

ILLINOIS POLLUTION CONTROL BOARD  
May 3, 2012

MIDWEST GENERATION, LLC – )  
WAUKEGAN GENERATING STATION, )  
 )  
Petitioner, )  
 )  
v. ) PCB 12-121  
 ) (Variance - Air)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by J.A. Burke):

On April 10, 2012, Midwest Generation, LLC – Waukegan Generating Station (Midwest Generation) filed a petition for a variance (Petition) for its electric generating station (Station), Agency I.D. No. 097190AAC, located at 401 East Greenwood Avenue, Waukegan, Lake County. The station is located on approximately 200 acres in a partially-developed industrial area. Midwest Generation seeks a variance from the provisions of 35 Ill. Adm. Code 225.296(a)(1) and (c)(1) for the 12-month period beginning December 31, 2013 and ending December 31, 2014.

Midwest Generation states that, in light of significantly changed circumstances since adoption of the rule, Midwest Generation’s current operation plans will provide northeastern Illinois with a “substantial net benefit” in air emission reductions, while continuing to comply with the emission limits of the rule, most of which have already been achieved. Pet. at 1. Midwest Generation seeks a variance from two of the components of the Combined Pollutant Standard (CPS) codified at 35 Ill. Adm. Code 225.291 - 225.299 and 225.Appendix A “in order to avoid arbitrary and unreasonable hardship by permitting the company to adapt to unanticipated conditions that have evolved since the adoption of the CPS.” *Id.* at 2. Specifically, Midwest Generation seeks a variance from the compliance dates applicable to station unit 7 for the installation of flue gas desulfurization equipment (Section 225.296(a)(1)) and the conversion of the hot-side precipitator on that unit (Section 225.296(c)(1)). Midwest Generation requests the variance for a period of one year, from December 31, 2013, until December 31, 2014, with no change in the existing emission rate limits of the CPS. *Id.* Midwest Generation notes that, in an agreement dated February 28, 2012, the Environmental Law and Policy Center, the Sierra Club, the Natural Resources Defense Council, and the Respiratory Health Association of Metropolitan Chicago, have stated that, in “recognizing the net benefits to the CPS realized by the early retirements of [Midwest Generation’s] Fisk and Crawford coal-fired units,” they would not oppose this request for a variance for station unit 7. *Id.* at 3.

The Environmental Protection Act requires the Illinois Environmental Protection Agency (Agency) to provide public notice of a variance petition, including notice by publication in a

newspaper of general circulation in the county where the facility is located within 14 days after the petition is filed. 415 ILCS 5/37(a) (2010); 35 Ill. Adm. Code 104.214. The Agency is also required to file its recommendation on the variance with the Board within 45 days after the filing of the petition, or at least 30 days prior to a scheduled hearing, whichever is earlier. 35 Ill. Adm. Code 104.216. Midwest Generation's petition was filed on April 10, 2012. Therefore, newspaper notice was required by Tuesday, April 24, 2012, and the Agency recommendation is currently due Friday, May 25, 2012. Within 14 days after service of the Agency's recommendation, Midwest Generation may file a response to the Agency recommendation or an amended petition. 35 Ill. Adm. Code 104.220.

Midwest Generation does not request a hearing "because no federal law is affected" by the requested variance. Pet. at 28. However, Midwest Generation reserves its right to request a hearing should the United States Environmental Protection Agency approve Illinois' Best Available Retrofit Technology and Regional Haze State Implementation Plan prior to issuance of the Board's order. *Id.* Midwest notes that it would waive the decision deadline to a later date to accommodate such a hearing. *Id.* The Board will hold a hearing on the variance petition (1) if the petitioner requests a hearing, (2) if the Agency or any other person files a written objection to the variance within 21 days after the newspaper notice publication, together with a written request for hearing, or (3) if the Board, in its discretion, concludes that a hearing would be advisable. 415 ILCS 5/37(a) (2010); 35 Ill. Adm. Code 104.224, 104.234.

The assigned hearing officer is responsible for guiding the parties toward prompt resolution of this matter through whatever status calls and hearing officer orders he determines are necessary and appropriate. Hearings, if necessary, will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/38(a)), which only Midwest Generation may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Midwest Generation may deem the requested variance granted for a period not to exceed one year. *See* 415 ILCS 5/38(a) (2010). Currently, the decision deadline is August 8, 2012 (the 120th day after the April 10, 2012 filing). *See* 35 Ill. Adm. Code 104.232. The Board meeting immediately before the decision deadline is scheduled for July 26, 2012.

IT IS SO ORDERED.

Chairman Holbrook Abstained.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 3, 2012, by a vote of 4-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board