



Office of Public Utility Counsel

P.O. Box 12397
Austin, Texas 78711-2397
Tel: (512) 936-7500 Fax (512) 936-7525
Toll Free: (877) 839-0363

Sheri Givens
Public Counsel

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Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Office of the Administrator
Room 3000, Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Gina McCarthy, Assistant Administrator
U.S. Environmental Protection Agency
Office of Air and Radiation
Ariel Rios Building, Mail Code 6101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

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

Administrator Jackson and Assistant Administrator McCarthy:

The Texas Office of Public Utility Counsel (OPUC) is a state agency that specifically represents and advocates for Texas consumers of electricity in both the ERCOT and non-ERCOT regions of the State. As Public Counsel, I am also a member of the ERCOT and Texas RE Board of Directors. I am writing you to express my office's concerns relating to the Cross-State Air Pollution Rule (CSAPR) from a Texas residential and small business consumer perspective. Since the publication of the CSAPR in July, I have had multiple conversations with generators, ERCOT, and other affected state agencies, including the Public Utility Commission of Texas, the Texas Commission on Environmental Quality, and the Texas Office of the Attorney General. Pursuant to my discussions with these various groups, I am most alarmed by two issues – reliability and costs – and their potential impact on my office's constituency.

Reliability

ERCOT ensures the reliable flow of electricity for 23 million Texas customers, representing 85% of the state's electric load. Texas residential customer load can range from 20% of the overall ERCOT load during off-peak conditions to over 50% during summer peaks, and small commercial customer load can range from 34% on a moderate day to 25% on a peak day.¹ Capacity available at peak is 73,175 MW, and the minimum reserve margin required for reliability is 13.75%.²

Texas has experienced one of its record hottest summers this year. During this summer, ERCOT experienced record peak demand, with new records set over three consecutive days at the beginning of August,³ and issued Energy Emergency Alerts notifying consumers of the need to conserve, due to the tightness of the reserve margin, to prevent statewide rotating outages. Rotating outages were avoided only by the curtailing of large commercial and industrial load through voluntary agreements to be curtailed during an emergency and the aggressive conservation efforts by consumers and businesses to reduce usage of electricity, especially between the hours of 3:00pm to 7:00 p.m.⁴ On the hottest day with the highest demand, ERCOT fell to a mere 3.8% reserve margin.⁵

In February of this year, ERCOT experienced rotating outages on a single day lasting approximately eight hours due to generation inadequacy caused by an unexpected loss of 8,000 MW of generation during a winter weather event,⁶ and at least one death was attributed to those outages.⁷ We have been fortunate, to date, not to have to enforce rotating outages this summer.

Prior to the August peak days, the ERCOT CEO issued a statement relaying the concern that many coal plants in ERCOT will be forced to limit or shut down operations in order to maintain compliance with CSAPR.⁸ Such limitations and shut downs could lead to inadequate operating reserve margins with insufficient time to retrofit existing generation or build new generation to meet the state's electricity needs. CEO Doggett also added that it is unclear whether ERCOT operations has adequate tools to maintain long-term reliability in the face of losing large amounts of base load in such a short period of time.

On September 1, ERCOT issued a report, "Impacts of the Cross-State Air Pollution Rule on the ERCOT System" regarding the dangerous impacts to the reliability of the Texas grid due to the short timeline associated with CSAPR compliance.⁹ The report presents an overview of the significant operational challenges for the state's electric grid should the rule be implemented as proposed and provides for three scenarios of potential impacts from CSAPR. Operational challenges to affected resource owners include the limited supply of available Powder River Basin coal coupled with increased demand, the limited number of allowances available to Texas units, the potential damage to units based on continuously-needed maintenance or de-rating, and the potential reduced capacity of generation units during retrofitting.¹⁰ Through dialogue with resource owners throughout Texas, ERCOT found that, due to the risks associated with the various compliance options under CSAPR, it is unlikely that all of the resource owners' plans will function as designed.¹¹ It was also clear to ERCOT that the resource owners' plans are "still preliminary and based on assumptions regarding technology effectiveness, fuel markets, impacts

on altered unit operations on maintenance requirements, and the cost-effectiveness of modifying and operating units to comply with CSAPR.”¹² ERCOT concluded that the implementation deadline of the rule does not provide ERCOT and its resource owners with “a meaningful window for taking steps to avoid the loss of thousands of megawatts of capacity, and the attendant risks of outages for Texas power users.”¹³ By delaying the CSAPR implementation deadline, options for maintaining system reliability would be expanded.¹⁴

