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October 4, 2011

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

Re: Petition for Reconsideration of "Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals," 76 Fed. Reg. 48,208 (Aug. 8, 2011)

Dear Administrator Jackson:

EME Homer City Generation, L.P. ("EME Homer City") respectfully petitions the United States Environmental Protection Agency ("EPA") to reconsider certain provisions within EPA's recently promulgated "Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals," 76 Fed. Reg. 48,208 (Aug. 8, 2011) ("Transport Rule").¹ In addition to filing this petition, EME Homer City's indirect parent company—Edison Mission Energy, LLC ("EME")—filed a petition with EPA for administrative stay of the Transport Rule on July 22, 2011. EME Homer City subsequently filed a petition for review of the Transport Rule in the U.S. Court of Appeals for the District of Columbia Circuit on August 23, 2011, and a motion for stay or, in the alternative, expedited review on August 25, 2011.² The issues addressed in this petition for reconsideration are in addition to the arguments EME Homer City has raised in these other filings.

¹ This petition is submitted pursuant to section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. § 7607(d)(7)(B).

² Since EME Homer City filed its petition for review, the following parties have also filed petitions for review: the State of Kansas, the State of Nebraska, the State of Alabama, the State of Florida, the State of Oklahoma, the State of South Carolina, the State of Virginia, the State of Texas, the Texas Commission on Environmental Quality, the Public Utility Commission of Texas, the Railroad Commission of Texas, and the Texas General Land Office, GenOn Energy, Inc., the Wisconsin Public Service Corporation, the National Mining Association, and Luminant Generation Company LLC and certain affiliates. Of these, the following parties have filed motions for stay or partial stay of the Transport Rule: the State of Nebraska, the State of Florida, the State of Texas, the State of Texas, the Texas Commission on Environmental Quality, the Public Utility Commission of Texas, the Railroad Commission of Texas, and the Texas General Land Office, GenOn Energy, Inc., the Wisconsin Public Service Corporation, and Luminant Generation Company LLC and certain affiliates. The following entities have moved to

Honorable Lisa P. Jackson
October 4, 2011
Page 2

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EME Homer City is an indirect subsidiary of EME, an independent power producer engaged in the business of developing, acquiring, owning or leasing, capacity to generate and sell electricity into the wholesale energy market. EME Homer City and EME are part of the Edison International family of companies. EME owns, operates, or leases interests in 39 operating assets, and controls an aggregate net generating capacity of 9,852 MWs. EME Homer City operates one of the largest coal-fired power plant in western Pennsylvania, the 1,884 MW Homer City electric generating station. That facility produces enough power for two million homes. It employs nearly 260 employees and contractors who earn higher than average salaries of \$73,500 per year. The facility has three units. All three units have had SCRs (selective catalytic reduction) in place since 2003, which have resulted in reductions of 68,000 tons of NO_x. Homer City's Unit 3 has a scrubber—an FGD (flue gas desulfurization)—which has been in place since 2001 and has resulted in emissions reductions of 170,000 tons of SO₂ emissions and 2,500 pounds of mercury.

EME Homer City has also assisted in reducing emission through the purchase of allowances under CAIR. Through CAIR and other cap-and-trade programs (including the Acid Rain Program and the NO_x SIP Call), Congress and EPA ensured that all power plants collectively paid for emission controls that would be installed only on some plants. Congress and EPA intentionally designed these programs so that the most costly controls would only be installed on a subset of plants that were the most cost-effective to control. Because these programs allowed sufficient lead-time for companies to develop their control strategies and distributed allowances equitably based on historic levels of operation, all plants could choose whether to install controls or purchase allowances. Importantly, plants that chose to install controls did not bear the full cost of installing or operating them. Plants without advanced controls have been required for many years to purchase allowances from those that do have them. Thus, between 2003 and 2011, EME Homer City purchased over \$285 million of SO₂ allowances. This is approximately equal to the cost of one wet scrubber for a mid-sized coal plant in 2011 dollars, or approximately two scrubbers for a mid-sized coal plant in 2000 dollars.

As EPA is aware, EME Homer City previously indicated that it would install scrubbers on Homer City's Units 1 and 2, and that it planned to complete installation by 2015. Following the Transport Rule's proposal, EME Homer City began working in good faith and with urgency with the Pennsylvania Department of Environmental Protection to permit the scrubber controls for Homer City's remaining two units as expeditiously as possible, and EME Homer City hopes to have those controls installed as early as 2014. As EPA knows, however, it is physically impossible to have these controls installed by 2012.

Reconsideration is necessary because the final Transport Rule significantly reduced Pennsylvania's SO₂ budget without notice and a meaningful opportunity to comment.³ The final Transport Rule does not make clear what specifically caused each of the changes, but it notes

intervene: Calpine Corporation, Exelon Corporation, the Natural Resources Defense Council, the American Lung Association, and the Clean Air Council, the Environmental Defense Fund, and the Sierra Club.

