

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the New York State
Department of Environmental
Conservation-Initiated Modification of
the Title V Facility Air Pollution
Control Permit Issued Pursuant to
Article 19 of the Environmental
Conservation Law ("ECL"), and Part 201
of Title 6 of the Official Compilation
of Codes, Rules and Regulations of the
State of New York ("6 NYCRR"),

**SUMMARY REPORT AND
ORDER OF
DISPOSITION**

DEC Permit ID No.
9-2938-00003/00002

- to -

AES SOMERSET, LLC,

Permittee.

Appearances of Counsel/Representatives:

-- Alison H. Crocker, Deputy Commissioner and General
Counsel (Michelle Crew, Jennifer L. Hairie, Blaise
Constantakes, and Rebecca Denué, of counsel), for the
Department of Environmental Conservation

-- LeBoeuf, Lamb, Greene & MacRae LLP (Robert J.
Alessi of counsel), for permittee AES Somerset, LLC

-- Peter McGowan, Acting General Counsel (Steven Blow
of counsel), for proposed intervenor New York State
Department of Public Service

-- Andrews, Pusateri, Brandt, Shoemaker & Roberson,
P.C. (Edwin J. Shoemaker of counsel), Paul V. Nolan,
and Sarah L. Miller, for proposed intervenor Town of
Somerset

SUMMARY REPORT AND ORDER OF DISPOSITION

Proceedings

On February 21, 2006, staff of the Department of
Environmental Conservation ("Department") commenced this
Department-initiated permit modification proceeding ("DIM") by
service of a notice upon permittee AES Somerset, LLC, of the

Department's intent to modify the current Title V air permit (Permit No. 9-2938-00003/00002) for the AES Somerset facility. The AES Somerset facility is a 675 megawatt coal-fired electric generating facility located in the Town of Somerset, Niagara County. Department staff stated that the purpose of the permit modification was to include in the facility's current Title V permit a special condition from the facility's 1999 Air State Facility permit related to the disposal of ammoniated waste generated by operation of the facility's selective catalytic reduction ("SCR") pollution control unit. The facility's current Title V permit was issued on April 30, 2002.

The DIM proceeding was commenced while the parties were engaged in settlement discussions in a related proceeding before the New York State Board on Electric Generation Siting and the Environment ("Siting Board") on AES's petition for clarification or amendment of its certificate of environmental compatibility and public need issued December 9, 1978, in Case 80002, as amended ("Article VIII certificate"), for the facility. The proceeding before the Siting Board also concerned the manner in which the ammoniated waste generated by the facility's SCR system would be disposed in the facility's landfill. At the time of the settlement discussions, on order of the Siting Board, AES's petition was before Presiding Examiner Raphael A. Epstein, and myself, as Associate Examiner, for adjudicatory hearings pursuant to Public Service Law article VIII.

By letter dated March 7, 2006, AES objected to the proposed Title V permit modification, and requested an administrative adjudicatory hearing pursuant to 6 NYCRR 621.14(d). The DIM matter was referred to my office on March 16, 2006, for the conduct of permit hearing proceedings pursuant to 6 NYCRR part 624, and I was assigned as the presiding Administrative Law Judge ("ALJ").

On April 26, 2006, a notice of legislative public hearing and issues conference was published in the Department's electronic Environmental Notice Bulletin, and in two local newspapers of general circulation -- the Buffalo News and the Lockport Union Sun and Journal. The notice established May 19, 2006 as the deadline for the filing of petitions for party status pursuant to 6 NYCRR 624.5(b). The legislative hearing was scheduled for June 12, 2006, and the issues conference for June 13, 2006. Two timely petitions for party status were filed -- a May 16, 2006 petition by the Town of Somerset, seeking full party status, and a May 18, 2006 petition by staff of the Department of Public Service ("DPS"), seeking amicus status.

On June 9, 2006, Department staff and AES informed the ALJ that they were discussing a settlement in the DIM proceeding and were hopeful that an agreement could be reached by June 19, 2006. Accordingly, they requested that the legislative hearing and issues conference be adjourned without date pending a negotiated settlement. The ALJ was further informed that the Town of Somerset and DPS staff agreed to the adjournment.

Based upon the consent of all parties, I granted the request, adjourned the hearing without date, and extended the written public comment period without date. To date, no written comments from the public have been received on the DIM.

The parties subsequently reached a settlement agreement in both the DIM proceeding and the Article VIII proceeding before the Siting Board. At a hearing conducted on July 11, 2006, Department staff submitted a revised draft Title V permit containing language reflecting the parties' agreement in the DIM proceeding (see Exhibit 8). Also accepted into the hearing record was a letter dated July 10, 2006 from DPS staff stating that DPS had reviewed the language of the revised draft permit and that it resolved all issues raised in its petition for amicus party status (see Exhibit 7). The remaining parties requested that the hearing be adjourned and the record in the DIM proceeding be held open until the Article VIII proceeding reached its conclusion, which request was granted (see Hearing Transcript, July 11, 2006, at 19).

