Hopping Green & Sams
Attorneys and Counselors

July 11, 2005

Stephen Johnson, Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, Mail Code: 1101A
Washington, D.C. 20460

RE: Petition for Reconsideration and Stay of Clean Air Interstate Rule

Dear Mr. Johnson:

Enclosed please find a Petition for Reconsideration and Stay of the final Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone,or Clean Air Interstate Rule (CAIR), 70 Fed. Reg. 25162 (May 12, 2005).

If you have any questions pertaining to this petition, please feel free to contact me at (850) 222-7500.

Thank you,

Robert Manning

Robert Manning
Attorney for Petitioners

cc: Jeffrey Holmstead, EPA
Steve Page, EPA
Brian McLean, EPA
Kevin McLean, EPA

Post Office Box 6526 Tallahassee, Florida 32314 123 South Calhoun Street (32301) 850.222.7500 850.224.8551 fax www.hgslaw.com

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 NOx SIP Call
70 Fed. Reg. 25162 (May 12, 2005)
_____/

PETITION FOR RECONSIDERATION AND STAY

Petitioner, the Florida Association of Electric Utilities, requests that the United States Environmental Protection Agency (EPA), by and through its Administrator, reconsider its adoption of the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone or Clean Air Interstate Rule (CAIR), 70 Fed. Reg. 25162 (May 12, 2005), and stay the implementation of the rule in Florida pending the outcome of this Petition. In sum, there are overwhelming legal, factual and policy reasons for not subjecting Florida, or a substantial portion of Florida, to CAIR, and EPA erred in concluding otherwise. As grounds for Reconsideration and Stay, and as explained in more detail below, Petitioner states that:

(1) Florida is already doing an outstanding job protecting state and regional air quality – Florida is one of only three states east of the Mississippi River that is in attainment for all pollutants.

(2) EPA did not conduct sufficient modeling to show that all parts of Florida are contributing significantly to downwind nonattainment for ozone and PM2.5.

(3) Petitioner has been unable (thus far) to replicate EPA's modeling, using the data provided by EPA, and is confident that further modeling will show that Florida,

or a substantial portion of Florida, does not contribute significantly to downwind nonattainment areas for both ozone and PM2.5.

(4) EPA did not provide proper notice of Florida's inclusion in the CAIR-ozone program.

(5) There are numerous legal, factual and policy reasons why Florida should not be included in the CAIR-ozone program.

(6) EPA's significant-contribution threshold for PM2.5 is arbitrary, inconsistent with relevant thresholds established by EPA, and unnecessary to protect public health and welfare.

(7) EPA's moving up of the compliance date for NOx reductions from 2010 to 2009 is arbitrary, lacked proper notice, and is unsupported by a sound technical rationale.

AUTHORITY FOR RECONSIDERATION AND STAY

Pursuant to Section 307(d)(7)(B) of the Clean Air Act, EPA shall convene a proceeding for reconsideration if the party seeking reconsideration demonstrates that the objection is of central relevance to the outcome of the rule, and that it was impracticable to raise the objection during the public comment period, or that the grounds for the objection arose after the public comment period. EPA's authority for CAIR could be derived from Section 307(d)(1)(V)'s coverage of "such other actions as the Administrator may determine." Alternatively, EPA has authority to reconsider a promulgated rule through notice-and-comment rulemaking pursuant to 5 U.S.C. s. 553. For the reasons explained in this Petition, Petitioner respectfully requests that EPA reconsider the specific aspects of the rule raised herein.

Regarding PM2.5, related objections/comments were made to the proposed rule and are addressed herein. Specifically, comments were timely submitted that it was premature to subject Florida to the CAIR-PM2.5 program, and that EPA should conduct additional modeling to confirm whether substantial portions of Florida, in fact, do not contribute significantly to nonattainment in other states.

