

ILLINOIS POLLUTION CONTROL BOARD

July 23, 2009

AMEREN ELECTRIC GENERATING)	
COMPANY, ELECTRIC ENERGY, INC.,)	
and MIDWEST ELECTRIC POWER, INC.,)	
)	
Petitioners,)	
)	
v.)	PCB 09-94
)	(CAAPP Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On April 23, 2009, Ameren Electric Generating Company, Electric Energy, Inc., and Midwest Electric Power, Inc. (Midwest) timely filed a petition (Pet.) asking the Board to review a March 19, 2009, determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40.2(a) (2006); 35 Ill. Adm. Code 101.300(b), 105.302(e). The Agency's determination concerns Midwest's electric generating station, composed of four combustion turbines, located at 2200 Portland Road, Joppa, Massac County. Midwest appeals on several grounds including that that numerous conditions within the renewed permit are arbitrary, capricious, unnecessary, unauthorized by law, unreasonable, or vague. Pet. at 3-6. Midwest challenges the inclusion of these conditions and asks the Board to stay their effect until ultimately ruling on the merits. *Id.* at 7. On May 7, 2009, the Board accepted the permit appeal for hearing, but reserved ruling on the motion to stay.

In Midwest's request for partial stay, Midwest argues "[h]istorically, the Board has granted partial stays in permit appeals where a petitioner has so requested." Pet. at 2 (citations omitted). Midwest asks that "the Board exercise its inherent discretionary authority to grant a partial stay of the CAAPP permit, staying only those conditions or portions of conditions indicated in Exhibit 2, *i.e.*, Conditions 5.6.2, 5.7.2, 5.9.2, 7.1.3(f), 7.1.3(f)(iv), 7.1.5(a)(iii)(A), 7.1.8(a)(iii), 7.1.9(1), 7.1.9(m), 7.1.10(e), and 7.1.12(e) during the pendency of this appeal." Pet. at 3; Exh. 2. Exhibit 2 to the petition is a "redlined" version of the permit that indicates the conditions or parts of the conditions Midwest seeks to stay. *Id.*

Section 101.500(d) of the Board's procedural rules provides that, "[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion." 35 Ill. Adm. Code 101.500(d). The Agency has filed no response to Midwest's request for a partial stay.

In Community Landfill Co. and City of Morris v. IEPA, PCB 01-48, 01-49, slip op. at 4 (Oct. 19, 2000), the Board found “that it has the authority to grant discretionary stays from permit conditions.” The Board noted that it “has previously granted or denied discretionary stays in permit appeals, both when the Agency did and did not consent to such stays.” *Id.* (citations omitted). The Board elaborated that “[t]he permit appeal system would be rendered meaningless in many cases, if the Board did not have the authority to stay permit conditions.” *Id.*

The Board has reviewed Midwest’s request for partial stay and Midwest’s exhibit 2, which is entitled “Redlined Version through Section 8”. The Board notes that Exhibit 2 strikes the all or parts of permit conditions 5.6.2, 5.7.2, 5.9.2, 7.1.3(f), 7.1.3(f)(iv), 7.1.5(a)(iii)(A), 7.1.8(a)(iii), 7.1.9(1), 7.1.9(m), 7.1.10(e), and 7.1.12(e). *See* Exh. 2.

The Board grants the requested partial stay and permit conditions 5.6.2, 5.7.2, 5.9.2, 7.1.3(f), 7.1.3(f)(iv), 7.1.5(a)(iii)(A), 7.1.8(a)(iii), 7.1.9(1), 7.1.9(m), 7.1.10(e), and 7.1.12(e), are stayed as requested by Midwest. The stay remains in effect until the Board takes final action on the permit appeal or until the Board orders otherwise.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 23, 2009, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board