

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

OFFICE OF
PUBLIC AFFAIRS

DATE: 07/28/05
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In re:

Prairie State Generating Station

Permit No. 189808AAB

PSD Appeal No. 05-05

**BRIEF OF THE PUBLIC POWER PARTICIPANTS
AS AMICI CURIAE**

July 28, 2005

NIXON PEABODY LLP
On behalf of the Public
Power Participants

Preliminary Statement

In their petition for review dated June 8, 2005 ("Petition"), American Bottom Conservancy, American Lung Association of Metropolitan Chicago, Clean Air Task Force, Health and Environmental Justice-St. Louis, Lake County Conservation Alliance, Sierra Club, and Valley Watch ("Petitioners") request the Environmental Appeals Board (the "Board") to review Prevention of Significant Deterioration ("PSD") Permit Number 189808AAB issued to Prairie State Generating Company, LLC on April 28, 2005 by the Illinois Environmental Protection Agency ("IEPA"). The PSD permit authorizes the construction of the 1,500 MW coal-fired Prairie State Generating Station in Washington County, Illinois. The petition alleges that IEPA failed to "comply with various procedural protections" and that it based certain permit conditions "on clearly erroneous findings of fact and conclusions of law." Petition at 1.

On July 28, 2005, 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, Inc. ("Wolverine"), and the Kentucky Municipal Power Agency ("KMPA") (collectively, the "Public Power Participants") moved the Board for leave to file a brief as amici curiae.

The Public Power Participants are a group of Midwest rural electric cooperatives and municipal joint action agencies:

- IMPA is a not-for-profit municipal joint action agency with a contractual obligation to serve to the full electric power requirements of 170,000 customers in forty member cities and towns in Indiana.

- MJMEUC is a statewide municipal joint action agency authorized by Missouri law to operate as an electric utility for the benefit of its 57 municipal electric systems serving almost 400,000 retail customers.
- NIMPA is a not-for-profit municipal joint action project agency organized under Illinois law and consisting of three member Illinois municipalities, each of which owns and operates an electric utility. Together, NIMPA's member municipalities serve over 26,000 retail customers.
- Soyland is a generation and transmission cooperative that provides power supply and delivery service to eleven member distribution cooperatives serving 78,000 retail customers in central Illinois.
- Wolverine is a not-for-profit wholesale generation and transmission cooperative that provides power supply and delivery service to five retail cooperatives with over 200,000 retail customers in 35 counties in northern Lower Michigan.
- KMPA is a not-for-profit municipal joint action agency serving almost 27,000 customers in two municipalities in Kentucky.

In February 2005, these six Public Power Participants entered into definitive agreements to acquire a 47 percent ownership interest in the Prairie State Generating Station and its electric output. While each of the Public Power Participants had its individual rationale for seeking an ownership position in the Prairie State Generating Station, the Public Power Participants, as public service entities, are united by the common objective of providing economical and reliable electricity to their customers. Each has determined that its participation in the Prairie State

Generating Station is a critical element in continuing to achieve that objective near the end of this decade and beyond. The Public Power Participants also are confident that the Prairie State Generating Station will be a clean, environmentally sound source of electricity for their customers.

Before the Public Power Participants committed to participation in Prairie State, they of necessity familiarized themselves with IEPA's review of Prairie State's PSD permit application, with the draft PSD permits, and with the emission control technologies and emission limits on which the final permit would be based. IEPA's three and one-half year-long (October 2001 through April 2005) review process included the Illinois Department of Natural Resources, EPA Region V, and the U.S. Fish and Wildlife Service as well as IEPA. The review process, which included a 6 month-long public comment period, produced a final permit that is 80 pages long. IEPA's Responsiveness Summary is 171 pages long. The Public Power Participants are satisfied that IEPA's review was as thorough as it was long. That said, the Public Power Participants fully acknowledge that it is the members of this Board and not they who are the ultimate administrative arbiters of whether IEPA's permit review has resulted in an appropriately conditioned PSD permit.

I. Less than Expeditious Review Will Imperil the Public Power Participants' Ability to Meet Their Customers' Requirements

The Board has no small task before it, as Petitioners have thrown up over twenty alleged procedural defects and flawed permit conditions. However, as the Board assesses whether Petitioners have met their burden of demonstrating that proper procedure was not followed or that the challenged permit conditions were based on clearly erroneous findings of fact or

conclusions of law, the Public Power Participants respectfully ask the Board to be cognizant of the importance to the Public Power Participants of a prompt resolution of this appeal.

Timing is critical to the Public Power Participants because of their public service obligations to their customers. They need to know soon that the Prairie State Generating Station will be available on a timely basis to replace expiring power contracts and meet projected load growth. IMPA, for example, expects a 200 MW increase in its peak load by 2010, and its 200 MW ownership interest in Prairie State is an integral part of the Generation Expansion Plan approved by the Indiana Utilities Regulatory Commission.

Similarly, NIMPA projects a 39 percent increase in the peak load of three of its members (the cities of Batavia, Geneva, and Rochelle) by 2010, and each city formally has endorsed NIMPA's selection of Prairie State to replace expiring contracts and meet their load growth. For its part, MJMEUC, which operates the Missouri Public Energy Pool #1, projects that current and new Pool members will need at least 100 MW of capacity by 2010, and MJMEUC's ownership interest in the Prairie State Generating Station is designed to meet that need. Wolverine's position is similar to NIMPA's, with a forecasted peak demand in 2010 that is nearly 100 MW higher than its peak demand in 2005; timely construction of Prairie State will allow Wolverine to meet its members' needs. Timely completion of Prairie State also is essential to Soyland because it is counting on the plant to stabilize power costs and meet new customer demand.

For KMPA, Prairie State is needed by December 2009, when its customer Paducah Power System's current contract with the Tennessee Valley Authority expires. Paducah Power needs to know that Prairie State will be built before it undertakes the several year, multimillion dollar transmission project required to receive energy from Prairie State.

In sum, although the Public Power Participants are convinced that the Prairie State Generating Station can be a future source of electricity for their customers that is more stable, economical and reliable than other competing options, lengthy delays in the finalization of its PSD permit will impact adversely the Public Power Participants' ability to bring those advantages to their customers.

Conclusion

For the foregoing reasons, the Public Power Participants respectfully request that the Board conduct its evaluation of the Petition as expeditiously as possible.

Dated: July 28, 2005

Respectfully submitted,

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