ILLINOIS POLLUTION CONTROL BOARD
May 2, 2024

ELECTRIC ENERGY, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 24-45
	)	(Petition for review – Alternative Source
ILLINOIS ENVIRONMENTAL	)	Demonstration)
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by M.D. Mankowski):

On December 22, 2023, Electric Energy, Inc. (Electric Energy) timely filed a petition (Pet.) asking the Board to review an alternative source demonstration determination (ASD) of the Illinois Environmental Protection Agency (Agency) under the coal combustion residual (CCR) surface impoundment rules in Part 845. *See* 35 Ill. Adm. Code 105.200 *et. seq.* and 845.650(e). The ASD determination concerns a CCR surface impoundment referred to as the Joppa East Ash Pond at Electric Energy's Joppa Power Plant located west of the Village of Joppa, northeast of the Ohio River in Section 15 South, Range 3 East in Massac County (facility). Additionally, Electric Energy's petition included a motion for a partial stay of the Part 845 requirements as they apply to an exceedance of the cobalt and pH groundwater protection standards at the Joppa East Ash Pond. On January 4, 2024, the Board accepted the petition for hearing, and on February 1, 2024, the Board granted Electric Energy's motion for partial stay. On April 19, 2024, Electric Energy and the Agency (collectively the "Parties") filed a joint motion to stay proceedings. For the reasons below, the Board grants the joint motion to stay proceedings.

JOINT MOTION TO STAY PROCEEDINGS

On April 19, 2024, the Parties filed a joint motion to stay (Mot.) this proceeding pursuant to 35 Ill. Adm. Code § 101.514. Mot. at 1.[1] The motion requests a stay until 30 days after the Board rules on a motion for summary judgment in a related case, PCB 24-43. *Id*.

Legal Background

Under Section 101.514 of the Board's rules, a motion 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). Additionally, the motion must include a status report

[1] On April 15, 2024, the Parties filed a joint consolidated motion to stay proceedings, along with four other related ASD appeals (PCB 24-45, PCB 24-48, PCB 24-53, and PCB 24-56), until 30 days after a ruling on summary judgment in the PCB 24-43 case. The Parties decided to withdraw that motion and file individual motions to stay in each proceeding. Mot. at 6.

detailing the progress of the proceeding. *Id*. If a stay is granted, at the end of the stay the parties must file a status report in compliance with Subpart C. 35 Ill. Adm. Code § 101.514(b). Any additional requests for stay must be directed to the assigned hearing officer. *Id*.

The Parties argue a stay would promote efficiency and judicial economy. Mot. at 6. The Parties contend that although the facts differ between the appeals, they share similar questions of law. *Id*. Those questions of law include the required burden of proof that must be met by an owner or operator submitting an ASD under Part 845, what kinds of evidence that may be used to support an ASD, what facts IEPA may use to justify a non-concurrence with an ASD, and the depth of justification the Agency must provide when issuing a non-concurrence. *Id*. The Parties add that some of the issues raised are of first impression before the Board and would benefit from a resolution in PCB 24-43 to provide clarity and narrow the issues in this appeal. *Id*. at 7.

The Parties also argue that a stay will not result in environmental harm because the Board has already stayed the requirements of Part 845 that are at issue in this appeal, finding that a stay will not increase the likelihood of harm to human health or the environment. Mot. at 7, *citing* Electric Energy, Inc. v. IEPA, PCB 24-45, slip op. at 3-4 (Feb. 1, 2024). The Parties add that each CCR surface impoundment will remain under groundwater monitoring during any stay. Mot. at 7, *citing* 35 Ill. Adm. Code § 845.650(d).

Additionally, the Parties argue the requested stay will not prejudice either party because they agree it will increase the efficiency with which the appeals will be decided or resolved. Mot. at 7. The Parties add that the stay will not impact the Agency filing the record under 35 Ill. Adm. Code § 105.116. *Id*. Nor will the stay prevent the parties from continuing to discuss settlement. *Id*.

Board Discussion and Findings

Based on its review of the Parties' joint motion to stay, the Board is persuaded that a stay will promote judicial efficiency and economy while not increasing the likelihood of harm to human health or the environment. In PCB 24-43, the hearing officer set a 60-day discovery period that closes on June 17, 2024. Mot. at 6. At that time, the hearing officer will set a briefing schedule for a motion for summary judgement. *Id*. Rather than grant a stay for 30 days after a ruling on the motion for summary judgment in PCB 24-43, the Board sees the benefit in setting a date on which the stay will end, when the Parties will be required to file a status report. Reviewing the discovery and motion for summary judgment timeline provided by the Parties, the Board will stay the proceeding for 90 days, at which time the briefing schedule for the motion for summary judgment may be set and underway.

The stay will remain in effect until July 31, 2024, 90 days from the date of this order. At that time the Parties will be required to provide a status report and may request a further stay from the assigned hearing officer. 35 Ill. Adm. Code § 101.514(b).

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 2, 2024, by a vote of 3-0.

Don A. Brown, Clerk
Illinois Pollution Control Board