



PENDING AND CURRENT ENVIRONMENTAL REGULATIONS

The U.S. Environmental Protection Agency (EPA) is in the process of making significant changes to rules affecting electric utilities. EPA has recently published proposed or final rules for sulfur dioxide (SO₂), hazardous air pollutants including mercury and fine particulate matter, nitrogen oxides (NOx), greenhouse gas (GHG) emissions including carbon dioxide (CO₂), ozone, cooling water intake structures and coal ash – all of which will have an impact on Great River Energy's operations. In addition, EPA has provided notice of its intent to seek further regulation of polychlorinated biphenyls (PCBs).

Great River Energy has concerns with EPA's regulatory process. First, the number and volume of changes being proposed and the current pace at which they are being proposed make it difficult for EPA to adequately develop the programs and determine the impacts those rules will have. Second, EPA will be challenged to adequately review the economic impacts of any new regulations without considering both their individual and cumulative costs. Third, the time frame for implementing controls is short and most likely will result in the installation of costly controls on existing power generation facilities. EPA has incorrectly assumed that there will be adequate materials, labor and waste management capacity to meet compliance requirements and with no impact to system reliability. Finally, it is highly uncertain that the EPA or state regulatory agencies will have the necessary resources to manage the implementation and oversight of all these new rules and associated permits.

Greenhouse Gas Emissions

Endangerment Finding – Regulation of GHG emissions was not contemplated when the Clean Air Act (CAA) was initially crafted. Even EPA recognizes that using the CAA to regulate greenhouse gas emissions is not effective or appropriate. However, a Supreme Court ruling issued in April 2007 said the EPA "must determine whether or not emissions of greenhouse gases from new motor vehicles cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision." In December 2010, the EPA finalized its "endangerment finding" formally declaring CO₂ and five other greenhouse gases threats to public health and welfare. The final rule published in May 2010, which established CAFE standards for light duty vehicles, triggers GHG regulation of all sources subject to the Clean Air Act.

Tailoring Rule – Under the rule, any new power plant that is considered a major emitter of at least one non-greenhouse gas pollutant may also be subject to Prevention of Significant Deterioration (PSD) permitting requirements for greenhouse gas emissions. In addition, any existing power plant that is modified and results in a significant increase of emissions for at least one non-GHG pollutant will also be subject to permitting requirements for GHG emissions. A regulated source subject to PSD permitting must install the "best available control technology."

Mercury and Air Toxics Standards (MATS) Rule

On December 21, 2011 the EPA issued its Mercury and Air Toxics Standards (MATS) rule to regulate mercury and other air toxics from steam electric generating units. There are concerns about numerous technical errors in the final rule as well as EPA's determination of "appropriate and necessary." Affected facilities have three years from the date of the final rule to meet the emission limits, unless states or EPA grant one-year extensions.

Cross-State Air Pollution Rule (Transport Rule)

The EPA finalized the Cross-State Air Pollution Rule (CSAPR) which requires 27 states in the eastern United States to improve air quality by reducing power plant emissions that contribute to ozone and/or fine particle pollution across state boundaries. CSAPR was promulgated to replace EPA's Clean Air Interstate Rule (CAIR), which was temporarily implemented while a court-ordered replacement rule was promulgated. Under CSAPR, EPA has set a pollution limit (or budget) with respect to both SO₂ and NO_x emissions for each of the states covered by the rule. By court order dated December 30, 2011, implementation of CSAPR was "stayed." While the litigation is pending, CAIR has been temporarily reinstated.

Coal Ash

In June 2010, the EPA published a proposed rule to regulate the disposal and management of coal combustion residuals (CCR), or coal ash. The agency is considering two options. The first, its preferred option, would regulate CCRs as a new "special waste" subject to many of the requirements for hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The second would regulate CCRs in a manner similar to typical solid wastes under Subtitle D of RCRA, which are subject to fewer and less severe requirements. If all coal combustion residuals were designated as hazardous waste, it would cost Great River Energy tens of millions of dollars annually.

Clean Water Act Section 316(b): Cooling Water Intake

The EPA has proposed requirements under section 316(b) of the Clean Water Act that would require a majority of power plants to conduct biologic and technology studies to determine the best methods for reducing aquatic life impacts to a measurable standard, and demonstrate performance. EPA is court-ordered to finalize the rule by July 2012.

PCB Electrical Equipment

Despite its longstanding authorization of the use of PCBs in certain enclosed applications, in April 2010 EPA issued an Advance Notice of Proposed Rulemaking announcing the agency's plans to eliminate the use of PCBs. EPA is contemplating a phase-out of high-concentration PCB equipment beginning in 2015, with a complete phase-out by 2025. EPA has not provided any evidence that the toxicity of PCBs is greater than was thought at the time of the original use authorization. Testing, removal, replacement, disposal and associated outages would cost Great River Energy tens of millions of dollars. This requirement would also impose a very significant additional cost to our member cooperatives that have a large amount of electrical equipment on their distribution systems and in their substations.

More to Come

Great River Energy works through many avenues to prevent EPA from forcing costly standards so quickly. The EPA is promulgating rules at an unprecedented pace and on many issues that will affect Great River Energy's operations. Although the EPA conducts a cost-benefit analysis of each rule on an individual basis, there is no consideration of the cumulative costs.

Regulated entities and the public have an opportunity to comment or, upon rule finalization, file an administrative challenge or lawsuit. Great River Energy is actively engaged in opportunities to minimize the impacts of EPA's rules while recognizing its responsibility to help protect human health and be a good environmental steward.