

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED NEW 35 ILL. ADM. CODE 225) R06-025
CONTROL OF EMISSIONS FROM) (Rulemaking – Air)
LARGE COMBUSTION SOURCES (MERCURY))

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn	Marie E. Tipsord, Esq.
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	James R. Thompson Center
Suite 11-500	100 West Randolph Street
Chicago, Illinois 60601	Suite 11-500
(VIA ELECTRONIC MAIL)	Chicago, Illinois 60601
	(VIA ELECTRONIC MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the **POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

By: /s/ Katherine D. Hodge
One of Its Attorneys

Dated: September 20, 2006

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THIS FILING SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the
attached POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL
REGULATORY GROUP upon:

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/s/ Katherine D. Hodge
Katherine D. Hodge

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IN THE MATTER OF:)
)
PROPOSED NEW 35 ILL. ADM. CODE 225) R06-025
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**POST-HEARING COMMENTS OF THE
ILLINOIS ENVIRONMENTAL REGULATORY GROUP**

NOW COMES the Illinois Environmental Regulatory Group (“IERG”), by and through its attorneys, HODGE DWYER ZEMAN, and submits its Post-Hearing Comments in the above-captioned matter to the Illinois Pollution Control Board (“Board”), stating as follows:

I. INTRODUCTION

The Illinois Environmental Regulatory Group (“IERG”) is a not-for-profit Illinois corporation affiliated with the Illinois State Chamber of Commerce and composed of fifty-five (55) member companies regulated by governmental agencies that promulgate, administer or enforce environmental laws, regulations, rules or other policies. On behalf of its member companies, IERG has attended outreach meetings, reviewed drafts of the proposed rules, and monitored Board hearings in this matter. Several of IERG’s member companies have participated directly in this rulemaking. IERG offers these comments for consideration by the Board on behalf of its member companies, excepting those participating in the Multi-Pollutant Standards (“MPS”) negotiation, as noted below.

II. DISCUSSION

During the recent hearings in this proceeding, testimony was offered on the proposed MPS, which contemplate reductions of emissions of mercury, as well as

reductions of emissions of two other pollutants – SO₂ and NO_x – from sources choosing the MPS compliance alternative. Two of IERG's member companies filed statements jointly with the Illinois Environmental Protection Agency ("Illinois EPA") in support of the MPS, providing, in pertinent part, as follows:

* * *

Ameren and the Illinois EPA agree that compliance with the Multi Pollutant Alternative is both technically feasible and economically reasonable, and that the level of NO_x and SO₂ reductions required in the proposed rule is expected to contribute significantly towards the state's efforts to achieve attainment of National Ambient Air Quality Standards, and any further reductions needed would first come from other sources.

Joint Statement, R06-25 at 3 (July 28, 2006). (Emphasis added.) Filed by Ameren Energy Generating Company, AmerenEnergy Resource Generating Company, Electric Energy, Inc., and the Illinois Environmental Protection Agency.

* * *

Dynegy and the Illinois EPA agree that compliance with the MPS revised as set forth herein, is both technically feasible and economically reasonable, and that the level of NO_x and SO₂ emission reductions required under the revised MPS is expected to contribute significantly to Illinois EPA's efforts to achieve attainment of the National Ambient Air Quality Standards, and that any further reductions needed would first be sought from other sources.

Corrected Joint Statement of Illinois Environmental Protection Agency and Dynegy Midwest Generation, Inc., R06-25 at 5 (August 23, 2006). (Emphasis added.)

At the hearing on August 14, 2006, testimony was offered by the Illinois EPA on a point of clarification regarding the implications of the above-referenced phrase, i.e., "any further reductions needed would first be sought from other sources." See August 14, 2006, Tr. at 201, 202. The Illinois EPA witness stated that the protective language regarding further reductions of NO_x or SO₂ was limited to coal-fired EGUs choosing the

MPS compliance alternative. *See* August 14, 2006, Tr. at 202. IERG understands this to mean that Illinois EPA would therefore look to EGUs that are not following the MPS, and/or non-EGUs, to achieve further reductions of NO_x or SO₂. Indeed, when specifically asked about non-EGUs, Illinois EPA's response was that they would "perhaps" be targeted for further NO_x or SO₂ reductions. *Id.* IERG's comments here seek further clarification on this point.

IERG has long supported the mercury emission reductions that would be achieved by adoption of the federal Clean Air Interstate Rule ("CAIR") and Clean Air Mercury Rule ("CAMR"). The United States Environmental Protection Agency developed both CAIR and CAMR based on the recognition that implementing air pollution controls in a phased approach would afford cost-effective emission reductions. This reduction of emissions in stages would allow the regulated entities to install the necessary emission controls in a manner consistent with managing debt load. It was further recognized that the phased approach would minimize potential impact on the power grid's stability and reliability. In addition, as Illinois EPA has acknowledged, the mercury reductions under CAMR were derived, in part, based on expected co-benefits from NO_x and SO₂ emission controls under CAIR. *See* Illinois EPA's Response to Midwest Generation's Motion to Schedule Additional Hearings, R06-25 at 8 (August 31, 2006).

IERG views the proposed MPS compliance option as a rational extension of the CAMR/CAIR co-benefit model. However, this rulemaking, as originally proposed, did not appear to contemplate such an inclusive approach. IERG notes that, in the initial Statement of Reasons in this proceeding, the Illinois EPA stated its regulatory goal:

Illinois EPA's regulatory proposal aims to achieve maximum mercury reductions in Illinois from EGUs while providing reasonable flexibility for affected sources.

Statement of Reasons, R06-25 at 24 (March 14, 2006).

The original intent of this rulemaking was to regulate mercury emissions from coal-fired EGUs in Illinois. For example, the technologies promoted by the Illinois EPA in its initial proposal, such as sorbent injection, were presented solely in terms of their ability to control mercury emissions and not for the benefit they would provide as part of a multi-pollutant control strategy. IERG certainly understands the inclusion of compliance alternatives and the co-benefit that NO_x and SO₂ emissions reductions have on mercury emissions. Illinois EPA nevertheless originated separate regulatory paths for control of mercury emissions and control of emissions of other pollutants.

Now, however, it appears that the statements surrounding the MPS proposed in this mercury rulemaking may be read to have implications for "other sources" of NO_x and SO₂ emissions in the State. IERG is uncertain that these "other sources" have been made fully aware of these implications, especially in the context of a rulemaking to control emissions of mercury from EGUs.

IERG understands that pursuant to the Board's request, Illinois EPA will be addressing the interplay of the MPS provisions with the proposed CAIR provisions. *See* Illinois EPA's Response to Midwest Generation's Motion to Schedule Additional Hearings, R06-25 at 4, 8 (August 31, 2006). However, it is unclear whether Illinois EPA will address only EGUs in this analysis or whether non-EGUs will be addressed as well. Thus, IERG respectfully requests that the Board also ask Illinois EPA to clarify the

implications, if any, of the MPS, as proposed in this proceeding, for “other sources” of emissions of SO₂ and NO_x, including non-EGUs.

III. CONCLUSION

IERG respectfully requests that the Board take further action in this proceeding consistent with IERG’s comments. Again, IERG appreciates this opportunity to participate in this rulemaking.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: September 20, 2006

By: /s/ Katherine D. Hodge
One of Its Attorneys

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