

ILLINOIS POLLUTION CONTROL BOARD
October 27, 2016

ILLINOIS POWER HOLDINGS, LLC,)
AMERENENERGY MEDINA VALLEY)
COGEN, LLC,)
)
Petitioners, and)
)
AMEREN ENERGY RESOURCES, LLC,)
)
Co-Petitioner,)
)
v.) PCB 14-10
) (Variance - Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J.D. O’Leary):

The Board granted a variance subject to nine conditions to Illinois Power Holdings, LLC¹; AmerenEnergy Medina Valley Cogen, LLC (Medina Valley); and co-petitioner Ameren Energy Resources, LLC (AER)². The Board granted the variance from sulfur dioxide (SO₂) emission rates in the multi-pollutant standard (MPS) applicable to seven coal-fired electric generating plants. IPH, LLC (IPH) and Medina Valley now request that the Board terminate the variance because they are able to comply with MPS emission limits.

When it granted the variance, the Board in Condition 7 limited mass emissions of SO₂ from the MPS Group to ensure that the variance would result in lower total emissions than the generally-applicable MPS limits. The Board imposed a number of other conditions to help meet the mass emissions limit during the variance period. Below, the Board concludes that IPH and Medina Valley have to date met the conditions of the variance and reported annual mass emissions of SO₂ consistent with attaining the overall limit. The Illinois Environmental Protection Agency (IEPA) responds (Resp.) that it does not object to the Board granting the motion. The Environmental Law & Policy Center, Natural Resources Defense Council, Respiratory Health Association of Metropolitan Chicago, and Sierra Club (collectively, Environmental Groups) comment (Cmt.) that they neither support nor oppose the motion. The Board grants the motion and terminates the variance as of the date of this order.

¹ On April 30, 2015, Illinois Power Holdings, LLC, was renamed IPH, LLC. Exh. 1 at 2 (¶3) (affidavit of Shannon L. Brown; Vice-President, Asset Management – MISO for IPH, LLC).

² As a result of reorganization related to the change in ownership, AER no longer exists as an ongoing corporate entity. Mot. at 2, n.2, citing Exh. 2 (State of Delaware Certificate of Cancellation).

Below, the Board first discusses the variance and conditions before addressing the motion to terminate. The Board then reviews the Environmental Groups' comment before reaching its conclusion to grant the motion and issuing its order.

DISCUSSION OF VARIANCE AND CONDITIONS

Illinois Power Holdings, LLC; Medina Valley; and AER filed their variance petition on July 22, 2013. Petitioners coordinated the filing with a change in ownership of the MPS Group from AER to IPH and Medina Valley. Mot. at 2. Through subsidiaries, IPH owns the five operating electric generating stations in the MPS Group: Coffeen in Montgomery County, Duck Creek in Fulton County, E.D. Edwards in Peoria County, Joppa in Massac County, and Newton in Jasper County. Medina Valley owns the Hutsonville Station in Crawford County and the Meredosia Station in Morgan County, both of which have been shut down. *Id.*, n.3.

The petition sought dual variances from the sulfur dioxide (SO₂) annual emission rate limits at 35 Ill. Adm. Code 225.233(e)(3)(C)(iii) and (iv), which provide that

- iii) Beginning in calendar year 2015 and continuing in calendar year 2016, for the EGUs [electric generating units] in the Ameren MPS Group, the owner and operator of the EGUs must comply with an overall SO₂ annual emission rate of 0.25 lb/million Btu.
- iv) Beginning in calendar year 2017 and continuing in each calendar year thereafter, for the EGUs in the Ameren MPS Group, the owner and operator of the EGUs must comply with an overall SO₂ annual emission rate of 0.23 lb/million Btu.