Regarding ozone, Florida was not included in CAIR in the proposed rule, the supplemental proposal, or the notice of additional data availability, and therefore grounds for objections related to Florida's inclusion in the CAIR-ozone program arose after the final rule was published. EPA justifies CAIR using the modeling it conducted, and therefore any errors or deficiencies in the modeling are of central relevance to the outcome of the rule.

Petitioner, through no fault of its own, has had great difficulty expeditiously obtaining the exact data used by EPA for both the PM2.5 and ozone modeling, and in replicating EPA's results, and therefore more time is needed to finalize this effort. In this regard, Petitioner is actively trying to set up a meeting with EPA to discuss modeling issues, and is committed to submitting a final report within 60 days.

Section 307(d)(7)(B) of the Clean Air Act allows EPA to stay the rule's effect for a period not to exceed three months for (pursuant to Section 307(d)(1)(7)) "such other actions as the Administrator may determine." Alternatively, EPA is authorized to stay the effect of a promulgated rule through notice-and-comment rulemaking pursuant to 5 U.S.C. s. 553. See, e.g., Stay of the Findings of Significant Contribution and Rulemaking for Georgia for Purposes of Reducing Ozone Interstate Transport, 70 Fed. Reg. 9897 (March 1, 2005) (in response to a petition for reconsideration, EPA proposed to stay the

NOx SIP Call rule as it applied to Georgia pending the outcome of notice-and-comment proceedings to address issues raised in the petition).

Petitioner respectfully requests that EPA immediately stay the implementation of CAIR in Florida pending the outcome of this Petition, for the reasons explained in this Petition, based on the authority in 5 U.S.C. s. 553. A Stay is needed immediately to not waste the state's energies in promulgating an implementation rule while EPA is reconsidering the rule (in order to be completed by September 2006, state rulemaking would likely begin in the next couple of months), as well as the sources' efforts in determining and implementing compliance strategies.

This Petition is timely filed within the 60-day period for judicial review, pursuant to Section 307(b)(1) of the CAA.

IDENTIFICATION OF PETITIONER

Petitioner is the Florida Association of Electric Utilities (FAEU), an unincorporated trade association comprised of the following electric utility companies with electric generating units (EGUs) located in Florida: City of Vero Beach, Florida Municipal Power Agency, Florida Power & Light Company, Florida Power Corporation d/b/a Progress Energy Florida, Inc., Gulf Power Company, Lakeland Electric, Orlando Utilities Commission, and Seminole Electric Cooperative, Inc. As finalized, CAIR requires Florida to substantially reduce emissions of sulfur dioxide and oxides of nitrogen, and creates model rules requiring EGUs to achieve these reductions. Petitioner is authorized to pursue this Petition on behalf of its members, who will be directly and substantially affected by CAIR's trading program and emission reduction requirements.

BACKGROUND

EPA proposed CAIR (initially known as the Interstate Air Quality Rule) on January 30, 2004 (69 Fed. Reg. 4565), and published a Supplemental Proposal on June 10, 2004 (69 Fed. Reg. 32683). In the proposed CAIR, EPA concluded that Florida contributed significantly to PM2.5 nonattainment areas in Georgia and Alabama (essentially, Macon, Columbus, Atlanta, and Birmingham), and expressly concluded that Florida did NOT contribute significantly to any ozone nonattainment areas. See 69 Fed. Reg. 4602 (Jan. 30, 2004). The Supplemental Proposal also made no mention of Florida's inclusion in the CAIR-ozone program, focusing on state-level emissions budgets, reporting requirements, SIP-approval criteria, and model cap-and-trade rules. On August 6, 2004, in a notice of additional data availability, EPA again did not mention any change to its conclusion regarding Florida. In the final rule, published on May 12, 2005 (70 Fed. Reg. 25162), EPA confirmed its proposed conclusion for Florida regarding PM2.5 and reversed its conclusion regarding Florida's impact on ozone nonattainment in another state. Utilizing updated emissions information, EPA concluded (with surprisingly minimal discussion) that Florida contributed significantly to Atlanta's ozone nonattainment problem. See 70 Fed. Reg. 25249. EPA made no attempt to determine, for either PM2.5 or ozone, whether some portion of Florida does not contribute significantly to downwind nonattainment.

