



**APPA's comments on  
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**

**(NESHAP Proposal Also known as EGU MACT or Mercury HAPs Proposed Rule)**

**Docket Number EPA-HQ-OAR-2009-0234;**

**Docket Number EPA-HQ-OAR-2011-0044, RFL-9286-1**

**August 2, 2011**

## About APPA

The American Public Power Association (APPA) is the national service organization representing the interests of the more than 2,000, not-for-profit municipal and other state and local community-owned electric utilities that collectively provide electricity to approximately 45 million Americans. These utilities, or “public power” systems, are among the most diverse of the electric utility sectors, representing utilities in small, medium and large communities in 49 states (all but Hawaii). Seventy percent of public power systems are located in cities with populations of 10,000 or less. APPA was created in 1940 as a non-profit, non-partisan organization. Its purpose is to advance the public policy interests of its members and their consumers, and to provide member services to ensure adequate, reliable electricity at a reasonable price with the proper protection of the environment.

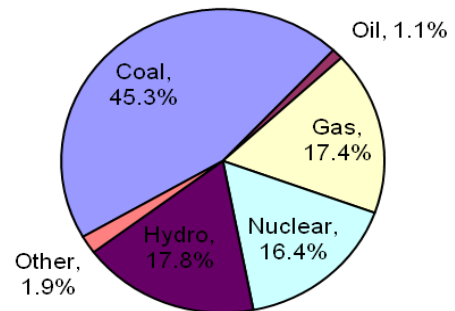
Overall, public power accounts for about 16% of all kilowatt-hour sales to retail electricity consumers. Approximately 46% of the megawatt hours of electricity produced by public power systems are generated using coal and more than 17% of MWH are generated using natural gas. This percentage of gas generation is growing since best practices for system stability dictate that the new intermittent resource capacity, such as wind and solar power be backed up at a 1:1 ratio by natural gas (mostly new Natural Gas Combined Cycle). In 2008, **27.7% of APPA member electric generating capacity (in Megawatts) and 46.4% of generation (in Megawatt-hours) was coal based. Less than 90% meet the SBREFA threshold.** Figure 1 presents the national generation portfolio from public power for 2009.

## Organization of these comments

These comments are structured in the following manner:

- An introduction and executive summary
- Comments related to the requirements of Clean Air Act Section 112
- Comments related to the requirements of the Unfunded Mandates Reform Act (UMRA), the Small Business Regulatory Fairness Act (SBREFA), Executive Order 13563, and Executive Order 13132
- Comments related to general policy considerations
- Comments related to Clean Air Act Section 111
- Detailed general comments
- Detailed technical comments
- Appendices

Figure 1



Public Power MWHs by Energy Source - National 2009 fig. 1

## *Introduction/Executive Summary*

### **Essential Corrections to EGU MACT Rule:**

- 1) U. S. EPA should re-propose the rule and the final EGU MACT should not include acid gases or PM regulatory controls.
- 2) Public power utilities need more time for compliance for planning, public hearings, financing, procurement and construction so the U. S. EPA and the President should grant extensions.
- 3) U. S. EPA should provide more flexibility including subcategories for public power, electric co-ops, IOUs and merchant power.

These subcategories include:

- $\leq 100$  MW for all types of utilities
- $\leq 30\%$  capacity factor peaking units (limited use – mostly for renewables)
- NERC Reliability Standard CIP 002-4 units
- By fuel type
- Those utilities with physical space constraints

