

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PRAIRIE STATE GENERATING)	
COMPANY, LLC,)	
)	
Petitioner,)	
)	
v.)	PCB No. 25 – 11
)	(Permit Appeal – Air)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board this Notice of Filing, the Answer Including Certificate of Record on Appeal, the Record, and a Certificate of Service, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

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ANSWER INCLUDING CERTIFICATE OF RECORD ON APPEAL

Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), in accordance with the procedural rules of the Illinois Pollution Control Board (“Board”) as set forth in 35 Ill. Adm. Code 105.302(f) and 105.116, files its answer including the entire Illinois EPA record in this cause.

A. Answer

Prairie State Generating Company, LLC (“PSGC”) operates a coal-fired power plant in Washington County approximately five miles east northeast of Marissa. The plant has a pair of coal-fired boilers with a nominal capacity of 750 net megawatts each. The boilers burn Illinois coal from a collocated mine that was developed with the plant. Each boiler has a multi-stage control train that includes selective catalytic reduction (“SCR”) for nitrogen oxide (“NOx”), a conventional dry electrostatic precipitator (“ESP”) for filterable particulate, a wet scrubber for sulfur dioxide (“SO₂”), and a wet electrostatic precipitator (“WESP”) for sulfuric acid mist and condensable particulate. Other emission units at the PSGC plant include cooling towers, fuel and other bulk material handling, processing, and storage operations, an x-ray sorter, an auxiliary gas-fired boiler, emergency diesel engines, other ancillary operations, and roadways and parking areas.

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The construction of the PSGC plant was addressed by an air pollution control construction permit, Illinois EPA Air Permit No. 01100065, initially issued April 28, 2005.¹ This permit is a “PSD permit,” providing approval to construct the plant under the Prevention of Significant Deterioration (“PSD”) rules. *See* 40 CFR § 52.21. This is because the plant’s actual and/or potential emissions would be such that it would be a major source for a number of pollutants, including SO₂, NO_x, particulate matter (“PM”), particulate matter with an aerodynamic diameter less than 10 microns or less (“PM₁₀”), carbon monoxide (“CO”), volatile organic material (“VOM”), sulfuric acid mist, and fluorides under the PSD rules. In addition, this permit authorizes operation of the plant until a Clean Air Act Permit Program (“CAAPP”) permit is issued to incorporate this PSD permit.²

Since May 2011, PSGC has submitted applications for, and been granted, several additional construction permits for various emission units and/or trial projects. Some of these construction permits have since expired,³ and others afford PSGC authorization to operate the permitted equipment until a CAAPP permit is issued to incorporate such permits.

On January 29, 2010, PSGC submitted its initial CAAPP permit forms to initiate a new CAAPP permit application for the coal mine operation. (Record at R0011-R0028). On February 16, 2010, PSGC submitted a supplement to the CAAPP permit application that included the required CAAPP Form 200 and CAAPP Form 292.⁴ (Record at R0032-R0042). On May 5, 2011, PSGC submitted additional materials to the application. The cover letter to this submittal made

¹ While this permit was issued on April 28, 2005, citizen groups subsequently sought review of the permit before the USEPA’s Environmental Appeals Board (EAB) and the 7th Circuit Court of Appeals (7th Circuit). The EAB denied review on August 24, 2006, and the 7th Circuit denied review on August 24, 2007. *See* In the Matter of Prairie State Generating Station, 13 E.A.D. 1; *Sierra Club v. U.S. Env’tl. Prot. Agency*, 499 F. 3d 653 (7th Cir. 2007). This permit did not become effective until review was complete. 40 CFR § 124.15.

² Illinois EPA Air Permit No. 01100065, Condition 1.6.

³ These construction permits either authorized the construction of temporary equipment and/or various pilot studies at the facility.

⁴ CAAPP Form 200 is the Application for CAAPP permit form, and CAAPP Form 292 is the Fee Determination for CAAPP permit form.

note that most of the equipment in this application was still under construction. *See* 415 ILCS 5/39.5(5)(x). (Record at R0052-R0838). PSGC timely submitted its initial CAAPP permit application.

