

**BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:

PETITION OF ELECTRIC ENERGY, INC.  
FOR A FINDING OF INAPPLICABILITY  
OR, IN THE ALTERNATIVE, AN  
ADJUSTED STANDARD FROM  
35 ILL. ADMIN. CODE PART 845

AS 2021-005  
(Adjusted Standard)

**NOTICE OF FILING**

To: Pollution Control Board, Attn: Clerk  
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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board Petitioner Electric Energy, Inc.'s Motion to Stay Proceedings and a Certificate of Service, copies of which are herewith served upon you.

/s/ Sarah L. Lode

Sarah L. Lode

Dated: March 7, 2022

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**PETITIONER ELECTRIC ENERGY, INC.'S  
MOTION TO STAY PROCEEDINGS**

Petitioner, Electric Energy, Inc. (“EEI”), by its undersigned counsel, respectfully requests that the Illinois Pollution Control Board (the “Board”) grant a stay in this proceeding, AS 2021-005, pursuant to 35 Ill. Admin. Code § 101.514. In support of its motion, EEI states the following:

1. On May 11, 2021, EEI filed a Petition for a Finding of Inapplicability or, in the Alternative, an Adjusted Standard from 35 Ill. Admin. Code Part 845 (“Part 845”). AS 2021-005, *In the Matter of: Petition of Electric Energy, Inc. for a Finding of Inapplicability or, in the Alternative, and Adjusted Standard from 35 Ill. Admin. Code Part 845*, Petition (May 11, 2021). EEI’s Petition requested that the Board find the newly enacted Part 845 inapplicable to its Joppa West Ash Pond (“Joppa West”) or in the alternative, grant an adjusted standard from certain sections of Part 845 as they apply to Joppa West.

2. On November 22, 2021, the Illinois Environmental Protection Agency (“IEPA”) filed its Recommendation with the Board, in which it suggested that the Board grant an interim adjusted standard exempting Joppa West from certain requirements of Part 845. AS 2021-005, *In the Matter of: Petition of Electric Energy, Inc. for a Finding of Inapplicability or, in the*

*Alternative, and Adjusted Standard from 35 Ill. Admin. Code Part 845*, Illinois Environmental Protection Agency Recommendation (Nov. 22, 2021).

3. Petitioner is now working on drafting and filing a response to IEPA's Recommendation, which is currently due to the Board on March 7, 2022. *See* AS 2021-005, *In the Matter of: Petition of Electric Energy, Inc. for a Finding of Inapplicability or, in the Alternative, and Adjusted Standard from 35 Ill. Admin. Code Part 845*, Hearing Officer Order (Jan. 31, 2022).

4. On August 28, 2020, the United States Environmental Protection Agency ("U.S. EPA") finalized Part A of the Federal CCR Rule (40 C.F.R. Part 257), which grants facilities the option to submit a demonstration to U.S. EPA for an extension of the deadline for unlined coal combustion residual ("CCR") surface impoundments to stop receiving waste. *See* 85 Fed. Reg. 53,516 (Aug. 28, 2020). Under the final rule—which became effective on September 28, 2020—facilities had until November 30, 2020, to submit a demonstration to U.S. EPA for approval. *Id.*

5. On January 11, 2022, U.S. EPA issued proposed decisions on four Part A demonstration submissions that it deemed to be complete under the Federal CCR Rule. *See* U.S. EPA, *Coal Combustion Residuals (CCR) Part A Implementation*, <https://www.epa.gov/coalash/coal-combustion-residuals-ccr-part-implementation>. Of those four proposed decisions, one was a proposed conditional approval while the remaining three were proposed denials. *Id.* The proposed conditional approval and proposed denials are now subject to a public comment period, which is currently scheduled to close on March 25, 2022. *Id.* Accordingly, U.S. EPA's proposed conditional approval and denials are still subject to public comments, revision by U.S. EPA, and appeal.