GROUNDS FOR RECONSIDERATION AND STAY

1. Florida is a Good Neighbor Already

Floridians enjoy some of the best air quality in the eastern United States, and sources in Florida are already doing their part to lower emissions. The entire state of

Florida is in attainment for all pollutants. See, e.g., 70 Fed. Reg. 943, 964 (Jan. 5, 2005); 69 Fed. Reg. 23857, 23893-94 (April 30, 2004). Numerous existing state and federal air regulatory programs are currently imposed on electric generating units in Florida, substantially lowering emissions from historic levels. Florida's existing air quality is a reflection of Florida's status as a "good neighbor," and CAIR is simply not needed in Florida to protect air quality in other states.

2. EPA's Modeling is Insufficient

Florida does not, or substantial portions of Florida do not, contribute significantly to nonattainment in another state for ozone and PM2.5. EPA did not conduct the necessary modeling to determine whether all, or even most, of the sources it was regulating in Florida under CAIR were contributing significantly to nonattainment areas in another state; EPA arbitrarily concluded that if any source/s in the state is/are contributing significantly to nonattainment area/s in another state, then the entire state is contributing significantly and is subject to CAIR. This conclusion is contrary to the Clean Air Act, recent caselaw and modeling.

The inclusion of an entire state without regard to the specific upwind state sources was squarely addressed in State of Michigan v. EPA, 213 F.3d 663 (D.C. Cir. 2000). In the Michigan case, EPA subjected the entire states of Georgia and Missouri to the NOx SIP Call in spite of modeling showing that outlying "coarse grid" portions of the state were not "worthy of special concern," and did not contribute significantly to downwind nonattainment. 213 F.3d at 682. The entire states were included based on emissions from only certain portions of each state.

The Michigan court vacated the NOx SIP Call rule as it applied to Georgia and Missouri, finding no "reason for ruling that significant contributions from a border city should rope in the entire state," and concluding that "nowhere has EPA reasonably explained why NOx budgets based on every state source are the best stopping point with respect to states on the perimeter of the ozone problem." 213 F.3d at 683, 685. Upon remand, EPA excluded the portions of Georgia and Missouri that were not contributing significantly to nonattainment in another state. 69 Fed. Reg. 21603, 21624 (April 21, 2004). The Michigan court further explained that "where the data . . . inculpate part of the state and not another, EPA should honor the resultant findings. Such a proposition would of course leave EPA free to select states as the unit of measurement. In turn, states (or the areas of states that believed themselves innocent of material contributions, or sources located therein), might respond by offering finer-grained computations. Such a process seems more like a healthy search for truth than the collapse into infinite regress that EPA claims to fear." 213 F.3d at 684.

Petitioner simply wants the same treatment under CAIR, and EPA should allow Petitioner time to conduct "finer-grained computations" determining which portions of the state may be "innocent of material contributions," and honor such determinations.

In response to comments specifically related to EPA's conclusions for Florida and Texas, EPA attempts to justify its "roping in" of an entire state when addressing interstate contributions to nonattainment, with the following three rationales: (1) state boundaries are "a natural demarcation point, since they reflect autonomous political activity," SIPs are statewide and CAA Section "110(a)(2)(D) prohibits emissions from States," (2) drawing a line somewhere other than a state boundary would subject EPA to attacks on

"arbitrary" grounds, and (3) excluding a portion of a state could create "in-state pollution havens," because excluded sources could increase generation/emissions, transmit their electricity to the included sources, who could decrease generation/emissions.

