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January 10, 2012

American Electric Power  
1 Riverside Plaza  
Columbus, OH 43215  
AEP.com

VIA OVERNIGHT AND ELECTRONIC MAIL

Administrator Lisa P. Jackson  
U.S. Environmental Protection Agency  
Room 3000, Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Re: Request for Reconsideration and Stay of *Federal Implementation Plans for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin and Determination for Kansas Regarding Interstate Transport of Ozone*, 76 Fed. Reg. 80760 (December 27, 2011)  
(Docket No. EPA-HQ-OAR-2009-0491)

Dear Administrator Jackson:

Public Service Company of Oklahoma, an operating company of the American Electric Power System (collectively referred to herein as "AEP"), respectfully requests administrative reconsideration of the final rule entitled *Federal Implementation Plans for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin and Determination for Kansas Regarding Interstate Transport of Ozone*, published at 76 Fed. Reg. 80,760 (Dec. 27, 2011) (the "Supplemental Transport Rule"), and a stay of the effective date beyond January 26, 2012, to allow time for judicial review of the companion rule known as the Cross-State Air Pollution Rule ("CSAPR"), 76 Fed. Reg. 48,208 (Aug. 8, 2011), which is currently pending before the U.S. Court of Appeals for the District of Columbia in *EME Homer City Generation, L.P. v. Environmental Protection Agency*, Case No. 11-1302 (and consolidated cases)(hereinafter "*EME Homer City*"). The final Supplemental Transport Rule requires substantial reductions in seasonal emissions of nitrogen oxides ("NOx") from electric generating units in five states as part of the CSAPR regional program to address interstate transport of fine particulate matter and ozone precursors in the United States beginning January 1, 2012 (or May 1, 2012, for those states subject only to seasonal NOx requirements).

Reconsideration and a stay are warranted because the D. C. Circuit recently issued an order staying implementation of the CSAPR requirements while the petitions for review of that rule are considered by the Court. *EME Homer City*, Order (D.C. Cir. Dec. 30, 2011) (attached as Exhibit A). The court further ordered that the Clean Air Interstate Rule ("CAIR") should continue in effect in lieu of CSAPR during this period. *Id.* CAIR has contributed to improved air quality across the eastern United States, including the area that is served by the single monitor upon which EPA based its decision to include

Oklahoma in the CSAPR program, the Allegan County, Michigan monitor, which was recently determined to be in compliance with the 1997 ozone standard, and for which EPA has approved a maintenance plan through 2021. 75 Fed. Reg. 58,312 (Sept. 24, 2010).

EPA noted in its original proposal that the Supplemental Transport Rule is based on the same methodology to identify receptors for nonattainment and maintenance used in CSAPR; the same methodology to identify any specific state's significant contribution to nonattainment or maintenance used in CSAPR; the same methodology to establish state budgets, variability limits, and state assurance levels used in CSAPR; the same methodology to allocate emission allowances used in CSAPR; and the same emissions inventories used for modeling in CSAPR.<sup>1</sup> 76 Fed. Reg. 40,662 (July 11, 2011). EPA therefore refused to accept additional comments on these issues in the context of the separate proposed Supplemental Transport Rule. Nonetheless, AEP and others presented comments on the flaws in these methodologies and elements as manifested in the proposed Supplemental Transport Rule. Many of these common elements of CSAPR and the Supplemental Transport Rule have been challenged by AEP and other petitioners in the pending D.C. Circuit litigation, and formed the basis for the arguments presented in the motions to stay CSAPR pending judicial review. It is quite likely that several of these issues with CSAPR will be addressed in the decision issued by the D.C. Circuit in the pending litigation. Therefore, the outcome of the pending litigation is likely to affect the core elements underlying both CSAPR and the Supplemental Transport Rule. The D. C. Circuit has ordered the parties to confer and submit proposals for further proceedings that would allow the CSAPR case to be heard in April of this year. An administrative stay of the Supplemental Transport Rule pending judicial review would allow the agency to take coordinated action in response to the court's decision, once the case has been decided, whether that action is to implement the rules as finalized, or to make further revisions to the rules in response to a decision from the court.

AEP intends to file a petition for judicial review of the Supplemental Transport Rule for Oklahoma, and will seek to have that petition consolidated with the pending petitions in the *EME Homer City* cases. Consolidated review is warranted and will provide an expedited path for consideration of the common issues raised in these cases, and will not prejudice any party. An administrative stay of the rule will avoid the need for additional briefing on a motion for stay before the court, and conserve the resources of the court and the parties.

