



ENVIRONMENTAL LAW & POLICY CENTER
ILLINOIS INDIANA MICHIGAN MINNESOTA OHIO WISCONSIN

October 13, 2000

P.C.#9

HAND DELIVERED

Ms. Dorthy Gunn
Clerk of the Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph
Suite 11-500
Chicago, IL 60601

Re: Illinois Commerce Commission Docket R01-9

Dear Ms. Gunn:

Enclosed please find an original and 9 copies of the *Comments of the Environmental Law and Policy Center*.

Sincerely,

Daniel W. Rosenblum / 17/8
Daniel W. Rosenblum
Attorney

DWR/cm
cc: Service List

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ROBERT L. GRAHAM - CHAIRPERSON HOWARD A. LEARNER - EXECUTIVE DIRECTOR



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)


PROPOSED NEW 35 ILL. ADM. CODE, SUPART W.,)
THE NO_x TRADING PROGRAM FOR)
ELECTRICAL GENERATING UNITS, AND)
AMENDMENTS TO 35 ILL. ADM. CODE 211 AND 217)

R01-9

(Rulemaking-Air)

NOTICE OF FILING


PLEASE TAKE NOTICE that on this date, October 13, 2000, I filed with Dorothy Gunn, Clerk of the Illinois Pollution Control Board, James R. Thompson Center, 100 West Randolph, Suite 11-500, Chicago, IL 60601, the enclosed *Comments of the Environmental Law and Policy Center* in the above-captioned proceeding by messenger.



Daniel W. Rosenblum

CERTIFICATE OF SERVICE

I, DANIEL W. ROSENBLUM, certify that I served the above Notice of Filing together with a true and correct copy of the document referred to therein upon Catherine Glenn, Esq., Hearing Officer, Illinois Pollution Control Board, James R. Thompson Center, 100 West Randolph, Suite 11-500, Chicago, IL 60601 by messenger and all active parties on the attached Service List by depositing a copy in a properly addressed, sealed envelope with the U.S. Post Office, Chicago, Illinois, with proper postage prepaid on October 13, 2000.



Daniel W. Rosenblum

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**COMMENTS OF THE
ENVIRONMENTAL LAW AND POLICY CENTER**

Introduction

The Illinois Environmental Protection Agency's ("IEPA") proposed new 35 Ill. Adm. Code, Subpart W ("Proposed Rule") misses an extraordinary opportunity to cost-effectively comply with the United States Environmental Protection Agency's ("US EPA") NO_x SIP Call. Inexplicably, IEPA has ignored the US EPA's explicit invitation to states to take advantage of the environmental and economic benefits of energy efficiency and renewable energy by including energy efficiency/renewable energy set-asides in their NO_x budget trading programs. The Environmental Law and Policy Center ("ELPC") respectfully requests that the Illinois Pollution Control Board ("Board") require changes in the Proposed Rule that will ensure that the citizens of Illinois benefit from the environmental and economic benefits of energy efficiency and renewable energy and that they not be required to waste their money on more costly measures to reduce NO_x emissions.

US EPA has provided states with guidance documents that clearly set forth both the benefits of energy efficiency/renewable energy set-asides and options and recommendations for how to structure the set-aside. ELPC will resist the temptation to "reinvent the wheel" and instead simply provide the Board with a summary of the information to be found in the guidance documents and urge the Board to refer to and rely upon the documents.

