**OFFICE OF PUBLIC UTILITIES**
**CITY OF SPRINGFIELD, ILLINOIS**

**J. MICHAEL HOUSTON, MAYOR**

via Certified Mail
Return Receipt

October 5, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: EPA-HQ-OAR-2009-0491
City of Springfield, Illinois, Office of Public Utilities
(d/b/a/ City Water, Light & Power)
Petition for Reconsideration and Stay of Cross-State Air Pollution Rule.

Dear Administrator Jackson:

The City of Springfield, Illinois, Office of Public Utilities, doing business as City Water, Light & Power (CWLP) writes to request reconsideration and an immediate administrative stay of the Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 Fed. Reg. 48,208 (Aug. 8, 2011) (the Cross-State Rule). CWLP outlines below why reconsideration and a stay of implementation is appropriate.

Of greatest significance to CWLP is EPA's method for allocating allowances to existing electric generating units (EGUs). CWLP operates six EGUs that are subject to the Cross-State Rule, and under the allocation method announced in the final Cross-State Rule, the newest and cleanest of CWLP's units (Dallman 4) is not allocated allowances that reflect its normal expected operations. Because this method appeared for the first time in the final rule and because Dallman 4 had not been allocated allowances as an existing unit under any of the proposed methods, it was impracticable for CWLP to challenge Dallman 4's allocation during the comment period. *See* 42 U.S.C. § 7602(d)(7)(B). CWLP therefore requests that EPA reconsider this aspect of the Cross-State Rule and further requests that EPA stay the rule's implementation during reconsideration and pending the issuance of a revised rule.

## I. Background

CWLP is a not-for-profit, municipally-owned electric generation and transmission utility that provides power to approximately 70,000 customers, including the citizens and businesses of the Springfield community. In fiscal year 2010, CWLP sold a total of 2.7 million megawatt hours of power to wholesale and retail customers. CWLP owns and operates four (4) coal-fired units at its Dallman Power Plant — Dallman Units 31, 32, 33 and

4. Each of those units is served by selective catalytic reduction (SCR) systems, and each has flue gas desulfurization (FGD) systems. CWLP began employing these emissions control technologies as early as 1980.[1] *See* Affidavit of Patrick J. Becker ¶ 4 (Ex. 1).

Dallman 4 is relatively new. It is a 200-MW (net) pulverized coal plant that employs the latest coal-fired technology and air quality control systems. On April 17, 2009, Dallman 4's boiler underwent first fire (for natural gas) and steam blow testing. On May 11, 2009, the unit was synchronized to the electrical grid (on natural gas) for the first time, operating at 13 MW. *Id.* at ¶ 6.

But Dallman 4 still has not operated in a manner that is representative of expected normal operations. Throughout 2009 and into 2010, Dallman 4 experienced a number of shakedown issues and thus did not achieve maximum operating load for many months in 2010. *Id.* at ¶¶ 6, 14. From June 2009 through December 2010, ordinary shakedown issues were compounded by problems with two circulating water pumps. *Id.* at ¶ 12. Dallman 4 is designed to operate with both of those pumps on line, but due to vibration issues in both pumps, it has only been able to operate with one pump. That has reduced Dallman 4's capacity factor to 63% in 2010. This problem led CWLP to request from Illinois EPA a 180-day extension of time to conduct stack testing for Dallman 4 as required by its PSD permit. *Id.* at ¶ 15. Illinois EPA granted that request. *Id.* at ¶ 16.

## II. The Treatment of Dallman 4 Under the Proposed and Final Rules.

### A. The Proposed Rule and EPA's September 2, 2010, Correction

As originally proposed on Aug. 2, 2010, the Cross-State Rule (then called the Clean Air Transport Rule (CATR))[2] would have allocated allowances based on a modeled prediction of industry decision-making in response to the rule. *See* 76 Fed. Reg. at 48,285-86. But the proposed unit-level allowance allocations that accompanied CATR contained several inaccuracies relating to CWLP. Among other things, EPA's inventory of affected units identified Dallman 4 twice — once as Dallman 4 and again as Dallman 34. And CATR did not identify the unit as either "existing" or "new". On September 1, 2010, EPA published a Notice of Data Availability (First NODA) that corrected the dual listing of Dallman 4, but still did not identify it as either a new or existing unit.

CWLP provided comments on both CATR and the First NODA on September 30, 2010. *See* Letter from Christine Zeman to Hon. Lisa P. Jackson (Sept. 30, 2010) (Ex. 2). CWLP identified the errors relating to CWLP units in CATR and expressed concern that EPA

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[1] CWLP also owns an oil-fired unit that is not subject to this rule.

[2] *See* Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone, 75 Fed. Reg. 45,210 (Aug. 2, 2010).

was proposing the rule as a FIP: "By proposing a FIP, rather than a schedule that allows for State Implementation Plans, USEPA is short-changing state environmental agencies, sources like CWLP regulated by those state agencies, and the process developed under the Clean Air Act which accommodates public comment on issues of traditionally local concern." *Id.* at 3. CWLP also noted that the proposed implementation schedule was unreasonably compressed. *Id.*

### B. EPA's January 7, 2011 Notice of Data Availability

On January 7, 2011, EPA issued another NODA (January 2011 NODA) that addressed unit-level allowance allocations and explained that EPA was considering two options for the allocation of allowances to existing units. Option 1 allocated allowances based on historic heat input. Option 2 also would allocate based on heat input, but would constrain each unit's allocations based on a reasonable projection of emissions. To project emissions, EPA would take the maximum emissions level during the baseline period and then would adjust that figure upward to reflect "a reasonable upper-bound capacity utilization factor." *See* 76 Fed. Reg. at 48,287. For reasons unexplained, Dallman 4 was treated as a new unit and therefore was not allocated allowances under either option.

CWLP commented on the January 2011 NODA on February 3, 2011. *See* Letter from Christine Zeman to Hon. Lisa P. Jackson (February 3, 2011) (Ex. 3). CWLP expressed support for Option 1, noting that Option 2 would penalize units that chose to invest early in control technologies and thus can be expected to have lower projected emissions.

