BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In re:	)	
	)	EPA Docket No.
Federal Implementation Plans: Interstate	)	
Transport of Fine Particulate Matter and	)	EPA-HQ-OAR-2009-0491
Ozone and Correction of SIP Approvals,	)	
76 Fed. Reg. 48,208 (Aug. 8, 2011)	)	
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PETITION FOR RECONSIDERATION AND STAY

Florida Municipal Power Agency ("FMPA") hereby requests the United States Environmental Protection Agency ("EPA") reconsider its Final Rule titled "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States" 76 Fed. Reg. 48,208 (Aug. 8, 2011) (Docket No. EPA-HQ-OAR-2009-0491) and stay implementation of the Final Rule pending its reconsideration.

I. Executive Summary

Florida Municipal Power Agency ("FMPA") is a Joint Action Agency owned by thirty municipal electric utilities in Florida. FMPA was created in 1978 under Florida law to finance, construct, own, and operate generation, transmission and other projects to supply power, transmission and other project services to its municipal electric utility members. While a number of FMPA's members have generation resources, we provide all or part of the power supply needs for 20 members. FMPA members provide retail electric service for approximately 2 million Floridians.

FMPA owns or controls 989 MW of generation at four generating facilities in the state of Florida, 908 MW of which would be regulated under the Cross State Air Pollution Rule ("CSAPR"). An additional 300 MW natural gas-fired combined cycle unit (Cane Island 4), which would also be regulated under CSAPR as a new unit, started commercial operation in 2011.[1]

FMPA actively participated in the stakeholder process for the Clean Air Interstate Rule ("CAIR") development and has adjusted its operations to meet CAIR emission reduction requirements. In addition, FMPA provided comments on the Clean Air Transport Rule ("CATR").

FMPA is an allied organization of the Florida Municipal Electric Association ("FMEA") and a member of the Florida Electric Coordinating Group ("FCG") and we endorse their petitions for reconsideration and stay of CSAPR. While we agree with the issues raised in the FMEA and FCG petitions, FMPA is uniquely impacted by CSAPR due to the high percentage of natural gas

[1] FMPA also owns a minority interest in the coal units at OUC's Stanton Energy Center.

usage and the very low emission rates of our wholly owned generating units. As a result, FMPA submits this Petition to address issues for reconsideration that are specific to FMPA.

EPA's decision to abandon the two alternative allowance allocation options discussed in the first notice of data availability ("NODA") for the CATR proposal has resulted in over an 80% reduction of FMPA's ozone season NO_X allowances as compared to CATR option 2, which FMPA supported as a participant in FMEA's earlier comments to the proposed rule. This dramatic and unexpected change from the CATR to the CSAPR, combined with FMPA's previous deployment of state of the art air pollution controls on our electric generating units (EGUs), presents FMPA with significant economic, compliance, and reliability concerns. The adverse impacts of this rule on our member utilities and their consumers are so significant and came with such limited notice and opportunity to evaluate and comment that a reconsideration of the rule and a stay of the rule pending such reconsideration are justified

II. Procedural History

EPA developed the original transport rule, the Clean Air Interstate Rule (CAIR), through a transparent process that included numerous opportunities for stakeholder input and agency feedback. The regulatory impact assessment (RIA) for the resulting rule demonstrated that CAIR would achieve all of EPA's Clean Air Act air quality objectives with a minimal impact to the electric generating industry's fuel mix and consumer energy cost.

Several parties brought suits in the United States Court of Appeals for the District of Columbia, which resulted in an eventual remand of CAIR. However, the Court found no issue with the methodology EPA selected to screen for significant downwind impact nor did the Court impose a definitive deadline to correct CAIR's flaws[2] For this reason many utilities subject to CAIR, including FMPA, reasonably assumed that EPA would amend CAIR to address only those flaws identified by the Court and proceeded to develop their compliance strategies accordingly.

On August 2, 2010, EPA officially proposed the Clean Air Transport Rule, which not only corrected the CAIR defects identified by the Court, but also increased the stringency of the SO_2 and NO_X emission caps well beyond those established by CAIR. On July 6, 2011 the Clean Air Transport Rule was renamed the Cross-State Air Pollution Rule and signed by the EPA Administrator. Major unexpected changes were made in emission reduction requirements from CAIR to CATR to CSAPR regarding covered states and emission caps, as illustrated in Table 1.

