

ILLINOIS POLLUTION CONTROL BOARD  
November 15, 2012

DYNEGY MIDWEST GENERATION, LLC )  
(WOOD RIVER POWER STATION), )  
 )  
Petitioner, )  
 )  
v. ) PCB 13-13  
 ) (Permit Appeal - Air)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by J.A. Burke):

On September 21, 2012, Dynegy Midwest Generation, LLC (DMG), timely filed a petition (petition) asking the Board to review an August 24, 2012 permit determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2010); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns DMG's Wood River Power Station located at 1 Chessen Lane, Alton, Madison County. Included in DMG's petition was a request for partial stay of the contested permit conditions. On October 4, 2012, the Board accepted DMG's petition for review, but reserved ruling on the request for partial stay. For the reasons below, the Board grants the request for partial stay.

In this case, the Agency issued DMG a permit for the construction and operation of a sorbent injection system at DMG's Madison County facility. DMG appeals on the grounds that certain conditions of the permit are arbitrary and unreasonable, and exceed the scope of the Agency's authority to include in a construction permit for a sorbent injection system.

DMG requests that the Board exercise its inherent discretion authority to grant a partial stay. Pet. at 5. Specifically, DMG requests

a stay of the construction permit, staying only those conditions or portions of conditions indicated in Exhibit 2, *i.e.*, Conditions 1(b)(ii), 2(b)(i), 2(b)(ii), 2(b)(iv), 2(c)(iii), 2(c)(vi), 4(a), 4(a)Note, 4(b), 5(b), 5(c), 6(a), 6(b), and 6(c) and part of the name of the Permittee. Pet. at 5; *see also* Pet. Exh. 2.

DMG states that, historically, the Board has granted partial stays in permit appeals where a petitioner has so requested. Pet. at 4 (citations omitted). DMG contends in support of its position that DMG

will suffer irreparable harm and the environment will not receive the benefit of the pollution control facilitated by the sorbent injection system if DMG is not allowed to construct and operate the sorbent injection system for Unit 4 at the

Wood River Power Station. DMG's request for stay of the contested language would provide the necessary and appropriate authorizations to install and operate the sorbent injection system in a manner to protect the environment while allowing DMG to exercise its right to an appeal under Section 40(a) of the Act. Pet. at 4-5.

On October 22, 2012, the Agency filed its response to DMG's request for partial stay and a motion for extension of time to file the record (Agency response).<sup>1</sup> The Agency does not oppose the request for partial stay of only those conditions or portions of conditions contested on appeal. Agency Resp. at 2.

The Board has the authority to grant discretionary stays of the type requested here. In Community Landfill Co. and City of Morris v. IEPA, PCB 01-48, 01-49 (consol.), 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 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 the allegations in DMG's stay request, as well as the specific language requested-to-be-stayed, as detailed in Exhibit 2 to DMG's petition. On the basis of that review and the Agency's response, the Board grants DMG's request for partial stay of the contested conditions in the construction permit for the Wood River Power Station. The Board stays those contested conditions and portions of conditions as reflected in the edited permit filed as Exhibit 2 to DMG's September 21, 2012 petition for review and request for stay. Exhibit 2 is incorporated herein by reference as if fully set forth. The partial stay remains in effect until the Board takes final action on the construction permit appeal, or until the Board orders otherwise.

IT IS SO ORDERED.

Chairman T. A. Holbrook and Member J. O'Leary Abstained

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 15, 2012 by a vote of 3-0.




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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board

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<sup>1</sup> On October 24, 2012, the Board's hearing officer granted the Agency until November 30, 2012 to file the record.