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October 7, 2011

Ms. Lisa Jackson
Administrator, U.S. EPA
EPA Docket Center, EPA West (Air Docket)
Attention: Docket ID No. EPA-HQ-OAR-2009-0491
U.S. Environmental Protection Agency, Mail Code: 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

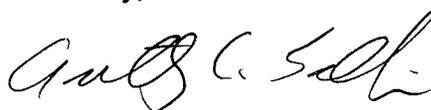
RE: Petition for Reconsideration Regarding Federal Implementation Plans
to Reduce Interstate Transport of Fine Particulate Matter and Ozone
and Correction of SIP Approvals, Docket No. EPA-HQ-OAR-2009-0491

Dear Ms. Jackson:

On behalf of the Indiana Municipal Power Agency (IMPA), enclosed please find a Petition for Reconsideration regarding the rule entitled "Federal Implementation Plan: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals," 76 Fed. Reg. 48,208 (August 8, 2011). Specifically, IMPA requests that EPA delay the beginning of phase 1 of this rule until 2015. As an alternative to the requested delay, IMPA requests that either (1) EPA re-start the rulemaking to allow adequate public participation regarding the actual allocations, and/or (2) that the effectiveness of this rule be stayed providing the resolution of any and all judicial challenges.

Thank you for your consideration of this petition. If you have any questions or would like additional information, please call.

Sincerely,



Anthony C. Sullivan

ACS:naw

Enclosure

Via Hand Delivery

cc Mr. Jack F. Alvey
Andrew Despain, Esq.

INDS01 1298988v2

BEFORE THE ADMINISTRATOR OF THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

)	
In Re:)	
Federal Implementation Plan:)	
Interstate Transport of Fine Particulate)	Docket No. EPA-HQ-OAR-2009-0491
Matter and Ozone and Correction)	
of SIP Approvals)	
)	

PETITION FOR RECONSIDERATION

I. INTRODUCTION

On August 8, 2011, the United States Environmental Protection Agency (“EPA”) published the Final Rule entitled “Federal Implementation Plan: Interstate Transport of Fine Particulate Matter and Ozone and Corrections of SIP Approvals,” or “CSAPR.” *See* 76 Fed. Reg. 48,208 (August 8, 2011). Pursuant to Section 307(d)(7)(B) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7607(d)(7)(B), and for the reasons outlined more fully below, the Indiana Municipal Power Agency (“IMPA”) hereby petitions the EPA for reconsideration of the CSAPR.

IMPA respectfully requests that EPA reconsider and delay the implementation of the first phase of the rule until no earlier than January 1, 2015. Such a delay is necessary to provide adequate and reasonable time to properly engineer, procure and construct emissions control equipment at those units where a business decision has been made to upgrade or add to existing emissions controls. The extra time is justified—and required—due to the defective manner in which EPA approached what was first the Clean Air Transport Rule (“CATR”) in 2010 and what is now the CSAPR.

As an alternative to the requested delay, IMPA requests that either (1) EPA re-start the rulemaking to allow adequate public participation regarding the actual allocations, and/or (2) that the effectiveness of this rule be stayed pending final resolution of any and all judicial challenges.

II. BACKGROUND AND JUSTIFICATION

IMPA was formed by a small group of Indiana municipalities in 1980 for the purpose of jointly financing, developing, owning, and operating electric generation and transmission facilities appropriate to serve, on a not-for-profit basis, the current and projected electric power needs of its municipal customers. Since then, IMPA has grown to become the total requirements wholesale power and energy provider to 53 municipally-owned utilities throughout Indiana and one Ohio village. IMPA jointly owns several coal fired power plants equipped with wet flue gas de-sulfurization (scrubber) and SCRs. Among these units is Gibson Station Unit 5 (“Gibson Unit 5”), which IMPA co-owns with Duke Energy Indiana and Wabash Valley Power Association. Gibson Unit 5 will likely require replacement of its scrubber and other upgrades to comply with CSAPR. IMPA’s primary concern with CSAPR arises out of the effects of the timing of the rule on Gibson Unit 5.

One inequitable aspect of the rule is that it provides no credit for the fact that Gibson Unit 5 has been scrubbed since the early 1980’s. IMPA has in most years had excess SO₂ allowances from its Gibson Unit 5 allocation that have not been used or sold into the market for use at another unscrubbed unit. Under EPA’s allocation methodology employed in CSAPR, unscrubbed units are afforded the same treatment as historically scrubbed units, a result that is arbitrary and fundamentally unfair.

Regarding the rule’s timing, the SO₂ emission allocations in CSAPR significantly reduced Gibson Unit 5’s allocation from the previous EPA unit level allocation estimate in the CATR and in notices provided during the CSAPR rulemaking. These reductions were drastic—approximately 33% for phase 1 of CSAPR—and represent a substantial departure from the proposed rule without adequate notice to IMPA. EPA’s reduction coupled with a five-month time period before the first phase of CSAPR becomes effective makes it impossible for units

such as Gibson Unit 5 to install equipment necessary to achieve compliance. Under this timeline, IMPA will not only be required to invest the capital cost to upgrade the scrubber, but also must purchase allowances to maintain compliance until construction is completed. This is especially problematic because it is not clear whether in-state Indiana allowances will even be available for purchase. Thus, IMPA and other entities are unable to evaluate risk or make business decisions based on the availability of market allowances and whether a state will exceed its assurance level.

While EPA's October 6, 2011 release of proposed amendments to the assurance penalty provisions of CSAPR are a step in the right direction, the proposed amendments do not go far enough. The extremely compressed CSAPR compliance timeline still leaves insufficient time to engineer, procure and construct the necessary emissions control equipment at Gibson Unit 5 and similarly situated units without incurring the additional (and yet unknown) cost of purchasing allowances. Further, the proposed delay of the assurance penalty provisions does nothing to cure the more fundamental defect that CSAPR radically decreased Gibson Unit 5's and other units' allowance allocations without adequate notice or opportunity for comment.

To summarize, EPA's allocation methodology unjustly failed to account for existing emissions controls at Gibson Unit 5. Further, due to EPA's actions and timing, IMPA did not receive adequate notice or a meaningful opportunity to comment on EPA's changes to state and unit-level emission allocations. EPA's significant departure from the proposed rule and the fact that compliance is required on an unreasonably short timeline makes it impossible for IMPA to add or upgrade control equipment as required. Thus, absent the relief requested, IMPA will suffer irreparable harm as the result of a flawed rule and rulemaking process.

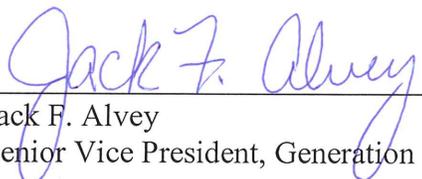
III. REQUEST FOR RELIEF

IMPA respectfully requests that EPA delay the effective date of phase 1 of CSAPR until no earlier than January 1, 2015. As an alternative to the requested delay, IMPA requests that either (1) EPA re-start the rulemaking to allow adequate process and public participation regarding the actual allocations, and/or (2) that the effectiveness of this rule be stayed pending final resolution of any and all judicial challenges.

IV. CONCLUSION

For all of the foregoing reasons, IMPA respectfully requests that EPA grant the Petition for Reconsideration, grant the requested relief, and provide any other proper relief under these circumstances.

Indiana Municipal Power Agency

By: 

Jack F. Alvey
Senior Vice President, Generation