



Via Electronic Mail to: a-and-r-docket@epa.gov

October 1, 2010

EPA Docket Center, EPA West (Air Docket)
U.S. Environmental Protection Agency
Mailcode: 2822T
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: Docket ID: EPA-HQ-OAR-2009-0491
Proposed Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone Comments of American Municipal Power, Inc.

On behalf of the organization and its membership, American Municipal Power, Inc. (collectively AMP) respectfully submits these comments to be included in the record for U.S. Environmental Protection Agency's (EPA) Proposed Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Transport Rule), issued for public notice and comment on August 2, 2010 at 75 Fed. Reg. 45210.

Background

AMP is a not-for-profit corporation founded in 1971 and headquartered in Columbus, Ohio. AMP's principal mission and purpose is to provide cost-effective, reliable power supply to 128 member municipal electric systems in six states (Kentucky, Michigan, Pennsylvania, Ohio, Virginia, and West Virginia; 82 of those members are located in Ohio). AMP and its member communities maintain a diversified portfolio of power generation assets and are regional leaders in the development of energy efficiency programs and the deployment of renewable generation assets. AMP built and currently operates the 42 megawatt (MW) Belleville hydroelectric plant on the Ohio River and Ohio's only utility-scale wind farm in Bowling Green, Ohio. AMP is also actively developing numerous renewable generation projects, including six hydroelectric projects along the Ohio River totaling approximately 400 MW of power generation and several wind, solar and landfill gas projects.

In addition to being a regional leader in renewable power development, AMP operates fossil-fuel base load electric generating units (EGUs) in Ohio. Several AMP members operate small utility boilers serving electric generators with nameplate capacity of 25 MW or less. Specifically, AMP's generating members include the cities of Orrville, Painesville, Shelby, Dover, and Hamilton in Ohio and Wyandotte in Michigan. These municipalities qualify as small governments and/or small utilities for the purposes of the Small Business Administration protections under the Regulatory Flexibility Act (RFA). Despite AMP's

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generation, AMP is also on the wholesale power market for a significant portion of its portfolio. This market power is supplied almost entirely by coal-fired generation in the region.

AMP understands the challenges of both providing cost-effective power and developing long-term base load power generation. AMP's diversified portfolio of generation assets has not come on-line overnight; rather, it took years of planning, permitting, and construction before each electric generation asset was able to commercially operate. Development of base load power generation takes time, requires significant research and development into new pollution control technologies, and necessitates close cooperation with state permitting agencies. While AMP appreciates EPA's efforts to develop a replacement for the Clean Air Interstate Rule (CAIR), AMP is concerned that EPA's Transport Rule creates, rather than eliminates, regulatory and legal uncertainty and overlooks the time-consuming and costly nature of project development and unit control equipment retrofits.

AMP encourages EPA to reconsider its current proposal and to enact a Transport Rule that realistically achieves environmental objectives but also accounts for the practical realities of building, replacing and retrofitting electric power plants. To that end, AMP requests that EPA consider the following specific comments.

Specific Comments

Although AMP understands that EPA's primary goal in issuing the Transport Rule is to replace the CAIR Rule, the Transport Rule goes well beyond the scope of CAIR and creates significant, additional uncertainties for the power generation sector. AMP encourages EPA to consider the following issues prior to moving forward to finalize the Transport Rule.

EPA Should Reconsider Its Determination to Issue a FIP

The Transport Rule is currently designed and structured as a Federal Implementation Plan (FIP) to regulate emissions from EGUs in thirty-two states. AMP is puzzled by EPA's decision in this regard and would ask that EPA reconsider this decision. Specifically, since CAIR remains viable as an interim measure, EPA should not rush the Transport Rule via FIP; rather, the states should be given time to modify State Implementation Plans (SIP) as contemplated by both the express language and spirit of Clean Air Act's requirements and federal-state cooperation tenants. Similarly, unit level allowance allocations should be the responsibility of states per the SIP process rather than allocation by EPA using the flawed Integrated Planning Model.

The Proposed Timelines are Unreasonable

The Transport Rule sets forth implementation and compliance timelines that are unrealistic and unworkable. EPA's proposed accelerated timelines will force the power industry to choose among several losing propositions: retire existing, cost-effective base load generation assets before replacement of such generation can be feasibly achieved; hastily attempt to retrofit existing plants with equipment that is either cost-prohibitive or commercially immature; or decrease overall electricity production in order to meet overly restrictive state emission budgets. The results of these choices will have severe cascading impacts on the power industry as well as other industry sectors and consumers.

