

1 ENVIRONMENTAL PROTECTION AGENCY

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PUBLIC HEARING ON

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REVISIONS TO FEDERAL IMPLEMENTATION

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PLANS TO REDUCE INTERSTATE TRANSPORT OF

7

FINE PARTICULATE MATTER AND OZONE

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Friday, October 28, 2011

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1310 L Street, N.W.

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Room 152

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Washington, D.C.

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14 The above entitled meeting was held,

15 pursuant to notice, at 9:00 a.m.

16 PANEL MEMBERS PRESENT:

17 Sam Napolitano, Director Clean Air Markets Division

18 Jeb Stenhouse, Chief, Program Development Branch

19 Gabrielle Stevens, Environmental Specialist,

20 Program Development Branch

21 Ragan Tate, Office of General Counsel

22

P R O C E E D I N G S

9:00 a.m.

MR. NAPOLITANO: Good morning. We would like to go ahead and start the hearing. I want to thank you for attending this public hearing to take comment on the proposed revisions to the Transport rule. They were signed by the administrator and posted on our website on October 6th, 2011.

My name is Sam Napolitano. I'm the Director of EPA's Clean Air Markets Division. I will be chairing the hearing this morning. Joining me on the panel are Jeb Stenhouse, who's the branch chief of the Program Development Branch of my division.

I've got Ragan Tate, to my left, who's with EPA's Office of General Counsel, who worked on this rule, and Gabrielle Stevens, an environmental scientist with the Program Development Branch, who you could tell is the contact person for the Federal Register notice for us.

On July 6, 2011, EPA finalized the cross-state air pollution rule, formally known as the Transport rule. The CSAPR limits the interstate

1 transport of emissions of nitrogen oxides and sulfur
2 dioxides in 28 states that contribute to harmful
3 levels of fine particulate matter in ozone in
4 downwind states.

5 This action will substantially reduce air
6 quality impacts in downwind states from the power
7 sector plant emissions, transmitted across state
8 lines, improving air quality for over 240 million
9 Americans in the east, and saving between 13,000 to
10 34,000 lives annually.

11 EPA estimates that the annual benefits of
12 the rule range between 120 billion to 280 billion
13 annually in 2014. Most of these benefits are public
14 health related. EPA has also implemented or excuse
15 me, issued a supplemental proposal to request comment
16 on its conclusion that six additional states
17 significantly affect downwind states' ability to
18 attain and maintain compliance with the 1997 Ozone
19 Act. If EPA finalizes this supplemental rule, 28
20 states would be covered by the CSAPR programs.

21 After we finalized CSAPR, we found or had
22 brought to our attention discrepancies in unit-

1 specific modeling assumptions that affect the proper
2 calculation of state emission budgets, new source
3 set-asides, the Indian country new unit set-asides
4 and assurance levels in ten states.

5 We propose to make adjustments to the
6 final CSAPR to address these issues. We also
7 proposed an additional limit on the allocation of
8 allowances to units already covered by certain
9 consent decrees that restrict the use of those
10 allowances.

11 In addition, we propose to amend the
12 effective date of the assurance penalty provisions to
13 start in 2014 instead of 2012, in order to help
14 promote the development of an allowance market
15 liquidity as those revisions, excuse me, as these
16 revisions are finalized.

17 We believe that deferring the effective
18 date of the assurance provisions would facilitate the
19 transition from the Clean Air Interstate Rule (CAIR),
20 to the Transport rule, provide additional confidence
21 for participants in the Transport rule's allowance
22 trading markets, and would not compromise the air

1 quality goals of the program.

2 Today, we will be accepting oral comments
3 on all aspects of our revisions for the proposal.
4 Written transcripts for this hearing will be
5 available as part of the official record for this
6 rule, and EPA will consider them as we move forward
7 to complete a final rule.

8 We are also accepting written comments for
9 the proposed rule until November 28th, 2011. There
10 is a handout available in the registration area with
11 detailed information for submitting written comments
12 by mail, fax or electronically.

13 Now let me describe the procedures for
14 today's hearing. I will call the scheduled speaker
15 to the table. When it is your turn to speak, please
16 state your name and your affiliation before you begin
17 your testimony. This will help the court reporter
18 here to be able to spell your name correctly.

19 In order to be fair to everyone, please
20 limit your testimony to five minutes each. After you
21 finish your testimony, members of the panel may ask
22 clarifying questions. If, in addition to the

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1 transcript of your testimony, you would like the full
2 text of your written comments included in the docket,
3 please be sure to give a copy of your written
4 comments to our staff at the registration table.

5 We have a low tech timekeeping system,
6 consisting of a stopwatch and green, yellow and red
7 cards, to my right here. When you begin speaking,
8 the green card will be raised. You'll have five
9 minutes. The yellow card will let you know when you
10 have two minutes left, and when the red card is
11 raised, your five minutes will have passed, and I
12 will ask you to complete your testimony.

13 Today's hearing is scheduled from nine
14 until noon. We intend to stay until everyone has an
15 opportunity to comment, and if you would like to
16 testify but have not yet registered to do so, please
17 sign up at the registration table.

18 For those of you who have already
19 registered to speak, we have tried to accommodate
20 your request for specific time slots. We ask for
21 your patience, as we proceed through the list of
22 speakers. We may need to make some adjustments as

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1 the day progresses. Thank you all again for being
2 here and being able to participate.

3 So now let's get started, and as I say
4 that, let me ask Ragan to give one more remark about
5 the ground rules. Please Ragan.

6 MR. TATE: Yes. As Sam mentioned, my
7 name's Ragan Tate and I'm from the Office of General
8 Counsel, and I just want to mention that we are still
9 during the comment period on the revisions rule, and
10 while we might be asking questions of you during your
11 testimony, we will not be responding to your
12 comments. We will reserve our response until our
13 final rule is published. So with that.

14 MR. NAPOLITANO: Yes, Gabrielle please.

15 MS. STEVENS: Sorry. I'm Gabrielle
16 Stevens. Just two quick points, most importantly
17 probably. The restrooms are out in the hall, and for
18 the gentlemen, you may go straight down this hall and
19 on the left. For the ladies, please go to the left
20 and then right, as if you were going back out the
21 doors, but don't go through the big doors, and the
22 restroom is on the right.

23

1 Additionally, if technology works, a
2 recording of this hearing will be available late this
3 afternoon. We'll put it up on the web, or if not
4 late this afternoon, then certainly Monday morning.
5 Thank you.

