

Preliminary Comments of the Agency of Natural Resources on How the Public Service Board Should Implement 30 V.S.A. §255

By a memorandum dated November 15, 2007, the Public Service Board (“Board”) requested that interested parties file position papers on how the Board should implement the statutory requirements of 30 V.S.A. §255(c)(2) and (d), and the appropriate process for doing so, on or before December 14, 2007. In response, the recommendations of the Agency of Natural Resources (“ANR” or “Agency”) are set forth below.

Background

The Regional Greenhouse Gas Initiative (“RGGI”) is a multi-state initiative to establish a regional carbon dioxide (“CO₂”) emissions budget and allowance trading program that regulates CO₂ emissions from fossil fuel-fired electric generating units that have a nameplate capacity equal to or greater than 25 megawatts. Pursuant to the RGGI Memorandum of Understanding (“MOU”) entered into by the participating states in December 2005, the State of Vermont’s base annual CO₂ emissions budget is as follows: 1,225,830 tons for the 2009 through 2014 allocation years; 1,195,184.25 tons for the 2015 allocation year; 1,164,538.5 tons for the 2016 allocation year; 1,133,892.75 tons for the 2017 allocation year; and 1,103,247 tons for the 2018 allocation year and each succeeding allocation year. See also Proposed Vermont CO₂ Budget Trading Program Regulations §22-501.

Under the RGGI MOU, each signatory state is required to allocate at least 25 percent of their CO₂ emissions budget to a “consumer benefit or strategic energy purpose.”¹ Vermont is required by statute, however, to allocate 100 percent of its CO₂ emissions budget and the proceeds from the sale of CO₂ allowances² to a consumer benefit or strategic energy purpose. See 30 V.S.A. §255(c)(2). Under 30 V.S.A. §255, the Public Service Board is directed to establish a process for this allocation and authorized to appoint one or more consumer trustees “to receive, hold, bank, and sell” Vermont’s CO₂ allowances.

The process for allocating Vermont’s budget of CO₂ allowances and the appointment of consumer trustees should build upon the unprecedented collaboration

¹ According to the RGGI MOU, “Consumer benefit or strategic energy purposes include the use of the allowances to promote energy efficiency, to directly mitigate electricity ratepayer impacts, to promote renewable or non-carbon-emitting energy technologies, to stimulate or reward investment in the development of innovative carbon emissions abatement technologies with significant carbon reduction potential, and/or to fund administration of this Program.”

² A “CO₂ allowance” is “[a] limited authorization by the Agency or a participating state under the CO₂ Budget Trading Program to emit up to one ton of CO₂” Proposed Vermont CO₂ Budget Trading Program Regulations §22-102(m).

between environmental and energy regulatory agencies established during the RGGI design process. Given the complicated interrelations between emissions of greenhouse gases and air quality, this collaboration will ensure that the proceeds from the sale of CO₂ allowances are invested in strategies and technologies that maximize cost effective reductions in greenhouse emissions while minimizing impacts on electric system reliability and avoiding inadvertent environmental impacts.

Recommendations

With regard to implementing the statutory requirements of 30 V.S.A. §255(c)(2) and (d) and ensuring consistency with the RGGI MOU and ANR's proposed Vermont CO₂ Budget Trading Program Regulations, the Agency offers the following preliminary comments.

Pursuant to 30 V.S.A. §255(c)(2) and ANR's Proposed Vermont CO₂ Budget Trading Program Regulations, 100 percent of Vermont's base annual CO₂ emissions budget and the corresponding CO₂ allowances for each allocation year will be allocated to the "consumer benefit or strategic energy purpose account." See 30 V.S.A. §255(c)(2) ("[T]he public service board . . . shall establish a process to allocate 100 percent of the Vermont statewide budget of tradable power sector carbon credits . . . to one or more trustees acting on behalf of consumers . . ."). See also Proposed Vermont CO₂ Budget Trading Program Regulations §22-502 ("For each allocation year, the Agency will allocate 100 percent of the State of Vermont CO₂ Budget Trading Program annual base budget to the consumer benefit or strategic energy purpose account."). The term "consumer benefit or strategic energy purpose account" is defined as "[a] general account managed by one or more consumer trustees appointed by the Public Service Board to receive, hold, bank, or sell, CO₂ allowances . . ." Id. at §22-102(af).

The participating RGGI states are currently contemplating holding a regional auction of CO₂ allowances as early as mid-2008 and the proposed Vermont CO₂ Budget Trading Program Regulations require the Agency to "record in the consumer benefit or strategic energy purpose account the CO₂ allowances for all allocation years" by January 1, 2009. Id. at §22-604(a). Accordingly, the Board's allocation plan should provide that prior to the first scheduled auction of CO₂ allowances and no later than December 31, 2008, the Public Service Board or the one or more consumer trustees appointed by the Board shall establish a "general account"³ pursuant to ANR's Vermont CO₂ Budget Trading Program Regulations. See id. at §22-602(b) (setting forth requirements for establishing a general account). This general account shall be referred to as "the consumer benefit or strategic energy purpose account" and shall be managed by the one or more consumer trustees appointed by the Public Service Board. See id. at §22-102(af).

