

JUL 13 2007

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
July 13, 2007

IN THE MATTER OF:)	
)	
SECTION 27 PROPOSED RULES FOR)	R07-19
NITROGEN OXIDE (NO _x) EMISSIONS)	(Rulemaking - Air)
FROM STATIONARY RECIPROCATING)	
INTERNAL COMBUSTION ENGINES AND)	
TURBINES: AMENDMENTS TO 35 ILL.)	
ADM. CODE PARTS 211 AND 217)	

HEARING OFFICER ORDER

On Friday, June 29, 2007, ANR Pipeline Company, Natural Gas Pipeline Company, Trunkline Gas Company, and Panhandle Eastern Pipeline Company (collectively, the Pipeline Consortium) filed a motion for production of information (Mot.). The Pipeline Consortium sought to have the hearing officer direct the Illinois Environmental Protection Agency (Agency) to produce specified data relating to pre-filed testimony submitted by Michael Koerber of the Lake Michigan Air Directors Consortium (LADCO) to the Board on May 11, 2007. The Pipeline Consortium requests that the data transmit from LADCO to the Pipeline Consortium's consultant, Alpine Geophysics, LLC (Alpine). On Tuesday, July 3, 2007, the Pipeline Consortium filed a supplement to its motion for production (Supp.) regarding the method through which it wished to receive the specified data. Noting that the Agency had informed the Pipeline Consortium that it would provide the data within 10-14 days (Mot. at 1-2), a hearing officer order dated July 11, 2007 directed the Agency, if it had not already done so, to supply the data requested in the Pipeline Consortium's motion and supplement through the method described in the supplement no later than Monday, July 16, 2007.

On July 12, 2007, the Agency filed a motion for reconsideration of the July 11, 2007 hearing officer order (Mot. Reconsider). Generally, the Agency argues that the Pipeline Consortium's motion for production is premature because the Agency has not yet obtained the data sought by that motion. Mot. Reconsider at 5-6. The Agency further claims that the record in this proceeding contains no testimony from Mr. Koerber and suggests on this basis that the information sought may not be relevant. *Id.* at 4, 5. The Agency thus argues that the hearing officer should reconsider the July 11, 2007 order and deny the Pipeline Consortium's motion for production of information. *Id.* at 1, 6. Alternatively, the Agency argues that, "if the information sought is to be the subject of an Order, the Hearing Officer should provide that the Illinois EPA produce the information within a time certain after its receipt of the data." *Id.* at 6.

The Board's procedural rules provide that, "[u]nless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 14 day response period . . ." 35 Ill. Adm. Code 101.500(d). The Agency has characterized the data it seeks as "highly technical" (Mot. at 2) and required for development of its case (Mot. at 1). Pre-filed testimony for the first hearing in this proceeding must be filed no later than

Monday, August 27, 2007. Accordingly, allowing the 14 day response period to expire under these circumstances would result in undue delay, and the hearing officer will proceed to consider the motion for reconsideration.

The motion to reconsider is denied. As the Agency notes, “[a]s part of the wholesale movement of the Illinois EPA’s filing in R 07-18 into newly created R07-19, the Board also included Mr. Koerber’s pre-filed testimony.” Mot. Reconsider at 5 n.2. While an Agency motion captioned R07-18 resulted in withdrawal of Mr. Koerber’s testimony from that docket, the Board has received no motion to withdraw it from the record in the separate docket R07-19. In the motion to withdraw Mr. Koerber’s testimony from the record in R07-18, the Agency stated that it “will more appropriately be addressed under the new docket R07-19.” With Mr. Koerber’s testimony filed May 11, 2007 remaining incorporated in the record of this proceeding, the data requested in the motion to produce is relevant to the substance of the Agency’s rulemaking proposal and appears necessary for participants and the Board to prepare effectively for hearing.

The Pipeline Consortium’s motion and supplement plainly recognized Mr. Koerber as the source of the requested data. Mot. at 2, Supp. at 2. By directing production of the requested data according to the supplement, the hearing officer order dated July 11, 2007 acknowledged Mr. Koerber’s role. Nonetheless, if the Agency cannot through the offices of Mr. Koerber produce the requested data by Monday, July 16, 2007, the Agency is directed to submit a filing showing cause why the data cannot be produced and proposing an alternative date by which production will occur. It is strongly preferred that Pipeline Consortium concur in any proposed alternative date.

IT IS SO ORDERED.



Timothy J. Fox
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, Illinois 60601
312-814-6085
foxt@ipcb.state.il.us