

ILLINOIS POLLUTION CONTROL BOARD

December 5, 2019

MIDWEST GENERATION, LLC, and INEOS)	
JOLIET, LLC,)	
)	
Petitioners,)	
)	
v.)	PCB 16-19 (Midwest Generation)
)	PCB 16-24 (INEOS)
ILLINOIS ENVIRONMENTAL)	(consolidated)
PROTECTION AGENCY,)	(Time-Limited Water Quality Standard)
)	
Respondent.)	

ORDER OF THE BOARD (by C.M. Santos):

On November 27, 2019, Midwest Generation, LLC (MG), INEOS Joliet, LLC (INEOS), and the Illinois Environmental Protection Agency (IEPA) filed a joint motion (Mot.) to stay these consolidated proceedings. MG and INEOS each has pending a petition for a time-limited water quality standard (TLWQS) concerning temperature. On July 25, 2019, the Board on its own motion consolidated these two proceedings for hearing. The extended deadline for IEPA to file its recommendation is December 9, 2019.

The Board approved alternative thermal effluent limitations for MG’s Will County Generating Station on November 7, 2019, and granted a motion to make non-substantive modifications to that order on November 21, 2019. Midwest Generation, LLC v. IEPA, PCB 18-58. MG states that the alternative limitations obviate the need to continue pursuing a TLWQS for its Will County Station. MG intends to dismiss the portion of its TLWQS petition addressing the Will County Station when its permit is modified to reflect the relief granted in docket PCB 18-58. Mot. at 3-4, 8-9.

MG met on October 1, 2019, with representatives of IEPA and the United States Environmental Protection Agency (USEPA) to discuss its pending TLWQS petition. The discussion of the petition identified numerous issues pertaining to Will County Station, Joliet Generating Station 9, and Joliet Generating Station 29. Mot. 4-5. These issues led MG and IEPA to conclude that “it will take a significant amount of time and effort to proceed” with MG’s TLWQS petition. *Id.* at 5.

The joint motion reports that IEPA approved MG’s detailed study plan and that MG performed studies to prepare a petition for alternative thermal effluent limitations for the two Joliet Stations. Mot. at 6-7; *id.* at 6, nn.4-5 (MG had two plans and expects to file two petitions—one for each Joliet Station—but refers to them in the singular for simplicity, as does the Board); *see* 35 Ill. Adm. Code 106.1120. IEPA has reviewed the draft report of those studies, and MG expects to file a petition for alternative limitations this month. Mot. at 9; *id.* at 6, n.4 (“Both petitions would rely on the same Demonstration Report.”). If the Board grants alternative

limitations for the Joliet Stations, it would moot MG's entire petition for TLWQS, and MG would move to dismiss its TLWQS petition once the Joliet Stations' permits reflect that relief. *Id.* at 9-10.

INEOS' amended petition for a TLWQS refers to and incorporates information MG provided in its amended petition. This information "is commonly applicable to dischargers that may be covered by this temperature multi-discharger TLWQS." Mot. at 8. The joint motion argues that proceeding with INEOS' petition for a TLWQS "would pose many of the same challenges" as proceeding with MG's. *Id.* Also, INEOS is considering whether to continue pursuing a TLWQS and whether it is feasible to pursue alternative thermal effluent limitations. *Id.* Reviewing MG's petition for alternative limitations for the Joliet Stations "will be an important part of this analysis." *Id.*

Under these circumstances, IEPA prefers to continue reviewing MG's preliminary report of its studies for alternative thermal effluent limitations for the Joliet Stations instead of drafting the TLWQS recommendation now due on December 9, 2019. Mot. at 9. The joint motion argues that the Board can conserve its resources by staying consideration of the TLWQS petitions and resolving the petition for alternative thermal effluent limitations for the Joliet Stations. *Id.* The joint motion requests that the Board stay proceedings in this consolidated matter until the Board reaches a final decision on MG's petition for alternative thermal effluent limitations for the Joliet Stations. *Id.* at 11.

The parties agree that MG's preliminary report for the Joliet Stations appears to show that they do not adversely influence aquatic life and that "granting this stay is not likely to produce any ecological harm in the foreseeable future." Mot. at 10. The Board notes that, beginning January 1, 2020, and for the stay's duration, MG commits to following—for both Joliet Stations—the "stricter thermal limits" proposed in its preliminary report and certifying compliance or noncompliance in monthly Discharge Monitoring Reports submitted to IEPA. *Id.* ("stricter" than "the currently applicable Secondary Contact and Indigenous Aquatic Life Water Quality Standards"); *see id.* at 11 (proposed alternative thermal effluent limitations).

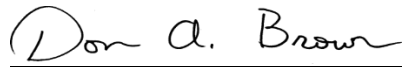
The Board has reviewed the joint motion and agrees that it would now be more efficient to use the parties' and the Board's resources to review MG's expected petition for alternative thermal effluent limitations than to proceed with IEPA's recommendation on and the Board's consideration of the TLWQS petitions. The joint motion requests that the Board stay these consolidated TLWQS proceedings until the Board reaches a final decision on MG's petition for alternative limitations, "which will be filed with the Board not later than December 31, 2019." Mot. at 11.

The Board has not favored indefinite stays. *See, e.g., Site-Specific Rule for the Closure of Ameren Energy Resources Ash Ponds: Proposed New 35 Ill. Adm. Code 840, Subpart B, R13-19, slip op. at 2 (July 25, 2013).* However, the Board recognizes that its final decision on MG's petition for alternative thermal effluent limitations defines the length of the requested stay. The Board grants the joint motion and stays these consolidated TLWQS proceedings until it reaches a final decision on MG's petition for alternative limitations for the Joliet Stations. The

Board directs MG to file a status report by January 31, 2020, if it has not filed its petition for alternative limitations by that date.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 5, 2019, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk
Illinois Pollution Control Board