

ILLINOIS POLLUTION CONTROL BOARD  
June 21, 2018

DYNEGY MIDWEST GENERATION, LLC )  
(BALDWIN ENERGY COMPLEX), )  
 )  
Petitioner, )  
 )  
v. ) PCB 06-63  
 ) (CAAPP Permit Appeal - Air)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by C.M. Santos):

On May 30, 2018, Dynegy Midwest Generation, LLC (Dynegy) and the Illinois Environmental Protection Agency (IEPA) filed a joint motion (Mot.) asking the Board to lift the stay of the uncontested conditions of a Clean Air Act Permit Program (CAAPP) permit. Mot. at 1. IEPA issued the permit to Dynegy’s Baldwin Energy Complex, a coal-fired electric generating station located at 10901 Baldwin Road, Baldwin, Randolph County. Dynegy’s appeal challenged numerous permit conditions.

The parties’ joint motion asks the Board to: (1) lift the stay of the uncontested permit conditions; (2) maintain the stay of the contested conditions and its jurisdiction over them; and (3) remand the permit to IEPA so that it can revise the permit’s term of duration and incorporate other modifications negotiated by the parties. Mot. at 1. The motion explains that the parties’ negotiated agreement has been submitted to public comment and reviewed by the United States Environmental Protection Agency. *Id.* The parties’ motion adds that, on the day the Board remands the permit to IEPA, IEPA will issue a modified permit with new effective and expiration dates and other negotiated changes. *Id.* at 2. Once IEPA issues the modified permit, Dynegy “will file a motion to dismiss this matter.” *Id.*

On February 16, 2006, the Board found that the automatic stay provisions of Section 10-65(b) of the Illinois Administrative Procedure Act (APA) apply to appeals such as this. Dynegy Midwest Generation v. IEPA, PCB 06-63, slip op. at 7-8 (Feb. 16, 2006). Public Act 96-934, effective June 21, 2010, added subsection (f) to Section 40.2 of the Environmental Protection Act (Act). Section 40.2 of the Act (415 ILCS 5/40.2 (2016)) concerns CAAPP permit appeals. Subsection (f) of Section 40.2 provides that the Board must stay contested permit conditions at a permit applicant’s request, and it gives the Board discretion to stay “any or all uncontested conditions.” It also provides that Section 10-65(b) of the APA “shall not apply to actions under this subsection.” 415 ILCS 5/40.2(f) (2016); *see* Public Act 96-934, eff. June 21, 2010.

The Board has granted requests like the one it rules on today, finding the requests appropriate and within its authority. *See, e.g., Electric Energy, Inc. v. IEPA*, PCB 06-65 (June 8,

2017); Midwest Generation v. IEPA, PCB 06-146 (June 16, 2016); Ameren Energy Generating Co. v. IEPA, PCB 06-68 (Nov. 19, 2015).

The Board grants the joint motion, lifts the stay of the uncontested conditions, retains jurisdiction over and continues staying the contested conditions, and remands the permit to IEPA. Under Section 40.2(f) of the Act, because the stay applies to some but not all conditions of the permit, Dynegy must continue to operate according to any related terms and conditions of any other applicable permits until final Board action in the review process. 415 ILCS 5.40.2(f) (2016).

When IEPA issues the modified permit, the Act allows persons with standing to appeal that determination. 415 ILCS 5/40.2 (2016). Although the Board retains jurisdiction of this matter, if a person with standing appeals the modified permit, the Board will, if appropriate, accept and docket that appeal under a different case number.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 21, 2018 by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, looped initial "D".

Don A. Brown, Clerk  
Illinois Pollution Control Board