
# Sunbury Generation LP

October 7, 2011

**VIA HAND DELIVERY**
Lisa P. Jackson
Administrator
Environmental Protection Agency
Ariel Rios South – Room 3000
1200 Pennsylvania Ave., NW
Mail Code 1101A
Washington, DC 20460

Re: Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals (Docket ID No. EPA-HQ-2009-0491); Petition for Reconsideration

Dear Ms. Jackson,

Enclosed please find Sunbury Generation LP's Petition for Reconsideration of EPA's final rule, "Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals", published at 76 Fed. Reg. 48,208 (Aug. 8, 2011).

Should you have any questions, please contact me at (570) 884-1210 or dave.meehan@sunburygen.com.

Sincerely,

David E. Meehan
President

cc: Ms. Meg Victor, EPA (via electronic mail)
Ms. Sonja Rodman, EPA (via electronic mail)

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**Sunbury Generation LP's Petition for Reconsideration of EPA's Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals**

## I. Introduction

In accordance with Section 307(d)(7)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7607(d)(7)(B), Sunbury Generation LP ("Sunbury") hereby submits this Petition for Reconsideration of EPA's Final Rule, "Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals", published at 76 Fed. Reg. 48,208 (Aug. 8, 2011) (to be codified at 40 C.F.R. pts. 51, 52, 72, 78, and 97) ("CSAPR"). Sunbury owns and operates an electric generating facility in Shamokin Dam, Snyder County, Pennsylvania (the "Facility"). Sunbury operates several coal-fired boilers and combustion turbines at the Facility to support its electricity generation operations. These sources are currently subject to a variety of federal and state regulatory requirements, and would be considered affected units under CSAPR.

Sunbury previously submitted comments on the proposed CSAPR, published at 75 Fed. Reg. 45,210 (proposed Aug. 2, 2010) (the "Proposed Rule"), in October 2010. Sunbury also submitted comments, in February 2011, on EPA's "Notice of Data Availability for Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone: Request for Comment on Alternative Allocations, Calculation of Assurance Provision Allowance Surrender Requirements, New-Unit Allocations in Indian Country, and Allocations by States", 76 Fed. Reg. 1,109 (Jan. 7, 2011). Finally, Sunbury is simultaneously filing with this Petition for Reconsideration a Petition for Review of CSAPR with the United States Court of Appeals for the D.C. Circuit, pursuant to CAA Section 307(b), in order to preserve Sunbury's rights to seek

judicial review of CSAPR. However, Sunbury is hopeful that the Agency will fully resolve the issues raised in this Petition without the need for hearing before the D.C. Circuit Court of Appeals, by reconsidering relevant provisions of CSAPR.

## II. Executive Summary

Sunbury requests that EPA reconsider and revise CSAPR consistent with Sunbury's specific comments addressing the final rule, as detailed below. As clearly reflected in the preamble to CSAPR, EPA apparently did not intend to impose significant emission reduction burdens on affected facilities during Phase I, which initially applies beginning on January 1, 2012. Specifically, EPA clearly recognizes in the preamble to CSAPR that it is impossible for affected facilities to install, within only a few months of the promulgation of the rule, the advanced post-combustion controls that would be necessary to achieve significant emission reductions. Instead, the preamble to CSAPR explains EPA's expectation that facilities can achieve the Phase I emission reductions by operating existing controls, fuel switching, and/or increasing dispatch of lower-emitting generation (i.e., by relying on compliance mechanisms that do not involve post-combustion control installation). On this basis, EPA ultimately concludes that CSAPR will not have a significant impact on affected sources during Phase I.

Notwithstanding EPA's expectation that CSAPR will not impose significant emission-control burdens on affected sources during Phase I, EPA has severely under-allocated sulfur dioxide ("$SO_2$") allowances to certain facilities, like Sunbury. These facilities have typically fully complied, to date, with applicable air emission control standards without the installation of significant back-end controls, and therefore exhibit

a relatively higher ratio of emissions-to-heat input. Sunbury and other similarly situated sources are particularly disadvantaged through this under-allocation of allowances due to the absence of practical alternative compliance options. Significantly, unlike every previous air emission control regulation promulgated by EPA that includes a trading mechanism, the compliance deadlines imposed under CSAPR preclude Sunbury from pursuing *any* compliance option under Phase I *except* attempting to secure available allowances from other affected sources.

Under the final CSAPR, many facilities, including Sunbury, will be allocated so few allowances in Phase I that it will be impossible for such facilities to satisfy the emission reduction requirements by simply operating existing controls, fuel switching, and/or increasing dispatch of lower-emitting generation (contrary to EPA's expectations, as noted above). Indeed, such facilities can achieve the required Phase I reductions only by installing advanced post-combustion controls – FGD, SCR, and/or DSI. However, EPA acknowledges that it is impossible for such controls to be installed by 2012 (in fact, EPA even concedes that it will be difficult to install such controls by *2014*). Consequently, these under-allocated facilities are left with only two options for complying with CSAPR in 2012: cease or curtail operations, or purchase allowances from their over-allocated competitors.

It would not be economically feasible for Sunbury to comply with CSAPR during Phase I through curtailment, because doing so would require restricting the Facility's operations to approximately 20% of the operating hours of its past utilization rates (i.e., Sunbury's Phase I $SO_2$ allowance allocation constitutes approximately 20% of the historic $SO_2$ emissions for its affected units). Accordingly, the only viable option for

facilities such as Sunbury to demonstrate compliance during Phase I is to purchase allowances on the market from their over-allocated competitors. In this way, CSAPR effectively requires certain facilities to pay their private, electricity-generating competitors for the continued right to operate.

The CAA clearly does authorize EPA to develop a regulatory scheme that requires certain regulated entities to compensate other regulated entities in the same industry as a condition to future operation, nor were the Act's emission control objectives ever intended to impose such anti-competitive policies and eliminate the availability of strategic compliance options for heavily regulated facilities. Based upon our review of EPA's statements throughout the development of CSAPR, we do not believe that EPA intended for this result. On this basis, Sunbury requests that EPA reconsider these aspects of CSAPR and revise the rule to avoid the imposition of this untenable "option" for Sunbury, whereby the Facility would be required to either severely curtail/shutdown its operation, or pay significant compensation to its competitors in order to remain operational.

