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**VIA ELECTRONIC SUBMISSION**

U.S. Environmental Protection Agency  
EPA Docket Center, EPA West (Air Docket)  
Proposed Rulemaking – Federal Implementation Plans To Reduce Interstate  
Transport of Fine Particulate Matter and Ozone  
Docket ID No. EPA-HQ-OAR-2009-0491  
1200 Pennsylvania Avenue, NW.  
Washington, D.C. 20460

**Re: Comments of American Municipal Power, Inc. on the Proposed Federal Implementation  
Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone  
75 Fed. Reg. 45210 (August 2, 2010)**

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Dear Administrator Jackson:

This comment is submitted on behalf of American Municipal Power, Inc.'s ("AMP") members that operate small utility boilers serving electric generators with nameplate capacity of 25 megawatts (MW) or less. AMP's generating members include the Ohio cities of Orrville, Painesville, Shelby, Dover, and Hamilton ("Municipal Generators"). These municipalities qualify as small governments and/or small utilities for the purposes of the Small Business Administration protections under the Regulatory Flexibility Act ("RFA").

**EXECUTIVE SUMMARY**

The Municipal Generators support a 25 MW applicability threshold for the Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone, 75 Fed. Reg. 45210 (proposed Aug. 2, 2010) ("Transport Rule"). While the Municipal Generators, both individually and collectively, may have other substantive concerns with the Transport Rule, those concerns have been articulated in AMP's comment letter and this letter only addresses the applicability threshold issue. EPA's decision to regulate only units serving "a generator with a nameplate capacity of more than 25 megawatts" is consistent with EPA's past rulemakings that define electric generating units ("EGUs"). This long-standing approach to EGU regulation is well supported. The Municipal Generators ask that EPA retain in the final rule the proposed 25 MW nameplate capacity threshold used to exclude smaller utility boilers, like those operated by Municipal Generators, from the Transport Rule.

This exemption streamlines this rulemaking by minimizing its impact on small business and state and municipal governments operating small utility boilers. EPA has estimated that approximately 600 small business and 380 state and municipally-owned utilities would be exempt from this Rule because of the 25 megawatt threshold. This exclusion allows EPA to make a determination that the Transport Rule will not adversely affect a significant number of small businesses for purposes of the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (“SBREFA”), and that a small government plan is not required by the Unfunded Mandates Reform Act (“UMRA”). Lowering the size threshold to include small utilities would require new analysis under both of these statutes, which could significantly delay a final rule.

Such a delay is unjustified in light of EPA’s conclusion that cost-effective limits on EGUs in the Transport Rule may be sufficient to eliminate the adverse effect of transported fine particle, nitrogen oxide, and sulfur dioxide emissions on all or virtually all affected downwind states. Given this conclusion, EPA is not required to include small utilities in the Transport Rule because EPA does not have sufficient evidence at this time to justify regulating entities that may not be contributing significantly to nonattainment in downwind states or interfering with maintenance of a National Ambient Air Quality Standard (“NAAQS”). EPA has ample authority to impose cost-effective emission reductions on EGUs in Ohio without going any further with its Transport Rule. Thus, AMP’s small utilities generating in Ohio are appropriately excluded from the reach of the Transport Rule at least until the proposed EGU approach falls short of the statutory obligation and EPA gathers evidence sufficient to demonstrate that small utilities in Ohio contribute significantly or interfere with achieving the NAAQS obligations in a downwind state.

Finally, the Municipal Generators support EPA’s use of generator nameplate capacity as the correct measure of a unit’s generating capacity. Nameplate capacity represents the maximum generating capacity that a unit is designed to meet on a steady-state basis. This figure is set by the manufacturer, and is a stable basis for determining applicability. In the dynamic operating environment actual maximum generation is more variable and therefore, less reliable for determining applicability for a significant federal rule. Generator nameplate capacity is a clear threshold that provides regulatory certainty, and should continue to set the applicability threshold in the final rule.

