ILLINOIS POLLUTION CONTROL BOARD
January 6, 1972

MT. CARMEL PUBLIC UTILITY CO.)
)
) PCB 71-15R
v.)
)
ENVIRONMENTAL PROTECTION AGENCY)

SUPPLEMENTAL ORDER AND OPINION (BY MR. LAWTON):

On November 11, 1971, the Board entered an Order granting Mt. Carmel Public Utility Co. a variance for a one-year period allowing it to emit particulates in excess of the particulate emission regulations and Section 9(a) of the Environmental Protection Act, subject to the following terms and conditions:

"1. This variance shall continue for a period of one year from this date. If the Utility wants a continuance of this variance it shall file a petition for renewal of the variance within ninety (90) days prior to the date the variance expires. The Board may authorize a hearing on that supplemental petition and shall make such further order as it deems necessary at that time.

2. The Utility shall proceed with the following program:

(a) The Utility shall complete the conversion of Boiler #5 from a coal-fired boiler to a boiler fired by oil and natural gas by March 30, 1973;

(b) The Utility shall complete the 69 KV line from Mt. Carmel to Keensburg by January, 1973;

(c) The Utility shall exert every effort to complete the 138 KV line from Keensburg to Albion before June, 1974. In that respect, the Utility shall file quarterly reports with the Board and the Agency, beginning on December 1, 1971, which reports shall detail the efforts made by the Utility to expedite the completion of the 138 KV line herein described; and

(d) The Utility shall not operate Boilers #1 and #4 in violation of the particulate regulations after the installation of the 138 KV line referred to in paragraph 4, or June 30, 1974, whichever occurs first.

3. The Utility shall post a bond in a form approved by the Agency to guarantee performance of the conditions of the granting of this variance. Said bond shall be in the amount of $500,000.

4. Failure to comply with any of the conditions of this variance shall result in the revocation of the grant of this variance."

On December 6, 1971, we received a Motion for Reduction of Performance Bond, or, in the alternative, for a stay. The company asserts that the $500,000.00 bond required was arbitrarily determined and constitutes a penalty, and as such, is unjust, discriminatory and unlawful. In support of its assertion, the company alleges an increase in its total indebtedness and represents that the proposed construction will entail additional borrowing in the approximate amount of $680,000.00. Petitioner also alleges that the requirement of the Environmental Protection Agency that the obligation of the bond be shown as a liability in the company's corporate financial statements will impair its credit and hinder its ability to obtain the necessary funds to pursue its abatement program.

Lastly, the company asserts that the order of the Board is discriminatory when considered in light of other orders entered requiring posting of a bond.

We deny the motion for reduction, or in the alternative, in the stay of the bond. Normally, in cases of this sort, we have required a bond in the approximate amount of the construction cost anticipated. However, in instances where the construction is in the millions of dollars, we have often required a bond in the amount of $500,000.00, feeling that this will furnish adequate assurance that the program of abatement upon which the variance was granted will be pursued to final completion. Cf. Illinois Power Company v. Environmental Protection Agency, Nos. PCB71-193, 195, 196, 197, 198.

Petitioner has asserted no facts suggesting in any way that our order is arbitrary or unreasonable, and, accordingly, the motion for reduction or stay is denied.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the above Supplemental Order and Opinion was adopted on the 6th day of January, 1972 by a vote of 4-0.

Christan L. Moffett