

January 11, 2017

Mr. Luke Ford
EH&S Manager
Primary Energy
3210 Watling Street, MC 2-991
East Chicago, IN 46312

Re: Applicability of the Cross-State Air Pollution Rule Trading Programs to the Portside Energy Facility (Facility ID (ORISPL) 55096)

Dear Mr. Ford:

This letter is the official response of the U.S. Environmental Protection Agency (EPA) to the request from Portside Energy LLC (Portside Energy), a subsidiary of Primary Energy, for a determination of applicability of the Cross-State Air Pollution Rule (CSAPR) trading programs¹ to the Portside Energy Facility (Portside). Based on the information provided by Portside Energy regarding Portside and its operations in the years from 2005 through 2015, EPA determines that Portside Units CT, BLR1, and BLR2 are not affected units for purposes of the CSAPR trading programs with regard to emissions occurring in 2015 and 2016 because the units qualify for an applicability exception available to certain cogeneration units. With regard to emissions occurring in 2017 and subsequent years, the units can continue to qualify for the cogeneration exception by continuing to satisfy the exception's two annual tests in each year from 2016 onward.

EPA's determination regarding applicability of the CSAPR trading programs to the units at Portside is discussed in section II of this letter. Section III of this letter addresses the disposition of emission allowances allocated to Portside Unit CT under the CSAPR trading programs in light of this determination.

I. Background

Portside Energy owns and operates Portside, located in Portage, Indiana at the Midwest Plant (Midwest), a steel finishing plant owned by United States Steel Corporation. Portside is a combined-heat-and-power (CHP) facility that is designed and operated to produce electricity, process steam, and process hot water for sale to Midwest. Portside's equipment includes a natural gas-fired, General Electric (GE) Frame 6B combustion turbine (Unit CT) and associated electricity generator, a heat recovery steam generator (HRSG), a GE steam turbine and associated electricity generator, and two natural gas-fired auxiliary boilers (Units BLR1 and BLR2). The combustion turbine is operated in combined-cycle configuration with the steam turbine, meaning that the combustor's exhaust gases drive its own turbine and associated electricity generator and then flow through the HRSG where the waste

¹ The CSAPR regulations originally used the term "TR" (for Transport Rule) instead of the term "CSAPR". In the Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (CSAPR Update Rule), 81 FR 74504 (October 26, 2016), EPA amended the regulations to use the term "CSAPR" instead of the term "TR" and also finalized various technical corrections that clarify but do not substantively alter the applicability provisions of the regulations as interpreted by EPA. In this letter, EPA quotes the amended regulatory text.

heat produces steam that is used to drive the steam turbine and that turbine's associated electricity generator. Units BLR1 and BLR2 produce supplemental steam that is also used to drive the steam turbine and that turbine's associated electricity generator. A portion of the steam produced by the HRSG and Units BLR1 and BLR2 is extracted from the steam turbine and is used either as process steam or to heat process water.

Under the CSAPR federal implementation plan (FIP) provisions applicable to sources in Indiana, CSAPR-affected units in the state are required to participate in several CSAPR trading programs addressing the units' emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x).^{2, 3} In the CSAPR rulemaking, EPA identified Portside Unit CT as a potentially affected unit. EPA consequently allocated emission allowances to Unit CT under the CSAPR FIPs for each of the CSAPR trading programs applicable to sources in Indiana.

The regulations for each of the CSAPR trading programs include provisions under which a certifying official of the owner or operator of any unit may petition EPA for a determination concerning the applicability of the trading program to the unit.⁴ In a November 2, 2011, letter, Portside Energy requested such a determination for Portside with regard to the CSAPR trading programs applicable to Indiana sources. Before EPA had responded to the request, in December 2011 and August 2012 the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued rulings first staying and then vacating CSAPR. In late 2014, after the U.S. Supreme Court had reversed the D.C. Circuit's vacatur and the D.C. Circuit had granted EPA's motion to lift the stay, Portside Energy indicated renewed interest in an EPA response to the request for an applicability determination. Portside Energy provided additional information regarding its request in March 2015, August 2015, and November 2016.

