

ILLINOIS POLLUTION CONTROL BOARD  
October 28, 1976

COMMONWEALTH EDISON COMPANY, )  
(LAKE SANGCHRIS), )  
 )  
Petitioner, )  
 )  
v. ) PCB 76-198  
 )  
ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
Respondent. )

OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin):

This matter is before the Board on a Variance Petition filed by Commonwealth Edison Company (Edison) on July 27, 1976. That Petition seeks a Variance from Rule 203(i)(5) of Chapter 3: Water Pollution, allowing the hearing required under that Rule to be held prior to April 16, 1977. Ill. PCB Regs., Ch. 3, Rule 203(i)(5) (1976). A Recommendation was filed by the Environmental Protection Agency (Agency) on September 8, 1976. No hearing was held in this matter.

Edison's Kincaid generating station, located in Christian County, Illinois, discharges heated effluent into Edison's Lake Sangchris. The heated effluent from Kincaid station, and Lake Sangchris generally, have been discussed by this Board previously and need not again be described. Citizens for a Better Environment v. Commonwealth Edison Company, PCB 73-245, -248, 13 PCB 69 (1974); In The Matter of Water Quality Standards Revisions, Cooling Lakes, R75-2, 18 PCB 381 (Aug. 14, 1975), Opinion at 18 PCB 681 (Sept. 29, 1975).

Rule 203(i)(5) provides, in pertinent part:

The owner or operator of a source of [certain thermal discharges] shall demonstrate in a hearing before this Board not less than 5 years nor more than 6 years after the effective date of these regulations ...that discharges from that source have not caused and cannot reasonably be expected to cause significant ecological damage to the receiving waters. (emphasis added.)

Rule 203(i)(5) was adopted on March 7, 1972. In The Matter of Water Quality Standards Revisions, R71-14, 4 PCB 3, 12 (1972). Therefore, the hearing required under Rule 203(i)(5) cannot normally take place until April 16, 1977. Edison requests that it be allowed to seek that hearing now.

Edison's Petition notes that the Board has presently pending before it a Regulatory Proposal for the establishment of a specific thermal standard for Lake Sangchris. In The Matter of Water Quality Standards Revisions, Lake Sangchris, R76-11 (hearing set for October 27, 1976). Edison alleges that the testimony and data to be presented in R76-11 will, in substantial part, be identical to that needed for a showing under Rule 203(i)(5). Edison claims that updating the matters to be presented in R76-11 for presentation under Rule 203(i)(5) only a few months later will be needlessly duplicative, wasteful, unduly expensive and will -- in light of the fact that no environmental harm will occur -- cause an arbitrary and unreasonable hardship on Edison. Edison alleges that, because Kincaid station has been in operation for approximately ten years, no useful purpose would be served by waiting for several additional months to hold the hearings required under Rule 203(i)(5).

The Agency agrees in its Recommendation that a failure to grant the requested Variance would indeed cause an arbitrary and unreasonable hardship. We agree, and shall grant the Variance. See, Union Electric v. EPA, PCB 76-89, \_\_\_ PCB \_\_\_ (July 8, 1976).

Edison's Petition requests, as part of the relief to be granted, that the hearing to be held for Rule 203(i)(5) purposes under this Variance be concurrent to that to be held for R76-11. The Agency also recommends that this relief be granted. The Board finds that such concurrent hearings would present procedural difficulties which need not be encountered. If it wishes, Edison may obtain essentially the same result through incorporation of the record in R76-11, or any other prior record, in its showing under Rule 203(i)(5).

This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

#### ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that Commonwealth Edison Company be granted a Variance for its Lake Sangchris from the five (5) year delay prior to hearing under Rule 203(i)(5) of Chapter 3: Water Pollution, of this Board's Rules and Regulations.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Final Opinion and Order were adopted on the 28<sup>th</sup> day of October, 1976, by a vote of 5-0.

  
Christian L. Moffett, Clerk  
Illinois Pollution Control Board