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September 4, 2012

**VIA E-MAIL AND OVERNIGHT MAIL**Illinois EPA  
Division of Public Water Supplies  
Attn: Andrea Rhodes, CAS #19  
P.O. Box 19276  
Springfield, IL 62794-9276Re: Violation Notice: Midwest Generation, LLC, Powerton Generating Station  
Identification No.: 6282  
Violation Notice No.: W-2012-00057

Dear Ms. Rhodes:

This letter is a supplemental response to the above-referenced June 11, 2012 Violation Notice ("VN") following the meeting between the Illinois Environmental Protection Agency ("Illinois EPA or the "Agency") and Midwest Generation, LLC ("MWG") on August 14, 2012.<sup>1</sup> MWG appreciated the opportunity to discuss the VNs and the underlying allegations with the Agency. The extensive participation at the August 14<sup>th</sup> meeting by Interim Director John Kim and Agency personnel was productive and helped to clarify the key issues. As a result, MWG believes it now has a better understanding of the Agency's views regarding resolution of this matter.

The August 14<sup>th</sup> meeting also helped MWG both to identify issues that warrant further attention and explanation in this supplemental response and to revise its proposed Compliance Commitment Agreement ("CCA") for the MWG Powerton Generation Station ("Powerton") for the Agency's consideration. Accordingly, this supplemental response does not repeat all of the information contained in MWG's July 27, 2012 response to the VN, but rather focuses on responding to the questions and concerns raised by the Agency during the meeting. It also includes a revised, proposed CCA which MWG submits should be acceptable to resolve the VN allegations based on discussion at the aforementioned August 14<sup>th</sup> meeting.

<sup>1</sup> The August 14, 2012 meeting was held at the request of MWG, pursuant to Section 31(a)(4) of the Illinois Environmental Protection Act. 415 ILCS 5/31(a)(4).



Central to the revised, proposed CCA and based largely on MWG's understanding of Agency staff's concerns as expressed during the August 14<sup>th</sup> meeting, MWG proposes to establish a Groundwater Monitoring Zone ("GMZ") for the ash ponds pursuant to section 620.250 of the Board's regulations. 35 Ill. Adm. Code §620.250. MWG will install an additional groundwater monitoring well and conduct additional groundwater monitoring to assist in establishing the three dimensional boundaries of the GMZ. In addition, and reflective of concerns expressed by the Agency staff during the August 14<sup>th</sup> meeting, MWG proposes to enter into an Environmental Land Use Control ("ELUC") Agreement to incorporate the restrictions that are applicable to the GMZ and the continued groundwater monitoring program for the existing and new monitoring wells. These and other provisions of MWG's proposed CCA are summarized in Section II below.

By submitting this supplemental response and revised, proposed CCA, MWG does not waive any of its original objections to the VNs raised in our July 27<sup>th</sup> response. Moreover, MWG does not, by submitting this supplemental response, make any admissions of fact or law, or waive any of its defenses to those alleged violations.

#### **I. Supplemental Response to Alleged Violations in the VN**

To answer questions presented at the August 14<sup>th</sup> meeting and further explain why the ash ponds at Powerton are not causing a release into the groundwater, MWG has set forth below additional information concerning: (1) the treatment purpose and function of the ash ponds; (2) the condition of the liners underlying the ash ponds; and (3) why the alleged groundwater exceedances are not the result of releases from the ash ponds. While we may not embrace the Agency's views on each of the issues discussed, the discussion provided MWG with information that enables us to present a revised CCA that we believe addresses the questions and concerns expressed by the Agency.

##### **A. The Treatment Purpose and Function of the Ash Ponds**

As stated in MWG's July 27, 2012 VN Response, and discussed further during the August 14<sup>th</sup> meeting, the three operating ash ponds at Powerton are different from other ash impoundments in Illinois.<sup>2</sup> They are neither disposal sites nor abandoned ponds. They are relatively small, active, wastewater treatment ponds that remove ash from the ash wastewater. The precipitated ash is routinely removed from the ponds.

