



**TEXAS MINING AND RECLAMATION ASSOCIATION**

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September 28, 2011

**VIA FIRST-CLASS MAIL AND ELECTRONIC MAIL**

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U.S. Environmental Protection Agency  
Office of Air and Radiation  
Ariel Rios Building, Mail Code: 6101A  
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Washington, D.C. 20460  
(mccarthy.gina@epa.gov)

Re: **Petition of the Texas Mining and Reclamation Association for Partial  
Reconsideration and Stay of the Cross-State Air Pollution Rule**

Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone  
and Correction of SIP Approvals, Final Rule, 76 Fed. Reg. 48208 (Aug. 8, 2011)  
Docket No. EPA-HQ-OAR-2009-0491

Dear Administrator Jackson and Assistant Administrator McCarthy:

The Texas Mining and Reclamation Association (TMRA) is an industry trade association of approximately 100 state and national mining industry members representing several thousand employees. TMRA members include companies who mine clays, crushed stone, granite, gypsum, limestone, marble, sand and gravel, uranium, and importantly for the purposes of this petition, lignite and coal.

TMRA petitions the U.S. Environmental Protection Agency (EPA) to conduct a partial reconsideration and stay of the Cross-State Air Pollution Rule (CSAPR) as the rule applies to Texas. Specifically, TMRA objects to the inclusion of Texas in the annual SO<sub>2</sub> and NO<sub>x</sub> programs without any prior notice or opportunity for meaningful and substantive comments and the impacts that this inclusion will have on the lignite mining industry.

TMRA members Luminant and San Miguel Electric Cooperative, Inc. (San Miguel), as well as the Gulf Coast Lignite Coalition (GCLC), which has several members who are also members of TMRA, have already filed extensive and detailed petitions for reconsideration and stay of CSAPR. TMRA incorporates those arguments into this petition by reference.<sup>1</sup> As described in those petitions, the inclusion of Texas in the annual SO<sub>2</sub> and NO<sub>x</sub> programs:

- was done without proper notice and comment, foreclosing the ability of impacted power plants and mines to file substantive comments;
- was based on a modeled contribution to PM<sub>2.5</sub> NAAQS exceedance at only one monitor, which is in an area now deemed in compliance with NAAQS based on actual emissions data;
- is being done through an immediate Federal Implementation Plan (FIP) process which violates Texas' right to submit a State Implementation Plan (SIP) first;
- will force Texas to make emissions reductions far exceeding any alleged significant contribution to downwind nonattainment, effectively forcing Texas to shoulder a significant amount of the emissions reductions of other states; and
- will force the derating or idling of lignite-fired and coal-fired power plants, resulting in closure of lignite mines and in significant economic impacts, job losses, and detrimental impact to electric reliability likely leading to rolling blackouts at peak demand periods next year.

In addition to incorporating Luminant, San Miguel, and GCLC's Petitions, TMRA files this petition to provide additional information on the impacts of CSAPR's forced derating, idling, and fuel-switching of power plants and the impacts that these decisions will have on Texas' lignite mines and miners.

**The Derating, Idling, and/or Fuel-Switching of  
Lignite-Fired Power Plants Would Have a Severe Impact  
on the Texas Lignite Mining Industry and the Texas Economy**

The impacts of CSAPR to Texas electric reliability have been well documented, with the Electric Reliability Council of Texas (ERCOT) predicting 1,200 to 1,400 MW of generation capacity reductions during the summer and between 3,000 to 6,000 MW of reductions during non-summer months.<sup>2</sup> The Southwest Power Pool, which manages electricity for approximately 14% of Texans, also has found

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<sup>1</sup> TMRA also supports the petition filed by the State of Texas.

<sup>2</sup> Electric Reliability Council of Texas, *Impacts of the Cross-State Air Pollution Rule on the ERCOT System*, 5 Sept. 1, 2011

through their modeling that the “CSAPR IPM generation dispatch indicates serious, negative implications to the reliable operation of the electric grid in the SPP region raising the possibility of rolling blackouts or cascading outages that would likely have significant impacts on human health, public safety and commercial activity within SPP.”<sup>3</sup> On September 12, 2011, Luminant announced a reduction of 1,300 MW in capacity in 2012 due to CSAPR.<sup>4</sup> This is likely the first of many announcements from Texas electricity generators of reduced generating capacity in 2012.

