

**BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:

PETITION OF ELECTRIC ENERGY, INC.  
FOR A FINDING OF INAPPLICABILITY  
OR, IN THE ALTERNATIVE, AN  
ADJUSTED STANDARD FROM  
35 ILL. ADMIN. CODE PART 845

AS 2021-005  
(Adjusted Standard)

**NOTICE OF FILING**

To: Pollution Control Board, Attn: Clerk  
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Pollution Control Board  
Hearing Officer Carol Webb  
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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board Petitioner Electric Energy, Inc.'s Status Report and a Certificate of Service, copies of which are herewith served upon you.

/s/ Sarah L. Lode

Sarah L. Lode

Dated: June 6, 2022

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**ELECTRIC ENERGY, INC.'S STATUS REPORT**

Petitioner, Electric Energy, Inc. (“EEI”), by its undersigned counsel, respectfully provides this status report to the Hearing Officer regarding recent activities in this matter pursuant to the Illinois Pollution Control Board’s (the “Board’s”) March 17, 2022, Order granting a 90-day stay of this adjusted standard proceeding. EEI provides as follows:

1. On May 11, 2021, EEI filed a Petition for a Finding of Inapplicability or, in the Alternative, an Adjusted Standard from 35 Ill. Admin. Code Part 845. Petition of Electric Energy, Inc. (May 11, 2021), *In the Matter of: Petition of Electric Energy, Inc. for a Finding of Inapplicability or, in the Alternative, an Adjusted Standard from 35 Ill. Admin. Code Part 845*, AS 2021-005. EEI’s Petition requested that the Board find the newly enacted Part 845 inapplicable to EEI’s Joppa West Ash Pond (“Joppa West”) or, in the alternative, grant an adjusted standard from certain sections of Part 845 as they may apply to Joppa West.

2. On November 22, 2021, the Illinois Environmental Protection Agency (“IEPA” or the “Agency”) filed its Recommendation in this proceeding, recommending that the Board conditionally grant Petitioner’s request for an adjusted standard. Illinois Environmental Protection Agency Recommendation (Nov. 22, 2021), *In the Matter of: Petition of Electric Energy, Inc. for a Finding of Inapplicability or, in the Alternative, and Adjusted Standard from 35 Ill. Admin. Code*

*Part 845*, AS 2021-005. IEPA included with its Recommendation certain conditions it believed should be included with the grant of the adjusted standard. *Id.* at 38-41.

3. After IEPA filed its Recommendation, EEI and the Agency engaged in multiple discussions for the purpose of incorporating the Agency's Recommendation into an agreed upon interim adjusted standard that EEI could include with its Response to IEPA's Recommendation.

4. On January 11, 2022, USEPA issued proposed decisions on four Part A demonstration submissions that it deemed to be complete under the Federal CCR Rule, 40 C.F.R. Part 257. See USEPA, *Coal Combustion Residuals (CCR) Part A Implementation*, <https://www.epa.gov/coalash/coal-combustion-residuals-ccr-part-implementation>. Of those four proposed decisions, one was a proposed conditional approval while the remaining three were proposed denials. *Id.*

5. Also on January 11, 2022, USEPA sent a letter to the State of Georgia regarding the state's consideration of one of USEPA's proposed determinations for a surface impoundment located in Georgia. Comments of Earthjustice, Environmental Law & Policy Center, Prairie Rivers Network, and Sierra Club on Electric Energy, Inc.'s Petition for a Finding of Inapplicability or Adjusted Standard: P.C. #1 (hereinafter "P.C. #1"), Ex. C (Feb. 14, 2022), *In the Matter of: Petition of Electric Energy, Inc. for a Finding of Inapplicability or, in the Alternative, and Adjusted Standard from 35 Ill. Admin. Code Part 845*, AS 2021-005. On the same date, USEPA issued a letter to Duke Energy related to the applicability of the Federal CCR Rule to two surface impoundments at the Duke Energy Gallagher Generating Station in Indiana. *Id.* at Ex. A.

6. After January 11, 2022, EEI and IEPA continued their discussions on an agreed-upon interim adjusted standard. Those discussions included making adjustments to the interim adjusted standard to take into account USEPA's proposed Part A determinations and letters.

7. On February 14, 2022, Earthjustice, Environmental Law & Policy Center, Prairie Rivers Network, and Sierra Club submitted a public comment in this proceeding. *See* P.C. #1. The comment largely focuses on arguing that the above-referenced USEPA letters and proposed Part A determinations should impact EEI's requested relief in this proceeding. P.C. #1 at 11–22, 26 & Exs. A–D.

