

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
WATER QUALITY STANDARDS AND)	
EFFLUENT LIMITATIONS FOR THE)	R08-09 Subdocket D
CHICAGO AREA WATERWAY SYSTEM)	(Rulemaking – Water)
AND THE LOWER DES PLAINES RIVER:)	
PROPOSED AMENDMENTS TO 35 ILL.)	
Adm. Code Parts 301, 302, 303 and 304)	

NOTICE OF FILING

TO: John Therriault, Assistant Clerk	Attached Service List
Illinois Pollution Control Board	
James R. Thompson Center	
100 West Randolph Street, Suite 11-500	
Chicago, IL 60601	

PLEASE TAKE NOTICE that I have today filed with the Illinois Pollution Control Board, Midwest Generation L.L.C.'s Motion for Extension of the Pre-First Notice Comments Deadlines, a copy of which is herewith served upon you.

Dated: March 21, 2014

MIDWEST GENERATION, L.L.C.

By: /s/ Susan M. Franzetti
One of Its Attorneys

Susan M. Franzetti
Kristen Laughridge Gale
NIJMAN FRANZETTI LLP
10 South LaSalle Street, Suite 3600
Chicago, IL 60603
(312) 251-5590

SERVICE LIST R08-09

Marie Tipsord, Hearing Officer
Illinois Pollution Control Board
100 West Randolph St.
Suite 11-500
Chicago, IL 60601

Deborah J. Williams
Stefanie N. Diers
Illinois EPA
1021 North Grand Avenue
P.O. Box 19276
Springfield, IL 62794-9276

Frederick Feldman
Ronald Hill
Margaret Conway
Metropolitan Water Reclamation District
100 East Erie St.
Chicago, IL 60611

Keith Harley
Elizabeth Schenkier
Chicago Legal Clinic, Inc.
211 West Wacker Drive
Suite 750
Chicago, IL 60606

Katherine Hodge
Matthew C. Read
Hodge Dwyer & Driver
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705-5776

Ann Alexander
Natural Resources Defense Council
20 North Wacker Drive
Suite 1600
Chicago, IL 60606

Fredric Andes
Erika Powers
Barnes & Thornburg
1 North Wacker Dr., Suite 4400
Chicago, IL 60606

Matthew J. Dunn
Thomas H. Shepherd
Environmental Enforcement Division
Office of the Attorney General
State of Illinois
69 W. Washington St., 18th Floor
Chicago, IL 60602

Lisa Frede
Chemical Industry Council of Illinois
1400 E. Touhy Avenue, Suite 110
Des Plaines, IL 60019-3338

Jack Darin
Cindy Skrukrud
Sierra Club, Illinois Chapter
70 E. Lake St., Suite 1500
Chicago, IL 60601-7447

Jeffrey C. Fort
Irina Dashevsky
Dentons US LLP
233 S. Wacker Drive, Suite 7800
Chicago, IL 60606-6404

Jessica Dexter
Environmental Law & Policy Center
35 E. Wacker Drive, Suite 1600
Chicago, IL 60601

Stacy Meyers-Glen
Openlands
25 E. Washington, Suite 1650
Chicago, IL 60602

Lyman C. Welch
Alliance for the Great Lakes
150 N. Michigan Ave., Suite 700
Chicago, IL 60601

Mitchell Cohen
Illinois DNR, Legal
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62705-5776

Roy M. Harsch
Drinker Biddle & Reath
191 North Wacker Drive, Suite 3700
Chicago, IL 60606-1698

Robert VanGyseghem
City of Geneva
1800 South Street
Geneva, IL 60134-2203

James L. Daugherty
Thorn Creek Basin Sanitary District
700 West End Avenue
Chicago Heights, IL 60411

Frederick D. Keady, P.E.
Vermilion Coal Company
1979 Johns Drive
Glenview, IL 60025

Chicago Department of Law
30 N. LaSalle St., Suite 1400
Chicago, IL 60602

Thomas W. Dimond
Susan Charles
Ice Miller LLP
200 West Madison Street, Suite 3500
Chicago, IL 60606-3417

Cathy Hudzik
City of Chicago
Mayor's Office of Intergovernmental Affairs
121 North LaSalle Street, Room 406
Chicago, IL 60602

Albert Ettinger
Counsel for Environmental Groups
53 W. Jackson Blvd., Suite 1664
Chicago, IL 60604

Claire A. Manning
Brown, Hay & Stephens, LLP
205 South Fifth Street, Suite 700
P.O. Box 2459
Springfield, IL 62705-2459

Jerry Paulsen
Cindy Skrukrud
Environmental Defenders of McHenry County
110 S. Johnson Street, Suite 106
Woodstock, IL 60098

