

AUG 17 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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: Robert A. Messina
Illinois Environmental Regulatory Group
3150 Roland Avenue
Springfield, IL 62703

Keith Harley
Chicago Legal Clinic
205 W. Monroe, 4th Floor
Chicago, IL 60606

Lisa Madigan
Matthew Dunn
Ann Alexander
Paula Becker Wheeler
188 West Randolph Street, Suite 2000
Chicago, IL 60601

Dorothy Gunn, Clerk
Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
100 West Randolph, Suite 11-500
Chicago, IL 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 Response to Sierra Club's Motion for Intervention, a copy of which is herewith served upon you.


Andrew N. Sawula

Dated: August 17, 2004

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

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached 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

Robert A. Messina, General Counsel
Illinois Environmental Regulatory Group
3150 Roland Avenue
Springfield, IL 62703

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

Dated: Chicago, Illinois
August 17, 2004

Respectfully submitted,

MIDWEST GENERATION EME, LLC

By: Mary Ann Mullin
Mary Ann Mullin

SCHIFF HARDIN LLP
6600 Sears Tower
Chicago, Illinois 60606
(312) 258-5687

One of the Attorneys for
Midwest Generation EME, LLC

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

AUG 17 2004

STATE OF ILLINOIS
Pollution Control Board

Midwest Generation EME, LLC,

Petitioner

v.

Illinois Environmental Protection Agency,

Respondent.

Case No. PCB 04-216

RESPONSE TO SIERRA CLUB'S MOTION FOR INTERVENTION

Pursuant to 35 Ill. Adm. Code 101.402, Midwest Generation EME, LLC ("Midwest Generation") respectfully submits this Response to Sierra Club's Motion for Intervention ("MFI").

1. On January 30, 2004, Commonwealth Edison Company ("ComEd") submitted final responses to a Clean Air Act § 114 Information Request issued by the United States Environmental Protection Agency ("U.S. EPA"). At U.S. EPA's suggestion, ComEd submitted a courtesy copy of the final responses and attachments to the Illinois Environmental Protection Agency ("IEPA").

2. Included in ComEd's final response were excerpts from a continuing property record ("CPR") relating to six coal-fired generating stations formerly owned by ComEd and currently owned by Midwest Generation (the "Stations"). Midwest Generation purchased the Stations in December 1999. Pursuant to the Asset Sale Agreement between ComEd and Edison Mission Energy, Midwest Generation's parent, ComEd provided Midwest Generation a copy of the portions of the CPR that relate to the Stations.

3. ComEd conspicuously marked information on the CPR as “Confidential Business Information.”

4. On February 26, 2004, IEPA requested that ComEd submit a Statement of Justification for ComEd’s trade secret claims. Midwest Generation was informed of this request and submitted an independent Statement of Justification on March 11, 2004.

5. On April 29, 2004, Midwest Generation received a letter from IEPA, dated April 23, 2004, granting in part and denying in part Midwest Generation’s trade secret claims as to the information on the CPR.

6. On June 3, 2004, Midwest Generation filed this action, requesting that the Illinois Pollution Control Board (the “Board) review IEPA’s denial of trade secret protection to the information in the CPR that ComEd submitted to IEPA.

7. On August 3, 2004, Sierra Club filed the MFI “on the basis that the final order of the IPCB may adversely affect and materially prejudice its interests.” Pursuant to 35 Ill. Adm. Code 101.402(d)(2) and (3), the Illinois Pollution Control Board (the “Board”) “may permit” Sierra Club to intervene if Sierra Club may be “materially prejudiced absent intervention” or “adversely affected by a final Board order.” Sierra Club failed to establish that it would be materially prejudiced absent intervention or adversely affected by a final Board order.

8. Midwest Generation obtained a copy of the MFI from the Board’s website; however Midwest Generation has not yet been served with, or at least has yet to receive, a copy of the MFI. Nonetheless, in the interest of moving this proceeding forward, Midwest Generation is filing this Response to Sierra Club’s MFI.

9. Before explaining why the Board should conclude that Sierra Club failed to establish that it would be materially prejudiced or adversely affected, Midwest Generation would like to correct factual errors in the MFI.

(a) In Paragraph 4, Sierra Club states that ComEd is the Petitioner in this proceeding. ComEd, in fact, is not a party to this proceeding and, thus, is not the Petitioner; rather, Midwest Generation is the Petitioner.

(b) In Paragraph 4, Sierra Club states that ComEd owned and operated nine coal-generated power plants. Regardless of how many plants ComEd may have owned or operated in the past, only documents related to six Illinois coal-fired generating stations are at issue in this proceeding.

10. In Paragraph 15(a) of the MFI, Sierra Club asserts that denial of the MFI may materially prejudice Sierra Club by preventing it "from making an adequate record of its interests" if it "decides to appeal any adverse decision regarding the release of requested records." In Paragraph 18, Sierra Club states that its interest "involves creating a record of the public's interests in having access to information consistent with Illinois and federal law." While Sierra Club would like to make a record of its interests, Sierra Club, in fact, has no interest in the issues that are currently before the Board. Midwest Generation's Petition for Review is based on a narrow question of whether IEPA correctly determined whether information submitted to IEPA constitutes trade secret information. That determination requires a factual analysis concerning the nature of the information submitted to the Board, and the manner in which Midwest Generation has treated that information; the determination does not involve an

analysis of Sierra Club's or the general public's interest, if any, in the information. Trade secret information is protected from disclosure pursuant to 415 ILCS 5/7(a) and 5/7.1(a), and the following sections of the Illinois Administrative Code: 2 Ill. Adm. Code 1828.401; 35 Ill. Adm. Code 130. IEPA may not release trade secret information even if the public has an interest in access to the information. Because the Board will not need to consider, and properly should not consider, the public's interest, if any, in this information during this proceeding, Sierra Club will not be materially prejudiced if it cannot make a record of Sierra Club's or the public's interest in this information.