**I. EPA SHOULD REGULATE ONLY UNITS SERVING GENERATORS GREATER THAN 25 MEGAWATTS UNDER THE TRANSPORT RULE**

EPA requested comment on whether it would be appropriate to regulate units serving generators less than 25 megawatts under the Transport Rule. 75 Fed. Reg. at 45309. Lowering the threshold below 25 megawatts would be inappropriate. These smaller units have not been subject to the previous Clean Air Interstate Rule, nor have they been subject to the NO<sub>x</sub> SIP call or the acid rain program. As a result, significant additional monitoring costs would be incurred by small utilities that have not been considered in the cost analysis. In addition, reducing the size threshold below 25 MW would bring a significant number of small entities into the rule and would require a new assessment under the RFA and the UMRA. This would require promulgation of a new proposed rule, and delay promulgation of a final rule. Furthermore, EPA

lacks evidence to support a finding that regulation of these smaller units is necessary to achieving and maintaining National Ambient Air Quality Standards (“NAAQS”) in downwind states. The 25 megawatt threshold, on the other hand, is consistent with EPA’s prior rulemakings and should be maintained in the final rule.

A. Including Only Units Serving Generators Greater Than 25 Megawatts Is Consistent with EPA’s RFA and UMRA Analysis

Excluding small utilities and/or small municipal entities from the Transport Rule is consistent with EPA’s obligation to minimize average regulatory impacts on small entities. Both the RFA (as amended by SBREFA) and the UMRA require EPA to consider the specific burdens rules will place on these small entities. These entities often experience diseconomies of scale, lack the ability to spread extensive capital costs over large customer bases, and have different emissions considerations than larger units, making it appropriate to regulate them differently from larger units.

EPA determined that a regulatory flexibility analysis was not required under the RFA because EPA certified that the rule would not have a significant economic impact on a substantial number of small entities. 75 Fed. Reg. at 45355. A major justification for this finding was that the 25 megawatt threshold exempted approximately 600 small businesses from the proposed Transport Rule. *See id.*; U.S. EPA, REGULATORY IMPACT ANALYSIS FOR THE PROPOSED FEDERAL TRANSPORT RULE at 235 (June 2010) (“RIA”). Similarly, EPA found that small government entities would not be significantly affected under UMRA, as the 25 megawatt threshold exempted 380 small state and municipal utilities from the proposed rule. 75 Fed. Reg. at 45356.

Changing the applicability threshold to include small utilities serving generators 25 megawatts or less would bring all of these entities back into the fold of the proposed rule, requiring a new analysis under both the RFA/SBREFA and the UMRA. This major analytical change would, in turn, delay promulgation of a final rule and likely require that EPA re-propose the Transport Rule. Such a course of action is unjustified, as EPA lacks data demonstrating that these smaller units are significant contributors to non-attainment and non-maintenance of NAAQS in downwind states.

B. EPA Lacks Data Necessary to Support Regulation of Sources 25 Megawatts or Less Under the Transport Rule

EPA provided three justifications for including only EGUs under the Transport Rule: 1) large utilities can achieve significant emissions reductions far more cost-effectively than smaller units; 2) regulating only large utilities is “sufficient to eliminate the quantity of emissions identified by EPA as significantly contributing to or interfering with maintenance of the 1997 PM<sub>2.5</sub> NAAQS in downwind areas”; and 3) EPA is still investigating whether regulation of smaller units will be necessary to address ozone. *See* 75 Fed. Reg. 45300.

EPA estimates that the proposed Transport Rule, which applies only to EGUs and requires only those emissions reductions that can be achieved in a cost-effective manner, will

address 84 % of nationwide NO<sub>x</sub> emissions and 73% of nationwide SO<sub>2</sub> emissions. RIA at 235. EPA concluded, for purposes of the Transport Rule, that a reasonable cost threshold for NO<sub>x</sub> reductions is \$500/ton. *Id.* at 45282. EPA has been unable to identify controls for small utilities that would achieve significant emission reductions at this cost. *See* 75 Fed. Reg. at 45286-90. As noted by the Northeast States for Coordinated Air Use Management (“NESCAUM”), NO<sub>x</sub> control costs for these smaller, non-EGU boilers range from \$1,000 to \$7,000 per ton of NO<sub>x</sub> removed, and can run as high as \$14,000 per ton. *See* NESCAUM, APPLICABILITY AND FEASIBILITY OF NO<sub>x</sub>, SO<sub>2</sub>, AND PM EMISSIONS CONTROL TECHNOLOGIES FOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL (ICI) BOILERS at 6-1 (Nov. 2008). These data indicate that highly cost-effective controls are not available for these smaller utilities and they would face a disproportionate cost burden if required to meet the same emission limits as the larger EGUs. Therefore, the available data support excluding small utilities from the Transport Rule.

