

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AUG 05 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:

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

Dorothy Gunn, Clerk  
Bradley P. Halloran, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board Petitioner Midwest Generation EME, LLC's Reply to IEPA's Response to the Board's June 17, 2004 Order Concerning Consolidation, a copy of which is herewith served upon you.



Andrew N. Sawula

Dated: August 5, 2004

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD AUG 05 2004

Midwest Generation EME, LLC,

Petitioner

v.

Illinois Environmental Protection Agency,

Respondent.

STATE OF ILLINOIS  
Pollution Control Board

Case No. PCB 04-216

**PETITIONER'S REPLY TO  
IEPA'S RESPONSE TO THE BOARD'S  
JUNE 17, 2004 ORDER CONCERNING CONSOLIDATION**

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Petitioner Midwest Generation EME, LLC, ("Midwest Generation") hereby submits its reply to IEPA's Response, dated July 26, 2004, to the Board's June 17, 2004 Order Concerning Consolidation. Midwest Generation received IEPA's Response on July 29, 2004. Midwest Generation states as follows:

1. In Paragraph 1 of its Response, IEPA provides only one reason why the Board should consolidate PCB 04-215 and 04-216; IEPA states that the two trade secret appeals concern the same set of documents. This statement is incorrect. As the Board observed in its June 17, 2004 Order, Commonwealth Edison ("ComEd") appeals IEPA's trade secret determination concerning excerpts from a Continuing Property Record ("CPR") and Generating Availability Data System ("GADs") data. Order at 3. By contrast, Midwest Generation only appeals IEPA's trade secret determination concerning the CPR. *Id.* at 3-4.

2. In Paragraph 2 of its Response, IEPA asserts that “consolidation would not cause material prejudice to any party, and the burdens of proof in the two matters do not vary.” IEPA does not, however, provide any factual, or other, support for this bald assertion.

3. Contrary to IEPA’s unsupported conclusion, Midwest Generation carefully articulated in its Opposition to Consolidation that consolidation would cause Midwest Generation material harm and would increase administrative burden and confusion. In sum, consolidation would cause administrative confusion because each petitioner’s interest in the CPR is different. Consolidation would increase the hearing time and associated expense for petitioners, without alleviating the Board’s administrative burden, because each petitioner has a different interest in the CPR, and Midwest Generation is not appealing IEPA’s determination with regard to the GADs data. Consolidation would deprive each petitioner of its decision making power regarding the approach to its appeal, such as whether or not to ask the Board to reconsider the portion of its June 17, 2004 Order holding that the hearing will be “on the record before IEPA” at the time of its determination.

For the reasons stated above, in addition to the reasons stated in Midwest Generation's Opposition to Consolidation, Midwest Generation submits that consolidation would be improper and, therefore, opposes the consolidation of PCB 04-215 and 04-216.

Dated: Chicago, Illinois  
August 5, 2004

Respectfully submitted,

MIDWEST GENERATION EME, LLC

By: 

Sheldon A. Zabel

Mary A. Mullin

Andrew N. Sawula

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Attorneys for

Midwest Generation EME, LLC

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served the attached Petitioner's Reply to IEPA's Response to the Board's June 17, 2004 Order Concerning Consolidation, by U.S. Mail, upon the following persons:

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

Dorothy Gunn, Clerk  
Bradley P. Halloran, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
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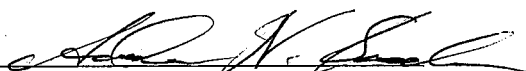
with courtesy copies to:<sup>1</sup>

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

Dated: August 5, 2004

Respectfully submitted,

MIDWEST GENERATION EME, LLC

By:   
Andrew N. Sawula

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One of the Attorneys for  
Midwest Generation EME, LLC

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<sup>1</sup> We understand that Sierra Club filed a Motion for Intervention on August 3, 2004. Although we have not yet been served with the motion and, to our knowledge, Sierra Club has not filed an appearance in PCB 04-216, we are providing Sierra Club with courtesy copies of this Reply.