

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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 IN THE MATTER OF:

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 AMENDMENTS TO 35 ILL.

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 ADM. CODE 217,

 NITROGEN OXIDES EMISSIONS

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R25-17

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(Rulemaking-Air)

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PUBLIC HEARING

November 21, 2024

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1021 North Grand Avenue East

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Reported In Person By:

17

Deann K. Parkinson: CSR 84-002089

18

Area Wide Reporting & Video Conferencing

301 West White

19

Champaign, Illinois 61820

(800) 747-6789

20

21

22

23

24

1 PRESENT BY VIDEOCONFERENCE:

2

 HEARING OFFICER

3

 DANIEL PAULEY

4

 ILLINOIS POLLUTION CONTROL BOARD

 60 E. VAN BUREN STREET Ste. 630

5

 CHICAGO, IL 60605

 312-814-6931

6

 daniel.pauley@illinois.gov

7

8 SPEAKERS: RORY DAVIS

9

 ANAND RAO

10

 CAITLIN KELLY

11

 GINA ROCCAFORTE

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 TREJAHN HUNTER

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 KRISTIN FRITCHMAN

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(The time is 10:00 a.m.)

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HEARING OFFICER: We can go ahead and get started. Good morning, and welcome to the Illinois Pollution Control Board hearing. My name is Daniel Pauley, and I'm the hearing officer for this rulemaking proceeding entitled Amendments to 35 Illinois Administrative Code 217, Nitrogen Oxides Emissions.

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The Board docket for this rulemaking is R25-17. Also present today from the Board are board member Jennifer Van Wie, Springfield board member, Mike Mankowski. Board staff present in Chicago are Anand Rao and Essence Brown of the Board's technical unit. And advisers Chloe Salk and Carlie Leoni. And also in Springfield is adviser Anupama Paruchuri.

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This hearing is governed by the Board's procedural rules. All information that is relevant and is not repetitious or privileged will be admitted into the record.

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Please bear in mind that any questions posed today by the Board and its staff are intended solely to help develop a clear and

1 complete record for the Board's decision, and do
2 not reflect any decision on the proposal testimony
3 or other questions.

4 For the sake of our court reporter,
5 please speak clearly and avoid speaking at the
6 same time as another person so that we can help
7 produce a clear transcript.

8 A quick background on this rulemaking.
9 The Illinois Environmental Protection Agency filed
10 this rulemaking proposal with the board on July
11 8th, 2024.

12 In early August of 2024 notice was
13 published for this hearing in all 11 air regions
14 across the state. The first hearing took place on
15 September 26th, 2024, between Edwardsville and
16 Springfield via video conference. The Board
17 received no prefiled testimony for this hearing,
18 however the Board did receive three post-hearing
19 comments from IEPA, prefiled questions for IEPA
20 from IERG, and prefiled answers to those questions
21 from IEPA.

22 So, first we'll start with the prefiled
23 questions from IERG, I-E-R-G. And then we'll move
24 to follow-up questions from anyone else, including

1 the Board.

2 And if time allows, we'll have anyone
3 who wishes to give public comment give that at the
4 end. Any questions about the order of
5 proceedings? All right. Would the court reporter
6 please swear in the Agency witnesses.

7 (Whereupon witnesses were sworn.)

8 HEARING OFFICER: Thank you. Does the
9 agency wish to give a brief statement before
10 moving to the questions?

11 MS. ROCCAFORTE: I can just introduce
12 everyone if you want me to. Good morning, I'm
13 Gina Roccaforte, assistant counsel with the
14 Illinois Environmental Protection Agency, and with
15 me today is Dana Vetterhoffer, deputy general
16 counsel. Rory Davis, manager of the air
17 regulatory unit and the bureau of air. And Kyle
18 Sottoriva, environmental engineer.

19 HEARING OFFICER: Thank you very much.
20 As I stated earlier, the Agency prefiled answers
21 to IERG's questions on November 20th, 2024. If
22 there's no objection, we will enter the Agency's
23 answers into the record as if read. Hearing no
24 objection, we'll enter those. And if the agency

1 is ready, we will proceed to any follow-up
2 questions from IERG first.

