

**STATE OF IOWA  
BEFORE THE IOWA UTILITIES BOARD**

<b>IN RE:</b>  <b>INTERSTATE POWER AND LIGHT COMPANY</b>	<b>DOCKET NO. WRU-2015-<u>0026</u>-0150</b>
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**PETITION FOR LIMITED WAIVER OF  
199 IAC 20.1(3) TO ACCOMMODATE CSAPR CREDITS**

Interstate Power and Light Company (IPL), pursuant to 199 Iowa Administrative Code 1.3, files this petition for a limited waiver of 199 IAC 20.1(3), for the ability to flow credits associated with the sale of emissions allowances through IPL's Electric Energy Adjustment Clause (EAC) to its customers. IPL requests that the Iowa Utilities Board's waiver ruling include the ability for IPL to flow credits related to the sale of emissions allowances under the Cross State Air Pollution Rule (CSAPR) in a similar manner as was previously allowed under the Clean Air Interstate Rule (CAIR). In support of its position, IPL states as follows:

**BACKGROUND**

1. On March 10, 2005, the United States Environmental Protection Agency (EPA) enacted CAIR in order to, among other things, reduce emissions and pollutant transport.

2. On April 15, 2008, in Docket No. RMU-07-11 (RMU-07-11 Order), the Board adopted revisions to its Electric EAC rules "to reflect new emissions allowances created by federal law." (RMU-07-11 Order, p. 1.) The revisions made to the definitions contained in 199 IAC 20.1(3) specifically named CAIR and the

Clean Air Mercury Rule (CAMR) as the federal laws generating the need for these allowances. These revisions allowed IPL to recover through the EAC the costs from and pass credits associated with the specified emission compliance programs to its customers.

3. On July 11, 2008, the D.C. Circuit Court of Appeals (Court) vacated CAIR, citing “more than several fatal flaws in the rule.” *North Carolina v. EPA*, 531 F.2d 896, 901 (D.C. Cir. 2008). On September 24, 2008, the EPA petitioned the Court for rehearing or, in the alternative, for remand of the case back to the EPA without vacatur. On December 23, 2008, the Court granted EPA’s alternative, and remanded the matter to the EPA for further proceedings and consideration.

4. After consideration, and multiple notices of proposed iterations of an emissions/pollutant transport rule, on July 7, 2011, the EPA issued CSAPR, intended to replace CAIR effective January 1, 2012. The first phase of CSAPR was intended to commence on January 1, 2012, and a second phase of CSAPR, with lower nitrogen oxide (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) emissions budgets, was intended to commence on January 1, 2014. Various parties<sup>1</sup> petitioned the EPA, as well as the U.S. District Court, for stay and/or reconsideration of CSAPR.

5. On December 30, 2011, the Court issued an order that stayed implementation of the CSAPR pending resolution of legal challenges to the rule and, as a result, CAIR remained in effect. In January 2012, the Court issued an order setting oral arguments in this case for April 13, 2012.

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<sup>1</sup> This includes Alliant Energy Corporation’s wholly-owned subsidiary (and IPL’s sister utility) Wisconsin Power and Light Company (WPL).

6. Oral arguments were held on April 13, 2012 and the Court issued an Order on August 21, 2012, that vacated CSAPR and remanded the proceeding back to the EPA to promulgate a valid replacement for CAIR.

7. In October 2012, the EPA asked for a rehearing of the CSAPR case from the full D.C. Circuit Court (i.e., an “en banc rehearing”). This request was denied in January 2013. In response, the EPA successfully petitioned the U.S. Supreme Court to review the D.C. Circuit Court CSAPR decision. The U.S. Supreme Court heard oral arguments on the CSAPR decision in December 2013.

8. On April 29, 2014, the U.S. Supreme Court issued an opinion reversing the August 21, 2012 Order that had vacated CSAPR. Following the remand of the case to the D.C. Circuit, EPA requested that the court lift the CSAPR stay and toll the CSAPR compliance deadlines by three years. On October 23, 2014, the D.C. Circuit granted EPA's request.

9. On November 21, 2014, EPA issued a ministerial rule that updates the CSAPR compliance dates and emission allocations for Phase I of the rule to 2015 and Phase II of the rule in 2017. EPA also confirmed in this rule that CAIR will no longer be applicable beginning in 2015. Accordingly, CSAPR Phase I implementation is 2015, with Phase II beginning in 2017. CSAPR went into effect starting January 1, 2015 for SO<sub>2</sub> and annual NO<sub>x</sub>, and went into effect on May 1, 2015 for ozone season NO<sub>x</sub>.

10. CSAPR creates brand new allowances (SO<sub>2</sub>, annual NO<sub>x</sub>, and ozone season NO<sub>x</sub>) that would each be worth one ton and are only useable for

compliance with the emissions reduction requirements of the CSAPR cap-and-trade program.

