

ILLINOIS POLLUTION CONTROL BOARD  
August 23, 2018

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

ORDER OF THE BOARD (by K. Papadimitriu):

On June 21, 2018, the Board accepted for hearing Illinois Power Generating Company’ (IPGC) petition (Pet.) asking the Board to review a May 10, 2018 determination of the Illinois Environmental Protection Agency (Agency). The determination concerns a National Pollutant Discharge Elimination System (NPDES) permit issued by the Agency for IPGC’s Coffeen generation facility at 134 CIPS Lane in Coffeen, Montgomery County (2018 Permit). Today the Board grants IPGC’s motion, accompanying the petition (Pet. at 4-5), to allow IPGC to operate under the 2018 Permit (Mot.). The Board deferred ruling on the motion until the Agency’s response time has run. Illinois Power Generating Co. v. IEPA, PCB 18-82, slip op. at 2 (Jun. 21, 2018).

**IPGC’S MOTION**

IPGC’s petition for review is contesting one condition of the 2018 Permit – Special Condition 17, the Effluent Limitation Guidelines Deadline. Special Condition 17 prohibits discharge of bottom ash transport waters after April 1, 2019 and imposes stringent effluent limitations on flue gas desulfurization waste water, beginning April 1, 2020. Pet at 2. IPGC’s motion is asking the Board in its discretion to allow IPGC to operate under the terms of the 2018 Permit “pending the outcome of this appeal or until Petitioner moves the Board for a discretionary stay at a later time.” Pet. at 4. IPGC explains that it does not request stay of Special Condition 17 since condition’s deadlines are not until April 1, 2019 and April 1, 2020 and IPGC anticipates that the parties will reach an agreement before that time. *Id.*

The Agency did not file an objection to the motion. On July 12, 2018, the Agency filed a Motion for Extension of Time to Respond to Petition for Review of IEPA NPDES Permit Decision and Response to Request to Operate Under the 2018 Modified Permit (Ag. Mot.). Agency’s motion states that the Agency does not oppose IPGC’s request to operate under the 2018 Permit. Ag. Mot at 2.

**DISCUSSION**

Consistent with the long-standing case law, the Board previously concluded that the automatic stay provisions of Section 10-65(b) of APA (5 ILCS 100/10-65(b) (2016)) apply to NPDES permit appeals before the Board. *See e.g., Spectrum Preferred Meats, Inc. v. IEPA*, PCB 13-63, slip. op at 2 (Jul. 11, 2013), *see Borg-Warner Corp. v. Mauzy*, 100 Ill. App. 3d 862, 427 N.E.2d 415 at 421 (3rd Dist. 1981) (*noting that a final and binding decision on an NPDES permit will not be forthcoming until the PCB rules on the permit application and that the effectiveness of the challenged permit is stayed until that time, under Section 16(b)*).

The Board also concluded previously that neither the Act nor APA prevent a permittee from electing *not* to avail itself of the APA stay in case a permittee may find it advantageous to operate under the terms of a renewed permit, rather than under the terms of the old one. *See Dynegy Midwest Generation, Inc. v. IEPA*, PCB 06-74 slip op. at 7 (Feb. 16, 2006); *see also Spectrum*, PCB 13-63, slip. op at 2.


### CONCLUSION

Exercising its discretion, the Board grants IPGC's unopposed motion to allow IPGC to operate under the terms of the 2018 Permit and not to stay the permit under the automatic stay provisions of Section 10-65(b) of APA (5 ILCS 100/10-65(b) (2016)).

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 August 23, 2018, by a vote of 3-0.

 Don A.

Brown, Clerk  
Illinois Pollution Control Board