

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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APR 27 2004

IN THE MATTER OF: )  
 )  
PROPOSED SITE SPECIFIC REGULATION )  
APPLICABLE TO AMEREN ENERGY )  
GENERATING COMPANY, ELGIN, )  
AMENDING 35 ILL. ADM. CODE PART 901)

R04-11

STATE OF ILLINOIS  
Pollution Control Board

NOTICE OF FILING

PLEASE TAKE NOTICE that the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, filed with the Illinois Pollution Control Board, its MOTION FOR LEAVE TO FILE A REPLY and its REPLY TO PETITIONER'S RESPONSE TO ATTORNEY GENERAL'S MOTIONS TO DENY AND STRIKE true and correct copies of which are attached hereto and are hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS  
Ex rel. LISA MADIGAN, Attorney  
General of the State of Illinois

BY:



JOEL J. STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
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Chicago, IL 60601  
(312) 814-6986

Dated: April 27, 2004

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

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ATTORNEY GENERAL'S OFFICE MOTION FOR LEAVE TO FILE A REPLY

The PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, pursuant to Section 101.500(e) of the Illinois Pollution Control Board's Regulations, 35 Ill. Adm. Code 101.500(e), requests that the Board grant it leave to file a Reply to Petitioner's Response to Attorney General's Motions to Deny and Strike which Petitioner filed on April 13, 2004. The Attorney General's Office ("AGO") contends that it is filing its Motion for Leave to File a Reply in a timely manner and that it will suffer material prejudice if the Board does not grant it leave to file a Reply.

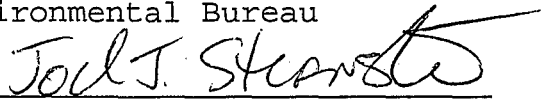
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
ex rel. LISA MADIGAN, Attorney  
General of the State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

ROSEMARIE CAZEAU, Chief  
Environmental Bureau

BY:

  
\_\_\_\_\_

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Chicago, IL 60601  
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**STATE OF ILLINOIS**  
**Pollution Control Board**

ATTORNEY GENERAL'S OFFICE REPLY TO PETITIONER'S RESPONSE TO  
ATTORNEY GENERAL'S MOTIONS TO DENY AND STRIKE

1. On page 1 of Petitioner's Response to Attorney General's Motions to Deny and Strike ("Response"), Petitioner contends that the AGO added new information to the record in its Post-Hearing Comments submitted on March 10, 2004 ("AGO's Post-Hearing Comments"). However, Petitioner also included new information its Post-Hearing Comments submitted on March 10, 2004 ("Petitioner's Post-Hearing Comments"). See, e.g., Petitioner's Post-Hearing Comments at p.9 ("Finally, this cost estimate does not include the cost of retaining and making available the expert consultants to conduct the study when the various necessary testing conditions are all aligned.") Petitioner has no right to criticize any new information in the AGO's Post-Hearing Comments when the Petitioner included new information in its own Post Hearing Comments. The AGO did not respond to Petitioner's new information out of respect for the Hearing Officer's March 10, 2004 deadline for all post hearing comments.

2. Petitioner states that nothing in the Act precludes the Board from granting its March 19, 2004 Pleadings ("March 19

Pleadings"). Response at pp. 1, 2. However, Petitioner ignores the fact that the March 19 Pleadings clearly violated the Hearing Officer's March 10, 2004 deadline for the submission of post-hearing comments.

3. In its March 19 Pleadings, Petitioner seeks to respond to the AGO's Post-Hearing Comments and answer questions raised by what the Petitioner incorrectly calls the AGO's "omission of critical facts and misinterpretations". Response at 1. Petitioner gets an additional opportunity to add to the record. This opportunity was denied to the AGO because the AGO adhered to the Hearing Officer's instructions. The AGO submitted no further comments after the March 10, 2004 post-hearing comment deadline. If the Board allows the March 19 Pleadings into the record, the AGO will be prejudiced.