II. Applicability determination

A. General CSAPR applicability before consideration of exceptions

Before consideration of exceptions for certain units (discussed in section II.B of this letter), the CSAPR trading programs' general applicability criteria provide that:

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State (and Indian country within the borders of such State) shall be CSAPR NO_x Annual units, and any source that includes one or more such units shall be a CSAPR NO_x Annual source, subject to the requirements of this subpart: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired

² CSAPR-affected units in Indiana are subject to the CSAPR NO_x Annual Trading Program (40 CFR 97.401 through 97.435) and the CSAPR SO₂ Group 1 Trading Program (40 CFR 97.601 through 97.635) for emissions occurring in 2015 and later years. See 40 CFR 52.38(a)(2) and 52.39(b). CSAPR-affected units in the state are also subject to the CSAPR NO_x Ozone Season Group 1 Trading Program (40 CFR 97.501 through 97.535) for emissions occurring in 2015 and 2016 and the CSAPR NO_x Ozone Season Group 2 Trading Program (40 CFR 97.801 through 97.835) for emissions occurring in 2017 and later years. 40 CFR 52.38(b)(2); see also the CSAPR Update Rule.

³ As implemented through the CSAPR FIPs, the applicability provisions of all the CSAPR trading programs are substantively identical. For brevity, in this letter EPA generally references only the applicability provisions and related definitions for the CSAPR NO_x Annual Trading Program at 40 CFR 97.404 and 97.402, respectively. Except where otherwise indicated, for purposes of this letter these references should be understood as encompassing the parallel applicability provisions at 40 CFR 97.504, 97.604, and 97.804 and the parallel related definitions at 40 CFR 97.502, 97.602, and 97.802.

⁴ 40 CFR 97.404(c).

combustion turbine serving at any time, on or after January 1, 2005, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CSAPR NO_x Annual unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CSAPR NO_x Annual unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.

40 CFR 97.404(a).⁵

Portside Units CT, BLR1, and BLR2 are located in Indiana, which, as indicated earlier, is a “State” for purposes of several CSAPR trading programs. Unit CT is a stationary combustion turbine, and Units BLR1 and BLR2 are stationary boilers, and all three units are fossil-fuel-fired because they combust natural gas. Starting before January 1, 2005 and continuing to the present, all three units have served generators that produce electricity for sale. Portside Unit CT serves both the electricity generator associated with the combustion turbine and the electricity generator associated with the steam turbine and therefore meets all the elements of the general CSAPR applicability criteria above if either generator has a nameplate capacity of more than 25 megawatts electrical (MWe). Portside Units BLR1 and BLR2 serve only the electricity generator associated with the steam turbine and therefore meet all the elements of the general CSAPR applicability criteria above if that generator has a nameplate capacity of more than 25 MWe, regardless of the nameplate capacity of the generator associated with the combustion turbine.

According to Portside Energy, GE’s nameplate for the generator associated with the Portside combustion turbine indicates a rating of 50,000 kilovolt-amperes (kVA) and a power factor of 0.85. Consistent with EPA’s standard practice, Portside Energy computes the generator’s nameplate capacity in MWe as the product of these two values, divided by 1,000 to convert from kilowatts electrical (kWe) to MWe.⁶ This computation yields a nameplate capacity for the generator of 42.5 MWe (50,000 kVA × 0.85 power factor ÷ 1,000 = 42.5 MWe). Portside Unit CT therefore meets the general CSAPR applicability criteria above.

Portside Energy has identified the nameplate capacity of the generator associated with the Portside steam turbine as 19 MW. This capacity rating appears on GE’s nameplate, but it is a rating that GE assigns to the steam turbine itself rather than to the associated electricity generator. For the generator associated with the steam turbine, GE’s nameplate indicates a rating of 32,000 kVA and a power factor of 0.8, yielding a nameplate capacity of 25.6 MWe (32,000 kVA × 0.8 power factor ÷ 1,000 = 25.6 MWe). For purposes of the CSAPR applicability criteria, as quoted above, the relevant capacity rating is the 25.6 MWe nameplate capacity of the generator, not the 19 MW rating of the steam turbine. Portside Units BLR1 and BLR2 therefore also meet the general CSAPR applicability criteria above.

