

ILLINOIS POLLUTION CONTROL BOARD
April 14, 2020

IN THE MATTER OF:)
)
STANDARDS FOR THE DISPOSAL OF) R 20-19
COAL COMBUSTION RESIDUALS IN) (Rulemaking – Land)
SURFACE IMPOUNDMENTS: PROPOSED)
NEW 35 ILL. ADM. CODE 845

HEARING OFFICER ORDER

On March 30, 2021, the Illinois Environmental Protection Agency (IEPA) filed a memorandum in the above-captioned matter, which was docketed as a public comment - PC 152. This filing was untimely as the record had closed on November 6, 2020. Hearing officer order Oct. 20, 2020.

IEPA’s memorandum summarizes the content of a meeting arranged by the Joint Committee on Administrative Rules (JCAR) on March 25, 2021. PC 152 at 1. IEPA says that submitting the memorandum to the Board was important because, “[a]lthough the rulemaking agency (the PCB) did not attend the March 25 meeting, we believe it is appropriate to report the meeting as an ex parte communication in accordance with 5 ILCS 100/5-165, even if it is not technically required.” *Id.* at 1-2. The memorandum summarizes the content of the meeting, statements made by those attending, and lists the participants of the meeting. *Id.*

On April 2, 2021, AmerenEnergy Medina Valley Cogen, LLC and Union Electric Company, d/b/a Ameren Missouri (collectively, Ameren) filed a motion to strike IEPA’s memorandum (Mot.). Ameren argues that, “the memorandum is improper and should not be a part of the rulemaking’s public content.” Mot. at 7. Further, Ameren argues that the meeting did not constitute ex parte communication and therefore did not meet the requirements laid out under the Illinois Administrative Procedure Act (IAPA). *Id.* at 8. Additionally, Ameren asks the Board to strike the memorandum as an untimely public comment. *Id.* at 8.

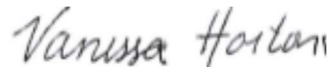
Due to the expedited nature of this rulemaking, the hearing officer ordered that any response to Ameren’s motion had to be filed by April 12, 2021. Hearing Officer Order, Apr. 5, 2021. No participant filed a response.

IEPA submitted the memorandum out of an abundance of caution, and in comports with the requirements of the IAPA. “While the Illinois EPA drafted the proposed rule and submitted it to the PCB, the PCB is the rulemaking agency for purposes of the Administrative Procedure Act (APA) and filed first notice and second notice, and received public comments in connection with the rulemaking.” PC 152 at 1. In addition to the IEPA memorandum, the Board received several additional public comments that shared the remarks the participants provided JCAR. *See*, PC 144, 146, 147, 148, 153, and 154. Ameren did not seek to strike those comments.

When at second notice, the Board can make substantive changes to its proposed rules only if requested by JCAR. 5 ILCS 100/5-40(c) (2018). The changes requested by Ameren at second notice (described in PC 151) would have been solely within the purview of JCAR to ask the Board to make.

IEPA's memorandum was only one of several comments filed by participants representing contact with JCAR during the second notice period. Ameren did not seek to strike the other comments. As the memorandum is merely a representation of a meeting between JCAR and other participants, the memorandum will not be stricken.

IT IS SO ORDERED.



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