Alexandria
Louisiana

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

October 7, 2011

Administrator Lisa P. Jackson
USEPA Headquarters
Room 3000, Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Docket No. EPA-HQ-OAR-2009-0941: Request for Reconsideration and Stay of EPA's Final Rule entitled *Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States* signed July 6, 2011.

Dear Administrator Jackson:

The City of Alexandria, Louisiana (the "City" or "Alexandria") herby requests that the United States Environmental Protection Agency ("EPA") reconsider and stay the effectiveness of its Final Rule entitled *Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States*, published at 76 Fed. Reg. 48,208 on August 8, 2011 ("Final Rule").

Alexandria is a home rule charter municipality organized under the Constitution and the statutes of the State of Louisiana as a municipal corporation in the Parish of Rapides with a population of approximately 50,000. The City owns and operates a not-for-profit electric utility system, which currently includes 140 MW of generating capacity located at Alexandria's D.G. Hunter Generating Station. The City is also entitled to approximately 55 MW of the output of Rodemacher Unit No. 2 pursuant to terms of an agreement between the City and the Louisiana Electric Power Authority.

Alainna Renee' Mire
Assistant City Attorney
Post Office Box 71
Alexandria, Louisiana 71309-0071
Tel (318) 449-5046 · Fax (318) 449-5019
e-mail: alainna.mire@cityofalex.com

Jacques M. Roy
Mayor

{0023904.DOCX \ }

The City has not previously filed comments in this proceeding. When the EPA issued its proposed rule in this proceeding, the nitrogen oxide ("NOx") emissions budget for the State of Louisiana was 21,220 tons for the 2012 ozone season. When the Final Rule was issued, however, the City learned for the first time that the EPA had cut the state's NOx budget to 13,432 tons – a 37% reduction in the NOx emissions permitted from the state's electric generating units ("EGUs") for the 2012 ozone season. As discussed in the Request for Reconsideration and Stay filed by the State of Louisiana Department of Environmental Quality in this proceeding on October 5, 2011, the reduction to the state's NOx budget contained in the Final Rule has far-reaching implications for the state's EGUs – including those units owned by the City.

Because the City became aware of the potential impact of the Final Rule only after it was issued, the City has been denied its right to meaningfully participate in this proceeding. The City has never been presented an opportunity to study and comment on the impact of a 13,432 ton budget for the 2012 ozone season on its electric utility operations. Nor has the City or any other interested party been given an opportunity to comment on the reasonable amount of time needed to permit compliance with the EPA's revised NOx emissions levels for 2012 and beyond.

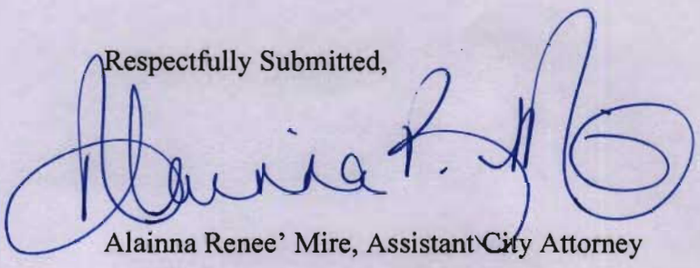
The Administrative Procedures Act, 5 U.S.C. § 101 *et seq.*, provides that "[a]fter notice...the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments...." 5 U.S.C. § 553. Similarly, section 307(d)(3) of the Clean Air Act requires that the EPA must provide adequate notice of, and the opportunity to comment on the elements of its rulemakings. The City could not comment on the impact of a 13,432 ton NOx emission budget for the State of Louisiana for the 2012 ozone season because it had no reason to believe that the EPA was considering a budget that was a full 37% lower than what it had initially proposed in this proceeding.

The opportunity for the City to submit these comments after the promulgation of the Final Rule is an insufficient remedy under the APA. "Section 553 [of the APA] is designed to ensure that affected parties have an opportunity to participate in and influence agency decision making at an early stage, when the agency is more likely to give real consideration to alternative ideas." *United States Steel Corp. v. EPA*, 595 F.2d 207, 214 (5th Cir. 1979). Nor could the City have reasonably anticipated that the Final Rule would depart from the proposed rule in such a significant manner. The D.C. Circuit has held that "[g]iven the strictures of the notice-and-comment rulemaking, an agency's proposed rule and its final rule may differ only insofar as the latter is a 'logical outgrowth' of the former." *Envtl. Integrity Project v. EPA*, 425 F.3d 992, 996 (D.C. Cir. 2005). The court explained further that a final rule is a logical outgrowth of a proposed rule "only if interested parties should have anticipated that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period." *Id.* at 998. The City, however, had no reason to believe that the EPA would

change its rule so significantly from the proposal stage when issuing the Final Rule. Nor could the City have submitted meaningful comments on a hypothetical NOx emissions budget and the reasonable amount of time necessary to comply with that emissions budget.

The City of Alexandria therefore respectfully requests that the Administrator convene a proceeding for reconsideration of the Final Rule and afford the City and other interested parties the opportunity to comment on the reasonableness of the proposed NOx baseline for the State of Louisiana. The City requests further that the Administrator stay the effectiveness of the Final Rule during the pendency of the reconsideration for the maximum time allowed by law.

Respectfully Submitted,



Alainna Renee' Mire, Assistant City Attorney