

ILLINOIS POLLUTION CONTROL BOARD  
September 20, 1985

ELECTRIC ENERGY, INC.,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent.

PCB 85-14

INTERIM ORDER OF THE BOARD (by J. Anderson):

This permit appeal was filed January 28, 1985, challenging conditions of NPDES Permit No. IL0004171 concerning Electric Energy Inc's. (EEI) outfall 010. The challenged conditions involve a new pH limit and new iron discharge limits and sampling requirements, and their January 30, 1985, effective date.

Hearing was held on June 4, 1985, at which the parties proposed a stipulated settlement of this action which contains a schedule for construction of a modified system to be completed by December 1986. Also introduced at hearing as Joint Exhibit No. 1 was a draft NPDES permit the Agency would propose to issue in the event the Board responded favorably to the parties' request that the Board "enter an Order binding the Parties to the terms of this Stipulation" (Stip., par. 10).

In response to a June 13 Interim Order of the Board, on June 24 the parties filed what is in essence a revised stipulation, denominated as a "Joint Motion To Reconsider" the Interim Order. In that motion, the parties cited "technical facts and legal assertions" based on the Agency permit appeal record, and have requested the Board to "exercise its independent judgment [to] make proper findings of fact and conclusions of law to make a final adjudication of this permit appeal", and to accept the proposed stipulation. The parties specifically have requested the Board to determine the legal issue of whether iron or pH limitations may be imposed on the settling lagoon, to avoid any future litigation of these issues of the sort that has thrice occurred concerning the pH limitation (see Joint Motion, par. 43).

Finally, the Joint Motion reiterates the parties' intent that "the Stipulation shall be null and void unless the Board shall approve and dispose of this matter on each and everyone of the terms and conditions set forth therein". However, EEI has agreed to waive the decision date in the event the Board is unable to approve the Stipulation, to allow the parties sufficient time to recommend to the Board an alternative method for resolution of this proceeding.

This Stipulation is rejected. The Board assumes that the factual stipulations and legal assertions presented herein are null and void unless the Stipulation is accepted; the Board therefore can make no findings on the basis of this record. The Board, though, wishes to note that if a re-routing of the settling lagoon discharge from the cooling water bay to the condenser inlet structure is designed to create a totally enclosed system, the Board would agree that the discharge to a water of the state issue would be eliminated. However, acceptance of the stipulation would amount to a grant of a one year variance. The Board lacks statutory authority to grant such relief in the context of a permit appeal: public notice requirements and statutory requirements for proof by petitioner are different in each action. The Board notes, however, that neither the Act nor the Board rules preclude EEI from petitioning for variance at this time.

Given the rejection of this stipulation, the parties must devise an "alternative method" to allow completion of the record and Board resolution of this matter: by the filing of an amended factual and legal stipulation, by the scheduling of hearing to accomplish the purpose, or any other appropriate method. As this matter is due for decision October 31, in the absence of an additional waiver, the Board directs that the parties file a statement indicating how they wish to proceed with this matter on or before October 8, 1985. Assuming issuance of a sufficient waiver, the Board would entertain a motion for stay of this appeal pending the outcome of any variance proceeding.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Interim Order was adopted on the 20<sup>th</sup> day of September, 1985, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board