



MONTANA-DAKOTA

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Submitted via <http://www.regulations.gov> Attention: Docket ID No. EPA-HQ-OAR-2011-0044 (NSPS Action) and Docket ID No. EPA-HQ-OAR-2009-0234 (NESHAP Action)

EPA Docket Center
EPA West (Air Quality)
U.S. Environmental Protection Agency
Mailcode: 2822T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Subject: Proposed National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units, 76 Federal Register 24976 (May 3, 2011).

Dear Administrator Jackson:

Montana Dakota Utilities Co., a division of MDU Resources Group, Inc. (Montana-Dakota) submits the following comments on the proposed rule regarding national emission standards for hazardous air pollutants (NESHAP) and new source performance standards (NSPS) for fossil-fuel electric utility, industrial-commercial-institutional, and small industrial-commercial-institutional steam generating units published by the Environmental Protection Agency (EPA). Montana-Dakota's comments address both the proposed NESHAP and NSPS actions. Montana-Dakota appreciates the opportunity to comment on the proposed actions.

At the outset, Montana-Dakota supports and incorporates by reference the comments made by the North Dakota Lignite Energy Council (LEC), the Western Business Roundtable (WBRT) and North Dakota Public Service Commission (ND PSC), as well as a majority of the comments submitted by the Edison Electric Institute (EEI), as identified further in this letter.

Montana-Dakota generates, transmits and distributes electricity to more than 122,000 customers in 177 communities and adjacent rural areas in North Dakota, South Dakota, Montana and Wyoming. The total capacity of the company's owned electric generation is 564 megawatts. Approximately 70 percent of this capacity is fueled by coal. The proposed rule requirements would apply to Montana-Dakota's coal-fired electric generating utilities which provide critical electricity generation for the company's customers in Montana, North Dakota, South Dakota and Wyoming.

The company has significant concerns about the potential economic and reliability impacts of this rule on Montana-Dakota's customers. One of the most significant concerns is the proposed rule's restrictive compliance timeline of between three and four years, which in the opinion of our experienced engineers, does not provide sufficient time for implementing a baghouse retrofit, and more significantly for construction of any potential generation resource replacement that may result from plant closure due to the proposed rules (see discussion in Comment III below).

Montana-Dakota supports scientifically justified and reasonable environmental regulations that are also supported by law, and which result in cost-effective benefits. Upon review of the EPA's rulemaking and MACT standard methodology, Montana-Dakota believes that the EPA has not properly justified regulation of EGUs, properly developed MACT standards or fully considered the sub-categorization of units. Given these deficiencies, the agency should withdraw and re-propose rules consistent with established Clean Air Act requirements.

I. EPA Has Not Followed Clean Air Act Section 307 and 112 Rulemaking Process Leaving Current Proposed Rule Invalid

The LEC comments provide an extensive discussion of the Section 112 historical timeline and the requirements in Sections 307 and 112(n) of the Clean Air Act (CAA) that require the EPA to first public notice its determination that it is "appropriate and necessary" to regulate electric generating units (EGUs) under Section 112 prior to proposing any emissions standards. Montana-Dakota believes that the deficiencies in this mandated process cited by the LEC require that the EPA withdraw the proposed rule until after the agency has undergone public notice and comment on an "appropriate and necessary" finding and decision to regulate EGUs under Section 112.

For example, the LEC explains that hazardous air pollutant (HAP) emissions must be used to determine the "appropriate and necessary" regulation of EGUs, not non-HAP particulate matter (PM). The EPA chose to use PM controls in the form of baghouses for a non-mercury metal emissions MACT standard and, in part, the mercury MACT standard, and total PM as the surrogate limit for determining compliance. The EPA relied on the additional benefits of reducing non-HAP related PM to endorse the economic benefits of the proposed rule. Montana-Dakota agrees with the LEC that Section 112(n)(1)(A) requires that HAP reductions must be used alone, and not in conjunction with non-HAPs reductions, to determine whether regulating EGUs is "appropriate and necessary". The agency's substantial reliance on co-benefits of controlling other non-HAP emissions to support HAPs reductions is misleading and inconsistent with Section 112. It also ignores the plain fact that the public is already benefiting from the reductions of PM emissions through other regulations such as Regional Haze and Cross-state Pollution Control Rule and revised SO₂ and NO₂ national ambient air quality standards (NAAQS).

