

**U.S. Environmental Protection Agency (EPA) Public Hearing:
“Revisions to Federal Implementation Plans to Reduce Interstate Transport of
Fine Particulate Matter and Ozone; Proposed Rule”; 76 FR 63860**

**Bruce Alexander
Environmental Regulatory Strategy Director
Exelon Corporation**

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Washington, D.C.**

Good morning. My name is Bruce Alexander, Environmental Regulatory Strategy Director with Exelon Corporation. I appreciate the opportunity to provide Exelon’s thoughts on the Agency’s proposed technical revisions to the Cross State Air Pollution Rule (“CSAPR”). We will be filing more detailed written comments later.

Exelon Corporation is comprised of three major operating companies:

- Exelon Generation with over 25,000 megawatts of generating capacity fueled by nuclear, coal, wind, hydro, natural gas, oil and solar, and
- Two distribution companies, Commonwealth Edison Company and PECO Energy Company, that collectively serve over five million customers in northern Illinois and southeastern Pennsylvania.

For nearly a decade investment in the electric industry has been stifled by environmental regulatory uncertainty. That is why we and others have urged EPA to finalize regulations on a timely basis to help inform industry investments. We thank EPA for providing needed regulatory clarity. I want to begin by making three points.

First, the CSAPR will work. The emissions reduction targets are achievable by simply optimizing the use of existing emissions controls and switching to cleaner forms of coal and gas. In recent years, the dirty secret in our industry is that many plants with dispatchable pollution controls do not operate them at full removal efficiency, or even at all. Why? Because it is more profitable to run the plants without operating these controls and because a minority of power plant owners are taking advantage of ongoing regulatory uncertainty. CSAPR will put an end to this practice and that is a good thing.

Second, CSAPR will not threaten electric reliability. Allowance trading mechanisms are precisely what the industry has urged EPA to adopt. They will work and have worked for over a decade in the Acid Rain program. As both buyers and sellers of electricity, we are buying and selling into the market for 2012-2015 and there is no shortage of electricity to meet demand.

Third, the cost impacts of the rule are modest and are dwarfed by the overwhelming health care savings that EPA has calculated. Contrary to some claims that EPA has sandbagged the costs, market costs are already lower than what EPA estimated. SO₂ allowances that EPA expected would sell for approximately \$1,000 per ton sell for less than \$900. That means that the cost of compliance is less than EPA projected and the impact on power prices is lower. We concur with EPA's RIA that the CSAPR will have less than a 1-2% impact on retail rates. We continue to believe that wholesale prices in the Philadelphia and Chicago areas will be far lower in 2015 than they were before the recession even considering all final and proposed EPA regulations.

Now will CSAPR impact some company's profits? Sure it will. Those companies that have not invested in pollution controls well over 40 years after the Clean Air Act was passed will have to buy allowances or install controls, but that is neither unexpected nor unfair. Well over 60% of the power plants in the country have already invested in controls. Those that did not should not blame EPA. While their plans to profit by running plants without pollution controls might face "a train wreck", they drove the train.

Turning to the proposed amendments to CSAPR, Exelon commends EPA for its commitment to implement the CSAPR on January 1, 2012. There is no justification for delaying the Rule. The deadlines for states to attain the 1997 ozone and the PM_{2.5} NAAQS have already passed and states have failed to submit adequate SIPs that control interstate transport that interferes with the ability of other states to fully attain and maintain the relevant NAAQS. The D.C. Circuit, in the 2008 *North Carolina* decision, invalidated CAIR because, in part, its 2015 compliance date was too late to

support the Clean Air Act's 2010 attainment dates. Delaying the start of the CSAPR beyond 2012 would be illegal. Using EPA's Federal Implementation Plans (FIPs) authority is not only the right thing to do; it is the only thing to do.

The focus of the proposed Rule is rightly limited to technical revisions to CSAPR and consideration of options to improve allowance market liquidity in the program's early years. This proposal provides the electric generation industry the fourth opportunity to file public comments related to technical corrections. But some small technical corrections should not delay the entire rule. We support the Agency's view that additional changes suggested during this public comment period should be subjected to a "material impact" threshold equal to no less than one percent of a state's emission budget.

With regard to the development of emission allowance markets and liquidity in the early years of the CSAPR, we believe that the sooner this proposed rule process is concluded, the better, as final Agency action will remove remaining regulatory uncertainty. Nothing inhibits early market development more than unresolved risks that final regulations may be further modified.

EPA's recent October 18 population of compliance accounts with 2012 vintage allowances for all currencies is a positive step, as is the passing of the date for states to declare their intention to submit abbreviated SIPs for 2013 generating unit allocations. In the last several weeks, we have seen bid-ask spreads close and prices decline as regulatory certainty increases. Trading volumes will increase as regulatory certainty improves, 2012 operational plans crystallize and the 2013 allowance surrender date for annual 2012 emissions gets closer.

While we agree with all of EPA's proposed budget revisions, there is one area where we believe that the proposal goes too far. We do not believe that the proposed multi-year delay in the start of the assurance provision is necessary to address concerns about market liquidity. The issue of liquidity is a "year one" issue that should only be

addressed, if at all, by accommodations in 2012. EPA should not delay the assurance provision implementation by more than one year. The assurance provision construct is a necessary element of the CSAPR, implemented to respond to the Court's invalidation of CAIR in *North Carolina*, and is a critical element of what makes CSAPR different from CAIR.

Finally, we note that because EPA has finalized the 2008 ozone NAAQS, EPA should act quickly to establish revised ozone NOx budgets for 2015. Revising the budgets for 2015 will allow us to better plan investments in control equipment for NOx emissions and allow us to coordinate those investments with other controls needed to meet the emissions reduction requirements of the Mercury and Air Toxics Rule.

Thank you for considering Exelon's comments on this proposed rule. I would be pleased to answer any questions that you may have.