BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN RE: FEDERAL IMPLEMENTATION PLANS: INTERSTATE TRANSPORT OF FINE PARTICULATE MATTER AND OZONE AND CORRECTION OF SIP APPROVALS 76 FED. REG. 48,208 (AUG. 8, 2011)	)	EPA Docket No. EPA-HQ-OAR-2009-0491

PETITION FOR RECONSIDERATION AND STAY

Nebraska Public Power District ("NPPD") respectfully requests that the U. S. Environmental Protection Agency ("EPA") grant partial reconsideration and immediately stay the compliance deadline and effective date of the above captioned rule (hereinafter "CSAPR" or "final rule"). In such final rule, EPA found that Nebraska's emissions interfered with 24-hour $PM_{2.5}$ maintenance in Milwaukee, Wisconsin. 76 Fed. Reg. 48208, 48244 (Aug. 8, 2011). EPA's final rule substantially reduced the emission budget for Nebraska and the individual electric generating units' ("EGU") allowances within Nebraska. The August 8, 2011 rule requires NPPD to begin compliance by January 1, 2012.

INTRODUCTION

Nebraska Public Power District, a public corporation and political subdivision of the State of Nebraska, provides the electricity requirements in all or parts of 86 of Nebraska's 93 counties. NPPD provides retail service and total or partial wholesale electric service to over one million Nebraska citizens. NPPD provides the entire electricity supply in 80 retail communities it serves and the entire wholesale supply of electricity to 52 municipal electric utilities and 25 public power districts and cooperatives. Several other utilities in Nebraska receive part of their power supply from NPPD.

NPPD requests that EPA grant partial reconsideration and immediately stay the compliance deadlines and effective date of CSAPR as they affect Nebraska and NPPD. Such relief should be granted for the following reasons:

1. CSAPR's substantial reduction of Nebraska's emissions budget was done without proper notice and public comment and was not a logical outgrowth of EPA's proposed rule.

2. EPA's compliance deadline in CSAPR arbitrarily punishes non-CAIR states like Nebraska by setting forth a compliance deadline which now cannot be met by NPPD in consequence of the drastically reduced Nebraska budget and unit allowances in the final rule.[1]

3. CSAPR's emission reduction requirements for Nebraska are not in compliance with the Clean Air Act ("CAA").

In consequence of the above, EPA should immediately stay the compliance deadline and effective date of CSAPR as it affects Nebraska and NPPD, pursuant to § 705 of the Federal Administrative Procedure Act. 5 U.S.C. § 705. EPA has discretion to do so because proceedings for judicial review of CSAPR have been filed by the State of Nebraska and others in the United States Court of Appeals for the District of Columbia and CSAPR is not now in effect.

Without a stay, communities in Nebraska, NPPD and NPPD rate-payers would suffer needless irreparable harm, including generation curtailment and potential job losses.

The Final CSAPR Reduced The State Budget For Nebraska Without Benefit Of Public Notice Or Comment

The following charts show the original Nebraska budget in the proposed Transport Rule compared to the Nebraska budget in the CSAPR. Also shown are the allowances provided for each of NPPD's units by the proposed rule in contrast to the reduced allowance budgets provided by the final rule.

Nebraska State Budget (tons per year)	
SO_2 proposed budget 71,598	SO_2 final budget 65,052
NO_x proposed budget 43,228	NO_x final budget 26,440

[1] "CAIR" refers to the Clean Air Interstate Rule, 70 Fed. Reg. 25162 (May 12, 2005).

Facility	2009 Actual SO_2	Proposed SO_2 Budget	Final SO_2 Budget	2009 Actual NO_x	Proposed NO_x Budget	Final NO_x Budget
Beatrice CT 1	0.2	242	1	3.9	242	11
Beatrice CT 2	0.2	243	1	5.0	222	10
Canady	3.2	217	82	16.3	118	65
Gerald Gentleman Station 1	15,805.3	14,652	13,116	5,446.5	7,957	4,571
Gerald Gentleman Station 2	16,125.4	15,468	14,387	9,540.1	8,400	5,014
Hallam	0.1	10	4	2.4	5	2
Hebron	0.03	5	2	2.4	3	1
McCook	0.04	5	2	2.5	3	1
Sheldon 1	2,702.2	2,479	2,198	4,276.7	1,346	766
Sheldon 2	2,692.4	2,689	2,422	3,359.9	1,460	844
TOTALS	37,329.07			22,655.7	19,756	11,285

CSAPR's final NO_x Budget for NPPD is 43% less than that set out in the proposed Transport Rule. CSAPR's final budget for NPPD's SO_2 allowances is 11% less than that set out in the proposed Transport Rule. T. Kent Dec. p. 2, ¶ 6[2]. More telling than the overall reductions is the impact the reductions in the final rule would have on NPPD's larger units – Gentleman Station, Units 1 and 2 and Sheldon Station, Units 1 and 2. Although the proposed Transport Rule set out an almost 40% reduction for NO_x, CSAPR requires an almost 80% reduction at Sheldon Station Units 1 and 2. T. Kent Dec. p. 3, ¶ 8. The NO_x allowances set forth in the proposed Transport Rule for Gentleman Station, Units 1 and 2, were reduced approximately 43% in the final CSAPR. [3]

When the proposed Transport Rule was published, NPPD reviewed it and believed it could meet the reductions set forth therein. T. Kent. Dec. p. 4, ¶ 9. There was nothing in the proposed Transport Rule that outlined how the proposed Nebraska state budget and, in turn, NPPD's NO_x allowances could change in the final rule. NPPD had no way to predict the impacts

[2] Mr. Kent's Declaration is attached as Exhibit 1

[3] The balance of this Petition will focus on NO_x emissions, budgets and allowances because EPA found that Nebraska's contribution to the 24-hour PM 2.5 at the Milwaukee, Wisconsin site was substantially nitrates i.e., approximately 70% for ammonium nitrate and only approximately 30% ammonium sulfate. *See* EPA Excel file "dailyPMtr1f-12EUS1 _ 2011mar10xisx."

flowing from the final rule because the proposed Transport Rule's state and unit allowances were much more attainable for NPPD. T. Kent Dec. p. 4, ¶ 9.

In a January 7, 2011, Notice of Data Availability ("NODA") for the proposed Transport Rule, EPA sought comment on alternative allocation methodologies for the proposed assurance provisions, allowances for surrender requirements at the designated representative level, a methodology for allocating allowances to new units located in Indian country and possible options for states wishing to submit state implementation plans related to the Transport Rule trading programs. The NODA went on to note "that state budgets may differ from the proposed budgets because EPA is still in the process of updating its emissions inventories and modeling in response to public comments, including comments on the Integrated Planning Model (IPM)." 76 Fed. Reg. 1111. Because EPA, as of January 7, 2011, had no new proposed state budgets to publish, EPA felt compelled to state in the NODA: "The unit-level allocations in this NODA are based on state emission budgets in the *proposed* Transport Rule." *Id.* Emphasis added.[4] Thus the final state budget and unit allowances for Nebraska remained a moving and unknowable target which was never disclosed until the final CSAPR. There was no opportunity for NPPD or anyone else to comment on the state budget numbers or unit allowances that appeared in the final Transport Rule for the first time.

The January 7, 2011 NODA did not ask for comments concerning the prospect of state budgets differing from the proposed budgets when EPA issued its final rule. It is unknown to NPPD whether EPA actually had available on January 7, 2011 "final" Nebraska state budget numbers and for whatever reason did not want to reveal them in the NODA. What is known to NPPD is that if final budget numbers had appeared in the January 2011 NODA, NPPD still could not have commented thereon because the comment period for the proposed Transport Rule had long expired in 2010.

The drastic reductions in the final rules' NO_x allowances for NPPD's affected units were too sharp a deviation from those set out in the proposed Transport Rule. The final rule's state budget for Nebraska and NO_x allowances for individual units were not the logical outgrowth of the proposed rule. As a matter of fact, EPA would have been more forthright in the proposed Transport Rule by omitting any specific state budget and allowance numbers. Had this been done, NPPD would not have had a false sense of security that it could meet the NO_x reductions. Of course, had EPA chosen to do this, at some point after all the emissions data were gathered and all the changes were made to EPA's modeling protocols, the actual "final" proposed budgets and allowance numbers would have had to have been published for public comment. This was never done.

EPA has made some basic errors, either in its final CSAPR analysis or documentation, or in its budget allocations. These must be corrected. The errors are with respect to Nebraska EGU emissions analyzed for the CSAPR "remedy" case compared to EPA allocation budgets provided in the final rule. The EPA provides the Nebraska EGU SO_2 and NO_x emissions budgets, analyzed as part of its Remedy case, as 71,339 and 28, 211 tons/yr, respectively. In the final

[4] The January, 2011 NODA provided the following Nebraska budget numbers: NO_x – options 1 and 2 – 41931 tons. SO_2 – options 1 and 2 – 69450 tons. *See* Alternative Allocation Tables & Underlying Data, http://epa.gov/airtransport/pdfs/altallocationtablesdata.xls (Jan. 7, 2011).

rule, EPA lists Nebraska budget allocations for SO_2 and NO_x as 65,052 and 26,440 tons/yr respectively.

EPA's 2014 remedy case for Sheldon Station provided 6,499 tons for NO_x while the 2014 allocation for Sheldon Station is only 1,610 tons.[5]

NPPD is not the only party noting the startling differences between the proposed rule and the final CSAPR. The Office of Management and Budgets' report on interagency review concludes the following about the significant differences between EPA's proposed rule and the final rule:

> It is unclear if states and affected facilities will be prepared for a January 1, 2012 start date, especially given other changes that EPA is making in the draft final rule. For instance, modeling results used in the final rule are substantially different than those in the original August 2, 2010 Proposed Rule and subsequent notices ... the sheer magnitude of changes to the budgets of all of the states *results in a significantly different rule than originally proposed.* [6]

Emphasis added.

NPPD agrees with OMB's assessment.