For non-mercury metal emissions, as well as acid gas and dioxin emissions, EPA has not yet completed an in-depth study, as it did for mercury, to identify the mechanisms of human exposure and related, detailed risk analysis. Montana-Dakota believes, along with the LEC, that the EPA cannot assume the same results and risks that occur with non-mercury metals as the agency determined for mercury, and that the EPA must complete a comparable and separate

national-scale risk assessment in order to determine appropriateness of proposing emissions standards for non-mercury metals.

Montana-Dakota believes that the EPA has not fully determined the nature and magnitude of the risk to public health posed by non-mercury metals, and acid gases and dioxins, and, therefore, the agency is not yet at the point at which it should propose emissions standards.

II. EPA Must Consider Additional Sub-categorization of Sources

Montana-Dakota appreciates that EPA considered the sub-categorization of sources such as boilers designed to burn lignite coals versus other fossil fuels, however, the company believes that the agency has not fully considered this aspect of its proposal, especially in regard to non-mercury metal and acid gas emissions. In the preamble, EPA states:

“The Small Entity Representatives (SERs) serving on the Small Business Advocacy Review Panel (SBAR) established under the Small Business Regulatory Enforcement Fairness Act (SBREFA) suggested that EPA consider developing an area-source (i.e., those EGUs emitting less than 10 tpy of any one HAP or less than 25 tpy of any combination of HAP) vs. major-source (i.e., those EGUs emitting 10 tpy or more of any one HAP or 25 tpy of more of any combination of HAP) distinction for this source category.” 76 Fed. Reg. 25020.

The next sentence provides EPA’s response to the the SER’s suggestion:

“The proposed rule treats all EGUs the same and proposes MACT standards for all units. Nothing in the CAA requires that we issue GACT standards for area sources.” 76 Fed. Reg. 25020.

The EPA goes on to state that data show similar HAP emissions and control technologies have already been installed on major and area sources and that there are significant numbers of well-controlled units of all sizes and that differentiating between a generally acceptable control technology (GACT) and MACT would be too difficult. The EPA further states:

“Moreover, EPA believes the standards for area source EGUs should reflect MACT, rather than GACT, because there is no essential difference between area source and major source EGUs with respect to emissions of HAP.” 76 Fed. Reg. 25020.

Montana-Dakota does not believe the above rationale sufficiently justifies limiting the agency’s efforts to evaluate and propose other potential source subcategories and agrees with the LEC that EPA’s decision not to further consider sub-categorization of sources is arbitrary and capricious. The EPA should further review the wide range of boilers, combustion unit sizes, coal-types, and control technologies currently in use that result in varying levels of mercury, non-mercury metals and acid gas control. With the extremely high level of control proposed in the rule, it is unknown whether existing plants could comply, even if baghouses were installed for non-mercury metals and mercury controls. Montana-Dakota recommends that the EPA conduct

further analysis, potentially reviewing more stack test data from a wider range of units to better understand the differences in HAP emissions within the industry, before finalizing any related MACT standards.

Montana-Dakota agrees with EPA's approach of subcategorizing oil-fired and lignite-fired facilities, however, as mentioned above, the company recommends that the EPA further research the differences between coal types and how additional controls for mercury may already reduce other HAPs as a potential additional sub-categorization method. For instance, Montana-Dakota's Lewis & Clark Station, an approximate 50 MW capacity lignite-fired unit, began controlling mercury emissions in late December 2009 utilizing oxidizing agent and activated carbon injection. A wet scrubber is also used for particulate control, as opposed to an electrostatic precipitator or a baghouse. From review of preliminary stack test results from non-mercury metals testing conducted at the unit this summer, it appears that Lewis & Clark Station would be able to pass the proposed total non-mercury metals limit, but would not pass all of the proposed individual metals limits nor the proposed total PM limit.