⁵ See also 40 CFR 97.402 (definitions of “boiler”, “combustion turbine”, “fossil fuel”, “fossil-fuel-fired”, “generator”, “Indian country”, “nameplate capacity”, “source”, “State”, and “unit”).

⁶ See also U.S. Energy Information Administration, Form EIA-860 Instructions at 9 (instructions for computing “nameplate capacity”), available at http://www.eia.gov/survey/form/eia_860/instructions.pdf.

B. Cogeneration exception

1. Overview of cogeneration exception

Because the Portside units meet the general CSAPR applicability criteria, EPA has further considered whether the units qualify for an exception to those general criteria. The CSAPR trading programs' applicability provisions include exceptions for certain cogeneration units and certain solid waste incineration units. The Portside units are not solid waste incineration units for purposes of CSAPR and are therefore ineligible for the solid waste incineration exception.⁷ However, because the units produce a combination of electricity, process steam, and process hot water, as noted earlier, they are potentially eligible for the cogeneration exception.

In order to qualify for the cogeneration exception, a unit that meets the general CSAPR applicability criteria above must satisfy two tests, both initially and on a continuing annual basis, as described in the CSAPR trading program regulations:

(b) Any unit in a State (and Indian country within the borders of such State) that otherwise is a CSAPR NO_x Annual unit under paragraph (a) of this section and that meets the requirements set forth in paragraph (b)(1)(i) or (2)(i) of this section shall not be a CSAPR NO_x Annual unit:

(1)

(i) Any unit:

(A) Qualifying as a cogeneration unit throughout the later of 2005 or the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit throughout each calendar year ending after the later of 2005 or such 12-month period; and

(B) Not supplying in 2005 or any calendar year thereafter more than one-third of the unit's potential electrical output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If, after qualifying under paragraph (b)(1)(i) of this section as not being a CSAPR NO_x Annual unit, a unit subsequently no longer meets all the requirements of paragraph (b)(1)(i) of this section, the unit shall become a CSAPR NO_x Annual unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section. The unit shall thereafter continue to be a CSAPR NO_x Annual unit.

(2) [exception for certain solid waste incineration units, not relevant to Portside].

40 CFR 97.404(b).⁸ The two annual tests are discussed individually below.

⁷ See 40 CFR 97.404(b)(2) and 97.402 (definition of "solid waste incineration unit").

⁸ See also 40 CFR 97.402 (definitions of "cogeneration unit", "potential electrical output capacity", and "utility power distribution system").

2. Annual test concerning qualification as a cogeneration unit

The first of the two annual tests to qualify for the cogeneration exception to the general CSAPR applicability criteria is that the unit must qualify as a cogeneration unit. Satisfying this test, in turn, involves several distinct requirements, as indicated in the definition of “cogeneration unit”:

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a topping-cycle unit or a bottoming-cycle unit:

- (1) Operating as part of a cogeneration system; and
- (2) Producing on an annual average basis—
 - (i) For a topping-cycle unit,
 - (A) Useful thermal energy not less than 5 percent of total energy output; and
 - (B) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.
 - (ii) For a bottoming-cycle unit, useful power not less than 45 percent of total energy input;
- (3) Provided that the requirements in paragraph (2) of this definition shall not apply to a calendar year referenced in paragraph (2) of this definition during which the unit did not operate at all;
- (4) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel, except biomass if the unit is a boiler; and
- (5) Provided that, if, throughout its operation during the 12-month period or a calendar year referenced in paragraph (2) of this definition, a unit is operated as part of a cogeneration system and the cogeneration system meets on a system-wide basis the requirement in paragraph (2)(i)(B) or (2)(ii) of this definition, the unit shall be deemed to meet such requirement during that 12-month period or calendar year.