In the preamble to the final rule, EPA acknowledges that it "improved" and "updated both steps of its significant contribution analysis." EPA states it also "updated" and "improved" its analysis for identifying any emissions within such states that constitutes a state's significant contribution to nonattainment or interference with maintenance. Not surprisingly, EPA finally concludes that "Therefore, the results of the analysis conducted for the final rule differ somewhat from the results of the analysis conducted for the proposal." 76 Fed. Reg. at p. 48213. NPPD strongly disagrees with EPA's choice of words "differs somewhat". As the above charts depict, changes in budgets and allowances for Nebraska and NPPD's EGUs are stark, drastic, and substantially different from those presented in the proposed Transport Rule.

EPA discloses that the projected 2012 base-case nationwide annual EGU NO_x emissions went from 3 million tons in the proposed rule to 2.1 million tons in the final rule.[7] This approximate 33% reduction is very substantial. EPA tries to mask the adverse consequences of the changes between the proposed and final rules by downplaying the significance of displaying state budgets and allowances in the proposed Transport Rule.

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[5] R. Morris Dec., attached hereto as Exhibit 2, ¶ 25, T.5.

[6] Summary of Interagency Working Comments on Draft Language under EO 12866 Interagency Review ("OMB Summary of Interagency Working Documents"), Document EPA-HQ-OAR-2009-0491-4133 at 11 (posted July 11, 2011).

[7] 76 Fed. Reg. at 48251.

> However, the budgets and allowance allocations provided for other states in the proposal *were included solely to illustrate* the result of applying EPA's proposed methodology for quantifying significant contribution to the data EPA proposed to use.[8]

Emphasis added.

EPA's inclusion of "illustrative" budgets and allowances in the proposed rule misled NPPD. The proposed Transport Rule did not advise that the budgets and allowances were solely for illustrative purposes. EPA should have initially published notice of its proposed methodology, prior to issuing the proposed Transport Rule. In this way, EPA's "improved" and "updated" analysis would have revealed actual, and not illustrative, proposed state budgets and allowances upon which interested parties could have commented.

This course of dealing by EPA does not comply with the Administrative Procedure Act's notice and comment requirements. *See, e.g.,* 5 U.S.C. § 553(b)(3). This provision has been interpreted to "[m]ean that an agency's notice must 'provide sufficient detail and rationale for the rule to permit interested parties to comment meaningfully.' " *Fertilizer Institute v. EPA*, 935 F.2d 1303, 1310-11 (D.C. Cir. 1991) (citation omitted). "If the final rule deviates too sharply from the proposal, affected parties will be deprived of notice and an opportunity to respond to the proposal." *Small Refiner Lead Phase-Down Task Force v. EPA,* 705 F.2d 506, 546-47 (D.C. Cir. 1983). NPPD was not given the opportunity to comment on CSAPR's unexpected and severe reductions in Nebraska's state budget and NPPD's "final" allowances for NO_x. For this reason alone, EPA should grant reconsideration and stay the effective date of the final rule as it applies to Nebraska and NPPD.

The January 1, 2012 Compliance Deadline Arbitrarily Discriminates Against Nebraska And NPPD

CSAPR sets a January 1, 2012 deadline for compliance, a mere five months after the final rule was published. EPA arbitrarily determined that utilities in non-CAIR states like Nebraska had sufficient time to comply with the required emissions reductions.[9] Such a short time period for compliance is in sharp contrast to the time EPA permitted utilities to comply with similar rule-makings. Affected parties were given 4.5 years to comply with the NO_x SIP Call, 63 Fed. Reg. 57356 (October 27, 1998) and 3.5 years to comply with the CAIR requirements. 70 Fed. Reg. 25162.

NPPD cannot install any control equipment within the allotted 5 month time period. EPA speculates in the final rule how utilities like NPPD could possibly meet the January 1, 2012 deadline. EPA assumes that facilities with stringent reduction requirements like NPPD could control sulfur dioxide (SO_2) by installing flue gas desulfurization equipment and control NO_x by installing selective catalytic reduction or selective non-catalytic reduction equipment. NPPD

[8] 76 Fed. Reg. at 48214.

[9] This portion of NPPD's discussion assumes, *arguendo,* that the state budgets and unit allocations in the final rule are lawful.

believes that it would take at least four to five years to approve, plan for, finance, obtain permitting and install such equipment. NPPD estimates that for Gentleman Station alone, capital costs for FDGs and SCRs would approximate $1.5 billion. T. Kent Dec. pp. 5-6, ¶ 16. Similar control technologies at Sheldon Station would have capital costs of about $300 million. T. Kent Dec., pp. 5-6, ¶ 16. EPA estimates that it takes 27 months to install an FDG and 21 months to install an SCR.[10] EPA's own time estimates would take NPPD far beyond the January 1, 2012 deadline.[11]

If the January 1, 2012 deadline remains, it appears that NPPD's only compliance path will require the curtailment of generation at its affected units. T. Kent Dec. pp. 4-5, ¶ 12. NPPD believes that the Clean Air Act generally requires and contemplates that cost-effective and technically feasible control technology should be used to reduce emissions. It's not the purpose of the EPA's regulations to effectively require utilities like NPPD to substantially curtail generation or to shut down plants. Yet, this is what CSAPR does. The final rule's truncated compliance date deprives NPPD from even attempting to install long-term and effective control equipment. T. Kent Dec. p. 5, ¶ 15.

EPA apparently agrees with NPPD that CSAPR compliance should not require utilities to shut down plants or curtail operations. In a September 11, 2011 letter from the Deputy Administrator of the EPA to David Campbell, CEO of Luminant (attached hereto as Exhibit 3), the Deputy Administrator noted that Luminant had announced it would idle certain of its coal-fired units as a means to achieve the pollution reductions required by CSAPR. The Deputy Administrator opines that under CSAPR, "[c]ost-effective reductions are possible without disruptions in operations. ... We will share with you data that illustrates how Texas and Luminant can comply with CSAPR cost-effectively while keeping levels of lignite coal use near current levels, thus avoiding the need to idle plants or shut down mines in response to the requirements of the rule." Deputy Administrator letter, Ex. 3.

Like Luminant, NPPD was not granted enough allowances to allow it to effectively operate its plants. Based on historic emissions, NPPD's nitrogen oxide allocation is approximately 11,000 tons short of the allowances it would need to operate in 2012 and 2013. NPPD received approximately 50% of the allowances it would need to operate in those years. T. Kent Dec. p. 5, ¶ 13.

The EPA should not have arbitrarily and capriciously discriminated against Nebraska, a non-CAIR state included within CSAPR. Utilities in Nebraska were not given a 3½ year lead time like utilities in CAIR states. Instead, Nebraska utilities like NPPD were given the task of complying with CSAPR within 5 months. Under these circumstances, EPA should immediately stay the effective date of CSAPR with respect to Nebraska and NPPD and initiate a reconsideration of the final rule.

[10] 75 Fed. Reg. 45210 at 45281 (Aug. 2, 2010).

[11] Industry experience indicates that it takes about 40 to 60 months for scrubbers and 32 to 46 months for SCRs. T. Kent Dec. p. 4, ¶ 11.

CSAPR's Emission Reduction Requirements Do Not Comply With The Clean Air Act

Section 110 of the Clean Air Act requires a state implementation plan to contain provisions "prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollution in amounts which will – (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard . . . ." 42 U.S.C. § 7410(a)(2)(D)(i)(I). The national ambient air quality standard ("NAAQS") for the 24-hour $PM_{2.5}$ was lowered from 65 to 35 ug/m^3 in 2006. *See* 75 Fed. Reg. 45210 at 45219. EPA's modeling and contribution analysis for CSAPR found that electric generating units and non-electric generating unit sources in Nebraska combined to contribute 0.52 ug/m^3 and 0.43 ug/m^3 and thus interfered with a downwind maintenance at two sites located at Milwaukee, Wisconsin. 76 Fed. Reg. at 48242-44. EPA used a version of the CAMx air quality model for the analysis of contributions in the proposed Transport Rule. The final rule used a new version of CAMx version 5.30. 76 Fed. Reg. at 48229.

As noted above, in finding that the State of Nebraska's emissions exceeded the CSAPR 0.35 ug/m^3 significance threshold for 24-hour $PM_{2.5}$, all emissions from EGUs and non-EGUs alike were aggregated to reach such conclusion. 76 Fed. Reg. at 48225-227. However, non-EGU emissions are not reduced at all by CSAPR. Insofar as NO_x emissions are concerned, the electric generating units in Nebraska only contribute a small percentage of the NO_x emissions for Nebraska. The following chart summarizes the percentage contribution of EGU NO_x emissions in Nebraska:[12]

	NO_X Non-EGU	Nebraska EGU	Total	% EGU
2005 Base case	211,288	52,426	263,714	20%
2012 Base case	153,391	44,496	197,877	22%
2014 Base case	141,361	45,047	186,408	24%
2014 Remedy	141,360	28,211	169,571	17%

EPA's attempt to comply with § 110(a)(2)(D)(i)(I) of the Clean Air Act fails. EPA's attempt to prohibit "any EGU source" from contributing significantly to nonattainment or interference with maintenance fails to prohibit or affect 80% of the NO_x emissions from Nebraska contributed by non-EGU sources. EPA also failed to address non-EGU sources in other CSAPR states. The Clean Air Act requires a state SIP or a federal implementation plan to deal with any and all sources which contribute significantly to nonattainment or interference with maintenance in another state. CSAPR fails to do so.

EPA attempts to justify excluding non-EGU sources in the final rule as follows: "EPA has not included non-EGU sources in this final rulemaking. EPA remains convinced that timely

[12] See CSAPR Emissions Inventory Final Rule TSD at: http://www.epa.gov/airtransport/pdfs/EmissionsInventory.pdf (June 28, 2011).

promulgation and implementation of this rule is responsive to the Court's remand of CAIR." 76 Fed. Reg. at 48256. It is unknown whether EPA intends to suggest that it did not have time to include non-EGUs in CSAPR or that it was not required to include non-EGUs in CSAPR by the remand. In either case, EPA has failed to regulate the great majority of Nebraska NO_x emissions allegedly causing maintenance problems in Milwaukee.

