**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**
**OF THE STATE OF ILLINOIS**

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|---|---|---|
| **AMEREN ENERGY GENERATING COMPANY, NEWTON POWER STATION,** **Petitioner,** | ) | |
| **v.** | ) | |
| **ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,** **Respondent.** | ) | **PCB 20066-68 (CAAPP Permit Appeal)** |

**NOTICE**

To:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph Street
Chicago, Illinois 60601

James T. Harrington
David L. Rieser
McGuire Woods, LLP
77 West Wacker, Suite 4100
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the **MOTION FOR LEAVE TO FILE THE ADMINISTRATIVE RECORD ON A SET OF COMPACT DISCS** of the Respondent, Illinois Environmental Protection Agency, a copy of which is herewith served upon the assigned Hearing Office and the attorney for the Petitioner.

Respectfully submitted by,

/s/
Sally Carter
Assistant Counsel

Dated: January 30, 2006
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

## CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of January 2006, I did send, by electronic mail with prior approval, the following instrument entitled **MOTION FOR LEAVE TO FILE THE ADMINISTRATIVE RECORD ON A SET OF COMPACT DISCS** to:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

and a true and correct copy of the same foregoing instrument, by First Class Mail with postage thereon fully paid and deposited into the possession of the United States Postal Service, to:

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph Street
Chicago, Illinois 60601

James T. Harrington
David L. Rieser
McGuire Woods, LLP
77 West Wacker, Suite 4100
Chicago, Illinois 60601

/s/
Sally Carter
Assistant Counsel

ORIGINAL

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**
**OF THE STATE OF ILLINOIS**

| | | |
|---|---|---|
| **AMEREN ENERGY RESOURCES GENERATING COMPANY, NEWTON POWER STATION,** | ) | |
| **Petitioner,** | ) | |
| **v.** | ) | **PCB No. 2006-068 (CAAPP Permit Appeal)** |
| **ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,** | ) | |
| **Respondent.** | ) | |

**MOTION FOR LEAVE TO FILE THE ADMINISTRATIVE RECORD ON A SET OF COMPACT DISCS**

NOW COMES the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by and through its attorneys, pursuant to 35 Ill. Adm. Code 101.500 and moves the ILLINOIS POLLUTION CONTROL BOARD ("Board") to grant the Illinois EPA leave to file scanned versions of the Administrative Record in this cause on a set of compact discs.

1. Petitioners filed their Petition with the Board on November 3, 2005, seeking a review of certain permit conditions contained within the Clean Air Act Permit Program ("CAAPP") permit issued to Ameren Energy Resources Generating Company ("Ameren" or "Newton") by the Illinois EPA on September 29, 2005. The permit authorized the operation of an electrical power generation facility known as the Newton Power Station. The facility is located at 6725 North 500th Street in Newton, Illinois. Formal notice of the appeal was served upon the Illinois EPA on November 4, 2005.

2. On November 17, 2005, the Board accepted Ameren's Petition for hearing. In addition, the Board ordered the Respondent to file the entire record of its

determination within 30 days of receipt of the Petition. If an extension of time to file the record would be sought by the Respondent, the Board's order instructed that such request was also due within 30 days after the Illinois EPA received the Petition.

3. On December 1, 2005, Illinois EPA counsel filed a Motion for Extension of Time to File Record ("Extension Motion") with the Board, observing that many permit appeals are of a type that could most aptly be described as "protective appeals" that frequently do not require the filing of an administrative record. However, counsel recognized that some of the collective twenty-one appeals possessed a much greater likelihood of proceeding to hearing, thus necessitating the filing of an administrative record in those cases. Counsel also observed that the Extension Motion was due, in small part, to the review time required for the remaining several hundred miscellaneous electronic mail messages of Illinois EPA personnel that had not yet been reviewed for information relied upon by the Illinois EPA in its permit decision.