One generator in ERCOT, Luminant, a subsidiary of Energy Future Holdings (EFH), or Luminant/EFH, has stated the impact of the CSAPR rule on its generation fleet will be the curtailment of operations and possible shutdown of units in a matter of months to meet Texas’ required emissions budgets.¹⁵ Unfortunately, due to the lack of notice relating to the EPA’s inclusion of Texas in the CSAPR, Luminant has not had an opportunity to fully review and comment on the rule’s impact to electric reliability and prices.¹⁶ However, one thing is certain, electric reliability will be put at risk and reserve margins will be dangerously decreased without a stay of this rule.¹⁷ In the recent 8-K filing of Luminant’s parent company, EFH, CSAPR compliance options identified include reducing operating levels of lignite/coal-fueled generation facilities, conducting seasonal or temporary shut-downs, installing and operating dry sorbent injection systems in conjunction with reducing operations and mothballing certain legacy lignite/coal-fueled generation and related mining operations.¹⁸

One non-ERCOT utility, located within the Texas Panhandle in the Southwest Power Pool, Southwest Public Service Company (SPS), a subsidiary of Xcel Energy, Inc. (Xcel), or SPS/Xcel, has stated that its affected Texas units, two-coal fired power plants (Harrington and Tolk) consisting of five units (or 2,146 MW of capacity), will be most dramatically impacted by CSAPR.¹⁹ SPS/Xcel continues to analyze the rule’s impacts and intends to supplement its data in the coming weeks.²⁰ Because of power-import and transmission constraints on SPS/Xcel, the company does not believe it will be able to purchase sufficient power to keep the lights on in its service territory should it have to curtail its coal-fired generation to comply with CSAPR.²¹

Without adequate generation capacity available to ensure a reliable grid, Texas electricity consumers may face rotating outages on a continuing basis which will potentially affect the health, safety and welfare of all Texans.

Costs

Texas electric customers in the ERCOT region have access to electricity prices as low as 4.5 cents/kWh for variable rate plans and 8 cents/kWh for fixed rate plans. With the proposed expeditious deadline of the CSAPR, resource owners and market analysts estimate affected Texas generators will face substantial costs, and acknowledge those costs will be pushed down to Texas consumers through the electric rates they pay.

SPS/Xcel estimates that the “system flip,” from coal-fired base load to natural-gas fired base load required by CSAPR compliance, may cost upwards of \$250 million in additional costs in 2012. Costs may include “added costs from switching from coal to natural gas, additional costs for purchase power, higher transmission costs, higher costs for natural gas due to increased

demand, and potential liquidated damages on coal rail contracts," much exceeding the EPA's estimated \$500 per ton threshold by as much as 20 times that amount.²² On September 2, SPS/Xcel did a media education session where it shared that the approximate \$250 million increase in fuel costs for re-dispatching its system would translate into an increase of approximately 12% to residential consumer bills, or for an average family, \$8 more per month on their electric bill starting as early as March or April of 2012.²³

Luminant/EFH compliance estimates for coal-fired generation have ranged between \$1.2 and \$2 billion.²⁴ Generation sources will need to make substantial compliance investments expeditiously in the coming months, and these investments may not be reversible if the Texas emission limits are revised or if Texas is later excluded.²⁵ The basic theory of supply and demand portends that the price to purchase necessary control equipment and appropriate coal types during high demand will cause higher-than-market value prices. Such increased costs will likely be passed on through wholesale electric rates which ultimately will be passed through retail electric rates paid by Texas consumers.

Though EPA acknowledges average retail electricity prices could increase by 1.7 % in the U.S., NERA Economic Consulting proposes average retail electric prices could increase by 12% nationally, and as much as 24% regionally.²⁶ For the ERCOT region, prior to inclusion of Texas in CSAPR emission reduction requirements, NERA estimated retail electricity prices could change as much as 12%, but it is clear, those estimates will be much higher with the recent addition of Texas. ERCOT CEO Doggett predicted to Senator John Cornyn these changes could increase electricity costs by 10%.²⁷

For these, and numerous other reasons put forth by other interested Texas parties, OPUC urges EPA to reconsider this rule and the impact it will have on reliability and the harm it could pose to Texas electric consumers. At the very least, OPUC encourages EPA to provide Texas resource owners adequate time to comply with these new regulations to mitigate the impact to Texas ratepayers so they are not left paying higher costs associated with the accelerated timeline.

