

ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

In The Matter of:)
)
Proposed New 35 Ill. Adm. Code 225) No. R06-25
Control of Emissions from) (Rulemaking – Air)
Large Combustion Sources)

NOTICE OF FILING

TO: See attached Service List

PLEASE TAKE NOTICE that on May 22, 2006, I filed with the Office of the Clerk of the Pollution Control Board, Participant Kincaid Generation, L.L.C.'s MOTION FOR LEAVE TO FILE INSTANTER KINCAID GENERATION L.L.C.'S QUESTIONS FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY AT THE HEARING COMMENCING JUNE 12, 2006 and KINCAID GENERATION L.L.C.'S QUESTIONS FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY AT THE HEARING COMMENCING JUNE 12, 2006, copies of which are herewith served upon you.

By: 
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Bill S. Forcade
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CERTIFICATE OF SERVICE

I, Katherine Rahill, an attorney, hereby certify that I served a copy of the foregoing Motion, via first-class mail, postage fully prepaid, upon the parties on the attached Service List this 22nd day of May, 2006:

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Katherine Rahill

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ILLINOIS POLLUTION CONTROL BOARD

In The Matter of:)
)
Proposed New 35 Ill. Adm. Code 225) **No. R06-25**
Control of Emissions from) **(Rulemaking – Air)**
Large Combustion Sources)

**MOTION FOR LEAVE TO FILE INSTANTER KINCAID GENERATION L.L.C.'S
QUESTIONS FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY AT
THE HEARING COMMENCING JUNE 12, 2006**

NOW COMES Participant KINCAID GENERATION, L.L.C. ("Kincaid"), by and through its attorneys, Jenner & Block LLP, and hereby moves the Board for leave to file instanter Kincaid Generation L.L.C.'S Questions For The Illinois Environmental Protection Agency At The Hearing Commencing June 12, 2006, with the exception of those questions directed to Dr. James Staudt. In support of its request, Kincaid states as follows:

1. On May 18, 2006, Kincaid's counsel received notice from the Illinois Environmental Protection Agency (the "Agency") that the Agency would be submitting revised testimony for Dr. James Staudt.
2. In response to this notice, on May 18, 2006, Kincaid, in cooperation with other participants, filed Participants' Emergency Motion to Suspend the Filing Date for Prefiled Questions and Request for Pre-Hearing Conference Call, requesting the Hearing Officer suspend the filing date for prefiled questions for all Agency witnesses until a later date to be determined at a pre-hearing conference call.
3. On the morning of May 19, 2006, the Hearing Officer issued an order asking for all responses to the emergency motion by 1:00 pm of that same day and stating that she expected

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to rule on the motion no later than 3:30 pm that day and that the order would be posted on the COOL system and emailed to all participants on the service list.

4. At 3:30 pm on May 19, 2006, and several times shortly thereafter, counsel for Kincaid checked on the COOL system and the Hearing Officer's order had not been posted. Neither had Kincaid's counsel received any email transmitting the order.

5. At sometime after 3:30 pm on May 19, 2006, Kincaid's counsel again checked the postings on the COOL system and found the Hearing Officer's order had been posted. However, Kincaid's counsel never received any email transmitting the order.

6. The Hearing Officer's order required Kincaid and other participants to prefile questions for all witnesses with the exception of those questions for Mr. Staudt on that same day, May 19, 2006.

7. Because the rules of the Illinois Pollution Control Board require all filings to be filed with the clerk by 4:30 pm on the date due, the Hearing Officer's order afforded participants significantly less than one hour to revise their current sets of questions for filing in compliance with such an order.

8. In order to comply with such an order, Kincaid's counsel would have needed to materially alter documents previously approved for filing by Kincaid and have the revised documents approved for filing by Kincaid within this very brief time frame.

9. Moreover, due to the mechanism by which Kincaid's counsel files documents, all revisions, approval and duplication would have needed to be completed by 4:00 pm, shortly after the time at which Kincaid's counsel had notice of the ruling.

10. Kincaid's counsel has now had the opportunity to revise the document to be filed and obtain consent for filing such document from their client.

11. The Agency will not be prejudiced by this delay as the delay is only one working day and the First Hearing is still weeks away.

WHEREFORE, for the reasons set forth above, Participant KINCAID GENERATION, L.L.C., respectfully requests that the Board grant its motion for leave to file instant Kincaid's prefiled questions for the First Hearing with the exception of those questions directed to Dr. James Staudt.

RESPECTFULLY SUBMITTED,

KINCAID GENERATION, L.L.C.