EPA has regulated non-EGU sources for NO_x emissions in the past. In the NO_x SIP Call, 63 Fed. Reg. 57356 at 57378 (October 27, 1998), EPA dealt with prohibiting downwind NO_x emissions as required by § 7410(a)(2)(D)(i)(I) of the Clean Air Act. Unlike CSAPR, in the NO_x SIP Call the EPA concluded that states were in the best position to determine how to reduce NO_x emissions to prevent downwind states from suffering nonattainment or interference with maintenance. EPA in the NO_x SIP Call emphasized that the statutory language "any source or other type of emissions activity within the state" is interpreted to require that the SIP regulate "all sources of emissions to assure that the total amount of emissions generated within the state does not adversely affect downwind areas. By its terms, the phrase covers all emitters of any kind because every emitter – stationary, mobile, or area – may be considered a 'source or other type of emissions activity.' This interpretation is consistent with the legislative history of the phrase". 63 Fed. Reg. at 57378. Emphasis added. In the NO_x SIP Call, EPA reiterated its position that: "Thus, one state may choose to primarily achieve emissions reductions from stationary sources while another state may focus emission reductions from the mobile source sector. (62 FR 60328)." *Id.*

Later, in 2005, EPA attempted to deal with the downwind effects of NO_x from one state to another in the Clean Air Interstate Rule, 70 Fed. Reg. 25162 (May 12, 2005). While EPA admitted in CAIR that it had addressed NO_x reductions from certain non-EGU sources in the NO_x SIP Call, EPA decided not to so regulate non-EGUs in CAIR allegedly because EPA did not have reliable information on SO_2 emissions. 70 Fed. Reg. at 25214. However, EPA indicated that it had been working on improving emission information and cost control information for non-EGU boilers and turbines. *Id.*

In consequence of applying reductions solely on Nebraska utilities owning EGUs, the very purpose of the Clean Air Act's requirement to prohibit air pollution from one state to another is frustrated. EPA's analysis determined that Nebraska's contribution affected two of five monitoring receptors in Milwaukee, Wisconsin, specifically, monitor site numbers 550790010 and 550790026. 76 Fed Reg. at 48242-44. Because approximately 75-80% of Nebraska's NO_x emissions are not being affected by CSAPR, the Nebraska NO_x reductions required by CSAPR do not come close to alleviating interference with maintenance at the Milwaukee sites as hypothetically determined by EPA.[13] The CSAPR required controls on Nebraska EGU sources contribute approximately 1% of the reduction at the two monitored sites. The CSAPR required controls on Nebraska EGU sources, under CSAPR's 2014 remedy case, would only result in a 0.03 ug/m^3 reduction in the maximum contribution from all Nebraska emissions sources and pollutants. This reduction is more than an order of magnitude below the EPA significant 24-hour $PM_{2.5}$ significant contribution level of 0.35 ug/m3, which is itself only

[13] In the real world, the monitoring receptors in Milwaukee show that in the last three years (2008-10) the sites are in attainment, reading 32.43 and 32.80 ug/m^3. These are well below the 35 ug/m^3 NAAQS' requirement. http://www.epa.gov/airexplorer/

1% of 2006 PM 2.5 24-hour NAAQS of 35 ug/m^3. Thus, EPA is imposing enormous costs on Nebraska utilities and electric power customers to make a reduction in impact that is less than one tenth of one percent of the standard. [14] In addition, even if all the Nebraska EGUs were shut down, the EPA's projected 2012 maximum 24-hour $PM_{2.5}$ Design Values at the two Milwaukee monitors would still exceed the 24-hour $PM_{2.5}$ NAAQS.[15] Nebraska's contributions to Milwaukee are just not significant as required by 42 U.S.C. 7410(a)(2)(D)(i)(I).

The actual and more recent monitoring data in Milwaukee show that nothing need be done in Nebraska because the Milwaukee sites are currently meeting the $PM_{2.5}$ NAAQS. Yet the EPA's final rule attempts to fix a problem that doesn't now exist, in a way that doesn't work if there were a $PM_{2.5}$ problem in Milwaukee. It must be noted that EPA failed to reveal in the final rule the expected reduction in ug/m^3 of a state's $PM_{2.5}$ contribution monitoring state site if the required state reductions in emissions occurred. Since the goal of the CAA provision is to prohibit any source from contributing significantly to nonattainment or interference with maintenance in another state, EPA should have determined whether its "EGU only" plan actually did so. As it is, CSAPR does not comport with § 7410(a)(2)(D)(i)(I) of the CAA and is therefore not lawful.

EPA should allow reconsideration of CSAPR and seek to comply with the requirements of the Clean Air Act. EPA should grant a stay of CSAPR as it affects Nebraska and NPPD until judicial review is completed.

NPPD Will Suffer Irreparable HARM if CSAPR is Not Stayed

If CSAPR must be implemented beginning on January 1, 2012, NPPD will suffer irreparable harm. First, it is impossible for NPPD to install control technologies to comply with the emission limits of CSAPR by January 1, 2012. T. Kent Dec. p. 3, ¶ 7, 12. CSAPR reductions would require the installation of more reliable, effective and cost-efficient control technologies. NPPD does not have scrubbers, selective catalytic reduction or selective non-catalytic reduction equipment installed at its coal-fired EGUs. According to EPA's own estimates, it takes 27 months to install scrubbers, and 21 months to install selective catalytic reduction equipment. 75 Fed. Reg. at 45281. Industry experience suggests installation of this equipment will take almost twice as long as EPA's estimates. T. Kent Dec. p. 4, ¶ 11. Regardless, emissions limits cannot be achieved through control technology in the short five-month timeframe provided by EPA in the final rule.

Under these circumstances, NPPD is faced with difficult choices, each of which would cause NPPD (and the general public) irreparable harm. First, NPPD will likely have to curtail electric generation at some of its coal-fired generation plants. T. Kent Dec. p. 5, ¶ 12. NPPD's coal-fired units are NPPD's lowest-cost thermal generation source and account for approximately 57 percent of NPPD's energy supply. T. Kent Dec. p. 6, ¶ 17. Curtailing generation at these

[14] *See* the Declaration of Ralph Morris, whose firm and he led the development of the Comprehensive Air-Quality Model with extensions (CAMx) used by EPA in CSAPR. His Declaration explains in detail the basis for the following conclusion: "Thus the CSAPR controls on Nebraska sources have no effect on PM 2.5 attainment at the two Milwaukee monitoring sites." R. Morris Dec. ¶ 23.

[15] R. Morris Dec. ¶ 24.

plants could have grim results: job losses of NPPD employees, rate increases for NPPD customers and harm to the local economy. *Id.*

CSAPR requires NPPD's Sheldon Station Units 1 and 2 to reduce about 80% of its NOx emissions from historical operation levels at Sheldon Station. Sheldon Station employs approximately 100 employees who have an average annual income of approximately $70,000 per year plus benefits. T. Kent Dec. p. 3, ¶ 8. The final rule threatens the future operation of Sheldon Station, which in turn, leads to the elimination of good paying jobs. Additionally, a premature closure of Sheldon Station would cause a stranded investment of over $36 million for recently installed equipment at the plant. *Id.* Unrecoverable economic loss can amount to irreparable harm. *See Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 220-21 (1994) (Scalia, J., concurring) ("[C]omplying with a regulation later held invalid almost *always* produces the irreparable harm of nonrecoverable compliance costs."); *Armour & Co. v. Freeman*, 304 F.2d 404, 406 (D.C. Cir. 1962) ("loss of profits which could never be recaptured" is irreparable harm).

There is another type of unrecovered cost which NPPD will suffer as early as 2012. NPPD estimates that its annual operating costs will increase approximately $6 million in 2012 as a direct result of the final rule. There are no investor-owned electric utilities providing retail service in Nebraska. Like other electric utilities operating in Nebraska, the cost imposed by the final rule on NPPD will have to be paid solely from rate increases on NPPD's wholesale and retail customers. T. Kent Dec. p. 5, ¶ 14.

If NPPD ultimately concludes that the only way to achieve long-term compliance with CSAPR is to install scrubbers and SCRs, the capital cost of such installation would cause great economic harm to NPPD and its rate-payers. The current estimated capital cost for installing scrubbers and SCRs at Gentleman Station is $1.5 billion. The capital cost for similar pollution control equipment at Sheldon Station is estimated to be approximately $300 million. It is estimated that rate increases of around 25% would likely be necessary to cover the capital cost caused by CSAPR. T. Kent Dec. pp. 5-6, ¶ 16.

If NPPD does not curtail production and cannot comply with CSAPR, it will be subject to harsh fines. CSAPR dictates a maximum civil penalty of an inflation-adjusted $37,500 per day per violation. 76 Fed. Reg. at 48297; 42 U.S.C. 7413(b). The preamble to CSAPR indicates that a "violation" is one ton per year over the unit's emission budget, multiplied by the length of the "control period." 76 Fed. Reg. at 48297. Because NPPD is subject to an annual NOx limit and an annual SO_2 limit, the control period for both parameters would be 365 days. Therefore, the current maximum penalty per ton per violation that could be assessed on NPPD would be $37,500 multiplied by 365 days, or approximately $13.7 million per ton per year. As noted above, NPPD is 11,000 tons per year short of NO_x allowances and 5,000 tons per year short on SO_2 allowances. Assuming the worst and unlikely case where NPPD could not comply with CSAPR for one year, NPPD could be subject to $219,000,000,000 (16,000 excess tons x $13.7 million per ton per year) in civil penalties.