While the variance petition was pending, the Board received approximately 2,470 public comments in favor of granting the petition and approximately 3,350 public comments that opposed granting it. Ill. Power Holdings, LLC, and AmerenEnergy Medina Valley Cogen, LLC and Ameren Energy Res., LLC v. IEPA, PCB 14-10, slip op. at 2 (Nov. 21, 2013) (Board Order). While some persons presented spoken comments at hearing, most submitted written comments. *See Ill. Power Holdings, LLC, and AmerenEnergy Medina Valley Cogen, LLC and Ameren Energy Res., LLC v. IEPA*, PCB 14-10 (Sept. 19, 2013) (transcript). Many of the written comments were filed by elected officials or on behalf of units of local government or organizations, and others were petitions listing multiple names.

The Board granted a variance for units in the Ameren MPS Group from the overall SO₂ annual emission rates of:

- 35 Ill. Adm. Code 225.233(e)(3)(C)(iii) from January 1, 2015, through December 31, 2019; and
- 35 Ill. Adm. Code 225.233(e)(3)(C)(iv) from January 1, 2017 to December 31, 2019.

The variance is subject to nine conditions. Board Order at 103-04. Below, the Board addresses each of the conditions and the information submitted by IPH and Medina Valley on each of them. The Board first addresses Condition 8 out of numerical order, since it requires reports regarding compliance with the conditions that precede it.

Condition 8 requires that, from October 1, 2013, through December 31, 2020, IPH annually report to IEPA the mass SO₂ emissions and overall SO₂ annual emission rate from the five operating stations in the MPS Group. Board Order at 103. Each report must also include a running total of the remaining emissions under the system-wide mass SO₂ emissions limit in Condition 7. *Id.* at 103-04. IPH has submitted these annual reports as required to IEPA. Exh. 1 at 2 (affidavit of Shannon L. Brown, IPH Vice-President), citing Attachments A (2013), B (2014), C (2015).

Condition 1 requires that, through December 31, 2020, IPH assure compliance with Condition 3, which provides that Medina Valley “must not operate the electrical generating units at Meredosia and Hutsonville until after December 31, 2020.” Board Order at 103. IPH states that these two stations “have been permanently retired and all Clean Air Act operating permits previously applicable to these stations have been surrendered to the Illinois Environmental Protection Agency.” Exh. 3 at 2 (affidavit of Mark C. Birk, President of Medina Valley).

Condition 2 provides that, “[t]hrough December 31, 2019, IPH must comply with an overall SO₂ annual emission rate of 0.35 lb/mmBtu.” Board Order at 103. IPH states that its reports to IEPA show compliance with this rate. Exh. 1 at 2. From October 1 to December 31, 2013, IPH reported a total SO₂ average emission rate of 0.317 lb/mmBtu. Attachment A at 3 (Report for Condition 2). From January 1 to December 31, 2014, IPH reported a rate of 0.334 lb/mmBtu. Attachment B at 3. From January 1 to December 31, 2015, IPH reported a rate of 0.317 lb/mmBtu. Attachment C at 3.

Condition 4 provides that, “[t]hrough December 31, 2019, IPH must continue to burn low sulfur coal at the E.D. Edwards, Joppa, and Newton Energy Centers. The combined annual average stack SO₂ emissions of these three stations must not exceed 0.55 lb/mmBtu on a calendar year annual average basis.” Board Order at 103. IPH states that these three stations burned low sulfur coal and did not exceed this emission limit. Exh. 1 at 3. From October 1 to December 31, 2013, IPH reported a total SO₂ average emission rate from these three stations of 0.439 lb/mmBtu. Attachment A at 3 (Report for Condition 4). From January 1 to December 31, 2014, IPH reported a total rate of 0.476 lb/mmBtu. Attachment B at 3. From January 1 to December 31, 2015, IPH reported a total rate of 0.487 lb/mmBtu. Attachment C at 3.

