ILLINOIS POLLUTION CONTROL BOARD

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MIDWEST GENERATION EME, LLC Petitioner,))) PCB 04-216) (Trade Secret Appeal)
v.)
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)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

NOTICE OF FILING

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

> Lisa Madigan Matthew Dunn Ann Alexander Paula Becker Wheeler Office of the 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 Midwest Generation EME, LLC's Amended Motion to Compel Respondent's Discovery Responses, a copy of which is herewith served upon you.

> /s/ Mary Ann Mullin Mary Ann Mullin

Dated: March 23, 2007

Schiff Hardin LLP 6600 Sears Tower Chicago, IL 60606 (312) 258-5687

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ILLINOIS POLLUTION CONTROL BOARD

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MIDWEST GENERATION EME, LLC Petitioner,

v.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent. PCB 04-216 (Trade Secret Appeal)

MIDWEST GENERATION EME, LLC'S AMENDED MOTION TO COMPEL RESPONDENT'S DISCOVERY RESPONSES

Comes Now MIDWEST GENERATION EME, LLC ("Midwest Generation"), through the undersigned counsel and pursuant to 35 Ill. Admin. Code. § 101.500, and hereby files this Amended Motion to Compel the Illinois Environmental Protection Agency's ("IEPA's") responses to certain of Midwest Generation's Initial Interrogatories and Initial Requests for the Production of Documents. In addition to the legal and factual bases for compelling IEPA's responses to discovery that were previously set forth in Midwest Generation's Motion to Compel (currently pending before the Hearing Officer), deposition testimony issued in this proceeding, after the Motion to Compel was filed, directly contravenes Respondent's objection that Midwest Generation's discovery requests are overbroad and unduly burdensome.¹ This testimony should be considered in connection with Midwest Generation's request for an Order compelling IEPA's discovery responses. In support thereof, Midwest Generation states as follows:

¹ This matter was stayed on April 6, 2006. The Stay is now lifted and it is anticipated that the Hearing Officer will set a new discovery schedule at the next Status Conference on April 12, 2007.

1. Consistent with Hearing Officer's Scheduling Order in this matter ("Order"),

Midwest Generation served IEPA with written discovery. Midwest Generation's Interrogatories and Document Requests sought, *inter alia*, information relating to IEPA's prior trade secret determinations regarding financial and operational data—including the same type of data at issue in this trade secret dispute—submitted by other businesses and electric utilities. Midwest Generation further requested the Agency's prior analyses and/or determinations of what constitutes "emissions data." The relevant interrogatories and document requests are set forth below:

Interrogatory No. 13: Identify any determination you have made relating to the trade secret status of a business's financial information submitted to IEPA.

Interrogatory No. 14: Identify any determination you have made that information constitutes "emission data" as that term is now or was in the past defined under Section 5/7 of the Illinois Environmental Protection Act, 415 ILCS 5/7, or Section 114(c) of the Clean Air Act, 42 U.S.C. § 7414(c), or their predecessors, and their implementing regulations.

Document Request No. 4: All Statements of Justification that were submitted to IEPA from January 1, 1990 to the present.

Document Request No. 5: All agency responses to Statements of Justification submitted to IEPA from January 1, 1990 to the present, including preliminary and final agency determinations and correspondence related to the same.

See Petitioner's Initial Interrogatories and Initial Document Requests attached to the Motion to

Compel as Exhibit 1.

2. IEPA provided no answers to the above-enumerated interrogatories, nor did it

agree to undertake reasonable efforts to locate responsive information. IEPA instead stated that

the discovery was overbroad, burdensome and vague. See Resp't Resp. to Interrogs. and Req.

Produc. Docs. at 2. No substantiation of any of the objections was provided.

3. As explained in Midwest Generation's February 16, 2006 Motion to Compel, the parties were not able to negotiate a mutually satisfactory resolution of these discovery issues. Accordingly, Midwest Generation filed its Motion to Compel, in which it explained that its discovery requests were both reasonable and relevant and required complete responses pursuant to Illinois law and the applicable Board rules. Midwest Generation incorporates by reference its Motion to Compel, filed on February 16, 2006, as if fully set forth herein.

4. IEPA filed an Opposition to Midwest Generation's Motion to Compel, in which it flatly refused to produce any information responsive to Interrogatory Nos. 13, 14, and Document Request Nos. 4 and 5 and, in fact, claimed that any attempt to even look for certain responsive information would be "unduly burdensome." Resp't Mem. Opp. Mtn. Compel at 11-12. For instance, in response to the request for prior Agency trade secret determinations, IEPA responded that no "separate record of trade secret determinations" existed; consequently, every single source file would need to be reviewed, a task which, according to IEPA, would be excessively burdensome. *See id.* Midwest Generation argued in its Reply that reasonable efforts to comply are required by Illinois rules and suggested that IEPA simply ask its employees to recall companies that had been involved in prior trade secret determinations, so that these individual source files could be consulted. Midwest Generation's Reply at 4.