11. In Paragraph 15(b) of the MFI, Sierra Club asserts that denial of the MFI may materially prejudice the Sierra Club by "preventing it from adequately representing the interests of its members and the public at large in having access to information compiled by the IEPA." As stated in Paragraph 10 of this Response, Sierra Club's and the public's interest in having access to this information is not an issue that the Board will address to make a decision concerning Midwest Generation's Petition for Review. On the contrary, IEPA may not release trade secret information even if Sierra Club or the public has an interest in access to the information. Thus, Sierra Club will not be materially prejudiced if it cannot represent its interests, the interests of its members or of the public at large in having access to the information.

12. In Paragraph 15(c) of the MFI, Sierra Club asserts that denial of the MFI may materially prejudice Sierra Club by preventing it and the public "from gaining a better understanding of how the IEPA enforces laws and regulations related to air and water pollution in keeping with the public's right to educate itself on the environmental protection process." Sierra Club fails to explain, however, how *intervening* in the proceeding could assist Sierra Club

in gaining a better understanding of how IEPA enforces laws and regulations relating to air and water pollution. One can only surmise, because Sierra Club does not explain, that Sierra Club believes it would gain this understanding by learning what type of information is afforded trade secret protection. As Sierra Club admits in Paragraph 18 of the MFI, it is not attempting to gain access to the disputed documents during this proceeding; thus, intervening in this proceeding will not enable Sierra Club to learn more about the type of information IEPA affords trade secret protection. Thus, Sierra Club will not be materially prejudiced absent intervention.

13. In Paragraph 15(d) of the MFI, Sierra Club asserts that denial of the MFI may materially prejudice Sierra Club by preventing it and the public “from gaining a well-grounded understanding of the compliance status of Midwest Generation and, in turn, evaluating opportunities for members of the public to participate in efforts to remedy any non-compliance.” Presumably, Sierra Club would like to intervene to improve the chance that the Board will deny Midwest Generation’s appeal of IEPA’s determination to release portions of the CPR to Sierra Club. As explained in Paragraphs 10 and 11 of this Response, however, Sierra Club seeks to intervene only to represent its and the public’s interest in the information, which, for the reasons stated in Paragraph 10 of this Response, is not relevant to, and should not even be admissible on, the issue before the Board. Sierra Club’s intervention, therefore, will have no impact on the Board’s decision in this proceeding, and will not further Sierra Club’s goal of gaining access to this information. Thus, Sierra Club will not be materially prejudiced absent intervention.

14. In Paragraph 13 of the MFI, Sierra Club asserts that, “[b]ecause it has a pending Freedom of Information Act request for the information that is the subject of this proceeding, the Sierra Club will be adversely affected if the Illinois Pollution Control Board prohibits releasing

some or all of the information to it.” Sierra Club fails to establish, however, how it will be adversely affected by a final Board order. Sierra Club has no legal right to these documents to the extent that they contain Midwest Generation’s trade secret information. Midwest Generation, through this proceeding, has asked the Board to determine whether the documents contain trade secret information. If the Board determines that these documents contain trade secret information, then Sierra Club has no legal interest in this information and cannot be adversely affected by not receiving the documents. That Sierra Club may claim it is interested in these documents, that the documents may even, in fact, contain information of interest to Sierra Club is simply irrelevant to the question of whether IEPA can release the documents.

15. Because Sierra Club failed to establish that it would be materially prejudiced absent intervention or adversely affected by a final Board order, it has not asserted any grounds on which the Board may permit its intervention. 35 Ill. Adm. Code 101.402.

16. Even if the Board determines that Sierra Club has established grounds for intervention pursuant to 35 Ill. Adm. Code 101.402(d), that section states that the Board “may permit” the intervention, subject to Section 101.402(b). Pursuant to Section 101.402(b), however, “the Board will consider ... whether intervention will unduly delay or materially prejudice the proceeding or otherwise interfere with an orderly or efficient proceeding.”

17. Sierra Club’s intervention would unduly delay, materially prejudice and otherwise interfere with an orderly and efficient proceeding.

18. Sierra Club admits that it has no interest in the issue that is before the Board. In Paragraph 17 of the MFI, Sierra Club states, “For the parties already involved in this appeal, the focus of the hearing is to determine whether ComEd’s records are protected from disclosure to

the SIERRA CLUB because they are trade secrets.” In Paragraph 18, Sierra Club asserts, “The SIERRA CLUB’S focus in this hearing is altogether different and involves creating a record of the public’s interests in having access to information consistent with Illinois and federal law.” Sierra Club goes on to state that it will not seek access, during this proceeding, to the information that is the subject of the proceeding. Through Paragraphs 17 and 18; Sierra Club attempts to establish how its interest is not currently represented in the proceeding. Sierra Club ignores, however, that its interest is not and need not be represented because it is irrelevant to the issue before the Board. Sierra Club is correct that the current parties’ focus is to determine whether certain documents are protected from disclosure because they contain trade secret information. Sierra Club overlooks that the parties are focused on this issue because it is the only issue before the Board. IEPA may not disclose Midwest Generation’s trade secrets to the public without Midwest Generation’s consent. Trade secrets do not cease being trade secrets merely because someone contends the public has an interest in seeing them. On the contrary, demonstrating that the public (especially Midwest Generation’s competitors and suppliers) has an interest in this information would only strengthen Midwest Generation’s claims. Because Sierra Club has indicated its desire to obtain these documents, it clearly has not filed a motion to intervene in order to present extra evidence of the competitive value of this information.

19. As Sierra Club admits, it seeks to intervene in order to pursue its own agenda. As explained in Paragraph 18 of this Response, Sierra Club’s intervention would in no way assist the Board in determining whether the disputed documents contain trade secret information and, therefore, may not be disclosed to the public. Sierra Club’s intervention, by definition, would “unduly delay” the proceeding. By attempting to bring irrelevant issues and politics into this

proceeding in a manner that is completely unrelated to the only issue the Board is called upon to decide, Sierra Club's intervention would "materially prejudice" and "interfere" with an orderly and efficient proceeding.

