

STATE OF ILLINOIS  
Pollution Control Board

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appeared on behalf of the Petitioner;  
6

7 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by  
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appeared on behalf of the Respondent.

11 ALSO PRESENT:

12 MS. ALISA LIU, Environmental Scientist  
13 MR. ETHAN PRESLEY, Intern  
MR. ANAND RAO, Senior Environmental Scientist  
14 MR. DANIEL ROBERTSON, Staff Attorney  
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1           HEARING OFFICER HALLORAN: All right. Good  
2 morning, everyone. My name is Bradley Halloran,  
3 I'm Hearing Officer with the Illinois Pollution  
4 Control Board. I'm also assigned to this case.  
5 It's docketed PCB 13-24. The caption reads Midwest  
6 Generation, LLC, Petitioner, versus the Illinois  
7 Environmental Protection Agency, and they're the  
8 Respondents.

9                       This is a matter regarding petition  
10 for air variance. And before I forget, it's my  
11 pleasure to introduce our board members that are  
12 sitting up front. We have Member Zalewski,  
13 Member Burke, Member Glosser and Member O'Leary.  
14 We also have -- from our technical unit we have  
15 Alisa Liu, Anand Rao. We also have a staff  
16 attorney here, Daniel Robertson, and we have one of  
17 our interns, Ethan Presley. So I think we're  
18 pretty well represented, and I appreciate them  
19 coming.

20                      And I want to ask you when we take  
21 breaks or lunch or something not to approach the  
22 people I just mentioned. If you have any  
23 questions, direct them towards me. That will be  
24 very helpful. Thank you. I will note that this

1 notice -- that this hearing was noticed up pursuant  
2 to the board's regulations, procedural rules and  
3 the act itself. The hearing will be conducted in  
4 accordance with Sections 104.200 and 101 of the  
5 board's procedural rules.

6 I will also note for the record that  
7 I will not be making the ultimate decision in the  
8 case. The decision is left up to the five board  
9 members. What they'll do is take a look at the  
10 record, the transcript, post-hearing briefs, and  
11 most certainly the public comments that come in.

12 My job here is to make a clean  
13 record and to rule on any evidentiary matters. The  
14 board welcomes public comments. I note that there  
15 are members of the public present. I don't know,  
16 probably 100 or so. But in any event, there is a  
17 sheet on the podium. You can sign up and we can  
18 discuss that later. But -- or you can send a  
19 written comment into the board.

20 But what we'll do, we have five  
21 elected -- five or six elected officials. They  
22 will give their comment first, because I think they  
23 have to go back to Springfield or parts unknown and  
24 go about their business. And then what we'll do is

1 start with Midwest Gen's case in chief -- well, the  
2 parties will introduce themselves and they'll start  
3 with the case in chief.

4 And if anybody else has pressing  
5 business, just raise your hand, and I can put you  
6 up right after the elected officials speak. That  
7 shouldn't be a problem. If not, we'll take a break  
8 in a couple of hours and then you come tell me and  
9 we might take some public comments then if you have  
10 to leave early.

11 I think that's about it for now. I  
12 think without further adieu, I would like to have  
13 the parties introduce themselves, starting with  
14 Midwest Gen.

15 MS. BASSI: Thank you, Mr. Halloran. My name  
16 is Kathleen Bassi, I'm with Schiff Hardin,  
17 representing Midwest Generation, and with me from  
18 Schiff are Steve Bonebrake and Andy Sawula, and  
19 Chris Foley from Midwest Generation has also  
20 entered his appearance on behalf of Midwest Gen in  
21 this proceeding. Mr. Bonebrake will offer an  
22 opening comment, and at the appropriate time I will  
23 introduce our exhibits.

24 HEARING OFFICER HALLORAN: Thank you,

1 Ms. Bassi. Before I forget, our court reporter  
2 reminded me if she raises her hand, just please  
3 stop and state your name. That would be a great  
4 help to everyone.

5 In any event, so Midwest Gen has  
6 introduced themselves. IEPA. Dana.

7 MS. VETTERHOFFER: My name is Dana  
8 Vetterhoffer, I'm an Assistant Counsel for Illinois  
9 EPA, and with me today is Jim Ross, Manager of the  
10 Division of Air Pollution Control and the Bureau of  
11 air at EPA?

12 HEARING OFFICER HALLORAN: Thank you,  
13 Ms. Vetterhoffer. So I think what we'll do now is  
14 have the elected officials come up, and I think the  
15 podium microphone is on, and they can state their  
16 comments as they so choose. Good morning, sir.

17 SENATOR MCGUIRE: Good morning. I'm Pat  
18 McGuire, State Senator for the 43rd District.  
19 Welcome to Joliet and the 43rd District. I  
20 appreciate the opportunity to participate in  
21 today's hearing.

22 I'm here as Illinois State Senator  
23 for the 43rd District to register my official  
24 support for Midwest Generation's request to you,

1 the Illinois Pollution Control Board, for  
2 temporary relief from certain State of Illinois air  
3 pollution requirements.

4                   Similar to many in this industry,  
5 Midwest Generation is experiencing financial  
6 difficulties. At the same time it is required to  
7 make additional capital investments to meet new air  
8 quality regulations. The temporary relief Midwest  
9 Generation is seeking would allow Midwest  
10 Generation the flexibility it needs to achieve the  
11 following:

12                   First, its long-term commitment to  
13 meeting air quality regulations. Second, the  
14 reliable supply of electricity to millions of  
15 Illinois households, businesses and other  
16 institutions.

17                   Third, the continued employment of  
18 hundreds of area residents, including many I  
19 represent. And, finally, the payment of valuable  
20 property taxes to our schools, municipalities and  
21 other units of local government.

22                   For all those above reasons, I  
23 respectfully urge the Illinois Pollution Control  
24 Board to approve Midwest Generation's request for



1 temporary relief. Thank you for allowing me to  
2 register my comments.

3 HEARING OFFICER HALLORAN: Thank you,  
4 Senator.

5 REPRESENTATIVE WALSH, JR.: Good morning.  
6 I'm Larry Walsh, Jr., State Representative for the  
7 86th District. Good morning, honorable members and  
8 staff of the Illinois Pollution Control Board.

9 As I said, my name is Larry Walsh,  
10 Jr., and I'm the state representative for Joliet  
11 area, and I represent the Joliet station, which is  
12 owned by Midwest Generation, and I represent  
13 hundreds of men and women whose livelihood is  
14 dependent on the continued operations of Midwest  
15 Generation.

16 I'm here to speak in support of  
17 Midwest Generation's request for a variance. To  
18 provide a little context and history, I'm a proud  
19 member of the International Association of  
20 Machinists and Aerospace workers and a strong  
21 supporter of organized labor.

22 I have friends and family who've  
23 worked at these power stations and can personally  
24 attest to the improvements that have been made in

1 these plants since Midwest Gen bought them in 1999.  
2 From what I can tell this really isn't a case about  
3 the environment. It's a case about finance and a  
4 company's ability to continue to operate its plants  
5 and employ its workers.

6 Midwest Generation has made it clear  
7 that when all is said and done in the year 2019 it  
8 will have met every single regulatory requirement  
9 effecting emissions from these plants established  
10 by the state of Illinois back in 2007.

11 Please, don't get me wrong. I care  
12 about the environment and will be the first one to  
13 hold Midwest Gen to the fire when it comes to their  
14 environmental performance. I have children in the  
15 community and want clean air as much as the next  
16 person.

17 That said, we're talking about a  
18 company that has done nothing but reduce emissions  
19 at its plants since they bought them. In fact,  
20 they've just recently learned that they have  
21 reduced their mercury emissions at the Joliet  
22 station alone by 96 percent since 1999, already  
23 compliant with federal rules that don't take effect  
24 until 2015.

1 I'm here today to ask the board to  
2 give this company and its workers a chance, just  
3 like the chance that that same -- this same body  
4 gave to Amron just a few months back.

5 Midwest Gen is not asking to get out  
6 of making these investments. They are simply  
7 asking for time to weather the storm that they're  
8 in. And on behalf of Local 15 and all the trades  
9 that work at these plants, please approve this  
10 variance.

11 At one point Illinois was a state  
12 where we valued the fact that we made products and  
13 had an economy based on blue collar jobs. I hope  
14 we don't reach the point where environmental  
15 activism makes those jobs a thing of the past. We  
16 have a chance at approving this variance to keep  
17 industrial jobs in our state, and I hope we'll take  
18 advantage of this opportunity.

19 So with these points in mind, I  
20 respectfully urge this board to grant the temporary  
21 relief requested by Midwest Generation. Thank you  
22 so much for your time.

23 HEARING OFFICER HALLORAN: Thank you,  
24 Representative.

1 CHIEF EXECUTIVE OFFICER WALSH, SR:

2 Good morning, everyone. I too am Larry Walsh, and  
3 I'm proud to say I'm the father of Larry Walsh,  
4 Jr., that is our State Representative. I am the  
5 Will County Executive, Chief Executive Officer for  
6 county government here in Will County.

7 Midwest Generation has asked the  
8 Illinois Pollution Control Board for temporary  
9 relief from state regulations, ensuring ongoing  
10 reductions in air emissions at the company's plants  
11 from 2008 to 2019. The company is only asking to  
12 reduce, not eliminate spending on environmental  
13 improvements for two years of that 12-year-period.

14 Midwest Generation has been meeting  
15 all of its environmental commitments under state  
16 regulations since 2008. Even with the requested  
17 relief known as a variance, it would meet all  
18 requirements by the time the state program ends in  
19 2019. Due to financial hardships caused by  
20 depressed energy prices, debt requiring a financial  
21 restructuring and substantial capital expenses  
22 needed to meet new regulations, Midwest Generation  
23 is requesting a variance in 2015 and 2016.

24 Midwest Generation is not asking to

1 avoid installing pollution controls. Rather we are  
2 asking that we be allowed to delay about  
3 \$200 million dollars in capital projects from 2013,  
4 2014 by getting modest relief from the regulations  
5 that would take effect in 2015, 2016.

6 This delay will give Midwest  
7 Generation an opportunity to conserve cash while  
8 the company works through their ongoing bankruptcy  
9 case. The company will reduce emissions in 2013  
10 and 2014 so that there will be less emissions than  
11 required by the current standard through 2016.

12 Midwest Generation will still meet  
13 all current requirements in 2013, 2014, and 2017 to  
14 2019. Midwest Generation employs 850 men and women  
15 in Illinois. 65 percent of them union. The Joliet  
16 station and the Will County station employs 425  
17 workers. 80 percent are union members.

18 The annual salary from wages and  
19 benefits for the Joliet and Will County plants is  
20 \$50 million dollars. The Joliet and Will County  
21 plants provide \$1.7 million dollars in annual local  
22 property taxes. In 2011 Midwest Generation donated  
23 mor.

24 E than \$275,000 to local charities

1 and nonprofit agencies in Will County. The Joliet  
2 facility provides power to more than one million  
3 homes and businesses daily.

4 Since Midwest Generation acquired  
5 the Joliet and Will County plants in 1999, they  
6 have constantly improved the environmental  
7 performance of their operations.

8 They have invested \$200 million  
9 dollars since 2000 to make the plants cleaner and  
10 safer, including the installation of leading edge  
11 technology to reduce emissions of mercury by more  
12 than 90 percent.

13 I ask the board for their  
14 consideration. I think together, working in  
15 collaboration, we can get the job done. The  
16 commitment from Midwest Generation is there. We  
17 just need a little time, and at the end both the  
18 plant and our community and Will County will be  
19 better off. Thank you, very much.

20 HEARING OFFICER HALLORAN: Thank you,  
21 Mr. Walsh.

22 MR. CARRIGAN: Good morning, members of the  
23 Illinois Pollution Control Board and staff. I'm  
24 not part of the Walsh family. I have a lot of

1 respect for them. My name is Michael Carrigan, and  
2 I'm President of the Illinois AFL-CIO. I'm here in  
3 support of Midwest Generation's request for a  
4 variance.

5 The Illinois AFL-CIO represents over  
6 900,000 union members in this state, and we are the  
7 voice for these families, these working women and  
8 men and their families.

9 Among our members are hundreds of  
10 men and women employed by Midwest Generation, and  
11 hundreds more from the buildings and construction  
12 trades who work in these plants on a contract  
13 basis. They're often working on environmental  
14 improvements.

15 In my humble opinion, there is no  
16 real environmental issue before you. Midwest  
17 Generation has made it clear that when all is said  
18 and done in the year 2019, it will have met every  
19 single regulatory requirement for effecting  
20 emissions from these plants established by the  
21 state of Illinois. Midwest Generation is a company  
22 with a history of meeting and sometimes going  
23 beyond its regulatory requirements.

24 So then what are we really talking

1 about here today? We're talking about the  
2 livelihood of hundreds of Illinois workers and the  
3 health and well-being of their families. I'm a  
4 35-year member of the IBEW and I know what it's  
5 like to be laid off and without a paycheck.

6 It's difficult to sit with your  
7 family and explain when you're going to go back to  
8 work. And we all know there's been hard economic  
9 times in this nation and in this state. And when  
10 industries close or substantially reduce their  
11 operations, they eliminate jobs.

12 So here we have a situation where if  
13 we do the right thing, we can have and retain good  
14 jobs in Illinois, jobs that support families. In  
15 approving this variance, we can keep industrial  
16 jobs in our state. I hope you will take advantage  
17 of this opportunity.

18 Finally, I'd just like to make a  
19 point about an issue we care a lot of about, and  
20 that's the issue of fairness. Just a few months  
21 ago the Illinois AFL-CIO played a small part in  
22 supporting Amron in a similar variance.

23 In fact, the only real difference  
24 between that variance and the one before you today



1 is that Midwest Generation isn't asking for the  
2 size and scope that Amron received.

3 So with these points in mind, I  
4 respectfully urge this board to grant the temporary  
5 relief requested by Midwest Generation. Thank you,  
6 verb much.

7 HEARING OFFICER HALLORAN: Thank you,  
8 Mr. Carrigan.

9 Anybody else on the elected official  
10 who list would like to speak? You know, before I  
11 forget, I'm remiss. I wanted to thank Joliet  
12 Junior College. They've been over the top beyond  
13 reproach accommodating us for this hearing, and I  
14 really want to thank them, and in particular Karen  
15 Randolph and, I think Jeff Fisher, and there is a  
16 Jeff Rush.

17 But in any event -- and I do notice  
18 there are about 30 people standing along the wall.  
19 I don't know if there is -- I know there's enough  
20 chairs. Is there enough room for the chairs?  
21 Would you like to sit? There's some folding chairs  
22 to my left in the corner. No? Yes? You're all  
23 comfortable standing?

24 Does anybody else have to give

1 public comment because they have pressing matters  
2 that they have to get to? Or we can wait a couple  
3 of hours and get your comments. I guess without  
4 further adieu, Mr. Bonebrake your opening.

5 MR. BONEBRAKE: Thank you, Mr. Halloran. I'm  
6 struggling with a little bit of a cold today, so  
7 perhaps, Mr. McFarlan, if you could pass the  
8 microphone down and save everybody my rasping.

9 HEARING OFFICER HALLORAN: Wait. I'm sorry,  
10 Mr. Bonebrake. Oh, go ahead, I thought she was  
11 going to make an oral comment.

12 MR. BONEBRAKE: It that on now?

13 HEARING OFFICER HALLORAN: It is on.

14 OPENING STATEMENT

15 MR. BONEBRAKE: Good morning, Mr. Hearing  
16 Officer, members of the board and board staff. My  
17 name is Steve Bonebrake, I'm one of the attorneys  
18 for Midwest Generation, the petitioner in this  
19 matter.

20 We are here today on Midwest  
21 Generation's petition for a variance from two  
22 elements of the Illinois Combined Pollutant  
23 Standard, commonly referred to as the CPS.

24 The first is Midwest Generation's

1 request for relief from the 2015 and 2016 SO2  
2 sulfur dioxide system emission rates. Second, is a  
3 request for variance from emission control  
4 equipment requirements specified by the CPS for  
5 Waukegan Unit 8.

6 Relatedly, Midwest Generation is  
7 also seeking relief from a prior board variance  
8 order in matter No. PCB 12-121, in which the board  
9 required compliance with the CPS SO2 system  
10 emission rates. That prior board variance order  
11 related only to relief for the Waukegan unit  
12 center.

13 Midwest Generation filed its  
14 petition for variance on November 30th 2012. On  
15 January 8th 2013, Midwest Generation made an  
16 informational filing with the board, informing the  
17 board that it had filed for Chapter 11 bankruptcy  
18 following the filing of its variance petition with  
19 the board.

20 On January 18th 2013, Midwest  
21 Generation filed responses to a first set of  
22 questions from the board. On January 25th 2013,  
23 this last Friday, Midwest Generation received  
24 additional questions from the board through a

1 hearing officer order. Those questions were  
2 denominated Nos. 1 through 4. We understand that  
3 the board would like the company to address those  
4 questions at the hearing today.

5 We appreciate the opportunity to  
6 present testimony today in support of Midwest  
7 Generation's variance petition and to address any  
8 questions that the board and the Illinois  
9 Environmental Protection Agency may have.

10 Midwest Generation is prepared today  
11 to call four witnesses. Douglas McFarlan, William  
12 Petmecky, Fred McCluskey and Lucy Fraiser.

13 Mr. McFarlan, on my far right, is  
14 the President of Midwest Generation and Senior Vice  
15 President of Public Affairs for Edison Mission  
16 Energy. Mr. Petmecky is the Vice President and  
17 Treasurer of Edison Mission Energy, and  
18 Mr. Petmecky is sitting directly to my right.

19 Mr. McCluskey is the Vice President  
20 of Technical Services for Midwest Generation and  
21 Edison Mission Energy, he is at Mr. McFarlan's  
22 left. And Lucy Fraiser is a board certified Ph.D.  
23 toxicologist with the AECOM firm.

24 These witnesses are here today to

1 provide information to the board and to answer any  
2 questions that may be asked. We propose to call  
3 Mr. McFarlan first to testify, followed by  
4 Mr. Petmecky, then Mr. McCluskey and then  
5 Dr. Fraiser.

6 Three of these witnesses,  
7 Messrs. McCluskey, Petmecky and McFarlan have filed  
8 affidavits, which are attachments to the variance  
9 petition, and we propose that they summarize their  
10 testimony today for the board.

11 Mr. McFarlan will offer testimony  
12 today concerning Midwest Generation's commitment to  
13 reducing air emissions, the need for and importance  
14 of the requested variance, why time is of the  
15 essence, and how the variance request has been  
16 structured to avoid environmental and health  
17 impacts.

18 Mr. Petmecky will provide testimony  
19 concerning Midwest Generation's financial hardship  
20 and why that necessitates the variance request.

21 Mr. McCluskey plans to address  
22 Midwest Generation's CPS control efforts,  
23 alternatives to the variance that were considered  
24 by the company and the emission impact of the

1 proposed variance.

2 Mr. McCluskey and Mr. McFarlan will  
3 collectively address question No. 1 in the Hearing  
4 Officer's order of January 25th. Mr. McFarlan will  
5 also address questions No. 3 and 4.

6 Finally, Dr. Fraiser will address  
7 whether granting the variance would cause any  
8 impact on human health. As part of her testimony,  
9 Dr. Fraiser will address question 2 from the  
10 Hearing Officer's January 24th -- 25th 2013 order.

11 We propose that following the  
12 narrative testimony the witnesses will be available  
13 for any questions that the board would have. The  
14 witnesses will do their best to respond to  
15 questions, and should additional resources or time  
16 be needed to address questions, we can address that  
17 issue as it may arise.

18 With that said, Mr. Halloran, we're  
19 prepared to call Mr. McFarlan.

20 HEARING OFFICER HALLORAN: I'm going to ask  
21 Ms. Vetterhoffer if she has an opening? Would you  
22 like to reserve your opening?

23 MS. VETTERHOFFER: No. I'm fine.

24 HEARING OFFICER HALLORAN: You're fine, okay.

1 Mr. Bonebrake.

2 MR. BONEBRAKE: We call Mr. McFarlan, please.

3 HEARING OFFICER HALLORAN: Mr. McFarlan, just  
4 raise your right hand and the court reporter will  
5 swear you in, please.

6 (witness sworn.)

7 BY MR. McFARLAN: Good morning, members of  
8 the board and Hearing Officer Halloran. As  
9 Mr. Bonebrake said, my name is Doug McFarlan, I'm  
10 the President of Midwest Generation and the Senior  
11 Vice President of Public Affairs of our parent  
12 company, Edison Mission Energy.

13 I joined Midwest Gen in 1999, and  
14 I'm also a member of the Executive Managing  
15 Committee of Edison Mission Energy, which I'll  
16 refer to in my remarks today as EME.

17 In this testimony I will highlight  
18 Midwest Generation's commitment to reducing  
19 emissions, including reductions that have been  
20 achieved under the Combined Pollutant Standard,  
21 which I'll refer to as the CPS.

22 I'll explain the need for and  
23 importance of obtaining this variance, address why  
24 the variance would cause new environmental injury,

1 and, of course, answer any questions that you may  
2 have, as Mr. Bonebrake said.

3 My remarks may take a little longer  
4 than I normally would like, because I would like to  
5 address some of the comments we've heard from third  
6 parties, and, specifically, address some of the  
7 questions that came in from the board late last  
8 week.

9 I want to begin by making clear that  
10 Midwest Generation views seeking a variance of this  
11 nature to be a last resort based on a financial  
12 hardship caused by economic and market circumstances  
13 that could not have been foreseen when the CPS was  
14 negotiated in 2006 with the Illinois EPA, and when  
15 it was adopted in 2007 by this board.

16 We do not take lightly the resources  
17 that the board and the Illinois EPA are required to  
18 devote to a proposal like this, and we would not be  
19 here if we had not concluded that we have exhausted  
20 every self help measure reasonably available to us,  
21 financially, technically and operationally to  
22 comply with the CPS.

23 In fact, we've been fully compliant  
24 with the rule from 2008 to the present. We will



1 continue to comply with original limits of the rule  
2 in 2013 and 14, even if this variance is granted.  
3 And after that only the sulfur dioxide emission  
4 rates would be altered and only for two years, 2015  
5 and 2016, during which time an alternative rate in  
6 the new mass emission limitation would apply.

7 We filed this petition because we  
8 concluded that securing what we considered to be a  
9 very limited variance will put us in the best  
10 possible position to make some very tough decisions  
11 about investments that we can make, operations that  
12 we can sustain, and the living wage jobs of hard  
13 working men and women that we can preserve.

14 We are a company that is undergoing  
15 a financial restructuring through the Chapter 11  
16 bankruptcy process. Due to the CPS, we face near  
17 term decisions that we need to begin making almost  
18 immediately with respect to investing hundreds of  
19 millions of additional dollars in capital  
20 investments in pollution controls.

21 We adhere to five principles in  
22 developing this petition. Principles that were  
23 tended to respect spirited and intent of the CPS  
24 and support the objectives of the Illinois and

1 U. S. Environmental Protection Agencies to protect  
2 the public health and the environment. And,  
3 obviously, also to satisfy the criteria this board  
4 has for granting a variance.

5 First, in no way, shape or form do  
6 we seek a free pass. Even with the variance, we  
7 will be investing in the design, planning and/or  
8 the installation of pollution control equipment  
9 every year through 2019, just as we have done every  
10 year since the CPS was adopted in 2007. Second, we  
11 do not seek to extend the timeline of the CPS or  
12 relax the emission limits that will be in effect  
13 when the CPS is fully implemented in 2019.

14 In contrast, last year Amron came  
15 before this board and was granted five additional  
16 years to achieve a required emission rate and three  
17 additional years to complete what is known as their  
18 multi-pollutant standard, which was negotiated and  
19 adopted around the same time as the CPS.

20 The third principle is that we  
21 respect that the state must demonstrate attainment  
22 with national ambient air quality standards of the  
23 U.S. EPA, and that emission reductions under the  
24 CPS will be a component, an important component of

1 such demonstrations.

2 With that in mind, we only seek the  
3 variance for 2015 and 2016, and then we will catch  
4 up, if you will, and resume compliance with the  
5 original limits of the CPS in 2017 as an  
6 intentional construct to support the state's  
7 anticipated need to demonstrate attainment in 2017  
8 with new federal standards for sulfur dioxide and  
9 particular emissions, as well as regional haze.

10 The fourth principle, we respect  
11 past precedent set by the EPA and this board that a  
12 petitioner for a variance must demonstrate a net  
13 environmental benefit. We have done this by  
14 committing to a compliance plan which guarantees  
15 that our actual tons of emissions of sulfur dioxide  
16 for the years 2013 through 2016 will be lower under  
17 the variance than would have occurred under an  
18 anticipated business as usual case when the CPS was  
19 adopted.

20 The same goes for all other  
21 pollutants, mercury, hydrogen oxide, particulate  
22 matter, carbon dioxide.

23 I would also note that in its  
24 comments to the board the Illinois EPA found that

1 "The determination by Midwest Generation showing a  
2 net environmental benefit in sulfur dioxide  
3 emissions over the terms of the variance is  
4 consistent with the method utilized in similar  
5 previous variance requests."

6 The agency also commented that it  
7 "Does not believe that any injury to the public  
8 will result from granting the variance."

9 The fifth principle, related to the  
10 issue of net benefit. We have proposed to add an  
11 additional layer of requirements to the CPS. That  
12 being a limit on actual tons of SO2 emissions each  
13 year from 2013 through 2016, in addition to an  
14 alternative limit for the SO2 emission rate at 2015  
15 and 16. This is an added safeguard that is not  
16 found in similar regulations that applied at Amron  
17 and Dynegy.

18 Next, I'd like to address objections  
19 to our petition filed by environmental groups and  
20 Dynegy, as well as points raised in the EPA's  
21 comments and questions submitted by the board.

22 In their objections the  
23 environmental groups suggest that we are breaking  
24 an agreement. On the contrary, due to unforeseen

1 circumstances, we are proposing a temporary limited  
2 change, which is absolutely consistent with the  
3 spirit and intent of the CPS, which has already  
4 brought this state reductions in mercury emissions  
5 that are not required under federal regulations  
6 until 2015 and reductions in nitrogen oxide  
7 emissions that are consistent with federal rules  
8 that have been put on indefinite hold by the  
9 Courts.

10 CPS has made Illinois a leader in  
11 environmental regulations, delivered tremendous  
12 benefits to the environment and will continue to do  
13 so uninterrupted under this variance, which leaves  
14 the original CPS timeline and in emission rate  
15 limits intact.

16 Environmental groups also complained  
17 there is no assurance that we will be able to  
18 comply with the schedule we propose under the  
19 variance. We have many pending investment  
20 decisions to make. If we don't make those  
21 investments CPS always has and always will require  
22 us to curtail generation or shut down generating  
23 units in order to comply.

24 We believe the relevant point here

1 isn't whether we guarantee to retrofit every single  
2 generating unit. It is our compliance with the CPS  
3 and with the compliance plan that is part of this  
4 variance. Noncompliance is not an option or a  
5 strategy that we're presenting to this board.

6 Finally, the environmental groups  
7 asked the board to delay acting on our request  
8 until we have merged from our Chapter 11 financial  
9 restructuring process that we initiated voluntarily  
10 in December of 2012. That position actually flies  
11 in the face of the very reason to recognize a  
12 financial hardship and grant the variance.

13 We make no bones about it. We are  
14 in financial distress and have entered into a  
15 restructuring process that is expected to run well  
16 into, if not all the way through 2014.

