

ILLINOIS POLLUTION CONTROL BOARD
September 6, 2007

DYNEGY MIDWEST GENERATION, INC.)	
(HAVANA POWER STATION),)	
)	
Petitioner,)	
)	
v.)	PCB 07-115
)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by N.J. Melas):

On June 7, 2007, the Board, at the parties' request, extended until August 27, 2007, the time period within which Dynegy Midwest Generation, Inc. (Havana Power Station) (Dynegy) could appeal a construction permit issued to Dynegy by the Illinois Environmental Protection Agency (Agency) on April 16, 2007. *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.208(a). On August 22, 2007, Dynegy timely filed a petition asking the Board to review the Agency-issued permit.

The Agency granted Dynegy a permit for construction and operation of a baghouse, scrubber, and sorbent injection control for units at the Havana Power Station located at 15260 N. State Route 78, in Havana, Mason County. Dynegy challenges numerous permit conditions. Dynegy's petition meets the content requirements of 35 Ill. Adm. Code 105.210. The Board accepts the petition for hearing.

Because the permit incorporates many conditions that Dynegy is currently challenging in another, still pending, permit appeal (Dynegy v. IEPA, PCB 06-71), Dynegy challenges the conditions' inclusion in the construction permit, and asks the Board to stay the effectiveness of those conditions. To date, the Board has received no response from the Agency regarding Dynegy's request for a stay. The Board today reserves ruling on stay issues until the Agency has filed a response or the response time has elapsed. *See* 35 Ill. Adm. Code 101.500(d).

Dynegy 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 Dynegy may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Dynegy "may deem the permit issued:" absent the contested conditions. 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is

December 20, 2007 (the 120th day after August 22, 2006). *See* 35 Ill. Adm. Code 105.114. There is a Board meeting scheduled on that day, December 20, 2007.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 21, 2007, which is 30 days after Dynegy 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).

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 September 6, 2007, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board