APPENDIX H

NEW YORK SITING PROCESS

In the State of New York, applications to construct and operate an electric generating facility with a capacity of 80 MW or more are ruled upon by the New York State Board on Electric Generation Siting and the Environment (NYS Siting Board) after various filings and hearings. The NYS Siting Board is comprised of chairmen and commissioners of various state agencies. The NYS Siting Board also includes two members of the public, appointed by the Governor of New York for each project, who reside near the proposed site.

The New York siting process requires the applicant to file a preliminary scoping statement for the proposed project, describing the following: the proposed facility and its environmental setting; potential environmental impacts from construction and operation; proposed mitigation of potential environmental impacts; and reasonable alternatives to the proposed facility. During this pre-application phase, a hearing examiner may mediate disagreements on the scope and method of any environmental impact studies needed in the application.

The application itself must contain the following: a description of the facility and the site including all applicable environmental characteristics; studies of impacts on air, water, visual resources, land use, noise levels, health, and other matters; proof that the proposed facility will meet state and federal health, safety, and environmental regulations; applications for air and water permits; and a complete report of the applicant's public involvement program activities and how it encouraged citizens to participate.

The applicant must publish notice that it filed the preliminary scoping statement and the application, and serve copies of those documents on interested state agencies, members of the legislature, municipalities, local libraries, and other interested persons and organizations. During the siting process, the applicant must carry out a meaningful public involvement program. The applicant is expected to hold public meetings, offer presentations to individual groups and organizations, and establish a presence in the community (*e.g.*, establishing a local office, toll-free telephone number, Web site, or a community advisory group).

To facilitate the ability of local government and the public to evaluate the proposed project, New York requires that the applicant provide funds for intervenors to use in the siting process. When the applicant submits the application, it must include a fee of $1,000 per MW of capacity, not to exceed $300,000, to be used as an intervenor fund. The funds are awarded to municipal and other local parties to help pay for the expenses of expert witnesses and consultants. At least 50% of the fund is designated for the use of municipalities. The applicant receives any intervenor funds remaining at the end of the case.

The New York State Department of Environmental Conservation reviews applications for air and water permits submitted as part of the siting process application. That department must provide the permits to the NYS Siting Board before that board decides whether to

approve siting by granting the applicant a Certificate of Environmental Compatability and Public Need. To grant a Certificate, the NYS Siting Board must determine:

- Either:

  Constructing the facility is reasonably consistent with the most recent state energy plan (the final 1994 plan assesses the state's current energy supplies, infrastructure, and policies, and forecasts energy needs and supplies through 2012), or

  The electricity generated by the facility will be sold into the competitive market;

- The nature of the probable environmental impacts, including evaluating cumulative air quality impacts;

- The facility minimizes adverse environmental impacts, given environmental and other pertinent considerations;

- The facility is compatible with public health and safety;

- The facility will not discharge or emit any pollutants in violation of existing requirements and standards;

- The facility will control the disposal of solid and hazardous wastes;

- The facility is designed to operate in compliance with state and local legal provisions, other than those local legal provisions that the NYS Siting Board finds unreasonably restrictive; and

- The construction and operation of the facility is in the public interest.

Various state agencies involved in the environment, public health, or energy are normally active parties in the New York siting process. Any municipality or resident within a five-mile radius of a proposed facility can become a party to the proceeding. Any organization or resident outside of the five-mile radius may request party status. Party status enables the person or entity to submit testimony, cross-examine witnesses, and file legal briefs. The NYS Siting Board's goal is to decide whether to grant siting within 14 months after it receives the application.

CALIFORNIA SITING PROCESS

California has empowered the California Energy Commission (CEC) to conduct a consolidated approval process for siting all power plants that will have electric generating capacities of 50 MW or larger. The CEC's siting responsibilities include statewide planning analysis. The siting process allows the project applicant to submit a single application for all

necessary state and local approvals and provides analysis of all aspects of a proposed project, including need, environmental impact, safety, efficiency, and reliability.

The CEC has exclusive authority to approve constructing and operating these plants. While the CEC's authority supercedes the authority of other state and local agencies, the CEC solicits their participation in the siting process to ensure compliance with all applicable requirements, including local requirements. Under this approach, the applicant seeks a single regulatory permit from the CEC.

The California siting process, which has public hearings and allows the public to participate, has two main phases. The first phase is expected to take nine months to one year to complete. It typically involves a conceptual review of the project, determining the need for a proposed plant, site suitability and acceptability, and alternatives to the proposed project. The second phase is expected to take 12 to 18 months to complete. It involves considering the specific site, technology, and equipment. In the second phase, the design, construction, operation, and closure of the power plant is reviewed against applicable laws, rules, and ordinances. The second phase is used to identify negative environmental effects and ways to mitigate them. The CEC also determines, or reconfirms, the need for the facility.

The California siting process includes a public adviser, nominated by the CEC and appointed by the Governor of California to a three-year term. The public adviser is responsible for ensuring that the public and other interested parties have full opportunities to participate in the siting process. The public adviser does not act as the public's legal counsel before the CEC but instead advises the public on how to effectively participate in the proceedings.

California has experienced delays with its siting process, resulting in changes to the program. The CEC amended its procedures to allow any proponent of a natural gas-fired merchant power plant to proceed to the second phase without applying for an exemption from the first phase. Apparently the California legislature created a "fast track" siting process of six months for new electric generating facilities presenting no significant adverse environmental impacts. It also appears that, under that legislation, a simple cycle peaker plant can receive a three-year operating permit in less than four months if it presents no significant adverse environmental impacts and is equipped with certain stringent emission control technology. A permit condition, however, requires the facility, within three years, to either convert to a combined cycle operation or cease operating.

APPENDIX I

ILLINOIS SB 172 SITING CRITERIA

The Act's pollution control facility siting criteria are as follows:

i. the facility is necessary to accommodate the waste needs of the area it is intended to serve;

ii. the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;

iii. the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;

iv. (A) for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year floodplain or the site is flood-proofed; (B) for a facility that is a sanitary landfill or waste disposal site, the facility is located outside the 100-year floodplain, or if the facility is a facility described in subsection (b)(3) of Section 22.19a, the site is flood-proofed;

v. the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;

vi. the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;

vii. if the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release;

viii. if the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; and

ix. if the facility will be located within a regulated recharge area, any applicable requirements specified by the Board for such areas have been met. 415 ILCS 5/39.2(a) (1998).

APPENDIX J

State Laws & Regulations
Peaker Plants

Area	LAWS and REGULATIONS	DESCRIPTION
	ARIZONA	
Energy Portfolio	**Electric Utility Restructuring Efforts** (5/00) http://www.eia.doe.gov/cneaf/electricity/chg_str/pbp.html	The AZ Commerce Commission issued an order that requires electricity providers to derive 1.1% of their total product from renewable energy sources by 2007. Implementation will begin with 0.4% from renewables by January 1, 2001. 50% of their renewable power must be derived from solar-generating facilities.
	CALIFORNIA	
Siting	"**Guidance for Power Plant Siting and Best Available Control Technology**," July 22, 1999 http://www.arb.ca.gov/powerpl/powerpl.htm	In July 1999, the CA Air Resources Board approved guidelines for major power plant permits. The guidelines are intended to ensure that air districts require power plants to use the cleanest emissions control technology currently available. Districts will also be expected to require newer, cleaner control technology as it becomes available. This document does not establish any new laws or rules but provides guidance on applying existing state & federal rules and authority to peaker/merchant power plants. • **SITING:** CEC and local Air Districts have control over siting power plants >50 MW. Electric generating facilities >50 MW are required to receive certification from the Energy Facilities Siting and Environmental Protection Division. Certifications are open to the public. In the siting phase, the design, construction, operation, and closure of the power plant is closely examined in relation to applicable laws, ordinances, rules, and standards. Adverse environmental effects are identified and mitigation measures established. The need for the facility is determined, or reconfirmed, if preceded by a Notice of Intent. The siting process ensures that the proposed power plants are safe, reliable, environmentally sound, and comply with all applicable requirements. The Siting Division also oversees construction and operation.
Air		• **AIR DISTRICTS:** Local Air Districts provide analysis and recommendations to the CEC on proposed projects to determine compliance with air pollution control regulations. The Local Air Districts use a permitting process to control emissions from non-vehicular sources (stationary sources) that is incorporated into the CEC's power plant siting process. The CEC's power plant siting regulations specifically provide for the district's participation in the process. Each district's regulations may vary depending on the air quality conditions in the district and the district's policies and strategies for attaining or maintaining compliance with the federal and state ambient air quality standards. The district's analysis and recommendations are provided to the CEC in a document known as a Determination of Compliance (DOC).

Air		• **BACT/LAER:** Major sources are required by permit to use "California BACT," which is equivalent to the more stringent federal LAER in most CA air districts. • **EMISSIONS OFFSETS:** Air pollution control and air quality management district (district) NSR rules and regulations employ both BACT and emission offset requirements to reduce the impact on air quality from new or modified stationary sources. If emission increases are above certain specified levels, district NSR rules require applying BACT. If the emission increases after installing BACT are still above specified levels, then emission offsets may be required. • **AIR IMPACT ANALYSIS:** CA Health & Safety Code requires Air Districts to evaluate air quality impacts in addition to the federal CAA requirements on PSD. This ensures new permits will not be issued for emission units (sources) that will prevent or interfere with the attaining or maintaining any applicable air quality standard. • **HEALTH RISK ASSESSMENT:** Power plant applicants are asked to submit a Health Risk Assessment under the CA Environmental Quality Act and the Health & Safety Code. A health risk assessment addresses three categories of health impacts from all pathways of exposure, if appropriate: acute health effects from inhalation only, chronic non-cancer health effects, and cancer risks from multiple exposure paths. • **ADDITIONAL PERMITTING CONSIDERATIONS:** Permits address start-up/shut-down emissions, continuous air monitoring, sulfur content of fuel, and ammonia slip from air pollution controls.
Water	**Water Recycling Act of 1991** http://leginfo.ca.gov	• Established grants and loans for water reclamation projects and encouraged water reuse among suppliers. • Applies only to public entities that produce or supply water and to entities responsible for groundwater replenishment.
	CONNECTICUT	
Energy Portfolio	**An Act Concerning Electric Restructuring** *(RB 5005)* (4/98) http://www.eia.doe.gov/cneaf/electricity/chg_str/tab5rev.html#CT	• The bill requires renewable energy funding, a 5.5% renewable portfolio standard, and environmental protections.
Noise	**State Policy Regarding Noise** *(CT General Statutes Ch. 442, Sec. 22a-67 to 22a-76)* http://www.cslib.org//statutes/title22a/t22a-p5.htm	• Noise regulations address impulse noises and a model ordinance.

	FLORIDA	
Siting	**Electrical Power Plant Siting Act, 1973** *(FL Statute Section 403.501-.518)* http://www.dep.state.fl.us/siting/Programs/progER-pps.htm	• FL has an **Siting Coordination Office** responsible for siting of: ➢ Electrical Power Plants ➢ Electrical Transmission Lines ➢ Natural Gas Transmission Pipelines ➢ High Speed Rails ➢ Hazardous Waste Facilities • Electrical Power Plant Siting Act applies only to steam or solar electric generation > 75 MW. This would include combined cycle plants but not simple cycle combustion turbines. • Final approval body for the permits is not the Siting Board, but the Department of Environmental Protection. • Fees are charged to the applicant. • BACT for NO_x is 9 ppm based on dry low NO_x combustion technology.
	Ten Year Site Plan Requirements (TYSP) *(Part of the electrical power plant siting process)*	• FL Public Service Commission (PSC) oversees the submission of plans by the utilities that describe current generation capacity and anticipated need for more capacity. The TYSPs also provide information on future sites for power plants to accommodate the anticipated need. This information includes land use data, environmental factors, and similar topics. Other state and local agencies can comment on the plans to the FL PSC. Based on this information and its own conclusions, the FL PSC will determine the suitability of the plan.
	Need Determination *(Part of the electrical power plant siting process, s. 403.519, F.S.)*	• Need Determination is a formal process and is conducted by the FL PSC. The FL PSC reviews the need for the generation capacity that would be produced by the proposed facility in relation to the needs of the region, and to the state as a whole. The FL PSC also looks at whether the facility would be the most cost-effective means of obtaining the capacity.
	EIS *(Statute section 62-1.211(1), F.A.C.)* http://www.dep.state.fl.us/siting/Law_Rule/apform-pps-a.htm	• Site certification application forms for power plants resemble an EIS. Site Certifications are issued by the Governor and Cabinet. Before issuing a Site Certification, the Department of Environmental Regulation (DER), Department of Community Affairs (DCA), FL PSC, Water Management Districts (WMD), and other affected agencies are required to assess the potential effects upon the environment, ecology, and society by the proposed plant to ensure that the construction and operation of the plant will be consistent with applicable environmental standards.
	GEORGIA	
Water	**Water Withdrawal Permits** http://www.ganet.org/dnr/environ/aboutepd_files/branches_files/wrb.htm	• GA has a Water Withdrawal Permit Program. • Develops short-term and long-term water management policies and strategies to address environmental problems induced by unsustainable use of GA's water resources.
Air	**Air Permit Modeling** http://167.193.59.200/metdata/	• GA maintains a Web site with geographical meteorological data for air permit modeling based on 5 years of data.
	HAWAII	
Noise	**Noise Pollution** *(HI Revised Statutes Chapter 342F)* http://www.capitol.hawaii.gov/hrscurrent/Vol06/hrs342f/HRS_342F.htm	• HI's noise regulations incorporate both a permit program and enforcement provisions.

