

ILLINOIS POLLUTION CONTROL BOARD
October 18, 2007

DYNEGY MIDWEST GENERATION, INC.)
(HENNEPIN POWER STATION),)
)
Petitioner,)
)
v.) PCB 07-123
) (Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by N.J. Melas):

On June 21, 2007, the Board, at the parties' request, extended until October 4, 2007, the time period within which Dynegy Midwest Generation, Inc. (Hennepin Power Station) (Dynegy) could appeal a construction permit issued to Dynegy by the Illinois Environmental Protection Agency (Agency) on May 29, 2007. *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.208(a). On October 4, 2007, Dynegy timely filed a petition asking the Board to review the Agency-issued permit.

The Agency granted Dynegy a permit for construction and operation of two baghouses, sorbent injection control systems and induced draft fans for units at the Hennepin Power Station located at 13498 East 800 Street, Hennepin, Bureau County. Dynegy challenges numerous permit conditions. Dynegy's petition meets the content requirements of 35 Ill. Adm. Code 105.210. The Board accepts the petition for hearing.

The permit incorporates many conditions that Dynegy is currently challenging in another, still pending permit appeal relating to Hennepin (Dynegy v. IEPA, PCB 06-72), as well as a recent appeal relating to a permit issued for Dynegy's Havana Power Station (Dynegy v. IEPA, PCB 07-115). Dynegy challenges these conditions' inclusion in the Hennepin construction permit, and asks the Board to stay the effectiveness of those conditions. To date, the Board has received no response from the Agency regarding Dynegy's request for a stay. The Board today reserves ruling on stay issues until the Agency has filed a response or the response time has elapsed. *See* 35 Ill. Adm. Code 101.500(d).

Dynegy has the burden of proof. 415 ILCS 5/40(a)(1) (2006); *see also* 35 Ill. Adm. Code 105.112(a). Hearings "will be based exclusively on the record before the Agency at the time the permit or decision was issued." 35 Ill. Adm. Code 105.214(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2006)), which only Dynegy may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Dynegy "may deem the permit issued" absent the contested conditions. 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is

February 1, 2008 (the 120th day after October 4, 2007). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadlines is scheduled for January 24, 2008.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by November 5, 2007, which is the first business day following the 30th day after Dynegy filed the petition. 35 Ill. Adm. Code 101.300(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. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

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 October 18, 2007, by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board