

ILLINOIS POLLUTION CONTROL BOARD
July 26, 2007

MIDWEST GENERATION, LLC, WILL)	
COUNTY GENERATING STATION,)	
)	
Petitioner,)	
)	
v.)	PCB 08-9
)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On July 20, 2007, Midwest Generation, LLC (Midwest Generation) timely filed a petition asking the Board to review a June 15, 2007 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.206(a). The Agency issued a construction permit containing conditions for Midwest Generation’s electrical generation facility located at Romeoville, Will County.

Midwest Generation appeals on the grounds that the Agency has inappropriately included conditions. 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) (2006); *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) (2006)), 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 “may deem the permit issued.” 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is November 17, 2007 (the 120th day after July 20, 2007). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for November 15, 2007.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by August 20, 2007 which is the first business day following the 30th day 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 stay the effectiveness of various conditions of the permit until the Board has rendered its final decision in this matter. The Agency has not yet responded to this request. *See* 35 Ill. Adm. Code 101.500(d). The Board reserves ruling on the issues relating to the requested stay pending the response of the Agency.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 26, 2007, by a vote of 4-0.

A handwritten signature in cursive script that reads "John T. Therriault". The signature is written in black ink and is positioned above a horizontal line.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board