

**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, Post-Hearing Brief 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

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**POST-HEARING BRIEF OF  
THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), in accordance with the Hearing Report of October 29, 2024, submits this Post-Hearing Brief to the Illinois Pollution Control Board (“Board”).

On August 30, 2024, Prairie State Generating Company, LLC (“PSGC”) filed a Petition for Hearing alleging that Illinois EPA had failed to take final action on PSGC’s initial Clean Air Act Permit Program (“CAAPP”) application and requesting that the Board enter an order requiring Illinois EPA to take action to issue a draft CAAPP permit within one year. On October 7, 2024, Illinois EPA filed its Answer Including Certificate of Record on Appeal (“Answer”). While Illinois EPA acknowledged it had not yet processed PSGC’s pending CAAPP permit application, Illinois EPA detailed the complex and arduous task ahead to process an application for a CAAPP permit for a coal-fired power plant with collocated mine that is a major source for several pollutants under the Prevention of Significant Deterioration (“PSD”) rules. In response to an unopposed oral motion, the Hearing Officer agreed that the timing of processing the pending CAAPP permit application is the only outstanding consideration before the Board and limited the October 29,

2024, hearing to the time necessary to process the pending CAAPP application. *Accord.* Hearing Officer Order of October 17, 2024.

At the hearing, Illinois EPA offered the testimony of William Marr, the manager of the Bureau of Air's Permit Section, who further detailed the complexities of processing PSGC's pending CAAPP application.<sup>1</sup> *See* Pre-Filed Testimony of William Marr on Behalf of the Illinois Environmental Protection Agency, dated October 25, 2024. Mr. Marr detailed both the complex nature of applicable Illinois and federal requirements, including existing regulations in effect when the source was built and new or amended regulations which have been promulgated since the initial construction permitting of the source. Mr. Marr also explained that 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 United States Environmental Protection Agency ("USEPA") review, would pose significant time and resource undertakings for Illinois EPA. *See id.*

While Mr. Ross Bunton, PSGC's Environmental Director, "reiterated Prairie State's initial request for the Board to enter an order requiring that Illinois EPA take final action on Prairie State's CAAPP permit application and issue a draft CAAPP permit within one year of the Board's order," PSGC did not dispute Mr. Marr's testimony.<sup>2</sup> *See* PSGC's Post-Hearing Brief, at 4. PSGC recognized parity between the parties' position on timing for final action to be taken by Illinois

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<sup>1</sup> PSGC's Post-Hearing Brief repeatedly referred to the testimony of William Barr on behalf of Illinois EPA rather than the testimony of William Marr on behalf of Illinois EPA. For accuracy in any opinion tendered by the Board, the manager of the Bureau of Air's Permit Section is Mr. William Marr, not Mr. William Barr.

<sup>2</sup> While PSGC has suggested that Illinois EPA be directed to *issue* a draft CAAPP permit by no later than one year of a Board order, Illinois EPA opposes any order that would require Illinois EPA to *issue* a draft CAAPP permit or to *issue* a CAAPP permit. Any such order would necessarily prejudice pending, or not yet pending, application materials before Illinois EPA. Moreover, any such order would necessarily presuppose public comment and/or USEPA comment on a matter that has not yet been subject to public comment or USEPA review. Rather, Illinois EPA requests that the Board direct Illinois EPA to *take final action* on such permit application within two years from the date that PSGC submits an updated, complete application.

EPA on the pending CAAPP permit application given that the “review process following issuance of a draft CAAPP permit could take an additional one year to complete.” *See id.* at 5.

Moreover, Illinois EPA has requested updated information from PSGC to facilitate Illinois EPA’s review, which PSGC “expects to submit to Illinois EPA before the end of 2024.” Transcript of October 29, 2024, Hearing, at 6 and 8-9. Upon submittal of an updated application, the applicant must show that the application, as submitted to 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 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 is issued. Illinois EPA cannot begin this activity until an updated and complete submittal has been made by PSGC.

In addition, it is appropriate to remember that the permitting of a coal-fired power plant with a collocated mine is both complex and controversial, requiring detailed technical review, extensive interaction with the applicant, and further investigation to properly respond to public comments and USEPA review. Given the complexities outlined by Illinois EPA in its Answer and the testimony of Mr. William Marr, Illinois EPA will require two years from the date that PSGC submits an updated and complete application to take final action on such permit application.

Illinois EPA respectfully requests that the Board allow Illinois EPA two years from the date that PSGC submits an updated, complete application to take final action on such permit application for a CAAPP permit.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

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**CERTIFICATE OF SERVICE**

I, Cathy Formigoni, certify that on the 19th day of November, 2024, I caused to be served by Electronic Mail the foregoing **Notice of Filing** and **Post-Hearing Brief of the Illinois Environmental Protection Agency** 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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