

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED NEW CAIR SO ₂ , CAIR NO _x)	
ANNUAL AND CAIR NO _x OZONE SEASON)	R06-26
TRADING PROGRAMS, 35 ILL. ADM.)	(Rulemaking- Air)
CODE 225, CONTROL OF EMISSIONS)	
FROM LARGE COMBUSTION SOURCES,)	
SUBPARTS A, C, D and E)	

NOTICE

TO: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601-3218

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board a REPLY TO RESPONSE TO MOTION TO AMEND RULEMAKING, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: _____
John J. Kim
Managing Attorney
Air Regulatory Unit
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DATED: December 22, 2006

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**THIS FILING IS SUBMITTED
ON RECYCLED PAPER**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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REPLY TO RESPONSE TO MOTION TO AMEND RULEMAKING

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by its attorneys, and pursuant to the Illinois Pollution Control Board (“Board”) Rules at 35 Ill. Adm. Code 101.500, hereby replies to Dynegy Midwest Generation, Inc., Midwest Generation, LLC, and Southern Illinois Power Cooperative’s (“Midwest Generation,” collectively) Response to Amend Rulemaking Proposal (“Response”). The Illinois EPA offers the following clarifications and proposed amendments to the proposal:

1. Illinois EPA notes that at the hearing that began on November 28, 2006, the Hearing Officer granted on the record an oral motion by Illinois EPA to file a reply in this matter pursuant to 35 Ill. Adm. Code 101.500(e).

2. In paragraph 2 of the Response (references to the Response will henceforth be made simply by citing to the paragraph), Midwest Generation states that the Illinois EPA’s revised definition for “coal-fired” at Section 225.140 refers to the citation to Subpart B of Part 225, a citation to a Subpart that has not yet been fully adopted by the Board. Illinois EPA included the citation to Subpart B in its Motion to Amend as rulemakings R06-25 and R06-26 have Subpart A of Part 225 in common and both proposed rules use a definition for “coal-fired.” This citation was included to assist the Board when it combines the provisions from Subpart A

from the two separate rulemaking into one part. The definition for “coal-fired” as it applies to Subpart C (CAIR SO₂ Trading Program) is different from and does not apply to Subpart B (mercury), Subpart D (CAIR NO_x Trading Program), or Subpart E (CAIR NO_x Ozone Season Trading Program). Illinois EPA would note that R06-25 was fully adopted by the Board on December 21, 2006.

3. Midwest Generation raised several questions concerning Illinois EPA’s proposed definition for “commence construction.” In paragraph 3(a), Midwest Generation asks who determines whether subsection (a) or subsection (b) has occurred.

Illinois EPA Response: As with most decisions on whether a project has met the precondition for submitting an application, the entity makes the initial determination that they have met the precondition for applying when they submit an application. The Illinois EPA then reviews the applications and either approves or disapproves the application.

Second, in paragraphs 3(b) and(c), Midwest Generation asks whether the definitions that appear in subsections (b)(1) and (b)(2) apply to subsection (a).

Illinois EPA Response: The definitions apply to both subsections (a) and (b). Below is a clarification to the proposal creating a new subsection (c) which will include these definitions.

Third, in paragraph 3(d), Midwest Generation states that there is a typographical error in line 294.

Illinois EPA Response: Illinois EPA agrees.

Fourth, in paragraph 3(e), Midwest Generation asks whether Sections 225.470 and 225.570 should be referenced in the definition and in any other section that uses the term.