NPPD could be subject to other penalties under CSAPR. CSAPR requires each source to hold enough allowances to cover its emissions in the control period. 76 Fed. Reg. at 48294-95. In addition to requiring covered states to hold allowances sufficient to cover their emissions,

EPA adopted assurance provisions to ensure that state emissions stay below the state assurance level. *Id.*

Beginning in 2012, each state for each trading program is prohibited from exceeding its budget plus the variability limit for nitrogen oxides and sulfur dioxide. *Id.* According to the final rule, there will be an assurance penalty borne by the owners and operators which will be based upon the amount by which the total emissions for the units in the group exceed the common Designated Representative share of the state assurance level as a percentage of the total calculated for all such groups of sources and units in the State of Nebraska. *Id.* Therefore, for any emissions identified by EPA as being over Nebraska's assurance level, an owner like NPPD must submit a total of three allowances per ton of shortfall. One allowance is for the standard compliance requirement for emitting under the program and two allowances for the assurance provision penalty. *See id.*; EPA's Assurance Penalty Level Analysis Final Rule TSD, at p. 2 (June 2011). The surrendered allowances must be submitted for the control period in the year immediately following the year when the excess emissions occurred. *Id.* at 48296.[16, 17]

Curtailing production at the low-cost, coal-fired plants could have major economic impacts on NPPD and will cause NPPD irreparable harm. First, curtailment of utility service and resulting loss of electric service constitutes an irreparable injury. *Consol. Edison Co. of N.Y., Inc. v. Fed. Power Comm'n.*, 511 F.2d 372, 379-81 (D.C. Cir. 1974). Economic harm is also irreparable if it will "cause extreme hardship to the business, or even threaten destruction of the business." *Toxco Inc. v. Chu*, 724 F. Supp. 2d 16, 31-32 (D.D.C. 2010). Here, the magnitude of economic losses is quantifiable, and demonstrates the likelihood of economic losses that are definite, certain, and grave. In fact, the "worst case scenario" for penalties alone could put NPPD out of business, also an irreparable harm. *Wash. Metro. Area Transit Comm'n. v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). Additionally, NPPD's economic harm will certainly affect rate-payers. Rate hikes of approximately 25 percent would be necessary just to offset the capital costs for control technologies at Gentleman and Sheldon Stations. T. Kent Dec. pp. 5-6, ¶ 16. The effect of CSAPR on rate-payers also constitutes irreparable harm. *Long Island R.R. Co. v. Int'l Ass'n of Machinists & Aerospace Makers*, 874 F.2d 901, 910 (2d Cir. 1989) ("In making the determination of irreparable harm, both harm to the parties and to the public may be considered.").

NPPD, the State of Nebraska, job-holders and rate-payers should not be subjected to these harms. This is particularly so where the monitor receptors in Milwaukee are now attaining the 24-hour $PM_{2.5}$ standard.

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[16] The above discussed 2-for-1 penalty level is a significant change from the level initially set out in the proposed Transport Rule. In this proposed rule, one allowance was to be surrendered for each ton of emissions over the state assurance level. 75 Fed. Reg. at 45314.

[17] The cost and availability of allowances remain uncertain. The first NO_x allowances sold for $3,750.00 per ton, and group 1 SO_2 allowances, which were projected to cost more than group 2 allowances, sold for $2,600.00 per ton. *Environmental Finance, First Trades Complete in Replacement* SO_2 and NO_x *Market* (September 5, 2011), available at http://www.environmental-finance.com/news/view/1953#.Tm94f-CiXZ0. These amounts are approximately four times higher than EPA's estimates.

NPPD Has Shown a Substantial Likelihood of Success on the Merits

NPPD can show a substantial indication of probable success on the merits of its case. First, the January 1, 2012 compliance deadline arbitrarily discriminates against the non-CAIR state of Nebraska and NPPD and ensures that NPPD has no chance of complying without curtailing operations or, possibly, shutting down EGUs.

EPA substantially changed the proposed rule, in a way that was not a logical outgrowth of the proposed rule. NPPD was not provided notice and a significant opportunity to comment on the drastically reduced NO_x allowances for NPPD in violation of the Administrative Procedure Act. *See* 5 U.S.C. § 553(b)(3); *Fertilizer Inst. v. EPA*, 935 F.2d 1303, 1307-1309 (D.C. Cir. 1991). Additionally, EPA's designation of January 1, 2012, as the compliance deadline for states like Nebraska that was not a CAIR state was arbitrary and capricious.

EPA's CSAPR does not meet the requirements or purpose of the Clean Air Act, as it does not impose limits on "any source" that contributes to downwind non-attainment per Section 110(a)(2)(D)(i)(I) of the CAA. Nebraska's largest contributors of NO_x emissions are non-EGUs which are not regulated under the final rule. For these reasons, NPPD has made a significant showing of the likelihood of success on the merits.

Grant of a Stay Is Consistent with the Public Interest

Granting a stay of the effective date of CSAPR is consistent with the public interest. A stay, if sufficiently long, would allow NPPD time to determine a compliance plan that may not require the curtailment of operations or the shut down of units, thus avoiding economic harm to rate-payers and job-holders in Nebraska. Further, a stay would allow time for EPA to correct its errors and to reconsider the final rule's application to Nebraska EGUs, which have almost no effect on Milwaukee monitoring sites.

No Other Party Will Be Harmed by Grant of a Stay

No other parties will be harmed if EPA stays the effective date of CSAPR. A stay would greatly lessen the probability of the loss of jobs and CSAPR related costs and rate increases. NPPD and the other Nebraska EGUs contribute only a small percentage of the NO_x emissions from the state of Nebraska – approximately 20%. The other 80% of the NO_x emissions are derived from non-EGU sources in Nebraska such as mobile sources. 76 Fed. Reg. 48256. Because the vast majority of NO_x emissions come from Nebraska sources that are not regulated by CSAPR, the EGU emissions being contributed to the Milwaukee, Wisconsin monitoring sites will remain largely unchanged by a stay of CSAPR.

Current data from the monitoring receptors at the Milwaukee, Wisconsin sites indicate that they are now in attainment. *See* http://www.epa.gov/airexplorer. Therefore, maintenance of the *status quo* will not harm the air quality in Milwaukee around the monitoring sites, to which NPPD and the State of Nebraska allegedly make significant contributions.

For all of these reasons and as justice requires, NPPD requests EPA grant a stay of the compliance deadline of CSAPR pursuant to 5 U.S.C. Section 705.

EPA Has Broad Discretion to Grant a Stay

EPA has broad authority to grant a stay under Section 705 of the Administrative Procedure Act, which provides that when "justice so requires," an agency may postpone the effective date of an action pending judicial review.[18] 5 U.S.C. § 705. EPA has utilized its broad powers under Section 705 to grant stays in a variety of circumstances. For example, EPA granted a stay when a rule had negative impacts within an industry that EPA did not expect when promulgating the rule;[19] when a rule required compliance expenditures that upon reconsideration of the rule may not continue to be required and would not have been reversible;[20] and when the final rule changed did not provide a sufficient opportunity for notice and comment.[21] Here, justice requires grant of a stay based on each of these factors.

EPA has stated that Section 705 requires EPA to grant a stay if it determines that "justice requires postponing the action, that the action has not gone into effect, and that litigation is pending." *See* 76 Fed. Reg. 28662, at 28663 (May 18, 2011). EPA can grant a stay without "concurring that the criteria for a stay (such as likelihood of irreparable harm or likelihood that these parties will ultimately prevail should the rule be litigated) are met." 61 Fed. Reg. 28508, at 28509 (June 5, 1996).

CSAPR Not Yet in Effect

The effective date of CSAPR is October 7, 2011. Compliance with the first phase of CSAPR begins on January 1, 2012, for states with annual NOx and SO_2 emission budgets, and May 1, 2012, for states with ozone season NOx emission budgets. 76 Fed. Reg. 48, 211 (August

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[18] In its entirety, Section 705 states:

> When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

[19] EPA granted a stay when "[i]ndustry sources .... indicated to the Agency that forcing compliance with [the rule] ... will have a negative impact within the industry" and EPA did not "anticipate adverse effects on the public as a result of issuing" the stay. 56 Fed. Reg. 43874, at 43876 (Sept. 5, 1991).

[20] EPA granted a stay when it was in the process of "amending the rule in ways that would increase compliance flexibility and possibly reduce certain regulatory requirements" and failure to grant a stay may require "compliance expenditures based on [the final rule] ... which may prove unnecessary in light of the projected amendments." 61 Fed. Reg. 28508 (June 5, 1996).

[21] EPA granted a stay when petitions for judicial review of a rule had been filed, and EPA intended to reconsider issues because "the public did not have a sufficient opportunity to comment on certain revisions EPA made to the proposed rules" and "thousands of facilities across multiple, diverse industries will need to begin to make major compliance investments soon, in light of the pressing compliance deadlines." Such investments "may not be reversible if the standards are in fact revised ..." 76 Fed. Reg. at 28663.

8, 2011). CSAPR will become effective in Nebraska on January 1, 2012, as Nebraska is subject to annual NOx and SO_2 emission budgets. 76 Fed. Reg. at 48261-62. Thus, the rule is not yet in effect.

Litigation is Pending Challenging CSAPR

CSAPR is the source of numerous Petitions for Review, Motions for Reconsideration, Motions for Stay and Motions for Expedited Review. To date, the states of Alabama Florida, Kansas, Nebraska, Oklahoma, South Carolina, Texas, Wisconsin and Virginia have brought some challenge to CSAPR, as have power generating facilities and industry group such as EME Homer City, GenOn, Luminant, Westar Energy, the Kansas City Board of Public Utilities and the National Mining Association. *See i.e. Kansas v. EPA*, Petition for Review, No. 11-1329 (D.C. Cir. September 19, 2011); *Nebraska , Alabama, Florida, Oklahoma, South Carolina, Texas & Virginia v. EPA*, Petition for Review, No. 11-1340 (D.C. Cir. Sept. 23, 2011); *Nebraska and Florida v. EPA*, Motion for Stay, No. 11-1340 (D.C. Cir. Sept. 23, 2011); *Texas v. EPA*, Petition for Review, No. 11-1338 (September 21, 2011); *GenOn Energy v. EPA*, Petition for Review and Motion for Stay or, in the Alternative Expedited Review, No. 11-1323 (D.C. Cir. September 19, 2011); *EME Homer City Generation v. EPA*, Motion for Stay or, in the Alternative, Expedited Review, No. 11-1302 (D.C. Cir. August 25, 2011); *Westar Energy & Kansas City Bd. of Pub. Utilities v. EPA*, Petition for Review, No. 11-1333 (D.C. Cir. September 19, 2011); *Luminant Generation Co. v. EPA*, Motion for Stay, No. 11-1315 (D.C. Cir. September 15, 2011). Several other potential petitioners have indicated they will challenge the rule. Because of the uncertainties created by the litigation surrounding CSAPR, EPA should grant a stay of CSAPR until the judicial reviews are resolved.

As discussed above, NPPD was given no notice and no opportunity to comment on the changes in the final rule. T. Kent Dec. p. 2, ¶ 6. The final rule was based on updated modeling, inputs, and data on which NPPD was not given an opportunity to review or comment. 76 Fed. Reg. 48, 213. EPA side-stepped the notice and comment process, and did a "surprise switcheroo" in violation of the Administrative Procedure Act. *Envt'l. Integrity Project, v. EPA*, 425 F.3d 992, 996 (D.C. Cir. 2005) (stating that the APA's notice requirements "are designed (1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review. ... [The D.C. Circuit has] refused to allow agencies to use the rulemaking process to pull a surprise switcheroo on regulated entities" in violation of the APA.).

