

ILLINOIS POLLUTION CONTROL BOARD  
March 5, 2009

DYNEGY MIDWEST GENERATION, INC. )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 09-48  
 ) (Variance - Air)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by G.L. Blankenship):

On January 9, 2009, Dynegy Midwest Generation, Inc. (Dynegy) filed a petition requesting a variance from the Board's air regulations limiting emission of mercury. Specifically, Dynegy seeks relief from the multi-pollutant standard (MPS) in Sections 225.233(c)(1)(A), 225.233(c)(2), 225.210(b) and (d), and 225.233(c)(5). Dynegy requested the variance for its Baldwin Unit 3 coal-fired power plant in Randolph County. In the petition, Dynegy waived hearing. On February 5, 2009, the Board identified several informational deficiencies in the petition and directed Dynegy to file an amended petition to provide the additional information. The Board allowed Dynegy until March 9, 2009, to file the amended petition and noted that the 120-day statutory period for the Board to decide this case will recommence upon the filing of the amended petition. *See* 35 Ill. Adm. Code 104.232(a)(2).

On February 18, 2009, Dynegy filed a motion asking the Board to reconsider the February 5, 2009 order (Mot.) and Dynegy filed an amended petition, accompanied by a motion. In the motion to reconsider, Dynegy asserts that the "informational deficiencies" identified by the Board in the February 5, 2009 order "do not rise to the level of jurisdictional deficiencies" that warrant dismissal of the petition. Mot. at 4. Dynegy asserts that therefore, "it is improper for the Board to treat Dynegy's submittal" as an amended petition and recommencing the 120-day statutory period. *Id.*

In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law, to conclude that the Board's decision was in error. 35 Ill. Adm. Code 101.902. In Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (Mar. 11, 1993), we observed that "the intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law." Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992).

The Board is unconvinced by Dynegy's arguments. The information requested in the Board's February 5, 2009 order was information necessary to evaluate the petition for variance

and absent that information the Board would be unable to consider the petition. Dynegy suggests that the Board's question might have been answered at a hearing; however, Dynegy waived a hearing. The Board's rules specify the information that must be included in a variance petition. *See* 35 Ill. Adm. Code 104.200-248. In the February 5, 2009 order the Board found several deficiencies in the petition. One example of the deficiencies found by the Board is that Section 104.204(b)(2) was not adequately addressed because the petition did not specify the nearest downwind monitoring station maintained by the Agency that is used for monitoring mercury emissions for each of Dynegy's power stations. Rather than dismiss the petition, the Board allowed Dynegy to file an amended petition. Dynegy has not pointed the Board to any factors that would warrant the Board reconsidering the February 5, 2009 order. Therefore, the Board denies the motion to reconsider.

The Board has reviewed the amended petition and finds that the petition meets the requirements of Section 104.204. The Board accepts the amended petition and notes that the Board's decision deadline is June 18, 2009.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on March 5, 2009, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board