

NEW MEXICO PUBLIC REGULATION COMMISSION

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CHIEF OF STAFF

Daniel "Danny" Mayfield

September 15, 2009

The Honorable Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code: 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Federal Rulemaking for Coal Combustion Byproducts

Dear Administrator Jackson:

Electric utilities in New Mexico have recently brought to our attention a decision to be made shortly by EPA that could significantly affect future electric utility rates and, in some cases, the ability of utilities to provide reliable and uninterrupted power delivery services. While the New Mexico Public Regulation Commission ("PRC") does not generally involve itself in regulatory issues involving coal combustion byproducts ("CCBs"), EPA's plans to develop federal regulations for CCBs has the potential to compromise the ability of utility companies in New Mexico to fulfill their responsibility to provide reliable electrical services at consistent and affordable rates. Because of the far-reaching impacts that this issue could have on electric services in New Mexico, we feel compelled to express our views on the subject.

In particular, we understand that EPA is evaluating whether to regulate CCBs as hazardous wastes under Subtitle C of RCRA, or as non-hazardous wastes under Subtitle D of RCRA. EPA also reportedly is evaluating requiring the early retirement of active surface impoundments used by electric utilities to manage CCBs. We understand that, to date, every State environmental agency that has weighed in on the issue (approximately twenty State agencies) has opposed regulating CCBs as hazardous waste, but instead has taken the position that the best management option for regulating CCBs is as non-hazardous waste under RCRA Subtitle D. The

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States take this position because it would preserve and expand the beneficial use of CCBs and because the States have the regulatory infrastructure in place to ensure the safe management of these materials. We believe that this is certainly the case in New Mexico with our New Mexico Environment Department and the Mining and Minerals Division of the New Mexico Energy, Minerals and Natural Resources Department.

Notwithstanding the views of the States, we are concerned that EPA will nonetheless regulate CCBs as hazardous waste and that utilities in New Mexico will be confronted with sharply higher operating costs to be passed on to the rate payers. Even more troubling is that some smaller plants may actually have to cease operations. This is because the costs of retrofitting their CCB management units to meet the hazardous waste standards and losing the capacity to manage CCBs in surface impoundments will be too high to allow these plants to recover the conversion costs given the limited capacity of these units.

As you can appreciate, the loss of generating capacity is a significant concern to the NMPRC as it directly threatens the obligation of utilities to provide reliable and cost-effective power. Under the PRC's mandate, utilities in New Mexico are required to provide reliable electrical services to their customers. We are deeply concerned that a decision by EPA to regulate CCBs as hazardous waste threatens the ability of at least some utilities to meet this obligation. Given that the States have already made clear that their programs will ensure the safe management of CCBs, the PRC sees no reason for EPA to pursue the hazardous waste option. Such an approach would appear to be regulatory overkill and, more importantly, could threaten cost-effective and reliable provision of electrical services in our State.

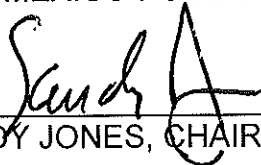
Again, while it is not generally the business of the PRC to involve itself with EPA regulatory matters, a decision by EPA to regulate CCBs as hazardous waste threatens to compromise the reliability of power delivery services in New Mexico. For this reason, the NMPRC respectfully recommends that EPA regulate CCBs as non-hazardous wastes under RCRA Subtitle D.

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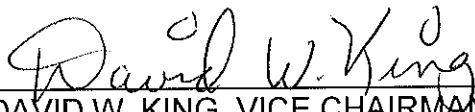
Thank you for your attention to this matter.

Sincerely,

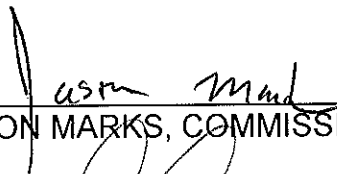
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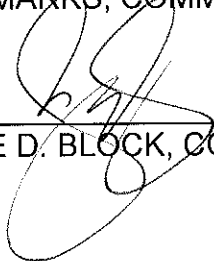
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