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VIA FIRST-CLASS MAIL AND ELECTRONIC MAIL

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Re: **Petition of the Gulf Coast Lignite Coalition for Partial Reconsideration and Stay of the Cross-State Air Pollution Rule as the Rule Applies to Texas**
Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, Final Rule, 76 Fed. Reg. 48208 (Aug. 8, 2011); Docket No. EPA-HQ-OAR-2009-0491

Dear Administrator Jackson and Assistant Administrator McCarthy:

On behalf of The Gulf Coast Lignite Coalition (GCLC), we file this Partial Reconsideration and Stay of the Cross-State Air Pollution Rule (CSAPR) as it applies to Texas. The GCLC is a coalition of entities that own or operate lignite- and coal-fired power plants and mines in Texas, Louisiana, and Mississippi. GCLC member companies comprise a significant percentage of total lignite- and coal-fired generation in Texas, and therefore, have a substantial stake in CSAPR and its impacts on Texas. GCLC requests that EPA commence a partial reconsideration proceeding and stay the rule as it applies to Texas pending resolution of the issues raised herein.

Two GCLC members, Luminant and San Miguel Electric Cooperative, Inc. (San Miguel) have, separately, filed petitions for partial reconsideration and stay detailing procedural and substantive concerns with this final rule as it applies to Texas. GCLC supports and incorporates the petitions made by Luminant and San Miguel and also the petition filed by the Texas Mining and

Reclamation Association (TMRA). GCLC also fully supports the petition for reconsideration and stay filed by the State of Texas.[1]

GCLC filed comments on the Clean Air Transport Rule[2] and two of the Notices of Data Availability preceding CSAPR finalization.[3] GCLC was also active in the Clean Air Interstate Rule (CAIR) regulatory docket through a series of comments filed on the rule proposal, when the rule was entitled the Interstate Air Quality Rule,[4] and on the CAIR Supplemental Notice of Proposed Rulemaking.[5] Given GCLC's history of participation in this docket and prior similar dockets, GCLC submits this petition as a continuation of its advocacy in favor of an interstate air pollution rule that is based in sound science, follows a reasonable implementation schedule, and avoids unnecessary and disproportionate impacts on lignite-based electric generation.

I. There are no Legal or Environmental Impediments to Granting a Stay.

EPA has finalized this rule and included Texas in the annual SO_2 and NOx programs with only a five-month compliance window. Luminant, San Miguel, and others have thoroughly briefed the necessity of a stay. These reasons, each individually justifying a stay, include:

- The Clean Air Act and Administrative Procedures Act (APA) not only allow but require a stay to provide time to address rule deficiencies;[6]
- EPA has already granted a stay in the similarly controversial and recently finalized Industrial Boiler MACT Rule;[7]
- Unless the compliance dates are extended, Luminant, San Miguel, and other impacted electric generating companies will have no choice but to spend millions of dollars to comply with a rule that may be significantly modified or potentially overturned in Federal court;
- The D.C. Court of Appeals, in the overturning of CAIR, provided sufficient flexibility in its decisions to allow ample time for EPA to issue a stay and reconsider the inclusion of Texas in the annual SO_2 and NOx programs; and
- The impacts to reliability will be substantial and pose an imminent, substantial, and irreparable harm to Texas electricity consumers and the Texas economy.

[1] Given the particular impacts to GCLC members in Texas, GCLC's Petition will be Texas focused. However, in no way should GCLC's Petition, and arguments herein, be interpreted to limit the Petitions, and arguments therein, of GCLC member companies filing separate Petitions.

[2] *See* GCLC Comment filed on October 1, 2010, Docket Id. No. EPA-HQ-OAR-2009-0491-2734.

[3] *See* GCLC Comments filed on October 15, 2010 and February 7, 2011, Docket Id Nos. EPA-HQ-OAR-2009-0491-3744 and EPA-HQ-OAR-2009-0491-3963.

[4] *See* GCLC Comment filed on March 30, 2004.

[5] *See* GCLC Comment filed on July 26, 2004.

[6] Clean Air Act § 307(d)(7)(b); Federal Administrative Procedures Act § 705.

[7] Industrial, Commercial, and Institutional Boilers and Process Heaters and Commercial and Industrial Solid Waste Incineration Units, Final Rules; Delay of Effective Dates, 76 Fed. Reg. 28,662 (May 18, 2011).

GCLC will emphasize the last two points and touch upon the first three.

A. The D.C. Court of Appeals has placed no impediments to EPA extending the compliance date for this rule.

EPA states that based on "the [D.C. Court of Appeals' (the Court's)] emphasis on remedying CAIR's flaws expeditiously," that EPA does "not believe it would be appropriate to establish a lengthy transition period to the rule which is to replace CAIR."[8] This statement overlooks the rest of the Court's decision in the July 2008 vacatur of CAIR and the Court's subsequent decision remanding, rather than vacating, CAIR in December 2008.

