

ILLINOIS POLLUTION CONTROL BOARD
April 24, 1986

ILLINOIS POWER COMPANY)
(Wood River Power Plant),)
)
Petitioner,)
)
v.) PCB 85-84
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

This matter comes before the Board upon the filing of a motion for Interim Order on behalf of the Illinois Power Company (IPC) on April 14, 1986. The Illinois Environmental Protection Agency (Agency) responded to that motion on April 22, 1986, and IPC filed a motion for leave to file a reply and a reply on April 23, 1986. The motion for leave to file is hereby granted.

In short, IPC contends that this matter is controlled by the Board's decision in Illinois Power Company (Hennepin) v. Illinois Environmental Protection Agency, PCB 85-119 (March 27, 1986) and requests that the Board reaffirm its Hennepin decision and issue:

- (1) an order which vacates the contested condition and remands the Permit with instructions that it be reissued in accordance with the law and the Board's findings and holdings; or
- (2) an interim order which contains these findings and holdings, but which reserves the remand until after hearing is held and which limits the scope of the hearing to comments from the public; or in the final alternative,
- (3) an interim order which limits the scope of the hearing to testimony and evidence concerning these issues and public comment, and excludes testimony and evidence from the parties concerning the merits of the contested conditions.

The Agency, on the other hand, argues that Hennepin was wrongly decided, that issues of fact remain, and that a "dialogue before issuance" provided IPC with "those rights afforded by the Illinois Environmental Protection Act; the Administrative

Procedure Act; the Board rules and applicable Federal Regulations." The Agency also asserts that the right to written comments was waived by IPC through its course of conduct.

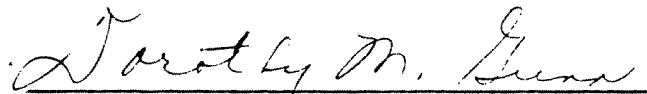
The right to a hearing under Section 40 of the Illinois Environmental Protection Act runs as much to the Agency as it does to IPC. While this case appears to be on all fours with the Hennepin decision, it also appears that there are issues of fact which are properly the subject of hearing, despite IPC's continued assertions to the contrary. Further, given that those facts could serve to distinguish this case from Hennepin which could result in the Board's reaching the substantive issues, there does not appear to be a basis for limiting the scope of the public hearing.

The Board hereby denies IPC's requested relief.

IT IS SO ORDERED.

Board Member J. Anderson dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 24th day of April, 1986 by a vote of 6-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board