6 MR. NAPOLITANO: Thanks, Gabrielle. One
7 additional housekeeping item. Someone found a
8 SmartCard coming in. If you want to check and come
9 up and get it when we take a break, here it is.
10 Okay, with that, the first speaker this morning is
11 Lyndsay F. Moseley from the American Lung
12 Association. Would you come up please?

13 MS. MOSELEY: Good morning. My name is
14 Lyndsay Moseley, and I'm the Director of Advocacy for
15 the American Lung Association's Healthy Air Campaign.
16 Thank you for the opportunity to speak today.
17 American Lung Association's mission is to save lives,
18 by improving lung health and preventing lung disease,
19 through research, education and advocacy.

20 We strongly support the Clean Air Act as a
21 landmark public health law, with a long-standing
22 promise that the air will be safe and healthy, that
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1 the simple, necessary act of breathing will not make
2 people sick.

3 Despite the promise of the Clean Air Act
4 and its many successes, the United States has lacked
5 the framework needed to reduce some of the most
6 widespread and dangerous air pollutants in the
7 nation, including soot and ash, sulfur dioxide,
8 nitrogen oxide, a precursor to ozone pollution, which
9 harms people who live downwind of coal-fired power
10 plants.

11 So again, we wish to thank the
12 Environmental Protection Agency for advancing these
13 safeguards and the recently finalized cross-state air
14 pollution rule. This promise of the Clean Air Act
15 has been especially important to lung disease
16 patients and their families, as well as those with
17 asthma, cardiovascular disease and diabetes, and
18 others who are especially vulnerable to the impacts
19 of air pollution, including children and seniors, and
20 those with limited access to health care.

21 Come to think of it, healthy air is
22 essential to all of us breathers. Yet the simple act

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1 of breathing can still be very dangerous. Soot or
2 toxic particles lodge deep in the lungs, where they
3 can lead to lung cancer, reduced lung function or
4 lung disease. These pollutants also impact the
5 cardiovascular system, leading to increased risk of
6 heart attack and stroke.

7 There are still days when the toxic
8 pollutants from dirty, uncontrolled power plants make
9 breathing nearly impossible for some, when the only
10 option to avoid coughing, wheezing or yet another
11 trip to the emergency room is to stay inside with the
12 windows closed, even if it means missing work or
13 school or soccer practice.

14 With the cross-state air pollution rule,
15 the Environmental Protection Agency is renewing the
16 Clean Air Act's promise to more than 240 million
17 people living in America today, saving up to 35,000
18 lives every year, and dramatically reducing the
19 health risks to even the healthiest among us, for
20 heart attacks, strokes and more.

21 But rather than continue with the litany
22 of the benefits, I want to share the story of Jake

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1 from Maine and his parents, Mark and Lisa. On New
2 Year's Eve 1999, as other families worried about the
3 Y2K bug, Lisa and Mark spent the night in the
4 emergency room with their newborn son Jake, who was
5 suffering an asthma attack.

6 Today, Jake is 11 and lives in Maine,
7 where he is active in soccer, basketball and
8 baseball. Of the sports, soccer is his favorite, and
9 he uses an inhaler before or during practices and
10 games, if he's having a flare-up. When Jake has a
11 bad flare-up, it's difficult for him to sleep because
12 of extreme coughing, and he's not able to go to
13 school.

14 He is extra susceptible to colds and what
15 he calls "junk in the air." Jake and his mother get
16 angry at smokers on the street who impair his
17 breathing. They feel the same way about businesses
18 that pollute the air, and they oppose proposals to
19 loosen policies on the worst polluting corporations.

20 Lisa says it doesn't make any sense to
21 play with people's lives like this. As for Jake, he
22 just feels like it's a pain in the butt when he has to

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1 miss out on school and can't play soccer. Maine is a
2 beautiful state, a great place for Jake to grow up.
3 Unfortunately for Jake and his parents, Maine is also
4 known as the tailpipe of America, because it is
5 downwind from power plants in the South and the
6 Midwest.

7 For Jake and others like him, the cross-
8 state air pollution rule will make a tangible
9 difference. It will save lives, reduce health costs
10 and help him spend less time in the emergency room
11 and more time on the soccer field. The American Lung
12 Association will submit written comments on the
13 proposed technical changes, but I offer Jake's story
14 as a reminder, especially to those who would weaken
15 the rule or seek to avoid compliance with the cross-
16 state air pollution rule, of what hangs in the
17 balance.

18 So what's the real bottom line? Cleaner
19 air means healthier people. Thank you.

20 MR. NAPOLITANO: Thank you very much,
21 Lyndsay. Any questions?

22 (No response.)

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1 MR. NAPOLITANO: Thank you. The next
2 speaker to come up would be Robert Manning please.

3 MR. MANNING: Good morning. My name is
4 Robert Manning, and I'm with the law firm of Hopping,
5 Green and Sams in Tallahassee, Florida, and I already
6 submitted my testimony into the record already. If
7 you need more copies, let me know.

8 I'm here today on behalf of the Florida
9 Electric Power Coordinating Group, also known as the
10 FCG. We are a non-profit organization in the state
11 of Florida that represents investor-owned utilities,
12 electric cooperatives, municipal utilities on
13 environmental issues affecting the utility industry.

14 The FCG has been actively participating in
15 EPA's effort to implement these provisions of the
16 Clean Air Act for many years, including participation
17 in the development of the CAIR Rule, as well as
18 throughout the rulemaking process on the transport
19 cross-state rule.

20 We appreciate EPA's recognition of the
21 errors contained in the rule, and the opportunity to
22 comment today on some of those provisions and the
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1 hopeful correction of those errors. EPA's revisions,
2 however, do not satisfy the FCG's fundamental
3 concerns with the rule.

4 As explained in our Petition for
5 Reconsideration and Stay, we believe that EPA
6 erroneously included Florida in the rule,
7 substantially under-allocated allowances to Florida,
8 requires Florida's electric utilities to
9 disproportionately and excessively have to reduce
10 their emissions, failed to allow for state
11 implementation of the programs and the reductions
12 that have already occurred, failed to consider the
13 impacts of the -- all of the impacts of the rule, set
14 an arbitrary and inadequate compliance deadline for
15 Florida of 2012, and failed to account for the
16 Houston area's attainment deadline of 2019, as
17 opposed to 2013 that the other areas are subject to.

