

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED NEW 35 ILL.ADM.CODE PART 225)	PCB R06-25
CONTROL OF EMISSIONS FROM)	Rulemaking - Air
LARGE COMBUSTION SOURCES)	

NOTICE OF FILING

To:

Dorothy Gunn, Clerk
 Illinois Pollution Control Board
 James R. Thompson Center
 Suite 11-500
 100 West Randolph
 Chicago, Illinois 60601

Marie Tipsord
 Hearing Office
 Illinois Pollution Control Board
 James R. Thompson Center
 100 W. Randolph
 Suite 11-500
 Chicago, Illinois 60601

Gina Roccaforte, Assistant Counsel
 Charles Matoesian, Assistant Counsel
 John J. Kim, Managing Attorney, Air
 Regulatory Unit
 Division of Legal Counsel
 Illinois Environmental Protection Agency
 1021 North Grand Avenue, East
 P.O. Box 19276
 Springfield, Illinois 62794-9276

Persons included on the
ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that we have today filed with the Office of the Clerk of the Pollution Control Board PARTICIPANTS AMEREN ENERGY GENERATING COMPANY, AMERENENERGY RESOURCES GENERATING COMPANY, DYNEGY MIDWEST GENERATION, INC., ELECTRIC ENERGY INCORPORATED, KINCAID GENERATION. L.L. C., and MIDWEST GENERATION, LLC's **EMERGENCY MOTION TO SUSPEND THE FILING DATE FOR PREFILED QUESTIONS AND REQUEST FOR PRE-HEARING CONFERENCE CALL**, copies of which are herewith served upon you.

/s/ Kathleen C. Bassi

Kathleen C. Bassi

Dated: May 18,2006

James T. Harrington
David R. Rieser
McGuire Woods LLP
77 West Wacker, Suite 4100
Chicago, Illinois 60601
Telephone: 312/849-8100

Sheldon A. Zabel
Kathleen C. Bassi
Stephen J. Bonebrake
Joshua R. More
Glenna Gilbert
Schiff Hardin, LLP
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
312-258-5500

Bill S. Forcade
Katherine Rahill
Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611-7603
Tel (312) 840-8618

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
PROPOSED NEW 35 ILL.ADM.CODE PART 225) PCB R06-25
CONTROL OF EMISSIONS FROM)
LARGE COMBUSTION SOURCES)

**PARTICIPANTS' EMERGENCY MOTION TO SUSPEND THE FILING DATE
FOR PREFILED QUESTIONS AND
REQUEST FOR PRE-HEARING CONFERENCE CALL**

NOW COME Petitioners Ameren Energy Generating Company, AmerenEnergy Resources Generating Company, Dynegy Midwest Generation, Inc., Electric Energy Incorporated, Kincaid Generation, L.L. C., and Midwest Generation, LLC (collectively "Petitioners"), participants in this proceeding, and move the Hearing Officer to suspend the filing date for prefiled questions and request that the Hearing Officer hold a conference call to establish a new schedule for filing prefiled questions. In support of its motion, Petitioners state as follows:

1. On May 18,2006, John Kim, Managing Air Regulatory Attorney for the Illinois Environmental Protection Agency ("Agency"), emailed attorneys for the Petitioners, stating that one of the Agency's witnesses, Dr. James Staudt, had informed the Agency that he needed to revise his prefiled testimony in this matter. Mr. Kim's email is attached hereto as Exhibit 1. Petitioners understand from the testimony filed in April that Dr. Staudt's testimony addresses the technological feasibility, technology availability. and costs of that technology.