40 CFR 97.402.⁹

As stated in paragraph (1) of the cogeneration unit definition, the first requirement for a unit to qualify as a cogeneration unit is that the unit must operate as part of a cogeneration system, a term that is also defined in the CSAPR regulations:

Cogeneration system means an integrated group, at a source, of equipment (including a boiler, or combustion turbine, and a generator) designed to produce useful thermal energy for industrial, commercial, heating, or cooling purposes and electricity through the sequential use of energy.

⁹ See also *id.* (definitions of “biomass”, “bottoming-cycle unit”, “cogeneration system”, “topping-cycle unit”, “total energy input”, “total energy output”, “useful power”, and “useful thermal energy”).

*Id.*¹⁰ As described in section I of this letter, Portside has two boilers, a combustion turbine, and two electricity generators that are designed and operated as an integrated group of equipment to produce electricity, process steam, and process hot water. The process steam and process hot water are made available to Midwest for use in its steel finishing operations and therefore qualify as forms of useful thermal energy, i.e., “thermal energy that is ... [m]ade available to an industrial or commercial process (not a power production process)...” *Id.* The useful thermal energy is produced using waste heat remaining after the energy from the fuel has been used to drive one or more turbines that drive electricity generators, which is a type of sequential use of energy, i.e., “the use of reject heat from electricity production in a useful thermal energy application or process” *Id.* Portside Units CT, BLR1, and BLR2 therefore all satisfy the requirement to operate as part of a cogeneration system.

As stated in paragraph (2)(i)(A) of the cogeneration unit definition, the second requirement for a unit to qualify as a cogeneration unit, in the case of topping-cycle units, is that the useful thermal energy produced must constitute at least five percent of total energy output in each year of operation starting with 2005. Portside Units CT, BLR1, and BLR2 are subject to this requirement because they are all topping-cycle units, i.e., units “in which the energy input to the unit is first used to produce useful power, including electricity, where at least some of the reject heat from the electricity production is then used to provide useful thermal energy.” *Id.* According to the information provided by Portside Energy regarding the Portside units’ annual production of useful power and useful thermal energy, well over five percent of the total energy output of each of the Portside units has consisted of useful thermal energy in every year from 2005 through 2015; in fact, the reported percentage is over 50 percent for each unit in each year. Each of the Portside units therefore satisfies the requirement for useful thermal energy to annually constitute at least five percent of total energy output.

The third requirement for a unit to qualify as a cogeneration unit is that the unit must pass or be deemed to pass a minimum efficiency test. Under paragraph (5) of the cogeneration unit definition, this minimum efficiency test may be passed either by the individual unit or by the cogeneration system of which the unit is a component. As stated in paragraph (2)(i)(B) of the cogeneration unit definition, in the case of topping-cycle units, the specific efficiency criterion that must be met for a given year depends on the unit’s (or the cogeneration system’s) production of useful thermal energy as a percentage of total energy output for the year. Because in each year from 2005 through 2015, for each of the Portside units and for the cogeneration system as a whole, this percentage is at least 15 percent, the applicable efficiency criterion for each such year for each of the Portside units and for the cogeneration system as a whole is that the sum of the useful power produced plus one-half of the useful thermal energy produced must be no less than 42.5 percent of total energy input. According to the information provided by Portside Energy regarding the Portside units’ annual total energy input and production of useful power and useful thermal energy, the cogeneration system as a whole has achieved efficiency (according to the formula just described) of at least 43.9 percent in every year from 2005 through 2015. Because the cogeneration system passes the minimum efficiency test, Portside Units CT, BLR1, and BLR2 are all deemed to satisfy this requirement.

Because Portside Units CT, BLR1, and BLR2 each meet, or are deemed to meet, each of the requirements to qualify as a cogeneration unit for each of the years from 2005 through 2015, each of the units meets the first annual test to qualify for the cogeneration exception to the general CSAPR applicability criteria for 2015 and 2016.

¹⁰ See also *id.* (definition of “sequential use of energy”).

