

ILLINOIS POLLUTION CONTROL BOARD
July 12, 2007

IN THE MATTER OF:)
)
FAST-TRACK RULES UNDER NITROGEN) R07-18
OXIDE (NO_x) SIP CALL PHASE II) (Rulemaking - Air)
AMENDMENTS TO 35 ILL. ADM. CODE)
SECTION 201.146 and PARTS 211 and 217)
_____)
)
IN THE MATTER OF:)
)
SECTION 27 PROPOSED RULES FOR) R07-19
NITROGEN OXIDE (NO_x) EMISSIONS) (Rulemaking - Air)
FROM STATIONARY RECIPROCATING)
INTERNAL COMBUSTION ENGINES AND)
TURBINES: AMENDMENTS TO 35 ILL.)
ADM. CODE PARTS 211 and 217)

ORDER OF THE BOARD (by A.S. Moore):

On July 11, 2007, the Illinois Environmental Protection Agency (Agency) filed a “Motion for Leave to File Reply by Date Certain” (Mot.). The Agency states that, on June 25, 2007, it filed with the Board a motion to reconsider a May 17, 2007 Board order in this proceeding. Mot. at 1. The Agency notes that, on July 9, 2007, the Board received from ANR Pipeline Company, Natural Gas Pipeline Company, Trunkline Gas Company, and Panhandle Eastern Pipeline Company (collectively, the Pipeline Consortium) the Pipeline Consortium’s response to the motion for reconsideration. Also on July 9, 2007, the Board received from the Illinois Environmental Regulatory Group (IERG) a motion to strike and a response to the motion for reconsideration.

In its motion, the Agency argues “that the Responses contain arguments that are both misleading and without merit.” Mot. at 2. The Agency seeks leave to file a reply to the responses “[i]n order to prevent material prejudice that would result from the inability to confront these arguments.” *Id.* at 3. The Agency claims that “[n]o hardship or prejudice will occur to the Pipeline Consortium or [] IERG as a result of the granting of this Motion.” *Id.* Acknowledging the Board’s interest in proceeding expeditiously in these rulemaking dockets, the Agency’s attorney states that he “will commit to filing a comprehensive Reply to both Responses with the Board by no later than Wednesday, July 18, 2007.” *Id.*

The Board’s procedural rules provide that, “[u]nless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 14 day response period except in deadline driven proceedings where no waiver has been granted.” 35 Ill. Adm. Code 101.500(d). Under Section

28.5(o) of the Environmental Protection Act (Act) (415 ILCS 5/28.5(o) (2006)), the Board must adopt a second-notice opinion in R07-18 no later than 130 days after receiving that rulemaking proposal on April 6, 2007. Specifically, the Board must adopt that opinion at its regularly-scheduled August 9, 2007 meeting. Furthermore, Section 28.5 does not provide either the Board or the rulemaking participant any mechanism for waiving deadlines in that “fast-track” rulemaking. In addition, the first hearing in R07-19 begins on Tuesday, September 18, 2007, and pre-filed testimony for that first hearing must be filed no later than Monday, August 27, 2007. Accordingly, the Board finds that allowing the 14 day response period to expire under these circumstances would result in undue delay in both R07-18 and R07-19, and the Board will proceed to consider the motion for leave to file.

The Agency has correctly noted that “the Board’s regulations do not specifically provide a right to reply to a moving party.” Mot. at 2. Specifically, the Board’s procedural rules provide that “[t]he moving party will not have the right to reply, except as permitted by the Board . . . to prevent material prejudice.” 35 Ill. Adm. Code 101.500(e). The Agency argues that it would suffer material prejudice if it is not allowed to confront the Pipeline Consortium’s and IERG’s arguments about the interpretation of Section 28.5 of the Act. Mot. at 2; *see* 415 ILCS 5/28.5 (2006). The Board grants the Agency’s motion for leave to file a reply. Noting the Agency’s commitment to file that reply (Mot. at 3), the Board directs the Agency to file its reply no later than Wednesday, July 18, 2007. With regard to filing this reply, the “mailbox rule” at 35 Ill. Adm. Code 101.300(b)(2) does not apply, and the Board’s Clerk must receive that filing before the close of business on July 18, 2007.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 12, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board