Furthermore, EPA does not possess data demonstrating that regulation of small utilities under the Transport Rule will have a significant impact on emissions. Instead, EPA determined that small utilities and other non-EGU sources are not significant contributors to PM<sub>2.5</sub>, and that any reductions in SO<sub>2</sub> would be variable and difficult to measure. 75 Fed. Reg. at 45286-90, 45300. EPA also acknowledged that it does not have sufficient data to determine whether regulation of small utilities under the Transport Rule will have a significant impact on attainment or maintenance of ozone NAAQS or other future NAAQS. *See* 75 Fed. Reg. at 45300.

EPA can achieve significant emissions reductions in a cost-effective manner by regulating only EGUs. EPA lacks sufficient data to determine whether regulation of other small utilities is necessary to fulfill the purposes of the Transport Rule. Thus, EPA’s proposed decision to regulate only those units definitively identified as significant contributors to pollution in downwind states – i.e., units serving generators with a nameplate capacity greater than 25 megawatts – is an appropriate basis for a federal implementation plan created under Clean Air Act § 110(c).

C. EPA Historically Has Regulated Units Serving Generators 25 Megawatts or Less Differently Than Larger Units

The proposed Transport Rule’s 25 megawatt threshold is well supported by past rulemakings. EPA used identical language to define an “electric generating unit” in setting New Source Performance Standards (“NSPS”) and developing state implementation plan guidelines. *See* 40 C.F.R. §§ 60.24, 51.123, 51.124, 52.34 (defining an “electric generating unit” as a unit serving “a generator with nameplate capacity of *more than 25 megawatts electric (MWe)*” (emphasis added)). EPA has also used the 25 megawatt threshold to distinguish between source categories subject to different NSPS and Maximum Achievable Control Technology (“MACT”) standards. The 25 megawatt threshold determines which units are regulated under NSPS standards in Subpart Da, as opposed to the standards of Subpart D or Db. *See* 40 C.F.R. §§ 60.2, 60.40(e), 60.41a, 60.40b(e). Likewise, the proposed National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (“Boiler MACT”) uses a 25 megawatt threshold to identify sources that are not subject to Boiler MACT standards, but will instead be subject to a separate MACT standard with distinct control requirements and emission limits. *See* 75 Fed. Reg. 32006, 32050, 32064 (proposed June 4,

2010). EPA has routinely used a 25 megawatt threshold to separately regulate large and small utilities, and should continue to do so under the Transport Rule.

**II. EPA HAS APPROPRIATELY RELIED ON NAMEPLATE CAPACITY TO IDENTIFY UNITS SUBJECT TO THE TRANSPORT RULE**

The proposed Transport Rule only applies to any “stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving . . . a generator with a nameplate capacity of more than 25 MWe producing electricity for sale.” 75 Fed. Reg. at 45372. “Nameplate capacity” is defined as “the maximum electrical generating output (in MWe) that the generator is capable of producing *on a steady state basis and during continuous operation* (when not restricted by seasonal or other deratings) . . . *as specified by the manufacturer* of the generator . . . .” 75 Fed. Reg. at 45370 (emphasis added). EPA’s definition of nameplate capacity is consistent with definitions promulgated by other regulatory agencies heavily involved with the electric utility industry, including the Energy Information Administration (“EIA”). The EIA defines generator nameplate capacity as the “maximum rated output of a generator . . . under specific conditions *designated by the manufacturer.*” U.S. Energy Information Administration, Glossary <http://www.eia.doe.gov/glossary/index.cfm?id=G> (last visited Sept. 27, 2010) (emphasis added)).

Nameplate capacity is the appropriate measure of generator capacity and should continue to set the threshold for applicability of the Transport Rule. Nameplate capacity provides a bright-line test for operators and regulators to determine whether a unit is subject to regulation under the Transport Rule. Unlike instantaneous peaks in generation that represent only a snapshot in time, nameplate capacity represents the generating capacity the unit is designed to sustain for a period of time. This is a more accurate and consistent measure of capacity because generating units designed to operate at a steady state may vary significantly for short periods. Using generator nameplate capacity to distinguish between units subject to the Transport Rule and those that are not in the final rule will avoid uncertainty and ensure units are accurately and appropriately categorized for the life of the unit (unless and until the design capacity is modified and the manufacturer acknowledges a change to the nameplate capacity).

Thank you for considering these comments. Please contact me if you have questions.

Sincerely,

Douglas A. McWilliams  
Counsel for the Municipal Generators

cc: AMP Generating Members