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MAY 19 2004

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
)  
PROPOSED SITE SPECIFIC REGULATION ) R04-11  
APPLICABLE TO AMEREN ENERGY ) (Site Specific  
GENERATING COMPANY, ELGIN, ILLINOIS) Rulemaking - Noise)  
AMENDING 35 ILL. ADM. CODE 901 )

NOTICE

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board a Motion to File Instanter and the Comments of Howard Chinn, P.E., of the Office of the Illinois Attorney General, in response to Petitioner's Post Hearing Comments.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
ex rel. LISA MADIGAN,  
Attorney General of the State  
of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

BY:



JOEL J. STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph Street, 20th Floor  
Chicago, IL 60601  
(312) 814-6986

Dated: May 19, 2004

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Ms. Dorothy Gunn  
Clerk of the Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph, Suite 11-500  
Chicago, IL 60601  
(312) 814-3620

Mr. John Knittle, Esq.  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Springfield, Illinois 62794  
(217) 278-3111

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  
(217) 782-5544

Office of Legal Services  
Illinois Department of Natural Resources  
One Natural Resources Way  
Springfield, IL 62702-1271  
(217) 782-6302

Ms. Marili McFawn, Esq.  
Schiff, Hardin & Waite  
6600 Sears Tower  
Chicago, Illinois 60606  
(312) 258-5519

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

Village of Bartlett  
Attn: Bryan Mraz, Attorney  
228 S. Main St.  
Bartlett, Illinois 60103

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MOTION TO FILE INSTANTER

1. Pursuant to the Order of Hearing officer John Knittle, on March 10, 2004 Petitioner Ameren Energy Generating Company ("Ameren") and the Office of the Attorney General ("AGO") each submitted Post-Hearing comments in this matter.

2. On March 22, 2004 Ameren filed a Motion for Leave to File Response, a Response to the AGO's Public Comment, and a Motion to Supplement Record (collectively "March 22 Pleadings").

3. On April 2, 2004, the AGO filed a filed a Motion to Deny the Motion for Leave to File, a Motion to Deny the Motion to Supplement the Record, and a Motion to Strike the Response and the documents intended to supplement the record (collectively "April 2 Pleadings"). Ameren responded to the April 2 pleadings, and the AGO filed a Reply.

4. On May 6, 2004, the Board granted and/or accepted into the record Ameren's March 22 pleadings ("May 6 Decision"). The Board denied the AGO's April 2 pleadings but granted the AGO leave to respond to Ameren's post-hearing comments.

5. However, in the May 6 Decision, the Board only provided the AGO until May 14, 2004 to file a response and held that the

mailbox rule would not apply.

6. The AGO did not find out that the Board had issued its May 6 Decision until May 7, 2004 but at that point the AGO did not know what the Board had decided. The AGO first noticed a summary of the Board's May 6 Decision on the Board's web site on May 11, 2004. The AGO was not able to download a copy of the May 6 Decision until May 13, 2004 which is the same day that the AGO received a hard copy of the May 6 Decision.

7. It took six days before the AGO was able to see the Board decision in full, but the Board only provided the AGO eight days to respond to Ameren's post-hearing comments. The AGO intends to file a complete and thoughtful response to Ameren's post-hearing comments, but it could not devote the time necessary to such a response in only two days.

8. Therefore, the AGO requests that it be allowed to file its comments in response to Ameren's post-hearing comments instanter.