- APPA requested an extension to the comment period deadline and appreciated that the U. S. EPA granted that extension of one month to the comment period.
- In the rule preamble and the supporting technical documents, the U. S. EPA fails to provide any evidence of any risk to the general population from non-mercury metal HAPs and acid gases. APPA believes that it is appropriate to develop regulations under Section 112 for only the two hazardous air pollutants (mercury and nickel) for which EPA has provided evidence of a significant risk to the public. If EPA believes that non mercury metals and acid gases must be regulated, EPA should regulate these HAPs under a less onerous health-based standard. APPA believes that this action would be consistent with the call for control of hazardous air pollutants only where the U. S. EPA has determined there to be human health concerns. EPA’s own study showed health concerns for only **mercury** (coal-fired generation) and **nickel** (oil-fired generation).
- APPA does not believe it unreasonable that the U. S. EPA should use its discretion to minimize the cost impact of this rule while still providing for the protection of public health. APPA believes that EPA should use its discretion in light of Executive Order 13563 (regulatory directive to minimize costs) to modify the proposed rule with a number of changes.
- U. S. EPA should eliminate the use of a “Franken” Plant approach to establish a MACT standard for coal and oil-fired EGUs. Specifically, APPA believes that EPA should establish a MACT that is based on the actual performance of individual EGUs for all HAPs to be regulated. This change in the final rule would result in less compliance cost with little to no change in health benefits or impacts.
- The proposed NSPS for SO<sub>2</sub>, PM, and NO<sub>x</sub> are, in practice, NOT achievable.
- APPA believes that the U. S. EPA should regulate mercury emissions from power production as necessary to reduce methyl mercury bioaccumulation in fish via air deposition. However, the U. S. EPA should regulate mercury from EGU’s considering the comments herein, on matters such as subcategories, compliance schedules, and other factors. APPA does not presume that these reductions of mercury will affect any mercury transported from international sources of mercury including Asia and Mexico.

- U. S. EPA should not expand the proposed utility toxic rule beyond mercury and nickel since in the preamble for the proposed rule EPA provided no data as to any health risks associated with non-mercury metal HAPS and acid gases related to fossil fuel-fired EGUs. Regulating these emissions would serve no purpose and would add cost without commensurate health benefits. In addition, EPA has not shown that the regulation of acid gases (HCl, etc.) and other air toxics is necessary and appropriate.
- In assessing costs to consumers, U. S. EPA should analyze the impact of the rule in wholesale electricity markets run by regional transmission organizations, particularly in forward capacity markets.
- U. S. EPA should subcategorize and provide for the use of Generally Available Control Technology(s) (GACT) and management practices for area source utilities. U. S. EPA should also make GACT along with alternative work practice or operational standards available for municipal utilities and utilities that are physically constrained, such as those retrofitting with baghouses and scrubbers where the space needed to accommodate the addition of pollution controls is not adequate. APPA believes that the subcategory should address fuel types, combustion processes, such as circulating fluidized boilers or pulverized over air-fired boilers, physical constraints limiting the footprint of plants, and age of plants. **APPA strongly endorses the ≤ 100 MW sub-category.** This ≤100 MW subcategory should apply to all in the utility sector. See Appendix A
- U. S. EPA has grossly overestimated the health benefits of controlling Particulate Matter (PM) and should not consider these benefits since PM is to be controlled under the National Ambient Air Quality Standards (NAAQS) section of the Clean Air Act.
- U. S. EPA should use its discretion to regulate utility air toxics with a health-based emission standard, which would decrease costs without jeopardizing public health and safety.
- U. S. EPA should 1) enable the power sector, particularly public power utilities, to have additional compliance time beyond the standard three years in the Clean Air Act. 2) The U. S. EPA should provide extensions of one or two years each (as needed) as allowed under Presidential extension provisions (the Presidential extension should be delegated to the Governor of each state if the U. S. President desires). An extension is necessary to allow installation of pollution control equipment given time needed for planning compliance, timing and process for obtaining financing for either pollution controls (scrubbers, baghouses, etc.) for EGU MACT/NSPS final rule **or** more time is needed for fuel switching to natural gas where the natural gas pipeline development and expansion projects must be financed, permitted and built by third parties to supply the utility plants that would use the natural gas.

APPA does not assert that any additional time is needed to purchase or install the combined cycle gas turbines themselves as that technology is fully commercially demonstrated, available, and even available in international markets. However, even fuel switching or conversion from coal-fired to natural gas may require permitting, financing and building of natural gas pipeline extensions, as well as natural gas storage permitting and construction. This is particularly true if a public power authority does not have power of eminent domain.

For *some* pipelines and local distribution companies (LDCs), FERC and Public Utility Commissions (PUCs) may need to change standards that would harmonize the “electric day” and “natural gas” scheduling day.

- APPA strongly recommends the U. S. EPA’s final EGU MACT rules include a Title V method to accommodate any utility that cannot meet the EGU MACT compliance deadline. This administrative noncompliance procedure is already established under the Clean Air Act. This will allow for compliance time and avoid criminal and civil liability while reducing the administrative burdens on U. S. EPA and any state agencies with delegated authorities, and reduce costs and burdens on small towns with public power electric utilities.