

ILLINOIS POLLUTION CONTROL BOARD
March 17, 2022

IN THE MATTER OF:)
)
PETITION OF ELECTRIC ENERGY, INC.) AS 21-5
FOR A FINDING OF INAPPLICABILITY) (Adjusted Standard - Land)
OR, IN THE ALTERNATIVE, AN)
ADJUSTED STANDARD FROM 35 ILL.)
ADM. CODE PART 845)

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

On May 11, 2021, Electric Energy, Inc. (EEI) filed a petition requesting that the Board find that the Joppa West Ash Pond at the Joppa Power Plant in Massac County is not a coal combustion residuals (CCR) surface impoundment and is not subject to recently-adopted CCR rules at 35 Ill. Adm. Code 845. In the alternative, EEI requested an adjusted standard from specified portions of the rules.

On November 22, 2021, the Illinois Environmental Protection Agency (IEPA) filed its recommendation (Rec.). The recommendation concludes that the West Ash Pond “meets the definition of a CCR surface impoundment subject to Part 845’s requirements.” Rec. at 24. If the Board agreed to grant EEI’s requested adjusted standard, IEPA recommended that it be limited to a duration of six years and subject to specified conditions. *Id.* at 39-41.

While considering and drafting a response to IEPA’s recommendation, on March 7, 2022, EEI filed a motion to stay (Mot.). EEI states that United States Environmental Protection Agency (USEPA) rules allow facilities to submit a demonstration to extend the deadline for unlined CCR surface impoundments to stop receiving waste. Mot. at 2, citing 85 Fed. Reg. 53516 (Aug. 28, 2020). EEI adds that USEPA has begun to issue proposed decisions on these submissions. Mot. at 2 (citation omitted). EEI reports that USEPA is scheduled to receive public comments on these proposed decisions until March 25, 2022, and that they will be subject to revision and appeal. *Id.*

EEI notes that on February 14, 2022, Earthjustice, the Environmental Law & Policy Center, Prairie Rivers Network, and Sierra Club (collectively, Environmental Groups) filed a public comment (PC 1). Attached to the comment were two letters from USEPA addressing the applicability of USEPA rules. PC 1; Exhs. A, C. EEI asserts that the comment argues that USEPA’s proposed decisions and letters “should impact EEI’s requested relief in this proceeding.” Mot. at 3, citing PC1 at 11-22, Exhs. A-D.

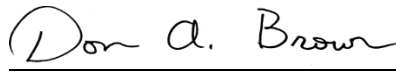
EEI argues that these proposed decisions and letters do not address its facilities, but it “believes that this proceeding would benefit from greater clarity at the federal level before their relevance or impact is considered.” Mot. at 4. EEI requests that the Board stay the proceeding for 90 days to allow EEI to review USEPA actions and consider any public comments, revised

decisions, and appeals before filing its response to IEPA's recommendation. EEI conferred with IEPA about this request and reports that IEPA does not object to it. Mot. at 4.

The Board has reviewed the factors cited in the motion for a stay and agrees that a limited stay of 90 days is appropriate. The Board grants the motion and stays this proceeding to Monday, June 6, 2022. At the close of the stay, the parties must file a status report. 35 Ill. Adm. Code 101.514(b); Mot. at 4. Any request to extend the stay should be directed to the assigned hearing officer. 35 Ill. Adm. Code 101.514(b).

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 17, 2022, by a vote of 5-0.

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

Don A. Brown, Clerk
Illinois Pollution Control Board