

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	AS 2021-003
Petition of Midwest Generation LLC for an	)	
Adjusted Standard From 35 Ill. Adm. Code	)	(Adjusted Standard)
845.740(a) and Finding of Inapplicability of	)	
35 Ill. Adm. Code 845	)	
(Waukegan Station)	)	

To: See attached service list.

**NOTICE OF ELECTRONIC FILING**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the Illinois Environmental Protection Agency’s Response to Midwest Generation’s Motion in Limine to Exclude and Strike from the Record or at a Minimum Give the Exhibit Little Weight, a copy of which is herewith served upon you.

Dated: November 30, 2023

Respectfully submitted,  
ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(217) 782-5544  
Sara.Terranova@Illinois.Gov

BY: /s/Sara Terranova  
Sara Terranova

**THIS FILING IS SUBMITTED ELECTRONICALLY**

**SERVICE LIST**

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ILLINOIS POLLUTION CONTROL BOARD

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**ILLINOIS EPA’S RESPONSE TO MIDWEST GENERATION’S MOTION IN LIMINE  
TO EXCLUDE AND STRIKE CERTAIN AGENCY EXHIBITS OR AT A MINIMUM  
GIVE THE EXHIBITS LITTLE WEIGHT**

The Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by and through its attorney, hereby submits its Response to Midwest Generation’s (“MWG” or “Petitioner”) Motion in Limine. The Agency states as follows:

- 1) On May 11, 2021, MWG filed a “Petition for an Adjusted Standard and a Finding of Inapplicability for Waukegan Station” regarding the East Pond and the Grassy Field.
- 2) On September 17, 2021, MWG filed an “Amended Petition for an Adjusted Standard and a Finding of Inapplicability for Waukegan Station” regarding the West Pond (instead of the East Pond) and the Grassy Field.
- 3) On October 31, 2022, Illinois EPA, pursuant to 35 Ill. Adm Code 104.416, filed with the Board a Recommendation to deny Petitioner’s request.
- 4) On July 28, 2023, Petitioner filed a Motion to Stay Proceedings, a Response to the Agency’s Recommendation, and Second Amended Petition for an Adjusted Standard from 35 Ill. Adm. Code 845.740(a) and Finding of Inapplicability of Part 845 withdrawing its request for an adjusted standard allowing the reuse of the West Pond’s existing lagoon but leaving its request to the Grassy Field.

Electronic Filing: Received, Clerk's Office 11/30/2023

5) On November 16, 2023, MWG filed its Motion in Limine (Motion) to Exclude and Strike from the Record Certain Agency Exhibits or at a Minimum Give the Exhibits Little Weight. In support, MWG stated certain Agency exhibits are not relevant evidence because the Agency did not reference or otherwise rely on the exhibits in support of its Recommendation in this proceeding. *See Motion at 1.*

6) MWG's Motion in Limine should be denied.

7) The Agency agrees that Exhibit 47 is not relevant as it pertains to the West Pond.

8) The Agency agrees that Exhibits 37, 40, 42, 43, 44, and 50 were not relied on in the Agency's Recommendation.

9) As the Agency stated in discovery, it does not plan to call any witnesses at hearing. This is because the burden of the proof in an adjusted standard proceeding is on the petitioner. 415 ILCS 5/28.1(c) and 35 Ill. Adm Code 104.426. Therefore, it is MWG (and not the Agency) that must demonstrate their qualification for an adjusted standard to the Board. 35 Ill. Adm. Code 104.426.

10) However, like all hearings before the Illinois Pollution Control Board, Agency staff will attend the hearing and will be available to answer any question from the Board or others who may have questions for the Agency.

10) While the Agency may agree with some of Petitioner's assertions, Agency staff will be available to answer any questions pertaining to the Agency's Exhibit List. Therefore, there will be no prejudice against MWG and the request to strike or exclude Agency Exhibits should be denied.

WHEREFORE, Illinois EPA requests the Illinois Pollution Control Board DENY MWG's Motion in Limine to Exclude and Strike Certain Agency Exhibits or at a Minimum Give the Exhibits Little Weight.

Respectfully submitted,

Dated: November 30, 2023

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PROTECTION AGENCY,

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Sara.Terranova@Illinois.Gov

BY: /s/Sara Terranova  
Sara Terranova

**CERTIFICATE OF SERVICE**

I, the undersigned, on affirmation certify the following:

That I have electronically served the attached Motion in Limine to Exclude and Strike Certain Agency Exhibits or at a Minimum Give the Exhibits Little Weight. upon those listed on the Service List before 4:30 p.m. on November 30, 2023.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By:           /s/ Sara Terranova            
Sara Terranova  
Assistant Counsel  
Division of Legal Counsel

DATED: November 30, 2023

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