

August 18, 2011

**By Electronic Filing**

U.S. Environmental Protection Agency  
EPA Docket Center  
Water Docket, Mail Code: 28221T  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460  
Email: OW-Docket@epa.gov

**Re: EPA Proposed Rule for Cooling Water Intake Structures at Existing Facilities and Phase I Facilities, Docket ID No. EPA-HQ-OW-2008-0667**

Dear Administrator Jackson:

The Alabama Public Service Commission (APSC) appreciates the opportunity to provide comments in response to the April 20, 2011 Proposed Rule issued by the Environmental Protection Agency (EPA) concerning the regulation of cooling water intake structures at existing facilities and Phase I facilities (Proposed Rule). The APSC regulates essential utility services throughout most of Alabama, including the electric utility service provided by Alabama Power Company. As a regulatory body, we are responsible for balancing the interests of our regulated utilities with those of the consuming public, with the ultimate goal being the provision of reliable service at rates that are fair and reasonable. To that end, the APSC must necessarily consider the impacts of any environmental control investments, such as investments in new generation plants, which may be triggered by compliance with the Proposed Rule.

In recent comments filed by the APSC in response to the proposed Air Toxics Rule (Docket ID: EPA-HQ-OAR-2009-0234), the APSC expressed concern with the impact that the Air Toxics Rule will have on electric generation reliability. The APSC further explained that it is not aware of a comprehensive study performed by the EPA, with the assistance of industry experts, which considers and explains the cumulative impacts on electric generation reliability as a result of implementation and compliance with the agency's recently implemented and proposed regulations. For that reason, the APSC called upon the EPA to perform a more comprehensive analysis that considers all factors and yields a true and correct assessment of the reliability impact of all of the rules and regulations recently promulgated or in progress, including the Proposed Rule. The APSC again requests that the EPA conduct such a comprehensive analysis in order to understand the true impact of its recent proposals and regulations in the aggregate.

As currently drafted, the Proposed Rule is unduly burdensome and will result in significant expenditures to bring certain electric generating facilities into compliance with the Proposed Rule. These increased costs necessarily will have an effect on the cost of power for consumers within the State. Moreover, these increased costs could potentially force the retirement of certain plants if prohibitively expensive modifications, such as the installation of

cooling towers, are necessary to meet the requirements of the Proposed Rule. The prospect of such a development concerns us greatly because it puts electric reliability, within the State of Alabama, at risk.

The APSC does believe, however, that certain key changes to the Proposed Rule would provide the enhanced protection for the environment that the EPA seeks, without greatly increasing the operational costs associated with the affected generating facilities. The APSC offers the following comments to address these concerns.

The APSC commends the EPA for not mandating closed-cycle cooling as the best technology available (BTA) for either entrainment or impingement mortality. As the APSC understands the design and operation of the generating facilities serving Alabama consumers, the overwhelming majority of those facilities cannot retrofit closed-cycle cooling without large capital expenditures. Thus, the imposition of such a technology, in lieu of other options that are more cost-effective, would be unreasonable and would bring about otherwise avoidable cost increases to Alabama consumers.

The APSC also commends the EPA for adopting a flexible, site-specific process delegated to state permitting authorities for determination of what constitutes BTA for minimizing the impacts of entrainment. Adoption of this site-by-site determination process recognizes the importance of state diversity in regulating and considering impacts under this Proposed Rule. It further allows for consideration of a range of factors that vary among facilities throughout the state and country, such as the cost of a specific technology, and the likely benefits of that technology, given the unique mix of species in the applicable water body. For more than 30 years, the EPA and state permitting authorities have utilized a site-specific approach to managing the impacts of cooling water intakes on aquatic environments. State environmental regulators thus have significant experience making sound decisions protective of our aquatic ecosystems that the EPA is correctly utilizing in the implementation of this rulemaking.

The Proposed Rule takes a different direction with respect to impingement, however, and it is not clear to the APSC why the EPA is choosing this course. Rather than utilize states' experience in managing the impacts of cooling water intakes on aquatic environments, the EPA instead is proposing a rigid, one-size-fits-all approach for regulating impingement. Under that method, the EPA would set national, numeric standards for mortality and intake velocity that are unachievable for an overwhelming majority of facilities in Alabama and throughout the country. This national, uniform approach takes away consideration of unique circumstances at various facilities and discretion for determining BTA for impingement on a site-by-site basis. Furthermore, by only providing a limited number of technology options to achieve compliance, the impingement standard also diminishes, and in some cases would eliminate entirely, the flexibility provided by the more appropriate entrainment standard. Like the proposed entrainment standards, the EPA should allow state environmental regulators to establish impingement standards, utilizing a site-specific, cost-benefit analysis to determine the best technology available for each individual facility.

Similarly, the EPA should eliminate the monthly and annual numeric impingement mortality limits from the final rule. In our opinion, the studies that the EPA relied upon to

establish these numeric standards do not appear to be representative of ecosystems and impingement mortality circumstances in Alabama. Facilities should be allowed to demonstrate compliance by showing they have installed and are properly operating and maintaining the technologies required by the rule. Moreover, numerical standards are overly burdensome and unfair for facilities that impinge small numbers of fish. Accordingly, the EPA should establish a *de minimis* exemption that facilities could qualify for, as determined on a site-specific basis at the state level. In the end, unattainable numeric standards will force more electric generating facilities to take the alternative compliance approach and modify the intake velocity at their facilities. This will drastically increase utilities' costs to comply with the impingement rule and increase costs to consumers.

Finally, the APSC encourages the EPA to revise the compliance schedules for the proposed entrainment and impingement standards and treat them jointly as part of any new rule. Presently, facilities are first required to address the impingement standards under the Proposed Rule; compliance with the entrainment standards follows later after sufficient time is allowed for the development of standards for site-specific applications. These separate compliance schedules are problematic because at the time impingement controls are being identified and implemented, industry will not have a full sense of what will be required to satisfy any applicable entrainment controls. As a result, impingement controls could be rendered obsolete or inadequate if such controls are not effective enough in reducing entrainment. Even in the most robust economy, a federal regulation should not promote unnecessary and duplicative compliance expenditures. Accordingly, the APSC urges the EPA to consider treating the compliance schedules for impingement and entrainment jointly under the final rule.

In conclusion, and as stated above, the APSC believes the current proposed rule is unduly burdensome and will result in unnecessary capital costs and increased operational costs that will be passed through to consumers. In today's difficult economy, environmental policy should not require overspending on nationally prescribed solutions to local issues, especially when more effective and flexible approaches are available. As such, revisions are needed before the final rule is issued. The APSC believes that the changes suggested herein would provide the desired, enhanced protection for aquatic ecosystems that the EPA desires without greatly increasing utilities' costs for compliance and, in turn, costs passed on to electricity consumers in Alabama.

If you have any questions or need additional information, please contact the undersigned at 334-242-9579 or [john.free@psc.alabama.gov](mailto:john.free@psc.alabama.gov).

Sincerely,

/s/John D. Free

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