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October 6, 2011

Honorable Lisa P. Jackson
U.S. Environmental Protection Agency
Room 3000, Ariel Rios Bldg.
1200 Pennsylvania Ave., NW
Washington, DC 20460

VIA OVERNIGHT DELIVERY

In re: Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 Fed. Reg. 48,208 *et seq.* (Aug. 8, 2011)

Docket No. EPA-HQ-OAR-2009-0491

PETITION FOR RECONSIDERATION

Pursuant to 42 U.S.C. § 7607(d)(7)(B), Wisconsin Power and Light Company ("WPL") respectfully requests that the U.S. Environmental Protection Agency ("EPA") grant a reconsideration of the "Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals," 76 Fed. Reg. 48,208 *et seq.* (Aug. 8, 2011), as it applies to Wisconsin. The rule, which is also known as the Cross-State Air Pollution Rule, shall be referred to in this petition as the "Cross-State Rule" or the "Final Rule".

I. INTRODUCTION

In August 2010, EPA published the proposed Clean Air Transport Rule ("CATR"). CATR including proposed SO_2 and annual NO_x emission budgets for Wisconsin and proposed allocations for electric generating units ("EGUs") within Wisconsin. Since the publication of the proposed CATR, WPL has undertaken efforts to manage its emissions in anticipation of the then-proposed January 1, 2012 effective date of the rule. WPL's planning considered the most

stringent of EPA's proposed CATR emission reductions and allocation approaches, and included installation of air pollution controls, where feasible in the time available, as well as adjustments to generation operations and dispatch. The Cross-State Rule, though, provides Wisconsin with much more stringent state emission budgets starting in 2012 and 2014 than were originally proposed. Likewise, EGUs within Wisconsin, including those owned and operated by WPL, will receive much smaller allowance allocations starting in 2012. This will require WPL to undertake interim measures to reduce emissions at its units, diverting resources from implementing longer-term solutions.

WPL is committed to complying with the Cross-State Rule, and is seeking ways to comply with the Final Rule's requirements in a cost-effective manner for its customers within the short period of time allotted. Notwithstanding this commitment, WPL believes that the Cross-State Rule unfairly and improperly requires Wisconsin to reduce its emissions beyond that necessary to comply with the Clean Air Act. This additional burden has the likely result of increasing the costs to operate EGUs within Wisconsin or to procure replacement power if EGUs within Wisconsin cannot operate as much as otherwise expected—costs that will ultimately be borne by customers. Furthermore, the short, six-month, timeline between publication of the Cross-State Rule and the effective date of the rule significantly limit the options available to WPL to reduce its emissions in advance of the effective date. Despite WPL's efforts, the stringency of the Final Rule as it relates to Wisconsin places a substantial burden on WPL to comply with the established budgets and allocations while providing affordable and reliable power to its customers.

II. BACKGROUND

In 2005, the EPA issued the Clean Air Interstate Rule ("CAIR") with the purpose of eliminating the impacts of upwind sources on out-of-state, downwind nonattainment of the national ambient air quality standards ("NAAQS") for annual and 24-hour PM2.5 and eight-hour ozone. EPA premised CAIR upon Section 110(a)(2)(D)(i)(I) of the Clean Air Act (CAA), which is often referred to as the "good neighbor" provision. The "good neighbor" provision provides that a state implementation plan (SIP) must:

> ...contain adequate provisions—(i) prohibiting...any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—(1) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any national ambient air quality standards [NAAQS]...

In 2008, the U.S. Court of Appeals for the District of Columbia Circuit, in *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), reviewed the CAIR and concluded that the rule was fatally flawed. The Court found that the "good neighbor" provision "require[s] the elimination of emissions from sources that contribute significantly and interfere with maintenance in downwind nonattainment areas." *Id.* at 908. Notwithstanding this requirement, the allowance trading system created by CAIR enabled sources within a state to comply solely through the purchase of emission allowances and without actually eliminating or addressing the state's significant

contribution. *Id.* at 906-08. The Court ultimately remanded CAIR to EPA to correct this and other fatal flaws.

The Cross-State Rule.