5. Since the motions relating to Midwest Generation's Motion to Compel were filed, several depositions of IEPA employees have been taken. Testimony provided during these depositions demonstrates that Midwest Generation's interrogatories and document requests relating to prior trade secret and Freedom of Information Act determinations clearly are not overbroad or unduly burdensome. To the contrary, IEPA should be able to locate such documents with reasonable effort.

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6. IEPA's Associate Counsel for the Bureau of Air, Julie Armitage, testified that copies of the Agency's trade secret determinations are kept in files labeled according to the source involved in the determinations. (Armitage Dep., Mar. 15, 2006 ("Ex. A") at 23:19-23). IEPA Assistant Counsel Christopher Presnall confirmed that the Bureau of Air's central files are organized by ID number and facility. (Presnall Dep., Mar. 15, 2006 ("Ex. B") at 10:14-24, 12:14-16). Thus, a trade secret determination involving a particular utility could be located simply by pulling that utility's central file, given that the central files are organized by entity name.

7. At least five companies involved in relevant trade secret determinations were identified by IEPA employees in their depositions. (*See* Ex. B at 31-33, 107; Romaine Dep, Mar. 16, 2006, ("Ex. C") at 25-28). For instance, Christopher Presnall testified that he has reviewed fewer than ten statements of justification under the trade secret rules and issued only one trade secret denial prior to Midwest Generation's. (Ex. B at 20:11-15, 30:6-10). He also recalled names of at least two sources involved in formal or informal trade secret denials. (Ex. B at 31-33, 107). Clearly, these determinations could be retrieved with little effort.

8. The above-cited deposition testimony establishes that IEPA employees know where to locate some of the Agency's prior trade secret determinations; furthermore, these determinations may be retrieved from the Agency's centrally located filing system. Midwest Generation's discovery requests for prior Agency determinations are neither overly broad nor unduly burdensome, and IEPA must produce responsive information to the extent practicable.

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WHEREFORE, Midwest Generation respectfully requests that the Hearing Officer grant

its Motion to Compel.

Dated: March 23, 2007

Respectfully submitted,

MIDWEST GENERATION EME, LLC

By: /s/ Mary Ann Mullin

Mary Ann Mullin SCHIFF HARDIN LLP 6600 Sears Tower Chicago, Illinois 60606 (847) 295-4318