18 Electric utilities in Florida have
19 recently spent billions of dollars on emission
20 controls, resulting in a dramatic reduction of many
21 pollutants but especially NOx. Specifically since
22 2005, Florida utilities have reduced NOx emissions,
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1 during the ozone season in 2005 when CAIR came into
2 place. But the reductions since that time have been
3 by approximately 64 percent, or over 65,000 tons per
4 year.

5 Since 1998, backing up a little bit
6 further, these emissions, NOx ozone season emissions
7 have been reduced by over 132,000 tons per year. The
8 cross-state rule does not appear to give any credit
9 for Florida's efforts in this regard. For Florida,
10 the cross-state rule appears to be a costly solution,
11 looking for a problem that no longer exists.

12 The proposed state budget revisions that
13 are the subject of today's hearing reflect some of
14 the errors in the rule. EPA has currently identified
15 the needed revisions for 12 state budgets, and it
16 seems highly likely that many more states will
17 identify additional errors.

18 For Florida, the FCG has been concerned
19 since EPA released the final rule, that the utilities
20 in the state are required to reduce, starting in a
21 few months, an additional 25 percent beyond the
22 reductions that occurred in actual emissions in 2010,

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1 and that EPA's modeling projects that we will utilize
2 13 percent less heat input than we actually used in
3 2010.

4 For Florida, this equates to a reduction
5 of approximately 108 trillion BTUs that EPA projects
6 that we won't be providing, and does not account for
7 economic recovery, growth or foreseeable storm
8 consequences that are an unfortunate periodic reality
9 in Florida.

10 Regarding the Florida-specific data that
11 EPA used to develop the rule, the FCG submitted
12 detailed comments or information in that regard on
13 September 30th, identifying several errors in the NOx
14 emission rates, and the Florida-specific demand
15 growth rate. We appreciate the inclusion of those
16 issues in the proposal, and we certainly will be
17 submitting more detailed comments on those and other
18 issues by November 28th.

19 We appreciate the opportunity to discuss
20 these errors, and are continuing to research possible
21 other areas that determined the under-allocation for
22 Florida. Several areas that we're looking into,
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1 EPA's apparent failure to account for certain must-
2 run units, units that are dispatched for non-economic
3 reasons; the non-deployment of certain very efficient
4 and low-emitting units; the under-utilization of
5 certain units and the low state-wide heat input that
6 I just mentioned; EPA's assumption that certain
7 selected catalytic reduction controls that control
8 NOx emissions are dispatchable, when in fact they're
9 not; EPA's apparent failure to account for
10 transmission constraints between units, between FERC
11 regions.

12 MR. NAPOLITANO: Robert, I ask you please
13 to wrap up.

14 MR. MANNING: Okay. Again, we will be
15 submitting detailed comments by November 28, and
16 finally we urge EPA, as we requested, to stay the
17 rule while it reconsiders these and other serious
18 errors. Thank you.

19 MR. NAPOLITANO: Thank you for your
20 comments, Robert. Any questions?

21 (No response.)

22 MR. NAPOLITANO: Thank you, Robert. Okay.

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1 The next speaker would be Susana Hildebrand, please.

2 MS. HILDEBRAND: Good morning. I'm Susana
3 Hildebrand, the Chief Engineer for the Texas
4 Commission on Environmental Quality. On behalf of
5 the TCEQ, I offer the following comments on EPA's
6 proposed revisions to the cross-state air pollution
7 order or CSAPR. While the EPA's current proposal
8 provides an additional 70,067 tons of sulfur dioxide
9 SO2 allowances to the Texas CSAPR budget, and a delay
10 until 2014 for the implementation of the assurance
11 provisions limiting interstate trading, it does not
12 address TCEQ's overall concerns regarding the
13 feasibility of such substantial reductions in SO2
14 emissions in an unprecedented short period of time.

15 Even with these additional allowances
16 proposed for Texas budget, and recent SO2 scrub bush
17 start-ups, the TECQ expects that substantial SO2
18 reductions will still be needed for the 2012 control
19 period. The EPA is publicly claiming that the rule
20 would not be implemented until March 1st, 2013, but
21 this statement is misleading.

22 March 1st, 2013, is the allowance transfer
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1 deadline for the annual nitrogen oxides NOx and SO2
2 programs. But these programs actually go into effect
3 on January 1st, 2012, as is clearly stated in the
4 rule. The allowance transfer deadline for seasonal
5 NOx allowances is December 2012.

6 While this 2012 control period is an
7 annual compliance, companies must reduce their SO2
8 emissions early enough in the year to avoid running
9 out of allowances mid-year and being forced to shut
10 down. Companies must certify compliance with CSAPR.
11 Even with the assurance provisions delayed in 2014,
12 there are still significant penalties if a company's
13 actual SO2 emissions exceed the allowances held.

14 Companies are unlikely to gamble
15 compliance on SO2 allowances becoming available at
16 the end of the 2012 control period. The EPA's intent
17 for delaying the assurance provisions until 2014 is
18 to encourage trading in the initial two years of the
19 CSAPR program. However, Texas is still limited to
20 trading with Group 2 states, which still does not
21 appear to be a viable trading market for SO2
22 allowances sufficient to address Texas concerns.

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1 Companies will still have only a matter of months to
2 achieve the large reductions in SO2 emissions that
3 EPA is mandating with the CSAPR, which leaves some
4 companies with limited options for compliance.

5 I would also like to take this opportunity
6 to reemphasize some significant concerns TECQ has
7 previously addressed regarding CSAPR. First, is the
8 lack of adequate notice or meaningful opportunity to
9 comment on Texas inclusion in CSAPR. There was no
10 significant linkage by Texas for PM 2.5 to any
11 monitor of the rule proposal. Yet a significant
12 Texas linkage was made for PM 2.5 to the Granite
13 City, Illinois monitor in the final rule.

14 At proposal, EPA only sought comment on a
15 hypothetical scenario involving increased SO2
16 emissions due to Texas switching to higher sulfur
17 coals, not an actual linkage by Texas to a specific
18 monitor. While Texas did point out some flaws in
19 EPA's integrated planning model data in comments on
20 the original proposal, it is EPA's own mistakes and
21 incorrect assumptions that caused the errors in EPA's
22 SO2 emission rates from electric generating units in

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1 Texas.