4. The more pressing matter underlying the Extension Motion involved the logistics of providing the necessary copying and/or scanning of the Administrative Record. As previously conveyed to the Board, this Administrative Record and the related records pertaining to the twenty CAAPP permit appeals involving other electrical power generation facilities in the State are quite voluminous. Newton's record consists generally of five trial boxes of material. Approximately two boxes are particular to Newton alone, while three other boxes are more aptly characterized as general reference material and documents relevant to the decisions underlying the issuance of all twenty-one CAAPP permits to the State's electrical power generation facilities. The thrust of the Extension Motion suggested that the Illinois EPA does not possess the support-staff to

make the necessary copies for filing before the Board, the assigned Hearing Officer and opposing counsel. If the Respondent were to seek leave from the Board to file four copies of the record, plus the original, the Respondent would still be mailing approximately twenty-five trial boxes to the Board for Newton alone. This scenario does not include the five boxes that would still be required for opposing counsel and, depending on the outcome of the settlement discussions, possibly the Hearing Officer as well. The Board has not yet ruled on the Illinois EPA Extension Motion.

5. Due to support staff constraints, counsel has researched the possibility of hiring an outside contractor to perform the required copying and/or scanning. Counsel has located a State-approved contractor that is willing to "scan" the record onto a set of compact discs for each of the twenty-one CAAPP permit appeals involving the electrical power generating facilities. However, the Board's procedural rules are not entirely clear on whether the Board will accept a scanned version of the administrative record on compact disc. While Sections 105.116 and 105.212 of the Board's procedural rules require the Illinois EPA to file the entire record of its decision with the Board, these sections do not specify the manner of such filing. The more applicable provision of Section 101.302(d) provides that filing by electronic transmission is only allowed with prior Board approval. While counsel for the Illinois EPA has received prior Board and/or Hearing Officer approval for the electronic filing of briefs and/or pleadings, the Board's procedural rules do not define what constitutes an "electronic filing." As it is not entirely clear whether a scanned version of the administrative record on compact disc comports with the Board's filing requirements, the Illinois EPA is seeking leave in the instant motion.

6. Additionally, the Board has previously expressed an interest for the electronic filing of documents that are amenable to a search command with the Board. Unfortunately, the Illinois EPA has recently learned that a searchable version of the scanned compact discs would be cost prohibitive to the State of Illinois.[1] However, the Illinois EPA will be providing a type of search mechanism through the bate stamping of the documents that will take place prior to shipment of the documents to the scanning service. In addition, future electronic filings, including any final briefing documents, will be filed by the Illinois EPA in Word format, thereby providing the Board its desired search function. Finally, it is worth noting that if the Illinois EPA were to file a more traditional paper record with the Board, no quick search mechanism would exist for such filing.

7. Counsel for Petitioner has conveyed to the Illinois EPA that they have no objection to a scanned version of the Administrative Record.

8. Based on the foregoing, the Illinois EPA formally seeks leave to file its Administrative Record with the Board on a set of compact discs. Specifically, the Illinois requests leave to file five sets of compact discs with the Board containing the two trial boxes of the Administrative Record that are particular to Newton alone. In addition, for the additional three trial boxes more aptly characterized as general reference material and

[1] Under the State contract, it costs the Illinois EPA a little over three cents a page to have a document scanned by the contractor. To provide a searchable scanned document via optical character recognition, it would cost the Illinois EPA approximately a dollar a page for a typical written document. While the contractor does not provide a guarantee on the accuracy of this function, it typically operates with 70 % degree of accuracy. If the Illinois EPA requested the same search function on all handwritten documents in the Administrative Record as well, it would cost approximately $1.65 per page. Counsel for the Illinois EPA estimates that there are approximately 150,000 pages including countless handwritten documents in the Administrative Record and the related records pertaining to the twenty CAAPP permit appeals involving the other electrical power generating facilities in the State. The cost differential between the varying degrees of searchable records and a non-searchable record is anywhere from $150,000 to $247,500 versus $5,000.

documents relevant to the decisions underlying the issuance of all twenty-one CAAPP permits to the State's electrical power generation facilities, the Illinois EPA requests leave to file five sets of compact discs for all twenty-one CAAPP permit appeals. This will avoid the needless duplication of the same general reference discs for all twenty-one CAAPP appeals before the Board.

9. The granting of this Motion for Leave to File the Record on a Set of Compact Discs will ensure that this voluminous record is not only filed but will further minimize any potential administrative burdens associated with the maintenance and storage of hundreds of trial boxes for this appeal, together with the other twenty CAAPP appeals before the Board and the assigned Hearing Officer.

WHEREFORE, the Illinois EPA respectfully requests that the Board grant this Motion for Leave to File the Administrative Record on a Set of Compact Discs.

Respectfully submitted by,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

_____/s/_____
Sally A. Carter
Assistant Counsel

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