20. Not only does Sierra Club seek to bring irrelevant issues and politics into this proceeding, but it has also already demonstrated that it does not follow the Board's rules and regulations, and it has already prolonged and complicated this proceeding. For example, 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 (the "July 20th Motion"); however, at that time, Sierra Club had not yet filed a motion for intervention and, obviously, ComEd had filed no response. When filing its July 20th Motion, Sierra Club neglected to file an appearance before the Board. On July 23, 2004, Midwest Generation filed an opposition to Sierra Club's July 20th Motion and, through a courtesy copy, alerted Sierra Club to its failure to file an appearance before the Board. *See* Paragraph 4, Midwest Generation'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. Subsequently, Sierra Club filed this MFI and, in the Notice of Filing, indicated that it was filing an appearance; however, Midwest Generation was not served with, or has not received, an appearance from either of Sierra Club's attorneys, and no appearance is posted on the Board's website. Adding even more confusion, Sierra Club's Notice of Filing the MFI captioned both PCB 04-216 and 04-215; however, the MFI only captioned PCB 04-216, and Sierra Club previously filed a motion for intervention in PCB 04-215 on June 21, 2004. Sierra Club, thus, has already interfered with an orderly and efficient proceeding and,

if allowed to intervene, would continue to “materially prejudice” and “interfere” with an orderly and efficient proceeding.

21. If the Board, nonetheless, determines to grant Sierra Club’s MFI, the Board should “limit the rights” of Sierra Club pursuant to 35 Ill. Adm. Code 101.402(e). For example, the Board should ensure that Sierra Club would “not control any decision deadline.” *Id.* The Board should bar Sierra Club from serving or reviewing discovery, interrogatories, and requests to admit. The Board should bar Sierra Club from conducting, attending, or reviewing transcripts of any depositions. Sierra Club should be bound by all Board and hearing officer orders issued to date, and should not be allowed to raise any issues that were raised and decided, or might have been raised, earlier in the proceeding. Moreover, the Board should not permit Sierra Club to gain access to the disputed documents or the information contained therein prior to the Board’s final decision on trade secret protection issue. Release of this information to Sierra Club, whether written or verbal, permanent or temporary, would irreparably harm Midwest Generation.

WHEREFORE, Midwest Generation respectfully requests that the Illinois Pollution Control Board enter its order denying Sierra Club's motion to intervene and denying leave for its attorneys to file their Appearances.

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

ATTACHMENT 1



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

RENLI CIPRIANO, DIRECTOR

217/782-5544
217/782-9143(TDD)

April 23, 2004

Andrew N. Sawula
Schiff Harden & Waite
6600 Sears Tower
Chicago, Illinois 60606-6360

**Re: Midwest Generation EME, L.L.C.
Trade Secret Justification – Commonwealth Edison information**

Dear Mr. Sawula:

The Illinois Environmental Protection Agency ("Illinois EPA") is in receipt of Midwest Generation EME, L.L.C.'s ("Midwest") trade secret Statement of Justification dated March 11, 2004 and received by the Illinois EPA on March 12, 2004. The Statement of Justification was provided at the request of the Illinois EPA and addresses information submitted by Commonwealth Edison ("ComEd") to the Illinois EPA in response to a United States Environmental Protection Agency ("USEPA") request for information under §114 of the Clean Air Act ("information request"). This letter serves as the Illinois EPA's response to Midwest's Statement of Justification.

Seven attachments marked "confidential business information" were submitted by ComEd on January 30, 2004, in response to the information request and supplement its September 11, 2003, response. Attachments A through F are responsive to information request numbers 3 and 10 and contain information from ComEd's Continuing Property Record ("CPR") for each of the six coal-fired electric generating stations subject to the information request. Midwest Gen's Statement of Justification asserts that the CPR is confidential business information as such is of competitive value to competitors and has been safeguarded by both ComEd and Midwest. The Illinois EPA is denying trade secret protection to all information contained in Attachments A through F (i.e., the CPR) responsive to information request numbers 3 and 10 except the work order numbers. Midwest and/or ComEd failed to adequately demonstrate that the information has not been published, disseminated, or otherwise become a matter of general public knowledge and/or failed to demonstrate that the information has competitive value. Further, Midwest and/or ComEd has failed to demonstrate that the information does not constitute emission data.

ROCKFORD – 4302 North Main Street, Rockford, IL 61103 – (815) 987-7760 • DES PLAINES – 9511 W. Harrison St., Des Plaines, IL 60016 – (847) 294-4000
ELGIN – 595 South State, Elgin, IL 60123 – (847) 608-3131 • PEORIA – 5415 N. University St., Peoria, IL 61614 – (309) 693-5463
BUREAU OF LAND – PEORIA – 7620 N. University St., Peoria, IL 61614 – (309) 693-5462 • CHAMPAIGN – 2125 South First Street, Champaign, IL 61820 – (217) 278-5800
SPRINGFIELD – 4500 S. Sixth Street Rd., Springfield, IL 62706 – (217) 786-6892 • COLLINSVILLE – 2009 Mall Street, Collinsville, IL 62234 – (618) 346-5120
MARION – 2309 W. Main St., Suite 116, Marion, IL 62959 – (618) 993-7200

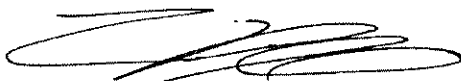
Attachment G of ComEd's response addresses information request number 4 and contains information from the Generating Availability Data System (GADs). Generally, the GADs identifies boiler and turbine related forced, maintenance and planned outages. Midwest's response failed to provide a justification addressing the GADs data thus the Illinois EPA is denying trade secret protection to the information submitted by ComEd in response to information request number 4.

