

ELIZABETH AMES JONES, CHAIRMAN
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RAILROAD COMMISSION OF TEXAS

August 23, 2011

The Honorable Greg Abbott
Attorney General of Texas
209 W. 14th street
P.O. Box 12548
Austin, Texas 78711-2548

Attn: Mr. Jon Niermann, Assistant Attorney General
Environmental Protection and Administrative Law Division

Re: Environmental Protection Agency Cross-State Air Pollution Rule (Docket ID No. EPA-HQ-OAR-2009-0491).

Dear General Abbott:

The Railroad Commission of Texas (Commission) voted today to request the Attorney General to take appropriate action, on behalf of the Commission, to challenge the Environmental Protection Agency's (EPA's) adoption and implementation of the Cross-State Air Pollution Rule (CSAPR) issued in the above-referenced docket.

On July 6, 2011, the EPA adopted the CSAPR and on August 8, 2011 published it in the federal register. It will become effective on October 7, 2011. The rule requires 27 states, including Texas, to significantly reduce power plant emissions that cross state lines and contribute to ozone and fine particulate pollution in other states, beginning in January 2012. The Commission firmly believes that the rulemaking process employed by the EPA was legally flawed, and that the rule, particularly as it focuses on Texas, is unsupported by credible and accurate technical data and analysis and will have serious adverse economic consequences for Texas without demonstrable environmental and health benefits.

The Commission questions the legal validity of the notice of proposed rulemaking issued by the EPA because the adopted version is much broader in scope than the rule as initially proposed (75 Fed. Reg. 45210, August 2, 2010). In particular, the proposed rule applied only to seasonal ozone in Texas, but the final rule applies year round, and adds Texas to the list of states where control for sulphur dioxide (SO₂) and nitrogen oxide (NO_x) apply. The final rule requires Texas power plants to commit to major SO₂ reductions by January 2012 and run the risk of shutting down if they cannot make or meet those commitments. Texas is subject to one of the largest SO₂ reductions of the states covered by the rule; yet the proposed rule did not specify any SO₂ emission reduction requirements for Texas.

The EPA also did not properly analyze the cost of compliance nor adequately assess the impacts of the rule on Texas. Texas relies on electricity generated by lignite its citizens mine, the regulation of which resides at the Commission. The broader adopted CSAPR threatens the viability of the Texas lignite mining industry, its jobs, and associated economic activity. Furthermore, the potential loss of lignite for power significantly threatens electric reliability in Texas to the detriment of all. As stated by the Electric Reliability Council of Texas (ERCOT), Texas could face a shortage of generation necessary to keep the lights on in Texas if the CSAPR is implemented.

For example, ERCOT hit a new record peak generation level of almost 68,000 MW on one day in the first week of August 2011. 1,500 MW of load was shed, pursuant to contractual arrangements, and approximately 1,000 MW of generation was imported from other grids, including the Southwest Power Pool and the CFE (Mexico). During this day, approximately 5,000 MW of generation was out of commission because of either mechanical breakdowns or derating as a result of extremely hot weather. Were such a similar occurrence to happen next summer, with the CSAPR in effect, it is unlikely that ERCOT could keep up with power demand.

Under the CSAPR, Texas is expected to reduce SO₂ emissions in Texas by 47% from 2010 levels, second only to Ohio. In addition, for the states included in the CSAPR SO₂ reduction requirements, approximately 25% of all reductions are expected to come from Texas. Texas' total lignite power generation capacity is approximately 9,500 MW. If CSAPR requires any of those units to shut down or run half time, Texas will not have enough power to keep the lights on.

The Commission is concerned about both the timing and the depth of the expected emission reductions. The timing of the new requirements – January 1, 2012 – is unreasonable because it does not allow enough time to implement operational responses to ensure reliability. Many coal-fired power plants may be forced to limit or shut down operations, possibly resulting in reductions in the safety margins of power operation of this state. The CSAPR will put at risk the economic future of power generation and those dependent on affordable electricity in Texas. The state possesses strong procedural and substantive legal challenges to CSAPR, and it is incumbent on the state to challenge this unfair and preemptory rule.

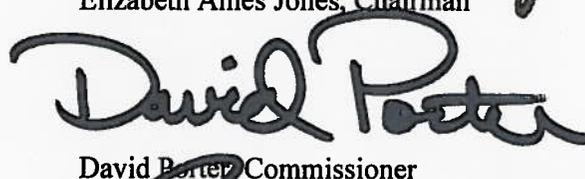
For these reasons, the Commission requests that the Attorney General, on behalf of the Railroad Commission, bring a prompt legal action and seek a stay of CSAPR's effectiveness. Because the rule otherwise becomes effective January 1, 2012, the Railroad Commission requests you treat this action among your highest priorities and that you institute legal action on a timetable that would ensure a ruling on the application for stay this fall and well in advance of the rule's effectiveness.

The Railroad Commission is ready and available to assist you in pursuing this matter.

Sincerely,



Elizabeth Ames Jones, Chairman



David Porter, Commissioner



Barry T. Smitherman, Commissioner