

1 APPEARANCES:

2 ILLINOIS POLLUTION CONTROL BOARD:

3 MS. ANDREA S. MOORE, Lead Board Member,

4 MR. TIMOTHY J. FOX, Hearing Officer,

5 MR. ANAND RAO, Technical Staff Member;

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7 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY:

8 MS. RACHAEL L. DOCTORS, Assistant Counsel,

9 MR. YOGINDER MAHAJAN, Engineer;

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11 ILLINOIS ENVIRONMENTAL REGULATORY GROUP and

12 ILLINOIS MUNICIPAL ELECTRICAL AGENCY:

13 MS. N. LaDONNA DRIVER of

14 HODGE, DWYER, ZEMAN;

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16 ANR PIPELINE COMPANY and

17 NATURAL GAS PIPELINE COMPANY OF AMERICA:

18 MR. JOSHUA R. MORE of

19 SCHIFFHARDIN, LLP.

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23 REPORTED BY: SHARON BERKERY, C.S.R.

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CERTIFICATE NO. 84-4327.

1 THE HEARING OFFICER: Good morning,
2 everyone. Welcome to this Illinois Pollution
3 Control Board hearing.

4 My name is Tim Fox, and I am the
5 Hearing Officer for this rulemaking
6 proceeding entitled Section 27 Proposed Rules
7 For Nitrogen Oxide Emissions From Stationary
8 Reciprocating Internal Combustion Engines and
9 Turbines, Amendments to 35 Illinois
10 Administrative Code 211 and 217. The Board
11 Docket Number for this rulemaking is R07-19.

12 In an order dated January 10th of
13 2008, the Board granted the Illinois
14 Environmental Protection Agency's motion to
15 proceed with an amended proposal and directed
16 the hearing officer to proceed to hearing.

17 Also present today from the Board
18 are, on my right, Board Member Andrea S.
19 Moore, the lead board member for this
20 rulemaking, as well as on my left Anand Rao
21 of the Board's technical staff.

22 Would Member Moore like to make
23 any opening remarks?

24 MS. MOORE: Welcome.

1 THE HEARING OFFICER: And on we go.

2 Today we are holding the second
3 hearing, of course, in this rulemaking. The
4 first took place, as all, of course, will
5 recall, on Wednesday, April 9th, 2008, in
6 Edwardsville.

7 This proceeding is governed by the
8 Board's procedural rules. All information
9 that is relevant and that is not repetitious
10 or privileged will be admitted into the
11 record.

12 Please note that any question
13 posed today, either by Board Member Moore or
14 the staff, are intended solely to develop a
15 clear and complete record for the Board's
16 decision and do not reflect any judgment or
17 conclusion regarding the amended proposal
18 filed by the Agency.

19 The Board has received prefiled
20 testimony for the second hearing from
21 Mr. James McCarthy of Innovative
22 Environmental Solution, Incorporated on
23 behalf of ANR Pipeline Company and Natural
24 Gas Pipeline Company of America, to which he

1 has referred collectively as The Pipeline
2 Group, as I recall.

3 We will begin this hearing with
4 Mr. McCarthy's testimony. This will be
5 followed by questions that any of the
6 participants may have for him on the basis of
7 that prefiled testimony. After that, anyone
8 else may testify, as time permits at this
9 hearing.

10 If any participant, other than
11 Mr. McCarthy, would like to testify today,
12 there is -- there are, in fact, two sign-up
13 sheets right inside the door to this room.
14 Like all witnesses, those who sign up to
15 testify will, of course, be sworn in and may
16 be asked questions about the substance of
17 that testimony.

18 And then, my obligatory plea, of
19 course, to speak clearly for the benefit of
20 the court reporter and avoid speaking at the
21 same time as another participant, so that she
22 can help develop a clear transcript for us.

23 Are there questions at all about
24 our procedures or our order of testimony at

1 this point?

2 Very well. If the court reporter
3 would swear in Mr. McCarthy, then, to testify
4 on behalf of The Pipeline Group, please.

5 (WHEREUPON, the witness was duly
6 sworn.)

