

ILLINOIS POLLUTION CONTROL BOARD
June 8, 2017

ELECTRIC ENERGY, INCORPORATED,)
)
Petitioner,)
)
v.) PCB 06-65
) (CAAPP Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by K. Papadimitriu):

On May 19, 2017, Electric Energy, Incorporated (Electric) and the Illinois Environmental Protection Agency (Agency) filed a joint motion (Mot.) asking the Board to lift the stay of the uncontested conditions of a Clean Air Act Permit Program (CAAPP) permit. Mot. at 1. The permit was issued for Electric’s coal-fired power plant at 2100 Portland Road, in Joppa, Massac County. Conditions that Electric challenges in this proceeding include those relating to reporting and recordkeeping, as well as the effective date of the permit. *Id.*

The parties’ motion asks the Board to: (1) lift the stay of the uncontested conditions; (2) maintain the stay of the contested conditions and its jurisdiction over them; and (3) remand the permit to the Agency so that it can revise the permit’s term and incorporate other modifications negotiated by the parties. Mot. at 1. The parties explain that the negotiated modifications have been noticed for public comment and reviewed by the United States Environmental Protection Agency. *Id.* On the same day the Board remands the permit, the Agency will issue the modified permit with a new term and other negotiated changes. *Id.* at 2. Once the Agency does so, Electric will file a motion to dismiss this appeal. *Id.* at 1.

The Board granted Electric’s motion to stay on February 16, 2006, concluding that Section 10-65(b) of the Administrative Procedure Act (APA) (5 ILCS 100/10-65(b) (2016)), the “automatic stay” provision, applied to this case, consistent with long-standing case law under the Environmental Protection Act (Act) (415 ILCS 5 (2016)). *See Electric Energy, Incorporated v. IEPA*, PCB 06-65, slip op. at 2 (Feb. 16, 2006). On June 21, 2010, however, the Act was amended by P.A. 96-934 (P.A. 96-934, eff. June 21, 2010), adding subsection (f) to Section 40.2 of the Act. Section 40.2(f) , provides that Section 10-65(b) of the APA does not apply to CAAPP permits and specifies that the Board must stay the contested conditions upon the permit applicant’s request. 415 ILCS 5/40.2(f) (2016).

The Board has previously granted similar motions, finding the requests both within its authority and appropriate. *See, e.g., Ameren Energy Generating Co., Coffeen Power Station v. IEPA*, PCB 06-64, slip op. at 2-4 (Sept. 20, 2012); *Kincaid Generation, L.L.C. v. IEPA*, PCB 06-62, slip op. at 2-3 (Feb. 2, 2015). The Board likewise grants the motion here.

Accordingly, the Board lifts the stay of the uncontested conditions, retains jurisdiction over and continues staying the contested conditions, and remands the permit to the Agency. Under Section 40.2(f) of the Act, because the stay applies to some but not all conditions of the permit, Electric must continue to operate in accordance with any related terms and conditions of any other applicable permits until final Board action in the review process. 415 ILCS 5/40.2(f) (2016).

The Board reminds the parties that when the Agency issues the permit with modifications, Section 40.2(a) of the Act provides for appeals by persons who have standing other than the applicant. 415 ILCS 5/40.2(a) (2016). Thus, even though the Board retains jurisdiction of this matter, if other persons have standing and wish to appeal, those appeals, if appropriate, will be accepted and docketed under a different case number.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 8, 2017, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, looped initial "D".

Don A. Brown, Clerk
Illinois Pollution Control Board