

ILLINOIS POLLUTION CONTROL BOARD  
May 19, 2006

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MAY 19 2006

STATE OF ILLINOIS  
Pollution Control Board

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

**HEARING OFFICER ORDER**

This hearing officer order will address two pending motions and explain a procedural issue relating to the publication of the second first notice in this rulemaking.

**Emergency Motion**

On May 18, 2006, Ameren Energy Generating Company, Amerenenergy Resources Generating Company, Dynegy Midwest Generation, Electric Energy Incorporated, Kincaid Generation, L.L.C. and Midwest Generation (Utilities) filed an emergency motion with Board. The Utilities ask that the deadline for prefiling questions for the June 12, 2006 hearing be suspended and that a prehearing conference call be scheduled on Wednesday, May 24, 2006. On May 19, 2006, the Illinois Environmental Protection Agency (Agency) filed a response in opposition to the motion.

In essence this issue has arisen because the Agency indicated to the Utilities an intention to revise the testimony of Dr. James Staudt that was prefiled on April 27, 2006. By hearing officer order, questions for the Agency's witnesses are due to be filed today, May 19, 2006. The Agency has expressed that it does not object to allowing revisions of any prefiled questions, but that all prefiled questions should be filed on May 19, 2006. The Utilities argue that time is needed to evaluate the revisions to Dr. Staudt's testimony and to revise their questions in response to the new testimony.

After reviewing the arguments, I agree that the revision of Dr. Staudt's testimony requires a modification of the prefiling deadline for questions of Agency witnesses. However, I disagree that any revisions to Dr. Staudt's testimony require a suspension of the deadline for prefiling all questions. Although it is unreasonable to expect participants to provide questions for testimony that the participants have not yet reviewed, prefiling questions for the remaining Agency witnesses is reasonable. Therefore, I will suspend the deadline for prefiling of questions for Dr. Staudt and those questions need not be filed today, May 19, 2006. However, any questions for the remaining Agency witnesses must be prefiled today, May 19, 2006. I will also allow leave to amend or withdraw, at hearing, any questions prefiled today, that the participants find need to be amended or withdrawn after reviewing Dr. Staudt's testimony.

To establish a new deadline for prefiling questions for Dr. Staudt, to attempt to identify and limit issues of disagreement among the participants, and to promote efficient use of hearing

time (35 Ill. Adm. Code 102.404(b) and 102.406(c)), I am scheduling a prehearing conference call. The call will be held at 10:00 AM, Wednesday, May 24, 2006. Anyone wishing to participate should contact the hearing officer by Tuesday, May 23, 2006 at 3:00 PM. To participate, individuals may:

1. Appear at the Board's office at 100 W. Randolph St. Suite 11-500, Chicago, Illinois; or,
2. Phone 1-800-559-0872 and type in the Pass Code 8798963#

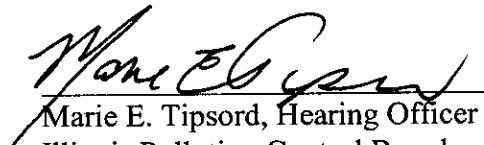
### **May 12, 2006 Motion**

On May 12, 2006, Dynege Midwest Generation, Kincaid Generation, L.L.C. and Midwest Generation filed a motion to withdraw a motion filed with the Board on May 9, 2006. On May 11, 2006, the hearing officer entered an order denying the May 9, 2006 motion as moot. Therefore, the motion to withdraw is also moot and is denied as such.

### **Second First Notice Publication**

On May 19, 2006, a second first notice for this proposed rule was published in the *Illinois Register*. See 30 Ill. Reg. 9281 (May 19, 2006). The notice pages for that first notice indicated that the Board was proposing the rule pursuant to Section 27 of Environmental Protection Act (Act) (415 ILCS 5/27(b) (2004)). However, due to a scrivener's error, the authority note following the Table of Contents in the actual rule references both Sections 9.10 and 28.5 of the Act. A notice of correction will be published in the June 2, 2006 *Illinois Register* indicating that the main authority note should read "implementing and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/27]". As a result of the notice of correction, the first notice period for the proposed rule will restart on June 2, 2006. See 1 Ill. Adm. Code 100.240(a).

IT IS SO ORDERED.

  
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