The Cross-State Rule is, at least in notable part, the result of the Court's remand, and, as with the CAIR, is premised under the good neighbor provision of the CAA. The Cross-State Rule seeks to address three NAAQSs: the 1997 and 2006 fine particulate matter ($PM_{2.5}$) NAAQSs and the 1997 ozone NAAQS. 76 Fed. Reg. at 48,209. EPA concluded that the SO_2 and NO_x emissions from 27 upwind states were contributing significantly to nonattainment or interfering with the maintenance of downwind states with one or more of these air quality standards. To address the impacts of the SO_2 and NO_x emissions from the upwind states, the Cross-State Rule creates four allowance trading programs—two SO_2 programs, a NO_x annual program, and a NO_x ozone-season program—which are intended to eliminate upwind states' significant contributions to nonattainment or interference with the maintenance with the $PM_{2.5}$ and ozone standards in downwind states. The rule seeks to realize actual reductions of emissions in upwind states (and avoid one of CAIR's fatal flaws) by establishing emission budgets for covered states and including assurance provisions.

EPA utilized modeling to determine which upwind states would be subject to one or more of the Cross-State Rule's allowance trading programs. Specifically, EPA modeled a base case to project which downwind locations (receptors) would be in nonattainment or have difficulty maintaining the $PM_{2.5}$ and ozone standards in 2012. 75 Fed. Reg. at 48,232-33. EPA also established thresholds, which equal 1% of the relevant NAAQS, to identify significant contributions ("linkages") from upwind states to downwind "nonattainment" or "maintenance" receptors; those thresholds are: 0.15 $\mu g/m^3$ for annual $PM_{2.5}$, 0.35 $\mu g/m^3$ for 24-hour $PM_{2.5}$, and 0.8 ppb for 8-hour ozone. *Id.* at 48,236. Upwind states that are below the threshold do not significantly contribute to nonattainment or interfere with maintenance of the standard, while upwind states that are at or above the threshold do. *Id.* EPA utilized the Comprehensive Air Quality Model with Extensions ("CAMx") to project upwind states' contributions to downwind maintenance and nonattainment receptors. *Id.* at 48,238-39. States that are projected to contribute the threshold amount or more to a downwind receptor are deemed "linked" to that receptor.

EPA then undertook a four-step process to determine the emission reductions required in upwind states to eliminate the upwind states' significant contributions to nonattainment or interference with maintenance at linked downwind receptors. *Id.* at 48,248. The four steps are:

> (1) Identification of each state's emission reductions available at ascending costs per ton as appropriate; (2) assessment of those upwind emission reductions' downwind air quality impacts; (3) identification of upwind ''cost thresholds'' delivering effective emission reductions and downwind air quality improvement; and (4) enshrinement of the upwind emission reductions available at those cost thresholds in state budgets.

Id. This methodology for establishing state budgets for the Cross-State Rule is generally consistent with the methodology that EPA used to develop the budgets for the proposed rule (CATR). EPA did, though, update certain data and assumptions in the underlying models.

Wisconsin's SO_2 and Annual NO_x Budgets under the Cross-State Rule.

Table 1 summarizes Wisconsin's budgets for SO_2 and annual NO_x emissions under both the proposed and final rules.

Table 1: Wisconsin CSAPR Budget

		SO_2 (tons)	Annual NO_x (tons)
EPA's 2012 Base		131,199	36,701
2012	Proposed	96,439	44,846
	Final	79,480	31,628
2014	Proposed	66,683	44,846
	Final	40,126	30,398

As seen in this table, Wisconsin's SO_2 budgets are dramatically reduced from both EPA's 2012 base case and the proposed SO_2 budgets. Wisconsin's final 2012 budget for SO_2 is approximately 18% smaller than its proposed 2012 budget, and constitutes an almost 40% reduction from EPA's 2012 base case. Wisconsin's final 2014 budget for SO_2 is 40% smaller than its proposed budget, and requires an approximately 70% reduction in emissions from EPA's 2012 base case.

Wisconsin's final 2012 annual NO_x budget is also significantly reduced – nearly 30% smaller than the proposed 2012 budget.