Illinois EPA Response: Illinois EPA agrees that the above sections should be included; however, Illinois EPA is limiting the applicability of the definition of “commence construction”

to the provisions that concern the Clean Air Set-Aside (CASA). The following language incorporates the comments above:

“Commence construction” means, for the purposes of Section 225.460(f), 225.470, ~~and 225.560(f)~~, and 225.570, that the owner or ~~his~~owner’s designee has obtained all necessary preconstruction approvals (e.g., zoning) or permits and either has:

- a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

c) For purposes of this definition:

- 1) “Construction” shall be determined as any physical change or change in the method of operation, including but not limited to fabrication, erection, installation, demolition, or modification of projects eligible for CASA allowances, as set forth in Sections 225.460 and 225.560.
- 2) “A reasonable time:” shall be determined considering but not limited to the following factors: the nature and size of the project, the extent of design engineering, the amount of off-site preparation, whether equipment can be fabricated or can be purchased, when the project begins (considering both the seasonal nature of the construction activity and the existence of other projects competing for construction labor at the same time, the place of the environmental permit in the sequence of corporate and overall governmental approval), and the nature of the project sponsor (e.g., private, public, regulated).

4. In paragraph 4, Midwest Generation asks whether a reference to Subpart C has been omitted from the definition of “compliance account.”

Illinois EPA Response: No, the definition for “compliance account” provided by USEPA in (CAIR SO₂ Trading Program) 40 CFR 96.202 refers to the federal Acid Rain program, while the definitions for “compliance account” for the CAIR NO_x Trading Program and CAIR NO_x

Ozone Season Trading Program as set forth in 40 CFR 96.102 and 96.302 do not. The following clarification is proposed for Section 225.310(d)(8):

- 8) Upon recordation by USEPA pursuant to 40 CFR 96, subpart FFF or ~~40 CFR 96~~, subpart GGG, every allocation, transfer, or deduction of a CAIR SO₂ allowance to or from a CAIR SO₂ source's compliance account, as defined by 40 CFR 96.202, is deemed to amend automatically, and become a part of, any CAIR permit of the CAIR SO₂ source. This automatic amendment of the CAIR permit will be deemed an operation of law and will not require any further review.

5. In paragraph 5, Midwest Generation notes that it does not appear that the eligibility of CASA projects is limited to those projects geographically located in Illinois.

Illinois EPA Response: Sections 225.460(a) through (c) and 225.560(a) through (c) all indicate that a project must be implemented in Illinois in order to be eligible for allowances from the CASA pool. To further clarify, Illinois EPA recommends that after the word "implemented" in these subsections that the words "and located" be added. In addition, Illinois EPA recommends in subsection (e) of Section 225.460 and 225.560 that the words "implemented and located in Illinois and" be added after the phrase "Applications for projects" and that the second "that" be struck:

(a), (b), and (c) means any of the follow projects implemented and located in Illinois:

- e) Applications for projects implemented and located in Illinois that ~~that~~ are not specifically listed in subsections (a) through (c) of this Section,

In paragraph 5(a), Midwest Generation asks whether, in the case of a power distributor that purchased wind-generated power, the windmills must be located in Illinois.

Illinois EPA Response: The power generated would only be eligible for allowances if the power generator paid for the windmill to be built. Purchasers of renewable energy are not eligible for allowances from the CASA, as the definition requires that it is the implementation of

the project not the use. Further, the calculation of the number of allowances is based on the number of megawatts generated. Under this scenario, the power distributor would neither be implementing the project nor generating the renewable energy.

In paragraph 5(b), Midwest Generation asks whether the power distributor purchasing the wind power needs to be located in Illinois.

Illinois EPA Response: As discussed above, the power distributor would not be eligible for allowances, so the query is moot.

In paragraph 5(c), Midwest Generation asks whether a project sponsor must be an Illinois entity or have some direct nexus to Illinois.

Illinois EPA Response: No, the only requirement is that the project be located and implemented in Illinois.

6. In paragraph 6, Midwest Generation points out that there is a comma missing in Sections 225.305(a)(2), 225.405(a)(2), and 225.505(a)(2).

Illinois EPA Response: Illinois EPA agrees. Sections 225.305(a)(2), 225.405(a)(2), and 225.505(a)(2) should be revised as follows:

2) If a stationary boiler or stationary combustion turbine that, pursuant

7. In paragraph 7, Midwest Generation notes that the organization of Section 225.305(b), 225.405(b), and 225.505(b), is confusing because it includes both units subject and not subject to the Subpart.