On May 18, 2011, Illinois EPA issued a notice to PSGC that the CAAPP permit application was administratively complete and issued a notice to begin paying annual fees of \$1,800.00.⁵ (Record at R0846). On July 27, 2020, PSGC submitted an update to its CAAPP permit application to include all construction permits issued during this intervening time, updates to required plans and/or programs, including an Episode Action Plan, stack testing results, updated emissions estimates and memorialized any changes or updates to applicable regulatory requirements. *See* 415 ILCS 5/39.5(5)(g), (h), and (i). (Record at R0860-R1053).

As provided by statute, a new CAAPP source like PSGC may continue to operate without a CAAPP permit after its submittal of a timely and complete application until such time as Illinois EPA has taken final action on the application. *See* 415 ILCS 5/39.5(5)(h) and (6)(b); *see also* 415 ILCS 5/39.5(5)(l). PSGC may waive this legal protection upon the failure to timely respond to a request for additional information sought by Illinois EPA after the completeness determination is made. *See* 415 ILCS 5/39.5(5)(g) and (h). To date, PSGC has met the legal criteria for operating its CAAPP source without a CAAPP permit until its pending application is acted upon by the permit authority. The principle represented here is a longstanding construct that applies not only to CAAPP sources but to Federally Enforceable State Operating Permits (“FESOPs”), 415 ILCS 5/39(x), and is codified in the Illinois Administrative Procedure Act, 5 ILCS 100/10-65(b).

⁵ In January 2012, PSGC was notified that it would be a maximum fee payor for annual fees and was issued an invoice in the amount of \$250,000.00. This amount later increased to \$294,000 when fees were updated in Section 39.5 of the Act in 2012. (Record at R0848).

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As Illinois EPA does not dispute that it has not yet processed PSGC's pending CAAPP permit application, the timing of processing the pending CAAPP permit application is the only outstanding consideration before the Board. A facility's CAAPP permit represents a comprehensive embodiment of applicable environmental requirements that will ensure the facility's compliance with applicable rules and regulations. For this coal-fired power plant operating with an integrated mine-mouth coal facility, the processing of such an application is inherently complex and necessarily arduous.

This is, in part, due to the labyrinthine nature of applicable requirements, including both Illinois and federal regulations, namely, the New Source Performance Standards ("NSPS") and National Emission Standards for Hazardous Air Pollutants ("NESHAP"), adopted by the United States Environmental Protection Agency ("USEPA"). In the event Illinois EPA processes a draft CAAPP permit, some of these regulations would be incorporated from the PSD permit and other construction permits into the draft CAAPP permit, as they were existing and in effect when the facility was built. Because new or amended regulations have likely been promulgated since the initial construction permitting, such requirements would also need to be addressed during permit review.⁶ Attendant permitting issues, such as the case-by-case review of periodic monitoring for individual emission units, as well as preparing and implementing the logistical processes for public comments and USEPA review, would pose significant undertakings. These considerations point to Illinois EPA requiring two years from the date that PSGC submits an updated application to take final action. Additional support for this timeline follows.⁷

⁶ Illinois EPA has requested updated information from PSGC to facilitate in this review.

⁷ At the same time, the CAAPP Unit must continue to process renewal applications pending for other CAAPP sources throughout the state. Currently, there are 446 existing CAAPP sources in the state.

