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October 6, 2011

VIA UPS OVERNIGHT

The Honorable Lisa P. Jackson
Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W
Washington, D.C. 20004

RE: Petition for Reconsideration of the Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals (EPA-HQ-OAR-2009-0491

Dear Administrator Jackson:

Enclosed please find a Petition for Reconsideration of the *Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals,* also known as the Cross-State Air Pollution Rule ("CSAPR"), published in the Federal Register at 76 Fed. Reg. 48208 on August 8, 2011, filed on behalf of our client, Wisconsin Electric Power Company (d/b/a We Energies).

If you have any questions regarding this Petition, please feel free to contact me.

Very truly yours,

QUARLES & BRADY LLP

Cynthia A. Faur

Enclosures

cc: Susan H. Martin, Esq.
Mr. Allen L. Leverett
Mr. Robert M. Garvin
Mr. Bruce W. Ramme
Ms. Meg Victor, United States Environmental Protection Agency
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Patrick Stevens, Administrator, Air and Waste Division, Wisconsin DNR

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BEFORE THE ADMINISTRATOR OF
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals	)	RIN 2060-AP50 EPA Docket No. EPA-HQ-OAR-2009-0491

PETITION FOR RECONSIDERATION AND REQUEST FOR STAY OF APPLICABILITY

Wisconsin Electric Power Company (d/b/a We Energies) respectfully requests that the United States Environmental Protection Agency ("EPA" or the "Agency") reconsider its final rule entitled, *Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals,* also known as the Cross-State Air Pollution Rule ("CSAPR"), published in the Federal Register at 76 Fed. Reg. 48208 on August 8, 2011, (Docket No. EPA-HQ-OAR-2009-0491).[1] Specifically, We Energies seeks reconsideration of the rule provisions establishing the commencement date for the assurance provisions and the penalties for exceeding state assurance levels for emission units that are required to operate in order to ensure reliability of the transmission system in transmission-constrained areas. We Energies also seeks reconsideration of the assurance requirements that would limit the ability of

[1] On October 6, 2011, EPA announced proposed technical adjustments to CSAPR that would revise the NOx budget for the States of Wisconsin and Michigan and delay compliance with assurance penalty provisions of the rule until 2014. We Energies has not had the opportunity to review this proposal and anticipates that it will provide comments to EPA following publication of the proposed rule in the Federal Register. While EPA's proposal addresses certain issues raised this Petition of Reconsideration, We Energies remains concerned that the technical adjustments proposed by EPA may not be sufficient to alleviate the reliability risks posed by CSPAR at the Company's Presque Isle Power Plant.

the Company, which operates plants in different states, to implement an emission trading plan that would allow emission trading within its fleet of covered units without the risk of exceeding the State of Michigan or the State of Wisconsin's assurance levels.

We Energies further requests that EPA stay the applicability of CSAPR or, at a minimum, its assurance provisions pending reconsideration or judicial review of the rule.

I. BACKGROUND

We Energies is an investor-owned electric, gas, and steam utility that serves over 1.1 million electric customers, 1 million gas customers and 425 steam customers in Wisconsin and the Upper Peninsula of Michigan. With a combined peak generating capacity of 8,326 MW, We Energies is the largest investor-owned electric utility in the State of Wisconsin. We Energies owns and operates four coal-fueled power plants, three in the State of Wisconsin and one in the State of Michigan.[2] Over the past 11 years, We Energies has undertaken significant actions to reduce NOx, SO_2 and mercury emissions from its fleet of coal-fueled power plants. By 2013, We Energies projects that it will have increased its generating capacity by approximately 50% while reducing emissions of NOx and SO_2 by approximately 70%.

We Energies currently operates five small generating units at its Presque Isle Power Plant ("PIPP") (Units 5 – 9), each with a generating capacity of approximately 80 MW, in Michigan's Upper Peninsula (the "Upper Peninsula").[3] Four older units (Units 1 – 4) were retired in 2007 and 2009. PIPP is the only large coal-fueled generating facility in the Upper Peninsula, and under certain conditions detailed below, transmission into and out of the Upper Peninsula is significantly constrained.