11. On April 1, 2014, IPL filed with the Board an updated multiyear Emissions Plan and Budget (EPB) in Docket No. EPB-2014-0150 for managing regulated emissions from its electric power generating facilities located in Iowa that are fueled by coal (2014 Plan Update). On January 16, 2015, IPL, the Environmental Intervenors, and the Office of Consumer Advocate (OCA) filed a proposed settlement agreement. The proposed settlement stipulated that the 2014 Plan Update, as amended, complies with Iowa Code § 476.6(20) and should be approved. The Board issued its Order Addressing Completeness of Emissions Filing and Approving Settlement on March 23, 2015, which deemed IPL's 2014 EPB complete and approved the settlement agreement.

12. In Section II, page 41 of the 2014 Plan Update, IPL originally stated that no request is necessary for the approval of any additional expenditures associated with the purchase of NO<sub>x</sub> or SO<sub>2</sub> allowances. IPL reaffirmed this position in the additional information it filed in response to the Board request for additional information on December 18, 2014 in IPL's EPB docket. IPL continues to expect that it will receive sufficient NO<sub>x</sub> and SO<sub>2</sub> allowances in its allocation from the EPA to comply with CSAPR requirements<sup>2</sup> and that any allowances in excess of those needed will be transacted in an appropriate manner (banked, swapped or sold) to the benefit of IPL's customers.

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<sup>2</sup> On September 2, 2015, IPL entered into a Consent Decree with the EPA, the State of Iowa, Linn County, Iowa, and the Sierra Club. Although the Consent Decree will impact long term IPL CSAPR allowance allocations and transactions, no impacts will occur during the period for which this waiver is sought (See Section 17 below).

The table below reflects IPL's actual and forecasted SO<sub>2</sub>, NO<sub>x</sub>, and NO<sub>x</sub> Ozone emissions allowance sales for 2015.

<b><u>2015 CSAPR Allowances - IPL:</u></b>	SO <sub>2</sub>	NO <sub>x</sub> Annual	NO <sub>x</sub> Ozone
Forecasted Emissions	13,100	7,140	2,774
Conservative Operations *	1,310	714	277
Total required allow. - Conserv. Oper.	14,410	7,854	3,051
EPA Allocation	33,678	11,410	4,986
Less actual 2015 sales of allowances *	17,000	2,650	1,050
Excess	2,268	906	885
Price per ton	\$ 3	\$150	\$ 270
Estimated refund to customers as fuel	\$ 6,804	\$135,900	\$ 238,842
Closed sales June-August 2015	\$154,736	\$ 281,563	\$ 35,750
Total closed sales and projected sales*			<u>\$ 853,595</u>

\* Conservative estimates are based on the 7 + 5 forecast plus a 5% adder for the remainder of the year.

7 + 5 means 7 months actual plus 5 months forecast.

13. IPL, as stated in its 2014 EPB Plan Update, will actively manage its CSAPR allowances to ensure adequate allowances are available to support its ongoing generation operations. Allowances in excess of those needed to support its generation can be:

- banked and carried forward to the following year;<sup>3</sup> or,
- swapped for future vintage year allowances, especially if a premium exists for the vintage year in which IPL has excess allowances;<sup>4</sup> or,
- sold for the benefit of IPL's customers.<sup>5</sup>

<sup>3</sup> 40 C.F.R. §§ 97.426, 97.526, 97.626

<sup>4</sup> 40 C.F.R. §§ 97.424, 97.524, 97.624

<sup>5</sup> 40 C.F.R. §§ 97.422, 97.522, 97.622

This applies to the NO<sub>x</sub> ozone season as well as the NO<sub>x</sub> annual and SO<sub>2</sub> compliance requirements. A general rule is that an allowance of a specific vintage can be used for compliance corresponding to the vintage year or banked and carried forward to a later year. The vintage cannot be used for compliance in an earlier year. Since current vintage allowances have more flexibility for use, they are usually more valuable than allowances with a later vintage.

14. On pages 41 and 42 of Volume II of IPL's 2014 Plan Update in Docket No. EPB-2014-0150, IPL made reference to the possible short-term selling of SO<sub>2</sub> emission allowances. IPL has since held discussions and entered into a joint settlement with the OCA<sup>6</sup> providing that IPL will not sell the allowances in the near term for the purpose of accelerating recovery of the costs from customers. Rather, SO<sub>2</sub> emission allowance costs resulting from the normal course of operations will flow through the EAC via routine accounting. The SO<sub>2</sub> emission allowance costs referenced above are applicable to CAIR and the Acid Rain Program only. The cost recovery of the allowances is separate and distinct from the potential CSAPR SO<sub>2</sub> allowance sales represented in table above, the proceeds of which IPL is seeking to flow to customers through this EAC waiver request.