By: _____


One of its attorneys

Dated: May 22, 2006

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MAY 22 2006

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED NEW 35 ILL.ADM.CODE PART 225) PCB R06-25
CONTROL OF EMISSIONS FROM)
LARGE COMBUSTION SOURCES)

KINCAID GENERATION L.L.C.'S QUESTIONS
FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY AT
THE HEARING COMMENCING JUNE 12, 2006

NOW COMES Kincaid Generation, L.L.C., by and through its attorneys, Jenner & Block LLP, and submits the following questions based upon the Statement of Reasons, Technical Support Document ("TSD") and its Appendices ("App."), and the testimony submitted by the Illinois Environmental Protection Agency ("Agency" or "Illinois EPA") in this matter.

For David C. Foerter

1. Did you receive any information from the Agency prior to forming any opinions including but not limited to the opinions contained in your testimony?
 - a. If so, describe that information in detail.
 - b. If so, did you rely on that information in forming any opinions or testimony?
 - c. If so, specifically what opinions or parts of your testimony rely on the information that you received from the Agency?

2. Have you reviewed Dr. Staudt's testimony?
 - a. If so, did you rely on Dr. Staudt's testimony in forming any opinions or testimony?
 - b. If so, on which parts of his testimony did you rely?

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- c. If so, specifically what opinions or parts of your testimony rely on Dr. Staudt's testimony?
3. Have you reviewed the TSD?
 - a. If so, did you rely on the TSD in forming any opinions or testimony?
 - b. If so, on which parts of the TSD did you rely?
 - c. If so, specifically what opinions or parts of your testimony rely on the TSD?
4. Have you reviewed the ICF report attached as Appendix C to the TSD?
 - a. If so, did you rely on the ICF report in forming any opinions or testimony?
 - b. If so, on which parts of the ICF report did you rely?
 - c. If so, specifically what opinions or parts of your testimony rely on the ICF report?
5. Have you reviewed the information acquired by the Agency from any of the site inspections at each of the Illinois coal-fired power plants (Control Configuration Inspections) during late April, early May of 2006?
6. Did you assist in writing any portion of the TSD? If so, which sections specifically and when did you provide the Agency your input?
7. What is your definition of "commercially available?"
8. What is your definition of "cost effective?"
9. What is your definition of "economically feasible?"
10. On page 1 of your testimony, you state that "there are a suite of options available to cost-effectively control mercury emissions from power plants of different configurations and coal types:"
 - a. List all of the different options and explain how each one works.
 - b. What are the costs associated with each of those options?

- c. Which of these options have been demonstrated to obtain the level of control currently called for in the IEPA's proposed mercury control regulations 100% of the time, under all operating conditions, at a facility of the size and type of the Kincaid facility?
 - d. Please describe where and when such demonstrations took place.
- 11. Again on page 1, you list certain existing control installations such as fabric filters and electrostatic precipitators as achieving "high levels of mercury reductions:"
 - a. Are those "high levels of mercury reductions" sufficient to meet the level of control currently called for in the IEPA's proposed mercury control regulations 100% of the time, under all operating conditions, at every one of the Illinois facilities that would be subject to those regulations?
 - b. Do you know if these "high levels of mercury reductions" are sufficient to meet the level of control called for in the federal CAMR 100% of the time, under all operating conditions, at every one of the Illinois facilities that would be subject to those regulations?
 - c. For each facility for which the answer to 6.a. or 6.b. is no, please describe what additional controls would be necessary to achieve the required level of control and the costs associated with such controls.
- 12. Please explain your statement on page 1 of your testimony: "With the implementation of mercury regulatory requirements beyond incidental co-benefit levels of control, a number of options for optimizing existing controls will be implemented to provide cost effective reductions."

13. What is the cost of a sorbent injection system for a coal-fired electric generating unit of the size and type of the Kincaid Generation facility?
 - a. Upon what factors does the cost of a sorbent injection system for a coal-fired electric generating unit depend?
14. Will a sorbent injection system for reducing mercury emissions from coal-fired electric generating units achieve compliance with the mercury proposal 100% of the time under all operating conditions for a facility such as Kincaid Generation LLC?
 - a. Upon what factors does the effectiveness of a sorbent injection system for a coal-fired electric generating unit depend?
15. What is the basis for your statement that “[m]ultipollutant control approaches as well as other mercury specific technologies provide additional low cost, innovative approaches to mercury control?”
 - a. What specifically are the “multipollutant control approaches” and “other mercury specific technologies” to which you referred in this statement?
 - b. What did you mean by “additional low cost, innovative approaches?”
“Additional” to what?
 - c. What is your definition of “low cost?” Specifically, how much does each of these “additional low cost, innovative approaches” cost?
16. Do you agree that regulatory programs with flexibility have value for the regulators, the regulated community, and the public?
17. Do you agree that regulatory programs with flexibility are economically efficient?
18. Do you agree that low-cost, reliable electricity is essential in our economy?

