BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, Complainant,	)	
v.	)	PCB 99-134
PEABODY COAL COMPANY, a Delaware corporation, Respondent.	)	

PEABODY COAL COMPANY'S BRIEF IN OPPOSITION TO STATE'S MOTION FOR LEAVE TO REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO STATE'S PROTECTIVE ORDER MOTION

Respondent, Peabody Coal Company ("PCC") objects to the Motion For Leave To Reply To Respondent's Brief In Opposition To State's Protective Order Motion ("State's Reply Motion"), filed by Complainant, People of the State of Illinois ("State"), on or about June 19, 2003, for the reasons fully discussed below. In short, the State's Reply Motion should be denied for the reason that the facts and arguments presented by the State in the Reply Brief[1] that it wishes the Hearing Officer to consider either (a) are not relevant to any issue presented by the State's Reply Motion or PCC's Response Brief, or (b) address issues that the State simply chose

[1] The following shortened terms are used in this brief to refer to certain documents previously filed by the parties that relate to the issues discussed in this brief:

- "State's Protective Order" means Complainant's Motion For Protective Order, filed on or about June 4, 2003.
- "PCC's Response Brief" means PCC's Brief In Opposition To State's Motion For Protective Order, filed on or about June 12, 2003.
- "Blanton Affidavit I" means the Affidavit Of W. C. Blanton Relating To State's Motion For Protective Order, filed on or about June 12, 2003.
- "Hedinger Affidavit" means the Affidavit Of Stephen F. Hedinger Relating To State's Motion For Protective Order, filed on or about June 12, 2003.
- "State's Reply Brief" means Reply To Respondent's Brief In Opposition To State's Protective Order Motion, tendered to the Hearing Officer with the State's Reply Motion on or about June 19, 2003.

to ignore in the State's Protective Order Motion in the first instance, so that the State will not be materially prejudiced if the State's Reply Motion is denied.

I. INTRODUCTION

The bases for the State's Reply Motion are set forth in numbered paragraphs 7 and 8 thereof, in which the State asserts (1) that it will be materially prejudiced if it is not allowed to dispute the factual statements within PCC's Response Brief, (2) that it will be materially prejudiced if it is not allowed to rebut PCC's contentions regarding the parties' Supreme Court Rule 201(k) correspondence and discussions, and (3) that PCC's contention that its withdrawal of the interrogatories that are the subject of the State's Protective Order Motion moots the State's request for a protective order with respect to those interrogatories is a new question that the State should be allowed to address. Because the State's Reply Motion contains only conclusory statements to justify the relief it seeks, it is necessary to examine the State's Reply Brief that it seeks leave to file in order to determine whether grounds exist for that brief to be considered by the Hearing Officer. There are none.

The factors to be considered by the Hearing Officer in determining whether or not to allow particular discovery sought by a party include (1) whether the discovery in question seeks to obtain relevant information or information calculated to lead to relevant information, and (2) whether a protective order would be necessary to deny, limit, condition, or otherwise regulate that discovery to prevent unreasonable expense, or harassment, to expedite resolution of the proceeding, or to protect non-disclosable materials from disclosure. 35 Ill. Adm. Code § 101.616(a), (d).[2] However, the State's Reply Brief offers no assistance to the Hearing Officer in making that determination.

[2] 35 Ill. Adm. Code § 101.616 shall be referenced hereafter as "Section 101.616."

II. DISCUSSION

PCC will address the arguments advanced in the State's Reply Brief in the following order: (A) the effect of PCC's withdrawal of its disputed interrogatories on the State's Protective Order Motion, (B) the State's contention that it has satisfied the applicable standard in obtaining a protective order, (C) the issue of whether PCC's disputed production requests seek documents subject to discovery, and (D) Supreme Court Rule 201(k) ("Rule 201(k)") issues.

A. As To PCC's Interrogatories

By its Reply Motion, the State in part seeks leave to argue that PCC's withdrawal of the interrogatories to which the State's Protective Order Motion was directed does not moot that motion to the extent it sought an order relieving the State of any obligation to respond to those interrogatories. There is, however, no good reason for this issue to be addressed in connection with the State's Reply Motion, but several good reasons not to.

