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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
SECTION 27 PROPOSED)
RULES FOR NITROGEN OXIDE)
(NOx) EMISSIONS FROM) R07-19
STATIONARY RECIPROCATING) (Rulemaking - Air)
INTERNAL COMBUSTION)
ENGINES AND TURBINES:)
AMENDMENTS TO 35 ILL.)
ADM. CODE PARTS 211 AND)
217.)

Proceedings held on April 9, 2008, at 9:00 a.m., at
the Madison County Administration Building, Room 203,
157 North Main Street, Edwardsville, Illinois, before
Timothy J. Fox, Hearing Officer.

Reported by Holly A. McCullough,
C.S.R., C.C.R., R.P.R.

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Also present for IERG:
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9 (IEPA Exhibit No. 1 is attached hereto.)

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PROCEEDINGS:

(April 9, 2008, 9:00 a.m.)

HEARING OFFICER FOX: Good morning and welcome to this Illinois Pollution Control Board hearing. My name is Tim Fox, and I'm the Hearing Officer for this rulemaking, which is entitled "Section 27 Proposed Rules For Nitrogen Oxide Emissions From Stationary Reciprocating Internal Combustion Engines and Turbines: Amendments to 35 Illinois Administrative Code Parts 211 and 217". The Board docket number for this rulemaking is R07-19.

In an Order dated January 10th of 2008, the Board granted the Illinois Environmental Protection Agency's motion to proceed with an amended proposal and directed the Hearing Officer to proceed to hearing.

Also present from the Board today are to my left Board Member Andrea Moore, who is the lead Board member for this rulemaking, as well as to my right Anand Rao of the Board's technical staff. Member Moore, did you wish to make any remarks at this time?

MS. MOORE: Careful what you whisper. The microphone is on. And welcome all, and we appreciate the amount of time and effort that's gone into

1 producing this rule and look forward to getting a good
2 record.

3 HEARING OFFICER FOX: Very well. Today we are, of
4 course, holding the first hearing in this rulemaking.
5 The second hearing is now scheduled to take place
6 beginning Wednesday, May 7th, 2008 in Chicago. More
7 details about that are in the notice of hearings that
8 are posted on the Board's web site under this docket
9 number.

10 This proceeding is governed by the Board's
11 procedural rules, under which all information that is
12 relevant and is not repetitious or privileged will be
13 admitted into the record. Please note that any
14 questions today that are posed either by the Board
15 member or by the Board staff are intended solely to
16 insist in developing clear and complete record and do
17 not reflect any prejudgment on the merit of this
18 proposal that's before the Board.

19 For this first hearing, the Board on March 26th,
20 2008 received prefiled testimony from the Illinois
21 Environmental Protection Agency by Mr. Yoginder
22 Mahajan and from Mr. Robert Kaleel. On the same date,
23 the Board also received prefiled testimony from the
24 Illinois Municipal Electric Agency or IMEA by

1 Mr. Kevin Wagner, and also on March 26th, the Board
2 received prefiled testimony from the Illinois
3 Environmental Regulatory Group or IERG, often
4 pronounced IERG, by Miss Deirdre Hirner. We will
5 begin this hearing, of course, with that prefiled
6 testimony, and we'll hear first from the witnesses
7 from the IEPA, which is, of course, the proponent in
8 this proceeding, and this will be followed by
9 questions that others present may have for the
10 Agency's witnesses. We will then turn at Miss
11 Drivers' direction to Mr. Wagner for his testimony,
12 which will also be followed by any questions of those
13 participants here today may have for him, and then
14 also at Miss Drivers' direction we'll then turn to
15 Miss Hirner for the testimony on behalf of IERG,
16 followed, of course, by questions the participants may
17 have.

18 While I know that you are all veterans of these
19 kind of proceedings, for the benefit of our Court
20 Reporter, please speak clearly, and, if you would,
21 please avoid talking at the same time as any other
22 participant here. That would certainly help her to
23 transcribe this and for us to have a transcript that
24 is as clear as possible.

1 Are there any questions before we move forward
2 with the Agency's witnesses?

3 (No response.)

4 HEARING OFFICER FOX: Very well. Having spoken
5 off the record with Miss Doctors before the hearing,
6 it was her intention I believe, and she'll correct me,
7 that she wish to have the Agency's two witnesses sworn
8 in together, and that they did not have any kind of
9 remarks to offer, and that they would be prepared to
10 move directly to questions. Is that correct, Miss
11 Doctors?

12 MS. DOCTORS: That's correct. And I have a couple
13 of comments I'd like to make on the record before we
14 start with questions.

15 HEARING OFFICER FOX: This seems like as good a
16 time as any if you want to pose those.

17 MS. DOCTORS: On behalf of the Director, I'd like
18 to thank the Board for its consideration for this
19 rulemaking proposal and it's opportunity to provide
20 testimony in support of R07-19. As Mr. Fox just
21 mentioned, we're going to go straight to questions.

22 I would like to note that on March 24th, 2008,
23 this EPA issued a SIP call to all states with ozone
24 non-containment areas that had failed to submit

1 complete RACT SIPs. Illinois is such a state. The
2 Federal Register began an 18 month sanction of the
3 law. If Illinois does not submit the complete RACT
4 SIP by August, 2009, the offset sanction will apply,
5 which concerns emissions for modified or new
6 construction in non-containment areas, and if we do
7 not submit within 24 months, timely sanctions would
8 apply.

9 I've given each participant a copy of this Federal
10 Register, and I'd like that to be admitted into the
11 record.

12 HEARING OFFICER FOX: Ms. Doctors, just for the
13 sake of clarity, that is the Federal Register, Volume
14 73, page 15416, the title "Findings of Failure to
15 Submit State Implementation Plans Required for the
16 1997 8-hour ozone NAAQS". Do I have the correct
17 document?

18 MS. DOCTORS: Yes.

19 HEARING OFFICER FOX: And did I hear a motion to
20 admit that as hearing Exhibit No. 1.

21 MS. DOCTORS: Yes.

22 HEARING OFFICER FOX: Is there any objection to
23 the motion to admit that as Exhibit 1?

24 (No response.)

1 HEARING OFFICER FOX: Neither seeing, nor hearing
2 any, it will be marked and admitted as Exhibit 1. Ms.
3 Doctors, thank you.

4 MS. DOCTORS: And the second comment, I'd like to
5 note that I found some typographical errors --
6 typographical errors have been brought to my attention
7 by both Miss Driver and Mr. More, and we're waiting
8 for the Board to tell us which is the correct document
9 that's been published to use for identifying which set
10 of typographical errors the Agency should submit as an
11 errata sheet. The Agency would like to do this at the
12 second hearing if possible.

13 And, also, the Agency would note that IERG has
14 proposed an amendment that concerns offsets that they
15 agree with, and that would be part of that sheet
16 showing some changes to the rule at the second
17 hearing.

18 MS. DRIVER: That's correct.

19 OFFICER HEARING FOX: Again, just for sake of
20 clarity -- I'm sorry to interrupt you -- I believe
21 Miss Hirner's pretrial testimony included specific
22 language proposed for that very issue; is that
23 correct?

24 MS. DOCTORS: Correct. And the Agency is in

1 agreement with that language. I was just going to put
2 it all together in one document.

3 HEARING OFFICER FOX: Thank you for clarification.
4 And if I may jump back -- and I'm sorry to interrupt
5 you again -- the Board appreciates your notice,
6 Mr. More's notice and Miss Driver's notice that there
7 were apparently some discrepancies between different
8 versions of the rule, and we will expeditiously see,
9 with your help gracefully, where those are and how
10 they arose at the earliest possible opportunity and
11 let you and the other participants know precisely
12 which version you can safely rely upon with the Board
13 in proposing various changes in an errata sheet or
14 otherwise. So, thank you all for bearing on that. We
15 work at resolving that as quickly as possible.

