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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD SEP 15 2000

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)	
)	
PROPOSED NEW 35 ILL. ADM. CODE, SUBPART W,)	R01-9
THE NO _x TRADING PROGRAM FOR)	
ELECTRICAL GENERATING UNITS, AND)	(Rulemaking-Air)
AMENDMENTS TO 35 ILL. ADM. CODE 211 AND 217)	

Testimony of Scott B. Miller
On Behalf of Midwest Generation EME, LLC

My name is Scott Miller. I represent Midwest Generation where I am employed as a Senior Environmental Engineer in the corporate Environmental Health and Safety Department. I have a Bachelor of Science degree in Mechanical Engineering from the University of Illinois and a Masters degree in Engineering Management from Northwestern University. I am a Registered Professional Engineer in the State of Illinois.

I have been working at Midwest Generation since the fossil generation assets of Commonwealth Edison were purchased by Edison Mission Energy on December 15, 1999. Prior to that, I held a similar position at Commonwealth Edison where I was involved mainly with air quality planning, permitting, monitoring and compliance.

I have been following NOx regulation development issues since the Clean Air Act was amended in 1990, and I have participated in the development of several proposed rulemakings concerning NOx emissions, including the Illinois draft NOx RACT regulation, and the Chicago nonattainment area NOx cap and trade design team (the predecessor to the VOM cap and trade design team). I also participated as a stakeholder in the development of the NOx Trading Program for Electric Generating Units, which is the subject of this rulemaking. I attended most of the meetings between the Agency and industrial sources over the last few years on the NOx Budget Trading Rule, some of which were held when I worked for my previous employer. I submitted written comments for most of the outstanding issues that were discussed at these meetings in this time period.

Midwest Generation generally supports the proposed rule including the NOx budget allowance allocations. The purpose of my testimony is to comment on three aspects of the rule: (1) the compliance date for the rule in light of a recent court ruling extending the compliance date for the NOx SIP call regulations until May 31, 2004; (2) the appropriateness of the fixed allocation method; and (3) the manner in which early reduction credits will be determined.

As the Board may be aware, Midwest Generation is a new company to Illinois. Before I discuss my substantive comments on the rule itself, I would like to tell you a little about Midwest

Generation. Midwest Generation EME, LLC is an Illinois company based in Chicago. It is a subsidiary of Edison Mission Energy. Edison Mission Energy is one of the largest independent power producers in the world with an installed capacity of over 27,000 megawatts of electrical generation. Midwest Generation, which consists of coal, oil and natural gas power plants in Illinois and Pennsylvania, has an installed capacity of 10,000 megawatts in Illinois and 2,000 megawatts in Pennsylvania. In Illinois, Midwest Generation operates coal fired power plants located in Chicago, Waukegan, Will County, Joliet, and Pekin.

When Midwest Generation purchased ComEd's fossil assets it made a commitment to reduce nitrogen oxide emissions from those plants by 50% on both a rate based and annual emissions basis by the end of 2002. This commitment was not based upon future regulatory requirements or the prospect of early reduction credits, but was based upon a desire to improve air quality in Midwest Generation's operating area.

Earlier this year, we retrofitted three tangentially fired boilers at our Joliet, Waukegan, and Will County stations with low NOx burners that utilize both close-coupled and separated overfire air ports known as the ABB TFS-2000 system. All three units have achieved NOx reductions as low as 0.130 lbs/mmBTU and collectively will reduce NOx emissions by 4,500 tons in this year's ozone season and 9,000 tons annually. The newly achieved emissions rate at all three units is greater than a 50% emission reduction on those units.

In the year 2001, Midwest Generation plans to install NOx controls at an additional five units. These controls will reduce NOx emissions by an additional 7,000 tons during the ozone season and 14,000 tons annually.

As I said earlier, Midwest Generation generally supports the rule as proposed, but we would like to comment on three aspects of the proposed rule.