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[2] We Energies also operates a cogeneration facility that provides steam and power to a regional medical campus and other operations located on the Milwaukee County grounds, and is currently constructing a biomass-fueled cogeneration facility at the site of an existing papermaking operation. These units are not covered by CSAPR.

[3] PIPP Units 5 and 6 are 80 MW, respectively, and Units 7, 8 and 9 are each 83 MW.

Generation from PIPP fulfills two critical needs in the Upper Peninsula:

1. As part of We Energies' system, to serve residential/commercial/industrial customer electric demand, including substantial load from two large mining operations that employ a considerable number of people in the Upper Peninsula; and
2. To provide electric system voltage support and grid stability as part of the interrelated electricity generation and transmission system.

As finalized, CSAPR creates real and significant risk for electric system reliability in the Upper Peninsula because insufficient allowances have been allocated to support the levels of generation from PIPP needed for reliability, and it does not appear that there will be sufficient allowances allocated to sources in the State of Michigan to enable the state to avoid compliance concerns with its assurance obligations. We Energies raised its concerns regarding reliability in the Upper Peninsula in its comments on the proposed transport rule, but these concerns have become more acute due to the revisions EPA made to the emission allocations and the Michigan state budget following the close of the public comment period. *See* Comment submitted by We Energies, EPA-HQ-OAR-2009-0491-2629, at p. 6.

In order to make up for allowance shortages, three compliance options exist for We Energies' Presque Isle Power Plant: curtailing operations, installing controls, or purchasing allowances on the open market. Curtailment of operations, however, is not a viable option because it would put the transmission system of the Upper Peninsula at certain risk for disruption and would adversely impact both businesses and residents in the Upper Peninsula. Also, while a certain amount of curtailed operation may be possible, it would not be sufficient to eliminate the risk of assurance penalties. Additionally, controls cannot be installed at the units prior to the commencement of the CSAPR trading program and the implementation of its assurance provisions in 2012. Finally, although We Energies could utilize emission allowances allocated to its Wisconsin units to make up all or some portion of any shortfall at PIPP during the early

years of the trading program, doing so would put the Company at risk for assurance penalties even though operation of its units is necessary. Plus, there is uncertainty regarding the viability of an emission trading market for allowances.

As detailed below, We Energies supports a limited reconsideration of CSAPR as it relates to the application of the assurance provisions at PIPP and the ability of the Company to employ a utility-specific emission trading plan to comply with CSAPR. The methodology and assumptions used by EPA to establish the state assurance levels and the assurance penalty provisions were inappropriate and flawed. These provisions failed to consider local transmission constraints that essentially force a generating unit to operate in a manner that contributes to an exceedance of a state assurance level. These provisions also fail to recognize both the air quality benefits and efficiencies associated with the implementation of a utility-specific emission trading plan to reduce fleet-wide emissions and comply with CSAPR even where the plan covers plants in neighboring states.

We Energies has also included in this Petition suggested remedies to address the Company's concerns regarding the ability of PIPP to comply with the assurance provisions of CSAPR. These remedies are suggested based on the final rule as issued. To the extent that other provisions of the rule are revised through reconsideration or judicial review, the proposed remedies may not alleviate the problems identified in this Petition, and accordingly may need to be further revised.

II. BASIS FOR RECONSIDERATION

In this Petition for Reconsideration, We Energies raises objections to CSAPR that must be raised in this forum due to changes made to the rule following the close of the comment period, which are of central relevance to the outcome of the rule. According to Clean Air Act

("CAA") Section 307(d)(7)(B), EPA must convene a reconsideration proceeding if a party was unable to raise certain objections during the specified public comment period or if the grounds for the objection arise after the public comment period.