7 MR. McCARTHY: I do.

8 MR. MORE: And, Tim, if it would be
9 all right, I'd like to give a statement
10 before he testifies.

11 THE HEARING OFFICER: Very good.
12 Please, go ahead.

13 MR. MORE: Josh More, from
14 SchiffHardin, representing ANR Pipeline
15 Company and Natural Gas Pipeline Company of
16 America.

17 As mentioned in Mr. McCarthy's
18 testimony, the emission units owned and
19 operated by natural gas transmission
20 companies are unique in how they are
21 constructed and how they operate. This is
22 important, because the way a unit operates
23 and the frequency of its operations has a lot
24 to do with how emissions can be controlled.

1 THE HEARING OFFICER: Mr. More, if I
2 may interrupt, it sounds like you're going to
3 come close to the nature of testimony about
4 some of the sources. If we could have the
5 court reporter swear you in, we can do that
6 very quickly and then have you resume.

7 MR. MORE: That's the end. I mean,
8 then I was going to get into our position on
9 where we stand with respect to the rule.

10 THE HEARING OFFICER: Very good.

11 MR. MORE: So I'll be more than happy
12 to be sworn in, if that's...

13 (WHEREUPON, the witness was duly
14 sworn.)

15 THE HEARING OFFICER: Mr. More, thank
16 you for letting me interrupt you.

17 Mr. McCarthy, in speaking
18 procedurally about the hearing before we
19 convened, Mr. Moore had indicated, I believe,
20 that you wished not to read your summary --
21 read your testimony, which is, of course,
22 already admitted into the record, and opted,
23 in fact, not to present a summary of any
24 kind. Is your preference simply to proceed

1 to questions that the other participants may
2 have of you at this point?

3 MR. McCARTHY: Yes.

4 THE HEARING OFFICER: Anything
5 further, Mr. More?

6 MR. MORE: Yes. I'd like to talk
7 about where we stand with respect to the
8 rule --

9 THE HEARING OFFICER: Very good.

10 MR. MORE: -- and how we got there.

11 So the Agency, with the help of
12 The Pipeline Group, developed compliance
13 options that take into account the
14 aberrational realities of the engines and
15 turbines used by gas transmission companies.
16 These compliance options that are being
17 considered today are necessary to enable
18 these units to comply.

19 As mentioned in the prefiled
20 testimony, ANR Pipeline Company and Natural
21 Gas Pipeline Company of America do not object
22 to the rule, because the geographic scope is
23 limited to the nonattainment areas, and the
24 affected sources will be able to find a

1 compliance option that works for them. With
2 that, Mr. McCarthy is available to answer any
3 questions.

4 THE HEARING OFFICER: Very good.
5 Thank you, Mr. Moore.

6 MS. DOCTORS: Can we go off the record
7 one second, let me just check with Rob?

8 THE HEARING OFFICER: That's fine,
9 Ms. Doctor's, please do.

10 (WHEREUPON, discussion was had
11 off the record.)

12 MS. DOCTORS: I just have two
13 questions.

14 THE HEARING OFFICER: Ms. Doctors,
15 please go ahead.

16 JAMES McCARTHY,
17 called as a witness herein, having been first duly
18 sworn, was examined and testified as follows:

19 EXAMINATION

20 BY MS. DOCTORS:

21 Q. Mr. McCarthy, I want to acknowledge
22 that the Agency has worked and you have worked with
23 us to develop a rule that meets both environmental
24 objectives and allows for compliance. With that

1 said, I'd like to ask you whether you just represent
2 the pipelines?

