

ILLINOIS POLLUTION CONTROL BOARD
November 13, 2009

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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)

HEARING OFFICER ORDER

The hearing in this proceeding took place on Tuesday, September 29, 2009, in Robinson, Crawford County. The Board received the transcript of that hearing (Tr.) on Friday, October 9, 2009, and posted it to its Web site at www.ipcb.state.il.us. In an order dated October 9, 2009, the hearing officer directed any participant in this proceeding wishing to file a post-hearing comment with the Board to do so on or before Friday, October 30, 2009. *See* 35 Ill. Adm. Code 102.108(b), Tr. at 111.

Pursuant to that order, the Board received post-hearing comments on October 23, 2009, from the Agency and on October 30, 2009, from Prairie Rivers Network (PRN) and from Ameren Energy Generating Company (Ameren).

On November 10, 2009, Ameren filed a motion for leave to file additional comment (Mot.), accompanied by its additional post-hearing comments. Ameren's motion states that the Board's procedural rules do not allow consideration of comments that are not timely filed unless the hearing officer or the Board allows filing such a comment to prevent material prejudice. Mot. at 1, citing 35 Ill. Adm. Code 102.208(d). Ameren states that "PRN's public comment misconstrues or mischaracterizes several facts relating to the technical justification and environmental impact of the proposed site-specific rule and alleges that Ameren has not met its burden of proof in this matter." Mot. at 1. Ameren requests that the Board allow it to file its additional comment "to prevent material prejudice that would result if PRN's public comment was allowed to stand containing such allegations and misrepresentations." *Id.* at 2. Ameren further requests that the Board consider the additional comment before proceeding to first notice. *Id.* at 1.

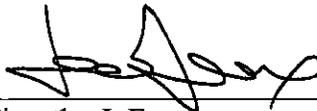
Section 101.500(d) of the Board's procedural rules provides, in pertinent part, that,

[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of 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).

In this proceeding, the Board has already conducted a hearing and held open a 21-day period for post-hearing comments. Furthermore, in its order accepting Ameren's proposal for hearing, the Board stated that it "commits to reaching a prompt decision in this matter as soon as the record is complete and directs its hearing officer to take any necessary steps to avoid delay in completing the record." Ameren Ash Pond Closure Rules (Hutsonville Power Station): Proposed 35 Ill. Adm. Code Part 840.101 through 840.144, R09-21, slip op. at 10 (June 18, 2009). Accordingly, undue delay would result from allowing the full 14-day response period to run under 35 Ill. Adm. Code 101.500(d).

Having reviewed the substance of Ameren's motion and in the absence to date of any opposition to it, the motion for leave to file additional comment is granted as follows. Any participant may respond to the post-hearing comments filed during the period ending October 30, 2009, or the additional comment allowed in this order. Participants are directed to file any such response on or before Monday, November 30, 2009. The "mailbox rule" at 35 Ill. Adm. Code 101.300(b)(2) does not apply to the filing of such responses, and the Board's Clerk must receive these documents before the close of business on Monday, November 30, 2009. Comments and other 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. Comments must be properly served to participants on the Service List for this proceeding. 35 Ill. Adm. Code 102.108(c). Note that, if the Board issues a proposal for first notice, the Board's procedural rules provide for an additional period for comment. See 35 Ill. Adm. Code 102.108(a), 102.604.

IT IS SO ORDERED.



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