In July 2008, when the D.C. Court of Appeals vacated CAIR in the *North Carolina* decision, the Court indicated that a date much later than 2012 would be considered "expeditious as practicable" stating that EPA "must decide what date, whether 2015 or earlier, is as expeditious as practicable for states to eliminate their significant contributions to downwind non-attainment."[9] The court followed the vacatur of CAIR with a subsequent decision in December 2008 granting EPA's petition to allow CAIR to remain in place during the CAIR replacement process.[10] In that decision, the court explicitly rejected establishing a firm timeline stating:

> "some of the Petitioners have suggested that this court impose a definitive deadline by which EPA must correct CAIR's flaws. Notwithstanding these requests, the court will refrain from doing so."[11]

By interpreting the term "expeditiously" to mean that CSAPR must contain a January 1, 2012 compliance date, EPA fundamentally misses the point of the Court's orders. While the Court clearly stated in its July 2008 decision that 2015 was expeditious, it is likely that the Court would believe an even later date is expeditious given its subsequent December 2008 decision to allow CAIR to remain in place while a replacement rulemaking was conducted. The time sensitivity of proceeding with a replacement was certainly eased, as this decision was clearly designed as a means to allow EPA to take the necessary time to conduct an accurate and equitable rulemaking. It is also clear that the court's reluctance to set a "definitive deadline," was once again an effort by the Court to err on the side of protecting the accuracy and scientific supportability of the rule by not artificially constraining the time period for EPA to propose a rule. The court was willing to overturn CAIR, a rule of enormous scope and impact, to ensure that the science and law was correct. There is no reason to believe that it would require EPA to proceed so quickly with this

[8] Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, Final Rule, 76 Fed. Reg. 48, 208, 48,220 (Aug. 8, 2011).

[9] *North Carolina v. EPA*, 531 F.3d 896, 930 (D.C. Cir. 2008); *See also* CSAPR Final Rule at 48,277 where EPA recognizes the 2015 timeline.

[10] *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008).

[11] *Id.*

rule as to cause the harm universally projected from CSAPR. It is also unreasonable to believe that the Court would support violating Texas' due process rights by including Texas in the annual NOx and SO_2 programs without an opportunity to meaningfully comment at the proposal phase under the auspices of complying with the Court's order to be expeditious.

B. The need for a stay is even more evident as impacts to reliability are significant and quickly becoming a reality.

The Electric Reliability Council of Texas (ERCOT) on September 1, 2011, released a report concluding that CSAPR would result in a 1,200 to 1,400 MW reduction in generating capacity during peak summer months and between 3,000 MW to 6,000 MW of reduced capacity during non-summer months. To quote ERCOT:

> "[e]ven in the best-case scenario, ERCOT is expected to experience a reduction in available operating capacity of 1,200 – 1,400 MW during the peak season of 2012 due to implementation of the CSAPR. Had this incremental reduction been in place in 2011, ERCOT would have experienced rotating outages during days in August."[12]

Similarly, the Southwest Power Pool (SPP), which covers 14% of Texans, sent a letter to EPA Administrator Jackson on September 20, 2011, emphasizing that its analysis of CSAPR "indicates serious, negative implications to the reliable operation of the electric grid in the SPP region raising the possibility of rolling blackouts or cascading outages that would likely have significant impacts on human health, public safety and commercial activity within SPP."[13] Further explaining these impacts and emphasizing the conflict between SPP maintaining compliance with mandatory Federal Energy Regulatory Commission (FERC) reliability standards, promulgated by the North American Electric Reliability Corporation (NERC), while also ensuring that individual units do not run afoul of CSAPR, SPP stated:

> "[SPP] reliability modeling indicates that the CSAPR Integrated Planning Model 4.1 (IPM) results, as depicted by the EPA, are likely to cause SPP to be out of compliance with the applicable NERC standards as early as 2012. SPP's planning models identified 5.4 GW from the 48 generation units identified by the EPA with zero fuel burn in 2012 that would have been dispatched

[12] Electric Reliability Council of Texas, *Impacts of the Cross-State Air Pollution Rule on the ERCOT System*, 5 Sept. 1, 2011. It is also important to note that these reductions in capacities are in addition to the 11,000 MW that ERCOT predicts will be retired as a result of the 316(b) rule, Utility MACT rule, and coal combustion residuals rule. *See* ERCOT, Review of the Potential Impacts of Proposed Environmental Regulations on the ERCOT System, Revisions 1, 12 (June 21, 2011).