Condition 5 provides that, “[t]hrough December 31, 2019, IPH must operate the existing Flue Gas Desulfurization [FGD] systems at the Duck Creek and Coffeen Energy Centers to achieve a combined SO₂ removal rate of at least 98 percent on a calendar year annual average basis.” Board Order at 103. IPH states that it has operated these FGD systems and achieved this removal rate. Exh. 1 at 3. From January 1 to December 31, 2013, IPH reported average scrubber SO₂ removal efficiency of 99.1%. Attachment A at 5 (Report for Condition 5). From January 1, to December 31, 2014, IPH reported average efficiency of 99.4%. Attachment B at 5.

From January 1, to December 31, 2015, IPH reported average efficiency of 99.3%. Attachment C at 4.

Condition 6 provides that “IPH must permanently retire E.D. Edwards Unit 1 as soon as allowed by the Midcontinent Independent Transmission System Operator, Inc. [MISO],” the regional transmission organization. Board Order at 103. IPH states that it permanently retired the unit on January 1, 2016, as soon as MISO allowed. Exh. 1 at 2-3.

Condition 7 provides that, “[f]or the time period beginning October 1, 2013 through December 31, 2020, IPH must limit the MPS Group system-wide mass emissions of SO₂ to no more than 327,996 tons.” Board Order at 103. The Board applied this limit to obtain a net decrease of 7,778 tons of SO₂ emissions from the fourth quarter of 2013 through 2020 as compared to compliance with the generally applicable MPS limits. *Id.* at 98. Over seven years and three months, the limit represents average annual emissions of approximately 45,240 tons. IPH reported to IEPA mass emissions of SO₂ “along with a running total of the remaining emissions available under the system-wide mass SO₂ emissions limit provided in the Variance.” Exh. 1 at 2.

From October 1 to December 31, 2013, IPH reported actual SO₂ emissions of 10,371 tons. Attachment A at 5 (Report for Condition 8). Based on one quarter of average annual emissions of 45,240 tons or 11,310 tons, these emissions represent a net decrease of 939 tons. There remained 317,625 tons of SO₂ emissions under the system-wide limit. *Id.*

From January 1 to December 31, 2014, IPH reported actual SO₂ emissions of 43,247 tons. Attachment B at 5. Based on average annual emissions of 45,240 tons, this represents a net decrease of 1,943 tons. There remained 274,378 tons of SO₂ emissions under the system-wide limit. *Id.*

From January 1 to December 31, 2015, IPH reported actual SO₂ emissions of 32,585 tons. Attachment C at 4. Based on average annual emissions, this represents a net decrease of 12,655 tons. There remained 241,794 tons of SO₂ emissions under the system-wide limit. *Id.* From October 1, 2013, to December 31, 2015, IPH reported actual SO₂ emissions that were 15,587 tons less than the average annual emissions under the system-wide cap. The Board imposed the cap to ensure that mass emissions would be 7,778 tons less than emissions under compliance with the generally-applicable MPS limits. Board Order at 98.

IPH and Medina Valley argue that the variance has resulted in greater reduction of SO₂ emissions compared to emissions allowed under the MPS. Exh. 1 at 4, citing Attachment H. IEPA does not disagree with petitioners’ evidence that the variance has resulted in an environmental benefit and does not object to the Board granting the motion and terminating the variance. Mot. at 1, 2.

Under Condition 9, the Board required IPH to meet deadlines regarding a FGD project at the Newton Power Station:

- a. On or before July 1, 2015, IPH must complete engineering work on the Newton FGD project.
- b. On or before December 31, 2017, IPH must obtain a new or extended construction permit, if needed, for the installation of the FGD equipment at the Newton Power station.
- c. On or before December 31, 2018, IPH must complete construction of the absorber building on the Newton FGD project.
- d. On or before July 1, 2019, IPH must complete steel fabrication of ductwork and insulation activities on the Newton FGD project.
- e. On or before July 1, 2019, IPH must complete installation of electrical systems and piping on the Newton FGD project.
- f. On or before September 1, 2019, IPH must set major equipment components into final position on the Newton FGD project.
- g. Beginning with calendar year 2013 and continuing through 2019, IPH must file annual progress reports with the Agency as to the status of construction activities relating to the Newton FGD project by the end of each calendar year. IPH's annual progress reports must include an itemization of activities completed during the year, activities planned to be completed in the forthcoming year, progress of the Newton FGD project to comply with the timelines specified in this variance, and the estimated in-service date. . . . Board Order at 104-05.