Midwest (or any requestor who is adversely affected by this determination) may petition the Illinois Pollution Control Board ("Board") pursuant to 35 Ill. Adm. Code 105, Subparts A and B to review the Illinois EPA's final determination within 35 days after service of the determination. Furthermore, Midwest (or any requestor who is adversely affected by a final determination of the Board) may obtain judicial review from the appellate court by filing a petition for review pursuant to Section 41 of the Illinois Environmental Protection Act [415 ILCS 5/41]. (35 Ill. Adm. Code 130.214)

Should Midwest or any requestor petition the Board or obtain judicial review from the appellate court, the Illinois EPA will continue to protect all information for which trade secret protection has been granted until it receives official notification of a final order by a reviewing body with proper jurisdiction that reverses this determination and that is not subject to further appeal. (35 Ill. Adm. Code 130.214)

The Illinois EPA will cease protecting all information not subject to trade secret protection as discussed herein unless the Agency is served with notice of the filing of a petition for review of its determination within 35 days after service of this notice of denial on Midwest and any requestor.

If you have any questions or concerns regarding this matter please do not hesitate to contact me.



Chris Pressnall
Assistant Counsel
Division of Legal Counsel

cc: Adam Quader, Sierra Club

ATTACHMENT 2

Andrew N. Sawula
(312) 258-5577
Email: asawula@schiffhardin.com

March 11, 2004

VIA FEDERAL EXPRESS

Chris Pressnall
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

CONFIDENTIAL

**Re: Midwest Generation EME, LLC
FOIA Request from Sierra Club -- Midwest Generation's Statement of
Justification**

Dear Mr. Pressnall:

I am writing on behalf of Midwest Generation EME, LLC ("Midwest Generation") to provide a Statement of Justification for its claim of business confidentiality concerning information (the "Confidential Information") that Commonwealth Edison ("ComEd") submitted in response to a request for information (the "Information Request Response") from the United States Environmental Protection Agency ("U.S. EPA"). In this Statement of Justification, as required by 35 Ill Admin. Code § 130.203, Midwest Generation describes the procedures it uses to safeguard the Confidential Information, explains the competitive value of the Confidential Information and identifies the people to whom the Confidential Information has been disclosed. I attach a certification by Fred McCluskey, on behalf of the Company, that upon information and belief, the Confidential Information has not been published or disseminated, and has not otherwise become a matter of general public knowledge. (See Attachment A)

I. Procedures for Safeguarding Information (35 Ill. Admin. Code § 130.203(a))

Since Midwest Generation's incorporation, Midwest Generation's corporate policies have required all employees to closely guard confidential and proprietary information. From its incorporation until January 5, 2000, Midwest Generation followed the policy of its parent, Edison Mission Energy ("EME"), which is attached to this letter as Attachment B (the "EME Confidentiality Policy"). On January 5, 2000, Midwest Generation implemented its own policy, which is attached to this letter as Attachment C (the "Midwest Generation Confidentiality

Policy"). In accordance with these policies, confidential and proprietary information could only be disclosed to Midwest Generation employees and outside contractors "who need to know the information to carry out their duties." The policies explain how to identify confidential and proprietary information, and what steps employees are required to take to safeguard the information.

In Spring 2002, Midwest Generation implemented an additional confidentiality program that is managed by Edison International ("EIX"), which is the parent corporation of both Midwest Generation and EME. This program is known by the acronym ACT - Assess, Classify, Take Action. Currently, both ACT and the Midwest Generation Confidentiality Policy safeguard the Confidential Information from public disclosure. When ACT went into effect, each employee was required to attend a training session to learn how to (1) Assess the information he or she handles, (2) Classify that information as *public, internal, or confidential*, and (3) Take appropriate action, based on the information's classification. A brochure detailing the policy and procedures of the ACT program is attached as Attachment D. Under this policy, confidential information may be communicated to employees only when they "need the information to perform their business duties." Confidential information, further, may be communicated to non-employees only if "(1) the person or entity needs the confidential information to conduct its business with or for the company, and (2) a non-disclosure agreement is executed by the person or entity or if other appropriate steps, approved by the company law department, are taken to ensure that confidentiality is maintained."

In July 2003, the Company implemented a new electronic mail retention policy (the "Email Retention Policy") to supplement ACT and the Midwest Generation Confidentiality Policy. Under the Email Retention Policy, each employee's electronic mail is automatically deleted 60 days after creation of the file, unless the employee saves the file to his or her hard drive. Once saved to a hard drive, that file is subject to the Company's standard record retention policy, which is attached as Attachment E.

II. Discussion of Competitive Value and Identification of People to whom Information has been Disclosed (35 Ill. Admin. Code §§ 130.203 (b), (d))

In its Information Request Response, ComEd submitted excerpts from ComEd's Continuing Property Record ("CPR"), which ComEd identified as "Confidential Business Information." These portions of the CPR pertain to several Midwest Generation Power Stations (namely, Crawford, Fisk, Will County, Joliet, Powerton and Waukegan). These portions of the CPR serve dual functions. To ComEd, the CPR provides information necessary for financial reporting, tax and regulatory purposes. Moreover, the CPR records many sensitive aspects of ComEd's historical business practices. To Midwest Generation, the CPR is the most

Chris Pressnall

March 11, 2004

Page 3

comprehensive source of information about the equipment installed at the fossil plants and the dates of installation, and relates to the ongoing operation and maintenance of the plants. This portion of the CPR possesses competitive value for Midwest Generation because, by looking at the nature of the projects, competitors can accurately assess Midwest Generation's environmental control strategies and can assess whether the projects will shift Midwest Generation's cost position in the marketplace. Further, if this information is released, competitors may be able to predict the Company's future maintenance costs, giving other power producers and utilities a competitive advantage.

