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IVIR. APPEALS BOARD

January 19, 2006

VIA MESSENGER

Eurika 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: In re: Prairie State Generating Station
Permit No. 189808AAB
PSD Appeal No. 05-05

Dear Ms. Durr:

Enclosed please find an original and five copies of a letter that we are submitting on behalf of the Indiana Municipal Power Agency, the Missouri Joint Municipal Electric Utility Commission, the Northern Illinois Municipal Power Agency, Soyland Power Cooperative, Inc., Wolverine Power Supply Cooperative, Inc., and the Kentucky Municipal Power Agency (the "Public Power Participants"). The Public Power Participants previously filed a Motion for Leave to File a Brief as Amici Curiae, accompanied by the Public Power Participants' Brief as Amici Curiae.

If you have any questions concerning these materials, please call me at 585-263-1612.

Very truly yours,

Scott M. Turner /aw

Scott M. Turner

cc: Petitioners
Robb H. Layman
Kevin J. Finto
Susan M. Tennenbaum



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1341 G Street, N.W., Suite 600
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RE: In re: Prairie State Generating Station
Permit No. 189808AAB
PSD Appeal No. 05-05

Dear Members of the Board:

On behalf of the Indiana Municipal Power Agency ("IMPA"), the Missouri Joint Municipal Electric Utility Commission ("MJMEUC"), the Northern Illinois Municipal Power Agency ("NIMPA"), Soyland Power Cooperative, Inc. ("Soyland"), Wolverine Power Supply Cooperative ("Wolverine"), and the Kentucky Municipal Power Agency ("KMPA") (collectively, the "Public Power Participants"), we write to express our opposition to a request filed by the U.S. Environmental Protection Agency ("EPA") for an extension of sixty days (*i.e.*, until March 21, 2006) to file a brief requested by the Environmental Appeals Board ("EAB or the "Board") on December 12, 2005 regarding the Prairie State Generating Station ("PSGS"). As noted in EPA's request, Intervenor Prairie State Generating Company, LLC opposed this request. Neither Prairie State nor the Public Power Participants want to appear uncooperative with EPA.

As the entities serving approximately one million customers in Indiana, Illinois, Missouri, Michigan and Kentucky, the Public Power Participants have entered into definitive agreements to acquire a 47% ownership in PSGS and its electrical output. Any further delay of the Prairie State project jeopardizes its completion in time to meet the Public Power Participants' customers' real energy needs. Moreover, while EPA has characterized the Board's Order as "requesting that EPA address legal policy questions of nationwide significance," we believe that it is possible for EPA to answer the questions posed in the EAB Order based on information in the PSGS permit record, recent guidance, and EAB decisions in a manner that would not require lengthy policy deliberations. The Public Power Participants respectfully request that EPA file its brief and the EAB issue a decision as soon as possible.

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I. A LESS THAN EXPEDITIOUS REVIEW WILL IMPERIL THE ABILITY TO MEET POWER REQUIREMENTS.

A. The Public Power Participants face real deadlines.

While some power projects may be speculative in nature, PSGS is a real project that will provide real electricity to real consumers who need it by a certain date. As stated in the Amicus Brief filed by the Public Power Participants on July 28, 2005, the power from PSGS is needed to meet the growth of demand of KMPA by 2009 and for the remaining Public Power Participants by 2010. Nothing has changed in this regard. That is why Prairie State filed the permit application in October 2001 and has worked diligently for its issuance in April 2005. Because of delays resulting from the Petition, this schedule is already in jeopardy.

B. The PSD Permit is critical path for PSGS.

PSGS is a complex project that involves a multitude of regulatory, engineering, financial and commercial arrangements that must work in an interdependent and coordinated fashion. Integral to almost all of these agreements is the final issuance of the prevention of significant deterioration ("PSD") permit because it defines many of the key parameters of the design, construction and operation of the project. While a good portion of the arrangements can be sketched out, only when the permit is final can the various parties, which include Prairie State, the Public Power Participants, engineering firms, financial institutions, equipment vendors and construction companies, work to finalize the arrangements so that construction can begin. The construction will also take several years. Thus, EPA's request for an additional sixty days from January 20 to March 21, 2006 inevitably will postpone the issuance of the permit that threatens to interfere with the highly complex sequence of events required to commence construction and the production of power by the 2009-2010 timeframe.

C. Delay adversely affects public health and welfare.

In addition to the concern about the schedule to ensure a reliable power supply, there is also concern about the increased costs that will be incurred if there is further delay. These will result in additional costs to electrical customers served by the Public Power Participants. In sum, the delay of the PSGS project, which is exacerbated by the extension sought by EPA, has a detrimental impact on the reliability and affordability of electric power. Reliable, low cost energy is important to public health and welfare; moreover, high energy costs have a disproportionately adverse impact on individuals living on fixed and low incomes. *See Klein and Keeney, Mortality Reductions from the Use of Low Cost Coal-Fueled Power: An Analytical Framework (December 2002) (Doc. 199 Certified Index).*

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II. AN ALTERNATIVE TO A LENGTHY POLICY DELIBERATION

The EAB Order of December 12 asks a series of three questions. In the spirit of expediting the process, the Public Power Participants respectfully suggest that EPA can address these questions based on EPA's comments during the permitting process, recent EPA guidance issued in the course of other matters, EAB decisions and/or a review of the facts presented in the IEPA Responsiveness Summary. In this way, a lengthy policy deliberation can be avoided.

