

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)

NOx TRADING PROGRAM SUNSET) R09-

PROVISIONS FOR ELECTRIC) (Rulemaking-Air)

GENERATING UNITS:)

AMENDMENTS TO 35 ILL.)

ADM. CODE PART 217.SUBPART W)

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JUN 23 2009

STATE OF ILLINOIS
Pollution Control Board

TRANSCRIPT OF PROCEEDINGS had in the
above-entitled cause on 18th day of June, A.D., at
1:00 p.m.

BEFORE: Kathleen M. Crowley, Hearing Officer,
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
312-814-6929

1 APPEARANCES:

2 KATHLEEN M. CROWLEY, Hearing Officer

3 ANAND RAO, Environmental Scientist

4 SHUNDAR LIN, Coordinating Board Member

5 ANDREA S. MOORE, Board Member

6 GARY BLANKENSHIP, Board Member

7

8 SCHIFFHARDIN, LLP,

9 6600 Sears Tower

10 Chicago, Illinois 60606

11 312-258-5567

12 MS. KATHLEEN C. BASSI,

13 appeared on behalf of Midwest Generation;

14

15 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

16 217-524-3337

17 MS. RACHEL DOCTORS,

18 appeared on behalf of the EPA;

19

20 OFFICE OF THE ATTORNEY GENERAL,

21 MS. WHEELER.

22

23 REPORTED BY: SHARON BERKERY, C.S.R.

24

CERTIFICATE NO. 84-4327.

1 THE HEARING OFFICER: Good afternoon.

2 This is a hearing being conducted
3 by the Illinois Pollution Control Board in
4 the matter of Nitrogen Oxide, or NOx, Trading
5 Program Sunset Provisions for Electric
6 Generating Units, 35 Illinois Administrative
7 Code, 217.751, which is the Board's docket,
8 RO9-20.

9 My name is Kathleen Crowley, and I
10 am the hearing officer in this proceeding.
11 And to my immediate right is the coordinating
12 board member, Dr. Shundar Lin. Seated to his
13 right is board member Gary Blankenship,
14 seated to my immediate left is environmental
15 scientist Anand Rao, and seated to his left
16 is board member Andrea S. Moore.

17 We have a very small group today,
18 including only representatives from the
19 Illinois Environmental Protection Agency, the
20 Attorney General's Office and --

21 MS. BASSI: The regulated community.

22 THE HEARING OFFICER: Thank you.

23 So I'm going to dispense with some
24 of the usual opening remarks.

1 This is a hearing being conducted
2 on the Illinois Environmental Protection
3 Agency's April 21st, 2001 -- excuse me --
4 2009 regulatory proposal.

5 Dr. Lin wanted to make a couple of
6 remarks, so we'll let him do so.

7 MR. LIN: Good afternoon.

8 On behalf of the Board, I welcome
9 everyone to this hearing to consider NOx
10 Trading Program Sunset Provision. Thank you
11 for your time and effort to participate and
12 invest in building the record of this
13 rulemaking process at this time.

14 We do hold to the testimony and
15 the questions today. Thank you.

16 THE HEARING OFFICER: The -- at this
17 point, I think I will just let the Illinois
18 EPA begin its presentation.

19 MS. DOCTORS: I just have a short
20 presentation.

21 My name is Rachel Doctors, and I'm
22 representing the Illinois Environmental
23 Protection Agency today.

24 On behalf of the director, I'd

1 THE HEARING OFFICER: Yes.

2 (WHEREUPON, said document,
3 previously marked Exhibit 1
4 for identification,
5 was offered and received in
6 evidence.)

7 MS. DOCTORS: I'm going to just make a
8 very brief opening statement, so, on the
9 record, we have a summary of what the
10 proposal covers, and then we can go directly
11 to questions from Mr. Mahajan.