[13] Letter from Nicholas Brown, et al., President and CEO, Southwest Power Pool, Inc. to Lisa Jackson, Administrator, U.S. EPA, Sept. 20, 2011.

> during the 2012 Summer Peak conditions. Our analysis revealed 220 overloads in excess of the required, 100% of emergency ratings under contingencies, and 1047 circumstances at various locations on the transmission system where voltage was below the prescribed lower limit of 90% of nominal rating....An even clearer representation of reliability violations can be found by applying higher operability limits of 120% to the overloads. There were 16 such overloads on the system. Using a similar out of normal range there were 93 circumstances where voltage dropped below 85% of nominal....
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> ...Some of the contingencies could be resolved with other short-term transmission and/or resource solutions, but several could not. In those cases, SPP would be in clear violation of mandatory reliability standards and subject to penalty from FERC. However, SPP cannot be compliant with NERC's planning standards without placing its generation owners in violation of EPA standards when the unutilized units in the IPM are unavailable to SPP."[14]

Luminant was the first, of potentially numerous Texas electric generation companies, to confirm that less electricity will be generated at their units next year if CSAPR is not stayed. On September 12, 2011, Luminant announced that two of their electric generating units (EGUs) would be idle and another three EGUs would convert entirely from lignite to Powder River Basin (PRB) coal, resulting in the reduction of 1,300 MW of generating capacity[15] and the closure of these units' supporting mines.[16]

Luminant's generation reductions alone will put Texas squarely within the range of power losses which ERCOT predicts would result in rolling outages in the ERCOT region if similar conditions existed as experienced this past summer; but Luminant, while the largest generator of coal-fired electricity in the state, is not the State's only coal- and lignite-fired electricity generator. It is simply the first to announce idling, closures, and the negatives effects of those actions. As compliance plans for each electric generating company and individual unit come together, it is likely that other units may be needed to be taken off line and it is almost certain that many of the units would have to derate for significant periods of time during 2012.

Luminant also announced that the idling of units and cessation of mining will result in approximately 500 lost Luminant jobs, not to mention the down-stream negative economic

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[14] *Id.*

[15] 1,300 MW is roughly 9% of Luminant's total capacity.

[16] *See* Luminant, Luminant Announces Facility Closures, Job Reductions in Response to EPA Rule, Sept. 12, 2011. Luminant plans idle Monticello Units 1 and 2 and cease use of Texas lignite at Monticello Unit 3. Luminant will cease mining lignite at the Thermo and Winfield mines, which support Monticello. Luminant will also cease using Texas lignite at Big Brown Units 1 and 2 and cease mining at the Big Brown/Turlington mine.

effects of lost local tax contributions, lost indirect employment, and other lost economic activity. Again, Luminant is only the first to announce these types of job losses, and it is expected that this number may grow as other electricity generating companies assess the effect that compliance plans have on employment. As predicted by EPA's IPM modeling, job losses may be particularly acute at lignite mines as EPA has designed the rule expecting lignite-fired power plants to turn away from lignite, towards PRB coal, at numerous Texas units.

The compliance plans that have been developed are extremely complex and rely on numerous third parties. If there are supply chain issues of temporary control technologies, which are a particular risk due to the sudden increase in demand for these products, issues with the installation of controls, or other breakdowns, this could delay the implementation of projects essential to prevent violations of individual unit allocations. If, as predicted by most experts, allowance markets are not liquid and flush with allowances available for trading, the only compliance option for these plants will be to idle or derate their generating facilities.

Every one percent of lost coal and lignite generation in ERCOT due to derating or idling would result in a loss of roughly 200 megawatts of electricity.[17] Given the small reserve margins Texas experiences at peak demand, only a few percentage points decrease in availability of this generation would result in rolling blackouts if peak summer demand similar to that experienced this year is faced in 2012 (or if extreme weather is faced during other parts of the year).

While previously commented on by Luminant, San Miguel, and others, GCLC also would like to reemphasize the significant difference between ERCOT's and EPA's capacity and reserve predictions. ERCOT calculates total resources to be 75,967 MW in 2014, with 19,959 of those MWs coming from coal sources.[18] EPA predicts that by 2014 the ERCOT region will have 90,405 MW of available capacity, of which 18,456 MW will come from coal.[19] There are numerous reasons why EPA has far exceeded ERCOT's capacity predictions, including counting retired and mothballed units as units available for electricity production and apparently making the unprecedented and unsupportable prediction that wind generation will produce at 100% of nameplate capacity. Ultimately, ERCOT's capacity predictions must be used, rather than EPA's. ERCOT knows its system, the units that are online today, and the units that will be online in the future. The same recognition needs to be made for SPP's predictions and the predictions of other system operators about the reliability impacts of CSAPR.