III. PETITION.

A. WPL's Request for Reconsideration is Appropriate under 42 U.S.C. § 7607(d)(7)(B).

Reconsideration is appropriate, because it was not practical for WPL to object to Wisconsin's inequitable treatment under the Cross-State Rule during the public comment period. Under 42 U.S.C. § 7607(d)(7)(B), the Administrator is required to hold a proceeding for reconsideration of a rule where the person raising the objection can show that "it was impracticable to raise such objection" during the public comment period or that the grounds for such objection arose after the public comment period, and that the "objection is of central relevance to the outcome of the rule[.]"

The crux of WPL's objections relates to Wisconsin's final emissions budgets and the disproportionate burden placed upon WPL and Wisconsin electric customers through those budgets. The state budgets are a key component of the Cross-State Rule as they represent, according to EPA, "the quantity of emissions that will remain from covered units under the Transport Rule after elimination of significant contribution to nonattainment and interference with maintenance in an average year...." 76 Fed. Reg. at 48,212. However, as discussed in more detail below, Wisconsin's budget under the Cross-State Rule appears to reflect reductions

in emissions well below the amount necessary for Wisconsin to eliminate its significant contribution to nonattainment and interference with maintenance in downwind states in an average year, enabling other states near Wisconsin to avoid eliminating their significant contributions. The objections raised in this petition could dramatically affect the outcome of the rule as it relates to Wisconsin.

WPL neither knew nor could have known of these objections during the public comment period, which occurred in 2010. EPA did not publish Wisconsin's severely diminished final budgets until the Final Rule was published, and as such, WPL was unable to comment on the inequitable impacts of the Final Rule on Wisconsin relative to other states near Wisconsin. "It is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data, or on data that, [to a] critical degree, is known only to the agency." *Am. Radio Relay League, Inc. v. Fed. Comm. Comm'n*, 524 F.3d 227, 237 (D.C. Cir. 2008) (quoting *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 393 (D.C. Cir. 1973)).

Additionally, WPL could not have reasonably predicted the dramatic reductions in Wisconsin's state budgets relative to the budgets included in the proposed rule. "Given the strictures of notice-and-comment rulemaking, an agency's proposed rule and its final rule may differ only insofar as the latter is a "logical outgrowth" of the former." *Envtl. Integrity Project v. EPA*, 425 F.3d 992, 996 (D.C. Cir. 2005); *see also Northeast Maryland Waste Disposal Authority v. EPA*, 358 F.3d 936, 952 (D.C. Cir. 2004) ("A rule is deemed a logical outgrowth if interested parties "should have anticipated" that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period.") (citing *City of Waukesha v. EPA*, 320 F.3d 228, 245 (D.C. Cir. 2003)). While EPA generally announced that it would be updating certain information in the modeling, nothing in EPA's notifications addressed or could have enabled WPL to predict the precipitous drop in Wisconsin's state budgets. Furthermore, WPL could not have reasonably predicted that Wisconsin's resulting stringent emission budgets may require Wisconsin to reduce its emissions beyond required to eliminate its significant contributions, thereby enabling nearby states to avoid eliminating their significant contributions. Consequently, it was not practical for WPL to object to Wisconsin's inequitable treatment under the Cross-State Rule during the public comment period.

For the foregoing reasons, reconsideration is appropriate and necessary under 42 U.S.C. § 7607(d)(7)(B).

B. The Cross-State Rule Impermissibly Requires Wisconsin to "Subsidize" Other State's Emission Reductions.

As discussed above, EPA used a 2012 base case to project which upwind states significantly contribute to nonattainment or interfere with maintenance at downwind receptors. For annual $PM_{2.5}$, any state that contributed 0.15 $\mu g/m^3$ or more to a downwind receptor was deemed to contribute significantly to, and was therefore "linked" to, that receptor. EPA's 2012 base case linked Wisconsin to seven nonattainment receptors for the annual $PM_{2.5}$ standard: Madison County, Illinois (171191007), Wayne County Michigan (261630033), three in Cuyahoga County, Ohio (390350038, 390350045, 390350060), and two in Hamilton County, Ohio (390610014, 390618001). Five states near Wisconsin are also linked to one or more of the same

nonattainment receptors as Wisconsin—Illinois, Indiana, Iowa, Michigan, and Missouri.[1] Table 2 shows the contributions of Wisconsin and these other five states to those seven nonattainment receptors.[2]