	ILLINOIS	
Air	**Air Pollution** *(35 Ill. Adm. Code, Subtitle B)* http://www.ipcb.state.il.us/title35/35conten.htm	• State rules follow federal requirements.
Energy Portfolio	**Renewable Energy Initiatives** http://www.eia.doe.gov/cneaf/electricity/chg_str/pbp.html	• 09/00 - Chicago Mayor Richard M. Daley announced that the City of Chicago and 47 other local government bodies plan to buy electric power as a group, requiring that 20% of the purchase (80 MW) come from renewable energy. The City has issued a request for proposals to the 13 licensed power providers in IL. This is the first opportunity that government agencies have had to purchase power competitively since IL passed its restructuring law. • 10/99: ComEd plans to allocate $250 million to a special fund to support environmental initiatives and energy-efficiency programs throughout the State.
Noise	**Noise** *(35 Ill. Adm. Code 900 – 952)* http://www.ipcb.state.il.us/title35/35conten.htm	• According to Greg Zak of IEPA, IL is more active than other states in regulating noise. However, some states may have cities that regulate noise through local ordinances.
	INDIANA	
Air		• Requires BACT for all new projects emitting >25 TPY VOM.
Siting		• Requires public utilities to obtain a *certificate of necessity* before constructing electric generating facilities. (The IN Utility Regulatory Commission considers IPPs to be public utilities.)
Water	**Water Rights & Resources** *(IN Code, 14-25)* http://www.ai.org/dnr/index.html http://www.ai.org/legislative/ic/code/title14/ar25/ch4.html	• Registration and annual reporting requirement for owners of significant water withdrawal facilities (> 1,000,000 gallons/day of surface water, groundwater, or combination). • IN Natural Resources Commission (NRC) has statutory authority to require, by rule, a permit for most water withdrawals from navigable waters, but authority has not yet been exercised. • IN NRC is required to develop and maintain inventories, gather and assess all information needed to properly define water resource availability. • IN NRC can establish, by rule, minimum stream flows. • Where groundwater is threatened, IN Department of Natural Resources (DNR) may designate a "restricted use area." Permit is then required for withdrawal of >100,000 gal/day beyond use at time of restricted use designation. In granting or refusing a permit, the IN DNR considers the concept of beneficial use.
	IOWA	
Energy Portfolio	**Electric Utility Restructuring Legislation** *(3/00)* http://www.eia.doe.gov/cneaf/electricity/chg_str/tab5rev.html#CT	• The IA Department of Natural Resources has proposed including a Renewable Portfolio Standard in restructuring legislation. The proposal would require renewable energy sources, such as wind, to be 4% in 2005 and increase to 10% by 2015. • Each peaker plant application is reviewed for acid rain potential and, in some cases, new sources must purchase credits from USEPA.

Water	**Water Allocation and Use; Flood Plain Control** *(Code of IA, 455B.261-290)* (1999) http://www.state.ia.us/dnr/organiza/epd/wtrsuply/alloca.htm http://www.legis.state.ia.us/cgi-bin/IACODE/Code1999SUPPLEMENT.pl	• Permit is required for any person who diverts, stores or withdraws >25,000 gal of water/day (surface or groundwater). Permits are generally issued for 10 years but, depending on geological conditions, can be for lesser period of time. • Permit program ensures consistency in decisions on allocations. Allocations are based upon concept of "beneficial use," the key points of which are: 1. water resources are to be put to beneficial use to the fullest extent; 2. water and unreasonable uses are prevented; 3. water conservation is expected; 4. established average minimum instream flows are protected. • Administrative process resolves water use conflicts. • Provisions are in place for involving the public in issuing water allocation permits and in generally establishing water use policies.
	KENTUCKY	
Air		• State rules follow federal air requirements.
Noise	**KY State Noise Control Act** *(KY Revised Statutes: KRS 220.30-100 to 220.30-190)* http://162.114.4.13/KRS/224-30/CHAPTER.HTM	• Regulations address a model ordinance.
	MAINE	
Energy Portfolio	**Electric Utility Restructuring Legislation** (5/97) http://www.eia.doe.gov/cneaf/electricity/chg_str/pbp.html	• ME's restructuring legislation contains the nation's most aggressive renewables portfolio, requiring 30% of generation to be from renewable energy sources (including hydroelectric).
	MASSACHUSETTS	
Energy Portfolio	**Electric Utility Restructuring Legislation** Http://www.eia.doe.gov/cneaf/electricity/chg_str/pbp.html	• MA's restructuring legislation includes a renewable portfolio requirement and established a renewable energy fund, funded via a system benefits charge. Funds will also be used to create initiatives to increase the supply of and demand for renewable energy.
	MICHIGAN	
Air	**Emissions Limitations and Prohibitions – New Sources of VOC Emissions** *(R336.1702)* Http://www.deq.state.mi.us/pub/aqd/rules/part7.pdf	• Requires BACT for all new sources of VOCs.

Siting	**MINNESOTA**	
	Power Plant Siting Act *(MN Adm. Code 116C.51-69.)* http://www.revisor.leg.state.mn.us/stats/116C/	• Power Plant Siting Act applies to facilities greater than 50 MW. • The siting authority is the MN Environmental Quality Board (EQB). Its purpose is to locate facilities compatible with environmental preservation and efficient use of resources. The MN EQB is to choose locations that minimize adverse human and environmental impact while insuring continuing electric power system reliability and that electric energy needs are met. • The MN EQB develops an inventory of study areas to guide the site selection process. The inventory is developed in a public planning process where all interested persons can participate in developing the criteria and standards to be used by the MN EQB. • A utility (public or private) must apply to the MN EQB for designation of a specific site for a specific size and type of facility. The application must contain at least two proposed sites. The MN EQB has 12-18 months to issue a decision. When the EQB designates a site, it issues a *certificate of site compatibility* to the utility with any appropriate conditions. No large electric power generating plant can be constructed except on a site designated by the MN EQB. • In designating a site, the MN EQB considers: ➢ effects on land, water and air resources; ➢ effects of water and air discharges and electric fields resulting from these facilities on public health and welfare, vegetation, animals, materials and aesthetic values, including base line studies, predictive modeling, and monitoring of the water and air mass at proposed and operating sites and routes; ➢ new or improved methods for minimizing adverse impacts of water and air discharges and other matters pertaining to the effects of power plants on the water and air environment; ➢ sites proposed for future development and expansion and their relationship to the land, water, air and human resources of the state; ➢ effects of new electric power generation and transmission technologies and systems related to power plants designed to minimize adverse environmental effects; ➢ potential for beneficial uses of waste energy from proposed large electric power generating plants; ➢ direct and indirect economic impact of proposed sites and routes including, but not limited to, productive agricultural land lost or impaired; ➢ adverse direct and indirect environmental effects that cannot be avoided; ➢ alternatives to the applicant's proposed site ➢ irreversible and irretrievable commitments of resources should the proposed site or route be approved; and ➢ where appropriate, consideration of problems raised by other state and federal agencies and local entities. • The MN EQB must hold a public hearing in the county where the proposed facility is to be located.

Water	**Water Supply Management** *(MN Statutes: Ch. 103G)* http://www.revisor.leg.state.mn.us/stats/103G http://www.dnr.state.mn.us/waters/programs/water_mgt_section/appropriations/permits.html http://www.dnr.state.mn.us/waters/programs/water_mgt_section/appropriations/progdesc.html	• Permit is required for all users withdrawing (surface and groundwater) more than 10,000 gallons per day or 1 million gallons per year. (Exceptions include: domestic uses serving less than 25 person, certain agricultural drainage systems, test pumping of a groundwater source, and reuse of water already authorized by permit, *e.g.*, water purchased from a municipal water system.) • Permits are granted for no longer than 5 years. • Policy is to manage water resources to ensure an adequate supply to meet long-range seasonal requirements for domestic, agricultural, fish and wildlife, recreational, power navigation, and quality control purposes. • Water Appropriation Permit Program exists to balance competing management objectives that include both developing and protecting MN's water resources. • Permitted users are required to submit annual reports of water use. Reported information is used to evaluate impacts and to aid in resolving conflicts.
Noise	**Noise Pollution Control** *(MN Rules Chapter 7030)* http://www.revisor.leg.state.mn.us/arule/7030/ http://www.pca.state.mn.us/programs/pubs/noise.pdf	• The MN Pollution Control Agency is empowered to enforce the state noise rules.
	MISSOURI	
Air		• State air rules follow federal requirements. • Major source threshold is 100 TPY.
Water	**Geology, Water Resources and Geodetic Survey** *(MO Revised Statutes, Chapter 256)* http://www.dnr.state.mo.us/dgls/wrp/wateruse statutes.htm http://www.moga.state.mo.us/statutes/c200-299/2560400.htm	• Major water users must register with MO Department of Natural Resources (DNR). A major water user is defined as an entity that is capable of withdrawing or diverting 100,000 gal or more per day from any water source. • Failure to register may result in MO DNR request that Attorney General file action to stop all withdrawal or diversion. Purpose of registration program is to ensure the development of information required for the analysis of certain future water resource management needs.
	NEVADA	
Energy Portfolio	**Electric Utility Restructuring, AB 366** *(6/99)* http://www.eia.doe.gov/cneaf/electricity/chg_str/tab5rev.html#CT	• AB 366 provides that the NV Public Utilities Commission establish portfolio standards for renewable energy. The standard will phase-in a requirement (beginning with 0.2% by January 2001 and adding 0.2% of a percent biannually) that 1% of energy consumed be from renewable energy resources.
	NEW JERSEY	
Water	**Water Supply Management Act** *(NJAC 7:19-1)*	• Water resources management is required for >100,000 gallons per day.

Noise	**Noise Control Rules** *(NJAC 7:29)* http://www.state.nj.us/dep/enforcement/pcp/olem-noise.htm	• The NJ Department of Environmental Protection (NJDEP) has developed a Model Noise Ordinance that can be adopted by local municipalities. • NJDEP does not have a noise control program and does not investigate noise complaints. Noise control is handled locally.
Energy Portfolio	**Electric Utility Restructuring** http://www.eia.doe.gov/cneaf/electricity/chg_str/pbp.html	• The restructuring legislation in NJ requires spending $230 million for home weatherization, renewable energy and other programs, and increases spending on new energy conservation programs. Also, electric generation companies must disclose a set of environmental characteristics, including power plant fuels and emissions.
	NEW YORK	
Siting	**Siting and Approval** *(Article X of Public Service Law)* http://www.dps.state.ny.us/articlex.htm	• The NYS Siting Board is in charge of siting and approval of all new power plants. • Article X of the Public Service Law sets forth a unified and expedited review process for applications for power plants > 80 MW. • Proceedings are open to the public • NYS Siting Board may preempt local zoning. • Siting may take up to 18 months. • NYS Siting Board must determine: **1.** either: (a) constructing the facility is reasonably consistent with the most recent **State Energy Plan**, or (b) the electricity generated by the facility will be sold into the competitive market; **2.** the nature of the probable environmental impacts (including evaluating cumulative air quality impacts); **3.** the facility minimizes adverse environmental impacts, given environmental and other pertinent considerations; **4.** the facility is compatible with public health and safety; **5.** the facility will not discharge or emit any pollutants in violation of existing requirements and standards; **6.** the facility will control the disposal of solid and hazardous wastes; **7.** the facility is designed to operate in compliance with state and local legal provisions, other than those local legal provisions that the Siting Board finds unreasonably restrictive; and **8.** the construction and operation of the facility is in the public interest.
	Intervenor Fund for Siting Review *(Article X, Section 164)*	▪ Power plant applicants are required to pay $1,000 per MW of capacity up to $300,000 to establish an Intervenor Fund. ▪ Funds are used to defray expenses associated with the siting review.
	Proposed Amendment to Article X *(NY State Bill A09039)*	▪ The bill would authorize the Commissioner of Environmental Conservation to issue environmental permits necessary to the siting of an electric generation facility if the NYS Siting Board is unable to do so and would make some technical changes to the siting law. ▪ The bill would also require the Energy Planning Board to do a reliability study of the state's transmission and distribution systems.

Water	**New York State Energy Plan 1994** *(NY State Energy Office)*	• The Final 1994 State Energy Plan calls for significant reductions in state energy taxes and endorses greater competition in utility purchases of electricity to lower electric rates in the state. The plan reaffirms the state's long-term energy, economic and environmental goals and its commitment to energy efficiency, but places increased emphasis on the use of energy policy as a means to promote sustained economic development. The plan assesses NY's current energy supplies, infrastructure and policies, and forecasts energy needs and supplies through the year 2012. Based on those findings, the plan sets policy goals and objectives and recommends 180 specific actions. The plan was prepared by the staffs of the State Energy Office and the State Departments of Environmental Conservation and Public Service in response to 1992 legislation that formalized NY Governor Mario Cuomo's model for integrated energy planning. The State Energy Planning Board, which approved the plan on October 31,1994, is made up of the commissioners of those three agencies. State energy law requires that any state action related to energy be reasonably consistent with the plan's findings and recommendations.
	Water Supply Permits *(Chapter 6, NY Codes, Rules and Regulations. Part 601: 6 NYCRR 601)*	• Required for suppliers of potable water with 5 or more service connections. • Applicants must demonstrate: 1. Plans are justified by public necessity. 2. Plans properly consider other sources of supply that are or may become available. 3. Plans provide for proper and safe construction of all work connected therewith. 4. Plans provide for proper sanitary control of the watershed and proper protection of the supply. 5. Plans provide for an adequate water supply. 6. Plans are just and equitable to the other municipal corporations and civil divisions of the state affected thereby and to the inhabitants thereof, particular consideration being given to the present and future necessities for sources of water supply. 7. Plans make fair and equitable provisions to determine and pay any and all damages to persons and property, both direct and indirect, that result from acquiring the lands or executing the plans. 8. Plans, in accordance with local water resources needs and conditions, include a description of an adequate near term and long range water conservation program. • Entities holding Water Supply Permits must report average and peak use to the NY Department of Environmental Conservation annually. If customer demand grows (*i.e.*, new peaker plant begins withdrawing from the water supply), supplier must re-demonstrate the above to the state if the demand exceeds amount authorized in the Water Supply Permit.
	Water Well Program *(Environmental Conservation Law 15-1525)*	• Pre-notification must be filed with the state before drilling specifying desired yield. • No restrictions are specified on the amount of water withdrawal. However, under NY Civil Law, property owners have water rights. If a well causes drawdowns that impact an off-site property owner's water use, then they can sue.

