

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

MIDWEST GENERATION, LLC, )  
FISK GENERATING STATION, )  
 )  
Petitioner, )  
 )  
v. ) PCB 2006-57  
 ) (CAAPP Permit Appeal)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

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

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

Sheldon A. Zabel  
Kathleen C. Bassi  
Stephen J. Bonebrake  
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Schiff Hardin, LLP  
6600 Sears Tower  
233 South Wacker Drive  
Chicago, Illinois 60606

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the **MOTION FOR EXTENSION OF TIME TO FILE RECORD** of the Respondent, Illinois Environmental Protection Agency, a copy of which is herewith served upon the assigned Hearing Office and the attorney for the Petitioner.

Respectfully submitted by,



Sally Carter  
Assistant Counsel

Dated: December 1, 2005  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS**

<b>MIDWEST GENERATION, LLC,</b>	)	
<b>FISK GENERATING STATION,</b>	)	
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<b>Petitioner,</b>	)	
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<b>v.</b>	)	<b>PCB 2006-57</b>
	)	<b>(CAAPP Permit Appeal)</b>
<b>ILLINOIS ENVIRONMENTAL</b>	)	
<b>PROTECTION AGENCY,</b>	)	
	)	
<b>Respondent.</b>	)	

**MOTION FOR EXTENSION OF TIME TO FILE RECORD**

NOW COMES the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by and through its attorneys, pursuant to 35 Ill. Adm. Code 105.116 and moves the ILLINOIS POLLUTION CONTROL BOARD ("Board") for an extension of the time to file the record of its determination in the above-captioned matter.

1. Petitioners filed their Petition with the Board on November 2, 2005, seeking a review of certain permit conditions contained within the Clean Air Act Permit Program ("CAAPP") permit issued to Midwest Generation, LLC ("Midwest Generation" or "Fisk") by the Illinois EPA on September 29, 2005. The permit authorized the operation of an electrical power generation facility known as the Fisk Generating Station. The facility is located at 1111 West Cermak Road in Chicago, Illinois. Formal notice of the appeal was served upon the Illinois EPA on November 4, 2005.

2. On November 17, 2005, the Board accepted Midwest Generation's Petition for hearing. In addition, the Board ordered the Respondent to file the entire record of its determination within 30 days of receipt of the Petition. If an extension of

time to file the record would be sought by the Respondent, the Board's order instructed that such request was also due within 30 days after the Illinois EPA received the Petition.

3. The undersigned attorney and a staff paralegal became involved with the compilation of the administrative record relating to Midwest Generation as early as mid-August 2005 and since that time, most of this attorney's and the staff paralegal's resources have been devoted to the compilation of this voluminous record and related records pertaining to the twenty CAAPP permit appeals involving other electrical power generation facilities in the State. At this juncture, Fisk's record consists generally of five to six trial boxes of material. Approximately two to three boxes are particular to Fisk alone, while three other boxes are more aptly characterized as general reference material and documents relevant to the decision underlying the issuance of all twenty-one CAAPP permits to the State's electrical power generation facilities. The only remaining documents to be assembled and reviewed for this record preparation generally consists of several hundred miscellaneous electronic mail messages of Illinois EPA personnel. Some, but not all, of these emails may contain information that were relied upon by the Illinois EPA in its permit decision.

4. The other assigned attorney, Robb Layman, became involved with the compilation of the administrative record relating to this proceeding in November 2005. Due to the press of other permit appeals before the United States Environmental Protection Agency's Environmental Appeals Board ("EAB") and enforcement case matters unrelated to the present appeal, Mr. Layman was generally unable to assist in the compilation of the record until this past month.

5. Due to the sheer magnitude of the documentation underlying the Illinois EPA's permitting decision in this matter and the additional twenty CAAPP permit appeals, the Illinois EPA was not able to compile the entire administrative record on or before December 5, 2005. Counsel expects that the compilation of the record will require at least an additional seven days. Beyond this point, the timing of the filing of the administrative record will likely be determined by matters largely outside of counsel's control.

6. First, while counsel for the Illinois EPA has observed that many permit appeals are of a type that could most aptly be described as "protective appeals" that do not necessarily require the filing of an administrative record, it is counsel's estimation that some of the collective twenty-one appeals possess a much greater likelihood of proceeding to hearing, thus necessitating the filing of an administrative record. While this case is admittedly at the earliest stage of litigation, the permitting of this facility was based upon years of work by the Bureau of Air's permitting engineers and countless communications with this facility and industry representatives at large. In addition, it is also the Illinois EPA's perception that the Board may not wish to accept voluminous administrative records in this and all of the other collective CAAPP appeals unless it appears that a settlement resolution cannot be reached.

7. Second, the Illinois EPA does not possess the support-staff to make the necessary copies for filing before the Board, the assigned Hearing Officer and opposing counsel. For instance, if the Respondent were to seek leave from the Board for a waiver of the applicable copying requirements, the Respondent would still be mailing approximately twenty-five to thirty trial boxes to the Board for Fisk alone. This does not

include the five to six boxes that would be required for both the Hearing Officer and opposing counsel. Due to these constraints, counsel has been researching the possibility of hiring an outside contractor to perform the required copying and/or screening.

However, the State is limited by further constraints; for instance, the Illinois EPA must first seek to employ a contractor that holds a State contract before turning to a non-State contractor for copying services. While counsel has located State contractors that would be willing to make 10,000 copies of ten documents, counsel has not found a State contractor willing to make seven copies of thousands of miscellaneous sized documents.

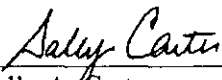
8. Based on the foregoing, the Illinois EPA formally requests an extension of time to file its administrative record with the Board to a date determined by the Board to be appropriate and/or consistent with any decisional deadline in this matter.

9. The grant of this extension of the filing date will ensure that this voluminous record is not needlessly filed but filed in the event that the matter does not settle. This will serve to limit the expenditure of constrained State resources on a potentially unnecessary copying job. Moreover, this will further minimize any potential administrative burdens associated with the maintenance and storage of hundreds of trial boxes for this appeal, together with the other twenty CAAPP appeals for the Board and the assigned Hearing Officer. In addition, an extension of this time period will not result in any hardship or prejudice to Petitioner.

WHEREFORE, the Illinois EPA respectfully requests that the Board grant this Motion for Extension of Time to File Record to a date determined by the Board to be appropriate and/or consistent with any decisional deadline in this matter.

Respectfully submitted by,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

  
\_\_\_\_\_  
Sally A. Carter  
Assistant Counsel

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217)782-5544

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1<sup>st</sup> day of December 2005, I did send, by electronic mail with prior approval, the following instrument entitled **MOTION FOR EXTENSION OF TIME TO FILE RECORD** to:

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

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

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

Sheldon A. Zabel  
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