2 The adjusted emissions are not
3 justification for EPA to include Texas in the rule
4 for PM 2.5. The federal Clean Air Act is clear. The
5 state's emissions must be shown to contribute
6 significantly to non-attainment in or interference
7 with maintenance by any other state. The EPA did not
8 allow Texas to comment on their claim that Texas was
9 impacting the Granite City, Illinois monitor.

10 Texas was only provided budgets for the
11 annual NOx and SO2 at finalization, with no
12 opportunity to comment on the impacts of such budgets
13 or the calculations of significant contribution to
14 Texas new linkage monitor forming the basis of such
15 budgets. The EPA claims that Texas could have
16 calculated a hypothetical budget based on the
17 information provided by EPA at proposal. Why should
18 Texas be the only state expected to do this?

19 Also, the fact that EPA has proposed
20 revisions to the budgets for Texas to correct the
21 mistakes they made at adoption of the final rule
22 shows that any budget that Texas may have estimated

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1 would have been highly speculative.

2 The EPA made numerous revisions to the
3 emissions inventories and modeling during the
4 original CSAPR rulemaking, which were not clearly
5 explained in the final rule preamble or technical
6 support documents. Texas has still not been able to
7 confirm that EPA has made the requested corrections
8 to the state's point source NOx emissions based on
9 the federally enforceable control measures that are a
10 part of the state implementation plan.

11 This correction is crucial to recognize
12 emission reduction efforts in Texas, and base any
13 modeling and linkage decisions on accurate emissions.
14 Finally, the economic impacts of CSAPR. CSAPR puts
15 at risk the economic future of power generation, and
16 those dependent on affordable electricity in Texas
17 and places vulnerable citizens at significant health
18 and safety risk. The potential loss of electricity
19 to state offices, schools, prisons, etcetera, would
20 directly impact state resources and the ability of
21 the state to provide services.

22 Texas' inclusion was not adequately
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1 noticed as a part of the rule proposal. The EPA
2 failed to adequately assess the economic impacts of
3 CSAPR on Texas. The EPA's analysis entitled
4 "Resource Adequacy and Reliability in the IPM
5 Projections for the Transport Rule TSD" was not
6 available at rule proposal and includes significant
7 errors regarding generation capacity within ERCOT,
8 the largest grid operator within Texas. The EPA
9 overestimates ERCOT's generation capacity by nearly
10 20,000 megawatts.

11 Thank you for the opportunity to provide
12 oral comments. We'll be supplementing today's
13 remarks with more detailed written comments prior to
14 the November 28th deadline. Thank you.

15 MR. NAPOLITANO: Thank you, Susana. Any
16 questions for her?

17 (No response.)

18 MS. HILDEBRAND: Thank you very much.

19 MR. NAPOLITANO: Thank you very much. The
20 next speaker, Karen Torrent. Hopefully I pronounced
21 that right.

22 (Off mic comments.)

1 MR. NAPOLITANO: We definitely can hear
2 you.

3 MS. TORRENT: Good morning. My name is
4 Karen Torrent. I am the federal legislative director
5 of the Environmental Law and Policy Center. Prior to
6 joining the ELPC, I was an attorney with the United
7 States Department of Justice in the Environment and
8 Natural Resources Division, where I represented this
9 agency in federal courts on Clean Air Act issues.

10 I appreciate the opportunity to comment on
11 the agency's proposed revisions to the cross-state
12 air rule. ELPC is a Midwest public interest
13 environmental advocacy and ecobusiness organization
14 that operates in Illinois, Iowa, Michigan, Minnesota,
15 Ohio, North Dakota, South Dakota and Wisconsin.

16 ELPC was founded on the principle that
17 environmental progress and economic development can
18 be achieved together. The rule, as promulgated by
19 EPA, is a sound, achievable market-based program that
20 will deliver strong public health protections. EPA's
21 proposed revisions are limited to accomplishing
22 important technical adjustments that will promote the
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1 development of allowance market liquidity and smooth
2 the transition from the Clean Air Interstate Rule
3 known as CAIR programs, to the cross-state rule in
4 2012 and nothing more.

5 ELPC applauds EPA's intent to implement
6 the cross-state air pollution rule, which was
7 promulgated by EPA to address interstate air
8 pollution, and requires reductions in the emissions
9 of sulfur dioxide and NOx, beginning on January 1,
10 2012.

11 Any further delay in the implementation of
12 the cross state air rule would not only be contrary
13 to law; it would be detrimental to the public's
14 health and environment, and would also be inequitable
15 to those utilities that have made the investments in
16 clean energy, installed emissions controls and closed
17 uneconomic coal plants.

18 The regulation of soot and smog emissions
19 from power plants is long overdue. EPA first
20 promulgated regulations dealing with cross-state
21 pollution almost seven years ago. However, under the
22 Clean Air Interstate Rule, the compliance date was
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1 not until 2015.

2 Subsequently, in 2008, the D.C. Court of
3 Appeals in North Carolina v. EPA, remanded CAIR back
4 to the agency for reconsideration. One of the
5 reasons the rule was overturned was that Title I of
6 the Clean Air Act required states to be in compliance
7 with NAAQs by 2010 or sooner.

8 In the North Carolina decision, the D.C.
9 Court admonished EPA to set the timing of emissions
10 reductions early enough, to help downwind states meet
11 their next deadlines. As we sit here today, nearing
12 the end of 2011, ELPC cautions that further delays in
13 the implementation of the cross-state rule would be
14 contrary not only to the decision of the Court of
15 Appeals, but also contravene the intent of the Clean
16 Air Act.

17 Nationwide, as this agency has noted and
18 promulgated in the regulation, the benefits of the
19 cross-state air rule far outweigh the costs, the
20 costs of 800 million projected to be spent annually
21 on this rule in 2014, and the roughly 1.6 billion per
22 year in capital investments already underway as a

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1 result of CAIR are small, compared to the estimated
2 annual benefits of 120 to 180 billion dollars, the
3 prevention of 13,000 to 34,000 premature deaths a
4 year, and improved air quality for over 240 million
5 Americans.

6 More particularly, in the Midwest, the
7 benefits of this rule may actually be more
8 substantial. Coal-fired power plants are among the
9 biggest emitters of NOx and SO2 pollution, and the
10 risk of death and disease caused by these coal-fired
11 power plants threatens millions of people who live in
12 the region.