	Water Withdrawal Registration *(6 NYCRR, Chapter X, Subchapter A, Article 1)*	• Applies to withdrawals from Great Lakes: • Great Lakes (6 NYCRR 675): ▪ withdrawals >100,000 gallons per day averaged over 30-day period *- OR -* ▪ lake water loss > 2,000,000 gallons per day averaged over 30-day period • No restrictions are specified on the amount of water withdrawal, just that withdrawals must be registered. Registration fee is $100/year.
	Long Island Water Withdrawal Restrictions	• Water withdrawals from wells are restricted by quantity on Long Island because over pumpage of groundwater on Long Island can cause infiltration of saltwater into the aquifer.
	Electric Utility Restructuring	• Funds to support energy conservation and renewable energy are made available to energy suppliers from the NY State Energy Research and Development Authority. Funds were created through the NY Public Service Commission order establishing a system benefits charge on electricity sales.
	OHIO	
Siting	OH Adm. Code 4906: **Ohio Power Siting Board** http://onlinedocs.andersonpublishing.com/oac/	• The OH Power Siting Board (PSB) within the Public Utilities Commission is the approval authority for all major utilities > 50 MW. • Meetings of the OH PSB where action is taken or deliberations conducted are open to the public. • Applicants for new facilities must consider at least 1 alternate site. • Applications are required to address: ➢ Justification of Need: ▪ Description of generation and associated facility alternatives ▪ Type, number of units, and estimated net demonstrated capability, heat rate, annual capacity factor, and hours of annual generation ▪ Land area requirement ▪ Fuel quantity and quality ▪ Types of pollutant emissions ▪ Water requirement, source of water, treatment, quantity of any discharge and names of receiving streams ➢ Siting issues: ▪ location ▪ major features ▪ the topographic, geologic, and hydrologic suitability for each alternate site ➢ Water: ▪ natural and man-affected water budgets ▪ existing maps of aquifers that may be directly affected ➢ Emissions control & safety equipment ➢ Local ambient air quality of proposed sites ➢ Locations of major and anticipated sources of air pollution ➢ Plans for future additions and the maximum generating capacity anticipated for the site. ➢ Financial data ➢ Environmental data

		➢ Social and ecological data: ▪ Noise ▪ Health & Safety ▪ Impact of water use ▪ Economics, land use, and community development ▪ Cultural impact ▪ Agricultural district impact • After the OH PSB certifies applications for new facilities, public hearings are held in the local vicinity of the proposed facility. • The OH PSB collects application fees.
Air	**NO_x – Reasonably Available Control Technology (RACT)** *(OAC 3745-14)* http://onlinedocs.andersonpublishing.com/oac/	• According to IEPA, certain minor sources must use BAT (Best Available Technology), OAC 3745-14-3. • Major sources are required to use BACT per federal regulations: 15 ppm NO_x for natural gas turbines, 42 ppm NO_x for oil burning. • For NO_x sources >100 TPY, Reasonably Available Control Technology (RACT) is required in certain counties. RACT for combustion turbines is 75 ppm for those firing gaseous fuels and 110 ppm for those firing distillate oil or diesel fuel.
Water	**Application for Permit for major increase in withdrawal of waters of the State** *(OH Revised Code 1501.30 & 33)* **Registration of facilities capable of withdrawing >100,00 gal/day; Groundwater Stress Areas** *(OH Revised Code 1521.16)* **Determination of reasonable use of water** *(OH Revised Code 1521.17)* http://onlinedocs.andersonpublishing.com/revisedcode/ http://www.dnr.state.oh.us/odnr/water/waterinv/waterinv.html	• Permits are required for those making a new or increased consumptive use of water than an average of 2 millions gallons per day over a 30-day period. • Registration is required for any facility or combination of facilities with the capacity to withdraw more than 100,000 gallons of water (surface or ground) daily. Annual reporting is required of those who must register. The purpose of registration and reporting is to gather data to assist in resolving future water use conflicts. • Chief of OH Department of Natural Resources Division of Water has authority to designate "groundwater stress areas" and to require water withdrawal registration in these areas for users of water less than the normal 100,000 gallon threshold. • Chief also has responsibility to maintain water Resources Inventory that must include information to assist in determining the reasonableness of water use. • While "reasonable use" is used by courts to determine water conflicts, legislature has set forth nine specific factors (applicable to both surface and groundwater) to define reasonableness. • "Consumptive use" is defined as a use of water resources other than a diversion that results in a loss of that water to the basin from which it is withdrawn and includes, but is not limited to, evaporation, evapotranspiration, and incorporation of water into a product or agricultural crop.
Energy Portfolio	**Electric Utility Restructuring** Http://www.eia.doe.gov/cneaf/electricity/chg_str/pbp.html	• Restructuring legislation includes a provision for a $110 million revolving load fund for residential and small commercial energy efficiency and renewable energy projects. Also, electricity marketers must disclose environmental information to consumers.
	OREGON	
Noise	**Noise Control Classification of Violations** *(OR Adm. Rules 340-012-0052)* http://arcweb.sos.state.or.us/rules/OARS_300/OAR_340/340_012.html	• Regulations address a model ordinance.

	PENNSYLVANIA	
Air	**Stationary Sources of NO_x & VOCs** *(PA Code Ch. 129.91)* http://pacode.com/secure/data/025/chapter129/chap129toc.html	• PA charges emissions fees: $42/ton (1999). • PA requires RACT for all major sources of VOC, NO_x.
Energy Portfolio	**Electric Utility Restructuring** *(9/00)* http://www.eia.doe.gov/cneaf/electricity/chg_str/pbp.html	• A $21 million Green Energy Fund was created by the PA Public Utilities Commission (PUC) to be used for investment in green energy projects, such as wind, solar, and biomass. The fund, which currently has $5 million, is expected to grow to more than $20 million over the next six years. The fund was created as part of a negotiated settlement between the PA PUC and PPL in the utility's restructuring case two years ago. Businesses and nonprofit organizations that wish to invest in green energy within PPL's territory may apply for the funds.
	TEXAS	
Water	**Use of Reclaimed Water**, *(TX Adm. Code Title 30 Part 1 Chapter 210)* (1997) http://www.tnrcc.state.tx.us/oprd/rules/index.html	• Establishes general requirements, quality criteria, design, and operational requirements for the beneficial use of reclaimed water that may be substituted for potable water or raw water. • Due to limited supply and high demand, reclaimed water can be much less expensive than using municipal drinking water or treating groundwater. The rule is intended to conserve surface and groundwater and to help ensure an adequate supply of water resources for present and future needs. • Use of reclaimed water is voluntary. • Locating reuse facilities near the municipal wastewater treatment plant helps to minimize infrastructure costs in constructing a distribution line. • Reclaimed water is provided to the user on a demand-only basis. • Approved uses include cooling tower make up water under §210.32 (2)(F).
	Water Use Permits *(TX Water Code, §11.121)* http://www.capitol.state.tx.us/statutes/wa/wa001100toc.html	• TX industries must obtain water rights to use surface water or protected groundwater. The authorization may be with or without a term, on an annual or seasonal basis, or on a temporary or emergency basis.
Siting	**Siting**	• Does not have a siting commission for power plant projects. • TX requires *certificates of convenience and necessity* for power plant projects that utilities initiate, but not for projects that IPPs initiate.
Energy Portfolio	**Electric Utility Restructuring** *(9/00)* http://www.eia.doe.gov/cneaf/electricity/chg_str/pbp.html	• TX's renewables portfolio standard requires that the State's utilities install or contract to buy power from 2,000 MW of renewable generating capacity by January 1, 2009.

Siting	**WISCONSIN**	
	State Energy Policy *(WI Statute: 1.12)* http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=111571&infobase=stats.nfo&jump=ch.%20196 **Power Plant Siting** *(WI Adm. Code Ch. PSC 111, 112)* **Environmental Analysis** *(WI Adm. Code Ch. PSC 4)* http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=95483&infobase=codex.nfo&jump=top	• WI's State Energy Policy includes policy on: ➢ Considering the maximum conservation of energy resources as an important factor when making any major decision that would significantly affect energy use ➢ reducing the ratio of energy consumption to economic activity in the state ➢ renewable energy resources ➢ protecting natural areas, including wetlands, wildlife habitats, lakes, woodlands, open spaces and groundwater resources. • Ch. PSC 111, 112 require the WI Public Service Commission (PSC) to develop a Strategic Energy Assessment (SEA) for power plants. The SEA involves an assessment of electric demand and supply, and information from electricity suppliers on economic, pollutant, and energy conservation data. • Ch. PSC 111,112 require *Certificates of Public Convenience and Necessity* for electric generating facilities. According to the ICC, this requirement applies to facilities > 100 MW. Applications for certificates include: ➢ at least 2 sites: preferred & alternate ➢ number of units, type, size, fuel ➢ hours of operation ➢ generating capacity ➢ pollutant emissions ➢ need for facility in terms of demand ➢ alternative sources of electric supply including energy conservation & efficiency ➢ Natural resources affected ➢ Ecological resources affected ➢ Community information • According to IEPA, siting is required for facilities >12,000 kW. • Ch. PSC 4 establishes procedures to provide the WI PSC with adequate information on the short- and long-term environmental effects of its actions as required by the WI Environmental Protection Act, ch. 274, section 1, laws of 1971 and s. 1.11 of the WI Statutes. PSC 4 requires the WI PSC to prepare an Environmental Assessment (EA) to assist the WI PSC in determining environmental impact of proposed facilities. Combustion turbines are included as types of projects requiring an EA. The WI PSC can approve or deny siting based on the EA or EIS. The EA is made available to the public, and hearings are held.

Water	**Water Resources** *(WI Statutes, Chapter 28, Subchapter II)* **Water Quality and Quantity; General Regulations** *(WI Statutes, Chapter 28, Subchapter III)* http://www.legis.state.wi.us/rsb/Statutes.html WI DNR Rules, Chapter NR 142	• WI law provides for: 1. Developing statewide water quantity resources plan 2. Registration and annual reporting (with fees) of major withdrawals (>100,000 gal/day in 30-day period) 3. Permit approval process (with administrative hearing process) for constructing, developing, and operating wells where capacity and rate of withdrawal of groundwater from all wells on one property is in excess of 100,000 gal/day. Approval is withheld or restricted if withdrawal will adversely effect or reduce availability of public water supply or does not meet grounds for approval, which are: ➢ no adverse effect on public water rights in navigable waters ➢ no conflict with any applicable plan for future uses of waters of state or water quantity resources plan ➢ reasonable conservation practices have been incorporated ➢ no significant adverse impact on environment and ecosystem of the Great Lakes basin or the upper Mississippi River basin ➢ plan for withdrawal consistent with protecting public health, safety, and welfare, and not detrimental to public interest ➢ no significant detrimental effect on the quantity and quality of the waters of the state (even more factors apply if the proposed withdrawal will result in an "interbasin diversion") 4. Permit approval process for diverting water from any lake or stream >2,000,000 gal/day in any 30-day period. If WI Department of Natural Resources (DNR) receives application for a withdrawal from the Great lakes basin that will result in a new water loss averaging 5,000,000 gal/day in any 30-day period, WI DNR notifies governors of other Great Lakes States, requesting their input. • Regulations define "water loss" and "consumptive use." • Rules incorporate methods for citizens to initiate WI DNR investigations of alleged violations.

Note: *This list is not meant to be all-inclusive.*

APPENDIX K

ADDITIONAL SUMMARIES OF PUBLIC COMMENTS—INDEX

#	PUBLIC COMMENT	Air: Emissions Control Technology	Air: Modeling	Air: Ozone Nonattainment	Air: Pollution	Air: Quality	Energy: Alternatives/Efficiency	Energy: Capacity	Energy: Demand	Energy: Deregulation	Energy: Market	Energy: Policy	Energy: Power Distribution	Health: Effects	Health: Safety	Moratorium	Noise	Regulations: Air	Regulations: Applicability	Regulations: Enforcement	Regulations: Permitting	Regulations: NOx SIP Call	Regulations: NOx Waiver	Regulations: Other States	Siting: Zoning	Siting: Local Guidance & Public Involvement	Siting: Number of Plants	Water: Use	Other: Taxes
1	Cindy Conte, Reliant	•	•					•																					
2	Debbie Halvorson, State Senator, 40th District															•													
3	Ron Molinaro, Winthrop Harbor, IL					•					•						•										•	•	
4	Peter J. Cioni, Dir. of Community Development, Zion																										•		
5	Bob Mosteller, Deputy Dir., Lake Cty. Zoning Board of Appeals																							•					
11	Susan Zingle, Exec. Dir., LCCA									•	•																		
12	Gary Hougen, Winthrop Harbor, IL													•														•	
13	Robert Brooks, Waukegan, IL	•																											
14-30, 32-90, 92-106, 113-160, 174-185, 188, 193	Big Rock Form Letter			•		•															•				•			•	
31	Curt W. Peters, Winthrop Harbor, IL																								•				•
91	Jane Erdman, New Holland, IL				•									•															
107	Udo A. Heinze, Mgr., Strategic Projects, Ameren				•										•			•	•		•				•			•	•
108	Jeannine Kannegiesser, Center for Neighborhood Technology						•		•	•	•		•																

#	PUBLIC COMMENT	Air	Emissions Control Technology	Modeling	Ozone Nonattainment	Pollution	Quality	Energy	Alternatives/Efficiency	Capacity	Demand	Deregulation	Market	Policy	Power Distribution	Health	Effects	Safety	Moratorium	Noise	Regulations	Air	Applicability	Enforcement	Permitting	NOx SIP Call	NOx Waiver	Other States	Siting	Zoning	Local Guidance & Public Involvement	Number of Plants	Water	Use	Other	Taxes
109	Patricio Silva, Midwest Activities Coordinator, NRDC					•		•	•	•	•	•			•	•											•	•	•			•	•		
110	Ronald D. Earl, General Manager & CEO, IMEA							•	•	•	•		•																						
111	Earl W. Struck, AIEC								•		•										•								•						
112	Verena Owen, Winthrop Harbor, IL										•			•							•														
161	Mary Thurow, Big Rock, IL																									•			•						
162	Margaret A. Bock, Libertyville, IL				•															•	•	•						•					•		
163	Cynthia A. Faur, Sonnenschein, Nath & Rosenthal on behalf of Midwest Generation									•	•									•	•	•			•	•			•				•		
164	Christopher Zibart of Hopkins & Sutter; Sharon Neal on behalf of ComEd								•	•	•	•	•	•							•	•						•	•						
165	Brain Urbaszewski on behalf of ALAMC & IEC															•																			
166	Carol Dorge, LCCA			•	•	•			•	•								•		•	•	•			•	•	•		•			•	•	•	•
167	James R. Monk, President, IEA												•							•	•	•						•	•						
169	Evan L. Craig, Group Chair, Sierra Club Woods & Wetland Group, Vernon Hills, IL							•																	•		•			•					
170	Stephen Brick, Director, External Relations & Environmental Affairs, PG&E			•						•	•	•													•	•	•	•	•	•	•				