For these reasons and those discussed above, justice requires EPA grant a stay of the compliance deadline of CSAPR because NPPD did not have notice and a significant opportunity to provide comments on the materially changed rule.

Justice Requires the Grant of a Stay because the Compliance Date Requires Upgrades that May Not Be Necessary and Will Not Be Reversible

NPPD is working diligently and in good faith to respond to the mandates of CSAPR. However, it is a burdensome task to obtain compliance to a rule that is being widely challenged

and is the source of numerous requests for stay, judicial reviews and reconsideration. In order to reduce emissions to work toward compliance with CSAPR, NPPD will expedite a $39.2 million project to install low NOx burners and other related equipment at its Gerald Gentleman Unit 2, modify the coal combustion equipment at Gerald Gentleman Unit 1, and install boiler-cleaning equipment at Sheldon Station Unit 2. T. Kent Dec. p. 3, ¶ 7.[22] This is a very costly undertaking that will take a toll on both NPPD and its rate-payers, and should not be undertaken until EPA has reconsidered CSAPR or judicial review has concluded, whichever is later.

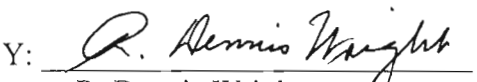
Requiring such large economic expenditures for control measures to comply with a rule that may be modified upon the resolution of the pending judicial reviews is irresponsible and will cause NPPD and its rate-payers irreparable harm. *Armour & Co. v. Freeman*, 304 F.2d 404, 406 (D.C. Cir. 1962) (stating the failure to grant a stay while a regulation was being reviewed would cause the petitioner "irreparable injury ... from the enforcement of the regulation" because the regulation being challenged would leave petitioner with only two options: "damage its good name" or "[w]ithdrawal from the interstate market ... [which] would of course cause loss of profits which could never be recaptured.").

Relief Requested

For the above reasons, the Nebraska Public Power District respectfully requests that EPA grant partial reconsideration to the extent CSAPR affects Nebraska and the Nebraska Public Power District and to immediately stay CSAPR's effectiveness as to Nebraska and the Nebraska Public Power District until EPA's reconsideration is concluded or the judicial reviews are concluded, whichever is longer.

Respectfully submitted,

STINSON MORRISON HECKER LLP

BY: 

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ATTORNEYS FOR THE PETITIONER

[22] This amount is in addition to the capital costs, operating costs, and potential penalty costs already discussed herein.

EXHIBIT 1

DECLARATION OF THOMAS J. KENT

DECLARATION OF THOMAS J. KENT

I, Thomas J. Kent, do hereby declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the Vice President & Chief Operating Officer for Nebraska Public Power District of Columbus, Nebraska ("NPPD"). NPPD is a public corporation and political subdivision of the State of Nebraska. NPPD provides firm power supply at wholesale and retail to approximately 385,000 meters throughout much of Nebraska, excluding Omaha, Lincoln and certain other areas. NPPD is governed by an 11-member Board of Directors elected by the citizens in its chartered territory. My responsibilities at NPPD include oversight of NPPD's non-nuclear generation resources and its transmission and distribution operations. The generation facilities include Gerald Gentleman Station Units 1 and 2 and Sheldon Station Units 1 and 2. Both stations use low sulfur coal from Wyoming's Power River Basin as their primary fuel. NPPD also generates electricity from natural gas or oil-fueled generating units that primarily are intended to meet intermediate and peak electricity needs. These units are Beatrice Station, Canaday Station, Hallam, Hebron and McCook.

2. I have personal knowledge of the facts referred to herein, except where stated on information and belief. If called upon to testify, I could and would testify truthfully thereto.

3. The purpose of this declaration is to explain the irreparable harm that will result to NPPD, our employees and our customers, if the rule issued by the U.S. Environmental Protection Agency ("EPA") entitled, "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"), is permitted to take effect, and my belief that reconsideration of the Transport Rule is necessary to prevent significant harm.

4. The Transport Rule establishes allowances for nitrogen oxide and sulfur dioxide emissions for Gerald Gentleman Station Units 1 and 2, Sheldon Station Units 1 and 2, and the units at Beatrice, Canaday, Hallam, Hebron and McCook. Neither the state nor any of these NPPD power plants, or any other electric generating units in Nebraska, were subject to the predecessor rule of the Transport Rule, known as the Clean Air Interstate Rule ("CAIR").

5. NPPD is subject to numerous environmental regulatory requirements at the state and federal level. Like other electric utilities, NPPD is preparing for new federal regulations that already have been issued by EPA or are expected to be issued in the coming months and years. Examples of these issued and upcoming rules and regulations include: the rules regarding the treatment of coal combustion residuals, non-hazardous secondary materials, the Transport Rule, new Clean Air Act ("CAA") greenhouse gas reporting requirements and substantive rules, new maximum achievable control technology ("MACT") requirements under the CAA, and Clean Water Act § 316(b) regulations for cooling water intake structures, among others.

Effect of Transport Rule

6. As previously stated, neither the State of Nebraska nor NPPD were subject to the CAIR, the predecessor of the Transport Rule. Furthermore, EPA's initial proposal for the Transport Rule specified the following levels of emission allowances for NPPD[1]: (1) nitrogen oxide allowances, 19,756 tons per year; (2) sulfur dioxide allowances, 36,010 tons per year. NPPD submitted written comments to EPA on the proposed rule in October 2010. However, without any notice to NPPD or opportunity to comment, the final Transport Rule established significantly lower allowances as follows: (1) nitrogen oxide allowances, 11,285 tons per year; (2) sulfur dioxide allowances, 32,215 tons per year. These allowances are 43% and 11% less in

[1] Proposed rule allocations are based on the Option 2 alternative allocation scenario that was proposed in the January 7, 2011 Notice of Data Availability, 76 Fed. Reg. 1109.

total nitrogen oxide and sulfur dioxide allowances, respectively, than the allowances specified for NPPD in the proposed rule.

7. Unlike similar rule-makings, EPA set a short, unreasonable and unachievable January 1, 2012 deadline for compliance. Such an abbreviated time period is not in keeping with the extended time EPA permitted utilities to comply with other similar rule-makings. It is impossible to install control technologies in time to meet the emissions reductions required by this rule. Affected parties were given 4.5 years to comply with the NO_x SIP Call, 63 Fed. Reg. 57356 (October 27, 1998) and 3.5 years to comply with the CAIR requirements, 70 Fed. Reg. 25162 (May 12, 2005). The accelerated timing and significantly reduced emission allocations mandated by the Transport Rule do not permit the lead time needed to respond to this sudden regulatory shift – by January 1, 2012. NPPD is working diligently and in good faith to respond to the mandates in the Transport Rule. The immediate impact of the Transport Rule includes a $39.2 million expedited project to install low NO_x burners and other related equipment at Gerald Gentleman Unit 2 and modification to coal combustion equipment at Gerald Gentleman Unit 1, installation of boiler cleaning equipment at Sheldon Station Unit 2 to allow better utilization of NO_x reduction equipment previously installed on this unit, increased use of natural gas fuel which is more expensive than the coal it replaces, and/or purchase of additional emission allowances. These projects can not all be accomplished by the January 1, 2012 compliance date. Even if these projects could be implemented by the January 1, 2012 compliance date, NPPD still could not comply with the Transport Rule's emission reductions.

8. The proposed Transport Rule required an almost 40% reduction in NO_x and the final Transport Rule an almost 80% reduction at Sheldon Station Units 1 and 2. Sheldon Station Units 1 and 2 employs approximately 100 individuals with an average annual income of approximately $70,000 plus benefits. The final rule threatens the future operation of the facility and could lead

to elimination of jobs, premature closure and a stranded investment of over $36 million for recently installed equipment and facilities involving water use, treatment and disposal which will be paid off over time.

9. NPPD could not have predicted the impacts that would flow from EPA's final rule because the proposed rule's state- and unit-level emission allowance allocations were much more attainable for NPPD. If EPA had retained the allowances specified for NPPD in the proposed Transport Rule, NPPD likely would have been able to comply with the rule.

10. NPPD could not have predicted the major shift in its emission allowance approach EPA adopted in the Final Rule. EPA's approach to unit-level allowances in the final Transport Rule has given NPPD's facilities significantly fewer allowances than they would need to operate using current emission control equipment. Given sufficient time, achieving these reductions over the long-term would likely require the installation of more reliable, effective, and cost-efficient major control technology equipment, including flue gas desulfurization equipment ("FGDs" or "scrubbers"), selective catalytic reduction ("SCR") or selective non-catalytic reduction ("SNCR") equipment.

11. However, the installation of such control equipment cannot be completed in time to reduce emissions when the Transport Rule is scheduled to take effect in 2012. EPA itself estimates that it takes 27 months to install a scrubber and 21 months to install an SCR. *see* 75 Fed. Reg. at 45,281. Industry experience establishes that it can actually take much longer—as long as 40 to 60 months for scrubbers and 32 to 46 months from SCRs. However, EPA gave NPPD just five months from the time the rule became final, and actual emission allowances for NPPD's facilities were known, to bring the units into compliance on January 1, 2012.

12. Because there is not sufficient time to install the control equipment discussed in paragraphs 7 and 10 above to reduce emissions beginning on January 1, 2012, NPPD will be

forced to pursue other alternatives. These alternatives include curtailing operations at its lowest cost power plants, and potentially paying millions of dollars to purchase emission allowances, if such allowances are even available.

13. Compared to 2009 actual fuel usage, NPPD's sulfur dioxide allocation is approximately 5,000 tons short of the allowances it would need to fully operate in 2012 and 2013, as it only received approximately 86% of the allowances it has historically used. Likewise, based on historic emissions, NPPD's nitrogen oxide allocation is approximately 11,000 tons short of the allowances it would need to operate in 2012 and 2013, as it received approximately 50% of the allowances it would need to operate in those years.