4. The only ways to remedy the potential prejudice to the AGO and to ensure that the Board treats both parties fairly are to strike Petitioner's March 19 Pleadings or allow the AGO the right to respond to the Petitioner's Post-Hearing Comments.

5. Petitioner also claims that granting the AGO's Motions to Deny and Strike will result in a record that is "not complete and accurate". Response at 2. Any blame for a supposedly inaccurate and incomplete record clearly lies with the Petitioner for neglecting to include information from its March 19 Pleadings in its Post-Hearing Comments. The AGO could also claim that the

record is not complete and accurate since it has not responded to Petitioner's Post-Hearing Comments. Both Petitioner and the AGO had a deadline to follow. The AGO met the deadline, and Petitioner is trying to add additional information to the record after the deadline. The AGO is prejudiced as a result.

6. Petitioner also complains that the AGO only attached a copy of the amended complaint in the Ameren et al v. Village of Bartlett et al case<sup>1</sup> to its Post-Hearing Comments but attached no other documents related to that case. The AGO referred to the complaint and included it in the AGO's Post-Hearing Comments in order to alert the Board to the existence of the Bartlett case. In its Post-Hearing Comments, the AGO also mentioned that it had become aware that the parties had reached a settlement in the Bartlett Case. The AGO would have simply wasted paper if it attached all of the other publicly-available documents in the Bartlett case to its Post-Hearing Comments. The Complaint, the Settlement, and many other documents from the Bartlett case were available to Petitioner long before the Hearing Officer's March 10 deadline in this matter. Petitioner cannot purposefully ignore the Hearing Officer's deadline just because it neglected to include documents during its presentation at hearing or in its Post-Hearing Comments.

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<sup>1</sup> Cook County Case No 03 CH 11307, included as Exhibit A to the AGO's Post-Hearing Comments.

7. Petitioner also claims that the AGO "misunderstood or misinterpreted" much of the record at hearing. Response at 1. This statement is not accurate. The AGO understood exactly what was happening at the hearing and has not misrepresented anything in the record.

8. Petitioner also makes the claim that the documents it attached to the March 19 Pleadings are not offered as new evidence. Response at 2-3. This is not true. These documents were proffered to the Board after the close of the post-hearing comment period and are certainly new.

9. Petitioner also claims that the AGO cited the Hillside facility "without any analysis of . . . critical facts". Response at 3. Again, this is not true and is another example of Petitioner commenting on the AGO's Post-Hearing Comments past the deadline without the AGO commenting on Petitioner's Post-Hearing Comments.

10. Therefore, the AGO requests that the Pollution Control Board do the following:

- a. Deny Petitioner's Motion for Leave to File Response;
- b. Strike Petitioner's Response to the AGO's Public Comment from the record;
- c. Deny Petitioner's Motion to Supplement Record; and
- d. Strike the documents attached to the Motion to



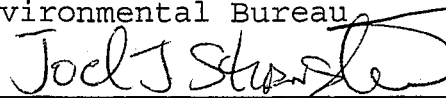
Supplement from the record.

PEOPLE OF THE STATE OF ILLINOIS  
Ex rel. LISA MADIGAN, Attorney  
General of the State of Illinois

