

ILLINOIS POLLUTION CONTROL BOARD
May 25, 1989

CITIZENS UTILITIES COMPANY)
OF ILLINOIS,)
)
Petitioner,)
)
v.) PCB 88-151
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board on a motion for sanctions filed by the Illinois Environmental Protection Agency ("Agency") on May 18, 1989. In response, Citizens Utilities Company of Illinois ("Citizens") filed its objections to and motion to strike the Agency's motion for sanctions on May 23, 1989. (Although itself entitled in part as a motion, the Board construes this document as a response to the Agency's motion.) On May 19, 1989, the Hearing Officer in this matter informed the Board by letter that he would not be ruling on the motion for sanctions because the motion seeks relief in the form of dismissal of the petition which, according to Board procedural rules, is beyond the authority of the hearing officer to grant.

In general, the Agency's motion alleges Citizens has abused the discovery process in this proceeding by either failing to give responses or rendering incomplete responses to five of its 29 interrogatories, and requests dismissal or any other relief deemed appropriate by the Board. Citizens claims that it inadvertently failed to answer one of the interrogatories in question, to which it has since responded (May 19, 1989) in writing to the Agency. Citizens further claims as to the other four that "[the Agency] does not like Citizens' answers to four of the other interrogatories."

At the onset it is necessary to relate certain aspects of procedural history prior to the filing of the Agency's motion. On March 8, 1989, a pre-hearing conference conducted by the Hearing Officer was held between the parties. At that time, oral rulings were made regarding interrogatories and other written discovery requests submitted by the parties. By written order, the Hearing Officer directed that the parties file answers to interrogatories on or before March 22, 1989. The Agency in its motion states that this date was later extended to March 29, 1989.

On March 29, 1989, Citizens filed its answers to interrogatories. Included in those answers were several answers

stating that Citizens would respond upon entry by the Hearing Officer of an appropriate protective order. The Hearing Officer issued an interim protective order relating to these matters on April 21, 1989. The Agency states that Citizens filed supplemental responses on May 8, 1989, and that both the initial responses of March 29, 1989 and the supplemental responses of May 8, 1989 are deficient.

The Board notes that the record before it is insufficient at this time for it to adequately determine the issues presented in the motion. Specifically, the Board notes that neither the May 8, 1989 nor the May 19, 1989 "supplemental responses" were filed with the Board. The Board further notes that the Agency did not file an affidavit regarding the facts within its motion. Also, the Board believes it is necessary to have additional input from its Hearing Officer before it can make any determinations on the motion. The Board therefore orders Citizens to file with the Board any supplemental responses in this matter it has given to the Agency. The Agency shall file appropriate affidavits. The Board further directs its Hearing Officer, upon review of his rulings and any other relevant matters, to advise the Board:

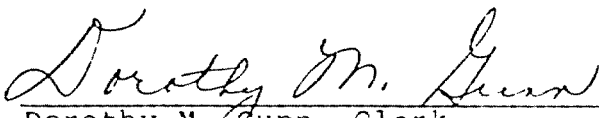
- 1) whether a refusal or failure to answer the interrogatories in question has occurred in this case; and,
- 2) if such refusal or failure has occurred, whether such refusal or failure was without sufficient justification.

The Hearing Officer should also inform the Board of any other relevant facts he deems necessary for Board determination. Such filings shall be made no later than June 2, 1989.

As a final matter, nothing in this Order shall be a bar to the parties resolving these discovery disputes among themselves or with aid of the Hearing Officer, prior to the Board's ruling on these issues. This Order is not intended to disturb the date of hearing as presently scheduled.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 25th day of May, 1989, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board