

ILLINOIS POLLUTION CONTROL BOARD

August 7, 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 J.D. O’Leary):

On April 9, 2013, Ameren Energy Resources filed on behalf of Ameren Energy Resources Generating, AmerenEnergy Generating Company, and Electric Energy, Inc. (collectively AER) 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. Ameren stated that its rulemaking proposal intended to allow it to close approximately 16 surface impoundments for the management of coal combustion waste at eight coal-fired powered plants owned by AER.

MOTION TO STAY

On July 1, 2013, Ameren filed a motion to stay proceedings (Mot.). Ameren stated 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 argued that it could not predict how a proposal 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.* On July 25, 2013, the Board granted the motion to stay for one year and directed Ameren to file quarterly status reports. The Board stated that, “[a]t the conclusion of the one-year stay, Ameren’s fourth status report may request an extension.”

STATUS REPORTS AND REQUEST FOR EXTENSION OF STAY

The Board received status reports describing the continued need for a stay on October 28, 2013; February 14, 2014; April 24, 2014; and July 23, 2014. The February 14, 2014 report states that, in December 2013, Illinois Power Resources, LLC (IPR) and Ameren Energy Medina Valley Cogen, LLC (Medina Valley) “acquired ownership of, or indirect ownership interest in, the facilities that are the subject of this site-specific rulemaking.” Site-Specific Rule for the Closure of Ameren Company Ash Ponds: Proposed New 35 Ill. Adm. Code 840, Subpart B, R 13-19, slip op. at 1 (Feb. 14, 2014). In their most recent report, IPR and Medina Valley note that the Agency its proposal for a generally-applicable rule on October 23, 2013. *See* Coal Combustion Waste (CCW) Ash Ponds and Surface Impoundments at Power Generating Facilities, R 14-10. The report states that, while the Board has held hearings in that docket, the

Board has not yet adopted a first-notice proposal. *See* 35 Ill. Adm. Code 101.514(a). IPR and Medina Valley add that they will continue to review filings and monitor procedures in the docket. IPR and Medina Valley “respectfully request that the Board extend the stay of this docket for an additional year or until such time as more certainty develops with respect to the state-wide rule.” Site-Specific Rule for the Closure of Ameren Company Ash Ponds: Proposed New 35 Ill. Adm. Code 840, Subpart B, R 13-19, slip op. at 2 (July 23, 2014). Specifically, they request that the Board extend the stay for an additional year. *Id.* at 1.

DISCUSSION OF REQUEST FOR EXTENSION

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).

IPR and Medina Valley seek to extend the stay of this proposed rulemaking in order to participate in rulemaking docket R14-10 and to gain more certainty with respect to the Agency’s proposal for a generally-applicable rule. Site-Specific Rule for the Closure of Ameren Company Ash Ponds: Proposed New 35 Ill. Adm. Code 840, Subpart B, R 13-19, slip op. at 2 (July 23, 2014). The Board has received no response to the request, and the failure to respond 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 the request by IPR and Medina Valley to extend the stay of this rulemaking, as specified below.

The Board extends the stay of this rulemaking proceeding for one year, through August 7, 2015, 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 IPR and Medina Valley to file a status report every three months during the one-year extension of the stay, and each status report must briefly describe the continued need for a stay. *See* 35 Ill. Adm. Code 101.514. At the conclusion of the one-year extension, the fourth status report may request an additional extension. However, if IPR and Medina Valley wish the Board to terminate the stay before August 7, 2015, they must file a motion to that effect.

IT IS SO ORDERED.

I, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 7, 2014, by a vote of 4-0.



Don A. Brown, Assistant Clerk
Illinois Pollution Control Board