ILLINOIS POLLUTION CONTROL BOARD September 6, 1979

CENTRAL ILLINOIS PUBLIC SERVICE CO.,)		
Petitioner,)		
v.) }	PCB 7	79-84
ENVIRONMENTAL PROTECTION AGENCY,)		
Respondent.)		

ORDER OF THE BOARD (by Mr. Goodman):

On August 16, 1979 Central Illinois Public Service Co. (CIPS) moved the Board to modify its Order dated July 12, 1979 by eliminating conditions 1(a), 1(b) and 2. Conditions 1(a) and 2 of the Order require CIPS to develop interim temperature standards for Lake Newton in anticipation of the resolution of PCB 78-271, CIPS' petition under Rule 203(i)(10) of the Board's Water Regulations. Condition 1(b) requires that any discharge from Lake Newton to Weather Creek comply during the terms of the variance with the applicable revisions of Rule 203(i)(1)-(4).

CIPS alleges that the record in the variance case contains no evidence regarding an interim limitations issue and that therefore the Board may not condition the variance on any requirement encompassing that issue. The Board directs CIPS attention to Section 36(a) of the Environmental Protection Act which states: "in granting a variance the Board may impose such conditions as the policies of this Act may require." The Board is not limited to considering only those issues presented by a petitioner in the record of a variance proceeding in fashioning the relief it may decide to grant.

CIPS further alleges that the issue of whether some or all of the provisions of Rule 203(i)(1)-(4) are applicable is properly determinable only in the 203(i)(10) proceeding, and that since no final Order has issued therein, the Board is without authority to condition this variance upon compliance with such provisions. The Board again directs CIPS' attention to Section 36(a) of the Illinois Environmental Protection Act and points out that compliance with Rule 203(i)(1)-(4) with respect to the discharge from Lake Newton to Weather Creek is totally independent of the resolution by the Board of PCB 78-271 and, due to condition 1(b) of the Board's July 12, 1979 Order herein, totally independent of the variance that was granted by that Order.

CIPS presumes that since the hearings in PCB 78-271 were concluded on July 17, 1979 a decision in that matter is imminent. CIPS contends that it will be unable to develop the required information until the next lengthy period of hot weather, namely, the Summer of 1980. CIPS' point is well taken. At the time of its Order, the Board was unaware that the matter in PCB 78-271 would be concluded so rapidly.

Under the circumstances the Board finds that it would be inappropriate to hold the decision in PCB 78-271 until CIPS can develop the information requested in conditions 1(a) and 2 of the Board's Order of July 12, 1979. The Board therefore grants CIPS' motion as it pertains to conditions 1(a) and 2 and denies the motion with respect to condition 1(b).

The Board Order of July 12, 1979 is hereby modified and renumbered in accordance with the above discussion.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the day of _______, 1979 by a vote of _______.

Christan L. Moffett, Clerk
Illinois Pollution Control Board