2. In a subsequent email from the Agency on the issue of Dr. Staudt's prefiled testimony, Charles Matoesian, attorney for the Agency, states that the Agency will file Dr. Staudt's testimony on May 19,2006, and stated that this re-filing of Dr. Staudt's testimony is within the scope of the Hearing Officer's order establishing the schedule for filing testimony for

the first hearing and the prefiled questions. Mr. Matoesian's email is attached hereto as Exhibit

2. However, the Hearing Officer stated as follows in her May 4th Order:

The Illinois Environmental Protection Agency (Agency) on April 27 and 28 prefiled testimony for the first bearing in this proceeding. The Agency need not file that testimony again for the June 12, 2006 hearing. However, as there are still over five weeks until the beginning of the June 12, 2006 hearing, I am directing that participants prefile questions for the Agency by May 19, 2006. Furthermore, under Section 27, the first hearing is not limited to the testimony of the proponent. Therefore, any person wishing to testify at the June 12, 2006 hearing should prefile their testimony by May 19, 2006.

Hearing Officer Order, p. 2 (May 4, 2006). Beside the clear language of the Hearing Officer's Order, the Agency's interpretation expressed in Mr. Matoesian's email would allow the Agency to revise all its testimony on the same day that the prefiled questions on the Agency's testimony are due, an obvious absurdity.

3. In this same email from Mr. Matoesian, he states that the Agency does not object to a week's extension to the filing of questions for Dr. Staudt.

4. The current schedule for prefiling questions based upon the Agency's prefiled testimony requires the questions to be filed by May 19, 2006

5. Revisions to Dr. Staudt's testimony could require amendments to the Agency's Technical Support Document and revisions to other Agency witnesses' testimony. The viability of the Agency's proposal largely rests on Dr. Staudt's testimony.

6. Petitioners require time to review Dr. Staudt's revised testimony in order to determine how to revise the prefiled questions directed to Dr. Staudt. Given the importance of Dr. Staudt's testimony to the Agency's position and the extent to which other Agency witnesses rely upon Dr. Staudt's testimony. The Agency represented to Petitioners the belief that at least some of the revisions to Dr. Staudt's testimony will address economic issues.

7. Petitioners require time to evaluate the degree to which revisions to Dr. Staudt's testimony will reverberate in questions posed to other witnesses, as other witnesses have relied upon Dr. Staudt's information or testimony in preparing their own testimony. The Agency's apparent view that Dr. Staudt's statements in his testimony do not affect questions posed to other witnesses miscomprehends the extent to which other Agency witnesses rely upon Dr. Staudt's testimony and the breadth of the prefiled questions that petitioners will be submitting.

8. Petitioners will be irreparably harmed and disadvantaged if they are not afforded the opportunity to review Dr. Staudt's revised testimony prior to submitting all of their prefiled questions in this matter.

9. Petitioners request that the Hearing Officer schedule a pre-hearing conference call on Wednesday, May 24, 2006. to reset the schedule for filing prefiled questions for the Agency.

WHEREFORE, for the reasons set forth above, Petitioners Ameren Energy Generating Company, AmerenEnergy Resources Generating Company, Dynegy Midwest Generation, Inc., Electric Energy Incorporated, Kincaid Generation, L.L. C., and Midwest Generation, LLC, and move the Hearing Officer to suspend the date for the prefiling of questions to be posed to the Agency for the first hearing in this matter to a date in a new filing schedule to be established, allowing Petitioners the opportunity to adequately evaluate Dr. Staudt's revised testimony and its implications to other Agency witnesses' testimony, and request that the Hearing Officer schedule a pre-hearing conference call for that purpose for Wednesday, May 24, 2006.