3 MR. DAVIS: That would be fine.

4 MR. PAULEY: Mr. Hunter, go ahead.

5 MR. HUNTER: Hello, my name is Trejahn
6 Hunter, that's spelled T-R-E-J-A-H-N. Last name
7 Hunter, H-U-N-T-E-R.

8 I'm representing the Illinois
9 Environmental Regulatory Group, also known by its
10 acronym IERG, or I-E-R-G. And I've got a few
11 follow-up questions based on the Agency's
12 prefiled testimony.

13 I'd first like to draw your attention to
14 question 22 from IERG's prefiled questions,
15 regarding the Agency's response to IERG's question
16 number 22. I'll give you a moment just to find
17 that.

18 Did the Agency perform modeling that
19 included the environmental benefit factor to show
20 or demonstrate that it was necessary for
21 attainment? If not, why not? And if not, please
22 explain the details of the Agency's analysis that
23 the environmental benefit factor is necessary for
24 attainment and provide all records relating to

1 that analysis.

2 MR. DAVIS: Okay. So, the Agency did
3 not perform modeling that included the
4 environmental benefit factor.

5 The modeling that has been done so far
6 for moderate nonattainment in the ozone
7 nonattainment areas was completed by our
8 multi-jurisdictional organization, or MJO, that's
9 called LADCO, which is the Lake Michigan area --
10 sorry; Lake Michigan Air Directors Consortium. So
11 that work was done well in advance of us drafting
12 our attainment demonstrations, which aim to show
13 that with the rules on the books, with certain
14 assumptions about what we may expect with emission
15 reductions from rules on the books. As I said,
16 mobile source emissions, non-road emissions and
17 also air source emissions, what kind of emissions
18 we expect in those areas. And then those are
19 modeled.

20 So when that work was done, the model
21 for Chicago's showed that we would be close or not
22 attaining by the attainment date this year, August
23 of '24. And so that work was done in 2021 or
24 2022, possibly earlier. So those models would not

1 have included our current NOx RACT rules. So the
2 areas did not attain by the attainment date. So
3 the projected year that was modeled would have
4 been 2023. The last full ozone season of data
5 that could have been projected during -- sorry;
6 ozone season that could have been projected
7 subsequent to the areas being reclassified to
8 moderate.

9 And so those -- the modeling performed
10 for this period of nonattainment being moderate
11 did not include any of the reductions that we'd
12 anticipate in the NOx RACT rules.

13 So, we are going to be bumped up, or
14 reclassified, to serious nonattainment we have
15 heard as early as next week. And so we anticipate
16 the effective date of serious nonattainment to be
17 possibly at the end of the year. We'll see if
18 that actually happens. With USEPA they do have a
19 tendency to let -- to project that they might have
20 things published in the Federal Register, and
21 sometimes there are delays. But we do expect that
22 any day.

23 So, none of the NOx RACT emission
24 reductions from this rulemaking would have been

1 included in those projections. However, we do
2 need, we are required to have RACT rules on the
3 books that represent or reflect RACT as will be
4 approvable for moderate by the USEPA. And then
5 also we do have serious RACT requirements coming
6 up when we are reclassified.

7 So as I stated, there was not specific
8 studies done to say, we need this ten percent
9 environmental benefit in order to attain, or
10 without it we wouldn't have attained. But that's
11 not really the relevant question. It's whether
12 that ten percent environmental benefit is required
13 as RACT. And the Agency and USEPA believes that
14 it is required.

15 MR. HUNTER: Have you, just to follow-up
16 from that. Are you in the process, or have you
17 begun any modeling for the attainment
18 demonstration for the anticipated bump up?

19 MR. DAVIS: Yes. That is, there is work
20 being done right now. We are putting together a
21 modeling platform that will have a base year of
22 2022. So, anything on the books or soon to be on
23 the books we would be able to include that. But
24 it wouldn't be a -- necessarily a, we need this or

1 else we don't attain. Or we have this, and so we
2 will or won't attain.

3 So, yes. That work has commenced.
4 They're working on the base year now. We expect
5 to have modeling done hopefully by, I think it was
6 summer next year. LADCO was hoping to have our
7 modeling too so we can begin on our serious
8 attainment demonstrations.

9 MR. HUNTER: Thank you. I'm going to
10 move on to question number 25, the Agency's
11 response to IERG's question number 25.

12 Regarding the Agency's response to
13 IERG's question number 25, was the reason that an
14 emission cap was not acceptable to sources due to
15 the Agency or USEPA's indication that a ten
16 percent environmental benefit would be required?

