



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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February 10, 2014

The Honorable Gina McCarthy, Administrator
Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy:

I write concerning the Environmental Protection Agency's ("EPA" or "Agency") proposed *Standards of Performance for Greenhouse Gas Emissions From Stationary Sources: Electric Utility Generating Units* ("Power Plant Carbon Standards")¹ published in the *Federal Register* on January 8, 2014, and then the subject of a Notice of Data Availability (NODA)², not yet published in the *Federal Register*, and accompanying Technical Support Document (TSD)³, both released by the EPA on February 5. As discussed below, Kentucky respectfully requests the EPA withdraw and re-propose the Power Plant Carbon Standards to incorporate the NODA/TSD's new information and rationale, and provide stakeholders a full 90 days to comment on the proposal. If the EPA does not do so, Kentucky requests that the comment deadline for both the Power Plant Carbon Standards and NODA/TSD be extended by a full 90 days after publication of the NODA/TSD in the *Federal Register* to allow for fulsome review and comment on the proposal and its new data.

Section 307(d) for the Clean Air Act ("CAA") requires that upon publication, a proposal like the Power Plant Carbon Standards include a "statement of basis and purpose . . . [which] shall include a summary . . . [of the] . . . factual data on which the proposed rule is based, . . . the methodology used in obtaining the data and in analyzing the data, . . . [and the] major legal interpretations and policy considerations underlying the proposed rule." CAA §

¹ 79 Fed. Reg. 1430 (Jan. 8, 2014).

² Signed on February 5, 2014 and not yet published in the *Federal Register*. Pre-publication version available at Docket No. EPA-HQ-2013-0495-1872.

³ *Technical Support Document: Effect of EPA Act 05 on BSER for New Fossil Fuel-fired Boilers and IGCCs*, Docket No. EPA-HQ-2013-0495-1873, Feb. 5, 2014.



307(d) also requires that “[a]ll data, information, and documents . . . on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule.”

The NODA/TSD of February 5 clearly evidences that the Power Plant Carbon Standards were incomplete when published back on January 8. The NODA/TSD is filled not only with new technical information, but more importantly, legal arguments outlining how the EPA believes facilities can still be considered under the Power Plant Carbon Standards despite apparent statutory prohibitions to the contrary. Even a preliminary review of the NODA/TSD makes clear that the new information includes “major legal interpretations and policy considerations underlying the proposed rule” and addresses new “data, information and documents.”

Consistent with requirements under CAA §307(d), the EPA should withdraw and re-propose the Power Plant Carbon Standards so the vital information in the NODA/TSD is “included in the docket on the date of publication of the proposed rule.” EPA also should accept public comments for a full 90 days after re-proposal. Anything less would deprive states and stakeholders of an adequate opportunity for analysis and comment.

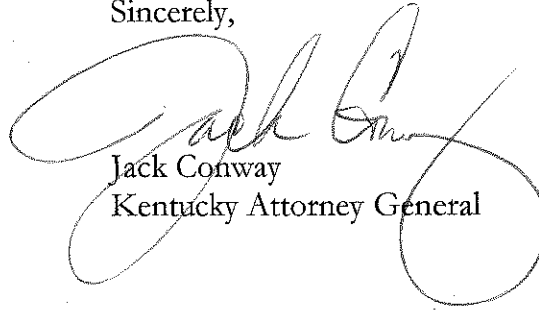
By way of background, states must balance administration of authorities delegated under the Clean Air Act with ensuring affordable and dependable electricity to constituent-ratepayers. While Kentucky anticipates it will rely on coal well into the future to meet the energy needs of its businesses, residents, and farmers, the Power Plant Carbon Standards would effectively prohibit the construction of new coal-fired power plants. Thus, Kentucky and other similarly-situated states must thoroughly analyze the Power Plant Carbon Standards to assess the proposal’s impact on the use of abundant and affordable domestic energy resources. As such, a 90-day period is necessary for states to comment on the Power Plant Carbon Standards while, at the same time, fulfilling duties to their citizens.

Since relevant analysis of the Power Plant Carbon Standards’ full legal and technical basis is only now beginning, the proposal’s current March 10 deadline does not allow sufficient time for meaningful comments. Yet, the EPA is now also requiring states simultaneously comment on the legally complex NODA/TSD by that same deadline. This leaves the public just twenty business days to not only complete comments on the Power Plant Carbon Standards, but also fully analyze and provide comments on the twenty-four additional issues raised in the NODA/TSD. Forcing states and stakeholders to draft comments on the Power Plant Carbon Standards and the NODA/TSD by March 10 is unreasonable and will burden state agencies.

Accordingly, Kentucky respectfully requests the EPA withdraw and re-propose the Power Plant Carbon Standards to incorporate the new information and rationale of the NODA/TSD, and provide stakeholders a full 90 days to comment on the proposal. If the

EPA does not do so, Kentucky requests the comment deadline for both the Power Plant Carbon Standards and NODA/TSD be extended to a full 90 days after publication of the NODA/TSD in the *Federal Register* to allow for fulsome review and comment on the proposal and its new data. This will provide state agencies time to fully consider the Power Plant Carbon Standards and its related documents in a manner that does not strain or undermine state operations. In turn, the EPA will benefit from more thorough feedback from states and other stakeholders.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Conway", is written over the typed name and title. The signature is fluid and cursive, with a large loop at the end.

Jack Conway
Kentucky Attorney General

c: Hon. Steven L. Beshear
Governor of Kentucky

Secretary Larry Hayes
Kentucky Cabinet for Economic Development

Secretary Leonard K. Peters
Kentucky Energy and Environment Cabinet