#	PUBLIC COMMENT	Air	Emissions Control Technology	Modeling	Ozone Nonattainment	Pollution	Quality	Energy	Alternatives/Efficiency	Capacity	Demand	Deregulation	Market	Policy	Power Distribution	Health	Effects	Safety	Moratorium	Noise	Regulations	Air	Applicability	Enforcement	Permitting	NOx SIP Call	NOx Waiver	Other States	Siting	Zoning	Local Guidance & Public Involvement	Number of Plants	Water	Use	Other	Taxes
171	Freddi Greenberg, Executive Director and General Counsel, MWIPS						•			•			•							•	•	•			•		•	•	•	•		•			
172	Sierra Club, Illinois Chapter																		•			•										•			
173	Gerald Erjavec, Manager, Business Development, Indeck	•																		•	•	•						•	•				•		
186	Ersel C. Schuster, McHenry County Board																							•											
187	Katherine Hodge & Karen Bernoteit, Hodge & Dwyer/IERG			•		•	•													•	•	•							•		•	•			
189	CCLC and Liberty Prairie Conservancy			•						•	•														•										
190	Jim LaBelle, Sandy Cole, Bonnie Thomson Carter—Lake County Board Members					•													•						•				•				•		
191	Marsha B. Winter, Zion, IL															•				•										•			•		
192	Ken Bentsen, Sugar Grove, IL				•														•			•			•				•			•	•		
194	Ralph N. Schleifer, Kaneville, IL				•														•													•	•		
195	Marci Rose, Big Rock, IL						•									•													•						

ADDITIONAL SUMMARIES OF PUBLIC COMMENTS—SUMMARIES

PC 1—Ms. Cindy Conte, Reliant

Reliant has a 345 MW peaker plant in Shelby County. It currently has an 870 MW peaker project under construction in DuPage County, scheduled to become operational in June 2001. Reliant stated that the industry standard is to have 15 to 20% extra capacity (*i.e.*, reserve margin). Figures from MAIN, which includes Illinois and nearby states, show that the reserve margin in 1998 was 9.6% and 7.6% in 1999. Reliant asserted that it will not be possible to maintain a 15-20% reserve margin without peaker plants in Illinois.

Reliant believes that Illinois has a shortage of peaking capacity in the State, and Illinois should construct additional power plants in the State. It noted that peaker plants are not new to Illinois. For over 30 years, there has been a dual fuel (natural gas/fuel oil) peaking unit in Aurora. Reliant noted that the technology for peaker plants has changed for today's peaker units. Namely, Reliant's peaker project in DuPage County will use turbines with advanced generation and clean emissions control technology fueled by natural gas only.

Reliant alleged that today's peaker plants are among the cleanest power plants operating and are significantly less harmful to the environment than existing fossil plants. Reliant's plants use state-of-the-art, dry-low NO_x and water-injection to control emissions. Reliant completed an air modeling study to determine where the greatest concentration of NO_x emissions would occur from the peaker project in DuPage County. The modeling showed, among other things, that the plant's maximum emissions are concentrated in a small area radiating out a few hundred feet to the north of the property.

Reliant cautioned that in California, due to a booming economy and unseasonably hot temperatures, the state's electricity reserve has gone from 35% in the early 1990s down to almost nothing. Reliant recommended that building peaker plants will help Illinois avoid a similar shortage, brownouts, and high costs for consumers. Reliant supports the current procedures in place for permitting and approval of peaker plants. It also cautioned that Illinois needs more power supplies, and should not rely on neighboring states to fill the gap.

PC 2—State Senator Debbie Halvorson, 40th District

State Senator Halvorson asked the Board to consider delaying the issuance of any air permits until the Board's inquiry proceedings are finished and the Board's recommendations are enacted. She joined State Senator Link in asking Governor Ryan for a moratorium on peaker plants this summer, until they could better understand the plants' effects on communities and general air quality.

PC 3—Mr. Ron Molinaro of Winthrop Harbor

Mr. Molinaro is concerned that if two peaker plants are built in Zion, then the area within a ten-mile radius of Zion would have two coal-burning plants and two peaker plants.

He fears that the cumulative effect of all four of these plants operating would be very detrimental to air quality. He is also concerned that the noise from the proposed plants would disrupt the homes located a few hundred yards away. Mr. Molinaro also wondered if there would be enough water available to new homes and businesses in the area if the plants were built. He mentioned that Zion exceeded its allocated amount of water in 1999 by 22 million gallons. Lastly, he questioned whether the price of electricity will increase if the plants are built.

PC 4—Mr. Peter J. Cioni, Director of Community Development, City of Zion

Mr. Cioni wanted to clarify that Zion is only considering one peaker plant project, namely the Skygen project.

PC 5—Mr. Bob Mosteller, Deputy Director, Lake County Zoning Board of Appeals

Mr. Mosteller, in response to Board Member Flemal's request, sent a copy of the Lake County Zoning Ordinance addressing peaker plants. In his comment, he set forth the standards under which conditional use permits may be approved. He also noted that separate conditions apply to permits for electric generation plants.

PC 11—Ms. Susan Zingle, Executive Director, LCCA

Ms. Zingle stated that, on August 14, 2000, The Wall Street Journal published an article entitled Volatile Electricity Market Forces Firms to Find Ways to Cut Energy Expenses. According to the article, during the summer of 2000, several of the states that had opened their electricity markets to deregulation were struck by extreme price volatility and, in some cases, power shortages. The reasons were varied: higher-than-expected demand; fewer new generating plants than necessary to keep up with demand; an interstate transmission network that is not designed for deregulation; and complex regulations governing the switch from fixed to free market pricing.

The article stated that consumers in San Diego have seen their electric bills double. Legislators there have been trying to introduce bills to ease the expense, but none address the question of who would pay for the difference between wholesale prices and the prices paid by the newly-protected consumer. The shock is causing many to question the main assumption about deregulation: "that competition among power providers would lead to cheaper prices and greater efficiencies."

Big energy users are spending more money on manpower and consultants to cope with deregulation. Their goal is to keep down prices and limit power disruptions. Energy trading company Enron signed contracts to supply $3.8 billion in energy and energy services to customers during the spring of 2000. Enron offers packages that mix fixed and indexed rates much as a mortgage does. It also provides incentives to those firms that allow it to replace their energy infrastructure over time—which gives Enron a better sense of what the client will be spending.

Companies for which electricity is a make-or-break operating cost have less flexibility. They have been most affected by current market conditions. Phelps, a copper producer, has boosted in-house generation to reduce reliance on outside suppliers and is "juggling its production schedules" to avoid operating when power is expensive.

PC 12—Mr. Gary Hougen of Winthrop Harbor

Mr. Hougen is concerned about the proposed peaker plant for Zion. Specifically, he is concerned about the "heightened nitrate ion content in groundwater during summer low-flow water conditions. Heightened nitrate . . . content has been linked to various illnesses . . . ."

Mr. Hougen claimed that "[h]eightened nitrates would occur as the ambient level of this ion is increased during cooling water usage by (water-cooled) peaker plants." Mr. Hougen attached a map showing "Commercial Nitrogen Fertilizer Leaching Vulnerability."

Mr. Hougen requested that the Board "develop a protocol to assure that drinking water of those households on well water in the vicinity of the proposed peaker plant would not incur a significant deterioration from their operation." Mr. Hougen hopes that "the protocol would demonstrate through engineering studies that the EPA limit of 10 ppm would not be exceeded."

PC 13—Mr. Robert Brooks of Waukegan

Mr. Brooks claimed that "advanced distributed power generation technology is now in the demonstration phase which has the following advantages vs. currently proposed turbine peaker or base load systems":

- "Nearly twice the efficiency of simple cycle peakers"
- "Less than 1 ppm NO_x output"
- "Requires no water input (produces a small amount of water) . . . ."

Mr. Brooks also enclosed two recent articles from Ward's Engine and Vehicle Technology Update that describe a distributed power system installed at a California electric utility plant. The system was expected to achieve efficiencies of 60 to 65%. It could also be modified so that its CO_2 emissions could be injected into the ground. The system requires no water, but instead produces a small amount of water.

PCs 14-30, 32-90, 92-106, 113-160, 174-185, 188, 193—Form Letter Filed By a Number Citizens

According to these citizens, Illinois needs to develop a NO_x SIP plan, and the cumulative impact of these plants on the air quality of the Chicago metropolitan area needs to

be considered. They stated that this cannot be accomplished by "look[ing] at permits one at a time." In addition, the Chicago area is an ozone NAA, which also needs to be considered.

In Big Rock, a peaker plant is proposed that would use groundwater as its water source. The citizens stated that all residents of Big Rock depend on groundwater. They asserted that extraordinary care should be made in permitting this use.

The citizens stated that new or expanding peaker plants should be subject to siting requirements beyond applicable zoning requirements. The peaker plant proposed for Big Rock would be located in the middle of what is now agricultural land. The citizens argued that this plant siting is inconsistent with the Kane County 2020 plan. According to the citizens, the State should have a policy to encourage the siting of peaker plants in brownfields.

The citizens maintained that additional regulations or restrictions should apply to "all facilities, old and new." They also asserted that the Board should place a moratorium on air permits for peaker plants at least until the cumulative effects of these plants "on the NO_x SIP call is completed."

PC 31—Mr. Curt W. Peters of Winthrop Harbor

Regarding the proposed peaker plants for the Zion Benton Township area, Mr. Peters stated: "It is my opinion the Zion City Council should explore alternative options to obtain tax base revenue, as well as jobs for the community. I say NO to building power plants of any kind in our township."

PC 91—Ms. Jane Erdman of New Holland

Ms. Erdman is alarmed about having a peaker plant in her area "due to the high possibility of air pollution, within an 8 mile radius of the plant." Ms. Erdman claimed that the emissions of the plant, along with other emissions will contribute to acid rain, "create respiratory problems, affect crop production, erode solids like paint and rock and severely pit metals; possibly creating disasters for this area in order to supply electricity for other states to waste."

PC 107—Mr. Udo A. Heinze, Manager, Strategic Projects, Ameren

Mr. Heinze commented on (1) emissions, (2) siting, (3) water, (4) hazardous materials on plant sites, (5) property taxes, (6) new rule applicability, and (7) the five questions that Governor Ryan posed for the Board's inquiry proceedings.

Emissions

Mr. Heinze noted that NO_x emissions from peaker plants will be kept under the emissions "cap" that the NO_x SIP call ordered. He argued that there is no need for additional requirements to control SO_2 emissions because those are already capped under the federal acid

rain program. Mr. Heinze further noted that most new peaker plants are simple cycle gas-fired combustion turbines. He argued that requiring BACT or LAER controls on these types of plants would be impractical or very expensive. The expense, he argued, would make the units uneconomical to operate.

He acknowledged that mass emissions during start-up might be slightly higher than normal operations. However, they are still very low and do not last long, according to Mr. Heinze. He also noted that IEPA has a process in the permitting of the plants to account for the slightly higher mass emissions that occur during start-up conditions. He added that the permitting process requires IEPA to review any proposed facility, including the modeling of air quality emissions.

Siting

Mr. Heinze argued that zoning should be a local issue, and not a decision that a State agency imposes.

Water

Mr. Heinze noted that the testimony shows that for some high-density areas, water use may be a broader issue. For those areas, he suggested that it would be prudent to consider water use on a regional, rather that purely local basis.

Hazardous Materials on Plant Site

Mr. Heinze noted that not all peaker facilities have backup fuel capability. When they do, however, it is part of the permitting process and would be presented to both IEPA as part of its air construction permit application and the applicable zoning authority. He also argued that storing fuel oil as backup fuel is not a new risk that requires further regulation or control.

Property Taxes

Mr. Heinze asserted that because combustion turbines are portable and can be relocated, they generally are not considered real property for tax purposes. He argued that the local taxing authority is the appropriate jurisdiction to address whether the peaker plants must pay property taxes. He further argued that it is not a foregone conclusion that all proposed peaker plants will obtain tax abatements, noting that many have not.

New Rule Applicability

Mr. Heinze advocated that as regulations governing facilities change, it is more reasonable that those changes apply to facilities that have not committed to purchase orders for equipment rather than to facilities already completed or in the process. He believes that developing generation requires “regulatory certainty.” He believes that any new rules should

not apply retroactively.

Governor Ryan's Questions

With respect to the questions that Governor Ryan posed for the inquiry proceedings, Mr. Heinze submited that Ameren thinks (1) peaker plants do not need to be regulated more strictly than Illinois' current air quality statutes and regulations provide; (2) peaker plants do not pose a unique threat, or greater threat than other types of facilities, with respect to air pollution, noise pollution, or groundwater or surface pollution; (3) peaker plants should not be subject to siting requirements beyond applicable local zoning requirements; (4) any new regulations or restrictions should be applicable on a date-certain basis, prospectively applied; and (5) other states' approaches to peaker plants should not necessarily be applied in Illinois.

PC 108—Ms. Jeannine Kannegiesser, Center for Neighborhood Technology (CNT)

What is peak demand and why are peaker plants appearing in Illinois?

CNT commented:

> Summer peak demand can cause trouble for utilities and their customers as noticed in Chicago's summer of 1999. When demand across the distribution system exceeds the systems capacity to carry power, blackouts and brownouts occur to protect the system. * * *
>
> The 1997 electric restructuring law in Illinois created an attractive business opportunity for merchant power generators. In a state where peak demand is growing, it became legal for alternative suppliers to market their product directly to customers.
>
> [P]eak power producers expect to make a profit by running their plants for a limited number of hours during the year. * * * However, the "annual" peaker plant emissions might occur over only a matter of days or weeks, concentrated during the hot summer months.