Bernard Sawyer
Thomas Granato
Metropolitan Water Reclamation District
6001 West Pershing Road
Cicero, IL 60650-4112

Erin L. Brooks
Bryan Cave LLP
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, MO 63102-2750

Mark Schultz
Navy Facilities and Engineering Command
201 Decatur Avenue, Building 1A
Great Lakes, IL 60088-2801

W.C. Blanton
Husch Blackwell LLP
4801 Main Street, Suite 1000
Kansas city, MO 64112

James E. Eggen
City of Joliet
Department of Public Works and Utilities
150 W. Jefferson Street
Joliet, IL 60431

Kay Anderson
American Bottoms RWTF
One American Bottoms Road
Sauget, IL 62201

Bob Carter
Bloomington Normal Water Reclamation
District
P.O. Box 3307
Bloomington, IL 61702-3307

Kenneth W. Liss
Andrews Environmental Engineering
3300 Ginger Creek Drive
Springfield, IL 62711

James Huff
Huff & Huff, Inc.
915 Harger Road, Suite 330
Oak Brook, IL 60523

Vicki McKinley
Evanston Environment Board
223 Grey Avenue
Evanston, IL 60202

Irwin Polls
Ecological Monitoring and Assessment
3206 Maple Leaf Drive
Glenview, IL 60025

Dr. Thomas J. Murphy
2325 N. Clifton Street
Chicago, IL 60614

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
WATER QUALITY STANDARDS AND)	R08-9 (Subdocket and D)
EFFLUENT LIMITATIONS FOR THE)	(Rulemaking – Water)
CHICAGO AREA WATERWAY SYSTEM)	
AND LOWER DES PLAINES RIVER)	
PROPOSED AMENDMENTS TO 35 ILL.)	
ADM. CODE 301, 302, 303, and 304)	

**MIDWEST GENERATION, L.L.C.'S MOTION
FOR EXTENSION OF THE PRE-FIRST NOTICE COMMENTS DEADLINES**

Midwest Generation, L.L.C. (“MWGen”), by its counsel, Nijman Franzetti LLP, hereby moves to extend the April 7, 2014 deadline for the filing of pre-first notice comments to April 30, 2014 and, consequently, also moves to extend the deadline for responses to those comments from April 21 to May 14, 2014. In support of this motion, MWGen states:

1. On March 6, 2014, the Illinois Pollution Control Board (the “Board”) declined the request by the Illinois Environmental Protection Agency (“IEPA” or the “Agency”) to open a new subdocket to address chlorides and directed the hearing officer to establish a comment period to allow participants to provide final pre-first notice comments on the IEPA’s proposed water quality standards. (Opinion and Order of the Board, R08-9(D), March 6, 2014).

2. Also on March 6, 2014, pursuant to the Board’s direction, the Hearing Officer Marie Tipsord issued an order that pre-first notice comments must be filed with the Board by April 7, 2014 and, if participants wish to do so, responses must be filed by April 21, 2014. (Hearing Officer Order, R08-9(D), March 6, 2014. As of March 13, 2014, MWGen had not yet received, but became aware of, the Hearing Officer’s Order on the Board’s website.

3. As the Board is generally aware, MWGen has a substantial interest in the UAA Subdocket D proceeding. Proposed thermal water quality standards in Subdocket D would apply to discharges from three of the MWGen electric generating stations – Will County (located on the Chicago Sanitary and Ship Canal (“CSSC”), a Use B water, and the two Joliet Stations (located on the Upper Dresden Island Pool water segment). In the UAA Subdocket C proceedings, MWGen presented the expert testimony of Ray E. Henry, Principal Consultant with Sargent & Lundy, LLC, and an extensive compliance costs study prepared by Sargent & Lundy, which showed that if the Board were to adopt the Agency’s proposed UDIP and Use B (for the CSSC) thermal standards, the compliance costs for these MWGen Stations would be well over \$600 million dollars, with annual estimated operation and maintenance costs of approximately \$17 million. (See Ex. 440 February 1, 2011 Pre-Filed Testimony of Ray E. Henry at pp. 14-15 and attached Ex. B thereto (Sargent & Lundy Report); March 9, 2011 Hearing Transcript at pp. 97-98). Hence, the record shows that MWGen has a significant business interest in the Subdocket D proceedings.

