

ILLINOIS POLLUTION CONTROL BOARD

May 7, 2009

DYNEGY MIDWEST GENERATION, INC.)	
(TILTON ENERGY CENTER),)	
)	
Petitioner,)	
)	
v.)	PCB 09-92
)	(CAAPP Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On April 22, 2009, Dynegy Midwest Generation, Inc. (Dynegy) timely filed a petition (Pet.) asking the Board to review a March 19, 2009, determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40.2(a) (2006); 35 Ill. Adm. Code 101.300(b), 105.302(e). The Agency's determination concerns the Tilton Energy Center, an electric generating station consisting of four natural gas-fired turbines, which is owned and operated by Dynegy. Pet. at 1. The Tilton Energy Center is located at 80 West First Street, Tilton, Vermillion County. For reasons below, the Board accepts Dynegy's petition for hearing.

Section 39.5 of the Environmental Protection Act (Act) (415 ILCS 5/39.5 (2006)) sets forth the Clean Air Act Permit Program (CAAPP), reflecting the requirements of Title V of the federal Clean Air Act Amendments of 1990 (42 U.S.C. §§ 7661-7661f). Generally, a CAAPP permit is designed to be a single, comprehensive document of all air pollution obligations that apply to a facility. The Agency decides whether to approve CAAPP permit applications, and Agency decisions may be appealed to the Board. *See* 415 ILCS 5/40.2(a) (2006); 35 Ill. Adm. Code 105.Subpart C. In this case, the Agency granted a renewal CAAPP permit, subject to conditions, for Dynegy's Tilton Energy Center facility.

Section 40.2(a) of the Act (415 ILCS 5/40.2(a) (2006)) allows several persons to appeal Agency CAAPP permit determinations: permit applicants; persons who participated in the Agency's public comment process under Section 39.5(8) of the Act (415 ILCS 5/39.5(8) (2006)); and persons who could obtain judicial review under Section 41(a) of the Act (415 ILCS 5/41(a) (2006)). *See* 415 ILCS 5/40.2(a) (2006); 35 Ill. Adm. Code 105.302(c). Dynegy is the CAAPP permit applicant. Dynegy appeals on several grounds including that several conditions are confusing and ambiguous resulting from missing punctuation and verbiage; the Agency's decision to include certain conditions while excluding others was inappropriate, arbitrary and capricious; and, the Agency's inclusion of reporting requirements in condition 6.2.3 is a result of the Agency's outmoded software systems. Pet. at 3-9. Dynegy challenges the inclusion of these conditions and asks the Board to stay their effect until ultimately ruling on the merits. *Id.* at 10. To date, the Board has not received a 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. 35 Ill. Adm. Code 101.500(d).

The Board accepts the petition for hearing. Dynegy has the burden of proof. *See* 415 ILCS 5/40.2(a) (2006); 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its permit decision. Accordingly, though the Board hearing affords petitioner the opportunity to challenge the Agency's reasons for its decision, information developed after the Agency's decision typically is not admitted at hearing or considered by the Board. *See Alton Packaging Corp. v. PCB*, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987); *Community Landfill Co. & City of Morris v. IEPA*, PCB 01-170 (Dec. 6, 2001), *aff'd sub nom. Community Landfill Co. & City of Morris v. PCB & IEPA*, 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.2(c) (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, "the permit shall not be deemed issued; rather, the petitioner shall be entitled to an Appellate Court order pursuant to Section 41(d) of this Act [415 ILCS 5/41(d) (2006)]." 415 ILCS 5/40.2(c) (2006). Currently, the decision deadline is August 20, 2009, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for the same day, August 20, 2009.

Unless the Board or the hearing officer orders otherwise, the Agency must file an answer, including the entire record of its determination within 30 days after it is served with the petition. *See* 35 Ill. Adm. Code 105.302(f). 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. *See* 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.302(f).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 7, 2009, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board