14. NPPD is in the process of evaluating the potential financial and other impacts caused by the Transport Rule. In addition to capital costs identified above, NPPD estimates its annual operating costs will increase approximately $6 million in 2012 as a direct result of the Transport Rule. There are no investor-owned electric utilities providing retail electric service in Nebraska. Like all other electric utilities operating in Nebraska, the costs imposed by the Transport Rule on NPPD will have to be paid solely from rate increases on NPPD's wholesale and retail customers.

15. It is my understanding that the Clean Air Act generally requires and contemplates that cost-effective and technically feasible control technology should be used to reduce emissions. I don't believe that the purpose of EPA regulations is to effectively require utilities to substantially curtail generation or to shut down plants. Yet this is what I believe the Transport Rule does. The Transport Rule's truncated compliance date deprive NPPD from even attempting to install long-term and effective control equipment.

16. As noted above, industry experience indicates that up to five years are necessary to install scrubbers and three to four years to install SCRs. If NPPD had the time (which the Transport Rule does not allow) and decided to install scrubbers for SO_2 at Gentleman Station and

SCRs for NO_x reductions, the current estimated capital cost is $1.5 billion. The capital cost for similar pollution control equipment at Sheldon Station is estimated to be approximately $300 million. Such costs would substantially and adversely affect NPPD's ratepayers and the economy of Nebraska. I estimate that rate increases of around 25% would likely be necessary. It is my opinion that such a rate increase would adversely affect Nebraska's ability to keep jobs and attract businesses with new jobs.

17. I also believe the general public would share in the harm that would flow from the Transport Rule taking effect. During the years 2006-2010, approximately 57% of NPPD's energy supply for its firm customers came from coal-fired generation which is its lowest cost thermal generation source. Thus, curtailment at NPPD's coal-fueled power plants could result in job losses, harm to the local economy, and adverse impacts on electricity prices.

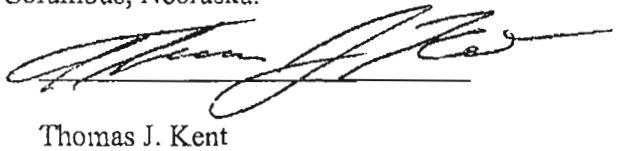
18. If NPPD's Gerald Gentleman Station and Sheldon Station are forced to curtail operations, the potential job losses, increase in electricity costs, and adverse impact on the state's economy will harm the communities and customers NPPD serves.

Need for a Stay of the Transport Rule

19. Reconsideration of the Transport Rule is necessary to prevent irreparable harm to NPPD which will have a direct and immediate negative impact on the ratepayers of the State of Nebraska who alone shoulder the burden of increased costs and obligations imposed upon Nebraska's public power industry.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

EXECUTED this 19th day of September, 2011 at Columbus, Nebraska.



Thomas J. Kent

EXHIBIT 2

DECLARATION OF RALPH MORRIS

DECLARATION OF RALPH MORRIS

I, Ralph Morris, do hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746 as follows:

I. QUALIFICATIONS

1. I have reviewed the final Cross-State Air Pollution Rule (CSAPR) and various technical information and data provided by EPA.

2. I am currently the Managing Principal of the Novato Office of ENVIRON International Corporation located at 773 San Marin Drive, Suite 2115, Novato, California 94998. ENVIRON is an approximately 1,300 person health and environmental consulting firm with offices throughout the U.S. as well as in Europe, Asia, Australia and South America. I am a recognized expert in air quality modeling, with particular emphasis on the development and application of advanced photochemical, particulate matter (PM), acid deposition and visibility models. This included leading the development of the Comprehensive Air-quality Model with extensions (CAMx) used by EPA in the proposed CATR and final CSAPR.

3. I have 31 years experience in air quality modeling and the development and application of advanced air quality models to address plume-scale, urban-scale, and regional-scale issues. I have written over 100 papers on the general area of air quality modeling and hundreds of reports on the subject. I received a B.A. and M.A. in Mathematics from the University of California and became an air quality consultant when I joined Systems Applications, Inc. (SAI) in 1979. While at SAI, I was lead developer of many of the ozone and particulate matter (PM) models used to address air quality issues during the 1980s and 1990s, including the Urban Airshed Model (UAM) that was the EPA-recommended model to address ozone issues in the 1990s:

    - Reactive Plume Model (RPM);
    - Regional Transport Model (RTM);
    - Version III of the RTM (RTM-III);
    - Urban Airshed Model (UAM); and
    - Version V of the Urban Airshed Model (UAM-V).

4. In 1994, after 15 years at SAI, I joined ENVIRON and have been one of the leaders in the development of the Comprehensive Air-quality Model with extensions (CAMx), a full-science photochemical grid model currently being used by states to address ozone attainment and fine particulate/visibility issues. CAMx was the model used by the U.S. Environmental Protection Agency (EPA) in the proposed Clean Air Transport Rule (CATR) and final Cross-State Air Pollution Rule (CSAPR) to determine which upwind

states contributed significantly to downwind nonattainment of the ozone and $PM_{2.5}$ NAAQS and are therefore subject to the CATR/CSAPR emission control requirements. In CATR/CSAPR, EPA used the CAMx Ozone Source Apportionment Technology (OSAT) and Particulate Source Apportionment Technology (PSAT) to determine a state's contribution to downwind nonattainment. I was one of the designers and developers of CAMx and OSAT/PSAT and likely have more experience in their application than any other person.

5. Because of my expertise in air quality modeling, I have been appointed to several expert panels and review committees, including:

    - Air Quality Modeling Subcommittee (AQMS) of the Science Advisory Board (SAB) that reviews EPA's Air Program;
    - EPA STAR Grant Review Panel that reviews proposals for EPA grants related to air issues;
    - Founding member of the CMAS External Advisory Committee (EAC) that oversees the Community Modeling and Analysis System (CMAS) that releases the CMAQ model;
    - Science Technology Modeling Peer Review Advisory Group (STMPRAG) for the South Coast Air Quality Management District (SCAQMD) that serves as a peer-review group for the Los Angles ozone and PM control plan development; and
    - Peer reviewer for and published in numerous peer-review Journals.

6. I have been performing regional particulate matter and ozone modeling for over 25 years. In the early 1980s I led the development of the Reactive Plume Model (RPM) and Regional Transport Model (RTM) and examined regional transport of ozone and PM in the eastern U.S. and Europe. In the late 1990s I was project manager of the EPA Five Cities UAM Study that demonstrated how photochemical grid modeling could be used for ozone State Implementation Plan (SIP) development and delivered UAM to EPA as a turn-key system that led to EPA designating UAM as the EPA-recommended model for ozone planning. In the 1990s I was the lead developer for Version V of the Urban Airshed Model (UAM-V) that was used in the Ozone Transport Assessment Group (OTAG) modeling. And in the 1990s I was one of the lead developers of the Comprehensive Air-quality Model with extensions (CAMx) that is currently being used in the U.S. to develop SIPs for ozone, $PM_{2.5}$ and visibility as well as the model used by EPA in the proposed CATR and final CSAPR.

7. On July 6, 2011, the U.S. Environmental Protection Agency (EPA) published the Cross-State Air Pollution Rule[1] that requires 27 states to reduce power plant NO_X and/or SO_2 emissions to reduce cross-state transport that contributes to ozone and/or $PM_{2.5}$ nonattainment or interferes with maintenance. CSAPR is a replacement to the 2005

1 http://www.epa.gov/airtransport/index.html

Clean Air Interstate Rule (CAIR). A December 2008 court ruling found flaws in the CAIR, but kept the CAIR control requirements in place while EPA developed a replacement to CAIR that resulted in CSAPR. The first phase of the emission reductions under CSAPR begins January 1, 2012 to address 24-hour $PM_{2.5}$ NAAQS. CSAPR finds that Nebraska interfered with maintenance and two Milwaukee, WI monitoring sites.

8. In the 2005 CAIR, Nebraska was not identified as contributing significantly to either ozone or $PM_{2.5}$ nonattainment so was not part of the CAIR emissions control program. Thus, Nebraska did not start to implement the SO_2 and/or NO_X control requirements in 2005 like some CAIR states' utilities.

9. EPA used the Comprehensive Air Quality Model with extensions (CAMx) with its Particulate Source Apportionment Technology (PSAT) to calculate the contributions of state's SO_2 and NO_X emissions to $PM_{2.5}$ Design Values at monitoring sites in the eastern U.S. CAMx was also used to calculate future year Average and Maximum $PM_{2.5}$ Design Values under 2012 base case, 2014 base case and 2014 Remedy case emission scenarios.

10. Nebraska Public Power District (NPPD) operates several electrical generating units (EGUs) in Nebraska that are subject to the CSAPR NO_X and SO_2 control requirements. NPPD asked me to analyze the technical basis of the CSAPR Nebraska significant contribution finding and estimate the benefits of the CSAPR controls on Nebraska sources for attaining the 24-hour $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS).

II. ANALYSIS

A. Nebraska Interference with Maintenance of the 24-Hour $PM_{2.5}$ NAAQS

11. The CSAPR 2012 CAMx/PSAT significant contribution modeling identified Nebraska as interfering with maintenance of the 24-hour $PM_{2.5}$ NAAQS at two monitoring sites in Milwaukee, Wisconsin. Table 1 displays the Nebraska contribution to the 2012 24-hour $PM_{2.5}$ Design Values (DVs) for five monitoring sites in Milwaukee, as well as the 2003-2007 observed and projected future year 24-hour $PM_{2.5}$ DVs from CSAPR. The Nebraska 2012 24-hour $PM_{2.5}$ contribution (0.52 and 0.43 $\mu g/m^3$) exceeds the 0.35 $\mu g/m^3$ CSAPR significance contribution threshold at two maintenance monitoring sites in Milwaukee (550790010 and 550790026). The Nebraska contribution to 24-hour $PM_{2.5}$ at the Milwaukee 550790099 monitoring site (0.46 $\mu g/m^3$) is also above the CSAPR significance threshold, but because this site is classified as an attainment monitoring site the contribution is not considered significant. At two other Milwaukee monitoring sites the Nebraska contribution is 30-35% below the significance contribution threshold.

