

ILLINOIS POLLUTION CONTROL BOARD
October 20, 2011

CENTERPOINT ENERGY – MISSISSIPPI)
RIVER TRANSMISSION, LLC,)
)
Petitioner,)
)
v.) PCB 12-14
) (Permit Appeal – CAAPP)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by G.T. Girard)

On July 21, 2011, at the parties' request, the Board extended until October 17, 2011, the time period for Centerpoint Energy – Mississippi River Transmission, LLC (Centerpoint) to appeal June 14, 2011 determination of the Illinois Environmental Protection Agency (Agency). The determination concerns Centerpoint's natural gas compressor station located at its St. Jacob Natural Gas Storage and Transmission Station in St. Jacob, Madison County. On October 17, 2011, Centerpoint timely filed a petition asking the Board to review the Agency's determination. *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.206. Additionally, on October 17, 2011, Centerpoint filed a motion to stay the effectiveness of the Clean Air Act Permit Program (CAAPP) permit or to confirm the automatic stay of the contested permit conditions. For the reasons below, the Board accepts the petition for review, but reserves ruling on the motion for stay.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), the Agency is the permitting authority, responsible for administering Illinois' regulatory programs to protect the environment. If the Agency denies a permit or grants one with conditions, the permit applicant may appeal the Agency's decision to the Board. *See* 415 ILCS 5/4, 5, 40(a)(1) (2010); 35 Ill. Adm. Code 105.Subpart B. In this case, the Agency issued Centerpoint a revised CAAPP permit regarding Centerpoint's Madison County facility. Centerpoint appeals on the grounds that the Agency improperly aggregated the emissions from Centerpoint's compressor station with those of its transmission station, resulting in both facilities being included under the same major pollution source permit. Centerpoint's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Centerpoint has the burden of proof. 415 ILCS 5/40(a)(1) (2010); *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its permit decision. *See* 35 Ill. Adm. Code 105.214(a). Accordingly, though the Board hearing affords a permit applicant the opportunity to challenge the Agency's reasons for denying or conditionally granting the permit, information developed after the Agency's decision typically is not admitted

at hearing or considered by the Board. *See* Alton Packaging Corp. v. PCB, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987); Community Landfill Co. & City of Morris v. IEPA, PCB 01-170 (Dec. 6, 2001), *aff'd sub nom. Community Landfill Co. & City of Morris v. PCB & IEPA*, 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2010)), which only Centerpoint may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Centerpoint may deem the requested permit issued. 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is February 14, 2012, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for February 2, 2012.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by November 16, 2011, which is 30 days after the Board received Centerpoint's petition. *See* 35 Ill. Adm. Code 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. *See* 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

Accompanying Centerpoint's petition for review is a motion to stay the effectiveness of contested permit conditions. The Board reserves ruling on the motion for stay to allow the Agency's response time to run. *See* 35 Ill. Adm. Code 101.500(d).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 20, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board