EPA's first justification – natural political demarcations, limitation of emissions from states, and the statewide nature of SIPs – is contrary to the plain language of Section 110(a)(2)(D) of the Clean Air Act. As explained by the court in Michigan:

> On its face the statute neither mandates nor prohibits an all-or-nothing statewide perspective. It directs EPA to make sure that SIPs (which of course are *state*[1] plans) adequately prohibit "any source or other type of emissions activity within the State from emitting" in excess of the substantive limit. **The critical issue is whether the targeted "source" or "emissions activity" "contribute[s] significantly to nonattainment" in another state.** (Emphasis supplied).

213 F.3d at 682. While EPA purports to have documented a measurable contribution from Florida, the "lumping in" of the state runs afoul of the Michigan court's mandate that "EPA must first establish that there is a measurable contribution. Interstate contributions cannot be assumed out of thin air." Id. at 684.

In response to EPA's arbitrariness concerns, EPA should simply conduct sufficient modeling to determine which "source or other type of emissions activity . . . contribute[s] significantly to nonattainment in another state," as required by the Clean Air Act. Wherever the modeling draws the line should provide a defensible, non-arbitrary, demarcation.

EPA's "pollution haven" rationalization for including the entire state of Florida is equally without merit. Rather than identify a source or sources of significant downwind contribution – as clearly required by the plain language of Section 110(a)(2)(D) -- EPA has conjured up a conspiracy theory whereby non-CAIR EGUs would over-generate and

---

[1] Emphasis as in original.

transmit electricity to under-generating CAIR EGUs. Without even debating the practical impossibility of such a scheme due to insufficient transmission capacity, EPA has provided no data to show that the hypothetical increase in emissions from the non-CAIR EGUs will reach such levels as to now make them a significant contributor to downwind nonattainment. Rather, EPA alleges without support that under this scheme "downwind receptors remain exposed to the same or similar level of PM2.5 and ozone emissions." See EPA's Response to Significant Public Comments (Corrected Version - April 2005), p. 230.

The theory that emissions will increase from non-CAIR EGUs is insufficient; to be subject to CAIR, sources must emit at (or increase their emissions to) levels that cause a significant contribution to nonattainment in another state. Moreover, the only way to truly address the situation imagined by EPA would be to subject the entire country to CAIR. Otherwise, according to EPA's argument, companies would locate EGUs in non-CAIR states and transmit electricity to the CAIR states; this scenario is as unrealistic on a national basis as it is within a state. And any implication that non-CAIR EGUs could increase emissions on a whim, or that such hypothetical increases would cause a local harm, is clearly misinformed and misleading. Such increases are regulated, and eventualities protected, exhaustively through other provisions of the Clean Air Act (for example, SIPs, PSD permitting, NSPS, etc); CAIR's authority is focused on interstate transport, not local effects.

Accordingly, EPA's newfound rationales provide no more of a basis for EPA to include the entire state of Florida in CAIR than it did in including the entire states of Georgia and Missouri in the NOx SIP Call.

3. Ongoing Modeling Conducted by Petitioners

Petitioner is actively engaged in modeling to determine whether all or a substantial portion of Florida does not belong in CAIR for both ozone and PM2.5. Petitioner appreciates EPA's efforts thus far in providing the necessary (and voluminous) data files to run both the CMAQ model for PM2.5 and the CAMx model for ozone.

Regarding the CAMx modeling effort, Petitioner has obtained (through informal discussions and a Freedom of Information Act Request) what EPA indicated were the precise data files used by EPA in its modeling effort. Using this data, Petitioner has thus far been unable to replicate EPA's modeling results as referenced in the various documents published by EPA. In fact, Petitioner's results thus far show that Florida's impact on the one relevant downwind ozone nonattainment area (i.e., Fulton County, Georgia) is approximately one-fourth of the threshold metric established by EPA – EPA's percent-contribution threshold metric is 1.0 percent or greater, and Petitioner's modeling results (thus far) show Florida's impact at .28 percent.