Attorney for MIDWEST GENERATION EME, LLC

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3/15/06 Julie Armitage

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¢	ounty, acting within and for the County of \cdots		Exhibit Number 4 3	2 .
	angamon, State of Illinois, at 4:59 o'clock P.M., n March 15, 2006, at 1021 North Grand Avenue	15	Exhibit Number 5 3	3
	ast, Springfield, Sangamon County, Illinois, ursuant to subpoena.	16		2
P	ursuant to subpoena.	17		
		18		
	BALDWIN REPORTING & LEGAL-VISUAL SERVICES	19		7
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1	PPEARANCES:	1	STIPULATION	
	SCHIFF HARDIN, LLP BY: Mary Ann Mullin, Attorney at Law	2	It is stipulated and agreed, by between the parties hereto, through thei	
	Sheldon A. Zabel, Esq.	3	attorneys, that the discovery deposition ARMITAGE may be taken before Rhonda K. Q	
	6600 Sears Tower	4	Notary Public, Certified Shorthand Repor	ter, and
	Chicago, Illinois 60606 On behalf of Complainant/Petitioner	5	Registered Professional Reporter, upon o interrogatories, on the 15th of March A.	
	Midwest Generation EME, LLC.		at the instance of the Complainants/Peti	tioners at
	SIDLEY AUSTIN, LLP	6	the hour of 4:59 o'clock P.M., 1021 Nort Avenue East, Springfield, Sangamon Count	
	BY: Byron F. Taylor, Esq. One South Dearborn	7 8	Illinois;	
	Chicago, Illinois 60603		That the oral interrogatories an answers of the witness may be taken down	ìn
	On behalf of Complainant/Petitioner	9	shorthand by the Reporter and afterwards transcribed,	· ·
	Commonwealth Edison Company.	10		
	MS. ANN ALEXANDER	11	That all requirements of the rul regulations promulgated under the Pollut	
	MS. PAULA BECKER WHEELER	12	Control Board of the State of Illinois a	nd the
	Assistant Attorneys General 188 Randolph Street		Rules of the Supreme Court as to dedimus expressly waived;	, are
	Twentieth floor	13	That any objections as to compet-	ency.
	Chicago, Illinois 60601 On behalf of Respondent.	14	materiality or relevancy are hereby rese	rved, but
	on benati of nespondent.	15	any objection as to the form of question unless specifically noted;	15 Waived
		16	That the deposition, or any parts	
		17	may be used for any purpose for which dia depositions are competent, by any of the	
		18	hereto, without foundation proof;	
			That any party hereto may be fur	
		19	copies of the deposition at his or her of expense.	wn .
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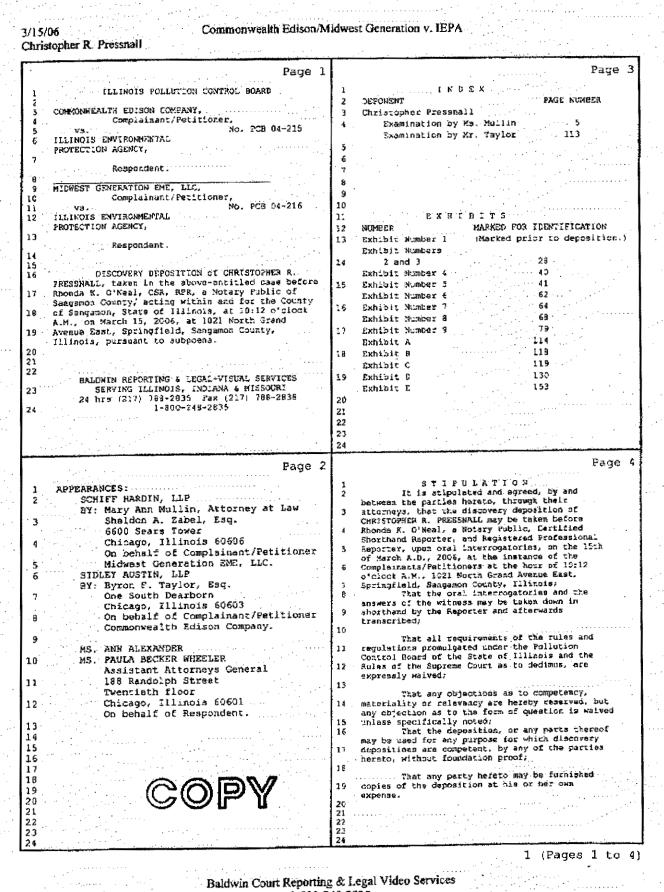
EXHIBIT A

3/15/06 Julie Armitage Midwest/Commonwealth v. IEPA

Pa	ge 21	Page 23
1	typical or not.	1 permit section's signature. But I do know that
2	Q Who here at IEFA could make that call?	2 that has been an issue that's been up for debate.
3	A Maybe somebody in the permit section	3 I don't know that an assigned engineer has ever
4	would know better whether it's a typical practice	4 signed a denial. I think that a denial would at a
5	or not.	5 minimum kick to Don or, like I say, to chief legal
6	Q Who in the permit section?	6 counsel, but it could potentially kick to just a
7	A One of the managers perhaps.	7 staff attorney as well.
8	Q What are their names?	8 Q Is there a central file where the chiefs
9	A Well, Chris Romaine's a manager and Don	9 legal counsel would keep all the denials that have
10	Sutton's a manager and Mike Reed is a manager, Bob	10 - come out under his signature?
1	Bernoteit's a manager, and Charlie Zeal's (sp) a	11 A No.
.2	manager.	12 Q Where would those letters go?
3	Q Once the engineers in the permit section	13 A My understanding is that whome signs a
4	give Marilyn their determination about whether or	14 letter, or whoever is the signatory to a letter
5	not to grant or deny a company's trade secret or	15 around here, the letter would go into a chron (sp)
6	confidentiality claims, what happens after that?	16 file, just a running chron file.
.7	A They won't actually give Marilyn the	17 Q Okay. Excuse me. Would it be that
8	determination. It's just that Marilyn has pointed	18 individual's chron file?
9	out that a determination needs to be made to them,	19 A Yes. So anything they sign would be in
0	and then they will make whatever determination	20 that file. And then a copy of declaions that are
1	needs to be made. And then Marilyn will know on	21 made that relate to bureau matters would typically
2	the heels of that whether there's more or less	22 . end up in source files in the general files in the
3	documentation that's going out the door in	23 burgau there.
4	response to the FOIA.	24 Q Is Don Sutton the head of the permit
?a	ge 22	Page 24
1	Q Do the permit engineers give any kind of	1 section?
2	written documentation to Marilyn or anybody else	1
	witteen dobamentation to metright of phytopy over	2 A Yes.
3	at IEPA about their determination?	2 A Yes.3 Q And how long has he held that position?
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4 5	at IEPA about their determination? A No. No. Short of whatever the	 3 Q And how long has he held that position? 4 A I don't know.
4 5 6	at IEPA about their determination? A No. No. Short of whatever the determination is, we eitherone of three things	 3 Q And how long has he held that position? 4 A I don't know. 5 Q As long as you've been at the agency?
4 5 6 7	at IEPA about their determination? A No. No. Short of whatever the determination is, we eitherone of three things is going to happen. You're either going to, the	 3 Q And how long has he held that position? 4 A I don't know. 5 Q As long as you've been at the agency? 6 A I don't think Don was the permit section
4 5 6 7 8	at IEPA about their determination? A No. No. Short of whatever the determination is, we eitherone of three things is going to happen. You're either going to, the claim isn'tyou're not going to react to the claim or you're going to accept the claim or	 3 Q And how long has he held that position? 4 A I don't know. 5 Q As long as you've been at the agency? 6 A I don't think Don was the permit section 7 manager when I first came to the bureau of air,
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4 5 7 8 9 0	at IEPA about their determination? A No. No. Short of whatever the determination is, we eitherone of three things is going to happen. You're either going to, the claim isn'tyou're not going to react to the claim or you're going to accept the claim or you're going to deny the claim. And so there's either going to be a denial if it's denied. And	 3 Q And how long has he held that position? 4 A I don't know. 5 Q As long as you've been at the agency? 6 A I don't think Don was the permit section 7 manager when I first came to the bureau of air, 8 no. 9 Q And you said there's been between one and 10 staff attorneys at the bureau of air since
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6 (Pages 21 to 24)