Moreover, based on the framework of CSAPR, it is impossible for facilities that are under-allocated in Phase I to ensure compliance with the final rule. EPA's apparent belief that there will be sufficient $SO_2$ and nitrogen oxides ("NOx") allowances available for these sources to purchase to demonstrate compliance during the 2012 and 2013 control periods is necessarily premised on two assumptions: (1) a sufficient quantity of allowances could be made available for sale in time to constitute a viable compliance option under Phase I; and (2) the entities holding any such "excess" allowances will make them available for sale at prices that can ensure the continued economic viability

of the entities that must rely upon them. Because each of these assumptions is flawed, it is impossible for a facility that is severely under-allocated in Phase I, like Sunbury, to ensure compliance with CSAPR by purchasing allowances on the market.

First, it is unlikely that many facilities will be able to complete the necessary steps to reduce emissions below current allocation rates within the four-and-a-half month period between the formal promulgation of CSAPR and the rule's effective date. To the extent that a sufficient number of allowances is *currently* available for transfer to under-allocated parties (i.e., without the need for affected facilities to implement material emission control programs), then Phase I of CSAPR does not achieve material aggregate emission reductions or associated environmental protection benefits.

Second, even to the extent that sources theoretically have "excess" allowances available for transfer, there are significant reasons to question whether such "excess" allowances would in fact be made available for transfer to under-allocated third parties, at least at prices that can reasonably be viewed as economically viable, particularly when taking into account that, during Phase II of CSAPR, affected sources in Group 1 states will be required to achieve $SO_2$ reductions that are significantly more stringent than those in Phase I. Given the meaningful increase in emission reductions required under Phase II, and the challenges faced by existing sources to materially reduce emissions by the Phase II compliance date, it is likely that many facilities holding excess allowances during Phase I will choose to bank their excess allowances for use during Phase II, rather than selling these allowances to their under-allocated competitors.

Finally, even to the extent that a sufficient quantity of "excess" allowances exists during Phase I and the entities holding such allowances would agree to transfer the

allowances to a third party, the probable cost for such allowances would likely threaten the economic viability of many facilities, including Sunbury. To avoid this unintended and unacceptable consequence, Sunbury requests that EPA reconsider and revise CSAPR to reallocate allowances to affected sources in Phase I based on historic emissions, rather than heat-input. Specifically, EPA should initially determine the allowance allocation (for $SO_2$, annual NOx, and ozone-season NOx) for each affected unit based on the unit's maximum historic 3-year average emissions during the period from 2003 to 2010. As a minimum alternative, EPA should revise Phase I of CSAPR to avoid application of the regulation's state-specific assurance provisions. In the absence of the assurance provisions, to the extent that a regulated source must secure allowances from other regulated facilities as a necessary compliance alternative during Phase I, such facilities should be protected under the regulation in relying upon this compliance methodology.

Even to the extent that a source plans to install pollution controls to comply with CSAPR in Phase II, such source may not be able to remain viable during Phase I under the current allocation scheme. While EPA acknowledges the challenges associated with installing certain advanced post-combustion controls by 2014, the Agency contends that it is possible for affected sources to take the necessary steps to install and operate such controls by this time. However, it will be impossible for these facilities to execute such plans if they are unable to remain viable and continue operations during Phase I. Therefore, Sunbury requests that EPA reconsider and revise CSAPR to ensure that facilities can remain viable until emission controls can be installed.

Sunbury further requests that EPA postpone the applicability date for Phase II, recognizing that it may not be possible for affected sources to design, construct, install, and commence operation of significant emission control systems by January 1, 2014. In order to ensure consistency between EPA's proposed timing for the implementation of the Utility MACT and CSAPR, Sunbury requests that EPA delay the effective date for Phase II until January 1, 2016. Phase I would continue to apply during the interim period between January 2014 and January 2016, thereby ensuring that no state's emissions would increase during Phase I relative to established historic emission rates.

## III. Comments for Reconsideration

### A. Although, based on its statements in the Preamble, EPA did not intend to impose significant emission reduction burdens on facilities during Phase I, CSAPR severely under-allocates allowances to certain facilities even during Phase I, imposing an impracticable compliance obligation.

#### *(i) EPA explained that affected sources would not be required to install substantial controls to satisfy the emission reduction requirements in Phase I.*

The first phase of $SO_2$ and NOx emission reductions under CSAPR initially applies on January 1, 2012. EPA clearly recognizes in the preamble to CSAPR that it is impossible for affected facilities to install, within only a few months of the promulgation of the rule, the advanced post-combustion controls required for larger emission reductions, such as FGD scrubbers, and SCR and DSI systems. 76 Fed. Reg. 48,252 ("EPA acknowledges that [advanced post-combustion control] installations are not feasible by 2012); 76 Fed. Reg. 48,280 ("EPA recognizes that the 6-month time frame [sic] between rule finalization and start of the first compliance period would not allow for

the installation of a major post-combustion . . . control . . . ."); 76 Fed. Reg. 48,282 ("EPA believes that the January 1, 2014 compliance date is as expeditious as practicable for the sources installing large, complex control systems.").[1]

By contrast, EPA repeatedly states in the preamble that facilities can achieve the Phase I emission reductions by operating existing controls, fuel switching, and/or increasing dispatch of lower-emitting generation. *See, e.g.,* 76 Fed. Reg. 48,252 ("$SO_2$ and NOx reductions [required during Phase I] come from operating existing controls, installing combustion controls, fuel switching, and increased dispatch of lower-emitting generation which can be achieved by 2012. In general, compliance mechanisms that do not involve post-combustion control installation are feasible before 2014."); 76 Fed. Reg. 48,279 ("In 2012, the industry will largely meet the rule's NOx requirements by: Operating an extensive existing set of combustion and post-combustion controls on fossil fuel-fired generators; dispatching lower emitting units more often; and installing and operating a limited amount of relatively simple NOx pollution controls in states not previously subject to CAIR. For the $SO_2$ requirements, EPA anticipates at a minimum that coal-fired generators will operate the substantial capacity of advanced pollution controls already in place or scheduled for 2012 use; some units will also elect to burn lower-sulfur coals; and the fleet will increase dispatch from lower-emitting units as well as from natural gas-fired generators."); 76 Fed. Reg. 48,279 ("EPA's analysis of emission reductions available in 2012 assumes year-round operation of existing post-combustion pollution controls in states covered for PM2.5 and ozone-season operation

[1] Indeed, EPA acknowledges that installing FGD and SCR retrofits by *2014* will be difficult, requiring "aggressive action", including "parallel permitting" and "overtime and/or two-shift work schedules". 76 Fed. Reg. 48,282-83. EPA also admits that its schedule assumptions – 27 months for wet FGD and 21 months for SCR – are only "reasonable expectations for sources that have completed most of their preliminary project planning and can quickly make commitments to proceed." 76 Fed. Reg. 48,282.

of NOx post-combustion controls in states covered for ozone. . . . For $SO_2$, EPA believes that reductions associated with the following methods of control are available and will be used as compliance strategies to meet the 2012/2013 budgets: (1) Operation of existing controls year-round in PM2.5 states, (2) operating of scrubbers that are currently scheduled to come online by 2012, (3) some sources switching to lower-sulfur coal . . . , and (4) changes in dispatch and generation shifting from higher emitting units to lower emitting units.").

