BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
NATURAL GAS-FIRED, PEAK-LOAD	)	R01-10
ELECTRICAL POWER GENERATING	)	P.C. #167
FACILITIES (PEAKER PLANTS)	)	

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(VIA FIRST CLASS MAIL)

PLEASE TAKE NOTICE that I have filed today an original and nine copies of the COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

By: Katherine D. Hodge
One of Its Attorneys

Dated: November 6, 2000

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COMMENTS OF THE
ILLINOIS ENVIRONMENTAL REGULATORY GROUP

NOW COMES the Illinois Environmental Regulatory Group ("IERG"), by one of its attorneys, Katherine D. Hodge of HODGE & DWYER, and provides the following comments with respect to the Peaker Plants Inquiry Hearings held by the Illinois Pollution Control Board ("Board").

I. INTRODUCTION

IERG is a not-for-profit Illinois corporation comprised of 68 member companies engaged in industry, commerce, manufacturing, agriculture, trade, transportation or other related activity, and which persons, entities, or businesses are regulated by governmental agencies which promulgate, administer, or enforce environmental laws, regulations, rules or policies. IERG was organized to promote and advance the interests of its members before governmental agencies such as the Illinois Environmental Protection Agency ("IEPA") and the Board. IERG is also an affiliate of the Illinois State Chamber of Commerce.

IERG appreciates this opportunity to offer comments in this inquiring proceeding and commends the Board for its efforts in collecting a body of information such that objective and impartial answers to the Governor's questions can be crafted. It is imperative that the Board review the body of information generated to *first* answer the

specific questions asked by the Governor. Only after arriving at answers to those specific questions should the Board turn its attention to recommendations as to imposing any further requirements on peaker plants.

IERG, on reviewing the testimony and questions presented at the public hearings, is concerned that the issues of *need for action* and of *available actions* have become blurred. In our final comments on this matter, IERG wishes to point out the differences between these two issues as they relate to air pollution controls. We also will comment on the issue of zoning, as opposed to more formal siting programs, reiterate our prior concerns as to the definition of peaker plants, and offer comment on the need for peak power in the new age of deregulation.

II. COMMENTS

A. Governor Ryan's Inquiries

The first question the Governor asks is:

1. Do peaker plants need to be regulated more strictly than Illinois' current air quality statutes and regulations provide?

The answer to this question lies in testimony and responses to questions relating to air quality impacts. How is one to determine if there is a *need* for additional regulations? IERG believes that the need for additional regulations, or lack thereof, is a function of whether the goals of air pollution control are, or are not, being achieved. The only way to determine if such goals are being achieved – or if the presence of new peaker units will somehow compromise such goals – is to look at the potential effect of peaker plants on ambient air quality standards and PSD increments. In fact, this type of analysis was the primary thrust of the testimony presented by IEPA witnesses (See, Testimony of

Thomas Skinner, Christopher Romaine and Robert Kaleel). (Transcript of August 23, 2000 Hearing, at pp. 48-130.)

Mr. Kaleel's testimony and attached exhibits are of particular importance on this issue. Mr. Kaleel's testimony was based on the results of modeling conducted by the IEPA as part of the air permitting process for peaker plants, as well as for attainment demonstration purposes. This modeling is *the only* scientific evidence presented as to the effects, or lack thereof, of the air quality impacts of peaker plants. Mr. Kaleel testified that the results of the studies reviewed to date have shown, to the Agency's satisfaction, that the natural-gas-fired peakers permitted thus far will not threaten the NAAQS or PSD for NO2, PM10, SO2 and CO. (Transcript of August 23, 2000 Hearing, at pp. 115-117.) As to ozone standards, Mr. Kaleel testified that the expected emissions from the natural gas fired turbines, or peakers, will not greatly affect the State's ability to demonstrate attainment of the 1-hour standard. Mr. Kaleel also stated that the model's response to projected emissions increases is small relative to the improvements in ozone air quality achieved to date and to improvements expected in the coming years from control programs yet to be implemented. (Transcript of August 23, 2000 Hearing, at pp. 128-130.)

Following the IEPA's testimony, the Board correctly asked a number of follow-up questions, in writing, to probe the question of localized air quality effects. (Illinois Pollution Control Board Order of September 25, 2000 Order, at p. 1.) In response to Board question # 2, the IEPA stated:

> The required analyses are conservative ... and address impacts at locations where peak impacts are expected to occur, even as close as the source's fence lines. The modeling has consistently demonstrated that the air quality impacts of the peakers

> are small, if not insignificant, and will not cause or contribute to violations of the NAAQS.

(IEPA October 4, 2000 Comments at p. 6.)

