

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AMEREN ENERGY RESOURCES,)	
)	
Petitioner,)	PCB 12-126
)	(Variance - Air)
v.)	
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

OBJECTION

I. Introduction

Pursuant to 35 Ill. Adm. Code 104.224(b), Environment Illinois, the Environmental Law & Policy Center, Respiratory Health Association of Metropolitan Chicago, and Sierra Club, (collectively, “Citizens Groups”) hereby OBJECT to the Petition for Variance (“the Petition”) filed by Ameren Energy Resources (“Ameren” or “the Company”) with the Pollution Control Board (“Board”) on May 3, 2012.¹ As discussed below, the Board should deny the Petition because the Multi-Pollutant Standard (“MPS”) Ameren now seeks to avoid reflects a settlement among multiple parties, including the Illinois Environmental Protection Agency (“Illinois EPA”) and Citizens Groups, which Ameren proposed, agreed to, opted into, and benefitted from. The Board must hold Ameren to that agreement.

II. Argument

The Board must deny Ameren’s request for a variance because Ameren proposed, agreed to, opted into, and benefitted from the standards it now seeks to undermine. Ameren requests a variance from 2015 and 2017 sulfur dioxide (“SO₂”) emission limits required by the MPS, codified at 35 Ill.

¹ Citizens Groups do not request a hearing pursuant to 35 Ill. Adm. Code 104.224(c), but will file comments further elaborating on the issues addressed in these objections, as well as other concerns about the proposed variance, later during the public comment period in this proceeding.

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Adm. Code 225.233. The MPS, originally promulgated in 2006,² allows owners of Electric Generating Units (“EGUs”) to meet mercury limits less stringent than would otherwise be required as long as they meet certain emission standards and technology requirements for SO₂ and nitrogen oxides (“NO_x”).

See 35 Ill. Adm. Code 225.233. Specifically, the MPS gave EGU owners a time-limited ability to “opt in” to meeting MPS requirements for SO₂ and NO_x,³ and, in exchange, the right to delay compliance with numeric or input-based mercury limits until at least 2015, or, in the case of certain smaller EGUs, the option to meet a carbon injection requirement instead of an emission limit.⁴ *See* 35 Ill. Adm. Code 225.233(c) and (d). Both MPS mercury control options are less stringent than the requirements of the Illinois Mercury Rule,⁵ which applies to EGU owners that do not opt in to the MPS or the similar Combined Pollutant Standard (“CPS”), 35 Ill. Adm. Code 225.291-99. Thus, using the MPS relieves EGU owners from compliance with more onerous mercury requirements in the Illinois Mercury Rule provided they comply with the SO₂ and NO_x components of the rule.

As Ameren acknowledges in its Petition, the MPS was a result of negotiations in which Ameren took a lead role.⁶ Not only did Ameren just acknowledge this, but it extolled this agreement at

² *In the Matter of: Proposed New 35 Ill. Adm. Code 225 Control of Emissions from Large Combustion Sources (Mercury)*, R06-25 (Dec. 21, 2006). The MPS was amended in 2009 to, among other things, require Ameren to meet the very standards at issue in this variance proceeding —i.e., a fleet-wide SO₂ standard of 0.25 lb/million Btu by 2015 and a fleet-wide standard of 0.23 lb/million Btu by 2017. *See In the Matter of: Amendments to 35 Ill. Adm. Code 225: Control of Emissions from Large Combustion Sources (Mercury Monitoring)*, R09-10 (June 18, 2009).

³ *See* 35 Ill. Adm. Code 225.233(e)(3)(C)(iii) and (iv). The MPS includes several requirements for SO₂ and NO_x control. For larger EGUs that fire bituminous coal, by no later than December 31, 2009, the EGU was required to install a Selective Catalytic Reduction (“SCR”) system for control of NO_x and a scrubber for control of SO₂. 35 Ill. Adm. Code 225.233(c)(1)(A). EGU owners must also meet fleet-wide annual and ozone season NO_x emission limits, which for Ameren is 0.11 lb/million Btu beginning in 2012, and fleet-wide annual SO₂ emission limits, which for Ameren decline as follows: 0.50 lb/million Btu from 2010-2013, 0.43 lb/million Btu in 2014; 0.25 lb/million Btu in 2015; and 0.23 lb/million Btu in 2017. 35 Ill. Adm. Code 225.233(e)(3).

⁴ Under the MPS, the owners of certain smaller EGUs—those with less than 90 gross MW in capacity, and those with less than 115 MW in capacity and which do not exceed 4% of the total gross MW capacity of the MPS Group—have the option of committing to comply with numeric emission limits or to continue under a carbon injection requirement. 35 Ill. Adm. Code 225.233(c)(1)(B).