Pursuant to the Asset Sale Agreement between ComEd and Edison Mission Energy as to Fossil Fuel Generating Assets, ComEd provided Midwest Generation a copy of the portions of the CPR that relate to Midwest Generation's stations. While ComEd retains a copy, as it is legally required to, it uses these portions of the CPR solely for financial reporting, tax and regulatory purposes and is contractually bound not to use it to Midwest Generation's competitive disadvantage. Midwest Generation only recently received the CPR from ComEd and has never provided it to any third party. Internally, key personnel in the following departments have access to pieces of information from this portion of the CPR on an as needed basis: operations, operations engineering, accounting and finance.

Thank you for safeguarding the Confidential Information. Please feel free to contact me if you have any questions.

Very truly yours,

Andrew N. Sawula

ANS:dm

Enclosures

cc: Sabrina Argentieri
Becky Lauer, Midwest Generation
Fred McCluskey, Midwest Generation
Byron Taylor
Jane Montgomery

ATTACHMENT A

Certification

I, Fred W. McCluskey, do state as follows:

1. I am the Vice President, Technical Services, for Midwest Generation EME, LLC (the "Company") and I am authorized to execute this certification on behalf of the Company.
2. The Company is the owner of the information described in the Statement of Justification, for which information the Company claims trade secret protection (the "Confidential Information").
3. Upon information and belief, the Confidential Information has not been published or disseminated, and has not otherwise become a matter of general public knowledge.

Dated: March 10, 2004



Fred W. McCluskey, Vice President

ATTACHMENT B

Edlson Mission Energy

Date Approved 02/14/1997	Corporate Policy Statement	Number 1000.013
Approved By E. R. Muller	CONFIDENTIAL AND PROPRIETARY INFORMATION	Supersedes 1000.013 Dated 08/09/1990

EME is engaged in the independent power production industry, which is highly competitive. Accordingly, certain aspects of EME's business operations are confidential and proprietary and must be disclosed only to EME employees who need to know the information to carry out their duties.

In particular, access to confidential and proprietary information that is not generally known to EME's competitors and that concerns:

- EME's business strategy, development plans, finances, or operating procedures;
- the detailed structure or financing of EME's business deals; or
- other EME information with actual or potential economic value

must be restricted to those EME employees with a need to know.

Before they gain access to confidential and proprietary information, EME employees must agree in writing not to misappropriate or improperly disclose such information either during or after their EME employment. After they gain access to confidential information, employees must take every reasonable step to keep it confidential. In addition, employees are forbidden from disclosing to EME or otherwise misappropriating any confidential, proprietary or trade secret information belonging to a former employer.

Confidential and proprietary information may be contained in verbal communications, employees' unwritten knowledge, traditional written or printed materials, or electronic databases. Because so much confidential information is stored in them, EME employees should treat all computer files as confidential. No employee should ever grant unauthorized access to a company computer, disclose his or her password to someone other than an EME information technology employee, or compromise any computer security device.

Employees should refrain from copying any document or computer file labelled "confidential" unless the EME vice president responsible for the matters addressed in the document or file approves the copying.

Likewise, employees must get approval from the responsible vice president before sharing confidential information with anyone outside EME -- including suppliers, customers, or partners -- or with any EME employee whose need to know the information is not readily apparent.

Finally, employees should resolve any doubts about disclosing confidential or proprietary information in favor of nondisclosure, and should refer the disclosure question to either the responsible vice president or the legal department.

Edison Mission Energy reserves the right and retains full discretion to revise, supplement or rescind this policy at any time.



EDISON
MISSION ENERGY

An *EDISON INTERNATIONAL*™ Company

Office: Americas
Section: Section 2: BUSINESS CONDUCT AND ETHICS

ATTACHMENT C

Midwest Generation EME, LLC

Date Approved 01/05/2000	Corporate Policy Statement	Number 1000.013
Approved By G. R. Nelson	CONFIDENTIAL AND PROPRIETARY INFORMATION	Supersedes Dated

Midwest Generation is engaged in the independent power production industry, which is highly competitive. Accordingly, certain aspects of Midwest Generation's business operations are confidential and proprietary and must be disclosed only to Midwest Generation employees who need to know the information to carry out their duties.

In particular, access to confidential and proprietary information that is not generally known to Midwest Generation's competitors and that concerns:

- Midwest Generation's business strategy, development plans, finances, or operating procedures;
- the detailed structure or financing of Midwest Generation's business deals; or
- other Midwest Generation information with actual or potential economic value

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Confidential and proprietary information may be contained in verbal communications, employees' unwritten knowledge, traditional written or printed materials, or electronic databases. Because so much confidential information is stored in them, Midwest Generation employees should treat all computer files as confidential. No employee should ever grant unauthorized access to a company computer, disclose his or her password to someone other than a Midwest Generation information technology employee, or compromise any computer security device.

Employees should refrain from copying any document or computer file labelled "confidential" unless the Midwest Generation vice president responsible for the matters addressed in the document or file approves the copying.

Likewise, employees must get approval from the responsible vice president before sharing confidential information with anyone outside Midwest Generation -- including suppliers, customers, or partners -- or with any Midwest Generation employee whose need to know the information is not readily apparent.

Finally, employees should resolve any doubts about disclosing confidential or proprietary information in favor of nondisclosure, and should refer the disclosure question to the responsible vice president.

Midwest Generation EME, LLC reserves the right to modify, supplement, rescind or revise any provision of this policy as it deems necessary or appropriate in its discretion except the arbitration and employment-at-will

policies.



**MIDWEST
GENERATION EME, LLC**

An EDISON INTERNATIONALSM Company

Office: Chicago
Section: Section 2: BUSINESS CONDUCT AND ETHICS

ATTACHMENT D



Information Management

Resources

Information Management Web site	https://myedison.net/cpi/policies/act/act.shtml
Information Management Answer Lines	1-800-249-5989 (U.S. only) 1-626-302-1787 (outside U.S.)
Specific company information	Your manager or supervisor

Dear Fellow Employee:

Information is one of our company's most valuable assets — one that we all have a responsibility to manage and protect. To help carry out our responsibility, we established the Information Management Program.

