

ILLINOIS POLLUTION CONTROL BOARD
September 10, 2009

RECEIVED
CLERK'S OFFICE

SEP 10 2009

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
AMEREN ASH POND CLOSURE RULES) R09-21
(HUTSONVILLE POWER STATION):) (Rulemaking - Land)
PROPOSED 35 ILL. ADM. CODE 840.101)
THROUGH 840.144)

ORIGINAL

HEARING OFFICER ORDER

In summary, the order below grants the motion for extension of time filed by Ameren Energy Generating Company (Ameren) on September 1, 2009; extends the deadline for pre-filing questions to September 15, 2009; and extends the deadline for pre-filing answers to September 22, 2009.

On May 19, 2009, Ameren filed a proposal for site-specific rulemaking. Ameren proposes a new subchapter in the Board's waste disposal regulations to address the closure of surface impoundments. Specifically, Ameren seeks adoption of regulations through which it can close Ash Pond D at its Hutsonville Power Station near Hutsonville, Crawford County. In an order dated June 18, 2009, the Board accepted the proposal for hearing and directed the hearing officer to proceed to hearing.

In an order dated June 30, 2009, the hearing officer scheduled a hearing beginning on Tuesday, September 29, 2009, and continuing, if necessary, on Wednesday, September 30, 2009. In the same order, the hearing officer also directed participants wishing to testify at the hearing to pre-file testimony no later than Tuesday, August 18, 2009. In order to expedite the hearing, the hearing officer directed participants to pre-file questions based on pre-filed testimony no later than Tuesday, September 1, 2009. The order also directed participants whose pre-filed testimony elicited pre-filed questions to pre-file written answers to those questions no later than Tuesday, September 15, 2009.

On August 18, 2009, Ameren pre-filed the testimony of Mr. Michael Bollinger. Also on August 18, 2009, the Illinois Environmental Protection Agency (Agency) pre-filed the testimony of Mr. Richard P. Cobb, Mr. William E. Buscher, Ms. Lynn E. Dunaway, Mr. Stephen F. Nightingale, and Mr. Christian J. Liebman.

On September 1, 2009, Ms. Traci L. Barkley, Water Resources Scientist for Prairie Rivers Network, pre-filed fifteen questions. Those questions are addressed separately as follows: to Ameren with regard to the Statement of Reasons filed with its proposal on May 19, 2009; to Mr. Bollinger specifically with regard to his pre-filed testimony; to the Agency generally with regard to its pre-filed proposed amendments; and to Mr. Nightingale specifically with regard to his pre-filed testimony.

Also on September 1, 2009, Ameren filed a Motion for Extension of Time to Pre-File Questions and Written Answers (Mot.). In the motion, Ameren notes the pre-filing of testimony according to the August 18, 2009, deadline and states that, since that date, “Ameren and the Agency have been in contact and are working towards resolving the differences between Ameren’s rulemaking proposal and the Agency’s proposed revisions.” Mot. at 2. Ameren requests that, in order to allow this attempt to resolve these differences to continue, the hearing officer extend the deadline to pre-file questions by one week to September 8, 2009, and the deadline to file written answers to those questions by one week to September 22, 2009. *Id.* Ameren argues that, “[b]ecause the participants have already pre-filed testimony in this matter, extending the deadline to pre-file questions and answers will not cause material prejudice to the participants, the Board or the general public.” *Id.* Finally, Ameren states that counsel for the Agency expressed no objection to the requested extensions. *Id.*

Section 101.500(d) of the Board’s procedural rules provides in pertinent part that, “[w]ithin 14 days after service of a motion, a party may file a response to the motion. . . . Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 14 day response period. . . .” 35 Ill. Adm. Code 101.500(d). As noted above, in an order dated June 30, 2009, the hearing officer scheduled a hearing in this matter to begin on Tuesday, September 29, 2009. This hearing date was based in part on the availability of both Ameren and the Agency at that time. *See Ameren Ash Pond Closure Rules (Hutsonville Power Station): Proposed Ill. Adm. Code 840.101 through 840.144, R09-21, slip op. at 2 (June 30, 2009) (hearing officer order).* The same order, in order to expedite the course of the hearing, set deadlines for pre-filing testimony, questions, and answers. *Id.* Because that hearing is scheduled to begin in less than three weeks, undue delay would result from allowing the full 14-day response period to run, and this order will address Ameren’s motion. Based upon review of its substance, the motion for extension of time is granted.

However, Ameren’s proposed extended deadline of September 8, 2009, for pre-filing questions has passed. Accordingly, the deadline to pre-file questions is extended to Tuesday, September 15, 2009. For witnesses whose pre-filed testimony has elicited pre-filed questions, the deadline to pre-file written answers to those questions is extended by one week to Tuesday, September 22, 2009.

In the event that the contact and work mentioned in Ameren’s motion culminates in “resolving the difference between Ameren’s rulemaking proposal and the Agency’s proposed revisions” (Mot. at 2) and generates any joint rulemaking proposal, proponents of such a joint proposal and any amended testimony are strongly urged to file those materials with the Board on or before September 22, 2009.

The “mailbox rule” at 35 Ill. Adm. Code 101.300(b)(2) does not apply to the filing of these pre-filed questions or answers or to the filing of any joint proposal and amended testimony, and the Board’s Clerk must receive these documents before the close of business on the specified dates. However, documents may be filed electronically through the Clerk’s Office On-Line (COOL) from the Board’s Web site at www.ipcb.state.il.us. Any questions about electronic filing through COOL should be directed to the Clerk’s Office at (312) 814-3629. Before filing

pre-filed questions or any other document with the Clerk, please check with the hearing officer or the Board's Clerk to obtain the most recent version of the Service List.

The hearing will begin as scheduled on Tuesday, September 29, 2009. The hearing officer order of June 30, 2009, addressed the order of that hearing. See Ameren Ash Pond Closure Rules (Hutsonville Power Station): Proposed Ill. Adm. Code 840.101 through 840.144, R09-21, slip op. at 2-3 (June 30, 2009).

IT IS SO ORDERED.



Timothy J. Fox
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, Illinois 60601
312-814-6085
foxt@ipcb.state.il.us