Reasoning that the emission reductions required in Phase I can be achieved by simply relying on existing controls and other methods that do not involve the installation of complex post-combustion retrofits, EPA concludes that CSAPR will *not* have a significant impact on affected sources during Phase I. Instead, according to EPA, the Phase I reductions are simply intended to "ensure that existing and planned $SO_2$ and NOx controls operate as anticipated", so that "EGUs . . . continue to emit at the reduced emission levels achieved by CAIR." 76 Fed. Reg. 48,278. *See also* 76 Fed. Reg. 48,313 (the emission reductions EPA expects to occur from 2012 to 2013 are "*unrelated* to the Transport Rule" (emphasis added)). Indeed, EPA recognizes that "[t]he power sector is *already strongly positioned* to achieve the Transport Rule state budgets" in 2012. 76 Fed. Reg. 48,280.[2]

[2] Consistent with this view, the cost-per-ton levels EPA used to determine the 2012 state emission budgets (i.e., $500/ton for $SO_2$ and NOx, respectively) "do not precipitate advanced post-combustion control installation in 2012 (as EPA acknowledges that such installations are not feasible by 2012)." 76 Fed. Reg. 48,252.

### *(ii)* ***Notwithstanding EPA's expectation that CSAPR will not impose significant emission control burdens on affected sources during Phase I, EPA has severely under-allocated $SO_2$ allowances to Sunbury.***

In the preamble to CSAPR, EPA explains that "CSAPR's heat input-based approach for existing units is consistent with the goals of the Clean Air Act because it allocates allowances to existing units on the basis of a neutral factor that *does not advantage* or *disadvantage* a unit based on what fuel the unit burns or whether or not a unit has installed controls in anticipation of [CAIR or CSAPR]" (emphasis added). 76 Fed. Reg. 48,289. Notwithstanding EPA's stated intention of allocating allowances to existing sources without advantaging or disadvantaging specific units, the rule's heat input based allowance allocation approach does just that. Specifically, certain facilities, like Sunbury, which have fully complied with applicable air emission control standards without the installation of significant back-end controls and therefore have a higher ratio of emissions to heat input, are substantially *under-allocated* allowances in Phase I of the rule. The significant *disadvantage* imposed upon Sunbury through this under-allocation of allowances relates to the absence of practical alternative compliance options. As more fully discussed below, unlike every previous air emission control regulation promulgated by EPA that includes a trading mechanism, the timing requirements associated with CSAPR preclude Sunbury from pursuing *any* compliance option under Phase I *except* attempting to secure available allowances from other affected sources.

The precise implications of the under-allocation of allowances to certain sources, like Sunbury, during Phase I of CSAPR depend on whether other sources have received corresponding over-allocations of allowances during the same compliance

period. Specifically, if CSAPR does not provide other regulated sources more allowances than they require for their own operations, then no allowances will be available for transfer to under-allocated units, like Sunbury.[3] The only other possible scenario is that certain affected facilities are provided a corresponding over-allocation of allowances during Phase I which could then be made available for sale to under-allocated units. Therefore, by direct application of Phase I of CSAPR, in the absence of reasonable alternative compliance options, certain facilities are disadvantaged relative to others through EPA's approach toward the allocation scheme. This result is wholly inconsistent with EPA's stated objectives for allocating allowances in Phase I of CSAPR.

Many of the under-allocated facilities, including Sunbury, will be allocated so few allowances in Phase I, that it will be impossible (i.e., technically infeasible) for such facilities to satisfy the emission reduction requirements by simply operating existing controls, fuel switching, and/or increasing dispatch of lower-emitting generation – i.e., the precise compliance methods EPA identifies in the preamble as being sufficient for achieving reductions in Phase I. These types of mechanisms are insufficient to reduce emissions to the levels necessary to compensate for the marked discrepancy between these facilities' emissions (as anticipated for 2012 and 2013) and their Phase I allocations. Instead, such facilities would only be able to achieve the required Phase I

[3] Of course, some affected sources may choose to shutdown, thereby making some small number of allowances available for transfer during Phase I. In addition, certain facilities may have limited opportunities to switch fuels or otherwise further reduce emissions to create "excess" allowances for transfer to third parties. However, such sources would presumably elect to do so only to the extent that cost incentives are available. Apart from this small quantity of allowances that may yet be created and made available during Phase I, because of the limited timeframe available to sources to achieve compliance, it is not reasonable to expect that a sufficient number of excess allowances would be available for transfer during Phase I, unless sufficient "excess" allowances have already been provided to certain sources through the initial allocation.

reductions by installing advanced post-combustion controls – FGD, SCR, and/or DSI. However, as discussed above, EPA acknowledges that it is impossible for such controls to be installed by 2012. Indeed, EPA even acknowledges that it will be difficult to install such controls by *2014*. As a result, these under-allocated facilities are left with only two options for complying with CSAPR in 2012: cease or curtail operations, (potentially shutting down completely, depending on the circumstances and the necessary emission reductions); or purchase allowances from their over-allocated competitors.

For the Sunbury facility, the allocation of $SO_2$ allowances during Phase I constitutes approximately 20% of the historic $SO_2$ emissions for its affected units. Therefore, in order to comply with CSAPR through curtailment, Sunbury must restrict its operations, in general, to approximately 20% of the operating hours of its past utilization rates. Such operating conditions are not economically viable, and effectively preclude Sunbury from being a meaningful participant in the electricity generation sector for the region.