Depending upon operations at the station, bottom ash wastewater is discharged to either the Ash Bypass Basin or the Ash Surge Pond for settlement of suspended solids. The effluent from the Ash Bypass Basin or the Ash Surge Pond, as applicable, is then conveyed to the Secondary Ash Settling Basin for additional, "finishing" treatment by settlement. Thus, only the

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<sup>2</sup> The fourth ash pond is not used as part of the Station's day-to-day operations. Its use is limited to providing emergency overflow capacity. There were no alleged exceedances of groundwater standards detected in the wells downgradient of this ash pond.

minimal, remaining ash solids that did not already settle out of the wastewater in either the Ash Bypass Basin or Ash Surge Pond may settle out of the wastewater after entering the Secondary Ash Settling Basin. The resulting Secondary Ash Settling Basin effluent discharges to the Illinois River through Outfall 001. This is a permitted effluent under the station's NPDES Permit (NPDES #0002232), specifically described therein as the "ash treatment system effluent."<sup>3</sup>

Apparently, because the ash ponds perform a wastewater treatment function and are not disposal sites, it was suggested by Agency personnel during the August 14<sup>th</sup> meeting that the ash ponds may be subject to the design criteria for treatment works set forth in Part 370 of the Illinois Pollution Control Board Regulations, referencing generally section 370.930 thereof entitled "Waste Stabilization Ponds and Aerated Lagoons," and more specifically, section 370.930(d)(2)(D) entitled "Pond Bottom" as the relevant criteria for the liners that should be installed in ash ponds. 35 Ill. Adm. Code § 370.930. Part 370 is not applicable to existing treatment works like the ash ponds at the Powerton station. Rather, Part 370 regulations only apply to new construction of waste collection and treatment works. As stated in section 370.100, the purpose of these regulations is to "establish criteria for the design and preparation of plans and specifications for wastewater collection and treatment systems." 35 Ill. Adm. Code § 370.100 (emphasis supplied; see also § 370.200). There are no provisions or requirements in the Part 370 regulations that require existing treatment works to be modified or replaced to meet Part 370 criteria. Moreover, with respect to the high-density polypropylene ("HDPE") liner that is in place in the Ash Bypass Basin, one of the ponds at issue here, this liner already provides an equivalent level of protection to that specified in section 370.930(d)(2)(D).

**B. Replacement or New Liners are not necessary to Protect against Groundwater Violations.**

The Ash Bypass Basin and Ash Surge Pond are fully lined to prevent releases to groundwater. Based on the August 14<sup>th</sup> meeting discussion, it is MWG's understanding that the Agency is satisfied with the adequacy of the Ash Bypass Basin's 2010 HDPE liner. The Ash Surge Pond bottom is lined with two, six-inch lifts of Poz-o-Pac with a bituminous coating and the sides are lined with a hypalon membrane liner over compacted fill. MWG has presented further information regarding the nature and condition of its Poz-o-Pac liners in its Supplemental VN Response for the Will County Station, which information is incorporated here by reference. The Secondary Ash Settling Basin, where the "finishing" step in the ash settlement process occurs, is lined with compacted fill and hypalon all the way across. As MWG explained during the August 14<sup>th</sup> meeting, installing a new liner in the Secondary Ash Settling Basin is simply not necessary given the minimal amount of ash that precipitates out of the wastewater which enters this pond. Further, the fact that boron and sulfate, which when combined are the primary ash leachate indicator parameters, were not detected at elevated levels downgradient of the Secondary Ash Settling Basin also confirms that it is not causing a release of constituents in violation of applicable groundwater standards.

<sup>3</sup> The effluent is subject to limits for pH and total suspended solids. To date, the limits have not been exceeded.

**C. The Ash Ponds are not causing a Release to Groundwater.**

As stated in the July 27<sup>th</sup> VN Response, the monitoring well results do not support the contention that any of the ash ponds are a source of the alleged groundwater impacts.<sup>4</sup> The July 27<sup>th</sup> response thoroughly evaluated the groundwater monitoring data on a parameter-by-parameter basis and in relation to the location of the ash ponds. The parameter-by-parameter evaluation showed that the monitoring data does not support the conclusion that the operation of the ash ponds has caused the alleged exceedances. Many of the results were isolated, unassociated with the ash ponds, and not repeated in subsequent sampling events. Moreover, the presence of other parameters in the groundwater is better explained by a significantly reducing environment in the groundwater rather than any particular source.

