

Meeting with OMB to Discuss EGU MACT

Nov. 3, 2011

1. Brief overview of public power and APPA's interest in the final rule for ensuring timely compliance.
2. In the proposed rule, the four years (three plus one) available for compliance is simply not enough time and the additional time for compliance must be provided. However, the additional time should not come through the "regular" enforcement process (Section 113) that involves a court-supervised consent decree. That approach is too lengthy and costly, and carries an unfair public stigma of having committed criminal noncompliance.
3. The Utility MACT rule presents unique and significant timing impacts to community-owned utilities because of state and local regulatory requirements for planning (*average time is 17 months*), often public hearings, financing (*average time is 8 months*), permitting, **public bid procurement** & construction involving large capital investments like pollution controls. The final rule therefore should provide tailored solutions for these unique government burdens by providing (a) compliance extensions for meeting MACT **and** (b) a subcategory for power plants <100 MW.
4. Existing Executive Orders (e.g. EO 12866 OIRA) provide "Regulatory Principles" that include requiring that EPA consider how regulatory requirements might significantly or uniquely affect small communities and governmental entities. In Sections 1(5) and 1(9) the EO outlines requirements to design regulations in most cost-effective manner to achieve objective and to minimize those regulatory costs and burdens that uniquely and significantly affect such governmental entities." In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local and tribal regulatory and other governmental functions". The EO states in Section 1(11) that "Each agency shall tailor its regulations to impose the least burden on society, (including individuals, businesses of differing sizes) and other entities, including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations".
5. Publicly-owned utilities must comply under State law with a rigorous public process to secure funding and approval for capital improvement and maintenance projects. Based upon our recent survey, most community owned utility systems will require on average 77 months to comply with state regulations and other public participation requirements to fund and award bids for purchase and installation of equipment. *APPA survey results reflect 50% of coal generating capacity or 14 GW of coal capacity.*
6. In order to ensure that our mayors and city councils (and operators) remain in compliance with the new regulation, APPA has suggested using Title V permits to

incorporate a compliance schedule as provided by Section 504(b) of the Clean Air Act for meeting the requirements of the utility MACT. Such a compliance plan would need to include milestones including the date by which the city will:

- Hold city council, board or hold public referenda (ex. public vote in Missouri, SD)
  - Issue bonds for financing required MACT pollution control equipment;
  - Accept and award bids for purchase of MACT pollution control equipment;
  - Award contracts for installation of MACT pollution control equipment;
  - Install MACT controls
  - Comply with MACT requirements.
7. The Title V permit regulations allow the state agency to “preprogram” in a regulation the type of permit revision needed to incorporate rule (in this case the utility MACT) requirements. This decision can be made by either the Governor or a delegated state pollution control agency. APPA has suggested that the final utility MACT rule would denote that incorporation of a compliance schedule would be incorporated into a Title V permit by using the minor permit revision procedure under 40 CFR §70.7 (e). We suggested this mechanism because (1) it provides public review procedures that confer federal and state enforceability over each milestone and (2) because once amended, the Title V permit provides a “permit shield” or “safe harbor” for city officials and the power plant’s operators.
8. We also request a subcategory for units <100 MW (requiring ACI for mercury controls, reductions in SO<sub>2</sub> and PM and perhaps precipitator tuning). APPA also supports Area Source Controls. (This approach avoids many installations of Fabric Filters). This issue is addressed in APPA’s comments (See Table 1 of APPA’s comments).

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