

ILLINOIS POLLUTION CONTROL BOARD

July 25, 2013

IN THE MATTER OF:)
)
SITE-SPECIFIC RULE FOR THE CLOSURE) R13-19
OF AMEREN ENERGY RESOURCES ASH) (Rulemaking - Land)
PONDS: PROPOSED NEW 35 ILL. ADM.)
CODE 840, SUPBPART B)

ORDER OF THE BOARD (by C.K. Zalewski):

On April 9, 2013, Ameren Energy Resources (Ameren) filed on behalf of Ameren Energy Resources Generating, AmerenEnergy Generating Company, and Electric Energy, Inc. a proposal to add a Subpart B to Part 840 of the Board’s regulations. Part 840 addresses the closure of coal combustion waste surface impoundments. *See* 35 Ill. Adm. Code 840. Accompanying the proposal were documents including a Statement of Reasons (SR).

Ameren stated that the rulemaking proposal would allow it to close surface impoundments for management of coal combustion waste at eight coal-fired powered plants owned by Ameren: the Coffeen Power Station in Montgomery County; the Duck Creek Power Station in Fulton County; the E.D. Edwards Power Station in Peoria County; the Grand Tower Power Station in Jackson County; the Joppa Power Station in Massac County; the Hutsonville Power Station in Crawford County; the Meredosia Power Station in Morgan County; and the Newton Power Station in Jasper County. SR at 1, 2, 7. These eight facilities include approximately 16 ash ponds “that could ultimately be subject to the proposed regulations.” *Id.* at 2.

On April 18, 2013, the Board accepted Ameren’s proposal for hearing. On July 1, 2013 Ameren filed a motion requesting the Board stay the rulemaking, and for the reasons stated below, the Board grants a one-year stay and requires regular status reports by Ameren.

MOTION TO STAY

Ameren stated in its July 1, 2013 motion that, both before and after filing its proposal with the Board, it discussed proposed rule language with the Illinois Environmental Protection Agency (Agency). Mot. at 1. Ameren further stated that, “[r]ecognizing a need for such rules, the Agency conveyed its intent to propose a rule that would apply state-wide to regulate the closure of all qualifying ash surface impoundments in Illinois.” *Id.* Ameren added that “[o]n June 12, 2013, the Agency indeed distributed to stakeholders draft language for a generally-applicable rule regarding groundwater monitoring, corrective action, and the closure of coal combustion waste surface impoundments at power generating facilities.” *Id.* at 2. Ameren reported that the Agency scheduled a June 27, 2013 meeting to receive comment on the draft language from interested entities. *Id.*

Ameren commended the Agency's initiation of statewide rules but claimed that it could not predict how draft language would evolve through the rulemaking process and whether adopted rules would address its requirements. Mot. at 2. Ameren requested that the Board indefinitely stay proceedings in this docket and conduct periodic status conferences. *Id.*

DISCUSSION

The Board's procedural rules provide that "[m]otions to stay a proceeding must be directed to the Board and must be accompanied by sufficient information detailing why a stay is needed. . . ." 35 Ill. Adm. Code 101.514(a). The decision to grant or deny a motion for stay is "vested in the sound discretion of the Board." See People v. State Oil Co., PCB 97-103, slip op. at 2 (May 15, 2003), *aff'd sub nom. State Oil Co. v. PCB*, 822 N.E.2d 876, 291 Ill. Dec. 1 (2nd Dist. 2004).

Ameren seeks a stay of its proposed rulemaking in order to evaluate the Agency's draft language addressing surface impoundments through the course of the rulemaking process and to determine whether any adopted rules satisfactorily address its own facilities. See Mot. at 2. No other participant filed a response to the motion, and the failure to respond to a motion constitutes waiver of objection to the Board granting the motion, although the Board is not bound by such a waiver. See 35 Ill. Adm. Code 101.500(d). Under these circumstances and in the interest of conserving resources, the Board grants Ameren's motion to stay this rulemaking as specified below.

The Board does not favor indefinite stays. The Board's stay of this rulemaking proceeding will last for one year, through July 25, 2014, unless the Board before that date issues an order terminating the stay. See Proposed Amendments to Tiered Approach to Corrective Action Objectives (TACO): 35 Ill. Adm. Code 742, R09-9, slip op. at 3 (Nov. 5, 2009). The Board directs Ameren to file a status report every three months during the one-year term of the stay, and each status report must briefly describe Ameren's "continued need for stay." Mot. at 2. At the conclusion of the one-year stay, Ameren's fourth status report may request an extension. However, if Ameren wishes the Board to terminate the stay before July 25, 2014, Ameren must file a motion to that effect. See *id.*

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 25, 2013, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board