Particularly with respect to the Ash Surge Pond, the July 27<sup>th</sup> response showed that boron, a parameter closely associated with leachate from coal ash, was not detected at elevated concentrations in the monitoring well immediately downgradient (MW-08) of this pond. Further, the wells upgradient to the Ash Surge Pond had higher concentrations of parameters, including boron, than the wells downgradient to the pond.

As to the Secondary Ash Settling Pond, there are no groundwater exceedances of the primary coal ash constituents of boron or sulfate downgradient of this pond. The concentrations of these two primary ash leachate indicator parameters were not elevated in these wells. Moreover, the wells upgradient of the Ash Settling Pond had either similar or higher concentrations, particularly for boron and sulfate, than the wells downgradient.

For all of the above reasons, the groundwater monitoring data simply does not support the conclusion that the existing condition of the ash ponds is allowing ash constituents to be released that are causing the alleged groundwater exceedances.

**II. Supplemental Compliance Commitment Agreement**

Based on and in response to the August 14<sup>th</sup> meeting discussion, MWG has revised its proposed Compliance Commitment Agreement ("CCA") terms which were submitted in its July 27, 2012 VN Response.

The revised CCA terms are set forth below and a draft CCA is enclosed for the Agency's review.

MWG believes this revised CCA should be an acceptable resolution to the VN issued to the Powerton Station. As stated in the July 27<sup>th</sup> VN Response, there is no threat to human health presented by the alleged exceedances of the groundwater standards. Six water wells are located within the 2,500-foot radius of the site; however none of the wells are downgradient of the ash ponds. In fact, two of the wells supply the Powerton Station with water, and are regularly

<sup>4</sup> MWG incorporates by reference all of its discussion and explanation of the groundwater monitoring results in the original VN Response.

sampled for potable water constituents. The sampling results have consistently been in compliance with potable water regulations.<sup>5</sup> In the absence of any potable groundwater receptors or use, groundwater at the Powerton site does not pose any risk to human health.

The modified CCA terms are as follows:

- A. The ash ponds will not be used as permanent disposal sites and will continue to function as treatment ponds to precipitate ash. Ash will continue to be removed from the ponds on a periodic basis.
- B. The treatment ponds will be maintained and operated in a manner which protects the integrity of the existing liners. During the removal of ash from these ponds, appropriate procedures will be followed to protect the integrity of the existing liners, including operating the ash removal equipment in a manner which minimizes the risk of any damage to the liner.
- C. During the ash removal process, visual inspections of the lined ponds will be conducted to identify any signs of a breach in the integrity of the pond liners. In the event that a breach of the pond liners is detected, MWG will notify the Agency and will submit a corrective action plan for repair or replacement, as necessary, of the liner. Upon the Agency's approval, and the issuance of any necessary construction permit, MWG will implement the correction action plan.
- D. MWG proposes to establish a Groundwater Management Zone ("GMZ") pursuant to section 620.250 of the Board's regulations. 35 Ill. Admin. Code § 620.250. An aerial map of the Powerton Station showing the proposed extent of the GMZ is enclosed as Attachment A for the Agency's review and reference in considering the proposed GMZ boundaries. To complete the definition of the southern boundary of the GMZ, as further described below, MWG will install an additional groundwater monitoring well.
  - a. The proposed boundaries of the three dimensional GMZ are defined as follows:
    - i. The northern boundary is defined by the portion of the shoreline of the Illinois River which borders the Powerton Station Property.
    - ii. The eastern boundary is defined by monitoring wells MW-02 and MW-03.<sup>6</sup>

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<sup>5</sup> See previously submitted Hydrogeologic Assessment of Midwest Generation Electric Generation Stations: Will County Station, Waukegan Station, Joliet 29 Station, Crawford Station, Powerton Station.

