



## STATE OF ALABAMA

ALABAMA PUBLIC SERVICE COMMISSION  
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SECRETARY

October 28, 2011

President of the United States of America  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Re: EPA Electric Utility Air Toxics Rule

Dear Mr. President:

On behalf of the Alabama Public Service Commission (APSC), we write to you regarding the pending Air Toxics Rule that is under consideration by the U.S. Environmental Protection Agency (EPA). As you may know, the APSC regulates essential utility services throughout many parts of Alabama, including the electric utility service provided in most of the lower two-thirds of the state. As a regulatory body, the APSC is responsible for balancing the interests of its 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 consider the impacts of any pollution control investments, plant retirements, investments in new generation plants, and other actions that may be triggered as a result of the Air Toxics Rule.

In fulfillment of our responsibilities, we urge the EPA to reconsider its finalization of the Air Toxics Rule or, at the very least, delay it for one year to allow for further consideration and analysis. As to any final rule, we urge the EPA to incorporate the maximum compliance flexibility possible. Finally, we respectfully request that you, Mr. President, invoke your authority under the Clean Air Act and extend any ultimate compliance deadline to the extent authorized by law. The APSC is concerned about our environment; however, the APSC remains gravely concerned that the Air Toxics Rule will significantly impact Alabama utility rates, reliability and jobs. Magnifying these very real concerns are the economic struggles facing the nation as a whole and Alabama citizens in particular. As a result of these circumstances, we are adamantly opposed to adding any new regulations that will result in financial hardships for Alabamians.

In previous comments to the EPA, the APSC explained our primary concerns with the Air Toxics Rule. Among other points, we explained how the cost impacts of the rule had not

been analyzed alongside the numerous other proposals being considered or recently implemented by EPA, such as the Cross State Air Pollution Rule. One source of our concern is a study conducted by the consulting firm National Economic Research Associates which considered the impacts of the Clean Air Transport Rule (when it was proposed) and the Air Toxics Rule. According to this study, average retail electricity prices are projected to increase between 12 percent and 23 percent in certain regions of the country by 2016. Compounding such a strain on the budgets of many Alabamians would be the corresponding increase in wholesale power prices. These prices are expected to escalate because tens of thousands of megawatts of existing coal-fired generation will be retired early rather than retrofitted for compliance with the Air Toxics Rule. These substantial retirements will lead to capacity shortages which will lead to higher wholesale prices. Such increases inevitably will be passed along to consumers, in the form of higher prices at grocery stores and shopping malls. In our earlier comments to the EPA, we also stressed how the Air Toxics Rule likely would cause a shift away from Alabama (*i.e.*, Appalachian) coal, resulting in a decrease of 8 percent in coal production and other decreases in coal-fired generation. Like the nation as a whole, the state of Alabama continues to endure high unemployment. Additional job losses from the coal and energy industries (either through coal production or coal-fired generation) will not help alleviate this problem.

To address our concerns with the potential costs and reliability impacts, the APSC believes that the EPA can, at a minimum, provide more flexibility, consistent with Executive Order 13563, "Improving Regulation and Regulatory Review." As issued by you, Mr. President, on January 18, 2011, this order generally requires agencies to consider costs and benefits, to ensure that benefits justify the costs, and to consider flexible approaches. In consideration of this directive, there are certain avenues that the APSC believes could be pursued by EPA with regard to its proposed Air Toxics Rule, and we respectfully ask you, Mr. President, for your support in this regard.

The most critical concern is the timing of the proposed rule. The APSC understands that when the court entered the consent decree setting the deadlines for the rule, it acknowledged that the timeframes were tight, and that it would be willing to entertain appropriate extensions. The APSC believes that it continues to be appropriate for the EPA to seek an extension of the court-ordered deadlines to allow for further consideration and analysis.

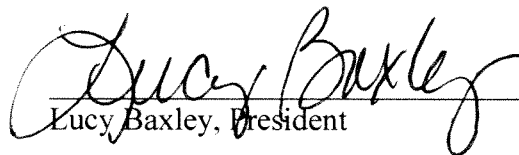
In a similar vein, the proposed Air Toxics Rule only allows three years for compliance, with the possibility of a one-year extension given on a case-by-case basis. However, from the perspective of a utility regulatory body, the "possibility" of a one-year extension does not rise to the level of assurance that is needed for purposes of resource planning by the regulated utilities. Utilities need to conduct firm and specific planning and have those plans approved by their respective commissions, all while maintaining a reliable supply of power. As a practical matter, it is quite difficult for responsible and prudent state regulators to approve utility plans for environmental compliance based on "possible" extensions of time. If you plan to move ahead, we request that the EPA pre-approve the one-year extension so that this additional time can be relied upon in the planning and evaluation process.

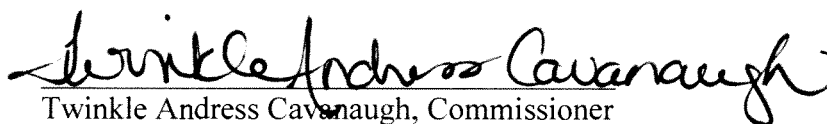
Lastly, we respectfully request that you, Mr. President, consider invoking your authority under the Clean Air Act, in the event the Air Toxics Rule is finalized, and extend any ultimate compliance deadline to the extent authorized by law. The on-going operations of a large number of electric generating units will be affected by not only the Air Toxics Rule, but also by the

numerous rules and regulations recently promulgated, or under consideration, by the EPA. These impacts, in combination with the time required to safely and reliably design, permit and construct complex environmental equipment and/or power supply replacement resources, clearly demand the establishment of a more measured and extended implementation term for the proposed rule.

In closing, while we are aware of concerns for public health and the environment, we are first obligated to consider the adverse impacts that the Air Toxics Rule may have on utility rates and reliability, Alabama jobs, and the harm those impacts could cause Alabama consumers. At a time when our National economy is putting a real strain on Alabama families and businesses, it is most important that consumers are not straddled with any unnecessary costs. In this regard, we firmly believe that the cumulative effects of the EPA's numerous proposals should be considered before moving forward and that consumers should be informed as to the financial impact these new rules will have on their household budgets. We further believe that extreme care should be taken at this time to ensure that the collateral effects of any new rule, or rules, does not further impede the country's ongoing economic recovery.

**Alabama Public Service Commission**

  
Lucy Baxley, President

  
Twinkle Andress Cavanaugh, Commissioner

  
Terry L. Dunn, Commissioner

Cc: Administrator Lisa Jackson, Environmental Protection Agency  
Governor Robert Bentley  
Senator Richard Shelby  
Senator Jeff Sessions  
Representative Jo Bonner  
Representative Martha Roby  
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