First, by PCC withdrawing the interrogatories complained of by the State, the State has obtained precisely the relief it sought as to those interrogatories by its Protective Order Motion in the first instance. The State does not contend otherwise in its Reply Brief; and the State does not present any reason there why the Hearing Officer needs to ratify the relief already obtained by the State.

Second, the State has failed to demonstrate why the Hearing Officer should resolve what is now, in the context of the State's Protective Order Motion, a hypothetical situation. At most, the State's Reply Brief addresses some of the criteria for the issuance of a protective order in general, conclusory terms while completely failing to address the fundamental issue of whether the interrogatories now withdrawn by PCC actually seek information that is subject to discovery.

However, without any interrogatories actually being directed to the State at this time, it is not possible for the Hearing Officer to reasonably apply Section 101.616(a) and (d) to this dispute.

By its Motion For Leave To Serve Interrogatories, PCC seeks leave to direct amended versions of the four sets of interrogatories that were attacked by the State's Protective Order Motion.[3] This PCC motion squarely raises the issues of whether PCC may direct additional interrogatories to the State at all; what, if so, are the factors to be considered in evaluating whether specific additional interrogatories should be allowed; and whether the specific interrogatories (most in their original form, but as modified) of which the State has complained should be allowed. These issues must be addressed by the Hearing Officer to rule on PCC's motion. Therefore, the Hearing Officer should decline to consider the State's discussion of these issues in its Reply Brief.

B. <u>As To Basis Of State's Objection To PCC's Production Requests</u>

By its Reply Motion, the State in part seeks leave to argue that grounds exist for the Hearing Officer to issue the protective order as sought by the State. However, the State has failed to justify the Hearing Officer considering the argument as to this issue set forth in its Reply Brief.

First, to the extent that the State's Reply Brief actually analyzes the issue of whether any of the criteria for issuance of a protective order are present here, this is the first time that the State has addressed that issue. As noted in PCC's Response Brief, the State supported its request for a protective order in its Protective Order Motion only by (1) a general complaint that PCC had directed a lot of production requests to the State, and (2) an allegation, without any attempt to demonstrate its accuracy that many of these requests are duplicative of discovery requests

[3] Thus, the arguments presented with respect to these issues by the State in its Reply Brief address a situation that is not only hypothetical but also not the actual situation that must be addressed by the Hearing Officer.

previously directed to the State by PCC. Having failed to make even a prima facie case to support its Protective Order Motion as to PCC's production requests in the first instance, the State should not be allowed to make its principal arguments as to this issue in its Reply Brief, under the guise of "replying" to PCC merely having pointed out the obvious shortcomings in the State's original filing.

Second, there is no reason for the Hearing Officer to entertain discussion of this topic in the State's Reply Brief, because that discussion also does not establish that any of the criteria for the issuance of the protective order as sought by the State exist here. In its Reply Brief, the only substantive arguments asserted by the State are (1) that there are a lot of discovery requests involved in this particular dispute, (2) that a lot of these requests are duplicative of previous production requests directed by PCC to the State, and (3) that if one were to "read each and every individual request and compare it to previously propounded requests," one would see that "the [new] requests constitute harassment, undue expense and delay." (Reply Brief at 9). These arguments do not support the issuance of a protective order as requested by the State even if countenanced by the Hearing Officer.

As a general proposition, a moving party bears the burden of proving the propriety of the relief sought by its motion. Scott v. Dept. of Commerce and Community Affairs, 84 Ill. 2d 42, 53 416 N.E.2d 1082, 1088 (1981): '[T]he courts have uniformly imposed on administrative agencies the customary common-law rule that the moving party has the burden of proof." (quoting International Minerals & Chemical Corp. v. New Mexico Public Service Comm'n, 81 N.M. 280, 283, 466 P.2d 557, 560 (1970)). See also, People v. Catalano, 29 Ill. 2d 197, 204, 193 N.E.2d 797, 801 (1963): "The motion by an attorney for leave to withdraw for any reason is also addressed to the sound discretion of the court. For that reason, a burden rests with the moving

party to prove to the court's satisfaction the legitimacy of the request, or the court may properly deny the motion." In the context of a discovery dispute, a party seeking a protective order has the burden of showing good cause for the issuance of such an order. May Centers, Inc. v. S.G. Adams Printing & Stationery Co., 153 Ill. App. 3d 1018, 1022, 506 N.E.2d 691, 694 (5th Dist. 1987). It is not sufficient for a party seeking a protective order to merely assert that certain material is exempt from discovery. Akers v. Atchison, Topeka & Santa Fe Rwy. Co., 187 Ill. App. 3d 950, 957, 543 N.E.2d 939, 944 (1st Dist. 1989). See also, Pemberton v. Tieman, 117 Ill. App. 3d 502, 505, 453 N.E.2d 802, 805 (1st Dist. 1983), holding that a party seeking discovery "is not bound by counsel's unsupported assertion that there is no relevant information to be obtained."