16 MS. DOCTORS: Thank you. The other thing the
17 Agency would like to know is that Section 201.146 is
18 also being amended, even though it's not in this title
19 of this -- in R07-19, that that had been part of the
20 Board's earlier order that they would remove it from
21 R07-18 to R07-19 to that amendment. Is that correct?

22 HEARING OFFICER FOX: I believe that was part of
23 the original proposal filed in March or April of '07.
24 It was not included in the second notice opinion and

1 order for the final adoption of R07-18, and I'm sure
2 we'll have a brief question about your intentions for
3 that language in this proceeding, but it sounds like
4 you are suggesting that you may wish to amend the
5 caption to reflect the fact that there would be
6 language in 201.146, if I recall correctly, that would
7 be opened up and amended in this proceeding.

8 MS. DOCTORS: Correct.

9 HEARING OFFICER FOX: Very good. We'll certainly
10 take note of that, and I appreciate you placing it on
11 the record.

12 MS. DOCTORS: I'd like now to open it up for
13 questions to my witnesses.

14 HEARING OFFICER FOX: If I could just ask -- and,
15 again, apologies for the interruption -- were there
16 any other procedural questions or any other issues
17 that any of the participants wish to raise?

18 (No response.)

19 HEARING OFFICER FOX: Very good. If you're set,
20 Miss Doctors, I'll have the Court Reporter swear in
21 your two witnesses and proceed then.

22

23 (At this time, ROBERT KALEEL and YOGINDER MAHAJAN
24 are sworn in.)

1 HEARING OFFICER FOX: And having been sworn in,
2 both Mr. Kaleel and Mr. Mahajan on behalf of the
3 Agency are available for any questions. If anyone has
4 a question that they'd like to pose, please just raise
5 your hand so I may recognize you, and on the first
6 recognition, if you would just state your name and any
7 organization that you may represent for the benefit of
8 the Court Reporter and the record, that would be much
9 appreciated. Any questions for either of the
10 gentlemen? Miss Driver?

11 MS. DRIVER: Thank you, Mr. Fox. My name is
12 LaDonna Driver. I'm an attorney here today for two
13 entities, the Illinois Municipal Electric Agency,
14 which I'll call IMEA for short, and the Illinois
15 Environmental Regulatory Group, which I'll call IERG
16 for short. Thank you for the opportunity to be here
17 and participate in this rulemaking.

18

19 E X A M I N A T I O N

20 by Ms. LaDonna Driver:

21 Q. I have just a few questions for Mr. Kaleel,
22 and they are basically just to clarify a few things in
23 the ruling and in the prefiled testimony. The first
24 question that I have, Mr. Kaleel, is in the

1 applicability section of the rules, which is Section
2 217.386, and I'm specifically looking at the
3 exemptions, (b)(5), this is the exemption that has
4 commonly been called the portable unit exemption or
5 mobile unit exemption. Let me know, Mr. Kaleel, when
6 you've got it in front of you.

7 A. I found that section.

8 Q. Okay. Great. Just a couple of questions
9 that some of our members were wanting some
10 clarification on this provision. Could you provide
11 some insight as to why the Agency chose to cap this
12 exemption at 1500 horsepower for engines?

13 A. I guess I really don't recall what the
14 rationale for the 1500 was at this time. I think the
15 1500 is considered a significant emission unit for our
16 purposes. I guess I need to defer to comments if I
17 could at this time as to rationale for the 1500.

18 Q. Certainly. That would be fine. The other
19 thing that we were interested in on this provision is
20 that it seems to get to the concept of mobile units
21 being or portable units not really being considered a
22 stationary unit that's subject to this rule. Are we
23 right about that provision?

24 A. That's right.

1 Q. Okay. The language that you have towards
2 the end of this provision is that it has to move to a
3 different source at least once every 12 months. We
4 understand the term "source" to mean something in air
5 regulations. Can you talk a little bit about -- Does
6 the Agency truly envision that in order for this
7 provision to apply that you physically would move it
8 to a different Clean Air Act source every 12 months?

9 A. That is our intent. We are aware that
10 people use engines for a lot of different purposes,
11 and in many cases if they remain in a particular
12 source, then they are truly stationary. There are
13 other people that use engines that perhaps move them
14 from site to site on a very frequent basis, and it's
15 very difficult for us to track those or permit those
16 or to be able to have knowledge of where those are at
17 all times. Sometimes they may move them within a
18 non-containment area and then move them outside the
19 non-containment area. These are typically not real
20 large engines that are used for that purpose. We
21 didn't intend to regulate those. But the engines that
22 are at a source, even if they're perhaps moved within
23 the locations within the source, we did intend,
24 provided that they're not exempt.

1 Q. So, just so I understand what you're saying,
2 Mr. Kaleel, if a company wants to move its unit within
3 its one source facility, is it your position then that
4 this provision does not apply because it has not moved
5 to a different Clean Air Act source, different
6 facility? Do you understand my question?

7 A. Well, maybe you could ask it again.

8 Q. Sure. What I'm getting at is the situation
9 where a source has an engine that could move within
10 that source. It could move to one production building
11 and be used for some spot power needs there, and then
12 maybe in a few months they need it at a different
13 production building at that same source -- permitted
14 source. Is that the kind of situation that you
15 envision this exemption covering? They're not leaving
16 the permitted source. They're moving around within
17 that permitted source.

18 A. Thank you for clarifying your question.
19 That is more what we had in mind. If that engine or
20 turbine is located at a particular source, that
21 engine, provided that it meet the other applicability
22 requirements, that that engine would be affected.

23 Q. Okay. So, even if they are physically
24 moving the unit around at that source, you do not

1 intend for this exemption to apply?

2 A. That's right.

3 Q. Okay. Does that movement within that source
4 make the unit any less mobile? I guess I'm trying to
5 understanding the distinction in your mind on
6 exempting something that's moving around within a
7 source as opposed to it just moving across the road to
8 another source from a control standpoint.

9 A. I guess I can't envision a situation where
10 somebody would move it right across the road, but
11 we're really thinking of things like construction
12 sites or perhaps asphalt plants that are movable and
13 mobile. They're not going to be in the same general
14 location for any significant length of time. It's
15 difficult to regulate units like that, difficult to
16 track them, to inspect them on a regular basis or
17 routine basis.

18 Q. Well, thank you for offering to provide us a
19 little bit more information on the levels that you're
20 looking at in this provision. We'll move on from here
21 on that.

22 A. Okay.

23 Q. The other provision that I wanted to ask you
24 about is in Section 390.217. I'm sorry. That's the

1 wrong section. I have my pages moved around. Pardon
2 me. Section 217.388(c).

3 MS. DOCTORS: At the bottom of page 3?

4 MS. DRIVER: Yes.

5 A. Okay.

6

7 BY MS. DRIVER:

8 Q. This is I think what we've commonly called
9 the low usage compliance option?

10 A. Yes.

11 Q. And in looking at your prefiled testimony,
12 specifically on page 6 of your prefiled testimony --

13 A. Okay.

14 Q. -- in the top paragraph on that page, you
15 talk about towards the end of that paragraph low usage
16 units, and in the next to the last sentence of that
17 paragraph, you state here that one provision of low
18 usage units from all engines and turbines at a source
19 are below a hundred ton per year of NOx emission.
20 Could you talk about the scope of that statement in
21 comparison to the provision of Section 217.388(b)(1)?
22 And what I'm getting at here is the statement in your
23 prefiled statement that "all engines and turbines at a
24 source is below a hundred tons per year" as compared

1 to the rule language in Section 217.388(b)(1), and
2 specifically which units you count in that hundred ton
3 per year limit and which ones do not count.