Electric reliability is <u>not</u> a talking point. It is not governed by theoretical modeling exercises like many of the analyses that EPA conducts. Electric reliability is the central job of highly sophisticated, high-performing system operators who are not political bodies subject to shifting

[17] ERCOT, Report on the Capacity, Demand, and Reserves in the ERCOT Region, 45, May 2011 (June 9, 2011 Revision 2).

[18] *Id* at 7, 45.

[19] *See* Resource Adequacy and Reliability in the IPM Projections for the Transport Rule, 5 EPA-HQ-OAR-2009-0491-4399 and U.S. Environmental Protection Agency, Resource Adequacy and Reliability in the IPM Projections for the Transport Rule TSD 6, June 2011, EPA-HQ-OAR-2009-0491-4455.

policy priorities. When those system operators speak on the topic, they should be listened to by EPA. The consequences are too dire to do otherwise.

II. The Effective Compliance Date for the Annual SO_2 and NOx Programs is January 1, 2012, not March 1, 2013.

In testimony presented at the U.S. House Committee on Science, Space, and Technology's September 15, 2011, hearing entitled *Out of Thin Air: EPA's Cross-State Air Pollution Rule*, Assistant Administrator Gina McCarthy repeatedly stated that the first compliance obligation for Texas EGUs is March 2013. Assistant Administrator McCarthy said the following:

> Although the program starts in 2012, power plants' first compliance obligation - *the first compliance obligation* [repeated for effect] - is not until March first of 2013. While the program starts in 2012, the first compliance for SO_2, which is the biggest challenge that Texas faces is March of 2013 when they're required to turn in allowances.[20]

Responding to legitimate questions regarding the infeasibility of installing new controls, switching to lower-sulfur coals, or obtaining allowances by January 2012, Assistant Administrator McCarthy added:

> We believe that all of those options are quite feasible and can be done to achieve the requirements by the time the first compliance period is required to be met which for SO_2 is March of 2013.[21]

In her testimony to the U.S. House Members, Assistant Administrator McCarthy appears to be implying that a plant could avoid installing controls, switching to low-sulfur coal, or buying allowances until the final day of the compliance year and still be in compliance with the rule.[22] In no way is this the case. Simply because a compliance *report* is due on March 1, 2013, does

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[20] Testimony of U.S. EPA Assistant Administrator Gina McCarthy, U.S. House of Representatives Committee on Science, Space, and Technology, *Out of Thin Air: EPA's Cross-State Air Pollution,* Hearing, September 15, 2011. Quotations from this hearing are not from an official transcript and are based on archived video testimony. Every effort has been made to ensure that quotations are accurate, but minor variations may exist between this quotation and a transcripted version. The CSAPR Rule Preamble at page 48,277, Fn. 57 states:

> For the annual programs, sources are required to have, by March 1, 2013, sufficient allowances in their accounts to cover their 2012 emissions. For the ozone-season program, they must have allowances in their accounts by December 1, 2012 to cover 2012 ozone-season emissions. The state budgets which determine the number of allowances allocated to units in each state become more stringent for some states in 2014.

[21] *Id.*

[22] GCLC notes that the compliance year actually terminates on December 31, 2012, not February 28, 2013.

not mean that beginning the conduct necessary (i.e. emission reductions) to demonstrate compliance with that report can be delayed past January 1, 2012. In order for a base load power plant operator to act responsibly and maintain the ability to produce power throughout the year, compliance has to begin on day one. The unit allocations, and necessary reductions to meet those allocations, demand immediate compliance efforts. Even units that are confident that they are able to meet their reduction requirements (although likely the result from reducing production capacity or installing temporary controls until permanent controls can be installed) know that emissions targets can only be reached through a year long effort of reducing emissions.

While EPA may be attempting to assuage legislative fears regarding the impact of this rule, to state that March 1, 2013, is the *actual* compliance date is a false and misleading description of the rule requirements. These statements even conflict with the CSAPR rule preamble, which affirms that the rule is designed so that the "initial phase of reductions start[ ] in 2012 to ensure that reductions are made as expeditiously as practicable....Sources must comply by January 1, 2012..."[23]

January 1, 2012 is the date when compliance has to begin, and at least with regard to the ERCOT region, these idling decisions must be reached much sooner as ERCOT requires a 90-day notice from its generating sources if a plant is going to significantly reduce its rated capacity.