[2] Case: 05-1244 State of North Carolina v. Environmental Protection Agency, Petitions for Rehearing Document: 01215418702

Table 1. Allowance Allocations for EPA's Proposed and Adopted Transport Rules

Rule	SO2 Allocation 2012 (tons)	SO2 Allocation 2014 (tons)	NOx Annual Allocation 2012 (tons)	NOx Annual Allocation 2014 (tons)	NOx OS Allocation 2012 (tons)	NOx OS Allocation 2014 (tons)	Total States Covered
CSAPR	3,270,978	2,064,887	1,205,808	1,127,255	591,038	556,748	28*
CATR	3,893,870	2,500,003	1,376,312	1,376,312	641,614	641,614	32**
CAIR	3,673,995	2,571,796	1,521,707	1,268,094	Na	na	26

Oklahoma Ozone Season only includes DC*

III. Grounds for Reconsideration and Stay

FMPA fully supports and adopts as part of this Petition the issues raised in FMEA's and FCG's petitions for reconsideration and stay. In addition, FMPA offers in support of this Petition the following.

A. EPA did not Provide Adequate Notice and Opportunity to Comment on the Final CSAPR.

In adopting CSAPR, EPA has gone well beyond correcting the remand flaws in CAIR and has created enormous additional compliance burdens on electric utilities and their customers without apparent justification; and it has done so without providing affected parties an opportunity to evaluate and comment upon the final rule. EPA has stated in a recent Congressional hearing on CSAPR and in correspondence to an affected utility that the electric utility industry had ample warning to prepare for the CAIR replacement rule.[3] FMPA strongly disagrees. EPA held few if any public workshops or meetings before publishing CATR or the final CSAPR. Furthermore, the final CSAPR allowance allocation was a drastic departure from that which was proposed and commented upon. This is in stark contrast to the open and transparent stakeholder process that resulted in CAIR. This lack of an open and transparent process in developing CSAPR resulted in FMPA being completely "blind-sided" by the radical reduction in the Florida Ozone Season NO_X allowances from the proposed CATR to the final CSAPR. FMPA was not provided an opportunity to evaluate or comment on the final CSAPR allowance allocations or methodology. As a result, the grounds for FMPA's objections to the final CSAPR arose after the public comment period had ended. Therefore, FMPA requests EPA stay the implementation of CSAPR and reconsider the final rule in light of the issues raised in this Petition.

[3] Honorable Gina McCarthy's testimony September 15, 2011 House Science and Technology Committee; EPA response letter from Robert Perciasepe Deputy Administrator to Luminant.

B. CSAPR Allocation Methodology is Unjust and Unreasonable

1. CSAPR's Allocation Methodology Severely Punishes Early Reductions and the Deployment of High Efficiency Air Pollution Control Systems (APCs).

FMPA has some of the lowest emitting gas-fired EGUs in the CSAPR region, which employ the best available control technology (BACT) of selective catalytic reduction systems (SCRs). However, instead of providing minimum allowance allocations based on heat input as in CAIR or CATR Option 1 (or the lesser of either the heat input allocation or the calculated maximum potential emissions based on maximum heat input, an assumed "clean" NOx rate, and an assumed "reasonable" capacity factor as in CATR Option 2), EPA in CSAPR awarded allowances at the lesser of the heat input allocation or the maximum *actual* annual emissions during years 2003 through 2010. The result was that FMPA's units, with state of the art NOx controls on our gas fired units and good historical environmental performance, will receive fewer allowances than those without NOx controls and with much poorer historical emission reduction. This is illustrated in Table 2, which shows the NO_X emission rates that FMPA must achieve for CSAPR compliance during the ozone season when compared to the average compliance emission rate for both Florida and all CSAPR states in the ozone season program. When compared to the 50% reduction in Florida CSAPR NOX allowances, the allowance allocation methodology change from CATR Option 2 to CSAPR reduced FMPA's ozone season NO_X allocation from 567 tons to 94 tons, an 84% reduction. (See Appendix 1)

As shown in Table 2. FMPA's wholly owned units are required to have an Ozone Season compliance emission rate about 60% below the Florida CSAPR average and 40% lower than the regional CSAPR Ozone Season average emission rate.

FMPA supported CATR Option 2 as the fairest option presented but strongly objected to the original CATR proposal where the allowance allocation was based on a unit's percentage of the state's total emissions rather than heat input. Like the original CATR proposal, CSAPR unjustly punishes low emitters, such as FMPA, by severely limiting the allocations for cleaner units. Further, FMPA's previous utilization of state of the art NOx controls prevents FMPA from taking additional steps to further reduce emissions on these units. This leads to the highly illogical result whereby FMPA may be prohibited from fully utilizing some of the cleanest generating units in the state of Florida, and instead turning to higher emitting units that were allocated additional allowances under CSAPR's flawed allocation methodology.

Table 2. CSAPR Ozone Season NOx Compliance Emission Rate Comparison (2010 emissions)

Sources	2012 (lb/MMBtu)	2014 (lb/MMBtu)
CSAPR Regional Average	0.1026	0.0967
Florida State Average	0.0571	0.0571
FMPA Unit Average	0.0170	0.0170

Source: EPA CSAPR Unit Allocation Database

2. CSAPR's Allocation Methodology Constrains FMPA's Ability to Provide Reliable Power and Fully Utilize our Generating Assets.

