

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

**AMEREN ENERGY GENERATING
COMPANY, AMERENENERGY
RESOURCES GENRATING COMPANY,
AND ELECTRIC ENERGY, INC.,**

Petitioners,

v.

**ILLINOIS ENVRIONMENTAL
PROTECTION AGENCY,**

Respondent.

**PCB 09-021
(Variance-Air)**

NOTICE

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Bradley Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Renee Cipriano
Kathleen Bassi
Amy Antonioli
Schiff Hardin, LLP
6600 Sears Tower
233 South Wacker Drive
Chicago, IL 60606

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a, MOTION FOR LEAVE TO FILE REPLY and REPLY, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



John J. Kim
Managing Attorney
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217.782.5544
217.782.9143 (TDD)
Dated: December 4, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AMEREN ENERGY GENERATING)	
COMPANY, AMERENENERGY)	
RESOURCES GENRATING COMPANY,)	
AND ELECTRIC ENERGY, INC.,)	
)	
Petitioners,)	
)	PCB 09-021
v.)	(Variance-Air)
)	
ILLINOIS ENVRIONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

MOTION FOR LEAVE TO FILE REPLY

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA") by one of its attorneys, John J. Kim, and, pursuant to 35 Ill. Adm. Code 101.500, 101.502, and the Illinois Pollution Control Board's ("Board") Hearing Officer's Order dated November 24, 2008, hereby files this Motion for Leave to File Reply to the Response of AMEREN GENERATING COMPANY, AMERENENERGY RESOURCES GENERATING COMPANY, and ELECTRIC ENERGY, INC. (collectively, "Ameren" or "Petitioners"), to the Illinois EPA's Recommendation to Petitioners' Petition for Variance from certain requirements of the Multi-Pollutant Standard ("MPS"), 35 Ill. Adm. Code 225.233. In support of its Motion, the Illinois EPA states as follows:

1. On October 1, 2008, Petitioners filed a Petition for Variance from a provision of the MPS, 35 Ill. Adm. Code 225.233, for a period beginning January 1, 2013, through December 31, 2014.
2. On November 17, 2008, the Illinois EPA filed a Recommendation with the Board pursuant to Section 37(a) of the Illinois Environmental Protection Act ("Act") (415

ILCS 5/37(a)) and Section 104.216 of the Board's procedural rules (35 Ill. Adm. Code 104.216). In the Recommendation, the Illinois EPA included all requisite information as required by Section 104.216(b).

3. On November 24, 2008, counsel for the parties participated in a telephonic status conference with the Board's assigned Hearing Officer. During that conference, counsel for the Illinois EPA stated its intent and desire to file a Reply to the Response that was anticipated to be filed by Ameren. The Hearing Officer noted the request, and in an order dated November 24, 2008, memorialized the Illinois EPA's anticipation of filing this Motion and the accompanying Reply by December 3, 2008.

4. On November 25, 2008, Ameren filed a Response to the Illinois EPA's Recommendation. In the Response, Ameren addressed certain issues and concerns raised by the Illinois EPA in its Recommendation.

5. As anticipated, the Illinois EPA is filing with this Motion a Reply to the Response filed by Ameren. The Reply is necessary to respond to the information within the Response and to make clear to the Board the Illinois EPA's position that it does not object to the Board granting a variance in this proceeding so long as the agreement in the Response to substitute a particular emission rate for one otherwise set forth in the Petition is included in the variance.

