

ILLINOIS POLLUTION CONTROL BOARD
November 19, 2015

AMEREN ENERGY GENERATING)
COMPANY, NEWTON POWER STATION,)
)
Petitioner,)
)
v.) PCB 06-68
) (CAAPP Permit Appeal – Air)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by G.M. Keenan):

On November 5, 2015, Ameren Energy Generating Company 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. We grant the motion.

This order first discusses the procedural background, then summarizes the motion, and finally sets forth the Board’s decision.

PROCEDURAL BACKGROUND

On September 29, 2005, IEPA issued a CAAPP permit to Ameren for its coal-fired power plant called Newton Power Station located at 6725 North 500th Street, Newton, Jasper County. On November 11, 2005, Ameren petitioned the Board for review of the permit. *See* 415 ILCS 5/40.2(a) (2014); 35 Ill. Adm. Code 105.302(e) (2014). Ameren challenged numerous permit provisions, including the effective date, reporting requirements, boiler testing requirements, and fly ash handling requirements.

On February 16, 2006, the Board found that the automatic stay provision in the Administrative Procedure Act (APA)¹ applied to this appeal under Borg-Warner Corp. v. Mauzy, 100 Ill. App. 3d 862, 427 N.E.2d 415 (3d Dist. 1981). The Board stated that “Section 10-65(b) of the APA [5 ILCS 100/10-65 (2004)] in effect issues a stay by operation of law, so that it is unnecessary for the Board to reach the issue of whether to exercise discretion to enter a stay in a particular case.” Ameren Energy Generating Company, Newton Power Station v. IEPA, PCB 06-68, slip op. at 2 (Feb. 16, 2006) (2006 Bd. Order).

On November 5, 2015, the parties filed a joint motion (Mot.) asking the Board to lift the stay on uncontested permit conditions and remand the permit to IEPA.

¹ 5 ILCS 100/1-5, 1-35, 1-40, 10-65 (2010).

MOTION

The parties stated they have reached an agreement on the contested permit conditions and that the agreement was noticed for public comment and reviewed by the U.S. Environmental Protection Agency. Mot. at 3-4. In order to incorporate the negotiated changes, the parties asked the Board to lift the stay on uncontested conditions and remand the permit to IEPA. *Id.* at 4. IEPA will issue a modified permit with a new effective date and expiration date on the same day we remand. *Id.* Ameren will move to dismiss this appeal when IEPA issues a new permit with the negotiated changes. *Id.*

DISCUSSION

Lifting the Stay

In 2006, the Board found that the automatic stay provisions of the APA, as it existed at the time, 5 ILCS 100/10-65 (2005), applied to this appeal. 2006 Bd. Ord. at 2. Subsequently, a new section was added to the Environmental Protection Act, 415 ILCS 5/40.2(f). *See* P.A. 96-934, effective June 21, 2010. Under this new section of the Environmental Protection Act, the APA's automatic stay provisions do not apply to CAAPP permit appeals. 415 ILCS 5/40.2(f) (2014). Instead, the Board must stay contested permit conditions at the request of the permit applicant, but has discretion whether to stay uncontested conditions. *Id.*

Under this authority, the Board will lift the stay on the uncontested conditions while continuing to stay the contested conditions, as requested. The contested conditions are listed in Ameren's petition filed on November 3, 2005.

Remand of Permit

The parties asked the Board to remand the permit to IEPA while we retain jurisdiction. In a similar proceeding, a Board order lifted the stay on contested CAAPP permit conditions, remanded it, and retained jurisdiction. Ameren Energy Generating Company, Coffeen Power Station v. IEPA, PCB 06-64 (Sept. 20, 2012) (*Coffeen* Ord.). In that order, the Board determined that remand while retaining jurisdiction was appropriate under the Environmental Protection Act. *Coffeen* Ord. at 3. The parties' present requests are similar, so the Board will likewise today remand the permit and retain jurisdiction.

When IEPA issues the permit with modifications, the Environmental Protection Act allows persons with standing to appeal. 415 ILCS 5/40.2 (2014). Though the Board retains jurisdiction of this matter, if others with standing appeal, we will, if appropriate, accept and docket those appeals under a different case number.

IT IS SO ORDERED.

I, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 19, 2015, by a vote of 5 to 0.

A handwritten signature in cursive script that reads "Don A. Brown". The letters are fluid and connected, with a prominent loop at the start of the word "Don".

Don A. Brown, Assistant Clerk
Illinois Pollution Control Board