Hopping Green & Sams
Attorneys and Counselors

October 18, 2005

VIA FEDERAL EXPRESS

Stephen Johnson, Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue
Room 2315
Washington, D.C. 20460

RE: Second Supplement to Petition for Reconsideration

Dear Mr. Johnson:

Enclosed please find a Second Supplement to Petition for Reconsideration of the final Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone, or Clean Air Interstate Rule (CAIR), 70 Fed. Reg. 25162 (May 12, 2005).

Please date stamp the enclosed copy of the filing and return to our office using the enclosed Federal Express envelope.

If you have any questions pertaining to this second supplement on the petition, please feel free to contact me at (850) 222-7500.

Thank you,

Robert Manning
Attorney for Petitioner,
Florida Association of Electric Utilities

cc: Jeffrey Holmstead, EPA
Steve Page, EPA
Brian McLean, EPA
Kevin McLean, EPA
Norman Rave, DOJ

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BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In The Matter of the Final Rule:

Rule to Reduce Interstate Transport of
Fine Particulate Matter and Ozone (Clean
Air Interstate Rule); Revisions to Acid Rain
Program; Revisions to the NOx SIP Call
70 Fed. Reg. 25162 (May 12, 2005)
_____/

SECOND SUPPLEMENT TO PETITION FOR RECONSIDERATION

Petitioner, the Florida Association of Electric Utilities (FAEU), submits the following Second Supplement to its Petition for Reconsideration, principally to offer detailed modeling information relating to EPA's conclusion that Florida significantly contributes to ozone nonattainment in Fulton County, Georgia. In support of its request that EPA reconsider and revise its findings related to sources in Florida, FAEU states:

1. On July 11, 2005, FAEU requested that EPA reconsider several aspects of the Clean Air Interstate Rule (CAIR), including its determination that emission sources in Florida contribute significantly to both PM2.5 and ozone nonattainment in another state.

2. On October 10, 2005, FAEU submitted its first Supplement to its Petition for Reconsideration, which offered detailed modeling information related to PM2.5 and additional citations supporting FAEU's request that EPA reconsider and rescind its finding that all of Florida contributes significantly to PM2.5 nonattainment in another state, and committed to providing additional information relating to ozone very soon. The citations and discussion of the Michigan case in FAEU's first Supplement apply equally to this Second Supplement relating to ozone.

3. FAEU is now forwarding its detailed modeling information relating to ozone (Attachment A), which shows the following:

a. EPA made errors in its definition of the grid cells comprising Fulton County and in the data for the 2010 Base Case emissions, which resulted in an overestimation of Florida's contribution to nonattainment in another state.

b. Using EPA's data and grid cell definition for Fulton County, the entire state of Florida's average percent contribution to the single "modeled + monitored" nonattainment area is still less than 1 percent (the precise number is 0.79), and therefore below EPA's 1-percent threshold of significance. Accordingly, EPA erroneously included the entire state of Florida in the CAIR-ozone program.

c. The rounding protocol EPA apparently used for the average percent contribution metric is inconsistent with the rounding protocols EPA has used with other relevant programs/assessments.[1]

d. Assuming for argument purposes that EPA's rounding approach for the percent contribution threshold metric is justifiable, the modeling results clearly show that a substantial portion of Florida does not contribute significantly to nonattainment in Fulton County. More specifically, had EPA conducted finer-grained modeling, they would have seen that anthropogenic sources in the southern portion of Florida do not significantly contribute to ozone nonattainment

[1] FAEU is awaiting EPA's response to its request filed pursuant to the Freedom of Information Act on September 28, 2005 to obtain the precise rounding protocols EPA used in CAIR. As part of conversations with EPA, FAEU understands that for the percent contribution metric EPA is rounding to the nearest whole number, which means that any value between 0.50 and 1.49 is rounded to 1.

in another state, while the northern portion of the state meets EPA's threshold for significance.

e. EPA did not provide adequate notice regarding the final CAIR, and FAEU could not have known that EPA would/could conclude that Florida contributes significantly to ozone nonattainment in Fulton County, Georgia in the final CAIR because:

i. EPA concluded the opposite in the proposed rule.

ii. The data needed to assess Florida's contribution and corroborate EPA's findings in the Final Rule was not available in the Proposed Rule, Supplemental Proposal, the Notice of Additional Data Availability, or the docket to the Final Rule. The complete data was not provided until August 2005, after several months of interactions with EPA.

iii. Even after receiving the complete data needed, the results were below EPA's threshold for a "significant contribution."

iv. EPA did not explain or justify its protocols for rounding the metrics that transformed a number less than 1 (0.79) to a number not less than 1.

v. EPA made errors in its definition of the grid cells comprising Fulton County, which were not published prior to promulgating the final rule, and which resulted in an overestimation of Florida's contribution.

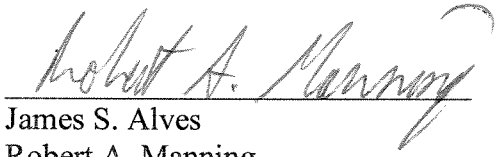
vi. EPA made errors in its data for the 2010 Base Case emissions, the most pronounced of which occurred for Saturday, June 24, which resulted in an overestimation of Florida's contribution.

4. Significantly, EPA confuses the average percent contribution metric further by defining it differently in the preamble to the final rule and the CAIR Technical Support Document (TSD), the preamble to the proposed rule and the preamble to the NOx SIP Call. The preamble to the final rule defines the metric as "had to be greater than 1 percent" (70 Fed. Reg. 25246/2), while EPA defines it in the other documents as "less than 1 percent." FAEU is presuming for purposes of this Supplement that "less than 1 percent" is the correct statement of the metric.

5. If EPA's rounding protocol for the percent contribution metric rounds any value between 0.50 and 1.49 to 1 (see Footnote 1), EPA erroneously defined this threshold metric in the CAIR TSD as "less than 1 percent." Under EPA's approach to rounding, this metric is actually one-half of one, and the definition therefore should have been "less than 0.50 percent."

Wherefore, FAEU respectfully reiterates and supplements its request that EPA reconsider the inclusion of the entire state of Florida in the CAIR-ozone program.

Respectfully submitted by:



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