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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JUL 23 2004

STATE OF ILLINOIS
Pollution Control Board

Midwest Generation EME, LLC
Petitioner,

v.

Illinois Environmental Protection Agency,
Respondent.

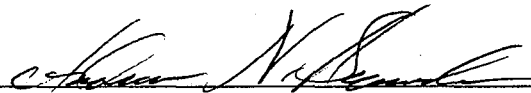
PCB 04-216
Trade Secret Appeal

NOTICE OF FILING

To: Dorothy Gunn, Clerk
Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, Illinois 60601

Lisa Madigan, Attorney General of the State of Illinois
Matthew Dunn, Environmental Enforcement/Asbestos Litigation Division
Ann Alexander, Assistant Attorney General and Environmental Counsel
Paula Becker Wheeler, Assistant Attorney General
188 West Randolph Street, Suite 2000
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board one original and nine copies of Midwest Generation EME, LLC's Opposition to Sierra Club's Motion for Leave to File Sierra Club's Reply to Commonwealth Edison's Response to Sierra Club's Motion for Intervention and my Appearance, copies of which are herewith served upon you.


Andrew N. Sawula

Dated: July 23, 2004

Schiff Hardin LLP
6600 Sears Tower
Chicago, IL 60606
(312) 258-5577

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Midwest Generation EME, LLC,

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v.

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STATE OF ILLINOIS
Pollution Control Board

Case No. PCB 04-216

**OPPOSITION TO SIERRA CLUB'S MOTION FOR LEAVE TO FILE SIERRA CLUB'S
REPLY TO COMMONWEALTH EDISON'S RESPONSE TO SIERRA CLUB'S
MOTION FOR INTERVENTION**

Pursuant to 35 Ill. Adm. Code 101.500, Midwest Generation EME, LLC ("Midwest Generation") respectfully submits this Opposition to Sierra Club's Motion for Leave to File Sierra Club's Reply to Commonwealth Edison's Response to Sierra Club's Motion for Intervention.

1. On July 20, 2004, Sierra Club filed a "Motion for Leave to File Sierra Club's Reply to Commonwealth Edison's Response to Sierra Club's Motion for Intervention." Midwest Generation received this Motion on July 22, 2004.

2. Sierra Club asserts, in paragraph 1, "On June 21, 2004, Sierra Club filed a Motion for Intervention" in PCB 04-216. Midwest Generation was not served with such a motion and has no knowledge that Sierra Club ever filed such a motion. No such motion is referenced on the Illinois Pollution Control Board's (the "Board's") website and, according to the Assistant Clerk of the Board, no such motion was filed in PCB 04-216.

3. Sierra Club asserts, in paragraph 2, "On July 7, 2004, Commonwealth Edison filed its Response to Sierra Club's Motion for Intervention." Midwest Generation was not served with such a response and has no knowledge that Commonwealth Edison ever filed such a response. No such response is referenced on the Board's website and, according to the Assistant Clerk of the Board, no such motion was filed in PCB 04-216.

4. Upon information and belief, neither Keith Harley, who identifies himself as an attorney for Sierra Club, nor any other attorney for Sierra Club, has filed an appearance in PCB 04-216, as required by 35 Ill. Adm. Code 101.400(a)(4).

5. Since, upon information and belief, Sierra Club never filed a Motion for Intervention in PCB 04-216 and Commonwealth Edison did not file a Response to the nonexistent Motion for Intervention, Sierra Club's "Motion for Leave to File Sierra Club's Reply to Commonwealth Edison's Response to Sierra Club's Motion for Intervention" is premature. Sierra Club simply does not have anything to which to reply.

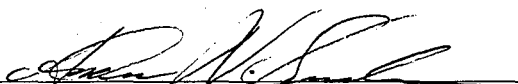
6. Based upon a review of the record, Midwest Generation understands that Sierra Club filed a Motion for Intervention in a different matter, PCB 04-215, on June 21, 2004, and that Commonwealth Edison responded to that motion on July 7, 2004. Neither of these motions, however, were filed in PCB 04-216, and Midwest Generation is not a party to PCB 04-215. Midwest Generation, consequently, has had no opportunity to respond to Sierra Club's apparent desire to intervene in this case.

WHEREFORE, Midwest Generation respectfully requests that the Illinois Pollution Control Board enter its order denying Sierra Club's "Motion for Leave to File Sierra Club's Reply to Commonwealth Edison's Response to Sierra Club's Motion for Intervention."

Dated: Chicago, Illinois
July 23, 2004

Respectfully submitted,

MIDWEST GENERATION EME, LLC

By: 

Sheldon A. Zabel
Mary A. Mullin
Andrew N. Sawula

SCHIFF HARDIN LLP
6600 Sears Tower
Chicago, Illinois 60606
(312) 258-5540

Attorneys for
Midwest Generation EME, LLC

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Appearance and Opposition to Sierra Club's Motion for Leave to File Sierra Club's Reply to Commonwealth Edison's Response to Sierra Club's Motion for Intervention, by U.S. Mail, upon the following persons:

Dorothy Gunn, Clerk
Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, Illinois 60601

Lisa Madigan, Attorney General of the State of Illinois
Matthew Dunn, Environmental Enforcement/Asbestos Litigation Division
Ann Alexander, Assistant Attorney General and Environmental Counsel
Paula Becker Wheeler, Assistant Attorney General
188 West Randolph Street, Suite 2000
Chicago, Illinois 60601


with courtesy copies to:

Keith Harley
Annie Pike
Chicago Legal Clinic, Inc.
205 W. Monroe, 4th Floor
Chicago, Illinois 60606

Dated: Chicago, Illinois
July 23, 2004

Respectfully submitted,

MIDWEST GENERATION EME, LLC

By: 
Andrew N. Sawula

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One of the Attorneys for
Midwest Generation EME, LLC