Illinois EPA Response: The amendments to these subsections reflect a request by USEPA that the Illinois CAIR rule use the applicability language verbatim from the April 28, 2006, *Federal Register*. The confusion arises from the fact that rules in the CFR may have six or seven levels while regulations in Illinois may only have five levels (initial level, lower case letter

(a, b), numerals (1, 2), upper case letters (A, B), and roman numerals (i, ii)). Illinois EPA's initial proposal which attempted to separate the items more clearly was found not to be approvable by USEPA; hence, an almost verbatim version is included in Illinois EPA's Motion to Amend Rulemaking. The current form of the language has been reviewed by USEPA for approvability and has been found acceptable.

8. In paragraph 8, Midwest Generation raises several issues concerning the new unit set-aside (NUSA) provisions. First, Midwest Generation states that Sections 225.430(c) and 225.530(c) do not clearly state that new units will not receive allowances for the first year that they commence commercial operation.

Illinois EPA Response: Sections 225.430 and 225.530 do not address the basis for the Illinois EPA's allocations, merely the vintage of the allowance and the date that the distribution of allowances will be submitted to USEPA. The issue of the basis for allocation to new units is more properly addressed in Sections 225.445(b) and 225.545(b) New Unit Set Aside (NUSA): "... to be allocated CAIR NO_x (Ozone Season) allowances from the NUSA starting with the first control period after the control period in which the new unit commences commercial operation..."

Second, Midwest Generation restates an issue that it raised at hearing; namely, that because the first allocation from the NUSA may be based on a partial year of operation, the number of allowances may not meet the compliance obligations of the source for the affected new unit.

Illinois EPA Response: Illinois EPA stated at hearing that while initially a new unit might receive fewer allowances to begin with, because the roll-in was much faster than under other scenarios it more accurately reflects the operation of the unit over the long-term.

Third, Midwest Generation restates another issue raised at hearing. Because the first allocation from the existing pool may be based on a partial year of operation, the number of allowances may not meet the compliance obligations of the source for the affected new unit.

Illinois EPA Response: Illinois EPA stated at hearing that while initially a new unit might receive fewer allowances to begin with, because the roll-in was much faster than under other scenarios it more accurately reflects the operation of the unit over the long-term.

9. In paragraph 9, Midwest Generation believes that the timing in Sections 225.430(c) and 225.530(c) are not consistent with the timing in Section 225.445(b) and 225.545(b), respectively.

Illinois EPA Response: The timing in the two subsections concerns two different actions. As discussed above, the timing in Sections 225.430(c) and 225.530(c) addresses when Illinois EPA will submit the allocations to USEPA for recordation in CAIR source accounts. The date is set forth in 40 CFR 51 and is required to be no later than October 31st of the applicable control period. The dates in Sections 225.445(b) and 225.545(b) concern when a CAIR designated representative is required to submit an application for allowances from the NUSA. For both the annual and ozone season trading programs, applications must be submitted by March 1st of the applicable control period. This ensures that the source will receive an allocation for the new unit before the end of the applicable control period.

10. In paragraph 10, Midwest Generation alleges that having two dates for submitting allowances to USEPA, one for the allowances from the CASA of October 1 and one for existing units of October 31, adds complexity to the program.

Illinois EPA Response: As noted in its Motion to Amend Rulemaking, the early submittal date for the allowances from CASA was to enable project sponsors more time to sell,

trade, or bank allowances before the transfer deadline for the CAIR NO_x Ozone Season Trading program. Illinois EPA believes that having two distinct deadlines lessen the confusion as the vintages of the allowances are different. Allowances from the existing pool are allocated four years in advance and allowances from the CASA pool are allocated in the same year. Furthermore, maintaining separate dates eases the burden on the Illinois EPA, which can then spread the workload for this regulation more evenly.