The Article VIII proceeding reached its conclusion with the issuance by the Siting Board of an order granting amendment of AES's Article VIII certificate (see DPS Case No. 04-F-1178, Matter of AES NY, LLC, Order Granting Amendment of Certificate of Environmental Compatibility and Public Need, June 29, 2007 [New York State Board on Electric Generation Siting and the Environment]). I subsequently received and accepted into the record of the DIM proceeding a July 23, 2007 letter from the Town of Somerset, a September 26, 2007 letter from AES, and a September 28, 2007 letter from Department staff, indicating that all issues in the DIM proceeding have been resolved, and requesting that the matter be remanded to Department staff for issuance of the modified Title V permit, subject to technical language changes being finalized among the parties.

Discussion

Pursuant to 6 NYCRR 624.13(d), stipulations executed by all parties resolving any or all issues in a permit hearing proceeding removes such issues from further consideration in the

hearing. Where the parties' agreement resolves all issues in a proceeding, a draft permit incorporating the parties' agreement is prepared by Department staff (see DEC Organization and Delegation Memorandum 94-13, Effect of Stipulations on Decision-Making in Permit and Enforcement Hearings, May 5, 1994, at 1-2). The draft permit is then submitted to the ALJ for inclusion in the record, together with written statements, signed by the parties or their representatives, stating that the draft permit conditions resolve all issues between the parties (see id.). Where, as here, the stipulation occurs before a determination of party status, the term "party" includes those persons who have applied for party status and who have not received a final denial or acceptance (see id. at 2 n 1). Upon receipt of the draft permit and the statements of the parties, the ALJ closes the record and prepares a summary report and order remanding the proceeding to Department staff for final processing of the permit.

In this case, Department staff has submitted and I have received into the record, a revised draft Title V permit incorporating the parties' agreement. In addition, I have received into the record signed statements from all parties, including Department staff, AES, DPS staff and the Town of Somerset, indicating that the revised draft permit resolves all issues between the parties.

Order of Disposition

ACCORDINGLY, IT IS HEREBY ORDERED THAT the record in this DIM proceeding is closed, and the matter is remanded to Department staff for final processing of the modified permit in accordance with the agreement of the parties.

_____/s/_____
James T. McClymonds
Chief Administrative Law Judge

Dated: December 5, 2007
Albany, New York

Attachment: Exhibit List revised Dec. 5, 2007

TO: Attached Service List

cc: Louis A. Alexander, Asst. Commissioner

Hon. Rafael A. Epstein
Hearing Examiner
New York State Department of Public Service
Office of Hearings and Alternative Dispute Resolution
Three Empire State Plaza, 3rd Floor
Albany, New York 12223

Matter of AES Somerset, LLC (Title V Facility Permit)

DEC Permit ID No. 9-2938-00003/00002

Revised 12/5/07

EXHIBIT LIST

Exhibit No.	Description
1A	Notice of Legislative Public Hearing and Issues Conference, as published in the April 26, 2006 <u>Environmental Notice Bulletin</u>
1B	Affidavit of Publication of the April 26, 2006 Notice of Legislative Public Hearing and Issues Conference in the <u>Buffalo News</u>
1C	Affidavit of Publication of the April 26, 2006 Notice of Legislative Public Hearing and Issues Conference in the <u>Lockport Union Sun and Journal</u>
2	Letter from Steven J. Doleski, DEC Regional Permit Administrator, DEC Region 9, to Jon Reimann, AES Somerset LLC, dated February 21, 2006, RE: Permit Transmittal Letter, Air Title V Permit Modification
3	Letter from Robert J. Alessi, Counsel for AES Somerset, LLC to Steven J. Doleski, and another, dated March 7, 2006 Department-Initiated Proposed Title V Permit Modification
4	Letter from Edwin J. Shoemaker, Esq., and Paul V. Nolan, Esq., Counsel for the Town of Somerset, to Hon. James T. McClymonds, Chief Administrative Law Judge, dated May 16, 2006 (Petition Seeking Full-Party Status)
5	Letter from Steven Blow, Esq., Counsel for Department of Public Service staff, dated May 18, 2006 (Petition Seeking Amicus Status)

6	Letter from Robert J. Alessi, Esq., to Hon. James T. McClymonds, Chief Administrative Law Judge, dated May 19, 2006
7	Letter from Steven Blow, Esq., Counsel for Department of Public Service staff, to Hon. James T. McClymonds, Chief Administrative Law Judge, dated July 10, 2006 (Statement)
8	Revised Draft Air Title V Facility Permit, Permit ID No. 9-2938-00003/00002
9	Letter from Edwin J. Shoemaker, Esq., Counsel for the Town of Somerset, to Hon. James T. McClymonds, Chief Administrative Law Judge, dated July 23, 2007 (Statement)
10	Letter from Robert J. Alessi, Esq., Counsel for AES Somerset, LLC, to Hon. James T. McClymonds, Chief Administrative Law Judge, dated September 26, 2007 (Statement)
11	Letter from Jennifer L. Hairie, Esq., Counsel for Department of Environmental Conservation staff, to Hon. James T. McClymonds, Chief Administrative Law Judge, dated September 28, 2007 (Statement)

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Matter of AES SOMERSET, LLC (Title V Permit)
TOWN OF SOMERSET, NIAGARA COUNTY

DEC Permit ID No. 9-2938-00003/00002

SERVICE LIST
(as of December 5, 2007)

ACTIVE PARTIES

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