What are the alternatives to peaker plants?

CNT stated:

> The motive for building a peak power plant might be reduced if electric customers in Illinois worked to decrease their demand for peak power. Customers can do this by improving end use energy efficiency or by generating their own power at the site of use.
>
> [I]mproving the efficiency of air conditioners is an attractive efficiency project. Upgrades in lighting and other end uses can contribute to decreases in peak load. Distributed generation, also called on-site generation, is the generation of electricity by small, clean generators located on or near the site where the power

> will be used. Distributed generation eliminates the need to transport power long distances over wires and can be dispatched to serve peak demand or to back-up a sensitive operation during power outages. Distributed generation might be a natural gas turbine, fuel cell, or renewable power source like photovoltaic cells.
> * * *
>
> Technologies for generating power at the site of use can decrease the growth in demand for utility power. Thermal storage can shift power usage to the time of day when power is much less expensive.

Why are alternatives to peaker plants not being selected?

> CNT stated:
>
> Because customers do not face real prices, there is no incentive for reducing usage during times when the cost of providing service is at its height. Residential and commercial customers, in particular, pay the same rate per kWh regardless of when they use it, despite the fact that the same kWh on a hot summer afternoon could cost the utility many times what a spring evening kWh costs.

What are the benefits of reducing peak demand?

> CNT claimed that:
>
> Reducing peak demand before the power market opens completely will give small consumers a stronger position in that market, particularly if groups of consumers can pool their more attractive demand and shop together for a lower price.

In addition, CNT maintained that the "distribution system will experience less stress if peak demand is maintained below capacity."

What is CNT doing about the change to a deregulated electric system?

> CNT explained:
>
> [T]hrough its Community Energy Cooperative[,] . . . [CNT] is currently contributing to an effort to improve state programs to promote energy efficiency and distributed resources. * * * On October 17, CNT participated in a meeting hosted by State Senator Steven Rauschenburger where we presented the case for state action to prepare consumers for the competitive market by promoting efficiency and distributed generation. State intervention is necessary during this transition when customers do not face real prices.

What does CNT suggest?

CNT urged the Board:

> [T]o promote energy efficiency and distributed generation as an alternative to increased commodity production by including these options in its report to the Governor. * * * The [Board] should also seek input on quantification of pollution prevention possible from energy efficiency to strengthen the argument for these measures becoming a focus of state policy.

PC 109—Mr. Patricio Silva, Midwest Activities Coordinator, NRDC

A "priority for NRDC is the enactment of state and federal electric utility restructuring legislation that insures that more open and competitive electricity markets do not yield unwanted dividends such as increased air and water pollution." NRDC stated that it:

> generally supports . . . new natural gas-fired combustion turbines as a transitional generating technology, alongside development of new renewable electric generating technologies and additional investment in energy efficiency . . . . The siting and permitting of new electric generating facilities ideally, should integrate evaluation of individual project and aggregate multiple project potential environmental and public health impacts.

According to NRDC, "[s]ince enactment of the [Illinois Electricity Choice Law], . . . Illinois has drawn considerable attention from merchant power plant developers." The result has been "the filing of numerous permit and zoning variance applications before state agencies and municipalities for over 55 new electric generating facilities, with a potential generating capacity of 22,000 MW . . . ." NRDC stated that "nearly all these new electric generating facilities will be . . . single cycle combustion turbines" operating "during periods of peak demand load."

NRDC explained the increase in peaker plant permit applications:

> Many developers of new electric generating facilities believe there are lucrative short-term profits to be made by siting as many peak load serving single cycle combustion turbines as they can within the next 18-24 months, anticipating peak demand episodes similar to that experienced by Illinois in 1999.

However, NRDC disagreed that peaker plants will alleviate the problems that Illinois faced in 1999: "Rather, improvements and upgrades of the distribution system infrastructure were and remain the principal problem and need."

NRDC stated that "[e]lectricity demand in Illinois is forecast to continue increasing. * * * The electric reliability council serving Illinois and portions of Wisconsin, MAIN, . . . projected available generating capacity at 56,523 MW" for the summer of 2000. NRDC noted

that the "Energy Information Administration . . . forecasts 'gas technologies are expected to dominate new generating capacity additions.'" NRDC stated that "[m]uch of this new natural gas-fired generating capacity is expected well before 2020."

NRDC reported:

> Illinois is experiencing the leading edge of an energy 'Oklahoma land rush' phenomenon that has already played itself out in New England . . . . Most relevant is
> that of the 36 combustion turbines being permitted at 19 electric generating facilities across New England, all are combined cycle natural gas-fired combustion turbines. * * *
>
> In the neighboring state of New York, 20 new electric generating facilities are undergoing siting review representing a total of 15,064 MW of generating capacity . . . . [T]hey will be equipped with combined cycle combustion turbines.

According to NRDC, it is not true that:

> [E]lectricity consumption in California is surging out of control . . . . In fact, the California system peak from 1990-1999 grew less than 2% per year . . . . Total statewide consumption of electricity increased less than 1% per year from 1990-1998 . . . .
>
> Electricity use spiked in June 2000, up almost 13% compared to the much cooler June of a year earlier. * * * This clearly contributed to sharply higher wholesale electricity prices for June 2000 . . . . It didn't help, obviously, that natural gas prices also were soaring above five dollars per [mmBtu] . . . . The first three weeks of July saw more moderate weather in California, [and] . . . average wholesale electricity prices dropped about 40%. However, . . . these prices were still very high by recent historical standards.

NRDC added:

> The short term reliability crises in California should be quickly and cost-effectively resolved by additional investment and deployment of energy efficiency and renewable energy on [a] sufficiently large scale, alongside entry into service of single and combined cycle natural gas-fired combustion turbines already in the siting and construction process.

NRDC claimed that the "deployment of energy efficiency and renewable energy investments have already made significant contributions to California's economy and electricity grid." Furthermore, the CEC wrote that "California continues to lead the nation in maximizing the amount of Gross State Product produced per unit of energy." NRDC

continued:

> California still has numerous untapped and inexpensive opportunities to get more work out of less electricity.
>
> Renewable energy is also a critical part of California's energy portfolio, with about one-ninth of the state's supply now generated from wind, solar, geothermal or biomass resources.

NRDC stated:

> Natural gas-fired combustion turbines represent the best available large-scale fossil fuel generation in terms of minimal adverse air quality impacts. Combustion turbines, particularly combined cycle applications are capable of obtaining 55-60% efficiencies . . . . Single cycle natural gas-fired combustion turbines are considerably less efficient, operating between 28-35% with combustion controls limiting NO_x emissions to 15-25 ppm.

However, "the aggregate impact of the proposed combustion turbine projects in Illinois would amount to several hundred tons, likely to be emitted during the worst ozone episodes."

NRDC recommended that USEPA "withdraw the section 182(f) NO_x waiver granted to the Chicago . . . ozone [NAA], which exempts proposed new single cycle combustion turbines from obtaining emission offsets or utilizing [BACT]."

NRDC discussed aggregate impacts from multiple peaker plants:

> In isolation single cycle natural-gas fired combustion turbines do not pose a greater threat to public health and the environment than other types of state-regulated facilities, particularly coal-fired steam turbine generating units. However, the aggregate impact of siting several single cycle natural gas-fired combustion turbines should be thoroughly evaluated since these units can emit quantities of NO_x . . . CO…PM 10…VOCs …SO_2…and sulfuric acid mist . . . in quantities sufficient to trigger permit review thresholds under the [CAA].

NRDC added that peaker plants can:

> [A]lso emit toxic air pollutants, including formaldehyde, acetaldehyde, benzene, lead, mercury and beryllium in quantities sufficient to trigger permit review thresholds under the [CAA].
>
> Toxic air pollutants emissions increase significantly at single cycle combustion turbines equipped to burn distillate fuel oils as an alternative fuel source.

NRDC commented that "many of these proposed single cycle combustion turbine projects maybe converted in the future to combined-cycle . . . . A single cycle generating unit may not tax available water resources for example, but its conversion to combined-cycle operation could create significant allocation quandaries for the host community."

NRDC stated that "[s]ingle cycle combustion turbines are not particularly water intensive, consuming less than 100,000 gallons per day." However, "[w]hen firing distillate fuel oil, water consumption rises to up to 1,000,000 gallons per day when steam injection is employed to reduce NO_x emissions. In comparison a 1,000 MW combined cycle natural gas-fired combustion turbine relying upon wet cooling consumes approximately 7,000,000 gallons per day."

NRDC stated that peaker plants:

> [S]hould avoid disproportionately burdening any community, but particularly low income communities and communities of color. * * * [M]any potential host communities are convinced from their experiences that existing local zoning requirements are not adequate to address all the public interest concerns. * * *
>
> That may be in part attributable to the lack of coordination between municipalities and Illinois regulatory agencies involved in permitting new electric generating facilities, particularly [IEPA] . . . .

NRDC advised that "[w]hen applications are pending for multiple facilities, siting boards should select those that best meet these criteria rather than approve applications on a first-come, first-served basis."

NRDC reported that "California and New York require a coordinated and systematic evaluation [of] the potential environmental and public health impacts of new electric generating facilities":

> The California energy facilities siting process is particularly rigorous, requiring demonstration of need, balanced against the potential environmental and public health impacts. An applicant seeking to site a new electric generating facility of 50 MW or greater is required to submit a pre-application. * * * The California energy facilities siting process requires a single regulatory permit (insured by simultaneous review of air, water quality permit requirements by relevant municipal, state and federal regulatory agencies). * * *
>
> The California Legislature amended the energy facilities siting process by establishing a "fast track" process of 6 months for new electric generating facilities presenting no significant adverse environmental impacts. * * *
>
> Single cycle natural gas-fired combustion turbines operating under contract with [the] California Independent System Operator which emit less than 5 ppm [of

> NO_x] . . . and displace[] more polluting existing generating capacity can obtain expedited air permit approvals. * * *
>
> The State of New York recently consolidated the permitting of new electric generating capacity greater than 80 MW under the [NYS Siting Board], under Article X of the New York Public Service Law. Prior to commencing construction, a power plant developer must obtain a "Certificate of Environmental Compatability and Public Need." * * * [The NYS Siting Board] "is authorized to issue both air and water permits. * * *
> Under [New York's] Article X, the project applicant is required to file a preliminary scoping statement explaining in detail: the proposed facility and its environmental setting; potential environmental impacts from the construction and operation of the proposed facility; proposed mitigation; reasonable alternatives to the proposed facility; and other information that may be relevant or required by the [NYS] Siting Board.
>
> The project applicant is responsible for ensuring the preliminary scoping statement is adequately publicized.
>
> Article X encourages public involvement by requiring the project applicant to hold public meetings, offer presentations to interested parties and establish a local presence in the community. * * * [T]he project applicant must submit with its application a fee to be used as an "intervenor fund," which the [NYS] Siting Board examiner will disburse to municipal and local parties to defray the cost of expert witnesses and other technical assistance. * * *
>
> At present NRDC is participating as an intervenor in 8 of the projects under Article X review.

NRDC believes that the Board should integrate "the currently disjointed local zoning review process with consideration of draft state administered air and water permits." NRDC supports:

> [S]iting laws that encourage new power plants to: (1) use renewable fuels[;] (2) implement state-of-the-art air and water pollution systems; (3) locate on or near existing power plant sites that do not require new fuel supply or transmission infrastructure; and (4) avoid disproportionately burdening low-income communities and communities of color. * * * [S]iting laws should ensure that cumulative environmental and public health impacts decline over time as capacity increases.

NRDC also stated that some entity should take over the ICC's old role and develop "a comprehensive energy strategy for Illinois."

PC 110—Mr. Ronald D. Earl, General Manager & CEO, IMEA

IMEA described itself as a:

> not-for-profit unit of municipal government made up of 39 of the State's 42 municipally-operated electric systems. * * *
>
> The IMEA's primary function is to provide wholesale electricity to its members. Not only does IMEA arrange for a sufficient quantity of electricity, it also schedules the delivery of that power to each community over the State's transmission grid on a real time basis.
>
> At this time, IMEA has contracts with 28 of the State's 42 municipal systems to provide all, or most, of their wholesale electricity.

IMEA claimed that "a reliable electric market requires generation sources in comfortable excess of projected peak demand." IMEA asserted that "generation sources should be located in relatively close proximity to the load they serve. * * * [H]igh volume, peak load days create transmission bottlenecks that have threatened parts of the State with mandatory curtailments as recently as this summer."

IMEA requested that "the State do nothing to create power shortages in Illinois through new and restrictive regulation of natural gas-fired, gas turbine peaking plants. They are . . . the cleanest source of power generation available today that can satisfy peak load needs." IMEA admitted that it would "be ideal if even greener sources of power, such as wind, solar, or hydro, could satisfy the State's growing needs. But such sources of power are not available on demand." IMEA stated that "[w]ithout sufficient power generation, higher costs and diminished reliability . . . will result."

PC 111—Mr. Earl W. Struck, President/CEO, AIEC

AIEC described itself as:

> [T]he statewide service organization for Illinois' 27 electric cooperatives. The 25 electric distribution cooperatives provide electric service[,] . . . primarily in rural areas. * * * Two generation and transmission cooperatives supply wholesale power to the majority of the state's distribution cooperatives.

AIEC stated that "Article XVII of Illinois' deregulation law grants co-ops and municipal systems 'local control' over decisions relating to a deregulated marketplace. * * * [A] number of cooperatives have taken steps to secure additional generation capacity."

AIEC reported:

> Two Illinois cooperatives have recently announced plans to increase coal-fired generation, using advanced 'clean coal' technologies. Several other

> cooperatives have decided to utilize natural gas-fired peaker plants. * * * In each case, planned peaker plants have been located in sparsely-populated and remote rural downstate areas, without objection from local residents, and with the support of local government.

AIEC believes that Board inquiry hearing testimony "indicates that peaker plants are among the 'cleanest' answers to the need for additional generation capacity." AIEC concluded: "The electric cooperatives of Illinois respectfully suggest that to impose new and burdensome regulations regarding installation of new gas-fired peaker plants, especially in light of California's recent experiences, would be unwise."