In its comments on the proposed transport rule, We Energies raised its concerns regarding reliability in the Upper Peninsula and commented on the need for EPA to recognize and enable utilities to implement utility-specific emission trading programs to comply with CSAPR without fear of incurring penalties; however, the numerous revisions to the emission allocations and to the state budgets contained in the final rule necessitate reconsideration of both of these assurance penalty-related issues. We Energies is not seeking reconsideration of the unit-specific emission allocations or the state budgets in this petition, but is seeking revision of assurance provisions of the rule because the changes in the allowance allocations and state budgets have increased the urgency to address local reliability concerns through revisions to CSAPR. Additionally, EPA accelerated the compliance date for the assurance penalty requirements from 2014 to 2012 in the final rule. This decision will result in adverse consequences for PIPP and the Upper Peninsula. For these reasons, the revision of that compliance date requires reconsideration.

III. ISSUES FOR RECONSIDERATION

A. EPA MUST RECONSIDER THE COMPLIANCE DATE FOR THE ASSURANCE PENALTY PROVISIONS.

In an attempt to address the concerns raised by the court regarding the failure of the Clean Air Interstate Rule ("CAIR") to prevent significant contribution to non-attainment or interference with maintenance of attainment within each state, EPA included "assurance provisions" in CSAPR. These assurance provisions are intended to limit emissions for each state to the amount of that state's budget plus a state-specific variability limit ("the state

assurance level"). While the "assurance level" applies on a state basis, if the level is exceeded, there are ramifications for the individual sources in the state. In particular, if a covered source obtained allowances from an out-of-state source, even if that source is owned or operated by the same company, and its particular state assurance level is exceeded, the source could be required to retire two additional allowances for each ton of the source's proportional share of the exceedance of the state assurance level.

EPA had proposed to implement these assurance provisions in 2014, but in the final rule, these penalties are to commence in 2012. The rationale provided by EPA for this change is that commencement of the assurance provisions in 2012 is more compatible with the Court of Appeals decision in *North Carolina v. EPA*, 550 F. 3d. 896 (D.C. Cir. 2008). *See* 76 Fed. Reg. 48296. *North Carolina*, however, does not mandate the commencement of these provisions at the start of the CSAPR program - particularly where transmission stability would be put at risk.

Additionally, contrary to the EPA's statements in the preamble to the proposed rule, it is extremely unlikely that sources in the states covered by the CSAPR program will be able to manage their emissions to ensure compliance with the respective state assurance levels in 2012. Indeed, We Energies projects a significant shortfall of NOx allowances in the State of Michigan in 2012. The projected shortfall from the state assurance level for annual NOx emissions is approximately 11,000 tons and for ozone season emissions is over 4,000 tons. Based on the projected shortfall in Michigan alone, it is highly unlikely that the State of Michigan's assurance level will be met in 2012 through management of emissions by covered sources. Given this impossibility, EPA must reconsider and delay the commencement date for the assurance provisions.

B. EPA MUST RECONSIDER THE ASSURANCE PENALTY PROVISIONS AS THEY APPLY TO TRANSMISSION-CONSTRAINED UNITS, LIKE PIPP.

We Energies strongly believes that EPA must delay the commencement date for implementation of the assurance provisions; it also believes that EPA must reconsider and revise these provisions as they apply to generation units that are located in local transmission-constrained areas. We Energies and many others raised detailed comments on local reliability issues associated with the proposed transport rule. Universally, EPA dismissed these comments even though it is apparent from the technical support documents that form the basis of this rule that the Agency did not meaningfully assess reliability and grid stability at a sub-regional level. Due to EPA's failure in this regard, the Agency must reconsider the application of the assurance provisions in the rule to transmission-constrained sources.

