

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
NATURAL GAS-FIRED, PEAK-LOAD) R01-10
ELECTRICAL POWER GENERATING)
FACILITIES (PEAKER PLANTS))

**FINAL COMMENTS OF THE
MIDWEST INDEPENDENT POWER SUPPLIERS
COORDINATION GROUP**

The Midwest Independent Power Suppliers Coordination Group (“MWIPS”) appreciates the opportunity to submit final comments on the subject of these hearings. MWIPS is an organization of leading competitive power suppliers with a common interest in promoting full and fair competition in the electric industry in the Midwest. A list of MWIPS members is attached hereto¹.

I. INTRODUCTION

This investigation was initiated in response to five questions concerning peaker plants that were posed to the Board by Governor Ryan. Those five questions are:

1. Do peaker plants need to be regulated more strictly than Illinois’ current air quality statutes and regulations provide?
2. Do peaker plants pose a unique threat, or a greater threat than other types of State-regulated facilities, with respect to air pollution, noise

¹ MWIPS’ comments do not necessarily reflect the position of each individual MWIPS member.

pollution, or groundwater or surface water pollution?

3. Should new or expanding peaker plants be subject to siting requirements beyond applicable local zoning requirements?
4. If the Board determines that peaker plants should be more strictly regulated or restricted, should additional regulations or restrictions apply to currently permitted facilities or only to new facilities and expansions?
5. How do other states regulate or restrict peaker plants?

The record in this proceeding strongly supports the conclusion that the present regulatory framework functions well and that peaker plants do not pose a unique threat to the environment. These comments include a brief response to each question, followed by some additional comments on issues raised during the Board's hearings.

The first question is whether peakers should be more strictly regulated as to air quality. As more fully discussed below, representatives of the Illinois Environmental Protection Agency ("IEPA") testified that peaker plants comply with existing requirements and do not threaten air quality. Accordingly, additional regulation as to air quality is not necessary.

The second question is whether peaker plants are unique with respect to pollution concerns. They are not. Other industries emit NO_x, use water, discharge waste water and produce noise. The record does not support a finding that peaker plants have a greater impact on the environment than other industrial undertakings, or that peaker plants pose a unique threat to the environment such that additional regulation is needed.

In fact, the unique feature of peaker plants is that their impact on the environment is minimal. Peakers should continue to be regulated in a manner consistent with the regulation of other industries with comparable impacts. To subject peakers to more stringent regulations would be inherently unfair and would discourage the construction of the new generating capacity that is required to ensure that Illinois continues to have a reliable and adequate supply of electricity.

The Governor's third question is whether peakers should be subject to siting requirements beyond local zoning. The answer to that question is "no". At present siting is addressed through the zoning process. This is as it should be as each community has unique concerns. In addition, siting issues are unique with respect to each peaker because each proposed site has unique characteristics. The local process allows consideration of the issues that are unique to each situation. In fact, the opportunity for local input is greater because the peakers under discussion here are being proposed by competitive suppliers rather than by utilities. If a utility regulated by the Illinois Commerce Commission ("ICC") proposed to build generation, the process would require a certificate of public convenience and necessity from the ICC in lieu of local zoning, taking the issues out of the hands of local officials. Likewise, any statewide siting process adopted in the future would, of necessity, preempt the existing local process.

The record here has shown that local zoning boards have the ability to address the issues raised with respect to a proposed plant. For example, Lake County has adopted a set of criteria to be used in evaluating a proposed plant; and DuPage County has commissioned a study of the impact of peaker plants which recommends an approach to

plant siting. Furthermore, the very fact that certain plants which were proposed did not obtain the necessary local zoning is evidence that local input is effective and that the process works. To the extent that a community might desire assistance with respect to the siting of peakers, mechanisms to provide that assistance can be fashioned without creating mandatory statewide siting. An example would be the establishment of a statewide clearinghouse for studies and data developed through local siting processes. Most importantly, project developers have shown their willingness to respond to local concerns and to provide additional information as necessary to answer questions raised in the local siting process.

The fourth question asks whether any new regulations should be applied retroactively to existing plants. Here it is important to remember that developers of peaker plants have made major investments in Illinois in reliance on the current regulatory requirements. Furthermore, the resulting facilities, which enhance electric reliability in Illinois, are clean, state-of-the-art facilities which have a minimal impact on the environment. Accordingly, the answer to the fourth question must be a resounding “no”. A contrary result would be inherently unfair, not only to owners of peakers, but to owners of other existing industrial installations that also would be affected by a retroactive rule.

The fifth and final question posed by the Governor solicits information as to how other states regulate peaker plants. The record indicates that various approaches are employed with no clear pattern. (See MWIPS initial comments dated August 16, 2000.) Perhaps the most important example here is California which is experiencing high

electric prices exacerbated by a shortage of generating capacity. As mentioned in MWIPS' initial comments, delays in California's process for permitting electric generation have held up the construction of \$10 billion worth of new generation. Electric consumers in Illinois would not benefit from a repeat of the California experience and, as demonstrated by the record in this proceeding, there is no justification for stricter rules that delay or prevent plant construction.

II. AIR QUALITY

Air quality is regulated extensively by both federal and state statutes and regulations with implementation by the IEPA. The record in this proceeding overwhelmingly demonstrates that concerns over the impact of peaker plants on air quality are adequately addressed through existing regulation.

