

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, Pre-Filed Testimony of William Marr on Behalf of the Illinois Environmental Protection Agency, and a Certificate of Service, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: /s/ Kevin D. Bonin
KEVIN D. BONIN, #6294877
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South 2nd Street
Springfield, Illinois 62701
Ph: (217) 782-5055
Fax: (217) 524-7740
kevin.bonin@ilag.gov

Service List

For the Petitioner

Robert Middleton
ArentFox Schiff LLP
233 S. Wacker Drive, Suite 6600
Chicago, Illinois 60606
Robert.Middleton@afslaw.com
Via E-Mail

David M. Loring
ArentFox Schiff LLP
233 S. Wacker Drive, Suite 6600
Chicago, Illinois 60606
David.Loring@afslaw.com
Via E-Mail

Paul E. Greenwalt
ArentFox Schiff LLP
233 S. Wacker Drive, Suite 6600
Chicago, Illinois 60606
Paul.Greenwalt@afslaw.com
Via E-Mail

For the Pollution Control Board

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue
P.O. Box 19274
Springfield, Illinois 62794-9274
carol.webb@illinois.gov
Via E-Mail

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**PRE-FILED TESTIMONY OF WILLIAM MARR ON BEHALF OF
THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

The Illinois Environmental Protection Agency, by and through its counsel, Kwame Raoul, Attorney General of the State of Illinois, hereby submits the following Pre-Filed Testimony of William Marr.

PRE-FILED TESTIMONY OF WILLIAM MARR

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. During my tenure with the Illinois EPA, I previously served as a permit analyst for the Clean Air Act Permit Program (“CAAPP”) and as a manager for the CAAPP Unit.

2. As part of my current responsibilities as the Permit Section Manager, 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.

3. A facility's CAAPP permit represents a comprehensive collection 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 difficult.

4. This is, in part, due to the complex nature of applicable requirements, including both Illinois and federal rules, 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 the 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. Associated 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 the Illinois EPA requiring two years from the date that Prairie State Generating Company ("Prairie State") submits an updated, complete application to take final action. Additional support for this timeline follows.

5. The Illinois EPA has requested updated information from Prairie State to facilitate in this review. Upon submittal of an updated application, the applicant must show that the application, as submitted to the Illinois EPA, demonstrates that no violations of the Environmental Protection Act ("Act") would occur if the requested permit is issued. *See ESG Watts v. IEPA*, PCB 01-63, 64 (consld.) (Apr. 4, 2002). A review of application materials that have been updated since

Prairie State's last submittal of July 2020 is needed to verify that there would not be a violation of the Act if the requested permit is 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 Prairie State 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"). Prairie State'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 Prairie State 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 Prairie State's Fugitive Particulate Operating Plans ("FPOP"), Risk Management Plan, Fuel Management Plan, and Site-Specific Monitoring Plans. After reviewing these plans, the Illinois EPA would need to determine whether Prairie State'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).

6. If the 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 regulations or laws, and from previously issued construction permits), ensuring the practical enforceability of each requirement, and including all necessary periodic monitoring for each term. If the 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) & (c).

7. 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 Prairie State, this supporting document could be lengthy.

8. In the event the Illinois EPA proceeds with a draft CAAPP permit, the Illinois EPA must first share the draft permit with Prairie State 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) & (g). A minimum of 30 days would be required for public notice; however, if the Illinois EPA determined that a significant public interest existed in the pending CAAPP permit application and proceeded directly to public hearing, the Illinois EPA would require, at a minimum, 75 days for public notice and a hearing. *See* 35 Ill. Adm. Code 252.205(b) & 252.206; 35 Ill. Adm. Code 166.130 & 166.191. In the alternative, the 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 the Illinois EPA, the 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 252.205(b) & 252.206; 35 Ill. Adm. Code 166.130 & 166.191.

9. In addition, the 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 the 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.

10. The Illinois EPA anticipates that processing the pending CAAPP permit application would not be a simple task given its earlier PSD permitting of Prairie State represented one of the largest and most time-consuming undertakings for the 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, the 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 Prairie State and for others in this sector, the Illinois EPA reasonably anticipates similar interest in its processing of Prairie State's pending CAAPP permit application that would likely include numerous public comments that would necessarily require extensive consideration and response.

11. The time needed for the Illinois EPA to address public comments and 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, the Illinois EPA will require two years from the date that Prairie State submits an updated complete application to take final action on such permit application.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: /s/ Kevin D. Bonin
KEVIN D. BONIN, #6294877
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South 2nd Street
Springfield, Illinois 62701
Ph: (217) 782-5055
Fax: (217) 524-7740
kevin.bonin@ilag.gov

Dated: October 25, 2024

CERTIFICATE OF SERVICE

I, Cathy Formigoni, certify that on the 25th day of October, 2024, I caused to be served by Electronic Mail the foregoing **Notice of Filing** and **Pre-Filed Testimony of William Marr on Behalf of the Illinois Environmental Protection Agency** to the parties listed below:

For the Petitioner

Robert Middleton
ArentFox Schiff LLP
233 S. Wacker Drive, Suite 6600
Chicago, Illinois 60606
Robert.Middleton@afslaw.com
Via E-Mail

David M. Loring
ArentFox Schiff LLP
233 S. Wacker Drive, Suite 6600
Chicago, Illinois 60606
David.Loring@afslaw.com
Via E-Mail

Paul E. Greenwalt
ArentFox Schiff LLP
233 S. Wacker Drive, Suite 6600
Chicago, Illinois 60606
Paul.Greenwalt@afslaw.com
Via E-Mail

For the Pollution Control Board

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue
P.O. Box 19274
Springfield, Illinois 62794-9274
carol.webb@illinois.gov
Via E-Mail

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.

/s/ Cathy Formigoni
CATHY FORMIGONI
Paralegal
500 South 2nd Street
Springfield, Illinois 62701
cathy.formigoni@ilag.gov