- iii. The southern boundary is defined by the MWG property boundary that runs from the southwest to the northeast south of both MW-09 and a new, additional monitoring well to be installed approximately 900 feet southwest of MW-09.
  - iv. The western boundary is defined by the existing canal/intake channel west of MW-07.
  - v. The vertical extent is defined as the top of the Carbondale Formation which is estimated, based on other site boring logs, to be approximately 70 feet below ground surface.
- b. MWG shall install the additional groundwater monitoring well, at a location approximately 900 feet southwest of MW-09, within 60 days of the effective date of the CCA.
  - c. The new monitoring well shall be sampled twice. The sampling protocol and analytical parameters for the new monitoring well shall be the same as for the existing groundwater monitoring wells. The first sampling event shall be conducted not later than 90 days from the effective date of the CCA. The second sampling event shall coincide with the next quarterly monitoring of the existing groundwater monitoring wells and shall be separated by an interval of at least 60 days from the first sampling event.
  - d. MWG shall submit a summary report to the Illinois EPA defining the GMZ (the "GMZ Report") within 45 days of receipt of all analytical data from the second round of sampling of the new monitoring well and the existing monitoring wells.
- E. As an institutional control to accompany the GMZ, MWG will enter into an ELUC to cover the area of the Powerton Station property which is contained within the GMZ. MWG will submit a proposed, draft ELUC to the Illinois EPA for review and comment within 90 days of the effective date of the CCA. A final proposed ELUC, incorporating the completed delineation of the GMZ boundaries, will be presented to the Agency for review and approval with the GMZ Report.
- F. MWG will continue to monitor the groundwater through the existing five groundwater monitoring wells and the additional proposed groundwater monitoring well and report its findings to IEPA. The continuing groundwater monitoring requirements will be included in the requirements of the ELUC described in sub-paragraph E above. The ELUC terms will include a provision

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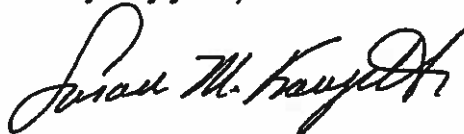
<sup>6</sup> Both MW-02 and MW-03 showed no elevated concentrations of the parameters. The one, non-reproducible pH exceedance cited in the VN for MW-02 was the result of a faulty pH meter, as discussed in the July 27, 2012 VN Response. .

Illinois EPA  
Division of Public Water Supplies  
September 4, 2012  
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which allows MWG the right to request the Agency's approval of a cessation of all or some of the monitoring requirements based on future monitoring results.

This letter constitutes our supplemental response to, and modified CCA for, the Violation Notice W-2012-00057. MWG also reserves the right to raise additional defenses and mitigation arguments as may be necessary, in defense of the allegations listed in the Violation Notice in the event of any future enforcement. We believe that this supplemental response is responsive to all of the Agency's comments and concerns expressed in our meeting, and represents an appropriate resolution to the VN. Should you have any additional questions or concerns, please do not hesitate to contact me.

Very truly yours,



Susan M. Franzetti  
Counsel for Midwest Generation, LLC

Enclosure

cc: Maria L. Race, Midwest Generation, LLC

Attachment A





NOTE: BACKGROUND MAP RETRIEVED FROM GOOGLE MAPS 2012

ENVIRONMENTAL CONSULTATION & REMEDIATION  
**K P R G**  
INCORPORATED  
1101 S. 4th Street, Peoria, IL 61614

PROPOSED GROUNDWATER MANAGEMENT ZONE EXTENT

POWER STATION  
 PEKIN, ILLINOIS

Scale: 1" = 550' Date: August 30, 2012

KPRG Project No. 18311.2 FIGURE 1

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

**IN THE MATTER OF:**

Midwest Generation, LLC  
Powerton Generating Station  
Pekin, Tazewell County, Illinois  
IEPA ID #170000151243

ILLINOIS EPA VN W-2012-00057  
BUREAU OF WATER

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**COMPLIANCE COMMITMENT AGREEMENT**

**I. Jurisdiction**

1. This Compliance Commitment Agreement ("CCA") is entered into voluntarily by the Illinois Environmental Protection Agency ("Illinois EPA") and Midwest Generation, LLC, Powerton Generating Station ("Respondent") (collectively, the "Parties") under the authority vested in the Illinois EPA pursuant to Section 31(a)(7)(i) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(a)(7)(i).

