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**By Electronic Filing**

Hazardous Waste Management System;  
Identification and Listing of Special Wastes;  
Disposal of Coal Combustion Residuals from Electric Utilities Docket;  
Attn: Docket ID NO. EPA-HQ-RCRA-2009-0640  
Environmental Protection Agency  
Mailcode: 5305T  
1200 Pennsylvania Ave. NW  
Washington, DC 20460

The Alabama Public Service Commission (APSC) is providing comments in response to the June 21, 2010 Proposed Rule issued by the EPA concerning the regulation of coal combustion byproducts (CCBs), particularly coal ash and gypsum, as either hazardous waste under Resource Conservation and Recovery Act (RCRA) Subtitle C or non-hazardous waste under RCRA Subtitle D. While the APSC recognizes that individualized circumstances may warrant revised, and focused, regulatory attention, the APSC strongly believes that the sweeping regulations set forth in the Proposed Rule will be very disruptive and are unwarranted at this time. If some form of new regulation is imminent, however, then the APSC encourages the EPA to regulate CCBs under RCRA's Subtitle D, as a non-hazardous waste, consistent with the "D Prime" option described in the proposed rule.

As the APSC understands that proposal, existing surface impoundments would not have to close or install composite liners, but could continue to operate for their useful life, subject to the other criteria set forth under the Subtitle D option, which include groundwater monitoring and corrective action standards for releases from the unit. In the view of the APSC, such an approach is preferable (if new regulation is deemed necessary), as it would not automatically result in the magnitude of costs that the other options in the proposed rule would impose, but instead would provide the States an opportunity first to confirm whether and to what extent existing impoundments in their respective jurisdictions are being properly managed and are adequately handling the subject CCBs. Fundamentally, the APSC believes this approach most closely adheres to the principles of the proposed rule, namely to provide the basis for action that will be protective of human health and the environment while being based on sound science. Importantly, it also will continue to promote and expand the beneficial uses of CCBs, all while protecting the best interest of the ratepayers.

The regulation of CCBs involves an important component of the energy policy of the nation generally, and the State of Alabama specifically. The course EPA chooses to adopt could have a significant impact on both the reliability of generation in the State of Alabama, and the

cost of using that generation to serve retail consumers, as a significant percentage of the baseload generation committed to public service here comes from coal-fired generating facilities. Relevant to the issue of reliability is the recent report of the North American Electric Reliability Corporation (NERC), the 2010 Special Reliability Scenario Assessment: Resource Adequacy Impacts of Potential U.S. Environmental Regulations (Assessment). In the Assessment, NERC examined the impact upon reliability that four separate EPA proposals might have in the coming decade, including the Proposed Rule. While NERC's case scenarios for the Proposed Rule project the retirement of 130 MW of capacity in the Southeastern subregion of SERC (and the combined retirement of between 287-388 MW of capacity nationally), NERC's sensitivities recognize that as CCB disposal costs increase, so too do retirements. Specifically, as disposal costs increase from \$37.50 per ton to \$500 per ton, retirements jump from 0.3 GW to 2.1 GW. As costs pass the \$1,000 threshold, retirements approach 22 GW in capacity. When costs near \$1,250 per ton, retirements quadruple to 88 GW. Although NERC indicates that costs are believed to be within the lower end of the range, any error (or conservatism) in the cost estimates that underlie NERC's Assessment (and the Proposed Rule) will manifest with time and, in the event it does, will have very significant consequences on the ability of a number of baseload units to continue to serve customers in this State and indeed across the country. Moreover, these considerations are only raised in the context of the Proposed Rule. Without repeating the substance of NERC's Assessment here, it suffices to say that when all of the proposals are considered in the aggregate, the nation's electric system faces very significant tests depending on whether, and if so how, the proposed policies are implemented.

Furthermore, the course of action selected by the EPA to regulate CCBs will necessarily impact the ratepayers in Alabama because the cost of mandated environmental controls for such regulation is a component of the applicable retail rate structure. As the APSC understands the circumstances, the potential compliance costs associated with the options set forth in the Proposed Rule range across a spectrum with a magnitude in the tens of billions of dollars. Indeed, the APSC understands that EPA has estimated the costs of regulating CCBs as hazardous waste (i.e., under RCRA Subtitle C) will exceed \$21 billion for the electric industry. Leaving aside whether that estimate will prove accurate, for every \$1 billion in rule-related compliance costs that Alabama is required to bear, retail prices for consumers would increase by approximately 3.4 percent. And to be sure, such a scenario contemplates only capital expenditures associated with compliance-related projects, and does not take into account incremental O&M expenses, incremental fuel costs or costs associated with the construction of new generation units (which as the NERC Assessment recognizes, may be necessitated as a result of requisite retirements). Should actual costs prove to be even greater as a result of the regulatory decisions of EPA, the cost to consumers would increase commensurately. Such a change will not aid the recovery of the fragile economy or spur economic development. In addition, the APSC understands that regulation of CCBs as hazardous waste would significantly constrain or end the beneficial use of CCBs, based on the opinions of those who generate and utilize CCBs beneficially. As a result, a large percentage of previously recycled CCBs – approximately 42 percent (or 52 million tons) – would instead be subject to direct disposal.

Previously, the EPA determined that CCBs do not warrant regulation as a RCRA Subtitle C hazardous waste. The APSC understands that EPA issued two formal reports to Congress, in 1988 and 1999, in which it concluded that CCBs do not warrant regulation as a hazardous substance. In addition, in 1993 and 2000, the EPA issued formal regulatory determinations that the preferable approach for regulating CCBs was under RCRA Subtitle D, and not Subtitle C, as

the latter course would adversely impact CCB beneficial use. The APSC agrees with that conclusion.

It is important that the final rule reflect a balanced approach that ensures the environmentally responsible, cost-effective management of CCBs while also continuing to promote CCB beneficial use. The APSC believes that such management already is being accomplished under the existing regulations and supervisory practices. While the APSC understands that EPA believes that benefits will be realized in the aggregate and over time if certain problem situations are remedied, the APSC does not wish to see its ratepayers burdened for the mistakes or mismanagement of others.

In this respect, the APSC questions the need for any drastic change to existing practices, especially when CCBs are being managed and utilized in a manner that is sufficiently protective of human health and the environment. Stated differently, the APSC is not convinced that a single failure of a CCB impoundment facility, namely the TVA Kingston spill, by itself justifies the conclusion that CCBs are hazardous and that all existing disposal facilities and practices should be eliminated in favor of new, extremely costly approaches. To this end, the APSC is not aware of any conclusive findings or information that refutes the previous determinations made by EPA regarding the need to regulate CCBs as hazardous substances.

In view of the above and from its vantage point here in Alabama, the APSC does not see the current circumstances as demanding the extreme and costly change that EPA is proposing. There is little doubt that the costs associated with the option to regulate CCBs as hazardous waste under Subtitle C will be extreme and are not warranted to protect the environment, as EPA has already determined. For that reason, the APSC respectfully urges EPA to proceed cautiously as it considers the need for any regulation in this area at this time. In the event EPA concludes that action is necessary, the APSC believes that EPA should work closely with all the States in developing a program for CCBs under RCRA's Subtitle D non-hazardous waste authority, consistent with the "D prime" option described in the proposed rule.

Sincerely,

/s/John D. Free

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