

United States Senate

WASHINGTON, DC 20510

August 3, 2011

The Honorable Cass R. Sunstein
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Eisenhower Executive Office Building
1650 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Administrator Sunstein:

We write to express our concerns over the Cross State Air Pollution Rule (CSAPR) and the Environmental Protection Agency's ("EPA") inclusion of Texas in the final rule's PM2.5 program. We believe that the rule should be immediately stayed and reconsidered as it applies to Texas. We appreciate your personal attention to the review of this rule.

The unprecedented action of the EPA in this matter has left Texas without the due process afforded to other states, and has resulted in insufficient time for analysis and the effects on jobs, prices and power supply reliability in Texas. EPA never actually proposed including Texas in the PM2.5 program's annual SO₂ and NO_x emissions limits, and never provided any proposed annual emissions budget for Texas. Thus, Texas businesses and citizens were not afforded the opportunity to review and comment on the specific Texas mandate, in violation of federal requirements governing notice and comment rulemaking.

Without due process, and the failure of the EPA to provide an emissions budget for the state in the proposed rule for comment, the rule will have a highly disproportionate impact on Texas. For example, despite the fact that Texas's SO₂ emissions make up only 11 percent of the SO₂ emissions for the states covered by the rule, EPA is mandating that 25 percent of the required reductions are to be made in Texas — by January 1, 2012.

The primary options for meeting the EPA's unreasonable mandates by 2012 will be ceasing operations at several affected power plant units for several months each year or reducing operations throughout the year. Today, the standard timeframe for permitting, constructing and installing major new emissions controls is several years, yet the rule unrealistically allows less than six months. Thus, curtailed plant and/or Texas mine operations will be the only option. That will mean less power provided to the Texas electricity grid and the risk of power shortages. It also means the potential shutdown of Texas lignite mines, serious threats to up to a thousand or more Texas jobs, and increased power prices in the state.

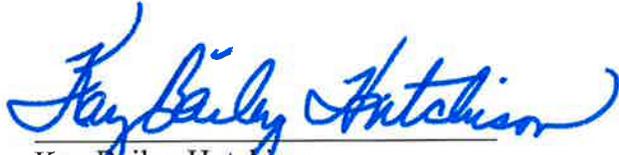
As you are likely aware, Texas is currently experiencing record heat which is putting pressure on the electricity grid. In fact, the Electric Reliability Council of Texas (“ERCOT”), the independent system operator for the electric grid that serves the majority of Texas, has made several pleas in recent weeks to the public to reduce power usage due to high demand. Certainly, reliability for the grid and power shortages in coming months due to this rule are serving as an additional burden and worry for countless job creators and energy consumers in this difficult economy.

Due to the flawed assumptions contained in CSAPR and the fast approaching compliance date, generators may have no other option but to shut down or curtail some generating units, ERCOT has recently warned “that Texas could face a shortage of generation necessary to keep the lights on in Texas within a few years, if the EPA’s Cross-State Rule is implemented as written.” ERCOT further noted that the “initial implications are that the SO2 requirements for Texas added at the last stage of the rule development will have a significant impact on coal generation, which provided 40 percent of the electricity consumed in ERCOT in 2010.” Since ERCOT requires 90 days of notice before ceasing plant operation, that gives Texas generators less than three months to make the operational decisions that will affect the Texas power grid.

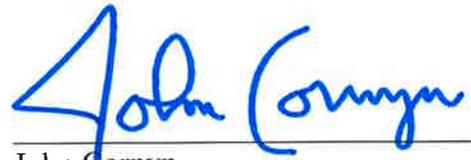
We strongly believe that this rule should be stayed and revisited to address these oversights and to hear the significant concerns of Texas stakeholders. The severe and disproportionate impact on Texas is unreasonable and unjustified.

Thank you for your consideration of this request and we look forward to your timely review of this action given the short timeframe created by this rule.

Sincerely,



Kay Bailey Hutchison
United States Senator



John Cornyn
United States Senator