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Mr. Ronald Jordon
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20002

RE: Comments of the American Public Power Association on the Postponement of Certain Compliance Dates for the Effluent Limitation Guidelines and Standards for Steam Electric Generating Point Sources; 82 Fed. Reg. 26,017, June 6, 2017; EPA-HQ-OW-2009-0819

Dear Mr. Jordon:

The American Public Power Association (Association) appreciates the opportunity to provide comment on the Environmental Protection Agency's (EPA or Agency) proposed rule on the "Postponement of Certain Compliance Dates for the Effluent Limitation Guidelines and Standards for the Stream Electric Power Generating Point Source Category" (Proposal).¹ The Association submitted extensive comments on the proposed "Effluent Limitation Guidelines and Standards for the Stream Electric Power Generating Point Source Category" (ELG Rule) expressing our concerns with the achievability and costs contemplated for affected electric generating units (EGUs).²

The Association is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the federal government to protect the interests of the more than 49 million people that public power utilities serve, and the 93,000 people they employ. The Association advocates and advises on electricity policy, technology, trends, training, and operations. Our members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.

The Association is a member of the Utility Water Act Group (UWAG) and is supportive of the administrative petition for reconsideration filed by the UWAG and the Small Business Administration, Office of Advocacy (SBA). The reconsideration petitions warrant the Agency's careful consideration due to the ELG Rule's impact on both the utility and coal industries and the resulting effect on the communities in which these industries serve. The Agency's decision to reconsider the ELG Rule and establish an administrative stay of the ELG Rule's best available technology (BAT) economically achievable limitations and pretreatment standards deadlines for certain waste streams is appropriate given the wide-ranging issues and objections raised in the reconsideration petitions.

¹ 82 Fed. Reg. 26,017(June 6, 2017).

² EPA-HQ-OW-2009-0819-5140.

The Association supports the Proposal to postpone certain “applicability dates“ that have not passed in the ELG Rule, for the following waste streams: BAT for flue gas desulfurization wastewater (FGDW) including limits for arsenic, mercury, selenium and nitrate/nitrite; fly ash transport water (FATW); flue gas mercury control (FGMC) wastewater; bottom ash transport wastewater (BATW) and the pretreatment standards for existing sources (PSES) for FGDW, FATW, BATW, FGMC and gasification wastewater.³ The postponement of applicability dates is appropriate considering EPA’s plans to reconsider the final ELG Rule and the pending judicial review in the U.S. Court of Appeals for the Fifth Circuit, *Southwestern Electric Power Co., et al.v. EPA* (No. 15-60821). We believe the postponement of certain applicability dates is a temporary measure to prevent public power utilities from expending resources until EPA completes its reconsideration of the ELG Rule. Further, postponement of the ELG Rule applicability dates will not adversely affect the environment. Water quality standards will apply and are independent of the ELG Rule.

Postponement of Deadlines is Necessary During EPA’s Reconsideration

The Association supports the postponement of certain applicability dates while EPA reconsiders the ELG Rule. The petitions for reconsideration introduced new compelling information documenting the harm and potentially irrevocable actions utilities would have to take, if certain applicability deadlines were not postponed. If the ELG Rule’s applicability deadlines are not postponed, public power utilities with limited resources will continue to be strained by the need to investigate various compliance strategies that may change after EPA’s review. So long as the applicability deadlines are in effect, public power utilities are unable to wait to see how the reconsideration is resolved and would have to make irrevocable decisions within the next 3-6 months. The Association surveyed its members and learned that in the interim, public power utility City of Springfield, Office of Public Utilities (City Water, Light and Power) is projected to spend over \$700,000 on engineering studies to evaluate compliance with the ELG Rule and Coal Combustion Residuals (CCR) rule, and anticipates spending approximately \$41-55 million in capital expenses to meet the November 2018 deadline for indirect discharges under the ELG Rule’s pretreatment standards. Postponement is necessary as a basic principle of fairness. Any large capital investments a public power utility makes for environmental projects require the evaluation of all technology options, preliminary engineering, and design consideration before expenditures are approved by city councils and boards of directors. The postponement of certain

³ The “compliance dates” that EPA proposes to stay are applicability dates, as EPA explains in the ELG Rule Response to Comments (EPA-HQ-OW-2009-0819-6469), pp. 8-128 to 8-129.

[In some cases, the rule establishes limitations that are based on technologies that are available as of the date of this final rule and thus must be met by a given plant immediately once incorporated into its NPDES permit. In other cases, the rule establishes limitations based on technologies that EPA determined are not available until at least November 1, 2018 (for reasons explained in preamble section VIII.C.7). For these limitations, EPA also determined that the technologies are available for every plant by December 31, 2023. In other words, the implementation period in the final rule (“as soon as possible beginning November 1, 2018, but no later than December 31, 2023”) tracks when, in EPA’s judgment, certain technologies represent Best Available Technology Economically Achievable, it is not [a] “compliance schedule” for meeting limitations based on a technology that is already available and achievable.]

ELG Rule deadlines during reconsideration will ensure communities don't make capital expenditures which are irrevocable.

