

**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
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

David C. Bender
McGillivray Westerberg & Bender LLC
305 S. Paterson Street
Madison, Wisconsin 53703

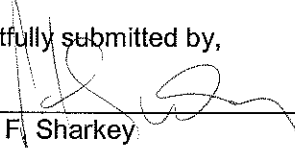
Matthew Dunn
Chief, Environmental Enforcement Division
Office of the Attorney General
100 West Randolph Street
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Robert Kaplan
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U.S. Environmental Protection Agency,
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77 W. Jackson Boulevard
Chicago, Illinois 60604-3507

Susan Hedman, Environment & Energy
Counsel
Gerald Karr, Assistant Attorney General
Office of the Illinois Attorney General
69 W. Washington – 18th Floor
Chicago, Illinois 60602

PLEASE TAKE NOTICE that I have today, March 10, 2010, filed with the Clerk of the Environmental Appeals Board on behalf of the Permittee, POWER HOLDINGS OF ILLINOIS, LLC, **Permittee's Notice of Objection to Petitioner's Motion for Leave to Reply and Permittee's Request for Leave to Respond to Such Motion** by electronic filing, a copy of which is herewith served upon you.

Respectfully submitted by,



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

Patricia F. Sharkey
McGuireWoods LLP
77 West Wacker Drive
Suite 4100
Chicago, Illinois 60601-1818
(312) 750-8601
Illinois Attorney No. 6181113

Certificate of Service

I hereby certify that on the 10th day of March 2010, I did send, the attached **Permittee's Notice of Objection to Petitioner's Motion for Leave to Reply and Permittee's Request for Leave to Respond to Such Motion**, to the following persons by U.S. Mail and, in addition, by electronic filing to the Clerk of the Board:

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

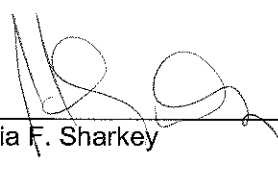
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Susan Hedman, Environment & Energy Counsel
Gerald Karr, Assistant Attorney General
Office of the Illinois Attorney General
69 W. Washington – 18th Floor
Chicago, Illinois 60602


By: Patricia F. Sharkey

Dated: March 10, 2010

Patricia F. Sharkey
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Chicago, Illinois 60601-1818
(312) 750-8601
Illinois Attorney No. 6181113

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

In the Matter of:

Power Holdings of Illinois, LLC

)
)
) **PSD Appeal No. 09-04**
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**PERMITTEE'S NOTICE OF OBJECTION
TO PETITIONER'S MOTION FOR LEAVE TO REPLY
AND
PERMITTEE'S REQUEST FOR LEAVE TO RESPOND TO SUCH MOTION**

Power Holdings of Illinois, LLC ("Permittee") hereby notifies the Board of its objection to Petitioner's anticipated Motion for leave to file a Reply in this matter and requests an opportunity to file a Response to any such Motion once it is posted on the Board's online docket.

In support thereof, Permittee states:

1. On Wednesday, March 10, 2010, Petitioner's attorney of record, David C. Bender, notified Permittee's attorney of record, Patricia F. Sharkey, of Petitioner's intent to file a Motion requesting leave to file a Reply brief in this matter on or before April 5, 2010. After conferring with her client, Ms. Sharkey informed Mr. Bender that Permittee objects to the granting of a Motion for Leave to Reply and also objects to the lateness of the proposed filing of the Reply, a full month after the Respondent's Response was filed.

2. Mr. Bender indicated his intent to file Petitioner's Motion for Leave to File a Reply brief as early as today or tomorrow. While Permittee has not yet received a

copy of Petitioner's Motion, Permittee has a concern that delay in the posting of the Motion on the Board's online docket or delay in delivery of the Motion to Permittee by U.S. Mail may result in the Board acting on such Motion before Permittee has an opportunity to Respond. Therefore, Permittee is compelled to file this anticipatory objection and request.

3. Pursuant to the Part 124 regulations governing PSD permit appeals, there is no right to Reply. However, the EAB Practice Manual states:

"After the permitting authority's response has been filed, the EAB normally does not require further briefing before issuing a decision whether to grant review. On occasion, however, petitioners who believe that the permitting authority's response requires a reply may, upon motion explaining why a reply brief is *necessary*, be granted leave to file a reply brief. Since the rules do not make provision for a reply, they do not establish a deadline for such a motion. However, motions for leave to file a reply brief *should be filed as soon as possible upon receipt of the permitting authority's response*, since the timeliness of the motion may be a factor in the Board's consideration of whether to grant it." EAB Practice Manual, p.36 [emphasis added]

4. Quite apart from the merits of Petitioner's Motion, which Permittee cannot discern at this point, granting Petitioner leave to file a Reply as late as April 5, 2010 will delay this proceeding by a full month and possibly more if a Surreply is required. Filing of an empty Motion, without the Reply itself, does not address the Board's intent to have the Reply itself filed "as soon as possible upon receipt of the permitting authority's response."

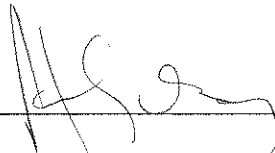
5. Particularly in a PSD permit appeal such as this, to which the Board "assigns a high priority," Petitioner should bear a significant burden of demonstrating

both a legal basis *necessitating* a Reply and facts *necessitating* a delay in the filing of such Reply of an entire month.

6. As Petitioner bears the burden of demonstrating *necessity* before its Motion for leave to file a Reply brief may be granted, Permittee, a party with a substantial interest in the timely resolution of this proceeding, requests an opportunity to Respond regarding the *necessity* of a Reply and the timing of such Reply before the Board acts on Petitioner's Motion. Because it wishes to expedite rather than delay this proceeding, Permittee is prepared to Respond to Petitioner's Motion within two (2) business days after it is posted on the Board's online docket.

WHEREFORE, Permittee requests leave to Respond to any Motion that Petitioner has already filed or may in the near future file requesting leave to file a Reply brief in this proceeding.

Respectfully submitted,



Power Holdings of Illinois, LLC

By One of Its Attorneys

Date: March 10, 2010

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