Table 2: 2012 Base Case Contributions to Annual $PM_{2.5}$ *Nonattainment* Receptors ($\mu g/m^3$)[3]

		Wisconsin	Illinois	Indiana	Iowa	Michigan	Missouri
Madison County, Illinois	171191007	0.16	(within state)	0.70	0.26	0.26	1.22
Wayne County Michigan	261630033	0.22	0.42	0.69	NL*	(within state)	NL
Cuyahoga County, Ohio	390350038	0.18	0.37	0.65	NL	0.63	0.15
	390350045	0.18	0.37	0.65	NL	0.64	0.15
	390350060	0.18	0.37	0.65	NL	0.64	0.15
Hamilton County, Ohio	390610014	0.15	0.50	1.28	NL	0.35	0.22
	390618001	0.15	0.50	1.27	NL	0.35	0.22
Largest Contribution to Nonattainment Receptor**							
		0.22	0.50	1.34	0.26	0.64	1.22

* "NL" identifies out-of-state receptors to which the state is not linked.
** Largest Contribution to Nonattainment Receptor may reflect contribution to a receptor not identified in table.

The 2012 base case also linked Wisconsin to four maintenance receptors for the annual $PM_{2.5}$ standard: two in Marion County, Indiana (180970081, 180970083), Cuyahoga County, Ohio (390350065), and Hamilton County, Ohio (390617001). Table 3 identifies the contributions of Wisconsin and the other five states' contributions to these maintenance receptors.

[1] Minnesota—one of Wisconsin's neighboring states—is not linked to any of the nonattainment receptors for $PM_{2.5}$ to which Wisconsin is linked.
[2] Illinois, Indiana, Iowa, Michigan, and Missouri may be linked to maintenance or nonattainment receptors for $PM_{2.5}$ beyond those receptors to which Wisconsin is also linked.
[3] Air Quality Modeling Final Rule Technical Support Document (June 2011) , Appendix D: 2012 Base Case State-by-State Contributions to Nonattainment and Maintenance for 8-Hour Ozone, Annual PM2.5, and 24-Hour PM2.5, pages D-7 and D-8. (http://www.epa.gov/crossstaterule/pdfs/AQModeling.pdf).

Table 3: 2012 Base Case Contributions to Annual $PM_{2.5}$ *Maintenance* Receptors ($\mu g/m^3$)[4]

		Wisconsin	Illinois	Indiana	Iowa	Michigan	Missouri
Marion County, Indiana	180970081	0.19	0.65	(within state)	NL	0.41	0.26
	180970083	0.19	0.65		NL	0.41	0.27
Cuyahoga County, Ohio	390350065	0.18	0.37	0.65	NL	0.64	0.15
Hamilton County, Ohio	390617001	0.15	0.50	1.27	NL	0.35	0.22
Largest Contribution to Maintenance Receptor**							
		0.19	0.65	1.27	NL	0.64	0.27

*"NL" identifies out-of-state receptors to which the state is not linked.
** Largest Contribution to Maintenance Receptor may reflect contribution to a receptor not identified in table.

As shown in Tables 2 and 3, Illinois, Indiana, and Michigan each have greater projected contributions to the nonattainment and maintenance receptors than Wisconsin, and Missouri's contribution is greater than Wisconsin for three of the nonattainment receptors and three of the maintenance receptors. Iowa's contribution to the Madison County, Illinois (171191007) nonattainment receptor—the one receptor to which Wisconsin and Iowa are both linked—is also larger than Wisconsin's. Moreover, each of the other five states' largest contribution to a nonattainment receptor for annual $PM_{2.5}$ exceeds Wisconsin's largest contribution, and four of those states' largest contribution to a maintenance receptor for annual $PM_{2.5}$ exceeds Wisconsin's largest contribution.[5]

The reductions that these states are required to achieve, though, do not appear to reflect their relative contributions to nonattainment and maintenance receptors. Table 4 summarizes the 2014 base case SO_2 emissions and the final 2014 SO_2 budgets for Wisconsin and the five other states near Wisconsin that have common linked nonattainment receptors for annual $PM_{2.5}$.