For Lewis & Clark Station, the MACT standard is therefore very restrictive. It would result in a very high compliance cost, and provide a very insignificant benefit since HAP emissions have been shown in the recent stack test to be already very low. This then supports further consideration be given to subcategorizing smaller, area source units and to providing a GACT standard that would allow for more flexibility in achieving HAP emission reductions, as opposed to the one-size-fits-all approach evident in the proposed MACT standards. The EPA has allowed much more flexibility in other rules, such as the recently proposed 316(b) rule, in order to achieve more cost effective environmental improvements. Montana-Dakota believes that the EPA can apply more flexibility in the proposed rule, possibly through additional sub-categorization, and still achieve the desired emissions reductions.

Compliance options must remain flexible and reasonable. Montana-Dakota therefore recommends that EPA take into account other methods for mercury control. For example, co-feeding limited amounts of tire-derived fuel with coal could be a viable control option as opposed to activated carbon injection. Injection of an oxidizing agent, such as calcium chloride, may also assist in achieving compliance with mercury emission limits, or possibly represent a singular control method, at a facility. Similarly, oxidizing agents coupled with a wet scrubber or electrostatic precipitator for particulate control may also provide some control of non-mercury metals without the need for a baghouse. EPA provides little to no detailed discussion on any of these alternatives in the proposed rule.

The additional sub-categorization of units goes hand-in-hand with the President's executive order issued recently directing federal agencies to apply the least burdensome means to achieve regulatory compliance. There is little evidence that EPA has applied this directive to this proposed rule.

Montana-Dakota also agrees with the exemption of peaking units firing fuel oil since emissions from these units are expected to be insignificant and the cost of controlling these emissions would not likely be economical.

III. Compliance Deadline Must Be Extended

Montana-Dakota recommends an extension of the compliance deadline since baghouse retrofit timelines and time that may be needed to replace generation resources do not correlate to the compliance timeline allowed in the proposed rule. The company believes this is particularly the case in the Great Plains region of the U.S. where there is a predominance of coal-fired electric generation facilities of which many will be required to make retrofits under the proposed rules, and some potentially forced to retire. The major issues supporting the finding that the rule provides too little time for compliance are: 1) the competition in obtaining engineering and environmental permitting assistance, materials and qualified laborers; 2) the timeline for approvals from state permitting agencies and the Public Service or Utility Regulatory Commissions; 3) the additional yet unknown impact from other extremely significant EPA regulations in proposal and pre-proposal stages; and 4) the impact on regional reliability.

A. Competition for Materials and Qualified Laborers

The timeline proposed for retrofitting impacted units under the proposed rule, along with other retrofits required under other EPA regulations, such as Regional Haze, is too ambitious. For years, the industry in this region has had concerns about timing of major outages and work projects amongst the plants and there is routine regional discussion on timing of outages to ensure that adequate craft and other labor and materials are available for all facilities when needed. This region of the U.S. will not just be competing locally for skilled workers; the competition impacts will be nation-wide. This appears to be a fundamental misstep that will not only increase costs of compliance and complexities relative to implementation, but it will potentially result in region-specific reliability issues.

B. Competition for Engineering Firms and Consultants

As the rule is proposed, and based on preliminary analysis by Montana-Dakota, the significant cost of pollution controls required to comply with the proposed rule may lead to decisions to retire coal-fired electric generating capacity in a very short timeframe of three to four years. Though a possible intended consequence of the proposal, this result is unprecedented. The ability to plan, site, engineer permit and construct replacement capacity is at least two to four years beyond the Section 112 allowed timeline of three to four years for compliance. More time must be allowed for compliance. As discussed further below, the EPA should immediately seek a Presidential exemption from compliance as provided in Section 112(i)(4) for the utility industry and incorporate the same into any compliance timeline set forth in any final MACT standard the agency promulgates.

C. Impact of Additional EPA Regulations

There are significant costs expected from future rules that EPA is expected to soon promulgate, such as 316(b), Coal Combustion Residuals, Regional Haze determinations, and Water Effluent Limit Reductions, and which are not expected to be finalized for at least a year or more. However, for a utility company to make decisions to install expensive retrofits under the proposed rule, it would be essential to know the outcome of these additional rules. Utilities will

be forced to speculate on the cost impacts from these other rules in order to make retrofit decisions in the near term. Retirements and retrofit decisions based on speculation are not supported by Public Service or Utility Commissions or utility shareholders.

