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EXECUTIVE SECRETARIAT

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VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

Administrator Lisa P. Jackson
U.S. Environmental Protection Agency
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1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
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Assistant Administrator Gina McCarthy
U.S. Environmental Protection Agency
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RE: Request for Partial Reconsideration of EPA's *Federal Implementation Plans: Interstate Transport of Fine Particle Matter and Ozone and Correction of SIP Approvals*, 76 Fed. Reg. 48,208 (August 8, 2011) (Docket No. EPA-HQ-OAR-2009-0491) (the "Cross-State Air Pollution Rule")

Dear Administrator Jackson and Assistant Administrator McCarthy:

The Homer City Owner-Lessors, LLC ("Homer City OLs")¹ support the goals of Environmental Protection Agency's ("EPA's") Cross-State Air Pollution Rule ("CSAPR") to reduce the interstate transport of sulfur dioxide ("SO₂") and nitrogen oxides ("NO_x") to assist in the attainment and maintenance of national ambient air quality standards. In particular, Phase II of the rule will achieve important improvements to the nation's air quality and public health.

Consistent with the President Obama's Executive Order 13563, *Improving Regulation and Regulatory Review*, the Homer City OLs believe the rule can be tailored to aid facilities like Homer City transition from Phase I to Phase II and thereby avoid job losses and increased costs to consumers that otherwise will result from the final rule without compromising its anticipated health benefits. Such an outcome would be consistent with the President's call to EPA to

¹ The Homer City Power Generation Station is owned by Homer City Owner Lessors 1 through 8, but operated by EME Homer City Generation, L.P. Homer City Power Generation Station is a 1,884 MW coal-fired power plant located in Indiana County, Pennsylvania. This petition for partial reconsideration is filed by all the Homer City OLs, except for Homer City OL 6, LLC. GE Capital Corporation is the parent company to Homer City OL 1 through 5, 7, and 8.

develop regulations that “protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.” Thus, we urge you to utilize your authority under Clean Air Act section 307(d) to convene a proceeding to partially reconsider CSAPR, consistent with the suggestions set forth below.

Importantly, the Homer City OLS are not requesting that EPA reconsider its legal authority to adopt CSAPR or the timing of its Phase II limits, which, according to EPA, results in CSAPR’s health benefits. Homer City OLS support the emissions limits set forth in Phase II, and are not concerned with the rule’s NOx limits. All three of the Homer City units are equipped with selective catalytic reduction and can operate within its NOx budget. The OLS’ concerns are limited to the obstacles that the final rule creates for the Homer City Generation Facility to finance and install the pollution controls that are necessary to comply with the Phase II SO₂ limits and to maintain operational viability in the meantime. Specifically, the Homer City OLS are concerned that under the current design of the rule, there will be a lack of liquidity in the allowance market during Phase I and that the Phase I SO₂ assurance cap will lead to excessive curtailments in the production of electricity. We are also concerned that the rule grants market competitors that have been allocated excess allowances the ability to hold Homer City and other facilities that have been allocated an insufficient number of allowances hostage by withholding or hoarding allowances. If unaddressed, this situation could result in reduced output and cause job losses and rate increases for millions of consumers.

Fortunately, there are a number of viable options— some of which EPA included or discussed in its original proposal— that EPA could lawfully and quickly adopt to resolve these concerns. Although EPA’s recent proposal “to amend the assurance penalty provisions so they start in 2014, instead of 2012” is helpful and a step in the right direction, it alone will not solve the issue. Thus, we formally request that you reopen CSAPR for the limited purpose of soliciting comments on options to address Phase I liquidity concerns and specifically to consider what we refer to as a “borrow-forward” option. This option would improve liquidity by allowing eligible entities to request from EPA an advance allocation of SO₂ allowances (“borrow forward”) from Phase II, specifically between the years 2014 through 2024, for use in Phase I. To ensure that a borrow-forward option is consistent with goals and purpose of the rule and the Clean Air Act “good neighbor” provision, it could be conditioned on the following:

- Only facilities that commit to install state-of-the-art pollution control equipment by a date certain and pursuant to specified milestones would be eligible to borrow forward.
- Eligible entities could borrow forward their own Phase II allocated allowances for 2014-2024 or purchase such future allowances from other units.
- Any Phase II allowances used during Phase I would be discounted (*e.g.*, 0.9 of a Phase I allowance) and permanently retired.

This borrow-forward option would provide sufficient liquidity in the allowance market to facilitate the financing and installation of scrubbers at the Homer City Generation Plant (and others like it) necessary to meet the more demanding emission requirements of Phase II and to allow the facility to operate in the interim. This option also would promote market discipline thereby making it less likely for entities with excess allowances during Phase I to withhold them

from the market and in turn will save consumers in Group 1 states hundreds of millions of dollars during Phase 1 alone.

