

ILLINOIS POLLUTION CONTROL BOARD

August 7, 2014

AMEREN ENERGY MEDINA VALLEY)	
COGEN, LLC,)	
)	
Petitioner,)	
)	
v.)	PCB 14-41
)	(Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.D. O’Leary):

On November 27, 2013, Ameren Energy Resources Generating Company (AERG) filed an appeal seeking review of the disapproval by the Illinois Environmental Protection Agency (Agency) of AERG’s request for a Beneficial Use Determination pursuant to Section 3.135(b) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/3.135(b) (2012)). AERG asserts that the Agency failed to act on the request by the statutory deadline and as a result the request is deemed disapproved by operation of law. See 415 ILCS 5/3.135(b), 40 (2012); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns AERG’s use of coal combustion by-product from the E.D. Edwards power generating station as structural fill material to construct a railroad embankment and haul road at the Duck Creek generating station, located at 17751 N. Cilco Road, Canton, Fulton County.

On April 17, 2014, AERG and AmerenEnergy Medina Valley Cogen, L.L.C., (Medina Valley) filed a motion for substitution (Mot.). The motion seeks to substitute Medina Valley as the petitioner in this matter. Mot. at 1. On May 13, 2014, the Attorney General, on behalf of the People of the State of Illinois and representing the Agency, filed a motion for extension of the response deadline. On May 22, 2014, the hearing officer issued an order extending the deadline to June 23, 2014. Ameren Energy Resources Generating Co. v. IEPA, PCB 14-41 (May 22, 2014). After a June 23, 2014 status conference, the hearing officer reported that “[t]he People do not plan to file a response to the motion to substitute.” *Id.* (June 23, 2014).

The motion for substitution states that, on December 2, 2013, Ameren Corporation (Ameren) “completed a transaction which, among other things, resulted in the divestiture of its merchant generation business including the Duck Creek Energy Center.” Mot. at 1; Exh. A (affidavit). The motion adds that, “[p]rior to its dissolution, Ameren Energy Resources Company, LLC, a direct wholly owned subsidiary of Ameren, was the beneficial owner of all of the issued and outstanding limited liability company interest in AERG.” Mot. at 1; Exh. A at 1. The motion claims that, as a result of the transaction, AERG no longer exists as an Ameren subsidiary. *Id.* at 2.

AERG and Medina Valley further state that, “[a]s part of the divestiture, a narrow set of liabilities, including all claims by the State of Illinois relating to the use of coal combustion material as sub-base within a rail line at Duck Creek, were retained.” Mot. at 1; *see* Exh. A. The motion states that, according to the terms of the transaction,


AERG and Medina Valley entered into an Assignment and Assumption Agreement, pursuant to which AERG assigned and Medina Valley assumed any liabilities arising from the Complaint filed by the Attorney General of the State of Illinois on February 4, 2013 in People v. AmerenEnergy Resources Generating Co., PCB Docket 13-41 and any subsequent complaints, enforcement actions, or petitions for relief related to the underlying allegations at issue in the Complaint, as well as the right to resolve the matter at issue in PCB docket 13-41 and any subsequent related actions. Mot. at 1-2; *see* Exh. A at 2.

The motion states that this appeal relates to the underlying issues raised in the complaint in People v. AmerenEnergy Resources Generating Company, Inc., PCB 13-41. Mot. at 2. The motion adds that that complaint “alleges that AERG did not obtain a beneficial use determination from the Illinois Environmental Protection Agency pertaining to the coal combustion by product used as fill material at the Duck Creek Station. The instant proceeding appeals the Agency’s failure to decide upon a beneficial use determination application for the very same project and may resolve the enforcement action.” *Id.* The motion concludes that “any rights or liability arising from the instant proceeding was assumed by Medina Valley.” *Id.*; *see* Exh. A at 2.

Section 101.500(d) of the Board’s procedural rules provides in 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 hearing officer in its disposition of the motion.” 35 Ill. Adm. Code 101.500(d). Having reviewed the motion and in the absence of any response on behalf of the Agency, the Board grants the motion for substitution. The substitution of Medina Valley as petitioner is reflected in the caption above.

IT IS SO ORDERED.

I, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 7, 2014, by a vote of 4-0.



Don A. Brown, Assistant Clerk
Illinois Pollution Control Board