As noted above, the analysis required to determine whether or not a protective order should be issued with respect to discovery requests involves consideration of (1) whether the requests seek information or documents that are subject to discovery, (2) what is required of the party to whom the requests are directed to respond to them, and (3) whether the effort to respond to the requests would be unduly burdensome. The State has made no effort to address any of these issues with respect to the great majority of the specific production requests in dispute.[4] Rather, the State has merely provided the Hearing Officer copies of those production requests.

Apparently, the State contends that the Hearing Officer should simply accept as an article of faith the State's representations that if the State had also provided the Hearing Officer PCC's

[4] Contrary to the State's assertions, PCC has never contended, either in its Response Brief or its attorneys' affidavits, that the State has totally failed to discuss its positions that the scope and scale of PCC's discovery requests in dispute are unreasonable. The PCC point is that the State has refused throughout this discovery dispute to address each of the discovery requests in dispute on their respective individual merits--and the State does not contend otherwise in its Reply Brief. Indeed, the fact that the State points only to two specific groups of production requests as to which the State has commented on the merits of individual requests emphasizes PCC's point. This is, of course, consistent with the State's basic position that it is entitled to a protective order precisely in order to avoid having to address the merits of the individual discovery requests at issue.

earlier production requests and if the Hearing Officer were to undertake an independent comparison of the two sets of documents, then he would reach the same conclusion about that comparison as the State has--even though the State does not even claim to have made that request-by-request comparison itself.

This is, of course, consistent with the State's view that PCC has the burden of "justifying" its discovery requests to the Hearing Officer in order to avoid the issuance of a protective order. This view, though, turns the discovery process on its head.

PCC has a right to propound production requests to the State in the first instance without artificial limit (unlike the case with interrogatories), subject only to its obligations to conduct this litigation in good faith generally and specifically to refrain from using the discovery process for an improper purpose. Once PCC has done so, the State has an obligation in the first instance to substantively respond to each request in good faith, including stating its objections to any request on its individual merits. Then, if and only if PCC contends that some State objection to a discovery request is without merit and seeks an order compelling a substantive response, does PCC bear the burden of "justifying" that specific request. Conversely, if the State contends that the grounds exist for the issuance of a protective order on a more general basis, then the State bears the burden of proving that one or more of the criteria for the issuance of a protective order are satisfied.

The State, though, contends that all it has to do in order to shift to PCC the burden of justifying to the Hearing Officer why additional discovery should be allowed is assert a general claim that it should not have to respond to any (or at least not much) additional discovery. As this is completely contrary to the normal rules of discovery dispute resolution, it is not surprising

that the State has provided no authority for its position as to which party bears the burden of persuasion with respect to the issue of whether a protective order should be issued.

The manner in which the State has advanced its primary complaint about the PCC production requests in question illustrates the problem with the State's tactic here. Throughout the pendency of this discovery dispute, the State has asserted over and over that many (if not most) of the disputed production requests seek the production of documents already produced by the State. However, the State has never, for either PCC or the Hearing Officer, made a request-by-request comparison of the disputed requests with previous ones to demonstrate the accuracy of its contention.

In the face of the State's relentless assertions that the production requests in dispute are for the most part duplicative in nature, PCC must emphasize that it was not its intention to seek either information or documents via the discovery requests in dispute that has already been provided to PCC by the State in response to earlier discovery requests.[5] Furthermore, in the face of these relentless assertions by the State, PCC also must emphasize its contention that none of the discovery requests in dispute in fact is duplicative of an earlier discovery request to which the State has provided a substantive response. PCC has acknowledged that some of the discovery requests in dispute are duplicative of earlier requests to which the State had not provided a substantive response at the time the new discovery requests were served upon the State. (Response Brief at 7, n.8).

