

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 12I-235E

IN THE MATTER OF COMMISSION ACTIVITIES RELATED TO THE ENVIRONMENTAL
PROTECTION AGENCY (EPA) MERCURY AND AIR TOXICS STANDARD (MATS).

ORDER OPENING AN INVESTIGATORY DOCKET

Mailed Date: March 16, 2012
Adopted Date: March 14, 2012

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Colorado Public Utilities Commission (Commission) to open on its own motion, an investigatory docket to evaluate the implications of the Environmental Protection Agency (EPA) Mercury and Air Toxics Standard (MATS).

2. The Commission finds it is appropriate to initiate an investigatory docket to receive and develop information and analysis related to the MATS, to engage with relevant stakeholders involved with and affected by the standard, and to participate in a multi-state collaboration to evaluate the implications of the MATS. Additionally, the Commission may also conduct one or more Commissioner Information Meetings, round-table discussions, or technical workshops related to the issues articulated in this Order.

3. This Docket shall constitute the repository for any such written material, as well as any written material exchanged at an *ex parte* presentation pursuant to the Permit-but-Disclose process adopted in Section B. As this Docket is a non-adjudicatory investigatory proceeding and because there are no parties to this proceeding, service upon other participants is not necessary. Participants making submissions to this matter are encouraged to use the Commission's E-Filings System to the extent possible; otherwise, if paper copy filings are made, the filings should conform with Rule 1204(a)(II)(C) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, or to the Permit-but-Disclose paper copy filing process described below.

B. The Permit-but-Disclose Process

4. The Commission's Permit-but-Disclose process, described below, shall apply in this Docket.

5. During the 2008 legislative session, the General Assembly passed, and the Governor signed, House Bill 08-1227 (HB 08-1227). HB 08-1227, among other things, modified the requirements applicable to the Commission concerning *ex parte* contacts with interested persons in non-adjudicatory proceedings. The Commission modified its Rules of

Practice and Procedure to conform to the new statute. *See* Decision No. R08-1297, Docket No. 08R-459ALL, mailed December 19, 2008.

6. As of the mailed date of this Order, any person may make an *ex parte* presentation to a Commissioner in a meeting that may include Commission Staff. Any such *ex parte* contacts must relate to matters being reviewed in this Docket and cannot concern any matter pending before the Commission in any other docket.

7. Within two business days following a permitted *ex parte* presentation, the person requesting the meeting shall file with the Commission in this Docket, a letter disclosing the contact. The disclosure letter shall state the date, time, and place of the meeting, list the individuals attending, and shall contain a summary description of the presentation, and a statement that the subject matter of the communication did not relate to any pending adjudicatory proceeding before the Commission. If any materials were provided to the Commissioner during the meeting, they shall be identified in the letter and attached. For filing purposes, the submission should be made through the E-Filings System if possible; if not, and the submission is made using the paper copy filing method, the disclosure and any attachments shall include an original and three copies. The disclosure letter and any other material must provide other interested persons with sufficient information to allow them to decide whether they wish to hold *ex parte* meetings to share their views on the subject. Persons should not simply file a disclosure that indicates they discussed this Docket, but should also include the specific topics covered.

8. The disclosure letter and any attached materials will become part of the official record in this Docket. Further, if the paper copy method of filing is used, the disclosure letter and other provided material will be promptly scanned and posted to the Commission's website in connection with other documents and orders in this Docket. Any materials asserted to be

confidential will be treated in the same manner as confidential material provided in comments in a rulemaking.

9. The Commissioners will attempt to accommodate all reasonable requests for *ex parte* meetings, subject to the schedule and availability of each Commissioner. We may give preference in scheduling to a person that has not made a prior *ex parte* presentation in this Docket, in contrast to a person wishing to make an additional presentation. Finally, we note that there is no requirement that a person make the same presentation to each of the three Commissioners. In other words, persons may elect to meet (in separate meetings) with one, two, or all three Commissioners. However, in such situations, copies of all the presentations, with letter(s) disclosing the separate contacts and presentations, must be filed with the Commission in this Docket.

10. To schedule an *ex parte* presentation with a Commissioner, the interested person should contact Ms. Donna Acierno, Executive Assistant to the Commissioners. When contacting Ms. Acierno, the interested person should notify her that the presentation is associated with this matter.

C. The Mercury and Air Toxics Standard ¹

11. The MATS was finalized on February 16, 2012 and is scheduled to become effective on April 16, 2012.

12. The MATS requires all coal and oil-fired electric generating units larger than 25 megawatts that produce electricity for sale and distribution to the public to meet emissions limits for toxic metals, acid gases, and particulate matter.

¹ Environmental Protection Agency. "Mercury and Air Toxics Standard." Accessed 03/01/2012. Available at <http://www.epa.gov/airquality/powerplanttoxics/>

13. The MATS is forecast by the EPA to reduce mercury emissions from the electric power sector by approximately 90 percent.

