

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ELECTRIC ENERGY, INC. and)
MIDWEST ELECTRIC POWER, INC.,)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

PCB No. 09-94
(CAAPP Permit Appeal - Air)

NOTICE OF ELECTRONIC FILING

TO: See Service List

PLEASE TAKE NOTICE that I have today caused to be filed a **JOINT RESPONSE TO BOARD QUESTIONS** with the Illinois Pollution Control Board, a copy of which is served upon you.



Nancy J. Tikalsky
Assistant Attorney General

Office of the Illinois Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, IL 60602
(312) 814-8567
Fax: (312) 814-2347
ntikalsky@atg.state.il.us

Dated: February 16, 2016

THIS FILING IS SUBMITTED ON RECYCLED PAPER

ELECTRIC ENERGY, INC. and)	
MIDWEST ELECTRIC POWER, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB No. 09-94
)	(CAAPP Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	
)	

JOINT RESPONSE TO BOARD QUESTIONS

Pursuant to the Hearing Officer Orders dated January 28, 2016, Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA” or “Agency”), *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, and Petitioners, ELECTRIC ENERGY, INC. and MIDWEST ELECTRIC POWER, INC., (“Midwest”) by and through their attorneys, hereby submit the following joint response to the Illinois Pollution Control Board’s (“Board”) questions in the above-referenced cases.

INTRODUCTION

The Hearing Officer Orders directed the parties to respond to a set of six questions from the Board relating to the status of settlement discussions and appeal resolution. Below, the parties first provide brief background on the dockets, followed by the parties’ joint responses to the questions posed by the Board.

I. Background on PCB 09-94

This appeal contests various conditions of the Clean Air Act Permit Program (“CAAPP”) renewal permit issued on March 19, 2009 (“2009 CAAPP”) to Midwest, a peaker plant, located in Joppa, Massac County, Illinois. Midwest operates the plant when sufficient electric power is not available from other sources.

II. The Parties' Answers to Board Questions 1-6

Board Question 1: Which permit conditions that were originally challenged have been resolved in settlement negotiations and which ones have not?

Answer: The parties have not reached consensus regarding any of the contested conditions in the 2009 CAAPP permit.

Board Question 2: Has the facility been subject to new operational requirements since this appeal began?

Answer: Yes. Such requirements that are derived from the Clean Air Act will be included in the facility's 2009 CAAPP permit through the CAAPP's renewal process. The incorporation of these additional rules or regulations into a CAAPP permit is a procedural requirement of Title V permitting. However, the absence of such requirements in a CAAPP permit does not affect the ongoing responsibility of a source to comply with rules or regulations upon their dates of effectiveness.

Board Question 3: Do any of those new requirements concern the permit conditions challenged in this appeal? If so, are the new requirements more stringent than the challenged permit conditions?

Answer: Some of the additional requirements may relate to, or overlap with, contested permit conditions. It is possible that some may appropriately be considered more stringent. However, any such requirements will have applied independently to a given source from the date of effectiveness of the affected rule or regulation. The renewal process will ensure that the 2009 CAAPP permit contains all applicable requirements.

Board Question 4: When did the parties to this appeal last meet to discuss settlement? Is a future meeting scheduled?

Answer: The Illinois EPA and representatives of the Petitioner plan to meet in the near future to work through the 2009 CAAPP permit with conference calls or in-person meetings, as needed.

Board Question 5: Which party made the last settlement proposal and who is reviewing that proposal? Does it resolve the entire appeal or only one part of it?

Answer: Given the Agency's workload, The Agency has engaged in a sequential process to negotiate resolution on several other CAAPP appeals previously pending before the Board and is negotiating revisions to several other CAAPP appeals currently pending before the Board. Unfortunately, the Agency has not had the resources to negotiate a resolution of the instant appeal until this time. Similar to the process previously utilized in these other matters, the parties will engage in a systematic discussion on each contested permit condition. The process will ultimately generate a set of permit changes that are acceptable to the parties and that must then be prepared for public notice and comment and United States Environmental Protection Agency ("USEPA") review.

Board Question 6: What is your best estimate of the date by which this appeal is likely to be settled?

Answer: The parties' best estimate of the date by which this appeal is likely to be settled is within 12 months. However, given the nature of the challenged conditions, the unpredictable nature of any negotiated process, and the Agency's workload, it may take more than 12 months to work out a resolution. Furthermore, once the set of conditions and permitting edits unique for the facility are addressed by Illinois EPA permitting staff and the respective permittee, the permitting documents must then be released for public comment and review by the USEPA.

CONCLUSION

The parties will work diligently to resolve this complex permit appeal and to achieve the common goal of an effective, up-to-date operating permit, and will continue to participate in periodic status conferences with the Board Hearing Officer.

Respectfully submitted,

ELECTRIC ENERGY, INC. and
MIDWEST ELECTRIC POWER, INC.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY
by LISA MADIGAN, Attorney
General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

/s/ Joshua R. More
JOSHUA R. MORE
Schiff Hardin LLP
Attorney for Petitioners
233 South Wacker Drive, Suite 6600
Chicago, IL 60606
(312) 258-5769
jmore@schiffhardin.com

/s/ Nancy J. Tikalsky
NANCY J. TIKALSKY
Assistant Attorney General
Illinois Attorney General's Office
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-8567
ntikalsky@atg.state.il.us
mcaaccio@atg.state.il.us

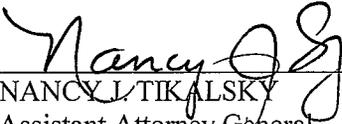
Dated: February 16, 2016

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ELECTRIC ENERGY, INC. and MIDWEST)	
ELECTRIC POWER, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB No. 09-94
)	(CAAPP Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	
)	

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on February 16, 2016, I served true and correct copies of an JOINT RESPONSE TO BOARD QUESTIONS upon the persons and by the methods pursuant to the service list hereto attached.



NANCY L. TIKALSKY
Assistant Attorney General
Office of the Illinois Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, IL 60602
(312) 814-8567

Service List

John Therriault
Assistant Clerk
Brad Halloran
Hearing officer
Illinois Pollution Control Board
100 W. Randolph
Chicago, Illinois 60601
john.therriault@illinois.gov
brad.halloran@illinois.gov
(*electronic filing*)

Mr. Brad Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, IL 60601
bhalloran@illinois.gov
(*electronic*)

Joshua R. More
Renee Cipriano
Petitioner counsel
Shiff Hardin, LLP
233 South Wacker Drive, Suite 6600
Chicago, Illinois 60606
jmore@schiffhardin.com
RCipriano@schiffhardin.com
(*electronic*)

Sally A. Carter
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
Sally.carter@illinois.gov
(*electronic*)