12. Average and Maximum 24-hour $PM_{2.5}$ Design Values for the Milwaukee monitoring site were presented in CSAPR based on 2003-2007 observations as well as projected under the 2012 base case and 2014 base and Remedy case emission conditions and are shown in Table 1. Design Values are used to determine whether an area attains the $PM_{2.5}$ NAAQS

or not. The 24-hour $PM_{2.5}$ Design Value is defined as the 98th percentile daily average $PM_{2.5}$ concentrations averaged over three consecutive years. Thus, for the 5-year 2003-2007 period, there are three observed $PM_{2.5}$ Design Values corresponding to years 2003-2005, 2004-2006 and 2005-2007. CSAPR defined the Average and Maximum $PM_{2.5}$ Design Value as the, respectively, average and maximum of the three Design Values over the 2003-2007 5-year period. The Average and Maximum Design Values were projected to 2012 and 2014 using CAMx modeling results. CSAPR classified a monitoring site whose Average and Maximum projected 2012 base case Design Values both exceed the 24-hour $PM_{2.5}$ NAAQS as nonattainment monitors and classified monitoring sites whose Average Design Value was below the NAAQS but the Maximum Design Value was above the NAAQS as maintenance monitoring sites. This results in two of the Milwaukee monitoring sites being classified as attainment, two as maintenance and one as a nonattainment monitoring site.

Table 1. Nebraska (NE) contribution to 2012 24-hour $PM_{2.5}$ Design Values (DV) at Milwaukee monitoring sites and 2003-2007 observed Average (Avg) and Maximum (Max) 24-hour $PM_{2.5}$ DVs and projected AVG and Max DVs for 2012 base, 2014 base and 2014 Remedy emissions scenarios.

Site Number	550790010	550790026	550790043	550790059	550790099
County	Milwaukee	Milwaukee	Milwaukee	Milwaukee	Milwaukee
State	Wisconsin	Wisconsin	Wisconsin	Wisconsin	Wisconsin
Classification	Maintenance	Maintenance	Nonattainment	Attainment	Attainment
NE $PM_{2.5}$ Contribution	**0.528**	**0.431**	0.245	0.229	0.466
2003-2007 Avg DV	**38.6**	**37.3**	**39.9**	**35.5**	**37.7**
2003-2007 Max DV	**40.0**	**41.3**	**40.8**	**37.0**	**38.7**
2012 base case Avg DV	35.4	33.6	**36.2**	32.3	34.0
2012 base case Max DV	**36.7**	**37.2**	**37.1**	33.6	35.0
2014 base case Avg DV	34.0	32.3	34.5	30.4	32.5
2014 base case Max DV	35.4	**35.9**	35.4	31.7	33.8
2014 Remedy Avg DV	30.7	29.9	31.6	28.2	30.6
2014 Remedy Max DV	33.0	32.9	33.8	29.8	32.0
Bold/Shading indicates values that exceed the significant contribution threshold or the NAAQS					

B. Estimate of Nebraska $PM_{2.5}$ Contribution under 2014 Emission Remedy

13. The proposed CATR used an Air Quality Assessment Tool (AQAT) to estimate a state's $PM_{2.5}$ contributions and $PM_{2.5}$ Design Values at monitoring sites under various SO_2 and NO_X control scenarios (e.g., $500 per ton, $1,000 per ton, etc.). This was done to determine what level of control across all significantly contributing states would be needed to achieve attainment of the $PM_{2.5}$ NAAQS. The proposed CATR AQAT used

the CAMx/PSAT 2012 source apportionment results and assumed a linear change in the $PM_{2.5}$ components related to a state's sulfate contribution with a change in a state's SO_2 emission between the 2012 base case and the alternative emissions scenario. Similarly, the $PM_{2.5}$ components associated with a state's nitrate contribution was assumed to change linearly with a state's NO_X emissions.

14. In the final CSAPR, however, the AQAT was modified so that it only estimated changes in a state's sulfate contribution due to changes in a state's SO_2 emissions and introduced a Calibration Factor so that the state's SO_2 emissions to sulfate contribution relationship was no longer linear. This was done by performing a CAMx 2014 Calibration Run that corresponded to the $500 per ton scenario for NO_X emissions and applying the linear AQAT for the 2014 Calibration emissions scenario to estimate the $PM_{2.5}$ Design Value at each monitoring site. Calibration Factors were developed for each monitoring site to force the AQAT estimated $PM_{2.5}$ Design Values to match the projected $PM_{2.5}$ Design Values from the CAMx 2014 Calibration Run. These Calibration Factors were applied to all of the state's $PM_{2.5}$ incremental concentrations associated with sulfate. Since the final CSAPR adopted the $500 per ton emissions scenario for NO_X control, then the final CSAPR AQAT used the CAMx 2014 Calibration Run nitrate contributions from all states along with sum of the individual states' scaled sulfate component associated with state's SO_2 emissions to estimate 2014 $PM_{2.5}$ Design Values under various alternative SO_2 emissions scenarios.

15. Because the final CSAPR AQAT only estimated an individual state's incremental $PM_{2.5}$ contribution associated with its SO_2 emissions and used the CAMx 2014 Calibration Run nitrate contribution due to all states for the $500 per ton scenario, the individual $PM_{2.5}$ contribution due to a state's SO_2 and NO_X control for the various 2014 control scenarios was never presented in CSAPR. Consequently, EPA never knew what the effects of the CSAPR controls had on a state's $PM_{2.5}$ contribution to nonattainment/maintenance monitoring sites.

16. I estimated the Nebraska $PM_{2.5}$ contribution at the two Milwaukee monitoring sites where Nebraska was determined to have a significant contribution for the 2014 base case and the 2014 Remedy case emissions scenarios by using the final CSAPR AQAT approach for the sulfate $PM_{2.5}$ component and the proposed CATR linear AQAT for the nitrate $PM_{2.5}$ component associated with Nebraska's SO_2 and NO_X emissions, respectively.

17. There are three components of $PM_{2.5}$ that are associated with a state's sulfate contribution: sulfate (SO4), ammonium (NH4) and particle bound water (PBW). These three terms are combined into ammonium sulfate (AMMS) term. The final CSAPR scaled a state's AMMS contribution from the 2012 CAMx source apportionment simulation by the change in a state's SO_2 emissions for the alternative 2014 emission scenarios and 2012 base case and then applied a Calibration Factor from the CAMx 2014 Calibration Run.

18. The formula used by the final CSAPR AQAT to obtain the 2014 Nebraska ammonium sulfate ($AMMS_{2014}$) concentration for a 2014 emission scenarios using the 2012 CAMx PSAT source apportionment ammonium sulfate ($AMMS_{PSAT}$) contribution for Texas is as follows:

$AMMS_{2014} = AMMS_{PSAT} \times [1 - (1 - EIRATIO) \times CF]$

Where, EIRATIO is the ratio of the 2014 to 2012 SO_2 emissions in Nebraska and CF is the Calibration Factor from the comparison of the estimated $PM_{2.5}$ Design Values from the linear AQAT and the CAMx 2014 Calibration Run.

19. A state's NO_X emissions are assumed to be associated with the incremental $PM_{2.5}$ concentration components related with a state's nitrate contribution, which includes nitrate (NO3), the NH4 bonded with the NO3 and PBW. These three terms are combined into ammonium nitrate (AMMN). The proposed AQAT linearly scaled a state's 2012 CAMx/PSAT AMMN by the change in a state's total NO_X emissions.

20. We combined the final CSAPR Calibrated AQAT for changes in SO_2 emissions with the proposed CATR linear AQAT for changes in NO_X emissions to estimate Nebraska's 24-hour $PM_{2.5}$ contribution at the two Milwaukee monitoring sites under the CSAPR 2014 base case and 2014 Remedy case emission scenarios. Table 2 displays the CSAPR Nebraska emissions for the 2012 base case, 2014 base case and 2014 Remedy scenario and the ratios (i.e., EIRATIO) between the 2014 emissions scenarios and the 2012 base case.

Table 2. Final CSAPR Nebraska 2012 base, 2014 base and 2014 Remedy case emission (tons per year) and ratio of the 2014 to 2012 emissions.

	Nebraska Emissions (TPY)	
Scenario	**SO_2**	**NO_X**
2012 Base Case (TPY)	87,119	197,887
2014 Base Case (TPY)	85,799	186,408
EIRATIO (2014 Base/2012 Base)	0.98484	0.94199
2012 Base Case (TPY)	87,119	197,887
2014 Remedy Case (TPY)	84,065	169,572
EIRATIO (2014 Remedy/2012 Base)	0.96494	0.85691
Source: CSAPR Nebraska_ptnonipm.xlsx & Nebraska_ptipm.xlsx spreadsheets (within 1 TPY of values in CSPAR AQTSD)		

21. Table 3 and 4 displays a summary of the calculation of Nebraska's $PM_{2.5}$ contribution to $PM_{2.5}$ at the two Milwaukee monitoring sites for the 2014 base and 2014 Remedy case emission scenarios using the final CSAPR Calibrated AQAT (AMMS) and proposed CATR linear AQAT (AMMN) approaches. Note that the actual calculations are more

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complicated using AMMS and AMMN contributions from the highest quarters in 5 years whose intermediate steps are not shown in Tables 3 and 4. For the 550790010 Milwaukee monitoring site (Table 3), Nebraska contributes 0.52 $\mu g/m^3$ in the CAMx/PSAT 2012 base case with AQAT estimating that it is reduced 0.02 $\mu g/m^3$ to 0.50 $\mu g/m^3$ for the 2014 base case and then reduced another 0.03 $\mu g/m^3$ to 0.47 $\mu g/m^3$ for the 2014 Remedy scenario. Similar results are seen for the Milwaukee site 550790026 (Table 4) whose 2012 base case 0.43 $\mu g/m^3$ contribution is reduced to 0.41 $\mu g/m^3$ for the 2014 base and to 0.38 $\mu g/m^3$ for the 2014 Remedy case.

22. Thus the effects of the CSAPR Remedy controls on Nebraska sources are to reduce its contribution to 24-hour $PM_{2.5}$ DVs at the two Milwaukee monitoring sites by 0.03 $\mu g/m^3$. However, as shown in Table 1, the reductions in 24-hour $PM_{2.5}$ DVs at the two Milwaukee monitoring sites ranges from 2.4 to 3.3 $\mu g/m^3$. Thus, the CSAPR controls on Nebraska sources contribute approximately 1 percent of the reduction at these two sites due to the CSAPR Remedy controls, a very small number.