19. Do you believe the proposed mercury control regulations to be cost-effective? Please explain.
20. In your testimony, you list the creation of jobs as a benefit of the proposed mercury control regulations – who would pay for these jobs?

For Ezra D. Hausman, Ph.D.

1. Did you receive any information from the Agency prior to forming any opinions including but not limited to the opinions contained in your testimony?
 - d. If so, describe that information in detail.
 - e. If so, did you rely on that information in forming any opinions or testimony?
 - f. If so, specifically what opinions or parts of your testimony rely on the information that you received from the Agency?
2. Have you reviewed Dr. Staudt's testimony?
 - d. If so, did you rely on Dr. Staudt's testimony in forming any opinions or testimony?
 - e. If so, on which parts of his testimony did you rely?
 - f. If so, specifically what opinions or parts of your testimony rely on Dr. Staudt's testimony?
3. Have you reviewed the TSD?
 - d. If so, did you rely on the TSD in forming any opinions or testimony?
 - e. If so, on which parts of the TSD did you rely?
 - f. If so, specifically what opinions or parts of your testimony rely on the TSD?

4. Have you reviewed the information acquired by the Agency from any of the site inspections at each of the Illinois coal-fired power plants (Control Configuration Inspections) during late April, early May of 2006?
5. Did you assist in writing any portion of the TSD? If so, which sections specifically and when did you provide the Agency your input?
6. In your testimony, you state that you rely on data provided by ICF Corporation:
 - a. To what data are you referring?
 - b. Do you know who participated in the evaluation and/or preparation of that data?
 - c. How did you originally obtain a copy of this data?
 - d. Were you directed to rely on this data by the Agency?
7. Your testimony includes some criticisms of the ICF data – did you find it to be unreliable to some extent? To what extent?
8. Is it your contention on page 15 and 16 of your testimony that the gas prices estimated in the IPM model are unrealistically low? Please explain.
9. If gas prices are underestimated, would the IPM model not also underestimate the costs and electric rate impacts of using more gas-fired generation and less coal-fired generation as a result of the proposed rule?
10. You identify employment gains from installation and maintenance of mercury controls as a potential economic benefit of the proposed rule. Please explain how the revenues that would support those jobs are not directly offset by the costs imposed on Illinois electric utilities which are then passed onto Illinois consumers.
11. Please explain the basis for your reliance on the Harvard/ NESCAUM study to estimate the economic value of the alleged health benefits of the proposed rule.

12. Please explain the basis for your selection of the range of estimated benefits per ton of mercury emission reductions from the Harvard/NESCAUM study.

For Sid Nelson, Jr.

1. Did you receive any information from the Agency prior to your forming any opinions including but not limited to the opinions contained in your testimony?
 - a. If so, describe that information in detail.
 - b. If so, did you rely on that information in forming any opinions or testimony?
 - c. If so, specifically what opinions or parts of your testimony rely on the information that you received from the Agency?
2. Have you reviewed Dr. Staudt's testimony?
 - a. If so, did you rely on Dr. Staudt's testimony in forming any opinions or testimony?
 - b. If so, on which parts of his testimony did you rely?
 - c. If so, specifically what opinions or parts of your testimony rely on Dr. Staudt's testimony?
3. Have you reviewed the TSD?
 - a. If so, did you rely on the TSD in forming any opinions or testimony?
 - b. If so, on which parts of the TSD did you rely?
 - c. If so, specifically what opinions or parts of your testimony rely on the TSD?
4. Have you reviewed the ICF report?
 - a. If so, did you rely on the ICF report in forming any opinions or testimony?
 - b. If so, on which parts of the ICF report did you rely?
 - c. If so, specifically what opinions or parts of your testimony rely on the ICF report?

