

ILLINOIS POLLUTION CONTROL BOARD
March 16, 2000

IN THE MATTER OF:)
)
PETITION OF COMMONWEALTH) AS 96-10
EDISON COMPANY FOR AN ADJUSTED) (Adjusted Standard - Water)
STANDARD FROM 35 ILL. ADM. CODE)
302.211(d) AND (e))

OPINION AND ORDER OF THE BOARD (by E.Z. Kezelis):

This matter is before the Board on a February 25, 2000 motion (motion)¹ by Commonwealth Edison Company (ComEd) and Midwest Generation, LLC (Midwest), to reopen this docket, AS 96-10, and substitute Midwest as the petitioner and holder of the adjusted standard. Both ComEd and Midwest have waived hearing in the matter.

On March 9, 2000, the Illinois Environmental Protection Agency (Agency) filed a response to the motion. In its response, the Agency states that it does not dispute any of the factual allegations set forth in the motion and that it concurs with the request by ComEd and Midwest to reopen the docket and substitute Midwest as the petitioner and holder of the adjusted standard.

BACKGROUND

The Board granted ComEd an adjusted standard from 35 Ill. Adm. Code 302.211(d) and (e) in an order dated October 3, 1996. *In re* Petition of Commonwealth Edison Company for an Adjusted Thermal Standard from 35 Ill. Adm. Code 302.211(d) and (e) (October 3, 1996), AS 96-10. The October 3, 1996 order granted ComEd an adjusted standard from the thermal standards for discharges of cooling water from ComEd's generating stations located in Joliet, Will County, Crawford, and Fisk (Generating Stations). In its motion, ComEd states that, in response to the October 3, 1996 adjusted standard, the Agency issued revised National Pollutant Discharge Elimination System (NPDES) permits to each of these Generating Stations, and that these permits remain in full force and affect. Mot. at 3.

Pursuant to the Electric Service Customer Choice and Rate Relief Law (220 ILCS 5/16-101 *et seq.* (1998)), ComEd agreed, in March 1999, to sell the Generating Stations to Edison Mission Energy, an indirect, wholly owned subsidiary of Edison International that specializes in the development, acquisition, construction, management, and operation of global power production facilities. Mot. at 3-4. Edison Mission Energy in turn, assigned all of its rights under the purchase agreement with ComEd to Midwest. Mot. at 4-5. Midwest is a limited liability company that is indirectly owned by Edison Mission Energy. Mot. at 5. On December 15, 1999, title to the Generating Stations was transferred to

¹ Citations to the motion will be referred to as "Mot. at ___."

Midwest. *Id.* As a result, Midwest has assumed all rights and obligations associated with the operation of the Generating Stations. *Id.*

ComEd and Midwest state in their motion that the operations of the Generating Stations will not change as a result of the title transfer. Mot. at 5. The Generating Stations will continue to produce electricity through the use of coal-fired boilers. *Id.* Midwest has retained almost the entire workforce previously employed by ComEd, including a senior biologist who has been and remains primarily responsible for developing and implementing the model used by ComEd to ensure compliance with the adjusted thermal standards set by the Board in its October 3, 1996 order. Mot. at 6.

DISCUSSION

The Board's authority for granting alternate thermal standards is found both in the Clean Water Act (CWA) (33 U.S.C. 1326(a)) and in 35 Ill. Adm. Code 304.141(c), that provides:

The standards of this chapter shall apply to thermal discharges unless, after public notice and opportunity for hearing, in accordance with Section 316 of the CWA and applicable federal regulations, the Administrator and the Board has determined that different standards shall apply to a particular thermal discharge. 35 Ill. Adm. Code 304.141(c).

Likewise, Section 28.1 of the Environmental Protection Act (Act) (415 ILCS 5/28.1 (1998)) establishes the level of justification required for the Board to grant an adjusted standard. Section 28.1(c) provides:

- (c) If a regulation of general applicability does not specify a level of justification required of a petitioner to qualify for an adjusted standard, the Board may grant individual adjusted standards whenever the Board determines, upon adequate proof by petitioner, that:
 - (1) factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;
 - (2) the existence of those factors justifies an adjusted standard;
 - (3) the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and
 - (4) the adjusted standard is consistent with any applicable federal law. 415 ILCS 5/28.1(c) (1998).

ComEd sought and, after providing sufficient justification, obtained an adjusted standard from the temperature standards of 35 Ill. Adm. Code 302.211(d) and (e), which provide:

Section 302.211 Temperature

* * *

- d. The maximum temperature rise above natural temperatures shall not exceed 2.8° C (5° F).
- e. In addition, the water temperature at representative locations in the main river shall not exceed the maximum limits in the following table during more than one percent of the hours in the 12-month period ending with any month. Moreover, at no time shall the water temperature at such locations exceed the maximum limits in the following table by more than 1.7° C (3° F).