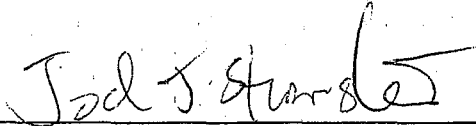
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COMMENTS OF HOWARD CHINN, P.E.,  
OFFICE OF THE ILLINOIS ATTORNEY GENERAL,  
IN RESPONSE TO POST-HEARING COMMENTS OF PETITIONER  
AMEREN ENERGY GENERATING COMPANY, ELGIN, ILLINOIS

Howard Chinn, P.E., of the Office of the Illinois Attorney General ("AGO") submits the following comments in response to Ameren Energy Generating Company's ("Ameren") Post-Hearing Comments (including the post-hearing public comments submitted on March 10, 2004 and the pleadings submitted on March 22, 2004) regarding the site specific rulemaking for Ameren's peaker power plant facility in Elgin, Illinois ("facility") pursuant to the Pollution Control Board order of May 6, 2004:

1. Ameren's comment that I did not take into account any of the pre-filed testimony and other documents that composed the entire record in this proceeding is not true and was made without any factual or credible basis. See March 22 Petitioner's Response ("March 22 Response") at 1.

2. The AGO objects to the Motion to Clarify Answer ("Motion to Clarify") submitted with Ameren's March 10 post-hearing comments ("March 10 Comments"). Ameren is seeking to introduce new non-sworn testimony into the record. The Motion to

Clarify should therefore be denied. If the Board grants the Motion to Clarify, the AGO claims that Mr. Smith's testimony therein should be disregarded as non-responsive to the Board's questions.

3. Ameren indicated that its facility is only permitted to operate 16% of the time annually. March 10 Comments at 3. Although this does not seem onerous if Ameren runs its peaker facility constantly throughout the year, peaker facilities generally are only in use during the summer months when air conditioning use spikes electric demand. Given the maximum amount of time allowed by its permit, Ameren could run its facility 48% of the time if it only operated during June, July and August - almost 12 hours a day. Noise at levels beyond the Class A receiving land limits for 12 hours a day could prove to be an extreme nuisance to the residents of the Realen Homes property.

4. Ameren's total costs for its current noise abatement measures of \$11.65 million were only 5% of the total capital cost of the facility. March 10 Comments at 6. This would imply a total capital cost of approximately \$233 million. Considering that Ameren sunk \$233 million into its facility, it is difficult to believe Ameren's claim that each \$100,000 noise test at the facility (representing less than 0.05% of the total capital cost) is unduly burdensome.

5. On a similar note, there is no merit in Ameren's claim that the 2000 and 2003 field measurements of noise plus associated analytical data "are sufficient to demonstrate that (the) Board should grant the relief requested". March 10 Comments at 10. Simply measuring noise levels and extrapolating data are only two steps out of many that Ameren would have to take to prove to the Board that it is entitled to the relief that it seeks in its petition. Furthermore, Ameren's claim in its March 10 Comments is a direct contradiction of its petition where it stated "This data must be conservatively interpreted because two sets of sound pressure level data cannot be considered a complete statistical representation of sound from the Facility." Ameren Petition at 23.

6. Ameren hired a public relations firm to survey the local community and found no opposition to its facility. March 10 Comments at 20. Of course, Ameren did not survey the residents (or the future residents) of the Realen Homes property to gauge their opinion about having a peaker plant facility directly adjacent to their homes which does not meet the State's Class C to Class A noise limitations.

7. Ameren summarized the testimony regarding noise control from their expert, Mr. Parzych of Power Acoustics. Ameren has asserted repeatedly that the sound abatement measures at the facility are the best available. March 10 Comments at 3-5, 14;



March 22 Response at 2, 3. Ameren's support for its claim is weak - it only compared its noise equipment to the equipment provided its nearest competitor. March 10 Comments at 5. It did not compare its noise equipment to other manufacturers nor explain the breadth of noise control measures generally within the gas-fired peaker power plant industry. Ameren's claim that its noise control technology was sufficient to control noise from Class C to Class C land (March 10 Comments at 5) is irrelevant given the scope of its proposed rulemaking seeks relief from Class C land to Class A/Class B land. Ameren could not adequately answer the Board's question regarding Ameren's ability to control noise from its facility to comply with Class A receiving land standards. March 22 Response at 2, citing Tr. at 112-113.

