

ILLINOIS POLLUTION CONTROL BOARD

June 18, 2009

DYNEGY MIDWEST GENERATION, INC.)
(TILTON ENERGY CENTER),)
)
Petitioner,)
)
v.) PCB 09-92
) (CAAPP Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by G.L. Blankenship):

On April 22, 2009, Dynegy Midwest Generation, Inc. (Dynegy) filed a petition (Pet.) asking the Board to review a March 19, 2009 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40.2(a) (2006), 35 Ill. Adm. Code 105.302. The Agency issued a renewed Clean Air Act Permit Program (CAAPP) permit, subject to conditions, for Dynegy’s Tilton Energy Center, an electric generating station located at 80 West First Street, Tilton, Vermillion County. Dynegy appeals on several grounds, including that several conditions are confusing and ambiguous as a result of missing punctuation and terms; the Agency’s decision to include certain conditions while excluding others was inappropriate, arbitrary and capricious; and the Agency’s inclusion of reporting requirements in one condition results from the Agency’s outmoded software systems. Pet. at 3-9. Dynegy also requests that the Board grant a partial stay of the CAAPP permit by staying portions of specified conditions. In an order dated May 7, 2009, the Board accepted Dynegy’s petition for hearing but reserved ruling on the requested stay pending the Agency’s response.

In its request for a partial stay, Dynegy argues that “[h]istorically, the Board has granted partial stays in permit appeals where a petitioner has so requested.” Pet. at 2 (citations omitted). Dynegy asks “that the Board exercise its inherent discretionary authority to grant a partial stay of the CAPP permit,” staying all or part of conditions 6.2.3, 7.1.8(e)(ii), 7.1.9(d), 7.1.9(f), 7.1.9(j)(ii), 7.1.10(d)(i), and 7.2.12(c)(ii). Pet. at 3, 10. Dynegy attached as Exhibit 2 to its petition a “redlined” version of the permit, which indicates the conditions or parts of conditions it seeks to stay. Pet. at 3 n.2; *see* Exh. 2.

Section 101.500(d) of the Board’s procedural rules provides that, “[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion.” 35 Ill. Adm. Code 101.500(d). The Agency has filed no response to Dynegy’s request for a partial stay.

In Community Landfill Co. and City of Morris v. IEPA, PCB 01-48, 01-49, slip op. at 4 (Oct. 19, 2000), the Board found “that it has the authority to grant discretionary stays from permit conditions.” The Board noted that it “has previously granted or denied discretionary stays in permit appeals, both when the Agency did and did not consent to such stays.” *Id.* (citations omitted). The Board elaborated that “[t]he permit appeal system would be rendered meaningless in many cases, if the Board did not have the authority to stay permit conditions.” *Id.*

The Board has reviewed Dynegy’s request for a partial stay and Dynegy’s Exhibit 2, which is entitled “Redlined Version of the Permit Through Section 8.” *See* Pet., Exh. 2. Dynegy states that the exhibit does not include Section 9 or 10 of the permit because it does not appeal, and therefore does not seek to stay, any of the conditions contained in those sections. Pet. at 3 n.3; *see* Pet., Exh. 2. The Board notes that Exhibit 2 strikes all or part of permit conditions 6.2.3, 7.1.8(e)(ii), 7.1.9(d), 7.1.9(f), 7.1.9(j)(ii), 7.1.10(c)(i), 7.1.10(d)(i), and 7.2.12(c)(ii). *See* Exh. 2.

The Board grants the requested partial stay of the contested permit conditions and stays all or part of permit conditions 6.2.3, 7.1.8(e)(ii), 7.1.9(d), 7.1.9(f), 7.1.9(j)(ii), 7.1.10(c)(i), 7.1.10(d)(i), and 7.2.12(c)(ii), as requested by Dynegy. The partial stay remains in effect until the Board takes final action on the permit appeal or until the Board orders otherwise.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 18, 2009, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board