12 THE HEARING OFFICER: Great.

13 MS. DOCTORS: The purpose of this
14 proposal is the Sunset Provisions of Part 217
15 Subpart W, beginning with the 2009 control
16 period consistent with the Clean Air
17 Interstate Rule adopted by the Board in
18 Part 225. The CAIR rule replaced the NOx SIP
19 Call trading program with a program that
20 contains both a NOx emissions annual and an
21 ozone season trading program.

22 The Illinois EPA is proposing to
23 Sunset any requirements related to the NOx
24 SIP Call trading program after the 2008

1 control period as set forth in Subpart W
2 beginning in 2009, the control period, and
3 thereafter. The provisions will remain in
4 effect for violations that occurred in the
5 control periods prior to 2009.

6 In this case, the rule is being
7 proposed to prevent a burden on affected
8 sources and replaces a rule that is no longer
9 being implemented by USEPA. They no longer
10 are giving out allowance for the NOx program,
11 only allowances for the CAIR program.

12 The adoption of the proposal will
13 not result in injury or substantial prejudice
14 nor an abrupt departure from a
15 well-established practice. Hence, adoption
16 of this proposal is appropriate to prevent a
17 burden on affected EGUs.

18 And that really is all I'd like to
19 say at this time. I'd like to open it for
20 questions, as appropriate.

21 THE HEARING OFFICER: I think we will
22 first ask that the court reporter swear in
23 the witness.

24

1 (WHEREUPON, the witness was duly
2 sworn.)

3 THE HEARING OFFICER: And I will just
4 ask that Exhibit 1 represents the testimony
5 that you would be prepared to give today --

6 THE WITNESS: Thank you.

7 THE HEARING OFFICER: -- and you're
8 sworn to the truth of that, as well.

9 Thank you.

10 THE WITNESS: Yes.

11 THE HEARING OFFICER: Okay.

12 Questions?

13 YOGINDER MAHAJAN,
14 called as a witness herein, having been first duly
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. BASSI:

18 Q. Hello, my name is Kathleen Bassi,
19 I am with the law firm SchiffHardin, LLP, and I'm
20 here today representing Midwest Generation.

21 I have questions -- I have just a
22 couple series of questions that are related to two
23 issues. One of them relates to enforcement, and one
24 of them relates to the distribution of unused

1 allowances under Subpart W.

2 MS. BASSI: And is Mr. Mahajan able to
3 answer questions on those two topics?

4 MS. DOCTORS: No, he is not. But I'd
5 love for you to ask your series of questions,
6 put them on the record, and we will address
7 them at the second hearing with respect to
8 the first issue, the compliance issue.

9 Mr. David Bloomberg will be
10 available at the second hearing to answer
11 them -- I mean, with respect to your first
12 question, the compliance issue.

13 With respect to the allowances,
14 this proposal does not address allowances.
15 Okay? It only -- so there -- that issue will
16 not be addressed at the second hearing,
17 because whatever allowances currently are
18 will remain. Okay?

19 But, please, put them in, and we
20 can respond in comment.

21 BY MS. BASSI:

22 Q. All right. The first series of
23 questions that I have is with respect to
24 enforcement.

1 And in her opening statement, I
2 believe Ms. Doctors stated that enforcement of
3 Subpart W from 2000 -- from the 2008 ozone season
4 and previous to then, would remain in effect. And
5 that the proposal was written to preserve the
6 Agency's and USEPA's ability to enforce for past
7 violations.

8 My first question is just to
9 confirm, and I guess I would state it, please
10 confirm that the last truly applicable provisions of
11 Subpart W, as you have proposed to amend it today,
12 occurred at the end of the ozone season in 2008.

13 MS. DOCTORS: Okay. Thank you.

14 BY MS. BASSI:

15 Q. All right. And then, the second
16 question is, wouldn't the Agency -- or would not the
17 Agency already know today, or at least within a
18 short period of time, whether or not there have been
19 violations under Subpart W as of the end of the 2008
20 ozone season?

21 And all of this is just, I guess,
22 questioning why we need to preserve enforcement,
23 even though we always do that.

