

ILLINOIS POLLUTION CONTROL BOARD
April 4, 1975

ILLINOIS POWER COMPANY,

Petitioner,

v.

ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

PCB 75-109

ORDER OF THE BOARD (by Mr. Zeitlin)

Illinois Power Company filed this Petition for Variance for its Baldwin Electric Power Generating Station on March 7, 1975. Illinois Power seeks a variance from Rule 204(e) of the Board's Air Pollution Regulations, regarding sulphur dioxide. In its Petition Illinois Power notes that the Board now has before it regulatory proceedings regarding proposed changes to Rule 204. Petitioner proposes to submit the appropriate compliance plan, and to bring Baldwin Station into compliance with such plan, after the Board has determined what changes, if any, are to be made as regards to Rule 204.

Petitioner states that it would be "unwise and unwarranted" to commit itself to any compliance program pending Board determination of the proposed changes to Rule 204. Petitioner further states that for the Board to require "firm commitments to achieve compliance" at this time would constitute an arbitrary and unreasonable hardship. This rationale is unacceptable. The fact that changes have been proposed for Rule 204, and that regulatory proceedings to consider such proposals have been ordered, are not sufficient to excuse compliance with the Board's Procedural requirements for variance petitions. Were the case otherwise, all regulatory proceedings would in effect constitute variances from the Board's procedural and substantive regulations concerning plans for compliance. Insofar as the Board, under authority granted by the Environmental Protection Act, has provided liberal rules to allow consideration of regulatory changes, to allow Petitioner such interim relief would place the Board in an untenable position for this and all similar proceedings.

It should be noted that Petitioner does state that it feels that an intermittent control system would constitute a reasonable permanent means of SO₂ control for the Baldwin Station. But Petitioner does not propose to formulate a specific plan utilizing **such** a control system

until after the conclusion of hearings on the proposed revision to Rule 204(e).

The Petition does touch briefly on several alternative methods by which Petitioner might achieve compliance. Each of these methods however, is similarly dismissed by Petitioner as impractical or overly expensive. The dismissed alternatives included the limitation of station output, the use of low-sulphur western coal, the installation of sulphur removal equipment on one unit at the station, and the use of oil.

While it is true that this Board has in the past accepted variance petitions, and in fact granted variances, where an immediate compliance plan was not shown, the facts here do not allow a similar conclusion. In cases where such variances were granted the Board has required a showing that a workable technology is not available, as opposed to the conclusory rejection of abatement methods other than SCS seen here. Further, the Board in such cases has required that petitioner develop a viable abatement technology, as part of a continuing program of research and development to achieve compliance. Such a program, to be carried on within Petitioner's financial means, is the only alternative to a firm compliance date. See, Union Oil Co. v. EPA, PCB 72-447, 10 PCB 217, 223; Mt. Carmel Public Utilities v. EPA, PCB 71-15, 1 PCB 463, 469 (1971).

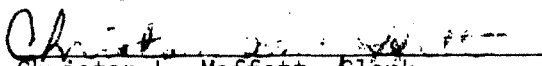
Here, the Board is presented with a "wait and see" attitude. The Board is asked to grant a variance from its SO₂ limitations, as they would affect Petitioner's Baldwin Station, for an indefinite period of time, pending the outcome of proposed regulatory changes. The Board is given no firm ground here on which it might base a variance. Further, Petitioner does not even present sufficient data to warrant a hearing.

The petition in this matter is inadequate in that it does not contain a detailed description of a program to be undertaken to achieve compliance, or even to work toward a future method of compliance, as is required under Board Procedural Rules 401(a)(vi)-401(a)(ix). For this reason, the Board will require Petitioner to return with a showing of further information relating to its attempts to achieve compliance-other than awaiting a change in the definition of compliance.

Petitioner will be required to supply the additional information required by Procedural Rule 401(a)(vi)-401(a)(ix) within 45 days of this Order. The 90 day period under Procedural Rule 408 shall commence upon the filing of such additional information. Failure to file such additional information will render the petition herein liable to dismissal for inadequacy.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that the above Order was adopted on the 4th day of April, 1975 by a vote of 3 to 0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board