

ILLINOIS POLLUTION CONTROL BOARD

June 21, 2018

ILLINOIS POWER GENERATING CO.)	
(COFEEN POWER STATION),)	
)	
Petitioner,)	
)	
v.)	PCB 18-82
)	(NPDES Permit Appeal - Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On June 13, 2018, Illinois Power Generating Company (IPGC) timely filed a petition (Pet.) asking the Board to review a May 10, 2018 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2016); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns a National Pollutant Discharge Elimination System (NPDES) permit for IPGC’s Coffeen generation facility at 134 CIPS Lane in Coffeen, Montgomery County. In this order, the Board accepts the petition for review.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2016)), the Agency is the permitting authority, responsible for administering Illinois’ regulatory programs to protect the environment. If the Agency denies a permit or grants one with conditions, the permit applicant may appeal the Agency’s decision to the Board. *See* 415 ILCS 5/4, 5, 40(a)(1) (2016); 35 Ill. Adm. Code 105.Subpart B. Here, the Agency issued a modified NPDES permit, subject to conditions. IPGC appeals one of the conditions, asserting that it “is not necessary to accomplish the purposes of the Act and Board regulations, and is otherwise arbitrary and capricious.” Pet. at 1. IPGC’s petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. IPGC has the burden of proof. 415 ILCS 5/40(a)(1) (2016); *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its permit decision. *See* 35 Ill. Adm. Code 105.214(a). Accordingly, though the Board hearing affords a permit applicant the opportunity to challenge the Agency’s reasons for denying or conditionally granting the permit, information developed after the Agency’s decision typically is not admitted at hearing or considered by the Board. *See* Alton Packaging Corp. v. PCB, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987); Community Landfill Co. & City of Morris v. IEPA, PCB 01-170 (Dec. 6, 2001), *aff’d sub nom. Community Landfill Co. & City of Morris v. PCB & IEPA*, 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).

Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by

videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 105.110.

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2016)), which only IPGC may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, IPGC "shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 of this Act [415 ILCS 5/41(d) (2016)]." 415 ILCS 5/40(a)(3) (2016). Currently, the decision deadline is October 11, 2018, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for October 4, 2018.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by July 13, 2018, which is 30 days after the Board received IPGC's petition. *See* 35 Ill. Adm. Code 105.116(a), 105.212(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. *See* 35 Ill. Adm. Code 105.116(a). The record must comply with the Board's requirements for content, organization, and certification. *See* 35 Ill. Adm. Code 101.1030(g), 105.116(b), 105.212(b). In addition, the Agency must file the record electronically instead of in paper. Specifically, the record must be filed through the Clerk's Office On-Line (COOL) or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. *See* 35 Ill. Adm. Code 101.302(h)(2)(A), 105.116(a).¹

Accompanying IPGC's petition for review is a motion to allow IPGC to operate under the 2018 permit, instead of the old permit. Pet. at 4-5. Unless the Board grants the motion, the 2018 permit will be automatically stayed by the Administrative Procedure Act. *See* 5 ILCS 100/10-65(b) (2016). The Board's procedural rules provide 14 days after service of the motion for the non-moving party to respond. *See* 35 Ill. Adm. Code 101.500(d). The Board therefore defers ruling on the motion until the Agency's response time has run.

IT IS SO ORDERED.

Board Members B.K. Carter and C.M. Santos abstained.

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 3-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

¹ Any questions about filing the record in an electronic format should be directed to the Clerk's Office at (312) 814-3620 or (312) 814-3461.