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<sup>1</sup> AEP identified numerous flaws in those underlying methodologies and assumptions in its Request for Reconsideration and Stay of the final CSAPR (filed Oct. 3, 2011) and incorporates by reference all of the arguments raised therein.

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Supplemental Transport Rule  
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Even if the petitions are not consolidated, administrative reconsideration and a stay of the Supplemental Transport Rule are clearly warranted. It would be unreasonable to attempt to implement the Supplemental Transport Rule in the limited number of states in which it applies while the companion rule, CSAPR, which covers the majority of the affected states, is stayed. In certain states, failure to administratively stay the Supplemental Transport Rule could lead to conflicting obligations to implement both CAIR and CSAPR. The separate allowance trading programs established by CAIR and CSAPR cannot function effectively if CAIR is required to be implemented in some states and the Supplemental Transport Rule is implemented in others.

For all of the foregoing reasons, AEP respectfully requests that the Administrator agree to the reconsider the final Supplemental Transport Rule in light of the D.C. Circuit's decision, and to stay the effective date of the Supplemental Transport Rule pending judicial review.

Respectfully submitted,



John M. McManus, Vice President  
Environmental Services Division  
American Electric Power Service Corporation

cc: Gina McCarthy, Assistant Administrator

United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11-1302

September Term 2011

EPA-47FR45210  
EPA-76FR48208

Filed On: December 30, 2011

EME Homer City Generation, L.P.,

Petitioner

v.

Environmental Protection Agency,

Respondent

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American Lung Association, et al.,  
Intervenors  
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Consolidated with 11-1315, 11-1323, 11-1329,  
11-1338, 11-1340, 11-1350, 11-1357,  
11-1358, 11-1359, 11-1360, 11-1361,  
11-1362, 11-1363, 11-1364, 11-1365,  
11-1366, 11-1367, 11-1368, 11-1369,  
11-1371, 11-1372, 11-1373, 11-1374,  
11-1375, 11-1376, 11-1377, 11-1378,  
11-1379, 11-1380, 11-1381, 11-1382,  
11-1383, 11-1384, 11-1385, 11-1386,  
11-1387, 11-1388, 11-1389, 11-1390,  
11-1391, 11-1392, 11-1393, 11-1394, 11-1395

**BEFORE:** Rogers, Griffith, and Kavanaugh, Circuit Judges

**ORDER**

Upon consideration of the motions to stay, the responses thereto, the replies, the Rule 28(j) letters, and the responses thereto; the motions for leave to exceed the page limit for replies; the motion to dismiss the State of Texas' petition and the opposition thereto; the motion to govern [1341711], the responses thereto, and the reply; the motion to release the decision on stay motions in a way that avoids unnecessary disruption in trading markets, and the response thereto, it is

**ORDERED** that the motion regarding advance notice of the release of the court's decision be denied. It is

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 11-1302**

**September Term 2011**

**FURTHER ORDERED** that the motions for leave to exceed the page limits for replies be granted. The Clerk is directed to file the lodged replies. It is

**FURTHER ORDERED** that the motion to dismiss the State of Texas' petition be referred to the merits panel to which these petitions for review are assigned. The parties are directed to address in their briefs the issues presented in the motion to dismiss rather than incorporate those arguments by reference. It is

**FURTHER ORDERED** that the motions to stay be granted. The Environmental Protection Agency's "Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals; Final Rule," 76 Fed. Reg. 48,208 (August 8, 2011), is stayed pending the court's resolution of these petitions for review. Petitioners have satisfied the standards required for a stay pending court review. See Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); D.C. Circuit Handbook of Practice and Internal Procedures 32 (2010). Respondent is expected to continue administering the Clean Air Interstate Rule pending the court's resolution of these petitions for review. It is

**FURTHER ORDERED** that the motion to govern be granted in part. The request to designate the case "complex" is granted. Petitioners are directed to identify lead or liaison counsel for appropriate groups of petitioners at the time briefing proposals are due. It is

**FURTHER ORDERED**, on the court's own motion, that the parties submit by January 17, 2012, proposed formats and schedules for the briefing of these cases that would allow the cases to be heard by April 2012. The parties are strongly urged to submit a joint proposal and are reminded that the court looks with extreme disfavor on repetitious submissions and will, where appropriate, require a joint brief of aligned parties with total words not to exceed the standard allotment for a single brief. The parties are directed to provide detailed justifications for any request to file separate briefs or to exceed in the aggregate the standard word allotment. Requests to exceed the standard word allotment must specify the word allotment necessary for each issue.

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
Lynda M. Flippin  
Deputy Clerk