24 My second set of questions --

1 THE HEARING OFFICER: Let me just make
2 sure -- this witness is not going to address
3 that; is that correct?

4 MS. DOCTORS: Mr. Mahajan won't.

5 THE HEARING OFFICER: That's fine.

6 MS. DOCTORS: David Bloomberg, our
7 manager of compliance, will be available at
8 the second --

9 THE HEARING OFFICER: Fine. I just
10 wanted it clear before she began with
11 something else. Thank you.

12 MS. BASSI: And just also to clarify,
13 I have no plans at this point in time to
14 attend the second hearing. And so, I will be
15 reviewing the transcript of the second
16 hearing -- or somebody, apparently, will read
17 the questions and respond to them -- and then
18 we will deal with whatever remaining issues
19 there are through comments or something like
20 that. Unless they're really bad, and then
21 we'll do something else.

22 The second set of questions that I
23 have goes to the distribution of unused
24 allowances. Subpart W provided that certain

1 allowances that were not distributed but were
2 retained by the Agency would be distributed
3 back to the EGUs that were part of that
4 program.

5 My question is, whether all such
6 allowances have been distributed back to the
7 EGUs as of the end of the 2008 ozone season.
8 If they have not been distributed back to the
9 EGUs, those that are available for
10 distribution back, when will they be
11 distributed back?

12 And then, thirdly, are there
13 allowances that are not under the umbrella of
14 returned distribution, if you will? And, if
15 so, what is the Agency's plan for those
16 allowances? That's it.

17 MR. RAO: I have a follow-up to
18 Ms. Bassi's question. And to your earlier
19 your response, saying that this rule doesn't
20 deal with allowances.

21 But the existing Subpart W does
22 deal with allowances. So it was not clear to
23 me when you said --

24 MS. DOCTORS: It doesn't affect them.

1 I'm sorry, that probably wasn't clear.

2 The allowances that -- what -- can
3 I -- I guess I can say what I'm going to say,
4 because it's a true statement, it's a factual
5 statement out of the CAIR Rule. Is that any
6 allowances that remained in anybody's
7 account, including the Agency's, the State's
8 account, just got moved over into their CAIR
9 account.

10 So no allowances are created or
11 destroyed. There's no change in the number
12 of allowances because of this rule.

13 MR. RAO: Okay.

14 MS. BASSI: But only through vintage
15 2008; is that correct?

16 MS. DOCTORS: Right. Because 2009 are
17 then CAIR allowances.

18 MR. RAO: Okay. Yeah, because, you
19 know, I was a little confused when you said
20 it doesn't deal with it.

21 THE HEARING OFFICER: Well, and I'm
22 sure you would have that made clear in
23 Mr. Bloomberg's testimony?

24 MS. DOCTORS: I believe since his unit

1 is the unit that does the distribution of
2 allowances and deals with CAMDI, the Clean
3 Air Market Division, that they would have the
4 best -- the greatest ability to answer
5 allowance --

6 THE HEARING OFFICER: And so, you will
7 have that statement made by sworn -- in sworn
8 testimony --

9 MS. DOCTORS: Yes.

10 THE HEARING OFFICER: -- at the next
11 hearing?

12 MS. DOCTORS: Yes.

13 THE HEARING OFFICER: Thank you.

14 MS. BASSI: I have another follow-up
15 along these lines then. Would you also
16 confirm, then, that the -- what I'm referring
17 to as Subpart W allowances are NOx SIP Call
18 allowances, or, you know, whatever
19 terminology we want to give them, become CAIR
20 allowances under the new -- the CAIR
21 system and retain whatever value they may
22 have as CAIR allowances?

23 MS. DOCTORS: Is your question -- is
24 that an allowance that's currently worth one

1 ton of emission still worth one ton?