D. State Permitting Agency and Public Service or Utility Regulatory Commission Approvals

The process of obtaining advance regulatory approvals, where available, can be as long as a 7 to 12 month process. Montana-Dakota will use the advance determination of prudence or other similar mechanisms to obtain concurrence from regulatory commissions that its decisions on options (and required expenditures) for future energy resources and modifications to existing energy resources are prudent. This further lengthens the time to plan and implement plant modifications.

E. Reliability

As proposed, this rule predicates the early retirement of electric generation facilities, particularly base load coal-fired sources of generation. Sufficient time must be allowed for utilities to secure new resources to ensure that disruptions and increased costs in electrical service are prevented. Additional off-ramps in the proposed rule may be needed to delay retirement of specific units to ensure system reliability is not compromised. Early unit retirements without sufficient construction time for needed replacement generation will impact utilities' abilities to serve customer load or base-load requirements. For every unit retirement, an equal or greater amount of new generation will be required to reliably serve existing customer load and future load growth. New unit construction, to replace retiring coal-fired sources of generation, will require numerous resources including: manufacturing, construction, engineering, siting and permitting. Scarcity of resources may increase installation times and impact any given utility company's ability to meet reliability demands if sufficient time is not allowed to implement this rule.

The EPA should consider creating a specific subcategory of sources in this rule due to specific reliability concerns and should work closely with FERC, NERC and regional reliability organizations to ensure that electric reliability is guaranteed.

If new generating resources are not located in the immediate vicinity of retiring units, new transmission investments may be required to facilitate the delivery of energy from new generating resources. Montana-Dakota agrees with EEI's detailed comments about the lengthy timeline for permitting and constructing transmission. The siting, permitting, design, and construction of new transmission facilities may take longer to complete than the construction timeline for the generating resource.

The proposed rule will require especially complex decisions to be made in a very short timeframe, possibly resulting in retirement of facilities which are a major source of employment for a community. This short timeframe is especially troublesome in a struggling economy. The proposed rule has already created concern in the utility workforce which may impact facilities' ability to maintain skilled employees.

F. Recommend Blanket One Year Extension and Added Five Year Presidential Extension

All of the issues outlined above support a longer timeline for implementing controls required by the proposed rule than is currently allowed. It is, at minimum, essential that the EPA grant a blanket one-year extension to all facilities under Section 112(i)(3)(B), however, more than a one year extension is expected to be necessary when taking into consideration all issues discussed above. Therefore, we also ask the agency take these concerns to the President and request that a five (5) year exemption be granted for all stationary sources needing to add a baghouse, other pollution controls requiring a significant timeline, or if replacement generation is required. An additional five years would provide a more feasible timeline for utilities to retrofit units or replace generation without scrambling for consulting and contractor resources that will be in high demand across the US, and without the lengthy time needed for regulatory approvals. In addition, the compliance extension is especially important for investor-owned utilities which need additional time to complete required integrated resource planning and supply side analyses under regulatory requirements, and obtain Public Service or Utility Commission advance determination of prudence to implement the required pollution control retrofits and/or replacement electric generation resources.

IV. Total Particulate Matter Not Appropriate as a Surrogate for Non-Mercury Metals Compliance

Montana-Dakota agrees with the LEC that filterable PM, as opposed to total PM, would be more suitable for determining continuous compliance with non-mercury metals. However, the MACT standard should be the average total non-mercury metal or individual metals emissions determined using the best performing 12 percent of units in a subcategory and not the total or filterable PM levels of those units. Each facility should be allowed to then correlate non-mercury metals emissions to a facility-specific filterable PM emission level that could be used as the surrogate for continuous compliance. The EPA should study this option further to determine if it is indeed appropriate. Montana-Dakota recommends that the EPA engage with industry and pollution control technology developers to better understand how non-mercury metal emissions are controlled.

EPA should further consider the following regarding non-mercury metals and use of PM as a surrogate:

- There may be distinct differences in metal concentrations in various types of coal that should be studied for determining appropriate sub-categorization.
- Additional stack testing may confirm that current particulate control devices installed under past NSPS requirements are already sufficient for controlling the metal or metals of concern and that mercury controls added to units may assist in reducing the other metals.

