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STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
ORIGINAL December 20, 2006

IN THE MATTER OF:)
)
PROPOSED NEW CLEAN AIR) R06-26
INTERSTATE RULES (CAIR) SO₂, NO_x) (Rulemaking – Air)
ANNUAL AND NO_x OZONE SEASON)
TRADING PROGRAMS, 35 ILL. ADM.)
CODE 225. SUBPARTS A,C, D and E)

HEARING OFFICER ORDER

On May 30, 2006, the Board received a rulemaking proposal submitted by the Illinois Environmental Protection Agency (Agency) that proposes a new Part 225 to reduce intrastate and interstate transport of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) emissions from fossil fuel-fired electric generating units (affected units), on an annual basis and on an ozone season basis of each calendar year. The Agency proposes the adoption of the Clean Air Interstate Rule (CAIR) SO₂ trading program, the CAIR NO_x Annual trading program and the CAIR NO_x Ozone Season trading program to accomplish this objective.

Hearings in this matter were held from October 10 through October 12, 2006, at the Illinois Environmental Protection Agency Office Building Training Room, 1214 West, 1021 North Grand Avenue East, North Entrance, in Springfield; and from November 28 through November 29, 2006, at the James R. Thompson Center, Room 2-025, 100 West Randolph Street in Chicago. On November 30, 2006, Dynegy Midwest Generation, Inc., Midwest Generation, LLC, and Southern Illinois Power Cooperative filed a motion to dismiss the rulemaking.

On December 18, 2006, the Agency filed motions for extension of time to file a response to the motion to dismiss (Mot.1), a reply to a response to the Agency's motion to amend the rulemaking (Mot.2), and to file written comments (Mot.3). To date, responses to the motions have not been received.

For the reasons explained more fully below, the Agency's motions for extension are granted.

November 28, 2006 Hearing

At this hearing, Rachel Doctors and John Kim appeared and participated on behalf of the Agency. Kathleen Bassi, Stephen Bonebrake, and Sheldon Zabel appeared and participated on behalf of Dynegy Midwest Generation, Inc.; Midwest Generation, LLC; and Southern Illinois Power Cooperative. David Rieser appeared and participated on behalf of Ameren Energy Generating Company, Ameren Energy Resources Generating Company, and Electric Energy, Inc. Steven J. Murawski appeared and participated on behalf of Zion Energy, LLP. Faith E. Bugel appeared and participated on behalf of the Environmental Law and Policy Center. James Russell appeared and participated on behalf of the Christian County Generation, LLC. Bill

Forcade appeared and participated on behalf of Kincaid Generation, LLC. Keith Harley appeared and participated on behalf of Environment Illinois.

At hearing, the Board received the testimony of Jason M. Goodwin, Gregory Kunkel, C.J. Saladino, Robert B. Asplund, Steven C. Whitworth, and Charles Kubert. The complete transcript of the hearing was received at the Board on December 4, 2006. Seven exhibits were offered at the hearings.

At the close of the hearing, the public comment period was set to expire on December 22, 2006. In addition, the Agency was given leave to file a reply to any response to the motion to amend the rulemaking within seven days after the motion was filed.

Motions For Extension

In the motion for extension of time to file a response, the Agency asserts that pursuant to Section 101.500 of the Board's procedural rules, a response to the motion to dismiss is due on or before December 18, 2006. Mot.1 at 1. The Agency asserts that due to the nature of the arguments raised in the motion, as well as the large amount of time spent recently by attorneys for the Agency on other matters directly related to this rulemaking, the Agency is seeking a short extension of time up to December 22, 2006, by which it must file a response. *Id.* The Agency contends that this short period of time will not result in prejudice nor impede the progress of the underlying rulemaking. *Id.*

In the motion for extension of time to file a reply, the Agency asserts that on December 11, 2006, the Agency received service of the participant's response to the Agency's motion to amend the rulemaking. Mot.2 at 1. The Agency asserts that it had previously conveyed to the hearing officer that it would file its reply to the response by no later than December 18, 2006, based upon the hearing officer's prior approval of the filing of such reply. *Id.* The Agency argues that due to the nature of the arguments raised in the response, as well as continuing discussions concerning the content of the response with counsel for the participants, the Agency is seeking an extension of time up to December 22, 2006, by which it must file a reply. *Id.* The Agency asserts that the extension will not adversely prejudice the petitioners nor impede the progress of the underlying rulemaking. *Id.*

In the motion for extension of time to file written comments, the Agency asserts that on November 29, 2006, at the conclusion of the hearing held in Chicago, the hearing officer ordered that the written comments were due by December 22, 2006. Mot.3 at 1. The Agency notes that this date was reached after off the record discussions between the hearing officer and the parties, and that counsel for several of the utility companies participating in this proceeding advocated for a later due date for the written comments. *Id.* The Agency asserts that since that time, the Agency has received information from the United States Environmental Protection Agency related to this pending rulemaking that should be taken into consideration in the written comments, and that the Agency has recently completed successful discussions with one utility that may require additional review of the existing proposed rule language and more extensive comments than previously anticipated. *Id.* The Agency asks that the Board extend the time by which the written comments are due until January 5, 2007. *Id.*

The Agency contends that although it has not reached out to all participants in this rulemaking, presumably this request would apply to any party seeking to file a written or public comment with the Board. Mot.3 at 2. The Agency asserts that it has discussed this request with counsel for Dynegy Midwest Generation, Inc., Midwest Generation LLC, and Southern Illinois Power Cooperative, and that counsel has indicated they have no objection to the request. *Id.* The Agency concludes that given the overall benefit that should hopefully accrue from additional time to better prepare written comments for the Board's consideration, this relatively short period of time will not adversely prejudice any participants to the proceeding, nor unduly impede the progress of the underlying rulemaking. *Id.*

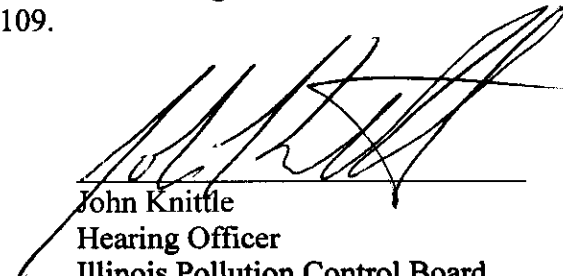
Discussion

Generally, the Board will not grant any motion before expiration of the 14-day response period unless undue delay or material prejudice will result. 35 Ill. Adm. Code 101.500(d). In this instance, the deadlines from which the Agency is seeking an extension, would lapse prior to the expiration of the response period. Thus, undue delay would result if the motions were not heard before the period expires.

Motions for extension of time may be granted on good cause shown. 35 Ill. Adm. Code 101.520. The Agency has shown good cause for each of its motions, and all three motions for extension are granted. The Agency will be given until December 22, 2006, to file its response to the motion to dismiss and its reply to the response to the motion to amend the rulemaking. Further, the deadline for written comments will be extended for all participants until January 5, 2007. The mailbox rule will not apply.

Once the public comment period expires, the Board will review the record and consider the proposal. Questions concerning the status of the rulemaking should be addressed to the hearing officer or Nancy Miller at (217) 278-3109.

IT IS SO ORDERED.



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(R06-26)

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