

ILLINOIS POLLUTION CONTROL BOARD
December 21, 2017

DYNEGY MIDWEST GENERATION, LLC))	
(HENNEPIN POWER STATION),))	
)	
Petitioner,))	
)	
v.))	PCB 06-72
)	(CAAPP Permit Appeal — Air)
ILLINOIS ENVIRONMENTAL))	
PROTECTION AGENCY,))	
)	
Respondent.))	

ORDER OF THE BOARD (by G.M. Keenan):

On December 18, 2017, Dynegy Midwest Generation, LLC and the Illinois Environmental Protection Agency (Illinois EPA) filed a joint motion asking the Board to lift a stay of uncontested conditions in a Clean Air Act Permit Program (CAAPP) permit for Dynegy's Hennepin facility. The joint motion also asks the Board to remand the permit to the Agency, while continuing to stay the remaining conditions. The remand will allow the Illinois EPA to revise the permit in accordance with the parties' settlement negotiations. The Board will grant the motion.

PROCEDURAL BACKGROUND

On November 3, 2005, Dynegy petitioned the Board for review of the CAAPP permit for its coal-fired power plant called Hennepin Power Station in Hennepin, Putnam County. *See* 415 ILCS 5/40.2(a) (2016); 35 Ill. Adm. Code 105.302(e) (2016). On February 16, 2006, the Board found that the automatic stay provision in the Administrative Procedure Act (5 ILCS 100/1-5, 1-35, 1-40, 10-65 (2016)) (APA) applied to this appeal. On December 18, 2017, the parties filed a joint motion (Mot.) asking the Board to lift the stay on uncontested permit conditions and remand the permit to the Illinois EPA.

The joint motion states that the parties have reached an agreement on the contested permit conditions; the revised permit provisions were noticed for public comment and reviewed by the U.S. Environmental Protection Agency. Mot. at 1. In order to incorporate the negotiated changes, the parties ask the Board to lift the stay on uncontested conditions and remand the permit to the Illinois EPA. *Id* at 2. Illinois EPA will issue the revised permit on the same day that the Board remands. *Id*. Dynegy will move to dismiss this appeal when Illinois EPA issues the revised permit. *Id*.

DISCUSSION

In 2006, the Board found that the automatic stay provisions of the APA, as it existed at the time (5 ILCS 100/10-65 (2005)), applied to this appeal. Subsequently, a new section was added to the Environmental Protection Act (415 ILCS 5/40.2(f) (2016)). Under this new section, the APA's automatic stay provisions do not apply to CAAPP permit appeals. *Id.* Instead, the Board must stay contested permit conditions at the request of the permit applicant, but has discretion whether to stay uncontested conditions.

Under this authority, the Board will lift the stay on the uncontested conditions while continuing to stay the contested conditions. The contested conditions are listed in Dynegey's petition filed November 3, 2005. The Board will also remand the permit to the Illinois EPA while retaining jurisdiction over contested conditions.

ORDER

1. The Board lifts the stay of uncontested conditions in Dynegey's CAAPP permit for its Hennepin facility.
2. The Board continues to stay the contested conditions in the Hennepin permit and retains jurisdiction over them.
3. The Board remands the permit to the Illinois EPA.

IT IS SO ORDERED.

Member Carter abstained.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 21, 2017, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board