PC 112—Ms. Verena Owen of Winthrop Harbor

Ms. Owen stated:

> Under the [CAA] 160 (5), the IEPA has to consider all the consequences of a decision to increase air pollution. That includes the basic determination if a facility is needed or not needed. The IEPA has repeatedly refused to look at the need for the peaker proposals, however, the language in the permits tells otherwise. The IEPA has apparently concluded that they are all needed. The IEPA is operating in a [void], i.e. a missing energy policy . . . .

Ms. Owen quoted IEPA's Mr. Romaine (from the transcript of IEPA's Carlton hearing at page 132): "Or if, in fact, there has been a catastrophic change in Illinois' electric power supply system for the particular summer . . . . We have to contemplate potential operation of this facility as a major source." Ms. Owen is concerned that "IEPA is contemplating the possibility that the minors become majors? Again, the permitting section of the IEPA would be making energy policy . . . ."

Ms. Owen "would like to see the . . . Board recommend relieving the IEPA from the responsibility of making energy policy decisions and taking over the role the ICC used to have. I would like to see you ask the legislators to develop a comprehensive energy policy that benefits the citizens of Illinois and protects the environment."

PC 161—Ms. Mary Thurow of Big Rock

Ms. Thurow stated that "[i]f a peaker plant is located in Big Rock, it will destroy a major portion of our small agricultural landscape." Ms. Thurow asked that the Board "study the plans on the NO_x SIP before further plans are acted upon."

PC 162—Ms. Margaret A. Bock of Libertyville

Ms. Bock admitted that "[a]lthough peaker plants have benefits . . . such as generating electricity without nearly the quantity of air pollution as old coal-fired power plants, they also have some negatives such as producing a certain quantity of air pollution, as well as a certain

level of noise. [T]heir water requirements pose a problem."

Ms. Bock stated that "[e]ach village and municipality must assess the proposal in terms of its effect on the local area. And yet, many of the effects have a far wider effect than a local one." Ms. Bock commented:

> I believe that we must consider their impact statewide. We need a statewide discussion on how many peakers would be optimal, and how to decide which sites are appropriate. We need to review our air quality statutes and regulations, and probably make them more rigorous. And those additional regulations or restrictions should apply to currently permitted facilities and to new facilities and expansions. * * * I refer you to the California Environmental Protection Agency Air Resources Board "Guidance for Power Plant Siting and Best Available Control Technology" publication, as approved by the Air Resources Board on July 22, 1999, as an example of what other states are doing.

PC 163—Ms. Cynthia A. Faur, Sonnenschein, Nath & Rosenthal, on behalf of Midwest Generation

Midwest Generation commented:

> Midwest Generation is a subsidiary of Edison Mission Energy . . . . On December 15, 1999, Midwest Generation purchased the fossil fuel-fired assets of [ComEd]. Midwest Generation has an installed capacity of approximately 10,000 [MW] in Illinois—nearly 1,000 [MW] of which is existing peaking capacity.
>
> Midwest Generation has applied to [IEPA] for a permit to install an additional 300 MW of peaking capacity at its existing Waukegan Generating Station. These peaking units will be subject to [NSPS], which in this case will be equivalent to [BACT], and NO_x emissions from these units will be limited to less than 40 [TPY].
>
> Since purchasing the Waukegan Station from ComEd in December of 1999, Midwest Generation has commenced a project to significantly reduce NO_x emissions from that station. In permitting new peaking capacity at the Waukegan station, Midwest Generation is not using any of these emission reductions to offset emission increases from the new peaking units.

Midwest Generation claimed that additional peaking capacity will be required to meet the 17-20% reserve minimums and keep pace with increasing demand. Midwest Generation maintained that peaker plants do not "warrant more stringent regulation than currently provided in existing and proposed Illinois requirements." Midwest Generation continued: "As both Chris Romaine and Kathleen Bassi of [IEPA] testified[,] . . . peaker plants do not

threaten air quality." Midwest Generation stated that "it is important to note that these new peaking units are required to meet the NSPS for Stationary Gas Turbines, 40 CFR § 60.330 *et seq*. This NSPS contains requirements which limit the amount of NO_x and SO_2 that can be emitted from peaking units."

Midwest Generation added:

> [T]he construction permits issued for the peaking units contain both short and long-term emission limitations. Where a peaking unit is located at an existing facility, the requirements can be more stringent. In the case of Midwest Generation's proposed peaking units to be installed at its Waukegan station, Midwest Generation accepted an annual NO_x limitation of approximately 39 tons on emissions from its two peaking units combined to ensure that the addition of these units would be treated as a minor modification to the Waukegan station.
>
> In addition to permitting limitations on peaker plants, many peaking plants will be subject to the NO_x reduction rules currently pending before the Board. Under the NO_x SIP call rule, peaker plants will be allocated NO_x allowances from an allowance "set-aside" available for new sources. Under the NO_x SIP call, NO_x allowances can be purchased on the open market from other sources. Midwest Generation believes that the existing permitting rules, the NSPS standards, and the NO_x SIP rule will effectively regulate emissions from peaker plants.

Midwest Generation claimed that "[t]hese plants do not pose a unique or greater "environmental threat" than other types of sources in Illinois." Midwest Genration continued:

> The primary emissions from these plants will be NO_x, but peaker plants will only be a small portion of the NO_x emitted in the State. * * * With regard to water use, not all peaking units use a great deal of water. In fact, Midwest Generation's existing peaking units, as well as those proposed to be installed at the Waukegan station, use very little water. * * *
>
> [P]eaking units constructed in Illinois are subject to stringent noise regulations which require the operators of peaking units to address noise issues . . . . Midwest Generation does not believe that noise from these peaking units will constitute a unique threat.

Midwest Generation believes that "while [IEPA] can provide technical expertise on the air quality impacts of peaker plants, local governments are the best suited to make land use determinations for their jurisdictions . . . . [L]ocal governments have the authority to deny siting approval for peaker plant even if [IEPA] grants a construction permit for the proposed project."

Midwest Generation does not believe "that [any new] requirements should apply retroactively to existing peaking units":

> Midwest Generation currently operates 9 existing peaking sites—all of which are located in sites that are zoned for that purpose or at existing power plants. If additional requirements were made applicable to these peakers, it could significantly impact the ability of these units to provide needed power during peak periods.

Midwest Generation claimed that "[w]ithout additional peaking capacity in the State, it would be difficult, if not impossible, to maintain reliable electric service."

PC 164—Mr. Christopher Zibart of Hopkins & Sutter and Ms. Sharon Neal on behalf of ComEd

ComEd claimed that the "record accumulated in this docket supports the current regulatory scheme." ComEd stated that it:

> [S]upports the restructuring of the electric industry as crafted by the Illinois Legislature and the [FERC]. ComEd believes that, as designed by the Illinois Legislature, a free market for electric generation will lead to ample capacity at reasonable prices. A critical feature of restructuring is the availability of new privately developed electric generation to meet the State's increasing demand for power. No longer will the customers of a utility be at risk that too much generation will be built, resulting in high rates based on the cost of building it.

ComEd stated that "local governments possess substantial control over the process of siting non-utility generation." ComEd claimed that "[n]ew or more stringent regulation is not warranted." ComEd stated that "[w]hereas California has maintained tight regulatory control over wholesale prices and the approval of new generation, Illinois has allowed prices in a free market to determine what generation needs to be built."

ComEd asserted that additional peak generating capacity is good for Illinois. ComEd stated that "peak load is increasing substantially from year to year. * * * Because electricity cannot be stored, and must therefore be generated at the instant it is demanded, there must be enough generating capacity available to meet the peak load."

ComEd stated that "[i]t is important for Illinois citizens and consumers that many of these new peaker plants be located in Illinois . . . [for] [t]hree key reasons":

> 1. Illinois peakers will benefit Illinois consumers. * * * As the price of electricity in the future depends increasingly on market forces, keeping prices down in the face of increased demand requires more generation, and generation by a diverse group of electric producers. A large number

of sellers directly connected to an Illinois utility's transmission grid, will keep the price of electric power from jumping rapidly.

2. Illinois peakers promote reliability. Local generation helps support voltage on the system, especially near the generator. * * * The closer a generation source is to the load, the fewer potential problems there are with transmitting the power.

3. Distant peakers are not just as good. * * * Only so much power can be transmitted through a given line; at some point, to keep the lines from overloading, a transmission owner must turn down requests to transmit more power or curtail other transactions. * * * There have already been numerous instances on which transmission requests were denied. This is especially true during peak load conditions. It is therefore incorrect that either Illinois can depend heavily on generation in other states, or that Illinois-based generation will be used to supply huge amounts of load in other states. Unless or until massive new transmission line projects redefine the transmission grid, this condition will remain for the foreseeable future. And, regardless of interstate transmission availability, distant generation cannot support voltage on the local system to the same extent that local generation can. [citations omitted]"

ComEd asserted that environmental regulation should not unduly inhibit and frustrate the power market developed by the legislature. ComEd claimed:

> [T]he Legislature has entrusted the emerging free market for electric power to cause the appropriate amount of new generation to be built. This scheme will not function as the Legislature intended if Illinois' environmental regulatory scheme is changed unreasonably. The Board must realize that restrictions on peaker plants will reduce the supply of electricity generated and available to consumers.

ComEd stated that peaker plants are not different from other industrial facilities in Illinois so as to require more stringent regulation. ComEd maintained that "a well-designed peaker plant easily complies with all applicable federal and state environmental requirements and poses no significant environmental threat to the surrounding community."

"As to siting the new peaker plants," ComEd claimed:

> [T]he current system is clearly working . . . . [U]nlike a state-regulated public utility, a private developer must fit its new plant into the zoning and siting scheme of the neighborhood it chooses. Municipalities are well aware of how to use their zoning power and have substantial discretion to grant or deny zoning changes or variances. For this reason, some plants have obtained approval, while numerous other plants have been turned down. (The latest example:

> since the first hearings before the Board in this docket, the Board of Trustees of the Village of Libertyville rejected a zoning request for a new peaking plant.) So, the current situation does not demand an overhaul of the siting mechanism. Certainly, a time-consuming, expensive, bureaucratic process would discourage independent power from locating in Illinois.

ComEd stated that it is unnecessary to address applying new regulations retroactively "because no new regulations are needed." ComEd added, however, that "retro-fitting equipment is terribly expensive, and would be unfair considering that the facilities met the regulations pursuant to which they were permitted."

ComEd concluded that "in California, a slow bureaucratic process has kept construction of independent power plants to a minimum even though the electric industry has been restructured."

PC 165—Mr. Urbaszewski on behalf of ALAMC and IEC

Mr. Urbaszewski stated:

> At the hearing on October 5, 2000[,] . . . there was a request from the Board to provide more information on the estimated number of premature deaths in Illinois due to the effects or airborne [PM] . . . . [A] report published by [NRDC] in 1996 . . . [is] the source of the number of 60,000 premature deaths nationwide due to [PM], as well as being the source of information on deaths in the Chicago Metropolitan area . . . . The name of the report is BREATHTAKING: Premature Mortality due to Particulate Air Pollution in 239 American Cities.

Mr. Urbaszewski reported that, "[f]or the Chicago Metropolitan Area[,] the estimated number of premature deaths was a . . . range from 2075-4759, with a midpoint estimate of 3479. In our original testimony, I stated that the number of premature deaths due to particulate levels was over 2000."

Mr. Urbaszewski stated that the "report includes such estimates for eight metropolitan areas in Illinois. It does not include any figures for rural Illinois counties . . . . Our testimony indicated that there were over 3000 premature deaths statewide. The actual total from the eight metropolitan areas in the report was a range of 3052-7020 with midpoint of 5124."

ALAMC and IEC provided:

> A new report released in mid-October, 2000 that documents the connection between premature deaths and emissions from power plants nationwide. This study, The Particulate-Related Health Benefits of Reducing Power Plant Emissions by Abt Associates also breaks down the estimates of premature deaths by state and metropolitan areas." The summary of the Abt report is titled

> "Death Disease & Dirty Power: Mortality and Health Damage Due to Air Pollution from Power Plants. Power plant emissions alone are associated with 1,700 premature deaths annually in Illinois, as well as 1,110 hospitalizations and 33,100 asthma attacks. Numbers for the Chicago Metropolitan Area are 995 premature deaths, 648 hospitalizations and 21,400 asthma attacks.

ALAMC and IEC "urged the Board to begin an inquiry into the threat to public health presented by existing coal-fired power plants. These plants are grand-fathered out of ever meeting modern emission standards and now emit the vast majority of [SO_2] emissions statewide—emissions that form airborne fine [PM] less than 2.5 microns (PM 2.5)."

ALAMC and IEC claimed that "[i]t is important to note that while the PM 2.5 standard is the subject of litigation before the Supreme Court, the health effects of PM 2.5 are not at issue. Even the District of Columbia Circuit Court of Appeals, the body that sent the case to the Supreme Court, agreed that the science shows there is a problem."

ALAMC and IEC "would like to correct a statement [at Tr.2 at 105-106], which states the number of people with lung disease in Cook County is 'over 14,000 people.' It should read 'over 400,000 people.'"

PC 166—Ms. Carol Dorge, LCCA

The Peaker Plant Industry

LCCA stated:

> The peaker plants that have been the subject of these hearings are natural gas fired [EGUs]. Some are also being permitted to use diesel fuel as an alternate fuel. Since these hearings commenced, in August, the number of peaker plants seeking air pollution permits from IEPA has grown from around 45 to over 60. Each plant has multiple turbines-usually three or more. We estimate their combined generating capacity to be 27,500 MW and their combined emissions (NO_x) to exceed 20,000 tons.

LCCA continued:

> The Board . . . need[s] to look at the numbers and recognize the reality. First, the fact that [it] is a big new industry and a real industry, and is not designed to serve only peak demand as peakers have in the past. Second, the fact that deregulation of the electric power industry, and relatively lax environmental regulations and local siting have contributed to an explosion in the number of plants choosing Illinois, over other states.