### C. New Allocation Method in Final Rule

In the final Cross-State Rule, EPA introduced for the first time a fourth option for allocating allowances to existing units. *See* 76 Fed. Reg. 48,288-90. Like Option 2, allocation would be based initially on heat input. But instead of constraining the allocation based on a reasonable projection of the unit's emissions at normal operations, the allocation would be limited by the highest level of emissions for that unit during the baseline period. In other words, under this new method, allocation would be constrained based solely on emissions that were not representative of normal operations, rather than a "reasonable upper-bound capacity utilization factor" for the facility.

This imposes a significant constraint on Dallman 4. Because 2010 is the only full year for which EPA could draw emissions data, and because Dallman 4's operations were limited during that year for the reasons described above, Dallman 4's "historic" emissions (i.e., emissions for 2010) are not representative of the emissions that CWLP expects from Dallman 4 in the future. Once the shakedown and other operation constraints are corrected on Dallman 4, CWLP expects it to be the first dispatched unit in CWLP's fleet, because it is the cleanest and most efficient to operate. CWLP expects Dallman 4 to achieve 90% capacity factor in 2012 as opposed to the 63% capacity factor it experienced in 2010.

The following table shows the disparity between the final allocation for Dallman 4, the allocations under the various proposed methods, and the allowances that Dallman 4 needs to operate at levels expected for 2012:

**Dallman 4**
**Allocation of Allowances Under Various Methods and Allowances Needed to Operate As Expected in 2012**

| | Annual SO2 (2012) | Annual NOx (2012) | Seasonal NOx (2012) |
|---|---|---|---|
| CATR Method[3] | 1,487 | 333 | 145 |
| Option 1 from January 2011 NODA[4] | 2,271 | 448 | 206 |
| Option 2 from Second NODA[5] | [unknown] | [unknown] | [unknown] |
| Final Allocation[6] | 692 | 315 | 139 |
| Allowances to cover expected emissions[7] | 993 | 447 | 186 |

Had CWLP been afforded the opportunity to comment,[8] CWLP would have offered two alternatives that would avoid short-changing new units. First, for newer existing units —

[3] *See* Technical Support Document (TSD) for the Transport Rule - State Budgets, Unit Allocations, and Unit Emissions Rates, EPA-HQ-OAR-2009-0491-0057 (Aug. 2, 2010). The allocation figures are those listed for "Dallman 34."

[4] As explained above, Dallman 4 was not allocated allowances in the second NODA. The allocation reflected under Option 1 is drawn from the data supporting the allocation under the final rule.

[5] *See* Updated Alternative Allocation Tables and Underlying Data, EPA-HQ-OAR-2009-0491-3875 (Jan. 10, 2011).

[6] *See* Final Transport Rule Unit Level Allocations Under the FIP, EPA-HQ-OAR-2009-0491-4400 (July 11, 2011).

[7] *See* Becker Aff ¶ 17.

[8] As explained above, the final allocation method was not articulated in either CATR or the Second NODA. And none of EPA's allocation methods actually allocated allowances

i.e., units that commenced commercial operation after January 1, 2008 — EPA could have allocated based on average heat input. In other words, for these newer units that, due to typical shakedown issues that all new units experience, will not have a year of representative emissions in the baseline period, EPA could have simply eliminated the historic emissions constraint. The higher allocation that results from using heat input would offset the much lower emissions levels that newer units with best available control technology will have experienced.

Second, for this narrow subset of existing units, EPA could have allocated based on the operator's reasonable projection of 2012 emissions. EPA already asks EGU operators to make projections of future operations as part of its New Source Review program, *see* 40 C.F.R. § 52.21(a)(2)(iv)(*c*), so the process of projecting future emissions is well-understood by EPA and utilities alike. This method would allow new units to receive allowances commensurate with how it reasonably expects to operate as opposed to an artificially low baseline maximum.

Either of these options would have treated Dallman 4 more fairly.

## III. EPA Should Reconsider Its Approach to Allocation of Allowances.

This new allocation method creates perverse results. Newer units like Dallman 4 are short-changed because, for quite predictable reasons, they have not developed an operational profile that is representative of expected future generation. CWLP submits that any method of allocation that penalizes units with the most advanced control technologies — i.e., units that should supply proportionately more generation — is suspect and should be re-evaluated.

Moreover, EPA's error in this regard points to a more fundamental problem — the allocation decision should be made by the State of Illinois, not EPA. Any one-size-fits-all allocation rule applied across all States covered the Cross-State Rule could result in inequities to one degree or another. But that only confirms the wisdom of Congress's decision to give States the responsibility to determine how to meet EPA air quality targets. *See* 42 U.S.C. §§ 7407(a) and 7401(a)(3) ("[A]ir pollution prevention . . . is the primary responsibility of States and local governments.").

EPA should have issued the Cross-State Rule as a SIP Call under section 110(k)(5) that, at a minimum, would have given States like Illinois the opportunity to allocate allowances in a way that takes into account unique local circumstances like those confronting CWLP.[9] *See, e.g.,* 63 Fed. Reg. 57,356 (Oct. 27, 1998) (the "NOx SIP Call"). States are

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to Dallman 4 as an "existing" unit. So this is the first opportunity that CWLP has had to comment on this methodology and its treatment of Dallman 4.

[9] Indeed, as CWLP noted in its comments, EPA lacks authority to issue a FIP under these circumstances. The statute authorizes EPA to issue FIPs only if a State "has failed to

more attuned to local circumstances like those affecting Dallman 4. And because the States are responsible only for allocating allowances to sources within their borders, they have much greater flexibility to fairly accommodate unique local factors. In this particular case, Illinois EPA was well aware of CWLP's issues with Dallman 4 and almost certainly would have devised an allocation method that taken those issues into consideration.