13 For example, in Chicago, with a population
14 of about 2.6 million people, the Fisk and Crawford
15 power plants have been polluting the air and harming
16 public health through uncontrolled soot and smog
17 emissions since their founding in the 1950's.

18 The operators have made a business
19 decision not to install SO2 scrubbers, even though
20 the technology has been widely accepted and available
21 for more than 35 years, and there is no legal
22 requirement for them to install those scrubbers.

1 In 2002, a Harvard study on those Illinois
2 power plants contained estimates of premature deaths
3 and illness caused by these plants. It has been
4 estimated that the uncontrolled Fisk and Crawford
5 coal plant emissions that include NOx and SOx may
6 have caused somewhere between 750 million to a
7 billion dollars in damages.

8 In the Chicago area alone, the health and
9 environmental-related damages from these coal plants
10 are estimated to have cost the public in excess of
11 \$120 million per year.

12 Even though the situation I just described
13 to you was in Chicago, this example could have also
14 been in Milwaukee, Wisconsin, Cleveland, Ohio,
15 Detroit, Michigan, Gary, Indiana or any other city
16 situated near any of the 200 coal-fired electrical
17 plants nationwide that do not have scrubbers.

18 Finally, EPA must insist on the
19 implementation without further delay, as it penalizes
20 those utilities who are in compliance and benefits
21 the non-compliers. I thank you for this opportunity
22 to testify, and if you have any further comments, I'd

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1 be happy to share this as well.

2 MR. NAPOLITANO: Thank you, Karen. Any
3 questions for her?

4 (No response.)

5 MR. NAPOLITANO: Thank you very much.

6 Next speak would be Shannon Maher Bañaga, thank you.

7 MS. BANAGA: Good attempt.

8 MR. NAPOLITANO: Yes. Good morning.

9 MS. BANAGA: Good morning. My name is
10 Sharon Maher Bañaga. I'm Manager of Environmental
11 Policy for Public Service Enterprise Group. I
12 appreciate the opportunity to share our comments on
13 EPA's proposed technical adjustments to the cross-
14 stage air pollution rule, also known as the Transport
15 rule, published on October 14th, 2011.

16 PSEG is a publicly traded diversified
17 energy company with annual revenues of more than 12
18 billion. Our family of companies distributes
19 electricity and gas to more than two million utility
20 customers in New Jersey, and owns and operates
21 approximately 13,500 megawatts of electric generating

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1 capacity concentrated in the Northeast.

2 We have a diverse fleet of generating
3 units including 2,400 megawatts of coal-fired
4 capacity and 3,700 megawatts of nuclear capacity.
5 PSEG has long-supported an integrated multi-pronged
6 strategy to reduce power plant emissions, and we
7 worked closely with our state and federal partners to
8 advance this goal.

9 We've advocated for tighter limits on
10 power plant nitrogen oxide and sulfur dioxide
11 emissions, in order to address the air quality
12 challenges that have plagued the state of New Jersey
13 and other states in the region. The New Jersey DEP
14 estimates that 26 to 82 percent of the ozone problem
15 under the current National Ambient Air Quality
16 Standards in New Jersey stems from upwind sources of
17 pollution outside the state.

18 As EPA tightened NOx, this contribution
19 will only increase. PSEG owns and operates 11 power
20 plants, with 71 fossil generating units subject to
21 the Transport rule in New Jersey and New York. Also
22 PSEG, is a co-owner of two coal-fired power plants

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1 subject to the Transport rule in Pennsylvania.

2 In addition, PSEG has an ownership
3 interest in seven fossil fuel plants that are leased
4 to operators in Illinois, New York and Pennsylvania.
5 While we continue to evaluate the proposal, I would
6 like to offer our initial reactions to the technical
7 corrections today, and file more fulsome written
8 comments by November 28th.

9 PSEG supports the timely implementation of
10 the Transport rule, because of the important air
11 quality benefits associated with the rule. Since the
12 D.C. Circuit's decision vacating CAIR, EPA has been
13 working diligently to develop an appropriate
14 replacement for CAIR, while addressing the
15 requirements of the Court.

16 We believe the Transport rule addresses
17 the requirements of the Court and the technical
18 corrections proposed by EPA further strengthen the
19 rule. As a result, we encourage EPA to move forward
20 with its technical corrections, and we continue to
21 support EPA's implementation of the Transport rule on
22 January 1, 2012.

23

1 In terms of the technical corrections
2 proposed for the New Jersey state budget in general,
3 we support EPA's proposal to correct the integrated
4 planning model assumptions regarding the installation
5 of pollution control systems for B.L. England Unit 1.
6 As observed in the proposed revisions to the
7 Transport rule, the controls of B.L. England Unit 1
8 are not actually required by New Jersey
9 administrative order until December 2013.

10 PSEG supports EPA's proposal to correct
11 for out of merit dispatch at certain generating
12 facilities in northern New Jersey. This region of
13 the state is located within load pocket, an area
14 where transmission constraints require the dispatch
15 of local generating units, to maintain reliability
16 and voltage support.

17 Also, electric generating facilities in
18 New Jersey support the wielding of power from upstate
19 New York through northern New Jersey into New York
20 City, again requiring out of merit dispatch. These
21 dynamics, which are unique to the region, and make it
22 particularly challenging to develop a reliable

23

1 forecast of individual unit dispatch decisions.

2 In our written comments, we will offer
3 detailed comments and recommendations on that
4 methodology, that EPA has proposed for addressing out
5 of merit dispatch in northern New Jersey. We have
6 not evaluated the corrections proposed to other state
7 budgets at this time.

8 PSEG supports EPA's decision to defer the
9 effective date of the assurance penalty provisions
10 until January 1, 2014. We agree that this proposal
11 will promote the development of allowance market
12 liquidity as the program gets underway. This will
13 smooth the transition from CAIR to the Transport rule
14 programs, whilst ensuring that necessary emission
15 reductions are occurring within the states that are
16 contributing to non-attainment.

17 As part of our written comments, we will
18 propose modification to the methodology for
19 determining the variability limits for small states
20 beginning in 2014. In closing, PSEG believes that
21 the electric power industry can meet the emissions
22 reductions within the time lines called for by the

23

1 Transport rule. The emissions reductions proposed
2 are essential to meet air quality goals required by
3 the Clean Air Act.

