

Hearing  
Out of Thin Air: EPA's Cross-State Air Pollution Rule  
Committee on Science, Space, and Technology  
U.S. House of Representatives

Testimony of  
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Mr. Chairman, thank you for the opportunity to provide the Committee on Science, Space and Technology with some real world impacts resulting from the new Cross-State Air Pollution Rule (CSAPR) promulgated by the Environmental Protection Agency and signed by the Administrator on July 6, 2011.

First, an introduction of whom I represent.

My name is Chip Merriam; I am the Chief Legislative and Regulatory Compliance Officer with the Orlando Utilities Commission, known as OUC—The *Reliable One*. OUC is the second largest municipal utility in Florida and the 16<sup>th</sup> largest in the nation, providing electric and water service to more than 313,000 metered accounts in the cities of Orlando and St. Cloud and unincorporated portions of Orange and Osceola counties.

We are privileged to serve our customers and get an opportunity daily to meet with them at our customer service center in downtown Orlando as many struggle to pay for the current cost of energy. We are an example of one of the closest connections between regulatory decisions from Washington and the direct impact on utility ratepayers. I can tell you firsthand that federal regulatory burdens are never easy, but in tough economic times, the regulatory impacts we are discussing today are devastating. Nearly 40 percent of OUC's customer base has an annual household income of less than \$35,000 per year. Any time there is a fiscal impact to our bottom line, it is passed on to our ratepayers. Our customers ask us for a few but important things; namely, to keep our rates as low as possible, to make our service the most reliable, and to provide a reasonable explanation for any rate increases.

With that in mind, OUC has worked hard to diversify our fuel portfolio. With the exception of our fleet and service vehicles, we are not dependent on foreign oil. Our fuel sources include natural gas, coal, nuclear, landfill gas, and solar. This diversity allows us to dispatch our fuels in the most economical manner available.

Allow me to walk you through OUC's experience with the EPA rule making, beginning with the Clean Air Interstate Rule (CAIR), and discuss the changes after the District

Court of Appeals ruling. I'll also discuss the changes OUC anticipated and commented on regarding the Transport Rule, as well as how CSAPR dramatically altered the game.

OUC, along with our industry partners, offered comments during the development of CAIR. While we had differences with the EPA regarding the technical basis of the Rule, it always has been OUC's mission to be a good steward of Central Florida's environment.

OUC began the capital discussion to achieve compliance with the clear understanding described in the Rule that new emission controls would have to achieve compliance by 2014. EPA had provided enough allowances, flexibility, and time such that an energy generator like OUC could appropriately plan and make major capital changes to our generation facility.

The Rule was challenged. The District Court of Appeals found parts of the Rule fatally flawed and remanded the Rule back to EPA. At that point, OUC had already committed \$50 million out of a total estimated \$150 million in capital projects necessary to comply with CAIR.

Understanding the basis for the Court's rulings, OUC chose to continue the design of our capital project changes while holding off on further construction until a new rule was drafted. The risk of expending the remaining \$100 million while not knowing the goals of a new rule greatly concerned our leadership, as did the risk that we may miss the target of complete compliance. Based on this thinking, OUC purchased emission credits to ensure compliance with CAIR during this "transition period" until a new rule would be finalized by EPA.

EPA then began the process of developing a new rule to replace CAIR—the Clean Air Transport Rule (CATR). Again, the industry was watching and commenting in a manner that appeared to reflect some understanding by EPA of the industry concerns. The first emission reduction requirements identified in the Rule's "Option 0" was reasonable for Florida, and, from an OUC perspective, the implications to our budget were significantly reduced. However, the next two options provided much more restrictive emissions requirements. Option 2 (the final drafted option) provided OUC leadership with optimism that the change of direction at the time of the CAIR challenge was the correct business decision for our ratepayers. The emission credits we had purchased were enough to allow the design work to move forward during the transition. The final drafted option of the Transport Rule provided for a declining emission allowance but gave OUC enough flexibility that the budgeted capital construction process could mature and achieve full compliance by 2014 without further need for allowances.

With the vision that our decision process was appropriate and fiscally and technically sound, we were stunned when a new rule, now called the Cross-State Air Pollution Rule (CSAPR), was signed by the Administrator of EPA on July 6, 2011. The new Rule has significant impacts on Florida and some very costly changes for OUC.

The basics of the Cross-State Rule:

- Include the replacement of the CAIR, beginning January 1, 2012.
- Address the transport of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) across state borders.
- Apply to electric generation units (EGUs) only.
- Include designs to eliminate “significant contribution of EGUs to downwind states” nonattainment of (or impairing ability to maintain compliance with) the National Ambient Air Quality Standards (NAAQS) for ozone and fine particulate matter (PM<sub>2.5</sub>).

And this Rule is only one of a suite of overlapping EPA power sector regulations.

While the Rule provides for an allowance trading program, the allowances were greatly reduced. From the Option 0 of the Transport Rule to the allowances provided for in the Cross-State Rule, Florida’s Emission Budget was reduced from 56,939 to 27,825 metric tons (see *Figure 1*). Put another way, emissions allowances were cut by more than half. OUC emissions also were slashed as identified in *Figure 2*. A more detailed graphic is depicted in *Figure 3*.