The program's policy and procedures are detailed in this brochure. I urge you to read it to learn how to **ACT**:

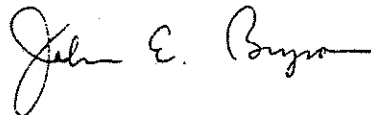
Assess the information you handle.

Classify that information as **public, internal, or confidential**.

Take appropriate action, based on the information's classification.

If you have questions, contact one of the Answer Lines listed above.

Protecting information depends on all of us.



John E. Bryson
Chairman, President and Chief Operating Officer
Edison International

What Is It?

Information that, if inappropriately disclosed, could provide an opportunity to gain an unwarranted economic advantage over others or would have a significant adverse impact on the company's business, legal, financial, or competitive position, or on its shareholders or employees.

Confidential information includes all information acquired or generated by the corporation that is protected by privacy laws, confidentiality agreements, and legal privileges, including trade secrets.

Examples

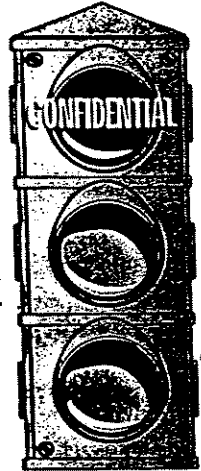
- Information on development/acquisition activity
- Strategic plans and information
- Plant availability and power marketing data
- Terms and structure of commercial contracts and financing agreements
- Many employee records

Who May Have Access?

Internally: Confidential information should be communicated only to Edison International employees who need to know it to perform their business duties.

Externally: Confidential information may be communicated to a non-employee only if the person or entity needs to know the information to conduct its business with or for Edison International; and only if a non-disclosure agreement is executed by the person or entity or if other appropriate steps, approved by the Law Department, are taken to ensure that confidentiality is maintained.

Confidential Information continued on next page



Confidential Information

Confidential Information *(continued)*

How Can It Be Communicated?

- Verbally
- Paper copy
- Faxes: All sheets, including the cover sheet, must be labeled "confidential."
- E-mail: Can be transmitted internally and externally to qualified receivers. Encryption and password protection are preferred.
- Transmitting by voice mail, cellular phone, or two-way radio is discouraged.

How Can It Be Protected?

- Label each page of a hard copy document "confidential."
- Workstations must have security features to prevent unauthorized access when the authorized user is absent.
- Electronic documents must have an on-screen notation identifying the information as "confidential."

How Should It Be Stored?

All confidential information should be stored in a manner that prevents access by unauthorized people who do not have a need to know.

Are There Retention/ Destruction Requirements?

Confidential information should be retained only for as long as needed for business, legal, tax, audit, or archival purposes; hard copy confidential information should then be shredded, and confidential information in electronic form should then be deleted. All confidential customer information must be shredded when it is no longer needed. Electronic confidential customer information, which is no longer needed, must be deleted by erasing or otherwise modifying the personal information in the records so that it is unreadable or indecipherable through any means.

What is it?

Information that is neither *public* nor *confidential*.

Examples

- Organization charts
- Employee lists and internal telephone directories
- Activity reports
- Training manuals and handbooks
- Procedure and policy statements
- Drafts of material that is intended for release to the public but is not final and has not yet been released.

Who May Have Access?

Internally: Internal information may be communicated to Edison International employees.

Externally: Internal information may be communicated to outside parties only if those parties need access to it to conduct business for or with Edison International.

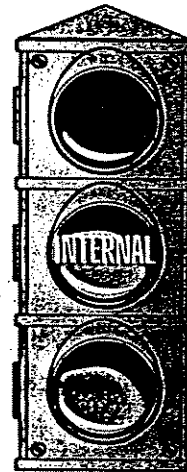
How Can It Be Communicated?

- Verbally
- Paper copy
- Fax
- E-mail

Are Protective Marks Needed?

Internal documents don't need to be marked "internal," but faxes should be marked with a notice stating that the document is for internal use and, if received in error, the sender should be notified immediately.

Internal Information continued on next page



Internal Information *(continued)*

How Should It
Be Stored?

Internal documents should be stored in a manner that reasonably prevents access by non-employees.

Are There
Retention/
Destruction
Requirements?

- Paper copies of internal documents may be recycled or otherwise discarded as appropriate.
 - Electronic files should be deleted.
-

What Is It?

Information that is created or received by the company that was developed and intended for public distribution and that has been released to the public.

Examples

- Company brochures and marketing materials
- Edison International Annual Report and most SEC filings (10-Ks and 10-Qs)
- Edison News
- Press releases

Caution

Drafts and interim versions of documents intended to be made public, but which have not yet been released, are NOT public information.

Who May Have Access?

Anyone may have access to public information.

How Can It Be Communicated?

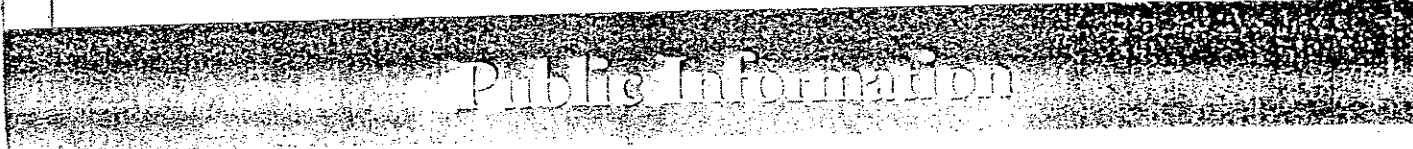
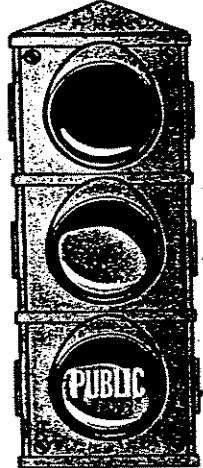
- Verbally
- Paper copy
- E-mail
- Fax
- There are no restrictions on handling public information.

