

**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  
60 E. Van Buren St., Ste. 630  
Chicago, Illinois 60605  
Carol.Webb@illinois.gov

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 1, 2023

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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 Hearing Officer’s December 6, 2022, Order granting a stay in this proceeding until June 1, 2023.

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 (“Part 845”). Petition (May 11, 2021), AS 2021-005, *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*.

2. On November 22, 2021, the Illinois Environmental Protection Agency (“IEPA”) filed its Recommendation with the Illinois Pollution Control Board (“Board”) recommending that the Board grant a conditional interim adjusted standard. Illinois Environmental Protection Agency Recommendation (Nov. 22, 2021), AS 2021-005, *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*.

3. After IEPA filed its Recommendation, IEPA and EEI began discussions to incorporate the Agency's Recommendation into an agreed upon interim adjusted standard. Additionally, during that time, the United States Environmental Protection Agency ("USEPA") took several actions related to the federal coal combustions residual rule, as described in EEI's March 7, 2022, Motion to Stay the Proceedings as well as in its June 6, 2022 and December 1, 2022, Status Reports in this proceeding. Petitioner Electric Energy, Inc.'s Motion to Stay Proceedings ¶¶ 4–6 (Mar. 7, 2022), AS 2021-005, *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*; Petitioner Electric Energy, Inc.'s Status Report ¶¶ 4–6 (June 6, 2022), AS 2021-005, *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*; Petitioner Electric Energy, Inc.'s Status Report ¶¶ 3 (December 1, 2022), AS 2021-005, *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*. For the reasons explained in those filings, a stay of this proceeding has been necessary to allow EEI and IEPA an opportunity to understand the impact of activities at the federal level and to engage in meaningful discussion regarding a mutually agreeable resolution of this matter.

4. On March 17, 2022, the Board granted an initial stay in this proceeding, 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), AS 2021-005, *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*.

5. Pursuant to the Board's March 17, 2022, Order, EEI filed a status report on June 6, 2022. Petitioner Electric Energy, Inc.'s Status Report (June 6, 2022), AS 2021-005, *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*. Subsequent to that report, EEI and IEPA met and conferred and on June 14, 2022, expressed agreement that extending the stay in this proceeding was appropriate given the circumstances. On June 15, 2022, the Hearing Officer extended the stay until November 30, 2022, directing EEI to file an additional status report by December 1, 2022.

6. Pursuant to the Hearing Officer's June 15, 2022, Order, EEI filed a status report on December 1, 2022. Petitioner Electric Energy, Inc.'s Status Report (December 1, 2022), AS 2021-005, *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*. EEI and IEPA met and conferred prior to filing that report and expressed agreement that a further extension of the stay was appropriate. On December 6, 2022, the Hearing Officer extended the stay by six months and directed EEI to file an additional status report by June 1, 2023.

7. Since the Hearing Officer's December 6, 2022, Order extending the stay of this proceeding, the judicial proceedings challenging the basis and legality of USEPA's proposed Part A determinations and letters discussed in EEI's June 6, 2022, and December 1, 2022, status reports (*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.)) remain ongoing. Earlier this year, USEPA motioned the Court to consolidate Case Numbers 22-1058 and 22-1056 and requested an extension to file its response to Petitioners opening brief. *See* Motion to Consolidate Cases (Mar. 13, 2023), ECF #1989944, *Electric Energy, Inc. v. USEPA*, Case No. 22-1056 (D.C. Cir.); Motion to

Consolidate Cases (Mar. 13, 2023), ECF #1989944, *Utility Solid Waste Activities Group v. USEPA*, Case No. 22-1058 (D.C. Cir.). Currently, USEPA's Motion to Consolidate Case Numbers 22-1058 and 22-1056 is pending before the Court for review and the briefing schedule for the proceedings is suspended. *See* Order (Mar. 14, 2023), ECF #1989968, *Electric Energy, Inc. v. USEPA*, Case No. 22-1056 (D.C. Cir.); Order (Mar. 14, 2023), ECF #1989968, *Utility Solid Waste Activities Group v. USEPA*, Case No. 22-1058 (D.C. Cir.).

8. Additionally, USEPA has made progress but continues to review the public comments submitted to the proposed Part A determinations, as discussed in EEI's June 6, 2022 status report, and has yet to make revisions to or finalize some of those proposed determinations. Further, USEPA has continued to issue and receive comments on additional proposed Part A determinations. *See, e.g.,* <https://www.epa.gov/coalash/coal-combustion-residuals-ccr-part-implementation>.

9. Also, on May 18, 2023, USEPA published a proposed rule seeking to expand the scope of the federal coal combustion residual rule, which may have relevance to the discussions EEI and IEPA are having regarding this matter in the event the rule is finalized as proposed. *Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments*, 88 Fed. Reg. 31982 (May 18, 2023).

10. EEI and IEPA continue to communicate and make progress towards possible resolution of this matter.

11. Prior to filing this status report, EEI and IEPA conferred and both agree that an additional stay of six months is warranted given their need for time to engage in meaningful, ongoing discussion and given the ongoing matters discussed above.

12. Accordingly, concurrent with filing this report, EEI is submitting a request with the Hearing Officer for an additional stay. IEPA does not object to this request.

Respectfully submitted,

ELECTRIC ENERGY, INC.

By: /s/ Bina Joshi  
One of its Attorneys

Dated: June 1, 2023

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on this 1st day of June, 2023:

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:

Pollution Control Board, Attn: Clerk  
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My e-mail address is Sarah.Lode@afslaw.com.

The number of pages in the e-mail transmission is 8.

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

/s/ Sarah L. Lode  
Sarah L. Lode

Dated: June 1, 2023

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