

ILLINOIS POLLUTION CONTROL BOARD
March 5, 2009

AMEREN ENERGY GENERATING CO.,)
)
Petitioner,)
)
v.) PCB 09-38
) (Thermal Demonstration-Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by S.D. Lin):

On December 15, 2008, Ameren Energy Generating Company (Ameren) filed a petition (Pet.) to modify the site specific thermal standards previously granted¹ by the Board pursuant to 35 IAC 302.211(j)(5). The thermal standards apply to heated effluent discharge from Ameren's Coffeen Power Station in Montgomery County to the artificial cooling lake known as Coffeen Lake. In brief summary, Ameren seeks an increase in thermal limits applicable during the calendar months of May and October.² Ameren asserts that compliance with the existing standards is technically infeasible or unreasonably cost prohibitive. Pet. at 5.

¹ As outlined in the petition (Pet. at 2-4), in 1977 and 1982 the Board initially established site specific standards for Coffeen Lake upon petition by the Coffeen Power Station's then-owner and operator under 35 Ill. Adm. Code 302.211(j)(5). CIPS V. IEPA, PCB 77-158, PCB 78-100 (cons.)(Mar. 19, 1982). CIPS sought and obtained relief from the original May and October thermal limits by way of variance. CIPS (Coffeen Power Station v. IEPA (PCB 97-131 (June 5, 1997). A condition of the variance required CIPS to conduct studies and collect data regarding the effect of the Station's discharges on the lake's fishery, resulting in variance termination in 1999 after a fish kill. Southern Illinois University-Carbondale (SIUC) fishery studies from 1997-2006 were provided in support of the current petition. Pet. Exh. 11.

² The current, 2-condition thermal discharge temperature limits applicable to the Station provide that discharges shall not result in a temperature, as measured at the outside edge of the mixing zone of Coffeen Lake, which

1) Exceeds 105 degrees F as a monthly average from June through September, and a 112 degrees F as a maximum for more than 3 % of hours during that same period, and

2) Exceeds 89 degrees F as a monthly average from October through May, and a 94 degrees F as a maximum for more than 2 % of hours during that same period.

Ameren proposes a 3-condition limit as follows (note slight change in #2 from above, and new #3):

The Board has completed its initial review of the petition and its 16 supporting exhibits for technical sufficiency under 35 Ill. Adm. Code 302.211(j)(3) and its procedural rules at 35 Ill. Adm. Code 106.Subpart B. The Board finds that the petition satisfies the information requirements of these rules. While the Board has identified some points on which it seeks clarification and some new information, the Board will not require Ameren to file an amended petition. Since the Board further finds that hearing is required under the terms of 35 Ill. Adm. Code 302.211(j)(3),³ these points can be addressed at hearing. Accordingly, the Board accepts this petition for hearing.

Ameren requests expedited review of its petition. Ameren asserts that

Unless granted the relief requested in this petition, Ameren predicts it will need to de-rate its units at Coffeen Station as soon as May 2009, to its financial detriment. Ameren requests that the Board expedite review of this Petition in accordance with the Board's resources. Pet. at 37.

Requests for expedited review are governed by Section 101.512 of the Board's rules, and must contain, *inter alia*, a complete statement of the facts and reasons for the request. See 35 Ill. Adm. Code 101.512. In acting on a motion for expedited review, the Board considers, at a minimum, all statutory requirements and whether or not material prejudice will result from the motion being granted or denied. 35 Ill. Adm. Code 101.512(b). In addition, as noted by Ameren, the Board will only grant a motion for expedited review consistent with available resources. See 35 Ill. Adm. Code 101.512(c).

At this time, the Board will not grant the motion for expedited review, finding that Ameren has failed to demonstrate the "material prejudice" required at this time. Under the

1) Exceeds 105 degrees F as a monthly average from June through September, and a 112 degrees F as a maximum for more than 3 % of hours during that same period, and

2) Exceeds 89 degrees F as a monthly average from November through April, and a 94 degrees F as a maximum for more than 2 % of hours during that same period.

3) Exceeds 96 degrees F as a monthly average, in each of the months of May and October, and 102 degrees F as a maximum for more than 2 % of hours in each of those same months. Pet at. 5-6.

³ Ameren noted that the Board's procedural rules for artificial cooling lake demonstrations at 35 Ill. Adm. Code 106.Subpart B do not explicitly require that hearing be held on such petitions. But, Ameren also noted that the substantive rule states that the discharger to an artificial cooling lake must make its demonstration at an adjudicative hearing before the Board. See 35 Ill. Adm. Code 302.211(j)(3). Accordingly, Ameren waived hearing unless the Board found that one is required by rule or the Board finds one is advisable. Pet. at. 37.

circumstances of this case, the Board cannot commit to decision of this matter prior to May 1, 2009. While the Board does not discount the Ameren's assertions concerning its historic problems caused by warm May weather when Lake Coffeen's water levels are low. However, Ameren notes that extraordinary precipitation refilled the lake in 2008. (Pet. Ex. 10, Affidavit of Michael L. Menne at para. 9). In the event that either the weather proves unseasonably hot or conditions at Lake Coffeen deteriorate, Ameren is free to renew its motion and advise the Board of changed circumstances.

Additionally, as noted by Ameren, expedited review is granted consistent with decision deadlines and available resources. The Board currently has numerous open rulemaking dockets that demand immediate attention, as well as pressing cases that will keep the Board busy for several months.

Due to attrition, Board staffing is at its lowest levels in some years. Even if the Board were to accept that Ameren's claims amount to "material prejudice", the Board's limited resources in light of its current and future decision deadlines render the granting of a motion for expedited review unlikely in all but the most dire circumstances.

However, the Board will commit to prompt decision of this matter as soon as the record is complete, and directs its hearing officer to take any necessary steps to avoid delay in record completion. The Board directs the hearing officer to expeditiously issue an order setting forth the points the Board wishes Ameren to clarify, and to hold an early telephone status conference to set a hearing date.

The Agency has yet to file a recommendation concerning this petition as required by Section 106.208(b); 35 Ill. Adm. Code 106.208(b) requires the Agency to file its recommendation with 60 days of the filing of the petition. Unless otherwise ordered by the hearing officer after consultation with the parties, the Agency must file its recommendation no later than 30 days following issuance of this order, *i.e.* on or before April 6, 2009.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 5, 2009, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board