14. The timeline for MATS compliance is three years. However, state agencies may grant up to a one year extension and the EPA may issue an administrative order allowing an additional one year extension.

15. Although extensions may be granted for compliance with the MATS, electricity providers with generating units not in compliance within the original three-year timeline may be subject to civil action despite state or administrative time extensions.

E. Implications of the Mercury and Air Toxics Standard for Colorado

16. The MATS affects the majority of the coal and oil-fired generating units in the United States and will significantly impact the electric power sector across the country. As part of the Western electrical interconnection, Colorado may be exposed to reliability risks related to compliance activities undertaken throughout the interconnection. Colorado may be particularly vulnerable to compliance activities undertaken by electricity generators in this state and in Wyoming.

17. The core of the reliability risk is driven by the need to take coal units off line to install pollution controls, convert them to natural gas, or retire them. Failure by the various generating entities to coordinate activities related to MATS compliance may expose the entire system to both generation and transmission vulnerabilities.

18. The MATS affects approximately 5,800 megawatts of coal and oil-fired generating capacity in Colorado. This represents 42 percent of the state's total generating capacity. With the exception of Comanche III, none of the coal plants in Colorado currently meets the standard.

19. Despite the Commission approved plan for emission reductions required by Colorado's Clean Air Clean Jobs Act, 49 percent of Public Service Company of Colorado's (Public Service) 3,227 megawatt coal-fired fleet is not scheduled to meet MATS compliance within the three-year timeline. The Colorado Department of Public Health and Environment is currently in discussions with the EPA regarding allowances to support the state's current emissions reduction plan.

20. Tri-State Generation and Transmission Association, Inc. (Tri-State), which owns/operates over 2,300 megawatts of coal-fired generation in Colorado, is required to comply with MATS. The inter-relationships between Public Service's system and Tri-State's system are significant.

21. In February of 2012, the National Association of Regulatory Utility Commissioners established the Task Force for Environmental Regulation and Generation (TFERG) to coordinate the efforts of state commissions in response to the MATS.

22. The Colorado Commission has taken a leadership role in TFERG's efforts to understand the status of the states in the Western interconnection with regard to the MATS regulation. This evaluation will involve both state and regional level implications.

D. Pertinent Issues Related to the EPA Mercury and Air Toxics Standard

23. The Commission is interested in a multitude of topics related to the MATS. Fully acknowledging that the Commission does not regulate the activities of the non-jurisdictional electricity providers, the Commission hopes that the importance of state and regional coordination will encourage electricity providers to work collaboratively to achieve EPA compliance while ensuring electric system reliability.

24. Topics of particular relevance to the Commission include:
- a) What strategies are the investor-owned and non-jurisdictional electricity providers in Colorado developing to achieve MATS compliance?
 - b) What methods are the respective electricity providers using to determine which generating units within their systems will need to be retrofitted with additional pollution controls, converted to natural gas, or retired to achieve MATS compliance?
 - c) What are the potential risks of MATS compliance to the reliable operation of the bulk electric power system both within Colorado and across the Western interconnection?
 - d) What activities are being developed by the contingency reserve sharing groups with regard to ensuring reliability while complying with the MATS?
 - e) Are the stakeholders currently engaging in or planning to engage in efforts to coordinate system reliability with neighboring entities such as adjacent transmission and market operators?
 - f) Do the electricity providers foresee challenges in meeting the MATS timelines?
 - g) What are the potential cost implications for ratepayers?

E. Direction to Interested Persons

25. The Commission hereby invites interested persons to submit comments, research materials, operational studies, market analyses, and other material that may be pertinent to the topics identified in Section D and with respect to the Permit-but-Disclose process described in Sections A and B.

26. Persons making submissions to this matter are encouraged to use the Commission's E-Filings System (<https://www.dora.state.co.us/pls/efi/EFI.homepage>) to the extent possible; otherwise, if paper copy filings are made, the filings should conform with Rule 1204(a)(II)(C) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, or to the Permit-but-Disclose paper copy filing process described previously.

27. In addition to receiving and developing information and analysis related to the MATS, engaging with relevant stakeholders involved with and affected by the standard, and participating in a multi-state collaboration to evaluate the implications of the MATS, the Commission may also conduct one or more Commissioner Information Meetings, round-table discussions, or technical workshops related to the issues articulated in this Order.

28. It is anticipated that this Docket will remain active for one calendar year, but the timeframe may be adjusted as the Commission deems appropriate. Submissions from participants are invited throughout the duration of the Docket.

II. ORDER

A. The Commission Orders That:

1. This Investigatory Docket is opened to serve as a repository for general information, research, and meeting activities related to the Mercury and Air Toxics Standard.

2. This non-adjudicative docket serves as a repository for information concerning its subject matter. Filings and submissions by persons participating in this matter shall be made in accordance with the above discussion.

3. The Permit-but-Disclose Process set forth above is adopted.

4. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 14, 2012.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

JAMES K. TARPEY

MATT BAKER

Commissioners