## IV. EPA Should Stay Implementation of the Cross-State Rule.

Pursuant to Clean Air Act § 307(d)(7)(B), 42 U.S.C. § 7607(d)(7)(B), where it was impracticable to raise an objection during the period of public comment or if the grounds for such an objection arise after the public comment period, and if such objections are of central relevance to the outcome of the rule, EPA is required to reconsider the rule. EPA also is authorized to stay the effectiveness of rules promulgated under the Clean Air Act for up to three months to accommodate the time needed for administrative reconsideration. *Id.* As noted above, EPA announced its allocation method for the first time in the final rule. And under none of the methods contemplated during the rulemaking was Dallman 4 allocated allowances as an existing unit. So there was no opportunity to comment on EPA's decision to allocate allowances to Dallman 4 using the method announced in the final rule. Unit-level allowance allocation is of central relevance to the rule and the ability of existing sources to comply.

EPA also may stay the effective date of a Clean Air Act rule pending judicial review under Section 705 of the APA, 5 U.S.C. § 705. *See, e.g.,* Final Rule, Amendments of Final Rule to Postpone Requirements, 61 Fed. Reg. 28,508 (June 5, 1996). EPA's authority to issue a stay under APA Section 705 is even broader than Section 307 in two respects. First, 5 U.S.C. § 705 allows EPA to grant a stay "[r]egardless of whether [the stay request] meet[s] the requirements of Section 307(d)(7)(B)." *See* Ohio: Approval and Promulgation of Implementation Plans, 46 Fed. Reg. at 8,582 n.1. Second, EPA's stay authority is not limited to three months. Furthermore, nothing in the CAA has abrogated EPA's authority under § 705 of the APA. *See, e.g.,* CAA § 7607(d)(1) (specifying sections of the APA that do not apply to CAA rulemaking, but not including APA § 705).

EPA has regularly used this authority to "postpone" the effective date of a rule indefinitely. *See, e.g.,* Reconsideration of the Prevention of Significant Deterioration and

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make a ***required*** submission," or if EPA disapproves a "required" submission. 42 U.S.C. § 7410(c) (emphasis added). CWLP understands that EPA grounds its authority to issue a FIP as to Illinois on its retroactive disapproval of the CAIR SIP that Illinois submitted in 2007 and the failure of Illinois to submit a SIP containing interstate transport provisions in response to the 2006 PM2.5 NAAQS. But until EPA issued the Cross-State Rule, which included a specific finding that Illinois was significantly contributing or interfering with maintenance to an identifiable degree, Illinois was not "required" to eliminate those emissions. Illinois would have had to be clairvoyant to meet such a standard.

Nonattainment New Source Review NSR: Aggregation, 75 Fed. Reg. 27,643 (May 18, 2010); Final Rule, Amendments of Final Rule To Postpone Requirements, 61 Fed. Reg. 28,508 (June 5, 1996) (staying rules to prevent facilities from incurring "compliance expenditures . . . which may prove unnecessary in light of the projected amendments"); Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Burning of Hazardous Waste In Boilers and Industrial Furnaces, 56 Fed. Reg. 42,874 (Sept. 5, 1991).

CWLP therefore respectfully requests that EPA stay implementation of the Cross-State Rule indefinitely while it reconsiders its approach to allocating allowances.

## V. Conclusion

Given the impending effective date of the Cross-State Rule, we are anxious to speak with you about this request as soon as possible. We will contact you immediately to arrange for a call or a meeting to discuss these important issues. In the meantime, please feel free to call me at (217) 789-2116 ext. 2628.

Sincerely,

Christine Zeman
Regulatory Affairs Manager

Encs.

**Exhibits to Petition for Reconsideration and Stay of Cross-State Air Pollution Rule of City of Springfield, Illinois, Office of Public Utilities (d/b/a/ City Water, Light & Power)**

## TABLE OF EXHIBITS

# EXHIBIT 1

## Affidavit of Patrick J. Becker

STATE OF ILLINOIS )
COUNTY OF SANGAMON) SS

# AFFIDAVIT

I, Patrick J. Becker, Manager of the Environmental, Health and Safety Office of the Office of Public Utilities, City of Springfield, Illinois, first being duly sworn and under oath, state as follows:

1. I am the Manager of the Environmental, Health and Safety Office of the Office of Public Utilities, City of Springfield, Illinois, d/b/a/ City Water, Light & Power (CWLP), and was promoted to that position in early 2011.

2. I have been employed by the City for over nine years, and prior to my current position, I held the position in the Environmental Health & Safety Office chiefly responsible for CWLP's compliance with the Clean Air Act, the Acid Rain program and air emission limitations in state and federal regulations and permits issued to CWLP by the United States Environmental Protection Agency (USEPA) and the Illinois Environmental Protection Agency (IEPA).

3. In early 2011, the City appointed me as CWLP's Designated Representative (DR) for the City of Springfield and its Electric Generating Units under the Clean Air Act Amendments of 1990, the Clean Air Interstate Rule (CAIR), the Greenhouse Gas Mandatory Reporting Rule and now also the Cross-State Air Pollution rule (CSAPR) for certifications by the City and communications with the USEPA and IEPA. Prior to being appointed DR, I was appointed by the City as the Alternate DR, including when USEPA issued its proposed regulation to replace CAIR with the Clean Air Transport Rule (CATR) in 2010.

4. CWLP is a not-for-profit, municipally-owned electric generation and transmission utility, providing public power to approximately 70,000 customers, the citizens and businesses of the Springfield community. CWLP currently owns and operates four (4) coal-fired units at the Dallman Power Plant, each served by selective catalytic reduction (SCR) systems, and each having flue gas desulfurization (FGD) systems as early as 1980. The four Dallman units are designated Dallman Units 31, 32, 33 and 4. CWLP also owns three other (non-coal fired) units, Interstate, Reynolds and Factory. In FY2010, CWLP sold a total 2.7 million megawatt hours (wholesale and retail). CWLP expects Dallman Unit 4 to be the first unit dispatched in our fleet because it is the cleanest, most efficient, most economical and newest. Dallman Unit 4 is a primary baseload unit.

5. My responsibilities in all positions I have held with the City have included close working relationships with the Dallman Power Plant personnel and the Major Project Developments personnel responsible for overseeing the construction and operation of CWLP's Dallman Unit 4.