8. On March 7, 2022, EEI sought a 90-day stay in this proceeding to allow time for review of USEPA's determinations and statements, to consider any public comments filed about and any changes to those determinations, to consider any federal judicial proceedings that may be filed, and to gain a better understanding of the applicability of the statements by USEPA that P.C. #1 relies upon. IEPA did not object to the stay. Petitioner Electric Energy, Inc.'s Motion to Stay Proceedings (Mar. 7, 2022), *In the Matter of: Petition of Electric Energy, Inc. for a Finding of Inapplicability or, in the Alternative, and Adjusted Standard from 35 Ill. Admin. Code Part 845*, AS 2021-005.

9. On March 17, 2022, the Board granted EEI's requested stay, ordered a status report be filed on June 6, 2022, and directed that any further motion for continuance of the stay be addressed to the Hearing Officer. Order of the Board (Mar. 17, 2022), *In the Matter of: Petition of Electric Energy, Inc. for a Finding of Inapplicability or, in the Alternative, and Adjusted Standard from 35 Ill. Admin. Code Part 845*, AS 2021-005.

10. Several developments have occurred regarding the proposed Part A determinations and USEPA letters since this matter was stayed. At the close of the comment period on USEPA's proposed Part A determinations, no less than 100 public comments had been filed. *See Gavin Power Station CCR Part A Site-Specific Alternative Deadline to Initiation of Closure*, Docket No. EPA-HQ-OLEM-2021-0590, <https://www.regulations.gov/docket/EPA-HQ-OLEM-2021-0590>;

*Spurlock Generating Station: CCR Part A Site-Specific Alternative Deadline to Initiation of Closure*, Docket No. EPA-HQ-OLEM-2021-0595, <https://www.regulations.gov/docket/EPA-HQ-OLEM-2021-0595>; *Dallman Power Station CCR Part A Site-Specific Alternative Deadline to Initiation of Closure*, Docket No. EPA-HQ-OLEM-2021-0588, <https://www.regulations.gov/docket/EPA-HQ-OLEM-2021-0588>; *Clifty Creek Power Station CCR Part A Site-Specific Alternative Deadline to Initiation of Closure*, Docket No. EPA-HQ-OLEM-2021-0587, <https://www.regulations.gov/docket/EPA-HQ-OLEM-2021-0587>.

11. Further, judicial petitions have been filed challenging the basis and legality of USEPA's proposed Part A determinations and letters. *See, e.g., Utility Solid Waste Activities Group v. USEPA*, Case No. 22-1058 (D.C. Cir.); *Electric Energy, Inc. v. USEPA*, Case No. 22-1056 (D.C. Cir.).

12. USEPA's Part A determinations and letters, and the subsequent challenges and comments to those determinations and letters, may have an impact on this proceeding, as demonstrated by the comments filed in P.C. #1. EEI understands that IEPA has also been in correspondence with USEPA to evaluate how, if at all, these federal developments might impact coal combustion residuals surface impoundments and related units in Illinois.

13. Given that comments on the Part A determinations are still undergoing consideration by USEPA, that USEPA's January 11 statements are under judicial review, and that EEI has not been informed of any updates regarding IEPA's discussions with USEPA on the impact of USEPA's statements, if any, on Joppa West, EEI believes a continuance of the stay in this matter is appropriate. Accordingly, on May 24, 2022, EEI contacted IEPA to discuss the possibility of continuing the stay in this matter.

14. On May 27, 2022, EEI and IEPA met and conferred to discuss a continuance of the stay. The Agency's attorneys represented that they would discuss the matter with Agency management. On June 1, 2022, the Agency told EEI that it would oppose a continuance of the stay.

15. Given various issues related to availability, EEI and IEPA have not been able to meet to discuss the Agency's reasons for opposing a stay or to discuss how forgoing an additional stay will impact previous filings in this proceeding as well as the schedule for this proceeding going forward. EEI believes that having such discussions is important to informing its decisions regarding whether to request a continuance of the stay with the Hearing Officer and/or whether continuing with the proceeding is feasible.

16. Accordingly, concurrent with this status report, EEI is submitting a request to the Hearing Officer to schedule a status conference 14 days from today, during which time the parties can meet and confer on these issues. EEI is also proposing that by or before the end of that 14-day period, it will file a request with the Hearing Officer for a continuance of the stay or, in the alternative, work with the Agency on a mutually agreeable proposed schedule for this proceeding going forward. EEI has discussed this request and proposal with IEPA, and IEPA has represented that it does not object.

Respectfully submitted,

ELECTRIC ENERGY, INC.

By:           /s/ Joshua R. More            
One of its Attorneys

Dated: June 6, 2022

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on this 6th day of June, 2022:

I have electronically served a true and correct copy of Petitioner Electric Energy, Inc. Status Report by electronically filing with the Clerk of the Illinois Pollution Control Board and by e-mail upon the following persons:

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My e-mail address is Sarah.Lode@afslaw.com.

The number of pages in the e-mail transmission is 9.

The e-mail transmission took place before 5:00 p.m.

/s/ Sarah L. Lode

Sarah L. Lode

Dated: June 6, 2022

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