

ILLINOIS POLLUTION CONTROL BOARD
March 28, 1991

COMMONWEALTH EDISON COMPANY,)
)
Petitioner,)
)
v.) PCB 91-29
) (Variance)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J. Anderson):

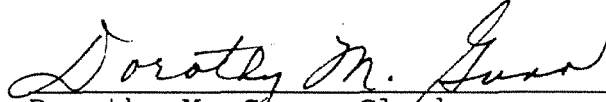
On February 7, 1991, Commonwealth Edison Company ("Edison") filed a petition requesting variance from the temperature requirements of 35 Ill. Adm. Code 302.211(d). On February 22, 1991, the Sierra Club filed an objection to Edison's variance petition as well as a petition to intervene. In its petition to intervene, the Sierra Club stated that Edison's petition should be dismissed because it did not comply with many of the requirements of 35 Ill. Adm. Code 104.121. On March 14, 1991, the Board issued an Order in which it stated that it construed the language in the petition to intervene as a motion to dismiss and that Edison would have seven days from the date of service of the Sierra Club's petition to respond to the motion to dismiss, if it so desired. On March 26, 1991, Edison filed its response and a motion for leave to file the response instanter.

In its motion for leave, Edison asserts that it could not file its response to the motion to dismiss within seven days of the date of service of the petition to intervene because the petition to intervene was served on Edison approximately three weeks prior to the Board's March 14, 1991 order. In light of this fact, we hereby grant Edison's motion for leave to file its response instanter.

After reviewing both the motion to dismiss and Edison's response thereto, the Board finds the petition adequate. Several issues of fact and law are raised in both documents and special circumstances exist which justify Edison's departure from the requirements of 35 Ill. Adm. Code 104.121. (See The Village of Sauget v. IEPA, PCB 89-86, 100 PCB 269 (June 22, 1989) and Village of Lemont v. IEPA et al., PCB 86-207, 77 PCB 51, 55 (April 1, 1987)). Accordingly, the Sierra Club's motion to dismiss is denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certifies that the above Order was adopted on the 28th day of March, 1991, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board