4 A. Okay. Yes, we have to clarify. I think
5 perhaps in my prefiled testimony I was a little too
6 general or too informal and were not precise enough in
7 the way I worded that. What would count towards the
8 hundred tons per year or what we're asking the company
9 to do is to compute for us the potentials from that
10 distinguished from actual emissions. The potentials
11 would consider a unit that might operate continuously,
12 and many of the engines that we are -- or units, not
13 just engines, turbines -- do not operate continuously.
14 So, we've written into the rule that if the company
15 was to accept limit potentials would emit less than a
16 hundred tons per year of aggregating all engines and
17 turbines located at a source that aren't otherwise
18 exempt, so that would limit our exemptions and
19 applicability criteria, and those would not count
20 towards the PTE calculation and also other units that
21 are otherwise in compliance with the emission limits
22 contained within the rule. So, it's just certain
23 units that would count towards the PTE calculation,
24 and it wasn't intended as being broad as I

1 characterized it in my testimony.

2 Q. Very good.

3 MR. RAO: May I ask a follow up? You also have a
4 hundred tons per year of NOx emission criteria under
5 Section 217.386(a)(2)?

6 A. Yes.

7 Q. Basically that section states for engines to
8 be subjected to this rule, they're supposed to emit or
9 put out -- potentially emitting NOx in an amount equal
10 to or greater than a hundred tons per year?

11 A. Yes.

12 MR. RAO: When you say "emission of NOx to be
13 equal to or greater than a hundred tons per year on
14 that source," that's NOx from the engines and
15 turbines, or are there any other NOx emissions that
16 can also be calculated in that?

17 A. In the applicability section, 386(a)2), it
18 could refer to any emission units that emits NOx at a
19 source. So, if they --

20 MR. RAO: If there's a major source of NOx, if
21 somebody's engine is meeting the criteria that you
22 have under subsection (a)(2) A and B, they are subject
23 to the rules?

24 A. They are subject to the rule. And

1 distinguishing the intent of that law is from the one
2 that Ms. Driver was asking about, this is specifically
3 for a low usage exemption for engines that might be
4 within a source that has other types of emission
5 units, whether it's boilers or process sources. I'm
6 trying to distinguish low usage from any general
7 applicability of a hundred tons per year.

8 MR. RAO: Thank you.

9 HEARING OFFICER FOX: Thank you.

10

11 BY MS. DRIVER:

12 Q. And then following up on that, Rob --
13 Mr. Kaleel, for those engines or turbines that would
14 meet one of the ruling exemptions, they would not get
15 counted towards that hundred ton low usage
16 designation?

17 A. That's correct.

18 Q. And if a source has certain units, engines
19 and turbines that it decides can comply with the
20 proposed rules emission limits, those also do not get
21 counted towards the hundred ton per year limit?

22 A. That's correct.

23 Q. Very good. Thank you for that
24 clarification. While we're on the low usage

1 provision, just one more point to clarify here. The
2 hundred ton per year provision that we were just
3 looking at is in (c)(1), but then there's an operating
4 hour low usage designation in (c)(2), and it's broken
5 down to accommodate both engines and turbines, and
6 (2)A is engines, and (2)B is turbines. It's our
7 understanding, Mr. Kaleel, that the Agency intends
8 that if a source wants to take advantage of the low
9 use designation and they have engines and turbines,
10 not just one or the other, that they could take
11 advantage of the 8 million horsepower hours for their
12 engines in (c)(2)A, as well as the 20,000 megawatt
13 hours for turbines in (2)B, that they could use both?

14 A. They can use both.

15 Q. They can use both?

16 A. Uh-huh.

17 Q. They can't also use the hundred tons in the
18 first section?

19 A. That's correct.

20 Q. You either have to take the emission limit
21 or the hours limit?

22 A. The language says "or". So, either one or
23 the other.

24 Q. But within the hours limit, you can use both

1 the engine number and the turbine number?

2 A. That's correct. If the source has both
3 engines and turbines, they would count those hours
4 separately.

5 Q. Very good. Thank you. Moving on to the
6 section on emission averaging plan, this is Section
7 217.390, and specifically I'm looking at Section
8 (a)(2)A.

9 A. Okay.

10 Q. This is the provision that talks about what
11 kind of units may not be included in an averaging
12 plan, and we understand that a lot of this averaging
13 plan language is already in the rule from the first
14 proceeding. We did have some questions from members
15 that weren't affected by that first proceeding as just
16 a point of information. What the Agency's rationale
17 was on choosing January 1st, 2002, a date several
18 years in the past, for the cutoff of when units in
19 operation could be included in an averaging plan.

20 A. Okay. The date stems from the
21 implementation rule posed or required by USEPA for the
22 eight-hour standard -- 1997 version of the eight-hour
23 ozone standard and also the PM2.5 standard of 2002 is
24 considered a base year, and the base year considers

1 the emissions inventory, what the emissions of various
2 sources in that year as compared to the air quality
3 levels. You actually measure PM2.5 and ozone levels
4 that are occurring at this same time. These air
5 quality levels are the basis for the Chicago area and
6 the Metro East being non-containment in the first
7 place. The monitored values were violating the
8 standards. The idea is you set a base year that is
9 representative of your monitoring data that considers
10 air quality exceeding the air quality standards. For
11 planning purposes, you would compare that inventory to
12 some future year inventory. In case of ozone and
13 PM2.5, 2010 is the containment year, where it's levels
14 of emissions in the non-containment areas must be
15 reduced from the base year to that future year, such
16 that we can demonstrate if that future year obtains
17 the standard. I guess it's kind of a long-winded
18 answer. We're looking for emission reductions from
19 that base year. Replacement units that would be
20 included in an averaging plan that are permitted after
21 this date could represent an increase in emissions
22 from the base year rather than a decrease or a holding
23 status, and we're trying to prevent emission increases
24 occurring under the averaging plan provision.

1 Q. Okay. Thank you for that clarification.
2 The last area that I had for you, Mr. Kaleel, is
3 really getting towards the amended second support
4 document that went in with your submittal this past
5 December, and specifically what I'm looking at is
6 what's called Attachment A to that document.

7 A. Okay. I have it.

8 Q. Okay. And this attachment has two tables
9 within it. One is a list of impacted RICE, and the
10 other page -- the table of impacted turbines. We
11 wanted to hear from you, Mr. Kaleel, of how you came
12 about determining which emission units were
13 represented on this table as being units that would be
14 impacted by the proposed rule.

15 A. Okay. First off, the amendment say -- it's
16 included with the Technical Support Document -- is
17 intended as an indication of the number of sources
18 that may be affected or the number of units that may
19 be affected. It isn't a complete list. There may be
20 other units that are out there that we're not aware of
21 or that somehow didn't make it into our emissions
22 inventory system that would be subject to the rule or
23 maybe units that are listed here that may qualify for
24 low usage exemption or other exemption. So, it's

1 really our best estimate based on the information that
2 we have available. We developed these lists based on
3 our computerized database at the Illinois EPA. The
4 database, we put a lot of effort into it. We use it
5 tremendously for funding activities and other
6 activities at the Agency. We have to admit equally
7 that it's not a perfect representation of everything
8 that's out there, and this is really our best
9 estimate.

10 Q. So, I think you're acknowledging then that
11 there are several units that are even permitted by
12 Illinois EPA right now that meet the applicability
13 requirements for this proposed rule that aren't listed
14 here in the table?

15 A. That's certainly possible.

16 MS. DRIVER: Okay.

17 MR. RAO: May I? This relates to what Miss Driver
18 was asking you. Look at the potentially affected
19 sources back in the documents on page 38. You
20 reference some of these sources as potentially
21 affected, and then you have some which are potentially
22 impacted by these rules, and it's confusing to me how
23 you use those terms. Can you clarify it for the
24 record what you mean by "potentially affected" and

1 "potentially impacted"?