17 MR. DAVIS: In discussions with some
18 affected sources, an emissions cap was suggested
19 rather than an environmental benefit of ten
20 percent on the current type of averaging plan that
21 is allowed.

22 The emissions cap that was discussed, or
23 submitted or shared with the agency, had a number
24 of things that were not in line with the guidance.

1 For instance, I think we were talking about a cap
2 that would include the maximum emissions over a 30
3 day period from a given unit where in the EIP
4 guidance it really says that you should be looking
5 at a two year average of emissions from a unit to
6 establish a baseline if you were going to do a
7 cap.

8 So, a lot of that EIP guidance is geared
9 toward setting a baseline, which is a little bit
10 different than what we have. Because we already
11 have an emissions averaging plan option available
12 in our part 217 rules.

13 So, if you were to start from the
14 beginning, and we didn't have an averaging plan,
15 if you wanted to do a cap, versus our current
16 averaging plan, you could do that cap. But, I
17 believe when we are in discussions with the
18 sources, that that cap system may have been even
19 more restrictive than adding the ten percent to
20 the current averaging plan scheme.

21 MR. HUNTER: Thank you. All right.
22 I'll draw your attention to question number 12 in
23 the Agency's response.

24 And this is also, the following

1 questions are also going to relate to previous
2 discussions we've had on the record about
3 Wisconsin and Ohio as other states that we've
4 compared and contrasted to.

5 The first question I have related to the
6 Agency's response for IERG's question number 12
7 is, is Wisconsin subject to the same timing for
8 its finding of failure in SIPS middle as Illinois?
9 Or similar timing?

10 MR. DAVIS: I would have to check to be
11 sure if it's the same dates exactly, but I believe
12 so.

13 MR. HUNTER: Has Wisconsin initiated a
14 rulemaking to address the purported ten percent
15 write off or environmental benefit emissions
16 reduction of Wisconsin Admin Code NR428?

17 MR. DAVIS: Not that I am aware of.

18 MR. HUNTER: The third question I have
19 is, isn't it correct that, quote, "when a
20 nonattainment area does not have an approvable
21 demonstration, a ten percent extra reduction in
22 emissions is required by an EIP", end quote. And
23 since IEPA did not file a timely attainment
24 demonstration, the burden falls on industry to

1 take a ten percent emissions reduction for
2 environmental benefit and install controls.

3 MR. DAVIS: I do not believe that's
4 accurate. Because these rules are a part of our
5 submission that will include our attainment
6 demonstration, and our NOx RACT rules. Or we will
7 be submitting the rule language. But, the
8 requirements for moderate will have included, did
9 we do the attainment demonstration? Did we
10 demonstrate that on the attainment date, we'll
11 have attained the standard? And then, do we have
12 adequate NOx RACT rules?

13 So, my understanding is that it's not
14 because there's no currently approved
15 demonstration that the ten percent would have to
16 apply. It would have always been a part of that
17 submission, of the submission that's upcoming with
18 these rules, that in order for us to meet NOx RACT
19 requirements, that an averaging plan would, such
20 as ours, an averaging plan such as ours would
21 require the ten percent.

22 So, it wouldn't necessarily be that
23 since we are late in submitting our current
24 attainment demonstration for moderate

1 nonattainment, that had we done that, that the ten
2 percent wouldn't have been required in the NOx
3 RACT. That is my understanding.

4 MR. HUNTER: Okay. Thank you. Just to
5 follow-up from that. Can you explain how the
6 Agency and USEPA believe that the ten percent
7 would be required as RACT without modeling or
8 technical analysis?

9 MR. DAVIS: So, there is the EIP
10 guidance. And I'll note that it is not final. As
11 we said, we're not aware that that was ever
12 finalized by USEPA.

13 I'm sorry, could you repeat the question
14 because I lost my train of thought.

15 MR. HUNTER: Yes. Could you explain how
16 the Agency and USEPA believe that the ten percent
17 emissions reduction for environmental benefit
18 would be required as RACT without any modeling or
19 technical analysis?

20 MR. DAVIS: Oh, sure. Well, it would be
21 along the same lines as, why would a 0.08 pound
22 per million BTU limit be appropriate RACT for a
23 boiler or process heater? Or why would a 30 day
24 average be appropriate as RACT?

1 It's an element that the USEPA has
2 been -- well, their guidance is from 2001. So
3 when we are using averaging plans, the guidance is
4 fairly clear that the ten percent should be
5 included. And so we don't really model what we
6 would have done with and without.