Even to the extent that it would be technologically feasible for these facilities to scale-back operations without shutting down completely, generating electricity at the substantially-reduced rates necessary to achieve the required emission reductions would diminish electric reliability, while driving-up electricity costs (ultimately impacting consumers) and eliminating jobs. *See* EPA, Office of Air and Radiation, Regulatory Impact Analysis for the Final CSAPR, Docket ID No. EPA-HQ-OAR-2009-0491 (2011), at 14 ("the projected annual incremental private costs of the selected remedy option (air quality-assured trading) to the power industry are $1.4 billion in 2012" (in 2007 dollars), and "[r]etail electricity prices are projected to increase nationally by an average of 1.3%

in 2012"). Indeed, independent financial analysts are projecting that CSAPR will result in increased operating costs for facilities that rely on coal-fired generation and, in turn, increased wholesale power prices. *See* Standard & Poor's, Global Credit Portal Ratings Direct, *Why Casper, The EPA's Cross-State Air Pollution Rule, Is Spooking the Electricity Sector* (Sept. 12, 2011), at 11-12 (noting that forward power prices in certain regions have already increased in response to CSAPR, as compared to prices in June). Analysts have also recognized that the electricity sector is anticipating that concerns about electricity reliability may arise in regions where coal plants are being retired to meet CSAPR. *Id.* at 13.[4]

For these reasons, as a practical matter, the *only* viable option for these facilities to demonstrate compliance during Phase I (assuming they intend to keep operating) is to purchase allowances on the market from their over-allocated competitors. As such, CSAPR effectively requires certain facilities to pay their private, electricity-generating competitors for the continued right to operate. Clearly, the CAA does not direct EPA to devise a regulatory scheme that *requires* certain regulated entities to compensate other regulated entities in the same industry as a condition to future operation.

In this respect, the timing of the application of Phase I of CSAPR is critical to the evaluation of the propriety of the final rule.[5] Under a regulatory scheme in which an affected facility may *elect* to pursue compliance through trading of emission allowances, rather than installation of controls, such facility may take into account the competitive posture of other industry participants and other strategic considerations *in deciding*

[4] Numerous parties affected by CSAPR have already filed challenges with the D.C. Circuit Court of Appeals, arguing, among other things, that the rule will have a negative impact on electricity reliability. *See EME Homer City Generation, L.P. v. EPA*, Case No. 11-1302.

[5] EPA's authority to directly promulgate a FIP under CAA Section 110 must also be considered in evaluating the propriety of the deadlines imposed by EPA under CSAPR, particularly under Phase I.

*whether to rely upon allowance transfers as the compliance method.* Under Phase I of CSAPR, Sunbury has no such option. Instead, EPA has (clearly inadvertently) established a regulatory scheme that would require a transfer of wealth between competitors within the same industry as the only viable compliance option for certain sources. Of course, the emission control objectives of the CAA were never intended to impose such anti-competitive policy and eliminate the availability of strategic compliance options for heavily regulated facilities. In addition, the CAA, does not authorize EPA to implement a federal air quality regulation that effectively *requires* one facility to pay another facility to preserve the legal authority to operate.

Based upon our review of EPA's statements throughout the development of CSAPR, we do not believe that EPA intended for this result. Instead, EPA states that its expectation is that affected facilities will not face significant burdens to achieve compliance during the virtually–immediate timeframes imposed under Phase I, but will face an aggressive schedule to satisfy the requirements of Phase II. In fact, as applied to Sunbury, Phase I of CSAPR imposes a significant burden, by allocating $SO_2$ allowances equivalent to only approximately 20% of Sunbury's established emission rates. Because EPA recognizes that Sunbury could not otherwise reduce emissions to comply with this allocation, EPA must also recognize that Phase I of CSAPR therefore requires Sunbury to either severely curtail/shutdown its operation, or pay significant compensation to other regulated sources for the privilege to continue to operate. In recognition of this likely-unintended outcome of CSAPR, we request that EPA reconsider these aspects of CSAPR and revise the rule to avoid the application of this untenable compliance "option" for Sunbury.

### B. It is impossible for facilities that are under-allocated in Phase I to ensure compliance with the final rule.

#### *(i) EPA cannot guarantee that a sufficient quantity of allowances will be available for purchase to allow all facilities to comply during Phase I.*

EPA apparently believes there will be more than enough $SO_2$ and NOx allowances available for purchase for these sources to demonstrate compliance for the 2012 and 2013 control periods. *See* 76 Fed. Reg. 48,283 (noting sources' ability to purchase allowances in the event that the installation of particular pollution controls requires additional time). *But see, Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1054 (D.C. Cir. 2001) (reasoning that ability of facilities subject to the NOx SIP Call to purchase additional allowances to demonstrate compliance "is no answer" to explain EPA's flawed allowance allocation methodology). This belief is necessarily premised on two assumptions: (1) a sufficient quantity of allowances could be made available for sale in sufficient time to allow a viable compliance option under Phase I; and (2) the entities holding any such "excess" allowances will make them available for sale at prices that can ensure the continued economic viability of the entities that must rely upon them.[6] Because each of these assumptions is flawed, it is impossible for a facility that is severely under-allocated in Phase I, like Sunbury and others, to ensure that it will be able to demonstrate compliance with CSAPR by purchasing allowances on the market.

First, EPA acknowledges that sufficient time is necessary for any existing source to take actions to reduce emissions below current allocation rates, if historic emissions have exceeded such initial allocations under CSAPR. Nonetheless, Phase I becomes

[6] It is noteworthy that these two prerequisites to the reliance on trading as a viable compliance option do not even raise the implications of the assurance provisions of CSAPR, which are significant and addressed separately elsewhere.

effective less than five months after promulgation of CSAPR in the *Federal Register.* Accordingly, it is unlikely that many facilities will complete such actions in this limited timeframe. While Sunbury recognizes that the compliance demonstration deadline for the 2012 compliance period does not occur until 2013, if Sunbury maintains its normal operational pattern, its emissions would exceed its initial allocation under CSAPR during the first quarter of 2012. Sunbury cannot continue to operate thereafter merely with the hope or expectation that a sufficient number of sources will thereafter generate affordable allowances for sale.

By contrast, to the extent that a sufficient number of allowances is already available for transfer to under-allocated parties, without the need for affected facilities to implement material emission control programs, then Phase I of CSAPR would not be achieving material aggregate emission reductions and associated environmental protection benefits. In such case, Phase I of CSAPR would be nothing more than a requirement for certain regulated facilities to pay other regulated facilities for the right to operate, without any corresponding material reduction in air emissions; such regulatory scheme is inherently inconsistent with the CAA and otherwise violative of federal law.

