
IOWA UTILITIES BOARD
Energy Section

Docket No.: WRU-2015-0026-0150
Utility: Interstate Power and Light
Company
File Date: September 18, 2015
Memo Date: November 3, 2015

TO: The Board

FROM: Ellen Shaw

SUBJECT: Request for Limited Waiver of 199 IAC 20.1(3) To Accommodate
Cross State Air Pollution Rule (CSAPR) Credits

I. Background

On September 18, 2015, Interstate Power and Light Company (IPL) filed a request for waiver of Board rule 199 IAC 20.1(3). The subrule contains definitions for "Affected unit," "Allowance," and the "Clean Air Interstate Rule" ("CAIR"). A waiver would allow IPL to flow credits related to the sale of emissions allowances under the Cross State Air Pollution Rule (CSAPR) to customers through the energy adjustment clause (EAC) in a similar manner that is allowed by Board rules under CAIR.

Staff notes that the EAC is a mechanism through which IPL flows to customers the energy costs to produce power and other costs/credits allowed by the Board. Emission allowances are authorizations issued by the United States Environmental Protection Agency (EPA) for an electric generating unit (EGU) to emit certain pollutants; the EGU must surrender allowances equal to its actual emissions and may swap or purchase additional allowances from other EGUs in order to have sufficient allowances.

CAIR/CSAPR litigation background:

- In March 2005, the EPA enacted CAIR in order to, among other things, reduce emissions from EGUs.
- In April 2008, the Board adopted revisions for 20.1(3) in Docket No. RMU-07-11 that, among other things, specified "CAIR" in the definitions of "Allowance" and "Affected unit."
- In July 2008, the United States Court of Appeals for the District of Columbia (D.C. Circuit) vacated CAIR.
- The EPA petitioned the D.C. Court for rehearing or, in the alternative, for remand of the case back to the EPA without vacatur.

- In December 2008, the Court remanded the matter to the EPA for further proceedings and consideration, allowing CAIR to be in place until a final CAIR replacement rule became effective.
- In July 2011, the EPA issued CSAPR as a replacement for CAIR effective January 2012.
- In December 2011, the D.C. Court issued a stay on the implementation of CSAPR pending resolution of legal challenges; CAIR remained in effect.
- In August 2012, a three-judge panel of the D.C. Court vacated CSAPR and remanded the proceeding back to the EPA to promulgate a valid replacement for CAIR.
- The EPA requested a rehearing from the full D.C. Circuit and was denied.
- In April 2014 the U.S. Supreme Court issued an opinion reversing the order that had vacated CSAPR and remanded certain elements back to the D.C. Circuit.
- In October 2014, the D.C. Court lifted the stay on CSAPR.
- In November 2014, the EPA issued a ministerial rule that updates the CSAPR compliance dates and emissions allocations; CAIR is no longer applicable in 2015.

IPL commented that it expects to receive sufficient allowances in its allocation from the EPA to comply with CSAPR requirements. IPL will actively manage its CSAPR allowances to ensure adequate allowances are available to support its ongoing EGU operations and will transact (bank, swap, or sell) any allowances in excess of those needed to comply with CSAPR, to the benefit of IPL customers. IPL projected approximately \$853,595 from the sale of CSAPR allowances in 2015 that will flow through the EAC if the Board grants IPL's waiver request.

IPL commented that it requests the Board interpret the definitions of "Affected Unit," "Allowance," and "Clean Air Interstate Rule" as pertaining to CAIR or its successor rule, CSAPR. IPL requests that the waiver continue until IPL's next Emissions Plan and Budget (EPB) update goes into effect, which is anticipated to be January 1, 2017.¹

IPL commented that the Board's four criteria in 199 IAC 1.3 for granting waiver requests are met:

1. A strict interpretation of the definitions in 20.1(3) would prohibit IPL from flowing CSAPR-related proceeds back to IPL customers, which would prohibit customers from benefitting from such sales. Therefore, application of the rule would pose an undue hardship.

¹ Iowa Code § 476.6(20) requires Iowa's rate-regulated utilities to develop a multi year emissions plan and associated budget for managing regulated emissions from their coal-fired facilities in a cost-effective manner, with updates filed at least every two years. IPL received Board approval for its most recent EPB plan, Docket No. EPB-2014-0150, which pertains to 2015 – 2016.

2. Granting the waiver to allow the proceeds from sales of CSAPR allowances through IPL's EAC would not prejudice the legal rights of any person.
3. The provisions waived are not specifically mandated by statute.
4. With the waiver, IPL customers will have the same protections they enjoy for any charge or credit anticipated and/or collected under the EAC and will additionally receive the proceeds from CSAPR allowance sales. Therefore, the public health, safety and welfare will be afforded substantially equal protection if this waiver is granted.

No objections or other responses were filed.

II. Legal Standards

Board rule 199 IAC 20.1(3) contains the following definitions referenced by IPL:

"Affected unit" means a unit or source that is subject to any emission reduction requirement or limitation under the Acid Rain Program, the Clean Air Interstate Rule (CAIR) or the Clean Air Mercury Rule (CAMR), or a unit or source that opts in under 40 CFR Part 74.

"Allowance" means an authorization, allocated by the United States Environmental Protection Agency (EPA) under the Acid Rain Program, to emit sulfur dioxide (SO₂), any SO₂ and nitrogen oxide (NO_x) emissions subject to the Clean Air Interstate Rule (CAIR), or mercury (Hg) emissions subject to the Clean Air Mercury Rule (CAMR), during or after a specified calendar year.

"Clean Air Interstate Rule" or "CAIR" means the requirements EPA published in the Federal Register (70 Fed. Reg. 25161) on May 12, 2005.

Board rule 199 IAC 1.3 lists four items for granting waivers and states, in part:

199—IAC 1.3(17A,474,476,78GA,HF2206) Waivers. In response to a request, or on its own motion, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds, based on clear and convincing evidence, that:

1. The application of the rule would pose an undue hardship on the person for whom the waiver is requested;
2. The waiver would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to a petition for waiver are not specifically mandated by statute or other provision of law; and

4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the rule for which the waiver is requested.

The burden of persuasion rests with the person who petitions the board for the waiver. If the above criteria are met, a waiver may be granted at the discretion of the board upon consideration of all relevant factors.

III. Analysis

IPL's waiver request to flow the proceeds to customers from its sale of CSAPR allowances in the same manner as CAIR allowances is reasonable. CSAPR is EPA's replacement for CAIR and the court litigation over CSAPR has been exhausted. Staff agrees that the four criteria for a waiver have been met. The Board's waiver will allow IPL's customers to benefit via the credits flowing through the EAC.

IV. Recommendation

Attached for the Board's consideration is a draft order granting IPL's waiver request. Staff recommends that the waiver request continue until IPL's next EPB update goes into effect, which is anticipated to be January 1, 2017.