

**JUL 26 2004**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

STATE OF ILLINOIS  
Pollution Control Board

**Commonwealth Edison Company,**  
**Petitioner**

**v.**

**Illinois Environmental Protection Agency,**  
**Respondent**

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**PCB 04-215**  
**Trade Secret Appeal**

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**Midwest Generation EME, LLC,**  
**Petitioner**

**v.**

**Illinois Environmental Protection Agency,**  
**Respondent**

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**PCB 04-216**  
**Trade Secret Appeal**  
**(not consolidated)**

**NOTICE OF FILING**

To: Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
100 West Randolph  
Suite 11-500  
Chicago, Illinois 60601

Byron F. Taylor  
Chante D. Spann  
Sidley Austin Brown & Wood LLP  
Bank One Plaza  
10 S. Dearborn  
Chicago, Illinois 60603

Brad Halloran  
Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph  
Suite 11-500  
Chicago, Illinois 60601

Keith Harley  
Annie Pike  
Chicago Legal Clinic, Inc.  
205 West Monroe, 4<sup>th</sup> Floor  
Chicago, Illinois 60606

Sheldon A. Zabel  
Mary A. Mullen  
Andrew N. Sawula  
Schiff Harden LLP  
6600 Sears Tower  
Chicago, Illinois 60606

Please take notice that today we have filed with the Office of the Clerk of the Pollution Control Board an original (1) and nine (9) copies of IEPA's Response to the Board's June 17 Order Concerning Consolidation. A copy is herewith served upon the

assigned Hearing Officer, the attorneys for the Petitioner, Commonwealth Edison Company, Midwest Generation EME, LLC, and the attorneys for the Sierra Club.

Dated: Chicago, Illinois  
July 26, 2004

LISA MADIGAN, Attorney General of the  
State of Illinois

MATTHEW DUNN, Chief, Environmental Enforcement/  
Asbestos Litigation Division

BY: 

Ann Alexander, Assistant Attorney General and  
Environmental Counsel

Paula Becker Wheeler, Assistant Attorney General  
188 West Randolph Street, Suite 2000  
Chicago, Illinois 60601  
312-814-3772  
312-814-2347 (fax)

**RECEIVED**  
CLERK'S OFFICE

**JUL 26 2004**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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**Petitioner**

**v.**

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**PCB 04-215** STATE OF ILLINOIS  
**Trade Secret Appeal** Pollution Control Board

**Midwest Generation EME, LLC,**  
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**v.**

**Illinois Environmental Protection Agency,**  
**Respondent**

**PCB 04-216**  
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**(not consolidated)**

**IEPA'S RESPONSE TO THE BOARD'S  
JUNE 17 ORDER CONCERNING CONSOLIDATION**

Respondent, Illinois Environmental Protection Agency ("IEPA"), by Lisa Madigan, Attorney General of the State of Illinois, herewith submits its response to the request by the Board in its Order dated June 17, 2004 that the parties address whether it would be appropriate to consolidate the two captioned appeals for purposes of hearing, if any, and decision. In response, Respondent states as follows:

1. The two trade secret appeals concern the same set of documents submitted by appellant Commonwealth Edison in response to an information request by the United States Environmental Protection Agency, and subsequently copied to IEPA. One appeal was brought by Commonwealth Edison as owner of the documents, and the other was brought by Midwest Generation, the current owner of the facilities that are the subject of the documents. The administrative records of the two appeals are therefore close to identical, with the only difference between them being the separate trade secret

justification statements submitted by Commonwealth Edison and Midwest Generation.

Consolidation of the two matters is therefore "in the interest of convenient, expeditious, and complete determination of claims." 35 Ill. Adm. Code 101.406.

2. Additionally, consolidation would not cause material prejudice to any party, and the burdens of proof in the two matters do not vary. Id.

3. For these reasons, Respondent IEPA favors and recommends consolidation of the two matters.

Dated: Chicago, Illinois  
July 26, 2004

LISA MADIGAN, Attorney General of the  
State of Illinois

MATTHEW DUNN, Chief, Environmental Enforcement/  
Asbestos Litigation Division

BY: 

Ann Alexander, Assistant Attorney General and  
Environmental Counsel

Paula Becker Wheeler, Assistant Attorney General  
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**CERTIFICATE OF SERVICE**

I hereby certify that I did on the 26<sup>th</sup> Day of July 2004 send by First Class Mail, with postage thereon fully paid and deposited into the possession of the United States Postal Service, one (1) original and nine (9) copies of the following instruments entitled Notice of Filing and IEPA's Response to the Board's June 17 Order Concerning Consolidation to

To: Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
100 West Randolph  
Suite 11-500  
Chicago, Illinois 60601

and a true and correct copy of the same foregoing instruments, by First Class Mail with postage thereon fully paid and deposited into the possession of the United States Postal Service, to:

Byron F. Taylor  
Chante D. Spann  
Sidley Austin Brown & Wood LLP  
Bank One Plaza  
10 S. Dearborn  
Chicago, Illinois 60603

Keith Harley  
Annie Pike  
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Sheldon A. Zabel  
Mary A. Mullen  
Andrew N. Sawula  
Schiff Harden LLP  
6600 Sears Tower  
Chicago, Illinois 60606

Dated: Chicago, Illinois  
July 26, 2004

LISA MADIGAN, Attorney General of the  
State of Illinois

MATTHEW DUNN, Chief, Environmental Enforcement/  
Asbestos Litigation Division

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