Second, regardless of the manner in which certain sources may limit emissions below their initial allocation rates under Phase I, and therefore theoretically have available for transfer "excess" allowances, there are significant reasons to question whether such "excess" allowances would in fact be made available for transfer to under-allocated third parties, at least at prices that can reasonably be viewed as economically viable. In Phase II of CSAPR, affected sources in Group 1 states will be required to achieve $SO_2$ reductions that are significantly more stringent than those in Phase I. *See*

76 Fed. Reg. 48,261-62, "Table VI.D-3 – $SO_2$ and Annual NOx State Emission Budgets for Electric Generating Units Before Accounting for Variability" (for most Group 1 states, including Pennsylvania, the Phase II $SO_2$ emission budgets are approximately 50% to 60% *smaller* than the States' corresponding Phase I budgets).

In addition, EPA itself acknowledges the challenges faced by regulated entities to design, construct, install, and commence operation of significant emission control systems by January 1, 2014. 76 Fed. Reg. 48,282-83. Indeed, in the context of developing its proposed Utility MACT, EPA has acknowledged that the same class of affected sources would face material challenges in completing significant emission control systems by November 2015 (the date currently identified by EPA as the probable compliance date under Utility MACT for existing sources) – nearly two years after the initial compliance date for Phase II of CSAPR. 76 Fed. Reg. 25,054-55. Given the meaningful increase in emission reductions required under Phase II and the challenges faced by existing sources to materially reduce emissions by the Phase II compliance date, it is likely that many facilities holding excess allowances during Phase I will choose to bank their excess allowances for use during Phase II, rather than selling these allowances to their under-allocated competitors for use during the Phase I control periods. Indeed, EPA effectively *relies* on banking as a compliance option as a basis to justify the timing of the Phase II requirements under CSAPR. *See* EPA, Office of Air and Radiation, Assurance Penalty Level Analysis Final Rule TSD, Docket ID No. EPA-HQ-OAR-2009-0491 (2011), at 5 (EPA's recognizes that "[c]overed sources in [$SO_2$ Group 1 states] may decide to reduce their emissions further than required in 2012 and 2013 and bank the unused allowances for use in 2014 and later years. This pattern

effectively smoothes their emission reductions over time to minimize total compliance costs in those states.").

Finally in this context, even to the extent that a sufficient quantity of "excess" allowances exists during Phase I and the entities holding such allowances would agree to transfer the allowances to a third party, the probable cost for such allowances would likely threaten the economic viability of many facilities, including Sunbury. *See, e.g.*, Standard & Poor's, Global Credit Portal Ratings Direct, at 12-13 (noting that "[u]ntil the [CSAPR] allowance market develops greater depth and liquidity in trading, we expect to see greater volatility in prices . . . for $SO_2$ allowances . . . ."). Even applying EPA's estimates of $2,500 per ton for $SO_2$ allowances, the cost implications to under-allocated facilities, especially smaller facilities like Sunbury, could be devastating. In fact, many observers project $SO_2$ allowance prices substantially greater than EPA's estimate. Such elevated allowance rates reflect the expectations of limited allowance availability and the competitive posture of the players in the market. At such rates, trading cannot be considered a truly viable compliance option for facilities that are severely under-allocated during Phase I.[7] For the foregoing reasons, it is impossible for EPA to ensure that there will be a sufficient quantity of allowances available for purchase to enable all under-allocated facilities to demonstrate compliance in Phase I.

Of course, EPA has previously promulgated air quality emission control regulations that include an allowance trading compliance option, and EPA could not in those cases "guarantee" that a sufficient number of allowances would be made available for transfer to under-allocated sources. However, in such cases, the relevant

[7] Moreover, to the extent allowances would be available for purchase in excess of $2,500 per ton, the compliance cost would not even comport with EPA's stated position during development of CSAPR of an appropriate cost effectiveness threshold for emission controls for affected sources.

timing of the effective date of the program did not eliminate any other compliance option for relevant sources. Therefore and most significantly, a facility determining under prior federal regulations to rely upon emission trading as its compliance option, in whole or in part, was offered the strategic choice to bear any associated risk. Further, economic realities, in turn, influence the availability and cost of allowances on the market, thereby affecting the viability of trading as a compliance option. Under EPA's construct for Phase I of CSAPR, the circumstances neither afford a compliance *option* nor ensure a compliance strategy.

***(ii) CSAPR's assurance provisions could require affected facilities to surrender substantially more allowances than those available for purchase on the market.***

A second reason why it is impossible for affected facilities to ensure their ability to comply with CSAPR for Phase I stems from the structure and operation of the final rule's assurance provisions. According to CSAPR, if the total emissions from the covered sources in a state in a compliance period exceed the state's emission budget plus the state's variability limit (i.e., the state's assurance level), then CSAPR's assurance provisions are triggered for that particular state. Once this occurs, EPA applies additional criteria to determine which owners and operators of units in the state will be subject to an allowance surrender penalty. Any source that EPA determines exceeded its proportionate share of the state's total budget is required to surrender two additional allowances per ton for its share of the emissions that exceeded the assurance level. These two additional allowances must be surrendered in addition to the single allowance otherwise required for each ton emitted during the control period, in accordance with CSAPR's standard allowance surrender requirements, which apply

regardless of whether the assurance provisions are triggered. Therefore, given the structure and practical effect of CSAPR's assurance provisions, in any state where the provisions are triggered, there will be a significantly higher demand for purchasing additional allowances. *See* EPA, Office of Air and Radiation, Assurance Penalty Level Analysis Final Rule TSD, Docket ID No. EPA-HQ-OAR-2009-0491 (2011), at 3-4 (EPA acknowledges that "[i]n reality, excess emissions would increase the allowance price (and therefore the cost of the [assurance] penalty itself) since allowances would have to be bought and surrendered for the penalty, raising allowance demand and thus making them more valuable.")

CSAPR's assurance provisions presuppose that the additional allowances needed will be available for purchase, but, as stated above, it is impossible for EPA to estimate the relative numbers of allowances that will be available for purchase at the end of each control period, let alone guarantee that sufficient numbers of allowances will be available. Further, depending on the magnitude of a facility's share of excess emissions over the state's assurance level, and the total number of facilities subject to the assurance provisions in a particular state, it is foreseeable that the covered sources subject to the assurance provisions could collectively be required to surrender more allowances to satisfy the assurance provisions for the 2012 control period than EPA has issued for this period.