2 A. We perhaps should have been a little more
3 consistent with our language. I think we intended
4 those terms to be interchangeable. These may be
5 sources or units that are affected by the rule
6 depending on the specific circumstance, how large a
7 unit, how much they emit, where they're located, etc.

8 MR. RAO: Okay. Thanks.

9 MS. DRIVER: Could we just have just a moment to
10 confer?

11 HEARING OFFICER FOX: Absolutely.

12

13 (A brief recess off the record.)

14

15 MS. DRIVER: Thank you for your indulgence.

16 HEARING OFFICER FOX: No worries at all.

17 MS. DRIVER: We are done. Thank you so much,
18 Mr. Kaleel, for your information. We appreciate it.

19 MR. KALEEL: Okay.

20 HEARING OFFICER FOX: Miss Driver, thank you for
21 your questions. Were there other participants here at
22 the hearing that had questions for either of the
23 Agency's witnesses? I see Mr. More.

24

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E X A M I N A T I O N

by Mr. Joshua More:

Q. My name is Josh More. I'm a lawyer from Schiff Hardin on behalf of NGPO and A and R Pipeline Company. I was hoping to ask Mr. Kaleel some questions about applicability, and I wanted to talk about the hundred ton threshold at the source.

HEARING OFFICER FOX: Mr. More, if I may interrupt you for a second. We have a fan that's making you almost inaudible. If you could --

BY MR. MORE:

Q. I was hoping we could start talking about the applicability threshold, the 100 ton NOx emissions at a major source. Is it correct that an engine which is not located at a major source with moderate non-containment, a source that does not emit 100 tons of NOx or had the potential to emit 100 tons of NOx would not be covered by this rule?

A. That's correct.

Q. And the same would hold true for a turbine?

A. That's correct.

Q. Even if they met the same plate threshold listed in 217.386(a)(2) A and B?

1 A. If it's not located at a major source for
2 NOx, and "major" is defined as a hundred tons per
3 year, if it is not located at a major source, then the
4 rule would not apply.

5 MR. MORE: Thank you.

6 MR. RAO: May I ask a clarification question? In
7 the scenario that Mr. More just talked about, if that
8 engine or turbine by itself emits NOx and has a
9 potential to emit a hundred tons per year of NOx,
10 would that be subject to the rule?

11 A. It would be subject to the rule, although I
12 could maybe also offer that if the actual emissions
13 from that engine or turbine were less than a hundred
14 tons per year, that the company that operates that
15 engine or turbine could request from the Agency a
16 federally enforceable emission limitation or
17 restriction on operations that would alter the
18 potential to emit a number or value that was less than
19 a hundred tons, and if they accepted that enforceable
20 permit, that they could avoid the requirements of the
21 rule.

22 MR. RAO: Thank you.

23

24 BY MR. MORE:

1 Q. I just want to make sure I understand it.
2 So, if the source took a synthetic minor and it had an
3 engine that's seated and maintained the capacity, it
4 would not be subject to the rule?

5 A. If they accepted the federally enforceable
6 emission limits, potential to emit less than a hundred
7 tons a year, they would not be subject to the rule.

8 Q. Along those same lines, could you take a
9 look at page 13 in the PSD -- the amended PSD, Section
10 2.2? The second to last sentence reads, "If some of
11 the emissions from all units at a source determines if
12 a unit is major and not subject to RACT requirements."
13 Should that read "determines if a source is major"?

14 A. Yes, you're correct, it should be "source".

15 Q. Okay. Thanks. Next I was hoping we could
16 talk a little bit about PSD permitting requirements
17 that might ensue from certain scenarios, and in
18 particular it's referenced on page 30 of the Technical
19 Support Document, the last paragraph.

20 A. Okay.

21 Q. Could you describe for me what scenarios
22 might result in an increase in CO emissions that would
23 then in turn trigger PSD permitting?

24 A. I can make a general description on what we

1 intended by this paragraph. Specific permitting
2 questions I probably would want to defer to comments
3 since we don't have staff from the Illinois EPA permit
4 section available, but we are aware and I think what
5 we intended by this TSD is that there are certain
6 control practices or equipment that could be used on
7 engines that could -- would have a substantial benefit
8 in relation to nitrogen oxide emissions, but might
9 result in an increase of carbon monoxide. So, we
10 acknowledge that perhaps in some cases there's a
11 tradeoff. We also acknowledge that in some cases the
12 carbon monoxide emissions could go up rather
13 significantly and may trigger -- depending on the size
14 of the engine or the number of engines, may trigger a
15 prevention of significant deterioration permit
16 relative to the emissions increase for CO. So, we are
17 aware of that.

18 Q. What control practices are you aware that
19 would have a benefit with respect to the NOx emissions
20 that might in turn result in a decrease in CO
21 emissions?

22 A. Just a moment. I'll talk with Mr. Mahajan
23 on this. Looking at the Technical Support Document,
24 starting on page 23 and continuing on to page 24, we

1 are aware of at least one control device or type of
2 control equipment called a dry low NOx combustor that
3 may have the effect of increasing carbon monoxide
4 emissions. The second to last sentence in Section 4.6
5 entitled "Dry Low NOx Combustors" makes that comment.
6 So, that might be an example of a controlled device
7 that would be chosen by a company that could result in
8 air CO emissions. That's just an example. There may
9 be others.

10 Q. Are you familiar with the amount of time it
11 takes to obtain a PSD permit?

12 A. I know it's lengthy, but I probably
13 shouldn't speak to specific schedules. There's
14 varying degrees of complexities, and sometimes it's
15 much more complex to get a PSD permit than others.

16 Q. And what about the cost associated with PSD
17 permitting?

18 A. Again, I think I probably have to defer to
19 the costs. The costs are borne by the applicant, not
20 by the Agency. There are certain fees involved, but,
21 you know, I think the cost would vary depending on the
22 complexity of a PSD permit. I'm sure it's not
23 insignificant.

24 Q. And what about the compliance cost

1 associated with triggering a PSD, and the compliance
2 would be you'd have to meet BACT (phonetic) ; is that
3 correct?

4 A. That is generally the requirement for
5 prevention of significant deterioration. BACT
6 (phonetic) is a case-by-case determination by the
7 Agency. So, I can't speak to the specific cost for
8 carbon monoxide. That's something that would be
9 identified through the permitting process.

10 Q. Were any of those costs taken into account
11 in determining the cost for compliance with this rule?

12 A. We did not account for that, no.

13 MR. MORE: That's all I have.

14 HEARING OFFICER FOX: Thanks, Mr. More. Was there
15 any other participant that had a question or questions
16 for the Agency's witnesses here this morning?

17 (No response.)

18 HEARING OFFICER FOX: I understand that Mr. Rao
19 does have at least a number of questions. Mr. Rao, we
20 can turn to you.

21 MR. RAO: I just wanted to get a clarification
22 from you on the proposed language for 201.146(i). In
23 your proposal, you had indicated that the Board should
24 use whatever was proposed in your first notice. I

1 just wanted to make sure that Illinois EPA has seen
2 that language and whatever it proposes is what it
3 wants in the rule.

4 MS. DOCTORS: What I'm looking at is the Board's
5 Order from May 17th, 2007 on -- Can you hear me?

6 HEARING OFFICER FOX: Uh-huh.

7 MS. DOCTORS: On page 7 of your Order, it shows
8 the language that the Agency proposed and would like
9 considered.

10 HEARING OFFICER FOX: And just for the record,
11 Miss Doctors, that was the May 17th Order in docket
12 number R07-18 also relating to NOx emissions; correct?

