

2607

July 2, 2007

RECEIVED

2007 JUL -5 PM 1:30

INDEPENDENT REGULATORY
REVIEW COMMISSION

By E-mail

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

Re: Clean Air Interstate Rule

Dear Members of the Environmental Quality Board:

On behalf of our organizations, we are writing to provide comments regarding the the Clean Air Interstate Rule, proposed by the Environmental Quality Board on April 28, 2007 (37 Pa. Bull. 2063) (Pa. CAIR). We support the Board's proposal, especially its measures that will encourage the development of energy efficiency and renewable energy (EERE) in the Commonwealth.

I. Renewable Energy

We strongly support the approach of the proposed CAIR to allocate nitrogen oxide (NO_x) allowances on an equal footing to qualifying EERE sources. This approach recognizes the important contribution of EERE resources in meeting Pennsylvania's energy needs, and offers these important benefits:

- Furthering the achievement of the Pennsylvania Alternative Energy Portfolio Standard (AEPS) requirements;
- Moderating projected increases in electric rates;
- Stimulating local job creation and economic growth; and
- Improving air quality.

A. Furthering the Achievement of the AEPS Requirements:

The proposed rule will further the achievement of the requirements of AEPS because the proposed rule will help assure that qualifying EERE sources receive their full value in the marketplace. In other words, the allocation of NO_x allowances to qualifying EERE projects will serve as an additional financial spur to the development of such projects.

The allocation of NO_x allowances to EERE projects increases the value or expands the market for such projects because the generator can participate in a number of renewable energy and emission allowance markets as follows:

- Selling the renewable energy or Alternative Energy Credit bundled with the allowances to a state or municipality that plans to retire the allowances, thereby receiving NO_x emissions reduction credit in its State Implementation Plan;¹
- Selling the allowance directly into the NO_x emissions trading market to receive additional revenue;² or
- Bundling the NO_x allowance with Alternative Energy Credits for sale into the voluntary market.

B. Moderating Projected Electric Rate Increases

By diversifying Pennsylvania's electric generation profile, renewable energy and demand-side management initiatives are two of the best ways to moderate electric rate increases. The proposed rule would serve to further stimulate growth of efficiency and renewable resources.

Fuel prices for oil, natural gas and coal have increased dramatically in recent years, and this fuel price volatility is a particular concern with the scheduled end of electric rate caps in Pennsylvania in 2010. The zero-emission renewable energy sources and efficiency resources covered by the proposed rule have zero fuel costs. As a result, these resources serve as a "shock absorber" to moderate price increases for fossil fuels. Thus, encouraging EERE resources as a part of the electricity mix in Pennsylvania is critical to maintaining the economic competitiveness of businesses in the Commonwealth.

C. Stimulating Local Job Creation and Economic Growth

The proposed rule will reinforce Pennsylvania's leadership in clean energy policies, thereby spurring the continued attraction of new jobs and economic growth in the Commonwealth. Pennsylvania's innovative AEPS and other aggressive clean energy policies already have led to the investment of millions of dollars in the State and the creation of more than 1,000 new jobs by Gamesa, the Spanish wind energy company. These policies also have led to an announcement in November of major investments in Pennsylvania by Germany-based Conergy AG, the world's largest solar power integration company.

The proposed rule will provide additional value in the Pennsylvania marketplace for wind energy, solar power, and other AEPS resources. This policy is particularly important in facilitating the achievement of the Commonwealth's aggressive solar energy goals in the AEPS. Moreover, in view of the adoption of NO_x allowance allocation to EERE projects by other States in the Mid-Atlantic Region, the proposed rule will help Pennsylvania to compete with other States in the Region in continuing to attract renewable energy industries.

¹ See section of this letter on "Facilitating Improved Air Quality" for a more detailed description of this issue, p. 3.

² In recent years, the value of NO_x allowances has ranged from about \$1000 to \$3000 per ton.

D. Improving Air Quality

As of this date, more than 30 counties in Pennsylvania have failed to attain the national air quality standards for ozone, and more than 20 counties or portions thereof have failed to attain the air quality standards for fine particulate matter. The allocation of NO_x allowances to EERE resources is an important step to facilitate attainment of these national standards.

The proposed rule provides a key mechanism to help fulfill the potential created by EPA guidance issued in August 2004, entitled "Guidance on SIP Credits for Emission Reductions from Electric Sector Energy Efficiency and Renewable Energy Measures."³ Under this guidance, States and municipalities can receive emission reduction credit in their State Implementation Plans (SIPs) for EERE measures that reduce NO_x emissions and help achieve attainment of national air quality standards. Previously, SIP credit had not been available for EERE measures.

However, in States, such as Pennsylvania, with emissions trading (cap-and-trade) programs for NO_x emissions, the EPA guidance generally will require the retirement of NO_x allowances by the State as a prerequisite for SIP credit for EERE measures.⁴ EPA's justification for requiring the retirement of NO_x allowances is that EERE measures are unlikely to reduce emissions of a capped pollutant, such as NO_x, unless allowances (the right to emit a ton of NO_x) are retired commensurate with the amount of emissions backed down by such measures. EPA is concerned that a fossil fuel generator is likely to take the excess allowances made available when its coal, natural gas, or oil generation is displaced by new EERE projects and either use such allowances itself (perhaps by increasing generation for export outside of its service territory) or sell the allowances to the open market, resulting in the continued emissions of NO_x at the capped amount and the failure to achieve surplus emission reductions.