11. In paragraph 11, Midwest Generation raises concerns that the new wording concerning the measurement of gross electrical output is too narrow.

Illinois EPA Response: Illinois EPA is proposing that following amendments be made to its proposal to clarify that compliance with the applicable part, either 40 CFR 60 or 75, for measuring gross electrical output will be sufficient.

Sections 225.450 and 225.550 Monitoring, Recordkeeping and Reporting Requirements
for Gross Electrical Output and Useful Thermal Energy

a) By January 1, 2008, or by the date of commencing commercial operation, whichever is later, the owner or operator of the CAIR NO_x unit must ~~install, calibrate, maintain, and~~ operate a system for measuring gross electrical output that is consistent with the requirements of either 40 CFR 60 or 75 relating to measurement of gross electrical output; must measure gross electrical output in MW-hrs using such a system on a continuous basis; and must record the output of the measurement system. If a generator is served by two or more units, the information to determine each unit's heat input for that control period must also be recorded, so as to allow each unit's share of the gross electrical output to be determined. If heat input data is used, the owner or operator must comply with the applicable provisions 40 CFR 75, as incorporated by reference in Section 225.140.

e) 1) A description of the system to be used for the measurement of gross electrical output pursuant to Section 225.450(a), including a list of any data logging devices, solid-state kW meters, rotating kW meters, electromechanical kW meters, current transformers, transducers, potential transformers, pressure taps, flow ~~venturi~~venturi, orifice plates, flow nozzles, vortex meters, turbine meters, pressure transmitters, differential pressure transmitters, temperature transmitters, thermocouples, resistance temperature detectors and any other equipment or methods used to accurately measure gross electrical output.

12. In paragraph 12, Midwest Generation asks the Illinois EPA to clarify whether it is the Illinois EPA's intent that sources submit both heat input and gross electrical output data by June 1, 2008. Midwest Generation suggests that "or" be inserted at the end of Sections 225.450(c)(1) and 225.550(c)(1).

Illinois EPA Response: It is not the Illinois EPA's intent that sources submit both kinds of data. Illinois EPA proposes the following changes to Sections 225.450(c) and 225.550(c):

- c) ~~By September 30, 2006,~~ The owner or operator of a CAIR NO_x affected unit shall must either report gross electrical output data to the Agency or comply with the applicable provisions for providing heat input data to USEPA as follows:

13. In paragraph 13, Midwest Generation asks why Illinois EPA is requiring gross electrical output data on a quarterly basis and suggest that the frequency be extended to annually.

Illinois EPA Response: The quarterly reporting of heat input/output data was briefly addressed in Jackie Sims' testimony in the morning hearing session on October 11, 2006. During the testimony, reference was made to the consistency of the 40 CFR 75 regulations. (See page 114 of transcript.) USEPA has noted that quarterly reporting of heat input or output data is vital to the success of a cap and trade program. Quarterly reporting eases the administrative burden associated with data reconciliation and allowance accounting process. Quarterly reporting will also allow the Illinois EPA to work with the affected sources during the year or ozone season to address any problems with the data rather than waiting until the year or ozone season is over. Reporting this information 30 days after the end of the quarter is also consistent with the 40 CFR 75 regulations. (See 40 CFR 75.64 and 75.73(f).) It should also be noted that annual reporting would be insufficient as the Illinois EPA will also require data for the ozone season.

14. In paragraph 14, Midwest Generation requested that projects that improved the heat rate of coal-fired units be added to the category for supply-side energy efficiency projects.

Illinois EPA Response: Heat rate improvements for coal fired units are already explicitly included under the broad description of Sections 225.460(a)(3) and 225.560(a)(3), which states that “Supply-side energy efficiency projects include projects implemented to improve the efficiency in electricity generation by coal-fired power plants...” Hence, this form of supply-side energy efficiency project is already included and no further clarification is necessary.