What have been less documented are the impacts that CSAPR will have on the mining industry and the Texas economy. Any rule which forces Texas power plants to turn away from lignite, through fuel switching, derating, or idling, would in effect strand potentially billions of tons of lignite, thereby undermining the ability of Texas to use a vital Texas resource, and permanently eliminating thousands of high-paying Texas jobs directly tied to the mining and lignite-fired power generation industries. Most immediately, it will expose the Texas electrical grid to serious reliability risks and necessarily increase electricity costs triggering significant adverse economic impacts.

Texas has approximately 23 billion tons of lignite deposits; of those, 10 billion tons are economically recoverable in today’s market. This would sustain Texas’ current lignite consumption for the next 100 years, which will help Texas maintain a diverse energy resource mix so critical to maintaining stable and affordable electricity rates at the heart of economic recovery and growth. Mandating emission reductions that functionally preclude a significant portion of that lignite from being utilized will interfere with Texas’ ability to maintain diversity and the price stability associated therewith.

The coal and lignite mining industry is also a major component of the Texas economy and an economic engine for communities where mines are located. The combined direct and indirect economic impact of coal and lignite mining in the state is more than \$28 billion, annually. Even incremental impacts to Texas coal and lignite mining can ultimately have a much larger effect, as economic impacts would reverberate throughout their communities and beyond. Suppliers of mining equipment and other services would no longer have a market, and the communities which support the mines and miners would also see a demand for their services and goods disappear. Local and regional governments would also be hit hard, as mining operations provide needed tax bases, often the largest tax bases, for their local communities. Schools, hospitals and other essential services for the communities would be impacted.

At the heart of all of these economic impacts are lost jobs. Luminant has already announced that idling plants and mine closures as a direct consequence of CSAPR will result in the loss of 500 jobs., but going forward, job losses will not be limited to Luminant. Luminant was only the first, of what TMRA fears will be many that will undergo similar cut-backs in workforce. Jobs will not only be lost when plants are idled or permanently shut down. Jobs will also be lost when plants derate due to CSAPR as reduced power output means reduced demand for lignite, and ultimately, fewer individuals who can be employed supplying that lignite.

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<sup>3</sup> *Id.* at 2.

<sup>4</sup> Luminant, Luminant Announces Facility Closures, Job Reductions in Response to EPA Rule, Sept. 12, 2011.

EPA should not lose sight of the human impact of this rulemaking, especially during these difficult economic times. All too often, proponents of rules like CSAPR seem to imply, if not outwardly state, that job losses at coal mines are a necessary evil. They try to justify job-killing rules such as CSAPR with grossly exaggerated and speculative health benefits. While many in the scientific community dispute EPA's claims about the health benefits of rules like the CSAPR, nobody can dispute the very real human cost when jobs are lost.

It is fundamentally misguided to advocate environmental causes in the name of establishing a more perfect world, while being callous about the human beings who live in that world. Rules such as CSAPR cannot and should not be implemented without more thorough evaluation of the human costs associated with their implementation. Every one of the 500 jobs lost at Luminant and the hundreds, if not thousands, of other potentially lost jobs represent a human being who supports themselves and, often, a family. These workers live in parts of rural Texas with few other job options, and it is callous to disregard this situation and the impact on worker and family health, nutrition, and education.

**Lignite Mine Closures and Job Losses at Texas Power Plants  
and Lignite Mines are Not a Surprise, but Rather, were Part of EPA's Model**

In testimony made by Assistant Administrator Gina McCarthy at the U.S. House Committee on Science, Space, and Technology's September 15, 2011 hearing entitled *Out of Thin Air: EPA's Cross-State Air Pollution Rule*, Ms. McCarthy voiced what appears to be surprise at the prospect of lignite mine closures. In particular, at the House Science, Space, and Technology hearing, Assistant Administrator McCarthy stated:

