

ILLINOIS POLLUTION CONTROL BOARD
May 6, 1991

COMMONWEALTH EDISON COMPANY,)
)
 Petitioner,)
)
 v.) PCB 91-70
) (NPDES Permit Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by B. Forcade):

On April 25, 1991, Commonwealth Edison Company filed a petition for permit review. This matter is accepted for hearing.

The Board specifically rejects the purported waiver filed by Commonwealth Edison. The waiver states, "This waiver expires 30 days after Commonwealth Edison files a Revocation of Waiver of Decision with the Board." Revocable waivers or conditional waivers are unacceptable. See, e.g., Land and Lakes, et. al., v. Village of Romeoville, PCB 91-7 (April 25, 1991). Board regulations at 35 Ill. Adm. Code 101.105 provide:

Section 101.105 Waivers

A waiver of a deadline for final Board action, as specified in Sections 38, 40, 40.1 and 41 of the Act, shall be filed as a separate document. The waiver shall be clearly titled as such, identify the proceeding by name and docket number, and be signed by the party or by his authorized representative or attorney. The waiver shall be an open waiver or a waiver until a calendar date certain. However, the Board reserves the right to accept waivers in other forms where it finds it necessary to prevent undue delay or material prejudice. A contingent waiver is not acceptable. (Emphasis Added).

Commonwealth Edison is free to file an open waiver or to file a waiver until a calendar date certain. However, this revocable waiver is not accepted.

Hearing must be scheduled within 14 days of the date of this Order and completed within 60 days of the date of this Order. The hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that public notice of hearing may be published. After

hearing, the hearing officer shall submit an exhibit list, and all actual exhibits to the Board within 5 days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and in no event later than 70 days from the date of this Order.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. This schedule will only provide the Board a very short time period to deliberate and reach a decision before the due date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

Within 10 days of accepting this case, the Hearing Officer shall enter a Hearing Officer Scheduling Order governing completion of the record. That Order shall set a date certain for each aspect of the case including: briefing schedule, hearing date(s), completion of discovery (if necessary) and pre-hearing conference (if necessary). The Hearing Officer Scheduling Order may be modified by entry of a complete new scheduling order conforming with the time requirements below.

The hearing officer may extend this schedule only on a waiver of the decision deadline by the petitioner and only for the equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of the Board. Any waiver must be an "open waiver" or a waiver of decision until a date certain.

Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be canceled unless the petitioner provides an open waiver or a waiver to a date at least 120 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice of hearing and receive transcripts from the hearing before the due date. Any order by the hearing officer granting cancellation of hearing shall include a complete new scheduling order with a new hearing date at least 40 days in the future and at least 30 days prior to the new due date and the Clerk of the Board shall be promptly informed of the new schedule.

Because this proceeding is the type for which the Illinois Environmental Protection Act sets a very short statutory deadline for making a decision, absent a waiver, the Board will grant extensions or modifications only in unusual circumstances. Any such motion must set forth an alternative schedule for notice, hearing, and final submissions, as well as the deadline for decision, including response time to such a motion. However, no such motion shall negate the obligation of the hearing officer to

establish a Scheduling Order pursuant to the requirements of this Order, and to adhere to that Order until modified.

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 6th day of May, 1991, by a vote of 6-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board