3. Annual test concerning amount of electricity supplied to a utility power distribution system for sale

The second of the two annual tests to qualify for the cogeneration exception to the general CSAPR applicability criteria concerns the amount of electricity supplied by a unit to any utility power distribution system for sale. Specifically, in each year starting with 2005, this amount may not exceed the greater of (i) one-third of the unit's potential electrical output capacity (PEOC), or (ii) 219,000 megawatt-hours (MWh). The formula for the PEOC is given in the CSAPR definitions:

Potential electrical output capacity means, for a unit (in MWh/yr), 33 percent of the unit's maximum design heat input rate (in Btu/hr), divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

*Id.*¹¹ According to Portside Energy, the maximum heat input rates for Portside Units CT, BLR1, and BLR2 are 498 million Btu per hour (mmBtu/hr), 260 mmBtu/hr, and 260 mmBtu/hr, respectively. Applying the formula above yields the following PEOCs for the three units:

Unit CT: $PEOC = 33\% \times 498,000,000 \div 3,413 \div 1,000 \times 8,760 = 421,804$ MWh/yr.

Unit BLR1: $PEOC = 33\% \times 260,000,000 \div 3,413 \div 1,000 \times 8,760 = 220,219$ MWh/yr.

Unit BLR2: $PEOC = 33\% \times 260,000,000 \div 3,413 \div 1,000 \times 8,760 = 220,219$ MWh/yr.

For Unit CT, one-third of the PEOC is 140,601 MWh/yr. For Units BLR1 and BLR2, one-third of the PEOC for each unit is 73,406 MWh/yr. Each of these annual amounts is less than 219,000 MWh. For each of the three Portside units, 219,000 MWh is therefore the relevant maximum annual amount of electricity that may be supplied by the unit to a utility power distribution system for sale without disqualifying the unit for the cogeneration exception to the general CSAPR applicability criteria.

As defined in the CSAPR regulations, a utility power distribution system is "the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers." *Id.* According to Portside Energy, all of Portside's net electricity production (i.e., production in excess of amounts used at the Portside facility itself) is delivered to Midwest over Midwest's internal facilities. Because Midwest is not a utility, any electricity delivered to Midwest is not "suppl[ied] ... to a utility power distribution system for sale" as long as the electricity is used by Midwest. However, Midwest's facilities are also interconnected with the facilities of the local electricity distribution utility, Northern Indiana Public Service Company (NIPSCO). Portside Energy states that Portside is generally operated as necessary to meet Midwest's requirements for useful power and useful thermal energy and not to produce electricity in excess of Midwest's requirements at any point in time. Nevertheless, in the absence of equipment designed to prevent such occurrences, it is possible for electricity produced by Portside and delivered to but not used by Midwest to flow onto NIPSCO's facilities at times when Midwest's electricity requirements have been overestimated. EPA has therefore evaluated whether the annual amounts of electricity produced by Units CT, BLR1, and BLR2, respectively, that could have flowed from Midwest's facilities onto NIPSCO's facilities may have exceeded 219,000 MWh in any year from 2005 through 2015.

According to the information provided by Portside Energy, the maximum annual amounts of useful power produced by Units BLR1 and BLR2 in any year from 2005 to 2015 are approximately 47,000 MWh and 51,000 MWh, respectively. The amounts of electricity produced by these units that could have flowed onto NIPSCO's facilities in any year necessarily would have been less than the net amounts of electricity produced by the units in total. Thus, the information regarding the units' annual

¹¹ See also *id.* (definition of "maximum design heat input rate").

production of useful power indicates that neither Unit BLR1 nor Unit BLR2 could have supplied more than 219,000 MWh to any utility power distribution system for sale in any year from 2005 through 2015.

With regard to Portside Unit CT, according to the information provided by Portside Energy, the amount of useful power produced by the unit was less than 219,000 MWh for each year from 2005 through 2011 but more than 219,000 MWh for each year from 2012 through 2015. This information indicates that Unit CT could not have supplied more than 219,000 MWh to any utility power distribution system for sale in any year from 2005 through 2011. However, in order to determine whether Unit CT could have supplied more than 219,000 MWh to a utility power distribution system for sale in any of the years from 2012 through 2015, EPA requested additional information from Portside Energy regarding flows of electricity from Midwest's facilities onto NIPSCO's facilities in those years.

