

ILLINOIS POLLUTION CONTROL BOARD
September 21, 1978

COMMONWEALTH EDISON COMPANY,)
)
 Petitioner,)
)
 v.) PCB 77-201
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

RICHARD E. POWELL AND EUGENE H. BERNSTEIN, ISHAM, LINCOLN & BEALE,
APPEARED ON BEHALF OF PETITIONER;
RUSSELL EGGERT, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF
RESPONDENT;
MICHAEL R. BERMAN, CITIZENS FOR A BETTER ENVIRONMENT, APPEARED ON
BEHALF OF INTERVENOR.

OPINION OF THE BOARD (by Mr. Goodman):

This Opinion is in support of an order entered herein on
August 3, 1978.

On July 25, 1977, Commonwealth Edison Company (Edison) filed a Petition for Variance for its Powerton Station (Powerton) requesting such relief as necessary to continue operation while it carried out a compliance program. The program was described in an agreement between Edison and the Illinois Environmental Protection Agency (Agency) which was attached to the Petition and marked Exhibit 1. On September 7, 1977, the Agency filed a recommendation supporting the proposed Variance for Edison's Powerton Station. On October 3, 1977, Citizens for a Better Environment (CBE) was granted leave to intervene and be a party in this matter. Late in 1977 changes in the Federal Clean Air Act prompted Edison to revise its compliance program in order to meet a July 1, 1979 compliance date. Edison cited as its reason provisions of the Amended Clean Air Act which require automatic assessment and collection of large penalties from non-complying sources after July 1, 1979.

The original Petition for Variance with which the Agency concurred called for a long-term variance while Edison installed flue gas desulfurization equipment (scrubbers) while continuing to use high sulfur Illinois coal. In addition, Powerton was to operate under the control of a supplementary control system (SCS) in order to prevent violation of the ambient air quality standards. Edison now feels, however, that to follow the original program would mean the automatic imposition of a \$25,000 per day fine after July 1, 1979, as dictated by the 1977 amendments to the Federal Clean Air Act. Edison therefore amended its proposal requesting relief until July 1, 1979, while it prepared to comply with the sulfur dioxide regulations with the use of low-sulfur western coal in lieu of the high-sulfur Illinois coal and scrubbers. The Agency argues against the use of low-sulfur coal alleging potential violation of the particulate standards due to the increased ash content of western coal. CBE argues against the variance alleging possible shortages in the availability of western coal for use by Powerton.

The Board finds the arguments presented by the Agency and CBE concerning the use of western coal to be too speculative in nature to form the basis for denial of the Variance Petition. The Petition before us involves only sulfur dioxide and requests variance only until July 1, 1979. The Board cannot dictate to Edison the method by which it complies with our regulations. The Board must still consider, however, whether denial of the Variance would work an arbitrary and unreasonable hardship on Edison.

Powerton has been the subject of previous proceedings before the Board, wherein the Board granted variance to Edison in order to allow continued operations of Powerton while various methods of compliance were investigated (PCB 74-16). The original method of compliance was to be a low BTU coal gasification plant which Edison subsequently abandoned due to the prohibitive cost of retrofitting Powerton with such a facility. After consultation with the Agency, Edison developed the compliance plan set forth in Exhibit 1 to its original petition herein. At the same time, it developed the SCS for Powerton pursuant to the Board Order in PCB 74-16. While the SCS system has yet to experience the full range of meteorological conditions which can be expected to occur in the Pekin area, Edison alleges that the SCS has been, and will continue to be, successful in assuring that ambient air quality standards in the vicinity of Powerton are not threatened by operation of the station. Now, due to the 1977 amendments to the Federal Clean Air Act, Edison wishes to convert Powerton to low-sulfur western coal which will enable it to meet the July 1, 1979 deadline dictated by the Federal law.

Although Edison appears to have been shifting its compliance plan relatively frequently, the end result of which is delayed compliance, the Board can find no deliberate effort on Edison's part toward that result. Delay has been caused by the failure of an innovative plan of compliance and the imposition of new law. As far as the Board can determine, Edison has attempted to follow its compliance program in good faith. Although the Board may not agree with the method chosen by Edison for final compliance, certainly Edison's decision is reasonable considering the potential penalties that may be assessed under the 1977 amendments to the Federal Clean Air Act.

The Board finds that Edison has made a good faith effort to comply with the the regulations and with prior Board Orders concerning the Powerton Station and that, because of the SCS, the likelihood of environmental harm is minimal. Balancing the hardship Edison would suffer by the imposition of severe fines after July 1, 1979, if forced to pursue compliance by scrubbers, against the minimal environmental harm, we find that denial of the requested Variance would create an arbitrary and unreasonable hardship for Edison. Variance is hereby granted from Rule 204(c)(1)(A) the Board's Air Regulations for Commonwealth Edison's Powerton Station until July 1, 1979, subject to certain conditions.

Edison is advised that failure to achieve final compliance by July 1, 1979 with Rule 204(c)(1)(A) may result in a requirement to pay a non-compliance penalty under Section 120 of the Federal Clean Air Act. In addition, this Variance shall terminate earlier upon any Rule or Order entered under Section 125 of the Federal Clean Air Act requiring Commonwealth Edison to burn Illinois coal at Powerton.

Mr. Jacob D. Dumelle Dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion was adopted on the 21st day of September, 1978 by a vote of 3-1.



Christan L. Moffett, Clerk
Illinois Pollution Control Board