

Electronic Filing, Received, Clerk's Office, June 25, 2007

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED NEW CAIR SO₂, CAIR NO_x)
ANNUAL TRADING PROGRAMS,) **R06-26**
35 ILL.ADM.CODE 225,) **(Rulemaking – Air)**
CONTROL OF EMISSIONS FROM LARGE)
COMBUSTION SOURCES,)
SUBPARTS A, C, D, AND E)

NOTICE OF FILING

To:

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

Persons included on the
ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that we have today filed with the Office of the Clerk of the Pollution Control Board **SIPC'S COMMENTS ON FIRST NOTICE AND MOTION TO AMEND THE PROPOSED RULEMAKING**, copies of which are herewith served upon you.



Kathleen C. Bassi

Dated: June 25, 2007

Sheldon A. Zabel
Kathleen C. Bassi
Stephen J. Bonebrake
SCHIFF HARDIN, LLP
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
312-258-5500

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**SIPC'S COMMENTS ON FIRST NOTICE AND
MOTION TO AMEND THE PROPOSED RULEMAKING**

NOW COMES SOUTHERN ILLINOIS POWER COOPERATIVE (“SIPC”), by and through its attorneys, SCHIFF HARDIN LLP, and comments upon the Board’s First Notice Order (“Order”) for the proposed Clean Air Interstate Rule for Illinois (“CAIR”), issued on April 19, 2007. Pursuant to 35 Ill.Adm.Code § 101.500, SIPC also moves that the Board amend the First Notice rule to address a situation unique to SIPC that cannot be effectively addressed through an adjusted standard because of the nature of the needed change to the rule and the timing involved and to insert provisions that appear to have been inadvertently omitted from the First Notice rule.

I. Initial Allocations

A. Application of Averaging (Converted) Gross Electrical Output to SIPC

In order to comply with the deadline of July 31, 2007, for submission of initial allocations to the U.S. Environmental Protection Agency (“USEPA”) (*see* Order, p. 8, 3rd paragraph), the Illinois Environmental Protection Agency (“Agency”) has begun the process of calculating the number of allowances for each affected source and sharing drafts with those

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sources. This process emphasized an issue that SIPC raised with the Agency prior to and during the hearings in this matter, specifically that there were not three years of “normal” operations at SIPC during the initial look-back period. During the look-back period of 2001 through 2005, SIPC was winding down operation of old Units 1, 2, and 3 and building Unit 123, which is the circulating fluidized bed boiler (“CFB”) at that generating station. The CFB commenced operation in mid-2003 and went through a shake-down period of a year to a year and a half.¹ It was not until 2005 that SIPC experienced what can be characterized as “normal” operation.

Because there were not three years of “normal” operation at SIPC during 2001 through 2005, SIPC is significantly disadvantaged in the calculation of initial allowances for which it is eligible. While the difference in the number of allowances for which SIPC may be eligible if true “normal” operations in 2005 and 2006 were considered may be relatively small compared to the number of allowances to be allocated to other power companies in the state, a difference of even 10 allowances is significant to SIPC because the number of allowances it will receive is so small. Ten allowances are equivalent to 10% of a month’s allowances for that station.

The first year during which SIPC had “normal” operation was 2005. Averaging the (converted) gross electrical output of 2005 with other years during the 2001-2005 period does not allow SIPC to participate in the CAIR on a level playing field with the other EGUs in the state. SIPC is unique relative to the initial allocations because of the timing of the construction of the CFB.

¹ We reiterate the Agency’s and Board’s observation, at page 14 of the Order, that SIPC’s CFB is the only electric generating unit (“EGU”) in the state utilizing this technology. Neither SIPC nor the Agency had experience with the operations of a CFB EGU prior to the installation of the CFB at SIPC. Therefore, the shake-down period may have been – legitimately – longer than what one might expect of a conventional boiler.

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As initial allocations will be based upon an average of (converted) gross electrical output, a possible acceptable alternative for SIPC would be to rely on only 2005 for its initial allocation. Another alternative would be to average the (converted) gross electrical output from 2006 with that from 2005 to determine SIPC's initial allocation. The 2006 data is available, and using such data would create no hardship for the Agency in calculating SIPC's allocation.

For the reasons set forth above, SIPC moves that the Board amend Sections 225.435 and 225.535 to provide that the Agency shall determine SIPC's initial allocation on the basis of operations in 2005 alone or, in the alternative, on the basis of the average of operations in 2005 and 2006. Language for reliance on 2005 alone is set forth below:

Section 225.435/535 Methodology for Calculating Annual Allocations

The Agency will calculate converted gross electrical output, in MWh, for each CAIR NO_x unit that has operated during at least one calendar year prior to the calendar year in which the Agency reports the allocations to USEPA as follows:

- a) For control periods 2009, 2010, and 2011 . . . :
 - 1) Gross electrical output. . . . If the unit does not have gross electrical output for the 2004 and 2005 control periods, the gross electrical output will be the gross electrical output data from the 2005 control period. The gross electrical output data from the 2005 control period will be used for Unit 123 at SIPC. . . .
 - 2) Heat input (HI). . . . If the unit does not have heat input from the 2004 and 2005 control periods, the heat input from the 2005 control period will be used. The heat input from the 2005 control period will be used for Unit 123 at SIPC.