6. CWLP's Dallman Unit 4 is a recently-constructed 200-MW (net) pulverized coal boiler steam-power plant that uses the latest in coal-fired technology and air quality control system. On April 17, 2009, its boiler underwent first fire (for natural gas) and steam blow testing. On May 11, 2009, Dallman Unit 4 was synchronized to the electrical grid (on natural gas) for the first time, operating at 13 MW. Throughout 2009 and into 2010, Dallman Unit 4 underwent the shakedown process, but unforeseen difficulties occurred that delayed and prevented operating the unit at maximum operating load for many months.

7. In my capacity with CWLP, I assisted in the assessment of proposed CATR, including its impact on CWLP. I helped develop comments on CATR, including those filed with the USEPA by CWLP's Regulatory Affairs Manager on September 30, 2010. CWLP's comments noted, among other things, that USEPA's proposed rule was based on inaccurate and dated information specific to CWLP. For example, CWLP noted that USEPA's inventory of affected units identified CWLP's Dallman Unit 4 twice, once as Dallman Unit 4 and once as Dallman Unit 34. In that proposal, Dalman 4 was not characterized as either "new" or "existing". (CWLP also noted that its Interstate Unit 1 did not receive any annual NOx allocations under USEPA's initial proposal).

8. I participated in assessing on behalf of CWLP, USEPA's Notice of Data Availability Supporting Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone (First NODA) issued September 1, 2010, that among other things, changed the projections relied upon in its initial CATR proposal. Both Dallman Unit 4 and Dallman 34 were listed, but only Dallman 34 had allowances allocated. They were not considered "existing" or "new" at this time.

9. On January 7, 2011, USEPA issued another NODA (January 2011 NODA). In this NODA, Dallman Unit 34 was correctly removed from the database, and Dallman Unit 4 was identified as a New unit.

10. I helped prepare CWLP's comments dated February 3, 2011, on the January 2011 NODA in which, among other things, CWLP supported the Heat Input allowance allocation methodology described in the NODA, supporting the annual Heat Inputs over a five year look-back period, as the best means of producing an equitable model of allowance distributions. CWLP noted that it supported Option 1 over Option 2. CWLP did not comment to USEPA on its designation of Dallman Unit 4 as

"New". Nor did CWLP comment on the use of the two options in relation to Dallman Unit 4, as those options did not apply to "New" units.

11. In review of the Options, USEPA's use of annual maximum historic baseline emissions from 2003-2010 were problematic for CWLP's Dallman Units 31 and 4. As to Dallman Unit 31, the outage in that period due to the explosion of Dallman Unit 31 artificially reduced the number of full-year operating periods by three (3). Dallman Unit 4 had only one-year of historic emissions between 2003 and 2010, since it had only come online in late-2009, but both its historic emissions from 2010 and heat input values were artificially low, and not representative of normal operations. In 2009 and 2010, Dallman Unit 4 was in its start up and subsequent shakedown period. Moreover, Unit 4 experienced unforeseen difficulties in the shakedown process that prevented maximum operating load from being achieved.

12. In addition to what CWLP would characterize as drawn-out delays in the start-up, shakedown process, since June 2009, it had continuing vibration problems with two circulating water pumps making it unable to achieve its maximum operating load on a consistent basis. Dallman Unit 4 is designed to operate with two circulating water pumps in order to achieve its maximum operating load; however, it was utilizing only one circulating water pump on a regular basis due to vibration issues until well-into 2011.

13. In my review of the final CSAPR issued by USEPA, I noted for the utility that USEPA's methodology had significantly reduced the pro-rated allowance allocation of CWLP's individual units, especially Dallman Unit 4. USEPA's methodology utilized data from 2010, at which time Dallman Unit 4 was unable to achieve its maximum operating load, in significant part due to the vibration issue related to the circulating pumps. (CWLP's allowance allocation for Unit 31 was also artificially low, because an explosion caused the unit to be out of operation for an extended period of time and reduced the number of full year operating periods by three).

14. USEPA's reliance on one year of operational information for Dallman 4 is not representative of its projected operations, especially but not excluding because in 2010, Dallman 4 was in its shakedown period. CWLP's Dallman Unit 4 experienced the following issues, with those related to the circulation pump limitation and vibration issues being particularly unexpected during the start up and shake down process, which demonstrate that Dallman Unit 4 did not operate in a representative capacity in the time frame considered by USEPA in the final rule. The list below enumerates outage dates and load restrictions for Unit 4 in 2010, along with a brief explanation of the contributing factor for the outage or load reduction.

1/22/10 – 1/26/10: Unit outage due to a boiler tube leak from sootblower erosion.

2/14/10 – 2/16/10: Unit outage due to a failed expansion joint (warranty claim made against Kiewit-Black&Veatch [KBV], the Prime Contractor).

3/13/10 – 3/23/10: Unit outage for KBV to install "spring plate" on Circulating Water Pump "A" (KBV warranty claim).

4/1/10 – 5/15/10: Load limited to 170 MW gross due to Circulating Water Pump "B" rebuild (KBV warranty claim).

5/25/10 – 9/23/10: Load limited to 170 MW gross due to Circulating Water Pump "A" failure (KBV warranty claim).

8/28/10 – 9/10/10: Unit outage for warranty inspections and Boiler Feed Pump Oil Leak repairs/investigation (KBV warranty claim).

10/26/10 – 11/4/10: Unit outage due to air flow pluggage issues (KBV warranty claim).

11/20/10 – 11/22/10: Unit outage due to flame scanner failures (KBV warranty claim).

12/10/10 – 12/17/10: Unit outage due to failed welds in boiler superheat pendants. This issue is not an official filed warranty claim with KBV, although it has occurred three times now and CWLP is trying to pursue this under other contract language with KBV, which is an "engineer, procurement, construct" (EPC) contract.

At this time, CWLP's contractual issues with KBV as to Dallman Unit 4 continue, still impeding the unit's performance and availability.

