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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ORIGINAL

RECEIVED  
CLERK'S OFFICE

JUL 28 2009

STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF: )  
)  
NITROGEN OXIDE, (NOx) TRADING ) R 09-20  
PROGRAM SUNSET PROVISIONS FOR ) (Rulemaking - Air)  
ELECTRIC GENERATING UNITS (EGUs): )  
NEW 35 ILL. ADM. CODE 217.751 )

THE MERIT AND ECONOMIC HEARING BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD, taken in the  
above-entitled case before Ann Marie Hollo, CSR, RPR, RMR,  
and Notary Public for Montgomery County, State of Illinois,  
before HEARING OFFICER CAROL WEBB, at 1:00 o'clock P.M., on  
July 23, 2009, at the IEPA Office Building, Room 1244N,  
First Floor, 1021 North Grand Avenue East, Springfield,  
Illinois 62794.

Keefe Reporting Company  
11 North 44th Street  
Belleville, Illinois 62226  
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1 APPEARANCES:

2 Illinois Pollution Control Board  
100 West Randolph Street

3 Suite 11-500  
Chicago, Illinois 60601

4 By: Carol Webb, Esq.

Hearing Officer with the Pollution Control Board

5

6 Illinois Pollution Control Board Members  
Dr. Shundar Lin and Thomas Johnson

7

8 Illinois Environmental Protection Agency  
1021 North Grand Avenue East

9 Springfield, Illinois 62794

By: Rachel Doctors, Esq.

10 On behalf of IEPA

11 ALSO PRESENT: David Bloomberg, IEPA  
Yoginder Mahajan

12

13 I N D E X

14 WITNESS

PAGE

15 DAVID BLOOMBERG

16 Examination by Ms. Doctors

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17

18

19 E X H I B I T S

20 NUMBER

MARKED FOR IDENTIFICATION

ADMITTED

21

22 Exhibit No. 2

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1 [WHEREBY, EXHIBIT NUMBER 2 WAS  
2 MARKED FOR IDENTIFICATION.]

3  
4 HEARING OFFICER WEBB: All right. We'll  
5 go ahead and begin.

6 Good afternoon. My name is Carol Webb.  
7 This is the second of the two hearings being  
8 conducted In The Matter of: Nitrogen Oxide  
9 Trading Program Sunset Provisions for Electric  
10 Generating Units, 35 Illinois Administrative  
11 Code 217.751.

12 At today's hearing, the Board will  
13 complete its receipt of testimony on the merits  
14 and economic effect of the Illinois  
15 Environmental Protection Agency's April 21,  
16 2009 regulatory proposal.

17 Seated to my right is Dr. Shundar Lin, the  
18 Board member coordinating this rulemaking, and  
19 also Board Member Tom Johnson. The assigned  
20 Hearing Officer in this proceeding is Kathleen  
21 Crowley. As announced at the  
22 June 18th hearing, I'm conducting this hearing  
23 in place of Ms. Crowley to conserve travel  
24 costs for the Board during this tight budget  
25 year.

1 Dr. Lin, would you like to make any  
2 opening remarks?

3 BOARD MEMBER DR. LIN: Good afternoon. On  
4 behalf of the Board, I welcome everybody here  
5 to the hearing. Your effort and input will be  
6 useful for our decision, and that, we  
7 appreciate. Okay.

8 HEARING OFFICER WEBB: Thank you.

9 Member Johnson, would you like to make any  
10 opening remarks?

11 BOARD MEMBER JOHNSON: No. Thank you.

12 HEARING OFFICER WEBB: At this point, I  
13 would like to ask the Agency to please make its  
14 appearance on the record.

15 MS. DOCTORS: My name is Rachel Doctors,  
16 and I'm representing the Agency. And today  
17 with me, I have David Bloomberg who has  
18 pre-submitted testimony, and Yoginder Mahajan,  
19 who testified at the last hearing. Also we  
20 have Jacqueline Sims, who works in the  
21 compliance section with the nox allowances in  
22 case there's some additional questions.

