



December 23, 2016

VIA US MAIL & ELECTRONIC MAIL

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Administrator, US Environmental Protection Agency
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Washington, DC 20460

David Risley
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ATTN Docket Number: EPA-HQ-OAR-2015-0500

Re: Petition for Reconsideration of the Cross State Air Pollution Update Rule as Applied to the State of Indiana (81 Federal Register 74504 (Oct. 26, 2016))

Dear Administrator McCarthy:

By this letter, White Stallion Energy requests that EPA reconsider the final Cross State Air Pollution Update (“CSAPR Update”) Rule as applied to the State of Indiana. White Stallion operates coal mines and supplies coal to facilities in Indiana. As finalized, the CSAPR Update Rule has the potential to significantly impact the ability of electric generating units (“EGUs”) in Indiana to continue to rely on coal for power generation.

In the final rule, EPA introduces a new methodology for calculating state ozone season nitrogen oxide (NOx) emissions budgets and that methodology substantially reduces Indiana’s final emissions budget as compared to the proposed rule and even more substantially as compared to the current Cross State Air Pollution Rule and current emissions. The budget is reduced almost

50% from the current CSAPR budget that was scheduled to take effect May 1, 2017¹ and is reduced almost 18% from the budget in EPA's November 2015 proposed CSAPR Update Rule.² As EPA notes in its Fact Sheet accompanying the final rule, 2015 ozone season NOx emissions from EGUs in Indiana were 36,353 tons.³ EPA has set the final Indiana emissions budget at 23,303, representing a reduction of over 13,000 tons, 36% from 2015 actual emissions.⁴ The more stringent budgets further increase the cost and ability to use coal without significant ozone air quality benefits.

EPA did not provide an opportunity to review and comment on the new methodology or the new modeling analysis integral to that methodology. A major concern with EPA's methodology and modeling in the proposed rule was that EPA assumed a substantial number of coal unit retirements by 2018 in connection with its Clean Power Plan ("CPP") rule, which was stayed by the U.S. Supreme Court. While EPA states that it addressed that issue in the final rule, it appears that while not "retired," many units are idled, i.e., not running, and EPA has provided no explanation of this new modeling approach or why idling units is not effectively the same as assuming units are retired.⁵

Moreover, EPA's modeling continues to assume post-2018 retirements of existing coal units as a result of the CPP which, with the change in Administrations, are now no longer likely to occur. The incoming Administration and its transition team have repeatedly indicated their intent to withdraw the CPP shortly after taking office. For example, the President-Elect's transition team has vowed on its website to "conduct a top-down review of all anti-coal regulations issued by the Obama Administration."⁶ Specifically, the transition team has promised that it will "scrap the \$5 trillion dollar Obama-Clinton Climate Action Plan and the Clean Power Plan and prevent these unilateral plans from increasing monthly electric bills by double-digits without any measurable effect on Earth's climate."⁷ With the elimination of the CPP, the CSAPR Update modeling must be redone.

The change in policy that can now be expected from the new Administration, moreover, will encompass more than just a repeal of the CPP. The President-Elect has promised to reverse the current Administration's anti-fossil fuel agenda and to foster significantly increased economic growth. The baseline against which EPA modeled CSAPR Update thus is about to change dramatically, requiring a reexamination of the rule's premises.

¹ The Original CSAPR Phase 2 Budget for Indiana is 46,175 tons. 76 Fed. Reg. at 48,414 (Aug. 8, 2011).

² Indiana's budget in the proposed CSAPR Update Rule was 28,284 tons, and its budget under the final CSAPR Update Rule is 23,303 tons.

³ "Fact Sheet: Key Changes and Improvements: Final CSAPR Update Rule for the 2008 NAAQS" at 4.

⁴ *Id.*

⁵ In its Response to Comments, EPA states that it "constrained the model to prevent retirement projections prior to the 202 run year, except for units that have announced plans to retire." EPA, "Cross State Air Pollution Update Rule—Response to Comment," at 328. It appears that EPA may have deemed some units as "idled" to avoid characterizing them as "retired." Based on available information, however, it is uncertain what practical impact, if any, these different characterizations have.

⁶ Energy Independence, Making America Great Again, <https://www.greatagain.gov/policy/energy-independence.html>.

⁷ *Id.*

Making matters worse, the new, more stringent emissions budget takes effect May 1, 2017, giving sources no real options for compliance beyond allowance purchases and shifting generation away from coal to natural gas-fired generating units. There are no new emission control systems that can be ordered and installed in time to meet a May 1, 2017 compliance deadline, leaving allowance purchases, generation shifting, and running existing controls harder as the only options.

Finally, the reductions in Indiana's statewide budget further reduce an already insufficient new unit set aside for the state. The final rule only provides 468 emission allowances for new units,⁸ which would have to cover both construction of new fossil units and the potential conversion of any industrial generating units to electric power service. EPA assumed that the new unit set aside would be needed only for new units that have already been announced or new generation (natural gas) units projected by EPA's IPM modeling. Changes in Administration policy and other factors could render this assumption invalid. This new unit set aside issue is not limited to Indiana. The new unit set aside should provide greater flexibility for the introduction of a greater number of "new" units to the program.

For these reasons, White Stallion requests that EPA undertake a public process to reconsider the final CSAPR Update, at least as applied to the State of Indiana if not as a whole.

If you have any questions about this petition, please contact Rashid Hallaway at 202-380-5118.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steven E. Chancellor', written over a horizontal line.

Steven E. Chancellor
Chairman

⁸ EPA, "Allowance Allocation TSD for the Cross-State Air Pollution Rule Update for the 2008 NAAQS," at 4, Table 1 (Aug. 2016).