8. Ameren wrote that "Although additional existing technology is not available to sufficiently reduce noise to compliance levels, Petitioner examined several experimental approaches". March 22 Response at 3; see also March 10 Comments at 11-13. However, classifying various noise control alternatives as experimental does not excuse the fact that Ameren has failed to conduct a valid engineering feasibility study of available noise control alternatives.

9. Ameren either misunderstood the record or chose to mischaracterize the record by inferring that the AGO represented to

the Board that the AGO believes that a barrier wall or berm is the only solution to the noise from the facility. March 22 Response at 1, 3. The AGO proffered to the Board that a berm and a barrier wall are two viable alternatives commonly employed as noise pollution control measures. Ameren has not provided sufficient engineering design details or technical specifications to completely rule out these two options.

10. With respect to construction of a berm, Mr. Parzych insisted that such a berm would have to have a large base and be 50 feet tall but gave few other details of this option. March 10 Comments at 12; March 22 Response at 3; Tr. at 165-167. Mr. Parzych did not back up his testimony with any engineering analysis. In addition, Ameren even neglected to study and compare the effectiveness and cost of the earthen berm at the nearby Reliant peaker power plant located at Eola Road and Butterfield Road in Du Page County.

11. Ameren estimated that constructing a barrier wall would cost \$3.6 million. March 10 Comments at 12; March 22 Response at 4. However, other than providing a rough cost estimate and the dimensions of a barrier wall, Ameren provided no further information in support of this estimate.

12. Ameren indicated that it contacted the owners of the Hillside peaker power plant facility and learned that it is not comparable to the Ameren facility. March 22 Response at 4.

Ameren provided few other details about its investigation of the Hillside facility (which was obviously extremely cursory) other than comparing the size of the Hillside turbines to a Chevrolet Suburban. Ameren did not even indicate what the noise output of the Hillside facility was, nor did it provide the effectiveness of the open building-type barrier there. Ameren simply dismissed the idea of an open building type-barrier and made no attempt to do any further investigation. See March 10 Comments at 13-14. Ameren is attempting to divert attention from the fact that an open building-type barrier is an effective, feasible, and economically reasonable technology to abate noise emissions.

13. Ameren indicated that "The suggestion that (the Hillside facility) is in any way an example of a facility comparable to the (Ameren facility), seriously calls into questions the credibility of this witness". March 22 Response at 4. This comment is yet another attempt to divert attention from the fact that Ameren did not undertake a complete investigation of an open building-type barrier and has failed to sustain the burden that it carries in this proceeding.

14. Ameren's concludes that "compliance with Class A land use noise limits is not possible at the Realen Homes property on a reasonable technological or economical basis". March 22 Response at 5. This conclusion is unsubstantiated. Ameren has demonstrated that they are unwilling to consider any viable

options that will bring them into compliance with the rules and regulations of the Board. Ameren is obviously recalcitrant to even give serious consideration to viable and technically feasible methods of noise abatement. The intent of Ameren's petition is to avoid any actions or efforts to ameliorate the potential nuisance to the future residents at the Realen Homes property.

15. Ameren indicated that "The record in this matter is complete and supports the Board granting the relief requested." March 22 Response at 5. The AGO believes that the evidence in this matter will show in a clear and convincing manner that Ameren failed to meet its burden of proof that compliance with the Board's rules and regulations is technically impractical and economically unreasonable. Therefore, Ameren's petition should be denied.

Respectfully submitted,

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ex rel. LISA MADIGAN,  
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of Illinois

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Environmental Enforcement/  
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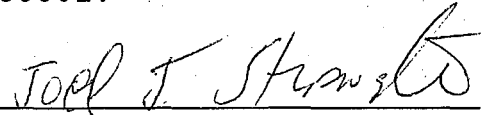
BY:

  
HOWARD CHINN

Professional Engineer  
Environmental Bureau  
188 W. Randolph Street, 20th Floor  
Chicago, IL 60601  
(312) 814-5393

CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, certify that on the 19<sup>th</sup> day of May 2004, I caused to be served by First Class Mail the foregoing to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



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JOEL J. STERNSTEIN