The following example helps to highlight the benefit of the proposed rule. Under the proposed CAIR, a wind energy farm owner will be eligible to receive an allocation of allowances based on the amount of generation produced. As a result, a municipal or corporate purchaser interested in air quality benefits will be able to purchase renewable energy output and require the retirement of the NO_x allowance as a prerequisite to its purchase. In comparison, under Pennsylvania's current NO_x trading rules, the purchase of wind power would not result in any reduction in NO_x emissions because all allowances would be allocated to fossil fuel generators. The proposed rule is essential to assure that the EERE developers are provided with an available pool of allowances so that they can claim the environmental benefits that accrue from their own investment.

³ Environmental Protection Agency, "Guidance on SIP Credits for Emission Reductions from Electric Sector Energy Efficiency and Renewable Energy Measures." August 5, 2004 (hereinafter cited as EPA SIP Guidance). See http://www.epa.gov/ttn/oarpg/tl/memoranda/ereeerem_gd.pdf

⁴ Id., pp. 10,18.

II. Department Requests for Comment

In the preamble to its proposed rule, the Board specifically requested comments on several aspects of the proposed Pa. CAIR rule. Our responses are as follows:

- Section 145.101: under certain circumstances, the Department proposes to allocate Pa. CAIR NOx allowances to non-electric generating units. We support the Department's proposal, which allows flexibility to sources without increasing overall emissions.
- Section 145.212(a): the Department proposes to replace EPA's system of allocating NOx allowances to new units with its own approach, which will encourage new and cleaner sources of energy. We support the Department's proposal.
- Section 145.212(b): the Department proposes to adopt a modified system for calculating heat input, starting this calculation with electrical output and deriving a heat input for allowance allocation purposes. We support the Department's proposal, which encourages efficiency.
- Section 145.212(c, e): the Department proposes to allocate allowances to new units without a specific set-aside for these units. We support the Department's proposal, which encourages new, clean generation of electricity. We believe that a new unit set-aside is disadvantageous to new units because of the potential for over-subscription of the new source set-aside, as experienced in the NOx Budget Trading Program.
- Section 145.212(f): we strongly support the Department's approach to allocating allowances to qualifying renewable energy resources without arbitrary percentage limitations and the Department's definition of "renewable energy" under Section 145.202. The qualifying EERE projects must produce zero emissions and will displace fossil fuel generation. As a result, these projects will reduce NOx emissions and facilitate efforts of fossil fuel generators to meet their emissions caps. Therefore, it is appropriate for qualifying EERE resources to receive an allocation of NOx allowances commensurate with their amount of generation.

III. Treatment of Emission Reduction Credits

In Section 145.205, the Department proposes, in summary, to reduce the CAIR NOx trading budget and to require that a source must surrender allowances if emission reduction credits are transferred from a source subject to Pa. CAIR to a non-subject source. We support the Department's proposal, which will protect the integrity of the emission allowance budget and ensure improvements in air quality.

IV. Conclusion

For these reasons, we urge your support of the proposed Pa. CAIR. Thank you for considering our views on this proposal.

Sincerely,

Charles McPhedran, Senior Attorney
PennFuture
1518 Walnut Street, Suite 1100
Philadelphia, PA 19102
(215) 545-9693
mcphebran@pennfuture.org

Kevin M. Stewart, Director of Environmental Health
American Lung Association of Pennsylvania
101 Good Drive, Suite 1
Lancaster, PA 17603
(717) 397-5203
kstewart@lunginfo.org

Michael A. Parker, Policy and Outreach Coordinator
Group Against Smog and Pollution, Inc.
5604 Solway Street, Suite 204
Pittsburgh, PA 15217
(412) 325-7382
michael@gasp-pgh.org

Joseph Otis Minott, Executive Director
Clean Air Council
135 S. 19th Street, Suite 300
Philadelphia, PA 19103
(215) 567-4004
jminott@cleanair.org

Eric Thumma, Director, Policy and Regulatory Affairs
Iberdrola Renewable Energies USA
201 King of Prussia Road, Suite 500
Radnor, PA 19087
(484) 654-1887
ethumma@iberdrolausa.com

David K. Friend, VP, Marketing and Sales
U.S. Wind Force, LLC
159 Lakewood Road
Greensburg, PA 15601
(724) 832-1709
dkfriend@uswindforce.com

Elizabeth Salerno, Manager of Policy Analysis
American Wind Energy Association
1101 14th Street, N.W., 12th Floor
Washington, DC 20005
(202) 383-2517
esalerno@awea.org

Alden Hathaway, Senior VP, Business Development
Sterling Planet, Inc.
3295 River Exchange Drive, Suite 300
Norcross, GA 30092
(678) 534-5827
ahathaway@sterlingplanet.com

Debra Jacobson, Owner
DJ Consulting LLC
1703 Fairview Avenue
McLean, VA 22101
(703) 353-7448
djacobson@law.gwu.edu

cc: Joyce Epps, DEP
Jim Stoner, DEP
Kristen Campfield, DEP