Until Petitioner can understand the cause of this difference, it is unable to confirm whether any portion of Florida is appropriately included in the CAIR-ozone program. Petitioner is in the process of setting up a meeting with EPA in this regard. The assumption at this point is that the differences must be caused by one or more of the following (a) Petitioner does not have the precise data files used by EPA, (b) EPA made erroneous or undocumented assumptions in running the model, or (c) Petitioner made erroneous assumptions in running the model, or at least different assumptions than used by EPA. If Petitioner's modeling is correct, no part of Florida belongs in the CAIR-ozone program. If EPA's modeling is correct, and Petitioner is able to replicate EPA's

results, then Petitioner is confident that additional modeling runs will show that a substantial portion of Florida is not contributing significantly to Fulton County's nonattainment status.

Regarding the PM2.5 modeling, Petitioner has been able to more closely (but not exactly) replicate EPA's results and is in the process of determining which portion of the state (if not the entire state) does not contribute significantly to the nonattainment areas in Georgia and Alabama. Note, however, that EPA has recently redesignated as attainment for PM2.5 two of the seven counties that EPA claims Florida is contributing significantly to: Russell County, Alabama and Clarke County, Georgia. 70 Fed. Reg. 19844 (April 14, 2005). Consequently, Florida cannot be contributing to these counties non-attainment.

Petitioner is committed to submitting a final report on its modeling efforts for both PM2.5 and ozone within 60 days.

4. Lack of Notice Regarding Florida's Inclusion in CAIR for Ozone

As cited in the Background section above, neither the proposed rule nor the supplemental proposal or notice of additional data availability made any reference to Florida contributing to any area's ozone nonattainment status. Accordingly, EPA failed to follow proper notice-and-comment rulemaking procedures when it included Florida in the CAIR-ozone program in the final rule, and even failed to highlight this change in the final rule, much less provide a detailed explanation/justification of the change in position. Therefore, EPA must initiate proper notice-and-comment rulemaking if it intends to subject Florida to the CAIR-ozone program. Petitioner was clearly and erroneously precluded from exercising its right under the APA "to participate in the rulemaking process" as to the inclusion of Florida in the ozone portion of CAIR. See, Natural

Resources Defense Council, Inc. v. Nuclear Regulatory Commission, 680 F.2d 810, 814 (D.C. Cir. 1982). Further, EPA's decision to include Florida in the CAIR-ozone program is not a "logical outgrowth" of the proposal or supplemental proposal. Rather, EPA developed and utilized new data (which EPA has had considerable difficulty in making available, and Petitioner is not certain if we have received the exact data still), and with surprisingly minimal discussion in the final rule, included Florida in the CAIR-ozone program. Petitioner could not have reasonably anticipated this conclusion.

5. Additional Legal/Factual/Policy Reasons Florida Should Not be in CAIR for Ozone

A. **Fulton County will achieve attainment status on its own in 2015**, without any benefit from CAIR; modeling for 2010 is what pulls Florida in. In other words, Florida is required to reduce its emissions to assist Atlanta in reaching attainment, when the modeling shows Atlanta will get there without Florida's help. Numerous comments were submitted on the proposed rule requesting that EPA utilize the 2015 modeled nonattainment areas as targets to assess upwind contributions, as opposed to the 2010 modeled areas, which would remove Atlanta as a nonattainment target and Florida as a contributor. EPA declined, however, arguing that Section 110(a)(2)(D) allows inclusion of states in CAIR if they "interfere with maintenance" of attainment by another state, and that without CAIR, areas achieving attainment would likely revert to nonattainment primarily due to growth. This argument, however, is contrary to EPA's overall approach in CAIR to (1) identify nonattainment areas, and then (2) identify significant contributors to those areas. If Atlanta is the only area Florida contributes significantly to, and Atlanta is no longer a nonattainment target, then Florida should not be in the CAIR-ozone

program. It simply is not sound policy to subject sources to extremely burdensome regulations when the regulation is not even needed to achieve the desired goal.