III. EPA Failed to Provide Adequate Notice and Opportunity for Substantive Comment.

The flaws in EPA's notice process for including Texas in the annual SO_2 and NOx program are clear. In direct violation of Clean Air Act § 307(d), GCLC and its member companies never had notice or an opportunity to file comments on key components of Texas' inclusion in the annual SO_2 and NOx program. This includes the factual data, methodology used in obtaining and analyzing that data, and the major legal interpretations and policy considerations as the foundation of this inclusion.[24]

Much has been made by EPA of the comments that were filed by Texas entities, and that since some limited comments were filed, this is somehow proof that adequate notice and opportunity to comment was provided. As one of the commenters during the proposal phase and NODA period, GCLC can definitively state that this is not the case.

GCLC was prompted by EPA to answer one question regarding whether EPA's speculation was correct that changes in coal prices would lead to an increase in Texas emissions. EPA appeared to be concerned that SO_2-regulated states would switch to lower-sulfur coal, thereby creating a

[23] CSAPR Final Rule, 76 Fed. Reg. at 48,214. GCLC reasserts that "expeditiously as practicable" as discussed by the Court is, at a minimum, 2015 or later.

[24] *See* Clean Air Act § 307(d).

market for the higher-sulfur coal in the "unregulated states" such as Texas. GCLC's comments on this one question were thorough and accurate, but the comments were ultimately on a question that EPA concluded was not relevant in deciding to include Texas in the annual SO_2 and NOx programs.[25] While GCLC attempted to provide additional comments beyond responding to the one request by EPA for comment, these comments were done in an abundance of caution. Without any other factual data or methodology to comment on regarding how the rule might affect Texas, in effect, GCLC was shooting in the dark and trying to predict and guess what EPA might do. Comments prepared in this way are unavoidably not substantive.

EPA's inclusion of Texas in the annual SO_2 and NOx program was unprecedented. Never before in the history of the Federal Clean Air Act has EPA rolled a state into a final rule in an emission budget-based rule without at least first providing emissions budgets at the proposal stage. Even in this rulemaking, no other state was included in a final program without an opportunity to comment. EPA proposed a supplemental notice of proposed rulemaking (SNPR) for the six states that were added into the ozone program in the final rule,[26] and despite apparently contemplating providing an SNPR for Texas' inclusion as well, EPA decided otherwise in the final rule.[27]

GCLC never had an opportunity to provide substantive comments on emissions budgets, potential unit level allocations, findings that Texas significantly contributes to downwind non-compliance, and the facts and methodologies that were the basis of those findings. EPA has failed to meet the notice and comment requirements of CAA § 307(d).

There was no way that GCLC, and other electric generators in the state, could have known that EPA would break precedent in this rulemaking. Rather, EPA has essentially stated that Texas "should have known" of the possible inclusion based on constructive notice of other states' inclusion. Constructive notice has no place in APA-compliant rulemaking and does not comport with the strict requirements of the Clean Air Act.

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[25] U.S. Environmental Protection Agency, *Transport Rule Primary Response to Comments* 563 (June 2011).

[26] Federal Implementation Plans for Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin to Reduce Interstate Transport of Ozone, 76 Fed. Reg. 40,662 (July 11, 2011).

[27] *See* CSAPR Final Rule, 76 Fed. Reg. at 48,214; *see also, and compare to,* U.S. Environmental Protection Agency, *E.O. 12866 Review – Draft*, 36 (Docket ID No. EPA-HQ-OAR-2009-0491-4552). In a draft version of the preamble, EPA stated:

> EPA therefore believes its determination that Texas must be included in the rule for annual $PM_{2.5}$ is a logical outgrowth of its proposal. EPA is also requesting comment, in a supplemental notice of proposed rulemaking, on its conclusion that Texas also significantly contributes to nonattainment or interferes with maintenance of the 24-hour $PM_{2.5}$ NAAQS in another state.

IV. Substantive and Legal Issues in the Final Rule.

There are numerous substantive and legal issues in the proposed rule, and as stated earlier, this petition is not intended to reiterate and argue each of those issues which have already been thoroughly briefed by Luminant, San Miguel, and others. However, GCLC would still call EPA's attention to four of these primary substantive and legal issues that need to be addressed through a reconsideration process while the rule is stayed.

A. EPA has left few viable compliance options, except to derate or idle power plants and shut down operations and mines.

The EPA's compliance window for Texas has significantly restricted compliance options that the electric generating companies can implement in order to comply with CSAPR. Requiring fuel switching has no place in the Clean Air Act and goes against long standing EPA precedent. Even if GCLC were to agree that forced switching of coal ranks was a legally viable alternative, for many plants this is not an option. Many lignite burning Texas facilities do not have infrastructure to handle those quantity of coal shipments and do not have contracts in place to purchase alternative coals.

