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September 23, 2005

By Hand

Ms. Eureka Durr
Clerk of the Board
Environmental Appeals Board
U.S. Environmental Protection Agency
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

Re: Prairie State Generating Station
Permit Number 189808AAB
PSD Permit Appeal No. PSD 05-05

Dear Ms. Durr:

Enclosed for filing is one original and three copies of Prairie State Generating Co., LLC's Motion to Strike Improper Exhibits.

Thank you for your assistance in this matter. If you have any questions, please feel free to call me.

Sincerely,

Kevin J. Finto

KJF:lo
Enclosure

U.S. P.A.C.

SEP 23 2005

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

IN THE MATTER OF:)
PRAIRIE STATE)
GENERATING STATION) APPEAL NUMBER: PSD 05-05
APPLICATION NUMBER: 01100065)
PSD PERMIT NUMBER: 189808AAB)

**PRAIRIE STATE GENERATING CO., LLC'S
MOTION TO STRIKE IMPROPER EXHIBITS**

Intervenor Prairie State Generating Co., LLC ("PSGC"), by counsel, moves to strike Exhibits 54 and 55 to Petitioners' Reply on the their Petition for Review. These exhibits are outside the record in this case. Moreover, they inject new issues that are irrelevant, misleading, and beyond the permissible scope of a reply brief. In support of this motion, PSGC states the following:

1. Petitioners were granted leave to file a Reply by Order dated August 19, 2005. The Order did not purport to alter the rules limiting review to matters in the administrative record. *See, e.g.*, 40 C.F.R. § 124.18(a)-(b) (2004) (final permit decisions must be based on administrative record, which includes comments received during public comment period); *id.* § 124.13 (to ensure consideration of their comments, interested persons "must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period"); *In re RockGen Energy Ctr.*, 8 E.A.D. 536, 557-58 (EAB 1999). In fact, the Order expressly took no position on the relevance of the interlocutory recommendation in the Thoroughbred matter. Order at 2 n.3.

2. Despite the rules, Petitioners attached two exhibits to their Reply that are outside the administrative record. Exhibit 54 is the interlocutory recommendation in *Sierra Club, et al. v. Environmental & Pub. Prot. Cabinet, et al.* ("Thoroughbred challenge"). Exhibit 55 is a rough transcript of a statement on September 8, 2005, by Greg Boyce ("Boyce statement"). Mr. Boyce is the President and CEO-elect of Peabody Energy, the ultimate parent of PSGC. As these documents are outside the record, they should not be considered in this proceeding and should be stricken.

3. These documents are also irrelevant and misleading. As noted in PSGC's opposition to Petitioners' Motion to File reply, the Thoroughbred case and permit are markedly different from the PSGC case and permit. Although the projects are similar in some respects, their permits contain numerous substantive differences. For instance, Thoroughbred has a combined PSD/Title V permit, whereas PSGC has only a PSD permit. The administrative records in the respective cases are also radically different. As just one of numerous possible examples, Illinois EPA evaluated IGCC technology in detail, whereas the Kentucky Division of Air Quality exercised its discretion not to require a full evaluation of IGCC. Moreover, a standard of review was applied in Kentucky (*de novo* review not limited to administrative record) wholly different from the standard this Board applies. Indeed, Kentucky does not consider this Board's precedent binding, and the hearing officer applied a BACT definition that this Board has consistently rejected. In short, not only is the Kentucky recommendation outside the administrative record, it is irrelevant and will confuse the review of the PSGC challenge.

4. The Boyce statement is likewise outside the record and irrelevant. More than four months after the PSGC permit was issued, Mr. Boyce was speaking about Peabody and its

business. Pulled from the internet,¹ the transcript is rough and contains obvious errors and omissions. More important, Petitioners' carefully edited and crafted paraphrase of Mr. Boyce's comments distorts the context. Petitioners try to suggest that Mr. Boyce somehow contradicted IEPA's findings about the economics of IGCC for PSGC. *See* Reply at 8. This is flatly wrong and contradicted by the statement itself. *See, e.g.*, Exhibit 55 at 6-7 (Mr. Boyce is referring to technologies identified in the previous paragraph -- "electric power generation facility, oil producing facility from coal...pipeline quality natural gas producing facility from coal" -- but not specifically IGCC -- when he says "these technologies are real." On page 11, Mr. Boyce makes it clear that when he is talking about "gasification" — conversion of coal to gas — he is contemplating movement of the gas offsite rather than use in an IGCC unit (gasification and a combined cycle turbines) onsite and, consistent with IEPA's findings, he recognizes the high capital costs of gasification.)

The things that you look for in terms of where you would locate gasification facilities is the size of the coal reserve that you have, then the availability of infrastructure to move the gas product out once you have it in place. You know, in the Power River Basin you could build a facility, and with all of the gas pipelines that came out of there from the (inaudible) methane, you could move it. And if you put it in the Illinois Basin, there's certainly plenty of gas infrastructure to move that gas. Capital costs are high. There's no question about that.

With respect to IGCC, Mr. Boyce speaks only in the future tense:

The future-gen plant, which is the IGCC power plant, coupled with carbon sequestration and hydrogen production, which will be funded jointly between the federal government and a consortium of coal and electric utilities is really designed to show that technology will be commercial and will provide the ability to supply hydrogen fuel for the transportation sector of the future for coal.

¹ Counsel for PSGC could not locate the transcript at the website cited by Petitioners.

Id. at 7 (emphasis added). Nothing in Mr. Boyce's statement is inconsistent with IEPA's analysis.

5. In addition, the Board should strike these exhibits on fairness grounds. IEPA never considered them during the permitting process. Moreover, they were not raised in the Petition. They were raised for the first time in the Reply, and neither Respondent has had the opportunity to brief the issues fully. If the Board were to allow these exhibits that are outside the record and that post-date the permit, an already-complicated appeal becomes even more complicated. Irrelevant and collateral issues will detract from the real issues.

For these reasons, PSGC respectfully requests that the Board strike Exhibits 54 and 55 accompanying Petitioners' Reply.

Respectfully submitted,



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Dated this 23rd day of September, 2005.

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of September, 2005, copies of the foregoing were served by first class mail, postage prepaid on:

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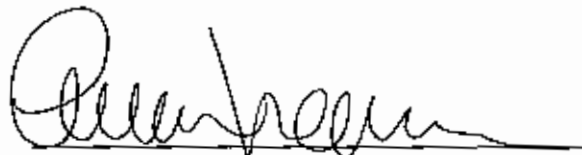
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