

ILLINOIS POLLUTION CONTROL BOARD

October 4, 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):

By order of September 6, 2007, the Board accepted for hearing the August 22, 2007 petition for review of an April 16, 2007 construction permit issued to Dynegy Midwest Generation, Inc. (Dynegy) by the Illinois Environmental Protection Agency (Agency). 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 characterizes the issues on appeal as falling into several categories:

One category addresses the manner in which the Agency has addressed the requirements of the Consent Decree applicable to Dynegy. A second category of issues concerns the Agency's treatment of the mercury rule adopted by the Board at 35 Ill. Adm. Code Part 225. Additionally, the Agency has included unnecessary conditions and "notes" in the permit that should be deleted. Dynegy also appeals provisions that were appealed in the CAAPP [Clean Air Act Permit Program] appeal, PCB 06-071, or are otherwise CAAPP-related. Dynegy objects to certain testing, recordkeeping, and reporting provisions in the permit and has other general objections. Pet. at 6.

In the body of its petition, Dynegy includes a request for partial stay of the contested conditions. Pet. at 4-6, and Ex. 2. In its September 6, 2007 order accepting the petition for hearing, the Board reserved ruling on the requested stay pending any Agency response. To date, the Board has received no response from the Agency regarding Dynegy's request for a stay. Section 101.500(d) of the Board's procedural rules provides that, "[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion." 35 Ill. Adm. Code 101.500(d).

In its request for a partial stay, Dynegy notes that, “[h]istorically, the Board has granted partial stays in permit appeals where a petitioner has so requested.” Pet. at 4-5 (citations omitted). Stressing the risk that it will suffer irreparable harm and that the environment will not benefit from improved pollution control, Dynegy asks “that the Board exercise its inherent discretionary authority to grant a partial stay of the construction permit” *Id.* at 5-6. Specifically, Dynegy seeks to stay

those conditions or portions of conditions indicated in Exhibit 2, i. e., Conditions 1.2(b), 1.3(a), 1.3(b), 1.3(c) Note, 1.4(a), 1.4(a) Note, 1.5, 1.6(a), 1.6(b) Note, 1.6(b)(iii), 1.6(c), 1.7(b)(ii)(B), 1.7(c), 1.7(e)(v), 1.7(e)(viii), 1.7(e) Note, 1.8(a), 1.8(c), 1.8 Note, 1.9-1, 1.9-2, 1.9-3, 1.10-1, 1.10-2, and the paragraph following Condition 1.1 1. In the alternative, if the Board believes that it must stay the entirety of an appealed condition rather than only the portions of the condition where so indicated in Exhibit 2, Dynegy requests that the Board stay the entirety of each of the conditions identified in Exhibit 2. *Id.*

The Board clearly has the authority to grant discretionary stays of the type requested here. In Community Landfill Co. and City of Morris v. IEPA, PCB 01-48, 01-49, slip op. at 4 (Oct. 19, 2000), the Board found "that it has the authority to grant discretionary stays from permit conditions." The Board noted it "has previously granted or denied discretionary stays in permit appeals, both when the Agency did and did not consent to such stays." *Id.* (citations omitted). The Board elaborated that "[t]he permit appeal system would be rendered meaningless in many cases, if the Board did not have the authority to stay permit conditions." *Id.*

The Board has reviewed the allegations in Dynegy’s stay request, as well as the specific language requested to be stayed and detailed in Exhibit 2 to Dynegy’s petition. On the basis of that review, and in the absence of any response to the request from the Agency, the Board grants Dynegy's request for partial stay of the contested conditions in the construction permit for the Havana Power plant. The Board stays those contested conditions and portions of conditions as reflected in the edited permit filed as Exhibit 2 to Dynegy’s August 22, 2007 petition for review and request for stay. Exhibit 2 is incorporated herein by reference as if fully set forth. The partial stay remains in effect until the Board takes final action on the construction permit appeal, or until the Board orders otherwise.

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 October 4, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk

Illinois Pollution Control Board