23. Furthermore, the 2014 Remedy scenario DVs at these two Milwaukee monitoring sites range from 29.9 to 33.0 $\mu g/m^3$, which are 7% to 16% below the 24-hour $PM_{2.5}$ NAAQS. Without the CSAPR controls on the Nebraska sources the 2014 projected Design Values at these two Milwaukee monitoring sites would be increased by 0.03 $\mu g/m^3$ so the CSAPR controls on Nebraska sources have no effect on $PM_{2.5}$ attainment at the two Milwaukee monitoring sites would essentially have no effect on the Milwaukee 24-hour $PM_{2.5}$ Design Values. Thus, the CSAPR controls on Nebraska sources have no effect on $PM_{2.5}$ attainment at the two Milwaukee monitoring sites.

24. The CSAPR projected 2012 Maximum 24-hour $PM_{2.5}$ Design Values at the Milwaukee monitoring sites 550790010 and 550790026 are 1.2 and 1.7 above the 24-hour $PM_{2.5}$ NAAQS (see Table 1). Using the CSAPR Calibrated AQAT for AMMS and the CATR linear AQAT for AMMN I estimate that the elimination of emissions from all EGUs in Nebraska would reduce the 24-hour $PM_{2.5}$ Design Values at the two Milwaukee monitors by just 0.15 and 0.12 ug/m^3. So even with the complete shutdown of all EGUs in Nebraska, the projected 2012 Maximum 24-hour $PM_{2.5}$ Design Values at the two Milwaukee monitoring sites would still exceed the 24-hour $PM_{2.5}$ NAAQS. This is because emissions from Nebraska EGUs have less than a 30% contribution to the state's total $PM_{2.5}$ contribution.

Table 3a. Estimate of contribution of Nebraska 24-hour $PM_{2.5}$ contribution at Milwaukee Monitor 550790010 under the 2014 base case emissions scenario using the final CSAPR Calibrated AQAT for AMMS and the proposed CATR linear AQAT for AMMN.

Nebraska Contribution to 24-hour $PM_{2.5}$ DV at Milwaukee (550790010)			
	AMMS	**AMMN**	**$PM_{2.5}$[1]**
Final CSAPR 2012 CAMx/PSAT NB ($\mu g/m^3$)	0.3679	0.1606	0.52
EIRATIO 2014 Base/2012 Base	0.98484	0.94199	
Calibration Factor	0.76037	1.0	
AQAT 2014 Base Case for NB ($\mu g/m^3$)	0.1594	0.3465	**0.50**

1. Use of CSAPR rounding/truncation convention to truncate state's $PM_{2.5}$ contribution to within two digits to the right of the decimal point

Table 3b. Estimate of contribution of Nebraska 24-hour $PM_{2.5}$ contribution at Milwaukee Monitor 550790010 under the 2014 Remedy case emissions scenario using the final CSAPR Calibrated AQAT for AMMS and the proposed CATR linear AQAT for AMMN.

Nebraska Contribution to 24-hour $PM_{2.5}$ DV at Milwaukee (550790010)			
	AMMS	**AMMN**	**$PM_{2.5}$[1]**
Final CSAPR 2012 CAMx/PSAT NB ($\mu g/m^3$)	0.3679	0.1606	0.52
EIRATIO 2014 Base/2012 Base	0.96494	0.85691	
Calibration Factor	0.76037	1.0	
AQAT 2014 Base Case for NB ($\mu g/m^3$)	0.1577	0.3152	**0.47**

1. Use of CSAPR rounding/truncation convention to truncate state's $PM_{2.5}$ contribution to within two digits to the right of the decimal point

Table 4a. Estimate of contribution of Nebraska 24-hour $PM_{2.5}$ contribution at Milwaukee Monitor 550790026 under the 2014 base case emissions scenario using the final CSAPR Calibrated AQAT for AMMS and the proposed CATR linear AQAT for AMMN.

Nebraska Contribution to 24-hour $PM_{2.5}$ DV at Milwaukee (550790026)			
	AMMS	**AMMN**	**$PM_{2.5}$[1]**
Final CSAPR 2012 CAMx/PSAT NB ($\mu g/m^3$)	0.3137	0.1180	0.43
EIRATIO 2014 Base/2012 Base	0.98484	0.94199	
Calibration Factor	0.76037	1.0	
AQAT 2014 Base Case for NB ($\mu g/m^3$)	0.1172	0.2955	**0.41**

1. Use of CSAPR rounding/truncation convention to truncate state's $PM_{2.5}$ contribution to within two digits to the right of the decimal point

Table 5. Comparison of final CSAPR Nebraska NO_X allocations versus CSAPR 2014 Remedy emission scenarios.

Plant Name	NO_X Emissions (tons per year)			
	CSAPR 2014 Remedy (tons)	CSAPR Unit Allocation (tons)	Difference (Remedy – Allocation) (tons)	Difference (Remedy – Allocation) (%)
Gerald Whelan Energy Center	802	571	231	28.82%
Lon D Wright Power Plant	1,433	448	985	68.74%
Lon D Wright Power Plant	31	1	30	96.77%
North Omaha Station	4,155	3,513	642	15.45%
Platte	1,443	736	707	48.98%
Sheldon	3,368	766	2,602	77.25%
Sheldon	3,131	844	2,287	73.04%
Gerald Gentleman Station	5,496	4,571	925	16.83%
Gerald Gentleman Station	4,705	5,014	-309	-6.57%
Nebraska City Station	1,602	4,085	-2,483	-155.03%
Nebraska City Station	953	3,635	-2,682	-281.57%
Others	1,093	407	686	62.78%
New Unit Set Aside		1,849	-1,849	
Total	**28,211**	**26,440**	**1,771**	**6.28%**

I declare that the foregoing is true and correct.

EXECUTED this 3rd day of October, 2011 at Novato, CA.

RALPH MORRIS

EXHIBIT 3

EPA DEPUTY ADMINISTRATOR LETTER

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 11 2011

DEPUTY ADMINISTRATOR

Mr. David Campbell
CEO
Luminant Headquarters
Lincoln Plaza
500 North Akard
Dallas, Texas 75201

Dear Mr. Campbell:

For the past two weeks you, Administrator Jackson and I have discussed Luminant's strategy to comply with the Cross-State Air Pollution Rule (CSAPR), building on conversations our staffs have had for months. In the course of those conversations we have discussed a variety of scenarios, consistent with the flexibilities inherent in the Clean Air Act and the CSAPR. We continue to believe there are options to explore that would bring your company into compliance with this rule – a rule that EPA was under court order to finalize and that will have significant public health benefits in Texas and numerous downwind states.

Unfortunately, I understand from our most recent discussions that you intend to announce that you will idle lignite coal-fired units at one of your facilities in Texas because you believe it is the only means by which you can achieve pollution reductions required under the rule. We also understand you will announce your intention to shut down two mines that supply the lignite coal to this and other units. While making the business decision to close these mines may be one of several cost-effective ways to comply with this rule we do not believe it is the only path forward, particularly given the nation's difficult economic situation.

Administrator Jackson and I have made ourselves personally available over the past weeks, as have other members of EPA's senior leadership, to work together to determine a course forward that enables the company to comply with the law and avert these potential impacts on production or jobs. The Administrator, our senior team and I will continue to make Luminant's situation a priority. Given the opportunity that still remains to work through a number of options we feel are available to you, we trust you will continue those discussions before making any final decisions that may result in the unnecessary loss of jobs for your workers.

In the course of our discussions, EPA has offered to make technical adjustments, based on technical information you have recently provided, that will give Texas and Luminant thousands of additional tons of pollution allowances to reduce required emission reductions. Additionally, there are alternative compliance approaches that rely on existing pollution control technology already installed at your facilities and on the powerful market-based mechanisms in the CSAPR that would not require you to

idle any facility or shut down these mines. We stand ready to continue working with you to ensure that you have explored all the available options to achieve the necessary pollution reductions under the Clean Air Act without having to idle or shut down these operations and put these jobs at risk.

Luminant faces a notable environmental challenge: its facilities emit high levels of Sulfur Dioxide (SO2) that represent close to half of Texas' total power sector emissions. These emissions contribute significantly to air pollution and health threats in downwind states, and Texas is required under the Clean Air Act to ensure reductions.

Cost-effective reductions are possible without disruptions in operations. Other states have made remarkable strides in reducing harmful SO2 emissions that cause asthma attacks and other illnesses. Over the past 20 years SO2 emissions from the power sector in the rest of the country have been reduced by as much as 70 percent, even while they remain at high levels in Texas. Texas is the second largest emitter of SO2 among the states covered by this rule, with Luminant's Big Brown, Monticello, and Martin Lake representing nearly half of the state's 2010 power sector emissions. In this scenario we see a wide variety of possible approaches to reducing this pollution.

That is why we have worked with you to explore several opportunities for cost-effective pollution reductions. We want to continue to do so. We will share with you data that illustrate how Texas and Luminant can comply with CSAPR cost-effectively while keeping levels of lignite coal use near current levels, thus avoiding the need to idle plants or shut down mines in response to the requirements of the rule. Our analysis indicates that additional reductions can be achieved by relying more on already-installed pollution controls. I ask that your staff examine these alternative compliance options thoroughly before making the business decision to idle these facilities and close the mines – and lay off the workers – that supply the lignite coal they use.

Administrator Jackson and I have made clear our commitment to working through compliance issues each time we have met with you over the past weeks. We have already utilized some of the flexibilities in the Clean Air Act and the CSAPR in response to updated technical information you have provided. The Administrator also made clear that she has not ruled out any potential solution to the concerns you have raised, should the flexibility and choice of compliance strategies built into CSAPR not prove adequate to meeting those concerns.

In its 40-year history, there have been no instances in which the Clean Air Act has contributed to electric grid reliability problems. The successful history of this law demonstrates that we can reduce harmful air pollution while ensuring the reliable delivery of electricity to our families and businesses. The flexibilities of the Clean Air Act are evident in the alternative compliance approaches we are presenting to you, and have presented to you – approaches that would yield reductions in pollutants and protect the health of Americans in Texas and downwind states without impacting electric reliability in Texas.

We are committed to working with you throughout this process. It is important that Luminant demonstrate equal commitment going forward over the coming days.

Sincerely,

Bob Perciasepe