

ILLINOIS POLLUTION CONTROL BOARD
November 20, 1986

IN THE MATTER OF:)
)
SITE-SPECIFIC RULEMAKING FOR) R85-7
CENTRAL ILLINOIS LIGHT COMPANY)

ORDER OF THE BOARD (by R.C. Flemal):

This matter comes before the Board upon the October 16, 1986 Motion for Rehearing filed by Central Illinois Light Company ("CILCO"). The Illinois Environmental Protection Agency filed a response to the motion on October 31, 1986.

CILCO contends that the Board's September 11, 1986 decision denying the site-specific relief requested by CILCO "appears to be based on a misunderstanding or mis-application of the structure and requirements of the Environmental Protection Act and a misunderstanding or unwarranted inference from the evidence in the record" ("Motion for Rehearing", p. 1).

The Agency argues that the Board's Procedural Rules do not provide, in the context of regulatory proceedings, for motions to the Board for rehearing or reconsideration. The Agency therefore urges that CILCO's motion be dismissed ("Agency Response to Motion for Rehearing", pgs. 1-3). Alternatively, the Agency states that if the Board rules on the merits of CILCO's motion, the motion should be denied since the Board correctly applied the statutory criteria of the Act and properly found that the requested relief was not justified by the record (Id. at 8).

The Board notes that, contrary to the Agency's assertion, motions for rehearing or reconsideration may appropriately be considered by the Board in rulemaking proceedings. The authority to hear such motions is implicit in the general rulemaking authority delegated to the Board by the Act. Nevertheless, in this instance the Board concludes that the Motion for Rehearing must be denied. The Board believes that its September 11, 1986 decision in this matter was not based on any misunderstanding/misapplication of the Act, or on any misunderstanding of the record. Rather, the Board affirms that the Opinion and Order adopted on September 11 was well founded on the record in this proceeding as it was developed by the participants.

The Board wishes to take special note of CILCO'S arguments concerning the Board's reference in its Opinion to the "goals of equitable and fair treatment". (Op. p. 8, CILCO Motion for Rehearing, p. 7-10). CILCO misconstrues the Board's statement, as well as the weight this matter carries in the determination that CILCO'S petition must be denied.

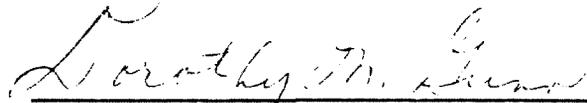
The Board determined, based on the record presented to it by CILCO, that CILCO failed to adequately demonstrate why it should be treated differently than others subject to the general rule. Such consideration of equitable and fair treatment is inherent in all Board rulemakings, whether general rulemakings or site-specific rulemakings. Therefore, the Board has not, in the instant matter, introduced "an entirely new, and unjustified test", as adduced by CILCO (CILCO Motion for Rehearing, p. 10).

Finally, CILCO errs in its interpretation of the weight accorded the matter of equitable and fair treatment. The Board has also determined that CILCO failed to demonstrate that compliance with the general rule is technically infeasible and economically unreasonable. This determination, in itself, required that the petition be denied.

The October 16, 1986 Motion for Rehearing filed by Central Illinois Light Company is hereby denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 20th day of November, 1986, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board