However, PCC recognizes that it would be no more appropriate for the Hearing Officer to accept at face value PCC's representations that the discovery requests in dispute are not duplicative of earlier requests than it would be for him to accept at face value the State's

[5] As previously noted, that PCC intent is clearly stated in the Instructions section of each of the sets of discovery requests at issue.

assertions that the requests are indeed duplicative in nature. Thus, if the issues raised here by the State's Protective Order Motion were instead raised by a PCC motion to compel discovery so as to overcome request-specific objections asserted by the State, PCC would support its positions on a request-by-request basis. Why the State believes that it has no corresponding burden in seeking a protective order from the Hearing Officer is unfathomable to PCC.[6]

In short, the State's grounds for the protective order it seeks are (1) "It will be a lot of work to provide substantive responses to these discovery requests, and we shouldn't have to do so because we have already provided PCC a lot of discovery," and (2) "A lot of these discovery requests are duplicative of ones we have already responded to--trust us on this." The first argument is legally insufficient. The second is unproven. Therefore, to the extent that the State's Reply Motion is based upon those arguments, it provides no support for the State's Protective Order Motion and should not be entertained by the Hearing Officer.

C. As To Propriety Of PCC's Production Requests

By its Reply Motion, the State in part seeks leave to argue that PCC's production requests to the State in dispute do not seek documents that are subject to discovery. However, the State has failed to justify the Hearing Officer considering that argument either.

First, the State completely failed in its Protective Order Motion to address the threshold issue of whether PCC's requests seek the production of documents subject to discovery, even though this is a fundamental part of the analysis required for a determination of whether any of the criteria that support the issuance of a protective order exists here. Having failed to address this basic issue in its Protective Order Motion in the first instance, the State should not be

[6]Significantly, the State understood its responsibility to address disputed discovery requests on a request-by-request basis earlier in this case when it unsuccessfully sought an order from the Hearing Officer compelling PCC to provide discovery sought by the State. Against this background, it is particularly puzzling why the State believes it need not undertake a similar effort in order to obtain a protective order against PCC's discovery directed to it.

allowed to make its principal arguments as to this issue in its Reply Brief, just because PCC has noted in its Response Brief this glaring hole in the State's case.

Second, there again is no substantive reason for the Hearing Officer to entertain the discussion of this topic in the State's Reply Brief. That discussion also does not establish the proposition that the documents sought by the production requests at issue are not subject to discovery.

The State sets forth a number of arguments in its Reply Brief that purport to address PCC's contention that the production requests in dispute seek the production of documents that contain information that is relevant to one or more issues that have been raised in this case and/or information that is calculated to lead to such relevant information. However, most of those arguments do not actually address that PCC contention. Rather, everything in Section IV of the State's Reply Brief after the first paragraph thereof is merely a continuation of the State's contentions that many of the production requests in question are duplicative of earlier requests and that it would otherwise just be too much work to respond to those production requests on their individual merits.

Thus, the only substantive contention the State makes in this part of its Reply Brief is that "Respondent simply reformulates many of its stricken affirmative defenses, and also places emphasis on certain questions that may, in actuality, be nothing more than smoke screens." (Reply Brief at 9). This statement hardly constitutes rebuttal of PCC's contention that all of the production requests in dispute seek the production of documents subject to discovery. Significantly, the State makes no effort in its Reply Brief to challenge either PCC's characterization of each and every production request at issue in Appendix A to its Response

Brief or PCC's contention that documents relating to the various issues identified by PCC in that Appendix are subject to discovery.

Assuming for the sake of argument that there is some conceptual connection between a description of documents to be produced and a "reformulation of a stricken affirmative defense," to the extent that a particular PCC production request seeks the production of documents relevant to a stricken affirmative defense, those documents also are relevant to the issue of the magnitude of an appropriate civil penalty, if any, to be imposed upon PCC in this case if the State proves those violations of the Illinois Environmental Protection Act alleged.[7] To the extent that there is some conceptual connection between a description of documents to be produced and "emphasis on certain questions that may, in actuality, be nothing more than smoke screens," PCC cannot locate that connection and cannot specifically comment further.

