

BEFORE THE WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

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ALLEGHENY ENERGY SUPPLY COMPANY, LLC,

Environmental Quality
Board

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 August 15-16, 2024, for at least 60 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 No. WV0079171, governing discharges from the McElroy’s Run Coal Combustion Residuals (“CCR”) Landfill and Impoundment facility (“the Facility”). AESC challenged certain aspects of both modifications. Modification No. 1 pertained to certain changes to groundwater monitoring and other actions required under the WVDEP’s solid waste regulations. Modification No. 2 involves changes to the water quality-based effluent limits (“WQBELs”) applied to outlet(s) discharging from different locations at the Facility, as the configuration will be changing with the cessation of use of the impoundment for deposits of CCRs and the subsequent dewatering of the impoundment, shifting to discharges by gravity through the sediment pond.

AESC challenged Modification No. 2 for two primary reasons: (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 WVDEP'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 WQBELs. Without objection by WVDEP, 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, and in particular regarding issues associated with running updated CORMIX computer modeling and making other decisions for purposes of establishing revised WQBELS as a part of Modification No. 2. Although the parties have not yet been able to agree to a specific proposed resolution of those disputes, the discussions have been fruitful and have moved the parties closer toward a possible resolution. Pursuant to informal agreement with WVDEP staff, AESC has been engaged in a sampling program intended to generate data from discharges during the "dry season" (i.e., through the end of June, 2024). Once it has all been analyzed and compiled (which should be completed soon), that data in conjunction with CORMIX computer modeling will serve as the basis for further consideration by the WVDEP of the appropriate WQBELS to be imposed.

Given the complexity of these issues, and the need to complete the technical work as described, AESC believes additional time is warranted to allow it and WVDEP to work through the remaining issues and determine whether an amicable resolution may be reached. A continuance would not present a significant risk of environmental harm because there is no indication that

AESC's discharges will violate water quality standards in the interim. AESC's modeling (as cited in the Notice of Appeal) shows that concentrations of several pollutants in AESC's discharge are 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 were subject to WQBELs in Modification No. 2. Additionally, AESC understands that WVDEP's own modeling shows that the discharge is expected to comply with water quality standards for those parameters if the full mixing zones authorized under West Virginia law are applied.

For all these reasons, AESC has shown good cause for a continuance and therefore MOVES the Board to continue the evidentiary hearing scheduled to commence on August 15-16, 2024, for at least 60 days in order to allow sufficient time to reach and fully document a resolution of these issues without hearing.

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 and proposed Order Granting Motion to Continue Hearing have been served upon the Appellee's counsel, this 22nd day of July 2024, via e-mail and regular U.S. mail, addressed to the following:

Charles S. Driver, Esq.
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West Virginia Department of Environmental Protection
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Christopher B. Power (W. Va. Bar No. 4286)

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CHARLESTON, WEST VIRGINIA**

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ORDER GRANTING MOTION FOR CONTINUANCE

On Thursday, July 25, 2024, the parties, by and through their legal counsel, appeared before the Environmental Quality Board ("Board"), via Zoom, for a prehearing status conference in this appeal and to address related issues. Prior to the conference, the Appellant filed its "Motion to Continue Evidentiary Hearing." The motion was presented for consideration and addressed by counsel at the conference.

For good cause shown, the Board GRANTS Appellant's Motion and ORDERS that the evidentiary hearing in this appeal shall be continued to _____, beginning at **8:30 a.m.**, at the Board's offices located at 601 57th Street, Charleston, Kanawha County, West Virginia 25304. As indicated in the previous Notice of Hearing, parties may participate in the evidentiary hearing either at the Board's offices or virtually via Zoom, using the following link:

<https://us02web.zoom.us/j/87949985859>

Additionally, the **prehearing status conference** shall be held on _____,
at **10:00 a.m.**, ***via Zoom only***, using the following link: : <https://us02web.zoom.us/j/81810490189>

All other matters addressed in the previous Notice of Hearing shall continue to apply.

It is so **ORDERED** and **ENTERED** this _____ day of July, 2024.

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

By: _____
Dr. Edward Snyder, Chairperson