Are Protective Marks Needed?

No.

How Should It Be Stored?

There are no restrictions on storing public information.





1. What are the three information classifications used by Edison International?

All information in the company falls into one of three classifications: *confidential*, *internal*, or *public*.

2. Who is responsible for classifying information?

The employee who generates or initially receives the information is responsible for classifying it.

3. Who actually "owns" the information?

All information that an employee generates or acquires through the performance of his or her business duties is the property of Edison International. It does not belong to any individual, department, or business unit; it belongs to the corporation.

CONFIDENTIAL INFORMATION ISSUES

4. What is considered confidential information?

Confidential information is that which, if inappropriately disclosed, could provide an opportunity to gain an unwarranted economic advantage over others or would have a significant impact on our business, legal, financial or competitive position, or on our shareholders or employees.

Confidential information includes all information acquired or generated by the corporation that is protected by its privacy laws, confidentiality agreements, and legal privileges, including trade secrets.

5. What are some examples of confidential information?

- Plant availability and power marketing data
- Strategic plans and information
- Information on development/acquisition activity
- Terms and structure of commercial contracts and financing agreements
- Many employee records

6. Am I required to label every page of every document with its appropriate classification?

No. Only *confidential* information must have its classification clearly labeled on each page.

7. The policy states that fax transmission of confidential information is permitted as long as the sender takes steps to ensure that the confidential information will reach only the intended recipient. What are those steps?

There are many steps you can take to ensure that a confidential fax goes only to the intended recipient and its confidentiality is protected. The steps you take will depend on the circumstances surrounding its sending, the recipient, and the sensitivity of the confidential information involved. Here are some general examples and guidelines:

- Always send the fax to a particular individual, not to a general location, address, or company.
- Always double-check the accuracy of fax transmittal numbers before sending, and carefully enter the number on the machine.
- Always use a fax cover sheet and clearly mark the cover sheet "confidential."
- Always note on your fax cover sheet that the attached information is intended only for the

FAQs continued on next page

Frequently Asked Questions

indicated recipient, and must be delivered promptly to that individual. It is also a good idea to request that if the fax is received by someone else, that the sender be contacted and the inadvertently received fax and any copies be returned by mail. (In that case, your fax cover sheet should also include the sender's mailing address and a contact phone number.)

Where the receiving end of the fax is a busy location and the information to be sent is particularly sensitive, one reasonable approach is to contact the recipient ahead of time to ensure that he or she can immediately pick up the fax as soon as it is sent, and contact the sender to confirm its receipt.

Q 8. Can I e-mail confidential information?

A Confidential information may be transmitted by e-mail to a recipient inside and outside of the company. However, encryption and/or password protection of such messages, if available, is preferred for both internal and external e-mail transmittal, to help protect against unauthorized interception of confidential e-mail messages. Your IT department can give you information about the availability of encryption and password protection. You should be aware, however, that even these protections aren't foolproof, and that there are more secure methods than e-mail that may be better for transmitting highly sensitive information under many circumstances.

Q 9. I will be contracting with an outside vendor for a project in our department. This project requires that the vendor have access to certain confidential information in order to complete the work

identified in the contract. Does this policy prevent me from disclosing that information?

A No. You may provide the vendor with the required confidential information so long as:

- 1) the vendor needs to know the specific information in order to conduct his or her business with Edison International, and
- 2) the vendor signs a nondisclosure agreement or takes other appropriate action, approved by the Law Department, to ensure that the information remains confidential.

Q 10. Can I use a cellular phone to discuss confidential information with an authorized person?

A Use of a cellular phone to transmit confidential information is discouraged, because cellular phone communications can be intentionally or unintentionally intercepted by outsiders.

INTERNAL INFORMATION ISSUES

Q 11. What is considered internal information?

A Internal information is all information that doesn't fall into the public category and doesn't fall into the confidential category.

Q 12. What are some examples of internal information?

- Organization charts
- Employee lists and telephone directories
- Activity reports
- Training manuals and handbooks
- Procedure and policy statements
- Drafts of material that is intended for release to the public but is not final and has not yet been released

FAQs (continued)

Q 13. May I communicate internal information to other employees of Edison International?

A Yes, *internal* information may be communicated to any employee of Edison International without restriction.

Q 14. When may I communicate internal information to a non-employee outside of Edison International?

A You may communicate internal information to outside parties if they need to know it in order to conduct business with or for Edison International.

Q 15. Does internal information have to be locked up at night?

A If your work site has restricted building access (e.g., a security guard), *internal* information may be stored in any appropriate location, like a file cabinet, bookshelf, desk drawer, or the like. These receptacles do not have to be locked, because in restricted access buildings, steps have been taken to ensure that only employees and authorized visitors have access. In facilities without restricted access (that is, where non-employees have easy access to the building and its contents) *internal* information should be stored in a manner that reasonably prevents access by non-employees. Under these circumstances, locked cabinets or drawers may be the best option.

Q 16. Am I required to shred paper copies of internal information when it is no longer needed?

A No. Paper (hard) copies of *internal* information may be recycled or otherwise discarded as

appropriate; electronic information should be deleted. Only the paper (hard) copies of *confidential* information must be shredded when they are no longer needed.

PUBLIC INFORMATION ISSUES

Q 17. What is considered public information?

A Any information created or received by the Corporation that was developed and intended for public distribution and that has been released to the public. Please note that drafts and interim versions of documents intended to be public, *but which have not yet been released*, are NOT public information.

Q 18. What are some examples of public information?

- A** • Company brochures and marketing materials
- Annual reports and most SEC filings like 10-Ks and 10-Qs
- *Edison News*
- Press releases

"MIXED" CLASSIFICATIONS

Q 19. Do I have to segregate hard copies of confidential information from internal information in separate files or areas?