**II. Allegation of Violations**

2. Respondent owns and operates a coal-fired electrical generating station at 13082 East Mantino Road in Pekin, Tazewell County, IL.
3. Pursuant to Violation Notice ("VN") W-2012-00057, issued on June 11, 2012, the Illinois EPA contends that Respondent has violated the following provisions of the Act and Illinois Pollution Control Board ("Board") Regulations:
  - a) Section 12 of the Illinois Environmental Protection Act, 415 ILCS 5/12
  - b) 35 Ill. Adm. Code 620.115, 620.301, 620.401, 620.405, and 620.410

**III. Compliance Activities**

4. On July 27, 2012, the Illinois EPA received Respondent's response to VN W-2012-00057, which included proposed terms for a CCA. On August 14, 2011, the Parties met at the Illinois EPA offices to discuss the violation notice and the July 27<sup>th</sup> response. On \_\_\_\_\_, 2012, the Illinois EPA received Respondent's supplemental reply to the VN in response to Illinois EPA's comments at the meeting. The Illinois EPA has reviewed Respondent's proposed CCA terms, as well as considered whether any

additional terms and conditions are necessary to attain compliance with the alleged violations cited in the VN.

5. Respondent agrees to undertake and complete the following actions, which the Illinois EPA has determined are necessary to attain compliance with the allegations contained in VN W-2012-00057:

- a) The ash ponds will not be used as permanent disposal sites and will continue to function as treatment ponds to precipitate ash. Ash will continue to be removed from the ponds on a periodic basis.
- b) The ash treatment ponds will be maintained and operated in a manner which protects the integrity of the existing liners. During the removal of ash from the ponds, appropriate procedures will be followed to protect the integrity of the existing liners, including operating the ash removal equipment in a manner which minimizes the risk of any damage to the liner.
- c) During the ash removal process, visual inspections of the ponds will be conducted to identify any signs of a breach in the integrity of existing pond liners. In the event that a breach of the pond liners is detected, MWG will notify the Agency and will submit a corrective action plan for repair or replacement, as necessary, of the liner. Upon the Agency's approval, and the issuance of any necessary construction permit, MWG will implement the correction action plan.
- d) A Groundwater Management Zone ("GMZ") pursuant to section 620.250 of the Illinois groundwater regulations. 35 Ill. Admin. Code § 620.250 shall be established. To complete the definition of the southern boundary of the GMZ, as further described below, MWG will install an additional groundwater monitoring well.

(1) The boundaries of the three dimensional GMZ are defined as follows:

- i. The northern boundary is defined by the portion of the shoreline of the Illinois River which borders the Powerton Station Property.
- ii. The eastern boundary is defined by monitoring wells MW-02 and MW-03.
- iii. The southern boundary is defined by the MWG property boundary that runs from the southwest to the northeast south of both MW-09 and a new, additional monitoring well to be installed approximately 900 feet southwest of MW-09.
- iv. The western boundary is defined by the existing canal/intake channel west of MW-07.

- v. The vertical extent is defined as the top of the Carbondale Formation which is estimated, based on other site boring logs, to be approximately 70 feet below ground surface.
- (2) Within 60 days of the effective date of the CCA, MWG shall install an additional groundwater monitoring well at a location approximately 900 feet southwest of MW-09.
- (3) The new monitoring well shall be sampled twice. The sampling protocol and analytical parameters for the new monitoring well shall be the same as for the existing groundwater monitoring wells. The first sampling event shall be conducted not later than 90 days from the effective date of the CCA. The second sampling event shall coincide with the next quarterly monitoring of the existing groundwater monitoring wells and shall be separated by an interval of at least 60 days from the first sampling event.
- (4) MWG shall submit a summary report to the Illinois EPA defining the GMZ (the "GMZ Report") within 45 days of receipt of all analytical data from the second round of sampling of the new monitoring well and the existing monitoring wells.
- e) As an institutional control to accompany the GMZ, MWG will enter into an ELUC to cover the area of the Powerton Station property which is contained within the GMZ. MWG will submit a proposed, draft ELUC to the Illinois EPA for review and comment within 90 days of the effective date of the CCA. A final proposed ELUC, incorporating the completed delineation of the GMZ boundaries, will be presented to the Agency for review and approval with the GMZ Report.
- f) MWG will continue to monitor the groundwater through the existing five groundwater monitoring wells and the additional proposed groundwater monitoring well and report its findings to IEPA. The continuing groundwater monitoring requirements will be included in the requirements of the ELUC described in sub-paragraph E above. The ELUC terms will include a provision which allows MWG the right to request the Agency's approval of a cessation of all or some of the monitoring requirements based on future monitoring results.

