

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	R06-25
PROPOSED NEW 35 ILL. ADM. CODE 225)	(Rulemaking – Air)
CONTROL OF EMISSIONS FROM)	
LARGE COMBUSTION SOURCES(MERCURY))	

NOTICE

TO: Dorothy Gunn
 Clerk
 Illinois Pollution Control Board
 James R. Thompson Center
 100 West Randolph St., Suite 11-500
 Chicago, IL 60601-3218

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the RESPONSE TO PARTICIPANTS' EMERGENCY MOTION, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
 PROTECTION AGENCY

By: _____
 John J. Kim
 Managing Attorney
 Air Regulatory Unit
 Special Assistant Attorney General
 Division of Legal Counsel

DATED: May 19, 2006

1021 North Grand Avenue East
 P. O. Box 19276
 Springfield, IL 62794-9276
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**THIS FILING IS SUBMITTED
 ON RECYCLED PAPER**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
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PROPOSED NEW 35 ILL. ADM. CODE 225) R06-25
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LARGE COMBUSTION SOURCES(MERCURY))

**RESPONSE TO PARTICIPANTS' EMERGENCY MOTION TO
SUSPEND FILING DATE FOR PREFILED QUESTIONS AND
REQUEST FOR PRE-HEARING CONFERENCE CALL**

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by one of its attorneys, and, pursuant to the Illinois Pollution Control Board ("Board") Rules at 35 Ill. Adm. Code 101.500 and 101.504, and the Hearing Officer's Order dated May 19, 2006, hereby responds to Participants' (Ameren Energy Generating Company, AmerenEnergy Resources Generating Company, Dynegy Midwest Generation, Inc., Electric Energy Incorporated, Kincaid Generation, L.L.C., and Midwest Generation, LLC) Emergency Motion to Suspend the Filing Date for Prefiled Questions and Request for Pre-Hearing Conference Call ("emergency motion"). The Illinois EPA requests that the Board enter an order denying the motion. In support of this request, the Illinois EPA states as follows:

1. As the Participants' note in the emergency motion, the undersigned counsel for the Illinois EPA contacted counsel for the Participants on May 18, 2006, in a good faith effort to inform them that one revision to pre-filed testimony would be filed by the Illinois EPA. As noted in the Hearing Officer's order dated May 4, 2006, the Illinois EPA has not and will not be re-filing all previously submitted pre-filed testimony. However, in one particular instance involving one witness, Dr. James Staudt, it has been determined that some revisions to his submitted testimony are warranted.

2. To allow the Participants all reasonable opportunity to respond to those revisions, undersigned counsel for the Illinois EPA also indicated that there would be no objection to questions solely related to Dr. Staudt's testimony being filed by the Participants one week later than the original date.

3. Following receipt of the undersigned counsel's e-mail, counsel for the Participants and the undersigned counsel spoke by conference call. At that time counsel for the Participants stated their position that no questions should be filed and additional time be allowed for submission of all pre-filed questions. At that time, undersigned counsel for the Illinois EPA stated that no commitment to any arrangement could be made until further internal discussion was held.

4. Subsequent to that conference call, and after internal discussion, counsel for the Illinois EPA informed counsel for the Participants of the Illinois EPA's position; namely, that all pre-filed questions should be submitted by the Participants as otherwise required by the Hearing Officer's May 4th order, with the understanding that the Illinois EPA would not object to revisions to any such pre-filed questions that Participants felt were necessary following review of Dr. Staudt's revised testimony if those revisions were filed within one week of the original filing date. This commitment was expressed in an e-mail from Charles Matoesian, counsel for Illinois EPA, to counsel for the Participants.

5. At some time after the receipt of Mr. Matoesian's e-mail, counsel for the Participants filed the emergency motion with the Board.

6. In the emergency motion, the Participants cite to the Hearing Officer's May 4th order, arguing that the Illinois EPA's interpretation would allow for the revision of all its testimony on the same day that pre-filed questions were due. The Illinois EPA's

interpretation of the Hearing Officer's order, however, is not at odds with the language and intent of the order.

7. The May 4th order clearly states that the Illinois EPA need not file testimony that was previously submitted, and that any person wishing to testify at the June 12, 2006 hearing should pre-file testimony by May 19, 2006. The May 19th deadline for pre-filed testimony did not exclude any witnesses that may be appearing on behalf of the Illinois EPA, and therefore the Illinois EPA is not prohibited from submitting revised testimony of one of its witnesses. The revised testimony is not identical to that already filed, so there is no conflict with the dictates of the May 4th order.

8. Further, the Participants' argument that all the Illinois EPA's testimony could be revised on the same day pre-filed questions are due, and that such a circumstance is absurd, is an abstract argument at best. Here, the reality is that only one piece of testimony is being revised, not all testimony. So moving past the hypothetical aspects of the Participants' objection, there is no irreparable harm or prejudice that will befall the Participants should they be required to file their pre-filed questions by the May 19th deadline, especially since the Illinois EPA has indicated it would not object to any revisions to those questions related solely to the revised testimony being filed after the original deadline (within a short time period, preferably one week's time).

9. The Participants also argue that revisions to Dr. Staudt's testimony may affect other portions of the Illinois EPA's witness testimony. To the extent that such revisions may be necessary, again the Illinois EPA notes it would not object to such limited revisions to the pre-filed questions being submitted within a short time after

receipt of Dr. Staudt's revised testimony. Thus, the Participants are not being penalized or placed in any disadvantaged position.

10. However, if they are allowed to withhold all their questions until some date uncertain, it is the Illinois EPA that would be harmed given the shortened period of time between receipt of pre-filed questions and the hearing. This is further highlighted by the fact that even the Participants must acknowledge not all (and perhaps not most) of their pre-filed questions relate to Dr. Staudt's testimony. Many if not most of the questions would effectively be held in abeyance over concern for some questions. That situation should not be allowed, especially since there is a remedy to be had.

11. The Board should not allow the Participants to use any minor excuse or allegation as the justification for derailing the proceedings and causing further delays to the rulemaking. There is a means by which all parties can have their interests protected, and that is to require the submission of pre-filed questions by May 19th with the further allowance of limited (i.e., related solely to revised testimony submitted on May 19th) revisions to such pre-filed questions within a short time after the original deadline.

WHEREFORE, for the reasons set forth above, the Illinois EPA requests that the Board enter an order denying the emergency motion.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/_____
John J. Kim
Managing Attorney
Air Regulatory Unit
Special Assistant Attorney General
Division of Legal Counsel

DATED: May 19, 2006

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STATE OF ILLINOIS)
)
COUNTY OF SANGAMON) SS
)

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served electronically the attached RESPONSE TO PARTICIPANTS' EMERGENCY MOTION, upon the following persons:

Dorothy Gunn
Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
Chicago, IL 60601-3218

and mailing it by first-class mail from Springfield, Illinois, with sufficient postage affixed to the following persons:

SEE ATTACHED SERVICE LIST

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

John J. Kim
Managing Attorney
Air Regulatory Unit
Special Assistant Attorney General
Division of Legal Counsel

Dated: May 19, 2006

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