

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)
) AS 2021-003
Petition of Midwest Generation, LLC)
for Adjusted Standards from) (Adjusted Standard)
35 Ill. Adm. Code, Part 845)
(Waukegan Station))

NOTICE OF ELECTRONIC FILING

To: Attached Service List

PLEASE TAKE NOTICE that on November 14, 2022, I electronically filed with the Clerk of the Illinois Pollution Control Board (“Board”) the **ENVIRONMENTAL ORGANIZATIONS’ COMMENTS ON MIDWEST GENERATION’S MOTION FOR EXTENSION OF TIME**, copies of which are served on you along with this notice.

Dated: November 14, 2022

Respectfully Submitted,

/s/ Jennifer Cassel
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**ENVIRONMENTAL ORGANIZATIONS' COMMENTS ON MIDWEST
GENERATION'S MOTION FOR EXTENSION OF TIME**

Clean Power Lake County, Earthjustice, Environmental Law and Policy Center, Prairie Rivers Network, and Sierra Club (collectively, "Environmental Organizations") hereby submit these comments on Midwest Generation's Motion for Extension of Time ("Motion") in the above-referenced docket regarding Midwest Generation's Petition for an Adjusted Standard ("Petition") for the Former Slag and Fly Ash Storage area ("Old Pond")¹ and West Pond at its Waukegan Station.

Midwest Generation's Motion comes one-and-a-half years after it filed its Petition for the Waukegan Station in May 2021. The Board should deny Midwest Generation's Motion, or in the alternative, grant a far shorter and more reasonable extension than the nearly six-month extension that Midwest Generation requests.

As explained in comments submitted in this docket by Clean Power Lake County and echoed in comments from the City of Waukegan, "[e]ach day that the Waukegan plant's pollution goes unchecked presents a risk to [the] community."² Extensive evidence—including evidence that the Board has already weighed in a separate proceeding—shows that coal ash at Midwest Generation's Waukegan Station is polluting groundwater.³ This includes coal ash held in the Old Pond, which is at issue in Midwest Generation's Petition.

¹ Midwest Generation misleadingly refers to the Old Pond as the "Grassy Field" in its filings in this docket.

² Clean Power Lake County, Public Comments, AS 2021-003 (May 23, 2022), <https://pcb.illinois.gov/documents/dsweb/Get/Document-105900>; see also City of Waukegan, Public Comments, AS 2021-003 (May 25, 2022), <https://pcb.illinois.gov/documents/dsweb/Get/Document-105905> ("Each day that passes without a decision, pollution continues to compound in a community that already bears the environmental burdens of irresponsible companies.").

³ See Interim Opinion and Order, 68, PCB 2013-15 (June 20, 2019), <https://pcb.illinois.gov/documents/dsweb/Get/Document-100709> ("Weighing the facts presented, the Board finds that Environmental Groups have proven that it is more likely than not that the historic areas [including the Old Pond] and coal ash in the fill areas at the [Waukegan] Station are causing or contributing to [Groundwater Quality Standards] exceedances at the Station"); *id.* at 69 ("[T]he 163 exceedances downgradient of the Former Slag and Fly Ash Storage area [the Old Pond], along with higher concentrations of indicator constituents, show that the Former Slag and Fly Ash Storage area is contributing to the exceedances in wells MW-1 through 7"); *id.* at 75 ("The Board finds that the groundwater monitoring results indicate the Former Slag and Fly Ash Storage area [the Old Pond] is the likely source of boron exceedances at Waukegan Station in the wells downgradient of the area as well as the ash ponds."); *id.* at 76 ("[T]he Board finds that the likely source of the 57 exceedances of sulfate and 63 exceedances of TDS in the downgradient

Waukegan is an area of environmental justice concern as defined under Part 845 of the Illinois Administrative Code. *See* 35 Ill. Adm. Code 845.700(g)(6). The Illinois General Assembly made clear when it enacted the Coal Ash Pollution Prevention Act (“CAPPA”) that closing Coal Combustion Residuals (“CCR”) surface impoundments in areas of environmental justice concern, like Waukegan, must be “given first priority.” 415 ILCS 5/22.59(g)(9). There is no dispute that the West Pond at the Waukegan Station is a CCR surface impoundment. The Old Pond is also a CCR surface impoundment, as the Illinois EPA amply demonstrated in its Recommendation on Midwest Generation’s Petition. Accordingly, Midwest Generation should have submitted a closure permit application for its West Pond and Old Pond by February 1, 2022 pursuant to the clear deadline that this Board set in Part 845 for CCR surface impoundments in areas of environmental justice concern. *See* 35 Ill. Adm. Code 845.700(g)(1)(C), (h).

Yet, because of its Petition, Midwest Generation has evaded all of CAPPA’s and Part 845’s requirements as they apply to the Old Pond—and several provisions that apply to the West Pond—for well over a year. Midwest Generation now seeks to further delay the Board’s decision-making concerning this priority site by another half-year.

The rules are, and have been, clear: Midwest Generation has 14 days from “the date of service” of Illinois EPA’s recommendation to file a response. 35 Ill. Adm. Code 104.416(d). Illinois EPA filed its Recommendation on Midwest Generation’s petition on October 31, 2022, making November 14, 2022 the deadline for Midwest Generation’s response. This Board should reject Midwest Generation’s attempt to add another six months to the already protracted timeline in this proceeding—especially because of the legislative mandate to prioritize the closure of CCR surface impoundments in areas of environmental justice concern, like Waukegan.

The Board should also reject Midwest Generation’s effort to equate its own extension request to those of Illinois EPA. Illinois EPA is a public agency tasked with carrying out the purpose of the state’s Environmental Protection Act. That duty requires Illinois EPA to manage multiple competing demands with only limited resources. As Illinois EPA explained in its first extension request in this proceeding, the agency received eight petitions for adjusted standards and three petitions for variances on the same day in May 2021, and many of those petitions concerned multiple CCR surface impoundments.⁴ Simply put, any justification that Illinois EPA might have had for seeking additional time to issue its Recommendation in this proceeding does not extend to Midwest Generation.

For the foregoing reasons, Environmental Organizations respectfully request that the Board deny Midwest Generation’s Motion.

Thank you for your consideration of our request.

monitoring wells MW-5, 7, 8, and 9 at Waukegan is the Former Slag and Fly Ash Storage area [the Old Pond] located west of the ash ponds.”).

⁴ Illinois EPA, Motion for Extension of Time, 3, AS 2021-003 (May 21, 2022), <https://pcb.illinois.gov/documents/dsweb/Get/Document-104122>.

Respectfully Submitted,

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Faith Bugel
On behalf of Sierra Club

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CERTIFICATE OF SERVICE

The undersigned, Jennifer Cassel, an attorney, certifies that I have served by email the Clerk and by email the individuals with email addresses named on the Service List provided on the Board's website, available at <https://pcb.illinois.gov/Cases/GetCaseDetailsById?caseId=17032>, a true and correct copy of the **ENVIRONMENTAL ORGANIZATIONS' COMMENTS ON MIDWEST GENERATION'S MOTION FOR EXTENSION OF TIME**, before 5 p.m. Central Time on November 14, 2022. The number of pages in the email transmission is 6 pages.

Dated: November 14, 2022.

Respectfully Submitted,

/s/ Jennifer Cassel

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