

ILLINOIS POLLUTION CONTROL BOARD

May 2, 2002

IN THE MATTER OF:)
)
PETITION OF CENTRAL ILLINOIS LIGHT) AS 02-4
COMPANY (E.D. EDWARDS) (Adjusted Standard – Air)
GENERATING STATION) FOR AN)
ADJUSTED STANDARD FROM 35 ILL.)
ADM. CODE 214.141)

IN THE MATTER OF:)
)
PETITION OF CENTRAL ILLINOIS LIGHT) R02-21
COMPANY (E.D. EDWARDS) (Site-Specific
GENERATING STATION) FOR A) Rulemaking – Air
SITE-SPECIFIC AIR REGULATION:)
35 ILL. ADM. CODE 214.561)

ORDER OF THE BOARD (by T.E. Johnson):

As explained below, this order dismisses adjusted standard AS 02-4, and opens the rulemaking docket. The effect of both actions is to allow petitioner to continue lawful operations under the terms of its existing variance while it pursues regulatory amendment of its existing site-specific rule excepting it from a rule of general applicability.

BACKGROUND

Central Illinois Light Company (E.D. Edwards Generating Station) (CILCO) operates the E.D. Edwards Generating Station (facility) located near Peoria in Peoria County. The facility consists of three coal-fired boilers. CILCO received a variance from 35 Ill. Adm. Code 214.141 in a Board order issued on April 15, 1999. *See Central Illinois Light Company v. IEPA*, PCB 99-80 (Apr. 15, 1999). The variance is effective through July 31, 2003. Boilers 1 and 3 are subject to a sulfur dioxide emission limit under a site-specific rule at 35 Ill. Adm. Code 214.561. Boiler 2 is subject to sulfur dioxide emissions limit under 35 Ill. Adm. Code 214.141. Pet. at 1.¹

On February 28, 2002, CILCO filed a petition for an adjusted standard pursuant to Section 28.1 of the Environmental Protection Act (Act) 415 ILCS 5/28.1 (2000). On March 21, 2002, the Board issued an order reserving judgment on the acceptance of this case

¹ CILCO's petition for a site-specific air regulation will be cited as "Pet. at __."

until CILCO addressed whether or not the relief requested by CILCO is contrary to the Act and the Administrative Procedures Act, (5 ILCS 100/1-1 *et seq.* (2000)) in that CILCO is requesting the amendment of a rule in an adjusted standard proceeding.

On April 26, 2002, CILCO filed a motion to file an amended pleading and a proposal for site-specific rulemaking. In the motion, CILCO requests that the Board accept the proposal for site-specific rulemaking as an amendment to the February 28, 2002 filing. CILCO represents that the Illinois Environmental Protection Agency (Agency) was apprised of the motion and had no objection.

CILCO filed the proposal for site-specific rulemaking pursuant to 35 Ill. Adm. Code Part 102.Subpart B and Section 27 of the Act, 415 ILCS 5/27 (2000). CILCO seeks to make permanent the relief it was granted in PCB 99-80 by amending 35 Ill. Adm. Code 214.561 with respect to the requirements for the operation of Boiler 2. CILCO requests that the Board repeal the text of 35 Ill. Adm. Code 214.561 and replace it verbatim with text from the variance order of April 15, 1999. *See CILCO*, PCB 99-80 slip op. at 8-9. CILC asserts that this language has already been reviewed, approved by the United States Environmental Protection Agency, and incorporated into the approved Illinois State Implementation Plan pursuant to the Clean Air Act. *See* 42.U.S.C. Section 7401, *et seq.* Pet. at 6.

DISCUSSION

The Board order of April 15, 1999, provides a mechanism that would allow CILCO to seek relief on a permanent basis, but specifies that CILCO file for such relief on or before February 28, 2002. CILCO met this requirement by timely filing its petition for adjusted standard.

In order to place this case on the procedurally correct course, the Board grants CILCO's motion to file the amended pleading, and dismisses CILCO'S petition for adjusted standard. Accordingly, the docket in AS 02-4 is closed, and the Board opens a new regulatory docket, R02-21. The Board finds that the proposal for rulemaking meets the requirements of 35 Ill. Adm. Code 102.210 and is accepted for hearing. The parties are directed to use the rulemaking caption for all future filings in this matter. The Board also finds that the variance granted in PCB 99-80 remains in effect, as a result of the timely filing of the now dismissed petition in AS02-4.

CILCO is also requesting that the record from PCB 99-80 be incorporated by reference. CILCO further requests that the Board waive the requirement that four copies of the material to be incorporated be attached.

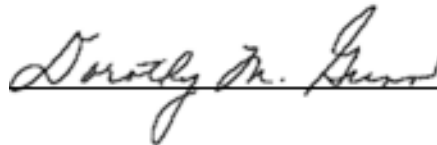
Section 101.306 of the Board's regulations addresses incorporation of documents by reference, and requires that the person seeking incorporation demonstrate the material to be authentic, credible and relevant to the proceeding. The Board finds the record of PCB 99-80 meets that requirement. Accordingly, the request for incorporation is granted. The Board will

also waive the requirement that four copies of the material to be incorporated be attached. However, if any portion of the record is not readily available to the Board, CILCO will be required to file four copies of that portion of the record upon notification of the hearing officer.

CILCO asks that the Board waive the requirement that a petition with at least 200 signatures accompany a proposal for rulemaking. *See* 35 Ill. Adm. Code 102.202(f). The Board hereby grants the motion to waive the signature requirement. Additionally, the Board notes that CILCO did not include the \$75 filing fee as required by the Board's procedural rules. 35 Ill. Code 101.302(e)(1) provides that an initial filing for a petition for a site-specific regulation requires a \$75 filing fee and will only be considered filed when accompanied by the appropriate fee. However, because the proposal is not an initial filing and CILCO did pay a filing fee when it filed adjusted standard AS02-4, no additional filing fee in this matter will be required. The Board's hearing officer is directed to schedule and hold a hearing expeditiously.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 2, 2002, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board