15. On December 3, 2010, I assisted in the preparation of a letter to Illinois EPA on behalf of CWLP, requesting an 180-day extension of time to conduct additional stack testing requirements in CWLP's PSD permit for Dallman Unit 4. CWLP submitted its request because as of December 2010, Unit 4 could only achieve what was then estimated to be approximately 70% of its maximum operating load with one circulating water pump in operation, preventing the unit from achieving its maximum operating load on a continual basis as required to perform the stack testing requirements of its PSD permit.

16. Illinois EPA approved CWLP's request and issued a Revised PSD Permit on February 28, 2011.

17. The 63% annual capacity factor realized by Dallman Unit 4 in 2010 is far below the capacity factor that CWLP reasonably expects the unit to achieve following the resolution of the contractual performance issues. CWLP expects that by 2012, Dallman 4 will operate at a 90% capacity factor. Based on this and Dallman Unit 4's 2010 annual average SO2 and NOx emissions rates, CWLP expects to emit approximately 993 tons of SO2, 447 tons of NOx in 2012, and 186 tons of NOx during 2012 ozone season.

18. This affidavit is given for the purpose of providing factual information to support the Petition for Reconsideration of the City of Springfield, Office of Public Utilities, CWLP.

Dated this 5th day of October, 2011.

Affiant

Subscribed and sworn to me before me, a Notary Public on this 5th day of October, 2011.

OFFICIAL SEAL
NORMA MCGILL TREPAL
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 12-10-2012

Notary Public

**EXHIBIT 2**

**Letter from Christine Zeman**
**to Hon. Lisa P. Jackson (Sept. 30, 2010)**

OFFICE OF PUBLIC UTILITIES
CITY OF SPRINGFIELD, ILLINOIS
TIMOTHY J. DAVLIN, MAYOR
R. TODD RENFROW, GENERAL MANAGER

APPA certified
Reliable Public Power Provider

Via Email and Fedex/Overnight Delivery

September 30, 2010

The Honorable Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue
Washington, DC 20460

Re: Docket No. EPA-HQ-OAR-2009-0491
CWLP Opposition to Proposed Clean Air Transport Rule

Dear Administrator Jackson:

Thank you for the opportunity to provide comment on the proposed Clean Air Transport Rule on behalf of the City of Springfield, Illinois, Office of Public Utilities, doing business as City Water, Light and Power ("CWLP"). CWLP is a not-for-profit, municipally-owned electric generation and transmission utility, providing public power to approximately 70,000 customers, the citizens and businesses of the Springfield community. CWLP currently owns and operates four (4) coal-fired units at the Dallman Power Plant, each served by selective catalytic reduction ("SCR") systems, each burning Illinois coal, having installed scrubbers as early as 1980. Last year, we began commercial operation of a new unit, Dallman Unit 4. The new unit won recognition and awards from engineering and environmental groups alike, including for CWLP's unique agreement with the Sierra Club, which resulted in reduced emission limits, increased investment in energy efficiency programs and a wind power purchase agreement, which brings the percentage of our renewable energy above most, if not all, existing and proposed renewable energy standards. CWLP also owns and operates two (2) peaker combustion turbines subject to this proposed rule. Interstate (Oris Code 7425) turbine is a dual fuel-fired unit (natural gas and diesel fuel) with a nameplate capacity of 138.6 MW. Factory (Oris Code 8016) turbine is diesel fired unit with a nameplate capacity of 26.6 MW. In FY 2010, CWLP sold a total 2.7 million megawatt hours (wholesale and retail).

CWLP will be directly affected by the proposed Transport Rule, and as a municipal utility, the costs will be directly borne by the citizens and businesses of Springfield, at an economic time when it can be least afforded, and when other (costly) USEPA rules on coal-combustion units will also be taking effect. While CWLP objects to the Transport Rule as proposed, CWLP agrees with USEPA's goals and objectives in improving air quality and reducing the transport of airborne emissions.

CWLP's initial objection is to the October 1, 2010, deadline to provide comment on the Rule, which will have a significant impact on CWLP's electric power production, our planning, rates and

operations. The proposed Rule is voluminous and complex, was proposed or published near the same time as other significant rulemakings impacting coal-fired operations, and is supported by over 150 documents posted by USEPA, many of which are highly technical. Moreover, as late as September 1, 2010, USEPA published its "Notice of Data Availability Supporting Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone" ("NODA") which includes "an updated version of the power sector modeling platform" accompanied by a later deadline to comment. USEPA acknowledges that this NODA is proposed to be used to support the final Rule, but also changes the projections relied upon in its initial Transport Rule proposal. As a relatively small not-for-profit, municipally-owned utility, it is difficult for CWLP to effectively evaluate, in such a short time frame, the applicability and potential impacts to CWLP of either the proposed Rule, or of new information in the NODA. Given the short time to comment and that the underlying background documentation has changed, CWLP concurs with others who have commented that the rulemaking record would benefit from a single set of comments addressing all matters raised regarding the proposed Transport Rule. Accordingly, CWLP yet requests that additional comments on this Transport Rule be allowed until October 15, 2010, when comments on the NODA are also due.

Another reason for CWLP's objection to the proposed Rule is that it is based upon inaccurate and dated information, including regarding the sources it seeks to limit. One concern with USEPA's reliance upon inaccurate information and assumptions is that the Rule may likely result in needless economic harm, or may penalize utilities that have already implemented significant controls, without concomitant benefit to air quality. In that regard, at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), CWLP developed the attached exhibit, identifying what appears to be inaccuracies in the information on which USEPA's Transport Rule proposal is based, specific to CWLP. The exhibit is self-explanatory and references the source information available to USEPA on which our corrections are based.

Since having provided the attached to Illinois EPA and the publication of the NODA (and webinars with speakers from USEPA on the Rule and the NODA) CWLP has noted that the Rule database lists Factory's capacity at 21 MW, whereas the Clean Air Market Division ("CAMD") has its nameplate capacity at 26.6 MW. CWLP also notes that Dallman Unit 31 had a significant outage due to a turbine generator explosion from November 11, 2007, through April 7, 2009. This outage will cause the unit to have artificially lower emissions and heat input during this period due to this unusual, onetime event.