First, Midwest Generation requests that the Board take notice of a recent court decision in the NOx SIP call litigation which postponed the compliance date for the NOx SIP call rules from May 1, 2003 to May 31, 2004. We do not know if the Agency intends to propose revisions to this rule that would extend the compliance date to May 2004, but Midwest Generation believes that such an extension will better enable sources to order and install the pollution control equipment necessary to meet the requirements of the rule by the compliance date. Therefore, we request that the Board revise the compliance date for this rule from May 1, 2003 to May 31, 2004 to be consistent with the Court order.

Second, I would like to comment on the fixed allocation method proposed by the Agency for the initial years of the program. Midwest Generation supports this approach because it provides existing coal burning facilities with certainty coming into this program. Since there has not been a great deal of experience on the retrofit of control technologies on existing coal burning plants, using fixed allotments for the initial years of the program will facilitate a smooth transition of existing EGUs (those in service before 1995) into this program.

Finally, I would like to comment on two aspects of the early reduction credit program proposed by Agency in Section 217.770 of the rule. As I said earlier, when Midwest Generation purchased ComEd's power plants, it made a commitment to reduce NOx emissions by 50% on

both a rate based and annual emissions basis by the end of 2002. It has already reduced the ozone season emissions from these plants by 4,500 tons through these early reduction efforts. Midwest Generation anticipates another 7,000 tons of emission reductions by the end of the 2002 ozone season. Therefore, Midwest Generation has a strong interest in including an early reduction credit program in the final NOx rule adopted by the Board. Midwest Generation believes that an early reduction credit reduction program will provide sources with the incentive to reduce their NOx emissions before the required compliance date. While Midwest Generation supports the early reduction program as proposed by the Agency, we believe that the program can be improved to better encourage true, early reductions.

First, Midwest Generation believes that an early reduction credit program which locks in the years for early reduction credit generation will truly encourage early reductions in the next two (or three) years. Even if implementation of the rule is delayed due to a neighboring state's failure to implement an approved NOx trading rule, early reductions that occur in 2001 and 2002 will likely continue to generate air quality benefits in the state, while actual implementation of the program is delayed. Under Section 217.770(e) of the proposed rule, if implementation of the rule is delayed beyond May 1, 2003, the years for which early reduction credits may be generated will also be delayed. So under the rule as proposed by the Agency, if the rule is not implemented until May 2005, early reduction credits would only be available for the years 2003 and 2004.

Sources that reduced their emissions in 2001 and 2002 would still be eligible for early reduction credits in 2003 and 2004, but so would other sources that had planned to install their control equipment just in time to comply with the rules' original May 1, 2003 compliance date. Since the number of available early reduction credits is limited, those sources that chose to decrease their emissions earlier would be penalized in a system where the years for early reduction credit eligibility slid with the regulatory compliance date because additional sources would be drawing from the early reduction credit pool, only because the implementation of the rule was delayed.

Now since through a court order the implementation date for the NOx SIP rules has been delayed until May 31, 2004, the Board may determine that an early reduction program that spans the years 2001, 2002, and 2003 is appropriate. Midwest Generation requests that the Board make such a determination, but I will address that later. Regardless of the number years involved in the early reduction program, Midwest Generation believes that the years should be specified in the rule. Therefore, Midwest Generation requests that the Board revise the proposed rule to lock in 2001 and 2002 (and 2003 to the extent the Board decides to include a 3 year early reduction credit program in the rule) as the years in which early reduction credits are generated.

In a similar vein, Midwest Generation requests that the Board revise the number of credits allocated in the years of the early reduction program to favor those sources that truly make "early" reductions. In Section 217.770(f)(2) (A&B) of the proposed rule, the IEPA divided the 15,621 early reduction credits (ERC) that it had available equally over the two years of the early reduction credit program. Midwest Generation believes that to truly encourage and reward early reductions, this pool should be divided such that more credits are available in the first years of the program. Reductions that occur in 2001 and potentially in 2002, will more likely be "early reductions" undertaken in part for air quality reasons than reductions that occur

later – especially given the court order delaying the compliance date. Midwest Generation believes that in some instances, “early” reductions that occur in the year prior to the implementation date are more likely to have occurred because of scheduling an outage at the unit than a conscious desire to improve air quality at that moment.