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Upon submittal of an updated application, the applicant must show that the application, as submitted to Illinois EPA, demonstrates that no violations of the Act would occur if the requested permit were issued. *See ESG Watts v IEPA*, PCB 01-63, 64 (consld.) (Apr. 4, 2002). A review of application materials that have been updated since PSGC's last submittal of July 2020 is needed to verify that there would not be a violation of the Act if the requested permit were issued. This review would necessarily include a review of any new or revised laws or regulations that have been promulgated since the construction permitting of PSGC and would include, at a minimum, USEPA's Cross-State Air Pollution Rule ("CASPR"), USEPA's Mercury and Air Toxic Standards ("MATS") and Illinois' Climate and Equitable Jobs Act ("CEJA"). PSGC's compliance history may provide insight for determining whether additional monitoring, testing, or recordkeeping requirements would be appropriate to ensure and maintain future compliance with all applicable requirements. Applicable monitoring plans and operating procedures that are utilized by PSGC must be reviewed to determine whether aspects of these monitoring plans or procedures should be appropriately incorporated into any draft CAAPP permit. Some of these plans include PSGC's Fugitive Particulate Operating Plans ("FPOP"), Risk Management Plan, Fuel Management Plan, and Site-Specific Monitoring Plans. After reviewing these plans, Illinois EPA would need to determine whether PSGC's existing monitoring plans and operating procedures are sufficient to ascertain compliance with applicable regulations and permit conditions or if additional monitoring methods would need to be incorporated into any draft CAAPP permit. *See* 415 ILCS 5/39.5(10).

If Illinois EPA's proposed action would be to grant a CAAPP permit, time would be required to draft appropriate permit terms memorializing all applicable requirements (including those derived from applicable state and federal laws and regulations and from previously issued construction permits), ensuring the practical enforceability of each requirement, and incorporating

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all necessary periodic monitoring for each term.⁸ Any draft permit must be publicly noticed, including an opportunity for public comment and hearing pursuant to Section 39.5(8)(a) of the Act. Additional time would also be required to draft supporting documentation that sets forth the legal and factual basis for the draft CAAPP permit conditions, including reference to the applicable statutory or regulatory provisions. *See* 415 ILCS 5/39.5(8)(b). In Illinois, this document is typically referred to as the Statement of Basis, and in the proposed permitting of more complex facilities such as PSGC, this supporting document can be voluminous.

In the event Illinois EPA proceeds with a draft CAAPP permit, Illinois EPA must first share the draft permit with PSGC on or before the time Illinois EPA provides notice to the public of a draft CAAPP permit and accompanying Statement of Basis. *See* 415 ILCS 39.5(8)(c) and (g). A minimum of 30 days would be required for public notice, however, if Illinois EPA determined that significant public interest existed in the pending CAAPP permit application and proceeded directly to public hearing. In such case, Illinois EPA would require, at a minimum, 75 days for public notice and a hearing.⁹ In addition, Illinois EPA must provide USEPA a copy of the proposed CAAPP permit for 45-day review. 415 ILCS 5/39.5(9)(a). If significant comments were received during the public participation process, the USEPA's 45-day review would not begin until Illinois EPA submitted the proposed permit and the draft written response to comments to the USEPA. *See* 40 CFR § 70.8(a)(1)(i). Additional requirements must be met in the event of a USEPA objection to the proposed issuance of a CAAPP permit pursuant to Section 39.5(9) of the Act.

⁸ If Illinois EPA's proposed action would be to deny the pending CAAPP permit application, different procedural requirements must be met. 415 ILCS 5/39.5(5)(j), (10)(b), and (c).

⁹ In the alternative, Illinois EPA could proceed to 30-day notice and, if information submitted during the public comment period suggested that a hearing would serve the interests of the public or of Illinois EPA, Illinois EPA could set the matter for public hearing at that time. This route would require a minimum of 105 days for public notice and a hearing. *See* 35 Ill. Adm. Code 166.130, 166.191, 252.205(b), and 252.206.

Illinois EPA anticipates that processing the pending CAAPP permit application will not be a simple task given that its earlier PSD permitting of PSGC represented one of the largest and most time-consuming undertakings for Illinois EPA's air pollution control program. For this earlier proceeding, the record consisted of approximately 40,000 pages of documents that were compiled during the review of the permit application. The Responsiveness Summary, which responded to public comments about the project, contained detailed and complex responses to more than 350 different comments raised during the lengthy public participation process. This permit was subsequently challenged in a petition before the United States Environmental Appeals Board culminating in review by the 7th Circuit Court of Appeals. More recently in the energy sector, Illinois EPA received thousands of comments for the proposed permitting of a major source construction project. Given the public interest that has been historically expressed in the permitting of PSGC and for others in this sector, Illinois EPA reasonably anticipates similar interest in its processing of PSGC's pending CAAPP permit application that will likely include numerous public comments that would necessarily require extensive consideration and response.

