

ILLINOIS POLLUTION CONTROL BOARD

May 26, 1977

CENTRAL ILLINOIS PUBLIC SERVICE)
COMPANY, (COFFEEN POWER STATION),)
)
) Petitioner,)
)
) v.) PCB 77-2
)
) ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

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

Central Illinois Public Service Company (CIPS) first filed a Petition for Variance in this matter on January 3, 1977. In an Interim Order entered January 6, 1977, the Board found that Petition inadequate, and deferred action on the case pending receipt of an Amended Petition. Following receipt of CIPS' Amended Petition on February 22, 1977, the Board entered another Interim Order, dated March 3, 1977, setting the matter for hearing pursuant to a timely objection filed by the Environmental Protection Agency (Agency).

The Agency's Recommendation was filed on April 22, 1977, and recommended that CIPS be granted the relief requested in its Amended Petition, but also recommended that relief be granted for a substantially shorter period of time than had been sought. The Agency also recommended certain conditions to accompany any Variance grant. On April 28, 1977, the Board entered a final Interim Order granting an Agency motion filed April 25, 1977, requesting leave to withdraw its Objection and asking that the matter be decided without hearing. Accordingly, no hearing was held in this matter.

CIPS' Variance Petition and Amended Petition concern discharges from Coffeen Power Station to Coffeen Lake, and seek relief from Rules 203(i)(1-4), (Thermal Standards), 408(a), (Suspended Solids, Iron), and 203(f), (Dissolved Solids, Boron), of Chapter 3: Water Pollution, of this Board's Rules and Regulations.

CIPS' Coffeen Power Station and Lake has been the subject of previous Board consideration. On March 28, 1974, the Board entered a final Opinion and Order denying a Permit Appeal brought by CIPS with regard to discharges into Coffeen Lake from the power station, finding that Coffeen Lake is a protected water of the State. Central Ill. Public Service Co. v. EPA, PCB 73-384, 11 Ill. PCB 677 (1974); aff.'d, Central Ill. Public Service Co. v. EPA and Pollution Control Board, 344 N.E.2d 229 (Ill. App. Ct., 5th Dist., Feb. 2, 1976); rehearing denied, March 25, 1976; leave to Appeal Denied, ___ Ill. 2d ___, (Ill., Sept. 29, 1976). Both the Board's

and the 5th District Appellate Court's Opinions adequately describe the facility in question, and the complete reiteration of the underlying facts need not be reiterated here.

Briefly, construction of the 880,000 Kw Coffeen Station commenced in 1962; one of the two units came on line in 1965, and the second came on line in 1972. The Agency's initial denial of an Operating Permit for discharges from the power station to Coffeen Lake led to our decision in PCB 73-384, supra, and the subsequent appeal. The crux of CIPS' theories on appeal was that Coffeen Lake constituted a treatment facility for discharges from the power station; that theory has never prevailed.

Following the Illinois Supreme Court's decision not to allow appeal, CIPS commenced planning for the control of discharges to Coffeen Lake. We agree that this belated planning for discharge limitation constitutes neither bad faith nor dilatory conduct, inasmuch as CIPS had -- until that time -- pursued an arguably valid theory in a case of first impression, that those discharges were not subject to the discharge limitations from which Variance is now sought. We therefore do not find that Board precedent concerning self-imposed hardship and belated Variance requests is applicable to the instant case.

As CIPS' Petition and Amended Petition make clear, however, CIPS' pursual of legal remedies now raises another problem with regard to the requested Variance: Specifically, sufficient sampling and theoretical data does not exist to allow full compliance with those provisions of Procedural Rule 401 requiring a complete description of existing discharges, environmental effects, and a compliance plan for full abatement of all violations.

Accordingly, CIPS has requested Variance from the thermal discharge requirements of Rule 203(i), the violation of which has apparently been ascertained, and from Rules 203(f) and 408(a). With regard to the latter two requests, CIPS' Petition is based on limited United States Environmental Protection Agency (U.S. EPA) sampling for a limited time period and area. Further, because of the relatively recent termination of litigation CIPS states that its compliance plan for these discharges has not been fully formulated. Two consulting firms have been retained, and CIPS will not be committed to a final compliance plan until after June 15, 1977, following submittal of the consultants' reports.

CIPS' Variance Petition and Amended Petition are therefore unclear as to final compliance plans and dates for all discharges into the lake, although various interim control measures are delineated. With regard only to the thermal component of its effluent into the lake, CIPS has indicated that it will file a Petition for specific thermal standard pursuant to Rule 203(i)(10) of Chapter 3.

Based on those uncertainties, the Agency has recommended that the requested Variances be granted as follows: (1) Variance from Rule 203(i) to be granted until May 31, 1977; (2) Variance from Rules 203(f) and 408(a) to be granted until August 30, 1977.

We agree that a Variance is warranted in this situation. It appears that a requirement of immediate compliance would impose a significant hardship. Absent the additional research required to determine the extent of the existing violations, and the effect thereof, the evidence indicates that no significant environmental harm will be occasioned by the grant of the requested Variance for a limited period of time. As noted in our Opinion in R75-2, Cooling Lakes, 18 PCB 681 (1975), artificial cooling impoundments often support well-balanced aquatic ecologies. The Petitioner here alleges (without contradiction) that this finding is applicable to Lake Coffeen, which is said to support a significant fishery. Accordingly, we do not feel that the grant of a limited Variance here will cause any excessive environmental damage.

We shall, however, limit the Variance grant to that period necessary to determine the necessity and extent of any longer term Variances from Rules 203(f) and 408(a), and to allow the filing of and decision upon a Rule 203(i)(10) Petition with regard to the thermal component regulated by Rule 203(i). At the conclusion of such Variance period, additional, specific information will allow informed decision on any longer Variance period.

Because of the limited period of the Variance to be granted, no further conditions are necessary.

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:

1. Petitioner Central Illinois Public Service Company be granted Variance from the thermal discharge standards in Rule 203(i) (1-4) for discharges from its Coffeen Power Station to Coffeen Lake until November 30, 1977, on the condition that an adequate petition for specific thermal standard pursuant to Rule 203(i)(10) be filed by June 15, 1977.

2. Petitioner Central Illinois Public Service Company be granted a Variance from Rules 203(f) and 408(a) of Chapter 3: Water Pollution until August 30, 1977.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 26th day of May, 1977, by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board