Installation of permanent control technologies cannot be done in this short period of time. Even if controls can be installed, for many plants, they are already controlling to the maximum of technical abilities. EPA has instead left many companies the only option of derating or idling their plants to comply by January 2012. For some, this includes ceasing mining activities.

EPA has dismissed these concerns, simply stating there are other business options that can be made. Assistant Administrator McCarthy stated the following at the September 15, 2011, House Science Committee hearing:

> "We did not want companies in 2012 to have to expend significant funds to comply. We are looking at a very low cost per ton and we believe those tonnage reductions are available by the use of existing equipment, by the use of operational changes, fuel switching and other mechanisms that are very readily available to them today."[28]

GCLC disagrees with these statements and emphasizes that EPA must heed the warnings of GCLC members and other electric generating companies. The costs per ton for compliance are not small. Temporary control technologies are expensive, and for facilities that require eventual full scrubber installations, the costs will be in the hundreds of millions. Further, EPA appears to believe that there is not a high cost associated with fuel switching. This is not the case. It is not

[28] Testimony of Assistant Administrator Gina McCarthy, September 15, 2011, Hearing. Again, quotations from this hearing are not from an official transcript and are based on archived video testimony. Every effort has been made to ensure that quotations are accurate, but minor variations may exist between this quotation and a transcripted version.

simply the immediate cost of each ton of western coal purchased. For the facilities that are able to switch fuels, EPA is asking the owners of these mines to give up massive monetary investments in land and mineral rights. The allowance market, particularly in the beginning, will also likely be prohibitively expensive.

Replying to questions regarding companies' plans to idle plants and cease operations at mines, Assistant Administrator McCarthy added:

> "Do we need to close - do companies need to choose to close the lignite facilities in order to comply? The simple answer is no. This system is set up to allow a number of choices - business choices. It may be that that business has chosen to take that path forward but EPA has anticipated that Texas may want to choose other options and in the rule itself we included information that indicated that you could maintain the same historical use of lignite coal in Texas and still achieve the reductions under the rule within the same cost constraints which make them very inexpensive reductions.[29]

These statements are simply not true. It makes no business or even logical sense that an electric generating company, particularly one with no other immediate source of generation coming online, would idle a relatively young and fully functioning power plant, and close associated mines, when affordable alternatives exist. There are no affordable alternatives. Derating or idling plants is a not business option but an option of last resort.

B. EPA's modeled predictions conflict with actual conditions.

EPA has relied upon modeling, instead of actual emissions data, to claim that Texas is contributing, or will contribute, to the nonattainment of the 1997 annual and 24-hour $PM_{2.5}$ NAAQS at the Granite City monitor in Madison County, Illinois. GCLC believes that one monitor in one county is not a sufficient basis to pull the entire state of Texas into this extremely costly rule, but even if that was sufficient, the actual conditions at the site do not merit inclusion. The area where the Granite City monitor is located has been found to be in attainment of its $PM_{2.5}$ requirements, and therefore, EPA is including Texas based on modeling data, rather than actual data. A model is exactly that – a model – a prediction. This prediction is further undermined from EPA's own findings that the primary reason that the Granite City monitor showed "excess" $PM_{2.5}$ concentrations, as opposed to every other monitor in the area, was not from EGU emissions but a proximately located U.S. Steel mill.[30] It is arbitrary and capricious to depend on modeled results when the real world demonstrates the area is in attainment and that

[29] *Id.*

[30] Sonoma Technology, Inc., Assessment of Local-Scale Emissions Inventory Development by State and Local Agencies, Draft Final Report Prepared for U.S. Environmental Protection Agency Research Triangle Park, NC, 3-6-3-7 (Oct. 2010).

the primary risk for exceedances at the Granite City monitor are the result of a nearby located steel mill and not Texas power plants.

C. Texas is being asked to shoulder a disproportionate amount of emissions reductions.

Assuming that Texas did contribute significantly to downwind nonattainment, which the facts flatly contradict, the emission budgets force reductions that far exceed Texas contribution amounts. EPA alleges that Texas' largest contribution to downwind annual $PM_{2.5}$ nonattainment maintenance is 0.18 $\mu g/m^3$, barely over the significance threshold of 0.15 $\mu g/m^3$. At this level, Texas ranks 17th among the states in this rule. However, for SO_2 in 2012, Texas is required to make the 2nd most reductions, almost twice as much as the 3rd and 4th SO_2 reducing states. This vastly disproportionate burden is clearly depicted in Exhibit 1 attached to this Petition. Ultimately, Texas is being asked to shoulder the burden of other states' reductions, which conflicts with Clean Air Act § 110(a)(2)(D)(i)(I).[31]

D. EPA has bypassed the state's ability to propose its own SIP.

Section 110(c)(1) of the Clean Air Act requires the EPA to allow the state to submit a SIP before EPA can propose a FIP. EPA must also provide an opportunity for a state to correct any SIP deficiencies before issuing a FIP. EPA has bypassed those requirements and progressed directly to a FIP. Texas must be given an opportunity to submit a SIP presenting its own compliance plan, which could possibly include requiring reductions beyond merely EGUs. To do otherwise violates the Clean Air Act and unfairly targets EGUs.