The time needed for Illinois EPA to address public comments and for USEPA review may be difficult to predict and is accompanied by uncertainty as to when a CAAPP permit, if determined to be compliant with law, can be issued. Given these complexities, Illinois EPA will require two years from the date that PSGC submits an updated, complete application to take final action on such permit application.

B. Certificate of Record on Appeal

The Illinois EPA's record of Petitioner's pending CAAPP application is attached and consists of the following documents:

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Doc #	Document Description	Date
1.	Acid Rain Program Permit (pp. R0002-R0009).	January 14, 2005
2.	Mine Equipment Startup and CAAPP Permit Application (pp. R0011-R0028).	January 29, 2010
3.	Permit Review Traveler Sheet (pp. R0030).	February 2, 2010
4.	Mine Equipment Startup and CAAPP Permit Application Supplemental CAAPP Forms (pp. R0032-R0042).	February 16, 2010
5.	Acid Rain Permit Application (pp. R0044-R0050).	May 5, 2011
6.	Submittal of Title V (CAAPP) Permit Application (pp. R0052-R0838).	May 5, 2011
7.	Permit Review Traveler Sheet (pp. R0840).	May 5, 2011
8.	CAAPP Application Completeness Determination and Source Fee Determination (pp. R0842-R0844).	May 18, 2011
9.	Initial Title V Permit Fee Invoice (pp. R0846).	May 18, 2011
10.	Annual Title V Permit Fee Invoice (pp. R0848).	January 31, 2012
11.	Acid Rain Permit and NOx Compliance Plan Renewal Application (pp. R0850-R0858).	June 29, 2016
12.	Submittal of Supplement to Title V (CAAPP) Permit Application (pp. R0860-R1053).	July 27, 2020
13.	Acid Rain Permit and NOx Compliance Plan Renewal Application (pp. R1055-R1066).	April 6, 2021

AFFIDAVIT AND CERTIFICATION

I, William D. Marr, being first duly sworn, depose and state that the following statements set forth in this instrument are true and correct, except as to matters therein stated to on information and belief and, as to such matters, the undersigned certifies that he believes the same to be true:

1. I am employed by the Illinois Environmental Protection Agency ("Illinois EPA") as the manager for the Bureau of Air's Permit Section located at 1021 North Grand Avenue East, Springfield, Illinois, and hold a degree in mechanical engineering. I was previously employed by Illinois EPA from May 1992 to January 2003 and have been employed by Illinois EPA since September 2015.

2. As part of my responsibilities, with the assistance of unit managers and lead workers, I oversee the work of permit analysts who review and process air-related permit applications, including assigning the review and monitoring of permit applications. Upon formal request, I also review pleadings to be filed by the Attorney General's Office to ensure veracity and accuracy with the records of Illinois EPA.

3. I have reviewed the Answer Including Certificate of Record on Appeal to which this Affidavit is attached and hereby verify the veracity and accuracy of the factual allegations contained therein.

4. I hereby certify, to the best of my knowledge and belief, that the entire Agency record, as defined in 35 Ill. Adm. Code 105.302(f), is hereby provided.

Further affiant sayeth not.

William D Marr

Subscribed and Sworn
To Before Me this 3rd Day of October 2024.

Dawn A. Hollis



Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

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Dated: October 4, 2024

CERTIFICATE OF SERVICE

I, Cathy Formigoni, certify that on the 4th day of October, 2024, I caused to be served by Electronic Mail the foregoing **Notice of Filing, Answer Including Certificate of Record on Appeal, and Record** to the parties listed below:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

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