As for both of these points (whatever they actually may be), the State has made no effort to identify which of the PCC production requests at issue satisfy either concept; but it is clear that these concepts do not apply to all of the requests at issue. Thus, the State's discussion provides no basis for the issuance of a protective order.

In short, the State has presented no argument in its Reply Brief that would establish the proposition that the PCC production requests in dispute do not seek the production of documents subject to discovery. Therefore, there is no reason for the Hearing Officer to entertain the discussion of this subject in the State's Reply Brief in connection with his consideration of the State's Protective Order Motion.

[7] Indeed, in arguing to the Board that all of PCC's affirmative defenses should be stricken, the State contended that the basic concepts of certain of PCC's affirmative defenses indeed are present in this case, but only in the context of penalty issues; and the Board agreed with the State in this regard to some extent in striking certain of PCC's affirmative defenses.

D. As To Rule 201(k) Issues

By the State's Reply Motion, the State in part seeks leave to file its Reply Brief so as to dispute certain assertions purportedly made by PCC regarding the parties' Rule 201(k) discussions/consultation and to set forth its version of certain other aspects of those discussions/consultation. However, the State's Reply Brief fails to address the Rule 201(k) issues discussed in PCC's Response Brief.

The State accurately observes that disputes exist as to precisely who said what to whom about what when in the course of the parties' attorneys' discussions and correspondence regarding the issues raised by the State's Protective Order Motion. However, these disputes are of no significance with respect to the issues raised by either that motion or the State's Reply Motion, so there is no reason for the Hearing Officer to be concerned with those disputes.[8] Rather, it is only certain aspects of the parties' discussion/consultation process that are not disputed that are relevant to the disposition of the State's motions.

First, it is undisputed that the State made no reasonable effort to invoke the Rule 201(k) consultation process before filing the State's Protective Motion in the first instance, as established by the Blanton Affidavit I at paragraphs 6 through 11 and the Hedinger Affidavit at paragraphs 6 through 10. There is nothing to the contrary in the State's Protective Order Motion and supporting materials, the State's Reply Motion, the State's Reply Brief, or the affidavits of the State's attorneys filed in support of the State's Reply Motion, both of which merely generally aver that the "assertions" contained in the State's Reply Brief are true, correct and accurate, to the best of their knowledge.

[8] To the extent, though, that the Hearing Officer considers the parties' factual disputes in this regard germane to any issue raised by either the State's Reply Motion or its Protective Order Motion, PCC reiterates its confidence in the veracity of the statements contained in the Blanton Affidavit I and the Hedinger Affidavit.

Second, it is undisputed that the State has consistently refused to discuss each of the individual discovery requests in dispute with respect to the issues of whether a request seeks information that is subject to discovery, what would be required of the State to provide the information sought by the request, and whether it would be unduly burdensome for the State to do so. Rather, the consistent positions of the State have been (1) that it has no obligation to discuss the discovery requests in dispute with PCC on the basis of the respective merits of each individual request unless the Hearing Officer's ruling on the State's Protective Order Motion imposes such an obligation, and (2) that the State will not undertake any such discussion prior to receiving that ruling. (See, e.g., Second Affidavit Of W. C. Blanton Relating To State's Motion For Protective Order) ("Blanton Affidavit II," ¶ 4).[9]

Because the State's Reply Motion does not discuss any Rule 201(k) issue germane to the State's Protective Order Motion, there is no reason for the Hearing Officer to entertain the discussion of Rule 201(k) issues contained in the State's Reply Brief in connection with his consideration of that Motion. Because the State has failed to comply with the requirements of Rule 201(k) with respect to the parties' discovery dispute here, the State's Protective Order Motion should be denied.

III. CONCLUSION

For the reasons stated above, the State's Reply Motion should be denied.

[9] The fact that the parties did discuss these issues with respect to the merits of three categories of the discovery requests in dispute does not detract from the significance of the State's general refusal to discuss the individual discovery requests in dispute with PCC. Rather, the fact that PCC was willing to modify the few requests that the State was willing to address on their individual merits, (Blanton Affidavit II, ¶ 4), confirms the merit of the Rule 201(k) requirement that parties involved in a discovery dispute make a good faith, reasonable effort to resolve that dispute by agreement prior to seeking relief from the presiding tribunal.