Also, the proposed rule's non-mercury metal emissions limits have been set at extremely low levels and in some cases cannot be measured at those low levels using current stack test procedures. For example, EPA's Method 29 standard, used to determine metal emissions from

stationary sources, has a beryllium method detection limit (MDL) that is three times higher than the proposed beryllium emission limit. The sample time of the stack test would need to be increased for lower concentrations to be measured and could require testing for 12 hours or more at a time. Such lengthened testing requirements would be burdensome and impracticable, and furthermore, for testing metals that were not determined by EPA to be a HAP emission of concern.

V. Work Practice Standards for Dioxin and Organics are Not Required or Necessary

It is difficult to understand why the EPA would seek to regulate dioxins/furans when the agency did not identify these as emissions of concern from utilities. The significant majority of the measured emissions from EGUs were demonstrated to be at or below the MDL even though an 8-hour test was required for dioxin/furan stack testing under the NESHAPs information collection request. Since the EPA did not consider dioxin an emission of concern from utilities, Montana-Dakota believes that this supports that a dioxin MACT standard is not required, and therefore, the requirements in the proposed rules should be removed. However, if EPA's further review of dioxin/furans supports development of a MACT standard in the future, even at the extremely low level of emissions, Montana-Dakota recommends that EPA allow EGU's to perform a one-time energy assessment as allowed under the EPA's recently finalized Area Source Boiler MACT Rule.

VI. Energy Efficiency and Demand Response Not a Sufficient Energy Resource Replacement

Montana-Dakota agrees with EEI's comments on the inappropriateness of requiring utilities to expand energy efficiency and demand response programs as an alternative to replacing retired generation when retrofits are uneconomical. Montana-Dakota offers these types of programs for its customers either through directives or objectives from a particular state or when these programs have proven to be more cost effective than energy obtained from traditional electric generation resources. Montana-Dakota conducts resource modeling as part of its integrated resources planning process and includes options and costs of demand response and energy efficiency programs in this process. Although these programs could be selected as a resource, the effectiveness and long-term viability is ultimately dependent on customer participation. Also, there are many complexities in arranging and obtaining agreements with interruptible service due to customers' scheduling constraints and priorities. Demand response and energy efficiency programs are typically more suited to be replacements for peaking type generation resources than traditional base load generation.

VII. Monitoring Requirements are Unreasonable and Unrealistic

Montana-Dakota believes, along with the LEC and EEI comments, that units with continuous emissions monitoring systems (CEMS) should not be required to perform additional fuel sampling or parametric monitoring since this is redundant and burdensome. Montana-Dakota also agrees that there is no logical reasoning for requiring sources to establish parametric limits for compliance at units already demonstrating compliance with CEMS.

Montana-Dakota supports using a mercury CEMS to demonstrate continuous compliance and has been operating and maintaining a mercury CEMS to report emissions at the Lewis & Clark Station to the Montana Department of Environmental Quality for about two years. However, the system has been challenging and the company is still working with the mercury CEMS vendor to resolve monitor issues, and therefore, it is still appropriate for the EPA to allow alternative methods of demonstrating compliance.

The proposed rule's mercury monitoring provisions indicate that a mercury CEMS would require initial certification utilizing EPA's National Institute of Standards and Technology (NIST)-Traceable elemental mercury standards, however, the EPA should confirm with suppliers and vendors that all necessary mercury NIST traceable calibration gases are available. The proposed rule also requires certification of the monitoring system calibrator with an offsite third party vendor calibrator that has been certified against a NIST certified calibrator. These requirements will create challenges for utilities that have already implemented mercury monitoring plans and emissions controls under state-specific mercury emissions reduction requirements. Montana-Dakota recommends that the EPA engage in discussion with these state agencies, such as the Montana Department of Environmental Quality, and utilities that have thought through these monitoring system calibration issues and have come up with solutions that are less burdensome than what the EPA has proposed.