Furthermore, given the number of acceptable and beneficial projects, the proposal also includes a “catch all” category in Sections 225.460(e) and 225.560(e). This section allows project sponsors the flexibility to submit for CASA requests for those project types not already explicitly defined. In addition, throughout the CAIR hearing process, as well as in documentation provided as early as outreach, Illinois EPA has made it clear that these types of projects are allowed, encouraged, and eligible for the CASA.

15. In paragraph 15, Midwest Generation raises two issues related to Section 225.460(d). First, Midwest Generation asks that Illinois EPA clarify in Section 225.460(d) that the subsection does not exclude projects undertaken as part of a strategy to comply with a cap and trade program or any other program where specific pollution control requirements are not enumerated in the regulation but merely that compliance with some level of reduction is required.

Illinois EPA Response: Initially, Illinois EPA notes that Sections 225.460(a, b, c) and 225.560(a, b, c) define what types of projects are energy efficiency and conservation projects, renewable energy projects, and clean technology projects (“defined projects”). By setting forth the requirements that must be demonstrated for a project to fall within one of those categories, it

is also clear that a project that fails to meet such requirements would not be considered one of the defined projects. Such a project that fails to meet the requisite elements set forth in Sections 225.460(a, b, c) and 225.560(a, b, c) would thus be excluded from the CASA. Taking that corollary a step further, Section 460(d) provides a listing of certain projects that are also excluded from the defined projects. Thus, in Sections 225.460(d)(2) and 225.560(d)(2), the regulation provides that a project required to meet emission standards or technology requirements under State or federal law or regulation is not considered a defined project (with two listed exceptions, i.e., installation of a baghouse and projects undertaken pursuant to Section 225.233). At this time, Illinois EPA finds the proposed amended language to be sufficiently clear in scope and effect. Further consideration of this language may be undertaken in the Illinois EPA's written comments due on January 5, 2007.

Second, Midwest Generation states the Illinois EPA has failed to explain – and Section 225.460(d) does not indicate – how the determination will be made that a project is ineligible under Section 225.460(d) because it is required to meet some other State or federal law or regulation. A request is made that Illinois EPA clarify how it would determine whether a project is “required to meet” some other such law or regulation.

Illinois EPA Response: Midwest Generation seems to be implying that the universe of State or federal laws or regulations that could possibly be considered when determining what laws or regulations a project is subject to are determined at the time of passage of this proposed rulemaking. However, the wording of Sections 225.460(d) and 225.560(d) makes no such limitation. Further, the question of whether a project is subject to compliance with emission standards or technology requirements pursuant to State or federal law or regulations is a compliance-related issue that would be considered and acted upon by Illinois EPA in a manner

consistent with other compliance-related decisions. Thus, no further clarification or revision of the proposed amended language is necessary.

16. In paragraph 16, Midwest Generation states that the baselines to be used for allowance allocations for control periods 2014, 2015, and 2016 are unclear and suggests that Illinois EPA add some examples for the Board to include.

Illinois EPA Response: The years that will be used to determine the allocations for 2014 are 2008 and 2009. Subsection (b)(2) of Sections 225.435 and 225.535 provides an example for the 2012 allocation year. Illinois EPA believes additional language in the proposal would be cumbersome and is unnecessary.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: _____
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DATED: December 22, 2006

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STATE OF ILLINOIS)
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COUNTY OF SANGAMON)
)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served electronically the attached
REPLY TO RESPONSE TO MOTION TO AMEND RULEMAKING upon the
following person:

Dorothy Gunn
Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
Chicago, IL 60601-3218

and mailing it by first-class mail from Springfield, Illinois, with sufficient postage affixed
to the following persons:

SEE ATTACHED SERVICE LIST

SUBSCRIBED AND SWORN TO BEFORE ME

This 22nd day of December, 2006

Notary Public

SERVICE LIST
R06-26

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