Portside Energy provided two sets of data in response to this request. The first data set covers the period from August 2012 through December 2015 and consists of instantaneous readings of the direction and magnitude of electricity flows (in MW) between Midwest's facilities and NIPSCO's facilities taken at regular intervals 600 times per month, or slightly less frequently than once per hour. The data show that for a substantial majority of the instantaneous readings, electricity was flowing from NIPSCO's facilities onto Midwest's facilities, indicating that no electricity produced at Portside and delivered to Midwest was being supplied to NIPSCO's facilities at the times of those readings. Assuming that, for each instantaneous reading, electricity flowed in the direction and at the rate of the reading until the next instantaneous reading, the largest annual total of the gross electricity outflows from Midwest's facilities onto NIPSCO's facilities in 2013, 2014, or 2015 would have been approximately 10,400 MWh in 2015, well below 219,000 MWh. Even if electricity had continuously flowed from Midwest's facilities onto NIPSCO's facilities for all 8,760 hours in a year at the highest instantaneous export rate shown in this data set (13.9 MW), the resulting gross outflows of electricity would have totaled 121,764 MWh, which is still less than 219,000 MWh. EPA considers this information a sufficient basis for concluding that Unit CT could not have supplied more than 219,000 MWh to any utility power distribution system for sale in any year from 2013 through 2015.

As noted above, the first data set provided by Portside Energy does not cover all of 2012. To evaluate the gross electricity flows from Midwest's facilities onto NIPSCO's facilities in 2012, EPA therefore also considered the second data set provided by Portside Energy, which covers the period from 2005 through 2015 and consists of the daily total net flows of electricity (in MWh) between Midwest's facilities and NIPSCO's facilities. Because each daily amount in this data set is a net amount that reflects gross electricity inflows offsetting some or all of the gross electricity outflows on the same day, the daily net amounts can understate the gross amounts of electricity that flowed from Midwest's facilities onto NIPSCO's facilities on those days. Based on comparing the annual sums of the daily net outflows in this data set (i.e., summing the amounts only from days when there was a net outflow) to the annual sums of the gross electricity outflows estimated from the first data set described above, EPA estimates that the gross outflows of electricity from Midwest's facilities onto NIPSCO's facilities in a given annual period may be from double to quintuple the sum of the daily net outflows of electricity for that same period. The sum of the daily net outflows of electricity from Midwest's facilities onto NIPSCO's facilities for 2012 in the second data set is 5,216 MWh. Multiplying this amount by a potential understatement correction factor of five yields an estimated potential amount of gross electricity outflows of 26,080 MWh, which is well below 219,000 MWh. EPA considers this information a sufficient basis for concluding that Unit CT could not have supplied more than 219,000 MWh to any utility power distribution system for sale in 2012.

Because Portside Units CT, BLR1, and BLR2 each did not supply more than 219,000 MWh to any utility power distribution system for sale in any of the years from 2005 through 2015, each of the units

meets the second annual test to qualify for the cogeneration exception to the general CSAPR applicability criteria for 2015 and 2016.

4. Conclusion regarding cogeneration exception

In summary, the information provided by Portside Energy regarding Portside and its operations in the years from 2005 through 2015 indicates that Portside Units CT, BLR1, and BLR2 have satisfied for each of these years both of the annual tests to qualify for the cogeneration exception to the CSAPR applicability criteria as provided in 40 CFR 97.404(b)(1)(i), 97.504(b)(1)(i), 97.604(b)(1)(i), and 97.804(b)(1)(i). Consequently, EPA determines that the units are not affected units under the CSAPR NO_x Annual Trading Program, CSAPR NO_x Ozone Season Group 1 Trading Program, or CSAPR SO₂ Group 1 Trading Program with regard to emissions occurring in 2015 and 2016. The units can continue to qualify for this exception under the CSAPR NO_x Annual Trading Program, CSAPR NO_x Ozone Season Group 2 Trading Program, and CSAPR SO₂ Group 1 Trading Program with regard to emissions occurring in 2017 and subsequent years by continuing to satisfy both of the annual tests for each year after 2015. If any of the units fails to satisfy either of the annual tests for any year, the unit will become a CSAPR-affected unit starting January 1 of the year after the first calendar year during which the unit no longer meets the requirements of the respective annual test, and will remain a CSAPR-affected unit thereafter, as provided in 40 CFR 97.404(b)(1)(ii), 97.604(b)(1)(ii), and 97.804(b)(1)(ii).