CSAPR will constrain FMPA's ability to meet obligations to serve our members under certain types of emergency situations. For example, with the reduction in FMPA's allocated allowances, we may be unable to supply power during periods of natural gas fuel supply reductions or transmission constraints in serving geographically remote members such as Key West without exhausting our fleet-wide CSAPR allowances. In addition, FMPA, like many smaller generating utilities, will "grow into" surplus generating capacity. Many of FMPA's largest and most efficient, low emitting units currently operate at less than a 70% capacity factor. These capacity factors are expected to increase as FMPA's most efficient generating units are optimally dispatched to meet growing load. In addition FMPA's Integrated Resource Plan (IRP) calls for FMPA to replace wholesale purchased power agreements with our own generation. CSAPR effectively constrains FMPA's future least cost energy options. In CSAPR, EPA has stated, *"EPA believes that a starting point allocating some units more than they have ever emitted would be illogical in programs aimed at reducing overall emissions."(FR page 48288)* However, this position does not consider future growth needs and the increased utilization of newer, low emitting and efficient generation units.

3. The CSAPR Jeopardizes FMPA's Ability to Provide Reliable Electric Service.

Since FMPA's SCR NO_X control systems are operated at near their maximum design efficiency, our ability to achieve additional reductions is very limited.[4] For example our combined cycle units equipped with SCRs have permit limits for ammonia slip that must be balanced with NO_X reductions. The alternative to decreasing the NO_X emission rates is to restrict capacity utilization growth of our low NO_X emitting generation fleet. FMPA's CSPAR allocations are also insufficient to allow the utilization of backup fuel (low sulfur diesel) if necessary, which essentially renders the capital investment to install that backup fuel capability worthless. The low sulfur diesel fuel would be required if access to natural gas was disrupted for any reason. Florida's state variability limit is not even enough to cover Florida's NO_X allowance shortfall based on the actual 2010 state emissions so it certainly is not enough to cover increased oil firing due to a disruption of natural gas fuel. The FMPA Cane Island #3, equipped with low NOx burners and SCR, would exhaust its CSAPR NOx allowances in less than 3 weeks if use of its back up distillate fuel oil was required. Hurricanes, are a very serious and viable threat for Florida and very likely to occur during the Ozone Season.[5] Hurricanes are just one example of an emergency situation that could cause disruption of Florida's natural gas supply.

a. Fuel Switching is not a compliance option for FMPA.

Because FMPA's wholly owned units are already natural gas fired (with low sulfur diesel used only as a backup fuel source), fuel switching is not an available compliance option for

[4] As Table 2 demonstrates, FMPA average NO_X emission rates are some of the lowest of all CSAPR utilities.

[5] Hurricane season runs from June 1 to November 30th while Ozone Season runs from May 1 to September 30.

FMPA. Stock Island CT4 in Key West is the exception to using natural gas because natural gas is not available to Key West's island location, thereby eliminating fuel switching as an option for this unit as well. FMPA already limits the dispatch of its Key West generation, to the extent possible, by importing energy from mainland Florida into the Florida Keys. But in the event of any transmission constraint, the dispatch of the Stock Island CT4 is the only viable option to serve load in Key West. When the Key West load exceeds the energy import limitations, it is FMPA's responsibility to run this unit to meet on-island load.[6] No Ozone Season NOx allowances were allocated for Stock Island CT 4. We estimate that a transmission constraint or other emergency condition of significant duration that requires the dispatch of Stock Island CT4 would deplete FMPA's entire fleet allowance allocation in less than 4 months.

b. Importation of replacement power is not a compliance option for FMPA.

Central Florida has significant transmission constraints that limit FMPA and others' ability of displacing existing generation with energy imported from other states. If FMPA's units exceed their allocated emission allowances, transmission constraints associated with serving load in regions that are not geographically contiguous would severely impede our ability to serve our members energy needs with replacement power.

Furthermore, CSAPR potentially presents FMPA with serious reliability issues related to its geographically dispersed members. FMPA is somewhat unique in that our service area is not contiguous. FMPA provides all the power supply requirements for fourteen members. These fourteen all-requirements members are geographically dispersed throughout the state of Florida. FMPA does not own its own transmission system, but rather relies entirely on the purchase of transmissions service from two large investor-owned utilities in Florida – Progress Energy Florida ("PEF") and Florida Power and Light (FP&L"). These utilities' transmission tariffs limit – and in the case of transmission constraints expressly prohibit – FMPA's ability to transfer replacement power between the FMPA loads located on each of the two transmission systems.