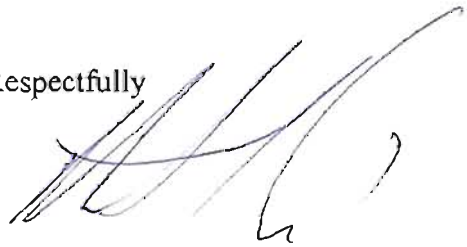
V. Conclusion

It is imperative that EPA grant GCLC's Petition, commence a reconsideration proceeding, and issue an immediate stay of the rule until impacted electric generating companies in Texas can have an opportunity to provide meaningful comment and EPA can have an opportunity to analyze those comments. The D.C. Court of Appeals decisions provide much more time for EPA to act, and EPA has not articulated a significant environmental harm if Texas is not included in this rule at this time. To move forward with this rule, and with this incredibly abbreviated time period, will result in significant harm to the citizens of Texas. Idled plants and ceased operations at coal mines will not only cost jobs and result in huge expenditures for power plants in Texas, the loss of generating capacity will almost certainly lead to rolling blackouts next year. Ultimately, the costs are too great, and the benefits are too few, not to grant a reconsideration and stay of the rule as it applies to Texas.

[31] Clean Air Act § 110(a)(2)(D)(i)(I) states that implementation plans must contain adequate provisions preventing states from emitting air pollutants which "contribute significantly to nonattainment." This is a limiting provision of the Clean Air Act. It does not allow for EPA to require a state to make reductions beyond the amount that EPA finds contribute significantly to nonattainment. Based on the reduction proposed, it is clear that Texas is forced to make reductions far exceeding its contributions levels, in violation of this provision.

GCLC appreciates your consideration of this Petition for Partial Reconsideration and Stay of the Cross-State Air Pollution Rule as the rule applies to Texas. Should you have any questions, please contact me directly.