15. Although CAIR has been replaced by the CSAPR, the definition of "Allowance" contained in 199 IAC 20.1(3) does not reflect that change. Allowance is defined in 199 IAC 20.1(3) as:

"an authorization, allocated by the United States Environmental Protection Agency (EPA) under the Acid Rain Program, to emit sulfur

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<sup>6</sup> Joint Settlement approved by the Board on March 3, 2015 in its "Order Addressing Completeness of Emissions Filing and Approving Settlement" EPB-2014-0150.

dioxide (SO<sub>2</sub>), any SO<sub>2</sub> and nitrogen oxide (NO<sub>x</sub>) emissions subject to the Clean Air Interstate Rule (CAIR), or mercury (Hg) emissions subject to the Clean Air Mercury Rule (CAMR), during or after a specified calendar year.”

## **DISCUSSION**

16. IPL requests a limited waiver of 199 IAC 20.1(3) to allow IPL to pass CSAPR emissions allowance credits to customers through IPL’s EAC in a comparable manner as CAIR credits are permitted to be passed to customers by “reflect[ing] new emissions allowances created by federal law,” as intended in the Board’s rulemaking in Docket No. RMU-07-11. (RMU-07-11 Order, p. 1.) Specifically, IPL requests the interpretation of CAIR not be limited to an EPA rule which is no longer in effect, but rather be extended to its successor CSAPR. IPL requests the strict interpretation of CAIR be waived in order to consider its successor rule. This interpretation would be required for the definitions of “Affected Unit,” “Allowance,” and “‘Clean Air Interstate Rule’ or ‘CAIR’” found in 199 IAC 20.1(3). In other words, IPL requests the rules be read as if all instances of the word “CAIR” be interpreted as if they stated, “CAIR or its successor rule, “CSAPR”, in those definitions.

17. IPL’s requested waiver need only extend through the planning period of the current term of the EPB plan. IPL requests its waiver continue until the Board deems IPL’s next EPB plan update complete; IPL will file its next EPB plan update on or before April 1, 2016.

18. In granting a waiver, the Board must determine that the four waiver criteria found in 199 IAC 1.3 are met. These criteria are:

- the application of the rule would pose an undue hardship;

- the waiver would not prejudice the substantial legal rights of any person;
- the provisions waived are not specifically mandated by statute; and
- substantially equal protection of public health, safety, and welfare will be afforded after the waiver.

IPL's waiver request meets these four criteria, as described below.

**A. The Application of the Rule Would Pose an Undue Hardship.**

19. Although the proceeds from the sales of emissions allowances flowing through a company's EAC was anticipated in the Board's rulemaking, a strict interpretation of 199 IAC 20.1(3) prohibits IPL from flowing CSAPR-related proceeds back to IPL's customers. This imposes an undue hardship on IPL's customers. Without the requested waiver, when IPL is in a positive allowance position and able to sell excess allowances, IPL's customers will not be able to benefit from such sales.

**B. The Waiver Would Not Prejudice the Substantial Legal Rights of Any Person.**

20. 199 IAC 20.1(3) does not currently allow IPL to flow the proceeds from the sales of CSAPR emission allowances through IPL's EAC. Granting this waiver will allow these proceeds to be passed through IPL's EAC to its customers. As a result, no prejudice to the legal rights of any person will be harmed by the grant of this waiver.

**C. The Provisions Waived Are Not Specifically Mandated by Statute.**

21. Iowa Code § 476.2 gives the Board rule making authority which includes utility compliance with federal air ambient quality standards. See IOWA CODE § 476.6(21)(c) (2015). Therefore, no legislative mandate would be waived by

allowing IPL to pass proceeds from CSAPR emission allowance sales through its EAC to customers.

**D. Substantially Equal Protection of Public Health, Safety, and Welfare Will Be Afforded After the Waiver.**

22. If the Board grants the requested waiver, IPL's customers will have the same protections they enjoy for any charge or credit anticipated and/or collected under the EAC, and will additionally receive the proceeds from CSAPR emission allowance sales. Therefore the public health, safety, and welfare will be afforded substantially equal protection if this waiver is granted.

**CONCLUSION**

23. In order to give full effect to 199 IAC 20.1(3), which was intended "to reflect new emissions allowances created by federal law," (RMU-07-11 Order, p. 1.), Board action is required. As noted above, the rule's lack of reference to CSAPR currently prohibits IPL's appropriate flowing of emission allowance proceeds related to CSAPR through its EAC to its customers. IPL suggests that a limited waiver of a strict interpretation of CAIR in the appropriate definitions found at 199 IAC 20.1(3) provides a solution through September 2, 2019.

**WHEREFORE**, IPL respectfully requests the Board grant a waiver of a strict interpretation of the terms “Clean Air Interstate Rule” and “CAIR” contained in the definitions of 199 IAC 20.1(3), to the extent necessary to acknowledge CAIR’s successor rule, CSAPR. IPL requests that this waiver expire either upon the adoption of modified rules that reflects CSAPR as the successor to CAIR or the implementation of a future EPB plan.

Dated this 18<sup>th</sup> day of September, 2015.

Respectfully submitted,

Interstate Power and Light Company

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