Table 4: Comparison of 2014 Base Case and Final SO_2 Budgets

State	2014 Base Case[6]	2014 SO2 Budget[7]	Percent Reduction from Base Case
Illinois	137,522	124,123	10%
Indiana	711,265	161,111	77%
Iowa	127,354	75,184	41%
Michigan	265,611	143,995	46%
Missouri	381,939	165,941	57%
Wisconsin	124,862	40,126	68%

[4] Air Quality Modeling Final Rule Technical Support Document (June 2011) , Appendix D: 2012 Base Case State-by-State Contributions to Nonattainment and Maintenance for 8-Hour Ozone, Annual PM2.5, and 24-Hour PM2.5, pages D-9 and D-10. (http://www.epa.gov/crossstaterule/pdfs/AQModeling.pdf).
[5] Iowa was not linked any maintenance receptors.
[6] 76 Fed. Reg. at 48,305.
[7] 76 Fed. Reg. at 48,262.

Of these six states, Wisconsin's 2014 budget requires the second largest reduction in SO_2 emissions when compared to the 2014 base case. This is particularly surprising in light of the fact that Wisconsin's contribution is relatively small compared to the contributions from the other states. Michigan, for example, has a larger contribution than Wisconsin to each nonattainment and maintenance receptor for annual $PM_{2.5}$ to which both states are linked, and with one exception, has more than twice the contribution. Nonetheless, Michigan's 2014 SO_2 budget is only a 46% from the 2014 base case by 46%, while Wisconsin's is a 68% reduction.

Wisconsin's stringent SO_2 budgets for both 2012 and 2014 imply that Wisconsin is reducing its emissions beyond what is required to eliminate its significant contribution to nonattainment or interference with maintenance in downwind states. EPA's data appears to confirm this implication. EPA modeled each Group 1 state's $PM_{2.5}$ contributions at $500 per ton and $2300 per ton cost levels. In conducting this modeling, EPA calculated each state's projected sulfate contributions to nonattainment and maintenance receptors; EPA's data indicates that it did not, though, calculate the projected nitrate contributions.[8] Consequently, EPA's data does not provide a complete picture of a state's projected contributions to annual $PM_{2.5}$ receptors. Nonetheless, EPA's data is illustrative and is the basis upon which it constructed state budgets for the Cross-State Rule. EPA's modeling demonstrates that at $500/ton Wisconsin's sulfate contribution to each of its linked annual $PM_{2.5}$ receptors would be well below the 0.15 $\mu g/m^3$ threshold. In fact, Wisconsin's sulfate contributions to those receptors are projected to range between 0.08 $\mu g/m^3$ and 0.11 $\mu g/m^3$. Given the low sulfate contributions, it is possible that Wisconsin's significant contributions would be eliminated at most, if not all, of those receptors at the $500 per ton level, even if Wisconsin's projected nitrate contributions were considered. EPA's modeling projects a further reduction in Wisconsin's sulfate contributions to its linked annual $PM_{2.5}$ receptors at the $2300 per ton level.

In stark contrast to Wisconsin, EPA's modeling demonstrates that Illinois, Indiana, and Michigan would—based solely upon sulfate contributions—remain at or above the 0.15 $\mu g/m^3$ threshold for the receptors identified in Tables 2 and 3 with the exception of Illinois's contribution to the Wayne County, Michigan receptor.[9] This is the case even at the $2300 per ton level.