23 HEARING OFFICER WEBB: Thank you very  
24 much. I will note for the record that the  
25 Agency personnel are the only people in

1 attendance at today's hearing.

2 Before we begin completion of the Agency's  
3 testimony, and receipt of testimony from anyone  
4 else on economic or other matters, there are a  
5 couple of items of information that must be  
6 entered into the record.

7 At the last hearing, Ms. Crowley stated  
8 that the first notice publication of the  
9 proposal in the Illinois Register was still  
10 pending. That publication was made on June 26,  
11 2009, at 33 Illinois Register 8880. The 45-day  
12 first notice comment period required by the  
13 Administrative Procedure Act expires on  
14 August 10, 2009.

15 The first notice publication included the  
16 dates of both scheduled hearings, and  
17 referenced the hearing officer's May 13, 2009  
18 order setting deadlines for the pre-filing of  
19 testimony and addressing other procedural  
20 points.

21 On May 13, 2009, the Board submitted a  
22 written request to the Department of Commerce  
23 and Economic Opportunity, known as DCEO, that  
24 it perform an economic impact study, known as  
25 EcIS, as provided for in Section 27 of the

1 Environmental Protection Act. The Board  
2 requested that DCEO provide any response to the  
3 request on or before June 30, 2009. No  
4 response has been received, and no study has  
5 been filed.

6 Section 27(b) requires the Board to hold a  
7 hearing on the economic impact of the rules,  
8 any EcIS submitted, and on any explanation DCEO  
9 provides for not conducting an EcIS.

10 Section 27(b) allows the Board to dovetail the  
11 economic impact hearing with any other hearing.

12 We will first allow the Agency to complete  
13 its testimony in support of its proposal,  
14 followed by any testimony by anyone concerning  
15 economic effects of the proposed rulemaking and  
16 any other matter.

17 At the first hearing, the Agency presented  
18 testimony, timely pre-filed, by Mr. Yoginder  
19 Mahajan. Testimony was also entered into the  
20 record as Exhibit 1. Questions were asked of  
21 Mr. Mahajan by counsel from Midwest Generation,  
22 Kathleen Bassi of SchiffHardin, LLP. Ms. Bassi  
23 represented that she might file additional  
24 questions for the Agency to answer at today's  
25 hearing. By e-mail of July 8, 2009, Ms. Bassi

1 informed Ms. Crowley that she would not be  
2 filing any additional questions, and I will  
3 note for the record Ms. Bassi is not in  
4 attendance at today's hearing.

5 On July 10, 2009, the Agency pre-filed the  
6 testimony of another witness, Mr. David  
7 Bloomberg. No other testimony or questions  
8 have been pre-filed.

9 We will first take the testimony of  
10 Mr. Bloomberg and any questions.

11 Would the court reporter please swear in  
12 Mr. Bloomberg.

13 [WHEREUPON THE WITNESS WAS SWORN  
14 BY THE NOTARY PUBLIC.]

15 HEARING OFFICER WEBB: Ms. Doctors.

16 MS. DOCTORS: I'm going to ask that  
17 David's testimony be admitted as read, but  
18 first I'm going to ask him if he prepared the  
19 testimony.

20 DAVID BLOOMBERG,  
21 having been first duly sworn by the Notary Public, testifies  
22 and says as follows:

23 EXAMINATION

24 BY MS. DOCTORS:

25 Q Did you prepare this testimony?

1 A Yes.

2 Q And it's true to the best of your  
3 knowledge?

4 A Yes.

5 MS. DOCTORS: I'd like to ask that it be  
6 marked as Exhibit Number 2 and be admitted into  
7 the record as if read.

8 HEARING OFFICER WEBB: Exhibit 2 is  
9 admitted into the record as if read.

10 [WHEREBY, EXHIBIT NUMBER 2 WAS  
11 ADMITTED INTO EVIDENCE.]