SIPC has discussed this issue with the Agency, but the Agency has indicated that it does not agree with this amendment to the First Notice rule, at least in part because it would have to adjust the allocations it has already submitted to USEPA for "parallel processing." This reasoning is inadequate. While USEPA may habitually review state rules through parallel

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processing² and for good reason, there is no obligation on the part of the Board to adopt what the Agency has submitted for parallel processing. Further, the Agency was arguably premature in submitting a rule and particularly this rule for parallel processing prior to Second Notice. SIPC is aware that the Agency is including a substantial number of amendments, including the amendment relative to the Clean Air Set-Aside (“CASA”) formula pertaining to the CFB discussed in Section II of these Comments, in its comments on the First Notice rule. Parallel processing is not a good reason to not accommodate SIPC in this request considering SIPC’s special circumstances.

B. Action Deadline in Sections 225.435(a) and 225.535(a)

Sections 225.435(a) and 225.535(a) provide that the owners or operators of EGUs subject to the CAIR may tell the Agency whether they want their initial allocations determined on the basis of gross electrical output or heat input converted to gross electrical output. The question of whether the companies had a choice in gross electrical output or converted gross electrical output was discussed at some length during the Springfield hearings in this matter, and SIPC appreciates the Agency’s willingness to clarify that it intended that there would be a choice and the Board’s implementing that clarification at First Notice.

However, as the Board noted and invited comment on page 39 of its Order, the deadline for the owners or operators to submit their choices, in writing, for the initial allocations is June 1, 2007. As the deadline for these comments on First Notice proves, the Board did not adopt this

² USEPA will review rules that state agencies submit as substantially complete and in the form likely to be adopted in order to save time during USEPA’s formal SIP approval process. Given the number of amendments that the Agency requires for this rule, the rule submitted to USEPA for parallel processing was not substantially complete and in the form likely to be adopted.

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rule as final by that date. Therefore, the rule improperly contains a deadline that predates the final adoption and effectiveness of the rule.

SIPC's preference would be to have all allocations based upon heat input. Understanding that the Board believes that basing allocations on gross electrical output would encourage efficiency, despite the fact that such efficiencies are not available to SIPC and any other type of unit that has pollution control as part of the boiler, in light of the pre-adoption deadline contained in the rule, SIPC encourages the Board to amend Sections 225.435(a) and 225.535(a) to reflect that initial allocations will be based on heat input only, with no conversions to gross electrical output and require the Agency to act compliant with the deadline in submitting initial allocations to USEPA.

II. Revision of CASA Formula

In its comments filed January 5, 2007, the Agency proposed a revision to the formulae found at Sections 225.465(b)(5)(B) and 225.565(b)(5)(B). PC # 5, pp. 17-18. The Board stated in its Order that it agrees with the Agency that SIPC's CFB "represents a special circumstance" and granted the motion to amend Sections 225.465(b)(5)(B) and 225.565(b)(5)(B) by changing the factor of 1.0 to 1.4 in the equation used to determine the number of allowances that SIPC may receive from the CASA. Order, p. 37. However, Sections 225.465(b)(5)(B) and 225.565(b)(5)(B) were not included in the First Notice rule. *See* Order, pp. 91-92.

SIPC believes it was the Board's intention to include the amendment proposed by the Agency for Sections 225.465(b)(5)(B) and 225.565(b)(5)(B) and hereby moves that the Board make that amendment, as follows:

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Section 225.465/565 Clean Air Set-Aside (CASA) Allowances

- b) The following formulas must be used to determine the number of CASA allowances that may be allocated to a project per control period:
- 5) For highly efficient power generation and clean technology projects pursuant to Sections 225.460[560](a)(4)(B), (a)(4)(C), and (c)(2), the number of allowances must be calculated using the number of megawatt hours of electricity the project generates during a control period and the following formulas set forth in subsections (A) and (B) of this subsection.

A) For projects other than fluidized bed coal combustion:

[the formula that is currently in the First Notice rule]

B) For fluidized bed coal combustion projects:

$$\underline{A} = \underline{(MWh_g) \times (1.4 \text{ lb/MWh} - \text{ER lb/MWh}) / 2000 \text{ lb}}$$

Where:

<u>A</u>	=	<u>The number of allowances for a particular project.</u>
<u>MWh_g</u>	=	<u>The number of gross MWh of electricity generated during a control period by a project.</u>
<u>ER</u>	=	<u>Annual average NO_x emission rate based on CEMS data in lb/MWh.</u>

SIPC has discussed this proposed amendment with the Agency, and the Agency agrees that the amendment should be made and does not object to it.