7 So, and like I said, the modeling, you
8 know, is not the issue here as much as the
9 requirement for what is considered adequate RACT.
10 And the ten percent, like some of the -- well, I
11 should say it's not exactly like the unit emission
12 limits. But a lot of the elements are not line by
13 line required, or in the Clean Air Act themselves.
14 It's the guidance. It's the interpretation of
15 USEPA as to what constitutes adequate RACT rules.

16 MR. HUNTER: I understand. Thank you.
17 All right. I'd like to draw your attention to
18 questions 9 and 9A and the Agency's responses to
19 those questions.

20 Can you tell us why Illinois's emission
21 averaging plan is classified as an EIP, rather
22 than a NOx SIP averaging plan that has been
23 historically authorized under EPA ozone
24 implementation requirements, including the 2015

1 ozone NOx implementation with rulemaking?

2 The preamble I'm going to read to the
3 final implementation act, 83 FR 62998 dated
4 12-06-2018 states the following in the section on,
5 quote, "requirements for RACT and RACM," end quote
6 at 84 FR 63007.

7 The EPA is retaining our existing
8 general RACT requirements for purposes of 2015
9 ozone NOx. These requirements which are being
10 codified into 40 CFR 51.1312 A and B address the
11 content and timing of RACT SIP submittals and
12 implementation, as well as major source criteria
13 for RACT applicability. Underlying these general
14 RACT requirements are well established EPA
15 policies and guidance, including existing control
16 techniques, guidelines, and alternative control
17 techniques.

18 Consistent with EPA's prior guidance,
19 when determining what is RACT for a particular
20 source or source category, air agencies should
21 also consider all other relevant information,
22 including recent technical information and
23 information received during the State's public
24 comment period that is available at the time they

1 develop their RACT SIPs. The EPA's adopted RACT
2 approach includes our longstanding policy with
3 respect to area wide -- excuse me, quote, "area
4 wide average emission rates. This policy
5 recognizes that states may demonstrate as part of
6 their NOx RACT SIP submission that the weighted
7 average NOx emission rate of all sources in the
8 nonattainment area subject to RACT meets NOx RACT
9 requirements. Thus, states are not required to
10 demonstrate RACT level controls on a
11 source-by-source basis. This approach for
12 demonstrating RACT through area wide average
13 emission rates was recently upheld in South Coast
14 2882 F.3D at 1154", end quote.

15 So, to restate my question. Can you
16 tell us why Illinois's emission averaging plan is
17 classified as an EIP, rather than a SIP averaging
18 plan? And wouldn't the area wide average plan be
19 more straightforward and a more expected way to
20 implement this program?

21 MR. DAVIS: I think for certain we're
22 going to have to address some of this in writing.
23 My initial reaction would be that, I don't have
24 any experience with an area wide RACT plan or any

1 kind of demonstration. Certainly USEPA has not
2 been, or in Region 5, that's not something that
3 has come up as a preferred option.

4 But like I said, I would really have to
5 dig into a lot of that to see why we never
6 considered an area wide -- 'cuz I'm assuming that
7 means all sources in the area on average are
8 meeting. The Chicago and St. Louis areas do have
9 quite a few number of sources that would take a
10 lot of study.

11 As far as why we consider our averaging
12 plan an EIP is because I believe, and again I
13 would have to check more thoroughly, is because it
14 is part of -- it is not part of an area wide NOx
15 RACT plan. And it is an averaging plan for units
16 that have specific emission limits.

17 MR. HUNTER: Thank you. To clarify, are
18 you able to provide more analysis and post-hearing
19 comment on our question?

20 MR. DAVIS: Yes, that is what I meant.
21 We'll have to read carefully through that question
22 and see what our final response will be.

23 MR. HUNTER: Thank you.

24 One more follow-up question regarding

1 the Agency's response to questions 9 and 9A.

2 Has the Agency evaluated EPA approved
3 NOx RACT averaging SIPs such as Pennsylvania's SIP
4 NOx averaging plan? That includes 23 major
5 sources approved by EPA on January 26th, 2022.