WHEREFORE, for the reasons set forth above, the Illinois EPA hereby respectfully requests that the Board grant it leave to file a Reply to the Response to the Recommendation in this matter.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,
Respondent

By: 
John J. Kim
Managing Attorney
Division of Legal Counsel

Dated: December 4, 2008

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REPLY

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”) by one of its attorneys, John J. Kim, and, pursuant to the Illinois Pollution Control Board’s (“Board”) Hearing Officer’s Order dated November 24, 2008, hereby files this Reply to the Response of AMEREN GENERATING COMPANY, AMERENENERGY RESOURCES GENERATING COMPANY, and ELECTRIC ENERGY, INC. (collectively, “Ameren” or “Petitioners”), to the Illinois EPA’s Recommendation to Petitioners’ Petition for Variance from certain requirements of the Multi-Pollutant Standard (“MPS”), 35 Ill. Adm. Code 225.233. In support of its Reply, the Illinois EPA states as follows:

1. On October 1, 2008, Petitioners filed a Petition for Variance from a provision of the MPS, 35 Ill. Adm. Code 225.233, for a period beginning January 1, 2013, through December 31, 2014.
2. On November 17, 2008, the Illinois EPA filed a Recommendation with the Board pursuant to Section 37(a) of the Illinois Environmental Protection Act (“Act”) (415 ILCS 5/37(a)) and Section 104.216 of the Board’s procedural rules (35 Ill. Adm. Code

104.216). In the Recommendation, the Illinois EPA included all requisite information as required by Section 104.216(b).

3. In the Recommendation, the Illinois EPA stated several times that following the filing of the Petition by the Petitioners, the Illinois EPA and the Petitioners continued with discussions that had been initiated prior to the filing of the Petition and had not ceased with the filing. As a result of those continuing discussions, the Illinois EPA and Ameren reached an understanding as to the variance petition's proposed relief.

4. As noted in paragraphs 33, 40, 47, 49, 50, and 53, the Illinois EPA represented that it would not object to the Board granting a variance to Ameren so long as the conditions originally proposed in the Petition are modified to include a system-wide annual average sulfur dioxide ("SO₂") emission rate of 0.43 pounds per million British thermal units ("lb/mmBtu") for the period from January 1, 2014, through December 31, 2014, as opposed to the 0.44 lb/mmBtu rate proposed in the Petition.

5. On November 25, 2008, Ameren filed a Response to the Illinois EPA's Recommendation. In the Response, Ameren addressed certain issues and concerns raised by the Illinois EPA in its Recommendation.

6. The Illinois EPA acknowledges the Response filed by Ameren and the statements and information therein. The Illinois EPA is not amending or otherwise modifying the content of its Recommendation based on any information or statements contained in Ameren's Response, as it is the Board's purview to consider the substance of the Petition, Recommendation, Response and this Reply in the course of rendering its decision.

7. However, the Illinois EPA is unable to reply to statements contained within the Response relating to Ameren's credit situation in the current economic market because

the Illinois EPA does not have any information in its possession to either contradict or confirm Ameren's representations.

8. While the Illinois EPA does not believe statements within its Recommendation were seemingly inconsistent as characterized by the Petitioners, it does direct the Board's attention to the important and overriding subject matter in which all parties are in agreement. Specifically, the Illinois EPA notes that Ameren has agreed that the variance being requested should include the system-wide annual average SO₂ emission rate of 0.43 lb/mmBtu for the period from January 1, 2014, through December 31, 2014.

9. Given that agreement by Ameren to include the 0.43 lb/mmBtu emission rate for SO₂, along with the other commitments and conditions proposed by Ameren in the Petition, the Illinois EPA hereby makes clear to the Board that it does not object to the variance being sought by Ameren.

WHEREFORE, for the reasons set forth above, the Illinois EPA reiterates and further clarifies its Recommendation and states that it does not object to the Board granting the variance as presented and requested by Petitioners, including the agreement made in the Response to modify the Petition as described herein.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,
Respondent

By: 

John J. Kim
Managing Attorney
Division of Legal Counsel

Dated: December 4, 2008

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CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on December 4, 2008, I served true and correct copies of a MOTION FOR LEAVE TO FILE REPLY and REPLY, by electronically filing with the Illinois Pollution Control Board and by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Springfield, Illinois, with sufficient First Class postage affixed thereto, upon the following named persons:

John Therriault, Assistant Clerk
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Suite 11-500
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Bradley Halloran, Hearing Officer
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