³ Under Section 22-102(al) of ANR's Proposed Vermont CO₂ Budget Trading Program Regulation, "general account" is defined as "[a] CO₂ Allowance Tracking System account established under Subchapter VI, that is not a compliance account."

Pursuant to 30 V.S.A. §255(d), the consumer trustee(s) appointed by the Board shall be authorized “to receive, hold, bank, and sell” CO₂ allowances created under RGGI. To achieve the goal set forth in 30 V.S.A. §255(c)(2)(C), the Agency recommends that, when appointing the one or more consumer trustees, the Public Service Board select individuals and/or entities with the financial expertise and ability “to optimize the revenues received from the management and sale of carbon credits for the benefit of Vermont electric consumers and the Vermont economy.”

With respect to the sale of CO₂ allowances, the Agency recommends that the Public Service Board establish auction procedures as part of the Board’s allocation plan or a companion document thereto. Further, the Public Service Board’s allocation plan should provide that the sale of CO₂ allowances from the consumer benefit or strategic energy purpose account by the consumer trustee(s) shall be conducted in accordance with the auction procedures established by the Board. If deemed in the best interest of Vermont, the Board’s auction procedures should allow for the conduct of a regional auction with other participating RGGI states. The Agency notes that the auction design and procedures established by the Board may serve to accomplish some of the goals set forth in 30 V.S.A. §255(c)(2)(A), (B), and (D).

The Board’s allocation plan should further provide that all proceeds from the sale of CO₂ allowances from the consumer benefit or strategic energy purpose account shall be allocated to a special and discrete fund administered by the consumer trustee(s) appointed by the Public Service Board (hereinafter referred to as the “Consumer Benefit/Strategic Energy Purpose Fund”). See 30 V.S.A. §255(c)(2) (directing the Board “to establish a process to allocate . . . the proceeds from the sale of [CO₂ allowances] to one or more trustees acting on behalf of consumers . . .”). Moreover, consistent with the goal of optimizing the revenues received from the sale of CO₂ allowances set forth in 30 V.S.A. §255(c)(2)(C), all balances in the fund at the end of any fiscal year shall be carried forward and remain part of the fund, and interest earned by the fund shall be deposited in the fund.

Pursuant to 30 V.S.A. §255(a)(6)-(8) and (c)(2), the Board’s allocation plan should provide that the proceeds from the sale of CO₂ allowances shall be invested in a strategic portfolio of energy efficiency and other low-carbon generation resources that maximize cost effective reductions in greenhouse gas emissions while minimizing impacts on electric system reliability. To ensure that Vermont remains eligible to participate in RGGI and to meet the principles set forth 30 V.S.A. §255(c)(2)(B) and (F), such investments should be deemed to include the reasonable costs associated with the implementation and operation of RGGI in Vermont.

In addition, the Agency recommends that the Public Service Board establish an Advisory Committee to make specific decisions with respect to investment strategies and projects. At a minimum, the Advisory Committee should consist of the Secretary of the Agency of Natural Resources and the Commissioner of the Department of Public Service, or their designees. This will serve the dual purposes of continuing the valuable collaboration between environmental and energy regulatory agencies established during

the RGGI design process and achieving the statutory goal of “support[ing] efforts recommended by the agency of natural resources or the department of public service to stimulate or support investment in the development of innovative power sector carbon emissions abatement technologies that have significant carbon reduction potential.” 30 V.S.A. §255(c)(2)(G). Other members should be appointed to the Advisory Committee as deemed necessary by the Board.

In selecting investment strategies, ANR recommends that the Public Service Board’s allocation plan establish the following evaluation criteria for the Advisory Committee to consider: (1) the greenhouse gas reduction potential and climate change benefits of the proposed strategy; (2) the proposed strategy in regard to the long-term benefit to Vermont power consumers, state climate change and energy efficiency objectives and policies, and state greenhouse gas reduction goals; and (3) any unintended environmental impacts of the proposed strategy. These criteria will help to achieve the goals set forth in 30 V.S.A. §255(c)(2)(E) and (F). Further, to ensure that there is a long-term vision and some continuity for allocating the funds generated from the consumer benefit or strategic energy purpose account, the Board’s allocation plan should direct the Advisory Committee to develop a five-year plan for expenditures from the Consumer Benefit/Strategic Energy Purpose Fund. See 30 V.S.A. §255(c)(2) and (c)(2)(F) (encouraging “accelerated and sustained investments in energy efficiency and other low-cost, low-carbon power system investments” (emphasis added)). This plan should be updated at least every five years or more often if necessary to respond to changing conditions.

Finally, the Public Service Board’s allocation plan should direct the consumer trustee(s) to disburse monies from the Consumer Benefit/Strategic Energy Purpose Fund as directed by the Advisory Committee.