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COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

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MINORITY (202) 225–5051
TTY (202) 225–6852

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September 25, 2000

BY FACSIMILE

The Honorable Mark J. Mazur
Acting Administrator
Energy Information Administration
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Mr. Mazur:

I am writing to request that the Energy Information Administration (EIA) analyze the impacts on consumers and energy markets of the largest Clean Air Act (CAA) enforcement action in the Environmental Protection Agency's (EPA's) history.

On November 3, 1999, the Justice Department, on behalf of the EPA, filed lawsuits against seven electric utility companies in the Midwest and South, charging that 17 of the companies' power plants violated the CAA by making major modifications without installing pollution control equipment required by the New Source Review (NSR) program. EPA also issued an administrative order against the Tennessee Valley Authority (TVA), charging the Federal agency with similar violations at seven plants. In addition to the lawsuits and administrative orders, EPA issued notices of violation to the utilities, alleging violations at an additional eight plants. In all, the Clinton-Gore Administration targeted 32 power plants located in Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Mississippi, Ohio, Tennessee, and West Virginia, and is investigating other units throughout the electric utility industry. For brevity's sake, I will hereafter refer to these various enforcement actions as the "NSR litigation."

On February 29, 2000, the Administration reached a settlement with Tampa Electric Company (TECO), one of the utilities named in the NSR litigation. TECO agreed to pay a civil penalty of $3.5 million, invest $10 million in nitrogen oxide (NOx) reduction projects, and convert its generating units from coal to natural gas. Although the Administration reportedly offered the TECO settlement as a model for industry-wide resolution of the litigation, the other affected utilities -- American Electric Power, Cinergy, FirstEnergy, Illinois Power, Southern Indiana Gas & Electric Company (since renamed "Vectren") -- and TVA decided to challenge the NSR litigation in court.

The economic impacts on consumers, energy markets, and electric power reliability from courts' adopting EPA's position in the NSR litigation could be significant. At a minimum, TVA and the targeted utilities would have to install additional expensive control technologies to further reduce emissions of NOx, sulfur dioxide (SO_2), and particulate matter (PM). Some might find it necessary to convert their plants from coal to natural gas or some other fuel source, cap emissions at historic levels regardless of increases in demand, or retire their plants altogether.

There is also the possibility of civil fines for these companies. In theory, the Administration could fine each of the power companies up to $27,500 per violation, per day. Since many of the alleged violations date back to the 1980s (or even earlier), the penalties could add up to tens of millions of dollars.

The economic impacts of the NSR litigation are likely to reach far beyond the targeted companies and their regional markets. EPA is investigating other companies and has already stated that it plans to launch additional lawsuits.

More importantly, the types of projects EPA has targeted in the NSR litigation are commonly undertaken throughout the electric utility industry. A typical coal-fired power plant replaces the types of components addressed in the litigation once, twice, or even more frequently in the course of its useful life. Therefore, if courts uphold EPA's interpretation of the NSR routine maintenance provision (as limited to "patch and weld" operations), then virtually all coal-fired plants will have to retrofit, re-power, or retire their generating units within a relatively short period of time. It is difficult to imagine that such sweeping changes in the regulatory environment of the electric power sector would not increase electricity prices, drive up natural gas prices, diminish electric supply reliability, or reduce national economic growth.

Furthermore, if coal-fired plants must go through the NSR permitting process each time they plan *in the future* to replace components such as economizers, fans, and cyclone burners, then the adverse impacts on electricity cost, availability, and reliability may continue for many years.

Therefore, pursuant to the Constitution and Rules X and XI of the United States House of Representatives, I request that EIA analyze the cost implications -- the likely impacts on consumers, energy markets, and, insofar as possible, electric power reliability -- of the following scenarios.

Scenario 1. By 2005, all 32 power plants currently named in the NSR litigation must either install best available control technologies (BACT), convert their coal-fired units to some other fuel source, or retire those units. (BACT is defined as selective catalytic reduction for NOx to a level of 0.1 lb/million btu, 95 percent reduction for SO_2, and 0.01 lb/million btu for PM). Each company must also surrender all SO_2 allowances beyond what the company would have earned

had it installed scrubbers at the start of the SO_2 trading program. All plants must pay a fine and invest in environmental projects roughly on the order of those specified in the TECO settlement.

Scenario 2. By 2010, all coal-fired power plants nationwide must either install BACT, convert their coal-fired units to some other fuel source, or retire those units. All plants must pay a fine and invest in environmental projects roughly on the order of those specified in the TECO settlement.

For each scenario, please estimate the cost to the electric utility industry, the impact on consumer prices, and implications for national economic growth. Even after BACT is installed or units are converted, EPA's new interpretation of the routine maintenance provision may disrupt traditional utility maintenance practices. Therefore, please also comment on the potential for future delays and cost increases in routine maintenance, repair, and replacement, and the implications for electric supply reliability.

Please deliver your analysis to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building by early December 2000, using EIA's *Annual Energy Outlook 2001* as a baseline. This analysis is to take priority over the analysis of multi-pollutant strategies, which I requested on June 29, 2000. Please complete phase two of that study by the end of December 2000.

Finally, I request that EIA post both the multi-pollutant strategies study and the NSR litigation study on its web site. If you have any questions about this letter, please call Subcommittee Staff Director Marlo Lewis at 225-1962. Thank you for your attention to this request.

Sincerely,

David McIntosh

David M. McIntosh
Chairman
Subcommittee on National Economic Growth,
Natural Resources, and Regulatory Affairs

cc: The Honorable Dan Burton
The Honorable Dennis Kucinich