6. Also on January 11, 2022, U.S. EPA sent a letter to the State of Georgia regarding the state's consideration of one of U.S. EPA's proposed determinations for a surface impoundment

located in Georgia. AS 2021-005, *In the Matter of: Petition of Electric Energy, Inc. for a Finding of Inapplicability or, in the Alternative, and Adjusted Standard from 35 Ill. Admin. Code Part 845*, Comments of Earthjustice, Environmental Law & Policy Center, Prairie Rivers Network, and Sierra Club on Electric Energy, Inc.'s Petition for a Finding of Inapplicability or Adjusted Standard: P.C. #1 (hereinafter "P.C. #1"), Ex. C (Feb. 14, 2022). On the same date, U.S. EPA issued a letter to Duke Energy related to the applicability of the Federal CCR Rule to two surface impoundments at the Duke Energy Gallagher Generating Station in Indiana. *Id.* at Ex. A.

7. On February 14, 2022, Earthjustice, Environmental Law & Policy Center, Prairie Rivers Network, and Sierra Club submitted a public comment in this proceeding. *See* P.C. #1. The comment largely focuses on arguing that statements in two of the above-mentioned proposed Part A determinations as well as in the above-mentioned letters should impact EEI's requested relief in this proceeding. P.C. #1 at 11–22, 26 & Exs. A–D.

8. The public comment asks the Board to consider and potentially weigh in on issues of federal law considered in the above-referenced documents, even though, as discussed above, U.S. EPA's Part A decisions are currently proposals. *See e.g.*, 40 C.F.R. §§ 257.103(f)(3)(iii), 257.103(f)(3)(iv) ("EPA will publish its *proposed decision* on a complete demonstration in a docket on [www.regulations.gov](http://www.regulations.gov) . . . . If the demonstration is particularly complex, EPA will provide a comment period of 20 to 30 days. . . . After consideration of the comments, EPA *will issue its decision* on the alternative compliance deadline within four months of receiving a complete demonstration." (emphasis added)). Further, the propriety of U.S. EPA's actions and statements in the above-referenced documents are subject to judicial review and challenge in the federal courts.

9. EEI does not believe that U.S. EPA's statements in the proposed decisions and letters—none of which address Joppa West—should be considered by the Board in this proceeding. That said, given that P.C. #1 so greatly focuses on U.S. EPA's statements and includes arguments that are largely predicated on those statements, EEI believes that this proceeding would benefit from greater clarity at the federal level before their relevance or impact is considered.

10. Accordingly, given the nature of the proposed Part A determinations and the statements in the letters included as Exhibits A through D of P.C. #1, EEI believes that a stay of this proceeding is appropriate. EEI requests that the Board grant a limited 90-day stay of this proceeding—until June 6, 2022—to allow time for review of U.S. EPA's determinations and statements, to consider any public comments filed about and any changes to those determinations, to consider any federal judicial proceedings that may be filed, and to gain a better understanding of the applicability of the statements by U.S. EPA that P.C. #1 relies upon.

11. EEI has conferred with counsel for the Illinois Environmental Protection Agency and the Agency does not object to the requested stay. EEI will submit a status report as required by 35 Ill. Admin. Code § 101.514 at the close of the 90-day stay. EEI suggests that its status report address, and that a status conference be held at the conclusion of the 90-day period to determine, whether it make sense for this matter to proceed at that time or whether a further stay is warranted.

Respectfully Submitted,

ELECTRIC ENERGY, INC.

By: /s/ Bina Joshi  
One of its attorneys

Dated: March 7, 2022

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on this 7th day of March, 2022:

I have electronically served a true and correct copy of Petitioner Electric Energy, Inc.'s Motion to Stay Proceedings, by electronically filing with the Clerk of the Illinois Pollution Control Board and by e-mail upon the following persons:

Pollution Control Board, Attn: Clerk  
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My e-mail address is [Sarah.Lode@afslaw.com](mailto:Sarah.Lode@afslaw.com)

The number of pages in the e-mail transmission is 8.

The e-mail transmission took place before 5:00 p.m.

/s/ Sarah L. Lode

Sarah L. Lode

Dated: March 7, 2022

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