³ This objection "arose after the period for public comment" and "is of central relevance to the outcome of the rule," so EPA "shall convene a proceeding for reconsideration of the rule." 42 U.S.C. §7607(d)(7)(B).

Honorable Lisa P. Jackson
October 4, 2011
Page 3

LATHAM & WATKINS LLP

that the differences between the Proposed Rule and the final Transport Rule were due to “updated and improved” modeling platforms and inputs, and updated modeling of cost curve analysis. *See* Transport Rule, 76 Fed. Reg. at 48,213, 48,216, 48,248-49.

Under the Proposed Rule, the SO₂ emission budget for Pennsylvania in 2012 and 2013 was 388,612 tons. *See* Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone, 75 Fed. Reg. 45,210, 45,291 (Aug. 2, 2010) (“Proposed Rule”). In the final Transport Rule, the SO₂ emission budget for Pennsylvania in 2012 and 2013 was 278,651. *See* Transport Rule, 76 Fed. Reg. at 48,262. That represents a 28% decrease. There was a similar 21% decrease in Pennsylvania’s SO₂ emission budget for 2014 and beyond. *Compare* Proposed Rule, 75 Fed. Reg. at 45,291 (141,693 tons) *with* Transport Rule, 76 Fed. Reg. at 48,262 (112,021 tons). OMB recognized that “modeling results used in the final rule are substantially different than those in the original August 2, 2010 Proposed Rule and subsequent notices,” emphasizing the “sheer magnitude of change to the budgets of all of the states results in a significantly different rule than originally proposed.” OMB *Summary of Interagency Working Comments on Draft Language under EO 12866 Interagency Review* at 11 (“OMB Summary of Interagency Working Comments”), Document EPAHQ-OAR-2009-0491-4133 (posted July 11, 2011). In states where 2012 SO₂ emission budgets were reduced, the reductions ranged from 2% to 69%, with an average of 26%. *Id.* at 12.

As a result of these and other changes, EME Homer City’s allowances were significantly reduced. Under the Proposed Rule, EME Homer City would have received approximately 96,000 allowances in 2012 and 2013. *See* <http://www.epa.gov/airtransport/pdfs/AllocationTable.pdf>. Under the final Transport Rule, EME Homer City will receive only approximately 26,000 allowances in 2012 and 2013. *See* <http://www.epa.gov/airtransport/pdfs/UnitLevelAlloc.pdf>. This represents a 73% reduction.

The drastic reduction in EME Homer City’s allocation will cause a substantial curtailment in operations. Based on historic emissions, the Homer City facility’s SO₂ allocation is approximately 85,000 tons short of the allowances it would need to operate in 2012 and 2013. It received only approximately 22% of the allowances it needs to operate in those years. According to internal projections, EME Homer City’s two unscrubbed units will only be able to operate 25% of the time. This substantial curtailment in operations could result in job losses for the many specialized workers and contractors that currently work at EME Homer City.

EPA claims that “[a]nalyzes performed by EPA demonstrate that EME’s facility will remain economic to operate in compliance with the Transport Rule with only a 4 percent difference in generation level in 2012 and a 1 percent difference in 2014.” EPA *Opposition to Motion For A Stay Or, In The Alternative, Expedited Review* at 16, No. 11-1302 (filed Sept. 9, 2011). This analysis conflicts with EME Homer City’s own internal analysis. EME Homer City would welcome an explanation from EPA as to how it can economically comply with the Transport Rule with only a four percent curtailment in operations. As EPA itself has admitted, it is physically impossible for EME Homer City to install controls by 2012 to achieve the mandated reductions. And buying additional allowances is not a reasonable compliance option because, even if enough allowances were for sale at economically sustainable prices, EME Homer City would risk substantial financial penalties because of the likelihood that the use of

Honorable Lisa P. Jackson
October 4, 2011
Page 4

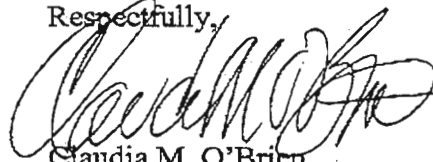
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this many allowances would violate the variability limits and trigger the assurance provisions, which the final Transport Rule accelerated the application of to 2012. See Transport Rule, 76 Fed. Reg. at 48,296. EPA's analysis is flawed, and as a result it has allocated EME Homer City substantially too few allowances. EME Homer City asks EPA to fix this unjust result and provide enough allowances for it to continue operating at approximately normal levels.

* * *

For the foregoing reasons, EME Homer City respectfully requests that EPA reconsider the Transport Rule and award EME Homer City additional allowances so that it may continue to operate at approximately normal levels. Should you have any questions or comments regarding the foregoing petition, please do not hesitate to contact me at 202-637-2181 or claudia.o'brien@lw.com.

Respectfully,



Claudia M. O'Brien
of LATHAM & WATKINS LLP