17 Our petition and supporting  
18 affidavits are clear that with this variance we  
19 believe we can defer on the order of \$200 million  
20 dollars in capital expense out of 2013 and 2014,  
21 the two critical years in our restructuring process  
22 when cash conservation is paramount as we work with  
23 stakeholders in our business to develop a plan of  
24 reorganization and a new capital structure.

1                   As for Dynegy's objections, I must  
2     say that I found their filing to be rather  
3     selective and misleading. First of all, Dynegy  
4     complains that it will suffer a competitive  
5     disadvantage versus Midwest Generation if the  
6     variance is granted.

7                   In fact, our plants are located in  
8     the competitive PJM interconnection marketplace,  
9     which extends from Northern Illinois to the east.  
10    While all of Dynegy's coal plants are located in  
11    the competitive Midwest interconnection system,  
12    which includes Central and Southern Illinois, and  
13    states to the west and north. These are different  
14    markets.

15                  In a recent presentation to  
16    investors that is publically available, Dynegy  
17    emphasized that the environmental retrofit work  
18    that it has done at its plants in Illinois gives it  
19    a competitive advantage over other coal plants, and  
20    it presented compelling data about its competitors  
21    to backup up that assertion. And all of that data  
22    was about coal plants in the Midwest interconnection  
23    system because that is where its competitors are.

24                  If Dynegy's objections to our

1 petition had merit, it is inexplicable to us that  
2 it did not object to Amron's variance request last  
3 year, given that all of Amron's coal plants, not  
4 ours, are located in the same competitive market as  
5 Dynegy's.

6 I would also point out that under  
7 its state rules, its multi-pollutant standard  
8 compared to our CPS combined pollutant standard,  
9 Dynegy's mercury emission regulations, which are  
10 the same as ours, did not take effect until a year  
11 later than ours.

12 Its nitrogen oxide regulations are  
13 exactly the same as ours and took effect at the  
14 same time, in 2012, and it's sulfur dioxide  
15 regulations end with an emission rate limit that is  
16 less stringent than the ultimate limit in our  
17 regulations.

18 To be fair, Dynegy will tell you  
19 that they have already invested a billion dollars  
20 in pollution controls and have already invested in  
21 sulfur dioxide controls that bring their emissions  
22 well below their required level under state  
23 regulations. That is true enough, and it is  
24 because in 2005 Dynegy entered into a consent



1 decree, settled litigation with the federal  
2 government before they entered into their current  
3 state regulations.

4               So in essence, we think it's fair to  
5 suggest that their state regulations essentially  
6 codified what they had already agreed to do to  
7 settle federal litigation. That is a unique  
8 circumstance to their company, which drove the  
9 business decision which they deemed to be  
10 appropriate for them at that time, regardless of  
11 how Amron or Midwest Gen were regulated.

12               With respect to the comments from  
13 the Illinois EPA, we find the agency statements on  
14 the whole to present a strong case for granting the  
15 variance consistent with its position in the 2012  
16 Amron variance proceeding.

17               As I have stated, the agency finds  
18 no evidence of injury to the public from granting  
19 the variance and finds that our calculation and  
20 demonstration of net environmental benefit is  
21 consistent with past variances the board has  
22 granted.

23               The agency does state that, "As this  
24 is Midwest Generation's second variance request in

1 the same year, it would be preferable that a  
2 stronger case be made to, again, amend the  
3 voluntary agreement and expend the considerable  
4 resources required by numerous parties to review  
5 the merits of the variance request."

6 Let me underscore again that we come  
7 here only as a last resort and with great respect  
8 for the burdens placed on the board and the agency.  
9 We have taken numerous self help measures to comply  
10 with all aspects of the CPS as cost effectively as  
11 possible. We have significantly reduced sulfur  
12 dioxide emissions before such reductions were  
13 required by switching to lower sulfur coal.

14 We have not maintained the status  
15 quo, and we have not come to you proposing a  
16 comprehensive overhaul of our rules. Rather, our  
17 request for variance is the next step that will  
18 continue reducing emissions from giving our company  
19 the best possible opportunity to conclude a  
20 successful financial restructuring and protect  
21 living wage jobs.

22 The agency also states that while it  
23 agrees that certain Illinois emission reduction  
24 requirements are more stringent than those required

1 by other states or under federal rules, "Midwest  
2 Generation was aware of several of these  
3 requirements when the CPS was promulgated, and that  
4 such provisions, in fact, formed the backdrop for  
5 negotiations between the Illinois EPA and other  
6 power generators."

7 That is a fair point, and it's one  
8 we acknowledge in our petition. However, back in  
9 2006 when the CPS was negotiated, we believed it  
10 was entirely reasonable to expect that a similar  
11 federal mercury rule would be in effect well before  
12 2015, which did not happen, and that additional  
13 federal regulations on sulfur dioxide and nitrogen  
14 oxide would be forthcoming.

15 In fact, such regulations were  
16 scheduled to take effect in 2012, but now are on  
17 hold due to court action.

18 As the agency states, we were well  
19 aware that Illinois regulations were putting us  
20 ahead of most states. It's the unforeseen delays  
21 and new federal rules that concern us and which  
22 Amron also cited at great length in its variance  
23 petition.

24 The agency also cites uncertainty

1 associated with Chapter 11 bankruptcy proceedings  
2 entered into by a company after this petition for  
3 variance was filed, and the agency states that  
4 those proceedings could potentially hinder our  
5 ability to comply with either the CPS or the  
6 variance.

7                   Again, we find this a reasonable  
8 observation that we tried to address in our  
9 petition, even though it was filed before our  
10 Chapter 11 filing was definite.

11                   Our point is that the variance is  
12 designed specifically to compliment our financial  
13 restructuring and support emergence from Chapter 11  
14 by the end of 2014, as a company that is more  
15 stable and secure for long-term operations and  
16 growth.

17                   Debt payments on bonds due this year  
18 have led in submission energy to enter into  
19 financial restructuring discussions with its note  
20 holders. We believe this can be a constructive  
21 process that stabilizes the company.

22                   Yes, there is uncertainty today  
23 about eventual outcomes of that process and the  
24 eventual owners of our business, but deferring

1 substantial capital expense out of the next two  
2 years while we work through this can be a  
3 significant contributor to a successful outcome.

4 Now, I'd like to address some of the  
5 questions that we received from the board. Earlier  
6 this month we filed written responses to our first  
7 set of board questions that we received in  
8 December, and then on Friday we received additional  
9 questions that, as Mr. Bonebrake said, I and other  
10 witnesses here will respond to today.

11 One of the questions asked, if the  
12 variance would jeopardize the state's ability to  
13 comply with National Ambient Air Quality Standards,  
14 also referred to as NAAQS. I hope we've addressed  
15 this in our original petition and my supporting  
16 affidavit of that petition in my earlier remarks  
17 this morning.

18 We are very aware of the state's  
19 needs to demonstrate attainment with the NAAQS  
20 rules, very aware that the Illinois EPA plans to  
21 include reductions to be achieved under the CPS in  
22 those demonstrations. None of our plants is in an  
23 area designated as not attainment with current  
24 NAAQS for sulfur dioxide.

1                   Recognizing that attainment  
2   demonstrations with new NAAQS for sulfur dioxide  
3   will be required by 2017 we built our compliance  
4   plan under this variance to insure that there was  
5   no change to the original CPS emission limits that  
6   are effective in 2017.

7                   The board asked an additional  
8   question about human health and environmental  
9   impact. To address that question we have with us  
10   today Dr. Lucy Fraiser from AECOM, who provided  
11   this board with similar analysis in last year's  
12   Amaris proceedings -- Amron's variance proceeding.

13                  The board asked whether Midwest  
14   Generation is now committing to not operating  
15   Crawford Station Units 7 and 8 in 2015 and 2016.  
16   This is now a requirement for the CPS under the  
17   Waukegan 7 variance approved by the board last  
18   year, and nothing in this variance effects that.

19                  Finally, the board asked additional  
20   questions about our compliance plan scheduled and  
21   timing of construction to achieve compliance with  
22   the variance. I will defer to my colleague, Fred  
23   McCluskey to supplement the information we have  
24   already provided on these issues, but I would like

1 to offer a few general remarks, especially with  
2 respect to the board's questions about the cost and  
3 timing of specific retrofit work on specific  
4 generating units.

5 We understand that a mandatory part  
6 of a variance is the compliance plan and schedule.  
7 We believe we have respected and met that  
8 requirement with the compliance plan and conditions  
9 that we've proposed.

10 Our compliance plan includes interim  
11 emission rates, It includes new limits on mass  
12 emissions, and it includes annual progress reports  
13 regarding work completed in a given year, progress  
14 made to comply with the timeline specified in the  
15 compliance plan, along with the general description  
16 in activities related to the installation of Trona  
17 and particular controls anticipated for the  
18 following year, including the status of the  
19 engineering for those projects.

20 As I testified earlier, in  
21 developing our variance and compliance plan we also  
22 sought to be consistent with the spirit and intent  
23 of the CPS as originally negotiated with the EPA.  
24 I was deeply involved in those negotiations and in

1 numerous subsequent discussions with EPA leadership  
2 to insure that our compliance plans were aligned  
3 with their expectations. We have crafted this  
4 variance in a manner that we believe is absolutely  
5 consistent with those expectations.

6 First, going back to 2006, it was  
7 made crystal clear to us that the state wanted a  
8 mercury emissions rule that led the nation and that  
9 was especially sensitive to the fact that we had  
10 two plants in Chicago and one in Waukegan that are  
11 near or border Lake Michigan. We met that  
12 objective in 2008.

13 It was made clear to us that the  
14 state wanted significant additional reductions in  
15 nitrogen dioxide emissions. We met that objective  
16 in 2012, which contributes to the state's efforts  
17 to achieve attainment with ozone National Ambient  
18 Air Quality Standards.

19 It was made clear to us that sulfur  
20 dioxide emissions limits would need to reflect the  
21 state's needs to demonstrate attainment with future  
22 National Ambient Air Quality Standards.

23 We've designed our variance to  
24 accommodate that, which was made clear to us that



1 there would need to be deadlines for installing  
2 flue gas to sulfurization equipment on the units at  
3 out Chicago plants and at Waukegan that were well  
4 ahead of the end of the CPS schedule, and that  
5 would be layered on top of the emission rate  
6 limits. That remains the case under this variance.

7 We also agree to a similar equipment  
8 requirement on all but one of our other generating  
9 units by the end of 2018, which is unchanged by  
10 this variance. Beyond all of those conditions, we  
11 have always believed the agency has been very clear  
12 that we had the flexibility with the type of  
13 technology and timing of technology installations  
14 that would be needed to achieve fleet wide emission  
15 limits.

16 I cannot emphasize that point  
17 enough, because it was a source of repeated  
18 conversation and confirmation that it was really  
19 core to the implementation from CPS to us. The  
20 message from the agency was clear. We've given you  
21 fleet wide limits on emissions to protect the  
22 public health, you figure out how to meet them.

23 As we've explained in our previous  
24 filings in this case, and as Mr. McCluskey will

1 discuss again today, we have lived up to this  
2 expectation and will continue to do so. As part of  
3 managing our financial hardship, we constantly  
4 evaluate the most cost effective ways to control  
5 emissions.

6 The CPS was designed precisely to  
7 give us that flexibility as long as we meet fleet  
8 wide emission limits and as long as we meet  
9 deadlines for equipment installation. It is  
10 absolutely imperative that this flexibility be  
11 maintained in order to address our financial  
12 hardship.

13 We're proud of our strong track  
14 record of operating our plants with a priority on  
15 safety and on environmental responsibility and  
16 compliance. Especially noteworthy is the  
17 development and the deployment of mercury emission  
18 control technology well ahead of national standards  
19 and our investments to meet the state's nitrogen  
20 oxide standards that took effect in 2012.

21 Not only have we invested hundreds  
22 of millions of dollars in air pollution control  
23 since acquiring our Illinois plants in 1999, we  
24 also incur \$70 million dollars a year in new

1 operations and maintenance costs to achieve the  
2 emission reductions required by the CPS. So that  
3 now accounts for about seven percent of our total  
4 operations and maintenance budget.

5           Going back to 1999. We've reduced  
6 sulfur dioxide emissions by 40 percent, mercury  
7 emissions by 89 percent, nitrogen oxide emissions  
8 by 83 percent, particulate matter emissions by 20  
9 percent and carbon dioxide emissions by 16 percent.  
10 We will reduce significantly more emissions of  
11 sulfur dioxide between now and 2019.

12           Even if this variance is granted by  
13 any measure, we will exceed reasonably expected  
14 reductions when the CPS was adopted. We've already  
15 complied with and are exceeding CPS requirements  
16 for both mercury and nitrogen oxide.

17           We do not see changes to the CPS for  
18 reducing sulfur dioxide in 2013 or 2014 or an  
19 extension of the program beyond its original  
20 schedule in 2019. During the term of the variance  
21 our emissions would decrease each year and then we  
22 will return the original CPS schedule in 2017.

23           I'd like to close by saying we are  
24 also proud of the significant contributions that

1 our company makes to the economy and quality of  
2 life in the state of Illinois in the communities in  
3 which we operate. We provide living wage jobs to  
4 nearly 850 men and women. 540 of whom are  
5 represented by IBEW Local 15.

6 And I want to thank all of the  
7 members of Local 15 and our other employees who  
8 have joined us here today. I think you can see the  
9 passion and urgency that they attach to supporting  
10 this request for variance, and we appreciate that  
11 very much.

12 We also provide work on special  
13 projects often for environmental retrofits to  
14 hundreds more members of building and in  
15 construction trades. You heard from Mr. Carrigan.  
16 I know there are others from building and trades  
17 that have lent strong support to this request also.

18 We spend nearly \$400 million dollars  
19 a year on goods and services purchased from  
20 Illinois companies for regulatory and licensing  
21 fees and support charitable and civic  
22 organizations. And we've paid nearly \$5 million  
23 dollars a year in property taxes that benefit  
24 schools and local government.

1                   We acknowledge that we face a great  
2   deal of uncertainty and financial stress. That's  
3   why we're here. We are indeed immersed in  
4   financial hardship, but we're still operating a  
5   viable fleet of power plants in this state and we  
6   want to continue to do so.

7                   We designed this variance to create  
8   minimal disruption to the CPS, while giving us an  
9   opportunity to defer significant capital expense  
10   during the most critical period for our financial  
11   restructuring and reorganization of our company.

12                  The men and women who work with us  
13   in this state and are here today are proud of the  
14   contributions that they make to a safe reliable and  
15   affordable supply of electricity.

16                  We are also gratified and humbled by  
17   the presence here and support of elected officials,  
18   business leaders, community leaders and labor  
19   leaders. That support is both passionate and  
20   thoughtful. It includes comments this board has  
21   received from leaders in this state who have been  
22   in the forefront of developing policies to protect  
23   the environment.

24                  Our employees and our other

1 supporters understand that there is no guarantee we  
2 can maintain all of our operations for the long  
3 haul. They understand that times are extremely  
4 challenging across our entire industry, but we and  
5 they believe this variance would put us in the best  
6 possible position to preserve the greatest number  
7 of jobs while still protecting the environment.  
8 Thank you.

9 HEARING OFFICER HALLORAN: Mr. Bonebrake, is  
10 that your direct so far?

11 MR. BONEBRAKE: That's correct, Mr. Halloran,  
12 sir.

13 HEARING OFFICER HALLORAN: Ms. Vetterhoffer,  
14 any cross of Mr. McFarlan?

15 MS. VETTERHOFFER: No.

16 HEARING OFFICER HALLORAN: I think what I'll  
17 do now, I'll ask the members if they have any  
18 questions, and if not I'll ask it to you.

19 Members, do you have any questions  
20 of Mr. McFarlan?

21 MS. LIU: Good morning, Mr. McFarlan. Thank  
22 you so much for your testimony for addressing all  
23 of those issues so well.

24 MR. MCFARLAN: Thank you.

1 MS. LIU: I was wondering if you could repeat  
2 your answer to the question No. 4 of the  
3 January 25th 2013 Hearing Officer order. You  
4 discussed it in your testimony, but I'm not sure  
5 that I was quite clear on the answer.

6 The question was, Does Midwest  
7 Generation intend to also commit to not operating  
8 Crawford Unit 7 and 8 in 2015 and 2016 as a  
9 condition of the variance requested here?

10 MR. MCFARLAN: Yes. As I stated in the  
11 variance that was granted in the Waukegan Unit 7  
12 case last year by this board, there was a condition  
13 in that variance that required that the Crawford  
14 plant not be run after the end of 2014. So,  
15 obviously, that would cover 2015, 2016. There's  
16 nothing we're doing here that changes that. So  
17 that condition still applies, and the CPS Crawford  
18 cannot run after 2014 under the CPS.

19 MS. LIU: Would that be all right to include  
20 that as a condition of the variance that you're  
21 requesting here?

22 MR. MCFARLAN: I really see no problem with  
23 that.

24 MR. BONEBRAKE: I think that is consistent

1 with the prior variance order, so I don't  
2 anticipate we would have an objection to doing so.

3 HEARING OFFICER HALLORAN: That was  
4 Ms. Alisa Liu, and Mr. Bonebrake just spoke as  
5 well.

6 Mr. Bonebrake, any redirect?

7 MR. BONEBRAKE: No, Mr. Halloran. And then  
8 if we have no further questions, I would propose  
9 that we call Mr. Petmecky next to testify.

10 HEARING OFFICER HALLORAN: Very well. Thank  
11 you. Raise your right hand, the court reporter  
12 will swear you in.

13 (witness sworn.)

14 BY MR. PETMECKY: Good morning, my name is  
15 William Petmecky. I am the Vice President and  
16 Treasurer of Edison Mission Energy, which I will  
17 refer to as EME. EME is the indirect parent  
18 corporation of Midwest Generation.

19 I am responsible for treasury  
20 activities, including corporate and project  
21 financing, financial planning and analysis, cash  
22 management and treasury operations.

23 I have financial experience in the  
24 electric industry, including 18 years of experience



1 in a variety of positions with EME and its  
2 affiliates, including its parent, Edison  
3 International.

4 The purpose of my testimony today is  
5 to explain Midwest Generation's current financial  
6 hardship, which necessitates a variance in the  
7 Illinois Combined Pollution Control Standards or  
8 CPS air emission limits in years 2015 and 2016, and  
9 an extension of the Waukegan Unit 8 emission  
10 controls installation deadline. November of last  
11 year I submitted an affidavit which addressed these  
12 issues.

13 Specifically, I will address work  
14 topics. First, the cost of work under the CPS.  
15 Second, possible sources to fund this work and why  
16 those sources are not currently available today.  
17 Third, how Midwest Generation's financial situation  
18 has changed since 2007 and when it opted into CPS.  
19 And, fourth, ways in which a temporary two-year  
20 pause in the pace of CPS rates step down will allow  
21 Midwest Generation to obtain the funds required to  
22 install the additional SO2 controls to comply with  
23 CPS.

24 So, first, I'd like to talk about

1 the cost of work required under CPS. The total  
2 cost of complying with CPS is forecast to be just  
3 over \$1 billions dollars. Of this amount we have  
4 already spent about \$200 million dollars.  
5 Therefore we estimate the remaining cost to be  
6 about \$850 million dollars.

7 Over the next two years, 2013  
8 and 14, assume that we do have no CPS variance, we  
9 expect that we'll need to spend about a half a  
10 billion dollars, and that will get us work  
11 compliant through 2016.

12 This spending can be separated into  
13 two parts. About half of the spending needs to be  
14 spent to comply with the CPS SO2 emission rates for  
15 2013 and 2014, so the immediate term things, and to  
16 satisfy specific control requirements for Waukegan  
17 Unit 7. In addition, we'll perform some  
18 engineering and other work on other units.

19 The other half of the money that  
20 needs to be spent to assure compliance with CPS SO2  
21 emission rates for 2015 and 2016 and to complete  
22 the installation of equipment to satisfy the  
23 Waukegan Unit 8 FGD work. It is the second set of  
24 costs that are at issue in this petition.

1                   As Doug McFarlan just explained in  
2     his comments, our request for a variance is guided  
3     by five principles. One, it's no free pass. Two,  
4     it does not extend the overall timeline or relax  
5     the ultimate emission limits. Three, it does not  
6     interfere with attainment of the National Ambient  
7     Air Quality Standards. Four, it offers a net  
8     environmental benefit. And, five, it adds an  
9     additional layer of requirements to the CPS.

10                  And very importantly -- and I put an  
11     emphasis on this -- that we will continue to be in  
12     compliance with the original limits of the rule in  
13     2013 and 14. That is why our request for a  
14     variance relates only to the second set of the  
15     cost, those for 2015 and 2016.

16                  It is important to note that Midwest  
17     Generation would need to have funding for these  
18     controls in place no later than April of this year  
19     in order to move forward with the construction work  
20     on schedule to comply with the 2015 and 16 rates.

21                  This brings me to my second topic.  
22     How we can pay for this work or typical sources of  
23     funding and why those sources of funding are  
24     currently not available for the 2015 and 16

1 compliance.

2 Before I discuss the specific  
3 funding options, I'd like to remind you, as Doug  
4 mentioned, that when I filed my affidavit in  
5 November, I explained that because of depressed  
6 energy and capacity prices and high fuel costs,  
7 Midwest Generation may need to file for protection  
8 under Chapter 11 of the U. S. Bankruptcy Court.

9 On December 17th of last year that's  
10 exactly what happened. EME and Midwest Generation  
11 filed for bankruptcy protection. It's important to  
12 know that we filed under Chapter 11, which means we  
13 intend to operate through and after the bankruptcy  
14 process. Also, bankruptcy provides a forum for us  
15 to work with our creditors to resolve our debts,  
16 including \$3.7 billion dollars upon us.

17 While I cannot provide you with a  
18 date from which we will emerge from bankruptcy, I  
19 can say this is a complicated process and it could  
20 take as much as two years.

21 Now, keep this backdrop in mind as I  
22 discuss the following funding sources.  
23 Historically Midwest Generation's costs were funded  
24 by either Midwest Gen operations or Midwest Gen's

1 parent, EME. Two additional possible funding  
2 sources have historically included EME's parent,  
3 Edison International and third party lenders, such  
4 as banks. However, none of these sources are  
5 currently available to supply funding for all the  
6 current necessary spending. I'll go through each  
7 one of those four one by one quickly.

8 First, we try to recover all of our  
9 costs through Midwest Gen operations. However,  
10 Midwest Gen expects to incur operating losses this  
11 year and next because of low revenues from low  
12 energy and capacity prices. We have high costs,  
13 and that means reduced output.

14 Even though Midwest Generation is  
15 working hard to manage through and improve the  
16 situation, during the next two years Midwest Gen  
17 will not be able to fund all the retrofits without  
18 external support. Midwest Generation simply cannot  
19 generate the cash to fund the retrofits necessary  
20 for 2015 and 16 compliance.

21 Next, we look to Midwest Gen's  
22 parent, EME for funding, but as I just explained,  
23 EME recently filed for bankruptcy. Midwest Gen is  
24 not contractually entitled to receive funding from

1 EME, and EME has its own creditors, including \$3.7  
2 billion dollars of unsecured bonds, which will  
3 likely own a majority of EME's equity after  
4 restructuring.

5 Therefore, not until EME and Midwest  
6 Generation can formulate a plan of reorganization  
7 that demonstrates long-term viability and to  
8 resolve our past debts will we be situated to  
9 better address the cost of environmental retrofits  
10 for compliance in 2015 and 2016.

11 In fact, a significant monetary  
12 contribution from EME before such a plan is  
13 formulated will be met with resistance from EME  
14 creditor's base. Another way to think of it is  
15 this, until our past debts are resolved, major  
16 funding for costs associated with future benefits  
17 will be very difficult.

18 Bringing us to our third source of  
19 funding. In certain situations upstream parents  
20 make investments into subsidiaries. In this case  
21 that upstream parent is Edison International.  
22 However, even before the bankruptcy filing, Edison  
23 International has stated that it will not put money  
24 into EME. Under the contemplated bankruptcy plan,

1 in fact, Edison International will no longer own  
2 the equity of EME's fund completion of the  
3 bankruptcy proceedings.

4 Which brings us to raising funds  
5 from outside the company from third party lenders,  
6 such as banks. Lenders may be very reluctant to  
7 provide long-term loans to Midwest Generation until  
8 we have consummated or at least proposed a plan  
9 that demonstrates financial viability of Midwest  
10 Generation into the long term.

11 In summary, because of the current  
12 market conditions which have led EME and Midwest  
13 Gen's bankruptcies in the near term it will be very  
14 difficult for us to get funding for the environmental  
15 retrofits to comply with 2015 and 2016 CPS  
16 requirements.

17 HEARING OFFICER HALLORAN: Ms. Vetterhoffer,  
18 any cross?

19 MR. PETMECKY: I'm sorry, I've got a couple  
20 more.

21 HEARING OFFICER HALLORAN: I'm sorry.

22 MR. PETMECKY: Moving to the third topic.  
23 Midwest Generation reasonably did not predict its  
24 buyer financial situation when it opted the its

1 coal fire units into CPS. Midwest Generation has  
2 reasonably experienced a tsunami of challenges.  
3 Some comparisons. Revenues have decreased.

4 For example, market energy prices  
5 for the first nine months of 2012 were roughly 45  
6 percent lower than for the first five months of  
7 2008. Costs of increase over the same period.  
8 Average delivered fuel costs were approximately 60  
9 percent during the first nine months of 2012 and  
10 during the same period in 2008.

11 These economics lower revenues and  
12 higher costs means that Midwest Generation will  
13 dispatch our plans less often and thus receive less  
14 revenues than were expected in 2007.

15 In 2007 EME and Midwest Generation  
16 had access to the capital markets. Today we are  
17 bankrupt. These conditions combined to create a  
18 vastly different economic reality than Midwest Gen  
19 reasonably anticipated in 2007.

20 Which brings me to my last topic.  
21 The financial benefits of a temporary two year  
22 pause in the pace of the CPS rates. This variance  
23 will provide time to, one, clarify our plan and  
24 possibly emerge from bankruptcy. Two, allow more



1 time to possibly obtain external funding.  
2 Currently we need to get the funding by this April,  
3 which is not much time, considering all the  
4 uncertainty. And, three, realize higher revenues  
5 through improving capacity prices and hopefully  
6 energy markets.

7 Therefore, Midwest Generation  
8 believes that it is reasonable to expect sufficient  
9 improvements in its operating revenues and its  
10 ability to secure additional cash and/or credit and  
11 time to allow it to fund additional controls to  
12 comply with the CPS if the variance is granted.

13 So to conclude, Midwest Generation's  
14 current financial hardship necessitates a variance  
15 in the CPS limits for the years 2015 and 2016, and  
16 of the Waukegan Unit 8 emission control  
17 installation deadline. Thank you, for your time.

18 HEARING OFFICER HALLORAN: Thank you,  
19 Mr. Petmecky. Ms. Vetterhoffer, any cross?

20 MS. VETTERHOFFER: No questions. Thank you.

21 HEARING OFFICER HALLORAN: Members of the  
22 board, any questions of the witness? Technical  
23 unit, any questions? That's it. Thank you, sir.

24 MR. BONEBRAKE: Mr. Halloran, we would then

1 propose to call next, Mr. McCluskey.

2 MR. MCCLUSKEY: Good morning.

3 HEARING OFFICER HALLORAN: I'm sorry. The  
4 court reporter will swear you in. Raise your right  
5 hand, please.

6 (witness sworn.)