3 A. Yes.

4 Q. Does this rule, in fact, cover other
5 types of engines?

6 A. It does.

7 Q. And turbines?

8 A. Yes.

9 Q. Do you object to this rule?

10 A. No, there's no objection.

11 MS. DOCTORS: Thank you.

12 THE HEARING OFFICER: Any other
13 questions on the part of the Agency,
14 Ms. Doctors?

15 MS. DOCTORS: No, we do not have any
16 more.

17 THE HEARING OFFICER: Ms. Driver, on
18 behalf of those you represent?

19 MS. DRIVER: No, thank you.

20 THE HEARING OFFICER: Mr. Rao
21 indicates that on behalf of the Board he
22 doesn't have any questions.

23 Does Board Member Moore have any
24 questions she'd like to pose?

1 MS. MOORE: Ms. Doctor's asked my
2 question.

3 THE HEARING OFFICER: In that case, I
4 will note for the record that I can clearly
5 see that there are -- the two sheets for
6 persons to indicate that they would like to
7 testify for persons who have not prefiled
8 testimony, those plainly are blank. But
9 certainly I would give any last option to
10 either the Agency's witnesses or to
11 Ms. Driver to offer testimony at this point
12 if they wish to.

13 MS. DRIVER: No, thank you.

14 MS. DOCTORS: We don't have -- the
15 Agency does not have any testimony. But it
16 would like to offer in the errata and
17 clarification sheet that it mentioned in the
18 first hearing.

19 THE HEARING OFFICER: Very good. That
20 sounds like a good time for a motion to that
21 effect, Ms. Doctors, if you'd like to offer
22 that?

23 MS. DOCTORS: I'd like to indicate
24 that this motion has been shared with

1 Mr. More and with Ms. Driver, and they
2 commented upon it. And the Agency believes
3 that we have agreement on the contents of
4 this clarification and errata sheet.

5 And at this point, I'd like to ask
6 that it be admitted. I have three copies.
7 Or let me give you another one.

8 THE HEARING OFFICER: I saw Mr. Moore
9 indicating with a gesture that he agreed with
10 your assessment.

11 Is that accurate, Mr. More?

12 MR. MORE: That's right. We have no
13 objection and we agree to the changes.

14 THE HEARING OFFICER: Very good. And,
15 Ms. Driver, you were obviously here for
16 Ms. Doctor's remarks, and it sounds like you
17 have no disagreement with those either?

18 MS. DRIVER: That's correct, we have
19 no objection.

20 THE HEARING OFFICER: Any objection at
21 all to the admission to what I will mark as
22 Exhibit No. 2, the clarifications and errata
23 sheet?

24 Hearing and seeing no objection,

1 it will be marked and admitted as Exhibit 2.

2 THE HEARING OFFICER: Mr. Rao
3 indicates that he has a question for the
4 Agency.

5 Mr. Rao, it appears to be a good
6 time for that.

7 MR. RAO: Yeah, my question relates to
8 an issue raised in Mr. McCarthy's testimony
9 on Page 6.

10 I think in the second full
11 paragraph Mr. McCarthy states that, "We
12 firmly believe that larger units for both IC
13 engines and turbines provide the most cost
14 effective and environmentally beneficial
15 avenue for emission reduction. I'm
16 questioning the basis and legitimacy of 500
17 horsepower IC engine threshold and 3.5
18 megawatt turbine threshold."

19 Could the Agency please -- and
20 I'll explain the rationale for setting those
21 thresholds.

22 MS. DOCTORS: Is Mr. Kalel still under
23 oath from the first hearing, or does he need
24 to be resworn?

1 THE HEARING OFFICER: Why don't we
2 just go ahead and have him sworn in.

3 (WHEREUPON, the witness was duly
4 sworn.)

5 ROBERT KALEL,
6 called as a witness herein, having been first duly
7 sworn, was examined and testified as follows:

8 EXAMINATION

9 BY THE WITNESS:

10 A. The thresholds that are described in
11 Mr. McCarthy's testimony on Page 6, the 500
12 horsepower threshold for IC engines and the 3.5
13 megawatts for turbines, these were developed by the
14 Agency based on their potential to emit for NOx. It
15 is our belief that engines of that size, just an
16 individual engine, has a potential to emit
17 approximately 100 tons per year of NOx emissions.

18 We are aware that not everyone
19 operates engines continuously throughout the year
20 and that units of this size may not achieve 100
21 tons, but we provided in the rule mechanisms that
22 engines of this size could avoid having to comply
23 with the rule, either through enforceable emission
24 limits in the permits or through other operating

1 characteristics in terms of the number of hours that
2 they operate. So there are -- there is relief for
3 small engines that don't operate continuously, but
4 because of the potential of engines of this size to
5 be significant emitters, we think that that
6 threshold is appropriate.