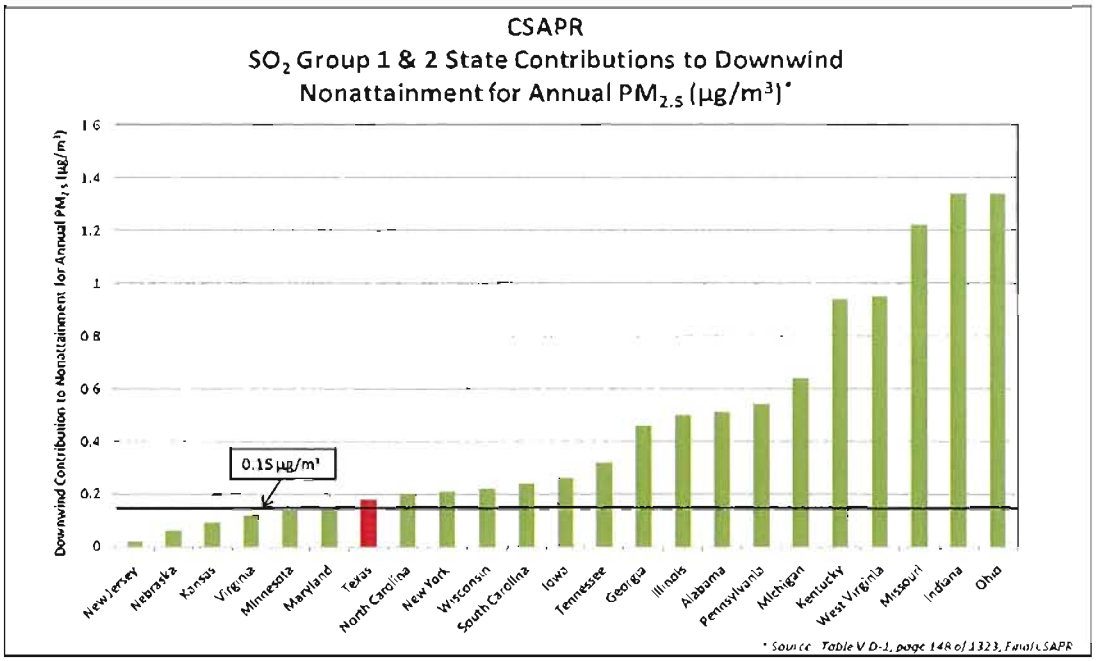
Respectfully

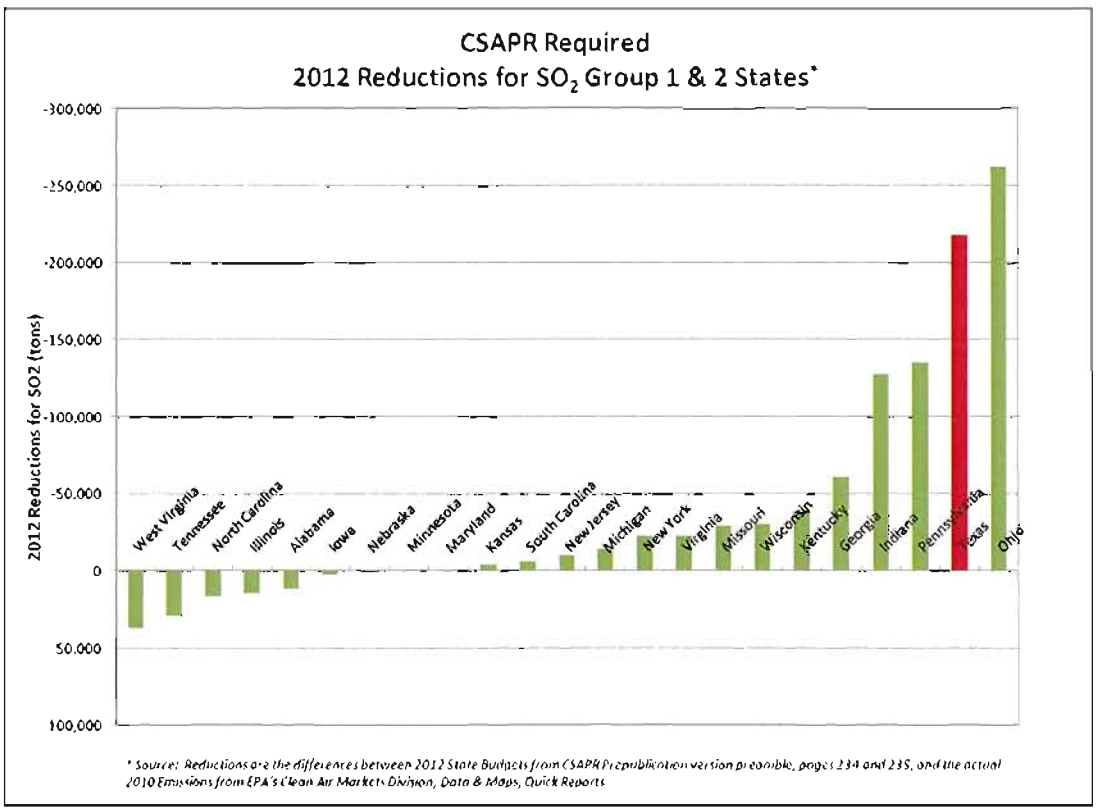


Michael J. Nasi
Counsel for the Gulf Coast Lignite Coalition

CC: ATTACHED DISTRIBUTION LIST

EXHIBIT 1


CSAPR
SO2 Group 1 & 2 State Contributions to Downwind
Nonattainment for Annual PM2.5 (µg/m3)*
Downwind Contribution to Nonattainment for Annual PM2.5 (µg/m3)
1.6
1.4
1.2
1
0.8
0.6
0.4
0.2
0
0.15 µg/m3
New Jersey
Nebraska
Kansas
Virginia
Minnesota
Maryland
Texas
North Carolina
New York
Wisconsin
South Carolina
Iowa
Tennessee
Georgia
Illinois
Alabama
Pennsylvania
Michigan
Kentucky
West Virginia
Missouri
Indiana
Ohio
* Source Table V D-1, page 148 of 1323, Final CSAPR


CSAPR Required
2012 Reductions for SO2 Group 1 & 2 States*
2012 Reductions for SO2 (tons)
-300,000
-250,000
-200,000
-150,000
-100,000
-50,000
0
50,000
100,000
West Virginia
Tennessee
North Carolina
Illinois
Alabama
Iowa
Nebraska
Minnesota
Maryland
Kansas
South Carolina
New Jersey
Michigan
New York
Virginia
Missouri
Wisconsin
Kentucky
Georgia
Indiana
Pennsylvania
Texas
Ohio
* Source: Reductions are the differences between 2012 State Budgets from CSAPR Pre-publication version pp ozonbc, pages 234 and 235, and the actual 2010 Emissions from EPA's Clean Air Markets Division, Data & Maps, Quick Reports

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