4 Further, PSEG believes that the rule
5 requires as reasonable compliance structure, given
6 the constraints imposed on EPA by the D.C. Circuit
7 Court's decision to remand CAIR. Finally, timely
8 implementation of the Transport rule is needed for
9 regulatory certainty, which is critical for the
10 electric power industry to be able to make long-term
11 capital investments.

12 In New Jersey alone, PSEG has invested
13 more than \$1.2 million during the past five years, in
14 selling state of the art pollution control systems at
15 our fossil generating stations. Through these
16 efforts, PSEG has dramatically lowered its emissions
17 of nitrogen oxide, sulfur dioxide and fine
18 particulate matter.

19 Today, PSEG's domestic generation fleet is
20 among the cleanest in the country. As a result of
21 these investments, our New Jersey generating fleet is
22 well-positioned to comply with the Transport rule, as
23

1 proposed in the utility toxics rule. We continue to
2 support EPA's efforts to implement the Transport rule
3 on schedule, and appreciate the agency's willingness
4 to make appropriate technical corrections to ensure a
5 cost-effective control program. Thank you for the
6 opportunity to comment today. Are there any
7 questions?

8 MR. NAPOLITANO: Thank you, Shannon.

9 (No response.)

10 MR. NAPOLITANO: No. Thank you very much,
11 Shannon.

12 (Off mic comments.)

13 MR. NAPOLITANO: Terry McGuire, if you're
14 here please.

15 MR. McGUIRE: Good morning. My name is
16 Terry McGuire, and I'm a Washington representative
17 with the Sierra Club. The Sierra Club is the
18 nation's oldest and largest grassroots environmental
19 organization, with chapters in all 50 states, the
20 District of Columbia and Puerto Rico.

21 On behalf of our 1.4 million members,
22 supporters and activists, I am here today to voice
23

1 our continued strong support for the cross-state air
2 pollution rule. This is a much needed, long overdue
3 public health safeguard. It is our assessment that
4 even with the proposed adjustments to the final rule,
5 the cross-state air pollution rule will have profound
6 positive effects on our nation's health and well-
7 being.

8 As adjusted, this rule will still
9 considerably reduce power plant emissions that travel
10 across state lines, and contribute to ground level
11 ozone and fine particle pollution. Clean-up of these
12 emissions will improve air quality for up to 240
13 million Americans, and will annually prevent up to
14 34,000 premature deaths, 400,000 cases of aggravated
15 asthma, and 1.8 million days of missed school and
16 work.

17 Additionally, with benefits expected to
18 exceed cost by a margin of approximately 350 to 1,
19 this represents a bargain for American taxpayers.
20 The Sierra Club will submit additional written
21 technical comments on the details of the proposed
22 adjustments.

23

1 While we fully support the EPA's efforts
2 to be as accurate as possible as the agency addresses
3 a very complex set of emissions and operations data,
4 we also want to urge the EPA to make sure the final
5 adjustments are based on an objective methodology,
6 and not on which companies have most loudly objected
7 to complying.

8 We understand that the EPA in this rule
9 are under attack from some utilities and their allies
10 in Congress, and we urge you to hold firm in
11 defending this essential rule. In closing, we urge
12 the EPA to wrap up the rulemaking process as quickly
13 as possible, and turn to implementing this life-
14 saving rule on the time frame they intended.

15 Too many American families and children
16 are suffering from ailments related to unsafe air
17 pollution, and they deserve action in addressing this
18 nationwide concern. Thank you for the opportunity to
19 provide oral testimony on this very important subject
20 and rule.

21 MR. NAPOLITANO: Thank you, Terry. Any
22 questions for Terry?

23

1 (No response.)

2 MR. NAPOLITANO: Thank you very much. The
3 next speaker would be Bruce Alexander.

4 MR. ALEXANDER: Good morning. My name is
5 Bruce Alexander, Environmental Regulatory Strategy
6 Director with Exelon Corporation. By way of
7 background, Exelon is comprised of three major
8 operating companies, Exelon Generation, with over
9 25,000 megawatts of generating capacity fueled by
10 nuclear, coal, wind, hydro, natural gas, oil and
11 solar, as well as two distribution companies,
12 Commonwealth Edison and PECO Energy that serve over
13 five million customers in northern Illinois and
14 southeastern Pennsylvania.

15 For nearly a decade, investment in the
16 electric industry has been stifled by environmental
17 regulatory uncertainty. That is why we and others
18 have urged EPA to finalize regulations on a timely
19 basis, to help inform industry investments. We thank
20 EPA for providing needed regulatory clarity on this
21 rulemaking and others to come.

22 I want to begin by making three points.

23

1 First, the CSAPR will work. The emissions reductions
2 targets are achievable simply by optimizing the use
3 of existing emissions controls and switching to
4 cleaner forms of coal and use of natural gas. In
5 recent years, the dirty secret in our industry is
6 that many plants with dispatchable pollution controls
7 do not operate them at full removal efficiency or
8 even at all.

9 Why would this be? Because it is more
10 profitable to run the plants without operating these
11 controls, and because a minority of power plant
12 operators are taking advantage of ongoing regulatory
13 uncertainty and continued low CAIR allowance pricing.
14 CSAPR will put an end to this practice, and this is a
15 good thing.

16 Second, CSAPR will not threaten electric
17 reliability. Allowance trading mechanisms are
18 precisely what the industry has urged EPA to adopt.
19 They will work and have worked for over a decade in
20 other regulatory programs. As both buyers and
21 sellers of electricity, Exelon is buying and selling
22 into the market for 2012 to 2015, and there is no

23

1 shortage of electricity to meet demand.

2 Third, the cost impacts of the rule are
3 modest and are dwarfed by the overwhelming health
4 care savings that EPA has calculated. Contrary to
5 some claims that EPA has sandbagged the costs, market
6 costs are already lower than what EPA estimated. SO2
7 allowances that EPA expected will sell for
8 approximately \$1,000 per ton in Group 1 states, are
9 already selling for less than 900.

10 That means that the cost of compliance is
11 less than EPA projected, and impact on power prices
12 is lower. We concur with EPA's RIA that the CSAPR
13 will have less than a one to two percent impact on
14 retail electric rates. We continue to believe that
15 wholesale prices in the Philadelphia and Chicago
16 areas will be far lower in 2015 than they were before
17 at the start of the recession, and as well in
18 consideration of other proposed EPA regulations.