6 MR. DAVIS: The question is, have we
7 taken a look at Pennsylvania's?

8 MR. HUNTER: Yes. Other EPA approved
9 NOx RACT averaging SIPs such as or including
10 Pennsylvania?

11 MR. DAVIS: I know that I have looked at
12 other plans of other states. I don't know that we
13 looked to Pennsylvania as a model for ours since
14 we did have our part 217 rules, or proposed in
15 2009 or so. I wasn't in on those initial
16 discussions, whether we should go for a
17 Pennsylvania type plan or the way we went.

18 Certainly, I think we'd have more than
19 23 affected sources in the Chicago and St. Louis
20 areas. That may have been the reason why we
21 didn't opt for an area wide NOx RACT plan. I
22 can't be certain about that. But, I have seen the
23 plans of many other states as we were drafting
24 these rules.

1 MR. HUNTER: As a follow-up; have any
2 states in Region 5 received SIP approval? NOx
3 RACT SIP approval that you've had a chance to
4 evaluate?

5 MR. DAVIS: I'm not certain that no
6 states have. I know that Indiana has not. I know
7 that Wisconsin has not. And as to your question,
8 have we seen Wisconsin's? We have been advised by
9 USEPA that the rules in their current submittal
10 are going to be considered deficient for moderate
11 RACT. And they do have a number of deficiencies
12 that USEPA has alerted them to. And so they will
13 expect updates for full approvability.

14 MR. HUNTER: Thank you.

15 I'd like to draw your attention back to
16 your response to our follow-up for question 22
17 where we discussed the requirement for the ten
18 percent environmental benefit to be a part of what
19 is RACT.

20 And you cited the 2001 guidance as part
21 of the justification for that. And so I'm
22 wondering if the 2001 guidance was clear as to
23 requiring this ten percent environmental benefit,
24 why wasn't it proposed by the Agency in the 2009

1 NOx RACT rulemaking?

2 MR. DAVIS: That, I'm -- so, I'm not
3 certain why that would have been not included.
4 Certainly, there was a number of other aspects of
5 our NOx RACT rules that were found deficient and
6 were never -- well, they were never going to be
7 approved by USEPA. That was one of them.

8 Certainly, ozone season long, an annual,
9 or year long averaging periods were another thing.
10 I'm not certain to all of the actions or decisions
11 that were taking place for the initial part 217
12 rules that we did for NOx RACT. But, in the end
13 they were not approvable for a number of reasons.
14 And that was one that USEPA has pointed out.

15 MR. HUNTER: Thank you. One more
16 follow-up question regarding your response to our
17 follow-up question for question number 12.

18 Well, let me double check. I believe it
19 was question 12. One second, please.

20 Yes. For your response to question 12A,
21 you mentioned that the ten percent environmental
22 benefit emissions reduction was not a result of
23 having -- not having an approvable nonattainment
24 demonstration.

1 But, can you reconcile that with your
2 response to question 12A, where you say when a
3 nonattainment area does not have an approvable
4 attainment demonstration, a ten percent extra
5 reduction in emissions is required by an EIP. And
6 you cite the guidance, the 2001 guidance. And you
7 quote the guidance saying, "if your trading or
8 Clean Air Investment Fund EIP covers a
9 nonattainment area that is needing and lacking in
10 approved attainment demonstration, or NALD, then
11 your EIP must meet the environmental benefit
12 requirement by requiring a ten percent extra
13 reduction in emissions."

14 So to restate the question. I'm
15 wondering, how do you reconcile your statement
16 that the ten percent emission reduction is a part
17 -- is necessary as a part of RACT, and not
18 necessarily a requirement due to not having an
19 approvable attainment demonstration as it's set
20 here in 12A, the response to 12A?

21 MR. DAVIS: So again, I'd refer to my
22 previous answer about what our approval attainment
23 demonstration would be. Certainly, our attainment
24 demonstration that we will be submitting is likely

1 not to be acted upon because we did not attain the
2 standard. So there's one thing there.

3 And as far as the ten percent, I do
4 believe that USEPA currently views the ten percent
5 in, for averaging plans, to be RACT regardless of
6 that. And I could point to Wisconsin. I'm not
7 certain that they do have an approvable or not
8 approved attainment demonstration.

9 But, I do know that USEPA is expecting
10 for those to be in averaging plans. And I would
11 kind of liken it to in this proceeding we have
12 proposed that the emission limit for turbines be
13 reduced from 42 PPMV to 25 PPMV. That's parts per
14 million by volume, I think.

