

ILLINOIS POLLUTION CONTROL BOARD
May 7, 2015

DYNEGY MIDWEST GENERATION, LLC,)
)
Petitioner,)
)
v.) PCB 12-135
) (Variance - Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

Dynegy Midwest Generation, LLC (Dynegy) seeks a variance from the multi-pollutant standard (MPS) applicable to the Dynegy MPS group of facilities. Dynegy specifically seeks relief from the prohibition in 35 Ill. Adm. Code 225.233(f)(2) against trading certain sulfur dioxide allowances. The Dynegy MPS group includes the following five coal-fired electric generating plants: Baldwin Energy Complex (Randolph County), Havana Power Station (Mason County), Hennepin Power Station (Putnam County), Wood River Power Station (Madison County), and Vermilion Power Station (Vermilion County). The Board is authorized to grant variances under Section 35 of the Environmental Protection Act (Act). 415 ILCS 5/35 (2012). The procedures for considering a request for a variance are found at Sections 35 through 38 of the Act (415 ILCS 5/35-38 (2012)) and 35 Ill. Adm. Code 104.Subpart B.

Dynegy filed its initial petition on June 8, 2012 (Pet.). On April 17, 2015, Dynegy filed a motion to amend its petition and for leave to file the amended petition attached to the motion (Mot.). The Board grants the motion. By May 21, 2015, Dynegy must provide notice of the amended petition consistent with Section 37(a) of the Act (415 ILCS 5/37(a)), as amended by Public Act 98-0822 (eff. Aug. 1, 2014). The Board directs the Illinois Environmental Protection Agency (Agency) to file a recommendation as to the disposition of the amended petition by June 22, 2015. To date, neither Dynegy nor anyone else has requested a hearing in this matter.

DYNEGY'S MOTION TO AMEND PETITION

Dynegy seeks relief from 35 Ill. Adm. Code 225.233(f)(2), which prohibits Dynegy from trading certain sulfur dioxide allowances. Mot. at 1. The sulfur dioxide allowances at issue are those allocated by the United States Environmental Protection Agency (USEPA) under the Cross-State Air Pollution Rule (CSAPR). USEPA adopted CSAPR on August 8, 2011. 76 Fed. Reg. 48208 (Aug. 8, 2011). CSAPR then was appealed to the United States Court of Appeals for the District of Columbia. EME Homer City Generation v. EPA, 696 F.3d 7 (D.C. Cir. 2012). Dynegy filed its initial petition for a variance relating to CSAPR allowances while this appeal was pending. The Board stayed this variance proceeding during the appeal of CSAPR. On April 29, 2014, the United States Supreme Court upheld CSAPR. EPA v. EME Homer City

Generation, 134 S. Ct. 1584 (2014). In December 2014, USEPA published notice of how it would proceed to implement CSAPR after the Supreme Court's ruling. 79 Fed. Reg. 71663 (Dec. 3, 2014).

Dynergy now would like to proceed with its variance petition, but with amendments. Mot. at 2. Dynergy notes that the Board has not held a hearing on the petition and has not made a decision on the variance request. *Id.* at 3. Dynergy states that, due to the passage of time, certain changes to the petition are needed. *Id.* For example, Dynergy initially requested a variance applicable to allowances allocated for 2013 and 2014 and now requests a variance covering allowances allocated for 2015 and 2016. Pet. at 1; Mot. at 3. Dynergy concludes by stating that it understands that the Agency does not object to this motion. Mot. at 3. Further, Dynergy attaches its amended petition to its motion.

Dynergy makes its motion pursuant to Section 104.226 of the Board's procedural rules, which allows a petitioner to make a motion to amend its petition prior to the close of the hearing or prior to the Board's decision. 35 Ill. Adm. Code 104.226. The Board has not held a hearing in this matter and has not issued its decision on the variance request. Accordingly, the Board grants Dynergy's motion to amend its petition for variance and for leave to file the amended petition attached to Dynergy's motion.

PROCEDURAL MATTERS

Notice of Amended Petition

The Act previously required the Agency to provide public notice of a variance petition, including notice by publication in a newspaper of general circulation in the county where the facility is located. 415 ILCS 5/37(a) (2012). Newspaper notice is required within 14 days after the petition is filed. 35 Ill. Adm. Code 104.214. In June 2012, the Agency placed notices in newspapers in each of the five counties where Dynergy plants are located. The Agency also mailed notices of the petition consistent with 35 Ill. Adm. Code 104.214(b), which generally requires notice be sent to elected officials.

Section 37(a) of the Act recently was amended to require that the variance petitioner rather than the Agency provide notice of the variance petition. P.A. 98-0822, eff. Aug. 1, 2014. The Act now requires the petitioner to

. . . (ii) promptly give written notice of such petition to any person in the county in which the installation or property for which variance is sought is located who has filed with the Board a written request for notice of variance petitions, the State's attorney of such county, the Chairman of the County Board of such county, and to each member of the General Assembly from the legislative district in which that installation or property is located, and (iii) publish a single notice of such petition in a newspaper of general circulation in such county. *Id.*

The Board directs Dynergy to provide the notices required under Section 37(a) of the Act. P.A. 98-0822, eff. Aug. 1, 2014. The notices must contain the information prescribed by Section

104.214(e) of the Board's procedural rules. 35 Ill. Adm. Code 104.214(e). Dynegy must provide these notices on or before May 21, 2015. Within 21 days after publication of each notice, Dynegy must file with the Board a certificate of publication stating the date on which the notice was published and attaching a copy of the published notice.

Agency Recommendation

The Act requires the Agency to investigate each variance petition and "make a recommendation to the Board as to the disposition of the petition." 415 ILCS 5/37(a) (2012); 35 Ill. Adm. Code 104.216. The Agency previously filed a document titled "Recommendation" but declined to provide a recommendation on the initial petition and instead stated that the Agency "neither supports nor objects to the [Board] granting Dynegy's petition."

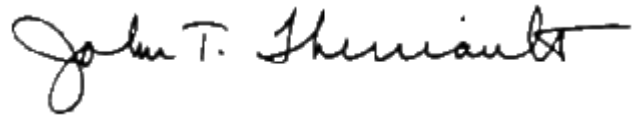
Section 104.226 of the Board's procedural rules requires the Agency to provide an amended recommendation when the petitioner amends the petition. 35 Ill. Adm. Code 104.226(b). The Agency's amended recommendation is due 45 days after the filing of the amended petition. *Id.*; *see also* 415 ILCS 5/37(a) (2012); 35 Ill. Adm. Code 104.216(b). The Board directs the Agency to file an amended recommendation as to the Board's disposition of the amended petition by June 22, 2015.

CONCLUSION

The Board grants Dynegy's motion to amend its petition and accepts the amended petition. By May 21, 2015, Dynegy must provide notice of the amended petition consistent with 415 ILCS 5/37(a). The Agency must file a recommendation as to the disposition of the amended petition by June 22, 2015.

IT IS SO ORDERED.

I, John Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 7, 2015, by a vote of 5-0.



John Therriault, Clerk
Illinois Pollution Control Board