7 BY MR. MCCLUSKEY: Good morning, Members  
8 O'Leary, Burke, Zalewski and Glosser, Hearing  
9 Officer Halloran.

10 My name is Fred McCluskey, and I am  
11 Vice President of Technical Services for EME, LLC  
12 and Midwest Generation. I'm also a member of EME's  
13 executive management committee. Among my principal  
14 responsibilities I oversee all major capital  
15 project management engineering and construction  
16 activities, such as installation of environmental  
17 controls for both Midwest Generation and EME.

18 I have worked in the electric  
19 industry for roughly 30 years. For the past 23  
20 years I have worked for EME and its affiliates. I  
21 have extensive experience in various aspects of the  
22 electric generation industry, including, capital,  
23 long-term, strategic planning, asset development,  
24 and evaluation, operations and large capital

1 project executions.

2 I'm here today to talk about Midwest  
3 Generation's CPS reduction efforts to date, its  
4 compliance plans for 2015 and beyond, the  
5 alternatives to the variance that Midwest  
6 Generation has evaluated, and the emission impacts  
7 of granting the variance.

8 I submitted an affidavit earlier  
9 that addressed these topics. I would also be happy  
10 to answer any questions that the court has  
11 regarding these topics at the end of my testimony.

12 Midwest Generation has taken  
13 significant costly steps to comply with the CPS.  
14 In fact, to go beyond the requirements of the CPS  
15 since its adoption in 2007. I'd like to highlight  
16 a number of our key accomplishments.

17 We completed all mercury related  
18 activated carbon injection systems in accordance  
19 with CPS timetables and have operated the units in  
20 compliance with CPS. Of particular note is the  
21 fact that we committed all but two of our units to  
22 meeting the more stringent CPS mercury rate  
23 standard of .008 pounds per gigawatt hour two years  
24 earlier than required.

1                   We completed installation of all CPS  
2   nitrogen oxide or NAAQS related controls in  
3   accordance with CPS and are fully compliant with  
4   the CPS NAAQS rate of 0.11 pounds per MMBTU. This  
5   includes SMCR's at our Powerton, Joliet, Will  
6   County and Crawford units.

7                   I think everyone understands that  
8   our Crawford facility has subsequently ceased  
9   operation. Of particular importance to our  
10   discussions today is the fact did we achieve  
11   compliance with the 2013 CPS emissions rate of 0.44  
12   pounds, MMBTU SO2 in 2011 and 2012 two years  
13   earlier than required.

14                  In short, we've met or exceeded all  
15   of our original commitments under the most  
16   difficult of circumstances. Midwest Generation's  
17   achievements to date demonstrate our commitment to  
18   reducing emissions and complying with the CPS.

19                  Those achievements have come at a  
20   considerable cost. To date we have spent more than  
21   \$200 million dollars to install control equipment.  
22   An increase of roughly 30 million since my previous  
23   affidavit as we continue to advance projects to  
24   insure CPS compliance.

1                   We permanently shut down Waukegan  
2     Unit 6 in 2007, and Will County Units 1 and 2 in  
3     2010, in accordance with CPS. We also accepted  
4     obligations in the Waukegan Unit 7 CPS variance  
5     order to shut down the three coal fire units at  
6     Fisk and Crawford. The Fisk unit in 2012 and the  
7     Crawford units at the end of 2014.

8                   The decision to shut down Fisk and  
9     Crawford was a difficult one and had a significant  
10    impact on many of the employees with us today. All  
11    told since opting in CPS in 2007, Midwest Generation  
12    has reduced annual emissions of NAAQS by roughly 74  
13    percent, mercury by roughly 84 percent, particulate  
14    matter by roughly 23 percent, SO2 by roughly 35  
15    percent, and carbon dioxide by roughly 20 percent.

16                  Midwest Generation wishes that it  
17    could continue to meet or exceed all the standards  
18    and deadlines as set forth in the CPS. But in  
19    light of the financial challenges outlined by Trace  
20    Petmecky we likely cannot. That is why we are  
21    asking for relief from the 2015 and 2016 SO2 rates  
22    and the deadline for installing controls on our  
23    Waukegan Unit 8.

24                  I would like to describe for you the

1 SO2 control plant that we have selected for CPS  
2 compliance and the other alternatives we  
3 considered. The control plant is relatively  
4 simple. It's lowering costs and alternate  
5 technologies and can be implemented on a relatively  
6 short timeframe. For perspective, it's the  
7 difference between hundreds of millions of dollars  
8 versus billions of dollars.

9                   The program has two key components.  
10 Ultra low sulfur coal and dry sorbent injection.  
11 The sorbent being Trona, a raw mineral used in  
12 production of sodium carbonate. Sodium carbonate  
13 is used in many of the products we use on a  
14 day-to-day basis, like, water softeners and laundry  
15 soaps. It's also, used to make sodium bi-carbonate  
16 or baking soda, which is something I think we're  
17 all familiar with.

18                   This was the least expensive, yet  
19 effective method for controlling SO2 emissions at  
20 the levels required by CPS. Moreover, we  
21 determined that it would allow us to stagger  
22 capital investments over time, which is a key  
23 consideration.

24                   Utilizing ultra low sulfur coal,

1 which is typically characterized as coal containing  
2 less than 0.55 pounds per MMBTU of sulfur. We have  
3 achieved system wide SO2 rates in 2011 and 2012  
4 based on estimates today below the .44 pound per  
5 MMBTU CPS standards. That did not go into effect  
6 until this year. Yet another example of achieving  
7 compliance well in advance of CPS deadlines.

8                   For the second control component  
9 Trona is injected into the boiler as a dry powder.  
10 There it reacts with and neutralizes SO2 and acid  
11 gases. Since we're injecting more particulate  
12 material into the boiler, as part of the process we  
13 have to collect more particulate material post  
14 combustion.

15                   The increase in fly ash increases  
16 particulate loading to the ESPs or electrostatic  
17 precipitators. As such, Midwest Gen will need to  
18 upgrade its ESPs or undertake other particulate  
19 control measures in conjunction with installing  
20 Trona injection systems.

21                   In response to the board's recent  
22 questions concerning the schedule for installing  
23 controls, we anticipate that a typical installation  
24 of Trona FGD equipment and necessary ESP upgrades

1 will take 18 to 24 months. This would encompass  
2 the full project from preliminary engineering to  
3 completion, start-up and performance testing of the  
4 completed systems. Unit outages associated with  
5 the ESP upgrades will vary considerably based on  
6 the complexity of work, but would typically be 16  
7 to 20 weeks in duration.

8 As I will discuss further in a  
9 moment, however, requiring specific timelines and  
10 deadlines would deprive Midwest Generation the  
11 flexibility that was specifically contemplated and  
12 allowed under the CPS. That flexibility is  
13 particularly critical for Midwest Generation as it  
14 proceeds through its restructuring.

15 By any measure these are significant  
16 and complex projects that require careful planning  
17 and close coordination between engineering,  
18 construction and operating staff to insure a safe  
19 working environment.

20 Our goal throughout this project is  
21 to be injury free. While this is the most cost  
22 effective, yet compliant program we considered, it  
23 is still extremely expensive. We estimate that the  
24 FGD equipment will average about \$38 million



1 dollars per unit, and ESP upgrades will average  
2 about \$55 million dollars per unit.

3 Some of the larger units like,  
4 Powerton 5 need more significant upgrades and the  
5 cost of this and similar units are considerably  
6 more. Added to those costs are the operating costs  
7 associated with Trona injections and the  
8 comparatively higher as delivered costs for  
9 procuring ultra low sulfur coal.

10 Looking ahead, we are in the process  
11 of installing SO2 controls on Powerton Unit 6. Our  
12 plans associated with the balance of units is quite  
13 fluid, as you could expect, given our financial  
14 condition, and the current state of the markets.

15 We will continue to evaluate all  
16 options for deferring and reducing capital expense.  
17 However, I assure you that we are committed to  
18 meeting our obligations under CPS and this variance  
19 request.

20 As I stated earlier, the cost of our  
21 overall SO2 control program is significant.  
22 Midwest Generation would need to spend  
23 \$440 million dollars in 2013, in 2014 in order to  
24 satisfy the CPS Waukegan Units 7 and 8, FGD

1 requirement and meet 2015 and 2016 systemwide SO2  
2 rates. We will need to spend hundreds of millions  
3 more in the 2015 to 2018 timeframe to install  
4 controls on our remaining units to attain CPS  
5 compliance.

6                   However, as Trace Petmecky  
7 testified, Midwest Generation has not been able to  
8 identify a viable source of funding for the full  
9 \$440 million dollars needed in 2013 and 2014.  
10 Consequently, we seek this variance so that we  
11 could defer approximately \$210 million dollars of  
12 that \$440 million dollars worth of work to 2015 or  
13 later.

14                   The work we seek to defer includes  
15 work in connection with the installation of Trona  
16 FGD equipment and ESP upgrades on Waukegan Unit 8,  
17 Powerton Unit 5 and either Joliet Unit 7 or 8. If  
18 the variance is denied Midwest Generation would  
19 need to begin incurring substantial costs in  
20 connection with these controls no later than April  
21 of this year as a result of equipment in  
22 construction lead times.

23                   As I mentioned, Midwest Generation  
24 considered various alternatives. We selected the

1 most efficient approach in terms of SO2 emission  
2 control. We selected the most efficient approach  
3 in terms of SO2 removal and costs.

4 It is neither feasible nor  
5 productive to now attempt to change course to  
6 another compliance strategy. Installing wet  
7 scrubbers or other types of dry scrubbers would  
8 cost more than controls we have selected and would  
9 take more time.

10 Converting to natural gas would  
11 reduce SO2 emissions, but would render the units  
12 uneconomic relative to more efficient combustion  
13 turbine based gas generation. In short, it would  
14 be unable to survive in a competitive market place.

15 If the board denies the variance to  
16 Midwest Generation and Midwest Generation cannot  
17 secure the necessary funding by April of 2013,  
18 which it almost certainly will be unable to do,  
19 Midwest Generation would be forced to curtail its  
20 operations.

21 We estimate that the curtailment  
22 would be roughly 35 percent in 2015 and 75 percent  
23 in 2016, as compared to average generation from the  
24 uncontrolled units over the past five years.

1                   Such curtailment would be  
2   unsustainable. It would substantially reduce  
3   revenues at a critical time and would likely result  
4   in the temporary or even permanent shut down of at  
5   least some of the curtailed units.

6                   Such curtailments may also result in  
7   penalties under Midwest Generation's capacity  
8   contracts, and may even require regulatory approval  
9   in light of grid reliability concerns.

10                  In sum, the curtailments could  
11   threaten the continued existence of Midwest  
12   Generation and the future viability of its  
13   stations. Shuttering our stations would have  
14   devastating impacts on hundreds of workers and  
15   their families, and significant numbers of union  
16   craft workers we hired to perform major maintenance  
17   and overhauls on an annual basis.

18                  More simply, the impact of shutting  
19   down units would drain hundreds of millions of  
20   dollars from the Illinois economy. Fortunately,  
21   this is not a choice between protecting the  
22   environment and saving jobs. We can do both.  
23   Granting the variance would have a positive impact  
24   on SO2 and other pollutant emissions.

1           The SO2 mass emission limits to  
2    which Midwest Generation would commit would reduce  
3    SO2 emissions overall over the period 2013 to 2016  
4    by 3,181 tons of SO2. Those SO2 mass emission  
5    limits would also cause a reduction of other  
6    pollutant emissions, including 11,553 tons of  
7    NAAQS, 4,306 tons of particulate matter, and  
8    22 million 266,320 tons of carbon dioxide, and 183  
9    pounds of mercury.

10           Thank you for your attention and  
11    consideration. I'd be pleased to answer any  
12    questions you may have.

13           HEARING OFFICER HALLORAN: Ms. Vetterhoffer,  
14    any cross?

15           MS. VETTERHOFFER: No questions.

16           HEARING OFFICER HALLORAN: Members of the  
17    board, any questions for Mr. McCluskey? Ms. Liu,  
18    Mr. Brown, Mr. Rao?

19           MR. RAO: Thank you, for your testimony,  
20    Mr. McCluskey. I have a clarification I wanted to  
21    ask you about.

22           You mentioned that Midwest  
23    Generation has chosen as a compliance strategy to  
24    use sulfur for coal and this Trona FGD and

1 upgrading of ESP. And in your response to the  
2 board's questions you had also, you know, mentioned  
3 the importance of having the flexibility under CPS  
4 so that Midwest Generation could retain ability to  
5 adopt alternate or emerging technologies in order  
6 to comply with the CPS.

7 So other than this, you know, the  
8 compliance strategy that you mentioned, could you  
9 tell us a little bit more of, like, if there are  
10 any other alternate or emerging technologies that  
11 Midwest Generation is considering?

12 MR. McCLUSKEY: Well, I think a lot of this  
13 goes to our core strategy these last few years,  
14 which has been to reduce our total capital exposure  
15 and look for alternatives. We're constantly  
16 looking for alternatives.

17 At present the best alternative is  
18 Trona with the ESP upgrades, but we continue to  
19 work closely with industry and technology  
20 providers. To the extent that there is something  
21 better that provides long -- better long-term  
22 opportunity, reduces our capital exposure, then  
23 we're going to continue to look at adopting that.

24 I think it's one of the -- it's the

1 flexibility that's embedded within CPS, since it's  
2 a step down rate over time, and for the most part  
3 it's a fleet wide emissions rate. It gives us a  
4 lot of flexibility. If there's a new mouse trap,  
5 we're certainly going to look at that opportunity,  
6 because ultimately it'll be beneficial to us and  
7 the employees that work for us.

8 MR. RAO: And regarding the specific, the  
9 variance request that affects the specific units  
10 with Midwest Generation, did I hear you say that  
11 the units that would be affected in terms of  
12 implementing some of the control technologies would  
13 be Waukegan 8, Powerton 5, and Joliet 7 and 8, are  
14 those the ones?

15 MR. McCLUSKEY: One, the control strategy is  
16 universal. We burn a common fuel across. The  
17 control stat strategy, as stated today, is Trona  
18 and various particular control upgrades. So those  
19 are on a unit level basis and that covers all the  
20 operating units within the fleet.

21 The variance as requested is meant  
22 to defer some of the capital that's relatively near  
23 term. That's what -- you know, we have to start  
24 Waukegan 7, we're looking to stagger Waukegan 7 and

1 8, which allows us to defer a little bit of  
2 capital, that more effectively managed the work at  
3 Waukegan 7 and 8.

4 Recognize that under the current  
5 plan, we're not planning on operating Waukegan 8  
6 until the unit restarts in 2015. So it would be  
7 shut down until the system is fully operational.

8 The current plan is to install Trona  
9 and various ESP upgrades for the balance of the  
10 units over the CPS timeframe.

11 MR. RAO: One of the questions we had asked  
12 when the Hearing Officer ordered that this file on  
13 January 25th was for a typical, you know, time  
14 schedule for implementation of all phases of the  
15 control program for -- with respect to the Trona  
16 FGD equipment and necessary ESP upgrades, and you  
17 did give us a general timeframe of 18 to 24 months.

18 But we also had asked for a time  
19 schedule for each CPS unit to comply with Section  
20 225.295 B at the end of the variance. And you  
21 mentioned that -- you know, because of the  
22 flexibility that you think it's really important  
23 for Midwest Generation.

24 You didn't touch on that question.



1 So I was wondering if you can elaborate a little  
2 bit more about what other unit, you know, what the  
3 time schedule would be for other units or should we  
4 assume that that 18 to 24 months that you told us  
5 applies to all affected units?

6 MR. McCLUSKEY: The work varies quite  
7 considerably unit to unit. Some units are going to  
8 be shorter, some units are going to be longer,  
9 depending. And it's principally the complexity of  
10 the precipitator upgrades. 18 to 24 months is  
11 pretty typical.

12 The engineering component is  
13 relatively small, but represents roughly five  
14 percent of the total project. We're seeing lead  
15 times for major materials associated with  
16 initiating construction of up to a year.

17 So, you know, typically we spend the  
18 first, anywhere from two to four months doing  
19 preliminary engineering. We, at that point, expend  
20 considerable dollars associated with long lead  
21 material procurements.

22 The construction activities are  
23 staggered by unit, because you have to recognize  
24 that the Trona component, the mills, the blowers

1 and associated equipment can be installed while the  
2 units are operating. Obviously, the precipitator  
3 upgrades require very extensive unit outages.

4 So if there's a stagger between the  
5 Trona work versus precipitator upgrade work and it  
6 varies on a unit by unit basis, because we've  
7 strived to align the work with existing outages,  
8 it's the most cost effective, and you can breakdown  
9 that 18-month timeframe into, you know, three to  
10 four months for engineering, up to a year of long  
11 lead procurement.

12 The construction schedule is going  
13 to typically withstand up to a year and embedded  
14 within that 18-month timeframe, and most of these  
15 units will be offline from -- anywhere from four to  
16 five months for the outages to perform the  
17 precipitator upgrades.

18 If I'm avoiding any specificity only  
19 because it varies so considerably from unit to unit  
20 based on the scope of work associated with the  
21 precipitator upgrades and the lead times for that  
22 equipment.

23 MR. BONEBRAKE: Just as a clarification. I  
24 would just also mention that Mr. McFarlan touched

1 on some compliance plan elements that have been  
2 proposed that leads toward compliance in 2017 at  
3 the end of the variance period. So I think there  
4 was also information relevant to the question you  
5 just asked in Mr. McFarlan's testimony.

6 MR. RAO: Yeah. We were trying to get  
7 information into the record. I know you had  
8 proposed as part of the compliance plan the  
9 emission rates that Midwest Generation will have to  
10 comply during the term of the variance, and we were  
11 more interested in the compliance strategy in terms  
12 of what equipment will be installed to come in  
13 compliance. And would it be, you know, acceptable  
14 for Midwest Generation to have some of these  
15 elements as part of the compliance plan?

16 MR. BONEBRAKE: I would suggest that  
17 Mr. McFarlan or Mr. McCluskey could address the  
18 challenges associated with specific unit  
19 requirements in the plan.

20 MR. McCLUSKEY: I think the challenge is one  
21 of those two components. There's one, CPS  
22 requirements as stated today is one set of  
23 schedules. We're currently working on Powerton 6.  
24 We would quickly initiate work, and we recognize we

1 still need to make investment decisions associated  
2 with Waukegan 7 and 8.

3 We would expect to quickly follow  
4 that with decisions, investment decisions around  
5 Joliet, both 7 and 8 and Powerton 6. The variances  
6 requested will allow us some flexibility to extend  
7 those decisions, particularly those related to  
8 Powerton 6 and Joliet.

9 Funding, as Trace Petmecky has  
10 outlined, is our principal consideration here. We  
11 have to balance compliance, in some cases which  
12 will require -- has the potential to require  
13 curtailments to meet the mass emission rate limits  
14 that we're proposing with the available cash and  
15 weigh all of those investment decisions discreetly,  
16 which is why we need to maintain flexibility and  
17 not state unit by unit plans, because that really  
18 is subject to our ability to fund that work. But  
19 those decisions will not impair our ability to meet  
20 the CPS requirements, either today or as stated, as  
21 requested under the variance.

22 MS. LIU: Good morning, Mr. McCluskey.  
23 Midwest Generation has said time and time again  
24 that they need flexibility in their control plan.

1                   Are you aware that there is a  
2     section in the board's variance procedures that  
3     does allow a petitioner to file a motion during the  
4     term of the variance to modify any internal  
5     variance compliance dates? And that would be  
6     Section 35, Illinois Administrative Code 104.212.

7           MR. McCLUSKEY: I am not aware of that, but  
8     I'm sure Counsel is aware of it.

9           MR. BONEBRAKE: Yeah. I'm assuming that's a  
10    legal question. The rules say what they say. You  
11    know, if there is such a motion possibility, you  
12    know, that's something that we could consider. Is  
13    there a question related to that that you would  
14    like to ask?

15          MS. LIU: With the ability to modify the  
16    internal compliance dates, would you be able to  
17    provide a more specific time schedule with dates  
18    for the Trona FGD equipment at various plants or a  
19    potential plant shutdowns buying that flexibility  
20    does exist to change those dates?

21          MR. McCLUSKEY: Not at this time. You need  
22    to -- and I respect the question, and I understand  
23    why you're asking it. But at the same time, given  
24    our bankruptcy and our discussions with both

1 unsecured creditors and loan holders, we have  
2 significant limitations as to the information that  
3 we can provide on the decisions that we have  
4 pending for future investments and what the  
5 likelihood of those outcomes may be.

6 MS. LIU: Thank you.

7 MS. BURKE: In the petition you discussed the  
8 figure, 210 million as being an estimate of the  
9 activities that needed to be delayed or deferred.  
10 Thinking about that number in connection with your  
11 testimony today, is what's included in that  
12 210 million, activities such as the work on  
13 Waukegan Unit 8, Powerton Unit 5 and Joliet Unit 7  
14 or 8, is that what you contemplate as being part of  
15 the 210 million?

16 MR. McCLUSKEY: In terms of the deferral?

17 MS. BURKE: Yes.

18 MR. McCLUSKEY: Yes. I mean, we're working  
19 on all of the projects in many respects parallel.  
20 We've already selected common equipment. We've  
21 already selected the key vendors that are going to  
22 support us. We have the underlying design for  
23 virtually all of the units, which was a lot of  
24 commonality between the two.

1                   What we're seeking to do is defer  
2       commitments. There's minimal deferral related to  
3       Waukegan 8, because we're only asking to move that  
4       five months. We would actually start procuring  
5       equipment for both Waukegan 7 and Waukegan 8  
6       simultaneously, because we get -- there's an  
7       advantage to that, as stated in our previous  
8       variance request of buying that equipment as a bulk  
9       package, that the balance we're associating with  
10      the larger Joliet units, those are significant  
11      investments, and Powerton 5, which is also a very  
12      significant investment.

13                   Those three units alone represent  
14      more than \$300 million dollars worth of total  
15      commitment, which was really the bulk of what we're  
16      trying to defer.

17                   HEARING OFFICER HALLORAN: Thank you,  
18      Mr. McCluskey. You know, I think my thought is  
19      now -- Mr. Bonebrake.

20                   MR. BONEBRAKE: Mr. Halloran, I just had a  
21      redirect question or two.

22                   HEARING OFFICER HALLORAN: Sure. Go ahead.

23                   MR. BONEBRAKE: If that'll be fine, and then  
24      I think you were heading towards maybe suggesting a

1 break?

2 HEARING OFFICER HALLORAN: Yes, sir.

3 MR. BONEBRAKE: Perhaps we can just get a  
4 couple of follow-up redirect questions for  
5 Mr. McCluskey and then talk about a break.

6 Mr. McCluskey, you mentioned the  
7 significance of flexibility under the CPS. Can you  
8 provide for the board, essentially, why that  
9 flexibility has been and is important, and maybe an  
10 example, you know, based upon compliance activities  
11 to date and selection of compliance plans, how  
12 important the flexibility provided by the CPS is  
13 for that whole process?

14 MR. MCCLUSKEY: You know, I think as  
15 discussed in a number of the testimonies, you know,  
16 the underlying tenants of CPS in providing this  
17 flexibility has actually been very important to us.  
18 Its been important to us historically, and it's,  
19 obviously, important to us going forward.

20 Its been really that flexibility  
21 that's enabled us to modify our compliance plan  
22 significantly over the course of these last few  
23 years. You know, initially at inception in 2007  
24 our strategy was considerably different, but yet



1 the objectives were the same, which is to meet the  
2 fleet wide emissions rates as outlined within the  
3 CPS agreement.

4 The expenditures estimated at that  
5 time were multiple billions of dollars, because the  
6 technology was significantly different. Its been  
7 the flexibility afforded us within CPS that has  
8 allowed us to really manage our technology  
9 selections and significantly reduce our capital  
10 exposure.

11 As stated earlier, we've gone from,  
12 you know, nominally in excess of \$2 billion  
13 dollars, which is really closer to \$3 billion, to  
14 roughly \$800 million dollars for overall CPS  
15 compliance costs. That's been very, very  
16 significant. Its also allowed us to change our  
17 plan and align our plan relative to our operating  
18 requirements of our units.

19 Initially our thinking was to begin  
20 work at Powerton 5, principally because Powerton 5  
21 has some fairly significant major work that needs  
22 to be done. I would simply characterize that as a  
23 super heater replacement. The expense associated  
24 with that was considerable. But CPS and the

1 flexibility built within CPS actually allowed us to  
2 adjust our plan and we switched to Powerton 6.

3 Just as we looked forward when  
4 granted this variance, we have completion of the  
5 work at Powerton 6. We have Waukegan 7 work,  
6 Waukegan 8 work, and those -- again, those  
7 decisions will have to be made.

8 But it just provides us a tremendous  
9 amount of flexibility to adjust the plan relative  
10 to operating conditions, to market conditions, and  
11 to conditions as outlined by Trace Petmecky that  
12 are really financial in nature.

13 It just provides us a tremendous  
14 amount of flexibility. It has historically and its  
15 provided significant benefits to us, and that same  
16 flexibility will provide benefits to us in the  
17 future.

18 HEARING OFFICER HALLORAN: Any recross or  
19 further direct, any questions?

20 MS. LIU: Mr. McCluskey, can I ask you one  
21 more question, please. Could you please more fully  
22 explain how your compliance plan would demonstrate  
23 progress to be in compliance with the applicable  
24 requirements based on what you're planning to do?

1 How your compliance plan would demonstrate  
2 progress?

3 MR. McCLUSKEY: I think we're prepared to  
4 provide a report out to the board on what we're --  
5 we have completed in the, you know, in the year. I  
6 think that's a reasonable request to provide for  
7 regular status reports of decisions that we're  
8 making and work that we're completing.

9 I think evidence of our compliance  
10 will be in our annual emissions rates, which will  
11 be in full compliance with the CPS variance  
12 request. It will be a matter of record what  
13 emission rate limits we're achieving. It will be a  
14 matter of record what SO2 tons are being emitted.

15 And, obviously, we'll be more than  
16 happy to share and maintain a dialogue with the  
17 board so that you can insure and be comfortable  
18 that we're progressing work and that we will be in  
19 compliance.

20 There will be times where that may  
21 not be very specific in terms of on a forward  
22 looking basis, but we can certainly provide you  
23 details on work that we're completing to date.

24 MR. BONEBRAKE: If I may. The question I

1 think also is perhaps properly proposed to  
2 Mr. McFarlan, who also touched in his testimony on  
3 plan elements, including the rates and mass  
4 emission limits that had been proposed on a  
5 decreasing basis.

6 Mr. McFarlan, maybe you can just  
7 mention that again, so the board has an  
8 understanding of the plan elements that would help  
9 lead toward compliance in 2017.

10 MR. McFARLAN: As I testified --

11 HEARING OFFICER HALLORAN: Remember, you're  
12 still under oath, Mr. McFarlan. Thank you.

13 MR. McFARLAN: I'm Doug McFarlan. As I  
14 testified, the compliance plan we designed with  
15 three components. One is the new limit on mass  
16 emissions 2013 through 2016, a new reported  
17 requirement, a new enforceable limit and condition  
18 to CPS.

19 And as Fred was saying, every year  
20 we'll be filing reports to show that emissions have  
21 come down each year to maintain below that -- below  
22 those new caps on tons. So we think that's  
23 critically important, the new element of the CPS  
24 under the variance, an important piece of the

1 compliance plan.

2 And then, secondly, the alternate  
3 emission rate limits in 2015, 2016 higher than the  
4 current emission rate limits in the CPS, but still  
5 lower than the 2013, 14 rates. Again, a matter of  
6 record and required reporting that we've achieved  
7 those, which shows progress on the way to full  
8 compliance again in 2017 with the original CPS.