13 MS. DOCTORS: Yes, it is R07-18.

14 HEARING OFFICE FOX: Thank you very much.

15 MR. RAO: Just to keep the proposal together and
16 all the language in it, would you consider proposing
17 that language in your errata sheet?

18 MS. DOCTORS: The Agency would be happy to include
19 Section 201.156.

20 MR. RAO: And then I had a couple of questions
21 relating to some typographical errors that may have
22 been triggered by the different versions of the rule,
23 but I thought I'd just ask you to -- or at least point
24 out those sections so you know which ones we found.

1 The first one was in Section 217.388. In the
2 preamble, it says, "On and after applicable compliance
3 date in Section 217.392, an owner or operator of an
4 affected unit must inspect and maintain affected units
5 as required by subsection C of this section," and I
6 notice that subsection C deals with low usage units.
7 I think it should be subsection D, but I wanted the
8 Agency to take a look at it to see what the correct --

9 MS. DOCTORS: What I'd like to do is just take a
10 list of the notations, and I'll respond in comment to
11 all once I have the correct version to go from.

12 MR. RAO: And let's see. The next one we found
13 was in Section 217.394(b). That subsection reads, "An
14 owner or operator of an engine or turbine must conduct
15 subsequent performance tests pursuant to subsection
16 C1, C2 or C3," but when you go to subsection C,
17 there's only C1 and C2. There's no C3.

18 MS. DOCTORS: Correct. That's a typo.

19 MR. RAO: That's a typo. Okay. So, that will be
20 addressed in your errata sheet?

21 MS. DOCTORS: Correct.

22 MR. RAO: Okay. Then I have a couple of questions
23 relating to the Technical Support Document. Go to
24 pages 34 and 35. The PSD -- Or the Technical Support

1 Document states, "For units included in an averaging
2 plan and units with continuous emission monitoring
3 system, compliance with emissions limit must be
4 demonstrated each year, and for all other units,
5 compliance will be demonstrated on a periodic basis
6 using stack tests and portable monitoring systems."
7 Could you please clarify if "all other units" mean
8 those that are not exempt from the rules, including
9 low usage units?

10 A. (by Mr. Kaleel) I'd be happy to clarify.
11 The rule requires record keeping by the companies.
12 So, when we say that compliance would be demonstrated
13 on a periodic basis, I mean, companies need to be in
14 compliance with the seasonal requirements and the
15 annual requirements. I mean, they always have to
16 comply with that. So, we didn't intend that they only
17 need to comply on a periodic basis. What we're
18 indicating here is that for averaging plans, we're
19 requiring submittal to us of compliance under the
20 averaging plan every year for both the ozone season
21 and the annual time frame. Other sources that seek to
22 comply -- other units -- I'm sorry -- that comply with
23 the emission limitations and not included in the
24 averaging plan are required to either use stack tests

1 or portable monitoring systems on a periodic basis,
2 once every five years in the case of stack tests,
3 annually for the portable monitoring systems. Low
4 usage units are required to maintain records that
5 demonstrate that they continue to qualify for that
6 exemption. So, again, there's various ways of
7 demonstrating compliance. The companies are supposed
8 to be able to maintain those records.

9 MR. RAO: With the five-year testing, is that
10 what's proposed in Section 217.394 subsection D?

11 A. Yes.

12 MS. DOCTORS: Can I ask a clarifying question?
13 Was it our intent that low usage units would be
14 required to do periodic monitoring or testing?

15 A. It is not required that low usage units do
16 testing or monitoring, unless it's subsequently
17 determined that they no longer qualify for that
18 exemption. Those units are required to test if the
19 Agency requires it or USEPA requires it, but it's not
20 in the rule that there's a periodic testing or
21 monitoring requirement for low usage units.

22 MR. RAO: As long as they provide the record
23 keeping and document that they're meeting the low
24 usage criteria?

1 A. Yes. That's correct.

2 MR. RAO: And page 38 of the TSD, regarding RICE
3 -- yeah, I think it's the RICE engine, with capacity
4 between 500 to 1500 brake horsepower, the Agency
5 estimates 135 units to be potentially affected by
6 these rules and estimates approximately 8 to be
7 potentially impacted by the proposal. Could you
8 please explain?

9 MS. DOCTORS: The Agency would like to note that
10 there's a typographical error. That the correct
11 number was thought to be 175, but it's 79 as presented
12 in Table 7-1.

13 HEARING OFFICER FOX: In other words, Miss
14 Doctors, the table is correct and should supersede the
15 175 in the text?

16 MS. DOCTORS: Correct.

17 HEARING OFFICER FOX: Thank you.

18 MR. RAO: That was part of my question. So, there
19 were 79 units considered as potentially affected by
20 these rules, and they approximate that 8 engines could
21 be potentially impacted by this proposal. Could you
22 please explain the rationale for assuming that a large
23 proportion of the affected engines, you know, not be
24 impacted by the rules?

1 A. (by Mr. Kaleel) I guess this goes back to
2 your previous question earlier about "potentially
3 affected" and "potentially impacted," and I apologize
4 if I didn't clarify the language properly. What we've
5 estimated based on surveys is that there could be as
6 many as 79 engines that are within 500 brake
7 horsepower and 1500 brake horsepower capacity. We've
8 made an attempt -- And if a source is in that range
9 and were operating continuously, their potential to
10 emit would be significant enough to be affected by the
11 rule. We've made an attempt to estimate how many of
12 those engines might meet the applicability criteria.
13 In other words, whether it's at a hundred ton source
14 or whether it operates at a level that might be
15 qualify for an exemption, and as a result of those
16 calculations, we've determined that we would estimate
17 8 engines in this size range would be affected by the
18 rule, would have to comply with the rule.

19 HEARING OFFICER FOX: Mr. More?

20 MR. MORE: You say "would have to comply with the
21 rule". These eight engines -- This is excluding those
22 engines that would take advantage of one of the
23 exemptions?

24 A. That's correct.

1 MR. MORE: So, technically speaking, those engines
2 that are taking advantage of the exemption are still
3 subject to the rule?

4 A. I note the clarification. I'm trying to
5 determine which source might actually have to -- or
6 which units might actually have to implement controls.

7 MR. RAO: That's all I have.

8 HEARING OFFICER FOX: Do any of the participants,
9 whether a follow-up by Mr. Driver, Mr. More, any of
10 the other folks present, have any questions for the
11 Agency's witnesses here this morning?

12 MS. DRIVER: I'm sorry. I have one more for
13 Mr. Kaleel that has come up.

14

15 E X A M I N A T I O N

16 by Ms. LaDonna Driver:

17 Q. In talking about the universe of units that
18 can be covered by this rule, and specifically I guess
19 with engines really, the rule itself is entitled and
20 speaks in terms of stationary internal combustion
21 engines. Can you talk a little bit about what the
22 Agency envisions by that terminology? In other words,
23 do you envision units that move while they're
24 operating to be considered stationary and, therefore,

1 subject to this rule?

2 A. (by Mr. Kaleel) Well, as we discussed
3 before, if an engine or a turbine operates in a
4 location within the source or even moves at different
5 locations within the source, if it meets the other
6 applicable requirements, then we would intend for the
7 rule to apply. We're aware of some circumstances
8 where some engines might move within a source that
9 might pose some difficulties in terms of testing or
10 installation of controls, and we are aware that the --
11 we're not quite sure at this time how to deal with
12 those circumstances. It may be that there are engines
13 of that type that should qualify for some sort of a
14 site specific consideration, but we've not developed
15 that at this time. So --

16 Q. Okay. Maybe that's something that we can
17 continue to develop and work on then.

18 A. We're always willing to discuss those
19 issues.

20 MS. DRIVER: Pardon me.

21

22 (A brief recess off the record.)

