

ILLINOIS POLLUTION CONTROL BOARD
July 14, 1983

ILLINOIS POWER COMPANY)	
(Vermillion Station);)	
)	
Petitioner,)	
)	
v.)	PCB Nos. 82-103
)	82-104
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon a July 8, 1983 appeal of the hearing officer's discovery order in this matter filed by the Illinois Environmental Protection Agency (Agency). The Agency requests that the Board reverse the hearing officer's order allowing the deposition of Mr. D'Auben, an Agency employee. The Agency argues that Mr. D'Auben "had not been personally involved in the review of the permit applications which are the subject of this appeal," that he became involved "with the facility only in analyzing information submitted after the permits were denied," and that such information is beyond the scope of a permit appeal.

On July 11, 1983 Illinois Power filed a response to that motion correctly pointing out that discovery is to be allowed "if the information sought appears reasonably calculated to lead to the discovery of admissible evidence or is relevant to the subject matter" (35 Ill. Adm. Code 103.161).

While the Board has uniformly held that a permit appeal is to be decided on the basis of what information was before the Agency at the time of the permitting decision, the Board has not before been faced with the issue of whether evidence offered to the Agency, but not requested by the Agency prior to denial, is admissible. Further, Mr. D'Auben is, as Illinois Power alleged, "clearly in a position to provide" information concerning the denial.

While a clearer indication of what information is sought from Mr. D'Auben would have been helpful in deciding this motion, the Board's discovery rules are liberal and the hearing officer's June 27, 1983 Order is affirmed and the Agency's motion is denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board hereby certify that the above Order was adopted on the 14th day of July, 1983 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board