15 And so that you'll find no where in the
16 statutes either, or in the Clean Air Act. But
17 that is what we, you know, in our studies of other
18 states, and then also with the advice of USEPA,
19 that that should be considered RACT, where it's
20 possible we could have left that there and then
21 they -- USEPA could have thought that that was a
22 deficiency also. Much like our 30 day rolling
23 average. I don't think that's going to be in the
24 Clean Air Act. It is in guidance of some sort.

1 And so they are saying that's the
2 longest averaging time that they'll accept in a
3 SIP. And this is another aspect of the RACT that
4 they are now considering what is adequate to dem
5 -- well, not to demonstrate. But adequate in RACT
6 rules.

7 MR. HUNTER: To follow-up; is it
8 possible for IEPA to have a different
9 interpretation of what RACT would be, compared to
10 what USEPA determines RACT is?

11 MR. DAVIS: It is possible.

12 MR. HUNTER: Okay. That's all from
13 IERG.

14 HEARING OFFICER: Thank you, Mr. Hunter.
15 We're going to move to the Attorney General's
16 questions now. But before we do, I forgot to
17 mention we have a board meeting at 11:00, so if
18 we're not wrapped up by 10:50 we'll have to break
19 until 11:30 and reconvene to finish it up. But,
20 we'll try to push through and get that done.

21 So we'll now move to the Illinois
22 Attorney General's questions. And they are here
23 in Chicago, if you would please introduce yourself
24 one more time for me.

1 MS. KELLY: My name is Caitlin Kelly,
2 I'm an assistant attorney general with the
3 Illinois Attorney General's office.

4 So, in response to IERG's questions
5 about number 9, IEPA stated that a ten percent
6 environmental benefit must be included in its NOx
7 RACT averaging provisions due to the USEPA
8 guidance from January 2001 entitled, Improving Air
9 Quality With Economic Incentive Programs. On page
10 86 of that guidance USEPA states that, quote, "all
11 EIPs must provide an environmental benefit." On
12 page 12 of its guidance USEPA states that by using
13 the term "must", it indicates that SIP submittals
14 containing those elements are approvable because
15 the SIP provision does not interfere with any
16 applicable requirement concerning attainment,
17 reasonable further progress, or any other
18 applicable requirement as stated by Section 110L
19 of the Clean Air Act.

20 To IEPA's understanding, are these
21 statements in USEPA's guidance consistent with the
22 approach USEPA has taken when discussing Illinois
23 EIP provision as they correlate to these proposed
24 regulations?

1 MR. DAVIS: I believe so. And I did
2 not, I guess, say that these averaging plans are
3 alternatives that are not required to be included
4 in our NOx RACT rules. And as I stated, or maybe
5 alluded to earlier, the training programs, EIPs
6 and emissions cap system for some kind of economic
7 incentive program, from that guidance you really
8 do see that when starting from a baseline, if you
9 are going to include a source or a number of
10 sources in averaging plans, they really do expect
11 for total emissions to be lower, or there to be an
12 environmental benefit for offering those economic
13 incentive programs.

14 So where we do have a baseline, they
15 would expect for emissions from a source in an EIP
16 to be better than what they would under a strict
17 weighted average of the emissions from all the
18 units at the source.

19 MS. KELLY: Thank you. Moving on to
20 IERG's question number 14. IEPA stated that it
21 believes USEPA's January 2001 guidance document
22 was not published in the Federal Register. The
23 Federal Administrative Procedure Act establishes
24 when a proposed or final rulemaking shall be

1 published in the Federal Register at 5 USC Section
2 553. In that section, the EPA specifically states
3 that Federal Register publication and other notice
4 requirements do not apply to general statements of
5 policy.

6 Is it your understanding that USEPA's
7 January 2001 guidance is a general statement of
8 policy as described in the Administrative
9 Procedure Act?

10 MR. DAVIS: I would have to take a
11 closer look exactly what that act says, as I'm not
12 absolutely familiar with that. But, I would agree
13 in part, yes. And I could also note that we have
14 taken guidance, or been advised by other guidance
15 documents in the past that were not finalized by
16 USEPA. So, similar situations have arisen where
17 guidance was never finalized. And yet USEPA has
18 treated them as guidance or guidelines.

19 MS. KELLY: Thank you. So now I'd like
20 to move on to IERG's question number 21. So,
21 there, in response IEPA stated that USEPA's 2001
22 guidance is non-binding policy for discretionary
23 EIPs. So belatedly in response to IERG's question
24 12, IEPA stated that Ohio submits averaging plans

1 to USEPA for approval.