Thus, it is the IEPA's testimony that, based on modeling results conducted on each and every permit application, the goals of the air pollution control program will not be jeopardized by the emissions from such facilities. IERG believes that, unless there is credible evidence to the contrary, the *need* for additional air quality controls has not been demonstrated.

IERG has reviewed the testimony and evidence submitted at hearing. With the exception of a few unsubstantiated claims that air quality will be compromised, there is no challenge made to the conclusions reached from IEPA modeling. Absolutely no modeling was submitted to attempt to demonstrate air quality impairment. Rather, a wealth of testimony as to what additional level of control *could* be applied to peaker plants was presented. There is no question that additional levels of control *could be applied.* But for the purposes of this proceeding, and in IERG's opinion, that issue is moot, unless the *need* for such additional controls has been demonstrated.

The Governor did not ask the Board whether additional controls *could* be applied; it would have been unnecessary to hold inquiry hearings to answer that question. The Governor asked the more difficult question on the *need* for controls. Based on the evidence presented at hearing, the Board must answer the Governor's first question in the negative.

The second question the Governor asks is:

> **2. Do peaker plants pose a unique threat, or a greater threat than other types of State-regulated facilities, with respect to air pollution, noise pollution, or groundwater or surface water pollution?**

IERG believes the comments we offered above clearly demonstrate that peaker units do not pose a unique or greater threat than other regulated facilities, as regards air pollution. In fact, the record demonstrates that such units pose an insignificant threat to this environmental medium. In addition, Greg Zak, Noise Advisor for the IEPA, testified that IEPA had received no noise complaints regarding existing peaker plants. (Transcript of August 23, 2000 Hearing, at p. 136.)

As regards water issues, IERG believes that the Board is following the correct course of action in providing the newly formed Water Resources Advisory Committee with a summary of all water-related issues. In the transmittal letter from Chairman Manning to Directors Skinner and Manning, the following statement was made:

> While water usage was NOT the focus of these Board hearings, the issue of water usage was nonetheless an express concern of many who testified.

(Chairman Manning's Letter of October 25, 2000, at p. 2.)

IERG believes that, in forming this advisory committee, the Governor intended to address water-related issues within that forum. The Executive Director of IERG serves on that committee and will continue to actively participate in the decision-making process. Accordingly, IERG believes it would be inappropriate for the Board to make any recommendations regarding water issues at this time.

The Governor's third question is:

3. Should new or expanding peaker plants be subject to siting requirements beyond applicable local zoning requirements?

This is, in IERG's opinion, the crux of the matter. The real issue is that certain persons simply do not want peaker units located within their locality and, more explicitly, in their "back yards." IERG agrees these citizens have every right to express their views and ask local government to take appropriate steps to protect what they believe to be their legitimate interests. In fact, IERG believes that zoning, rather than state-prescribed siting, increases the potential for local citizens' input. In siting procedures for landfills, for example, local government must approve siting if the proposed facility demonstrates that it meets certain criteria established by state statute. There is no opportunity for local government to decide a siting request simply on the basis of local citizens' opinions or concerns. On the other hand, with zoning, people in and outside of a given community may disagree about the merits of a proposed peaker, but all views can be considered and weighed in local government efforts to prescribe appropriate action.

And here, the key term is *appropriate*. It is not appropriate to impose air, water or any other restrictions on a peaker unit, or any other facility, unless those restrictions are necessary to prevent a demonstrated environmental risk. It is inappropriate to saddle any facility with costly procedural requirements, or locational or technical restrictions, as a back-door way of increasing costs, thus diminishing the economic feasibility of the facility. Such actions do not constitute rational siting; rather, they are techniques to preclude siting by economic pressure. A facility that must incur such unnecessary costs

will – if built – be forced to pass those additional costs on to the consumer, imposing unnecessary costs on society as a whole.

Local citizens should, through their elected representatives, be allowed to *just say no*. The ability to *just say no* is, IERG would suggest, a basic tenet of zoning, as set forth above. Consider the example of a major retail outlet seeking to locate in a fast-developing area on the outskirts of a city. Local residents may not want the project and express their concerns to their local zoning board. Others in the city may want the facility. The local zoning board will decide. The zoning board does not need artificial reasons to deny the right to locate. It can negotiate changes to make the facility more acceptable to the opponents – or it can *just say no*. IERG is hard pressed to find any valid reason for the State to become involved in a locational decision that is basically a local decision, best addressed through local zoning. This is particularly true where, as explained above, local citizens' concerns are more adequately addressed in local zoning, than in state-prescribed siting

Furthermore, would the proponents of a state-prescribed siting process be willing to give up the ability of the locality to *just say no?* If the State believes that a peaker plant should be located in a specific area, will that decision override local zoning? There is not, in IERG's opinion, any reason to establish a new bureaucracy to site facilities that are appropriately regulated. Local zoning should, and can, do the job.