B. **Fulton County's nonattainment problem is 76% local**, and shows the lowest percentage of contribution from transport (24%) of any identified nonattainment area. Florida's minimal contribution (1 percent according to EPA's modeling) to a primarily locally-caused problem is insufficient to subject Florida to the CAIR-ozone program.

C. There are two threshold criteria for determining whether a state "contributes significantly" to downwind nonattainment: a percent of total nonattainment of 1.0 or more, and a maximum contribution of 2 ppb or more. If both are met, EPA then looks at all of the metrics. EPA states that **Florida's percent of total contribution to Atlanta's nonattainment is only 1 percent**, and Petitioner (thus far) has been unable to replicate EPA's results. Again, Florida's minimal contribution to a primarily locally-caused problem is insufficient to subject Florida to CAIR's ozone program.

D. **Proximity to nonattainment area is a factor**. EPA stated in the NOx SIP Call effort that proximity to the nonattainment area was a factor in whether and to what extent an upwind state impacted the downwind nonattainment area. This concept was referenced in the Michigan case as well: "EPA acknowledges that '[s]ources that are closer to the nonattainment area tend to have much larger effects on air quality than sources that are far away.'" 213 F.3d at 679 (quoting 63 Fed. Reg. 25919). This supports the argument that all of Florida should not be included in CAIR, due to the distance from Atlanta (and to Macon, Atlanta and Birmingham for PM2.5).

E. **Florida is in the coarse-grid modeling domain**. In EPA's CAIR modeling, Florida was entirely in the coarse-grid domain, as an artifact of the OTAG process.

OTAG and the NOx SIP Call concluded that Florida did not significantly impact ozone nonattainment in another state. The Michigan court recognized that the coarse grid areas did not contribute significantly to nonattainment in another state (although it didn't mention Florida specifically because it wasn't part of the challenge).

F. **EPA failed to model all of Florida.** All of Florida was not included in the coarse-grid area modeled by EPA. EPA's coarse grid only covers the portion of Florida above the 26th latitude (an East-West line from just South of Naples to Hollywood). Accordingly:

i. EPA's modeling does not show that the area of Florida below the 26th latitude contributes significantly to any nonattainment area, because it was not modeled. The Michigan court stated that "EPA must establish that there is a measurable contribution" from an area, before it can conclude that there is a "significant" contribution. 213 F.3d 683-4. EPA has offered no data that Florida sources below the 26th latitude make a "measurable contribution" to Atlanta's (or any other) downwind nonattainment area. In the Appalachian Power case, the court reiterated its holding from Michigan, which appears on point with Florida's CAIR-ozone situation: "For certain states EPA had analyzed emissions data only from a portion of the state closest to the affected downwind areas, and, finding that portion to have made contributions exceeding the threshold, had made 'contribution' findings for the entire state. We held this extension to the whole state invalid because EPA might well have included areas that were

'wholly innocent of material contributions.'" Appalachian Power Co. v. EPA, 249 F.3d 1032, 1050 (D.C. Cir. 2001).

ii. EPA's own approach supports the idea that all of Florida does not contribute significantly, because EPA did not find it necessary to model the entire state.

iii. EPA calculated Florida's NOx budget based on heat input from the entire state, but only modeled impacts above the 26th latitude.

6. EPA's PM2.5 Threshold is Arbitrary, Inconsistent and Unnecessary

EPA established the "significance" threshold for PM2.5 as any upwind state that contributes to a downwind nonattainment area in amounts equal to or greater than 0.2 $\mu g/m^3$. EPA's rational for the .2 $\mu g/m^3$ threshold is contrary to the CAA and inconsistent with other EPA determinations of what constitutes "significance." EPA chose the .2 level by rounding up from 1% of the ambient standard of 15 $\mu g/m^3$, and supported this threshold with claims that there are "significant public health impacts associated with ambient PM2.5, even at relatively low levels," and that "at least some nonattainment areas will find it difficult to or impossible to attain the standards without reductions in upwind emissions." Numerous comments were submitted on this issue during the public comment period. EPA's health impact justification is contrary to EPA's obligation under CAA Section 109(b)(1) to establish ambient standards at levels necessary "to protect public health" with "an ample margin of safety," because EPA's PM2.5 "significance" threshold is 75 times lower than the ambient standard established by EPA. The inability of an area to achieve attainment without some upwind help is one of the bases for CAIR, but it is not instructive in determining what constitutes a "significant" contribution.