Montana-Dakota agrees with the EPA that application of a bias adjustment for mercury emissions is not necessary. It is our understanding that a bias adjustment, as used for SO₂ emissions in the Acid Rain Program, was primarily intended to assist with ensuring emissions were adjusted properly for cap and trade of emissions. Since mercury will not be traded, the bias adjustment is not necessary.

Montana-Dakota also agrees with the EPA that the Emissions Collection and Monitoring Plan System (ECMPS) could be used for submittal of compliance data as required in the proposed rule. This system is currently used successfully to report Acid Rain Program emissions from utility units.

EEl provides detailed discussion in its comments on Section 63.10007 and Tables 5 and 7 that contains compliance demonstration requirements, and specifically, demonstration "through performance testing". This rule section and tables require units to establish site-specific operating parameter limits for each applicable control device during three-run performance tests. These provisions essentially require utility units to develop parametric limits at different operating levels and coal qualities. According to this section, stack testing is to be performed while units burn coal with the maximum concentration of HAP constituents, but units would still have to run at normal operating load. Montana-Dakota does not believe this would be possible since the company has observed that coal with the maximum HAP concentration characteristics generally contains lower heat content. Therefore, running a performance test solely with coal having the higher HAP concentrations, and lower heat content, would not allow a unit to attain normal operating loads. Numerous stack tests would be required during a single compliance period to determine parametric limits for each seam/quality or type of coal as proposed in the rule and there could be multiple compliance periods in a year depending on a utility's chosen compliance method. This is burdensome. The company believes that the proposed MACT standard should already take into account the variability in the coal a unit burns and that it is not

necessary to conduct performance testing of different coal quality/seams. It would be helpful for the EPA to review data showing HAP concentration variability by coal-type and within coal-type before finalizing these monitoring requirements. Montana-Dakota believes this effort would lead to a reduced compliance burden on utilities.

Also, units using a CEMS for compliance would be receiving real-time data in order to make parametric adjustments to control emissions if HAP constituents change with incoming coal. Again, Montana-Dakota believes parametric monitoring coupled with a CEMS for compliance is unjustified.

EEl and the LEC also provided significant comment on difficulty in complying with parametric limits at all times, especially when a parametric limit was set at a higher load, and a unit operates a significant amount of time at lower loads. Plants must have the flexibility to adjust parameters beyond what would be encountered during a performance stack test to address incoming coal variability, ambient weather conditions, and to support the operational changes occurring in other control systems. Also, according to the proposed rule requirements, activated carbon injection amounts, or other control media, would be set at the highest operating load and a unit would not be able to reduce the amount of product injected when running at lower loads and corresponding lower flue gas flows. This does not make economic sense and is wasteful to add more material than necessary to control emissions.

We agree with EPA's provision that units can comply with the standards by demonstrating they meet low emitting EGU (LEE) status for mercury and believe EPA can apply this compliance methodology to other HAP constituents. However, we do not believe it is necessary to sample larger volumes during stack testing to comply with LEE status. Current stack test methods should be sufficient for determining compliance with LEE status and a unit is still required to conduct monthly fuel sampling per 63.10006(c) that would serve to demonstrate coal variability. Montana-Dakota also believes it is burdensome to require parametric limits to be applied to LEE units as well, since existing controls for other pollutants, such as SO₂ in consideration of a potential HCl LEE unit, would be adjusted as appropriate for the pollutant emissions that are monitored by the CEMS. This would serve to keep HAP emissions consistent, and again, fuel analysis is conducted monthly for LEE units to evaluate potential increases in constituents that might result in higher emissions.

VIII. EGU Definition Should Be Revised to Reflect EPA's Historical Interpretation of the EGU Definition in Section 112(a)(8)

Section 112(a)(8) of the federal CAA defines the term "electric utility steam generating unit" or "EGU." The first part of the definition applies to thermal combustion units of a certain size that serve a generator that produces electricity for sale. The second part applies to units that cogenerate steam and electricity. Where the latter is concerned, Congress expressly directed that megawatt electrical output (MWe) to a distribution system be the basis for establishing the EGU status of a unit. In practice, EPA has also applied a "MWe" output qualifier to the thermal combustion units covered by the first part of the EGU definition in Section 112(a)(8).

The first part the definition applies to a thermal combustion units. It does not use the MWe qualifier.

