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Environmental Quality
Board

BEFORE THE WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

ALLEGHENY ENERGY SUPPLY COMPANY, LLC,

Appellant,

Appeal No.: 24-03-EQB

v.

JEREMY W. BANDY, DIRECTOR,
DIVISION OF WATER AND WASTE MANAGEMENT,
WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Appellee.

MOTION TO CONTINUE EVIDENTIARY HEARING

Appellant Allegheny Energy Supply Company, LLC (“AESC”), by counsel, hereby MOVES the Board to continue the evidentiary hearing scheduled to commence on May 9, 2024, for at least 90 days or as soon thereafter as the hearing may be scheduled. In support of this motion, AESC states the following.

This appeal involves the terms and conditions of two modifications made by Appellee West Virginia Department of Environmental Protection (“WVDEP”) to the WV/NPDES permit governing discharges from the McElroy’s Run CCR Landfill and Impoundment facility, WV0079171. AESC challenges the following provisions of those modifications:

Modification No. 1: WVDEP’s failure to revise the Compliance Schedule set forth in the permit to include an opportunity to complete an alternate source demonstration (“ASD”) as to lithium in groundwater, and the failure to modify the Compliance Schedule item requiring completion of an Assessment of Corrective Measures (“ACM”) by January 25, 2026, so that an ACM is only required for lithium if a successful ASD is not achieved.

Modification No. 2 (two primary issues): (1) WVDEP's failure to prepare a revised Draft Permit and allow for comment prior to imposing more stringent effluent limits than were proposed in the Draft Permit; and (2) WVDEP's failure to prepare a revised Draft Permit and allow for comment on the change in DEP's calculations for purposes of deriving water quality-based effluent limits, including changed inputs to the "CORMIX" computer modeling for mixing zones and the ultimate selection of the water quality-based effluent limits. By order entered on March 25, 2024, the Board granted a stay as to certain aspects of Modification No. 2.

AESC has been engaged in ongoing discussions with WVDEP representatives concerning the issues raised in this appeal. AESC believes those discussions have been fruitful and have moved the parties closer toward a possible resolution. For example, AESC and WVDEP appear to have come to an agreement on updated CORMIX computer modeling associated with mixing zones that pertains to Modification No. 2. However, other issues have not yet been resolved, including issues associated with Modification No. 1. AESC believes additional time is warranted to allow it and WVDEP to work through the remaining issues to determine whether an amicable resolution may be reached, and if so, the terms of such a resolution.

A continuance will not lead to environmental harm. The issues associated with Modification No. 1 concern a potential ACM plan that is not due until January, 2026 and whether AESC should be afforded the opportunity to first demonstrate that it is not the source of lithium concentrations in groundwater before being required to develop the ACM plan. A 90-day continuance of the evidentiary hearing will not affect the January, 2026 deadline.

With respect to Modification No. 2, there is no indication that AESC's discharges will violate water quality standards during a 90-day continuance. As explained in the Notice of Appeal, AESC's modeling shows that concentrations of several pollutants in AESC's discharge with the

planned facility change will be so low that there is an absence of “reasonable potential” to violate water quality standards, and thus no limit should be required in the first place for several of the parameters that are subject to water-quality based effluent limits in Modification No. 2.

In short, a 90-day continuance of the evidentiary hearing will not cause any environmental harm. AESC has been authorized to state that the WVDEP does not oppose this motion.

For all these reasons, AESC moves the Board to continue the evidentiary hearing scheduled to commence on May 9, 2024 for at least 90 days or as soon thereafter as the hearing may be scheduled.

Respectfully submitted,

Allegheny Energy Supply Company, LLC
By counsel



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CERTIFICATE OF SERVICE

I, Christopher B. Power, counsel for Appellant Allegheny Energy Supply Company, do hereby certify that copies of the foregoing Motion to Continue Evidentiary Hearing have been served upon the Appellee's counsel, this 24th day of April 2024, via e-mail and hand-delivery, addressed to the following:

Chance J. Chapman, Esq.
Office of Legal Services
West Virginia Department of Environmental Protection
601 57th Street, S.E.
Charleston, West Virginia 25304



Christopher B. Power