IPH submitted reports itemizing its FGD project activities. Exh. 1 at 3; *see* Attachments D (2013), E (2014), F (2015). IPH states that it has met each of the deadlines established in Condition 9 up to the date of filing its motion to terminate. Exh. 1 at 3; *see* Mot. at 3. IPH adds that, since acquiring the operating stations in the MPS Group, it “has spent approximately \$43 million on continuing construction of the Newton FGD project. The current estimated cost to complete the Newton FGD project is approximately \$201 million.” Exh. 1 at 3.

IPH and Medina Valley conclude that they “have complied with all conditions of the Variance since acquiring the electrical generating units in the MPS Group.” Mot. at 2, citing Exh. 1 at 2-3, Exh. 3 at 2.

MOTION TO TERMINATE

IPH and Medina Valley state that they based their variance petition in part on the need for electricity market conditions to improve before completing the FGD at Newton Energy Center. They identify this as the project that would allow the MPS Group to comply with the limits at 35 Ill. Adm. Code 225.233(e)(3)(C)(iii) and (iv). Mot. at 3 (citing petition). IPH and Medina Valley state that expected market improvements have not occurred. *Id.* They argue that Newton is not recovering operating costs and cannot consider making capital expenditures required to

complete the FGD project. *Id.*, citing Exh. 1 at 3-4. As a result of these circumstances, IPH and Medina Valley decided to retire Newton Unit 2 permanently, effective September 15, 2016. Mot. at 4., citing Exh. 1 at 4.

IPH and Medina Valley state that, with retirement of Newton Unit 2 and effective management of remaining units in the MPS Group, they can comply with 35 Ill. Adm. Code 225.233(e)(3)(C)(iii) for calendar year 2016 without the variance. Mot. at 4, 5; Exh. 1 at 4. They also state that, without completing the Newton FGD Project, the MPS Group can comply with 35 Ill. Adm. Code 225.233(e)(3)(C)(iv) for calendar years beginning in 2017. *Id.* IPH and Medina Valley project that they will meet the MPS SO₂ emission limits beginning in 2016 instead of the variance deadline of January 1, 2019. Exh. 1 at 4.

IPH and Medina Valley suggest that the Board's 2013 Order granting the variance with conditions did not contemplate permanent retirement of an electric generating unit at Newton. Mot. at 5. They argue that termination is the appropriate Board action when conditions anticipated in the variance petition do not materialize "and a petitioner can no longer justify the need for a variance." *Id.* at 4, citing Wallace Pharmaceuticals (n/k/a Medpointe Pharmaceuticals) v. IEPA, PCB 02-207, slip op. at 3 (Apr. 7, 2005).

SUMMARY OF ENVIRONMENTAL GROUPS' COMMENT

Environmental Law & Policy Center, Natural Resources Defense Council, Respiratory Health Association of Metropolitan Chicago, and Sierra Club (collectively, Environmental Groups) filed a comment (Cmt.) in which they neither support nor oppose the motion to terminate the variance. Cmt. at 1. However, the Environmental Groups question the original grant of the variance with conditions.

Environmental Groups assert that granting the variance "was meant to prevent plant closures and save jobs." Cmt. at 1. The Groups argue that current economic, market, and regulatory circumstances have made plant closures "unavoidable." *Id.* at 2. The Groups argue that variances should not be granted based on representations that they are needed to prevent closures. *Id.*

Environmental Groups argue that the variance intended to secure construction of a scrubber at Newton. Cmt. at 2. Instead, the Groups argue that the public will not receive the benefits of the reduced SO₂ pollution from Newton Unit 1 that a scrubber would have provided. *Id.*

