

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT-Regulation No. 2
Water Quality Standards
Third-Party Rulemaking
ASSOCIATED ELECTRIC COOPERATIVE, INC.
DELL POWER PLANT
Dell, AR**

DOCKET NO. 05-012-R

MINUTE ORDER NO. 05-32

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On November 10, 2005, Associated Electric Cooperative, Inc. ("AECI") filed a Petition to Initiate Third Party Rulemaking to Amend Regulation No. 2, Water Quality Standards ("Petition"). Pursuant to Ark. Code Ann. § 8-4-202(c), the Arkansas Pollution Control and Ecology Commission ("Commission") has sixty (60) days in which to either institute rulemaking proceedings or to give written notice denying the petition for rulemaking.

The Commission's Regulations Committee met on December 9, 2005 to review AECI's Petition. Having considered the Petition, the Regulations Committee recommends the Commission institute a rulemaking proceeding to consider adopting the proposed revision to Regulation No. 2. The Regulations Committee also proposes adoption of the following procedural schedule so consideration of this matter may proceed in an efficient and orderly manner.

1. AECI and the Arkansas Department of Environmental Quality ("ADEQ") shall file an original and twenty-five (25) copies of all materials required under this Minute Order. Each party shall serve the other with the materials filed. This requirement does not apply to transcripts.

2. Persons submitting written public comments shall submit their written comments to the ADEQ. Within ten (10) business days following the adoption or denial of the proposed rule, the ADEQ shall deliver the originals of all comments to the Commission Secretary.

3. AECI has filed with the Petition a black-lined version of the section of Regulation No. 2 which will be amended by the proposed rule.

4. AECI has submitted to the ADEQ's public affairs office, the following:

- a. A proposed public notice to be used in mailing notice to interested persons, for publishing in appropriate industry, trade, or professional publications as the Commission may select. The proposed public notice may, in the ADEQ's discretion, be approved for use or the ADEQ may choose to prepare its own public notice. The public notice shall conform to the requirements of Regulation No. 8, Section 3.1.3. The public notice shall be published not later than 45 days prior to the public hearing. By agreement, AECI shall pay the costs of the newspaper publications

and the costs of the appropriate industry, trade, or professional publications chosen by the Commission. AECI shall file only the original proof of publication with the Commission. The ADEQ shall be responsible for mailing the public notice to all persons who have requested advance notice of rulemaking proceedings and the cost of the mailing.

- b. Sixty-five (65) copies of the executive summary of the proposed rulemaking.
- c. Eight (8) bound copies of the Petition and all supporting documentation.

5. A public hearing or hearings shall be conducted the week of January 30, 2006 in Mississippi County, Arkansas. The exact date, time and location of the public hearing will be determined by the ADEQ's Public Affairs office.

6. The period for receiving all written comments by the public, AECI and the ADEQ shall conclude ten (10) business days after the date of the public hearing pursuant to Regulation No. 8, Part 3, Section 2.2.3, unless an extension of time is granted.

7. AECI and the ADEQ shall each file, not later than March 3, 2006 a Statement of Basis and Responsiveness Summary as required by Regulation No. 8, Part 3, Section 3.6.2(1), (2) and (3).

8. AECI and the ADEQ shall each file not later than March 3, 2006 a proposed Minute Order deciding the matter.

9. The ADEQ shall seek review of the proposed rule from the Joint Interim Committee on Public Health and Welfare and/or from the Joint Interim Committee on Administrative Rules and Regulations.

10. The Regulations Committee will consider this matter at its April, 2006 meeting. Members of the Regulations Committee may ask questions of any persons that made oral or written comments. The Regulations Committee will make a recommendation to the Commission.

11. At the Commission's regularly scheduled April, 2006 meeting, the presentation of oral statements and legal arguments will be regulated as follows:

- a. The Chair of the Commission will permit members of the public to make a statement to the Commission. No more than three (3) minutes will be allowed for each statement. The period for statements will close at the end of one (1) hour, or sooner if all interested persons have completed their statements. At the discretion of the Chair, the one (1) hour oral statement period may be extended.
- b. At the discretion of the Chair, an attorney representing one of more individuals, a corporation or other legal entity may be permitted five (5) minutes in which to address the Commission.
- c. Legal counsel or other designated persons representing AECI and the ADEQ shall be permitted ten (10) minutes in which to address the Commission.
- d. At the conclusion of all statements, the Chair will call on each Commissioner for the purpose of asking the attorneys or persons sponsoring statements who are present, any questions they may have. Attorneys will not be permitted to respond or ask follow-up questions of any person questioned by a Commissioner.

After each Commissioner has had an opportunity to ask questions, the Chair will entertain a motion on the matter, allow discussion, and call for a vote of the Commission members.

12. If AECI desires a transcript of the public hearing, Regulations Committee meeting, and Commission meetings, or if required by the Commission, AECI agrees to pay all costs for the preparation of a transcript of the public hearing, Regulations Committee meetings and Commission meetings which concern this docket and occur after the adoption of this Minute Order. If transcript of the rulemaking proceedings is required, the court reporter will be employed by AECI, and the court reporter shall deliver the original transcript to the Commission Secretary.

13. The Commission authorizes the Chair of the Regulations Committee, in consultation with the Chair of the Commission, to revise the procedures and schedules set out above.

14. Executive Order 05-04 requires that the Commission determine whether a proposed rule affects small businesses. Based on the information contained in the Petition and the explanation given by AECI and its counsel, the Commission finds the proposed amendment to Regulation No. 2 does not affect small businesses. Therefore, the Commission concludes that the procedures set forth in Executive Order 05-04 are not applicable to the proposed amendment to Regulation No. 2.

The Commission accepts the recommendation of the Regulations Committee and initiates the rulemaking proceeding in this docket. The Commission adopts, without modification, the procedural schedule set forth above.

COMMISSIONERS:

[Signature] B. Ackerman
[Signature] L. Bengal
[Signature] S. Henderson
[Signature] C. McGrew
[Signature] R. Quillin
[Signature] D. Samples
[Signature] T. Schueck

[Signature] J. Shannon
[Signature] L. Sickel
[Signature] W. Thompson
[Signature] E. Valdez
[Signature] B. White
[Signature] R. Young

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Chair
[Signature]
Vice Chair

SUBMITTED BY: Marcella Taylor DATE PASSED: 12/09/05