UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY - 9 2014

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letters of November 15, 2013, and March 12, 2014, to Administrator Gina McCarthy regarding the U.S. Environmental Protection Agency's proposed New Source Performance Standards for emissions of greenhouse gases (GHG) from new fossil fuel-fired power plants ("Carbon Pollution Standards").

Your November 15, 2013, letter requests that the EPA withdraw the proposed Carbon Pollution Standards because, in your view, they conflict with provisions of the Energy Policy Act of 2005. EPA is considering issues relating to the Energy Policy Act of 2005 as part of the rulemaking, which is discussed in more detail in enclosure 1. We are also attaching the Notice of Data Availability and the Technical Support Document, which provide additional information responsive to your letter.

Your March 12, 2014, letter requests that the EPA provide documents generated during the development of the Carbon Pollution Standards proposal, including information about evaluating the application of provisions of the Energy Policy Act of 2005. EPA is committed to providing the Committee information necessary to satisfy its oversight interests. Toward that end, we have enclosed documents from EPA's docket that are responsive to several of your requests. The documents are listed in enclosure 2 and are attached to this response.

Your March 12th letter also requests internal EPA documents. As you are aware, your request is related to an ongoing regulatory action, a status that raises particular concerns regarding the independence and integrity of ongoing Agency deliberations. The documents you seek are likely to reflect internal advice, recommendations, and analysis by Agency staff and attorneys about the proposed rule. These internal and pre-decisional deliberations are likely to be the subject of additional discussions and analysis among Agency staff and senior policymakers when the comment period on the proposed rule closes and the Agency takes the important step of considering comments from various stakeholders, including comments from Members of Congress, if any. It is critical for Agency policymakers to obtain a broad range of advice and recommendations from Agency staff and to be able to properly execute their statutory obligations under the Clean Air Act and other environmental statutes. Disclosure of pre-decisional information at this stage of the deliberations could raise questions about whether the Agency's decisions are being made or influenced by proceedings in a legislative or public forum rather than through the established administrative process, which is ongoing. In addition, disclosure of such information could compromise the ability of Agency employees to provide candid advice and

recommendations during the Agency's ongoing deliberative processes. It could also chill the candor of future Executive Branch deliberations making the rulemaking process less robust and limiting the Agency's ability to carry out its mission.

Nevertheless, EPA recognizes the importance of the Committee's need to obtain information necessary to perform its legitimate oversight functions, and is committed to working with Congress on such matters. As noted, we are still in the process of gathering and reviewing other documents that may be responsive to the remainder of your requests. After we have processed these documents, we will determine how best to accommodate the Committee's interests in these documents.

Again, thank you for your interest in this important rulemaking. If you have further questions, please contact me, or your staff may contact Tom Dickerson in my office at dickerson.tom@epa.gov or (202) 564-3638.

Sincerely,

Laura Vaught
Associate Administrator

Enclosures

cc: The Honorable Henry A. Waxman
Ranking Member

Enclosure 1

Information in Response to the November 15, 2013, letter from House Energy and Commerce

EPA is considering issues relating to the Energy Policy Act of 2005 as part of the rulemaking process. See Notice of Data Availability, 79 FR 10750 (Feb. 26, 2014). EPA there indicated that the proposal, should EPA ultimately take final action to finalize it, would not violate the cited Energy Policy Act provisions, and solicited public comment on the issue. Id. at 10752.

More specifically, EPA proposed that the best system of emission reduction (BSER) for new fossil fuel-fired boilers and integrated gasification combined cycle (IGCC) electric utility generating units (EGUs) is a new efficient unit implementing partial carbon capture and storage (CCS). The EPA based this proposal on a review of existing projects that implement CCS, existing projects that implement various components of CCS, planned CCS projects, and scientific and engineering studies of CCS. The determination relies on a wide range of data, information and experience well beyond that generated by projects receiving financial assistance under Energy Policy Act of 2005 and thus does not depend solely on those projects.

EPA's Notice of Data Availability (NODA) provides the public with additional information on the Energy Policy Act of 2005 and the proposed standards. Through this NODA and an accompanying technical support document (TSD), the EPA clarifies and solicits comment on its proposed views as to the meaning and significance of relevant provisions of the Energy Policy Act of 2005, including how these provisions may affect the rationale for the proposed BSER determination. We have enclosed copies of the NODA and the TSD for your reference. We have also enclosed additional responsive documents, as listed in enclosure 2.

We are committed to ensuring that environmental regulations are developed to facilitate continued maintenance of a reliable, affordable energy portfolio and a diverse mix of fuels in providing the nation's electricity, while also ensuring the protection of public health and the environment. Coal-fired power plants are the largest contributor of U.S. GHG emissions, and climate change poses a serious threat to human health and the environment. The EPA's proposal would ensure that progress toward a cleaner, safer and more modern power sector continues through the deployment of the same types of modern generation technologies and steps that power companies are already using to build the next generation of power plants.

Enclosure 2
List of Enclosed Responsive Documents

1. EPA-HQ-OAR-2013-0495-0024
2. EPA-HQ-OAR-2013-0495-0045
3. EPA-HQ-OAR-2013-0495-0046
4. EPA-HQ-OAR-2013-0495-0047
5. EPA-HQ-OAR-2013-0495-0048
6. EPA-HQ-OAR-2013-0495-0050
7. EPA-HQ-OAR-2013-0495-0054
8. EPA-HQ-OAR-2013-0495-0055
9. EPA-HQ-OAR-2013-0495-0065
10. EPA-HQ-OAR-2013-0495-0068
11. EPA-HQ-OAR-2013-0495-1872
12. EPA-HQ-OAR-2013-0495-1873