23

24 MS. DRIVER: Thank you very much.

1 HEARING OFFICER FOX: Any further questions on
2 anybody's part for the Agency?

3 (No response.)

4 HEARING OFFICER FOX: Seeing no indication that
5 anyone does have questions, gentlemen and Miss
6 Doctors, thank you for your testimony and responses to
7 the questions and your time. Why don't we proceed,
8 Miss Driver, if you have no -- I'm sorry. Miss
9 Doctors, I think we had spoken off the record before
10 the hearing, the prefiled testimony of the Agency's
11 two witnesses, of course, is filed with this Board,
12 and it's admitted into the record at this proceeding
13 as if read under the Board's rules. It's my
14 understanding that you did not wish to admit their
15 prefiled testimony as a hearing exhibit in this
16 proceeding. Is that correct?

17 MS. DOCTORS: Yes.

18 HEARING OFFICER FOX: Thank you very much for
19 clarifying. Miss Driver, I'm sorry for the
20 interruption. If you are set, we may turn to
21 Mr. Wagner for the Municipal Electric Agency. Did you
22 wish to submit his prefiled testimony into the record
23 as a hearing exhibit today?

24 MS. DRIVER: We do not. We, like the Agency, are

1 happy to consider it admitted as if read.

2 HEARING OFFICER FOX: Very well. And if the Court
3 Reporter then could proceed to swear Mr. Wagner in, we
4 could turn to perhaps a brief summary that he might
5 like to offer or otherwise go right to questions that
6 the Board and the participants may have for him.

7 MS. DRIVER: Actually, I will just make a couple
8 really quick points to cover both IMEA and IERG, and
9 we'll go straight to questions if that's fine.

10 HEARING OFFICER FOX: Excellent.

11 MS. DRIVER: We are very pleased to be here today.
12 We appreciate the opportunity to participate in this
13 rulemaking on behalf of both IMEA and IERG. We've
14 been working with the Agency on this rule for a few
15 years now, and unlike a lot of rules that come before
16 the Board of emission regulation type, this one in our
17 view is unique, in that you have a situation where you
18 have a great diversity of emission units at issue
19 here, and that happens quite frequently, but in this
20 case, we have a situation where a lot of the units
21 that are within the applicability of the rule do not
22 operate on a consistent basis, unlike a lot of units
23 that we deal with here. So, for us as the regulated
24 sources, it was critical that we consider that in how

1 the rule development went forward because the way a
2 unit operates and the frequency and its function has a
3 great deal to do with what you can do as far as
4 controls. So, as we worked with the Agency on this
5 rule, we developed some different compliance options
6 that we've talked about today, averaging plans, low
7 use options, and one thing that hasn't been mentioned
8 so far which is that of NOx allowances in certain
9 limited compliance situations. Those components of
10 the rule, both for IMEA and IERG, are critical
11 components of this rule.

12 As you can see from the prefilled testimony, we
13 have not talked about, nor challenged, the level of
14 the emission limits in the proposed rule, the control
15 technology that the Agency has focused on for getting
16 to those limits, nor the costs of those controls, and
17 the reason is because for the most part we feel that
18 our membership in both organizations will be able to
19 find and approach in the rule that works for them as
20 long as those approaches remain as proposed.

21 So, with that, we have both the prefilled testimony
22 of Kevin Wagner from IMEA, as well as Deirdre Hirner
23 from IERG, and both witnesses are available for
24 questions. I think we'll begin with Mr. Wagner.

1 HEARING OFFICER FOX: Thank you, Miss Driver. If
2 the Court Reporter could swear Mr. Wagner in, please.

3
4 (At this time, KEVIN WAGNER is sworn in.)

5
6 HEARING OFFICER FOX: If there are questions,
7 we'll proceed to those for Mr. Wagner. Again, if you
8 are seeking to ask a question for the first time, if
9 you would just identify yourself by name and any
10 organization you might represent so that the record is
11 clear. Is there anyone who wishes to pose a question
12 to Mr. Wagner?

13 (No response.)

14 HEARING OFFICER FOX: I know Mr. Rao has some
15 questions. Why don't we let him pose those?

16 MR. RAO: Good morning, Mr. Wagner.

17 A. Good morning.

18 MR. RAO: Your prefiled testimony on pages 6 and
19 7, you provide an example of an emergency situation
20 based by municipality members without naming the
21 impacted municipality. Would it be possible to
22 identify, you know, this affected municipality that
23 faces an emergency situation?

24 A. Let's see here. You're looking at --

1 MR. RAO: I was wondering if there's anything --
2 any information, or is it just --

3 A. You're referring to the example at the
4 bottom of page 6?

5 MR. RAO: And goes on to page 7.

6 A. The particular member that we were speaking
7 of is the City of Princeton, Illinois. They are in a
8 containment area. They are not one of the affected
9 units that -- Actually, there's five member cities
10 that are affected by the proposed rule, and they have
11 similar stories to tell, but we wanted to point out
12 the example of Princeton as being typical of the kind
13 of situation we can have when weather conditions
14 requires to run generation for extended outage.

15 MR. RAO: These -- You know, Princeton and also
16 these other five affected units you talk about, are
17 they all similarly situated in terms of having radio
18 transmission, or do they have different issues?

19 A. Yes. Those five are on page 12 in that
20 little table you'll see of my testimony.

21 MR. RAO: Okay.

22 A. At least four of those five have
23 transmission arrangements that are subject to a single
24 outage contingency situation that could cause problems

1 to supply their peak load. They have weak backup
2 lines, and they would have to run local generation to
3 support voltage or prevent overloading of those backup
4 facilities that they have.

5 MR. RAO: And the five municipalities that you
6 list on page 12, those are the ones that are in the
7 non-containment areas?

8 A. Yes, these are the ones that are affected by
9 the proposed ruling.

10 MR. RAO: Do any of these municipalities have, you
11 know, plans to make any changes to their transmission
12 system, or is that a very expensive change to make?

13 A. Yes, transmission improvements are very
14 expensive to make, and, of course, right-of-way is a
15 very difficult thing to obtain. Trying to bring a
16 transmission line through somebody's backyard is very
17 difficult. We are, of course, working with the
18 investor owned utilities, Ameren and those -- and
19 Exelon who are involved in those areas, to try to
20 coordinate our planning and put in those improvements
21 where we can, but those are difficult, and those are
22 long range projects.

23 MR. RAO: And of those five municipalities that
24 are affected by the proposed rule, do all the five

1 qualify for this low usage exemption?

2 A. Yes, all of these cities have units that we
3 believe exceed the standard that's proposed by the
4 rule, the emission standard, and we're not sure what
5 compliance strategy they'll choose, but very likely
6 they would opt for one of the low usage approaches.

7 MR. RAO: So, that is a viable option for these?

8 A. Yes.

9 MR. RAO: On page 8, you define "low usage unit"
10 as a unit that make take a collective federal
11 enforceable emission level of a hundred tons per year
12 of NOx. Would you clarify whether collective limit is
13 a source wide limit on potential to emit from all
14 engines and turbines in that particular source; is
15 that how you read the exemption to apply?

16 A. It's my understanding that that 100 tons
17 would pertain to all of the units in that particular
18 city.

19 MR. RAO: Without questions of the Agency, I just
20 wanted to make sure of that.

21

22 E X A M I N A T I O N

23 by Ms. LaDonna Driver:

24 Q. Can I follow-up on that? Just as a point of

1 clarification, so that we're not confusing
2 applicability with low usage, if a source wants to
3 take advantage of the low usage designation and they
4 want to take the hundred ton per year limit, is it
5 your understanding, Mr. Wagner, that that limit would
6 be taken only for those units that are not exempt
7 under the applicability provision and those units that
8 are not complying with the emission limits of the
9 proposed rule?

