

ILLINOIS POLLUTION CONTROL BOARD

December 16, 1999

COMMONWEALTH EDISON)	
COMPANY (Zion Power Station),)	
)	
Petitioner,)	
)	
v.)	PCB 00-99
)	(Provisional Variance - Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C.A. Manning):

Pursuant to Section 35(b) of the Environmental Protection Act (Act) (415 ILCS 5/35(b) (1998)), Commonwealth Edison Company, Zion Power Station (petitioner), located in the City of Zion, Lake County, Illinois has requested that the Board grant a provisional variance. The petitioner seeks a provisional variance from the permit requirements of 35 Ill. Adm. Code 309.154 to allow it to construct a new zebra mussel control system with an approved copper ion system to replace its existing chlorine feed control system. Petitioner asserts that the copper discharge is a temporary one to test the new equipment prior to the onset of cold weather. The request for a provisional variance and the notification of recommendation were filed with the Board by the Illinois Environmental Protection Agency (Agency) on December 14, 1998. Pursuant to Section 35(b) of the Act (415 ILCS 5/35(b) (1998)), the Board must issue the variance within two days of this filing.

Pursuant to Section 35(b) of the Act (415 ILCS 5/35(b) (1998)), the Agency, by and through its Director, Thomas Skinner, petitioner seeks a provisional variance from the National Pollutant Discharge Elimination System (NPDES) Permit requirement, as set forth in 35 Ill. Adm. Code 309.154(a), (b).

The Agency recommends that the Board grant the requested provisional variance with specified conditions. The Agency agrees that the modification to the zebra mussel control system is necessary. The recommendation states that "Zion Power station's reissued NPDES Permit will allow for the operation of this replacement system. However, given that this Permit is still pending issuance, testing of the new system will require a provisional variance".

The Agency anticipates that the requested provisional variance would have minimal environmental impact on the receiving stream. The Agency is unaware of any public water supplies that the requested provisional variance would adversely impact. The Agency maintains that grant of a

provisional variance would violate no federal laws. The Agency believes that denial of the requested provisional variance would create an arbitrary or unreasonable hardship on the petitioner.

Specifically, the Agency recommends that the Board grant petitioner a 21-day provisional variance for its Lake County facility from 35 Ill. Adm. Code 309.154(a), (b), which prohibits the construction of any new treatment works, disposal well, or wastewater source without an NPDES Permit. This variance period shall commence on a date in the middle of December 1999, and shall continue for a period of 21 days.

Provisional variances are by their very nature temporary. The responsibilities of the Agency and the Board in these short-term provisional variances are different from the responsibilities in standard variances. See 415 ILCS 5/35(b), 36(c) (1998). In provisional variances it is the responsibility of the Agency to make the technical determinations and finding of arbitrary or unreasonable hardship. The Board's responsibility is to adopt a formal order, to assure the formal maintenance of the record, to assure the enforceability of the variance, and to provide notification of the action by a press release.

Having received the Agency recommendation that a denial of the requested relief would impose an arbitrary or unreasonable hardship, the Board hereby grants petitioner a provisional variance from 35 Ill. Adm. Code 309.154(a), (b), subject to conditions.

1. The purpose of this provisional variance is to allow the construction of a new zebra mussel control system with an approved copper ion system to replace the existing chlorine feed control system. The term of this provisional variance shall commence upon the start of testing which is scheduled to begin in the middle of December 1999 and continue for a period of 21 days.
2. Petitioner shall limit copper concentration from Outfall 001 and Outfall 002 to 19.8 ug/L. Copper concentration shall be sampled twice a day for the first three days and then once per day thereafter until testing is completed.
3. If a violation is detected, testing of the copper ion zebra mussel control system shall cease and petitioner shall evaluate and immediately contact the Agency before continuation of completion of test.
4. Petitioner shall notify Matthew Wertman, Maywood regional office, by telephone, at 708/338-7900, at the start of testing and the completion of testing the copper ion zebra mussel control system. Petitioner shall confirm this notice in writing within five days, addressed as follows:

Illinois Environmental Protection Agency
Bureau of Water, Compliance Assurance Section
Attention: Dan Ray
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Petitioner shall execute a copy of a certificate of acceptance of this provisional variance and forward that copy to the Agency addressed as is the written notice required in the above condition; petitioner shall forward that copy within ten days of the date of this order of the Board, and the certificate of acceptance shall take the following form:

CERTIFICATION

I (We), _____, hereby accept and agree to be bound by all terms and conditions of the order of the Pollution Control Board in PCB 00-99, December 16, 1999.

Petitioner

Authorized Agent

Title

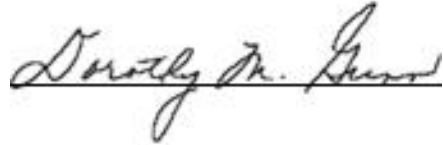
Date

- 5. Monitoring results of all testing and dates shall be tabulated and submitted to the Agency for the variance period. This information shall be sent to the address noted above in condition 4.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 16th day of December 1999 by a vote of 6-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board