CWLP is also concerned that the proposed Transport Rule is both premature and potentially unnecessary. For example, it appears that USEPA has used 2005 data as a starting point for its analysis, and has neither determined nor taken into account the impact on air quality as a result of recent actions to comply with the Clean Air Interstate Rule ("CAIR"). While USEPA's proposal to achieve maximum achievable control technology ("MACT") is not due until next spring and addresses pollutants not at issue here, the required MACT standard may require costly emission controls that could also reduce pollutants at issue in the Transport Rule. Similarly, guidance on greenhouse gases ("GHG") best available control technology ("BACT") is apparently now under review. Additionally, CWLP has agreed to lowered emission rates beginning in 2010 as part of a Best Available Retrofit Technology ("BART") agreement with Illinois EPA. By failing to recognize existing requirements and recent controls to comply with them, as well as impacts from the required MACT, GHG BACT standards and BART, USEPA's proposed Transport Rule lacks credibility, but will also result in economic harm to the citizens of Springfield, without a correlative improvement to air quality.

For these same reasons, CWLP is concerned that in choosing 2012 and 2014 as the targeted compliance dates, USEPA's compliance schedule appears to be unreasonable and unrealistic, as well as potentially harmful to an already weakened economy. As a member of the Midwest Ozone Group ("MOG"), CWLP has become aware of the results of MOG's modeling and air quality analysis showing that the air quality objectives of the Transport Rule can be achieved without the implementation of any controls beyond the CAIR rule and other controls already required. CWLP supports and adopts by reference MOG's comments on the Transport Rule proposal, which I understand will be filed by October 1, 2010, in this docket.

In addition, by selecting 2012 as a compliance target, without taking into account controls and reductions since 2005, USEPA has artificially boot-strapped its support for an expedited federal implementation plan ("FIP"). By proposing a FIP, rather than a schedule that allows for State Implementation Plans, USEPA is short-changing state environmental agencies, sources like CWLP regulated by those state agencies, and the process developed under the Clean Air Act which accommodates public comment on issues of traditionally local concern.

As to options under the proposed Transport Rule that USEPA invites comment, CWLP supports the interstate allowance trading option, so as to provide greater flexibility to sources, while still restricting the transport of certain emissions consistent with the Clean Air Act's provisions. CWLP also supports the proposal that allocates allowances to units six (6) years after shutdown.

CWLP strongly supports the goals of the Clean Air Act and USEPA's efforts to achieve cleaner air and to restrict the transport of airborne emissions, but cannot support the Transport Rule as proposed for the reasons stated. Thank you for the opportunity to comment.

Sincerely,

Christine Zeman
Regulatory Affairs Manager

Encl.

# Comments on the Proposed Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Docket ID No. EPA-HQ-OAR-2009-0491)

City Water Light & Power (CWLP) would like to submit the following questions and comments to the United States Environmental Protection Agency for consideration while the proposed rulemaking is being developed.

## Affected Units

| Plant Name | ORIS | Unit |
|---|---|---|
| Dallman | 963 | 31 |
| Dallman | 963 | 32 |
| Dallman | 963 | 33 |
| Dallman | 963 | 4 (not 34) |
| Lakeside | 964 | 7 |
| Interstate | 7425 | 1 |
| Factory | 8016 | 1 |

## Dallman Unit 4 and 34 Issue

The inventory of affected units for CWLP appears to have two duplicate units. The following units are likely the same units;

| Plant Name | ORIS | Unit |
|---|---|---|
| Dallman | 963 | 34 |
| Dallman | 963 | 4 |

In CAMD and with Illinois EPA, the unit is listed as Dallman Unit 4. This is a new unit that commenced commercial operation on 5/11/2009 and has a nameplate capacity of 230.1 MW Gross.

Assumed Heat Input

Please see table below for detailed comments.

| CWLP Comments for USEPA's Assumed Heat Input (HI) mmBtu | | | | | | |
|---|---|---|---|---|---|---|
| Plant Name | ORIS | Unit ID | Heat Input assumed in 2012 SO2 Allocation | Heat Input assumed in 2014 and beyond SO2 Allocation | Heat Input assumed in Annual NOx Allocation | Heat Input assumed in Ozone Season NOx Allocation |
| Dallman | 963 | 31 | 1,840,548 | 6,142,925 | 0 | 0 |
| Dallman | 963 | 32 | 5,444,108 | 7,500,575 | 6,513,133 | 3,026,000 |
| Dallman | 963 | 33 | 12,959,824 | 14,933,400 | 13,051,729 | 4,727,635 |
| Dallman | 963 | 34 | 11,548,100 | 13,220,800 | 11,548,100 | 502,050 |
| Dallman | 963 | 4 | 0 | 0 | 0 | 0 |
| Interstate | 7425 | 1 | 0 | 0 | 0 | 52,258 |
| Lakeside | 964 | 7 | 1,965,554 | 0 | 1,965,554 | 850,310 |

*Dallman Unit 31's assumed Heat Input (HI) is considerably low (even 0 for Annual and Ozone Season NOx Allocations). Dallman Unit 31 had a significant outage due to a turbine generator explosion (from November 11, 2007 through April 7, 2009). The assumed HI should mirror it's sister unit - Dallman Unit 32, which its shares a common scrubber and stack with.*

*Dallman Unit's 33 assumed HI for the Ozone Season is low. The projected HI for the Ozone Season 5.687 TBtu.*

*The inventory of affected units for CWLP appears to have two duplicate units. Moreover, the following units are likely the same units (Dallman Unit 34 and 4).*

*Dallman Unit 4's assumed HI should be higher then this projection. It is our first unit to be dispatched since it is the most efficient and cleanest. The assumed HI should be 13 TBtu annually and 6.2 TBtu during the Ozone Season.*

*Dallman Unit's 4 assumed HI for the Ozone Season is extremely low. The projected HI for the Ozone Season is 6.2 TBtu.*

*Interstate assumed annual Heat Input is 0. Projected annual HI for Interstate is 0.275 TBtu.*