⁵ The Illinois Mercury Rule required EGUs to meet the same numeric or input-based mercury standards as in the MPS in 2009, six years earlier than required by the MPS, without the compliance option of injecting activated carbon at a particular rate for smaller EGUs. 35 Ill. Adm. Code 225.230.

⁶ Indeed, as Ameren admits, it proposed the regulatory compromise reflected in the MPS. Petition at 12.

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the time. Ameren's then-Chairman, President, and Chief Executive Officer Gary L. Rainwater stated: "We appreciate Governor Blagojevich's support and that of the Illinois EPA in working with us to come up with an approach that provides reductions of multiple pollutants and offers flexibility, while reaching the goal of significantly reducing air emissions. . . . We believe this constructive approach will significantly benefit the state's air quality."⁷ The lengthy record of the MPS rulemaking reveals that numerous parties, including other EGU owners, the Illinois EPA, and Citizens Groups including Environment Illinois, the Environmental Law & Policy Center, Respiratory Health Association of Metropolitan Chicago, and Sierra Club, all took part in the formulation of the MPS.⁸ The final 2006 MPS represented a laboriously-negotiated agreement among multiple diverse parties who identified a mutually-acceptable path to address the problems of mercury, SO₂, and NO_x pollution from Illinois' electric generators. Ameren opted in to the MPS in 2007.⁹

Since Ameren negotiated, opted into, and benefitted from the MPS, the Board must not now permit the Company to undermine that crucial 2006 agreement by relieving it of its obligations to meet the 2015 and 2017 SO₂ emissions standards until 2020 and 2021, respectively. As noted above, the agreement underpinning the MPS hinged on the commitment of EGU owners to meet the SO₂ and NO_x limits included in the standard, and, in return, to be subject to less stringent mercury standards: it was a package deal. Ameren now wants to have its cake and eat it, too; it reaped the benefit of being subject to the less stringent mercury standards for years but wants to receive that benefit without meeting the

⁷ See <http://www.illinois.gov/PressReleases/PressReleasesListShow.cfm?RecNum=5128> (last accessed May 31, 2012).

⁸ See generally *In the Matter of: Proposed New 35 Ill. Adm. Code 225 Control of Emissions from Large Combustion Sources (Mercury)*, R06-25, available at <http://www.ipcb.state.il.us/COOL/external/CaseView.aspx?referer=results&case=12992> (last visited May 31, 2012). The Citizens Groups were key players in the negotiations leading to the regulatory compromise of the MPS; Illinois EPA specifically sought the Citizen Groups' approval and sign-off on the agreement codified in the standards. The Citizen Groups' participation is reflected in an August 2, 2006 press release from the Office of the Governor that announced the "agreement" underlying the MPS and included statements from the Citizen Groups. See <http://www.illinois.gov/PressReleases/PressReleasesListShow.cfm?RecNum=5128> (last accessed May 31, 2012).

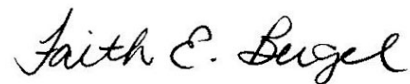
⁹ Ameren's December 27, 2007 letter opting into the MPS is attached as Exhibit B to its October 10, 2008 Petition for Variance filed in *Ameren Energy Generating Co. et al. v. Illinois Environmental Protection Agency*, PCB 09-21.

prescribed SO₂ limits. Allowing Ameren to do so would breach the agreement that underlies the MPS, undermine the settlement process, and betray the public trust.

III. Conclusion

The MPS reflects an agreement among multiple parties, including Illinois EPA and the Citizens Groups, which Ameren proposed, agreed to, opted into, and benefitted from. The Board should not permit Ameren to undermine the public trust and public health by circumventing the very emission limits it proposed. The Board must deny Ameren's request for a variance.

Respectfully submitted,



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DATED: May 31, 2012

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

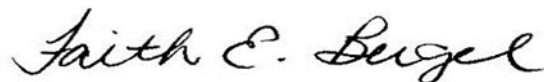
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NOTICE OF ELECTRONIC FILING

To: Attached Service List

PLEASE TAKE NOTICE that on May 31, 2012, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois an **OBJECTION** on behalf of Environment Illinois, Environmental Law & Policy Center, Respiratory Health Association of Metropolitan Chicago, and Sierra Club, a copy of which is attached hereto and herewith served upon you.

Respectfully Submitted,

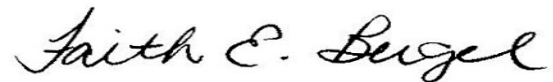


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CERTIFICATE OF SERVICE

I, Faith Bugel, hereby certify that I have filed the attached **OBJECTION** on behalf of Environment Illinois, Environmental Law & Policy Center, Respiratory Health Association Of Metropolitan Chicago and Sierra Club in PCB 12-126 upon the attached service list by depositing said documents in the United States Mail, postage prepaid, in Chicago, Illinois on May 31, 2012.

Respectfully submitted,



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SERVICE LIST

May 31, 2012

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