Date: July 14, 2003

Respectfully submitted,

PEABODY COAL COMPANY

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, Complainant,	)	
v.	)	PCB 99-134
PEABODY COAL COMPANY, a Delaware Corporation, Respondent.	)	

SECOND AFFIDAVIT OF W. C. BLANTON RELATING TO STATE'S MOTION FOR PROTECTIVE ORDER

W. C. Blanton, being first duly sworn, states as follows:

1. The statements made herein are based upon my personal knowledge, and I am competent to testify hereto.

2. I am an attorney duly authorized to practice law in the States of Indiana, Missouri, and Minnesota; and I am one of the attorneys of record for Respondent, Peabody Coal Company ("PCC"), in connection with the above-captioned matter, having been granted leave by the Illinois Pollution Control Board ("Board") to appear pro hac vice in this matter on behalf of PCC.

3. This affidavit is being filed with the Board as part of PCC's opposition to Complainant's Motion For Protective Order ("State's Motion"), filed in this matter on or about June 4[1] by Complainant, People of the State of Illinois ("State").

[1] All dates stated herein are for the year 2003, unless specifically stated otherwise.

4. It was the position of the State's attorneys at the meeting that is the subject of Paragraph 13 of the Affidavit Of W.C. Blanton Relating To State's Motion For A Protective Order executed June 12, ("Blanton Affidavit I") that the State has no obligation to and would not undertake the effort to determine whether grounds exist for the State to assert objections to all of the discovery requests in dispute on an individual basis prior to the issuance of a ruling on the State's Motion. Rather, it was the State's position as articulated by its attorneys at that meeting that the State has already provided substantial information and produced a large number of documents in response to PCC's discovery requests already, and that it is therefore PCC's burden to justify any (or at least any substantial amount of) further discovery requests to the State. However, in the course of that meeting, three categories of discovery requests were discussed with respect to certain of the issues raised by those requests.

First, the State's attorneys voiced an objection to interrogatories 3 and 4 contained in PCC's Third Set Of Interrogatories To The State and production requests 16 and 17 contained in PCC's Fourth Set Of Requests To The State For The Production Of Documents, which seek detailed information regarding the State's opinion witnesses and the opinions of those witnesses to be offered as evidence at a judicatory hearing in this matter, as being unduly burdensome. In response, I agreed on behalf of PCC to address the matters that are the subject of portions of those discovery requests in PCC's depositions of those State opinion witnesses in lieu of obtaining the information sought by means of written answers to those interrogatories.

Second, the State's attorneys voiced an objection to the scope of interrogatories 16 and 17 contained in PCC's Fifth Set Of Interrogatories To The State and production requests 14 and 15 contained in PCC's Sixth Set Of Requests To The State For The Production Of Documents, which seek information regarding certain aspects of the State's handling of cases other than this

one involving actual or threatened contamination of groundwater, as being overly broad. In response, I agreed on behalf of PCC to limit the scope of those discovery requests so as to seek only information regarding the possible establishment of a groundwater management zone in connection with the State's handling of each of those other cases.

Third, the State's attorneys voiced an objection to certain interrogatories and production requests on the grounds of the State's contention that they seek information or the production of documents already provided by the State to PCC in response to previous discovery requests, asserting that the instruction associated with each of the PCC sets of interrogatories and production requests in dispute that unequivocally states it to be PCC's intention not to require the State to provide discovery in a duplicative manner is insufficient protection for the State with respect to any duplicative discovery requests. In response, I agreed on behalf of PCC to review the discovery requests in dispute and to qualify each discovery request that could reasonably be interpreted as being duplicative in nature and to modify each such request to explicitly state that the request seeks either information or the production of documents only to the extent "not previously provided."

5. Throughout the course of the parties' in-person discussions and correspondence regarding the issues raised by the State's Motion, the State's attorneys consistently took the position that the first step of any effort to resolve the parties' discovery dispute would have to be PCC advising the State which, if any, of the discovery requests in dispute PCC would voluntarily withdraw, after which the State might be willing to discuss the possible handling of the remaining viable discovery requests by agreement.

Further affiant sayeth not.

W. C. Blanton

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 11th day of July, 2003.

GERALDINE F. HALL
Notary Public - Notary Seal
STATE OF MISSOURI
Jackson County
My Commission Expires: November 12, 2004

Notary Public

My Commission Expires:

11-12-04