Changes in other environmental rules warrant a postponement of the ELG Rule's applicability deadlines. The Agency recently announced plans to review the emission guidelines for existing power plants under section 111(d) of the Clean Air Act and has received an administrative petition for reconsideration of the CCR rule. The utility industry anticipates both rules will undergo substantive changes. In EPA's regulatory impact analysis of the ELG Rule the Agency evaluated the impacts of the CCR rule and the 111(d) rule. This analysis no longer reflects the true financial impacts of the ELG Rule. The postponement of the ELG applicability deadlines will provide EPA an opportunity to evaluate the cumulative impacts of these rule.

The ELG Rule identified six utilities subject to the pretreatment standards for existing sources under section 307 (b) of the Clean Water Act. Many of these utilities are Association members, such as Lakeland Electric and City Water, Light and Power. Postponement of the ELG Rule applicability deadlines is critical for utilities subject to the pretreatment standards which have applicability dates as early as November 1, 2018. Florida's Lakeland Electric, that owns and operates McIntosh power station (365 megawatt coal plant), is facing a 16-24-month lead time and approximately \$7 million in costs to design, permit, construct, and commission FGDW BAT by November 1, 2018. Additionally, the plant must be reconfigured to comply with the zero-liquid discharge limit for BATW, at an additional cost of \$1 million. The utility is now faced with an immediate decision to retire, idle, or retrofit the unit to comply with unrealistic deadlines. Retiring the McIntosh unit would result in irrevocable harm to the Lakeland community and utility customers. Customers would lose the leverage that a diverse fuel mix offers, and the McIntosh unit's retirement may require the utility to purchase power at higher costs to their customers. Further, the community would suffer the loss of approximately 100 jobs if the plant were to permanently close and the potential loss of an untold number of jobs in other related industries. Postponement is necessary to prevent irreparable harm to utilities subject to the November 1, 2018 deadlines. Capital expenditures during the reconsideration period are unnecessary.

Postponement of the ELG Rule deadlines is required due to the inability of coal plants to reliably achieve the FGDW limits in the rule. The FGDW BAT limitations were based on biological treatment and chemical precipitation modeled technology. A report submitted in conjunction with UWAG's reconsideration petition found that the biological treatment system used in a pilot study did not consistently demonstrate compliance with the selenium limits in the ELG Rule while burning subbituminous coal.⁴ Utilities would have to continue to expend resources investigating possible compliance strategies for a technology that has not been tested across a broad range of operational conditions. Without a postponement of applicability dates for certain waste streams like the FGDW, utilities would have to resume pilot studies and waste limited resources.

⁴ EPRI Technical Report March 2017: Biological Treatment of Flue Gas Desulfurization Wastewater at a Power Plant Burning Power River Basin Coal: Pilot Demonstration with the ABMet Technology.

Postponement of the ELG Rule deadlines is warranted to facilitate planning for public power utilities with multiple EGUs. Facilities with multiple EGUs have greater variability in plant operations due to start-up, shut-down, and electrical load levels. An optimal wastewater treatment system would need to integrate all units, all waste streams, and all BAT technologies. Imposing these dynamic planning requirements on a utility while the ELG Rule is under review is overly burdensome and may result in flawed decision-making.

Recently, EPA sought stakeholder input on existing regulations that should be repealed, replaced, or modified in accordance with Executive Order, 13777 “Enforcing the Regulatory Reform Agenda.” The Association specifically commented in this docket, calling for the Agency to modify the ELG Rule based upon its effect on jobs, costs that exceed benefits, and the lack of transparency in the rule’s underlying data. Postponement of the ELG Rule applicability deadlines meet the intent and spirit of the President’s regulatory reform principles. If the applicability deadlines remain in effect during reconsideration, the ELG Rule would impose compliance costs that would impact jobs and potentially force plants to close prematurely, foreclosing the opportunity to operate a valuable asset for its remaining useful life.

Length of Postponement

The Proposal requests comments specifically on “whether the postponement should be for a specific period of time, for example, two years.”⁵ The Association believes, at a minimum, the duration of the postponement should be added to any new applicability dates. EPA has indicated the postponement would remain in effect until the Agency promulgates any new applicability dates, to prevent affected units from expending undue resources. The Association supports a detailed and prompt reconsideration of the ELG Rule. We believe two years is an admirable goal, however, the length of the postponement is dependent on the scope and depth of the issues EPA agrees to reconsider. EPA should consider the time necessary to plan, design, tie-in, start-up, and finance a wastewater system when setting any new effluent limitations and applicability dates. Some waste water treatment technologies are multi-year projects. Further, many facilities are on two- to four-year maintenance cycles, meaning it may take two years to design and build a treatment system, but the next plant outage maybe eighteen months away, thereby increasing the overall implementation schedule to four years. The Association supports a timeframe for postponement that encompasses all the above consideration when planning a project and a thorough review of all issues raised in the reconsideration petitions.

⁵ 82 Fed. Reg. 26,018.

Summary

The Association supports the postponement of certain applicability deadlines in the EGL Rule to allow the Agency to complete its reconsideration without imposing undue financial harm to public power communities. The postponement is warranted to ensure any revised ELG Rule reflects the principles of regulatory reform and achievable limitations.

Please contact Ms. Carolyn Slaughter at 202-467-2943 or email cslaughter@publicpower.org with any questions about the above comments.

Sincerely,

A handwritten signature in black ink that reads "Carolyn Slaughter". The signature is written in a cursive, flowing style.

Carolyn Slaughter
Director of Environmental Policy