4. MWGen understands the Board’s strong desire to move the Subdocket D rulemaking to conclusion given the extensive effort that the Board, the Agency and the interested parties have put into the entire UAA rulemaking. This motion is not an attempt to unnecessarily delay the conclusion of the Subdocket D proceeding. Unfortunately, the Board’s selection of the April 7, 2014 comment deadline puts MWGen into a difficult position as it is approaching a proposed change in management that only recently received the necessary judicial and regulatory approvals. On March 11, 2014, the Bankruptcy Court approved NRG Energy, Inc.’s (“NRG”) purchase of all assets and operating companies of Edison Mission Energy, including MWGen. On March 18, 2014, the Federal Energy Regulatory Commission (“FERC”) approved NRG’s

acquisition of MWG. The Bankruptcy Court and FERC approvals pave the way forward to a scheduled April 1, 2014 closing of the NRG purchase, which will allow NRG to take control of the MWGen electric generating stations, including the two Joliet and one Will County Station that discharge into waters within the scope of this UAA Subdocket D rulemaking. Accordingly, MWGen reasonably expects that the change in management will occur on April 1, 2014.

5. Until the NRG purchase is finalized, MWGen cannot receive or take direction from new management regarding the filing and content of pre-first notice comments in this proceeding. The one-week period between the scheduled April 1, 2014 closing and the April 7, 2014 pre-first notice comments deadline does not provide sufficient time to fully brief and to implement the direction of new management regarding the pre-first notice comments.

6. MWGen recognizes that its situation is unique and that it is requesting an accommodation from the Board, the Agency and other interested parties because of this unique situation. It assures the Board that it has not made this decision lightly and that the previously unforeseeable circumstances of the timing of the April 1 closing and the Hearing Officer's March 6, 2014 Order setting an April 7 comments deadline have made it a necessity due to the significant business interests at stake. In an effort to assist and inform the Board's consideration of this extension request, MWGen has conducted outreach to both the Agency and to other interested parties, including counsel for the environmental groups (*i.e.*, Albert Ettinger and Keith Harley), Citgo, ExxonMobil, the Illinois Environmental Regulatory Group, and Stepan. All of these parties have advised MWGen's counsel that they have no objection to the requested extension of the comments deadline to April 30, 2014.

7. MWGen has provided, and will continue to provide, relevant information to NRG concerning the Subdocket D issues and their potential effect on the future operations of the

MWGen stations so that it could reduce this extension request to the minimum amount of time necessary. As MWGen hopes the Board will appreciate, the effort involved to adequately inform new management of the relevant evidence and issues in this Subdocket D rulemaking so as to enable informed decision-making and direction is a substantial one. MWGen respectfully submits that the additional few week's extension of the April 7, 2014 comment deadline it is requesting is reasonable under the circumstances.

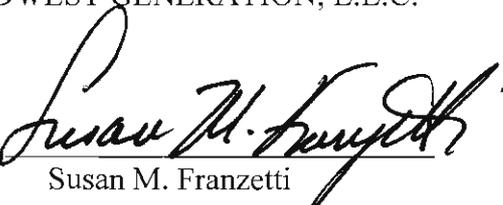
8. MWGen is also requesting an extension of the April 21 response to comments deadline to May 14, 2014. MWGen does not know whether it will file any response to pre-first notice comments filed by other parties. However, given that MWGen is requesting an extension of the April 7 pre-first notice comments deadline to April 30, 2014, the existing April 21 response to comments deadline also would need to be extended by the Hearing Officer's previously contemplated two-week interval between the deadline for filing pre-first notice comments and any responses to those comments.

9. As demonstrated by its previous active involvement in the UAA rulemaking, MWGen is requesting this extension of time to avoid the potential for significant prejudice to the substantial interests it has at stake here and to allow it adequate time to consider comments issues with its new management. MWGen believes that the additional time requested may in turn provide the Board with relevant and helpful information as the Board proceeds towards the issuance of its First Notice Opinion and Order. As evidenced by the results of the above-described outreach conducted by MWGen's counsel, the requested extension of the Subdocket D comments deadlines should not prejudice or harm to the Agency or any interested parties.

WHEREFORE, for the foregoing reasons, Midwest Generation, L.L.C. respectfully requests that the Board grant its motion for extension of the pre-first notice comments deadline to April 30, 2014 and the response to comments deadline to May 14, 2014.

Respectfully submitted,

MIDWEST GENERATION, L.L.C.

By: 
Susan M. Franzetti

Dated: March 21, 2014

Susan M. Franzetti
Nijman Franzetti LLP
10 S. LaSalle St., Suite 3600
Chicago, IL 60603
(312) 251-5590 (phone)
(312) 251- 4610 (fax)

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Midwest Generation L.L.C.'s Motion for Extension of the Pre-First Notice Comments Deadlines were filed electronically on March 21, 2014 with the following:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

and that true copies were sent via email and mailed by First Class Mail, postage prepaid, on March 21, 2014 to the parties listed on the foregoing Service List.

/s/ Susan M. Franzetti