WHEREFORE, for the reasons set forth above, Southern Illinois Power Cooperative moves that the Board amend Sections 225.435(a) and 225.535(a) of the First Notice rule by providing that the initial allowance allocation for Unit 123 at SIPC will be based upon only 2005 operations or, in the alternative, that such allocation will be based upon the average of 2005 and 2006 operations. SIPC requests that the Board amend the date by which sources must notify the Agency of their choice regarding use of heat input or (converted) electrical output to a date after


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the rule is adopted. Southern Illinois Power Cooperative also moves that the Board amend Sections 225.465(b)(5) and 225.565(b)(5) of the First Notice rule by inserting subsection (B) in each section as set forth above and which consists of the formula for determining the CASA allowances for SIPC's CFB.

Respectfully submitted,

SOUTHERN ILLINOIS POWER COOPERATIVE

by:



One of Its Attorneys

Dated: June 25, 2007

Sheldon A. Zabel
Kathleen C. Bassi
Stephen J. Bonebrake
SCHIFF HARDIN, LLP
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
312-258-5500
Fax: 312-258-5600

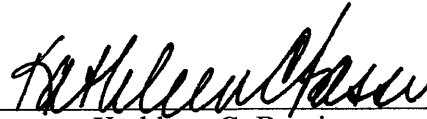
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CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 25th day of June, 2007, I have served electronically the attached **SIPC'S COMMENTS ON FIRST NOTICE AND MOTION TO AMEND THE PROPOSED RULEMAKING** upon the following persons:

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

and electronically and by first-class mail with postage thereon fully prepaid and affixed to the persons listed on the **ATTACHED SERVICE LIST**.



Kathleen C. Bassi

Sheldon A. Zabel
Kathleen C. Bassi
Stephen J. Bonebrake
SCHIFF HARDIN, LLP
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
312-258-5500

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SERVICE LIST

(R06-26)

<p>Amy Antonioli Hearing Office Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph Suite 11-500 Chicago, Illinois 60601 antonioaj@ipcb.state.il.us</p>	<p>Rachel Doctors, Assistant Counsel John J. Kim, Managing Attorney Air Regulatory Unit Division of Legal Counsel Illinois Environmental Protection Agency 1021 North Grand Avenue, East P.O. Box 19276 Springfield, Illinois 62794-9276 rachel.doctors@illinois.gov john.j.kim@illinois.gov</p>
<p>Matthew J. Dunn, Division Chief Office of the Illinois Attorney General Environmental Bureau 188 West Randolph, 20th Floor Chicago, Illinois 60601 mdunn@atg.state.il.us</p>	<p>Virginia Yang, Deputy Legal Counsel Illinois Department of Natural Resources One Natural Resources Way Springfield, Illinois 62701-1271 virginia.yang@illinois.gov</p>
<p>David Rieser James T. Harrington Jeremy R. Hojnicky McGuireWoods LLP 77 West Wacker, Suite 4100 Chicago, Illinois 60601 drieser@mcguirewoods.com jharrington@mcguirewoods.com jhojnicky@mcguirewoods.com</p>	<p>William A. Murray City of Springfield, Office of Public Utilities 800 East Monroe, 4th Floor, Municipal Building Springfield, Illinois 62757-0001 bmurray@cwlp.com</p>
<p>Katherine D. Hodge N. LaDonna Driver HODGE DWYER ZEMAN 3150 Roland Avenue, P.O. Box 5776 Springfield, Illinois 62705-5776 khodge@hdzlaw.com nldriver@hdzlaw.com</p>	<p>S. David Farris Manager, Environmental, Health and Safety City Water Light & Power 201 East Lake Shore Drive Springfield, Illinois 62757 dfarris@cwlp.com</p>
<p>Faith E. Bugel Environmental Law and Policy Center 35 East Wacker Drive, Suite 1300 Chicago, Illinois 60601 fbugel@elpc.org</p>	<p>Keith I. Harley Chicago Legal Clinic, Inc. 205 West Monroe Street, 4th Floor Chicago, Illinois 60606 kharley@kentlaw.edu</p>

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<u>SERVICE LIST</u> (R06-26)	
Sasha M. Reyes Steven J. Murawski Baker & McKenzie One Prudential Plaza, Suite 3500 130 East Randolph Drive Chicago, IL 60601 sasha.m.reyes@bakernet.com steven.j.murawski@bakernet.com	Bruce Nilles Sierra Club 122 West Washington Avenue, Suite 830 Madison, Wisconsin 53703 bruce.nilles@sierraclub.org
Daniel D. McDevitt General Counsel MIDWEST GENERATION, LLC 440 South LaSalle Street, Suite 3500 Chicago, Illinois 60605 dmcdevitt@mwgen.com	James H. Russell Winston & Strawn LLP 35 W. Wacker Drive, 40 th Floor Chicago, Illinois 60601 jrussell@winston.com
Bill S. Forcade Katherine M. Rahill JENNER & BLOCK LLP One IBM Plaza Chicago, Illinois 60611 bforcade@jenner.com krahill@jenner.com	Karl A. Karg Cary R. Perlman Andrea M. Hogan Latham & Watkins LLP 5800 Sears Tower 233 South Wacker Drive Chicago, Illinois 60606 karl.carg@lw.com cary.perlman@lw.com andrea.hogan@lw.com