Statement from ERCC Director Scott H. Segal
Public Hearing on National Emissions Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units
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My name is Scott Segal and I am director of the Electric Reliability Coordinating Council, or ERCC. ERCC is a group of power-generating companies that provide reliable and affordable power to millions of American households, small businesses, industrial facilities, schools and hospitals. Thanks for letting us speak.

We are here today because EPA has recently issued a proposed rule to reduce emissions of so-called "hazardous air pollutants" (or HAPs) from coal- and oil-fired power plants. This rule is generally referred to as the Utility MACT because it was developed under a section of the Clean Air Act that calls for EPA to develop standards based on the "maximum achievable control technology" (MACT) that can be used to control HAP emissions from different type of industrial facilities. But this Utility MACT is only one part of the puzzle. EPA has or will promulgate numerous new rules in 2010 - 2012 with compliance deadlines on, before or near 2015. In 2015, due to the timetables established by EPA, the industry will face perhaps its costliest and most pressing challenge in the Utility MACT.

As proposed, the Utility MACT would be the most expensive rule in EPA history. Some experts believe that EPA has actually understated its likely costs, but even EPA acknowledges that it would impose costs of about $11 billion a year on the U.S. economy. Yet EPA has also gone to great lengths to argue that the benefits of this rule will greatly exceed the costs. Under the requirements of two Executive Orders on regulatory process, EPA prepared a cost-benefit analysis that it claims demonstrates net savings attributable to the Agency's benefits analysis.

This is an interesting view given that the target of the rule is costly indeed. EPA's upcoming regulation will impact roughly 400,000 MWs of oil and coal-fired generation, which is about 40 percent of the current available electric capacity in the U.S., and makes up nearly 50 percent of the U.S. total electricity generation. EPA's regulations will force plants to retrofit or into retirement, at a cost of about $300 billion in the next five years, according to ICF data of likely scenarios.

Large as these costs are, they are in part based on EPA's assessment of the removal efficiency for mercury - the primary target of the proposal. And yet, recent analysis of EPA's data gathering has shown that the Agency's contractors allowed statistical transcription errors that overestimated removal efficiencies by a factor of one thousand. EPA has since contended that such large errors are still within its acceptable margin of error for variability. We are disappointed in this view and contend that errors of this sort constitute a basis for reproprosal. We also believe these and other errors, coupled with the general complexity and cost of the proposal at least justify additional time for the comment period of the proposal to put it on par with other rules the Agency has proposed in recent years.

Adaptation to the all the proposed rules, with Utility MACT being the most immediate challenge, constitutes an extraordinary threat to the power sector - particularly the half of U.S. electricity derived from coal-fired generation. According to an analysis of data gathered by ICF, US

employment income is estimated to drop as a result of the proposal by an amount equivalent to the earnings of about 2-2.5 million full-time workers. This estimate includes an estimated increase in offsetting compliance-related employment income equivalent to about 0.2-1 million full-time workers limited to the early years of implementation.

According to data gathered by researchers at the economics departments of Penn State University, without the impact of these regulations, by 2015, the power sector would contribute $1.05 trillion (2005 $) in gross economic output; $362 billion in annual household incomes, and 6.8 million jobs.

Retail electricity price is estimated to increase by 20 to 25% to cover the costs of complying with the new environmental requirements and the average US household is estimated to lose buying power of $400 to $500 per year due to these increases, with adverse impacts on business, minority and elderly communities, and the health care sector - in other words, those parts of society least able to afford it.

So, how did the Agency come to believe its rule possessed such great advantages as to diminish or ignore its tremendous costs?

The Agency's sole basis for issuing this proposal is a regulatory determination that then-EPA-Administrator Carol Browner made in December 2000 that it was "appropriate and necessary" to regulate certain HAPs from power plants This determination was based almost entirely on the Administrator's concern about mercury emissions from coal-fired power plants. Not surprisingly, the majority of the proposed rule deals with mercury reduction requirements for coal-fired power plants.

