

**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
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218
Don.Brown@Illinois.Gov
PCB.Clerks@illinois.gov

Stefanie Diers
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Ave. East
PO Box 19276
Springfield, Illinois 62794-9276
Stefanie.Diers@Illinois.Gov

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/ Bina Joshi

Bina Joshi

Dated: December 1, 2023

ARENTFOX SCHIFF LLP
Attorneys for Petitioner Electric Energy, Inc.
Joshua R. More
Bina Joshi
Sarah L. Lode
ArentFox Schiff LLP
233 South Wacker Drive, Suite 7100
Chicago, Illinois 60606

(312) 258-5500

Joshua.More@afslaw.com

Bina.Joshi@afslaw.com

Sarah.Lode@afslaw.com

**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)

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 1, 2023, Order granting a stay in this proceeding until December 1, 2023.

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 and December 1, 2022, Status Reports 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*; Petitioner Electric Energy, Inc.'s Status Report ¶¶ 3 (December 1, 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 was 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*.

Electronic Filing: Received, Clerk's Office 12/1/2023

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. Pursuant to the Hearing Officer's June 15, 2022, Order, EEI filed a status report on December 1, 2022. Petitioner Electric Energy, Inc.'s Status Report (December 1, 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*. EEI and IEPA met and conferred prior to filing that report and expressed agreement that a further extension of the stay was appropriate. On December 6, 2022, the Hearing Officer extended the stay by six months and directed EEI to file an additional status report by June 1, 2023.

7. Pursuant to the Hearing Officer's December 6, 2022, Order, EEI filed a status report on June 1, 2023. Petitioner Electric Energy, Inc.'s Status Report (June 1, 2023), 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*. EEI and IEPA met and conferred prior to filing that report and expressed agreement that a further extension of the stay was appropriate. On June 1, 2023, the Hearing Officer extended the stay by six months and directed EEI to file an additional status report by December 1, 2023.

8. The judicial proceedings challenging the basis and legality of USEPA's proposed Part A determinations and letters discussed in EEI's June 6, 2022, and December 1, 2022, status reports (*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 but are progressing. Additionally, USEPA has made progress but 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 or finalize some of those proposed determinations. Further, USEPA has continued to issue and receive comments on additional proposed Part A determinations. *See, e.g.,* <https://www.epa.gov/coalash/coal-combustion-residuals-ccr-part-implementation>.

9. EEI and IEPA continued to communicate and make progress towards possible resolution of this matter during the stay. Prior to filing this status report, EEI and IEPA conferred and both agree for the stay in this matter to be lifted at this time.

10. Accordingly, concurrent with filing this report, EEI is submitting a request to the Hearing Officer for a status conference to take place in 45 days. IEPA does not object to this request.

Respectfully submitted,

ELECTRIC ENERGY, INC.

By: /s/ Bina Joshi
One of its Attorneys

Dated: December 1, 2023

ARENTFOX SCHIFF LLP

Attorneys for Petitioner Electric Energy, Inc.

Joshua R. More

Bina Joshi

Sarah L. Lode

ArentFox Schiff LLP

233 South Wacker Drive, Suite 7100

Chicago, Illinois 60606

(312) 258-5600

Joshua.More@afslaw.com

Bina.Joshi@afslaw.com

Sarah.Lode@afslaw.com

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 1st day of June, 2023:

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
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218
Don.Brown@Illinois.Gov
PCB.Clerks@illinois.gov

Stefanie Diers
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Ave. East
PO Box 19276
Springfield, Illinois 62794-9276
Stefanie.Diers@Illinois.Gov

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

My e-mail address is bina.joshi@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/ Bina Joshi

Bina Joshi

Dated: December 1, 2023

ARENTFOX SCHIFF LLP
Attorneys for Petitioner Electric Energy, Inc.
Joshua R. More
Bina Joshi
Sarah L. Lode
ArentFox Schiff LLP
233 South Wacker Drive, Suite 7100
Chicago, Illinois 60606
(312) 258-5500
Joshua.More@afslaw.com
Bina.Joshi@afslaw.com
Sarah.Lode@afslaw.com