Energy

1. Efficiency and Renewable Energy Provide Major Economic and Environmental Benefits

Starting with the basics, US EPA defines an energy efficiency/renewable energy set-aside ("EE/RE Set-Aside") as "a pool of allowances that comes from within a state's NO_x budget and is used to award energy efficiency and renewable energy projects that are implemented in the state that reduce or displace electricity generation." Office of Atmospheric Programs, United States Environmental Protection Agency, *Guidance on Establishing an Energy Efficiency and Renewable Energy (EE/RE) Set-Aside in the NO_x Budget Trading Program*, 5 (March 1999). US EPA explains that the set-aside comes from within the state's budget "in order to ensure that the use of these allowances will not cause a state to exceed its budget. It comes from the electricity budget only

because this (1) is consistent with the goal of awarding end user actions, and (2) it avoids the possibility of double-rewarding allowances." *Id.*

US EPA succinctly summarizes why states should include an EE/RE set-aside as part of their NO_x Budget Trading Programs:

There are three key reasons for a state to include an EE/RE set-aside as part of its NO_x Budget Trading Program: (1) to reduce the total economic cost of meeting the proposed NO_x cap; (2) to promote energy efficiency by accelerating the adoption of energy efficient practices and technologies; and (3) to reduce future CO₂-related liabilities by recognizing the positive impacts of energy efficiency and renewable energy on carbon emissions. Greater adoption of energy efficiency and renewable energy can prevent growth in NO_x emissions, avert the need for building additional generation facilities, save energy and consumer dollars, and put additional jobs and money into the local economy.

Id. at 6. US EPA's analysis concludes that implementing a 5 percent set-aside will lead to:

an estimated reduction in electric demand of over 90 BKWh in 2003 in the SIP Call region;
approximately \$5.0 billion in energy bill savings to consumers in 2003;
about \$150 million in compliance cost savings for that year; and
about 20,000 new jobs throughout the region.

Id. at 7. US EPA notes that energy efficiency and renewable energy projects will also prevent emissions of other pollutants, including particulate matter, greenhouse gases, mercury and others. *Id.* A more detailed analysis of the benefits of an EE/RE set-aside is included in the guidance document. ELPC notes that the guidance document has tremendous credibility as the work product of an EPA/State workgroup that included EPA representatives from the Office of Air and Radiation, EPA Regional Air Offices and air and energy officials from various states including Indiana and Wisconsin. *Id.* at i.

2. Illinois Should Establish an EE/RE Set-Aside of at Least 5 Percent of the Illinois NO_x Budget

US EPA recommends that states opting to include an EE/RE set-aside "set the size of the allowance pool at an amount large enough to maximize the opportunities to promote energy efficiency and renewables projects." *Id.* at 10. US EPA states that a set-aside in the range of 5-15 percent of the total electricity budget for a state or across the region is reasonable. *Id.* Because Illinois utilities have not implemented aggressive energy efficiency programs or renewable programs, such as those that exist in states such as Wisconsin, there is a huge amount of cost-

effective energy efficiency and renewable energy available in Illinois. See Goldberg, *et. al.*, American Council for an Energy-Efficient Economy, *Energy Efficiency and Economic Development in Illinois* (December 1998). While Illinois could easily justify a 15 percent set-aside, ELPC recommends that Illinois include, at an absolute minimum, a 5 percent set-aside for energy efficiency and renewable resources.

3. Illinois Should Give Credit for Early Actions

US EPA notes that just as the NO_x Budget Trading Program allows core sources to earn allowances for NO_x reductions that occur as a result of actions taken prior to the beginning of the trading program, set-aside allowances can also be awarded for actions taken prior to the start of the program. US EPA provides a persuasive rationale for giving credit for early actions:

One advantage to allowing early credit is the avoidance of providing a short-term disincentive to undertaking energy efficiency and renewable energy actions. Without credit for early action, implementers of projects may consider deferring their actions until the 2003 summer ozone season, when they may be eligible for set-aside allowances. Other advantages of crediting actions prior to the 2003 ozone season include:

increased likelihood that the pool will be fully subscribed;

more accurate estimate of the pool size; and

additional time for State review and processing of applications prior to the 2003 ozone season.

Early credit may also increase the opportunity for the set aside to be fully subscribed for the 2003 ozone season.

Id. at 25. While the guidance document did not anticipate the delay in the beginning of the NO_x Budget Trading Program, the delay only increases the importance of giving credit for early actions.

