

ILLINOIS POLLUTION CONTROL BOARD

March 7, 2013

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 13-41
)	(Enforcement - Land)
AMERENENERGY RESOURCES)	
GENERATING COMPANY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.D. O'Leary):

On February 4, 2013, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against "Ameren Energy Generating Company, Inc." The complaint concerns the Duck Creek Power Generating Station located at 17751 North Cilco Road in Canton, Fulton County (Site). The Board accepted the matter for hearing in an order of February 7, 2013. Today, the Board rules upon a motion for dismissal and a motion for substitution of parties.

PENDING MOTIONS

On February 8, 2013, Ameren Energy Generating Company (AEG) filed a "Motion to Dismiss for Failure to Identify Proper Legal Party" (Mot. Dism). AEG asserts that the complaint's alleged violations are based upon AEG's purported ownership or operation of the Site. Mot. Dism. at 1-2. According to the motion, however, "AEG is not, nor has AEG ever been, the owner or operator of the Site." *Id.* at 2. AEG represents that the Site is "owned by an affiliate of AEG but that company is a separate and distinct legal entity from AEG." *Id.* AEG requests that the Board dismiss this action "as to Ameren Energy Generating Company with prejudice as AEG is not a proper party to this matter." *Id.*¹

On February 20, 2013, the People filed a "Response and Motion for Substitution" (Resp./Mot. Sub.). The People claim that "AmerenEnergy Resources Generating Company" (AERG) is the operator of the Site and that the complaint inadvertently named AEG as the respondent. Resp./Mot. Sub. at 1. The People acknowledge that AERG and AEG "are separate and distinct corporations." *Id.* The People attach a copy of a September 1, 2006 "Violation Notice" issued to AERG by the Illinois Environmental Protection Agency. *Id.* The People

¹ In its dismissal motion, AEG refers to itself as "Ameren Energy Generating Company," without using the abbreviation "Inc." Mot. Dism. at 1-2 (the complaint refers to "Ameren Energy Generating Company, Inc."). The motion makes plain, however, that AEG considers the complaint to have named AEG as the respondent. *Id.*

request that AEG's motion for dismissal be denied, and that AERG "be substituted as the Respondent in this matter." *Id.* at 2.

DISCUSSION

Several circumstances militate in favor of granting the People's motion to substitute AERG for AEG as the respondent in this case. First, the action before the Board is in its procedural infancy. On February 6, 2013, the People served the complaint on counsel for AEG, who the hearing officer has confirmed is also counsel for AERG. On February 7, 2013, the Board accepted the complaint for hearing. On March 6, 2013, the hearing officer conducted the first status conference call of this proceeding.

Second, there is no opposition to the People's motion for substitution. During the March 6, 2013 status conference, counsel for AEG and AERG stated to the hearing officer that no response would be filed to the People's motion. Accordingly, any objection to the granting of the motion is waived. *See* 35 Ill. Adm. Code 101.500(d).

Third, several relevant representations are made in the People's motion: (1) AERG is the operator of the Site; (2) AERG was issued a Violation Notice; and (3) AEG was named in the complaint as the respondent through inadvertence. *Resp./Mot. Sub.* at 1.

Finally, during the March 6, 2013 status conference, the hearing officer extended until May 6, 2013, the 60-day period for filing an answer to the complaint. Accordingly, the full 60-day period for filing an answer, required by the Board's procedural rules, would be provided even if AEG is replaced by AERG. *See* 35 Ill. Adm. Code 103.204(d). The May 6, 2013 deadline set by the hearing officer would also be consistent with the procedural rules should the Board rule upon AEG's dismissal motion today. Under the rules, the timely filing of a dismissal motion automatically stays the 60-day period for filing an answer to the complaint until the dismissal motion is ruled upon by the Board. *See* 35 Ill. Adm. Code 103.204(e). The first business day following 60th day after the date of this Board order is May 6, 2013. *See* 35 Ill. Adm. Code 101.300(a).

Under these circumstances, the Board finds that granting the People's motion to substitute AERG for AEG as the respondent in this case would result in no undue delay or material prejudice. The Board grants the People's motion for substitution. Accordingly, AERG is the respondent and AEG is not a party to the enforcement action. This record, however, does not establish that AEG should be dismissed "with prejudice." *Mot. Dism.* at 2. AEG's motion for dismissal of this matter as to AEG is otherwise moot based upon the Board's grant of the People's motion to substitute. The Board therefore denies AEG's motion to dismiss. The caption of this order has been amended to reflect AERG as the respondent.

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 March 7, 2013, by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is fluid and cursive, with a long horizontal stroke at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board