5. Have you reviewed the information acquired by the Agency from any of the site inspections at each of the Illinois coal-fired power plants (Control Configuration Inspections) during late April, early May of 2006?
6. Did you assist in writing any portion of the TSD? If so, which sections specifically and when did you provide the Agency your input?
7. What is your definition of “commercially available?”
8. What is your definition of “cost effective?”
9. What is your definition of “economically feasible?”
10. Please explain your statement on page 2 of your testimony that the costs and results for sorbent injection technologies vary depending on the type of coal burned and the existing pollution control equipment at the plant.
 - a. How much would the costs and results vary based on the type of coal burned and the existing pollution control equipment at each of the coal-fired electric generating units currently operating in Illinois?
11. Is the St. Clair Power Plant of Detroit Edison discussed on page 3 of your testimony similar in operations to the coal-fired electric generating units currently operating in Illinois?
12. How much do your company’s various control systems as described in your testimony cost? What factors weigh into the cost of your systems?
13. In your testimony on page 3, you state that the quantity of sorbent you need to inject into a subbituminous plant is directly proportional to the mercury removal to be achieved. What factors go into determining the quantity of sorbent necessary?
14. Is it important to have accurate data as to the mercury content of the coal being fired?

15. If identical samples of coal were submitted to five different laboratories for mercury analysis what is the largest variation in analytical results that you would expect? Do you have any data to support that conclusion?

For Agency

1. Please provide the names of each person that participated in the preparation of Chapter 8 of the TSD.
2. For each of the people provided in answer to Question 1, explain the specific role that each played in the preparation of Chapter 8 and identify the specific sections which they participated in drafting.
3. Please provide the names of each person that participated in the preparation of Chapter 9 of the TSD.
4. For each of the people provided in answer to Question 3, explain the specific role that each played in the preparation of Chapter 9 and identify the specific sections which they participated in drafting.
5. Please provide the names of each person that participated in the preparation of Chapter 10 of the TSD.
6. For each of the people provided in answer to Question 5, explain the specific role that each played in the preparation of Chapter 10 and identify the specific sections which they participated in drafting.
7. What information did you use to determine the economic effect of the proposed mercury control regulations as stated in the TSD and where did you obtain that information?
8. Did you perform any independent verification of the economic information used in the TSD?

9. Provide the basis for each of the comments provided in Tables 8.3 and 8.4 of the TSD.
10. Tables 8.5 and 8.6 of the TSD list “typical” mercury content of coal and “projected” mercury in coal:
 - a. What is the agency’s understanding of how representative these values are for the coal fired at each of the coal-fired electric generating units in Illinois?
 - b. If analytical inaccuracies showed a mercury content that was 5% higher or lower than the actual value, what impact would this have on the nature of the control technology required to achieve a 90% reduction?
 - c. If analytical inaccuracies showed a mercury content that was 5% higher or lower than the actual value, what impact would this have on the cost of the control technology required to achieve a 90% reduction?
11. Provide the basis for the agency’s statements in the TSD regarding the level of risk and costs associated with the trading of mercury emissions credits under CAMR.
12. Please explain the statement that “the costs associated with the CAIR rule on electric rates and the power sector are several orders of magnitude higher than those of the proposed Illinois mercury rule” (p. 185 of TSD).
 - a. Is this statement based on a comparison of the national costs of compliance with CAIR/CAMR to the costs of the Illinois proposed mercury regulations in Illinois?
13. Please explain the IPM modeling result indicating that more than one half of the compliance costs will be borne by states other than Illinois (Table 9.4, page 176).
 - a. What then are the economic implications of the Illinois proposed mercury regulations for utilities and consumers in nearby states?

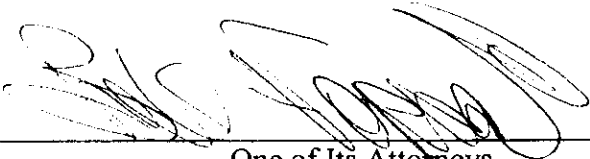
14. Please provide the names, background, education and experience of all people who assisted in the preparation of Table 10.3 Summary of Cost-Benefit Analysis (p. 207 of TSD).
15. List any and all documents used in the preparation of Table 10.3 Summary of Cost-Benefit Analysis.
16. Does the Agency believe cost-benefit analysis summarized in Table 10.3 meets the accepted standards for such analyses in support of regulatory impact assessments?
17. Please provide the names of all people that participated in the evaluation and/or preparation of the ICF Report contained in Appendix C of the Technical Support Document.
18. For each of the people provided in answer to Question 17, explain the specific role that each played in the evaluation and/or preparation of the ICF Report or its background materials.
19. For each of the people provided in answer to Question 17, provide a list of available dates for cross-examination of those individuals.

20. Please provide all information, including all documents, provided by the Agency for the evaluation and/or preparation of the ICF Report.

Respectfully submitted,

KINCAID GENERATION, L.L.C.

by:



One of Its Attorneys

Dated: May 22, 2006

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