10 A. Yes.

11 MS. DRIVER: Okay.

12 MR. RAO: You also define a "low usage unit" as a
13 reciprocating engine with a federally enforceable
14 limit of 8 million Bhp hours or a turbine with a limit
15 of 20,000 megawatt hours annually in the aggregate.
16 Were these thresholds proposed by IMEA to the Agency,
17 or did they have to come up with those threshold
18 numbers?

19 A. I don't recall how those numbers were
20 developed.

21 MR. RAO: I wanted to ask you what's the rationale
22 for those numbers, but, you know, the Agency may jump
23 in and answer if they know.

24 A. (by Mr. Kaleel) The concept of using brake

1 horsepower hours or megawatt hours was actually
2 proposed to us by stakeholders. That specific number
3 or those numbers that are used in the rule was more of
4 a negotiation. I think the concept is that with brake
5 horsepower hours or megawatt hours that a small -- a
6 relatively small unit could operate for a lot of hours
7 and not trigger that threshold, and the smaller unit
8 would have fewer emissions. A larger unit would be
9 allowed fewer hours before it triggered that
10 requirement because that larger unit would be expected
11 to have larger emissions. But the values themselves
12 that are contained in the rules were a result of the
13 negotiation at stakeholders.

14 MR. RAO: Thanks for the clarification. I was not
15 sure because I know you worked with the Agency on this
16 part of the rule. So -- On Page 10 of your testimony,
17 you describe the potential impact of the proposed
18 rules based on applicability of the newer units to
19 comply with the proposed emission limits. Could you
20 please clarify whether IMEA or its members have
21 performed any preliminary monitoring and testing to
22 determine if the newer units can comply with the
23 proposed emission limits?

24 A. (by Mr. Wagner) Our numbers are based on

1 what we've seen from manufacturers' information.
2 There were a few random gas samples taken in the
3 Waterloo area, but nothing to -- that we could really
4 reach a conclusion on at this time, but we are
5 encouraged that from what we've read from
6 manufacturers' information on some of these new units
7 that some of them could possibly comply. We're not
8 certain at this time.

9 MR. RAO: Okay. On page 11 of your testimony, you
10 state that NOx allowance provision at Section
11 217.392(c) addresses emergency response situations
12 when a low usage unit meets the exceedance limit.
13 Could you comment on the rationale for limiting the
14 number of emergency based exceedances to two events
15 every five years? Is that -- That's what is proposed
16 in the rules. Is that an adequate, you know, number
17 of incidents to deal with emergencies?

18 A. Well, we'd always like to see more, but I
19 believe this was a number that we felt we could live
20 with based on experience we've seen -- historical
21 experience.

22 MR. RAO: Okay. I just wanted to see if there was
23 any rationale for that or, you know -- because
24 emergencies don't occur on a periodic basis.

1 HEARING OFFICER FOX: Mr. Kaleel, did you have a
2 comment on that issue?

3 A. (by Mr. Kaleel) Yeah. I think the way the
4 concept was developed in discussions with the
5 stakeholders, the idea of using NOx Sip call
6 allowances, it's kind of a novel law that was brought
7 to us by the stakeholders in the process. The
8 circumstance that I think that they had in mind was
9 unforeseen circumstances, unpredictable circumstances
10 that may cause exceedances of an emission limit or
11 violations of an emission limit. We -- I guess it
12 seemed to us that if we have three, four or five
13 exceedances -- they say for the unforeseen
14 circumstances occurring every year, well, then maybe
15 they're more predictable or could be dealt with with
16 better planning on the part of the units involved.
17 So, it didn't seem to us that that should be an
18 unlimited way of complying with the rule, that if
19 there are circumstances that are frequently occurring,
20 they almost by definition are unforeseeable. It seems
21 a better planning on the part of the companies would
22 be required. We didn't want it to be open-ended.

23 MR. RAO: You mentioned that this is the first
24 time the Agency is allowing this kind of an approach

1 to -- for affected units to comply with the rules. Is
2 there any downside to allowing the use of NOx
3 allowances to come to compliance?

4 A. (by Mr. Kaleel) Well, I guess the downside
5 of using the allowances is -- The idea originally came
6 with the trading program. The federal trading program
7 is that controlling NOx emissions helps to reduce
8 ozone or flying particles on a regional basis. That's
9 why the trading concept came along. It's a little
10 inconsistent with the idea of reasonably available
11 control technology, which is a Clean Air Act
12 requirement for a specific area. So, it's not
13 necessarily a regional transport issue anymore. It's
14 a local issue. So, the idea that a company might
15 comply by using allowances means that maybe they're
16 not applying controls locally. That would be a
17 downside. Currently the emission reduction under this
18 program is to be implemented locally and not
19 regionally.

20 MR. RAO: Thank you.

21 HEARING OFFICER FOX: Member Moore has indicated
22 that she has no questions, and that Mr. Rao has
23 exhausted those that he wanted to pose to Mr. Wagner.
24 Was there any other participant, anyone else here

1 present today that had a question for him?

2 HEARING OFFICER FOX: Miss Driver?

3 MS. DRIVER: Could I just quickly follow-up on the
4 last question that was raised about the NOx allowances
5 and Mr. Kaleel's response on that?

6 HEARING OFFICER FOX: Please do.

7

8 E X A M I N A T I O N

9 by Ms. LaDonna Driver:

10 Q. Understanding, Mr. Kaleel, what you just
11 said about the difference in the RACT emission
12 regulatory approach and trading, in the sense that in
13 other RACT-type rules that we have on the books right
14 now, if a source were to perhaps exceed some of those
15 limits, the traditional route would be doing what has
16 to be done to solve that problem, possibly some
17 enforcement and that sort of thing. The NOx allowance
18 here option also, does it not, allow for some kind of
19 fix in the air shed in that same somewhat season and
20 time, in that to the extent that there has been an
21 exceedance of NOx emission in the air shed, the source
22 compensates for that by retiring the same number of
23 emissions out of the NOx air shed, so there is some
24 benefit to having that happen at that point in time?

1 A. Well, we recognize there would be some
2 benefit to it. I guess in general in a trading
3 program, all of the states or the entire region that
4 participates in that program would see some benefit,
5 but it's conceivable that the NOx allowance that a
6 source might surrender to cover a compliance option
7 under this rule that that allowance may have been due
8 to an emission reduction that happened in a state
9 that's a long way away. So, in some cases -- It is
10 kind of theoretical. It wouldn't necessarily yield a
11 benefit in this air shed. It would yield a benefit
12 regionally -- somebody's air shed in the area that's
13 covered by the trading program.

14 Q. Somebody's benefitting?

15 A. Somebody would get a corresponding benefit.
16 It may not be in the same air shed.

17 Q. Thank you.

18 A. We do recognize the circumstances of the
19 operators of the engines and turbines that what
20 they're required to do with those engines and
21 turbines, there may be unforeseen circumstances. We
22 certainly recognize that, which is why we included
23 this.

24 MS. DRIVER: Thank you.

1 HEARING OFFICER FOX: Anything further, Miss
2 Driver?

3 (No response.)

4 HEARING OFFICER FOX: Mr. Wagner, it appears that
5 no one else had any questions for you. Thank you for
6 your prefiled testimony and your answers here today.
7 It's appreciated on behalf of the Board and the staff.
8 Miss Driver, as we are making progress through the
9 prefiled testimony, would it be appropriate to simply
10 go directly to Miss Hirner?

11 MS. DRIVER: Yes.

12 HEARING OFFICER FOX: I suspect having not wished
13 to admit Mr. Wagner's prefiled testimony as an
14 exhibit, that that would apply, as well, to Miss
15 Hirner. Of course, it's already in the record.

