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August 30, 2023

Jeaneanne Gettle, Acting Regional Administrator  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street SW  
Atlanta, GA 30303

Re: Comments relating to the Federal “Good Neighbor Plan” for the 2015 Ozone National Ambient Air Quality Standards; Response to Judicial Stays of SIP Disapproval Actions for Certain States; Docket ID: EPA–HQ–OAR–2020–0668; FRL-8670.2-03-OAR

Dear Ms. Gettle:

On behalf of the Commonwealth of Kentucky and the Energy and Environment Cabinet, the Division for Air Quality (Division) respectfully submits the following comments relating to the United States Environmental Protection Agency’s (EPA) interim final rule published in the July 31, 2023 Federal Register, relating to changes to the Federal “Good Neighbor Plan” for certain states where a judicial stay has been granted for State Implementation Plan (SIP) disapprovals.<sup>1</sup>

As noted in the interim final rule, the EPA has been allowing new Cross State Air Pollution Rule (CSAPR) rulemakings to satisfy the requirements of previous CSAPR Good Neighbor Federal Implementation Plan (FIP) requirements.<sup>2</sup> While the Division appreciates the ease that this creates for states that have been determined by EPA to ‘significantly contribute’ to downwind receptors, the approach raises substantial compliance issues for the states captured by a judicial stay. The interim final rule does not maintain the status quo for Kentucky electric generating units (EGUs). Moving EGUs in the Commonwealth into an “expanded Group 2” subcategory in which trading can only occur between Kentucky and Louisiana<sup>3</sup> is unduly burdensome, has an immediate effect on Kentucky EGUs, and circumvents the purpose of the Sixth Circuit Stay Order. EPA has greatly diminished EGU compliance flexibility as it relates to trading in this scenario. Such a reduction in trading options has the potential to lead to increased compliance costs, which will be passed on to ratepayers.

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<sup>1</sup> 88 Fed. Reg. 49,295 (July 31, 2023).

<sup>2</sup> 88 Fed. Reg. 49,296 (July 31, 2023).

<sup>3</sup> Note – Louisiana and Kentucky are the only states in this expanded subcategory. If either state were to be subject to the “Good Neighbor Plan”, there would be no trading options for the expanded Group 2.

The Division strongly urges that EPA allow all sources, regardless of previous “Group” categorization be allowed to trade with one another. EPA should establish the same budgets that sources would have under CSAPR Update or Revised CSAPR Update and allow those sources to trade to maintain compliance flexibility. EGUs that are not part of the 2015 “Good Neighbor Plan” but are subject to previous versions of CSAPR are being punished for reducing emissions and no longer being a ‘significant contributor.’ Allowing trading between sources allows for continued compliance flexibility.

Additionally, the Division recommends that EPA add language that clearly explains that if the “Good Neighbor Plan” is stayed, remanded, or vacated, the interim rule shall be vacated and unenforceable.

The Sixth Circuit Order granting Kentucky’s Motion to Stay Enforcement Pending Appeal clearly states that without a stay, “Kentucky residents will face higher prices and that Kentucky’s power grid faces destabilization.”<sup>4</sup> This interim rule will result in the same harm to Kentucky residents if/when the expanded Group 2 trading program cannot meet grid demand. This interim rule does not maintain the status quo and runs afoul of the Sixth Circuit Order.

The Division appreciates EPA’s consideration of these comments. If you have questions or comments, please contact Ms. Cassandra Jobe at, [Cassandra.Jobe@ky.gov](mailto:Cassandra.Jobe@ky.gov), at your convenience.

Sincerely.

 Recoverable Signature

X *Michael Kennedy*

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Signed by: Michael Kennedy

Michael Kennedy, P.E.  
Kentucky Division for Air Quality

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<sup>4</sup> See Order at Pg. 9, *KY v. EPA, et al*, Case No. 23-3216/23-3225, filed July 25, 2023.