EPA notes that the determination in this letter does not alter the existing requirements under Indiana's state implementation plan, in compliance with 40 CFR 51.121, for Portside Energy to monitor and report NO_x emissions and heat input for Portside Units CT, BLR1, and BLR2 in accordance with 40 CFR part 75.

III. Disposition of CSAPR emission allowances allocated to Portside Unit CT

In the original CSAPR and in subsequent rules amending CSAPR, including the recent CSAPR Update Rule, EPA established specific amounts of CSAPR NO_x Annual allowances, CSAPR NO_x Ozone Season Group 1 allowances, CSAPR NO_x Ozone Season Group 2 allowances, and CSAPR SO₂ Group 1 allowances that would be allocated to Portside Unit CT (but not to Unit BLR1 or Unit BLR2) under the CSAPR FIP provisions applicable to existing units in Indiana. However, as noted in section 1 of this letter, Portside Energy made the initial request for an applicability determination on November 2, 2011, before the first allowance recordation deadline under the CSAPR trading programs, and under the circumstances EPA has not recorded these allowance allocations for any control period.¹² Consequently, there are no previously recorded emission allowances for any CSAPR trading program whose status is affected by the determination in this letter and there is no need for Portside Energy to take any action to facilitate the surrender of any such previously recorded allowances.

In accordance with the determination expressed in this letter, EPA will not record allocations of CSAPR emission allowances to Portside Unit CT as an existing unit under the CSAPR FIP provisions for future control periods.¹³ Allowances that have been allocated to Portside Unit CT as an existing unit under a given CSAPR trading program will be transferred to a new unit set-aside for Indiana for the corresponding CSAPR trading program and will be allocated to other Indiana units in EPA's normal course of administering the new unit set-asides.¹⁴ If any Portside unit becomes a CSAPR-affected unit

¹² Some allowances were erroneously recorded in Portside's compliance account but EPA subsequently corrected the errors and reversed the recordation transactions. See 40 CFR 97.427.

¹³ See 40 CFR 97.411(c)(2).

¹⁴ See 40 CFR 97.411(c)(5)(i) and (ii).

with regard to emissions occurring in a year after 2016, the unit may be eligible to receive allocations of CSAPR allowances from the new unit set-asides for Indiana.¹⁵

If and when Indiana chooses to submit and EPA approves a SIP revision substituting state-determined allowance allocations for the allocations established by EPA under the CSAPR FIP provisions, the allowances formerly allocated to Portside Unit CT will be included in the total amounts of allowances available for allocation under Indiana's allocation methodology.¹⁶

IV. Conclusion

EPA's determination concerning the applicability of the CSAPR trading programs to Portside Units CT, BLR1, and BLR2 is conditioned and relies on the accuracy and completeness of the information provided by Portside Energy in the November 2, 2011 letter and the supplemental information provided in subsequent email messages¹⁷ and is appealable under 40 CFR part 78. If you have any questions regarding the applicability determination or the disposition of emission allowances discussed in this letter, please contact Louis Nichols at (202) 343-9008 or nichols.louis@epa.gov. Thank you for your continued cooperation.

Sincerely,

/s/
Reid P. Harvey, Director
Clean Air Markets Division

cc: Douglas Aburano, EPA Region V
Jarrod Fisher, IDEM

¹⁵ See 40 CFR 97.412(a)(1)(ii).

¹⁶ See 40 CFR 52.38(a)(4)(i)(A), (a)(5)(i)(A), (b)(8)(iii)(A), and (b)(9)(iii)(A) and 52.39(e)(1)(i) and (f)(1)(i).

¹⁷ Portside Energy provided supplemental information in email messages on March 9, 2015; March 23, 2015; August 3, 2015; August 7, 2015; November 11, 2016; November 17, 2016; and November 22, 2016.