"The term 'electric utility steam generating unit' means any fossil fuel-fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale."

The second part of the EGU definition, which applies to units that cogenerate steam and electricity, expressly references electrical output capacity as MWe. It states as follows:

"A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale shall be considered an electric utility steam generating unit ." (Emphasis added).

EPA has routinely construed the first and second parts of Section 112(a)(8) synonymously relative to the megawatt qualifier. A prime example of this is found in *The Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generation Units—Final Report to Congress* (Volume 1 & 2), which EPA submitted to Congress in February 1998 (Final Report).¹ In that report, which is critical to this rule making, EPA states as follows:

Section 112(a)(8) of the Act defines an "electric utility steam-generating unit" as "any fossil-fuel-fired combustion unit of more than 25 megawatts electric (MWe) that serves a generator that produces electricity for sale."

The proposed definition of EGU in Section 63.10042 mirrors the Final Report by adding the "MWe" qualifier in the second part of Section 112(a)(8) to non-cogenerating units covered in the first part of the statutory definition. The definition in the proposed rule states as follows:

"*Electric utility steam generating unit* (EGU) means a fossil fuel-fired combustion unit of more than 25 megawatts electric (MWe) that serves a generator that produces electricity for sale. A fossil fuel-fired unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 MWe output to any utility power distribution system for sale is considered an electric utility steam generating unit. See 75 Fed. Reg. at 25122.

Montana-Dakota believes that this all makes sense for thermal combustion units so long as EPA clarifies that the definition of EGU is assessed by reference to the maximum electrical generating capacity of the generator the combustion unit serves. Thermal units, or boilers, are not, from an engineering standpoint, assigned MW or MWe ratings in design or specification. In Montana-Dakota's experience these ratings are only known to be assigned to generator electric output (i.e., to the generators a boiler serves). Thus, the thermal capabilities of a combustion unit are specified by reference to generator output. The definition of EGU should therefore be revised as follows:

1 See EPA-453/R-98-004 a & b (Feb 24, 1998).

“Electric utility steam generating unit (EGU) means a fossil fuel-fired combustion unit servicing a generator of more than 25 megawatts (MWe) ~~that serves a generator~~ that produces electricity for sale. A fossil fuel-fired unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 MWe output to any utility power distribution system for sale is considered an electric utility steam generating unit.

While this proposed revision conforms to EPA’s historical interpretation of Section 112(a)(8) for EGUs, it necessitates that EPA also conform the definition “fossil fuel fired” in Section 63.10042 of the proposed rule. That definition should therefore be revised as follows:

“Fossil fuel-fired for cogeneration means a cogeneration means an electric utility steam generating unit (EGU) that is capable of combusting sufficient fossil fuel more than 73 MWe (250 million Btu/hr, MMBtu/hr) heat input (equivalent to 25 MWe output of fossil fuels to generate 25 MWe from such fuels alone. To be “capable of combusting” fossil fuels, an EGU would need to have these fossil fuels allowed in their permits and have the appropriate fossil fuel handling facilities on-site (e.g., coal handling equipment, including coal storage area, belts and conveyers, pulverizers, etc.; oil storage facilities). In addition, fossil fuel-fired means any EGU that fired fossil fuels for more than 10.0 percent of the average annual heat input during the previous 3 calendar years or for more than 15.0 percent of the annual heat input during any one of those calendar years.”

The above proposed revisions to the definition of “EGU” and “fossil fuel fired” reflect commonly known and accepted metrics for measuring the output of combustion units used to generate electricity. Consistent with that approach, generator output is used to express the amount of thermal input necessary to generate a specified level of electricity. Historically, the agency has adopted this approach when interpreting Section 112(a)(8) and it expressly references this approach in the following portion of the preamble to the proposed rule:

“For such [cogeneration] units, EPA is proposing that the unit must be capable of combusting sufficient coal or oil to generate 25 MWe from the fossil fuel alone, and must provide for sale to any utility power distribution system electricity equal to more than one-third of their potential electric output capacity and greater than 25 MWe electrical output.” (Emphasis added.)

See 76 Fed. Reg. 24976, 25025-26.