#### IV. Terms and Conditions

- 6. Respondent shall comply with all provisions of this CCA, including, but not limited to, any appendices to this CCA and all documents incorporated by reference into this CCA. Pursuant to Section 31(a)(10) of the Act, 415 ILCS 5/31(a)(10), if Respondent complies with the terms of this CCA, the Illinois EPA shall not refer the alleged violations that are the subject of this CCA, as described in Section II above, to the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violations occurred. Successful completion of this CCA or an amended CCA shall be a factor to

be weighed, in favor of the Respondent, by the Office of the Illinois Attorney General in determining whether to file a complaint on its own motion for the violations cited in VN W-2012-00057.

7. This CCA is solely intended to address the violations alleged in Illinois EPA VN W-2012-00057. The Illinois EPA reserves, and this CCA is without prejudice to, all rights of the Illinois EPA against Respondent with respect to noncompliance with any term of this CCA, as well as to all other matters. Nothing in this CCA is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Illinois EPA may have against Respondent, or any other person as defined by Section 3.315 of the Act, 415 ILCS 5/3.315. This CCA in no way affects the responsibilities of Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act, and the Board Regulations.
8. Respondent represents that it has entered into this CCA for the purpose of settling and compromising the alleged violations in VN W-2012-00057. By entering into this CCA and complying with its terms, Respondent does not admit the allegations of violation within VN W-2012-00057 and this CCA shall not be interpreted as including such admission.
9. Pursuant to Section 42(k) of the Act, 415 ILCS 5/42(k), in addition to any other remedy or penalty that may apply, whether civil or criminal, Respondent shall be liable for an additional civil penalty of \$2,000 for violation of any of the terms or conditions of this CCA.
10. This CCA shall apply to and be binding upon the Illinois EPA, and on Respondent and Respondent's officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondent, as well as upon subsequent purchasers of Respondent's facility.
11. In any action by the Illinois EPA to enforce the terms of this CCA, Respondent consents to and agrees not to contest the authority or jurisdiction of the Illinois EPA to enter into or enforce this CCA, and agrees not to contest the validity of this CCA or its terms and conditions.
12. This CCA shall only become effective:
  - a) If, within 30 days of receipt, Respondent executes this CCA and submits it, via certified mail, to Andrea Rhodes, CAS, CAS #19, Illinois EPA, Division of Public Water Supplies, P.O. Box 19276, Springfield, IL 62794-9276. If Respondent fails to execute and submit this CCA within 30 days of receipt, via certified mail, this CCA shall be deemed rejected by operation of law; and
  - b) Upon execution by all Parties.

13. Pursuant to Section 31(a)(7.5) of the Act, 415 ILCS 5/31(a)(7.5), this CCA shall not be amended or modified prior to execution by the Parties. Any amendment or modification to this CCA by Respondent prior to execution by all Parties shall be considered a rejection of the CCA by operation of law. This CCA may only be amended subsequent to its effective date, in writing, and by mutual agreement between the Illinois EPA and Respondent's signatory to this CCA, Respondent's legal representative, or Respondent's agent.

**AGREED:**

**FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY:**

BY: \_\_\_\_\_  
Mike Crumly  
Manager, Compliance Assurance Section  
Division of Public Water Supplies  
Bureau of Water

DATE: \_\_\_\_\_

**FOR RESPONDENT:**

BY: \_\_\_\_\_  
Susan M. Franzetti  
Counsel for Midwest Generation, LLC

DATE: \_\_\_\_\_