



## INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

December 9, 2011

The Honorable Lisa Jackson, Administrator  
United States Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Re: Docket No. EPA-HQ-OAR-2011-0044

Dear Administrator Jackson,

As the Indiana Utility Consumer Counselor, I wrote you on August 3, 2011, expressing my deep concerns about the near term impacts of the EPA's proposed Mercury and Air Toxics Standards (MATS) Rule to regulate hazardous air pollutants. (A copy of my previous letter is attached for your convenience.) In that letter, I conveyed well-grounded concerns that the three-year compliance time table to meet the requirements of this rule was problematic, given the strong likelihood that the MATS Rule would put a strain on utilities' ability to comply and would result in unnecessary cost increases falling on the shoulders of ratepayers in order to comply. Accordingly, I had asked the EPA to reconsider the MATS Rule time table and provide some flexibility in its implementation by extending the deadline for completion of the compliance schedule.

While I had informed you that the nation's utilities had made a reasonable case for additional compliance time, credible mounting intervening data from other sources has heightened my initial concerns. I would particularly draw your attention to the recent November 30, 2011 technical conference held by the Federal Energy Regulatory Commission, which provided a forum for an open discussion of the serious reliability and cost consequences of failing to allow adequate time for coal generation to retrofit to the EPA's new standards. As MISO's Clair Moeller suggested in his comments – and as was echoed by FERC Commissioner Cheryl LeFleur in her opening remarks while chairing the technical conference – this is truly an “all-hands-on-deck” moment for the electric utility industry and its regulators.

Additional analysis has come from the regional transmission organizations (RTOs). Indiana is served by both MISO and PJM, and both of these RTOs have extensive expert resources for planning and reviewing generation adequacy and market impact issues. Independence is also a hallmark of the RTO construct, so it is imperative that their analysis be taken seriously.

According to the most recent data from these organizations, a large majority of the coal capacity in the MISO and PJM regions will require some form of retrofit. Given necessary planning and regulatory approvals, much of this work will not be able to take place until 2014. Considering that thousands of megawatts of coal-fired retirements have already been announced and the RTOs' projections that significant additional resources may retire, attempting to complete such a large number of retrofits during the shoulder seasons of a single year would be an extraordinary challenge. Requiring utilities both to serve load reliably and to meet impossible environmental compliance timelines will force them into a "Hobson's choice" which is clearly inconsistent with public policy. It is absolutely necessary that the EPA take seriously the potential reliability issues of requiring too many retrofits in too short a time period.

We also have new information as to cost implications. MISO estimates the capital costs of necessary retrofits – let alone such issues as fuel switching driven by the market impacts of such changes – will drive retail rates higher across the region by an average of 7.0-7.6%. Many states in the industrialized Midwest, including Indiana, rely particularly heavily on coal. Such states can expect to take an even greater hit. While the actual cost of compliance will be worked out over time through state regulatory proceedings and the region's markets, my office has now received its first estimates of what Indiana utilities expect the EPA's new initiatives will cost.

According to information I was provided just yesterday, the five largest Indiana electric utilities estimate the total cost of complying with the Cross State Air Pollution Rule (CSAPR) and MATS to range between \$6.532 billion and \$7.299 billion. They also expect additional compliance costs for the Cooling Water Intake Standards under §316(b) of the Clean Water Act to range between \$791 million and \$2.825 billion, and for compliance with the Coal Combustion Byproducts rule to cost between \$1.110 billion and \$1.405 billion. Taken all together – which is the way Indiana's customers will have to pay them – the total capital compliance cost of these rules could exceed \$11 billion. Even worse, these figures do not include such significant additional costs as potential replacement capacity, the market impacts of buying necessary emissions credits and/or relying more heavily on natural gas generation, transmission expansions which become necessary because of changes in the generation fleet, and other costs. Even without such other costs, my office estimates the impact of the capital compliance costs in terms of increased revenue requirements on Indiana alone will be in the range of \$1.7 billion annually. This would translate to an overall rate increase of approximately 22 percent over time, when compared to the combined 2010 operating revenues of Indiana's five investor-owned utilities.

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Despite these extraordinary costs, my office supports the need to improve the environment and reduce emissions over time. However, I hope you would share my concern that ratepayers not be exposed to exacerbating such costs by imposing unrealistic timeframes on the industry. Cleaner, more efficient energy infrastructure is a goal shared by us all, but recent experience with cost overruns on new infrastructure in Indiana has confirmed in my mind that we need to take the time to do everything we can to ensure new infrastructure is built as efficiently, prudently, and responsibly as possible.

Like most of the participants in last week's FERC technical conference, this office does not oppose the objectives of the EPA's MATS Rule. However, I would reiterate what I said to you in my August letter, that rushing this process exposes Indiana ratepayers to excessive reliability and cost risks and potentially poor decisions caused by insufficient time for sound planning, engineering and regulatory prudence reviews. In contrast, a reasonable, sustained approach to the implementation of this Rule which mitigates rapid increases in power prices, minimizes rate shock to consumers and ensures reliability is maintained will keep rates reasonable, support Indiana businesses, and in turn maintain jobs and promote competitiveness.

In view of all these considerations, I reinforce my request that the EPA reconsider its timetable and provide great flexibility and latitude in the implementation of the proposed MATS Rule.

Sincerely,



A. David Stippler  
Indiana Utility Consumer Counselor

Enclosure



## INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

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The Honorable Lisa Jackson, Administrator  
United States Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave. N.W.  
Washington, DC 20460

August 3, 2011

Re: Docket No. EPA-HQ-OAR-2011-0044

Dear Administrator Jackson:

After careful review of the proposed Utility MACT Rule to regulate hazardous air pollutants, I respectfully request that you consider extending the compliance schedule for fossil fired generating units.

As the Indiana Utility Consumer Counselor, I am concerned about the possible short term impacts of this proposed rule on Indiana ratepayers. The need to regulate and reduce hazardous air pollutants emitted from coal fired power plants is undisputable. However, forcing an untenable timeframe creates specific concerns. The constrained compliance timeline will likely put a strain on the utilities' ability to comply with interim dates, resulting in unnecessary increases in the cost to comply. Reasonable and carefully considered rules that mitigate rapid increases in power prices, minimize rate shock to consumers, and ensure reliability will support Indiana businesses and thereby maintain jobs and promote competitiveness.

I understand that the compliance timetable is about three years. The nation's electric utilities have made a reasonable case for additional compliance time to acquire the materials and labor needed to construct and install the required equipment without creating unnecessary cost increases and an unreliable electricity supply. In addition, these projects require substantial engineering, permitting and regulatory approval, all prior to construction. This timetable is all the more problematic in a state like Indiana where construction of major projects (like scrubbers or new generating plants) requires the issuance of a Certificate of Public Convenience and Necessity (CPCN) to a utility by the Indiana Utility Regulatory Commission. This process takes time to administer. Once a CPCN is issued, Indiana ratepayers bear virtually all of the cost and risk of construction. Rushing this process exposes Indiana ratepayers to excessive risks and potentially poor decisions caused by insufficient time for sound planning and engineering.

In view of these considerations, the EPA should reconsider this timetable and provide some flexibility in the implementation of the proposed rule by extending the deadline for completion of the compliance schedule.

Sincerely,

A handwritten signature in black ink, appearing to read "A. David Stippler".

A. David Stippler,  
Indiana Utility Consumer Counselor