

ILLINOIS POLLUTION CONTROL BOARD
April 11, 2019

AMERENENERGY RESOURCES)	
GENERATING COMPANY,)	
EDWARDS POWER STATION,)	
)	
Petitioner,)	
)	
v.)	PCB 06-67
)	(CAAPP Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by K. Papadimitriu):

On April 4, 2019, Illinois Power Resources Generating LLC, as a successor to AmerenEnergy Resource Generating Company, Edwards Power Station (AmerenEnergy) and the Illinois Environmental Protection Agency (IEPA) filed a joint motion (Mot.) asking the Board to lift the stay of uncontested conditions in a September 29, 2005 Clean Air Act Permit Program (CAAPP) permit. The Agency issued the permit for AmerenEnergy’s coal-fired power plant known as the E.D. Edwards Station at 7800 South CILCO Lane in Bartonville, Peoria County (Edwards CAAPP Permit). The joint motion also asks the Board to remand the permit to IEPA while continuing to stay the remaining contested conditions. The remand will allow IEPA to revise the permit in accordance with the parties’ settlement negotiations. For the reasons below, the Board grants the motion.

PROCEDURAL BACKGROUND

On November 3, 2005, AmerenEnergy petitioned the Board to review the Edwards CAAPP Permit. The Board accepted petition for hearing on November 17, 2005. On February 16, 2006, the Board granted a stay of the permit as requested by AmerenEnergy. The Board found that Section 10-65(b) of the Administrative Procedure Act (APA) applies to CAAPP permits and stays the newly-issued CAAPP permit by operation of law. AmerenEnergy v. IEPA, PCB 06-67, slip op. at 7 (Feb. 16, 2006). “Petitioner must continue to operate by the terms and conditions of its prior State operating permit during the pendency of this appeal.” *Id.*

On June 21, 2010, however, the Environmental Protection Act (Act) was amended by P.A. 96-934, adding subsection (f) to Section 40.2 of the Act. Section 40.2(f) provides that Section 10-65(b) of the APA does not apply to CAAPP permits and specifies that the Board must stay the contested conditions upon the permit applicant’s request. 415 ILCS 5/40.2(f) (2016).

DISCUSSION

The parties' joint motion asks the Board to: (1) lift the stay of uncontested conditions of Edwards CAAPP Permit; (2) maintain the stay of the remaining conditions and jurisdiction over them; and (3) remand the permit to IEPA so that it can revise the permit's term and incorporate other modifications negotiated by the parties. Mot. at 1. The parties explain that they negotiated an agreement concerning the contested conditions that includes changes noticed for public comment. *Id.* The United States Environmental Protection Agency has completed its review of the negotiated changes. *Id.* To incorporate the changes and resolve the appeal, the parties ask the Board to remand the permit to IEPA. *Id.* In turn, IEPA will issue the modified version of the permit, incorporating the negotiated changes "[o]n the same day the Edwards Permit is remanded by the Board." *Id.* at 2. Once IEPA does so, AmerenEnergy will file a motion to dismiss this appeal. *Id.*

The Board has previously granted similar motions to lift a stay of uncontested conditions while retaining the stay of contested conditions and remanding the permit to IEPA, finding the requests both within its authority and appropriate. *See, e.g., Ameren Energy Generating Co., Coffeen Power Station v. IEPA*, PCB 06-64, slip op. at 2-4 (Sept. 20, 2012); *The Premcor Refining Group, Inc. v. IEPA*, PCB 07-30, PCB 10-55 (consol.), slip op. at 2 (Mar. 14, 2019). The Board likewise grants the motion here.

Under Section 40.2(f) of the Act, because the stay applies to some but not all conditions of the permit, AmerenEnergy must continue to operate in accordance with any related terms and conditions of any other applicable permits until final Board action in the review process. 415 ILCS 5/40.2(f) (2016).

The Board reminds the parties that when IEPA issues the permit with modifications, Section 40.2(a) of the Act provides for appeals by persons who have standing other than the applicant. 415 ILCS 5/40.2(a) (2016). Thus, even though the Board retains jurisdiction of this matter, if other persons have standing and wish to appeal, those appeals, if appropriate, will be accepted and docketed under a different case number.

ORDER

1. The Board lifts the stay of uncontested conditions in Edwards CAAPP Permit.
2. The Board continues to stay the contested conditions in Edwards CAAPP permit and retains jurisdiction over them.
3. The Board remands the permit to IEPA.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 11, 2019, by a vote of 4-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, looped initial "D".

Don A. Brown, Clerk
Illinois Pollution Control Board