This option would not compromise any of the rule's public health benefits or run afoul of the mandates of *North Carolina v. EPA* because it would not adjust the Phase II deadline or emission caps that drive the benefits. In fact, this option would result in even greater longer-term air-quality benefits, because it requires the discounting of any Phase II allowances used during the Phase I transition years and would lower Phase II allocations to facilities that utilize this compliance option.

EPA could accommodate a borrow-forward option within the general regulatory structure of CSAPR. Limited amendments to current regulations would be needed for Group 1 and Group 2 sources. Under this amendment, the EPA Administrator would be allowed to record Phase II allowances for existing EGUs at any time prior to the allowance transfer deadline applicable to sources for the 2012 and 2013 control periods. A corresponding deduction in future year allowances could be accommodated by amending the same regulatory provisions (*i.e.*, 40 C.F.R. §§ 97.621 and 97.721).

Given the current structure of CSAPR, it also would be necessary to address the rule's Phase I assurance penalty provision that might be triggered by the utilization of Phase II SO₂ allowances during Phase I. Under CSAPR, in states where the assurance level is exceeded, EPA is required to establish an assurance account for owners and operators determined to have responsibility for exceeding the assurance level. Allowances may be from the current compliance year, years *prior to* the compliance year (*i.e.*, banked allowances), or the year immediately following the compliance year. The easiest way for EPA to address this issue, and the one that the OLs would prefer, would be for the agency to adopt its recent proposal to defer initiation of the assurance penalty provision until 2014. Alternatively, EPA could amend its regulations either to exempt eligible entities from assurance penalties during Phase I or to allow for the intrastate trading of assurance "safe-harbor" allowances.

It is clear that EPA can provide additional flexibility in the assurance level requirements without jeopardizing CSAPR's environmental goals. EPA based CSAPR's assurance levels on the highest historic state variability in heat input, not on emission reductions necessary to attain ambient air quality standards. Indeed, EPA concluded that the location of existing and planned pollution controls in 2012 and 2013 would provide necessary emission reductions *without* the imposition of assurance provisions. EPA stated that it "believe[d] that there is a high level of certainty that emissions reductions projected for 2012-2013 with interstate trading would be achieved within the states where they are projected to occur, making imposition of the assurance provisions during 2012-2013 unnecessary."² EPA reached this conclusion even though it proposed state emissions budgets for Group 1 states substantially higher (371,000 net allowances even after accounting for the inclusion of Texas) than those it adopted in the final rule. EPA's recently proposed revisions to CSAPR serve to further confirm this analysis.

² 75 Fed. Reg. at 45,314-15.

Allowing additional flexibility to transfer Phase II allowances to Phase I is consistent with CSAPR's objective of eliminating significant contribution to downwind nonattainment and preventing interference with the maintenance of national ambient air quality standards since implementation of such a flexibility option would both ensure that new air pollution control technology will be installed and that nonattainment and maintenance objectives will be obtained and indeed enhanced by reducing the amount of allowances otherwise available to EGUs in Phase II. Thus, we urge EPA to allow for additional evaluation of this option and other flexibility mechanisms through the grating of partial reconsideration of certain Phase I SO₂ regulatory provisions.

In addition to affording EPA the opportunity to consider the borrow-forward option described above and to solicit comments on other options to improve allowance liquidity, granting reconsideration also would satisfy EPA's obligation under CAA section 307(d) to afford the Homer City OLs an opportunity to review, analyze, and comment on centrally-relevant data and assumptions that were not included in the earlier proposals. Specifically, OLs should be given an opportunity to comment on the new assumptions and methodologies that EPA employed for the first time in the final rule, which affected state emissions budgets, allowance allocations to individual facilities, and the availability of allowances through trading. The Homer City OLs believe that the agency would also benefit from our comments regarding EPA's determination of what constitutes "cost-effective" reductions during Phase I, the final Phase I SO₂ budgets for Pennsylvania, and various coal and gas assumptions used in the Integrated Planning Model runs EPA relies on to support the final rule. Finally, a grant of partial reconsideration would afford the OLs the opportunity to provide EPA with information on the negative impacts that the final rule has on the Homer City Plant, local jobs, and consumer electricity prices, and suggestions for avoiding them. Soliciting comment on these critically important issues could serve only to improve the rule and the transparency of the rulemaking process.

Again, the Homer City OLs support CSAPR's goals and Phase II reductions. However, with relatively minor adjustments to the rule, EPA could ensure that these reductions are obtained more fairly and effectively, in a way that ensures the viability of plants like Homer City while they transition to Phase II, and in a way that restores market confidence in EPA's cap-and-trade programs. Thus, we urge you to grant this petition for partial reconsideration.

We appreciate your consideration of this petition and stand ready to assist the agency in any way we can.

Sincerely,



Chet M. Thompson
Robert Meyers

On behalf of the Homer City Owner Lessors
1 through 6, 7, and 8.