9 And then, thirdly, the reporting  
10 that Fred was just discussing. It would be our  
11 hope that through those reports you see the only  
12 work we have done, which indicates the progress  
13 that we're making throughout the fleet.

14 And, also, the work that is planned,  
15 as Fred said, plans are subject to change, but we  
16 will -- we do have good faith plans from year to  
17 year of what we are looking to do. What we've been  
18 trying to emphasize is that as a matter of the way  
19 we manage our business if we can find a way to  
20 defer an expense or, you know, reconfigure to  
21 become more efficient of a particular plan and  
22 still comply, we'll do that.

23 And that's the flexibility that  
24 having fleet wide emission limits has given us,

1 other than, you know, there are specifics. I mean,  
2 there's -- clearly here you're talking about unit  
3 specificity. Waukegan 7, Waukegan 8 have unit  
4 specificity to them that can -- you know, is part  
5 of the compliance plan also.

6 I think, you know, something else to  
7 bear in mind is that as we go forward to comply  
8 with the CPS's currently written order under the  
9 variance, I think we've all stated that there's --  
10 there are multiple compliance approaches you can  
11 take, either individually or in combination.

12 One is the controls, one is to  
13 curtail regeneration, which obviously, results in  
14 lower emissions, and one is to actually shut down  
15 units, which we have done in some cases for  
16 economic reasons, but also can become a compliance  
17 strategy for less efficient, less economic units.  
18 So that's something that, again, we look at  
19 literally on a daily basis almost in the times  
20 which we live now.

21 So I think we're very open to very  
22 open book reporting dialogue throughout to show  
23 where we are at a particular point in time with our  
24 planning, as well as what we've achieved.

1 But to a lay out a blueprint unit by  
2 unit now, other than the units that are already  
3 required of the CPS, robs us of that very  
4 flexibility that has been a core component from the  
5 start.

6 So we keep coming back to having  
7 difficulty, you know, with making that kind of  
8 commitment, other than absolutely full compliance  
9 with the emission rate limits, full compliance with  
10 the tonnage cap limits, ongoing, you know,  
11 guaranteed reductions in emissions year over year  
12 and more voluminous and detailed reporting than we  
13 do today so we can continue to evaluate constantly  
14 our progress toward full compliance again in 2017.

15 MR. RAO: Thank you, very much.

16 MR. McCLUSKEY: Thank you.

17 HEARING OFFICER HALLORAN: We're going to  
18 take a break now till 11:00 o'clock. And my  
19 thought is when we come back at 11:00 any members  
20 of the public or elected officials that have  
21 recently showed up that need to make a statement  
22 now, we can do that.

23 And if not, then we can move on to,  
24 I think Midwest Gen's fourth witness. So

1 11:00 o'clock. Thank you.

2 (recess taken.)

3 HEARING OFFICER HALLORAN: What I discussed  
4 beforehand before the break, any elected officials  
5 that wish to give public comment at this point,  
6 please do so, and anybody that has to leave before,  
7 say 12:30, make a public comment, please do so now.  
8 So thank you. The first gentleman. And just state  
9 your name and spell it for the court reporter.

10 MR. MCGOLDRICK: Thank you. My name is  
11 Terry McGoldrick, it's M-c-G-o-l-d-r-i-c-k. I'm  
12 the Vice President and Senior Business Manager for  
13 Local 15 of the International Brotherhood of  
14 Electrical Workers.

15 And on behalf of our President,  
16 Business Manager, Dean Apple, I'm here today  
17 representing 540 members who operate the Midwest  
18 Generation plants. We're the union operators,  
19 electricians, maintenance workers, mechanics,  
20 laborers and co-handlers. And many of these guys  
21 and us have been at these plants for 20, 30, and  
22 even 40 years.

23 Last year our members delivered for  
24 Midwest Generation the best safety performance and



1 best reliability performance in its history. We're  
2 proud of the job that we do to provide electricity  
3 and provide for our families, while respecting the  
4 environment.

5 This company and our members have  
6 worked together to clean up these plants over the  
7 last 13 years, and the relief the company is asking  
8 for does nothing to diminish that record.

9 Local 15 also represents 6200  
10 workers in Illinois. Workers who work in coal  
11 plants, nuclear plants, with utility transmission  
12 distribution systems. We know this industry and we  
13 have watched it take severe economic hits in recent  
14 years, that have affected our members at the cost  
15 of hundreds of jobs.

16 We've seen Midwest Generation forced  
17 to close plants as recently as last year, and we've  
18 seen them look at every angle to maintain those  
19 operations and make economic sense.

20 There's a real financial hardship  
21 the company is going through; they are working hard  
22 to get -- work through it, and we are working with  
23 them to do that as well.

24 We strongly support this variance to

1 strengthen their opportunity to protect the jobs we  
2 have today. We have an open relationship with the  
3 company. We understand the challenges they face,  
4 and we know this variance is intended to give them  
5 the best chance to maintain a long, strong business  
6 that benefits this state and the communities where  
7 our members live and work.

8 Thank you for your consideration to  
9 our members, and urge you to approve this request.  
10 Thank you, very much.

11 HEARING OFFICER HALLORAN: Thank you, sir.

12 MR. FRANCO: Hello, my name is Antonio Franco  
13 F-r-a-n-c-o. I am the Co-chair of Students  
14 (inaudible), here at JJC. I am also a concerned  
15 member of this community. I have been living here  
16 for the past 10 years with my family. We migrated  
17 from Mexico, and we came to this community.

18 I am concerned that if we approve  
19 this variance to the coal plant the air pollution  
20 will cost significant damage to the community. I  
21 do not think that any other people that are here  
22 and whose jobs are at risk because of this had  
23 anything to do with it.

24 I think that most of the people that

1 have -- that the reason why this is a big problem  
2 are the people who control this power plant. In  
3 other words, the ones that are here to make the big  
4 decisions.

5 I don't think that any of you really  
6 who are members of a union have anything to do with  
7 it. Yet we are being the ones that have to pay for  
8 it. Not only the jobs that are at risk, but also  
9 in the jobs -- well, in the -- sorry, I'm a little  
10 nervous.

11 HEARING OFFICER HALLORAN: Take your time;  
12 that's okay.

13 MR. FRANCO: But also in the health risks of  
14 other people because of the pollution. I am  
15 concerned that because I live in this community and  
16 because my family lives in this community their  
17 health is going to be at risk because of this  
18 variance.

19 Not only are the jobs of these  
20 people at risk, like I said before, but we need to  
21 really look at how it's just going to effect the  
22 community. Coal is not going to be the energy of  
23 the future. We know that it's a limited resource  
24 and we need to look into something else.

1 I'm not saying that the people here  
2 in the unions shouldn't be working for a nuclear  
3 power plant or a coal power plant or a gas power  
4 plant.

5 Who's to say that they can't work  
6 for creating winter by looking at renewal sources  
7 of energy. We need to look into the future. Not  
8 to stay on these resources that are going to be  
9 gone. Thank you.

10 HEARING OFFICER HALLORAN: Thank you, sir.

11 MR. WOLF: Good morning. Thanks to the  
12 board. My name is Tom Wolf W-o-l-f, like the  
13 animal. I'm with the Illinois Chamber of Commerce.  
14 I'm the Executive Director on the RG Council. On  
15 behalf of the Illinois Chamber of Commerce, I would  
16 like to be record with the Illinois Pollution  
17 Control Board and supporting Midwest Generation and  
18 its request for short term relief from state  
19 regulations covering emissions of its coal fire  
20 power plants.

21 The company's request is  
22 straightforward, reasonable and it falls in line  
23 with our support for rational regulatory  
24 flexibility, while still leaving intact the overall

1 goal and timeline established by the board.

2 The adjustment will still provide  
3 positive benefits for the people of Illinois and  
4 predictability for the energy marketplace.

5 Midwest Generation's request its  
6 permission to restructure the investment schedule  
7 during just two years of the state's 12-year  
8 emissions reduction program. It seems a reasonable  
9 modification.

10 The company is not shirking from its  
11 responsibilities or commitments to the overall  
12 goals of the program. It is merely asking to defer  
13 some capital expenses as it goes through a  
14 financial or a finance in restructuring. Something  
15 that could not have been predicted when the program  
16 was put in place more than a decade ago.

17 Therefore, since Midwest Generation  
18 provides important based on the energy in the TGM  
19 market. I would say they're to true their word and  
20 satisfied previous upgrades of facilities with a  
21 more than \$300 million dollars of investments since  
22 they employed thousands of hard working  
23 Illinoisans.

24 And, finally, since they're not

1 asking for an extension of the regulatory goal, but  
2 for an opportunity to adjust the investment  
3 schedule, the Illinois Chamber respectfully asks  
4 the Pollution Control Board to approve Midwest  
5 Generation's request.

6 I want to 10 seconds of personal  
7 note. Though I live in Chicago, my in-laws, who I  
8 love, I know it's not -- you're supposed to not say  
9 that, but I love my in-laws. My father-in-law and  
10 my mother-in-law have lived in the shadow of the  
11 Romeoville coal plant in Romeoville since they  
12 built their house there in 1957, and they still  
13 live there and raised a family there, including my  
14 wife, and I would not be here today if I thought  
15 anything that was being discussed today would harm  
16 their health. Thank you, very much.

17 HEARING OFFICER HALLORAN: Thank you,  
18 Mr. Wolf.

19 MR. CAAMANO: Good morning to everyone. My  
20 name is Jerry Caamano, with the Three Rivers  
21 Manufacturing Association. I am the Executive  
22 Director.

23 HEARING OFFICER HALLORAN: Could you spell  
24 your last name, sir, please.

1 MR. CAAMANO. C-a-a-m-a-n-o.

2 HEARING OFFICER HALLORAN: Thank you.

3 MR. CAAMANO: I appreciate the opportunity to  
4 deliver my testimony in support of the variance  
5 requested by Midwest Generation. Our organization  
6 represents 160 members in Will County and Grundy  
7 Counties, including the Joliet and Will County  
8 plants operated by Midwest Generation.

9 We serve the needs of our members  
10 businesses and support the economic well-being of  
11 the communities we call home. Midwest Generation  
12 is a key part of the manufacturing sector here in  
13 Will County. When one of our members faces  
14 setbacks, it affects all of us.

15 The company employs hundreds of  
16 skilled workers at their plants. Not only their  
17 employees, but also building trade contractors,  
18 provides state revenue for the public services and  
19 supports businesses throughout the state by  
20 purchasing hundreds of millions of dollars in goods  
21 and services.

22 I understand quite well that  
23 manufacturers like Midwest Generation must operate  
24 their plants responsibly for the sake of our

1 environment and the health of our fellow residents.

2 One of our key purposes of the  
3 organization is to keep our members abreast of  
4 environmental regulations and to work together to  
5 insure that we perform our duty as good corporate  
6 citizens.

7 Midwest Generation has demonstrated  
8 that they understand their responsibility, they  
9 have a strong 13 year environmental record.  
10 They're meeting, and in some cases, exceeding their  
11 current time table for state regulations.

12 The temporary relief that Midwest  
13 Generation is requesting will have no impact  
14 whatsoever on the emission limits that they must  
15 achieve by 2019. Their request will simply provide  
16 them the flexibility they need to invest in  
17 environmental controls, while managing a tough  
18 financial situation in a tough economy.

19 The alternatives will increase the  
20 likelihood of plant closings and layoffs. The  
21 outcome of the decision before the board will have  
22 a major impact on our local manufacturing sector.  
23 Let there be no doubt that the effects will  
24 reverberate throughout our communities in Will



1 County, in Grundy Counties and beyond.

2 I encourage you to make the right  
3 decision for those communities and the state of  
4 Illinois and grant a temporary relief requested by  
5 Midwest Generation. And I thank you. And by the  
6 way, myself and our families have been living here  
7 in this area for 30 years. So appreciate. Thanks.

8 HEARING OFFICER HALLORAN: Thank you, sir.

9 MR. SLINKARD: Good morning. My name is Russ  
10 Slinkard S-l-i-n-k-a-r-d. I'm the President and  
11 CEO of the fourth largest Chamber of Commerce in  
12 Illinois, the Joliet Region Chamber of Commerce and  
13 Industry, with 1400 business members.

14 Earlier this month our organization  
15 sent a letter to the board asking for approval of  
16 the variance required by -- requested by Midwest  
17 Generation. But in addition to that I wanted to be  
18 here in person to demonstrate the strong support of  
19 our organization, as well as the business community  
20 as a whole for what we see as a very reasonable  
21 request.

22 If granted, this request will  
23 benefit our communities with continued jobs and  
24 with dollars that are injected into our economy,

1 and tax revenues for our schools and services.

2 The Joliet Chamber's mission is to  
3 enhance the business environment and with the  
4 quality of life in our community. For that reason  
5 we pay close attention to the regulatory  
6 environment that effects us.

7 None of us would quarrel with the  
8 need for tough regulations to continue the  
9 improvement of air quality to protect health and  
10 safety, but frankly it's difficult to understand  
11 why anybody would quarrel with Midwest Generation's  
12 practical and reasonable request for temporary  
13 relief from these air quality requirements.

14 All the company seeks is some  
15 regulatory flexibility in order to keep jobs and  
16 spending in our region while it goes through  
17 financial restructuring. Flexibility requested by  
18 Midwest Generation only applies to two years within  
19 the 12-year timeframe of state pollution control  
20 program. Nothing changes as far as the emission  
21 limits that must be in place by 2019 under state  
22 regulation.

23 It's hard to imagine a more  
24 justifiable variance request, given the financial

1 hardship that the company is now experiencing, and  
2 the fact that it has a demonstrated record of  
3 meeting all regulatory requirements. At times  
4 ahead of schedule.

5 Midwest Generation needs a modest  
6 amount of flexibility from this board in how it  
7 goes about fulfilling its environmental  
8 responsibilities to the people of Illinois and to  
9 our communities.

10 Just a few months ago this board  
11 approved a similar variance for Amron. The only  
12 real difference between that variance and this one  
13 is that Midwest Generation's is more limited in  
14 scope.

15 Having lived in this region now for  
16 44 years, for all of the reasons mentioned, we  
17 respectfully request this board to grant the  
18 temporary relief requested by Midwest Generation.  
19 Thank you, very much.

20 HEARING OFFICER HALLORAN: Thank you, sir.

21 MR. HENNESSY: My name is Mike Hennessy  
22 H-e-n-n-e-s-s-y. I represent the United Way of  
23 Will County. I'm here to support a wonderful  
24 community partner that gives back everyday to help

1 those less fortunate, Midwest Generation.

2 For many, many years Midwest  
3 Generation and their employees, many are  
4 represented of IBEW Local 15 and the other building  
5 trades, have had a workplace campaign to raise need  
6 funds to support the many worthy organizations.

7 For years they have been in the top  
8 10 in terms of overall supporting efforts. These  
9 funds raised every year support our homeless  
10 centers, emergency shelters for women and children,  
11 women who are victims of domestic violence. Our  
12 after school initiatives, in fact, one right down  
13 the street here at the YMCA providing after school  
14 programs and mentoring. Hospice care for those who  
15 have a loved one with a terminal illness.

16 All of us have been affected by  
17 persons who have a terminal illness and providing  
18 critical care for our Hospice residents. In fact,  
19 their facility is just less than a mile away from  
20 here. So many wonderful programs benefit from the  
21 generosity of employees and the companies of  
22 Midwest Generation.

23 In addition to giving of their  
24 treasurer, we find Midwest Generation employees who

1 are very involved in giving back their time. Many  
2 of them are involved in leadership roles with our  
3 United Way, serving on various committees of our  
4 major employers division.

5 Others volunteer in communities  
6 where they will go out to other businesses, other  
7 organizations to share the good things they do at  
8 their place of work to help those less fortunate,  
9 encouraging others to step up and join them.

10 Also, we find that on our local  
11 agency boards you will find Midwest Generation  
12 employees, again, giving their time to help fulfill  
13 that mission of that organization.

14 Our community would certainly be a  
15 loss without this valuable partner. And it's our  
16 sincere hope that the Illinois Pollution Board will  
17 look favorably upon their request and keep this  
18 valuable community partner engaged in helping them,  
19 again, helping those less fortunate in our  
20 community. Thank you, so much for your time.

21 HEARING OFFICER HALLORAN: Thank you,  
22 Mr. Hennessy.

23 MS. SNYDER: Good morning. My name is Gail  
24 Snyder, and I'm a resident of Will County,

1 Illinois. Before I read my prepared statement, I'd  
2 just like to say based on some of the things I've  
3 heard here today, I'm a bit concerned about the  
4 variance and the ability to change dates within the  
5 variance once it's granted.

6                   You know, the gas industry has  
7 really been booming and taking quite a toll on  
8 energy prices. The nuclear industry has felt this.  
9 They have closed down a nuclear facility -- or plan  
10 to close down one in Wisconsin because of the  
11 competition from lower energy prices versus their  
12 cost to maintain their older plants, as well  
13 implement new changes to keep the plant in  
14 operation.

15                   This is happening across the nuclear  
16 industry because of the competition of energy  
17 prices. And this is what is happening here with  
18 ComEd's plant and why the banking industry doesn't  
19 seem to want to lend them any money.

20                   I think in the future, if this  
21 variance is granted, two years from now we might be  
22 back here again looking at why ComEd needs another  
23 variance because energy prices have still  
24 challenged them.

1                   With that, I just want to say that  
2 my child and approximately 120 other children  
3 attend Lemont Montessori school, which is about  
4 four miles to the east of Midwest Generating coal  
5 plant, which is in Romeoville. I'm not speaking on  
6 behalf of the school or the parents, but I just  
7 want you to know that those children are there.

8                   I'm speaking for myself and my  
9 child. In this region the wind generally blows in  
10 the direction from west to east, making our school  
11 downwind of any releases of any chemicals for  
12 Midwest Generating's coal plant in Romeoville,  
13 Illinois.

14                  Also, our school is at a higher -- at a  
15 higher elevation than the coal plants, that brings  
16 us up even a little closer to the stacks and what  
17 they release. The area around the school is in a  
18 non-attainment area for sulfur dioxide, and Midwest  
19 Generation is asking for a variance so they don't  
20 have to comply with required pollution controls  
21 mandated by the state of Illinois if implemented,  
22 which would decrease the amount of sulfur dioxide  
23 currently emitted.

24                  And they would do that sooner rather

1    than later. And why does that matter? It matters  
2    to those children who are in that school, and it  
3    matters to the people in the community. You know,  
4    it's maybe another two years of breathing even more  
5    chemicals. For young children it's a big  
6    difference.

7                   It's my understanding that the  
8    majority of electricity generated from Midwest Gen  
9    is not used in Illinois. A lot of it is actually  
10   exported out of the state, and that they've been  
11   seeking tax breaks from the very communities that  
12   are subject to the pollution generated by their  
13   coal plant.

14                   While I can sympathize with the  
15   struggles of any company going through a bankruptcy  
16   and the concerns for their profit and their  
17   employees, the state of Illinois must choose  
18   carefully which businesses it can and will help.

19                   Midwest Generation is not a company  
20   that the state of Illinois or local taxing districts  
21   should assist through variances, through pollution  
22   control or tax breaks. Midwest Generation is  
23   creating air pollution and we are breathing it in.  
24   Exporting the majority of their electricity they



1 generate and asking not to pay their fair share of  
2 taxes.

3 Surely the State of Illinois can  
4 find better companies in Illinois to help make  
5 Illinois a place where people can raise their  
6 families without carrying the financial  
7 environmental burdens of others. Thank you, very  
8 much.

9 HEARING OFFICER HALLORAN: Thank you. Could  
10 you please spell your last name, please.

11 MS. SNYDER: Snyder S-n-y-d-e-r.

12 HEARING OFFICER HALLORAN: I thought so.  
13 Thank you. Have a great day.

14 MR. SCHWARTZ: Good morning. I'm Robert  
15 Schwartz, 304 North Brookshore Drive in Shorewood,  
16 just six miles from Midwest Generation's Joliet  
17 Generating Stations, Units 6, 7 and 8, and about 12  
18 miles I live from Midwest Generation's Will County  
19 stations, Unit 3 and 4. I'm also President of the  
20 Boilermakers Union, and represent many members of  
21 the Will-Grundy Building Trades Council. This is  
22 not just about jobs. It's about dependable  
23 electricity.

24 Midwest Generation provides reliable

1 electricity to the residents of Illinois for their  
2 base load generating stations. Reliable  
3 electricity is a matter not only of convenience,  
4 but of security and safety. It keeps our traffic  
5 signals working, fire and burglar alarms and  
6 healthcare equipment operating. All of which are  
7 vital to our well-being.

8                   The people of the state of Illinois  
9 have spoken to you, the Illinois Pollution Control  
10 Board, through the petition process. These are  
11 residents. Some live around and near the Midwest  
12 Generation plants from 189 different cities, towns  
13 and villages, who you, the Pollution Control Board  
14 represent.

15                   They are Illinois residents. Not  
16 companies or special interest groups trying to put  
17 Midwest Generation out of business in a free  
18 deregulated power industry.

19                   I respectfully request that on  
20 behalf of the over 3,000 petitioners, you grant  
21 Midwest Generation the requested variance.

22                   I know there's environmental people  
23 in this room. I ask you to look out these windows.  
24 Today the sun is not shining; there is no solar

1 electricity; the branches on the trees are not  
2 blowing, the wind turbines aren't turning, but we  
3 have lights on in this room and heat to conduct the  
4 business of the Illinois Pollution Control Board.  
5 This is reliable electricity provided by Midwest  
6 Generation.

7 As you exit today and head towards  
8 Houbolt Avenue you'll see the stacks of Midwest  
9 Generation Unit 6, 7 and 8. You'll see the steam  
10 vapor coming out of those stacks. The boilers are  
11 boiling water to make steam to turn the turbines,  
12 to turn the generators to make electricity so you  
13 could come here today in a warm building with  
14 lights on to conduct your business.

15 Again, I respectfully request that  
16 the Pollution Control Board grant Midwest  
17 Generation their variance. And I thank you for  
18 giving me the opportunity to speak today.

19 HEARING OFFICER HALLORAN: Thank you, sir.  
20 Sir, could you, please, spell your last name,  
21 please, for the record.

22 MR. SCHWARTZ: Yes. S-c-h-w-a-r-t-z.

23 HEARING OFFICER HALLORAN: Thank you.

24 MR. SCHWARTZ: Thank you.

1 MS. KLEN: Hi. My name is Susan Klen  
2 K-l-e-n, and I'm a life long Joliet resident.  
3 First, I'd like to thank the state for holding this  
4 hearing here at Joliet Junior College.

5 As of this coming March I've been  
6 unemployed for four years, so I understand how  
7 important it is for people to find work and then  
8 keep those jobs, especially in our area. My family  
9 desperately needs me to find work, but they also  
10 need to be able to breathe clean air.

11 The Clean Air Act was passed 43  
12 years ago this year. Both our state and federal  
13 EPAs have put a lot of time and money into  
14 developing their minimum standards for emissions of  
15 pollutants, like CO2. So I think after 43 years we  
16 need to quit putting off cleaning our air and just  
17 do it.

18 Putting off pollution controls until  
19 a company is flushed with cash shouldn't be an  
20 acceptable excuse. Not polluting the air shouldn't  
21 be on a company's wish list, like redecorating our  
22 offices.

23 I'd like to ask this board to  
24 consider three things: One, the acid rain, asthma

1 and COPD caused by sulfur dioxide causes a huge  
2 economic hardship on all of us in terms of lost  
3 work and healthcare costs. I personally suffer  
4 from asthma, which can be very scary.

5 Two, if the variance is granted,  
6 please write into the agreement that we won't be  
7 back here in three years for yet another variance  
8 in 2016.

9 And, three, also please include  
10 language in this agreement that if Midwest Gen  
11 sells any of these plants that the new owners will  
12 comply -- will have to comply with all prior  
13 negotiations so that we're not starting from  
14 scratch.

15 From what I've heard here today,  
16 this won't be Midwest Generation's first variance  
17 allowing air pollution at excessive levels. If  
18 this board does allow this, let's please make sure  
19 this is the last variance to pollute.

20 In closing, as I stated earlier, the  
21 Clean Air Act was passed 43 years ago. Because of  
22 that, I don't think we should continue to refer to  
23 allowing continued pollution as a temporary  
24 measure, which I've heard several times today.

1 Thank you, very much.

2 HEARING OFFICER HALLORAN: Thank you, ma'am.

3 MS. KLEN: Would you like us to check our  
4 names off on here?

5 HEARING OFFICER HALLORAN: You may if you --  
6 no, that's fine, because we have it on the  
7 transcript.

8 MS. KLEN: Thank you.

9 HEARING OFFICER HALLORAN: Thank you. Yes,  
10 sir.

11 MR. JOHNSON: My name is a Mike Johnson  
12 J-o-h-n-s-o-n. I work for Greenpeace. And I just -- I  
13 guess I want to speak candidly. Obviously this is  
14 a weighty matter. I mean, you're here and you see  
15 a lot of folks here today representing Midwest  
16 Generation, and we understand there are a lot of  
17 jobs that are involved in this whole process of  
18 generating energy.

19 You know, there are a lot of tough  
20 choices that are to be made and that have been  
21 made, and unfortunately, the leadership at Midwest  
22 Generation has just not really taken on a lot of  
23 those challenges in a very forthcoming way and in a  
24 way that's really been in the best interest of its

1 own employees and the residents that live near the  
2 plants.

3 So we're here today with this  
4 opportunity to really send a message that basically  
5 pollution is not free. You know, the CPS was  
6 negotiated with Midwest Generation. This -- you  
7 know, this has been longstanding. Its been on the  
8 books for some time, and I think to now say after  
9 the fact that this is unforeseen is stretching the  
10 truth.

11 So, you know, in terms of holding  
12 Midwest Generation to the agreement that it signed,  
13 you know, we see Dynegy as being a classic example  
14 of somebody who took the risk of investing in  
15 pollution control equipment and going through  
16 bankruptcy and emerging from it stronger.

17 The unfortunate difference here is  
18 that Midwest Generation waited entirely too long,  
19 and has put the health of the people living near  
20 the plants at jeopardy, as well as the folks who  
21 work at the boilers day in and day out.

22 So what we're really asking today is  
23 just for the Pollution Control Board to deny this  
24 variance, because basically there's no real way

1 that you can do the math that it comes out that  
2 there is any net emissions benefit to the proposed  
3 variance.

4                   You know, I've looked at the  
5 numbers; I've looked at hourly generation numbers;  
6 I've looked at -- poured through data and I can't  
7 come up with any way but to assume eight and a half  
8 percent growth in generation or in fuel input to  
9 get -- actually get the numbers that they're  
10 talking about in terms of the 31,181 ton net  
11 reduction in SO<sub>2</sub>, and even that presupposes early  
12 action credit for Fisk and Crawford, which they  
13 closed voluntarily.

14                   We think it was the right decision,  
15 but unfortunately that shouldn't have an impact on  
16 something that's already been generated or upon an  
17 agreement that's already been put out there. You  
18 know, it's kind of stretching it to ask for all of  
19 this ex post-facto, to ask for any actual credit  
20 when it wasn't part of the original agreement.

21                   So we urge you to oppose this  
22 variance. Thanks for this opportunity.

23                   HEARING OFFICER HALLORAN: Thank you. I  
24 don't see any other members of the public that feel



1 it imperative to make a comment before 12:30, so as  
2 promised, Mr. Bonebrake, if you can continue with  
3 your case in chief, please.

