

ILLINOIS POLLUTION CONTROL BOARD  
June 15, 2006

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

ORDER OF THE BOARD (by G.T. Girard, A.S. Moore):

On May 23, 2006, the Illinois Environmental Protection Agency (Agency) filed a “Motion to Amend Rulemaking Proposal” (Motion) along with amended testimony of Dr. James Staudt<sup>1</sup>. On June 6, 2006, Dynegy and Midwest Generation (Dynegy), Ameren Energy Generation Company, Amerenenergy Resources Generating Company, and Electric Energy, Inc. (Ameren), and Kincaid Generation, L.L.C. (Kincaid) all filed responses to the motion. On June 7, 2006, the Agency filed motions for leave to file replies to each of the responses.

In general the responses state that they do not object to the motion; however, the responses ask that the Board direct the hearing officer to alter prefiling deadlines and redesignate the hearing scheduled to begin August 14, 2006. For the reasons discussed below the Board will grant the motion to amend, but declines to make any decision regarding prefiling deadlines and the hearing conduct. The Board denies the Agency’s motions for leave to file replies as the Board finds that the Agency will not be materially prejudiced by the inability to reply to a response that does not object to the underlying motion. *See* 35 Ill. Adm. Code 101.500(e).

The Board has not made any decision concerning the substance of the proposal. On March 16, 2006, the Board accepted the Agency’s March 14, 2006 proposal for hearing. The Board did not comment on the merits of the proposal in accepting the proposal for hearing. On May 4, 2006, the Board decided to proceed with the proposal under Section 27 of the Environmental Protection Act (415 ILCS 5/27 (2004)). The Board again did not comment on the merits of the proposal.

The Agency has the burden to “provide information supporting the requested change” in its proposal to adopt regulations pursuant to the Environmental Protection Act (Act) (*see* 415 ILCS 5/27(a) (2004)). Therefore, if the Agency fails to provide support for the proposal or amended proposal, the Agency will have failed to meet the statutory burden. The Board notes, without commenting on the sufficiency of that testimony, that the Agency submitted revised testimony from Dr. James Staudt, more than three weeks before the date of this order. Furthermore, Dr. Staudt will be present at hearing and subject to cross-examination, as will all of the Agency’s witnesses.

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<sup>1</sup> On May 24, 2006, the hearing officer granted a motion to file *instanter* the amended testimony of Dr. Staudt.

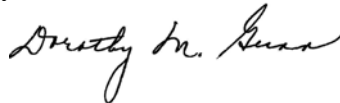
The Agency states that the inclusion of a Temporary Technology Based Standard, which is the subject of the proposed amendment, was considered during several stakeholder meetings prior to the filing of the Agency's proposal. Mot. at 2. However, a limited number of comments were received and no stakeholders stated that they would utilize such a standard. *Id.* Based on all of this, the Board finds that the participants will not be prejudiced by the acceptance of the amended proposal.

The participants have made various requests to the Board concerning hearing conduct and deadlines. Specifically, Dynegy asks the Board to "redesignate the scheduled August hearing for completion of the Agency's and supporters' cases." Dynegy also asks the Board to direct the hearing officer to schedule a third hearing at least 30 days after the conclusion of the second hearing to be dedicated exclusively to the opponent's cases. Ameren asks that the Board extend the deadline for pre-filing testimony for the second hearing to a date no earlier than July 28, 2006. Ameren also asks that the Board recognize its "right to seek additional extension of relevant dates" at the end of the first hearing based on the testimony presented there or if the Agency presents additional testimony during the second hearing. Kincaid asks that the Board direct the hearing officer "to ensure that the pre-filing date for rebuttal testimony will not occur" for at least 30 days after the conclusion of the cross-examination of the Agency's witnesses.

The Board finds that it is premature for the Board to direct the hearing officer to change the order and conduct of the hearings at this time. The Board recognizes the concerns raised by the participants; however, the hearing officer has the authority to alter the schedule and order of hearings (*see* 35 Ill. Adm. Code 102.416-102.424). Therefore, any motions seeking a change in scheduling or the conduct of the hearing should be addressed to the hearing officer.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 15, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board