

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

IN THE MATTER OF:)
) PSD APPEAL NO. 09-04
POWER HOLDINGS OF ILLINOIS, LLC)

Notice

To:

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

John J. Kim
Chief Legal Counsel
Illinois Environmental Protection Agency
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77 W. Jackson Boulevard
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PLEASE TAKE NOTICE that I have today filed with the Clerk of the Environmental Appeals Board an original and two copies of Permittee's Objection, Motion for Reconsideration of Order Extending Time to File Response to Petition for Review, and Motion for Expedited Review on behalf of the Permittee, POWER HOLDINGS OF ILLINOIS, LLC, a copy of which is herewith served upon you.

Respectfully submitted by,



Patricia F. Sharkey
On Behalf of Power Holdings of Illinois, LLC

Dated: January 6, 2010

McGuireWoods LLP
77 West Wacker Drive
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(312) 750-8601
Illinois Attorney No. 6181113

Certificate of Service

I hereby certify that on the 6th day of January, 2010, I did send the following document entitled **Permittee's Objection, Motion for Reconsideration of Order Extending Time to File Response to Petition for Review, and Motion for Expedited Review** to the following persons:

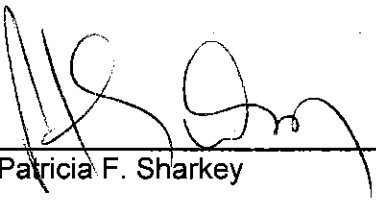
Eurika Durr
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By: Patricia F. Sharkey

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

In the Matter of:)
) **PSD Appeal No. 09-04**
Power Holdings of Illinois, LLC)

**Permittee's Objection, Motion for Reconsideration of
Order Extending Time to File Response to Petition for Review, and
Motion for Expedited Review**

Power Holdings of Illinois, LLC ("Power Holdings"), the Permittee in this matter, hereby objects to the State of Illinois' *Motion for Extension of Time to File Response to Petition for Review*, moves the Environmental Appeals Board ("Board") to reconsider its *Order Extending Time to File Response to Petition for Review*, and moves the Board for expedited review in this proceeding.

In support thereof, Power Holdings states:

1. Power Holdings filed a *Request to Participate* in this proceeding on December 30, 2009. In that Request, Power Holdings emphasized its concern that unwarranted delay might occur in this proceeding and emphasized that such delay would be prejudicial to Power Holdings interest in the timely commencement of construction of its new facility.

2. On January 4, 2009 the State filed a Motion for an extension of 60 days in which to file both the Administrative Record and its Response Brief. Although the State consulted with the Sierra Club, the State did not consult with Power Holdings. As the State and Power Holdings share the same goals in this proceeding, this failure to consult was likely inadvertent.

3. The Board granted Power Holdings *Request to Participate* on January 5, 2009, but failed to give Power Holdings an opportunity to respond to the State's Motion. Again, this may have been an oversight.

4. That this lengthy extension is unwarranted can be discerned from the State's Motion, which simply states: "The permitting agency continues to compile the administrative record and the certified index thereto, which after completion and review by the Office of the Illinois Attorney General, will be filed with the Board." These are steps which can be accomplished in far less than 60 days.

5. Facts which can be discerned from the filings and public record in this case demonstrate that the Administrative Record is readily available and that a 60 day extension is unnecessary. Those facts are as follows:

- The Administrative Record has long been closed -- as can be discerned from the fact that the public comment period in this proceeding closed on midnight, May 4, 2009 and the permit was issued on October 26, 2009.

- The relevant documents are not difficult to compile -- as can be discerned from Sierra Club's Petition for Review which was filed on November 25, 2009 together with almost all of the relevant documents in the Record attached as Exhibits.

- The issues in this proceeding are well known to the State -- as can be discerned from the State's lengthy and well documented Responsiveness Summary which was issued together with the permit on October 26, 2009.

6. What the State and the Board may not have considered is that taking an extra 60 days to file these initial filings will have significant implications for Power Holdings construction schedule. Power Holdings cannot commence construction of its new facility until this appeal proceeding is concluded and its permit is deemed to be finally issued. As the construction season is approaching, Power Holdings urges the State and the Board to recognize that moving forward in this proceeding with all due speed and diligence, in accordance the standard procedures and deadlines prescribed by 40 C.F.R. 124 and by the Board in its Practice Manual and standard orders, is critical.

7. The Board has previously recognized that delay in new source permit appeals is prejudicial to the permittee. In the matter *In re Hawaii Electric Light Company, Inc.*, PSD Appeal Nos. 01-24 and 01-29 (Board Nov. 27, 2001, Order Denying Review), before denying review, the Board issued an Order Granting Motion to Intervene and To Expedite, stating: "It is the Board's practice to assign permit appeals under 40 C.F.R. 124 involving new source construction the highest priority." In order to give this case the priority it deserves and that the Board has assigned other new source cases, it is incumbent on the Board to limit requests for extensions to the minimum time demonstrated to be necessary and to generally hold this proceeding to a strict schedule.

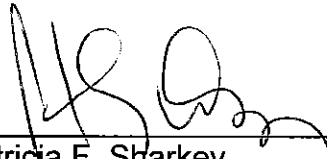
8. Upon reconsideration, Power Holdings requests that the Board establish a revised schedule which allows the State until no later than February 3, 2010 (30 additional days) to file the State's Response Brief and the Certified Index to the Administrative Record, together with relevant documents

from the Administrative Record. This schedule is generous and achievable. Power Holdings is prepared to file its own brief in this matter on or before February 3, 2010 as well.

9. Power Holdings further moves the Board to expedite review in this matter by allowing no extensions of time, no extraneous motions, and no other delays which are not necessary to the Board's review of this permit, and by prioritizing the Board's own review of this case.

WHEREFORE, Power Holdings requests that the Board reconsider its January 5, 2010 Order granting the State's motion, establish a revised schedule for submittal of the Administrative Record and Response Briefs, as outlined above, and prioritize and expedite this proceeding.

Respectfully submitted,



Patricia F. Sharkey
On Behalf of Power Holdings of Illinois, LLC

Dated: January 6, 2010

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