LCCA claimed:

> Simple cycle turbines are not "energy efficient" energy producers and they will contribute significantly to the ozone problem in Illinois and Wisconsin. These plants generate fewer jobs and less tax revenue than other types of industry. They take up large tracts of land. Most of the electricity they produce will be sold to out-of-state customers, and we can expect higher electric prices, and higher natural gas prices. There are few discernable benefits. Most of the municipalities that are approving these facilities are being enticed by financial incentives, through host agreements, or threatened by lawsuits.

LCCA stated that Illinois:

> [I]s currently issuing permits which would allow these sources to emit roughly 20,000 tons of NO_x (estimated), when the state's air regulations and SIP proposals project a NO_x demand for new sources of 1500 tons. Noise is a problem. The transportation and storage of millions of gallons of diesel fuel through and adjacent to residential areas is a problem. We are already observing clustering of facilities. Their combined impact needs to be considered. The state should be proactive and adopt regulations addressing these environmental impacts.

Air Permit Procedures Need to be Strengthened

LCCA commented:

> Almost all of these plants approach or exceed major source thresholds for NO_x, CO, VOM and toxics. [W]e note that facilities are being permitted to emit a wide range of emissions. Emissions of NO_x range from 2.5 ppm to over 40-55 ppm-even plants that are major and subject to BACT. Some of these plants are admittedly major, and subject to PSD and BACT. LCCA believes that even the sources being permitted as major sources are being allowed to emit far more air pollution than BACT should allow.

LCCA claimed that "[i]t is well known that pollutant emissions from combustion processes are higher during periods of start-up (and possibly shut-down)." LCCA also claimed that "IEPA has not been requiring applicants to obtain reliable emissions data from the manufacturers and include the information in their application."

LCCA stated that "[m]any of these plants are being permitted as synthetic minors with emissions of NO_x and CO approaching major sources thresholds. We believe these sources would be major, if all emissions (including emissions during startup) were properly accounted for. IEPA should establish standardized procedures for calculating emissions."

LCCA claimed that "permits are not being issued based on good engineering data" and that "[c]onstruction permits allow these plants to operate for a whole season (180 days) before demonstrating an ability to comply with permit limitations."

LCCA stated that the following items should be a part of every permit application:

- "Identity of the real operator and a demonstration of ability to operate, maintain and decommission the facility;"
- "Information on the duration and expected frequency of startup and shutdown, and emissions of all pollutants during startup;"
- "Information regarding emissions of toxics during normal operation;"
- "Good operating practices for their units;"
- "Information regarding operating factors;"
- "Standard procedures for calculating emissions during normal operation;"
- "Identification of monitoring procedures available to monitor all conditions impacting emissions;"
- "Modeling, including a demonstration that the facility will not contribute to the ozone non-attainment problem.;"
- "Offsets;"
- "[O]perator training;" and
- "Contractual warranties."

LCCA stated that "[t]hese facilities should install LAER, and every effort should be taken to prevent backsliding, particularly in the case of NO_x and VOM emissions. The NSPS (at around 75 ppm NO_x) is over 20 years old and grossly outdated. The Board should declare all of these sources "major" for purposes of all air regulations."

<u>These Sources Will Cause Nonattainment of the Ozone Standard</u>

LCCA reported:

> IEPA showed us, through modeling, that the combined impact of the roughly 45 plants in the pipeline would cause exceedences of the ozone standard, at least at Wisconsin locations. We also note that the Illinois attainment demonstration for ozone appears to account for roughly half of the plants that are being permitted, and does not account for additional plants that may be proposed. * * * These new sources are not currently securing offsets. Only a few of the proposed

sources will utilize LAER. It will not be technically feasible for these sources to reduce their emissions to 1500 Tons or to purchase the necessary allowances from Illinois sources. They will be purchasing allowances from out-of-state sources, while continuing to emit high levels of NO_x, in Illinois. Any regulatory initiative should include incentives designed to reduce levels of NO_x emitted within the state. There should be incentives which encourage the purchase of offsets from Illinois sources.

NO_x Waiver

LCCA stated that the "NO_x waiver should be lifted."

Noise

LCCA recommended that "[t]hese applicants should be required to hire noise experts and demonstrate noise will be controlled, before these plants are built."

Water Use

LCCA believes that "the state should adopt regulations governing water usage and that this should also be subject to review in a permit proceeding."

Water Discharge

LCCA acknowledged that the "NPDES program may adequately address concerns associated with water discharges, including storm water discharges, however, this should also be made part of the record in the permitting process."

Spills and Releases

LCCA claimed that "[c]itizens are extremely concerned about the possibility of spills, releases and possible explosions associated with peaker plant operations" and that "[n]o state agency has responded to those concerns."

Environmental/Engineering Review/Permitting

LCCA recommended "a state level environmental/engineering review and peaker plant permitting process which takes into account all of the environmental impacts associated with these plants, and imposes requirements to mitigate all environmental impacts. The permit applicant should include a financial demonstration of some sort, and a decommissioning plan."

Complete Application

LCCA also recommended that "[w]hen an application is truly complete, [IEPA] should issue Notice of Receipt of a Complete Permit Application to all parties to the permit proceeding."

Siting

LCCA believes "that there is also a need for some state involvement in siting in some, but not all cases."

LCCA's Siting and Permitting Proposal

LCCA's proposal includes:

- "Local siting and zoning approval;"
- "State siting approval may also [be] required;"
- "All property owners located within 2500 feet of the property line of a proposed facility should be provided with notice of the air permit application and peaker permit application;"
- "Any person could ask[] to be placed on the notice list and request service of all application materials;"
- "Hearings will be held upon the request of any party;"
- "Any party to a permit proceeding could appeal any permit that was issued;" and
- "[W]e feel an 'SB 172' type proceeding is warranted."

Questions That Governor Ryan Posed

Do peaker plants need to be regulated more strictly than Illinois' current air quality statutes and regulations provide? LCCA stated:

> The answer is an unequivocal yes. They should be subject to LAER, MACT, [and] the ERMS program. Existing emission standards—particularly the NSPS—are terribly outdated. The regulations should also better define permit application requirements. * * * There must be a way to account for the combined contribution of these facilities, to the ozone problem. A noise standard should be adopted. Siting regulations are needed. * * * Storm water permits should also be required. The combined effect of these facilities needs to be considered.

Do peaker plants pose a unique threat, or a greater threat than other types of State-regulated facilities, with respect to air pollution, noise pollution, or groundwater or surface water pollution? LCCA answered: "Yes, based on the . . . number of units that have been proposed and their combined emissions."

Should new or expanding peaker plants be subject to siting requirements beyond applicable local zoning requirements? LCCA answered: "Absolutely. Local zoning is not adequate, particularly where facilities are sited near a municipality's boundary and near residential areas."

If the Board determines that peaker plants should be more strictly regulated or restricted, should additional regulations or restrictions apply to currently permitted facilities or only to new facilities and expansions? LCCA answered: "The regulations will only be effective if they are retroactive, to cover sources whose applications are pending, who have not commenced construction as of today."

PC 167—Mr. James R. Monk, President, IEA

IEA "is a trade organization representing investor-owned electricity and combination electricity and natural gas companies serving customers in the State of Illinois."

Do peaker plants need to be regulated more strictly than Illinois' current air quality statutes and regulations provide?

IEA answered:

> No. No credible evidence has been presented that would justify more restrictive statutes or regulations for peaker plants than is already imposed on such plants. Existing and newly proposed rules and regulations regarding nitrogen oxide emissions provide stringent emission control requirements to safeguard the health and welfare of Illinois citizens. The permitting process sufficiently guarantees that these plants will not pose air quality problems for the localities in which they are operated. * * * Illinois regulators have yet to receive even the first noise-related complaint regarding those peaker plants that have already been constructed and are operating under approved permits.

Do peaker plants pose a unique threat, or a greater threat than other types of State-regulated facilities, with respect to air pollution, noise pollution, or groundwater or surface water pollution?

IEA answered: "No. * * * [S]ingle-cycle peaker plants create little in the way of [NO_x] emissions or noise and use very small amounts of water. Larger combined-cycle plants are already held to higher standards under existing rules and regulations."

Should new or expanding peaker plants be subject to siting requirements beyond applicable local zoning requirements?

IEA answered: "No. * * * [L]ocal zoning authorities are on top of this situation and are exercising their extensive power. * * * [T]he State does not know and should not attempt to tell local zoning authorities what is best for their respective communities in the form of new state siting requirements."

If the Board determines that peaker plants should be more strictly regulated or restricted, should additional regulations or restrictions apply to currently permitted facilities or only to new facilities and expansions?

IEA answered:

> It would be patently unfair to apply any new, stricter rules or regulations to those facilities that have already been approved through the existing permitting process. To change those rules after the fact could have a tremendous chilling

effect on possible new investment to meet the state's growing demand for electricity. Such actions could also be perceived by potential investors in other similar industries as a sign of uncertainty in Illinois public policy.

How do other states regulate or restrict peaker plants?

IEA responded that "[n]o patterns have emerged in other states in this regard . . . . [W]hile we certainly should not ignore how other states deal with the peaker plant construction issue, we should not place too much emphasis on those states because they are not similarly situated in this regard."

General Comments

IEA said that "peaker plants cannot and should not be viewed only in the context of the environmental issues that are the crux of this inquiry," but instead should be viewed in light of "the broader public policy issue of how to supply safe, reliable, and affordable energy for the citizens of our state."

IEA continued: "Reliable electricity and affordable electricity are inextricably linked in our new deregulated power supply industry." Illinois must "make sure that the lights stay on even at times of peak demand" and provide for "affordable electricity prices . . . . [T]he only way to meet these twin goals in the near future is through the additional electricity capacity supplied by peaker plants."

Conclusion

IEA believes that "the record in this inquiry shows that there is no necessity for more strict regulation of peaker plants in our state."

PC 169—Mr. Evan L. Craig, Group Chair, Sierra Club Woods & Wetland Group (SCW&WG), Vernon Hills

These comments supplement those that Mr. Jack Darin submitted on behalf of the Sierra Club, Illinois Chapter. SCW&WG claimed that the "present reliance on local citizens to be experts is extremely taxing. * * * We need more help protecting our environment, and we expect more from our IEPA."

SCW&WG is bothered by "[f]rivolous applications. They're all the same. They are usually incomplete. They are all recommended by IEPA for approval." SCW&WG stated: "We've suffered from Grandfathered Coal. And then the NO_x Waiver. Those should stop. They should not be replaced by a new loophole: synthetic minors."

SCW&WG said that peaker plants "are compared to coal as cleaner, but we're being asked to accept peakers AND coal plants. Neither should be justified by comparison to the other unless one truly replaces the other." SCW&WG claimed that "[n]ew plants are not

needed until other measures have been exploited: Conserve, then Cogeneration on existing plants, then Renewable Energy, then, last of all fossil plants."

SCW&WG asserted that "[w]e need more comprehensive regulations of energy sources that considers the aggregate and various environmental burdens of each."

PC 170—Mr. Stephen Brick, Director, External Relations and Environmental Affairs, PG&E

PG&E stated that "the sheer number of plants being simultaneously permitted creates an unprecedented situation. * * * It is critical that a balance be struck between the pressing need for new sources of electricity and the desire to maintain and improve environmental quality."

Need for the Plants

PG&E commented:

> The testimony in the record supports the need for additional sources of generation to serve need in Illinois and elsewhere. * * * By the passage of the state's restructuring law, Illinois determined that the best way to encourage additional plant development is through market mechanisms. * * * [A] regulatory process would hamper the newly created competitive market.

Local Land Use Control

PG&E said that "[d]ecisions concerning the suitability of a proposed project should ultimately be left to the affected jurisdiction. * * * [T]he local zoning boards can share information and experiences, and we encourage the state to develop a process to facilitate this sort of exchange."

State Environmental Review

PG&E stated: "IEPA issues air permits for power projects. This is generally the most significant state level regulatory approval needed for a power plant." PG&E noted that "[m]ost of the power projects permitted thus far in Illinois have been permitted as synthetic minor sources. * * * [S]ynthetic minors are exempted from the air quality modeling requirements of the . . . PSD program."

PG&E stated:

> Most of the proposed projects . . . have submitted applications that request permits allowing them to emit just up to the major source threshold. * * * [N]umerous developers have requested permits to emit NO_x in the range of 245 to 249 [TPY]. * * * Because Illinois was granted a waiver under Section 182(f) of the [CAA], the major source threshold for NO_x emissions is 250 [TPY]. If

> this waiver were revoked, the threshold would drop to 25 [TPY]. * * * The 182(f) waiver was granted on the presumption that NO_x emission reductions were counter-productive to attaining the ozone standard in certain regions. This has since proven to be untrue, and states are in the process of implementing the SIP call on the assumption that broad, regional reductions of NO_x are needed to attain the ozone standard.
>
> PG&E suggested:
>
> The state could revise its permitting policy, and lower the major source threshold to 25 [TPY] for NO_x. This would greatly increase the credibility of air permits issued for peaking projects. This would provide more information to local communities and regulators on the impacts of proposed projects on local air quality. [IEPA] could also take care to insure that [USEPA] policies are followed in estimating emissions from start-up and shut-down, and to make sure that potential emissions estimates and worst case modeling includes these emissions, when appropriate. Finally, [IEPA] could insure that particulate emissions from proposed projects are being estimated using the required EPA methods that include both front-half and back-half emissions.

Need for a State Administered Siting Process

PG&E stated that a siting process like SB 172 "could have benefits" but "could also pose significant costs and delays that could threaten reliability." PG&E stated that in most states with "comprehensive power facility siting processes, the decisions of the state run boards overrule local jurisdictional authority." This is the situation in "Wisconsin, New York, Massachusetts, Connecticut, California, and Florida, among others. This type of process has cause[d] delays in facilities siting in a number of these states, with delays in California being the most significant."

PG&E stated that siting boards offer power plant developers a "venue in which local concerns can be balanced against other issues. In some cases, siting boards decide to certify a project over the objections of local citizens, deeming a proposed site the best alternative." PG&E added that, "[f]rom the perspective of home political authorities and citizens, . . . such boards have the ability to run roughshod over local preferences."