SO2 and NOx Emission Rates

Please see table below for detailed comments.

| CWLP Comments for USEPA's SO2 and NOx Rates | | | | | | |
|---|---|---|---|---|---|---|
| Plant Name | ORIS | Unit ID | 2012 SO2 Rate (lbs/mmBtu) | 2014 SO2 Rate (lbs/mmBtu) | Annual NOx Rate (lbs/mmBtu) | Ozone Season NOx Rate (lbs/mmBtu) |
| Dallman | 963 | 31 | 0.659 | 0.234 | 0.000 | 0.000 |
| Dallman | 963 | 32 | 0.167 | 0.234 | 0.086 | 0.086 |
| Dallman | 963 | 33 | 0.323 | 0.244 | 0.096 | 0.096 |
| Dallman | 963 | 34 | 0.257 | 0.244 | 0.058 | 0.577 |
| Dallman | 963 | 4 | 0.000 | 0.000 | 0.000 | 0.000 |
| Interstate | 7425 | 1 | 0.000 | 0.000 | 0.000 | 0.151 |
| Lakeside | 964 | 7 | 5.722 | 0.000 | 0.874 | 0.846 |
| *Dallman Units 31 and 32 share a common FGD and Stack. Therefore the SO2 and NOx Rates should be the same. Dallman Unit 31 had a significant outage due to a turbine generator explosion (from November 11, 2007 through April 7, 2009)* | | | | | | |
| *Dallman Units 31 and 32 SO2 rates should be 0.29 lb/mmBtu, which is in our Memorandum of Understanding (MOU) in our BART agreement with Illinois Environmental Protection Agency.* | | | | | | |
| *Dallman Unit 31 has no Annual or Ozone Season NOx Rate.* | | | | | | |
| *The Annual and Ozone Season NOx Rates for Dallman Units 31, 32, and 33 are not consistently achievable, and are belowthe NSPS NOx limit of 1.0 lb/MWh (which equates to ~ 0.1 lb/mmBtu).* | | | | | | |
| *The inventory of affected units for CWLP appears to have two duplicate units. Moreover, the following units are likely the same units (Dallman Unit 34 and 4).* | | | | | | |
| *Dallman Unit 4 has a permitted SO2 rate of 0.20 lb/mmBtu and NOx rate of 0.10 lb/mmBtu.* | | | | | | |
| *Interstate Unit 1 has no SO2 Rates (natural gas rate is 0.0006 lb/mmBtu and for oil it is 0.05 lb/mmBtu). It also has no Annual NOx Rate.* | | | | | | |

**SO2 and NOx Allocations**

Please see table below for detailed comments.

| CWLP Comments for USEPA's SO2 and NOx Allocations | | | | | | |
|---|---|---|---|---|---|---|
| Plant Name | ORIS | Unit ID | 2012 SO2 Allocation | 2014 SO2 Allocation | Annual NOx Allocation | Ozone Season NOx Allocation |
| Dallman | 963 | 31 | 607 | 720 | 254 | 110 |
| Dallman | 963 | 32 | 455 | 879 | 279 | 130 |
| Dallman | 963 | *33* | 2,092 | 1,819 | 628 | *228* |
| Dallman | 963 | *34* | 1,487 | 1,610 | *333* | *145* |
| Dallman | 963 | *4* | 0 | 0 | 0 | 0 |
| Interstate | 7425 | 1 | 0 | 0 | *0* | 4 |
| Lakeside | 964 | 7 | 5,624 | 0 | 859 | 359 |

*The inventory of affected units for CWLP appears to have two duplicate units. Moreover, the following units are likely the same units (Dallman Unit 34 and 4)*

*Dallman Unit 33 Ozone Season NOx allocations are far below it's projected Ozone Season NOx emissions [This is using a Dallman Unit 33 NOx rate of 0.1 lb/mmBtu and a projected ozone season utilization of 5,687 TBtu, which equates to 284 NOx tons.*

*Dallman Unit 4 Annual NOx allocations and Ozone Season NOx allocations are far below it's projected Annual and Ozone Season NOx emissions [This is using our permitted Dallman Unit 4 NOx rate of 0.1 lb/mmBtu and projected utilization of 13.0 TBtu annually and 6.2 TBtu during the ozone season, which equates to 650 NOx tons annually and 310 NOx tons during the ozone season.*

*Interstate Unit 1 did not receive any annual NOx allocations. It should be ~21 annual NOx allocations [This is using a NOx rate of 0.15 lb/mmBtu and a projected annual utilization of 0.275 TBtu]*

**Assumed Heat Input**

Please see table below for detailed comments.

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| Dallman | 963 | 4 | 0 | 0 | 0 | 0 |
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*Dallman Unit's 4 assumed HI for the Ozone Season is extremely low. The projected HI for the Ozone Season is 6.2 TBtu.*

*Interstate assumed annual Heat Input is 0. Projected annual HI for Interstate is 0.275 TBtu.*

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| Dallman | 963 | *33* | 0.323 | 0.244 | *0.096* | *0.096* |
| Dallman | 963 | *34* | *0.257* | *0.244* | *0.058* | *0.577* |
| Dallman | 963 | 4 | 0.000 | 0.000 | 0.000 | 0.000 |
| Interstate | 7425 | 1 | *0.000* | *0.000* | *0.000* | 0.151 |
| Lakeside | 964 | 7 | 5.722 | 0.000 | 0.874 | 0.846 |
| *Dallman Units 31 and 32 share a common FGD and Stack. Therefore, the SO2 and NOx Rates should be the same. Dallman Unit 31 had a significant outage due to a turbine generator explosion (from November 11, 2007 through April 7, 2009)* | | | | | | |
| *Dallman Units 31 and 32 SO2 rates should be 0.29 lb/mmBtu, which is in our Memorandum of Understanding (MOU) in our BART agreement with Illinois Environmental Protection Agency.* | | | | | | |
| *Dallman Unit 31 has no Annual or Ozone Season NOx Rate.* | | | | | | |
| *The Annual and Ozone Season NOx Rates for Dallman Units 31, 32, and 33 are not consistently achievable, and are belowthe NSPS NOx limit of 1.0 lb/MWh (which equates to ~ 0.1 lb/mmBtu).* | | | | | | |
| *The inventory of affected units for CWLP appears to have two duplicate units. Moreover, the following units are likely the same units (Dallman Unit 34 and 4).* | | | | | | |
| *Dallman Unit 4 has a permitted SO2 rate of 0.20 lb/mmBtu and NOx rate of 0.10 lb/mmBtu.* | | | | | | |
| *Interstate Unit 1 has no SO2 Rates (natural gas rate is 0.0006 lb/mmBtu and for oil it is 0.05 lb/mmBtu). It also has no Annual NOx Rate.* | | | | | | |