19 Now will CSAPR impact some company
20 profits? Sure, it will. Those companies that have
21 not invested in pollution controls, well over 40
22 years after the Clean Air Act was passed, will have

23

1 to buy allowances or install controls. But that is
2 neither unexpected nor unfair.

3 With over 60 percent of the power plants
4 in the country already invested in controls, those
5 that did not should not blame EPA. While their plans
6 to profit by running plants without pollution
7 controls might face a train wreck, they drove the
8 train.

9 Turning to the proposed amendments to
10 CSAPR, Exelon commends EPA for its commitment to
11 implementing the rule on January 1, 2012. There is
12 no justification for any further delay. The
13 deadlines for states to attain the '97 ozone and PM
14 2.5 NAAQS have already passed, and states have failed
15 to submit adequate SIPs.

16 The D.C. Circuit in the 2008 North
17 Carolina decision invalidated CAIR because in part
18 its 2015 compliance date was too late to support the
19 Clean Air Act's 2010 attainment dates. Delaying the
20 start of the CSAPR beyond 2012 would be illegal.
21 Using EPA's federal implementation plan authority is
22 not only the right thing to do, it is the only thing

23

1 to do.

2 The focus of the proposed rule is rightly
3 limited to technical corrections to the CSAPR, and
4 consideration of the options to improve allowance
5 market liquidity in the program's early years. This
6 proposal provides the electric generation industry
7 the fourth opportunity to file public comments
8 related to technical corrections.

9 We support the agency's view that
10 additional changes suggested during this public
11 comment period should be subjected to a material
12 impact threshold equal to no less than one percent of
13 the state's emission budget.

14 With regard to the development of emission
15 allowance markets and liquidities in the early years,
16 we believe that the sooner the proposed rule process
17 is concluded, the better. We agree with all of EPA's
18 proposed budget revisions. We do not believe that
19 the proposed multi-year delay in the start of the
20 assurance provision, however, is necessary to address
21 market liquidity.

22 The issue of liquidity is a Year 1 issue
23

1 that should only be addressed, if at all, by
2 accommodations in 2012. EPA should not delay the
3 assurance provision implementation by more than one
4 year. The assurance provision construct is a
5 necessary element of the CSAPR, implemented to
6 respond to the Court's 2008 North Carolina decision.
7 It's a critical element of what makes CSAPR different
8 from CAIR, and we fully believe it's a necessary
9 component of the final rule.

10 Finally, we would like to note that
11 because EPA has finalized the 2008 ozone NAAQS
12 reconsideration, that EPA should act quickly to
13 establish revised ozone NOx budgets for 2015.
14 Revising the budgets for 2015 will allow us to better
15 plan investments in control equipment for NOx, and
16 coordinate compliance planning with the mercury and
17 air toxics rule. Thank you for the opportunity to
18 provide comments today.

19 MR. NAPOLITANO: Thank you, Bruce. Any
20 questions for Bruce?

21 (No response.)

22 MR. NAPOLITANO: Okay. Thank you very
23

1 much. David McCabe. The court reporter asked us
2 if you have been -- if you've got written comments
3 that you've been working from, to provide us this
4 morning testimony, could you supply those to him?
5 Because then he can more accurately transcribe what
6 you'd like to have in the record, please. If you've
7 got them, if you could give him a copy please, that
8 would be great.

9 Okay. I guess David's not here yet. How
10 about Marty McBroom? I don't see Marty either.

11 Okay. At this point, all the speakers that have
12 signed up that are here have spoken. We still want
13 to give David McCabe and Marty McBroom the chance.
14 So we're going to stay open, so to speak, until noon
15 as we committed to.

16 But what we'll do now is go into recess,
17 and turn the mics off and once we have a speaker come
18 in, we'll call ourselves back into session. But at
19 this point, as they say on Southwest Airlines, you're
20 free to move about the room, and we'll call you back
21 once we're good to go again. Thank you.

22 (Whereupon, a short recess was taken.)

23

1 MR. NAPOLITANO: Okay. I'd like to call
2 the session back into order. Our next speaker is
3 here. Anyone in the hall, please come on in. Is
4 that everybody that was out there? Right, okay.
5 Okay, we are back in session, and our next speaker is
6 David McCabe. If you'd come forward please.

7 MR. McCABE: Good morning. My name is
8 David McCabe. I'm an atmospheric chemist with the
9 Clean Air Task Force. I appreciate the opportunity
10 to speak with you today. We're based in Boston,
11 where Clean Air Task Force is a national non-profit
12 environmental advocacy organization, and our mission
13 includes reducing the adverse health, environmental
14 and climate impacts of power plants.

15 Our staff and consultants include
16 scientists, economists, MBAs, engineers and attorney.
17 Almost 15 years ago, EPA promulgated the 1997 air
18 quality standards for fine particulate matter and the
19 eight hour ozone standard. A more protective
20 particulate matter standard was established in 2006.

21 Today, however, many areas throughout the
22 East and Midwest continue to exceed those health-

23

1 based standards. Emissions of nitrogen oxides and
2 sulfur dioxide from power plants are a major reason
3 for this major public health failure. Because these
4 emissions are often transported downwind into
5 numerous states, EPA must use the good neighbor
6 provision of the Clean Air Act to correct this
7 failure.

8 EPA's Clean Air Interstate Rule was
9 finalized almost seven years ago, and it was intended
10 to address this problem of transported power plant
11 pollution. However, CAIR was invalidated by the D.C.
12 Circuit Court of Appeals, and this summer EPA
13 finalized CAIR's replacement, the cross-state air
14 pollution rule.

15 This new Transport rule is one of the most
16 important and beneficial air pollution rules EPA has
17 ever issued. It will improve air quality for 240
18 million Americans. It will prevent an estimated
19 13,000 to 34,000 premature deaths each year, and will
20 create between 120 and 280 billion in annual
21 monetized benefits to American society.

22 It will provide these benefits, these
23

1 enormous health benefits at are very small comparable
2 cost of less than a billion dollars. Earlier this
3 month, EPA proposed several revisions to its cross-
4 state rule. First, EPA proposed to make adjustments
5 to the emission budgets of a number of states, to
6 reflect corrections in certain unit-specific modeling
7 assumptions used in establishing those budgets.
8 Second, EPA proposed to delay the effectiveness of
9 the assurance provisions from 2012 to 2014.