EPA explains that it "does not find reason to expect that emissions from covered sources in any state will exceed that state's assurance level", reasoning that the "two-for-one allowance surrender penalty" provides a sufficient deterrent to keep emissions from covered sources in each state from exceeding the assurance levels. EPA, Office

of Air and Radiation, Assurance Penalty Level Analysis Final Rule TSD, Docket ID No. EPA-HQ-OAR-2009-0491 (2011), at 2. This view is fundamentally flawed, however, because it is based on the assumption that affected facilities will easily be able to track their emissions, as well as the emissions of all other affected facilities in the state, throughout the control period, and then, if it appears that the state's total emissions are approaching the state's assurance level, simply-scale back operations to the extent needed to avoid triggering the assurance provisions. *See* EPA, Office of Air and Radiation, Assurance Penalty Level Analysis Final Rule TSD, Docket ID No. EPA-HQ-OAR-2009-0491 (2011), at 6 (EPA recognizes that "it is best to be sure in the initial years that the assurance penalty is effective . . ., while encouraging trading to lower costs and increase[d] flexibility and avoiding actions that have a chilling effect on activities.").

These concerns are particularly severe for under-allocated facilities in Pennsylvania. Specifically, EPA substantially reduced the final allocation of $SO_2$ allowances to affected sources in Pennsylvania in the final version of CSAPR, relative to that proposed by EPA throughout the rulemaking process. For this reason, not only were Pennsylvania sources not afforded prior notice of the ultimate compliance obligation that would be imposed through the final regulation, but the ability of affected sources in Pennsylvania to ensure compliance within the state's assurance level is substantially compromised. Since the final allocation to Pennsylvania sources was severely depreciated compared to the initial expectation of such sources, it is unlikely that Pennsylvania sources have adequately planned to maintain sufficient allowances to comply. Moreover, under EPA's proposed rule, the assurance provisions were not

scheduled to take effect until the beginning of Phase II, and would have required the surrender of only one additional allowance per ton of excess emissions above the state's assurance level. 76 Fed. Reg. 48,296. Therefore, based on the proposed rule, affected facility owners were not anticipating having to demonstrate compliance with the assurance provisions until Phase II (i.e., by which time such facilities would have had the opportunity to install necessary pollution controls, as an alternative compliance strategy), nor were they expecting the imposition of an allowance surrender penalty that is *twice* as stringent as the one initially proposed.

For a facility, like Sunbury, that is woefully under-allocated $SO_2$ allowances when compared to historic emission rates, the probability that such facility would bear a significant burden of any aggregate exceedance of Pennsylvania's assurance level is substantially pronounced. In other words, to the extent that the aggregate $SO_2$ emissions from Pennsylvania affected sources exceed Pennsylvania's assurance level, those facilities that relied most heavily for compliance on allowances secured from out-of-state sources would be most severely penalized under CSAPR's assurance provisions. The penalty in this case is one that, quite possibly, could not even be satisfied based upon the actual availability of allowances. Accordingly, there is a substantial likelihood that the aggregate emissions from Pennsylvania affected sources will exceed the state's assurance level, particularly during the first year of Phase I, and that those facilities that most heavily relied upon out-of-state allowances for their initial compliance demonstration would face severe difficulty in securing the sufficient number of allowances to satisfy CSAPR's penalty assurance provisions.

For the reasons discussed above, an affected facility would not be in a position to ensure compliance with CSAPR in Phase I. This result is not only arbitrary and capricious, but it also exceeds EPA's authority under the CAA. *See Michigan v. EPA*, 268 F.3d 1075, 1082 (D.C. Cir. 2001) (striking down EPA CAA regulation, reasoning that "if EPA lacks authority under the Clean Air Act, then its action is plainly contrary to law and cannot stand"); *Davis Cnty. Solid Waste Mgmt. v. EPA*, 101 F.3d 1395, 1401, 1411 (quoting *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1998) (finding that EPA's CAA standards addressing municipal solid waste combustion exceeded EPA's authority under CAA Section 129; the Court noted that "it is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress"). Moreover, it has been recognized that EPA does not have the authority to implement a regulation with which an affected source cannot ensure compliance. *See Hooker Chemicals & Plastics Corp. v. Train (EPA Administrator)*, 537 F.2d 620, 636-37 (2d Cir. 1976) (setting aside EPA Clean Water Act regulation, reasoning that EPA failed to demonstrate that the technology required by the regulation was or would be available, and EPA may be foreclosed from promulgating regulations where they are "not attainable by any technology known today"). For the foregoing reasons, EPA should reconsider and revise the final rule's heat input-based allocation approach as requested below.

### C. The application of CSAPR's final allocation methodology during Phase I, and the timing requirements associated with the applicability of Phase II, could prevent affected sources from demonstrating compliance.

#### *(i) Even to the extent that a source plans to install pollution controls to comply with CSAPR in Phase II, such source may not be able to remain viable during Phase I under the current allocation scheme.*

As discussed above, EPA clearly does not intend for CSAPR to result in significant emission reductions during Phase I (i.e., in addition to the emission reductions that would otherwise be achieved in the absence of CSAPR). Rather, EPA anticipates that the most meaningful emission reductions – at least with respect to $SO_2$ emissions in Group 1 states – will be generated in Phase II. It is clear from EPA's preamble discussion, and taking into account the final allowance allocations which take effect in 2014, that many (if not most) affected sources will not be able to achieve the emission reductions required in Phase II without installing certain advanced post-combustion controls. While EPA acknowledges the challenges associated with installing such controls by 2014, the Agency contends that it is possible for affected sources to take the necessary steps to install and operate such controls by this time.

Consistent with this view, it is possible that, in response to CSAPR, a number of facilities may pursue plans (including making the necessary capital expenditures) to install the post-combustion controls needed to demonstrate compliance with CSAPR in 2014. However, it will be impossible for these facilities to execute such plans if they are unable to remain viable and continue operating during Phase I. As explained above, many existing facilities, including Sunbury, are so grossly under-allocated in Phase I, that it will be impossible for them to achieve the applicable emission reductions without

installing advanced post-combustion controls – an option which EPA has acknowledged is not practicable before 2014. This fact, coupled with the inherent uncertainty surrounding the rule's allowance trading programs and related assurance provisions, create circumstances under which many facilities cannot remain viable throughout Phase I, irrespective of whether such facilities intend to install the necessary retrofits to ensure compliance during Phase II. *See* Standard & Poor's, Global Credit Portal Ratings Direct, at 6 (noting that there are a variety of factors which "may favor the decision to retire coal capacity rather than retrofit it"). Accordingly, CSAPR should be revised to ensure that affected facilities can remain viable until emission controls can be installed. Such regulatory strategy is integral to the preservation of reliability in the energy generation market throughout Phase I of CSAPR.