“Do we need to close - do companies need to choose to close the lignite facilities in order to comply? The simple answer is no. This system is set up to allow a number of choices - business choices. It may be that that business has chosen to take that path forward but EPA has anticipated that Texas may want to choose other options and in the rule itself we included information that indicated that you could maintain the same historical use of lignite coal in Texas and still achieve the reductions under the rule within the same cost constraints which make them very inexpensive reductions.”<sup>5</sup>

Assistant Administrator McCarthy's position, to state it simply, is not correct and is contradicted by EPA's own IPM modeling. In the IPM model, EPA completely eliminated the use of lignite at numerous Texas power plants in the remedy case. As lignite-fired power plants in Texas are typically co-located with their mines, and obtain their lignite from these designated mine sources, there is no question that job losses at these mines would be inevitable if the use of lignite is foreclosed. There is no other market for this lignite. This directly conflicts with EPA's written statements and testimony, and clearly supports the position that these mine closures are real, forced, and a predicted part of this rulemaking.

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<sup>5</sup> *Id.*

As far as EPA's current contention that operators do not have to "choose" to close down mines, as made clear in Luminant's announcement, the idling of power plants and the shutdown of mines is not a "choice" that is made over other options.<sup>6</sup> There are no other options.

### **Forced Fuel Switching has No Place in this Rulemaking**

One of EPA's suggested compliance options, indeed the clear intent of this rulemaking as reflected within EPA's economic modeling, is to force the fuel switching of Texas lignite units to other types of coal. TMRA objects to the assumption that fuel switching is a justified option under the Clean Air Act, especially as portrayed by EPA in CSAPR, as an option that is feasible, simple, cheap, and achievable in the short term.

Forced fuel switching is not called for in the Clean Air Act and is against the longstanding policy of the EPA. The reasons for this historical opposition to forced fuel switching are numerous, but fundamentally revolve around the fact that the Clean Air Act was never intended to be used to make energy policy or preclude the market viability of energy resources. Given the short compliance window for this rule and without the ability to retrofit the plants in time or purchase the requisite number of allowances at an affordable price, when power plants are faced with the option of either derating/idling their facility or looking elsewhere for their coal shipments, the choice to switch from lignite to PRB coal is not "voluntary."

The very reason that fuel-switching has been disfavored by EPA for decades is the reason it is bad policy today. It limits compliance options, impairs fuel diversity, artificially limits energy markets, and increases consumer prices. Less fuel diversity means more exposure to price volatility associated with supply, demand, and transportation issues inherent in the use of energy commodities. Furthermore, CSAPR's forced fuel-switching will also eliminate high-paying jobs, mainly in rural areas, and detrimentally impact local communities including schools, hospitals, and community programs that depend on this tax revenue base as well as small businesses who are suppliers to the companies and those small businesses that depend on workers' as customers. These additional indirect jobs also provide for the general welfare of these communities.

### **Conclusion**

The nature and timing of CSAPR must be revisited. CSAPR, if not reconsidered and stayed, will result in thousands of direct and indirect job losses and serious economic impacts to the communities and customers that these operations serve. The rule will undermine electric reliability and affordability, as baseload power plants which have always depended on a plentiful, local, and affordable lignite source will have to look elsewhere for coal with no assurance that they will be able to get the amount they need

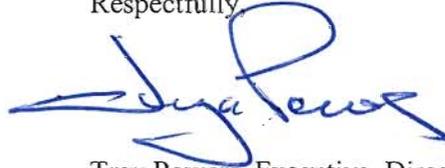
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<sup>6</sup> See Luminant, Luminant Announces Facility Closures, Sept. 12, 2011

when they need it. During the stay, a reconsideration period will provide impacted Texas entities the opportunity to provide meaningful comment for the first time on the inclusion in the annual SO<sub>2</sub> and NO<sub>x</sub> program, which will be critical in working towards fixing the errors in the current rule and settling upon a more scientifically sound and well-reasoned CSAPR that can be complied with, while not doing irreparable damage to Texans, their communities, and the Texas economy.

The Texas Mining and Reclamation Association appreciates your consideration of this petition. If you have any questions, please do not hesitate to contact me directly.

Respectfully

A handwritten signature in blue ink, appearing to read "Trey Powers". The signature is stylized and fluid, with a large initial "T" and "P".

Trey Powers, Executive, Director  
Texas Mining and Reclamation Association

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