The following illustrates a "real life" example of how CSAPR can impact our system reliability during a planned outage. Treasure Coast is beginning a one month outage on October 8, 2011. An outage of this duration only occurs once about every five years, but is absolutely necessary for turbine and compressor maintenance. During this outage period, Stock Island CT4 in Key West, necessarily an oil-fired unit due to lack of access to natural gas on the island, must be used for replacement power in the FMPA member cities located on Florida Power and Light's transmission system. Due to transmission constraints on FP&L's system and restrictions in the FP&L transmission tariff regarding allowable resources on their transmission system, Stock Island CT4 is the only FMPA unit available that is of sufficient size and location for this purpose.[7] FMPA is restricted in its use of FMPA-owned resources that have been designated for

[6] FMPA also has several small non-CSAPR generating units at Stock Island

[7] By itself, Stock Island CT 4 has insufficient capacity to cover the TCEC outage, so additional energy though purchased power with Southern Company for Oleander Unit 5 will be used.

use on the Progress Energy Florida transmission system. If FMPA load center was centralized on FMPA's own transmission system, for example, FMPA's use of its own resources would not be restricted and any FMPA-owned unit could be dispatched instead of CT4. However under CSAPR, the required dispatch of CT4 in our example would potentially exhaust FMPA's system allowances since this unit can only fire oil and was given no NOx allowances.[8] As a result, FMPA may find itself choosing between either operating its system in an unreliable manner or noncompliance with CSAPR.

c. Compliance through purchases of Ozone Season NO_X allowances is problematic and uncertain.

As discussed before, CSAPR's allowance allocation method, unlike the CATR Option 2, sets allowance allocations based on the lower of actual emissions or the allocations based on heat input. The CSAPR allocation method will constrain the Florida market, especially in the early years, since most EGUs with SCRs have been running at a high rate of NO_X removal since 2009. The generation of excess allowances by over control is very limited. With such short notice prior to the implementation of CSPAR, the deployment of additional SCRs by 2012 is nearly impossible. Since CSAPR's new method of setting the significance screening level is based on one percent of the Ozone NAAQS, utilities with surplus NO_X allowances will be more reluctant to sell with such uncertainty as to future CSAPR caps. For this reason allowance prices will likely be much higher than EPA predictions. CSAPR Ozone Season NO_X allowances recently sold at $3,750/ton as compared to EPA's estimate of less than $1500/ton.[9]

Finally, only 27,262 Ozone season NO_X allowances are provided for Florida under CSAPR as compared to 2010 Florida Ozone season NO_X emissions of 37,334 tons, which provides a short fall of 10,000 NO_X allowances. Since Florida's variability limit is 5,843 tons, 4,157 tons of additional reductions must be generated in state. It is hard to see how those levels of reductions will be possible by 2012.

4. CSAPR's allowance allocation methodology will prevent additional Florida NO_X Ozone Season allowances from mitigating the FMPA allowance shortfall.

Even if EPA finds that it under allocated NOx allowances to Florida, CSAPR will still limit the FMPA unit allocations to actual historical emission levels. For higher emitting units, the CSAPR allowance allocation methodology is more likely to default to the heat input calculated number of allowances. Because allowances allocated by the heat input calculation are a percentage of the total allowances allocated to Florida, this will result in additional allowances being allocated to these units if the total allowance allocation to Florida is increased. However, for low emitting units, such as FMPA's gas-fired combined cycle units, the CSAPR allowance allocation methodology defaults to the maximum actual historical emissions, This means that FMPA unit NO_X allocations will remain virtually unchanged, constraining any increase in its

[8] The allowances allocated to FMPA wholly owned units are found in appendix A.

[9] On September 5, 2011 the Environmental Financial News report that ICAP brokered trades for 100 tons of vintage 2012 allowances for both seasonal and annual NOx.

capacity utilization of FMPA's clean generating units and precluding its backup use of low sulfur diesel fuel during emergency situations.

IV. Request for Relief

The CSAPR allowance allocation methodology should not punish utilities with low emitting generation. Basing the allowance allocation on the lesser of the heat input allocation or the maximum actual annual emissions during years 2003 through 2010 handcuffs utilities such as FMPA that own efficient, natural gas burning generation by not allowing them to fully utilize these units. Considering FMPA's low system NO_X emission rate, at a minimum EPA should reconsider its allowance allocation methodology. As further discussed in FMEA's and FCG's petitions for reconsideration, EPA should also reconsider its inclusion of Florida in the CSAPR NOx Ozone Season program and second, if Florida remains in the program, reconsider its decision to require Florida to shoulder 70% of the emission reduction burden for upwind states impacting Houston, TX. Nevertheless, if Florida remains in the NOx Ozone Season program, then EPA should make FMPA whole for Ozone Season NO_X allowances by increasing Florida's Ozone Season NOx allocations and utilizing CATR Option 2 as the individual unit allocation methodology to allow for a more balanced approach that will not penalize low emitters. Furthermore, EPA should stay the implementation of CSAPR pending reconsideration.

Respectfully submitted,

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