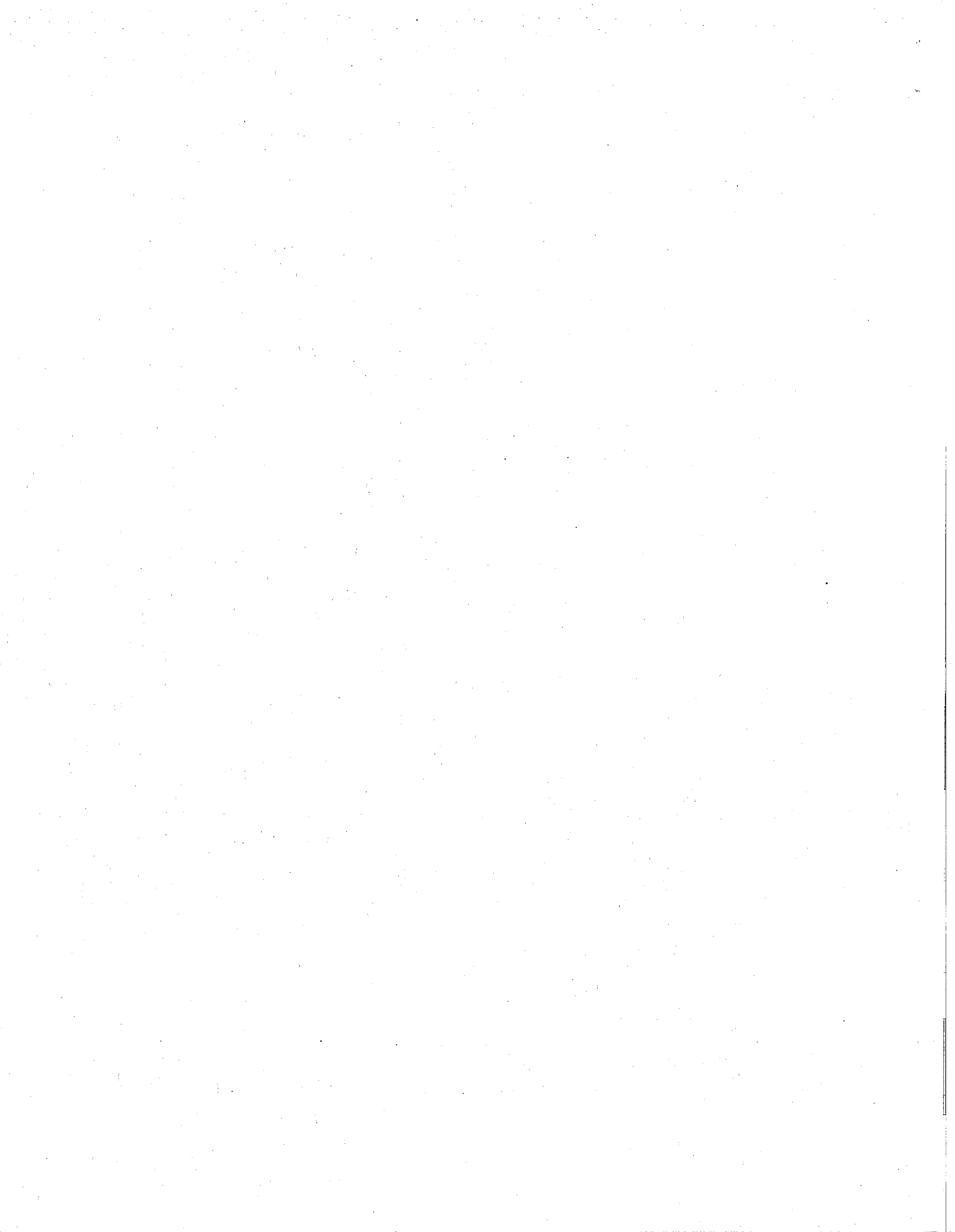
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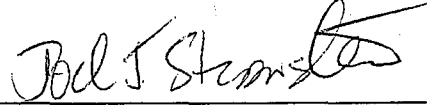


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CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, do certify that I caused to be mailed this 27<sup>th</sup> day of April 2004, the foregoing ATTORNEY GENERAL'S OFFICE MOTION FOR LEAVE TO FILE A REPLY and ATTORNEY GENERAL'S OFFICE REPLY TO PETITIONER'S RESPONSE TO ATTORNEY GENERAL'S MOTIONS TO DENY AND STRIKE by first-class mail in a postage prepaid envelope and depositing same with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois, 60601.



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JOEL J. STERNSTEIN

