

ILLINOIS POLLUTION CONTROL BOARD

December 17, 2015

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, on behalf of Ameren Energy Resources Generating, AmerenEnergy Generating Company, and Electric Energy, Inc. (collectively Ameren), filed a proposal to add a Subpart B to Part 840 of the Board’s waste disposal regulations. Part 840 addresses the closure of coal combustion waste surface impoundments. *See* 35 Ill. Adm. Code 840. Ameren stated that the proposal intended to allow it to close approximately 16 impoundments at eight coal-fired power plants it owns.

On July 1, 2013, Ameren filed a motion to stay proceedings noting that the Illinois Environmental Protection Agency (Agency) intended to propose generally-applicable rules regulating closure of coal combustion waste surface impoundments. On July 25, 2013, the Board granted the motion, stayed this proceeding for one year, and directed Ameren to file quarterly status reports.

The Board received status reports on October 28, 2013; February 14, 2014; April 24, 2014; and July 23, 2014. The February 14, 2014 report stated that, in December 2013, Illinois Power Resources, LLC (Illinois Power Resources) and AmerenEnergy 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.” The report also noted that the Agency had filed a proposal for a generally-applicable rule. *See* Coal Combustion Waste (CCW) Ash Ponds and Surface Impoundments at Power Generating Facilities, R14-10 (Oct. 28, 2013). The July 23, 2014 report requested that the Board extend the stay for an additional year.

On August 7, 2014, the Board extended the stay for one year and directed Illinois Power Resources and Medina Valley to file quarterly status reports during the extension. The Board received status reports on November 7, 2014, and February 10, 2015. On November 19, 2015, the Board directed Illinois Power Resources and Medina Valley to file a status report describing the progress of this proceeding and any continued need for a stay.

On November 25, 2015, Illinois Power Resources and Medina Valley filed a status report indicating that they “continue to review the filings, testimony and developments in docket R14-10.” They noted that in R14-10 the Agency had sought an indefinite stay to await the outcome of Congressional legislation and pending appeals of the federal coal combustion residuals rule. *See* 80 Fed. Reg. 21302 (Apr. 17, 2015). Illinois Power Resources and Medina Valley state that “[t]hese actions may have a significant effect on the scope and contents of the proposed state

rules under consideration in this docket.” The status report notes that, on November 5, 2015, the Board stayed R14-10 for 120 days to March 4, 2016. Illinois Power Resources and Medina Valley “respectfully request that the Board continue to maintain the stay of this docket until such time as more certainty develops with respect to the federal criteria for coal combustion residuals surface impoundments and the general rule.”

“Motions 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).

Illinois Power Resources and Medina Valley seek to extend the stay to gain more certainty with respect to federal requirements and the Agency’s proposed rule. The Board has received no response to the request. *See* 35 Ill. Adm. Code 101.500(d). Under these circumstances and in the interest of conserving resources, the Board extends the stay of this rulemaking proceeding for 90 days, through Monday, March 16, 2016, 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 Illinois Power Resources and Medina Valley at the conclusion of the extended stay to file a status report briefly describing the progress of this docket and the continued need for a stay. *See* 35 Ill. Adm. Code 101.514. The status report may request an additional extension. However, if Illinois Power Resources and Medina Valley wish the Board to terminate the stay before March 16, 2016, they must file a motion to that effect.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 17, 2015, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board