2 MS. BASSI: Yes.

3 MS. DOCTORS: Okay.

4 MS. BASSI: That's it.

5 THE HEARING OFFICER: That's the end
6 of your questions?

7 MS. BASSI: Those are the only
8 questions I have, that I can think of.

9 THE HEARING OFFICER: Any more
10 questions from the Board?

11 MR. LIN: I have a question for you
12 (indicating).

13 THE WITNESS: Uh-huh.

14 BY MR. LIN:

15 Q. On your Page 2, about nine out of ten.
16 Locate to the 21091. What is that unit out of that,
17 pound or milligram or --

18 A. NOx allowances -- each allowance is
19 one ton.

20

21 Q. Ton?

22 A. One ton. So 2000 pounds.

23 Q. Shouldn't you put ton in? Because
24 that's a unit of that number.

1 A. Each allowance is one ton. So if you
2 have it written somewhere, it could have been much
3 easier for you to understand, but each allowance is
4 one ton of NOx.

5 BY MR. RAO:

6 Q. Mr. Mahajan, isn't allowance defined
7 in the rules?

8 A. Yeah, it is.

9 Q. As one ton?

10 A. One ton.

11 THE HEARING OFFICER: So putting ton
12 in would be a redundancy. The rule defines
13 allowance as ton.

14 THE WITNESS: Yes.

15 BY MR. RAO:

16 Q. Along the same lines Mr. Lin was
17 asking, if you go down a few more lines, you have
18 estimated NOx emission reduction from NOx SIP Call
19 were 85,777 per year. There's no units there.

20 A. It should be tons.

21 MS. MOORE: That's what I thought.

22 THE HEARING OFFICER: That should be
23 tons.

24 BY THE WITNESS:

1 A. I'm sorry, yeah, this is tons.

2 BY MR. RAO:

3 Q. And that is the estimated reductions
4 under the NOx SIP Call --

5 A. Yes.

6 Q. -- from the base year of 2007. And
7 further down you state that Illinois EPA believes
8 the CAIR NOx ozone trading will provide reductions
9 in NOx emissions equal to or greater than the
10 estimated reductions from SIP Call -- NOx SIP Call.

11 So do you have an estimate what
12 that number is under CAIR?

13 A. No, it's based on the presumption,
14 because the allowances are the same. So it should
15 be the same.

16 And in 2015, the allowances will
17 be reduced to whatever the number is.

18 Q. Yeah.

19 A. It's less than 3.71, so the reduction
20 will be more it means.

21 Q. Okay.

22 A. It will be beneficial from the
23 environment presumption.

24 MR. RAO: Thank you.

1 THE HEARING OFFICER: Then I'll ask if
2 we can have -- Mr. Mahajan could make the
3 correction and initial it and have it marked
4 as Exhibit 1 to add the unit tons.

5 MS. DOCTORS: The first place that you
6 wanted it added?

7 THE HEARING OFFICER: Was the second
8 full paragraph after --

9 MS. DOCTORS: Eighty-five thousand?

10 THE HEARING OFFICER: Eight five seven
11 seven seven.

12 MS. DOCTORS: Put your initials.

13 THE HEARING OFFICER: Allowances equal
14 tons. This is the only reference that didn't
15 have a unit (indicating).

16 MR. MAHAJAN: So initial it?

17 MS. DOCTORS: Yeah, just put your
18 initials.

19 THE HEARING OFFICER: Just so that
20 it's clear that I haven't added anything that
21 you're not in agreement with.

22 MS. BASSI: Put today's date.

23 MS. DOCTORS: It's the 18th?

24 THE HEARING OFFICER: Thank you.

1 Did anyone else have any questions
2 for either this witness or for the EPA to
3 address at some future point?

4 Ms. Wheeler?

5 MS. WHEELER: No, thank you.

6 THE HEARING OFFICER: Thank you very
7 much then.

8 The next hearing in this matter is
9 scheduled for July 23rd, 2009, also at 1:00
10 in the video room at the Board's Springfield
11 offices.

12 As a matter of housekeeping, I
13 will mention that in the Board's May 7th,
14 2009 order, the Board ordered first notice
15 publication of this rule. That publication
16 has not occurred yet. The material has been
17 submitted to the Secretary of State's office,
18 so that it will be published, we hope, in the
19 near future.