PG&E made a recommendation:

> A process could be adopted to allow individuals or organizations with standing in a local proceeding to appeal to a state run board for assistance. This could occur if local authorities lack adequate resources to review project proposals, or if citizens or developers feel that a local process has produced an inappropriate result. The board could promulgate siting criteria in advance that would be applied to cases brought before the board. We believe the [Board] would be the appropriate agency in which to locate such authority.

PC 171—Ms. Freddi Greenberg, Executive Director and General Counsel, MWIPS

MWIPS is "an organization of leading competitive power suppliers with a common interest in promoting full and fair competition in the electric industry in the Midwest." MWIPS claimed that the "record in this proceeding strongly supports the conclusion that the present regulatory framework functions well and that peaker plants do not pose a unique threat to the environment."

Should peaker plants be more strictly regulated regarding air quality?

MWIPS stated that IEPA "testified that peaker plants comply with existing requirements and do not threaten air quality."

Are peaker plants unique with respect to pollution?

MWIPS claimed "[t]hey are not. Other industries emit NO_x, use water, discharge waste water and produce noise." Peaker plants' "impact on the environment is minimal."

Should peaker plants be subject to siting requirements beyond local zoning?

According to MWIPS:

> The answer to that question is "no." * * * The local process allows consideration of the issues that are unique to each situation. * * * [L]ocal zoning boards have the ability to address the issues raised with respect to a proposed plant. * * * To the extent that a community might desire assistance with respect to the siting of peakers, mechanisms to provide that assistance can be fashioned without creating mandatory statewide siting. An example would be the establishment of a statewide clearinghouse for studies and data developed through local siting processes.

Should any new regulations be applied retroactively to existing plants?

MWIPS maintained that "[t]he answer must be a resounding 'no.' A contrary result would be inherently unfair, not only to owners of peakers, but to owners of other existing industrial installations that also would be affected by a retroactive rule."

How do other states regulate peaker plants?

MWIPS claimed that "various approaches are employed with no clear pattern. * * * [D]elays in California's process for permitting electric generation have held up the construction of $10 billion worth of new generation."

Air Quality

MWIPS stated:

> The record in this proceeding overwhelmingly demonstrates that concerns over the impact of peaker plants on air quality are adequately addressed through existing regulation. [IEPA] requires each peaker applicant to conduct an air quality analysis of ambient impacts associated with the construction and operation of the peaker. * * * [T]hey assess whether emissions from a proposed source in conjunction with existing sources will not contribute to a violation of applicable NAAQS or PSD. * * * [IEPA] testified that modeling demonstrated that the impact of permitted and proposed peaker plants will not interfere with the ability to attain the ozone NAAQS.

MWIPS noted that IEPA also indicated that revoking the NO_x waiver "would have broad ramifications and that the waiver should not be revoked."

Water

MWIPS said that peaker plants "have two possible impacts on water resources: water usage and discharge of wastewater. The record has not demonstrated the need for further regulation in either regard."

MWIPS claimed that peaker plants "generally don't place as much pressure on local water supply as many other industries or activities" and that the WRAC "is in the process of analyzing the need for new laws or regulations to govern water usage in Illinois." MWIPS referred to Chairman Manning's October 25, 2000 letter to the WRAC (see Appendix G of the Report).

Noise

According to MWIPS, IEPA's Mr. Zak testified that "Illinois regulates noise more strictly than other states" and that IEPA "has received no complaints regarding noise from existing peaker plants." MWIPS stated that "the reasonable conclusion is that no further regulation is needed with respect to noise."

Peaker Plants Are Needed to Protect Reserve Margins

MWIPS claimed that "[p]rojected reserve margins for the years 2001, 2002 and 2003, taking into account capacity from existing peaker plants, but excluding capacity from proposed peakers are estimated at 13%, 11% and 10%, respectively, [are] substantially below the minimum industry standard."

Peaker Plants Will Benefit the State and Local Communities

MWIPS stated that "utilities have not built new capacity for a number of years during which there has been significant economic growth." MWIPS continued:

> [A] peaker plant is most profitable when its output is sold within the local electric grid. * * * [T]he most reliable manner of assuring adequate electric supply is to locate the plant within the utility transmission system where the electricity will be consumed. There may be times, however, when the output of a peaker plant is sold other than to meet local electric needs. * * * [A] developer who desires to meet capacity needs in another state has every incentive to build generation in the state where the plant's output will be consumed.

Conversion from Simple Cycle to Combined Cycle Involves an Additional Process

MWIPS stated that "such a conversion would increase the air emissions from the facility to the extent of requiring a new permitting process. This process would provide an opportunity for public participation."

Conclusion

MWIPS concluded that the "[t]estimony before the Board establishes that the present regulatory framework functions effectively."

PC 172—Sierra Club, Illinois Chapter

Sierra Club is concerned about the effects the proposed plants will have on air and water. Specifically, Sierra Club noted that the plants will consume large amounts of water, and argued that Illinois needs to take an active role in managing water use. It proposed that State approval should be required for any new withdrawal from surface or groundwater sources exceeding 10,000 gallons per day.

Sierra Club is concerned that the discharges from the plants could significantly degrade the habitat of a smaller stream by changing the flow regime. It argued that strong antidegradation rules should be adopted to protect the streams against the discharges.

Sierra Club urged Illinois to reconsider the current exemption of new pollution sources in the Chicago [NAA] from RACT requirements. It also recommended adopting more protective emission standards for the plants.

Sierra Club supports a moratorium on permitting and constructing new plants, to allow time to examine the policies that are drawing peaker plants to this State.

PC 173—Mr. Gerald Erjavec, Manager, Business Development, Indeck

Indeck argued that peaker plants do not need to be regulated more strictly than Illinois' current air quality statutes and regulations provide. It noted that State and federal programs tightly regulate air emissions from the plants. Indeck also argued that NO_x emissions from the plants are the lowest emitters of NO_x per kWh produced, when compared to other means of electrical production. Additionally, Indeck argued that the technologies mentioned at the hearings, that have the potential to reduce the minimal amounts of NO_x, have not been adequately proven on a commercial-sized scale. Most developers will not risk committing to a permit that relies on these technologies to comply.

Regarding water concerns, Indeck argued that the record shows that technology exists to reduce the amount of fresh water the plants require. Indeck commended the Board for referring deliberations on water use impacts to the WRAC.

Indeck argued that no further noise regulation is necessary. It relied on IEPA's report that it has not received a complaint regarding noise from the peaker plants that have existed since 1965.

Indeck asserted that little to no testimony was offered that compares the impacts of other State-regulated facilities to peaking facilities. It argued that peaker plants have impacts that are equal to or less than many other facilities that have no additional regulatory requirements. It believes that if additional regulation of peaker plants is considered, the State should also increase its oversight of most other industries.

Indeck argued that peaker plants should not be subject to siting requirements beyond applicable zoning requirements. It noted that most local zoning codes allow for uses that are more intensive than a peaking plant in one or more zoning classifications. It asked that if any alternate process is considered, it should be one that restricts the decision-making to facts in the record.

Indeck argued that a period of regulatory certainty is necessary to allow the industry to move forward. If there is any change in regulations and restrictions, those should be evenly applied to all other industries in the State.

Indeck commented that the process of regulating peaker plants in other states varies. It noted that other states have a process like Illinois' process—one or two local agencies handle the local issues and the State handles the state and federal issues.

In closing, Indeck asserted that the majority of the testimony did not address Governor Ryan's questions for the inquiry hearings, but instead addressed the "evils" of peaker plants.

PC 186—Mr. Ersel C. Schuster, McHenry County Board

Mr. Schuster stated that he supports the concepts and suggestions offered by Mr. Zak,

Mr. Urbaszewski, Dr. Winstanley, Ms. Turnball, Mr. Romaine, Ms. Zingle, Dr. Overbye, and others. His comment focused on enforcement. He argued that his board does not have the authority, technical expertise, or financial ability to ensure that the operator of a peaker plant is complying with the regulations. He argued that local officials must have a means to effectively enforce against these operations.

PC 187—Ms. Katherine Hodge and Ms. Karen Bernoteit, Hodge & Dwyer/IERG

IERG argued that the need for additional regulations, or lack thereof, depends on whether the goals of air pollution control are, or are not, being achieved. To determine whether the goals are being achieved, it contended one must look at the potential effect of peaker plants on ambient air quality standards and PSD increments. Citing the testimony of IEPA's Mr. Kaleel, IERG argued that the results of IEPA modeling shows that the natural gas-fired peaker plants permitted thus far will not threaten the NAAQS or PSD for NO_2, PM 10, SO_2 and CO. Based on this testimony, and absent evidence to the contrary, IERG declared that there is no need for additional controls.

IERG argued that the record shows that peaker plants do not pose a unique or greater threat than other regulated facilities, regarding air pollution. It noted that Mr. Zak, noise advisor for IEPA, testified that IEPA had not received any noise complaints regarding existing peaker plants. IERG supports providing the WRAC with a summary of all water-related issues; and believes that it would be inappropriate for the Board to make any recommendations regarding water issues at this time. IERG referred to Chairman Manning's October 25, 2000 letter to the WRAC (see Appendix G of the Report).

IERG believes that siting is the crux of the matter. It argued that local zoning should, and can, do the job of siting peaker plants.

IERG argued that there is no need to regulate peaker plants more stringently, and the plants do not pose a unique or greater threat than other regulated facilities.

IERG also stressed that the Board's informational order should precisely define the types of facilities that are the focus of any recommendations to the Governor. IERG noted that during the course of testimony, the scope of the hearings became blurred with discussion regarding combined cycle, co-generation, and base-load facilities. IERG argued that the focus of the hearings was supposed to be natural gas-fired peaker plants, not all power generation facilities. It wants the definition of peaker plants to be clear so that there are no potentially severe and unnecessary impacts on the business community.

IERG further stated that there should not be a concern that there are too many facilities being planned, or permitted, or constructed, relative to the demand for peak power. IERG argued that if too many peaker plants are built, only those willing to produce the needed power at the lowest possible cost will operate. The competitive marketplace will address the situation.

PC 189—CCLC and Liberty Prairie Conservancy

This comment offered a list of suggestions for IEPA to follow when a peaker plant seeks a permit, including:

- IEPA should maintain, both on the Web and hard copy, data regarding existing capacity, projected need, and detailed projected capacity throughout MAIN;
- Create an additional information form to be completed by each applicant;
- Post all permit applications on the Web; and
- Develop new air modeling parameters based on the proposed months during which the facilities will operate, not on annual averages.

PC 190—Mr. LaBelle, Ms. Cole, Ms. Carter, Lake County Board Members

This comment provided a number of recommendations for siting requirements, including:

- A moratorium on all pending peaker plant air quality permits until all outstanding peaker plant permitting issues are resolved;
- After current IEPA peaker permits expire, no "un-built" plants will be grandfathered;
- Emissions generated during equipment start-up and shut-down must be regulated differently to optimize emission control;
- The Board or another appropriate agency should govern the regional siting process;
- The impact analysis should not allow pollution outputs to be considered over a 12-month period, but rather a three month period when plants are likely to operate;
- More stringent permitting regulations if the power that the plants generate is sold outside of Illinois;
- The Board should recognize that water supply issues are a major concern and need to be addressed in the permitting process; and
- The Board should require the approved siting agency to work with the Midwest Independent System Operator on locating generation.

PC 191—Ms. Marsha B. Winter of Zion

This comment is in the form of a letter that Ms. Winter sent to Zion Mayor Lane Harrison and members of the Zion City Council. Ms. Winter was angry that neither the Mayor nor members of the Zion City Council attended a peaker plant forum on November 4, 2000. Ms. Winter is also unhappy that citizens who attend Zion City Council Meetings are not given the opportunity to address the peaker plant issue.

Ms. Winter claimed that Zion residents do not want the proposed peaker plants because they pollute and generate noise. She also claimed that Zion does not have the capacity to supply the proposed peaker plants with the water that they need (2 million gallons per day). Ms. Winter stated that proposed peaker plants would violate Zion zoning codes as well.

Ms. Winter alleged that the proposed peaker plants are "hideous eyesores" that will decrease property values. She also alleged that they will negatively impact public health.

PC 192—Mr. Ken Bentsen of Sugar Grove

Do peaker plants need to be more strictly regulated than Illinois' current air quality statutes and regulations provide?

Mr. Bentsen stated that peaker plants need to be more strictly regulated than current Illinois air quality statutes and regulations provide. He said that the State must examine all of the peaker plant applications together to determine the impact on air quality, especially air quality in the Chicago NAA.

Mr. Bensten asserted that peaker plants pose a unique threat or a greater threat than other State-regulated facilities with respect to groundwater. Mr. Bentsen is concerned that a peaker plant proposed for Big Rock would use groundwater that citizens currently use. He stated that the permitting process should be conducted with great caution and information on the proposed peaker should be made publicly available.

Mr. Bentsen asserted that peaker plants should be subject to siting requirements beyond local zoning: "The [p]eaker [p]lant proposed for Big Rock Township would be located right in the middle of agricultural land and is inconsistent with the Kane County 2020 plan." The State should have a policy for siting peaker plants on brownfields as opposed to farmland, according to Mr. Bentsen.

Mr. Bentsen also wants the State to impose a moratorium on granting air permits until the NO_x SIP call is completed.

PC 194—Mr. Ralph N. Schleifer of Kaneville

Mr. Schleifer maintained that peaker plants need to be more strictly regulated than Illinois' current air quality statutes and regulations provide. The cumulative effects of all of the peaker plant proposals need to be considered on the Chicago ozone NAA.

Mr. Schleifer asserted that the proposed Big Rock peaker plant would compete with residents there for use of groundwater. Mr. Schleifer asked the State to impose a moratorium on granting air permits until the NO_x SIP call is completed.

PC 195—Ms. Marci Rose of Big Rock

Ms. Rose recently moved to Big Rock from Wheaton, and did not find out about the proposed peaker plant for Big Rock until after she and her family moved. Several of her children have respiratory diseases (asthma, allergies, bronchitis) and they moved to Big Rock for its clean air. Ms. Rose is "sure there is somewhere else this power plant can be put." Ms. Rose also attached a copy of a form letter that others filed in these proceedings.