16 MS. DRIVER: That's correct, it will be admitted
17 as if read.

18 HEARING OFFICER FOX: If the Court Reporter would
19 swear Miss Hirner in, we'll turn to her and any
20 questions both you may have of her.

21

22 (At this time, DEIRDRE HIRNER is sworn in.)

23

24 HEARING OFFICER FOX: Miss Hirner, why don't we

1 turn to questions? Is there anyone on the part of the
2 Agency, any of the other participants that would have
3 a question they wish to pose to her?

4 MS. DOCTORS: No questions at this time.

5 HEARING OFFICER FOX: Miss Doctors, thank you. I
6 think Mr. Rao has a question.

7 MR. RAO: Miss Hirner, on page 3 of your prefiled
8 testimony, you state that IERG has non-attainment area
9 members with units which are not listed in Attachment
10 A that would be affected by this proposed rule. Does
11 IERG have such information as to how many additional
12 units would be affected by the proposed rules?

13 A. (by Ms. Hirner) I have an idea of the
14 number of members who may have units that would be
15 affected by the rule, and I think our issue goes to
16 what "affected" means. For example, my members are
17 all Title 5 sources, and some of the members who are
18 in this Title 5 area have sources -- or have units
19 that would now in their permits be noted as
20 insignificant units. However, when this rule comes
21 into play, those insignificant units, in order to --
22 will not necessarily have to have NOx controls placed
23 on those units, but for those insignificant units will
24 have to take a federally enforceable limit and then

1 will have to do some monitoring to ensure that they
2 comply with those federally enforceable limits as
3 stated. So, when we look to being affected by the
4 rule, while not having to place specific controls on
5 those units, they will be affected in that they will
6 have to do some revisions to the permitting, and that
7 they will have to do some monitoring activities. And,
8 so, for example, Abbott Laboratories would be one in
9 the Chicago non-attainment areas that has a unit that
10 will be affected by the rule in that regard.

11 MR. RAO: Okay. Since some of these units are not
12 part of the Agency's analysis in the TSD, do you take
13 issue with any of their, you know, conclusions based
14 on the impact of the rules in terms of the costs?

15 A. I'm not -- Could you clarify your question?

16 MR. RAO: What I was saying is, you stated that a
17 few of these -- your members have these units affected
18 by these rules which are not considered by the Agency
19 in their Technical Support Document and in their
20 analysis. So, my question was, because the Agency
21 didn't consider those units, do you have any issues
22 with the Agency's conclusions on the economic impact
23 of the rules, or should they have looked at, you know,
24 some of these insignificant units that would be also

1 affected by the rules?

2 A. With regard to, let's say, additional
3 permitting costs, I don't think that I have the
4 information at hand to answer that at this time, but
5 I'd be glad to address that in comment if you want me
6 to.

7 MR. RAO: If you think it's a significant impact
8 by the proposed rules on these sources, it would be
9 helpful to the Board if you could provide that
10 information either in comment or the next hearing.

11 A. Okay. I can do that.

12 MR. RAO: Thank you. That's all I have.

13 HEARING OFFICER FOX: Are there any further
14 questions for Ms. Hirner? Mrs. Doctors?

15

16 E X A M I N A T I O N

17 by Ms. Rachel L. Doctors:

18 Q. Yes. I just want to clarify your answer in
19 which you'd said there would be additional monitoring
20 in order to comply with the federal enforceable limit.
21 Now, you're talking about the periodic-type monitoring
22 requirements for Title 5, not monitoring requirements
23 as stated in our rule?

24 A. Correct.

1 Q. Which could be different and less stringent
2 and less frequent; is that correct?

3 A. Correct.

4 MS. DOCTORS: Thank you.

5 HEARING OFFICER FOX: Anything further, Miss
6 Doctors?

7 MS. DOCTORS: No.

8 HEARING OFFICER FOX: Were there any other
9 questions for Miss Hirner?

10 (No response.)

11 HEARING OFFICER FOX: Seeing none, Miss Hirner,
12 thanks to you, as well, for your prefiled testimony
13 and for your answers here today and your help to the
14 Board for building its record.

15 There is a sign-in sheet at this podium for folks
16 who wish to provide testimony who had not prefiled it
17 in advance of today's hearing. I see clearly that no
18 one has signed up. Is there anyone else here today
19 who did wish to be sworn in and offer any testimony on
20 the Agency's amended proposal?

21 (No response.)

22 HEARING OFFICER FOX: Neither seeing, nor hearing
23 any, we can turn to some housekeeping details and more
24 toward adjournment. If anyone wishes to do so, they

1 may file written public comments with the Board's
2 clerk in this proceedings. Those dates of filing the
3 comments may be made electronically through the
4 clerk's office on-line or the COOL system, and any
5 questions about that procedure of electronic filing
6 should be directed to the clerk's office, where they
7 can provide help on the technical aspects of that.

8 Filings with the Board, whether they're on paper
9 or electronic must also be served on the hearing
10 officer and those whose names appear on the service
11 list in this proceeding and before filing with the
12 clerk. You may reach me at 312-814-6085 or at the
13 e-mail address foxt@ipcb.state.il.us. If you did not
14 get those as I ran through them quickly, they'll
15 appear in the transcript, and they're also in the
16 notice of hearings that are posted on the Board's web
17 site under this docket number. That contact will make
18 sure you have the most current service list.

19 The Court Reporter indicates that copies of the
20 transcripts of this hearing today should be available
21 to the Board by April 15th, and very soon after those
22 transcripts are received, they would be posted on the
23 Board's web site, where they can be read, downloaded
24 and printed off free of charge at any time, again,

1 under this docket number, R07-19.

2 The second hearing in this proceeding is now
3 scheduled to take place beginning Wednesday, May 7th.
4 I believe that's exactly four weeks from today. It
5 will begin at 11:00 a.m. in Chicago. And the deadline
6 for prefiling testimony for that, again according to
7 the notice of hearing, is on Wednesday, April 23rd.

8 If anyone has questions about those procedural
9 aspects, such as prefiling, they may certainly reach
10 me through the phone number or the e-mail address that
11 I provided, and that is available on the Board's web
12 site.

13 One other issue I wish to bring up quickly, the
14 Board on the agenda of its regularly scheduled meeting
15 next Thursday, April 17th has in this docket an order
16 directing the clerk to withdraw from first notice
17 publication the original proposal that was published
18 in the Illinois Register in June of 2007. Having
19 granted the Agency's motion to proceed with the
20 amended testimony, it was the Board's conclusion that
21 that had in effect been superseded. In the interest
22 of trying to eliminate any risk of confusion or
23 misunderstanding, the Board will move forward to
24 withdraw that from first notice so that any subsequent

1 first notice and any order it wishes to issue in this
2 proceeding will take place that much more clearly
3 hopefully.

4 Are there any other questions or any other matters
5 procedurally that need to be addressed at this time?

6 (No response.)

7 HEARING OFFICER FOX: Hearing no response, I'll
8 restate thanks on behalf of the Board and the rest of
9 its staff. We very much appreciate your time and
10 travel in being here today and, of course, for your
11 prefiled testimony and your assistance in answering
12 questions. And with that, we can adjourn for today.
13 And we will -- I suspect to see many of you in Chicago
14 on Wednesday, May 7th. Thanks once again.

15 (Hearing adjourned.)

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1 STATE OF ILLINOIS)
2 COUNTY OF ST. CLAIR)

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I, HOLLY A. McCULLOUGH, a Notary Public within and for the County of St. Clair, State of Illinois, do HEREBY CERTIFY that the foregoing record was made before me on April 9, 2008, at the Madison County Administration Building, Room 203, 157 North Main Street, Edwardsville, Illinois.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the 10th day of April, 2008.

HOLLY A. McCULLOUGH
Notary Public
CSR #084-004265
RPR #821968
CCR #1011