12 HEARING OFFICER WEBB: At this point, I  
13 would like to ask if there are any questions  
14 for Mr. Bloomberg?

15 BOARD MEMBER JOHNSON: You're under oath,  
16 right, David?

17 MR. BLOOMBERG: Yes.

18 BOARD MEMBER JOHNSON: How did you lose  
19 all that weight? Just kidding.

20 HEARING OFFICER WEBB: Any other  
21 questions?

22 Dr. Lin, do you have any questions?

23 BOARD MEMBER DR. LIN: No.

24 HEARING OFFICER WEBB: No? Okay.

25 As I said before, DCEO has not submitted



1 any EcIS or any explanation for its decision  
2 not to perform one.

3 Does anyone have any testimony on this or  
4 on the economics of the proposal?

5 [NO RESPONSE.]

6 HEARING OFFICER WEBB: Hearing no voices,  
7 I will go on.

8 Does anyone other than the Agency have any  
9 testimony or statements to present? As I've  
10 mentioned, there is no one here other than the  
11 Agency.

12 Our last task today then is to set a date  
13 for the closing of post-hearing comments. As  
14 mentioned, the 45-day first notice comment  
15 period required by the Administrative  
16 Procedures Act began on June 26, 2009 and ends  
17 August 10, 2009. Section 102.108(b) of the  
18 Board's procedural rules also provides that the  
19 Board will accept comments for 14 days after  
20 their receipt of the hearing transcript or at  
21 any other date set by the hearing officer. I  
22 would like to set a date certain based on the  
23 date of the anticipated receipt of the  
24 transcript.

25 The transcript is due by August 4th. The

1 14-day due date under Section 102.108 would be  
2 August 18, 2009. The Board realistically will  
3 not take this up before the August 20, 2009  
4 Board meeting. So we will set the date for the  
5 end of the comment period.

6 MS. DOCTORS: I would ask that -- I'm  
7 going to be out of town. So that if comments  
8 were received, I might not be aware of them  
9 during that last week of August. I mean,  
10 during that week before. I'm out of town until  
11 the 18th.

12 HEARING OFFICER WEBB: Until August 18th?

13 MS. DOCTORS: Right. So unless they were  
14 submitted the first week, which was unlikely.

15 HEARING OFFICER WEBB: Wait. We'll  
16 discuss all this off the record.

17 MS. DOCTORS: I'm sorry.

18 HEARING OFFICER WEBB: That's okay.

19 MR. BLOOMBERG: I was going to bring up;  
20 is it -- I mean, is it really going to take  
21 until August 4th to get the transcript of 10  
22 minutes?

23 HEARING OFFICER WEBB: Well, that's when  
24 it's due by contract. I don't know when it  
25 will actually be.

1 THE REPORTER: Probably in a few days.

2 HEARING OFFICER WEBB: Okay.

3 MR. BLOOMBERG: If we could make it  
4 earlier rather than later.

5 HEARING OFFICER WEBB: Oh. Well, it has  
6 to be -- I'd rather hold it over for a week if  
7 that's okay, if we can make it later.

8 MS. DOCTORS: The 27th would work better.

9 HEARING OFFICER WEBB: The 27th? Then it  
10 would just be -- it would have to be bumped to  
11 the next Board meeting, which would be  
12 September 3.

13 MS. DOCTORS: Which is fine.

14 HEARING OFFICER WEBB: Is that okay with  
15 everybody? This is not a -- yeah, it just  
16 needs to be adopted.

17 MS. DOCTORS: By November.

18 HEARING OFFICER WEBB: And that would  
19 still be -- would that put it on the -- yeah, I  
20 think that would still be doable.

21 Well, I'll just go ahead and set it. And  
22 if she needs to do another hearing officer  
23 order changing it, she can do it.