10 We of course agree that EPA should use
11 accurate and correct data in promulgating the rule's
12 state emission budgets. However, we also strongly
13 agree with EPA that any additional claims of
14 incorrect data should be brought to EPA's attention
15 immediately, and certainly no later than November
16 28th, the deadline for comments on the proposed
17 revisions.

18 We are continuing to study EPA's proposal,
19 and we may provide written comments by the November
20 deadline. But the main point we wish to stress is
21 that EPA must wrap up this corrections process as
22 soon as possible and get on with implementing the
23

1 rule.

2 Industry has managed to delay for years
3 implementation of reductions in the power plant air
4 pollution that has impacted millions of Americans,
5 and prevented many areas of the country from
6 attaining the health-based air quality standards for
7 ozone and PM.

8 EPA must not allow that delay to extend
9 any longer than it already has. The lives of tens of
10 thousands of Americans depend upon it, as does the
11 health of millions more. Thank you for the
12 opportunity to provide these comments.

13 MR. NAPOLITANO: Thank you, Dave. Any
14 questions?

15 (No response.)

16 MR. NAPOLITANO: Okay. Thank you very
17 much. David, if you would like, could you please
18 leave your statement with our court reporter, so he
19 can -- if that's all right.

20 (Off mic comments.)

21 MR. NAPOLITANO: Okay. Never mind, thank
22 you.

23

1 MR. McBRIDE: But I can email it.

2 MR. NAPOLITANO: Okay, if you would.

3 Thanks, David. Okay. We only have one more
4 scheduled speaker and I know him personally and he's
5 not here yet. So why don't we go back into recess?
6 He is supposed to be here by 11:00, but please don't
7 go far, in case he shows up early, and that would be
8 the last recorded speaker, although we will stay here
9 until noon as we committed to, in case other people
10 do walk in.

11 But we have just one more scheduled
12 speaker, Marty McBroom from AEP that's on his way.
13 We think he should be here by 11:00 to speak when
14 he's scheduled. So we're in recess again, and I'll
15 call you back when Marty arrives.

16 (Whereupon, a short recess was taken.)

17 MR. NAPOLITANO: Then I'll call you to
18 speak to us once you're ready to go.

19 (Off mic comment.)

20 MR. NAPOLITANO: They all wanted to wait
21 for you, once I said who the next speaker and last
22 speaker, at this point that's scheduled, is. They
23

1 all stayed. We went into recess.

2 Anyways, I'd like to call this session
3 back into order, and basically ask our last speaker
4 that is scheduled at this point, Marty McBroom from
5 AEP, to please come and speak to us. Was anybody
6 else outside when you were out there? Okay. So
7 everybody's in. When you're ready, Marty.

8 MR. McBROOM: American Electric Power
9 appreciates the opportunity to present this statement
10 on EPA's proposed cross-state air pollution rule,
11 commonly known as the Transport rule. AEP has
12 previously submitted comments, a petition for
13 reconsideration, and will be providing more detailed
14 written comments.

15 AEP appreciates EPA's effort to correct
16 technical deficiencies in the development of state
17 emission budgets for the final Transport rule. The
18 proposed corrections more accurately represent
19 projected emission levels achievable in 2012. AEP
20 also strongly favors deferring the effective date of
21 the assurance provisions until 2014 or later, if such
22 provisions are necessary.

23

1 AEP believes that a number of other
2 technical corrections and/or adjustments be made, to
3 more accurately reflect the operation of the power
4 system. These corrections include (1) providing
5 additional allowances for 22 units utilized for
6 spinning reserves, voltage support, black start
7 capability and other ancillary services necessary to
8 support grid stability and reliability.

9 (2), adjusting the new source set-aside to
10 provide allowances for the operation of the John W.
11 Turk, Jr. power plant. The Turk plant should be
12 included in the needs database, and the new set-aside
13 adjusted to eight percent.

14 (3), adjusting the Oklahoma seasonal NOx
15 budget, if it is included in the final program, to
16 reflect the infeasibility of installing new controls,
17 and the excessive cost of those controls compared to
18 the cost thresholds in the final rule. New low NOx
19 burners at AEP's Northeastern Units 3 to 4 in
20 Oklahoma have a levelized cost removal that's greater
21 than \$1,800 per ton.

22 (4), correcting the emission rates and
23

1 allocations for 33 AEP units wrongly assumed to burn
2 biomass in 2012. (5), correcting the amount of fuel
3 switching that can occur by 2012. Very low sulfur
4 fuel is only available from a selected number of
5 mines in Wyoming and Montana. The 20 percent
6 production increase in the 2012 policy case is not
7 technically feasible.

8 (6), adjusting the assumed in-service
9 dates for FGD or dry sorbent injection in the 2014
10 policy case. AEP does not believe it is technically
11 feasible to install FGDs by 2014 that are not already
12 under construction, and has no operational experience
13 using DSI for SO2 reductions, and the U.S. power
14 industry as a whole has little experience. More
15 detail on these issues will be provided in AEP's
16 written comments on this proposal.

17 AEP would like to thank the U.S. EPA for
18 the opportunity to present the views of AEP on this
19 important issue.

20 MR. NAPOLITANO: Thanks, Marty. Any
21 questions for Marty?

22 (No response.)

23

1 MR. NAPOLITANO: Thank you very much.

2 MR. McBROOM: Thank you.

3 MR. NAPOLITANO: Okay. Do we have any
4 more people that have signed up? Okay. Well, at
5 this point, we know of no others that are coming to
6 speak, and we committed to be here until noon. So we
7 will stay until noon, in case someone does still
8 arrive, so that they'll have their opportunity. But
9 we're going to go back into recess, and then see if
10 anybody does join us between now and noon, and at
11 that point, if not, we will then adjourn. Okay.
12 We're back in recess. Thank you.

13 (Whereupon, a short recess was taken.)

14 MR. STENHOUSE: This is Jeb Stenhouse.
15 I'm just going to call this hearing back into
16 session. It is now a mere minute or so from noon,
17 and I am simply requesting whether there are any
18 other people who would like to offer testimony at
19 this time.

20 We have still not had any other
21 indications of people who would like to offer
22 testimony to this hearing?
23

1 (No response.)

2 MR. STENHOUSE: It is now noon, and as
3 such, we are adjourning this proceeding. Thank you
4 very much.

5 (Whereupon, at 12:00 p.m., the hearing was
6 adjourned.)

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