ILLINOIS POLLUTION CONTROL BOARD
December 19, 2019

HOLLAND ENERGY, LLC,   )
)
    Petitioner,   )
)
    v.   )   PCB 09-96
)   (CAAPP Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL   )
PROTECTION AGENCY,   )
)
    Respondent.   )

ORDER OF THE BOARD (by C.M. Santos):

On December 5, 2019, Holland Energy, LLC (Holland Energy) and the Illinois Environmental Protection Agency (IEPA) filed a joint motion asking the Board to lift a stay of uncontested conditions in a Clean Air Act Permit Program (CAAPP) permit and remand the permit to the IEPA.

Today's order provides a brief procedural history of this case and summarizes the joint motion. The Board then grants the motion, lifts the stay, and remands the permit.

PROCEDURAL BACKGROUND

On March 20, 2009, IEPA issued a renewed CAAPP permit with conditions to Holland Energy for its natural gas-fired power plant facility located at Rural Route 2, 270-A, Beecher City, Shelby County. On April 24, 2009, Holland Energy petitioned the Board for review of the permit (Pet.). Holland Energy challenged a number of conditions on various grounds. *See* Pet., Exh. A. Holland Energy acknowledged that the renewal permit was stayed as of the filing of its petition, and that the prior permit remained in effect until the Board rules on the merits of the petition or Holland voluntarily dismisses the petition. Pet. at 3, citing Ameren Energy Generating Co., Edwards Power Station v. IEPA, PCB 06-67, slip op. at 7 (Feb. 16, 2006).

On December 5, 2019, the parties filed a joint motion asking the Board to lift a stay of uncontested permit conditions and remand the permit to the IEPA (Mot.).

MOTION

The parties report that they have reached an agreement on contested permit conditions. Mot. at 1. The negotiated changes have been submitted to public comment, and the United States Environmental Protection Agency has reviewed them. *Id*. To incorporate the negotiated changes, the parties ask the Board to lift the stay on the uncontested conditions and remand the permit to IEPA. *Id*. IEPA will then issue a modified permit incorporating the negotiated changes including new effective and expiration dates reflecting the five-year duration of the

permit. *Id*. at 2. Holland Energy intends to move to dismiss the matter when IEPA issues the modified permit. *Id*.

DISCUSSION

Stay

Holland Energy's 2009 petition acknowledged that the renewal permit was stayed as of the filing of its petition. Pet. at 3. The General Assembly later added Section 40.2(f) to the Environmental Protection Act. 415 ICLS 5/40.2(f) (2018); *see* Public Act 96-934, eff. June 21, 2010. Under this provision, the Administrative Procedure Act's automatic stay provisions do not apply to CAAPP permit appeals. Instead, the Board must stay contested permit conditions at the request of the permit applicant but has discretion to stay uncontested conditions. 415 ILCS 5/40.2(f) (2018).

Under this authority, the Board will lift the stay on the uncontested conditions while continuing to stay the contested conditions, as the parties request

Remand

The parties ask the Board to remand the permit to IEPA while retaining jurisdiction. Mot. at 1. In a similar proceeding, the Board lifted the stay on uncontested conditions, remanded it, and retained jurisdiction. Ameren Energy Generating Co., Newton Power Station v. IEPA, PCB 06-68, slip op. at 2 (Nov. 19, 2015). The parties' present requests are similar, and the Board likewise remands the permits and retains jurisdiction.

When IEPA issues the permit with modifications, the Environmental Protection Act allows persons with standing to appeal. 415 ILCS 5/40.2 (2018). Though the Board retains jurisdiction of this matter, if others with standing appeal, the Board will, if appropriate, accept and docket those appeals under a different case number.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 19, 2019, by a vote of 4-0.

Don A. Brown, Clerk
Illinois Pollution Control Board