



**Southern Illinois
Power Cooperative**

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AUG 20 2009

**STATE OF ILLINOIS
Pollution Control Board**

August 18, 2009

Dr. Sundar Lin
Presiding Board Member
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

PC# 1

Re: R09-20, In the Matter of NOx Trading Program Sunset Provisions for Electric Generating Units, Amendments to 35 Ill.Adm.Code Part 217, Subpart W

Dear Dr. Lin:

Although the Southern Illinois Power Cooperative ("SIPC") did not appear in person at the hearings in this matter, SIPC did participate in the Illinois Environmental Protection Agency's ("Agency") outreach efforts prior to its proposal of this amendment. *See, e.g.*, the attached email between SIPC and the Agency regarding this proposed rule. SIPC is an entity affected by the proposed rulemaking. SIPC operates a coal-fired power plant located near Marion, Illinois, and is subject to the Nitrogen Oxides ("NOx") Budget Trading Program, 35 Ill.Adm.Code Part 217, Subpart W ("Subpart W") as well as the Illinois Clean Air Interstate Rule ("CAIR"), 35 Ill.Adm.Code Part 225, Subparts D and E, and the Illinois mercury rule, 35 Ill.Adm.Code Part 225, Subpart B. SIPC is proud of its efforts to remain in compliance with all of these rules.

SIPC generally supports the Agency's proposal to sunset the provisions of the NOx Budget Trading Program and agrees that the duplicative recordkeeping and reporting created by the NOx Seasonal CAIR are unnecessary and burdensome.

However, as SIPC told the Agency during outreach, SIPC believes that if the Board is going to sunset Subpart W, it should do it completely. That is, the Board should, in this rulemaking, address the distribution of NOx Budget allowances remaining in the Agency's account. Mr. David Bloomberg,

testifying on behalf of the Agency, stated that the allowances remaining in the Agency's NOx Budget account cannot be distributed "because the current regulations do not provide for such distribution." David Bloomberg, Testimony (July 10, 2019), p. 2. Since the authority to distribute allowances lies in the Board's rule, then the Board can alter that authority in this sunset rulemaking by providing that the Agency distribute all remaining NOx allowances. To accomplish this, SIPC suggests the following language:

The provisions of this Subpart W shall not apply for any control period in 2009 or thereafter. All allowances remaining in the Agency's accounts shall be distributed pursuant to the provisions of Section 217.764(b)(4)(A) and (B) of this Subpart. Noncompliance with the provisions of this Subpart that occurred prior to 2009 is subject to the applicable provisions of this Subpart.

If the Board does not address distribution of the remaining NOx Budget allowances in this rulemaking, then either the Board will have to hold a second rulemaking to address this deficiency in this proposed rule or the allowances will, effectively through neglect, be subject to the retirement provisions of the CAIR. *See* 35 Ill. Adm. Code §§ 225.545(i) and 225.575(b)(4).

As is evident by the structures of Subpart W and the CAIR, Subpart W generally provided for distribution of excess allowances to existing electric generating units, while the CAIR focuses on the retirement of excess allowances. These are diametrically opposed means of addressing excess allowances. The Agency's direction in Subpart W should continue to apply to the remaining NOx Budget allowances rather than allowing the Agency to apply the direction of the CAIR by not addressing disposition of the remaining allowances at this time.

This issue is properly before the Board at this time, as the question of the unallocated allowances was raised at the first hearing and addressed in testimony at the second hearing. *See* Hearing Transcripts, June 18, 2009, and July 23, 2009, and Pre-Filed Testimony of David Bloomberg; *see also* Opinion, R06-26 (August 23, 2007) (addition of Subpart F and renaming of the Agency's proposed rulemaking without Subpart F addressed at any hearing, though it was included at First Notice). There are a total of

at least 1,212 New Source Set-Aside (“NSSA”) allowances remaining plus a number of allowances from the general pool not distributed due to rounding. *See* Agency Trading website: < www.epa.state.il.us/air/nox/ > and < www.epa.state.il.us/air/nox/allowances.html >. In 2007 and 2008, the Agency set aside 614 allowances into the NSSA. 35 Ill. Adm. Code § 217.760(a)(2). Only 16 allowances were distributed from the NSSA in 2007,¹ and none were distributed in 2008, leaving 1,212 undistributed allowances in the NSSA.

For these reasons, it is timely and appropriate for the Board to address the issue of the undistributed NOx Budget allowances remaining in the Agency’s account, and SIPC requests that the Board amend the proposed rulemaking with the addition of direction to the Agency to distribute the remaining NOx Budget allowances as set forth above.