1. EPA Failed to Appropriately Take Into Account Sub-Regional Transmission Constraints.

Based on a review of the technical documents that form the basis of CSAPR, it appears that EPA completely ignored the impact of local transmission constraints on the ability of certain sources to comply with the rule and its assurance provisions in a cost-effective manner even though this issue was raised by numerous commenters, including We Energies, the New Orleans City Council, the Louisiana Energy and Power Authority, the Ohio Environmental Protection Agency and the Kansas City Board of Public Utilities.[4]

In evaluating the impact of CSAPR on reliability, EPA admits in its Response to Comments that it only considered issues of regional resource adequacy and inter-regional

[4]Comment submitted by We Energies, EPA-HQ-OAR-2009-0491-2629; comment submitted by the City of New Orleans, Louisiana, EPA-HQ-OAR-2009-0491-2719; comment submitted by Louisiana Energy and Power Authority EPA-HQ-OAR-2009-0491-3738; comment submitted by Louisiana Energy and Power Authority, EPA-HQ-OAR-2009-0491-2700; comment submitted by Ohio Environmental Protection Agency, EPA-HQ-OAR-2009-0491-3704; comment submitted by Kansas City Board of Public Utilities, EPA-HQ-OAR-2009-0491-3978.

transmission of power in its IPM modeling. *See* Transport Rule Primary Response to Comments, document ID Number EPA-HQ-OAR-2009-0491-45131, June 2011 ("Primary Response to Comments"), at p. 1517; *see also* Resource Adequacy and Reliability in the IPM Projections for the Transport Rule TSD (the "Reliability TSD"), June 2011, at p. 2 ("adequate transmission capacity exists to deliver any resources located in or transferred to, the region"). With regard to local transmission constraints, EPA stated in response to comments that it

> [R]ecognizes that local grid issues, such as shifts in congestion patterns and transmission impacts from the retirement of specific power plants will need to be coordinated at the utility and regional levels as they routinely managed (sic) for all changes in the power sector . However, EPA also believes that there are sufficient provisions in the rule for flexible coordination with regional entities and among utilities to permit these local issues to be resolved in the normal course of business.

Primary Response to Comments, at p. 1517.

This response demonstrates a lack of understanding into the very real and valid concerns of generating stations that serve these transmission-constrained locales. Contrary to EPA's assertions, there are not "a diverse set of readily attainable compliance options that can be taken"[5] that will enable We Energies' Presque Isle Power Plant to avoid the risk of paying an assurance penalty in 2012 given transmission constraints in the Upper Peninsula.

PIPP, like We Energies' other coal-fueled power plants, is located in the Wisconsin and Upper Michigan System ("WUMS") transmission region, which includes eastern Wisconsin and a portion of the Upper Peninsula of Michigan. WUMS has traditionally been a transmission-constrained region. The North WUMS sub-region, which includes the area surrounding PIPP, suffers from significant transmission constraints that are unique to the area. In its 2011 Summary Report for its 10-Year Transmission System Assessment, the American Transmission Company ("ATC LLC") stated

[5] Primary Response to Comment at p. 1524.

> There are a number of transmission system performance issues in [the Upper Peninsula] including limited ability to import or export power, generator instability, overloaded lines and equipment, low system voltages and chronic limitations to transmission service.

American Transmission Company's 2011 Summary Report, 10-Year Transmission System Assessment. September 2011 at p. 20. The ATC LLC further noted that "[t]he potential for generation at Presque Isle Power Plant becoming unstable after certain disturbances to the transmission system has been a long standing limitation." *Id.*

While the ATC LLC Northern Umbrella Project upgraded electric transmission in the Upper Peninsula, substantial additional transmission upgrades are necessary to alleviate the existing constraints that reduce power flow in and out of the Upper Peninsula. It is We Energies' understanding that such upgrades could not be placed into service until 2017 at the earliest.

As a public utility, We Energies is required to provide service to the citizens and businesses in its service territory. Plus, due to the specific transmission constraints in the Upper Peninsula, the Company has the added obligation to maintain operations at a level that will ensure stability to the grid in the Upper Peninsula. Midwest Independent System Operator Inc. ("MISO") and ATC LLC typically require PIPP to operate four out of its five units to avoid risk to the electric system in the Upper Peninsula, including the possibility of a black-out situation.[6] If PIPP is not able to operate four of its five units, customer load is at a significantly increased risk of curtailment to ensure grid stability. A curtailment of customer load would adversely impact businesses in the Upper Peninsula that are already struggling due to the current economic conditions.