4 MR. BONEBRAKE: Mr. Halloran, we are then  
5 prepared to call Dr. Fraiser as our next witness.

6 HEARING OFFICER HALLORAN: Can you raise your  
7 right hand, the court reporter will swear you in,  
8 and, yeah, please speak -- you've got to really get  
9 close to the mic, we're having issues.

10 (witness sworn.)

11 BY DR. FRAISER: My name is Lucy Fraiser.  
12 I'm a Senior Consulting Toxicologist with AECOM,  
13 and I've been asked to attend this hearing to  
14 address questions about health impacts. Likely --  
15 whether health impacts are likely to incur if  
16 Midwest Generation's request for variance is  
17 granted.

18 My testimony will include a response  
19 to question No. 2 of the Hearing Officer order of  
20 January 25th. But before --

21 HEARING OFFICER HALLORAN: Doctor, if I may  
22 interrupt you. Just raise your hand if you can't  
23 hear Dr. Fraiser, everybody, and I'll -- all right.  
24 Thank you. Continue, Doctor, sorry.

1 DR. FRAISER: Sure. Before I get into the  
2 meat of my testimony, though, I'd like to tell you  
3 a little bit about myself, just so that you know  
4 who you're talking to here. I have a doctorate in  
5 toxicology. I'm certified by the American Board of  
6 Toxicology. The certification by the American  
7 Board of Toxicology is a globally recognized  
8 credential that signifies competency and commitment  
9 to environmental sciences and health.

10 And the American Board of Toxicology  
11 credential is similar to credentials that are probably  
12 more familiar to most of you, the Professional  
13 Engineer or PE credential or the Professional  
14 Geologist or PG credential.

15 To get the American Board of  
16 Toxicology credential it requires a combination of  
17 both higher education and experience, and there are  
18 also rigorous certification and recertification  
19 procedures.

20 I have over 20 years of experience  
21 in the areas of human health risk assessment and  
22 evaluation of human health effects associated with  
23 environmental pollutants. While I have extensive  
24 experience in all areas of risk assessment, I

1 specialize in the risk assessment and health  
2 effects evaluation associated with air pollutants.

3 I've testified before at the Texas  
4 state legislature, regulatory bodies and televised  
5 press conferences, public meetings, state  
6 administrative hearings and in courts of law on the  
7 potential health effects associated with air  
8 pollutants.

9 And, lastly, last year I submitted a  
10 response to the board addressing health concerns  
11 that were raised in the hearing on Amron Energy's  
12 request for variance for some of the sulfur dioxide  
13 provisions of the multi-pollutant standard.

14 I was asked to first comment on the  
15 general human health and environmental impact of  
16 sulfur dioxide emissions in general. And I'd like  
17 to begin by talking about a couple of different  
18 types of health effects studies that I will be  
19 referring to during my testimony here today.

20 Epidemiological studies determine  
21 factors that are associated with human disease at  
22 the population level. That's typically done by  
23 linking temporal air concentrations with health  
24 statistics, such as emergency room visits and

1 hospitalizations and sometimes even mortality.

2 In epidemiological studies, however,  
3 no information about individual exposures is  
4 typically collected, and, therefore, the exposures  
5 in those types of studies have to be assumed. And  
6 that's typically done by using regional air  
7 monitoring data. And the regional air monitoring  
8 data may or may not indicate accurately the  
9 exposure levels of any given individual.

10 The other types of study that I will  
11 be referring to are clinical studies. Sometimes  
12 those are also referred to as controlled human  
13 studies. And in these clinical studies, human  
14 volunteers are exposed to non concentrations of air  
15 pollutants in a clinical setting or under very  
16 controlled conditions.

17 As an initial matter, I'd like to  
18 note that all of the statements that I'm going to  
19 make here in my testimony today are predicated on  
20 the assumption that inhaling sulfur dioxide, which  
21 I'll be referring to as SO<sub>2</sub> -- that exposures to  
22 sulfur dioxide have a causal effect on the health  
23 effects that are being discussed.

24 And the reason why I feel it's

1 necessary to make that declaration is that most  
2 epidemiological evidence points to particulate  
3 matter as a stronger causal agent in causing both  
4 mortality in most cardio respiratory effects than  
5 gaseous sulfur dioxide.

6                   However, because sulfur dioxide is  
7 most of the time found in association with  
8 particulate pollution, it's a precursor to find  
9 sulfate particles. Its been very difficult to  
10 separate the health effects from these two very  
11 different pollutants.

12                   There does appear to be a continuous  
13 spectrum of sensitivity to sulfur dioxide, with some  
14 people being completely unaffected by concentrations  
15 that cause severe effects in others.

16                   The major health concerns that are  
17 typically associated with high concentrations of  
18 sulfur dioxide include effects on breathing,  
19 respiratory illness, alterations in pulmonary  
20 defenses, aggravation of existing cardiovascular  
21 disease and asthma.

22                   And the subpopulations that are most  
23 sensitive to sulfur dioxide include asthmatics and  
24 individuals with cardiovascular disease or chronic

1 lung disease, as well as children and the elderly.  
2 However, asthma is the health effect that's most  
3 commonly associated with sulfur dioxide because  
4 asthmatics are very sensitive to its effects.

5 Emissions of sulfur dioxide can also  
6 cause environmental impacts that are not related to  
7 health, such as damage to foliage of trees and  
8 agricultural crops. Sulfur dioxide is also a  
9 precursor to acid rain, which is associated with  
10 the acidification of lakes and streams. It's also  
11 associated with corrosion of buildings and  
12 monuments and can contribute to visibility  
13 impairment.

14 While concerns about potential  
15 health effects associated with sulfur dioxide are  
16 understandable, there are a lot of misconceptions  
17 about what the research is telling us with regard  
18 to sulfur dioxide.

19 Most people don't know that more  
20 studies than not have failed to find statistically  
21 significant associations between long-term and  
22 short-term exposures to sulfur dioxide and  
23 mortality and a variety of respiratory effects, and  
24 that includes the studies that have been used by

1 U. S. EPA in establishing the one hour sulfur  
2 dioxide NAAQS.

3 In fact, nine of the 10 primary  
4 epidemiology studies attempting to correlate short  
5 term exposure to asthma related emergency room  
6 visits or hospitalizations relied upon by EPA in  
7 establishing the one hour SO<sub>2</sub> NAAQS found either no  
8 association or very small positive associations.

9 In its latest review of the National  
10 Ambient Air Quality Standards or NAAQS, EPA  
11 concluded that there is not a causal relationship  
12 between long-term sulfur dioxide exposure and  
13 respiratory effects for mortality. It also  
14 concluded that evidence on short term sulfur  
15 dioxide exposure is only suggestive of a causal  
16 relationship with mortality.

17 EPA did, however, conclude that the  
18 results of clinical studies or controlled human  
19 studies in which asthmatics are exposed to non  
20 concentrations of sulfur dioxide that are much  
21 higher than what we typically find out in the  
22 ambient era supports a causal relationship between  
23 respiratory effects and short term sulfur dioxide  
24 exposure.

1                   However, with the exception of one  
2 out of the 13 primary clinical studies that EPA  
3 relied on in setting the recent one hour SO<sub>2</sub> NAAQS,  
4 higher sulfur dioxide concentrations than those  
5 corresponding to the one hour NAAQS were required  
6 do elicit statistically significant respiratory  
7 effects, even though the test population in most of  
8 those studies consisted of an extraordinarily  
9 sensitive subpopulation of exercising asthmatics.

10                   Therefore, despite the dogmatism  
11 with which health effects of SO<sub>2</sub> are often asserted,  
12 when the studies that provide the underlying  
13 support for these accusations are more closely  
14 examined, it becomes clear that neither the  
15 association between sulfur dioxide and a variety of  
16 health effects, nor the concentrations that cause  
17 those types of health effects are as clear as is  
18 often portrayed.

19                   Although I think it can be  
20 universally agreed that the respiratory illnesses,  
21 such as asthma and chronic obstructive pulmonary  
22 disease represent harmful effects, there is a  
23 threshold concentration below which sulfur dioxide  
24 does not cause toxic effects.



1                   And what that means is that  
2       concentrations of sulfur dioxide have to be greater  
3       than this threshold to cause any adverse health  
4       effects. Therefore, the fact that a power plant or  
5       any other source emits sulfur dioxide, does not  
6       necessarily mean that adverse health effects will  
7       occur.

8                   The second item that I was asked to  
9       address in my testimony today was to discuss the  
10      potential of human health and environmental impact  
11      of granting the proposed variance that Midwest  
12      Generation is requesting.

13                  As previously mentioned by  
14      Mr. McCluskey what we're talking about here is a  
15      variance that would allow somewhat higher sulfur  
16      dioxide emission rates than required by the CPS in  
17      2015 and 16, although Midwest Generation will be in  
18      full compliance with the provisions of the CPS in  
19      2017.

20                  However, to offset the smaller  
21      reduction in emission rates relative to those  
22      required by the CPS in 2015 and 2016, Midwest  
23      Generation proposes to maintain mass emission  
24      levels lower than those anticipated over the

1 four-year period of the variance under the CPS,  
2 based on average historical heat input.

3 To illustrate the SO2 emissions that  
4 are proposed in this variance relative to the CPS  
5 base case, I've prepared a graph that I believe is  
6 being put up right now. And I'm not sure, did the  
7 board get individual copies?

8 MS. BASSI: I have them right here  
9 (indicating).

10 MR. BONEBRAKE: Mr. Halloran, will it be all  
11 right if we distribute individual copies?

12 HEARING OFFICER HALLORAN: Yes, it will.

13 DR. FRAISER: And is it okay if I stand up  
14 next to the board?

15 HEARING OFFICER HALLORAN: Yes. Could you  
16 bring your mic with you.

17 DR. FRAISER: Sure.

18 HEARING OFFICER HALLORAN: You can take it  
19 out of the stand I, think.

20 DR. FRAISER: So the first thing that I would  
21 like to call your attention to on this graph --

22 HEARING OFFICER HALLORAN: Would you mind  
23 turning it a little bit this way, so the members of  
24 the board could see that, Dr. Fraiser. Is that

1 visible to all?

2 DR. FRAISER: So on this graph, this blue  
3 line here (indicating) represents the CPS base case  
4 sulfur dioxide emissions. The red line represents  
5 the sulfur dioxide emissions that would occur under  
6 the variance that Midwest Generation has requested.

7 So the first thing that I would like  
8 to call your attention to is that if you will note  
9 here on the red line representing the variance SO2  
10 emissions is that sulfur dioxide emissions decrease  
11 continuously over this entire four-year variance  
12 period. They decrease over the entire period with  
13 each successive year resulting in lower SO2  
14 emissions than the previous year.

15 The other thing that I would like to  
16 call your attention to is that, as you can see on  
17 the graph here, the SO2 emissions under the  
18 requested variance are lower than the CPS base case  
19 emissions in the years 2013 and 2014. However,  
20 they are higher than the CPS base case emissions in  
21 2015 and 2016.

22 But what's important about this  
23 graph is that if you will notice the area between  
24 the emissions that are proposed in the variance and

1 the CPS base case is actually larger than the  
2 area -- in 2013 and 2014, than the area represented  
3 by the difference in 2015. And so the area that  
4 I'm referring to here is the blue shaded areas.

5 So the variance that is being  
6 proposed actually represents an overall net  
7 decrease in sulfur dioxide that corresponds to  
8 3,181 tons of sulfur dioxide. And with that net  
9 decrease in SO2 emissions would also come a  
10 corresponding net health benefit, if you assume  
11 that the emissions from the plants are capable of  
12 causing health effects in the first place. So with  
13 that, I'm going to take my seat again.

14 And continuing on that same note,  
15 the one other thing that I would like to mention is  
16 that this graph here simply represents the  
17 decreases in the sulfur dioxide emissions, but as  
18 has been discussed by a couple of the other folks  
19 that have given testimony here this morning, the  
20 variance will also result in reductions in  
21 emissions of a variety of other air pollutants as  
22 well.

23 And so the additional reductions in  
24 the emissions of those pollutants would be expected

1 to result in the avoidance of potential health  
2 effects, in addition to the sulfur dioxide  
3 reductions.

4 The specific question that I was  
5 asked to come here this morning and address from  
6 the Hearing Officer's order of January 25th was  
7 No. 2.

8 And the essence of that question is  
9 whether any health effects that could hypothetically be  
10 associated with the smaller reductions in sulfur  
11 dioxide emissions that Midwest Generation is  
12 requested for 2015 and '16, whether those health  
13 effects would be minimal, and, two, whether those  
14 health effects would be more than offset by the  
15 overall net emissions, decreases resulting in  
16 environmental health benefits.

17 So I think this illustration shows  
18 how any effect on human health that results from  
19 the smaller reductions that are made in 2015 and  
20 2016 emissions would be more than offset by the net  
21 emission decreases.

22 Assuming that one accepts that  
23 Midwest Generation sulfur dioxide emissions pose a  
24 health threat, granting this variance would provide

1 greater reductions in health effects now in  
2 exchange for smaller reductions in health effects  
3 later.

4 Plus, based on Midwest Generation's  
5 calculations, the variance provides accumulative  
6 net reduction in sulfur dioxide emissions with  
7 intended health and environmental benefits.

8 With respect to any emissions  
9 impacts in the years 2015 and 2016, there are a  
10 number of reasons why those smaller reductions, by  
11 comparison to what's required by the combined  
12 pollutant standard might not be expected to result  
13 in any significant health detriment.

14 Even though the reductions in sulfur  
15 dioxide emissions and associated health benefits  
16 are smaller than those contemplated by the CPS in  
17 2015 and '16 under the variance, the truth of the  
18 matter is that under the variance sulfur dioxide  
19 emissions continue to decrease in 2015 and 2016,  
20 and would theoretically be accompanied by  
21 additional health benefits above and beyond those  
22 resulting from the sulfur dioxide emissions made in  
23 2013 and 2014.

24 So we're not talking about increased

1 SO2 emissions or increased health effects that  
2 might occur in 2015 and 2016. We're simply talking  
3 about smaller reductions in the potential health  
4 effects.

5 And to continue on with that concept  
6 for air pollutants, like sulfur dioxide, as I  
7 mentioned a little bit earlier, sulfur dioxide has  
8 a threshold below which toxic effects no longer  
9 occur. There's a level below which continued  
10 reduction and emissions and ambient concentrations  
11 would cease to improve any additional health  
12 benefits.

13 Therefore, a reduction in emissions  
14 that's made in ambient concentrations that are  
15 relatively higher, such as would be the case in  
16 2013 and 2014, would generally be expected to have  
17 a greater impact on health, both in terms of the  
18 degree of toxic response itself, as well as in the  
19 percentage of the population that may experience  
20 those toxic health effects than an emission  
21 reduction of similar magnitude that's made when the  
22 concentrations are lower, such as in 2014 and 2015.

23 Another thing to keep in mind is  
24 that all of the emissions that we've discussed thus

1 far have been exhaust gas emissions from the stack.  
2 However for adverse health effects to occur the  
3 sulfur dioxide emissions must leave the plant  
4 boundary and reach public areas where exposure can  
5 occur, and the concentrations in those locations  
6 must be above the threshold below which -- above  
7 which we see adverse health effects with SO<sub>2</sub>.

8 SO<sub>2</sub> that's emitted from coal stacks  
9 can be transported long distances in the upper  
10 reaches of the atmosphere where it's dispersed or  
11 diluted. And while the SO<sub>2</sub> may gradually disperse  
12 back down to ground level, once it reaches ground  
13 level it's going to be significantly diluted from  
14 what came out of the stack in the first place. And  
15 also, significant additional dilution in the sulfur  
16 dioxide concentrations would occur as the emissions  
17 were to leave the property.

18 While asthma attacks can be very  
19 dangerous in those who are severely affected, it's  
20 important to recognize that the health effects that  
21 are associated with sulfur dioxide require higher  
22 concentrations than typically found in ambient air  
23 to elicit respiratory effects, even in sensitive  
24 populations, like exercising asthmatics. In non



1     asthmatics the adverse effects of sulfur dioxide  
2     are generally short lived and completely reversible  
3     upon cessation of exposure.

4                     So for these reasons, it is my  
5     opinion that the proposed variance, if granted,  
6     will result in a health and environmental benefit.  
7     Thank you.

8             HEARING OFFICER HALLORAN:   Ms. Vetterhoffer,  
9     any cross?

10            MS. VETTERHOFFER:   No questions.   Thank you.

11            HEARING OFFICER HALLORAN:   Members of the  
12     board, any questions?

13            MS. ZALEWSKI:   I have.

14            HEARING OFFICER HALLORAN:   Oh, I'm sorry.

15            MS. ZALEWSKI:   Hi, Dr. Fraiser, thank you  
16     for your testimony.   I'm just not sure if I missed  
17     it.   Did you tell us what the threshold amount was  
18     you were referring to?

19            DR. FRAISER:   No, I didn't.   I did not  
20     specifically mention threshold amount.   And that  
21     depends on several things.   There are some  
22     disagreements as to what that threshold amount is,  
23     but it also depends on the exposure period for  
24     which someone is exposed.

1                   But I can address, if you would  
2     like, the recent one hour NAAQS. The recent one  
3     hour NAAQS that is not currently in effect, but  
4     will go into effect in the relatively near future,  
5     has been established as a one hour concentration of  
6     75 parts per billion.

7                   However, something that's important  
8     to recognize about that particular standard is that  
9     the studies that -- the primary studies that  
10    informed the setting of the standard at that level  
11    were actually studies that were conducted in human  
12    volunteers that were asthmatics.

13                  And in most of the studies the  
14    asthmatics were exercising as they were being  
15    exposed to sulfur dioxide, but the exposure periods  
16    were for a very short period of time. Five  
17    minutes.

18                  And so that one hour of sulfur  
19    dioxide NAAQS is actually based on threshold levels  
20    that were established in studies where asthmatics  
21    were exposed for only five minutes. And that was  
22    done by doing some modeling and developing  
23    relationships between high peak concentrations and  
24    one hour average concentrations. In that -- in the

1 recent review of the NAAQS, EPA set a five minute  
2 threshold at 200ppb.

3                   However, in my opinion, and I've  
4 reviewed the data on which the NAAQS was  
5 established, the studies really support a threshold  
6 level that's considerably higher than 200ppb, if  
7 you really look at the studies and the levels at  
8 which health effects were caused in a reasonable  
9 percentage of the population, and also look at the  
10 health effects themselves and whether they were  
11 clinically relevant.

12                   In my opinion the threshold really  
13 is at least twice that at a 150ppb, and using some  
14 of the studies you could argue that threshold is  
15 even higher than that. And, again, that's for a  
16 five minute exposure period.

17                   HEARING OFFICER HALLORAN: All right. Our  
18 technical people they have no questions of  
19 Dr. Fraiser.

20                   MR. BONEBRAKE: At this time, Mr. Halloran,  
21 we'd like to move a copy of Dr. Fraiser's chart  
22 into the record.

23                   MS. BASSI: No.

24                   MR. BONEBRAKE: I think Ms. Bassi would like

1 address other issues then we'll return to this  
2 graph.

3 HEARING OFFICER HALLORAN: Ms. Bassi.

4 MS. BASSI: I'm Ms. Bassi. Mr. Halloran, we  
5 would like to move acceptance by the board of our  
6 exhibits that we submitted with our petition for  
7 variance, and with the first response to the  
8 board's questions.

9 HEARING OFFICER HALLORAN: Okay.

10 MS. BASSI: And these are the same as were  
11 filed with them. So Exhibit 1, if you accept my  
12 numbering.

13 HEARING OFFICER HALLORAN: I will.

14 MS. BASSI: Okay. Is the Environmental  
15 Protection Agency's 2010 Air Quality Report. This  
16 is excerpts from that. And I brought four copies  
17 for the board. And I will note that Ms. Vetterhoffer  
18 submitted a more recent version of this document  
19 with her recommendation that I don't have with me.

20 Exhibit 2 is a table listing the air  
21 permits that have been issued to Midwest  
22 Generation. This -- the board's rules require a  
23 petitioner to identify relevant permits, and we  
24 thought this would be the easiest way to present

1 those.

2 Exhibit 3 is the affidavit of  
3 Douglas McFarlan. Exhibit 4 is the affidavit of  
4 William M. Petmecky, the III. Exhibit 5 is the  
5 affidavit of Fred McCluskey.

6 Exhibit 6 is excerpts front the Bart  
7 Sip technical support documents that the agency  
8 submitted to U. S. EPA. This includes the cover  
9 letter, the TSD cover page, certain pages from the  
10 document and Appendix C.

11 Exhibit 7 is U. S. EPA's proposed  
12 approval of the Illinois Bart Sip at 77 Fed. Reg. 3966,  
13 January 26, 2012. Exhibit 8 is the final federal  
14 approval of the Illinois Bart Sip, 77 Fed. Reg. 39943,  
15 July 6th 2012.

16 Exhibit 9 is a table comparing  
17 Midwest Generation's emissions at the proposed 2015  
18 and 2016 rate to presumptive Bart levels. And the  
19 purpose of this was to demonstrate that the  
20 proposed variance would not interfere with the Bart  
21 Sip.

22 These first nine exhibits were all  
23 part of our petition of the petition for a  
24 variance.

1           Exhibit 10 and Exhibit 11 were part  
2 of the response to the board's questions that were  
3 issued to Midwest Generation on December 24th.

4           Exhibit 10 is a comprehensive  
5 emissions analysis table. And the board had asked  
6 for a table of calculations and equations, and  
7 that's what Exhibit 11 is.

8           For exhibit -- then we proposed that  
9 the table that we handed out a few minutes ago  
10 before Dr. Fraiser's testimony -- or during her  
11 testimony, and that is a replica of the chart -- or  
12 the chart is a replica of the table, be accepted as  
13 Exhibit 12.

14           HEARING OFFICER HALLORAN: I think we did  
15 agree to that, Ms. Vetterhoffer. Is that ok, we  
16 just using that for demonstrative purposes?

17           MS. VETTERHOFFER: No. It's fine.

18           MS. BASSI: That's it.

19           HEARING OFFICER HALLORAN: And the chart, Ms.  
20 Bassi, that was -- I'm sorry, No. 12?

21           MS. BASSI: That was 12, yes; Exhibit 12.

22           HEARING OFFICER HALLORAN: Any objection,  
23 Ms. Vetterhoffer, taking these exhibits into  
24 evidence?

1 MS. VETTERHOFFER: No.

2 HEARING OFFICER HALLORAN: All right. So  
3 moved.

4 MR. BONEBRAKE: So, Mr. Halloran, assuming  
5 that the testimony received today is part of the  
6 record without any motion on my part to make it  
7 part of the record. I have just a short closing  
8 statement, but I would suggest I just hold that to  
9 the end of the hearing today. It's quite brief.  
10 And with that, I believe our direct case is closed  
11 until later when I'll make the closing statement.

12 HEARING OFFICER HALLORAN: Thank you,  
13 Mr. Bonebrake. Ms. Vetterhoffer.

14 MS. VETTERHOFFER: I have no questions.

15 HEARING OFFICER HALLORAN: Well, it's your  
16 case in chief. Do you rest?

17 MS. VETTERHOFFER: We don't intend to put on  
18 any direct testimony, but Mr. Ross is available if  
19 the board has any questions.

20 HEARING OFFICER HALLORAN: Okay. Sure thing.  
21 Obviously, no rebuttal. I think at this point what  
22 we'll do, we'll take public comment, again. We can  
23 open up the podium.

24 Okay. We're going to backtrack a

1 little bit. Ms. Liu has a question about the  
2 agency. Ms. Liu, let me give you my microphone  
3 here.

4 MR. RAO: Good afternoon, Mr. Ross.

5 HEARING OFFICER HALLORAN: Mr. Ross, can you  
6 raise your right hand and the court reporter will  
7 swear you in, please.

8 (witness sworn.)

9 MR. RAO: We asked a question of Midwest  
10 Generation regarding human health and environment  
11 impact, and we just wanted to get the agency's  
12 response to the same question. I will read the  
13 question for you.

14 Please address whether granting  
15 Midwest Generation's petition for variance is  
16 expected to jeopardize the state's ability to meet,  
17 one, its current obligation under the Illinois Sip  
18 to obtain and maintain compliance with National  
19 Ambient Air Quality Standards. And, two, the new  
20 primary National Ambient Air Quality Standards for  
21 sulfur dioxide?

22 MR. ROSS: Illinois EPA believes that  
23 granting the variance request will not jeopardize  
24 its current obligations under the Illinois Sip.



1 Current obligations to attain and maintain the  
2 NAAQS will not be jeopardized due to the net  
3 environmental benefit over the term of the  
4 variance.

5 Illinois EPA's obligations for the  
6 2010 SO2 NAAQS will not be jeopardized, since the  
7 variance ends December 31st 2016, while the  
8 attainment date of the 2010 SO2 NAAQS is no sooner  
9 than July, 2017. The variance will end prior to  
10 the 2010 SO2 NAAQS attainment date, and, therefore,  
11 no impact is expected.

12 MR. RAO: Thank you, very much.

13 HEARING OFFICER HALLORAN: Thank you. Again,  
14 I think we'll open the floor up for public comment.  
15 You stand up to the podium, and so far we've been  
16 doing a pretty good job keeping it four minutes and  
17 under. So when you stand up there, just please  
18 introduce yourself and spell your sir name for the  
19 court reporter. Thank you.

20 MR. KENNEDY: Good morning. My name is John  
21 Kennedy K-e-n-n-e-d-y. I'm the Senior Vice  
22 President of Generation for Midwest Generation. A  
23 graduate of the University of Illinois; life long  
24 resident of Illinois.

1 I've got over 33 years in the power  
2 industry. My experience actually started as a  
3 laborer at a power plant in down state Illinois  
4 shoveling coal at a coal fire power plant, which is  
5 how I got interested in this industry, which is  
6 very complex.

7 Our coal plants have a long standing  
8 history of environmental stewardship. As you've  
9 heard this morning, we are among the first in the  
10 country to reduce mercury emissions that now meet  
11 federal standards that do not go into effect until  
12 2015.

13 We're also well ahead of meeting  
14 federal standards for nitrogen oxide and 10 percent  
15 below the standard for 2012. So our performance is  
16 documented as being excellent in terms of our  
17 compliance with regulations.

18 We've also continued to improve  
19 sulfur dioxide emissions, which are now much lower  
20 than when Midwest Generation took over  
21 responsibility for the plants, as you've heard in  
22 testimony this morning.

23 These reductions were achieved by  
24 employees; many of whom are in this room, who are

1 committed to operating in compliance with integrity  
2 and safety in compliance with all of our state and  
3 federal environmental requirements.

4 I'm proud of the service that our  
5 employees provide in delivering safe, reliable and  
6 environmentally responsible power generation that  
7 insures reliable energy to the communities in which  
8 we live and in which we work.

9 As you've heard, we are committed to  
10 the community. Many of our members are involved in  
11 community organizations, and we give back, not only  
12 financially, but also of our time.

13 Approval of the variance requested  
14 will preserve quality jobs here in Illinois. The  
15 provisions in the request also insure continued  
16 improvement emissions, while providing a path for  
17 us to work through our current financial challenges.

18 These plants support over 800 men  
19 and women, along with their families with quality  
20 employment. There are also numerous businesses,  
21 suppliers and union leaders that you've heard from  
22 this morning who actively support these plans and  
23 rely on their continued operations.

