

**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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Pollution Control Board
Hearing Officer Carol Webb
60 E. Van Buren St., Ste. 630
Chicago, Illinois 60605
Carol.Webb@illinois.gov

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 Status Report and a Certificate of Service, copies of which are herewith served upon you.

/s/ Sarah L. Lode

Sarah L. Lode

Dated: December 1, 2022

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ELECTRIC ENERGY, INC.'S STATUS REPORT

Petitioner, Electric Energy, Inc. (“EEI”), by its undersigned counsel, respectfully provides this status report to the Hearing Officer regarding recent activities in this matter pursuant to the Hearing Officer’s June 22, 2022, Order granting a stay in this proceeding until November 30, 2022.

EEI provides as follows:

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”). Petition (May 11, 2021), 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*.

2. On November 22, 2021, the Illinois Environmental Protection Agency (“IEPA”) filed its Recommendation with the Illinois Pollution Control Board (“Board”) recommending that the Board grant a conditional interim adjusted standard. Illinois Environmental Protection Agency Recommendation (Nov. 22, 2021), 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*.

3. After IEPA filed its Recommendation, IEPA and EEI began discussions to incorporate the Agency's Recommendation into an agreed upon interim adjusted standard. Additionally, during that time, the United States Environmental Protection Agency ("USEPA") took several actions related to the federal coal combustions residual rule, as described in EEI's March 7, 2022, Motion to Stay the Proceedings as well as in its June 6, 2022, Status Report in this proceeding. Petitioner Electric Energy, Inc.'s Motion to Stay Proceedings ¶¶ 4–6 (Mar. 7, 2022), 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*; Petitioner Electric Energy, Inc.'s Status Report ¶¶ 4–6 (June 6, 2022), 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*. For the reasons explained in those filings, a stay of this proceeding has been necessary to allow EEI and IEPA an opportunity to understand the impact of activities at the federal level and to engage in meaningful discussion regarding a mutually agreeable resolution of this matter.

4. On March 17, 2022, the Board granted an initial stay in this proceeding, ordered a status report be filed on June 6, 2022, and directed that any further motion for continuance of the stay be addressed to the Hearing Officer. Order of the Board (Mar. 17, 2022), 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*.

5. Pursuant to the Board's March 17, 2022, Order, EEI filed a status report on June 6, 2022. Petitioner Electric Energy, Inc.'s Status Report (June 6, 2022), 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*. Subsequent to that report, EEI and IEPA

met and conferred and on June 14, 2022, expressed agreement that extending the stay in this proceeding was appropriate given the circumstances. On June 15, 2022, the Hearing Officer extended the stay until November 30, 2022, directing EEI to file an additional status report by December 1, 2022.

6. Since the Hearing Officer's June 15, 2022 Order extending the stay of this proceeding, the judicial proceedings challenging the basis and legality of USEPA's proposed Part A determinations and letters discussed in EEI's June 6, 2022, status report (*see, e.g., Utility Solid Waste Activities Group v. USEPA*, Case No. 22-1058 (D.C. Cir.); *Electric Energy, Inc. v. USEPA*, Case No. 22-1056 (D.C. Cir.)) remain ongoing. On November 22, 2022, the court in both proceedings extended the time for petitioners to file their opening briefs, and the briefing schedule in both matters is now set to begin on December 6, 2022, and end no later than May 31, 2023. *See* Order (Nov. 22 2022), ECF #1974722, *Utility Solid Waste Activities Group v. USEPA*, Case No. 22-1058 (D.C. Cir.); *see also* Order (Nov. 22 2022), ECF # #1974722, *Electric Energy, Inc. v. USEPA*, Case No. 22-1056 (D.C. Cir.).

7. Additionally, USEPA continues to review the public comments submitted to the proposed Part A determinations, as discussed in EEI's June 6, 2022 status report, and has yet to make revisions to those proposed determinations or finalize them.

8. Further, EEI and IEPA continue to communicate and make progress towards possible resolution of this matter.

9. Prior to filing this status report, EEI and IEPA conferred and both agree that an additional stay of six months is warranted given their need for time to engage in meaningful, ongoing discussion and given the ongoing legal challenges to USEPA's letters and proposed Part A determinations.

10. Accordingly, concurrent with filing this report, EEI is submitting a request with the Hearing Officer for an additional stay. IEPA does not object to this request.

Respectfully submitted,

ELECTRIC ENERGY, INC.

By: /s/ Bina Joshi
One of its Attorneys

Dated: December 1, 2022

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 1st day of December, 2022:

I have electronically served a true and correct copy of Petitioner Electric Energy, Inc. Status Report 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
100 West Randolph Street
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My e-mail address is Sarah.Lode@afslaw.com.

The number of pages in the e-mail transmission is 7.

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

/s/ Sarah L. Lode

Sarah L. Lode

Dated: December 1, 2022

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