4. Illinois Should Consider Other Design Issues at a Later Date

US EPA addresses a variety of important design issues in the guidance documents. In the first guidance document EPA analyzes and makes recommendations for the following design elements: (1) what types of projects are eligible for awards, and who would receive allowances; (2) how can pool size be used to help a state focus allowance awards on new projects; (3) how should the pool be sized to award credit for actions implemented before 2003; (4) how does pool size depend on the number of control periods the award will be given for (length of award); and (5) how can states adjust their set-aside pools to handle over and under subscription. *Id.* at x and 16-30. US EPA's second guidance document addresses and makes recommendations on the various programmatic elements that states will need to determine in choosing the best approach for administering their set-aside: (1) how to design the set-aside application process; (2) how to allocate set-aside allowances

to eligible projects; (3) how to translate energy savings and displacements into emissions reductions; (4) the time frame for processing applications and administering allocations; and (5) the kinds of documentations and reporting that should be required. Climate Protection Division, United States Environmental Protection Agency, *Creating an Energy Efficiency and Renewable Energy Set-Aside in the NO_x Budget Trading Program: Designing the Administrative and Quantitative Elements (Draft Guidance)*, EPA-430-K-00-004, v-vi (April 2000).¹ Finally, a third and final guidance document will outline options for states to consider in measuring and verifying the energy savings/displacements that result from set-aside programs.

As discussed in the next section, most of these design issues do not have to be resolved immediately. ELPC recommends that the IEPA establish a collaborative/workshop process to address these design issues.

5. Illinois Should Provide the Minimum Information Necessary to Establish an EE/RE Set-Aside

Fortunately, Illinois does not have to resolve all of the design issues at this time. While resolving the issues should not be difficult, thanks to US EPA's extensive analysis and recommendations in the guidance documents, US EPA requires very little detail in the NO_x SIP Call submission. As stated by the US EPA:

In order to include an energy efficiency and renewable energy set-aside as part of the NO_x Budget Trading Program a state needs to submit three pieces of information to EPA in its NO_x SIP Call Submission. First, a state must include a statement in the SIP telling EPA that it has chosen to include such a set-aside. Next, a state must include in its SIP submission the specific number of allowances that it will set-aside for energy efficiency and renewable energy projects beginning in 2003. The state must also indicate whether or not it plans to award allowances for early actions that are implemented prior to the 2003 ozone control period. Finally, the state must re-adjust its allocations to the core sources in its EGU budget by the amount that has been set-aside.

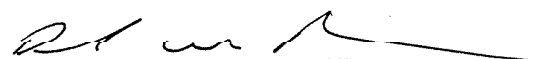
Office of Atmospheric Programs, United States Environmental Protection Agency, *Guidance on Establishing an Energy Efficiency and Renewable Energy (EE/RE) Set-Aside in the NO_x Budget Trading Program*, 31 (March 1999).

¹ Copies of the US EPA guidance documents are available on the US EPA's Climate Protection Division website at http://epa.gov/appdstar/appd/stat_pub.html.

6. Conclusion

Illinois should include a statement in its SIP informing US EPA that it has chosen to establish a set-aside, establish a set-aside of no less than 5 percent of its NO_x budget, award allowances for early actions implemented prior to the initial year of the budget trading program and readjust its allocations to the core sources in its EGU budget by the amount set-aside. IEPA should establish a collaborative/workshop process to address and resolve remaining design issues.

Respectfully submitted,


Daniel W. Rosenblum

Dated: October 13, 2000

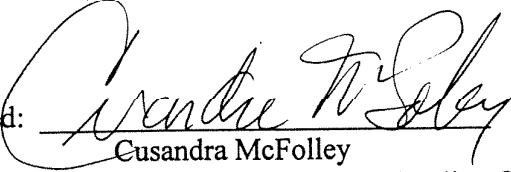
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served by first class mail the *Comments of the Environmental Law and Policy Center* upon each person designated on the service list in Docket NoR01-9.complied .

Dated 13th day of October, 2000.

Signed: _____



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