20 Once the first notice publication
21 occurs, of course, there's a 45-day comment
22 period following that. We are aware that we
23 would like to get this rulemaking completed
24 in a timely fashion so we will see whether we

1 can dovetail the posthearing comment period
2 following the second hearing with that APA
3 45-day comment period.

4 But again, we'll see if we need
5 additional time, because of anything --
6 testimony that may be given at the next
7 hearing, we may have to allow additional
8 time. But we'll see how that works.

9 MS. DOCTORS: The Agency is looking --
10 hoping that this rule could be fully adopted
11 no later than November 30th. Because that's
12 when the recordkeeping requirements of
13 Subpart W become effective, when they have --
14 the last day that they can -- so that would
15 be the -- you know, what we're trying to
16 avoid is people having duplicative
17 requirements.

18 THE HEARING OFFICER: Thank you for
19 giving us that specific target date. We
20 certainly hope to do it more quickly than
21 that. But it is helpful to know what our
22 drop dead date is.

23 Yes?

24 MS. BASSI: If I may, on behalf of

1 Midwest Generation, also, I would like to
2 state that Midwest Generation does support
3 this sunseting rule proposal. And we
4 appreciate the Agency's concern with the
5 double -- the duplicative requirements that
6 would apply otherwise.

7 And so, November 30th is a really
8 good target date, so there's not double
9 recordkeeping to be done.

10 Thank you.

11 THE HEARING OFFICER: I'm trying to
12 see whether there's a pre-filing date in the
13 order for the -- July 10th is the pre-filing
14 date for the July 23rd hearing under the
15 May 13th hearing officer order. Obviously,
16 if it could be -- if the Agency's comments
17 addressing this can be assembled earlier,
18 great.

19 But if not, please do try to get
20 us that material so that we can determine how
21 the next hearing needs to go.

22 MS. DOCTORS: Okay.

23 Yes?

24 MR. RAO: Is there any possibility for

1 you to provide answers to Ms. Bassi's
2 questions before the hearing? That way I --

3 THE HEARING OFFICER: And that's what
4 I would hope to see.

5 MR. RAO: Yeah.

6 MS. DOCTORS: Let me see. Let me go
7 back and speak with the affected people.

8 I'll get the transcript and
9 I'll -- we'll have a meeting, and I'll --
10 we'll discuss and I'll get back to the
11 parties.

12 THE HEARING OFFICER: The sooner we
13 can get the information, the sooner we know
14 what additional proceedings need to take
15 place in this rulemaking. And just -- I will
16 just make a warning, if -- due to budget
17 uncertainties, our travel budget is very
18 tight.

19 It is a possibly that you will
20 see, as the hearing officer for the next
21 hearing, Carol Web from the Board's
22 Springfield office, to eliminate travel on my
23 part. So you may be seeing me or you may be
24 seeing Ms. Web, we'll see how that all shakes

1 out, as well.

2 If there is nothing else from
3 anyone, then we'll close this hearing. And
4 thank you all very much for your
5 participation.

6 (WHICH WERE ALL THE MATTERS
7 HEARD IN THE ABOVE-ENTITLED
8 CAUSE THIS DATE.)

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1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF COOK)

4 I, SHARON BERKERY, a Certified Shorthand
5 Reporter of the State of Illinois, do hereby certify
6 that I reported in shorthand the proceedings had at
7 the hearing aforesaid, and that the foregoing is a
8 true, complete and correct transcript of the
9 proceedings of said hearing as appears from my
10 stenographic notes so taken and transcribed under my
11 personal direction.

12 IN WITNESS WHEREOF, I do hereunto set my
13 hand at Chicago, Illinois, this 22nd day of
14 June, 2009.

15

16


17 Certified Shorthand Reporter

18

19

C.S.R. Certificate No. 84-4327.

20

21

22

23

24

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