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SENT VIA REGULATIONS.GOV AND EMAIL

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ATTN: Docket ID No. EPA-R05-OAR-2011-0969

**Re: Indiana; Ohio; Wisconsin; Disapproval of Interstate Transport Requirements
for the 2008 Ozone NAAQS; Proposed Rule**
Our File No. 043590

Dear Mr. Aburano:

On March 16, 2016, U.S. EPA published in the Federal Register: Indiana; Ohio; Wisconsin; Disapproval of Interstate Transport Requirements for the 2008 Ozone NAAQS; Proposed Rule, 81 Fed. Reg. 14025 (Mar. 16, 2016). The following comments are submitted on behalf of the Ohio Utility Group and its member companies (“OUG” or “the Utilities”),¹ which is an association of individual electric utilities in the State of Ohio. The electric utilities own and operate power plants and other facilities that generate and transmit electricity for residential, commercial, industrial, and institutional customers. These power plants and other facilities are subject to the Clean Air Act. OUG’s purpose, in part, is to participate collectively on behalf of its members in administrative proceedings under various environmental laws, including the Clean Air Act and in litigation arising from those proceedings that affect electric generators. Thus, the notice affects the members of OUG.

Ohio EPA submitted its Regional Haze SIP on March 11, 2011 and its Infrastructure SIP for the 2008 Ozone NAAQS on December 12, 2012. At that time, the Clean Air Interstate Rule

¹ The member companies include: AEP Generation Resources Inc., Buckeye Power, Inc., The Dayton Power and Light Company, Duke Energy Ohio, Dynegy Commercial Asset Management, LLC, FirstEnergy Solutions Corp., and Ohio Valley Electric Corporation.

(“CAIR”) emission allowance trading program was in effect for sulfur dioxide and for the annual and ozone-season nitrogen oxide requirements for Ohio’s Electric Generating Units (“EGUs”). Likewise, U.S. EPA’s CAIR=BART rule, which was codified at 40 C.F.R. §51.308(e)(4), was in effect for EGU’s sulfur dioxide and nitrogen oxide emissions that were subject to CAIR. While the Cross State Air Pollution Rule (“CSAPR”) was slated to take effect and replace CAIR on January 1, 2012, the D.C. Circuit Court stayed CSAPR on December 30, 2011 and directed U.S. EPA to administer CAIR pending litigation over CSAPR. Order, *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 and consolidated cases (D.C. Cir. Dec. 30, 2011), at 2. This was consistent with the Court’s decision in *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008) (per curiam), *modifying North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008) (per curiam), in which the Court held that, in order to “at least temporarily preserve the environmental values covered by CAIR,” CAIR would remain in effect until superseded by a valid replacement rule. 550 F.3d at 1178. Consistent with the Court’s decisions and directives, CAIR remained in effect in Ohio through the end of 2014 and was not replaced by CSAPR until January 1, 2015.

Likewise, EPA’s CAIR=BART rule, as codified at 40 C.F.R. § 51.308(e)(4), remained in effect until the superseding “CSAPR=BART” provision of section 51.308(e)(4) took effect on August 6, 2012. *See* 77 Fed. Reg. 33,642, 33,643 (June 7, 2012). Ohio EPA submitted its Regional Haze SIP provisions before U.S. EPA signed the rule that revised section 51.308(e)(4) and that included a limited disapproval of Ohio EPA’s CAIR=BART SIP. Accordingly, the SIP was submitted in full compliance with relevant Clean Air Act requirements governing regional haze and interstate visibility transport and, therefore, should be fully approved.

In the event that U.S. EPA does not agree that Ohio had a fully approvable SIP, with regard to Prong Four (protection of visibility), U.S. EPA issued a Federal Implementation Plan (“FIP”) for Ohio in 2012. 77 Fed. Reg. 33642, 33658 (June 7, 2012). Thus, should U.S. EPA conclude that it is disapproving Ohio EPA’s SIP, U.S. EPA should clarify that no further action is necessary for Prong Four because U.S. EPA issued FIPs “that allowed CSAPR to meet the regional haze requirements for EGUs.” 81 Fed. Reg. at 14029.

Further, on February 1, 2015, OUG, Midwest Ozone Group (to which some of OUG members belong), and the Utility Air Regulatory Group (to which some of OUG members belong) submitted comments on Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS; Proposed Rule, 80 Fed. Reg. 75706 (Dec. 3, 2015). Those comments detailed legal problems and technical flaws with the modeling used to determine states’ contributions to downwind states for nonattainment or interfering with maintenance. As noted in U.S. EPA’s Federal Register that is the subject of these comments, the same modeling is being used here to disapprove Ohio EPA’s SIP. Therefore, OUG incorporates those comments by reference and includes them with these comments for the record.

Because the CSAPR Update Rule has not been finalized, U.S. EPA should have waited to act on Ohio EPA’s SIP until it had finalized the CSAPR Update Rule and responded to the comments regarding the problems with the modeling. Ohio EPA submitted its Infrastructure SIP for the 2008 Ozone NAAQS in 2012. There was no pressing reason that U.S. EPA needed to act on Ohio EPA’s SIP at this time.

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The disapproval was also based on an analysis that was conducted approximately three years after the SIP submittal. Rather than proposing to disapprove Ohio EPA's SIP, U.S. EPA should have requested supplemental information from Ohio EPA regarding support for its Infrastructure SIP for the 2008 Ozone NAAQS.

Finally, the measures that Ohio EPA provided in its Infrastructure SIP for the 2008 Ozone NAAQS remain in place and in accordance with what was required at the time. The continued implementation of these programs aids in the reduction of air pollution to address the 2008 Ozone NAAQS, which should not be discounted by U.S. EPA. If U.S. EPA believes additional programs are necessary, then U.S. EPA should not disapprove the SIP but rather issue a SIP Call to revise the Infrastructure SIP.

The Utilities thank U.S. EPA for the opportunity to comment.

Very truly yours,



Cheri A. Budzynski

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Enclosures