

ILLINOIS POLLUTION CONTROL BOARD
June 16, 2016

MIDWEST GENERATION, L.L.C.,)
WAUKEGAN GENERATING STATION,)
)
Petitioner,)
)
v.) PCB 06-146
) (CAAPP Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by C.K. Zalewski):

On June 10, 2016, Midwest Generation, L.L.C., (Midwest Gen) and the Illinois Environmental Protection Agency (IEPA) filed a joint motion asking the Board to lift the stay of the uncontested conditions and remand the permit to the IEPA. For the reasons discussed below the Board grants the motion.

The parties indicate that an agreement concerning petitioner’s contested permit conditions for the Waukegan generating station has been reached. Mot. at 3. Further, the agreement has been noticed and undergone United States Environmental Protection Agency review. *Id.* at 4. In order to incorporate the negotiated changes, the parties ask the Board to lift the stay as to conditions not contested by the petitioner and remand the permit back to the IEPA. *Id.* at 4. The IEPA will establish a new effective date and expiration date and issue a modified permit on the same day the Board remands the permit. *Id.* Petitioner will file a motion to dismiss this permit appeal when the new permit, with the negotiated changes is issued. *Id.* The parties ask the Board to lift the stay on the uncontested provisions of the permit and remand the permit, while retaining jurisdiction over the contested conditions without citation to authority.

Lifting the Stay

The Board found, on February 16, 2006, that the automatic stay provisions of Section 10-65(b) of the APA (5 ILCS 100/10-65 (2012)) applied to appeals like this one. Midwest Generation, LLC, Crawford Generating Station v. IEPA, PCB 06-56, slip op. at 7 (Feb. 16, 2006); Midwest Generation, LLC, Fisk Generating Station v. IEPA, PCB 06-57, slip op. at 7 (Feb. 16, 2006); Midwest Generation, LLC, Joliet Generating Station v. IEPA, PCB 06-58, slip op. at 7 (Feb. 16, 2006); Midwest Generation, LLC, Powerton Generating Station v. IEPA, PCB 06-59, slip op. at 7 (Feb. 16, 2006); and Midwest Generation, LLC, Will County Generating Station v. IEPA, PCB 06-60, slip op. at 7 (Feb. 16, 2006). In the Board’s March 16, 2006 order accepting the petition for review in this case, it noted the effect of the automatic stay provisions of the APA. Midwest Generation, LLC, Waukegan Generating Station v. IEPA, PCB 06-146, slip op. at 2 (March 16, 2006).

On June 21, 2010, Section 40.2(f) of the Act was added by P.A. 96-934 to provide that “subsection (b) of Section 10-65 of the Illinois Administrative Procedure Act shall not apply to actions” taken under the CAAPP provisions at Section 39.5 of the Act. 415 ILCS 5/40.2(f) (2012); *see* 415 ILCS 5/39.5 (2012). Section 40.2(f) of the Act requires the Board to stay the contested conditions upon the request of the applicant, and gives the Board discretion to stay the effectiveness of “any or all uncontested conditions.” *Id.* Today, the Board grants the joint motion and lifts the stay of the uncontested conditions, while continuing to stay the contested conditions.

Remand of Permit

As indicated above, the parties ask that the permit be remanded to the IEPA while the Board retains jurisdiction. In Ameren Energy Generating Company, Coffeen Power Station v. IEPA, PCB 06-64 (Sept. 20, 2012), the parties asked the Board to lift the stay of contested CAAPP permit conditions, remand the permit, and retain jurisdiction. The Board reviewed relevant portions of the Act and determined that remanding a CAAPP permit was appropriate. *See* Ameren Energy Generating Company, Coffeen Power Station v. IEPA, PCB 06-64, slip op. at 3 (Sept. 20, 2012); Midwest Generation, LLC, Powerton Generating Station v. IEPA, PCB 06-59 (Oct. 15, 2015). The Board further found that the Board could retain jurisdiction. *Id.* The requests made in this case are similar to those in the Ameren and Midwest Generation cases. Therefore, the Board will grant the parties’ request to remand the permit and retain jurisdiction of the case.

The Board lifts the stay of the uncontested CAAPP permit conditions and remands the permit to the IEPA as requested by the joint motion. The Board reminds that when the IEPA issues the permit with modifications, Section 40.2 of the Act provides for appeals by persons who have standing other than the applicant. 415 ILCS 5/40.2 (2014). Thus, even though the Board retains jurisdiction of this matter, if other persons have standing and wish to appeal, those appeals, if appropriate, will be accepted and docketed under a different case number.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 16, 2016, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board