

ILLINOIS POLLUTION CONTROL BOARD

January 8, 2004

MIDWEST GENERATION, L.L.C.--)	
COLLINS GENERATING STATION,)	
)	
Petitioner,)	
)	
v.)	PCB 04-108
)	(Permit Appeal - Air)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.P. Novak):

On December 31, 2003, Midwest Generation, L.L.C. (Midwest Generation) timely filed a petition asking the Board to review a November 25, 2003 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.206(a). Because the postmark date of the joint request is within the extended time for filing, the petition was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. The Agency approved the application for a Clean Air Act Permit Program permit, with modifications, regarding Midwest Generation’s steam electric generating facility at 4200 Pine Bluff Road, Morris, Grundy County. Midwest Generation appeals on the grounds that the permit contains conditions that are not acceptable to Midwest Generation, including provisions that are contrary to applicable law. Midwest Generation’s petition meets the content requirements of 35 Ill. Adm. Code 105.210. The Board accepts the petition for hearing.

Midwest Generation has the burden of proof. 415 ILCS 5/40(a)(1) (2002); *see also* 35 Ill. Adm. Code 105.112(a). Hearings “will be based exclusively on the record before the Agency at the time the permit or decision was issued.” 35 Ill. Adm. Code 105.214(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only Midwest Generation may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Midwest Generation “shall be entitled to an Appellate Court order pursuant to Section 41(d) of this Act [415 ILCS 5/41(d) (2002)].” 415 ILCS 5/40.2(c) (2002). Currently, the decision deadline is April 29, 2004 (the 120th day after December 31, 2003). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for April 15, 2004.

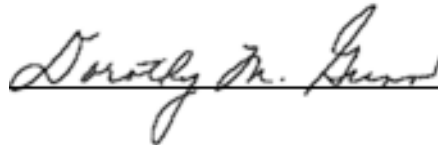
Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by January 30, 2004, which is 30 days after Midwest Generation filed the petition. 35 Ill. Adm. Code 105.212(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

With its petition, Midwest Generation submitted a request that the Board allow it to file a reduced number of copies of attachments to its petition. Midwest Generation stated that it attached a redlined copy of the comments it submitted to the Agency in response to the draft permit. Midwest Generation asserts that the comments are 95 pages in length and also will be submitted to the Board as part of the Agency record. Midwest Generation requests that the Board allow it to file one original and four copies of the attachments. *See* 35 Ill. Adm. Code 101.302(h) (2002). The Board hereby grants leave to file one original and four copies of the attachments as requested.

Also with its petition, Midwest Generation submitted a request that the Board stay the effectiveness of various conditions of the permit until the Board has rendered its final decision in this matter. Midwest Generation asserts that compliance with the terms and conditions of the permit on the date of permit issuance was impossible. Midwest Generation asserts that requiring compliance without allowing sufficient time to review the permit and ensure compliance prior to the effective date is arbitrary and capricious. The Agency has not yet responded to this request. *See* 35 Ill. Adm. Code 101.500(d) (2002). The Board reserves ruling on the issues relating to the requested stay pending the response of the Agency.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 8, 2004, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board