Respectfully Submitted,



Leonard F. Hopkins, P.E.

Attachment

cc: Clerk, Illinois Pollution Control Board
Kathleen Crowley, Hearing Officer
Rachel Doctors, Illinois EPA

¹ This information was on the Agency’s website shortly after the June 18th hearing but has since apparently been removed.

Leonard Hopkins

From: Leonard Hopkins
Sent: Tuesday, March 17, 2009 3:31 PM
To: 'Rob.Kaleel@Illinois.gov'
Cc: 'iergstaff@ierg.org'
Subject: FW: Rulemaking Proposal to Sunset the NOx SIP Call for EGUs

Hi Rob:

I think this would be a fine time to correct that oversight, follow the previous example, and insert language to return those allowances to the EGUs!!

Leonard

Leonard F. Hopkins, P.E.
Fuel Procurement & Compliance Manager
Southern Illinois Power Cooperative
11543 Lake of Egypt Road
Marion, IL 62959
(618) 964-1448 x 268
lhopkins@sipower.org

From: Kaleel, Rob [mailto:Rob.Kaleel@Illinois.gov]
Sent: Tuesday, March 17, 2009 3:16 PM
To: Leonard Hopkins
Subject: RE: Rulemaking Proposal to Sunset the NOx SIP Call for EGUs

Hi Leonard. As I understand it, there is no provision in our CAIR rule that allows us to return leftover set aside allowance to EGUs. It's also my understanding that our NOx SIP Call rules only allowed us to do that from 2004 -2006. As of now, we have no plans for the leftover set aside allowances.

From: Leonard Hopkins [mailto:lhopkins@sipower.org]
Sent: Tuesday, March 17, 2009 1:25 PM
To: Kaleel, Rob
Subject: RE: Rulemaking Proposal to Sunset the NOx SIP Call for EGUs

What happens to the NOX set aside allowances that weren't used by new sources? In years prior to 2008, these were returned to the EGUs. Has or will that be done?
Thanks!

Leonard F. Hopkins, P.E.
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From: Kaleel, Rob [mailto:Rob.Kaleel@Illinois.gov]

Sent: Monday, March 16, 2009 4:59 PM

To: abigail.rector@exeloncorp.com; arnold.jenkinsjr@duke-energy.com; bill.murray@cwlp.com; bruceparker@electricenergyinc.com; Bsteinhauser@ipr-us.com; CJ.Saladino@dom.com; cjacobsen@tenaska.com; dale.davis@exeloncorp.com; dave.farris@cwlp.com; dfcole@ameren.com; dfurstenwerth@reliant.com; Diane.Leopold@dom.com; djmurphy@pplweb.com; gkunkel@tenaska.com; glenn.calloway@calpine.com; Glenn.P.Johnson@dom.com; james.eiseman@dynegy.com; james.r.kipp@dynegy.com; jason.goodwin@calpine.com; jim.idzorek@nrgenergy.com; Jason McLaurin; Joseph.C.Wood@dom.com; jrtaylor@cordovaenergy.com; jshimshock@reliant.com; kirk.millis@dynegy.com; kjanderson@ameren.com; laboyer@pplweb.com; Larry.Waite@dynegy.com; lcarlson@tenaska.com; Leonard Hopkins; Lonnie.A.Grote@dynegy.com; mcgriggs@duke-energy.com; mlmenne@ameren.com; pcgrigsby@duke-energy.com; pj.becker@cwlp.com; randy.speccht@exeloncorp.com; rfisher@ppi.coop; robert_crowe@dynegy.com; roger.stegeman@sweci.com; russel.gilbert@sweci.com; schy.willmore@cwlp.com; smiller@mwgen.com; sphart@cordovaenergy.com; stan_sander@dynegy.com; ted_lindenbusch@dynegy.com; terryarbes@electricenergyinc.com; timothy.kelley@dynegy.com; tjonas@tenaska.com; vbisini@reliant.com; wendell_watson@dynegy.com; Asplund, Bob; Bassi, Kathleen; Kolaz, Dave

Subject: Rulemaking Proposal to Sunset the NOx SIP Call for EGUs

Attention CAIR Contacts:

The Agency intends to submit the attached proposal to the Illinois Pollution Control Board in the next few weeks with a request to expedite the rulemaking. The intent of this proposal is to sunset the provisions of the NOx SIP Call (Subpart W) affecting electric generating units, as these provisions have been superseded by Illinois' CAIR rule. We don't believe this proposal is controversial so we will not initiate a formal outreach process before we submit this to the Board. Please let me know if you have any questions or concerns.

Rob Kaleel
Air Quality Planning
Bureau of Air