It stands to reason that the vast majority of benefits claimed by EPA to justify the proposed rule must be the result of reductions in mercury emissions. But the Agency's cost-benefit analysis tells a very different story. According to EPA, the benefits to society of the mercury-reduction requirements are in the range of $500,000 to a maximum of $6.1 million in total (i.e. not even annual) benefits. In other words, in a rule estimated by EPA to cost $11 billion annually, the maximum total benefit of reducing emissions of mercury—the emissions of which serve as the primary basis for the rule—is $6.1 million.

EPA asserts, however, that its proposal is justified based on cost-benefit analysis because the rule will provide benefits of up to $130 billion ever year. Yet virtually all these benefits come from reducing PM2.5.

Although mercury is the Agency's legal justification for the Utility MACT, EPA argues that it must also regulate non-mercury HAPs such as certain metals (e.g. nickel, selenium, etc.) emitted in trace amounts and acid gases (e.g. hydrogen chloride and hydrogen fluoride) that, according to EPA, do not pose a meaningful risk to public health. While some health risks from emissions of non-mercury HAPs are discussed in the proposed rule and the RIA (presumably implying health benefits from reducing such emissions), EPA does not make any attempt to evaluate the benefits that will be achieved by reducing these emissions. What is discussed at some length is that control technologies for non-mercury HAPs included in the proposed MACT standard result in reductions of emissions of PM2.5 and SO2. In fact, EPA's analysis admits that virtually all (i.e.

99+ percent) of the estimated $42 to $130 billion in annual benefits are due to reductions in PM 2.5.

Nowhere does EPA explain whether there is a less costly way to achieve these benefits, which is puzzling because Congress has created a whole separate program to regulate PM2.5 – and it is very different from the MACT approach that EPA is now proposing. Although EPA is aggressively implementing the program that Congress created to regulate PM2.5, this program is much more flexible than the MACT program and would be a much more cost-effective way of regulating PM2.5 from power plants.

Why should this matter to the public? Because EPA is mandated to find the most cost-effective solution for the regulatory priority (here: controlling mercury emissions from power plants) How can the Agency possibly conclude that it is a good deal for society to impose an annual cost of $10.9 billion to achieve benefits of $6.1 million?

The other reason this type of analysis matters is that EPA has already controlled emissions of PM2.5 by setting a national ambient air quality standard ("NAAQS") under section 108 of the Clean Air Act. In doing so, EPA has set a level of PM2.5 that it has found to be sufficient to public health and welfare with an adequate margin of safety. Areas of the country that already have attained this level of PM2.5 (i.e., that are in "attainment") are presumably therefore already safe from any health risks; Other areas that have not yet reached this level (i.e. are in "non-attainment") are already required to implement market-wide reductions in PM2.5 to get into attainment.

In explaining how it developed the baseline for its benefits analysis, EPA's RIA states that "EPA did not consider actions states may take in the future to implement the existing ozone and PM2.5 NAAQS standards[.]" Of course, as it did for the Utility MACT, EPA's proposed NAAQS for PM2.5 contained an estimated analysis of the benefits of PM2.5 reductions. By not including these benefits in the baseline of the Utility MACT, EPA is essentially claiming these same benefits a second time to justify another regulation. Put a different way, the only way EPA can possibly claim more benefits from reductions in PM2.5 is to go beyond the controls it has already put in place under the PM2.5 NAAQS. Doing so, however, is completely contrary to Congress' intent to regulate PM2.5 under a different section of the Clean Air Act and contrary to EPA's own claims that the PM2.5 NAAQS is sufficient to protect public health and welfare.

For the Agency to undertake a proper MACT analysis does not require any gap in the regulation of the power sector. Indeed, by 2015, coal-fueled power plants in the U.S. will have invested as much $125 billion in advanced emission control technologies, reducing air emissions substantially under existing programs, despite the demand for electricity having tripled the industry's coal use between 1970 and 2005. Industry has already committed to working with EPA on sensible mercury regulations in order to achieve those benefits properly identified.

President Obama's January Executive Order stated that Agency's must "consider costs and how best to reduce burdens for American businesses and consumers." By ignoring substantial costs and double counting its benefits, Agency has failed to meet the letter or spirit of this and other commands. With the livelihoods of so many American families on the line, it simply must do better. Thank you.