

ILLINOIS POLLUTION CONTROL BOARD

August 6, 2015

MIDWEST GENERATION, LLC, )  
Petitioner, )  
v. ) PCB 16-19  
ILLINOIS ENVIRONMENTAL ) (Variance – Water)  
PROTECTION AGENCY, )  
Respondent. )

ORDER OF THE BOARD (by D. Glosser):

On July 21, 2015, Midwest Generation, LLC (Midwest Generation) filed a petition for variance from the thermal water quality standards adopted by the Board in Water Quality Standards And Effluent Limitations For The Chicago Area Waterway System And Lower Des Plaines River Proposed Amendments To 35 Ill. Adm. Code 301, 302, 303, and 304, R08-9(D) (June 18, 2015). Specifically Midwest Generation seeks a variance from the standards in Section 302.408 (35 Ill. Adm. Code 302.408). After providing background on variances and Midwest Generation’s petition, today’s order accepts the petition for hearing, and addresses deadlines for the recommendation of the Illinois Environmental Protection Agency (Agency) and the final decision of the Board.

**BACKGROUND**

Under the Environmental Protection Act (Act) (415 ILCS 5/35-38 (2014)), the Board is responsible for granting variances when a petitioner demonstrates that compliance would impose an “arbitrary or unreasonable hardship” on petitioner. *See* 415 ILCS 5/35(a) (2014); *see also* 415 ILCS 5/37(a) (2014) (burden of proof is on petitioner). A “variance is a temporary exemption from any specified rule, regulation, requirement or order of the Board.” *See* 35 Ill. Adm. Code 104.200(a)(1). However, “[i]f any person files a petition for variance from a rule or regulation within 20 days after the effective date of such rule or regulation, the operation of such rule or regulation shall be stayed as to such person pending the disposition of the petition.” 415 ILCS 5/38(b) (2014). The Board may issue a variance, with or without conditions, for up to five years, but may extend a variance if petitioner shows that it has made satisfactory progress toward compliance. *See* 415 ILCS 5/36(a), (b) (2014). The Act requires the Agency to “make a recommendation to the Board as to the disposition of the petition.” 415 ILCS 5/37(a) (2014).

This petition concerns the discharge from three of Midwest Generation’s electric generating stations, the Will County Station, Joliet 9 Station, and Joliet 29 Station (collectively, MWGen Stations). The Will County Station discharges to the Chicago Sanitary & Ship Canal (CSSC). Both the Joliet 9 and Joliet 29 Stations discharge to the portion of the Des Plaines River defined under the Illinois use designation system as the Upper Dresden Island Pool (UDIP).

## **PETITION**

Midwest Generation seeks a two-year variance authorizing continued thermal discharges from the MWGen Stations in compliance with the currently effective thermal water quality standards set forth in 35 Ill. Adm. Code 302.408(b), and a variance from both the numerical and narrative provisions of Sections 302.408(c) through (f), (h) and (i), as of the July 1, 2018 effective date or applicability of these new thermal water quality standards. Midwest Generation argues that compliance with the standards applicable in 2018 would impose an arbitrary or unreasonable hardship. Pet. at 1.

According to Midwest Generation the requested variance would allow it to discharge heated cooling water in compliance with the thermal standards currently applicable for Use B and UDIP waters as set forth in Section 302.408(b), which are the same as the formerly applicable “Secondary Contact and Indigenous Aquatic Life” thermal standards (“Indigenous Aquatic Life”), as conditioned in this variance request. Pet. at 2

## **AGENCY RECOMMENDATION**

Unless otherwise ordered by the hearing officer or the Board, the Agency is 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. *See* 35 Ill. Adm. Code 104.216(b). The Agency recommendation is currently due September 4, 2015, the 45th day after the petition was filed. Within 14 days after service of the Agency’s recommendation, Midwest Generation may file a response to the Agency recommendation or an amended petition. *See* 35 Ill. Adm. Code 104.220.

## **HEARING AND DECISION DEADLINE**

Generally, the Board will hold a hearing on a 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. *See* 415 ILCS 5/37(a) (2014); *see also* 35 Ill. Adm. Code 104.224, 104.234. Midwest Generation requested a hearing in this case. Pet. at 37. The Board accepts Midwest Generation’s petition for hearing without ruling upon the sufficiency of the petition. Before hearing, the Board or its hearing officer may issue one or more orders seeking additional information from Midwest Generation.

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 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) (2014). Currently, the decision deadline is November 18, 2015. The Board currently has a Board meeting scheduled for November 5, 2015.

Section 37(a) of the Act requires petitioner to provide notice of the petition to:

any person in the county in which the installation or property for which variance is sought is located who has filed with the Board a written request for notice of variance petitions, the State's attorney of such county, the Chairman of the County Board of such county, and to each member of the General Assembly from the legislative district in which that installation or property is located, and (iii) publish a single notice of such petition in a newspaper of general circulation in such county. 415 ILCS 5/37 (a) (2014).

The Board has not received proof that notice was provided pursuant to the Act and directs Midwest Generation to do so before hearing.

IT IS SO ORDERED.

I, John Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 6, 2015, by a vote of 5-0.



---

John Therriault, Clerk  
Illinois Pollution Control Board