Regards,



Sheri Sanders Givens
Public Counsel
Office of Public Utility Counsel

cc: The Honorable Rick Perry
The Honorable David Dewhurst
The Honorable Joe Straus
The Honorable Members of the Texas Legislature
The Honorable Members of the Texas Congressional Delegation
The Honorable Bryan W. Shaw, TCEQ
The Honorable Donna L. Nelson, PUCT

¹ ERCOT, *ERCOT Demand Response Overview & Status Report*, p. 7 (Aug. 30, 2011). See http://www.ercot.com/content/meetings/dswg/keydocs/2011/0830/3_ERCOT_presentation_workshop_083011.pdf.

² ERCOT, ERCOT Quick Facts (July 2011). See <http://www.ercot.com/news/presentations/2011/ERCOT%20Quick%20Facts%20-%20July%202011.pdf>.

³ New peak demand records were set on Aug. 1 (66,867 MW), Aug. 2 (67,929 MW) and Aug. 3 (68,294 MW). See ERCOT, *CEO Update*, p. 5 (Aug. 16, 2011) (CEO Update). See

http://www.ercot.com/content/meetings/board/keydocs/2011/0816/Item_03_-_CEO_Update.pdf.

⁴ ERCOT, ERCOT CEO Statement, *Thank you for conserving electricity* (Aug. 16, 2011). See http://www.ercot.com/news/press_releases/show/425.

⁵ CEO Update at 8.

⁶ ERCOT, Presentation to Joint Senate Committees, *February 2, 2011 Grid Emergency Events*, pp. 6, 8 (Feb. 15, 2011). See http://www.ercot.com/content/news/presentations/2011/Senate_EEA_Presentationfinaltg.pdf.

⁷ Christine Dobbyn, Houston-KTRK, *Family blames brother's death on rotating outages* (Feb. 2, 2011). See <http://abclocal.go.com/ktrk/story?section=news/local&id=7936394>.

⁸ ERCOT, *ERCOT CEO Statement Regarding EPA Cross-State Rule* (July 19, 2011). See http://www.ercot.com/news/press_releases/show/354.

⁹ ERCOT, *Impacts of Cross-State Air Pollution Rule on the ERCOT System* (Sept. 1, 2011). See http://www.ercot.com/content/news/presentations/2011/ERCOT_CSAPR_Study.pdf.

¹⁰ Id. at 3, 6.

¹¹ Id. at 4.

¹² Id. at 5-6.

¹³ Id. at 7.

¹⁴ Id.

¹⁵ See Luminant/EFH's *Request for Partial Reconsideration and Stay of EPA's Final Rule titled "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States" Signed July 6, 2011 (Docket No. EPA-HQ-OAR-2009-0491)*, p. 33 (Aug. 5, 2011) (Luminant/EFH Petition).

¹⁶ Id. at 15.

¹⁷ Id. at 34.

¹⁸ EFH, *Form 8-K filing with the U.S. Securities and Exchange Commission* (July 13, 2011); See PUCT Project No. 20310, *Electric Utilities Securities and Exchange Commission (SEC) Form 8-K Pursuant to Subst. R. 25.73(c)*, Item No. 888, Energy Future Holding Corp. Form 8-K (July 15, 2011). See

http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/20310_888_702616.PDF.

¹⁹ See SPS/Xcel's *Initial Petition for Reconsideration and Request for Stay of the Cross-State Air Pollution Rule*, p. 2 (Aug. 23, 2011) (SPS/Xcel Petition).

²⁰ Id. at 3.

²¹ Id. at 9.

²² SPS/Xcel Petition at 13.

²³ See <http://www.newschannel10.com/story/15387052/get-ready-for-an-electric-bill-price-hike>. See also <http://amarillo.com/news/2011-09-02/rule-could-lead-xcel-boost-prices#.TmbVSY6Vmul>.

²⁴ See <http://www.ft.com/cms/s/0/ba247c5e-ce8b-11e0-b755-00144feabdc0.html#axzz1XERTP9sS>.

²⁵ Luminant/EFH Petition at 33.

²⁶ See Federal Register 48346-48347 (Aug. 8, 2011); NERA Economic Consulting, *Proposed CATR + MACT Presentation* (May 2011). See http://www.americaspower.org/NERA_CATR_MACT_29.pdf.

²⁷ Elizabeth Souder, *ERCOT Chief Executive Predicts Coal Pollution Limits Could Boost Electricity Bills 10%*, See <http://www.dallasnews.com/business/energy/20110902-ercot-chief-executive-predicts-coal..> (September 2, 2011)