Since the implementation date for the NO_x SIP rules have been delayed by approximately a year, Midwest Generation requests that the Board revise the proposed rule to enable early reduction credits or ERCs to be generated over a three year period (2001, 2002, and 2003). A three year program will enable more sources to participate in the early reduction credit program, and if the credits are allocated in a manner that favors earlier reductions, sources making those early reductions will not be penalized. Specifically, Midwest Generation would propose an allocation system where ½ of the available allowances, or 7,811 ERCs, would be allocated to the Compliance Supplement Pool in 2001; ¼ of the available allowances, or 3,905 ERCs, would be allocated to the pool in 2002; and the remaining ¼ of the allowances, or 3,905 ERCs, would be allocated to the pool in 2003. This allocation method would both encourage earlier reductions in 2001 and 2002, but would also provide sources who make reductions in 2003 with some early reduction credits.

While Midwest Generation believes that adoption by the Board of an early reduction credit program that spans 3 years would have several benefits, if the Board determines that a two year early reduction program is more appropriate, Midwest Generation suggests that the Board keep 2001 and 2002 as the years in which early reduction credits can be generated. Again, by keeping the early reduction credit generation years as 2001 and 2002, the Board will encourage and reward true early reductions.

If there is a two year early reduction credit program, Midwest Generation proposes an alternative allocation method for the credits. Specifically, Midwest Generation requests that the Board revise the proposed rule to increase the number of credits allocated in 2001 from ½ of the available credits to 2/3 of the credits, or 10,174 ERCs. The remaining 1/3 of the credits, or 5,087 ERCs, would be available in 2002. Since the allowances carry forward, no unused allowances would be lost by this proposed method, and again, this method would encourage and reward earlier NO_x reductions. Midwest Generation suggested this allocation method to the Agency before it proposed this rule, and the Agency acknowledged Midwest Generation’s proposal of this alternative method in its Statement of Reasons for this rulemaking.

Midwest Generation also requests that the Board revise the calculation methodology contained in Section 217.770(c) of the proposed rule, which is used to determine if early reductions are eligible for the early reduction credit program. Specifically, Midwest Generation is concerned about the requirement contained in Section 217.770(c)(2) that EGUs with units that are part of a NO_x averaging plan achieve emission reductions from those units as a whole equivalent to a 30% reduction from the emission rate required under that NO_x averaging plan.

A NO_x averaging plan is a means of demonstrating compliance with annual NO_x limitations under the federal Acid Rain Program, and Midwest Generation does not believe that this annual averaging plan should be applied on a five month basis because under the averaging plan there can be variation annually in the emissions from the units included in the average. For example, in the summer months, all the units in the NO_x averaging plan may meet or exceed the

individual NOx limitations applicable to their particular boiler type without averaging, but averaging may be needed to meet the NOx limits of the Acid Rain Program in another part of the year. In that example, some units may be achieving emission reductions that exceed 30% of their individual acid rain limitations, but the other units included in the averaging plan may not be performing at a level that would demonstrate a 30% reduction from the emission rate in the averaging plan even if the other units were actually in compliance with their individual acid rain NOx limitations for the ozone season.

As demonstrated by my example, an EGU could be penalized for using an annual NOx averaging plan for Acid Rain compliance in a way that another source that was not participating in an averaging plan would not. To address this potential problem, Midwest Generation requests that the Board delete the requirement that EGUs participating in an annual NOx averaging plan for Acid Rain compliance be required to demonstrate a 30% reduction from the emission rate contained in the averaging plan across the units in the averaging plan. Instead, Midwest Generation requests that the Board require that all EGUs demonstrate a 30% reduction from the applicable acid rain requirement on a unit by unit basis.

Thank You for allowing Midwest Generation to comment of this proposed regulation.

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