A No. If there is a practical, business reason to file differently classified information together, you may do so. Remember, however, that confidential documents and information must be labeled "confidential," so that later reviewers of the file will be alerted to its classification.

FAQs continued on next page



Policy Statement

Information created or acquired by the Company's employees while performing their business duties is considered company property. Employees are responsible for protecting company property and must therefore classify all company information created or obtained in the course of their employment as public, internal, or confidential. Further, this information must be handled in a manner consistent with such classification. Additional information-handling requirements may be designated by responsible organizations under certain circumstances.

Disseminating company information outside of the Company is solely the responsibility of officers and specifically designated employees. Information that is not publicly available may only be used for legitimate company business purposes.

Policy Detail

Company Information

Information is a valuable company asset and must be treated as such. Its value can be diminished or lost if it is disclosed inappropriately. Under current law, a company's proprietary information may be protected as a trade secret if it derives economic value from not being generally known to the public, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Definition: Information

Includes oral, written, or electronically recorded information (in any form or medium) created or received by the Company in the course of its business. Information subject to this policy includes, but is not limited to, material contained in oral communications, documents, records, databases, computer files, e-mail, voice mail, or any other digital or analog medium. Any procedures governing access or use of information apply to all copies or versions of the information, regardless of format.

Classifying Information

Employees or departments that generate or acquire information for the first time must assign to that information a classification of public, internal, or confidential. New documentation containing previously classified information should be assigned the same classification as the most sensitive information contained within.

Definition: Public Information

Any information created or received by the Company that was developed and intended for public dissemination, and which actually *has been released* to the public. There are no restrictions on handling public information.

Note: Drafts and interim versions of documents that are *intended* for public release, but which *have not yet been released*, filed, or disclosed publicly, are *not* public documents.

Definition: Internal Information

All information that is neither *public* nor *confidential*. Internal information must be handled as follows:

Access: Internal information may be communicated (orally, electronically, or in writing) to the Company's employees. Internal information may be communicated (orally, electronically, or in writing) to a non-employee only if the person needs the information to conduct business for or with the company.

Policy continued on next page

Policy

Policy (continued)

Storage and Physical Security: In on-site facilities with restricted building access (security), internal information can be stored in any appropriate location. In facilities without physical restrictions on building access, internal information should be stored in a manner that reasonably prevents access by non-employees.

Retention and Destruction: Paper copies of internal documents may be recycled or otherwise discarded as appropriate. Electronic files should be deleted.

Definition: Confidential Information

Information that, if disclosed to or used by an unauthorized person, could provide an opportunity to gain an unwarranted economic advantage over others, or would have a significant adverse impact on the company's business, legal, financial, or competitive position, or on its shareholders or employees. This includes all information acquired or generated by the corporation that is protected by privacy laws, confidentiality agreements, and legal privileges, including trade secrets.

Confidential information must be handled as follows:

Access: Confidential information may be communicated (orally, electronically, or in writing) to only the Company's employees who need the information to perform their business duties. Confidential information may be communicated (orally, electronically, or in writing) to a non-employee only if (1) the person or entity needs the confidential information to conduct its business with or for the company, and (2) a non-disclosure agreement is executed by the person or entity or if other appropriate steps, approved by the company law department, are taken to ensure that confidentiality is maintained.

Protective Marks and Electronic Security: Each page of a hard copy confidential document must be prominently labeled "confidential." Electronic versions of documents, records, and databases containing confidential information should contain an on-screen notation identifying the displayed information as "Confidential."

Transmittal Protocols: Facsimile transmittal is permitted as long as the sender takes steps to ensure that the confidential information will reach only the intended recipient. Facsimile cover sheets and each page of the document must identify the transmittal as "Confidential." E-mail transmittal internally and externally is permitted, but where available and practical, a higher level of protection, such as encryption and/or password protection, is preferred. Transmitting confidential information by voice mail, cellular phone, or two-way radio is discouraged.

Storage and Physical Security: All confidential material should be stored in a manner that reasonably prevents access by unauthorized people, i.e., those who do not have a "need to know." Workstations where confidential information is maintained or displayed must have security features to prevent access to confidential information when the authorized user is absent.

Retention and Destruction: Confidential information should be retained only for as long as needed for business, legal, tax, audit, or archival purposes. Confidential information should be shredded when it is no longer needed for any business purpose. All confidential customer information must be shredded when it is no longer needed. Electronic confidential customer information, which is no longer needed, must be deleted by erasing or otherwise modifying the personal information in the records so that it is unreadable or indecipherable through any means.

Additional Information Handling Requirements

From time to time and for valid business or legal reasons, responsible organizations may designate additional, more stringent handling requirements for a specific information item or project. Such requirements must be communicated to all affected employees and followed accordingly.

Revised Date: 06/20/2002

ATTACHMENT E

Midwest Generation EME, LLC

Date Approved 01/05/2000	Corporate Policy Statement	Number 1000.046
Approved By G. R. Nelson	RECORDS RETENTION	Supersedes Dated

Each department of Midwest Generation generates business information daily in the form of paper documents and computer disk files, all of which comprise one of the company's key assets. Being able to draw on this valuable resource is important to our success. It is equally important to protect this resource from possible loss or misuse by third parties. Accordingly, in order to facilitate record management both departmentally and company-wide, to effectively control document production discovery, and to manage the sheer volume of paperwork, each department within Midwest Generation shall adopt a formal records retention program to ensure that records are retained for the period required by applicable laws and business needs, and deleted promptly thereafter in order to reduce the high cost of storing, indexing and managing the data.)

Contact the legal department regarding specific record retention requirements.

Midwest Generation EME, LLC reserves the right to modify, supplement, rescind or revise any provision of this policy as it deems necessary or appropriate in its discretion except the arbitration and employment-at-will policies.



Office: Chicago
Section: Section 3: BUSINESS POLICIES AND PRACTICES