***(ii) CSAPR's January 1, 2014 applicability date for Phase II is improperly aggressive and does not afford affected facilities sufficient time to install necessary pollution controls.***

In the preamble to CSAPR, EPA clearly acknowledges the challenges faced by regulated entities to design, construct, install, and commence operation of significant emission control systems by January 1, 2014. *See, e.g.*, 76 Fed. Reg. 48,282-83. Specifically, EPA recognizes that installing FGD and SCR retrofits by 2014 will be very difficult, requiring "aggressive action", including "parallel permitting" and "overtime and/or two-shift work schedules". *Id. See also* 76 Fed. Reg. 48,282 (noting that "any other unit that might choose to retrofit FGD for a January 2014 compliance date will likely have to use various methods to accelerate the project schedule"). EPA also admits that its schedule assumptions – 27 months for wet FGD and 21 months for SCR – are only "reasonable expectations for sources that have completed most of their

preliminary project planning and can quickly make commitments to proceed." 76 Fed. Reg. 48,282. Applying this standard, EPA's schedule assumptions would be *unreasonable* for the vast majority of unscrubbed coal-fired plants today, because "only about 30 gigawatts (GW) of the 143 GW of unscrubbed coal-fired power capacity (or about 22%) is currently under development or construction". *See* Standard & Poor's, Global Credit Portal Ratings Direct, at 5. Consistent with this view, some utilities have already asserted that EPA has underestimated the time required to install dry or wet scrubber technology, arguing that installation of a scrubber system can take up to 52 months – i.e., nearly twice as long as EPA projects. *Id.* at 6.

In the context of developing its proposed Utility MACT, EPA acknowledged that the same class of affected sources would face material challenges in completing significant emission control systems by November 2015 (the date currently identified by EPA as the probable compliance date under the Utility MACT for existing sources) – nearly two years after the initial compliance date for Phase II of CSAPR. 76 Fed. Reg. 25,054-55.[8] EPA cannot simultaneously conclude that affected utilities will require *four years* to install the necessary controls to demonstrate compliance with the Utility MACT, but only *two-and-a-half years* to install the *same* types of complex controls to demonstrate compliance with CSAPR. Indeed, EPA apparently recognizes that many facilities will not be able to satisfy the Phase II requirements through the installation of controls and, on this basis, effectively *relies* on banking as a compliance option as a

[8] In the context of the Utility MACT, as part of EPA's "analysis to assess the feasibility (e.g., the ability of companies to install the required controls within the compliance time-frame) and potential impact of the proposed rule on reliability", the Agency "assessed a time-frame that would allow some installations to take up to 4 years. This time-frame is consistent with the CAA which allows permitting authorities the discretion to grant extensions to the compliance time-line of up to 1 year." 76 Fed. Reg. 25,054-55. Thus, it is clear that EPA fully expects that affected existing sources will require more than three years to demonstrate compliance with the final Utility MACT.

basis to justify the timing of the Phase II requirements under CSAPR. *See* EPA, Office of Air and Radiation, Assurance Penalty Level Analysis Final Rule TSD, Docket ID No. EPA-HQ-OAR-2009-0491 (2011), at 5 (EPA's recognizes that "[c]overed sources in [$SO_2$ Group 1 states] may decide to reduce their emissions further than required in 2012 and 2013 and bank the unused allowances for use in 2014 and later years. This pattern effectively smoothes their emission reductions over time to minimize total compliance costs in those states.").

For these reasons, Sunbury believes CSAPR's current Phase II applicability date is improperly aggressive. Sunbury requests that the Agency revise the relevant applicability provisions under CSAPR such that Phase II does not commence until January 1, 2016. That is, in order to achieve consistency with the probable schedule for implementation of the Utility MACT, affected sources under CSAPR should be given four years from the anticipated promulgation date of the final Utility MACT rule to demonstrate compliance with Phase II – i.e., November 2015. Because CSAPR is currently structured to apply on a calendar-year basis, Sunbury recommends that Phase II commence at the start of the first calendar year following November 2015 – i.e., January 1, 2016. Applying this alternative approach, Phase I would continue to apply during the interim period between January 2014 and January 2016, thereby ensuring that no state's emissions would increase during Phase I relative to established historic emission rates, consistent with the overarching objectives of the CSAPR regulatory construct.

### D. EPA should reconsider and revise CSAPR to reallocate the Phase I allowances based on historic emissions, rather than using the final heat input-based approach.

For the reasons discussed above, Sunbury believes CSAPR's final heat input-based allowance allocation approach is arbitrary and capricious, contrary to EPA's authority under the CAA, and inconsistent with EPA's implementation of prior air quality programs under the CAA. Accordingly, in order to remedy the implications of the this heat input-based approach, Sunbury requests that EPA reconsider and revise CSAPR to reallocate allowances to affected sources in Phase I based on historic emissions, rather than heat-input, as described below.

First, EPA should identify the maximum average reported emissions (for $SO_2$, annual NOx, and ozone season NOx) for each affected CSAPR unit for any consecutive three year period between 2003 and 2010 (i.e., the same time period used by EPA to calculate the Phase I allowance allocations under the final rule). Of course, EPA has already compiled this data for affected units. *See* EPA, Office of Air and Radiation, Allocation Allowance Final Rule TSD, Docket ID No. EPA-HQ-OAR-2009-0491 (2011), at 11. Then, each covered unit should be initially allocated a number of allowances equal to its maximum historic 3-year average emissions during the relevant time period (for $SO_2$, annual NOx, and ozone-season NOx). If the state's emission budget is insufficient to provide each affected unit a number of allowances equal to the unit's maximum 3-year average historic emissions, then each unit's allocation should be reduced proportionately, based on that unit's percentage share of the state's total emission budget.[9]

[9] Based upon the relative immediacy of the timing obligations under Phase I of CSAPR, in conjunction with EPA's statements that Phase I is not intended to impose significant burdens on affected facilities as