EPA proposes emissions reductions and caps which take effect very quickly—in 2012—with additional reductions occurring in 2014. While EPA believes that this phased approach allows adequate time for fossil fuel-fired generator owners to install pollution control equipment, it simply does not. It takes significant time to plan, design, permit, and install pollution control equipment at a power plant. Additionally, EPA's expeditious timelines are unnecessary given the current effectiveness of the CAIR program.

Additionally, EPA has ignored the other significant federal rule mandates that will add to the complexity of compliance. For instance, EPA has not factored in considerations associated with new NAAQS and entirely new permit concepts tied to greenhouse gas emissions. EPA should be more reasonable in developing workable timeframes and, as such, AMP requests that EPA reconsider this issue and suspend the compliance deadlines of the Transport Rule for at least five years.

Interstate Trading Should Be Supported

AMP has been a long-term proponent of pollutant trading concepts and encourages continuation of market-based approaches. As such, AMP supports options that allows for both intrastate and interstate allowance trading. Trading gives operators, especially smaller generators and municipal power organizations, needed flexibility and allows for more cost-effective compliance.

Allowance Provisions Should Be Flexible and Fair

AMP encourages EPA to design a final Transport Rule that allows full transfer of banked CAIR allowances into the new trading program. We respectfully disagree with EPA's concern that the CAIR allowance fuel adjustment factors will provide unjust allowance banking by certain units. These CAIR allowances have already been allocated and reliance on the use of the CAIR allowances is certainly reasonable and to be expected as part of long-range planning. Additionally, the Court did not address this issue in its consideration of the existing CAIR program; thus, the Court has not precluded the transfer of the allowances. The maintenance and use of the CAIR allowances is important to municipal generators and will provide increased flexibility in the initial years of the new program.

EPA's alternative proposals introduce the concept of assurance provisions aimed at ensuring that each state meets its pollution control obligations while accounting for inherent variability in power system operations. For the State Budgets/Limited Trading option, assurance provisions would be applicable in 2012, and for the Direct Control option, such provisions would be applicable in 2014. However, EPA does not explain how the assurance provisions will practically and functionally operate or why such provisions are necessary. As such, the Transport Rule should not include assurance provisions without additional demonstration by EPA justifying, clarifying and explaining how the assurance provisions would function in a document subject to public comment.

The 25 MW Threshold Should be Maintained

While the proposed Transport Rule has a 25 MW applicability threshold, EPA is still contemplating including units with a nameplate capacity less than or equal to 25 MW. EPA should not lower the applicability threshold as it would needlessly burden smaller sources for little environmental benefit. According to the Transport Rule's Regulatory Impact Analysis, the current applicability threshold of greater than 25 MW already accounts for sources representing 84% of nationwide SO₂ emissions and 73% NO_x emissions. Lowering the threshold would add 600 small entities into regulation by the Transport Rule, which, as EPA itself acknowledges, would be burdensome. In fact, according to the EPA, it was the exclusion of such small sources and small entities that supported EPA's conclusion that the Transport Rule did not significantly economically impact small entities. As previously noted, AMP has several member communities that operate units that are less than 25 MW. Subjecting these members to the Transport Rule would have disastrous and financially devastating consequences, would be contrary to EPA's own findings, and would overload already struggling state permitting agencies like Ohio EPA with additional sources.

The New Source Set-Aside Should Encourage Power Sector Growth

EPA proposes to set aside 3% of each state's emissions budgets for new units. This new unit set-aside is deficient and discourages growth of new units that are designed and operated with advanced pollution control equipment. The blanket 3% per state new unit set-aside also fails to account for states experiencing significant growth in the electric power sector. This failure by EPA to account for such growth could likewise overlook other factors affecting power sector growth, such as growth in manufacturing or similar development. Thus, growing states or regions are stymied by a one-size-fits-all approach to new unit

emission budgets. Finally, EPA should clarify the Transport Rule to provide that "new units" move from the new unit set-aside to an existing unit allocation pool after a certain period of time to assure a long-term allowance structure and in order to free up new unit set-asides for future projects. Just as EPA should clarify when new units have existed for a sufficient period to warrant classification as existing units, EPA should clarify the time periods associated with allocations for retired or retiring units. Such clarification is necessary to assure that trading markets and new units will not be unnecessarily impacted by unit retirement.

Conclusion

Thank you for the opportunity to comment on this proposal. If you have any questions, please contact me or Randy Meyer, AMP Director of Environmental Affairs.

On Behalf of AMP and the Members,



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