In *North Carolina*, the D.C. Circuit plainly stated "section 110(a)(2)(D)(i)(I) gives EPA no authority to force an upwind state to share the burden of reducing other upwind states' emissions." 531 F.3d at 921. Yet, this appears to be precisely what the Cross-State Rule does to Wisconsin. EPA's data projects that, at the $500/ton level, Wisconsin's sulfate contributions will be well below the 0.15 $\mu g/m^3$ threshold, and indicates a potential (if not likely) elimination of Wisconsin's significant contribution to downwind state's air quality problems. The rule goes further, though, and burdens Wisconsin with achieving greater reductions than necessary. Wisconsin's additional reductions enable nearby states, such as Illinois, Indiana, and Michigan, to avoid reducing their respective contributions to the common linked receptors for annual $PM_{2.5}$ below the 0.15 $\mu g/m^3$ threshold. Put simply, the Cross-State Rule is requiring Wisconsin to

[8] This is in contrast to EPA's modeling of the 2012 base case, which calculated states' combined sulfate and nitrate contributions to nonattainment and maintenance receptors for $PM_{2.5}$.

[9] At both the $500/ton and $2300/ton levels, Missouri's sulfate contributions are less than the 0.15 $\mu g/m^3$ threshold for some, but not, all of the nonattainment and maintenance receptors to which Missouri and Wisconsin are both linked.

"subsidize" the emission reductions of nearby states. This is clearly impermissible under *North Carolina*, as "Each state must eliminate its own significant contribution to downwind pollution." *Id.*

In light of the Cross-State Rule's inequitable and improper treatment of Wisconsin, EPA should reconsider the rule as it relates to Wisconsin.[10]

C. Errors in EPA's Data Likely Compounded Wisconsin's Disparate Treatment.

WPL submitted comments on the proposed rule (the Clean Air Transport Rule) on October 1, 2010, which stressed the need for EPA to ensure the accuracy of its modeling input data:

> WPL reinforces that EPA must assure the accuracy of the input data for the final CATR. This includes validating generation data inputs in EPA's integrated planning and air quality models. Utility companies nationwide have recently submitted much of the information required in EPA models as part of certified responses to the Utility Maximum Achievable Control Technology (MACT) Information Collection Request (ICR). This includes information on generation fleet operating characteristics and permitted emissions rates. WPL requests that input data and modeling used for the final CATR be appropriately updated to reflect the Utility MACT ICR database. ...

WPL Oct. 1, 2010 Comments at 4. WPL also identified some of the errors contained within the NEEDs database, which EPA used, in part, to populate its model. Notwithstanding these comments, the modeling inputs utilized by EPA to develop the Cross-State Rule appear to still contain significant errors regarding generating units within Wisconsin, including Columbia Units 1 and 2 and Edgewater Unit 5, each of which are operated by WPL.[11]

Columbia Units 1 & 2. The Integrated Planning Model ("IPM") data file for EPA's 2012 base case identifies wet scrubbers on both Columbia Unit 1 and Columbia Unit 2. This data is incorrect. Neither Columbia Unit 1 nor Columbia Unit 2 has a wet scrubber installed or planned for installation. Dry scrubbers (spray dryer absorbers and baghouses), though, are planned for installation on both Columbia units, but construction of those dry scrubbers is not scheduled for completion until the first-half of 2014.

While WPL is unable to readily determine how EPA utilized its data regarding Columbia Units 1 and 2, it appears as though EPA may have modeled the Columbia units with wet scrubbers operating at all times starting in 2012. This assumption would be clearly erroneous. In addition to assuming wet scrubbers instead of the planned dry scrubbers, such an assumption would also contemplate approximately two and one-half years of SO_2 emission reductions that will not actually be realized (2012 – mid-2014). Columbia Units 1 and 2 are two of the largest coal-fired

[10] Section II.B. of Wisconsin Public Service Corporation's Amended Petition for Reconsideration (dated September 30, 2011) contains a detailed discussion of the inequitable and improper treatment of Wisconsin under the Cross-State Rule.

[11] WPL is the sole owner of Edgewater Unit 5, and jointly owns Columbia Units 1 and 2 with Wisconsin Public Service Corporation and Madison Gas and Electric Company.

generating units in Wisconsin, with nameplate capacities of 512 MW and 511 MW, respectively. A mischaracterization of their SO_2 emission profiles could dramatically affect the way Wisconsin is treated under the Cross-State Rule for the purposes of determining the cost to reduce SO_2 emissions, which could, in turn, negatively affect the state's SO_2 emissions budget.