All of this occurred without the regulated industry providing comments and without allowing for the states to work with EPA and develop a state implementation plan. Since the CSAPR is a Federal Implementation Plan, it sidesteps the states’ ability to adopt an after-the-fact state plan. Since the federal plan is the rule, a state would find it difficult to adopt a plan that is not the federal plan.

The Rule is one of many overlapping regulatory actions by the EPA that include but are not limited to:

- The Utility Maximum Achievable Control Technology Rule (MACT)
- CO<sub>2</sub> New Source Performance Standards (NSPS) that apply to existing new and modified units. At this time, this greenhouse gas rule has unknown requirements to improve efficiency, and compliance timing is likely tied to the Utility MACT Rule.
- New, more stringent National Ambient Air Quality Standards (NAAQS) for ozone, which were just delayed by the White House, along with more stringent PM<sub>2.5</sub> NAAQS that are expected to further reduce SO<sub>2</sub> and NO<sub>x</sub> emissions.
- Coal Ash Rule.

- 316(b) Cooling Water Intake Structure Rule.

The Cross-State Rule will have significant impacts to OUC and our customers.

The emission allowances purchased prior to CSAPR expire December 31, 2011, with the new Rule taking effect January 1, 2012. Florida and OUC are in the Ozone-only portion of the Rule that begins May 1, 2012, only months after the publishing of the Rule. Under this timeline, there is little opportunity for the utilities in need of capital construction development to complete construction in such short timeframes.

Because of the reduction in emission allowances and restrictions on trades, OUC will have to lower the capacity of our 450 Megawatt coal Unit 1 to little more than 100 MW. Yet we still could be at risk for further reductions that could force us to take the unit offline before the end of the 156 Day-Ozone Season. We remain on the timetable, as required under CAIR and CATR, for final completion of construction prior to the start of the 2014 Ozone Season. This will require OUC to purchase additional generation options (through Power Purchase Agreements), since the Ozone Season coincides with our highest demand period – summer in Florida.

OUC's main energy generation site is unique. The site was designed in the early 1980s with a visionary approach. It utilized recycled water from a nearby wastewater treatment plant to be used in the cooling towers and prohibited the runoff of any stormwater from the site. With an average of 54 inches of rainfall a year, we keep all stormwater on site and convert it to steam through our scrubbers. We also utilize wastewater from Orange County, Florida to meet our other generation needs and allow that water to evaporate over time.

An additional side effect of CSPAR on OUC is that, with the loss of full operation of both of OUC's coal units, the efficient design of our site does not provide for the management of the Florida summer rains and the additional stormwater. Therefore, OUC would be required to design, permit, and construct other means to manage and store this stormwater at an additional projected cost of nearly \$40 million.

With this as background, I thought a description of the impacts associated by a rule such as the Cross-State Air Pollution Rule (CSPAR) would benefit the committee. Today's discussion is not about criticizing EPA and our technical differences in the Rule; rather, it is to provide the Committee with factual impacts when such rules are developed without the necessary input from the industry that must manage under these rules. Frankly, the Commissioners who make up the governing body of OUC want to deliver the best, most affordable and reliable service to our customers while serving as great stewards of our environment.

Our position is that, when the EPA can demonstrate the benefits of moving forward on air or water quality improvements, we will do our best to find a way to achieve compliance while always keeping an eye on the bottom line when it comes to electric rates. The real costs are not reflected in the economic studies provided by EPA, and there appears to be

no full connection or link to the promulgation of rules within the EPA. It just is not as simple as the economic studies reflected in the rule development. Our strong suggestion would be for EPA to work with the electric generators to determine if there are common, cost-effective ways to achieve scientifically credible improvements in the utilization of coal for the generation of energy in the United States.

OUC's position is not to challenge the Rule but to demonstrate the need for more time to reach the emission requirements identified. Moving back the deadline also would provide more time to pay for the costs associated with the Rule. Utilizing the same timeframes developed in both CAIR and CATR, organizations such as OUC will be able to comply.

In closing, I would like to emphasize that Central Florida is still reeling from the economic downturn. Unemployment is high, and we have seen a significant increase in the number of long-term customers needing utility payment arrangements. Small businesses have been hit particularly hard by the recession and are still struggling to make ends meet. Increasing utility rates to pay for the CSAPR regulation could have a devastating effect on OUC customers and the Central Florida economy.

Figure 1

**Florida Ozone Season NOx Budget CAIR v. Transport Rule (TR) v. CSAPR**

	CAIR 2009 Phase I	CAIR 2014 Phase II	Original TR	CSAPR
NOx Ozone Season Allowances	47,912	39,926	56,939	27,825

50 percent allowance reduction from Original TR to Final CSAPR

Figure 2

**OUC Ozone Season NOx Allowance Changes During Transport Rule (TR) Development to CSAPR**

	Proposed TR (July 2010)	Draft for Comment TR Option I (January 2011)	Draft for Comment TR Option II (January 2011)	Final CSAPR (July 2011)
Stanton Unit 1	2,886	923	1,190	620
Stanton Unit 2	1,006	942	1,215	607

Unit 1 Ozone Season Actual Emissions 2010 = 2,050 T  
 Unit 2 Ozone Season Actual Emissions 2010 = 1,102 T  
 Unit 2 has compliance infrastructure installed

Figure 3

**Seasonal NOx Allocations for OUC by Rule**

