

ILLINOIS POLLUTION CONTROL BOARD
February 4, 2010

DYNEGY MIDWEST GENERATION, INC.)
(WOOD RIVER POWER STATION),)
)
Petitioners,)
)
v.) PCB 10-53
) (NPDES Permit Appeal - Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)
)

ORDER OF THE BOARD (by G.T. Girard):

On January 12, 2010, Dynegy Midwest Generation, Inc. (Dynegy) timely filed a petition (Pet.) asking the Board to review National Pollutant Discharge Elimination System (NPDES) permit No. IL0000701. *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.204, 105.206. The NPDES permit was issued by the Illinois Environmental Protection Agency (Agency) on December 9, 2009, for the Wood River Power Station, an electric generating station owned and operated by Dynegy. The station, which has two coal-fired boilers, is located at #1 Chessen Lane in Alton, Madison County.

Dynegy appeals on the grounds that the boron effluent limitation of 1 milligram per liter (mg/l) appears to be based on the Agency's inappropriate use of the general water quality standard for that constituent. Pet. at 5. According to Dynegy, the applicable boron water quality standard is 15 mg/l based on a site-specific rule, and the Agency has provided no analysis indicating that an effluent limitation of 1 mg/l is necessary for the discharges from Outfalls 002 and 005 to meet that water quality standard. *Id.* The petition concludes that the Agency acted "arbitrarily and capriciously and without substantial evidence" in issuing the boron conditions for Outfalls 002 and 005. *Id.* Dynegy also requested that a stay from "the boron effluent limitations of 1 mg/l for Outfalls 002 and 005 and associated sampling, recordkeeping, and reporting requirements, as set forth in Exhibit 3." Pet. at 4-5, 6. On January 21, 2010, the Board accepted the permit appeal for hearing, but reserved ruling on the motion to stay, pending any response from the Agency.

In the request for stay, Dynegy argues that Dynegy will suffer irreparable harm if the Board does not grant this stay as Dynegy is unable to comply with the effluent limitations by the effective date of the permit. Pet. at 4. Dynegy notes that the previous permit did not contain boron limitation for Outfall 002 or 005 and maintains that if a stay is not granted, Dynegy would have to somehow "immediately study, develop, and implement pollution control equipment and/or significant operational changes in order to comply." *Id.* Dynegy further maintains that

absent a stay Dynegy would be exposed to an enforcement risks during the period Dynegy developed and implemented the compliance measures. *Id.*

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 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 stay and Dynegy's exhibit 3, which is the issued NPDES permit with the contested conditions shown as stricken through. *See* Ex. 3. The Board grants the requested stay and the permit conditions related to boron effluent limitations at Outfall 002 and 005 and associated sampling, recordkeeping, and reporting requirements, are stayed as requested by Dynegy. The 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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 4, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board