Edgewater Unit 5. The IPM data file for EPA's 2012 base case identifies a selective catalytic reduction ("SCR") system on Edgewater Unit 5. An SCR is currently under construction at Edgewater Unit 5, and is scheduled for completion at the end of 2012. Again, WPL is unable to readily determine how EPA utilized its data regarding Edgewater Unit 5 in its modeling. However, it appears as though EPA may have assumed that Edgewater Unit 5 had an SCR operating at all times starting in 2012. This assumption would be erroneous, and would contemplate a year's worth of NO_x emission reductions from the SCR that will not actually be realized (2012). A mischaracterization of Edgewater's NO_x emission profiles could affect the way Wisconsin is treated under the Cross-State Rule for the purposes of determining the cost to reduce NO_x emissions, which could, in turn, negatively affect the state's NO_x emissions budget.

If EPA had validated its IPM data files using the information that WPL provided to EPA in response to the Utility MACT ICR, EPA could have could have avoided these data errors regarding Columbia Units 1 & 2 and Edgewater Unit 5.[12] Likewise, EPA could have mitigated the effect of any improper assumptions made based upon the erroneous data.

In its October 1, 2010 comments on the proposed rule, WPL recommended "that prior to issuing a final rule, EPA release a Supplemental Notice of Proposed Rulemaking and/or Notice of Data Availability ("NODA") that allows owners of covered units to verify the data underlying the allocations in the final rule and provide any necessary comments correcting the data." WPL Oct. 1, 2010 Comments at 4. WPL further noted that:

> Without this crucial step, it is inconceivable that the EPA will be able to realistically revise its state budgets and source allowance allocations to accurately reflect when and where emissions reductions can be achieved in a highly cost-effective manner. EPA must allow affected sources to validate the use of these models on the operation of their electric generation fleet and ensure sufficient time to prepare for compliance.

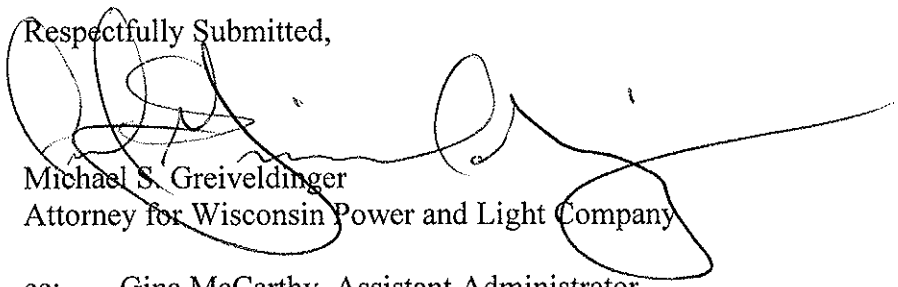
Id. WPL was not provided an opportunity to review the final data and assumptions used to model generating units that WPL operates prior to the publication of the Cross-State Rule. It now appears that significant errors in the data and assumptions remain. Unfortunately, the erroneous data and assumptions may have dramatically and negatively affected Wisconsin's emission allowance budgets. Had EPA provided operators the opportunity to conduct a meaningful review of its modeling data and assumptions, errors such as these could have been avoided.

[12] It is noteworthy that the NEEDs data, upon which EPA based some of its assumptions, does not identify wet scrubbers on the Columbia units.

IV. CONCLUSION.

The Cross-State Rule inequitably and inappropriately burdens Wisconsin, Wisconsin utilities, and their customers with overly stringent emission budgets, which enable other states to avoid eliminating their significant contribution to the nonattainment or interference with maintenance in downwind states. While WPL is committed to complying with the Cross-State Rule, it believes that the flaws in the rule relative to Wisconsin's budget must be addressed. As such, WPL respectfully requests that EPA reconsider the Cross-State Rule as it relates to Wisconsin.

Respectfully Submitted,



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