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ENVIR. APPEALS BOARD

March 15, 2006

Via Fascimile and Federal Express
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Ms. Erika Durr, Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1341 G Street, N.W. Suite 600
Washington, D.C. 20005

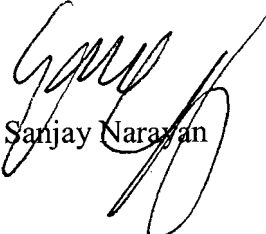
Re: Appeal Number: PSD 05-05
Permit Number: 189808AAB
Prairie State Generating Company

Dear Ms. Durr:

Enclosed for filing is one original and three copies of Petitioners' Motion for Leave To File Response Brief.

Thank you for your assistance in this matter. If you have any questions about this filing or if I can be of any further assistance please call me.

Sincerely,


Sanjay Narayan

Enclosures

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

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ENVIR. APPEALS BOARD

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

MOTION FOR LEAVE TO FILE RESPONSE BRIEF

Petitioners hereby move for leave to file a brief responding to the Brief of the EPA Office of Air and Radiation and Region V, filed in this matter on March 7, 2006 (“USEPA Brief”). Petitioners request leave to file their Response Brief by Monday, April 3, 2006. Petitioners have contacted counsel for the United States Environmental Protection Agency (“USEPA”), Illinois Environmental Protection Agency (“IEPA”), and the intervenor, to determine whether they oppose this motion. IEPA and the intervenor have indicated that they will oppose this motion.

On December 12, 2005, the Environmental Appeals Board issued an order requesting a brief from USEPA addressing: (1) whether “IEPA’s conclusion that low-sulfur coal is not a potentially applicable control alternative correctly appl[ies] the statutory definition of BACT and relevant Agency guidance”; (2) “the statutory or regulatory basis for the Agency’s historical views regarding redefining the source”; and (3) Petitioners’ reliance upon the Agency’s briefs in other cases to the effect IEPA has . . . broad authority to consider and a duty to respond to public comments” Order Requesting EPA’s Office of General Counsel & EPA’s Region 5 to File a Brief at 11-12. On April 3, 2006, USEPA filed the requested brief.

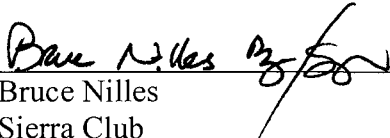
Petitioners request leave to respond to USEPA's brief, for two reasons. First, USEPA has raised arguments that are wholly novel to these proceedings. USEPA primarily contends that the applicant's desire to utilize coal from an adjacent mine should be considered part of the "basic design" of the proposed source, thereby excusing IEPA's failure to consider the use of low-sulfur coal from alternative sources during its BACT analysis. USEPA Brief at 7. Neither IEPA nor the permit applicant has previously made that argument – and as a result, Petitioners have had no opportunity to address it. Similarly, USEPA asserts that the Clean Air Act does not require permitting agencies to consider the need for a proposed facility, or "alternatives such as energy efficiency or demand management." USEPA Brief at 22-23. Both of those arguments differ from IEPA's own justification of its decisions; Petitioners have not had an opportunity to address them.

Second, the positions taken here by USEPA have broad-ranging significance. They will affect a variety of PSD permits. For example, Petitioners here are currently challenging Peabody's proposal to build a similar coal-fired power plant in front of the Kentucky Environmental and Public Protection Cabinet. There, as here, Peabody would prefer to utilize coal from an adjacent mine, and has contended that consideration of lower-sulfur coal should be excluded from the BACT analysis. Likewise, the Montana state authorities are currently considering a permit for the Roundup coal-fired power plant, whose owner proposes to use coal from an adjacent mine. The USEPA Brief opines on issues that could affect each of these, as well as additional future, permit proceedings in a manner that directly affects Petitioners' interests.

For these reasons, Petitioners request leave to submit a brief responding to the USEPA brief.

Respectfully submitted this 15th day of March, 2006,

By:



Bruce Nilles
Sierra Club
214 N. Henry Street, Suite 203
Madison, WI 53703
p: 608.257.4994
f: 608.257.3513
Bruce.nilles@sierraclub.org

Alex Levinson
Sanjay Narayan
Sierra Club Environmental Law Program
85 Second St., 2d Floor
San Francisco, CA 94105
p: 415.977.5769
f: 415.977-5793
sanjay.narayan@sierraclub.org

On behalf of Petitioners

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BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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ENVIR. APPEALS BOARD

IN THE MATTER OF:) PSD APPEAL NO. 05-05
PRAIRIE STATE)
GENERATING STATION)
)
PERMIT NUMBER)
189808AAB)

CERTIFICATE OF SERVICE

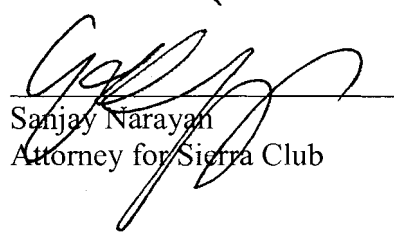
On March 15, 2006 I served a copy of the **PETITIONERS' MOTION FOR LEAVE TO FILE RESPONSE BRIEF** on the following parties via United States first class mail, postage pre-paid:

Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region V
77 West Jackson Boulevard
Chicago, IL 60604-3507

Mr. Bertram Frey
Acting Regional Counsel
Office of Regional Counsel
U.S. EPA, Region V
77 West Jackson Boulevard
Chicago, IL 60604-3507

Robb Layman
Assistant Counsel
Illinois EPA
1021 North Grand Ave, East
P.O. Box 19276
Springfield, Illinois 62794-9276

Kevin Finto, Esq.
Hunton & Williams
Riverfront Plaza East Tower
951 East Byrd Street
Richmond, VA 23219


Sanjay Narayan
Attorney for Sierra Club