

ILLINOIS POLLUTION CONTROL BOARD
October 23, 2009

RECEIVED
CLERK'S OFFICE

OCT 23 2009

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
NO_x TRADING PROGRAM:) R06-22
AMENDMENTS TO 35 ILL. ADM. CODE) (Rulemaking - Air)
PART 217)

ORIGINAL

HEARING OFFICER ORDER

On October 14, 2009, the Illinois Environmental Protection Agency (Agency) filed a motion for leave to file *instanter* and for an extension of the deadline to respond to IERG's motion for reconsideration and clarification (Mot.). On October 21, 2009, the Agency filed a motion for leave to file *instanter* and for an extension of time to file a status report (Mot. Status). This order addresses the two motions in separate sections below.

On October 15, 2009, the Illinois Environmental Regulatory Group (IERG) filed a motion to withdraw a portion of its pending motion for reconsideration and clarification (Mot. Withdraw). IERG specifically asked the Board to "withdraw the portion of IERG's pending Motion related to the request for reconsideration." Mot. Withdraw at 4-5. Because that motion is directed to the Board, and because the deadline to respond to that motion has not passed, this order will not address the substance of IERG's motion.

IEPA Motion for Extension of Time to File Response

On August 3, 2009, IERG filed two motions in this rulemaking docket, a "Motion for Emergency Rule" and a "Motion for Expedited Action on the Illinois Environmental Regulatory Group's Alternative Proposal." In an order dated August 20, 2009, the Board denied both motions and directed the Illinois Environmental Protection Agency (Agency) to file a status report on or before October 19, 2009. On September 14, 2009, IERG filed a motion requesting that the Board reconsider and clarify its order. On September 29, 2009, the Agency filed a motion to file *instanter* and for an extension of the deadline to respond to IERG's motion for reconsideration and clarification. In an order dated October 1, 2009, the hearing officer granted the Agency's motion to file *instanter* and also extended the Agency's response deadline to Tuesday, October 13, 2009.

On October 14, 2009, the Agency filed a motion for leave to file *instanter* and for an extension of the deadline to respond to IERG's motion for reconsideration and clarification. The Agency states that, on September 24, 2009, it "received a letter from USEPA [United States Environmental Protection Agency] confirming that Non-EGUs [Electric Generating Units] were not required to hold allowances for the 2009 control period." Mot. at 2 (attaching letter). The Agency further states that it is still discussing with IERG the issues raised in IERG's motion and the implications of USEPA's recent letter. *Id.* The Agency seeks to extend to Monday, October 26, 2009, the deadline to respond to the motion for reconsideration and clarification. *Id.* The

Agency also states that the “Motion for Extension would have been filed on October 13, 2009, but the parties were not able to confer until October 14, 2009, on the contents of this Motion requesting the extension.” *Id.*

Section 101.500(d) of the Board’s procedural rules provides, in pertinent part, 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. Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 14 day response period. . . .” 35 Ill. Adm. Code 101.500(d).

The Agency has requested a 13-day extension of its response deadline. Under these circumstances, undue delay would result from allowing the full 14-day response period to run. *See* 35 Ill. Adm. Code 101.500(d).

Having reviewed the substance of the motion and in the absence to date of any objection, the Agency’s motion for leave to file *instanter* is granted. The Agency’s motion for an extension of the response deadline is also granted. The Agency is directed to file its response to IERG’s motion for reconsideration and clarification on or before Monday, October 26, 2009. The “mailbox rule” at 35 Ill. Adm. Code 101.300(b)(2) does not apply to the filing of this response. The Board’s Clerk must receive the response before the close of business on Monday, October 26, 2009. Although the response may be filed electronically through the Clerk’s Office On-Line (COOL) from the Board’s Web site at www.ipcb.state.il.us, an electronic or approved fax filing must be received by the Clerk’s Office no later than 4:30 PM on Monday, October 26, 2009. Any questions about electronic filing through COOL should be directed to the Clerk’s Office at (312) 814-3629.

Motion for Extension of Time to File Status Report

The Agency notes that the Board’s August 20, 2009, order directed the Agency by October 19, 2009, to file a status report “indicating whether and when it will be filing a withdrawal of this docket and submitting a new proposal addressing Non-EGUs and NO_x emissions.” Mot. Status at 1. The Agency states that it has discussed issues pertaining to this docket with IERG, although the two “were unable to meet in person until October 20, 2009.” *Id.* at 2. The Agency further states that, when it met with IERG, they discussed extending the deadline for filing a status report to November 10, 2009. *Id.* The Agency reports that “IERG has indicated that it will not object to the extension.” *Id.* The Agency requests that the Board or hearing officer “allow the Illinois EPA up to and including November 10, 2009, to file a Status Report for Docket R06-22.” *Id.*

Section 101.500(d) of the Board’s procedural rules provides, in pertinent part, 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. Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 14 day response period. . . .” 35 Ill. Adm. Code 101.500(d).

In its August 20, 2009, order, the Board noted the Agency’s earlier indication that it expected to propose a rule that would integrate non-EGUs into the CAIR [Clean Air Interstate Rule]. NO_x Trading Program Amendments to 35 Ill. Adm. Code Part 217, R06-22, slip op. at 33 (Aug. 20, 2009). The Board thus directed the Agency to file a status report indicating whether and when it intends to file such a separate rulemaking proposal. *Id.* The Board also directed the Agency to address whether it is prepared to schedule hearings in this docket or to dismiss it. *Id.* Under these circumstances, undue delay would result from allowing the full 14-day response period to run. *See* 35 Ill. Adm. Code 101.500(d).

While the direction to the Agency to file a status report demonstrates the Board’s clear interest in a prompt resolution of the issues raised in IERG’s motions for emergency rulemaking and for expedited review, the Agency’s original deadline for filing its status report has passed. Furthermore, the Agency notes IERG’s indication that it will not object to an extended deadline. Having reviewed the substance of the motion and in the absence to date of any objection, the Agency’s motion for leave to file *instante*r is granted. The Agency’s motion for an extension of the time to file a status report is also granted.

The Agency is directed to file its response to IERG’s motion for reconsideration and clarification on or before Tuesday November 10, 2009. The “mailbox rule” at 35 Ill. Adm. Code 101.300(b)(2) does not apply to the filing of this status report. The Board’s Clerk must receive the status report before the close of business on Tuesday, November 10, 2009. Although the status report may be filed electronically through the Clerk’s Office On-Line (COOL) from the Board’s Web site at www.ipcb.state.il.us, an electronic or approved fax filing must be received by the Clerk's Office no later than 4:30 PM on Tuesday, November 10, 2009. Any questions about electronic filing through COOL should be directed to the Clerk’s Office at (312) 814-3629.

IT IS SO ORDERED.



 Timothy J. Fox
 Hearing Officer
 Illinois Pollution Control Board
 100 West Randolph, Suite 11-500
 Chicago, Illinois 60601
 (312) 814-6085
 foxt@ipcb.state.il.us

