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July 23, 2009

Honorable Lisa Jackson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Management and Regulation of Coal Combustion Byproducts (CCBs)

Dear Ms. Jackson,

Thank you for meeting with our EEI CEO group on July 22, 2009. I appreciate your candor and cooperative spirit and look forward to working with you and your staff on the many important issues in front of us.

As a follow-up to that meeting, I wanted to reiterate a few of Southern Company's concerns over the future regulation of coal combustion byproducts ("CCBs") since it is the immediate issue on our agenda. Southern Company urges EPA not to apply hazardous waste regulations to CCBs because it will severely restrict opportunities for beneficial use and significantly increase handling, transportation, and disposal costs. Any consideration by EPA to mandate a phase-out of wet management practices would require major equipment modifications at many power plants, including (but not limited to) the conversion of fly ash and bottom ash handling systems and new treatment methods for liquid discharges currently managed in ash ponds.

Regulating CCBs as hazardous waste and the mandatory phase out of wet management practices will have a substantial economic impact to the electric utility industry and is likely to cause a certain percentage of coal-fired plants to close, according to current and ongoing studies being conducted throughout the industry. Because of this, any loss in localized generation will create a significant reliability concern for the transmission grid. Any feasible replacement of that generation loss will result in massive cost increases for customers.

A decision for EPA is whether to regulate CCBs under Subtitle C or D of the Resource Conservation and Recovery Act ("RCRA"), or some hybrid of the two. In other words, EPA must decide whether to ignore the almost 20 years of detailed study and its own conclusion that the regulation of CCBs as hazardous waste is not warranted.

Whether intended or not, any application of Subtitle C is likely to reduce beneficial uses substantially – even if EPA proposes a hybrid C program that provides exemptions for certain beneficial uses. Utilities and vendors will have serious concerns about selling and distributing a product EPA characterizes as “hazardous” for purposes of RCRA, with or without an exemption. EPA is well aware of the many beneficial uses of CCBs. The curtailment or elimination of beneficial uses that would likely result from a Subtitle C or hybrid C program increases the volume of CCBs that must be managed in a land-based facility. Consequently, more and larger facilities would be required and beneficial uses – including use in road-building, concrete and gypsum in agricultural applications – would diminish.

EPA concluded in 2000 that CCBs should not be regulated as hazardous. Today, we are aware of no new findings that would cause EPA to reach a different conclusion. In fact, the efforts EPA has taken in response to the TVA Kingston release in December 2008 have focused on the structural stability of CCB surface impoundments rather than the nature of coal ash. Further, EPA itself has approved the disposal of the Kingston material in a Subtitle D, non-hazardous, landfill with the use of the material as alternative daily cover.

In conclusion, Southern Company encourages EPA to continue to rely on its past determination that the regulation of CCBs as hazardous waste is not warranted. I thank you for your consideration of our concerns. Please let me know if I may provide additional information or assistance as EPA continues its efforts in this area.

Sincerely,

A handwritten signature in black ink, appearing to read "David". The signature is written in a cursive style with a large, looping initial "D".