IERG believes that the Governor's final two questions are, in effect, resolved by the matters set forth above. There is no need for more stringent regulation of peaker facilities and these peaker units do not pose a unique or greater threat than other regulated

facilities. The concerns raised in these proceedings are best addressed by local zoning, rather than additional state regulation.

B. Additional Considerations

IERG would like to pose two additional questions and answers that are vital to this inquiry proceeding, as set forth below.

1. What is a peaker plant?

D.K. Hirner, IERG's Executive Director, previously testified at the Board's hearing on this matter. (Transcript of August 24, 2000 Hearing, at pp. 308-313.) In that testimony, IERG stressed that the Board should clearly define the type of units that are to be the subject of any recommendations that result from these hearings. Our concern at that time was that an entire universe of industrial steam and/or electric generation facilities could be treated as peaker plants. After review of the testimony, our concerns in this area have increased.

Once again, the focus of the hearings – natural gas-fired peaker plants – has been obscured by much of the testimony. The initial motivation for these hearings was public concern – justified or not – that power-generating facilities that are specifically constructed to supply only electric power, come on-line quickly, and produce power only in times of peak demand, would create unique problems for a community. During the course of the testimony, this scope became blurred with extensive discussion regarding combined-cycle, co-generation and even base-load facilities. IERG would submit that if the hearings were intended to cover issues regarding such a wide universe of power generation facilities, the testimony would have been much more detailed and comprehensive.

As the Board will be issuing an *informational* order in the near future, it is imperative that the Board's order precisely define the types of facilities that are the target of any recommendations. Failure to do so risks the Board's recommendations being misunderstood and thus misapplied in future legislative or regulatory initiatives. As noted in IERG's prior testimony in this matter, including industrial co-generation facilities in the definition of "peaker plant," either intentionally or by failure to adequately define "peaker plant," could impose potentially severe and unnecessary impacts on the business community.

2. How does the prospect of added environmental regulation square with Illinois' adopted policy to deregulate the utility industry and promote free competition?

Only a few years ago, the General Assembly passed landmark legislation in the area of electric deregulation. Illinois is not the first state to do so, nor assuredly, will it be the last. The primary motivation for deregulation is the desire to lower the cost of the goods or services provided, by substituting a competitive marketplace for a regulated monopoly. In virtually all cases, be it air fares, long distance telephone charges or trucking, the costs have decreased dramatically due to deregulation. While the transition will undoubtedly have problems, that is exactly why the General Assembly allowed for an extended period of transition. During that transition period, a number of events should occur. Among those events will be the private sector identifying areas of need (in this case for peak power) and providing the facilities and infrastructure to meet that need.

Prior to deregulation, public utility companies had an obligation to provide power; the State, through the Illinois Commerce Commission, was authorized to issue and approve the construction of a new power generating facility through certificates of

necessity, and in return, the public utility received a guaranteed rate of return. After deregulation, private utility companies may construct facilities to deliver power. Private utility companies must obtain all applicable environmental and other permits and ask their shareholders to assume the profit or loss risks should the decision to construct be faulty.

The intended result is that, eventually, supply and demand will balance, resulting in the consumer getting electricity at a fair price and the private utility earning a fair rate of return. IERG's concern in this regard is that each time *unnecessary* regulatory constraints are placed on a competitive entity, the laws of competition are skewed and everyone loses. Either consumers will pay a higher price to compensate for additional regulatory costs or the utility will opt not to construct a necessary facility resulting in a shortfall in supply – and thus higher prices will follow.

The concern raised by many at hearing is that there are too many facilities being planned, or permitted, or (possibly) constructed, relative to the demand for peak power. Quite frankly, this should not be a concern. In fact, if this is indeed the case, the laws of supply and demand say that the consumer will be the big winner while the environment will not suffer as a result of over-capacity. Electric power production differs from the manufacture of "widgets" in a fundamental way. While one may overbuild and stockpile widgets, with the attendant environmental impact of each additional widget being produced, one cannot stockpile kilowatts in the back yard. Thus, if there are too many peaker plants built, only those willing to produce the needed power at the lowest possible cost will operate. The remaining facilities may well be there, but they will have a zero environmental impact. The shareholders will suffer, not the consumer or the

environment. The competitive marketplace will deal with this situation. Accordingly, while IERG can understand the concerns of residents in the areas regarding excess capacity, upon close analysis, we believe such concerns may, in many cases, be unwarranted.

III. CONCLUSION

IERG appreciates the opportunity to participate in this proceeding. IERG respectfully requests that the Board consider and act favorably on the comments set forth herein.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

By: Katherine D. Hodge
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Dated: November 6, 2000

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