

FRED UPTON, MICHIGAN  
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA  
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

May 9, 2011

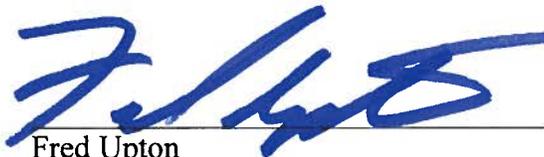
The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Administrator Jackson:

Pursuant to Rule X and XI of the Rules of the U.S. House of Representatives, the Committee on Energy and Commerce seeks information relating to recent and pending new rules promulgated by your agency that impact the electric power sector. We seek information about your plans with regard to implementing these regulations, and about the agency's decision-making process and analysis supporting development of these rules. In connection with this oversight, we write today specifically to request information to help evaluate EPA's analysis and planning concerning the specific impacts of its new rules on the U.S. power sector and the reliability of the domestic energy supply necessary to power a recovering economy.

Accordingly, please find attached to this letter questions and document requests as well as instructions relating to the requests for documents. Please provide the written responses and documents requested by no later than three weeks from the date of this letter. Thank you for your prompt attention to this request. Should you have any questions, please contact Mary Neumayr of the Majority Committee staff at (202) 225-2927.

Sincerely,

  
Fred Upton  
Chairman

  
Ed Whitfield  
Chairman  
Subcommittee on Energy and Power

  
Cliff Stearns  
Chairman  
Subcommittee on Oversight and Investigations

Letter to The Honorable Lisa Jackson

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cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Bobby L. Rush, Ranking Member  
Subcommittee on Energy and Power

The Honorable Diana DeGette, Ranking Member  
Subcommittee on Oversight and Investigations

Attachments

## INFORMATION & DOCUMENT REQUESTS

### Electric Power Sector

1. On January 12, 2010, Administrator Jackson released a memorandum to all EPA employees announcing seven priorities for the agency.<sup>1</sup> One of these priorities was “Improving Air Quality,” and she stated: “EPA will develop a comprehensive strategy for a cleaner and more efficient power sector, with strong but achievable emission reduction goals for SO<sub>2</sub>, NO<sub>x</sub>, mercury and other air toxics.”
  - a. Has EPA developed a comprehensive strategy? If yes, provide a copy of the document(s) reflecting that strategy.
  - b. Has EPA prepared any analysis of the effect of this coordinated power sector effort on jobs, the economy, or the competitiveness of U.S. industry? If yes, provide any such analysis.
  - c. Has EPA prepared any analysis of the impact of greenhouse gas (GHG) regulation on the regulation of criteria pollutants and air toxics? If yes, provide any such analysis.
2. EPA has adopted and is planning to adopt a series of regulations affecting the electric utility industry. These rules include the proposed Transport Rule announced in July 2010 and planned additional transport rules to address revised air quality standards; the proposed utility national emissions standards for hazardous air pollutants and new standards of performance announced in March 2011; GHG regulations including GHG New Source Performance Standards for power plants which EPA plans to propose in July 2011; the proposed coal ash rule announced in June 2010; National Ambient Air Quality Standards (NAAQS) for ozone, particulate matter, sulfur dioxide (SO<sub>2</sub>), and nitrogen dioxide (NO<sub>2</sub>); and the cooling water intake structures rule announced in March 2011 under Section 316 of the Clean Water Act.
  - a. Has EPA undertaken any analysis of the cumulative impacts of all of these regulations, together with other regulation that EPA has adopted on the energy sector? If yes, provide a copy of all such analyses.
  - b. Has EPA undertaken any analysis of the potential cumulative impacts of these regulations, on the energy sector, on domestic manufacturing and energy-intensive and trade-exposed industries, including but not limited to the chemicals, glass, iron and steel, cement, aluminum, metal casting, and pulp and paper industries? If yes, provide a copy.
  - c. Has EPA consulted with North American Electric Reliability Corporation (NERC), or any regional entity, on issues related to electric reliability? If yes, describe the

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<sup>1</sup> See “Memorandum From Lisa Jackson, Administrator, to All EPA Employees,”

<http://yosemite.epa.gov/opa/admpress.nsf/e77fdd4f5afd88a3852576b3005a604f/bb39e443097b5df5852576a9006a5a86!OpenDocument>.

consultation including the context in which the consultation occurred, the date on which it occurred, issues discussed, and conclusions drawn.

