

ILLINOIS POLLUTION CONTROL BOARD
April 4, 2013

MIDWEST GENERATION, LLC)	
)	
Petitioner,)	
)	
v.)	PCB 13-24
)	(Variance - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

CONCURRING OPINION (by D. Glosser):

I agree with the majority opinion and concur in order to address my concerns with Midwest Generation, LLC (Midwest Generation)'s request for a variance. I agree that Midwest Generation will suffer an unreasonable economic hardship such that granting a variance is legally justified. Given the majority's inclusion of a comprehensive compliance plan, the variance as granted is consistent with the Board's previous actions, and I agree with granting this variance. However, I have several concerns about Midwest Generation's request that I believe need to be voiced.

I am concerned with the scale of this variance, which includes nine EGUs involving multiple facilities. Midwest Generation seeks variance relief from the system-wide sulfur dioxide (SO₂) emission rates of Section 225.295(b) (35 Ill. Adm. Code 225.295(b)) for the two-year period of 2015 and 2016. Pet. at 1, 52; Post Br. at 6. This relief would apply to the company's nine operating EGUs: Joliet Units 6, 7, and 8; Powerton Units 5 and 6; Waukegan Units 7 and 8; and Will County Units 3 and 4. Midwest Generation has not identified specifically which units will achieve the SO₂ reductions. Given that many of these EGUs are located in the Chicago Area which has air quality issues, I find the scale of the variance problematic.

The Illinois Environmental Protection Agency noted that with the Midwest Generation variance, "the calculated net environmental benefit is smaller than that calculated for previous variances granted [by the Board in Ameren Energy Resources v. IEPA, PCB 12-126 (Sept. 20, 2012) and the Waukegan Order]." Agency Rec. at 7-8. Even though the Ameren variance was for a longer period of time (five years), the fact that Ameren addressed only two EGUs and had larger SO₂ emission reductions, I believe makes the Board's decision in Ameren less problematic than a variance for nine EGUs involving multiple facilities with substantially less net SO₂ emission reductions.

Midwest Generation asserts that its proposed compliance plan would result in approximately 15,227 tons of SO₂ less than anticipated under the CPS during the years 2013

through 2014, 12,046 tons more in the years 2015 and 2016, with a net reduction of 3,181 tons overall from 2013 through 2016. Pet. at 48. Midwest Generation also claims that the proposed cap on mass emissions for SO₂ and the resulting reduction in the average annual heat input under the variance would also effectively reduce emissions of NO_x, PM, mercury, and carbon dioxide (CO₂) during the variance period. Pet at 49, Exh. 5 at 11.

Although the majority finds support for Midwest Generation's calculations and accepts those calculations, I am concerned that the reduction of SO₂ over the life of the variance is marginal at best and not as significant as portrayed by Midwest Generation.

Another area of unease I have is reflected by the Citizens Groups, who argue that, in light of the variance Midwest Generation was granted just four months prior to its current variance request (Midwest Generation, LLC - Waukegan Generating Station v. IEPA, PCB 12-121 (Aug. 23, 2012)), the company has made no indication that it will not return to the Board seeking another variance in the future. PC 2 at 6-7. Midwest Generation's own president indicated that the Chapter 11 bankruptcy proceedings could hinder Midwest Generation's ability to comply with the CPS or the variance. This issue, however, according to Mr. McFarlane, is addressed by designing the variance to compliment Midwest Generation's financial restructuring. Tr. at 36; *see also* Tr. at 57. I believe the potential exists for Midwest Generation to need to file additional variance requests from the CPS and this is a grave concern. The CPS provides an alternative to compliance from certain emission standards and Midwest Generation has already twice sought an alternative to the alternative.

My remaining concern relates to the potential for adverse impacts to public health as a result of the increase in SO₂ emissions in 2015 and 2016 as compared to that allowed by the CPS, although the record did not provide sufficient data to draw definitive conclusions.

For the foregoing reasons I concur in the majority opinion and order.



Deanna Glosser

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above concurring opinion on April 4, 2013.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board