The IEPA requires each peaker applicant to conduct an air quality analysis of ambient impacts associated with the construction and operation of the peaker. By this method, they assess whether emissions from a proposed source in conjunction with existing sources will not contribute to a violation of applicable National Air Quality Standards (NAAQS) or Prevention of Significant Deterioration (PSD) increments (IEPA Questions and Answers; Testimony of IEPA Witness Kaleel). The modeled impacts from peakers did not exceed either NAAQS or PSD increments for any of the relevant air contaminants, including NO_x. IEPA testified that modeling demonstrated that the impact of permitted and proposed peaker plants will not interfere with the ability to attain the ozone NAAQS. No threat to the maintenance of air quality standards has been

demonstrated by the record, so there is no reason to impose stricter regulation with respect to air quality.

Finally, one proposal mentioned by commenters was that the Board should recommend revocation of the NO_x waiver. In that regard, IEPA properly noted that revocation would have broad ramifications and that the waiver should not be revoked based solely on peaker plants.

III. WATER

Peaker plants have two possible impacts on water resources: water usage and discharge of waste water. The record has not demonstrated the need for further regulation in either regard.

IEPA witness, Mr. Nightingale of the IEPA Bureau of Water, testified that waste water discharge from peakers is subject to local, state and federal regulations. (Unlike simple cycle peakers, combined cycle plants are subject to federal effluent guidelines.) Under present regulations, the IEPA does not anticipate any adverse environmental impact on Illinois waters as a result of peaker discharge.

With respect to water usage, peaker plants generally don't place as much pressure on local water supply as many other industries or activities, i.e., golf courses. Accordingly, there is no justification for singling out peaker plants for stricter regulation as to water usage.

Finally, Governor Ryan has appointed a Water Resources Advisory Committee that is in the process of analyzing the need for new laws or regulations to govern water

usage in Illinois. Chairman Manning of the Pollution Control Board has recently issued a letter to that Committee recommending the development of a workable regulatory framework for the conservation and fair allocation of water resources in the state.

MWIPS welcomes the opportunity to work with Chairman Manning and other members of the Water Resources Advisory Committee toward the goal of establishing a framework that regulates water consumption for all users on an equitable basis. Because the Water Resources Advisory Committee is addressing this issue, there is no need for the Pollution Control Board to address that issue in great detail.

IV. NOISE

With respect to noise, Mr. Zak of IEPA, testified that: (1) Illinois regulates noise more strictly than other states, and (2) IEPA has received no complaints regarding noise from existing peaker plants. In light of this, the reasonable conclusion is that no further regulation is needed with respect to noise. It should be noted that developers of peaker plants report that they routinely and successfully work with the surrounding community to address any concerns about noise that arise once a peaker plant begins operation.

IV. OTHER ISSUES

A. Peakers Are Needed to Protect Reserve Margins

In this proceeding, several witnesses have testified about the increasing demand for electric power, including Mr. Naumann and Ms. Juracek of Commonwealth Edison; Mr. Monk, of the Illinois Energy Association; and Mr. Bulley of Mid-America

Interconnected Network, Inc. (MAIN), the regional reliability council that includes Illinois. Ms. Juracek testified that load growth is expected to continue. Mr. Bulley testified that the industry wide minimum standard reserve requirement is between 17% and 20%; that for the summer of 2000 MAIN's projected reserve margin was 18%, but without electric power generated by peakers, the margin would only have been 7.4%. Projected reserve margins for the years 2001, 2002 and 2003, taking into account capacity from existing peaker plants, but excluding capacity from proposed peakers are estimated at 13%, 11% and 10%, respectively, substantially below the minimum industry standard.

B. Peakers Will Benefit the State and Local Communities

It is important to remember that developers are building peaker plants in Illinois in response to present and anticipated needs for new generating capacity. As in most parts of the country, utilities have not built new capacity for a number of years during which there has been significant economic growth. From a purely economic standpoint, a peaker plant is most profitable when its output is sold within the local electric grid, avoiding transmission costs and related charges, and limiting transmission losses. In addition, due to transmission constraints, the most reliable manner of assuring adequate electric supply is to locate the plant within the utility transmission system where the electricity will be consumed. There may be times, however, when the output of a peaker plant is sold other than to meet local electric needs. Even in those situations, peakers enhance reliable operation of the local system, as discussed by Mr. Naumann. There is simply no basis for the assumption that generation built in Illinois is intended primarily to

serve other states. To the contrary, a developer who desires to meet capacity needs in another state has every incentive to build generation in the state where the plant's output will be consumed².

C. Conversion from Simple Cycle to Combined Cycle Involves An Additional Process

Concerns have been raised that a plant permitted as a simple cycle peaker might be converted to a combined cycle process, with greater impact on the environment and without further opportunity for public notice or comment. In general, such a conversion would increase the air emissions from the facility to the extent of requiring a new permitting process. This process would provide an opportunity for public participation just as the original permitting process did. Fears of such "stealth" conversions to combined cycle facilities are unfounded, and should not form a basis for the Pollution Control Board's conclusions in this proceeding.

V. CONCLUSION

The testimony before the Board establishes that the present regulatory framework functions effectively. Peaker plants are properly regulated, pose no unique threats as to air, noise or water pollution, and are essential to the uninterrupted supply of electric power within the State of Illinois. There exists no justification for singling peakers out from other industry by imposing stricter regulatory controls. Furthermore, any change in

² In fact, transmission constraints that limit the importation of electricity into Wisconsin, have led to a number of recent proposals to build new generation within that state.

the current regulatory scheme that increases the time needed to site a peaker plant, or that makes the siting process less predictable, will discourage the development of needed additional generation within the state. Illinois is fortunate to have a vibrant and expanding economy that enjoys a reliable and adequate supply of electricity. The continued development of new generating capacity by responsible developers will allow Illinois to continue to meet the electric demands of the states business and residential consumers.

Once again, MWIPS appreciates the opportunity to present these comments and stands would be pleased to provide any further input required by the Board in order to respond to Governor Ryan's mandate.

Respectfully submitted,

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