

US EPA ARCHIVE DOCUMENT

**BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In The Matter of the Final Rule:

Rule to Reduce Interstate Transport of
Fine Particulate Matter and Ozone (Clean
Air Interstate Rule); Revisions to Acid Rain
Program; Revisions to the NO_x SIP Call
70 Fed. Reg. 25162 (May 12, 2005)

SUPPLEMENT TO PETITION FOR RECONSIDERATION

Petitioner, the Florida Association of Electric Utilities (FAEU), submits the following Supplement to its Petition for Reconsideration, principally to offer detailed modeling information relating to PM_{2.5} (as promised in FAEU's Petition) in support of its request that EPA reconsider and revise its findings related to sources in Florida. The detailed information relating to ozone will be submitted very soon. Specifically, Petitioner states:

1. On July 11, 2005, FAEU requested that EPA reconsider several aspects of the Clean Air Interstate Rule (CAIR), including its determination that emission sources in Florida contribute significantly to both PM_{2.5} and ozone nonattainment in another state. As part of this request, FAEU stated that "EPA did not conduct sufficient modeling" to support this conclusion, and arbitrarily roped-in the entire state when more detailed modeling would have shown that a substantial portion of the state does not, in fact, contribute significantly to nonattainment in another state.

2. The Michigan case cited by FAEU in its Petition agrees that "where the data . . . inculcate part of state and not another, EPA should honor the resultant findings," and that "offering finer-grained computations . . . seems more like a healthy

search for truth than the collapse into infinite regress that EPA claims to fear.” Michigan, 213 F.3d at 684. This approach is especially sound for “states on the perimeter of the [] problem.” Id. at 684.

3. FAEU’s attached PM2.5 modeling report (Attachment A) provides this “finer-grained computation.” In sum, FAEU’s PM2.5 modeling effort was able to adequately corroborate EPA’s results using EPA’s statewide-contribution approach, and clearly shows that had EPA conducted finer-grained modeling they would have seen that a substantial portion of the state does not, in fact, contribute significantly to PM2.5 nonattainment in another state. “The critical issue is whether the targeted ‘source’ or ‘emissions activity’ ‘contribute[s] significantly to nonattainment’ in another state,” and the attached modeling report shows the portion of Florida that does not. 213 F.3d at 682.

4. Moreover, given EPA’s effort to justify CAIR from a cost-effectiveness standpoint, it is irrational to subject emissions sources to the extremely burdensome CAIR program when the modeling clearly shows that they do not contribute significantly to nonattainment in another state. EPA’s approach punishes sources that, in the words of the Michigan court, are “innocent of material contribution.” 213 F.3d at 684.

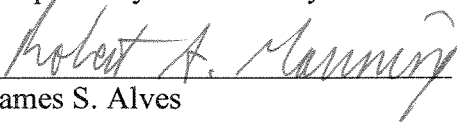
5. While the Michigan court does not mandate or prohibit a statewide approach, the court recognized that Clean Air Act Section 110(a)(2)(D) only authorizes regulation to the extent that the regulated sources contribute significantly to nonattainment, or interfere with maintenance, in another state. FAEU’s modeling clearly shows the substantial portion of Florida that does not contribute significantly to PM2.5 nonattainment in another state, and therefore that EPA’s state-wide approach is arbitrary and contrary to the Clean Air Act.

6. Further, FAEU's approach in CAIR is consistent with the holding by the Michigan court. Specifically, had EPA provided entire-state modeling analysis for Georgia and Alabama in the NOx SIP Call record, each entire state would have shown a significant contribution because a portion of the state showed a significant contribution. As EPA argued in the NOx SIP Call case, and the Michigan court recognized, "a state is the sum of its parts." But as the court pointed out, this argument is also "completely consistent with the rump portion being innocent of downwind effect, and thus is scarcely a reason for ruling that significant contributions from a border city should rope in the entire state." 213 F.3d at 683.

7. On a procedural note, the City of Lake Worth became a member of the Florida Association of Electric Utilities on July 19, 2005. The other members remain as stated in our Petition.

Wherefore, FAEU respectfully reiterates and supplements its request that EPA reconsider the inclusion of the entire state of Florida in the CAIR-PM2.5 program. FAEU will provide an additional Supplement relating to ozone very soon.

Respectfully submitted by:



James S. Alves
Robert A. Manning
Winston K. Borkowski
Laura J. Ketcham
Hopping Green & Sams
123 South Calhoun Street
Tallahassee, Florida 32301
850-222-7500 (telephone)
850-224-8551 (facsimile)

Counsel for Petitioner
Florida Association of Electric Utilities