24 On behalf of all the men and women

1 at Midwest Generation, I respectfully urge the  
2 Pollution Control Board to approve the requested  
3 variance. Thank you, for your time.

4 HEARING OFFICER HALLORAN: Thank you, sir.

5 MR. NAGLOSKY: William Naglosky  
6 N-a-g-l-o-s-k-y. Good morning, everyone. I'm the  
7 Station Director at Joliet Generating Station. I  
8 represent nearly 250 employees who work at Joliet  
9 Station. Many, as you can see, have joined me here  
10 today.

11 We're here to urge and recommend to  
12 the Illinois Pollution Control Board to grant  
13 Midwest Generation this request for a variance.

14 Joliet Station employees that are  
15 here today and the ones that work 24 hours a day,  
16 seven days a week are proud of how we operate the  
17 plants. We have three top priorities at the plant  
18 level. One of them, if you can ask anybody in the  
19 room, is to always work safely.

20 The second is to operate in  
21 compliance with environmental and all other  
22 regulations. And the third is to provide for  
23 reliable supply of electricity. The people in this  
24 room have done that for 30, 40 years, some members.

1                   We're proud to say we've gone more  
2   than 325 days without an injury and we're  
3   continuing to provide affordable and reliable  
4   electricity to the region. The Joliet Station has  
5   never been cleaner, and with our emissions they are  
6   now lower than they ever were in the plant's  
7   existence.

8                   We know we have a responsibility to  
9   the community and our society in the way we run the  
10  plants. We could not be prouder of how we fulfill  
11  that commitment. Our employees rely on these jobs  
12  to support their families. Government and  
13  nonprofit agencies, as you've heard already,  
14  benefit from the \$1.8 million dollars we pay in  
15  local, county and sales tax.

16                  Schools and community organizations  
17  benefit from our financial support, and the volunteer  
18  work of our employees. Our plant purchases more  
19  than 35 million -- just Joliet Station purchases  
20  more than 35 million in goods and services from  
21  regional suppliers. We are part of the fabric of  
22  this community, and we are proud to be a good  
23  neighbor.

24                  I urge your approval for this

1 variance as we seek to do all we can to protect and  
2 preserve jobs and the operations that provide  
3 benefits to so many. Thank you, for your time.

4 HEARING OFFICER HALLORAN: Thank you, sir.

5 MR. BURKE: Good afternoon. My name is  
6 William Burke B-u-r-k-e, and I'm the Director of  
7 Procurement and Supply Chain Management for Midwest  
8 Generation. And I'm not here as Director of  
9 Procurement and Supply Chain Management for Midwest  
10 Generation. I'm here as a citizen of Illinois and  
11 employee of Midwest Generation.

12 37 years ago I started working at  
13 Crawford Station, and over the 37 years I have  
14 worked at almost every generating facility that  
15 both ComEd and now Midwest Generation owns. I have  
16 seen ComEd, over my first 25 years, work to try to  
17 maintain environmental integrity at the plants, but  
18 I have never seen ComEd work with the intensity  
19 that Midwest Generation has worked over the last 13  
20 years to clean up emissions at our plants and  
21 provide good working wages and good, safe, clean  
22 jobs for our employees.

23 We also provide jobs for numerous  
24 contractors who come and do work at our plants.

1 These contractors provide a living wage in wish to  
2 raise a family, just as our employees are.

3 So as an employee of Midwest  
4 Generation, a resident of the area, I respectfully  
5 request that the board approve this variance.  
6 Thank you, very much.

7 HEARING OFFICER HALLORAN: Thank you, sir.  
8 Ms. Bugel, Mr. Armstrong. Take your time. You may  
9 step up, sir, please.

10 MR. PERRY: Good morning. My name is Scott  
11 Perry P-e-r-r-y, and I'm the Plant Director of Will  
12 County Generating Station. And I won't repeat  
13 everything that Bill Naglosky said. I think he did  
14 a great job of representing the feelings of the  
15 plants. I just wanted to add my voice for Will  
16 County Station.

17 You know, we are committed to  
18 providing electricity in a safe, reliable and  
19 environmentally responsible manner. We take pride  
20 in the fact that we generate electricity, which is  
21 a critical product for really everybody.

22 As was stated before, the lights  
23 here, the heat here, and we do that with -- really  
24 with pride, and we just -- we'd like you to approve

1 the variance to allows us to continue to do that  
2 work. And we will do it, as I stated environmentally,  
3 in a responsible manner, as was stated before.

4 Thank you.

5 HEARING OFFICER HALLORAN: Thank you, sir.

6 MS. BUGEL: Hi. My name is Faith Bugel  
7 B-u-g-e-l, and I'm testifying on behalf of  
8 Environmental Policy Center.

9 In August many of us sat in a PCB  
10 hearing room in Springfield. We listened to Amron  
11 as they claimed to be invested in Illinois communities.  
12 We listened as Amron pressured the state to give a  
13 variance with the threat of job loss. We listened  
14 as Amron suggested that they would continue to run  
15 plants and protect jobs in this state if they  
16 received the variance.

17 Amron stated that it was certainly  
18 not prepared to give up on the plants. It turns  
19 out, looking back, that we were led astray down the  
20 garden path.

21 In December, 2012 -- and I'm quoting  
22 from Amron's SEC filing. "Amron determined that it  
23 intends to and it is probable that it will exit the  
24 merchant generation segment of its business before



1 the end of the useful lives of that business  
2 segments assets."

3 We don't know what this means. Are  
4 they going to shut our plants? It's possible. Are  
5 they going to sell plants to a different operator?  
6 That's possible too. Are they going to net more in  
7 that sell because of the variance? That's possible  
8 too. What it seems is that the variance in the  
9 name of Amron to take the money and run.

10 Like Amron, Midwest Gen claims to be  
11 committed to Illinois communities. Like Amron,  
12 Midwest Gen claims to need the variance to protect  
13 jobs. Just like Amron, Midwest Gen wields job loss  
14 like a sword. These companies put enormous  
15 pressure on the state to grant the variance by  
16 threatening job loss.

17 Midwest Gen, like Amron, cannot give  
18 us any assurance that it will continue operating  
19 these plants and protect these jobs, even with a  
20 variance. Midwest Gen is facing financial  
21 uncertainty. As pointed out by the IEPA,  
22 bankruptcy makes Midwest Generation's future very  
23 uncertain.

24 The petition for the variance is

1 based on a set of financial facts that will change  
2 over time. The ownership interest in the plants  
3 covered by the variance could change. As IEPA  
4 pointed out, the bankruptcy proceeding may render  
5 the company unable to comply with the specifics of  
6 a variance order.

7 In fact, the company cannot even  
8 give us the specifics of a compliance schedule  
9 today. In short, granting the variance provides us  
10 no assurance that jobs will be protected or the  
11 plants will remain open.

12 In addition, I'd like to point out  
13 one of the laws that applies to bankruptcy  
14 proceedings. Federal law requires the debtor to, I  
15 quote "Manage and operate the property in his  
16 possession according to the requirements of the  
17 valid state laws of the state."

18 That's required in bankruptcy. So  
19 why is the bankruptcy being used here as a reason  
20 to change the valid state laws? If this is a  
21 financial issue, it should be left to work it out  
22 in the bankruptcy proceedings.

23 If this is a market issue about  
24 natural gas becoming more competitive, it's for the

1 market to pick the winners and losers based on  
2 market prices for gas, electricity and coal. It is  
3 for the bankruptcy court to pick the winners and  
4 losers among the debtors and creditors.

5 Finally, I'd like to point out  
6 something about the claimed net environmental  
7 benefit. May I approach the Exhibit, please?

8 HEARING OFFICER HALLORAN: You may.

9 MS. BUGEL: The net environmental benefit, as  
10 IEPA pointed out, is very small. The difference  
11 between these two blue areas is about 3,000 - or is  
12 3,181 tons of SO2. In the Amron variance  
13 proceeding the net environmental benefit there was  
14 64,964 tons. In the Waukegan variance proceeding,  
15 the net environmental benefit there was 8,385 tons  
16 of SO2.

17 However, it is possible that this  
18 net environmental benefit is not a real environmental  
19 benefit. And the reason is if we look at the CPS  
20 base case the tons of emissions for 2013 are  
21 claimed to be 65,341 tons. And this is based on a  
22 2008 to 2011 average.

23 If we look at 2011 actuals,  
24 according to Doug McFarlan's testimony at page 6,

1 actuals in 2011 were 56,395 tons. That is actually  
2 right about where this red line is, which makes the  
3 real environmental benefit disappear and this blue  
4 area goes away. Thank you.

5 MR. ARMSTRONG: Good afternoon. My name is  
6 Andrew Armstrong, and I'm also testifying on behalf  
7 of the Environmental Law and Policy Center.

8 My comments will be focused on  
9 one critical legal issue, specifically, Midwest  
10 Generation's refusal to provide a legally sufficient  
11 compliance plan. Midwest Generation has failed to  
12 meet the legal requirements for a variance because  
13 of this failure.

14 The board's regulations and prior  
15 decisions make clear that a petitioner for a  
16 variance must provide a detailed plan by which it  
17 will come into compliance with regulatory  
18 requirements. Midwest Generation refuses to  
19 provide that plan.

20 Instead, Midwest Generation  
21 insists that it needs flexibility. The flexibility  
22 to determine at some unspecified future date whether it  
23 will clean up its plants, shut them down or given  
24 its recent track record, perhaps seek yet another

1 variance.

2 Midwest Generation's no questions  
3 answered approach is inconsistent with the detailed  
4 compliance plan the board required of Amron during  
5 its variance proceeding last year. Midwest  
6 Generation's lack of such a compliance plan  
7 represents a stark difference between these two  
8 cases.

9 Midwest Generation needs to be  
10 transparent with the board and with the public.  
11 The question that Midwest Generation needs to  
12 answer is, what is the plan going forward for its  
13 plants?

14 Now, Midwest Generation claims  
15 that its lack of a detailed plan is consistent with  
16 the quote, unquote "spirit" of the CPS. However,  
17 legal issue is, is it consistent with the requirements  
18 for a variance? The answer to that question is no.

19 Without that plan what Midwest  
20 Generation is proposing is not a variance. It's an  
21 outright amendment of the CPS that should be made,  
22 if at all, through a rule making; not a variance  
23 proceeding.

24 Midwest Generation's petition should

1 be denied. And thank you for your consideration of  
2 my comments.

3 HEARING OFFICER HALLORAN: Thank you,  
4 Mr. Armstrong, Ms. Bugel. Any members of the  
5 public wish to give public comment? Oh, I'm sorry.  
6 Yes, sir.

7 MR. (UNKNOWN): I have a question.

8 HEARING OFFICER HALLORAN: Yes, sir.

9 MR. (UNKNOWN): There is a sign up sheet.  
10 Are we taking people in order?

11 HEARING OFFICER HALLORAN: No. You just can  
12 get up in line, if you want. I don't know how many  
13 people -- I haven't really looked at it. Probably  
14 25 people. I think about 15 or 18 have already  
15 gave comments. So if you have a comment --

16 MR. (UNKNOWN): Thank you, very much.

17 HEARING OFFICER HALLORAN: All right. Thank  
18 you, sir.

19 MS. SHUTTS: Hello. My name is Susie Shutts,  
20 that's S-h-u-t-t-s, and I'm here on behalf of the  
21 Natural Resources Defense Council.

22 We ask that the board deny Midwest  
23 Generation's variance petition, and instead hold  
24 the company to previously agreed to pollutant

1 standards for three reasons.

2 First, Midwest Generation's  
3 commitment to reduce sulfur dioxide were part of a  
4 larger settlement agreement in 2006. The company  
5 agreed to opt it into and has since benefitted from  
6 that agreement.

7 The company should, therefore, not  
8 now be permitted to avoid its obligations under the  
9 settlement's terms.

10 Midwest Generation took over a year  
11 in forming the settlement and has received the  
12 benefits of the agreement, including less stringent  
13 mercury limits than would otherwise be required.  
14 These benefits were given to Midwest Generation in  
15 exchange for its meeting certain emission  
16 standards, and it should now do so.

17 In addition, as the Illinois EPA has  
18 stated in its recommendation on the company's  
19 variance request, the company knew of many of the  
20 factors and now cites as rationale for its request.

21 Granting Midwest Generation a  
22 variance would allow the company to breach the  
23 agreement, would undermine the settlement process,  
24 will betray the public trust.

1                   Second, Midwest Generation's  
2     variance request should be denied, given that the  
3     company has not provided adequate assurance, but  
4     will comply with its proposed schedule under the  
5     variance and that it won't ask for another one in  
6     the future.

7                   While Midwest Generation has stated  
8     its intention is to reorganize and return from  
9     bankruptcy proceedings as an even stronger presence  
10    in the Illinois market, it's difficult to predict  
11    the outcome of these proceedings.

12                  Although ideally the company  
13    will be successful, its financial situation and  
14    ability to finance pollution control projects are not  
15    guaranteed to be approved.

16                  Alternatively, it is possible that  
17    the company will follow the path of a similarly  
18    situated company, Amron, just three months after it  
19    was granted its extension.

20                  To meet amalgamated regulations,  
21    the company announced it was divesting itself of  
22    the plants, and it cited, though, energy prices, as  
23    well as costly environmental plant upgrades, and  
24    these are the same circumstances that Midwest



1     Generation is facing and will face.

2                     Amron's announcement came just  
3     months after the company made its supposed  
4     commitment to the communities where its plants are  
5     a center piece of a justification for a variance, which  
6     was granted.

7                     Likewise, Midwest Generation has  
8     used similar language about the importance of its  
9     plans to local communities in Illinois a justification  
10    for a variance. For example, it stated that a  
11    variance would significantly reduce, if not  
12    eliminate the depth and breadth of potential  
13    operational effects.

14                    Yet the company offers no  
15    assurances that a variance will be sufficient, and  
16    that the company is more interested in staying in  
17    Illinois than in avoiding the regulatory pressure  
18    of an agreement it has already benefitted from.

19                    Another roadblock to the company's  
20    ability to meet its proposed schedule is that it  
21    cites decreased revenue and increased costs as for  
22    the costs of the financial challenges, but is  
23    leading it to request a variance. But there is no  
24    reason to expect these conditions to abate so that

1 it can fund pollution controls in the future.

2           The variance request relies on  
3 speculative energy price increases, yet energy  
4 prices continue -- could continue to remain low,  
5 and this actually seems likely, given that the  
6 energy prices have fallen every year since 2008 due  
7 to natural gas price decreases, and that the  
8 U. S. Energy Information Administration forecasts  
9 increased natural gas production, which, again,  
10 would keep prices low into the future.

11           These conditions indicate continued  
12 financial strains, which suggests that Midwest  
13 Generation could ask for another variance in the  
14 future. But such a pattern undercuts the purpose  
15 of granting a variance, which is to provide  
16 temporary reprieve, not indefinite support.

17           Finally, if the company's variance  
18 requests should not be granted, given the uncertainty  
19 caused by its ongoing bankruptcy proceedings.  
20 Furthermore, if the bankruptcy court should decide  
21 priorities among competing demands on Midwest  
22 Generation its filing for bankruptcy does not allow  
23 it to fall short of its obligations under the 2006  
24 agreement.

1                   In conclusion, for all of these  
2 reasons, we ask that the board deny Midwest  
3 Generation's petition. In considering whether to  
4 grant Midwest Generation's variance request, the  
5 board should not rely on the same kinds of  
6 unsupported promises by a similarly situated  
7 company, that being Amron, made in its variance  
8 petition just a short time ago, which were broken a  
9 few a months later.

10                   That experience shows that when a  
11 company's importance to the state and local economy  
12 is used as justification for a variance, granting  
13 that does not insure that the company will be able  
14 to stay in the state and local market.

15                   Midwest Generation was aware of many  
16 of the factors it now cites when the 2006 agreement  
17 was reached. It has already benefitted from that  
18 agreement, which said the combined pollutant  
19 standards must now uphold the end of the bargain.  
20 Thank you, so much for your time.

21                   HEARING OFFICER HALLORAN: Thank you.

22                   MS. BURCENSKI: Good afternoon. My name is  
23 Sandy Burcenski. I'm a life long resident of Will  
24 County.

1 HEARING OFFICER HALLORAN: Could you spell  
2 your last name, please.

3 MS. BURCENSKI: Oh, I'm sorry.

4 HEARING OFFICER HALLORAN: Thank you.

5 MS. BURCENSKI: B-u-r-c-e-n-s-k-i. I'm also  
6 a member of CARE, Citizens Against Ruining the  
7 Environment. I've heard here today that Midwest  
8 Generation is in compliance on mercury in NAAQS.  
9 But we are here to talk about SO2. I have heard  
10 the term compliance commitment spoken numerous  
11 times today by Midwest Generation, so I would like  
12 to ask a question.

13 What is Midwest Generation's  
14 compliance commitment to Will County since Will  
15 County Romeoville plant, I believe, is second only  
16 to Powerton in the state with the highest levels of  
17 SO2 over the facility?

18 Midwest Generation wants a variance,  
19 yet are you aware that in the last year to year and  
20 a half Midwest Generation has gone to all the local  
21 municipalities to solicit their support to allow  
22 Midwest Generation to be a part of the enterprise  
23 zone, which I believe puts the burden on all of us.

24 Are you also aware that the way

1 this was presented and sold to these municipalities  
 2 is that Midwest Generation needs this so they can  
 3 implement pollution controls at their facilities.  
 4 Nothing was ever mentioned about variances and when  
 5 this would take place.

6 Based on past agreements with  
 7 Midwest Generation, how long will the Pollution  
 8 Control Board and the EPA, in my opinion, continue  
 9 to be strung along by Midwest Generation with good  
 10 faith plans that are subject to change?

11 I would like to respectfully ask the  
 12 board not to grant this variance. Thank you.

13 HEARING OFFICER HALLORAN: Thank you.

14 MS. OWEN: Good afternoon. My name is Verena  
 15 Owen, and I usually spell my first name, but I will  
 16 spell both for you.

17 HEARING OFFICER HALLORAN: Sure.

18 MS. OWEN: It's V-e-r-e-n-a O-w-e-n. My  
 19 family and I live in Winthrop Harbor, that's just a  
 20 couple of miles north of the Waukegan plant. I'm  
 21 also a volunteer for the CR club.

22 10 years ago, I testified at the  
 23 Waukegan plants operating permit hearing, and the  
 24 permit, as the board is well aware of, the company

1 is still fighting. And I pointed out that this  
2 plan is totally unscrubbed and has no SO2 pollution  
3 controls on their facility. And I have a feeling  
4 of déjà vu standing here 10 years later.

5 You will get testimony and already  
6 have gotten testimony about the impact of health  
7 pollution -- of air pollution to public health.  
8 There's numbers, there's statistics, there was  
9 premature deaths in emergency room visits.

10 I have a very good friend who had a  
11 lung ailment and she passed away, leaving four  
12 little boys and she died before her oldest ever  
13 graduated from high school. Those numbers are real  
14 people, they are not just statistics.

15 Midwest Generation bought these  
16 plants and the Waukegan plant in or around 1999,  
17 and they were all aging plants at the time and they  
18 knew very well they would need considerable  
19 upgrading from what they had when they bought them.

20 So it was obviously Midwest Gen  
21 agreed to the CPS and committed to either close the  
22 Waukegan plant or install this new pollution  
23 control by 2014.

24 So Ted Craver, who at the time was

1 the CEO of Edison Mission Energy or EMG, said in  
2 the press release, This agreement -- speaking of  
3 the CPS -- provides long-term certainty for both  
4 the state and how the company helps the state and  
5 city of Chicago achieve their clean air goals, and  
6 allows us to plan and manage significant capital  
7 investments and major technology projects in a  
8 reasonable timeframe to plan and manage significant  
9 capital investment.

10 So did Mr. Craver do that? No, he  
11 didn't, and he didn't do it in the future either.  
12 Mr. Craver is now the CEO of Midwest Gen's parent  
13 company, Edison International.

14 I am a shareholder of Edison  
15 International; I own one share. At a recent  
16 earnings call Ted Craver cut Midwest Generation  
17 loose from the mother ship, indicating the  
18 unwillingness of the parent company to fix -- to  
19 fund anymore Midwest Gen projects.

20 Interesting enough, Edison  
21 International still makes a profit, which I donate  
22 that I just need to a good organization. Why is  
23 that? Edison International's portfolio is actually  
24 only eight percent coal, 90 percent (inaudible),

1 and varies a vast variety of other sources for  
2 Midwest Generation.

3 Midwest Generation's portfolio in  
4 comparison is 89 percent coal. Coal is simply a  
5 bad business model. The handwriting has been on  
6 the wall for quite some time, and the true cost of  
7 coal is finally coming in.

8 In the 2012 -- November, 2012  
9 business update Edison International lists  
10 environmental expenditures for the Midwest  
11 Generation fleet. EME spent \$26 million dollars in  
12 2012, and plans to spend \$112 million dollars in  
13 2013, and \$311 million dollars in 2014, without any  
14 mentioning where that money will come from.

15 To put this in perspective, in its  
16 application, Midwest Gen states that it spent  
17 \$170 million dollars over six years, which is  
18 \$28 million dollars, which is about what they  
19 expect in 2012.

20 In the same report there is a list  
21 of Midwest Gen's compliance costs. Again, Edison  
22 International estimates compliance costs at about  
23 \$863 million dollars, broken down into large units  
24 and small units, and there's a very telling



1 footnote. It says, No decision has been made to  
2 retrofit particular units.

3 Capital expenditures forecasts,  
4 the ones that I mentioned, provides for large unit  
5 retrofits. It is less likely that retrofits will  
6 be made to Joliet 6 and the Waukegan Station.

7 So to me the cost and expenditure  
8 numbers don't add up. I don't understand what  
9 they're doing and somebody may not be really  
10 telling the truth here.

11 The variance will not resolve any of  
12 Midwest Gen's financial problems. This variance  
13 cannot fix an unfixable company, and Mr. Craver  
14 seems to understand that. The variance also  
15 doesn't guarantee jobs and nor that the plants will  
16 stay open. There is simply no certainties.

17 It is past time for Midwest Gen to  
18 come clean and disclose what -- to their workers  
19 and to the communities what exactly their plans are  
20 for those plants. And communities around those  
21 plants deserve to know and need to know and need to  
22 start thinking beyond coal and planning for a  
23 redevelopment and juxtaposition of the workers.

24 It is the responsibility of you, the

1 board, and the duty of you to protect Illinois  
2 residents from being taken advantage of by  
3 companies like Midwest Generation and their parent  
4 Edison International.

5 The board has to -- it would be  
6 irresponsible of the board to approve the variance  
7 without knowing if the company can reasonably and  
8 actually pay for those controls. And I urge you to  
9 deny the variance. Thank you.

10 HEARING OFFICER HALLORAN: Thank you.

11 MS. KLIPP: Good afternoon. Barbara Klipp  
12 K-l-i-p-p. Before I begin my official testimony, I  
13 wanted to address one concern that I have. In  
14 previous testimony by the company and by several of  
15 the elected officials they had stated that the  
16 company has remained in compliance with all federal  
17 and state regulations.

18 But according to the EPA toxic  
19 release inventory page on the Waukegan coal plant  
20 they've been in noncompliance for the past three  
21 years. So I'm concerned about the discrepancy  
22 there.

23 At any rate, my name is Barbara  
24 Klipp. I'm with an organization called Incinerator

1 Free Lake County. We're a grass roots organization  
2 of concerned citizens in Lake County, working on  
3 clean air issues, amongst other things.

4 We're asking you to vote no on the  
5 variance before you today for the following  
6 reasons: Midwest Generation's plant in Waukegan is  
7 the largest source of pollution in Lake County,  
8 placing a tremendous burden on the citizens,  
9 schools and businesses in the region in terms of  
10 increased healthcare costs, lost work and school  
11 attendance days, and even in some cases loss of  
12 life.

13 The 2010 study by the Environmental  
14 Law and Policy Center estimates that this plan  
15 alone cost the region \$86 million dollars annually  
16 in healthcare and environmental costs.

17 The 2011 study by the Clean Air Task  
18 Force estimates that the Waukegan -- the pollution  
19 from the Waukegan plant, of which SO2 was a major  
20 component, is the cause annually of 34 deaths, 54  
21 heart attacks, 570 asthma attacks, 25 hospital  
22 admissions, 21 cases of chronic bronchitis, and 35  
23 asthma related ER visits. For an estimated  
24 evaluation of \$266 million dollars per year.

1           As I'm sure you're aware, Lake  
2 County noncompliance on PM 2.5, which is directly  
3 related to SO2, and the Chicago area is Ground Zero  
4 for asthma in the country, with double the national  
5 average of asthma related hospital emissions.

6           As a person with respiratory issues  
7 and a parent of a child with asthma, I can tell you  
8 that I personally had to take time off of work for  
9 respiratory health issues for myself and my child,  
10 and I don't want to lose my job either.

11           Health insurance and life insurance  
12 costs more for me, specifically because I have  
13 asthma, I'm a single mother and sole supporter of  
14 three. These are not just statistics, but very  
15 real consequences in our lives.

16           The company claims that economic  
17 hardship is the grounds for their variance.  
18 However, there's no assurances that this variance  
19 will remedy their economic difficulty or that these  
20 good people's jobs and the taxes will remain in  
21 place.

22           What will be different in two years  
23 to assure you that they will be able to comply with  
24 these proposals, will they be able to approve their

1 financial viability or will market forces improve  
2 as they state is necessary to secure the funding?

3 It is not certain that these jobs  
4 or the taxes will be here in two years, if the  
5 company will be able to comply in two years or if  
6 they will even be in business in two years.

7 But what we do know for certain is  
8 that if you grant this variance, the air surrounding  
9 these plants will continue to be excessively  
10 polluted with sulfur dioxide, affecting the health  
11 of millions of citizens, including children with  
12 undeveloped respiratory immune systems and costing  
13 the local regions hundreds of millions of dollars  
14 in increased costs from environmental and health  
15 consequences.

16 Economic issues are important to  
17 consider when weighing the merits of a claim, but  
18 we implore you to put the health of the citizens of  
19 Illinois ahead of economic issues. Thank you.

20 HEARING OFFICER HALLORAN: Thank you.

21 MS. FOX: My name is Tracy Fox. I'm from  
22 rural Peoria County. I'm a member of Peoria  
23 Families Against Toxic Waste, a grass roots  
24 volunteer group that works on pollution issues.

1 I'm here today to testify against the variance  
2 requested by Midwest Generation.

3 This is eerily similar to the  
4 hearing that was held on Amron's variance request  
5 earlier. And it follows a typical pattern. The  
6 company couldn't perceive the horrific  
7 circumstances that would lead them unable to do  
8 anything except slash pollution control in order to  
9 preserve jobs.

10 And although they remained  
11 concerned about the environment, they claim that  
12 these standards can be changed to meet their needs  
13 without harming anyone.

14 Well, I find all of this very  
15 troubling. I don't see any factors presented by  
16 Midwest Generation that could not have been  
17 predicted long, long ago. Natural gas prices have  
18 been falling for some time. Energy demand has been  
19 falling, Illinois's regulatory environment and its  
20 competitive state relative to other states has not  
21 changed recently, and their loan has been coming  
22 due from the day they took it out.

23 None of these factors should've been  
24 unforeseen or precluded Midwest Gen from making

1 plans to follow the compliance steps that they had  
2 already agreed to.

3 And I think their inability to  
4 predict these things and to manage such basic  
5 aspects of their operation should also call in your  
6 mind questions about their ability to deal with an  
7 overly flexible compliance schedule.

