

ILLINOIS POLLUTION CONTROL BOARD  
January 21, 2010

DYNEGY MIDWEST GENERATION, INC. )  
(WOOD RIVER POWER STATION), )  
 )  
Petitioner, )  
 )  
v. ) PCB 10-53  
 ) (NPDES Permit Appeal - Water)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

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

On January 12, 2010, Dynegy Midwest Generation, Inc. (Dynegy) timely filed a petition (Pet.) asking the Board to review National Pollutant Discharge Elimination System (NPDES) permit No. IL0000701. *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.204, 105.206. The NPDES permit was issued by the Illinois Environmental Protection Agency (Agency) on December 9, 2009, for the Wood River Power Station, an electric generating station owned and operated by Dynegy. The station, which has two coal-fired boilers, is located at #1 Chessen Lane in Alton, Madison County. Pet. at 2. For the reasons below, the Board accepts Dynegy’s petition for hearing. However, the Board reserves ruling on Dynegy’s request for partial stay, which is set forth in the petition.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)), the Agency is the permitting authority, responsible for administering Illinois’ regulatory programs to protect the environment. If the Agency denies a permit or grants one with conditions, the permit applicant may appeal the Agency’s decision to the Board. *See* 415 ILCS 5/4, 5, 40(a)(1) (2008); 35 Ill. Adm. Code 105.Subpart D. In this case, the conditions in the NPDES permit that Dynegy appeals concern the effluent limitations on boron for Outfalls 002 and 005. Pet. at 5. Dynegy appeals on the grounds that the boron effluent limitation of 1 milligram per liter (mg/l) appears to be based on the Agency’s inappropriate use of the general water quality standard for that constituent. *Id.* According to Dynegy, the applicable boron water quality standard is 15 mg/l based on a site-specific rule, and the Agency has provided no analysis indicating that an effluent limitation of 1 mg/l is necessary for the discharges from Outfalls 002 and 005 to meet that water quality standard. *Id.* The petition concludes that the Agency acted “arbitrarily and capriciously and without substantial evidence” in issuing the boron conditions for Outfalls 002 and 005. *Id.* Dynegy’s petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Dynegy has the burden of proof. *See* 415 ILCS 5/40(a)(1) (2008); *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its permit decision. *See* 35 Ill. Adm. Code 105.214(a). Accordingly, though the Board hearing affords a permit

applicant the opportunity to challenge the Agency's reasons for denying or conditionally granting the permit, information developed after the Agency's decision typically is not admitted at hearing or considered by the Board. *See* Alton Packaging Corp. v. PCB, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987); Community Landfill Co. & City of Morris v. IEPA, PCB 01-170 (Dec. 6, 2001), *aff'd sub nom.* Community Landfill Co. & City of Morris v. PCB & IEPA, 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).


Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2008)), which only Dynegy may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Dynegy "shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 of this Act [415 ILCS 5/41(d) (2008)]." 415 ILCS 5/40(a)(3) (2008). Currently, the decision deadline is May 12, 2010, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for May 6, 2010.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by February 11, 2010, which is 30 days after the Board received Dynegy's petition. *See* 35 Ill. Adm. Code 105.212(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. *See* 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

Finally, in its petition, Dynegy requests that from the effective date of the NPDES permit, January 1, 2010, through the pendency of this appeal, the Board stay "the boron effluent limitations of 1 mg/l for Outfalls 002 and 005 and associated sampling, recordkeeping, and reporting requirements, as set forth in Exhibit 3." Pet. at 4-5, 6. To date, the Board has not received a response from the Agency. The Board today reserves ruling on Dynegy's request for partial stay to allow the Agency's response time to expire. *See* 35 Ill. Adm. Code 101.500(d).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 21, 2010, by a vote of 4-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board