

ILLINOIS POLLUTION CONTROL BOARD  
August 30, 1990

REED-CUSTER COMMUNITY UNIT )  
SCHOOL DISTRICT NO. 255-U, )  
 )  
Petitioner, )  
 )  
v. ) PCB 87-209  
 ) (Tax Certification)  
COMMONWEALTH EDISON COMPANY )  
and THE ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

DISSENTING OPINION (by B. Forcade):

I respectfully dissent from the majority.

I agree with the majority that the sole question on review is whether the application submitted by Commonwealth Edison Company ("ComEd") contained fraudulent or misrepresentative statements. I have found no basis in the record to conclude that ComEd or Reed-Custer Community Unit School District No. 255-U ("Reed-Custer") have been attempting to malevolently misrepresent the character of the cooling pond. This case represents an honest disagreement over the legal interpretation of the statutory phrase, "for the primary purpose." If Reed-Custer's position on the legal meaning of the phrase is correct, then ComEd's application contains misrepresentations (albeit innocent misrepresentations). If ComEd's legal interpretation is correct, then the application is accurate. The question then is what did the General Assembly really intend. I believe that the General Assembly's intention was to not include this type of facility as a pollution control facility, but that decision seems to me a very close call. I am more convinced that the intention was to exclude a part of the piping, which has been included in this application.

The definitional issues involved in the question of whether a piece of equipment is "designed, constructed, installed, or operated for the primary purpose of eliminating, preventing, or reducing..." pollution is a real property tax law question that has never been answered before by this Board. While not intending to oversimplify the matter, I believe that the primary purpose definition is met when the facility could continue to operate without the piece of pollution control equipment. Probably it would pollute the environment more, possibly it would run less efficiently; but, it could continue to operate.

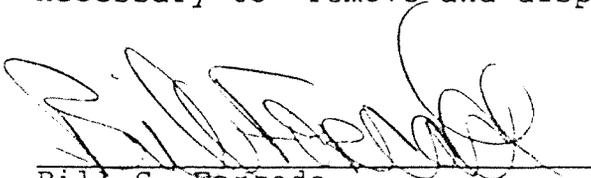
Here, there is no question that a nuclear power plant cannot continue to operate without some form of heat dissipation

technology. This limitation is not imposed for the protection of fish and other wildlife, but for the protection of internal plant components from damage due to heat buildup. In that context, I find it difficult to conclude that the cooling technology generally has a primary purpose of pollution control. Here, that issue is even more clear. For several months per year the Kankakee River flow is inadequate to supply the station cooling needs. During those times the plant simply could not operate without the cooling pond, even if unlimited thermal pollution of the Kankakee River was acceptable.

I find the majority reasoning unpersuasive. They conclude that the cooling pond is primarily for pollution control because it is subject to regulation under the Environmental Protection Act ("Act"). Under the Act, the Board also regulates gasoline, automobiles, trucks hauling special wastes, qualifications of individuals to operate landfills, etc. These are not all pollution control facilities.

Several cases cited by ComEd support their position, but are not directly on point to the argument raised here. After reviewing all the arguments, I continue to believe that this is a close call on the meaning of the statutory phrase as it would apply to all cooling technology generally or to this specific cooling pond, but I believe that balance tips in favor of Reed-Custer.

I also find persuasive the arguments of Reed-Custer regarding the four-foot diameter pipe which conveys water from the Kankakee River to the cooling pond. Without a pipe to convey water into the cooling pond, it would seem unworkable to have a pipe that only conveyed water from the cooling pond. ComEd's inclusion of one pipe in the tax certification application while excluding the other seems to imply that only one pipe is involved. While it may be true that the water in the second pipe is hotter than water in the first pipe, both would seem to be necessary to "remove and disperse heat."



Bill S. Forcade  
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 15 day of September, 1990.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board