Moreover, EPA's threshold is arguably not "measurable" because the modeling uncertainty is greater than the threshold, and it is below current measurement/detection techniques.

Also, EPA has made several "significance" determinations that are inconsistent with the CAIR-PM2.5 threshold. For example, EPA's CAIR-ozone threshold is 2.4 % of the ambient standard, the PSD rules set PM10 thresholds at 6.7% of the 24-hour standard (for air quality analysis), 5.3% of the 24-hour standard (for Class I increments), and 3.3% of the 24-hour standard (for "contribution to a violation" analysis). These relevant thresholds would correspond to a PM2.5 threshold somewhere between .36 (at 2.4%) and 1.0 (at 6.7%).

7. <u>NOx Compliance Date Lacks Proper Notice and is Arbitrary</u>

EPA failed to follow proper notice-and-comment rulemaking procedures when it revised the NOx compliance date from 2010 to 2009, and based this revision on erroneous technical information. There were numerous comments submitted regarding the great difficulty, and in some cases impossibility, of being able to engineer, permit, procure, install, test and place in service controls to lower emissions to CAIR levels by the proposed January 1, 2010 NOx compliance date. Petitioner was hopeful that more time would be allowed, and could not have reasonably anticipated without any notice that the date would be moved up one year to January 1, 2009.

The installation of controls to meet the CAIR-NOx requirements involves large and complicated projects. In many cases, these projects must be designed and installed along with the design and installation of SO2 controls, which adds to the difficulty and complexity of the work. As EPA acknowledged (70 Fed. Reg. 25217, May 12, 2005),

these projects require schedule durations of 39 to 45 months, and projects at multiple-unit sites must stagger the project schedules to minimize operational disruptions. These projects must also be staged due to resource limitations and existing site conditions and must be carefully coordinated with planned outages so as not to impact the generation capability available to meet customer demand. There are also national security concerns that must be addressed for stations that have nuclear and fossil generation on the same site. In addition, because Florida was not included in the NOx SIP Call, Florida facilities have not had the advance notice that sources in NOx SIP Call states have had regarding NOx control installations. For these reasons, the compliance date for the CAIR-NOx programs must be reset to at least January 1, 2010.

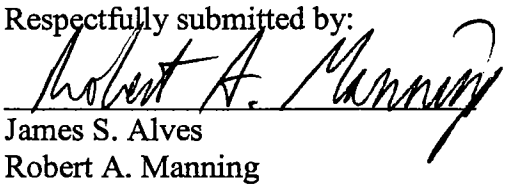
REQUEST FOR RELIEF

Based upon the foregoing, Petitioners request that EPA immediately initiate notice-and-comment rulemaking to:

1. Stay CAIR as it applies to Florida pending the outcome of this Petition;
2. Reconsider the application of CAIR to Florida for both PM2.5 and ozone and conclude that no part of Florida contributes significantly to nonattainment in another state for either standard, or, apply the rule to only the portion of Florida that modeling demonstrates contributes significantly to nonattainment in another state for PM2.5 and ozone;
3. Revise the PM2.5 significant-contribution threshold to a more defensible value, between .36 and 1.0 $\mu g/m^3$;

4. If there is a deadline for Florida, revise the compliance date for NOx reductions to 2010, as set out in the proposed rule, in lieu of the 2009 date first appearing in the final rule; and
5. Such other relief as may be appropriate.

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 Petitioners