

ILLINOIS POLLUTION CONTROL BOARD  
September 22, 1988

CITIZENS UTILITIES COMPANY )  
OF ILLINOIS, )  
 )  
Petitioner, )  
 )  
v. ) PCB 88-151  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by J. Anderson):

This matter comes before the Board on a petition for variance filed September 16, 1988 by Citizens Utilities Company of Illinois (Citizens). The variance is requested for Citizens' water supply service area referred to as Chicago Suburban. Citizens requests five year variance from 35 Ill. Adm. Code 602.105(a) Standards of Issuance and 602.106 Restricted Status but only as related to radium-226 and radium-228. Citizens' is seeking relief from the Board's regulations so as to be able to extend its water mains and be removed from the Agency's restricted status list.

Citizens' proposed schedule for compliance with the combined radium standard is as follows:

<u>Event</u>	<u>Total Elapsed Time From Date of Board Order Granting Pétition Request</u>
1. Satisfying declaratory judgment condition precedent to Glenview agreement; design and completion of construction of facilities for Glenview Lake Michigan water supply facilities.	36th month
<u>OR</u>	
2. Obtain Illinois Commerce Commission approval for ion exchange treatment design and completion of construction of ion exchange treatment facilities.	60th month

In reviewing the variance petition, it appears that Citizens is either:

a) Proposing to secure Lake Michigan Water in three years, but without any schedule related to construction of the system. Citizens states:

The timing and success of Glenview's action for declaratory judgment are not within Citizens' control and cannot be assured. It is Citizens' best estimate that, assuming one more year of litigation between Glenview and Northfield Woods, approximately three years will be required to substitute Lake Michigan water as Citizens' source of supply. (Pet. p. 6,7, Para. 15);

or b) Proposing, as a subsequent alternative, to install ion exchange treatment equipment in five years, after first receiving Illinois Commerce Commission (ICC) approval, but without any schedule related to ICC approval or to construction of the system. Citizens states:

If Citizens were required to install the treatment equipment now, the equipment would be rendered useless a short time later if CUCI obtains a Lake Michigan source of supply from Glenview as proposed in the compliance plan. (Pet. p. 7,8, Para. 17)

The variance petition is deficient. In a variance petition 35 Ill. Adm. Code 104.121(f) requires:

a detailed description of the existing and proposed equipment or proposed method of control to be undertaken to achieve full compliance with the Act and regulations, including a time schedule for the implementation of all phases of the control program completion and the estimated costs involved for each phase and the total cost to achieve compliance; (emphasis added)

Citizens must propose a compliance plan with such a time schedule, and with such increments of progress.

The Board also emphasizes that Citizens must, after discussing alternate methods of compliance, select "the control program proposed to achieve compliance" pursuant to Section 104.121(i).

The first three years of Citizens' proposal commits to initiating nothing; Citizens simply proposes to "wait and see"

until there is a final determination in court litigation that Citizens does not have to pay the connection fees.

If Citizens does not win on the connection fee issue or, presumably, if it wins too late in the three year period to design, construct and hook-on to the Glenview system, Citizens proposes to start over with a new compliance program of at least two years to install ion exchange treatment after getting Illinois Commerce Commission approval. Here, again, there is no time schedule, no date for initiating design, and no schedule at all for any phase of the control program except a final compliance date.

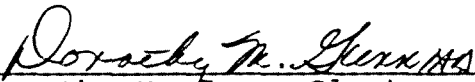
The Board takes special note of its opinions and orders in PCB 86-185 concerning Citizens most recent variance petition for the same water supply and concerning the same combined radium non-compliance, and hereby incorporates by reference from PCB 86-185: Opinion and Order, March 24, 1988; Supplemental Opinion and Order, May 19, 1988, and Order, August 4, 1988.

These prior Board actions thoroughly discuss the connection fee issue, and why it is unacceptably speculative for the litigation to be an essential element of the timing of a compliance plan. The only difference in this petition is that Citizens is now requesting authorization to abandon at some point the speculative compliance program (similar to, but even more imprecise than, that proposed in PCB 86-185) in favor of another compliance program, also deficient, and also unacceptable.

If the Board does not receive an amended petition within 45 days of the date of this Order curing the above-noted defects, this matter will be subject to dismissal.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 22<sup>nd</sup> day of September, 1988, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board