2 To your understanding, when USEPA
3 approves Ohio's averaging plans, is this a binding
4 final action from USEPA?

5 MR. DAVIS: Could you repeat that?

6 MS. KELLY: Sure. So, in response to
7 question 21, IEPA stated that USEPA's 2001
8 guidance is non-binding policy for discretionary
9 EIPs. And then your response to question 12, IEPA
10 stated that Ohio submits averaging plans to USEPA
11 for approval.

12 So the question is, when USEPA approves
13 Ohio's averaging plans, is that considered a
14 binding final action for the USEPA?

15 MR. DAVIS: Yeah, to the extent that
16 those approvals would be published in the Federal
17 Register, and they are actions of the USEPA. I
18 don't know how I would characterize it as binding
19 or an action, or a final action of USEPA. But, I
20 believe that would be considered a final action of
21 the USEPA when they are approved and published in
22 the Federal Register.

23 MS. KELLY: Thank you. I don't have any
24 further questions.

1 HEARING OFFICER: All right. Thank you
2 very much. Before we move to the Board's
3 questions, I'm going to see if there's anyone else
4 who wants to ask questions to IEPA in Springfield?
5 Go ahead, if you could introduce yourself. If you
6 want to move to the chair over there you can.

7 KRISTIN FRITCHMAN: Good morning. My
8 name is Kristin Fritchman and I work for Energy
9 Transfer. K-R-I-S-T-I-N. F-R-I-T-C-H-M-A-N.

10 Energy Transfer is the parent company of
11 Panhandle Eastern Pipeline, which owns and
12 operates several natural gas compressor stations
13 in Illinois.

14 These stations are not located in the
15 metro counties, but are subject to subpart Q
16 because they have engines which are listed in
17 Appendix G. We currently demonstrate compliance
18 using an emission averaging plan.

19 The proposed changes to emission
20 averaging plans will require significant changes
21 to our current averaging plan, particularly the
22 change to the 30 day rolling averages based on
23 operating days, and the reduction in total
24 allowable NOx emissions. We reviewed the proposed

1 rule amendments and have two questions regarding
2 the proposed changes to subpart Q.

3 First question, could you please clarify
4 the due date for submitting a new emission
5 averaging plan in compliance with the new rule?
6 Section 217.390B5 states, quote, "on and after May
7 1st, 2025, an owner operator must submit an
8 averaging plan to the Agency at least 30 days
9 prior or before beginning to use that plan to
10 demonstrate compliance", unquote.

11 Should a new plan be submitted on or
12 before May 1st, 2025?

13 MR. DAVIS: Yes. I think our
14 interpretation sitting here now is that, and we
15 can, if I'm incorrect respond in our post-hearing
16 comments, if this is inaccurate.

17 But the interpretation I think we have
18 right now is that the new provision for the
19 averaging plan, if changes are required to the
20 averaging plan to meet that, then yes, we would
21 expect for those proposed averaging plans to be
22 submitted 30 days in advance.

23 KRISTIN FRITCHMAN: Okay. So, due by
24 May 1st?

1 MR. DAVIS: Yes.

2 KRISTIN FRITCHMAN: Thank you. My
3 second question. The proposed rule language will
4 require two annual reports. One reporting
5 emissions and one compliance certification.
6 That's Sections 217.396 C4-5 and C-5. The
7 emission report is due January 31st, and the
8 compliance of certification is due May 1st. The
9 rule provisions allow the compliance certification
10 to be submitted along with the annual emission
11 report for permitting.

12 In order to streamline the reporting
13 process, would the Agency consider aligning the
14 due date for both of these annual reports to May
15 1st, particularly since the emissions report would
16 be reporting emissions, so it could go along with
17 the whole annual emission report for the facility.
18 If you understand what I'm asking.

19 MR. DAVIS: I think I do. So, our
20 annual emission reports and our annual compliance
21 certifications are both due on May 1st. And your
22 question is?

23 KRISTIN FRITCHMAN: Regarding, there's an
24 annual emission report regarding, or for emission

1 averaging plans that's set to January 31st.

2 MR. DAVIS: That's right. Okay. Yes.

3 The Agency can consider changing those dates to
4 make them the same. And we will provide comments
5 to the board on that.