The Environmental Groups comment that Ameren and IPH were "disingenuous" when they claimed that they would have to close multiple plants if the variance was not granted. Cmt. at 2. The Groups note that IPH now needs to retire only Newton Unit 2 in order to comply with the MPS in 2017. *Id.* at 3. The Groups urge the Board to ask IPH what specific circumstances have changed so that it can now comply by only retiring one unit. *Id.*

The Environmental Groups note IPH's claim that Coffeen achieves SO₂ removal efficiency of 99.8%. Cmt. at 3. The Groups state that this is an "unusually high removal

efficiency” and urge the Board to request additional information on how this efficiency is achieved. *Id.*

Finally, the Environmental Groups dispute IPH’s claim that it requests termination of the variance because an anticipated improvement in electrical prices has not occurred. Cmt. at 4. The Groups argue that this improvement was “never legitimately anticipated.” *Id.*

DISCUSSION OF MOTION

When the Board granted the variance, it imposed Condition 7 limiting mass emissions of SO₂ from the MPS Group to 327,996 tons during the variance period. This limit ensured that the variance would result in a net decrease of 7,778 tons of SO₂ emissions from the fourth quarter of 2013 through 2020 as compared to emissions under compliance with the generally-applicable MPS limits. Board Order at 98. The Board imposed other conditions intended to help meet the mass emissions limit during the variance period. *Id.*

IPH and Medina Valley support their motion to terminate with reports, affidavits, and other documents regarding operation of the MPS Group. The Board addressed these submissions above in discussing the variance conditions. The Board finds that IPH and Medina Valley persuasively demonstrate that they have to date satisfied these conditions.

The Board places particular weight on Condition 7, the mass emissions limit. From October 1, 2013 to December 31, 2015, annual mass emissions of SO₂ were below an annual average of 45,240 tons based on the total limit of 327,996 tons. During that period, total reported mass emissions were 15,587 tons less than the amount indicated by annual averages. IPH and Medina Valley have reduced mass emissions by approximately twice the amount required by the mass limit over the entire variance period. The Board notes that the mass limit reduced emissions below the level complying with the generally-applicable MPS limits. Board Order at 98. The Board finds that IPH and Median Valley have to date reduced emissions consistent with the mass limit under Condition 7 and that this reduction results in an environmental benefit beyond compliance with the generally-applicable MPS limits. In its response, IEPA does not disagree with the “demonstration of the environmental benefit that has been achieved to date under the Variance.” Resp. at 2.

The Environmental Groups’ comment requests that the Board seek documentation from IPH on removal efficiency at Coffeen. Cmt. at 3-4; *see* Attachment B at 5; Attachment C at 4. IPH has certified its reported removal efficiency in accordance with the MPS regulations, and the Board is not persuaded that it should delay deciding the motion to request additional information. Attachment B at 2; Attachment C at 2; *see* 35 Ill. Adm. Code 225.290(d)(3). The Groups also request that the Board seek additional information on IPH’s position that it can now comply with the MPS by closing one unit. The Board did not lack information on petitioners’ position in 2013 when it decided to grant the variance with conditions, and the Board now has sufficient information on IPH’s position to decide the pending motion.

The Board grants the motion to terminate and, as of the date of this order, terminates the variance from the overall SO₂ annual emission rates of 35 Ill. Adm. Code 225.233(e)(3)(C)(iii)

and (iv). Having terminated the variance, IPH and Medina Valley become subject to the generally-applicable standards of the MPS.

CONCLUSION

The Board grants the motion filed by IPH and Medina Valley and therefore terminates the variance. As requested by IPH and Medina Valley, the termination takes effect today. For enforcement purposes, the variance was in effect from November 21, 2013, to October 27, 2016. *See Wallace Pharmaceuticals (n/k/a Medpointe Pharmaceuticals v. IEPA, PCB 02-207, slip op. at 3 (Apr. 7, 2005).*

ORDER

Effective October 27, 2016, the Board terminates the variance granted on November 21, 2013, in this docket.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2014); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 27, 2016, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board