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APR 12 2004

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

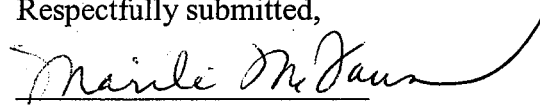
PROPOSED SITE SPECIFIC REGULATION )  
APPLICABLE TO AMEREN ENERGY ) R04-11  
GENERATING COMPANY, ELGIN, ILLINOIS, )  
AMENDING 35 ILL. ADM. CODE 901 )

NOTICE OF FILING

TO: See attached Service List

Please take notice that today I have filed with the Clerk of the Illinois Pollution Control Board on behalf of the Petitioner in this matter the attached Petitioner's Response to Attorney General's Motions to Dismiss and Strike, along with a Certificate of Service.

Respectfully submitted,

  
Marili McFawn

Dated: April 9, 2004

Schiff Hardin L.L.P.  
6600 Sears Tower  
Chicago, Illinois 60606  
312-258-5519

**SERVICE LIST**

Ms. Dorothy Gunn  
Clerk of the Pollution Control Board  
James R. Thompson Center  
100 West Randolph  
Suite 11-500  
Chicago, Illinois 60601

Mr. John Knittle, Esq.  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Springfield, Illinois 62794

Office of Legal Services  
Illinois Department of Natural Resources  
One Natural Resources Way  
Springfield, Illinois 62702-1271

Mr. Scott Phillips, Esq.  
Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Realen Homes  
Attn.: Al Erickson  
1628 Colonial Parkway  
Inverness, Illinois 60047

Mr. Joel Sternstein  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

Village of Bartlett  
Attn.: Bryan Mraz, Attorney  
228 South Main Street  
Bartlett, Illinois 60103

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PETITIONER'S RESPONSE  
TO ATTORNEY GENERAL'S MOTIONS TO DENY AND STRIKE

Now comes Ameren Energy Generating Company (Petitioner), by and through its attorneys, and hereby files its response to the four motions filed as a single pleading on April 2, 2004 by the Office of the Attorney General ("AGO"). Those motions seek to exclude the information provided with the two motions filed by Petitioner on March 19, 2004. In support of its Motions, the AGO offers two rationales: (1) that Petitioner seeks to introduce new evidence; and (2) the AGO would be prejudiced if Petitioner's Motions are granted.

Petitioner's Motions of March 19, 2004 address the new information and issues raised by the AGO in its March 10, 2004 public comment. Therefore, contrary to its claim, the AGO will not be prejudiced if Petitioner's Motions to Supplement the Record and for Leave to File a Response are granted. The purpose of developing a record in this rulemaking is to provide a complete, accurate and clear record for the Board to consider in making its decision whether to adopt the proposed site specific rule. The public comment filed by the AGO added new information into the record, and demonstrated that it has misunderstood or misinterpreted much of the record presented at hearing. Petitioner seeks to supplement the record only to address the new information submitted with the AGO's public comment, and to file a response to the AGO's public comment to clarify and hopefully answer the questions raised by the AGO's omissions of critical facts and misinterpretations.

This is not an adjudicatory proceeding; it is quasi-legislative. There is nothing in the Act or the Board's procedural rules which would preclude the Board from granting Petitioner's

motions. Granting Petitioner's motions in this rulemaking will not cause the AGO to suffer any material prejudice. However, granting the AGO's motions will result in a record which is not complete and accurate, a result that would result materially prejudice Petitioner and others relying upon that record for clarity and completeness. Granting Petitioner's motions means only that the Board has available the most complete and accurate record for its decision-making in this matter. Therefore, neither party is prejudiced if the Board denies the AGO's Motions to Deny and to Strike Petitioner's motions, and grants Petitioner's motions.

In further response, Petitioner will address both of the AGO's claims initially in the context of each of our two motions.

1. Petitioner's Motion to Supplement the Record included two documents: (1) the Circuit Court's Agreed Order resolving the Complaint entered into this record by the AGO as part of its public comment; and (2) the "Noise Easement and Restrictive Covenant Agreement between Petitioner and Realen Homes L.P." As explained in Petitioner's Motion to Supplement, the AGO had these documents before it filed its post hearing comment on March 10, 2004. Both are matters of public record and available to the Board and the AGO independent of Petitioner's Motion to Supplement. The AGO introduced only the Complaint into the record with its Public Comment. The documents provided by Petitioner are necessary for the Board to be fully apprised of the facts surrounding the Complaint attached to the AGO's public comment. Thus, the AGO cannot suffer any prejudice if Petitioner's Motion to Supplement is granted, but the Petitioner would suffer material prejudice if Petitioner's Motion is denied.

As for the AGO's second claim that these documents are offered as new evidence, that is incorrect. As stated at paragraphs 3 and 4 of Petitioner's Motion to Supplement, these documents are not offered as evidence in support of the site specific rule requested by Petitioner in this rulemaking, but rather to remove any question the Board may now have due to Mr. Chinn's comment about the Circuit Court proceeding that is independent of this rulemaking.

2. In Petitioner's Motion for Leave to File a Response to the AGO's Public Comment and the attached Response, Petitioner did not seek to introduce any new evidence. While the

Motion for Leave to File provided that the only new information in the Response was that omitted by the AGO concerning the Hillside facility, the facts about that facility were included in Petitioner's Public Comment as a footnote. See page 14, footnote 5 of Petitioner's Public Comment. The only thing new to the record is Petitioner's objection to the AGO's decision to omit these material facts when it once again cited the Hillside facility in support of its public comment without any analysis of these critical facts.

The AGO will not be prejudiced if the Board grants Petitioner's Motion for Leave to File a Response. Concerning the Hillside facility, Mr. Chinn had an opportunity to include these facts at hearing or in the Response to Questions Raised at Hearing, filed on February 9, 2004. He never included these facts—not at hearing (although he testified that he had personally visited the facility); not in the AGO's Response to Questions even though Chinn had agreed at hearing to provide equipment information to the Board (Tr. 270); and not in the AGO's public comment. These facts are not new to the AGO. Therefore, the discussion about the Hillside facility in Petitioner's Response cannot be a surprise or otherwise prejudicial to the AGO.

Petitioner prays that the Board will deny the each of the four motions filed by the AGO, and grant the two motions filed by Petitioner on March 19, 2004. In so doing, the issues that the AGO raised in its public comment of March 10, 2004 will be complete and fully addressed for the purposes of the public record and the Board's decision-making in this rulemaking.

Respectfully submitted,

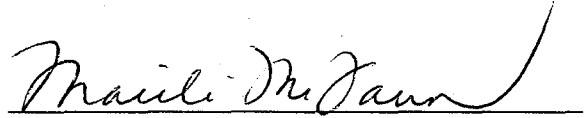


Marili McFawn  
Schiff Hardin LLP  
6600 Sears Tower  
Chicago, Illinois 60606  
Attorney for Petitioner

Dated: April 9, 2004

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served the documents described in the attached Notice of Filing upon the Clerk of the Pollution Control Board and Hearing Officer John Knittle by Federal Express and those on the Service List by depositing them in regular U.S. mail on April 9, 2004.



Marili McFawn