[6] The Upper Peninsula has suffered three blackouts in the last ten years: May 2003, December 2003 and May 2011.

2. EPA Failed To Consider the Need for Transmission-Constrained Sources to Continue to Operate When it Established its Assurance Provisions.

In CSAPR, PIPP did not receive enough allowance allocations to support the operation of four units at load levels required by MISO/ATC LLC when one considers the assurance provisions of the rule. As illustrated by the table below, when one considers 2010 NOx emissions at PIPP as a base case for operation of the facility, emissions from the facility would not only exceed the number of allowances it was allocated for 2012 and 2014, but would also exceed its share of the State of Michigan's assurance level.[7]

2010 Emissions*			2012**				2014			
			Alloc.	Def.	Assur.	Def.	Alloc.	Def.	Assur.	Def.
PIPP	Annual NOx	5,675	2,240	-3,435	2,643	-3031	2,148	-5,179	2,535	-3,140
	Ozone NOx	2,374	983	-1,391	1,189	-1,184	943	-2127	1,141	-1,233

* 2010 emissions were taken from EPA's CAMD database.

** A similar deficit to 2012 will likely occur in 2013.

We Energies is not requesting reconsideration of this allocation, and to the extent that it were to operate at emission levels above its unit-specific allocations, the Company would acquire emission allowances either from its Wisconsin generating facilities or attempt to acquire allowances on the open market. We Energies, however, has significant concerns regarding the availability of excess emission allowances, especially Annual and Ozone Season NOx allowances in the State of Michigan. Based on publicly available emission data from EPA set forth below, We Energies projects significant NOx allowance deficits in Michigan based on 2010 emission levels through at least 2012.

[7] We Energies foresees great difficulty meeting the Annual NOx and Ozone Season NOx assurance requirements at PIPP and for that reason, the examples and control equipment discussion in this Petition focus on NOx emissions and control. The Company recognizes that other covered sources in other transmission-constrained areas may have different concerns.

2010 Emissions*			2012**			
			Allocation	Deficiency	Assurance	Deficiency
Michigan	Annual NOx	80,390	58,988	-21,402	69,606	-10,784
	Ozone NOx	34,889	25,232	-9657	30,531	-4,358

* 2010 emissions were taken from EPA's CAMD database.

** A similar deficit to 2012 will likely occur in 2013.

As demonstrated by the projected emission deficits in the table above, there are serious questions that have not been considered, let alone answered, by EPA about the availability of a viable emission trading market and the ability to purchase emission allowances. Additionally, the cost of allowances is another major uncertainty that remains unaddressed. We Energies acknowledges that there may be sufficient allowances available to enable PIPP and the State of Michigan to meet their respective assurance obligations in the later years of the program; however during the period from 2012-2014, it is unlikely that sufficient allowances from Michigan sources will be available for PIPP to meet its assurance program requirements. This situation creates unacceptable reliability risks for the Upper Peninsula.

EPA has assumed in issuing CSAPR assurance requirements that owners and operators of covered sources will have no problem meeting the state assurance levels in the rule. Specifically, the Agency stated in the preamble to the final rule:

> EPA expects companies in various states will **readily** be able to manage their emissions to stay collectively below their state's assurance levels as they track emissions quarterly throughout the year and manage their generation units and pollution control efforts accordingly.

76 Fed. Reg. 48294-48295 (emphasis added). Where emissions are approaching the state assurance levels, EPA anticipates that the owners and operators of covered sources will band together as good neighbors to ensure that the state assurance level will not be exceeded. *See Id.*

This assumption is naive in many respects. Indeed, EPA itself identified the possibility of antitrust concerns when working together to manage emissions and operations within a state. *Id.* This also does not account for the fact that owners are likely to conclude that it would be prudent to maintain a reserve margin of allowances and therefore not sell all of their excess each and every year. Additionally, given the short timeframes provided for compliance with the 2012 and 2014 emission reduction requirements and the fact that there are not enough emission controls under construction to ensure that sources in Michigan will be able to comply with the assurance cap, it is unlikely that an emission source owned by a different company in a different part of the state would be willing to curtail its operations so that PIPP can provide voltage stability to the grid and service to its customers in the Upper Peninsula.