8 I think you need to nail them down  
9 on specific steps, on specific dates, specific  
10 amounts of money that will be spent. I don't  
11 believe they'll follow it, and I think you should  
12 deny the variance. But if you go forward, I would  
13 ask for as much specificity as possible.

14 I think their failure to protect  
15 things like falling natural gas prices, like a loan  
16 coming due that they themselves stand for shows  
17 that they are really fundamentally unable of  
18 working without a lot of supervision.

19 I also find the whole situation very  
20 predictable, that they would come up and they would  
21 place all of these workers, their jobs are in  
22 jeopardy unless this variance is granted. It's the  
23 same story that we heard from Amron, and yet in  
24 December Amron announced that despite being granted

1 the variance, they're sorry, the jobs are going  
2 away.

3 I think all of us fundamentally  
4 recognize that any corporate entity that is failing  
5 to invest in its plants is failing to invest in the  
6 future of its workers. There is no future for  
7 anyone in terms of long-term job security if a  
8 company is not willing to invest in where you're  
9 working.

10 And I looked back at various reports  
11 about the financial troubles of the energy industry  
12 in Illinois in general and comments by Midwest  
13 Generation specifically.

14 In April, 2012 Mr. McFarlan in  
15 speaking to Midwest Energy News indicated that they  
16 had spent \$400 million on compliance in the period  
17 1999 to 2012, with an additional \$860 million  
18 dollars to be invested in the 2012 through 2015  
19 timeframe.

20 Now, it would seem to me that  
21 between now and last April, \$800 plus million  
22 dollars didn't simply disappear. Either he just  
23 says what's expedient at the moment or there are  
24 some serious management issues that have not been



1 disclosed today.

2 I dot do not believe that if I as an  
3 individual stood up and said I had \$40,000 in  
4 unanticipated expenses in the last 10 years, I know  
5 that I'm going to have 80,000 in the next four and  
6 yet I haven't saved a thin dime, you would not  
7 trust me to move forward, especially with something  
8 so critical, like compliance with environmental  
9 standards is at stake.

10 I don't understand where this money  
11 goes. I don't understand the complex structures of  
12 ownership and partnership and generations and  
13 leases, but I don't think that the Illinois Pollution  
14 Control Board has the resources, nor should be  
15 responsible for sorting that out. Instead, I think  
16 you should let it go through bankruptcy, deny the  
17 variance and see what falls out.

18 Finally, in closing remarks, I'm  
19 also very concerned about the way that this  
20 flexible approach is going to impact individual  
21 communities.

22 Before the morning break, Midwest  
23 Generation testified that its Powerton plant, which  
24 is located in Taswell County, part of the

1 Tri-County regional area that I live in, is the  
2 worst in its fleet and most in need of upgrades,  
3 and that they had already put that pollution  
4 control on hold, and instead were working on  
5 Powerton 6 and some additional things.

6 I believe that they were used in the  
7 same way that Amron did at the closure of the Fisk  
8 and Crawford plants, the various down times of the  
9 other units that are being upgraded to run Powerton  
10 long, hard, and actually increase the pollution  
11 burden in my area disproportionately.

12 I believe that you need to deny them  
13 any flexibility whatsoever and get a scheduled roll  
14 out so that all of the dirty plants are taken care  
15 of. I'm concerned about my ability -- my region's  
16 ability to meet ambient air quality standards.

17 I've sat in on numerous meetings of  
18 government officials trying to figure out plans to  
19 get people to car pool more and other things like  
20 that, because they're very concerned about the  
21 financial implications of non-attainment.

22 And yet, with this fleet wide  
23 structure, you could end up with something that may  
24 appear to reduce pollution control slightly or step

1 it down, albeit not in compliance, but at least  
2 reducing and yet cause spikes in the individual  
3 plants, whether it be Waukegan or Powerton in  
4 Taswell County.

5 In the end, I believe that Midwest  
6 Generation has failed to show good faith, and  
7 basically, you're going to end up with them going  
8 through bankruptcy to have another -- they are  
9 already a complicated corporate structure,  
10 difficult to trace cash flows, and it's not clear  
11 why they would have \$860 million dollars last  
12 spring, and suddenly now be broke and unable to  
13 payback a loan that they knew was coming.

14 I think it's going to emerge from  
15 bankruptcy in an even more ambiguous form. I think  
16 the focus, though, will remain the same. I don't  
17 think anything will really change.

18 I believe that they are going to  
19 continue to use jobs to plead for variances from  
20 all kinds of environmental regulations, wether it  
21 be coal, ash, CO2 or additional air pollutants, and  
22 in the end, I think the farthest in the future  
23 they're going to ever look is the next quarterly  
24 earnings report.

1 I apologize if that's harsh, and I  
2 understand people's jobs are on the line, but in  
3 the end, I think we would all be better served if  
4 we would move forward into something that's stable,  
5 find industries that are willing to invest in the  
6 workers and the plants, rather than just stringing  
7 them along month after month after month. Thank  
8 you.

9 HEARING OFFICER HALLORAN: Thank you.

10 MR. URBASZEWSKI: My name is Brian  
11 Urbaszewski, B-r-i-a-n U-r-b-a-s-z-e-w-s-k-i, and I  
12 do have a small exhibit that I would like to put  
13 for the board. These are just pictures that I'll  
14 explain in a minute in my testimony here.

15 Thank you for the opportunity to  
16 testify here today. My name is Brian Urbaszewski,  
17 and I represent Respiratory Health Association.  
18 RHA is an Illinois lung health charity that works  
19 to fight lung disease and promotes lung health  
20 through a research advocacy in education.

21 I'm here representing the  
22 approximately one in 10 Illinoisans who live with  
23 lung disease. High air pollution levels trigger  
24 more asthma attacks.

1                   People with lung disease also  
2    use more medication, are more likely to visit their  
3    doctor, more likely to wind up in the emergency  
4    room, and are more likely to be hospitalized when  
5    air pollution levels are high.

6                   Air pollution is also tied to  
7    increases in heart attacks, strokes and premature  
8    deaths. Hundreds of people in Illinois die every  
9    year from breathing coal power plant emissions.  
10   Thousands are sickened and many of these are  
11   hospitalized.

12                  Indifference to Dr. Fraiser  
13   pollution includes PM 2.5, fine particulate matter  
14   derived from sulfur dioxide emissions. In fact,  
15   sulfur dioxide is the largest contributor of PM 2.5  
16   emission in Illinois.

17                  The CPS option approved by the  
18   board set strong and comprehensive rate reduction  
19   requirements for coal and power plants. Midwest  
20   Generation freely admits that they voluntarily  
21   chose this option.

22                  Today Midwest Generation asks  
23   us to believe a fantasy. They claim to have the  
24   legal right to operate the Crawford plant. They

1 highlight precedence in how the board has treated  
2 other companies who have idle coal fire power  
3 plants.

4 They are asking that credit be  
5 given for future pollution reductions, based on  
6 what a shuttered plant could generate if the  
7 company wished to reopen and operate it.

8 The reality is different. The  
9 company says it could operate the Crawford plant  
10 until the end of 2014. But it has already begun  
11 dismantling the plant, and about 100 feet or so of  
12 one of the two main exhaust stacks has already  
13 gone, and that's what the picture in front of you  
14 shows.

15 How can a company claim to be  
16 able to operate that plant legally with a smoke  
17 stack that is 100 feet or so shorter? Is the  
18 company really allowed to pollute with half a  
19 stack, smothering the nearby largely Hispanic  
20 neighborhood with pollution?

21 If they are claiming the benefit of  
22 not running the Crawford plant in their accounting  
23 that leads to the 3,340 ton sulfur dioxide benefit,  
24 how can this be justified?

1                   The company is using the threat  
2   of legally running a dirty power plant for two  
3   years as leverage to get a variance. When it's  
4   clear they don't have the physical ability to  
5   actually run that plant.

6                   If they do not have this capability,  
7   they should not get credit for SO emissions  
8   avoided. Supposed SO2 benefit is a farce. It's  
9   like offering to not drive a car that does not have  
10  an engine.

11                  The owners of Midwest Generation  
12  benefitted from the CPS options and made firm  
13  commitments to cut SO2 rates fleet wide. With  
14  benefits reaped and shareholders rewarded, they now  
15  don't want to invest in cleaner emissions they  
16  promised Illinois residents.

17                  It is telling that the company is  
18  not willing to state what specific actions it will  
19  take to meet post 2016 emission targets. They are  
20  simply asking the board to trust them to comply.

21                  I ask you to deny this variance.  
22  Illinoisans should not be paying with their health  
23  or their lives to benefit a company's stock price.  
24  Your decision today and in future weeks will

1 determine more than financial concerns. It will  
2 determine whether Illinois residents live or die  
3 because of what they breathe. Thank you, very  
4 much.

5 HEARING OFFICER HALLORAN: Thank you, sir.  
6 Does anyone want to take a 10, 12 minute break?  
7 We'll be back at 1:00 o'clock. Thank you.

8 (recess taken.)

9 HEARING OFFICER HALLORAN: What I want to get  
10 an idea is how many people still want to make  
11 public comment? If I can see a show of hands.  
12 We've have got like, what, six, seven back there,  
13 eight, nine, 10, 11, 12. Okay, there's a lot more  
14 with their hands up than signed up.

15 But I think what we'll do, we'll  
16 go -- there's some people that are hungry here, so,  
17 you know, but my thinking is if there's probably  
18 12, 14 more people that want to give public  
19 comment, it would be kind of crazy to take an hour  
20 lunch, but, you know, I don't know.

21 All right. Step up and we'll see  
22 how it goes. We're back on the record. We'll  
23 start with public comment and we'll see how long we  
24 can last. Just state your name and spell it.



1 Thank you, so much.

2 MS. WEIMER: Judy Weimer W-e-i-m-e-r. I am  
3 here today because I fight for air every day. I am  
4 a survivor of a bilateral lung transplant, and  
5 thank you, donors. The reason I needed the  
6 transplant was because I have COPD emphysema and  
7 acute bronchitis. 80 percent of my COPD was due to  
8 environment.

9 In the '50s, '60s, '70's I grew up  
10 in Chicago, five brothers, everybody was a  
11 mechanic, if you wanted to go someplace you walked,  
12 you rode your bike. You were lucky to have one car  
13 in the family. So if you wanted to get someplace,  
14 that's what you did.

15 So things that were going on back  
16 then are not necessarily going on now, but still  
17 it's all coming together. I'm trying to help clean  
18 the air for my, you know, 15-year-old niece and  
19 nephews out there.

20 And all the little particles that  
21 are floating in the air that come out on everything  
22 and everybody is just not healthy. You're going to  
23 just inhale it and asthma is just going to keep  
24 going and going and going.

1 I've gone through my \$200,000  
2 401(k) for meds. I've gone through another 60,000  
3 in savings account for meds in order to be here  
4 today. Someone had to die in order for me to come  
5 and ask that you stop doing these variances. It's  
6 not going to help. There's so much problems out  
7 there, I can't begin to tell you.

8 It used to take me four hours to  
9 take a shower, and I was lucky to do that once a  
10 week. I was dependent on other people. The  
11 firefighters would come every -- probably six  
12 weeks, pick me up, take me to the ICU at the  
13 hospital, and I was hooked up to all the machines.

14 I was in adult diapers, I was on  
15 oxygen, I was in a wheelchair. If I wanted to walk  
16 around the house, I had a chair every five feet,  
17 because I had to sit and catch my breath for 10  
18 more minutes to go do. So doing anything was  
19 impossible.

20 If I wanted to eat, everything just  
21 went right down me because of the shakes, which I  
22 still have, but that's, you know, life. At least I  
23 have the right to be here today and speak my mind  
24 and ask that you do not give the variance. Thank

1     you.

2             HEARING OFFICER HALLORAN: Thank you, so  
3     much.

4             MS. GIBSON: Hello. My name is Tameka Gibson  
5     G-i-b-s-o-n, and I represent the Illinois Environmental  
6     Council. The Illinois Environmental Council founded in  
7     1975 is the eyes and ears of the environmental  
8     community in Illinois.

9             We focus on efforts that preserve  
10    the air and water quality, preserve open space and  
11    insure that the rights of every Illinois resident  
12    to a clean environment is both exercised and  
13    protected.

14            For far too long most Illinois coal  
15    fire power plants were shielded from having to  
16    install modern pollution controls designed to  
17    reduce smog, soot and mercury pollution.

18            The Illinois Environmental Council  
19    was at the forefront of the effort to de-grandfather  
20    the older coal fire power plants responsible for a  
21    large portion of the pollution emitted in Illinois,  
22    and has strongly supported the efforts of its  
23    member groups to clean up existing electric  
24    generation sources in the state.

1                   We continue to work in partnership  
2     with our member groups to maximize the use of  
3     energy efficiency and clean renewable energy here  
4     in Illinois in order to provide and preserve a  
5     healthy environment for all.

6                   The key point here today is that  
7     Midwest Generation voluntarily opted into the  
8     combined pollutant standard in 2007, knowing full  
9     well the benefits, risks and obligations that came  
10    with that choice.

11                  The company made that choice  
12    with a view towards its bottom line, and for many  
13    years apparently profited handsomely from that  
14    decision.

15                  But the company was not prudent,  
16    made inaccurate preparations for needed  
17    investments, and is now asking the public to allow  
18    it to pollute at a high level for a longer period  
19    of time.

20                  They are asking the public to  
21    believe that they are providing a net environmental  
22    and health benefit compared to simply complying  
23    with the existing terms of the agreement with the  
24    state.

1                   The company has filed for bankruptcy  
2     since applying for this variance, apparently  
3     because the parent corporation of Midwest  
4     Generation and Edison Mission Energy is refusing to  
5     spend its own money to support further investment  
6     in the company.

7                   Given that the courts are being  
8     asked to sort out the financial aspects Edison  
9     International has created, it would be wise for the  
10    board to await the outcome of those financial  
11    deliberations of the bankruptcy court before  
12    considering any variance.

13                  Given that the ability of the  
14    company to financially comply with any variance  
15    requirements or even whether the company will  
16    continue to exist as a going concern is being there  
17    realm, there are too many uncertainties that should  
18    be addressed by the bankruptcy courts.

19                  If assets are sold off due to  
20    bankruptcy proceedings, any new owners of former  
21    Midwest Generation coal plants should be held to  
22    the same emission requirements of the CPS that  
23    Midwest Generation was held when they exercised the  
24    CPS option.

1                   The coal plants must meet the  
2       emissions rate targets and the rules no matter who  
3       owns them in the future. We urge the board to deny  
4       the variance as proposed by Midwest Generation.  
5       Thank you.

6                   HEARING OFFICER HALLORAN: Thank you,  
7       Ms. Gibson. Due to time constraints, could we kind  
8       of keep our comments to around two minutes, and if  
9       we start going over, I'll ask you to summarize.  
10      Thank you.

11                  MS. LEE: Good afternoon. My name is Sabrina  
12      Lee L-e-e, and I'm an employee of Midwest  
13      Generation. I started with ComEd, and the only  
14      reason I'm standing right here today is because  
15      I've heard people come up and talk about the  
16      environment.

17                        I'm also an asthmatic, and I  
18      spent 29 years within the coal plants, and, I'm --  
19      fortunately, I've never had to take off because of  
20      asthma and pollution. There's a lot of pollution  
21      out there, but Midwest Generation do keep their  
22      plants clean. Thank you.

23                  HEARING OFFICER HALLORAN: Thank you.

24                  MS. BLUMENSHINE: Thank you, very much. My

1 name is Joyce Blumenshine B-l-u-m-e-n-s-h-i-n-e. I  
2 live in Peoria, Illinois. It's about two hours  
3 south of here along the Illinois River in wonderful  
4 Illinois River Valley with the high bluffs on both  
5 sides and the prevailing winds from the south,  
6 southwest.

7 I was in Springfield last year for  
8 the Amron hearing. I'm here today because I am  
9 very concerned about who speaks up for the people  
10 of Illinois. I have an acquaintanceship with  
11 chronic obstructive pulmonary disorder.

12 My mother had that. She lived in  
13 Tazwell County; we grew up in Tazwell County. I  
14 helped her walk to the car to take her to the ER.  
15 I have a friend who lives a few blocks from me. I  
16 live on what's called the Old East Bluff of Peoria  
17 upwind of these power plants, and I'm concerned  
18 because you see it's hard; I have breathing  
19 trouble, and there's 379,186, people in the Peoria  
20 Metro area.

21 I did not hear today what's going to  
22 happen with Powerton, which is in a non-attainment  
23 area well-known to IEPA. An article from the Pekin  
24 Times of May 20th 2011 says, IEPA officials

1 discussed sulfur dioxide pollution problems.  
2 Concerned residents and city leaders attended a  
3 meeting to address Pekin sulfur dioxide air  
4 pollution. IEPA is recommending that two townships  
5 be designated a non-attainment, which they are now,  
6 because they do not meet the air pollution  
7 standards. Pekin is measured at 235 parts per  
8 billion. That was in 2011, the worst in the state.  
9 This is a community of some 30,000.

10 What I'm trying to say is, this  
11 shell game -- and I apologize. I have no better  
12 words as a citizen to understand what is happening  
13 here. It's a shell game. So there's going to be  
14 improvements in sulfur. Well, what's going to  
15 effect the 300,000 people in my area who have the  
16 ongoing impacts from Powerton, a plant that is  
17 doing ground water pollution and has other  
18 concerns.

19 And we see year after year  
20 variances, delays and now the added concerns of  
21 economy -- and I will wrap up shortly here -- is  
22 that the decisions are here with the Illinois  
23 Pollution Control Board.

24 Strong arguments have been made



1 for the legal clarity in denying this permit. The  
2 facts, to me, show this permit should be denied.  
3 There is no clear evidence of a true plan with a  
4 timetable for any of us to rely on.

5 So I do ask you, please, and with  
6 great respect on behalf of the people who depend on  
7 your agency to direct the future of our environment  
8 and health and the costs of the public that bear  
9 the pollution of these plants, please deny this  
10 permit.

11 HEARING OFFICER HALLORAN: Thank you.

12 MR. LAMBERT: My name is Tom Lambert, and I  
13 just wanted to stand and make testimony to the  
14 character as I know it of Midwest Generation. More  
15 importantly, people that lead the company.

16 I'm a pretty ordinary person, but  
17 I've had the opportunity for 40 years to work with  
18 some extraordinary people, and so my testimony is  
19 based on facts, three facts that the company, as  
20 far back as 40 years when it was ComEd, has always  
21 supported three major objectives.

22 Number one has always been safety.  
23 Everybody in this room will testify, and so did, I  
24 believe, some of our leadership earlier. Not just

1 the safety of the people that work in the plant,  
2 but those in the community.

3 Second has always been environment.

4 Our emissions, total emissions. I was one of the  
5 guys that crawled through the precipitator, pulled  
6 the wires, so I did my part.

7 And then, thirdly, they were always  
8 committed to producing reliable energy. As I said  
9 earlier, I'm a simple man. I'm also a father and a  
10 grandfather. I breathe the air; I actually swim in  
11 the rivers, believe it or not. You know, run and  
12 walk on the trails. You know, I love nature. I'm  
13 very strongly committed to my health and long after  
14 I'm gone from the planet my children and  
15 grandchildren will still be here.

16 And I have strong confidence that  
17 Midwest Generation will do their very best to reduce  
18 emissions and keep their promises. Thank you, for  
19 hearing me.

20 HEARING OFFICER HALLORAN: Thank you, sir.  
21 To make the record clear, these are not testimonies  
22 we're hearing. It's just public comment. Testimony  
23 you'd be under oath. But just for the record.  
24 Thank you.

1 MR. DeGROATE: Good afternoon. My name is  
2 Scott DeGroate, it's spelled D-e-capital-G-r-o-a-t-e.

3 I'm one of the owners of DeGroate  
4 Petroleum Service, and I am a supplier to Midwest  
5 Generation. Today I've heard conjecture. I have  
6 also heard some things that I know to be fact.

7 What brings thought to me is since  
8 the company had gone bankrupt in order to go ahead  
9 and to create money to go ahead and to make the  
10 changes to the plants you have to allow the company  
11 to go ahead and generate electricity.

12 Let's face it. The company is under  
13 the gun to continue on with what they've already  
14 been chartered to do, and that is to help -- is to  
15 reduce, you know, our carbon footprint. Well, the  
16 long and short of it is, you know, it takes money  
17 to go ahead and do that.

18 You know, I'm a 45 year long  
19 resident of Joliet. I've lived within five miles  
20 of Joliet stations. I can't say if I've ever  
21 gotten sick because of the plant, but by God, you  
22 know, we've had people living here ever since the  
23 plants were created and that was back when those  
24 suckers really chugged out some really nasty

1 carcinogens.

2 But the bottom line is, is the  
3 company is following mandates that's going on out  
4 there. Its been shown today. But once again,  
5 without having the financial part to go ahead and  
6 pay for these upgrades, these updates that they  
7 have to do, they have to run.

8 HEARING OFFICER HALLORAN: Mr. DeGroate,  
9 could you wrap up your comments, please? We're  
10 trying to limit it to two minutes or thereabout, so  
11 thank you.

12 MR. DeGROATE: All I am trying to say is, is  
13 that I'm very grateful to be a supplier to the  
14 company, a resident of Will County and Joliet. And  
15 I wish that -- it is my thought, as is the thoughts  
16 of my employees that you please grant the variance  
17 to Midwest Generation. And I thank you.

18 HEARING OFFICER HALLORAN: Thank you, sir.

19 MS. KAISER: Good afternoon. My name is  
20 Kathy Kaiser K-a-i-s-e-r. I'm a life long resident  
21 of Joliet and also a member of Cool Joliet, which  
22 is a grass roots organization dedicated to  
23 improving the quality of air, water and soil in our  
24 community, and also educating the public on

1 environmental issues.

2 As a social worker, I've been  
3 involved with the Head Start program for over 30  
4 years, and I've seen firsthand the effects of poor  
5 air quality on these children who are vulnerable  
6 children in our community.

7 This year there is 700 children  
8 enrolled in Head Start and approximately 175 of  
9 them have been diagnosed with asthma or 25 percent.  
10 Now, all Head Start teachers must be retrained to  
11 respond to asthma attacks. Inhalers are available  
12 in each class room, with physician instructions on  
13 treatment for each affected child.

14 In the current Head Start population  
15 six children require EpiPins on site, due to the  
16 seriousness of their asthma conditions. These are  
17 real people facing real consequences of public  
18 policy decisions on air quality.

19 I respectfully ask that you consider  
20 denial of the variance to Midwest Generation.

21 HEARING OFFICER HALLORAN: Thank you, ma'am.

22 MR. GREGORY: Good afternoon. My name is Don  
23 Gregory G-r-e-g-o-r-y. I am the Vice President of  
24 the Will-Grundy Building Trades Council that

1 represents 24 local unions and over 20,000 men and  
2 working women throughout the region. I'm also a  
3 Business Rep for Pipefitters 597, and a 48-year  
4 Will County resident.

5 On behalf of the member locals and  
6 our working families that I represent, I'm here  
7 today to express our strongest possible support for  
8 Midwest Generation's request for a variance.

9 Midwest Generation is a major  
10 provider of jobs at its plants and through the  
11 supplies and services it buys from Illinois  
12 companies. Nearly 65 percent of all 850 employees  
13 are union members.

14 100's of additional union members  
15 in the building and construction trades work in the  
16 plants on special projects in these plants, often  
17 installing new pollution controls. Those are the  
18 people I represent.

19 I understand the need to protect the  
20 environment, health and safety, and there should be  
21 no doubt about Midwest Generation's record in this  
22 area. It has been committed to since it was  
23 founded and took over the plants in 1999 to invest  
24 in environmental improvements, sometimes even

1 before the new government rules were in place.

2 In closing, I just want to express  
3 my appreciation to Midwest Generation for its  
4 operation in plants and the highest priority for  
5 safety for all the workers and the times.

6 Thank you for giving me the  
7 opportunity for the comments.

8 HEARING OFFICER HALLORAN: Thank you, sir.

9 MS. McELROY: Hi. My name is Jennifer  
10 McElroy. I am a member of CARE, Citizens Against  
11 Ruining the Environment, and also a student here at  
12 Joliet Junior College.

13 I just wanted to say that I think we  
14 all know that coal is -- it's a resource that's  
15 going to run out eventually. It's an unrenewable  
16 resource. We all know that it pollutes the  
17 environment and it has a lot of hazardous effects.

18 So I think it would be a good idea  
19 to start retraining the community and Midwest  
20 Generation's people to looking into greener  
21 alternatives, as opposed to just losing jobs. They  
22 should take their assets and retrain and think  
23 about what else that they can do.

24 And as a mother, I am also concerned

1 about my son's health. He was recently diagnosed  
2 with asthma. He's also missed a lot of school, and  
3 I'm concerned about what and be done. I don't even  
4 know if I want to continue to live in Illinois, because  
5 of the pollution problems and the economic problems  
6 that this state is having, which is unfortunate.

7 So thank you for your time, and,  
8 please, deny Midwest Gen of whatever.

9 HEARING OFFICER HALLORAN: The variance.  
10 Thank you. Could you please spell your last name,  
11 please.

12 MS. McELORY: It's McElroy M-c-E-l-r-o-y.

13 HEARING OFFICER HALLORAN: Thank you.

14 MR. MEAD-LUCERO: Hi. My name is Jerry  
15 Mead-Lucero. It's Jerry Mead-Lucero. I'm with  
16 Pero P-e-r-o, which is the Pilsen Environmental  
17 Rights and Reform Organization, which is an  
18 environmental justice group in the Pilson  
19 neighborhood in Chicago.

20 So I used to live, actually, within  
21 a few blocks of the Fisk plants in our neighborhood,  
22 which is one of the two coal fire power plants in  
23 the Chicago -- in the city of Chicago. The  
24 Crawford plant in Little Village is only a few



1 miles away from me as well.

2 So for many years, for a decade,  
3 basically, I've worked with my organization with  
4 others to try to clean up those two power plants.

5 We're very grateful that we reached  
6 an agreement with Midwest Generation this last year  
7 that resulted in the closure of those two plants.  
8 That was a very big step forward.

9 But for all -- for that decade that  
10 we worked on these issues, we worked also very  
11 closely with our friends out here in Will County  
12 with CARE and other groups that were also concerned  
13 about the effects of the pollution on their  
14 communities, which I'm here to support their  
15 efforts because they came out and supported us  
16 many, many times over the last decade in Chicago.

17 Given that, you know, that I live so  
18 close to that plant and I've been working on this  
19 issue for so many years, I'm very familiar with the  
20 health effects that these plants cause, the kind of  
21 problems they cause for us in Chicago, and the kind  
22 of problems they cause out here in Will County and  
23 other parts of Illinois. And you guys have heard  
24 that testimony repeatedly, so I'm not going to go

1 over that information again.

2 I think what I can offer, though --  
3 I mean, what our issues were particularly concerned  
4 about was when we heard that the Crawford plant  
5 which had been named in this particular request for  
6 variance as well, we were concerned about that. We  
7 didn't initially understand what that was about.

8 I've learned since now what that's  
9 about, which is trying to use the offsets that are  
10 happening to get that part that has shuttered to  
11 basically reduce the requirements who meet similar  
12 pollution controls on plants in other parts of the  
13 state, and that areally concerns us.

14 We really feel that, you know, the  
15 fact that we were able to win a major victor in  
16 Chicago, reducing pollution in Chicago, should then  
17 lead to people in other communities in Illinois  
18 having to breathe in those kind of pollutants. You  
19 know, that which, obviously, they put us in a odd  
20 situation to have our victory turn out to be a loss  
21 for other communities, and so I'm here to oppose  
22 the variance.