6 KRISTIN FRITCHMAN: Thank you. That
7 concludes my questions.

8 HEARING OFFICER: All right. Thank you
9 very much. We'll now move to the head of the
10 Board, technically Anand Rao to ask questions.

11 MR. RAO: I have a couple of questions,
12 and these are not follow-up. But, basically
13 relates to implications of the proposed rules on
14 any sources that may be in nonattainment areas
15 with plant-wide applicability limitation, or PAL
16 limitation.

17 So, the question is, if these proposed
18 NOx RACT regulations are adopted, if existing
19 sources, if they have PAL permits, is there any
20 way to use those PAL limitations as a way to
21 comply with this lower NOx thresholds?

22 MR. DAVIS: You're speaking of sources
23 that are outside the nonattainment area?

24 MR. RAO: No, within. Because right now

1 we have a rule making pending in docket 2217, and
2 the nonattainment new source review rules which
3 have PAL provisions in them. So, we were just
4 wondering if there are any implications of these
5 rules, and how those provisions may help sources
6 comply with these regulations?

7 MR. DAVIS: Certainly, if there are
8 limits in federally enforceable permits, be they
9 FESOPs, CAAPPs, yes, those provisions could be
10 used to demonstrate that their source-wide
11 emissions are less than 50 tons that would -- then
12 these rules would then not apply. Unless they're
13 in the once-in always-in section of the
14 applicability.

15 Or, the terms of the permit could
16 demonstrate that a source -- sorry, a specific
17 limit in 217 does not apply to a specific unit
18 because the source has taken a limit of 15 tons or
19 less in their permit. And that would be for
20 boilers and process heaters.

21 Also, a source could take limits to have
22 a federally enforceable term that would also get
23 them under the low usage unit for turbines such as
24 the eight million break horsepower hour threshold,

1 or the 20,000 megawatt hour threshold.

2 Is that a good answer or am I missing
3 something?

4 MR. RAO: Yeah, I think you answered
5 part of the question. We're mostly looking at if
6 there are any sources of PAL permits already in
7 place under the blueprint rule, or is the Agency
8 aware of any sources of PAL permits?

9 MR. DAVIS: I guess I'm not. I'm not in
10 permitting. But we can certainly look into that
11 and check with our permit section to provide some
12 better answers in post-hearing comments.

13 MR. RAO: That would be helpful if you
14 can. That's about it.

15 HEARING OFFICER: All right. Thank you
16 very much. For the record, does anyone else have
17 any questions for the Agency witnesses? All
18 right. Not hearing or seeing any, we will now
19 move to public comments. Is there anyone present
20 who would like to give a public comment on the
21 Agency proposal that has not yet done so? Hearing
22 and seeing none, let me take a moment to address
23 the issue of an economic impact statement.

24 Section 27B of the Environmental

1 Protection Act provides that the Board must
2 request that the Department of Commerce and
3 Economic Opportunity, DCEO, conduct an economic
4 impact study of proposed rules before the Board
5 adopts the rules. The Board must make either the
6 economic impact study or the Department's
7 explanation for not conducting one available to
8 the public at least 20 days before a public
9 hearing.

10 In a letter dated July 11th, 2024, the
11 Board's chair, Barbara Flynn Curry, requested that
12 DCEO conduct an economic impact study of this
13 rulemaking proposal. On August 28th, 2024, DCEO
14 declined our request, saying they do not have the
15 industrial engineering expertise to meaningfully
16 participate in this docket.

17 Is there anyone present today who would
18 like to testify regarding the Board's request for
19 a study and DCEO's response? All right. Not
20 hearing or seeing any, madam court reporter, can
21 we please go off the record.

22 (At this point there was an off the
23 record discussion.)

24 (The time is 10:51 a.m.)

1 HEARING OFFICER: We'll go back on the
2 record now. We went off the record to discuss
3 procedural issues. The post-hearing comments will
4 be due by December 16th, 2024. And any follow-ups
5 to those comments will be due by the following
6 Friday, December 20th, 2024. Copies of this
7 transcript of today's hearing are expected to be
8 available no later than Monday, December 2nd,
9 2024. Promptly after the Board receives the
10 transcript it will be posted to COOL (phonetic)
11 from which it can be viewed and printed. Are
12 there any other matters that need to be addressed
13 at this time? Neither seeing nor hearing any,
14 thank everyone for participating today. The
15 second hearing is adjourned.

16 (The time is 10:55 a.m.)

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