Installation of additional emission controls at PIPP also is not an option for compliance with CSAPR in the early years of the program. The 2012 and 2014 compliance deadlines do not allow enough time to install sufficient controls. While EPA in its unit-specific projections does not assume that We Energies would install additional emission control to meet CSAPR requirements on any of the small generation units at PIPP,[8] the Company has investigated additional emission control options in light of EPA's failure to consider transmission constraints when establishing assurance requirements.

While EPA asserts in the preamble to CSAPR that it is possible for utilities to obtain approval, permit and construct certain less extensive emission control equipment between the issuance of CSAPR this summer and December 2011,[9] We Energies experience shows EPA's position to be inaccurate. What EPA deems to be "simpler" NOx emission controls, advanced

[8] *See* WebReady_ParsedFile_TR_Remedy_Final_2012.xlsx; WebReady_ParsedFile_TR_Remedy_Final_2012.xlsx, both available for download at http://www.epa.gov/airmarkets/progsregs/epa-ipm/transport.html .
[9] *See* 76. Fed. Reg. 48280.

low NOx burners or potentially selective non-catalytic reduction ("SNCR"), cannot be installed at PIPP prior to the end of 2014 and are not expected to achieve sufficient emission reductions to mitigate the Company's concerns regarding the state assurance requirements. When one considers planning, engineering, licensing, permitting, procurement, construction and startup of major controls (selective catalytic reduction ("SCR")), this work could not be completed until 2017. Furthermore, such major controls would not be economical under EPA's own cost projections in the rule. In identifying significant contributions to nonattainment and maintenance, EPA selected $500/ton as the significant cost threshold for both Annual and Ozone Season NOx. 76 Fed. Reg. at 48,526-48,527. We Energies estimates the installation of SCR technology at PIPP to cost well over 20 times what EPA deems to be reasonable. Also, planned outage schedules at PIPP are restricted by the MISO/ATC LLC requirements described above, providing an additional constraint on construction schedules associated with the addition of major controls.

As stated above, per MISO and ATC LLC's requirements, We Energies typically operates four of the five PIPP units at all times. The Company has asked MISO to provide the expected minimum generation level required for the PIPP units to support area load. We are interested in whether there is some amount of variation in the requirement that We Energies operate four of the five units at PIPP at all times. We recognize that MISO and ATC LLC are concerned about balancing the needs of a reliable electric power system. Whether those discussions will enable the Company to operate in a manner that mitigates the risk of an assurance penalty is unknown, but unlikely.

PIPP is just one example of a source in a transmission-constrained area. There are likely others as well. For all the reasons set forth above, EPA must reconsider the assurance penalty provisions as they would apply to PIPP and other similarly situated sources.

C. EPA MUST RECONSIDER THE ASSURANCE PROVISIONS TO THE EXTENT THEY LIMIT THE USE OF UTILITY-SPECIFIC EMISSION TRADING PROGRAMS - PARTICULARLY ON WE ENERGIES' SYSTEM.

One of the purported benefits of the CSAPR trading program is that it results in cost-effective emission reductions while addressing $PM_{2.5}$ and ozone nonattainment in the eastern United States. We Energies agrees that emission trading is the most cost-effective method to address nonattainment issues. We Energies, however, is dismayed that EPA did not provide adequate flexibility for utilities, like itself, that operate generation facilities in multiple states. EPA should reconsider CSAPR and revise the rule to include an exemption from the assurance penalty provisions for utility-specific emission trading plans that involve interstate transactions across units and state lines where a utility's fossil fuel fleet is located in multiple states. Alternatively, EPA should reconsider the rule to provide a specific exemption for We Energies' fossil fuel fleet such that the Company is able to trade allowances within its fleet of covered units without the risk of exceeding the State of Michigan or the State of Wisconsin's assurance levels.