A. **EPA Region V and IEPA properly addressed the issue of high versus low sulfur coal.**

For example, with respect to questions about the need to consider low sulfur coal as an alternative to the relatively higher sulfur mine mouth coal, EPA Region V addressed this issue in its comments:

The draft permit proposes BACT for SO₂ for the boilers as 0.182 lb/mmBtu, 30-day rolling average, achieved with wet scrubbing. The recent PSD permit for Indeck-Elwood in Illinois and the proposed WE Power project in Wisconsin both have lower BACT limits of 0.15 lb/mmBtu. Considering that the high inherent sulfur content of the mine-mouth coal to be combusted at the proposed plant results in an SO₂ emission rate that is above 0.15 lb/mmBtu, the BACT determination also should include an enforceable 30-day rolling average minimum percent control efficiency for the SO₂ control system.

Letter from Pamela Blakely, Chief, Air Permit Section, EPA Region V, to Don Sutton, IEPA at 1 (July 26, 2004). In this comment, EPA Region V recognized the inherently higher sulfur in the Prairie State mine mouth fuel supply in comparison to other plants burning eastern bituminous coal and required additional restrictions to ensure the permit imposed BACT. EPA Region V did not suggest that the plant consider switching to lower sulfur fuel; rather, it recommended imposing a minimum percent SO₂ control efficiency.

IEPA responded to this comment by adding a 98% SO₂ removal requirement as recommended by EPA. Responsiveness Summary 99 at 46. IEPA concluded that 98% SO₂ removal was the maximum reduction achievable. *Id.* 100 at 46-47, 109 at 52. IEPA's approach of combining a numeric 30-day SO₂ emission limit with an annual requirement of 98% SO₂ removal is consistent with EPA Region V's comment and meets the regulatory definition of BACT -- it is "an emissions limitation . . . based on the maximum degree of reduction of each pollutant . . ." 40 C.F.R. § 52.21(b)(12). In this comment and response, EPA Region V and IEPA acted consistent with longstanding agency policy that BACT does not redefine the source. *See In the Matter of Pennsauken County, New Jersey Resource Recovery Facility*, PSD Appeal

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No. 88-8 at 11 (Adm'r 1988). Thus, the agency effectively answered this question on the site-specific facts of PSGS, and there is no need for a lengthy policy deliberation on it.

B. The “clean fuels” language.

The first question also asks about the consistency of IEPA’s approach with the term “clean fuels” in the BACT definition. The words “clean fuels” are only a fragment of the BACT definition. BACT is “an emission limitation based on the maximum degree of reduction . . . which the permitting authority [here, IEPA], on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems and techniques, including fuel cleaning, clean fuels or treatment or innovative fuel combustion techniques for control of each such pollutant.” CAA § 169(3). Thus, “clean fuels” is one of a litany of “available methods, systems and techniques.” Because the definition uses the disjunctive “or” rather than the conjunctive “and,” nothing suggests that every project must consider both “clean fuels” and “fuel cleaning.” For PSGS, where the fuel is part of the project definition, and required use of low sulfur fuel would redefine the project, it was reasonable for EPA and IEPA to require a careful analysis of coal washing (*i.e.*, “fuel cleaning” rather than “clean fuels”) in the BACT analysis. *See, e.g.*, Responsiveness Summary 54-98 at 26-45, 30 at 63.

Nevertheless, IEPA addressed the adverse environmental and economic impacts of bringing in low sulfur coal versus using mine mouth coal in terms of pollution from transportation. *Id.* 46 at 23. IEPA also distinguished the state-of-the-art pollution control equipment proposed for Prairie State from the lesser controlled existing units in Illinois using low sulfur coal. *Id.* IEPA also distinguished the Prairie State situation from those in the *Inter-Power of New York* and *Hawaiian Commercial* EAB decisions in which “the planned fuel supply for the proposed project was not an intrinsic aspect of the project. Instead, the selection of the planned fuel supply for the proposed plant involved a business decision by the source considering potential fuel supplies, all of which would have to be transported substantial distances to the proposed plant.” *Id.* 47 at 24.