This proposed approach would enable EPA to establish and impose state emission budgets even during Phase I of CSAPR, thereby ensuring that no state's emissions would increase during Phase I relative to established historic average emission rates, while enabling all affected sources to establish and implement the CSAPR-required recordkeeping, reporting, and compliance demonstration procedures, and otherwise prepare for transition to compliance under Phase II. Ultimately, Phase II of CSAPR would establish appropriate state-specific emission budgets to ensure that emissions would not contribute to an exceedance, or interfere with maintenance, of the fine particulate matter ("PM2.5") or ozone NAAQS in a downwind state, consistent with the underlying purpose of CSAPR. This proposed approach would be consistent with CSAPR's method for allocating allowances to new units from the new unit set-aside, which is based on an affected unit's emissions during the applicable control period, rather than historic heat input. *See* 76 Fed. Reg. 48,292-93. Therefore, EPA has already determined that this basic approach is consistent with the CAA and appropriate for application to affected units as part of the regulatory framework selected by EPA to address interstate pollution transport.

This approach would also be consistent with EPA's stated objective that "a starting point allocating some units more than they have ever emitted would be illogical", because under such approach, no affected unit would be allocated more than its maximum historic emissions during the relevant time period. See 76 Fed. Reg. 48,288. This proposed approach would also allow EPA to avoid a distribution of allowances whereby certain facilities are effectively disadvantaged under the final rule, while others

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they prepare to transition to Phase II, Sunbury further believes that state-specific allowance budgets should not be set at a level during Phase I that would require any substantial reduction in $SO_2$ emissions from affected sources.

are given a windfall. Likewise, facilities would not be put in a position where their *only* available option for demonstrating compliance is to attempt to purchase allowances from their competitors.

At a minimum, Phase I of CSAPR should not impose the regulation's state-specific assurance provisions. To the extent that a regulated source must secure allowances from other regulated facilities as a necessary compliance alternative during Phase I, such facilities should be protected under the regulation in relying upon this compliance methodology. In short, since Phase I of CSAPR would provide only a single compliance option (to the extent that it is even viable) to certain under-allocated sources during Phase I, EPA must ensure that such affected sources will be able to demonstrate compliance, including without severe penalty, by relying on such compliance method. Given the limited duration of Phase I, as well as the specific objectives for that portion of the regulation, elimination of the assurance provisions during Phase I (consistent with EPA's initial proposal for the imposition of the assurance provisions during the rulemaking process) would not undermine the overall objectives of the regulation.

## IV. Conclusion

As detailed above, EPA apparently did not intend to impose significant emission reduction requirements on affected facilities during Phase I, reasoning that such requirements can be achieved by simply relying on existing controls and other methods that do not involve the installation of complex post-combustion retrofits. Nevertheless, CSAPR severely under-allocates $SO_2$ allowances to certain facilities, like Sunbury, even

during Phase I, thereby imposing an impracticable compliance obligation on these facilities.

The significant disadvantage imposed upon Sunbury and others through this under-allocation of allowances is magnified by the absence of practical alternative compliance options, because the deadlines imposed under CSAPR preclude Sunbury from pursuing any compliance option under Phase I except attempting to secure available allowances from other affected sources. Specifically, these facilities will be allocated so few allowances in Phase I, that they will not be able to satisfy the emission reduction requirements by simply operating existing controls, fuel switching, and/or increasing dispatch of lower-emitting generation. Similarly, these facilities will not be able to achieve the required reductions by installing advanced post-combustion controls, because, as EPA has clearly recognized, it is impossible for such controls to be installed by 2012. Accordingly, these under-allocated facilities are left with only two options for complying with CSAPR in 2012: cease or curtail operations, or purchase allowances on the market from their over-allocated competitors. Since it would not be economically feasible for Sunbury to curtail its operations to 20% of historic rates, the only viable option for Sunbury to demonstrate compliance during Phase I is to purchase allowances from its over-allocated competitors. However, the CAA clearly does not authorize EPA to develop a regulatory scheme that requires certain regulated entities to compensate other regulated entities in the same industry as a condition to future operation. For these reasons, Sunbury requests that EPA reconsider these aspects of CSAPR and revise the rule to avoid the application of this unworkable result for Sunbury.

It is also impossible for facilities that are under-allocated in Phase I to ensure compliance with CSAPR. EPA appears to believe that there will be more than enough $SO_2$ and NOx allowances available for purchase for these sources for the Phase I period. However, because this belief is premised on two flawed assumptions, it is impossible for a facility that is severely under-allocated in Phase I, like Sunbury, to ensure that it will be able to demonstrate compliance with CSAPR by purchasing allowances on the market. First, it is unlikely that many facilities will be able to complete the necessary steps to reduce emissions below current rates before Phase I takes effect in January 2012 and, as a result, it is doubtful that a sufficient number of allowances will be available for transfer from these facilities to their under-allocated counterparts. Second, even to the extent that sources have "excess" allowances available for transfer, many facilities holding excess allowances during Phase I are likely to elect to bank their allowances for use during Phase II, when the required $SO_2$ reductions are meaningfully more stringent in Group 1 states. Thus, Sunbury requests that EPA reconsider and revise CSAPR to reallocate allowances to affected sources in Phase I based on historic emissions, rather than heat-input, in the manner described above in Section III.D. At a minimum, CSAPR should not impose the state-specific assurance provisions during Phase I.

Further, even to the extent that a source plans to install pollution controls to comply with CSAPR in Phase II, such source may not be able to remain viable during Phase I under the rule's current allocation scheme. Although it is foreseeable that a number of facilities may pursue plans to install post-combustion controls to demonstrate compliance with CSAPR in 2014, it will be impossible for these facilities to execute such

plans if they are unable to remain viable and continue operating during Phase I, because, as in Sunbury's case, they are grossly under-allocated in Phase I.

Sunbury further requests that EPA postpone the applicability date for Phase II, recognizing that affected sources will face material challenges to design, construct, install, and commence operation of significant emission control systems by January 1, 2014. In order to ensure consistency between EPA's proposed timing for the implementation of the Utility MACT and CSAPR, Sunbury requests that EPA delay the effective date for Phase II until January 1, 2016. Phase I would continue to apply during the interim period between January 2014 and January 2016.

Sunbury appreciates the opportunity to submit this Petition for Reconsideration and looks forward to continuing to work with EPA to address the issues discussed herein.