On a utility basis, We Energies has made significant investments in air quality control systems, including advance post-combustion controls such as SCR and flue gas desulfurization ("FGD"), for NOx and SO_2 control, respectively. Many of these controls have been installed and are operating. Others are under construction and will be fully operational by 2013, at which time more than 80% of our generating system's coal-fueled generation capacity will be controlled with these advanced devices. By 2013, We Energies will have reduced its NOx and SO_2 emissions by more than 70% from 2000 levels.

Given these significant investments, which total 1.7 billion dollars,[10] We Energies is concerned by the limitations that CSAPR's assurance provisions place on interstate trading and banking. While we understand the limitations on trading under the *North Carolina* decision, We Energies is confident that the final rule can be revised in a manner that (1) addresses the need for states to reduce their significant contribution to nonattainment or interference with maintenance of attainment in another state and (2) enables utilities that have generating facilities in multiple states to comply with CSAPR without the risk of incurring assurance penalties. At a minimum, We Energies requests that EPA consider a site-specific revision to the rule to allow PIPP to participate in a system-wide emission trading plan without the risk of incurring assurance penalties given the significant investment in emissions control equipment made by We Energies and the substantial emissions reductions that are associated with the operation of that equipment.

PIPP represents about 10% of We Energies' coal-fueled generating assets, and is the Company's sole coal-fueled power plant in the State of Michigan. Further, PIPP represents only around 4% of the Michigan state assurance level for both Annual and Ozone Season NOx emissions. It is not clear from the technical information used to support CSAPR whether emissions from PIPP impact any particular non-attainment area. In light of these factors and the significant air quality control systems that We Energies has installed in southeastern Wisconsin where the benefits associated with such NOx control are great, EPA should consider revisions to CSAPR that would allow We Energies to trade emission allocated to its Wisconsin coal-fueled units for use at PIPP without consideration of the Michigan assurance levels.

While nothing in the rule prohibits We Energies from trading emission allowances among its generating units as documented in this petition, use of an emission trading plan would put

[10] On an annual basis, We Energies incurs approximately $250 million in annualized costs that will be recovered through customer rates.

PIPP at risk for the payment of assurance penalties because it would be using out-of-state allowances to comply with CSAPR. If Michigan exceeds it state assurance level, which we believe is likely, PIPP would be in a penalty situation.[11] To the extent that EPA, through CSAPR, is encouraging sources to make cost-effective control decisions, this result is unfair given the emission reduction program that has been undertaken by We Energies in Wisconsin.

For the reasons set forth above, We Energies requests that EPA reconsider the assurance provisions to the extent the assurance penalty provisions limit the use of utility-specific emission trading plans, in general, and on We Energies' emission trading plan, in particular.

IV. POTENTIAL REMEDIES

We Energies proposes two potential remedies for EPA to consider in a reconsideration proceeding addressing the application of assurance penalty requirements to generating units that must operate at levels in excess of their share of the state assurance level. These remedies are based on the rule as finalized. To the extent that EPA reconsiders and revises the unit-based allocations, state budgets, state assurance levels or trading program participation, these proposed remedies may not alleviate the problems identified in this petition.

A. Option 1: Creation of a Limited Exemption from Assurance Penalty Provisions for Transmission-Constrained Units

First, EPA could create on reconsideration a limited exemption for emission units in transmission-constrained areas that need to operate above their share of an applicable state assurance level in order to ensure stability of the transmission grid. We Energies notes that there are likely very few sources that are subject to transmission constraints like those to which it is

[11] Based on the final rule as issued, We Energies does not anticipate that it will be at risk for incurring assurance penalties in Wisconsin. To the extent the rule is revised, however, We Energies would request that it be able to utilize emission allowances across its entire system without the risk of incurring assurance penalties in either Michigan or Wisconsin.