C. The basis for EPA’s historical views.

The Order asks “[i]n OGC’s and the Region’s view, what is the statutory or regulatory basis for the Agency’s historical views regarding redefining the source?” In a recent letter, EPA reconfirmed that the BACT requirement is not “a means to redefine the basic design of the source or change the fundamental scope of the project when considering available control alternatives.” Letter from Stephen D. Page, Director, EPA Office of Air Quality, Planning and Standards, to Paul Plath, Senior Partner, E3 Consulting, LLC at 1 (Dec. 13, 2005). For support, EPA cited CAA § 165(a)(4), which provides that a major emitting facility may not be constructed unless “*the proposed facility* is subject to the best available control technology for each pollutant . . . from . . . *such facility*”. CAA § 165(a)(2) (emphasis added). EPA further quoted from the definition of BACT in CAA § 169(3), which refers to “such facilities.” Under

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the plain language of the statute, the BACT analysis focuses on the determination of an emission limitation for “the proposed facility” — *i.e.*, the facility proposed by the applicant. *See also In the Matter of Pennsauken County, New Jersey Resource Recovery Facility*, PSD Appeal No. 88-8 at 11 (Adm’r 1988; *In re Spokane Regional Waste-to-Energy*, PSD Appeal No. 88-12 at 5, n.7 (Adm’r 1989).

D. The IEPA complied with its obligations under CAA § 165(a)(2) and 40 C.F.R. § 124.17 to provide an opportunity for and briefly respond to public comments.

Finally, the EAB asks for EPA’s view of “Petitioners’ reliance upon the Agency’s briefs in other cases to the effect that IEPA has . . . broad authority to consider and a duty to respond to public comments . . . suggesting alternatives to Prairie State’s proposed Facility.” The CAA and implementing regulations simply require an opportunity for public comment (CAA § 165(a)(2)) and impose a duty upon IEPA to “[b]riefly describe and respond to all significant comments.” 40 C.F.R. § 124.17(emphasis added). Contrary to Petitioners claim, IEPA did both. Therefore, there is no policy issue warranting prolonged review.

During the public comment period, Petitioners suggested the power plant was not necessary or that natural gas, wind, or a smaller plant might be appropriate. Petitioners did *not* provide with their comments any analysis of the impacts of alternatives to the proposed source. IEPA considered and responded to these comments in two ways. *See* Responsiveness Summary, 19-31 at 13-17, 45 at 22, 52 at 25. First, IEPA explained the scope of its legal authority, noting that it had not been given authority by the Illinois legislature to conduct an analysis of alternative sites and facilities as part of the PSD permitting process. *See, e.g., id.* 19 at 13-14, 21 at 14. Second, IEPA responded to the substance of the comments and explained why the alternatives posed by Petitioners were rejected. *See, e.g., id.* 22-23 at 14-15, 25 at 15-16, 45 at 22, 52 at 25. IEPA explained that there was a need for PSGS to satisfy growing electricity demand in Illinois, even with conservation and efficiency improvements; that Illinois would benefit from an efficient coal plant that burns local coal, which would free up natural gas for other regions and uses; and that alternatives suggested by Petitioners such as wind power were not appropriate for base load generation. *Id.*

Moreover, the “alternatives” language of section 165(a)(2) applies to the phrase “air quality impacts of such source,” not just to the “source.” In other words, section 165(a)(2) invites comments presenting alternatives to the air quality impact analysis provided for the proposed source, not merely comments suggesting that an alternative to the source proposed by the applicant might be preferable. IEPA and the applicant conducted extensive air quality analysis of the proposed source, and IEPA explained that based on those analyses, the size and location of PSGS were not at issue. Responsiveness Summary 49 at 25. Because Petitioners did not submit any alternative analysis of “the air quality impact of such source,” there is no comment on the matter addressed by CAA § 165(a)(2), much less a comment that requires any new analyses by the permit issuer or applicant. *See generally Newmont Nevada Energy*

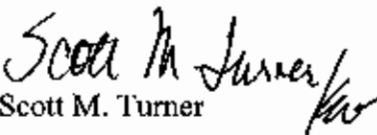
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Investment, L.L.C., PSD Appeal No. 05-04 (EAB 2005). Petitioners' dissatisfaction with the result of IEPA's consideration of its comments does not raise a policy issue.

III. CONCLUSION.

The Public Power Participants previously wrote of the need for expeditious review of this PSD permit in our Motion for Leave to File a Brief as Amici Curiae on July 28, 2005. Nearly six months later we once again are compelled to alert the Board to the urgency of our situation. The Public Power Participants respectfully request that the EPA expeditiously respond to the Board's Order without prolonged policy deliberations and that the Board issue a decision on the Prairie State permit as soon as possible.

Respectfully submitted,


Scott M. Turner

cc: Petitioners
Robb H. Layman
Kevin J. Finto
Susan M. Fennelbaum

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of January, 2006, copies of the foregoing letter on behalf of the Public Power Participants were served by first class mail, postage prepaid to:

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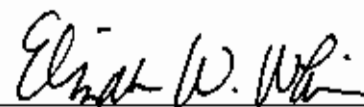
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