SO2 and NOx Allocations

Please see table below for detailed comments.

| CWLP Comments for USEPA's SO2 and NOx Allocations | | | | | | |
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| Dallman | 963 | *34* | 1,487 | 1,610 | *333* | *145* |
| Dallman | 963 | 4 | 0 | 0 | 0 | 0 |
| Interstate | 7425 | 1 | 0 | 0 | *0* | 4 |
| Lakeside | 964 | 7 | 5,624 | 0 | 859 | 359 |
| *The inventory of affected units for CWLP appears to have two duplicate units. Moreover, the following units are likely the same units (Dallman Unit 34 and 4).* | | | | | | |
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| *Interstate Unit 1 did not receive any annual NOx allocations. It should be ~ 21 annual NOx allocations [This is using a NOx rate of 0.15 lb/mmBtu and a projected annual utilization of 0.275 TBtu].* | | | | | | |

**EXHIBIT 3**

**Letter from Christine Zeman**
**to Hon. Lisa P. Jackson (February 3, 2011)**

City of Springfield
City Water Light & Power
Municipal Center East
Springfield, IL 62757

February 3, 2011

The Honorable Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue
Washington, DC 20460

Re: Docket No. EPA-HQ-OAR-2009-0491
CWLP Comments to Proposed Clean Air Transport Rule Jan. 7, 2010 Notice of Data Availability

Dear Administrator Jackson:

Thank you for the opportunity to provide comment on the proposed Clean Air Transport Rule (CATR) January 7, 2011 Notice of Data Availability (NODA) on behalf of the City of Springfield, Illinois, Office of Public Utilities, doing business as City Water, Light and Power ("CWLP"). CWLP is a not-for-profit, municipally-owned electric generation and transmission utility, providing public power to approximately 150,000 customers, the citizens and businesses of the Springfield community. CWLP currently owns and operates four (4) coal-fired units at the Dallman Power Plant, each served by selective catalytic reduction (SCR) systems, each burning Illinois coal, having installed scrubbers as early as 1980. In 2009, we began commercial operation of a new unit, Dallman Unit 4. The new unit won recognition and awards from engineering and environmental groups alike, including for CWLP's unique agreement with the Sierra Club, which resulted in reduced emission limits, increased investment in energy efficiency programs and a wind power purchase agreement, which brings the percentage of our renewable energy above most, if not all, existing and proposed renewable energy standards. CWLP also and operates two (2) peaker combustion turbines subject to this proposed rule. Interstate (ORIS Code 7425) turbine is a dual fuel-fired unit (natural gas and diesel fuel) with a nameplate capacity of 138.6 MW. Factory (ORIS Code 8016) turbine is diesel fired unit with a nameplate capacity of 26.6 MW. In FY 2010, CWLP sold a total 2.7 million megawatt hours (wholesale and retail).

CWLP appreciates the effort USEPA has undertaken to accept council regarding the most prudent allowance allocation implementation strategy. As the costs of the proposed Transport Rule will be significant in a difficult economy, it is vital that the distribution of allowances under the program be fair and equitable. Please consider this letter a reflection on the January 7, 2011 NODA only and in no way an abrogation of CWLP's positions outlined in the comments submitted on September 30, 2010.

In general, CWLP supports the underlying assumption that annual Heat Inputs over a five year look-back period, as described in both Option 1 and Option 2 of the NODA, provide the best means of producing an equitable model of allowance distribution. CWLP has great misgivings on the appropriateness of the original CATR proposal, whereby the decision-making and subsequent actions of private industry is modeled and predicted by a regulatory agency for the purpose of distributing essential and valuable allowances.

Likewise, as described in both Options of the NODA, CWLP supports the use of the three largest annual Heat Input numbers from the look-back period. This would adequately capture and exclude years where planned or unplanned outages would have artificially reduced the average annual heat input, and thereby reduced the pro-rated allowance allocation of the individual state's budgeted total.

CWLP agrees with the USEPA's method of handling the addition of new generation and the eventual retirement of existing generation. The addition of the retiring unit's allowance allocation to the New Unit Set-Aside (NUSA), rather than the existing unit pool, would provide a method of NUSA growth. This would be vital, given that units deemed to be a part of the NUSA would remain in that classification indefinitely and would be in competition for allowances with any future generation units. However, USEPA should clarify that, under the Options of the NODA, the new unit allocation methodology would mirror that of the existing unit methodology. Currently, the NODA states that allowance allocation would be based upon the provisions of the original proposed CATR.

Given CWLP's support for the Heat Input allowance allocation methodology described in the NODA, it is clear that Option 2 is an inferior method to that described in Option 1. CWLP believes that the Emissions-Rate-Informed cap on allowance distribution would unfairly penalize utilities that consciously chose to reduce emissions before and during the previous decade with the installation of capital-intensive pollution control projects. In our case, CWLP chose to invest in control technologies for the removal of both SO2 and NOx at two aging, coal-fired, cyclone units that were not inherently low-emitting in either boiler design or fuel-type. CWLP believes that our proactive efforts would be penalized in the use of Option 2 over Option 1.

CWLP supports the efforts of the USEPA to craft reasoned and efficacious regulations based upon the Clean Air Act that preserve and improve interstate air quality. Thank you for the opportunity to comment.

Sincerely,

Christine Zeman
Regulatory Affairs Manager