subject in the Upper Peninsula, but based on the comments on the proposed transport rule, others are similarly concerned.[12] Such an exemption would be unlikely to have an adverse impact on attainment of ozone and $PM_{2.5}$ requirements because it would apply to at most a handful of sources, most of which are likely in remote areas with limited transmission systems. Indeed, We Energies believes it to be unlikely that emissions from PIPP adversely impact any non-attainment areas in other states given its location in northern Michigan. To take advantage of this exemption, a source could be required to hold emission allowances sufficient to cover all its emissions of covered pollutants, and the source could be required to make a one-time submittal supporting its need to operate to meet transmission demands, such as a document from MISO, ATC LLC or other organizations charged with management of the regional transmission system.

B. Option 2: Limited Exemption for Interstate Trading

Alternatively, EPA could provide a limited exemption to the assurance penalty provisions for generating units that participate in a company's system-wide emission reduction program as outlined in Section III.C. of this Petition. At a minimum, a site-specific exemption for PIPP from the assurance penalty provisions for those emission allowances that it acquires through We Energies' emission trading plan would mitigate to some extent the risk of assurance penalties in the early years of CSAPR. A limited exemption of this type could be implemented consistent with the goals of CSAPR and still recognize the need for facilities, like PIPP, to implement cost-effective compliance strategies for CSAPR without the risk of incurring assurance penalties.

[12] EPA recognized in the preamble that some sources may elect to continue operation even though it is not economical under CSAPR to maintain stability on the transmission grid. *Id.* at 48,346. The Agency assumed, however, that these would be "predominantly small and infrequently used generating units dispersed throughout the area affected by the rule." *Id.*

V. REQUEST FOR AN ADMINISTRATIVE STAY

We Energies requests that EPA administratively stay CSAPR or at a minimum, its assurance provisions, pending reconsideration or judicial review of the rule. Under both Section 307 of the CAA and Section 705 of the Administrative Procedure Act ("APA"), EPA has broad authority to stay the effectiveness of a final rule promulgated under the CAA pending reconsideration and judicial review, respectively. Pursuant to Section 307(d)(7)(B) of the CAA, EPA may grant administrative stay of a final rule of up to three months if EPA has decided to grant reconsideration of that rule. Furthermore, under Section 705 of the APA, EPA may stay the effective date of a rule pending judicial review when justice requires. While EPA has yet to grant reconsideration of this rule, justice clearly requires this rule be stayed pending judicial review. As detailed in this petition, EPA made numerous revisions to this rule after the end of the public comment period, including acceleration of the compliance date for the assurance penalty provisions from 2014 to 2012. At the same time, EPA drastically reduced state budgets and state assurance levels for both 2012 and 2014. With less than *five months* from the publication date of CSAPR to its implementation date, covered sources have no ability to take the actions necessary to comply with applicable regulatory requirements, and contrary to EPA's assumptions, the emission controls that would be required to meet most state budgets, including Michigan's budget, are not in place and may not be in place until after 2014. If this rule is not stayed, covered sources and their commercial and residential customers will incur irreparable harm.

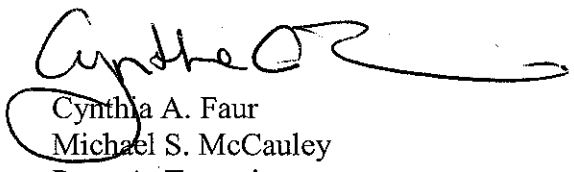
For all the reasons set forth above, We Energies requests that EPA issue an administrative stay of CSAPR or, at a minimum, the assurance provisions.

VI. RELIEF REQUESTED

For the foregoing reasons, We Energies respectfully requests that, pursuant to 42 U.S.C. § 7607(d)(7)(B), the Administrator convene a proceeding for reconsideration of the issues identified in this Petition and afford the interested public the procedural rights due them. We Energies further requests that EPA issue an administrative stay of the rule or, at a minimum, assurance provisions therein.

Respectfully submitted,

QUARLES & BRADY LLP



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