23 I also want --

24 HEARING OFFICER HALLORAN: Sir, could you

1 wrap up? We're about two and half minutes in.

2 MR. MEAD-LUCERO: Sure.

3 HEARING OFFICER HALLORAN: Thank you, so  
4 much.

5 MR. MEAD-LUCERO: No problem. Real quick.  
6 The last thing I want to say too is, you know,  
7 let's keep in mind this is actually -- really these  
8 plants should have been cleaned up in the '70s when  
9 the Clean Air Act was passed.

10 This has been something that's been  
11 delayed 30, 40 years. Not just the few years that  
12 we're talking about since 2007 when the Illinois  
13 regulations were met.

14 We didn't actually -- our  
15 organization didn't support the 2007 agreement,  
16 because we thought as week as it was, and now  
17 they're asking for a variance even on that. So to  
18 us this is something that's been, you know, 40  
19 years overdue and to just keep pushing it off and  
20 off and off into the future is a real mistake. So  
21 thank you.

22 HEARING OFFICER HALLORAN: Thank you, sir.

23 MS. ROWAN: Hi. My name is Kimberly Rowan  
24 R-o-w-a-n. I am the Director of the Illinois

1 Student Environmental Coalition, as well as an  
2 Illinois college graduate and lifelong Illinois  
3 resident. I'll be testifying on behalf of the  
4 Illinois college students.

5 I work with student leaders  
6 throughout 40 schools throughout Illinois. Three  
7 located inside Will County, including Joliet Junior  
8 College. Students are the future of the state and  
9 of our nation, however, with the effects of climate  
10 change put into action largely by fossil fuel  
11 pollution, students may not have much of a future  
12 to utilize their education.

13 It is impossible to deny the  
14 devastating effects of climate disruption because  
15 we have witnessed them and the terrible storms,  
16 floods, heat waves forests and wild fires that have  
17 ravaged most of the globe.

18 In recent months Illinois college  
19 students have joined a national movement  
20 challenging their schools to divest from fossil  
21 fuel companies and break the stranglehold these  
22 industries have on our democracy and on our  
23 economy.

24 This has further created uncertainty

1 for companies like Midwest Generation because  
2 nobody wants to buy their dirty coal power as its  
3 becoming more and more expensive than alternative  
4 fuels and people are becoming aware of the negative  
5 externalities associated with fossil fuel  
6 pollution.

7 This has made it less and less  
8 certain that Midwest Generation will be able to pay  
9 for further pollution variances.

10 Students play a major role in  
11 determining the future of Illinois and its economy.  
12 Their education is an investment in the state of  
13 Illinois, so it shouldn't it be that policy  
14 reflects the values of this generation of future  
15 leaders.

16 In recent years there have been an  
17 increased interest in the sustainability and the  
18 growth in the green collar job sector. Illinois  
19 needs to be providing job opportunities in the  
20 expanding clean energy sector for college  
21 graduates. Not giving free handouts to companies  
22 that demonstrate complete disregard for the  
23 communities that they operate in.

24 The example we're setting the

1 economic climate it creates by allowing these  
2 pollution control variances will hinder Illinois  
3 college graduates from staying and working in  
4 Illinois after receiving their degree.

5 Illinois is notorious for its  
6 reliance on coal, which presents a unique  
7 opportunity for the state to step up, become a  
8 leader and transition for fossil fuels and more  
9 reliable and safer sources of energy.

10 Illinois students want to be  
11 proud of the state that they live in. Not only  
12 does the insatiable drive for energy and research  
13 at companies like Midwest Gen possess and lead to  
14 pollution resource depletion and climate change,  
15 but it also leads to rise in health care costs.

16 More than half of Americas recent  
17 college graduates are unemployed or under employed.  
18 Factoring this in with the rising amount of student  
19 debt and it's clear increasing healthcare costs are  
20 not an externality that not all Illinois college  
21 students and graduates will be -- have the  
22 privilege of adhering to.

23 HEARING OFFICER HALLORAN: Could you, please,  
24 wrap it up, please.

1 MS. ROWAN: Sure.

2 HEARING OFFICER HALLORAN: Thank you, so  
3 much.

4 MS. ROWAN: No problem. In closing, Illinois  
5 needs regulations that reflect the values of future  
6 generations and allow for the growth of a  
7 sustainable economy, one that protects the natural  
8 environment and offers stable well paying jobs.

9 That's why I'm asking you on behalf  
10 of Illinois college students to oppose the Midwest  
11 Generation's petitions for pollution variances.  
12 Thank you.

13 HEARING OFFICER HALLORAN: Thank you.

14 MR. HARROD: Good afternoon. My name is  
15 James Harrod H-a-r-r-o-d. I'll keep my statement  
16 very brief. I've been a life long resident of the  
17 Joliet area and Will County. In fact, I grew up  
18 three miles from here and I've been in this area my  
19 entire life. In fact, this is my alma mater. I  
20 went to this fine establishment, and I'm here  
21 representing Hayes Mechanical, one of the vendors  
22 that works with Midwest Generation.

23 We've worked with Midwest Generation  
24 for many years. Of all of the companies that we do

1 business with it in Illinois and the in Midwest,  
2 and we have five offices around the Midwest,  
3 Midwest Generation has always upheld the highest  
4 standards of safety and environmental protection of  
5 any of the companies that we've worked with.

6 They have treated their employees  
7 fair; they treat their contractors fair, and they  
8 come into this with the best of intentions and  
9 commitment to meet the compliance that the Illinois  
10 Pollution Control Board and our hearing is in  
11 today.

12 Again, I would just like to say my  
13 strong support of Midwest Generation's variance.  
14 My company employs, when we peak out with the work  
15 we do with Midwest Generation, 1400 employees for a  
16 three to four month period. And this is the employment  
17 they bring. It's not just the 800 full-time employees.  
18 When the outage season comes up, the employment  
19 peaks significantly.

20 These are jobs that are in Illinois.  
21 This is a company that's in Illinois. It's easy to  
22 say let's just shut them down and try to bring  
23 other business into Illinois.

24 They're a home grown company and



1 we need to support them, and I strongly suggest you  
2 grant their variance. Thank you.

3 HEARING OFFICER HALLORAN: Thank you, sir.

4 MR. JURAS: Hello. My name is Randy Juras  
5 J-u-r-a-s. I'm a resident of Homer Glen. I'm with  
6 the Homer Glen Environmental Committee. I'm a  
7 neighbor from the Romeoville plant, and one of the  
8 things that concerns me is what the toxicologist  
9 was talking about.

10 Everything that's emitted from that  
11 plant goes up into the air and it floats from west  
12 to east over our community. It joins up with the  
13 smog from I-355, and then we're also going to be  
14 getting the diesel truck traffic that's going to be  
15 at Heritage Crossing. They are estimating 80,000  
16 trucks per year that'll be going through there.

17 I realize that when you look at any  
18 single component come out of any single place,  
19 you're only going to see the results of that. What  
20 we see time and time again is that you get a  
21 combination of things. That's what you actually  
22 get bombarded with in your community.

23 The last thing I would like to say  
24 too is is that I was in R&D and we had to prepare

1 AOP plans, things of this nature, and I've got to  
2 admit I don't think some of my plans would've ever  
3 gotten forward with some of the numbers that were  
4 put forth here.

5 I don't think that they should be  
6 given the variance, given what they said they could  
7 do, will do, might do. I don't think that this is  
8 the end of the line here. I see this all happening  
9 again in a year or two with things not going quite  
10 right.

11 Having been in a number of those  
12 type of adventures, I know how difficult it is.  
13 And given what they're trying to do, I don't think  
14 the variance is going to really do the trick.  
15 Thank you.

16 HEARING OFFICER HALLORAN: Thank you, sir.

17 All the commentators, are they out  
18 there now? I don't know how this is happening, but  
19 they're multiplying. Could we have about one, two,  
20 three four, five more.

21 MS. BURNITZ: I don't know if that's  
22 everyone, but that's who's lined up right now.

23 HEARING OFFICER HALLORAN: Is anybody else  
24 thinking about giving public comment that's not out

1 in the hallway? Okay. Great. We've got five  
2 left, and we're doing a great job holding it to  
3 around two minutes, so thank you. You may step up.

4 MS. BURNITZ: Good afternoon. My name is  
5 Mary Burnitz, but I'm going to read something.  
6 It's from my neighbor. She is unable to read it.  
7 So I'll start.

8 Hello, my name is Ardis Doolin. In  
9 the fall and winter when the leaves are off the  
10 trees I have an obstructed view of my neighbor  
11 directly to the west, the Romeoville coal fire  
12 power station.

13 Since I'm only three or four years  
14 older than the power station, it's safe to say I've  
15 been watching and breathing the smoke coming out of  
16 the plant's smoke stack for most of my life.

17 My first memory dealing with  
18 respiratory problems takes place when I was about  
19 five or six years old. After taking me to the  
20 doctor, my mother and I returned to the car, while  
21 my father --

22 HEARING OFFICER HALLORAN: Just slow down  
23 just a little. I'm sorry.

24 MS. BURNITZ: Slow down, okay.

1                   -- while my father went into the  
2 drug store to get my prescription filled. It  
3 gradually dawned on me that people would go out of  
4 their way, even going so far as to cross the street  
5 to avoid coming near our car.

6                   When I asked my mom about it, she  
7 told me they probably thought I had whooping cough.  
8 I didn't have whooping cough, but it sounded like I  
9 did. To this day I still have a persistent  
10 explosive cough that sounds absolutely awful.

11                  Growing up I was a normal happy kid  
12 who did all the things a normal happy kid would do.  
13 But as I got older, I was less and less able to  
14 keep up with my friends. I couldn't run as fast or  
15 swim as well or bicycle as far, and I honestly  
16 didn't think anything of it because it's just the  
17 way it was.

18                  Bronchitis and upper respiratory  
19 infections were common. And, again, I thought it  
20 was normal. It was only when I was diagnosed with  
21 asthma that I began to realize there had been a  
22 problem all along. Now, I'm on medication, but  
23 even some days are good and some days are bad. On  
24 the bad days, it's difficult for me to talk.

1                   Despite what I just told you about  
2   myself, I'm one of the lucky ones. In November of  
3   2011 a doctor told my friend, Jan, who grew up not  
4   far away from me, she had about a year to live  
5   unless she had a lung transplant.

6                   Someone needing a transplant  
7   doesn't get put on a transplant list right away.  
8   The recipient has to undergo a series of tests to  
9   see if he or she is physically and mentally  
10  eligible for a transplant.

11                  If all the tests are not right, the  
12  recipient then has to wait for the insurance  
13  company's approval. While she was taking the test  
14  and waiting for the insurance determination, Jan's  
15  health deteriorated a lot.

16                  When she was first diagnosed with  
17  COPD she was having oxygen only when she felt she  
18  needed it. Gradually it progressed to the point  
19  where she needed oxygen all the time. She went  
20  from using one cannula to three of them all hooked  
21  together.

22                  She couldn't get up and go to the  
23  bathroom whenever she wanted. She had to think  
24  about it and get herself siked, because a trip to

1 the bathroom would drain every bit of energy she  
2 had, leaving her gasping for breath.

3 Like me, she had good days and  
4 bad days. On one of her really bad days it was  
5 difficult for her to do something as simple as  
6 repositioning a water bottle. Her heart was  
7 impacted from all the strain. She sounded weaker  
8 and weaker every time I talked to her.

9 It finally got to the point where  
10 they were desperately trying to build up her  
11 strength so she would be strong enough to undergo  
12 the operation that had finally been approved. She  
13 was in a race against time and she lost.

14 She passed away at the end of  
15 September, and I was with her just a few hours  
16 before she died. She was going through something.  
17 What she was going through was awful. Something I  
18 hope none of you will ever have to witness. She's  
19 three years younger than I, so she was in her late  
20 50's.

21 Maybe now you can understand  
22 why I think of her and consider myself one of the  
23 lucky ones. My friends took me -- look at me and  
24 consider themselves lucky. It's all a matter of

1 perspective.

2           The Romeoville coal burning plant is  
3 old. Back when it was built, I didn't think -- don't  
4 think anyone really knew what was coming out of  
5 those stacks, but things change and for quite a  
6 while now people running that plant have known  
7 exactly what's being spewed into the air, and  
8 consequently inhaled into area lungs.

9           Grandfathered or not, for purely  
10 ethical reasons the plant should've had upgrades to  
11 make it adhere to the clean act a long, long time  
12 ago.

13           HEARING OFFICER HALLORAN: Can we kind of  
14 wrap it up?

15           MS. BURNITZ: Yeah, I'm almost done. In this  
16 day age when health hazards of coal burning power  
17 plants are well known and documented, no one should  
18 have to look at the smoke spewing out of those  
19 stacks and ask is that going to make me sick. Say  
20 no to the variance. Thank you.

21           HEARING OFFICER HALLORAN: Thank you.

22           MR. THORNE: My name is James Thorne  
23 T-h-o-r-n-e. It shouldn't take a long time, I  
24 hope.

1 I'm not a public speaker; I'm not a  
2 Vice President, a VP, I'm not a CEO. I am a  
3 retired Army pilot, if that helps. But, no. I'm  
4 here to speak on behalf of Midwest Generation.  
5 Been around the world, seen a lot of different  
6 things. Seen a lot of other companies and how they  
7 deal with environmental issues and what have you.

8 I've been here four years, and I'm  
9 like Tom, I'm like an ordinary man, and that's all  
10 I know, their honesty integrity, commitment. When  
11 they say they're committed, I'm here to vouch for  
12 that. I felt compelled -- I don't have a speech or  
13 anything. I wasn't even going to talk today, so  
14 I'm a little nervous.

15 I was standing over there and I  
16 was listening, and you guys got -- you've got some  
17 decisions to make, and I'm just hoping that you're  
18 looking at all the facts and issues and not just  
19 the heartfelt passion.

20 Although that's important, because  
21 we have it on our side just as well as the opposing  
22 company I listened to -- or the opposing people  
23 here. I hear, you know, them saying that Midwest  
24 Generation is just using the threat of the loss of



1 jobs.

2 I don't see how that's any different  
3 than them using the health and welfare of other  
4 people. I can't speak intelligently about their  
5 living habits. Maybe they didn't exercise; maybe  
6 they ate bad. Maybe they -- you know, I don't  
7 know.

8 But there's a lot of people here  
9 that testified they had asthma and it hasn't  
10 bothered them. That's a lot of passion that's  
11 going on and both sides are -- you know, I just  
12 want -- I'm here to -- not as somewhat saying here,  
13 telling you what you need to do.

14 I'm here to ask you and urge you to  
15 look at all the facts, and -- I mean, even the Illinois  
16 EPA isn't contesting. But that's all. I just urge  
17 you to approve the variance.

18 HEARING OFFICER HALLORAN: Thank you, sir.

19 MS. SITKO: Good afternoon. My name Edyeta  
20 Sitko. It's S-i-t-k-o, E-d-y-e-t-a. And I'm here  
21 on behalf of Greenpeace's 15,000 supporters in the  
22 state of Illinois. I'm going to add onto some of  
23 my colleague's, Mike Johnson.

24 And I'm here to ask the Illinois

1 Pollution Control Board to deny Midwest  
2 Generation's request for a variance for the 2006  
3 CPS agreement.

4 Midwest Generation's smoke stacks  
5 have illumined over the homes of people in this  
6 community for decades spewing asthma attacks and  
7 other respiratory health problems, and some of the  
8 real stories of the real people who live in this  
9 community that you've heard today.

10 Now, this company is trying to  
11 present itself as a victim who deserves special  
12 concessions. The truth is the world is changing.  
13 No one wants to pay for their energy with their  
14 lives.

15 Communities throughout Illinois  
16 are Illinois are standing up and saying no to coal  
17 power and are seeking cleaner, cheaper energy  
18 sources.

19 Nationally coal use is on the  
20 decline, and renewable energy is creating new jobs  
21 while providing cost competitive generation that  
22 doesn't threaten public health.

23 The short and the long term outlook  
24 for emergent coal plants is pretty bleak at best,

1 and it's only a matter of time before these plants  
2 are retired.

3 But while lawyers and accountants  
4 mull over the balance sheets and bankruptcy  
5 filings, residents in Romeoville, Lockport, Joliet  
6 worry about the safety of their lives and their  
7 kids and their air.

8 While Midwest Generation may save  
9 some capital in the coming years by getting this  
10 variance, it is those residents who will pay the  
11 costs of the delay with their health and  
12 well-being.

13 Midwest Generation does not  
14 deserve a break. This isn't a serious proposal to  
15 comply with the CPS. It's a delay tactic to avoid  
16 responsibility for its toxic pollution.

17 Last year Amron pulled the wool over  
18 eyes of regulators and was granted a variance for  
19 the stated purpose of protecting jobs and local  
20 economies. The variance didn't protect jobs. It  
21 didn't reduce pollution, and it didn't increase  
22 local investments.

23 Amron benefitted and the public paid  
24 the price, as the company announced in December

1 plans to close its mercury and coal business  
2 permanently.

3 HEARING OFFICER HALLORAN: Could you please  
4 summarize. Thank you, so much.

5 MS. SITKO: In summary, let's not repeat the  
6 same mistakes. The PCB needs to put people ahead  
7 of pollution, and deny Midwest Generation's request  
8 for a variance.

9 HEARING OFFICER HALLORAN: Thank you, so  
10 much.

11 MS. SITKO: Thank you.

12 MR. PICKERING: Marvin Pickering. I've live  
13 in the area.

14 HEARING OFFICER HALLORAN: Sir, could you  
15 please spell your last name for the court reporter,  
16 please.

17 MR. PICKERING: P-i-c-k-e-r-i-n-g.

18 HEARING OFFICER HALLORAN: Thank you.

19 MR. PICKERING: I've lived in the area since  
20 1962. And I realize you have a difficult decision,  
21 because I have seen this thing progress in various  
22 ways. I can understand you have a difficult  
23 decision, and I'd like to share some information.

24 First of all, I'm a retired science

1 teacher. And we have done some experiments with  
2 our students pertaining to acid rain in the area  
3 over the years. I have one neighbor who works for  
4 Midwest Generation.

5 I have another one who didn't get a  
6 lung transplant, and he can't be here, and I  
7 realize there's a lot of people that aren't here,  
8 and I thought I'd come to try to speak for them,  
9 because they're in bed and they have respiratory  
10 problems, which don't seem to get better.

11 So I'd like to deal with two points.  
12 One academic and scientific, and the second,  
13 subjective. From the academic, with our laboratory  
14 work we gathered grain samples right after a rain,  
15 tested them and from the southwest to the northeast  
16 you can draw a line from Joliet through the south  
17 part of Homer Township to the northeast part of  
18 Homer Township, which is northeast of here, and  
19 that prevailing wind with a PH between four and  
20 five.

21 But you go to the northwest part of  
22 Homer Township and the ph was much higher. And  
23 this wasn't one lab, this wasn't one year. This  
24 was many years in the '90s and the late '80s.

1 I realize it may be outdated and it  
2 might be a high school lab, but those high school  
3 students are now voters, and we have a problem.

4 I live on Gougar Road. On Gougar  
5 Road they turned the switch off at 80. We have  
6 lost six people within a year, all on Gougar Road,  
7 Homer Township. We have the benefit of two coal  
8 generating plants intersecting; three miles to  
9 Romeoville and about seven miles to Joliet.

10 Mrs. Mitchell at 159th and Gougar,  
11 Mrs. Meyers at 159th and Gougar, Ed and Ann Carkett  
12 at about 15400 and Gougar, Teresa Koskowitz across  
13 the road at 15400, Bess Hoster at 151st.

14 HEARING OFFICER HALLORAN: Sir, could you  
15 please summarize?

16 MR. PICKERING: Yes.

17 HEARING OFFICER HALLORAN: Thank you, so  
18 much.

19 MR. PICKERING: We have seen the results of  
20 acid rain and acid pollution and sulfur dioxide,  
21 which becomes, I believe sulfurous acid. Basically  
22 what we have happening is what my doctor has told  
23 me now. A year ago he said you're wheezing.

24 And now, just a couple of weeks ago

1 he says you're wheezing, and now it's four inhalers  
2 a day for me. A guy that's always done what he  
3 wanted and when he wanted.

4 They're about to turn the lights  
5 out. I'm 76. You only get to be 80 on Gougar  
6 Road, maybe 81, if you're lucky, and it all seems  
7 to be pneumonia, pneumonia, pneumonia, which goes  
8 back to respiratory problems.

9 So on behalf of the people that  
10 can't be here, behalf of those people who know that  
11 there is a prevailing wind that carries the sulfur  
12 dioxide to Homer Township, thank you, and consider  
13 us, please.

14 HEARING OFFICER HALLORAN: Thank you, sir.  
15 By my calculations, we have one left, public  
16 comment? We have two?

17 MS. RENDULICH: Mine is going to be short,  
18 because I didn't really write anything out. My  
19 name is Ellen Rendulich. I'm with Citizens  
20 Concerning the Environment.

21 HEARING OFFICER HALLORAN: Could you please  
22 spell your name for the court reporter.

23 MS. RENDULICH: R-e-n-d-u-l-i-c-h. I just  
24 have a couple comments or questions.

1 Well, first of all through this  
2 whole day the majority of the talks have been about  
3 jobs, but I thought this was a pollution hearing.  
4 Is that not the case?

5 HEARING OFFICER HALLORAN: Is that  
6 rhetorical? It's a Pollution Control Board  
7 hearing, correct.

8 MS. RENDULICH: But isn't pollution control  
9 supposed to be helping the people with pollution  
10 and not jobs?

11 HEARING OFFICER HALLORAN: I can't answer.  
12 It is rhetorical.

13 MS. RENDULICH: Well, the thing is, we can't  
14 fill up a room with people because people are  
15 working. I mean, we don't have the unions to  
16 support us. We need these unions and we need these  
17 people to have jobs, but I think Midwest Generation  
18 should find a way to replace their employees. I  
19 think it's getting out of hand.

20 Midwest Generation is also saying  
21 they've done all these great things, the pollution  
22 controls, blah, blah, blah, but the thing is that  
23 we, since 1995, have been trying to get the coal  
24 companies to put pollution controls on, and most of



1 the time it was done only because of stuff the  
2 environmentalists have done.

3 And the thing is is the SO2. We're  
4 not only concerned with the coal plants, but  
5 there's other chemical industries out there, and  
6 you have the accumulated effects -- or we have that  
7 we're breathing.

8 I live by -- you can see Midwest  
9 Generation's Romeoville facility outside my  
10 windows, and on a clear day I can see Joliet's and,  
11 of course, when you go a little further east you  
12 get the Chicago facilities.

13 So I think between my sister-inlaw  
14 dying of lung disease, my husband with asthma,  
15 myself with asthma, I would say nine out of 10  
16 members of our group has some kind of respiratory  
17 or asthma problems. There's no way that they  
18 should be given any variance at all.

19 We need pollution controls on now,  
20 because how many more people will be sick or have  
21 to go to the hospital with the extension that  
22 they're giving.

23 If you don't start now, we're never  
24 going to have clean air. So we're going -- many of

1 our organization will be submitting comments.

2 Thank you.

3 HEARING OFFICER HALLORAN: Thank you.

4 MS. BURNITZ: It's me again. Mary Burnitz.

5 I live on High Road, right -- good neighbor to  
6 Midwest Generation. I actually live in -- there's  
7 smoke billowing over my house.

8 I have a daughter who has got  
9 respiratory issues; I have a husband who has got  
10 COPD. He was forced to retire from his job due to  
11 his ailments.

12 I heard repeatedly today that  
13 Midwest Generation is a great neighbor. And if  
14 they're such a good neighbor, I really encourage  
15 them to do the right thing. I don't think that  
16 they're fiscally sound.

17 I personally went to Los Angeles  
18 this past spring to bring Ted Craver, the CEO of  
19 Edison Mission 7,000 signed petitions to do the  
20 right thing. I disagree with the variance.

21 I know that you guys think that  
22 you're doing the right thing, but I really encourage  
23 the board to listen to everybody and do the right  
24 thing and say no to the variance. That's it. Have

1 a great day.

2 HEARING OFFICER HALLORAN: You too. Thank  
3 you, so much. I see no more public comments.  
4 Mr. Bonebrake, do you want to give your closing?  
5 You want a short break?

6 MR. BONEBRAKE: My closing will be 30  
7 seconds.

8 HEARING OFFICER HALLORAN: Okay.

9 MR. BONEBRAKE: I think we can talk about any  
10 housekeeping items.

11 HEARING OFFICER HALLORAN: Well, housekeeping  
12 items I was going to do after closing. But the  
13 only housekeeping item that I have, other than  
14 thanking everyone, was based on the post-hearing  
15 briefs.

16 I calculate the transcript should be  
17 available by February 8th at the board's website.

18 Midwest's opening post-hearing brief  
19 will be due on or before February 18th, and they  
20 have to be filed with the board.

21 Public comment is due on or before  
22 February the 18th.

23 The IEPA's response is due  
24 February 28th.

1                   And then Midwest Gen's reply, if  
2     any, is due March 4th. The record closes March 4th,  
3     and we will not take anything after -- reply after  
4     that.

5                   But, again, public comment  
6     February 18th, and I would ask you to have it  
7     filed. You can do it electronically or send it to  
8     Mr. Ferrio (phonetic) on or before February 18th.

9                   All right, Mr. Bonebrake -- anybody  
10    else have any questions before we hear  
11    Mr. Bonebrake's closing? All right. Go ahead, sir.

12                   CLOSING STATEMENT

13                  MR. BONEBRAKE: On behalf of Midwest  
14    Generation, I wanted to express our appreciation  
15    for the opportunity to participate in the hearing  
16    today.

17                   For the reasons presented today and  
18    in various filings, including our initial petition and  
19    our responses to board questions, Midwest  
20    Generation believes that its variance request  
21    should be granted.

22                   Again, we appreciate the time and  
23    consideration of the board, the Illinois Environmental  
24    Protection Agency, and other interested persons.

1 Thank you.

2 HEARING OFFICER HALLORAN: Ms. Vetterhoffer,  
3 any closing or reserve for post-hearing brief? Do  
4 you wish to make a closing?

5 MS. VETTERHOFFER: No, I do not.

6 HEARING OFFICER HALLORAN: Thank you.

7 On behalf of the board and the board  
8 members and the staff, I really want to thank  
9 everybody here sitting in the room. Not only the  
10 parties and attorneys, but also the public for  
11 their civility and professionalism.

12 And I want to thank, again, Joliet  
13 Junior College. They just did a wonderful job.  
14 And I thank you, and have a safe trip home. And I  
15 understand, according to Tom Skilling, you may have  
16 to build an arch here in a few hours, I think two  
17 to three inches already. So, anyway, thank you.  
18 Have a good day.

19 (which were all the proceedings had.)

20

21

22

23

24

1 STATE OF ILLINOIS )  
2 COUNTY OF WILL ) SS:  
3

4 I, Bernice Betts, a  
5 Certified Shorthand Reporter in and for the County  
6 of Will and State of Illinois, do hereby certify  
7 that I reported in shorthand the proceedings of  
8 said hearing as appears from my stenographic notes  
9 so taken and transcribed under my direction.  
10

11 IN WITNESS WHEREOF, I have hereunto set  
12 my hand in my office at Joliet, Illinois, this  
13 8th day of February, 2013.  
14

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*Bernice Betts*  
Illinois CSR License 084-003788

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