24 But what date did you suggest? The 27th?

25 MS. DOCTORS: The 27th.

1 MR. BLOOMBERG: When is your vacation?

2 MS. DOCTORS: It's the 9th through the  
3 18th.

4 MR. BLOOMBERG: If we have it in a few  
5 days.

6 MS. DOCTORS: My problem is somebody else  
7 is going to file comments, and they're going to  
8 wait for the last second.

9 MR. BLOOMBERG: No, no, no. I'm just  
10 trying to think. There's no way to do it when  
11 you're not on vacation.

12 MS. DOCTORS: If we get them in by the  
13 27th, then would you have them in time for the  
14 third board meeting? The comments? Or do you  
15 need them -- how far in advance of that Board  
16 meeting on the 3rd do you need them?

17 HEARING OFFICER WEBB: Well, that's not  
18 really a question I can answer because I'm not  
19 the person doing the work.

20 Well, I'll do this. I'll set it for the  
21 27th. If the hearing officer can't -- if that  
22 doesn't work for her, we'll -- you know, she  
23 can issue an additional hearing officer order.

24 MS. DOCTORS: The 18th is a Tuesday. What  
25 if we just made the comments due on the 20th,

1           you know? Then she'd have two weeks.

2           HEARING OFFICER WEBB: That would be  
3           better, if you could.

4           MS. DOCTORS: That's fine. They're not  
5           going to be extensive. If we extend it two  
6           days, that just gives me time to get back.

7           BOARD MEMBER JOHNSON: You've been on the  
8           record the whole --

9           HEARING OFFICER WEBB: Oh, I said we are  
10          discussing it off the record. That's okay.

11          BOARD MEMBER JOHNSON: That's okay.

12          HEARING OFFICER WEBB: I thought I had  
13          said that.

14          Anyway, now that I thought we were -- back  
15          on the record. I'll just recap the discussion  
16          that we've had regarding the public comment  
17          deadline.

18          The transcript is due by August 4th. The  
19          14-day due date under 102.108 would be  
20          August 18, 2009. We've just had a conversation  
21          with the Agency that -- I apologize -- I  
22          thought it was off the record, but we agreed to  
23          extend that public comment deadline to  
24          August 20th to allow Agency counsel time to  
25          review comment after she returns to the office.

1           Oh, actually, we had set it for Friday,  
2           August 21st. So we'll just go ahead and make  
3           it the 21st. So the public comment deadline is  
4           Friday, August 21st.

5           Sorry. That was more complicated than it  
6           needed to be.

7           Comments must be in the Board's office by  
8           that date, and the Mailbox Rule of 35 Illinois  
9           Administrative Code 101.300(b) will not apply.

10          Ms. Crowley asked me to advise that the  
11          Board will consider any request for extension  
12          of the comment period in light of the Agency's  
13          preference that the rules be finally adopted no  
14          later than the end of November 2009. Meeting  
15          this goal will require fairly prompt action by  
16          all participants as well as the Board.

17          Does anyone have any final comments before  
18          we conclude this hearing?

19          MS. DOCTORS: No.

20          HEARING OFFICER WEBB: All right. Seeing  
21          none, we will conclude this hearing, and I  
22          thank everyone for their participation.

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[END OF HEARING.]

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NOTARIAL CERTIFICATE

I, ANN MARIE HOLLO, a Certified Shorthand Reporter for the State of Illinois, CSR# 084-003476, and a duly commissioned Notary Public within and for the State of Illinois, do hereby certify that there came before me at the office of the Illinois Environmental Protection Agency, 1021 North Grand Avenue East, Springfield, Illinois,

HEARING IN THE MATTER OF R 09-20,  
RULEMAKING HEARING,

that said hearing was reduced to writing; and this transcript is a true and correct record of the proceedings.

I further certify that I am neither attorney nor counsel for nor related nor employed by any of the parties to the action in which this hearing is taken; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on July 27, 2009.

My commission expires April 5, 2010.

*Ann Marie Hollo*

Notary Public