Respectfully submitted,

Ameren Energy Generating Company,
AmerenEnergy Resources Generating
Company, and Electric Energy Incorporated

by:

/s/ James T. Harrington
One of Their Attorneys

Dynegy Midwest Generation, Inc., and
Midwest Generation, LLC

by:

/s/ Kathleen C. Bassi
One of Their Attorneys

Kincaid Generation, L.L.C.

by:

/s/ Bill S. Forcade
One of Their Attorneys

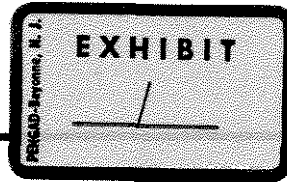
Dated: May 18,2006

James T. Harrington
David R. Rieser
McGuireWoods LLP
77 West Wacker, Suite 4100
Chicago, Illinois 60601
Telephone: 3121849-8100

Sheldon A. Zabel
Kathleen C. Bassi
Stephen J. Bonebrake
Joshua R. More
Glenna Gilbert
Schiff Hardin, LLP
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
312-258-5500

Bill S. Forcade
Katherine Rahill
Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611-7603
Tel (312) 840-8618

CH2\1431964.1



Bassi, Kathleen C.

From: John Kim [John.Kim@epa.state.il.us]
Sent: Thursday, May 18, 2006 9:23 AM
To: bforcade@jenner.com; jharrington@mcguirewoods.com; Bassi, Kathleen C.
Cc: Charles Matoesian; Gina Roccaforte
Subject: Mercury rulemaking - Updated testimony

Greetings,

Let me begin by stating I apologize for the timing of this e-mail. I am writing to inform you that one of our witnesses, Dr. James Staudt, has recently informed us that he feels very strongly that he needs to submit revised testimony in place of his original pre-filed testimony.

Our intention is to file that revised testimony by no later than tomorrow, the deadline for any additional pre-filed testimony as set forth in the Hearing Officer's latest order.

Of course, that order also schedules tomorrow (May 19th) as the deadline for pre-filed questions as well. Thus, to be fair, we would have no objection to your holding off on filing any pre-filed questions that would otherwise address Dr. Staudt's testimony for an additional week. We have informed the Hearing Officer of this situation, and she has asked simply to keep her apprised as needed. We would assume that all other pre-filed questions would be filed consistent with the May 19th deadline.

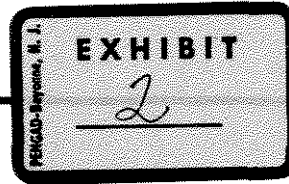
Please contact me (or Gina Roccaforte or Charles Matoesian) at 217.782.5544 if you have any questions.

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If you have received this e-mail in error, please notify:

John J. Kim
Managing Attorney, Air Regulatory Unit
Special Assistant Attorney General
Illinois EPA
1021 N. Grand Avenue, East
P.O. Box 19276
Springfield, IL 62794-9276
217.782.5544
217.782.9807 (Fax)
E-mail address: john.kim@epa.state.il.us



Bassi, Kathleen C.

Subject: FW: MERCURY

-----Original Message-----

From: Charles Matoesian [mailto:Charles.Matoesian@epa.state.il.us]

Sent: Thursday, May 18, 2006 1:52 PM

To: bforcade@jenner.com; jharrington@mcguirewoods.com; Zabel, Sheldon

Cc: John Kim

Subject: RE: MERCURY

Mr. Zabel,

The Agency will be filing the amended testimony of Dr. Staudt tomorrow, which is within the May 19 deadline set forth in the Hearing Officer's order. It is our position that pre-filed questions for the Agency also be filed by the May 19 deadline. However, we do not object to a one-week extension to the filing of revised questions based upon Dr. Staudt's amended testimony.

Charles

Charles E. Matoesian
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9807 FAX

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If you have received this e-mail in error, please notify:

>>> "Zabel, Sheldon" <SZabel@schiffhardin.com> 5/18/2006 11:01 AM >>>
Gentlemen:

We spoke with Marie and she cannot entertain a call with us this afternoon because it would require the attendance, or at least notice, to all of the parties on the service list. She wants a motion which we can draft but we would like to know the Agency's position as it would be more expeditious if the Agency is in agreement with postponing the filing of questions at least until after we and our clients and experts have had an opportunity to review the revised Sraudt testimony and we have had a conference call with the hearing officer. We

asked Marie in the call, and would reiterate it in the motion, to schedule a prehearing conference call on Wed.

