

EPA-HQ-2015-008156 Interim 6

**From:** michael Goo Ex. 6 - Personal Privacy  
**Sent:** Friday, May 10, 2013 5:27 PM  
**To:** goo.michael@epa.gov  
**Subject:** Fw: CSAPR Concerns

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----- Forwarded Message -----

**From:** Michael Bradley <mbradley@mjbradley.net>  
**To:** Ex. 6 - Michael Goo  
**Sent:** Sunday, September 18, 2011 1:38 AM  
**Subject:** FW: CSAPR Concerns

Michael,

Below is the message I have sent to Gina and Joe. I can be reached before 10:00 AM eastern time tomorrow morning and after 3:30 PM when I arrive in DC.

Michael

**From:** Michael Bradley [mailto:mbradley@mjbradley.com]  
**Sent:** Sunday, September 18, 2011 1:35 AM  
**To:** Ex. 6 - Joe Goffman  
**Subject:** FW: CSAPR Concerns

Joe,

Would you please send this email on to Gina for me? I would have sent it to her directly with a cc to you but I don't have a private email address for her and would prefer to not use an official email address. Your calls to Eric and Bob were very helpful in reassuring them that EPA is looking to be responsive to their State budget concerns but time is becoming an issue and others within PSEG and NGrid are pushing for a clear resolution in the very near term. Thanks.

Gina,

As you know, many of the CEG companies have been having a series of conversations with EPA about the concerns on the final state budgets under the Cross-State Air Pollution Rule (CSAPR). The companies want to remain supportive of the final CSAPR because it is intended to reduce emissions. In general, the companies see the rule as improving on CAIR and being responsive to the D.C. Circuit's decision. However, we are continuing to identify errors in the final rule that we believe could undermine the legal stability of the rule. Our goal is to have a rule implemented that is legally sound, gives the industry the needed business certainty for investments in cleaner generation,

and addresses the air transport issues affecting many of the state in which the CEG members operate. We would not want to see the rule stayed.

However, as we have discussed, the state budgets for NY, NJ, and FL were significantly reduced in the final rule. These changes are making supporting the implementation of the rule, as currently written, very difficult. While we understand EPA is willing to consider making technical adjustments to state budgets based on new technical information, we are concerned that despite efforts to provide EPA with additional information, EPA may not be able to adjust those state budgets until after October 7<sup>th</sup> the deadline for when petitions for reconsideration and petitions to the DC Circuit are due. Additionally, since the rule's release, multiple levels of staff at the various CEG companies have become involved in evaluating the implications of the rule and suggesting various courses of action, which, as I am sure you can appreciate, make the dynamics difficult to manage.

Since the rule's release about 10 weeks ago, we have been working to explain the concerns we have with certain state budgets and highlight the technical errors that result from using the IPM model and not taking into account the transmission system constraints that are unique to certain areas in the U.S. The following explains our specific concerns related to New Jersey, New York and Florida as well as the outreach we have had with EPA.

Following Eric Svenson's outreach to you regarding PSEG's concerns, we have had several discussions with Joe Goffman and Sam Napolitano on the NJ state budget. Compared to the proposed budget, New Jersey's final annual NOx budget was reduced by 39 percent, the ozone season NOx budget was reduced by 36 percent, and New Jersey's SO2 budget was reduced by 51 percent. With fewer allowances available to the state, several of PSEG's generating units are projected to be short allowances beginning in 2012, despite having advanced pollution control equipment installed and operating. Additionally, since PSEG's generating fleet is generally well controlled, there are limited opportunities for further emissions reductions between now and 2012.

A similar situation exists for NY. Compared to 2010 emissions, NY state looks to be significantly short of the 2012 state budgets even with the assurance provisions. We understand the NYDEC has been engaged with EPA to provide information to highlight the fact that there are many units in NY that must operate due to transmission constraints but for which the model predicted the units to have zero heat input. Both National Grid and Consolidated Edison of NY have also had calls with Sam and Joe to express similar concerns with the model and state budget, and had provided similar information about these must run units during the comment period. Without adjustments to the state budget, there are concerns that units needed for reliability purposes would not be able to operate.

NextEra has also met with Joe and Sam several times regarding the Florida state budget, and there we are also seeing that the IPM model fails to recognize that some units will need to run for reliability purposes due to natural gas constraints. This was an

issue NextEra and others also raised during the comment period, and the inability of the model to make these adjustments significantly impacts the state allowance budget.

The concerns described above are creating a very difficult dynamic within the Clean Energy Group and for these individual companies to remain supportive of EPA's regulations. The approaches in the final rule appear to penalize the early investments many of the CEG companies made in anticipation of regulations. Additionally, the rule does not allow for economic growth as there is not updating of allowance allocations.

I am appreciative of EPA's efforts to try to make the necessary adjustments to state budgets that have clear errors while ensuring that any changes do not affect the timely implementation of the entire rule. The CEG members similarly want to make sure that right balance is struck so that the rule can remain effective in January 2012. Joe in particular has been very constructive in trying to find any appropriate solutions, but given the tight timeframe leading up to October 7<sup>th</sup>, I wanted you to be aware of the difficult position in which many of the CEG members are finding themselves.

Please do not hesitate to call me with any questions. I will be traveling tomorrow from the west coast to DC, arriving at 4:00 PM, and plan to be in DC all day on Monday and Tuesday. With the exception of the times when Sue Tierney, Paul Allen and I are presenting a Utility Toxics Rule briefing for House and Senate staff on Monday I'm available to discuss these issues with you and others.

Michael