3. In the proposed Transport Rule,<sup>2</sup> EPA included a discussion of “Rules Affecting the Power Sector,” and stated that: “The rules under the CAA will substantially reduce the emissions of SO<sub>2</sub>, NO<sub>x</sub>, mercury, and other air toxics. To the extent that the Agency has the legal authority to do so while fulfilling its obligations under the Act and other relevant statutes, the Agency will also coordinate these utility-related air pollution rules with upcoming regulations for the power sector from EPA’s Office of Water (OW) and its Office of Resource Conservation and Recovery (ORCR).”
  - a. Describe any efforts EPA has made to coordinate these power sector rules and provide documentation reflecting such efforts.
  - b. Has EPA prepared any analyses of the cumulative impacts of these rules on the U.S. economy, jobs and/or the competitiveness of U.S. businesses?
    - i. If yes, provide copies of all such analyses. If not, state whether EPA plans to prepare such an analysis and when it will be prepared.
  - c. Has EPA prepared any analyses of the cumulative impacts of these rules on the coal industry, coal producing states, and/or states that rely primarily on coal for generation of electricity?
    - i. If yes, provide copies of all such analyses. If not, state whether EPA plans to prepare such an analysis and when it will be prepared.
4. Has EPA consulted at any time since January 2009 with the Federal Energy Regulatory Commission, Department of Energy, Council on Environmental Quality, Office of Management and Budget, or any other federal agency or department on issues regarding the potential impacts of its GHG or other power sector rules referenced above on electricity reliability? If yes:
  - a. Describe each consultation, including where it occurred, the date on which it occurred, and the participating agencies.
  - b. Describe in detail the outcome of those consultations.
  - c. Provide all documents relating to those consultations.
5. Is EPA participating in any interagency task forces or other working groups to address issues related to the impacts of EPA’s power sector rules on electric reliability? If so, provide a detailed response including but not limited to:

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<sup>2</sup> *Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate matter and Ozone; Proposed Rule*, 75 FR 45, 210, 45,227 (August 2, 2010).

- a. The members of the interagency task force(s) or working group(s);
  - b. When the interagency task force(s) or working group(s) were formed;
  - c. The statutory authority under which the task force(s) or working group(s) have been formed;
  - d. The dates on which the task forces or agencies have met to address issues related to the impacts of EPA's power sector rules on electric reliability; and,
  - e. Any minutes, communications or other documentation relating to the work of the task force(s) or working group(s).
6. What emergency authority exists to waive environmental regulations if they threaten electric reliability? To the extent such authority exists, what is EPA's role in decisionmaking to invoke that authority, and how would EPA coordinate with other relevant agencies?
  7. In the past, has EPA exercised emergency authority to waive environmental regulations to ensure reliability of energy supply? If yes, please identify each such instance, including the dates, facilities involved and the nature of the action taken by EPA.
  8. If EPA or other federal authorities exercise such emergency authority to direct utilities or electricity generators to continue to operate to ensure reliability of electricity supply:
    - a. Will the utility or electricity generators be protected from penalties for violations of the environmental regulations or will they potentially be subject to penalties?
    - b. Will the utility or electricity generators be protected from civil or criminal enforcement actions by federal or state regulators or will they potentially be subject to enforcement actions?
    - c. Will the utility or electricity generators be protected from citizen suits or actions by third parties or will they potentially be subject to suits or third party actions?

## **RESPONDING TO COMMITTEE DOCUMENT REQUESTS**

*In responding to the document request, please apply the instructions and definitions set forth below:*

### **INSTRUCTIONS**

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
9. The Committee requests electronic documents in addition to paper productions when possible. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

12. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

13. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

14. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.

15. In the event that a responsive document is withheld on any basis, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document.

16. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

17. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and (3) all documents identified during the search that are responsive have been produced to the

Committee, identified in a privilege log provided to the Committee, as described in (15) above, or identified as provided in (10) above.

## DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.
3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.
4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The terms "you" or "your" means and refers to you as a natural person and the United States Environmental Protection Agency (the "EPA") and any of its offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the EPA; and includes any other person(s) defined in the document request letter.

8. The term "EPA" refers to the United States Environmental Protection Agency and any of its offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the EPA.