Finally, to ensure the rule definitions are internally consistent, the definitions of “coal-fired electric utility steam generating unit” and “oil fired electric steam generating unit” should be revised as follows:

“Coal-fired electric utility steam generating unit means an electric utility steam generating unit ~~meeting the definition of “fossil fuel-fired”~~ that burns coal or coal refuse either exclusively, in any combination together, or in any combination with other fuels in any amount. In addition, coal-fired means any EGU that fired coal for more than 10.0 percent of the average annual heat input during the previous 3 calendar years or for more than 15.0 percent of the annual heat input during any one of those calendar years.

* * * *

Oil-fired electric utility steam generating unit means an electric utility steam generating unit that either burns oil exclusively, or burns oil alternately with burning fuels other than oil at other times. In addition, oil-fired means any EGU that fired oil for more than 10.0 percent of the average annual heat input during the previous 3 calendar years or for more than 15.0 percent of the annual heat input during any one of those calendar years.

IX. Montana-Dakota’s Agreement with Additional LEC and EEI Comments

Montana-Dakota also agrees with the following list of LEC and EEI comments that have been submitted on the proposed rule:

- EPA cannot establish standards for emissions the agency has determined are not of concern.
- Dry sorbent injection has limited applicability for meeting acid gas reductions and could hinder beneficial use of coal ash.
- EPA must calculate a mercury standard using the average of the best performing 12 percent of existing sources or source subcategory.
- New unit MACT standards must be based on performance of existing units.
- New unit MACT standards, as proposed, cannot be demonstrated or measured by new units.
- Individual non-mercury metal limits would not be attainable for both existing sources and new sources.
- Monitoring requirements are severe and expensive, contradicting the President’s recent executive order directing federal agencies to apply the least burdensome means to achieve regulatory compliance. Monitoring requirements are redundant, confusing and excessively burdensome.
- EPA should allow work practice standards as MACT for start up and shutdown conditions as allowed in the recent Boiler MACT Rule(s), and not apply these periods to numeric emission limits.

- EPA should allow broad emissions averaging to more economically and effectively achieve emissions reductions.
- EPA's Risk Impact Assessment does not address cumulative impacts of emissions reductions and costs from other proposed and soon-to-be proposed environmental regulations.
- Emissions limits are set so low that accurate testing methods do not exist to demonstrate compliance in some cases.
- It is inappropriate to apply a snapshot maximum operating PM limit to a unit.
- EPA must address the cumulative effects of multiple pollution control devices on existing units in determining MACT standards.
- HCl monitoring methods must be flexible since current HCl CEMS cannot accurately measure emissions in the concentration range of the proposed HCl emission limit.
- Construction timeline for new units and lengthy retrofits do not match rule's compliance timeline.
- States, as the permitting authority, should be given the discretion to approve a longer and justified compliance timeline for units on a case-by-case basis.

X. Conclusion

Montana-Dakota has significant concerns about the potential economic and reliability impacts of this rule on the company's customers. The restrictive timeline must be extended at least by one year, plus receive a Presidential extension of an additional five (5) years since sufficient time is not provided for implementing a baghouse retrofit or for construction of any potential generation resource replacement. Montana-Dakota believes the LEC's rationale is sound in determining that the EPA has not properly justified regulation of EGUs, properly developed MACT standards or fully considered sub-categorization of units. The agency should withdraw the proposal and approach new rulemaking per established Clean Air Act requirements.

Montana-Dakota appreciates the opportunity to comment on this proposed rule. If you have any questions, please contact me at (701) 222-7844.

Sincerely,



Abbie Krebsbach
Environmental Manager

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August 4, 2011

Senator Max Baucus - Montana
Senator Jon Tester - Montana
Senator Kent Conrad – North Dakota
Senator John Hoeven – North Dakota
Senator Tim Johnson – South Dakota
Senator John Thune – South Dakota
Senator Mike Enzi - Wyoming
Senator John Barrasso - Wyoming
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Representative Cynthia Lummis – Wyoming
Representative Rick Berg – North Dakota
Representative Kristi Noem – South Dakota
North Dakota Public Service Commission
South Dakota Public Utilities Commission
Montana Public Service Commission
Wyoming Public Service Commission