	° C	° F		° C	° F
JAN.	16	60	JUL.	32	90
FEB.	16	60	AUG.	32	90
MAR.	16	60	SEPT.	32	90
APR.	32	90	OCT.	32	90
MAY	32	90	NOV.	32	90
JUNE	32	90	DEC.	16	60

In the Board's October 3, 1996 order, ComEd was granted the following alternate thermal standards for discharges from the Generating Stations:

	° F		° F
JAN.	60	JUNE 16-30	91
FEB.	60	JULY	91
MAR.	65	AUG.	91
APR. 1-15	73	SEPT.	90
APR. 16-30	80	OCT.	85
MAY 1-15	85	NOV.	75
MAY 16-31	90	DEC.	65
JUNE 1-15	90		

See *In re* Petition of Commonwealth Edison Company for an Adjusted Thermal Standard from 35 Ill. Adm. Code 302.211(d) and (e) (October 3, 1996), AS 96-10, slip op. at 7.

In the motion presently before the Board, ComEd and Midwest maintain that the relevant factors that justified the grant of alternative thermal standards in 1996, are not affected by the transfer of the facility today. Mot. at 7. Specifically, the petitioners assert that the factors justifying the adjusted standard involved not the identity of the discharger, but rather “the nature of the discharge and the conditions in the receiving waterway, in particular, the lack of impact that the adjusted standards would have on the ecosystem of the receiving waterway” Mot. at 7-8. A change in ownership of the Generating Stations should not impact these factors at all. Mot. at 8.

Neither the Act nor the Board’s procedural rules address the specific type of relief being sought by these petitioners. However, ComEd and Midwest identified a previous situation in which the Board granted similar relief. See In re Petition of Envirite Corporation for an Adjusted Standard from 35 Ill. Adm. Code 721 Subpart D: List of Hazardous Substances, Appendix I (November 7, 1996), AS 94-10. In the Envirite proceeding, Envirite was originally granted an adjusted standard from the listing of a particular waste from the lists in 35 Ill. Adm. Code 721.Subpart D. At some point after the adjusted standard was granted to Envirite Corporation, ownership and operation of the facility at issue was transferred to Envirite of IL, Inc. Both Envirite Corporation and Envirite of IL, Inc. petitioned the Board to reopen the adjusted standard docket and substitute the named petitioner. The basic factor in support of the Board’s decision to grant the Envirite motion was the fact that the relevant factors required to justify the Board’s original decision to grant an adjusted standard had not changed. See In re Petition of Envirite Corporation for an Adjusted Standard from 35 Ill. Adm. Code 721 Subpart D: List of Hazardous Substances, Appendix I (November 7, 1996), AS 94-10.

ComEd and Midwest urge the Board to apply similar reasoning in this case. As previously stated, the Agency concurs in this request and, in fact, has already transferred NPDES permits for these Generating Stations to Midwest. Mot. at 5.

CONCLUSION

Based upon the assurances of ComEd and Midwest that the management and operation of the Generating Stations will continue unchanged, and upon the Board’s previous findings of justification in its October 3, 1996 order, the Board will officially reopen this docket and substitute the name of Midwest Generation, LLC, for Commonwealth Edison Company in its October 3, 1996 order.

ORDER

1. The Board hereby amends its October 3, 1996 order in this matter, and grants to Midwest Generation, LLC an adjusted standard from 35 Ill. Adm. Code 302.211(d) and (e) for the Joliet, Will County, Crawford, and Fisk generating stations.
2. The alternate thermal standards shall apply at the I-55 Bridge as limitations for discharges from the above listed generating stations.
3. In lieu of the requirements of 35 Ill. Adm. Code 302.211(d) and (e), the following standards will apply:

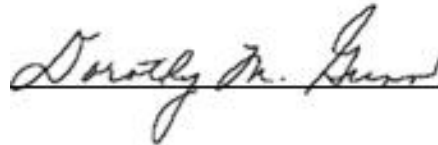
	° F		° F
JAN.	60	JUNE 16-30	91
FEB.	60	JULY	91
MAR.	65	AUG.	91
APR. 1-15	73	SEPT.	90
APR. 16-30	80	OCT.	85
MAY 1-15	85	NOV.	75
MAY 16-31	90	DEC.	65
JUNE 1-15	90		

4. The standards may be exceeded by no more than 3 degrees Fahrenheit during 2% of the hours in the 12-month period ending December 31, except at no time shall Midwest's generating stations cause the water temperature at the I-55 Bridge to exceed 93 degrees Fahrenheit.
5. Midwest's generating stations continue to be subject to the Secondary Contact Standards at the point of discharge.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of the date of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 16th day of March, 2000 by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board