

JUN 06 2006

STATE OF ILLINOIS
Pollution Control Board

In The Matter of:)

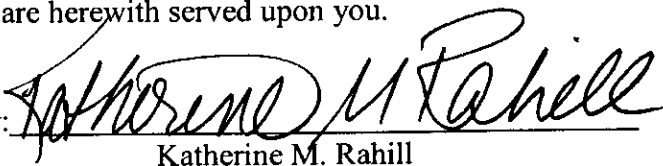
Proposed New 35 Ill. Adm. Code 225)
Control of Emissions from)
Large Combustion Sources)

No. R06-25)
(Rulemaking – Air)

NOTICE OF FILING

TO: See attached Service List

PLEASE TAKE NOTICE that on June 6, 2006, I filed with the Office of the Clerk of the Pollution Control Board, Participant KINCAID GENERATION, L.L.C.'s RESPONSE TO ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S MOTION TO AMEND RULEMAKING PROPOSAL, copies of which are herewith served upon you.

By: 
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CERTIFICATE OF SERVICE

I, Katherine M. Rahill, an attorney, hereby certify that I served a copy of the foregoing KINCAID GENERATION, L.L.C.'s RESPONSE TO ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S MOTION TO AMEND RULEMAKING PROPOSAL, via first-class mail, postage fully prepaid, upon the parties on the attached Service List this 6th day of June, 2006:

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JUN 06 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

In The Matter of:

**Proposed New 35 Ill. Adm. Code 225
Control of Emissions from
Large Combustion Sources**

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**No. R06-25
(Rulemaking -Air)**

**KINCAID GENERATION, L.L.C.'S RESPONSE TO ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY'S MOTION TO AMEND RULEMAKING PROPOSAL**

NOW COMES Participant KINCAID GENERATION, L.L.C. ("Kincaid"), by and through its attorneys, JENNER & BLOCK LLP, and hereby responds to the Illinois Environmental Protection Agency's ("IEPA" or the "Agency") motion to amend its rulemaking proposal, "Proposed New 35 Ill. Adm. Code Part 225 – Control of Emissions from Large Combustion Sources." Kincaid does not object to the Agency's amendment of the rulemaking proposal but asks that the Board consider the effect of the amendment and provide for additional time in this rulemaking. In support of its response, Kincaid states as follows:

1. The original rulemaking proposal was filed with the Board on March 14, 2006, and accepted for hearing by the Board on March 16, 2006.
2. On May 4, 2006, the Hearing Officer set the hearing dates for the rulemaking as follows: first hearing (proponents' case) – June 12-23, 2006; and second hearing (opponents' case) – August 14-25, 2006. Also, according to the May 4, 2006 order, participants must prefile testimony for the second hearing on or before July 17, 2006.
3. The current schedule allowed participants over seventeen weeks to consider, analyze, and prepare testimony in response to the Agency's original rulemaking proposal.
4. Even the original Hearing Officer's order under the Section 28.5 expedited schedule required those opposing the proposed regulations to submit prefiled testimony on May 26, 2006, more than ten weeks after the original proposal was filed with the Board.

5. The Agency filed its motion to amend its rulemaking proposal on May 23, 2006. Given the Board's meeting schedule and the briefing schedule set forth under the Board's rules, it is likely that the Board will decide whether to grant or deny the motion on June 15, 2006, but no earlier.

6. If participants are required to prefile testimony on or before July 17, 2006, participants will have, at most, only a little over four weeks from the date of the Board's decision to analyze the amended proposal and revise any testimony accordingly. During 1 1/2 weeks of that four week time, participants and their counsel will be occupied at the hearings in this matter and unable to prepare or review such testimony.

7. Moreover, because it is highly unlikely the Board will make a decision on the Agency's motion prior to June 15, three days into the first hearing, it is doubtful that the Agency will present its full testimony and the participants will conclude cross-examination of the Agency's witnesses by the June 23, 2006 conclusion of the first hearings. Therefore, the proponent's testimony will likely continue into the second hearing, further impinging on participants' ability to respond to the Agency's case.

8. The proposed amendment appears to change the fundamental underpinning of the rule by conceding that some facilities may not be able to meet the general rule requirements in a technologically feasible or economically reasonable manner. The proposed amendment adds an additional level of complexity because it may change the amount and timing of mercury reductions contemplated in the original rule, thereby placing in question any prior testimony or support for the claimed reductions in environmental or health impacts. As a result, participants need sufficient time to consider the applicability of this amendment as well as its potential

effects on the full spectrum of Agency's supporting documents and testimony, to consult with participants experts, and to prepare testimony in response.

9. Furthermore, the Agency has not submitted any testimony regarding the proposed amendment other than a few sentences in Dr. Staudt's testimony. Because the amendment has the potential to touch a range of topics, it is likely that the testimony of a number of witnesses may be affected by the proposed amendment, not just the testimony of Dr. Staudt. The only means with which participants can gain a greater understanding of the amendment is through cross-examination of the Agency's witnesses on the meaning and effect of the amendment. Therefore, participants need a full opportunity to cross-examine the Agency's and any other proponents' witnesses regarding the amendment and sufficient time to reflect on those responses in preparing responsive testimony.

10. The current schedule contemplates that testimony on technical feasibility and economic reasonableness (the portion of the testimony most affected by the amendments to the proposal) will occur at the end of the June hearings. It is not unreasonable to assume that the Agency witnesses on these topics will not be able to complete their cross examination by June 23, 2006, and would have to complete their cross examination during the August hearings.

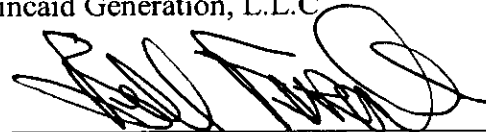
11. The current scheduling order requires the regulated community to submit any rebuttal testimony on technical feasibility and economic reasonableness on July 17, 2006. If the cross examination of Agency witnesses on these topics is not completed by June 23, and must continue to the August hearings, this requires opponents to pre-file rebuttal testimony approximately 30 days prior to the conclusion of the cross-examination of proponents witnesses for these topics. Members of the regulated community cannot reasonably prepare rebuttal testimony by July 17 to testimony they will not hear until August 14 or later.

WHEREFORE, for the reasons set forth above, Participant Kincaid Generation, L.L.C., respectfully requests that if the Board grants the Agency's motion to amend the rulemaking proposal, the Board direct the Hearing Officer to ensure that the prefiling date for rebuttal testimony will not occur until 30 days or later after the conclusion of the cross-examination of all proponents' witnesses, that the prefiling date for questions related to the rebuttal testimony will not occur until 14 days after the prefiling date for rebuttal testimony, and that the second hearing not be set to begin until 30 days or later after the prefiling date for rebuttal testimony.

Respectfully submitted,

Kincaid Generation, L.L.C.

by:



One of Their Attorneys

Dated: June 6, 2006

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