7 MR. RAO: Okay. Thank you very much.

8 THE HEARING OFFICER: Any further
9 questions on the part of Member Moore,
10 Mr. Rao?

11 On the part of any other
12 participants, last opportunity?

13 Excellent. Why don't we thank,
14 first of all, Mr. McCarthy for the
15 preparation of his testimony and his travel
16 to the hearing.

17 And it's appropriate, it appears,
18 to move onto the issue of the economic impact
19 study.

20 Since 1998, Section 27(b) of the
21 Environmental Protection Act has required
22 that the Board request that the department
23 now known as the Department of Commerce and
24 Economic Opportunity, conduct an economic

1 impact study of proposed rules before the
2 Board adopts them.

3 The Board then must make either
4 the economic impact study or the Department's
5 explanation for not conducting one available
6 to the public at least 20 days before a
7 public hearing. In a letter dated January
8 23rd, 2008 and posted under this docket
9 number on the Board's website, the Board did
10 request that the Department conduct an
11 economic impact study on this amended
12 rulemaking proposal, specifically. And, to
13 date, the Board has received nothing from the
14 Department responding to that request.

15 Is there anyone who wishes to
16 testify or comment regarding either the
17 request from the Board or the lack of
18 response from the Department of Commerce and
19 Economic Opportunity on that issue?

20 Seeing none, why don't we go off
21 the record briefly, just to address a
22 procedural issue.

23 (WHEREUPON, discussion was had
24 off the record.)

1 THE HEARING OFFICER: Then, if we may
2 go back on the record, please.

3 In going off the record to discuss
4 procedural issues, the participants spoke
5 about filing deadlines, specifically before
6 the Board does take action on the Agency's
7 amended proposal. The Board will hold open a
8 comment period ending 30 days after the Board
9 receives the transcript of this hearing and
10 allow responses for a period of 14 days after
11 that 30-day comment period has run.

12 To set the specific deadlines more
13 clearly, I'll issue a hearing officer order
14 shortly after the transcript is filed with
15 the Board, which will -- is expected to be
16 available on May 14th, 2008. Of course, once
17 it's filed with the Board, it will be placed
18 very quickly on the Board's website, where it
19 can be viewed and printed by any of the
20 participants.

21 Written public comments are not
22 limited to those who have participated in
23 either of these two hearings, and those
24 comments may be filed with the Board or

1 electronically through the Board's clerk's
2 office online, and any questions about
3 electronic filing can certainly be directed
4 to the Board's clerk's office. Filings with
5 the Board, of course, whether paper or
6 electronic, must also be served on the
7 hearing officer and those persons on the
8 service list.

9 And a correct service list is
10 available from the clerk's office. If there
11 are questions at all about procedural aspects
12 of the rulemaking, you may contact me at the
13 telephone number and e-mail address that are
14 posted on the Board's website. No other
15 hearings, of course, are now scheduled in
16 this rulemaking proceeding.

17 Are there any other matters that
18 need to be addressed at this time?

19 Seeing none, I would like to thank
20 everyone for their travel time and their
21 participation, and we can adjourn. Thanks
22 very much.

23 (WHICH WERE ALL THE MATTERS HEARD
24 IN THE ABOVE-ENTITLED CAUSE THIS DATE.)

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF COOK)

4 I, SHARON BERKERY, a Certified Shorthand
5 Reporter of the State of Illinois, do hereby certify
6 that I reported in shorthand the proceedings had at
7 the hearing aforesaid, and that the foregoing is a
8 true, complete and correct transcript of the
9 proceedings of said hearing as appears from my
10 stenographic notes so taken and transcribed under my
11 personal direction.

12 IN WITNESS WHEREOF, I do hereunto set my
13 hand at Chicago, Illinois, this 7th day of
14 May, 2008.

15

16

17 Certified Shorthand Reporter

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19 C.S.R. Certificate No. 84-4327.

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