JOHN, WE WILL AWAIT FILING THE MOTION UNTIL WE HAVE HEARD FROM YOU AS TO THE AGENCY'S POSITION.

Sheldon

Tax Matters: To the extent this message or any attachment concerns tax matters, it is not intended or written to be used, and cannot be used by a taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer under law.

This message and any attachments may contain confidential information protected by the attorney-client or other privilege.
If you believe that it has been sent to you in error, please reply to the sender that you received the message in error. Then delete it. Thank you.

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 18th day of May, 2006, I have served electronically the attached PARTICIPANTS AMEREN ENERGY GENERATING COMPANY, AMERENENERGY RESOURCES GENERATING COMPANY, DYNEGY MIDWEST GENERATION, INC., ELECTRIC ENERGY INCORPORATED, KTNCAID GENERATION, L.L. C., and MIDWEST GENERATION, LLC's **EMERGENCY MOTION TO SUSPEND THE FILING DATE FOR PREFILED QUESTIONS AND REQUEST FOR PRE-HEARING CONFERENCE CALL**, upon the following persons:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

and electronically and by first-class mail with postage thereon fully prepaid and affixed to the following persons:

Marie Tipsord
Hearing Office
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph
Suite 11-500
Chicago, Illinois 60601
tipsorm@ipcb.state.il.us

Gina Roccaforte, Assistant Counsel
Charles Matoesian, Assistant Counsel
John J. Kim, Managing Attorney
Air Regulatory Unit
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
john.kim@epa.state.il.us
charles.matoesian@epa.state.il.us
gina.roccaforte@epa.state.il.us

the participants listed on the
ATTACHED SERVICE LIST

/s/ Kathleen C. Bassi

Kathleen C. Bassi

James T. Harrington
David R. Rieser
McGuire Woods LLP
77 West Wacker, Suite 4100
Chicago, Illinois 60601
Telephone: 312/849-8100

Sheldon A. Zabel
Kathleen C. Bassi
Stephen J. Bonebrake
Joshua R. More
Glenna Gilbert
Schiff Hardin, LLP
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
312-258-5500

Bill S. Forcade
Katherine Rahill
Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611-7603
Tel (312) 840-8618

SERVICE LIST

William A. Murray
Special Assistant Corporation Counsel
Office of Public Utilities
800 East Monroe
Springfield, Illinois 62757
bmurray@cwlp.com

Christopher W. Newcomb
Karaganis, White & Mage., Ltd.
414 North Orleans Street, Suite 810
Chicago, Illinois 60610
cnewcomb@k-w.com

Faith E. Bugel
Howard A. Learner
Meleah Geertsma
Environmental Law and Policy Center
35 East Wacker Drive, Suite 1300
Chicago, Illinois 60601
fbugel@elpc.org

David Rieser
James T. Harrington
McGuireWoods LLP
77 West Wacker, Suite 4100
Chicago, Illinois 60601
drieser@mcguirewoods.com
jharrington@mcguirewoods.com

Bruce Nilles
Sierra Club
214 North Henry Street, Suite 203
Madison, Wisconsin 53703
bruce.nilles@sierraclub.org

N. LaDonna Driver
Katherine D. Hodge
Hodge Dwyer Zeman
3150 Roland Avenue, P.O. Box 5776
Springfield, Illinois 62705-5776
nldriver@hdzlaw.com

Bill S. Forcade
Katherine M. Rahill
Jenner & Block
One IBM Plaza, 40th Floor
Chicago, Illinois 60611
bforcade@jenner.com
krahill@jenner.com

Keith I. Harley
Chicago Legal Clinic
205 West Monroe Street, 4th Floor
Chicago, Illinois 60606
kharley@kentlaw.edu

S. David Farris
Manager, Environmental, Health and Safety
Office of Public Utilities, City of Springfield
201 East Lake Shore Drive
Springfield, Illinois 62757
dfarris@cwlp.com