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EXHIBIT B

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1	Page 17	T	Page 1
	1 HS, ALEXANDER: I'm sorry. Can we clarify	1	resolved and it seemed fairly clear on its face
	2 that? Asked for. Do you mean asked for in a PCIA	2	that either, well, maybe there was an error in
	3 request?	3	stamping it confidential or maybe it's just, hey,
ţ	4 MS. MULLIN: Q Right. You had said that	4	company, we definically, we need this. This part
ł	5 there was a lot of information that folks claim as	5	that you claim is emissions data. We need it to
ł	6 trade secret. But if the agency doesn't have any	6	calculate it, so can we resolve this and it's
ł	7 reason to believe that somebody else wants that	1 7	resolved. But again, that'sI's only just
	9 information either through a FOIA request or	е	operating off of really one or maybe two matters
Į	9 otherwise, you don't go abead and make a	9	rep think of where there has arises other than th
I	10 determination?	20	-instant matter.
I	11 A Right, right.	11	Q Okay. How many statements of
I	12 Q So in the situation, in the instance in	22	justification under the trade secret rules have
I	13 Which the agency is going to make a determination	:3	you reviewed curing your time have at the IEPA?
I	14 about whether or not scmething is trade secret, in	14	A I couldn't give you an exact number. I
ł	15 that situation is it fairly typical for a permit	15	would imagine that it is less than 10.
I	16 engineer or someone to give the company a heads-up	16	Q And in those situations, did either you
I	17 to explain that, to explain that under the IEPA	17	or someone else from the IEPA wake a determination
I	18 Jules, the IEPA doesn't think that that	18	about whether the information claimed confidentia;
I	19 Information is trade secret?	19	or trade secret was confidential or trade secret?
I	20 A I guess the reason I'm having difficulty	20	A Could you repeat the question or have it
ĺ	21 answering that questionI mean, I'll enswer it,	21	read back?
l	22. but why I was having difficulty thinking about it	22	0 I'll repeat the question.
l	23 is just simply to my knowledge this is the only	23	. In what context did you review the
I	24 determination I've been involved in, so what's	24	statement of justification?
ŀ	Page 18		Page 2
1		1	
	1 Typical, I suppose, then it'sf can't tell you	1	N Well, of course, I received two in this
	2 what's typical based on one determination. The	2	matter, so that's two; And then when I said that
Į	3 previous things that I were talking about, the	3	less than 10. I vargely recall at some point
ł	4 previous matters I was talking about, there was the	4	looking at a statement of justification in perhaps
l	5 · never any determination that was made.	5	one of these other matters I was talking about.
l	6 0 Right. I understand where the confusion	6	Beyond that I, I'm, not sure what your question was
	7 is. I wasn't talking about a formal determination	7	getting at as to whether we made a datermination
ļ	θ that was issued by the agency, but I was talking	8	orI just can't recall too much of the substance.
I	9 about that period of time before the formal	9	Again, it never just rose to this level. But if
ſ	10 determination is issued when an engineer comes to	10	you wast to ask the question again maybe
1	11 speak with you to get your opinion about whether	11	Q I appreciate your answer. I think that's
	12 or not the information is trade secret.	12	satisfactory.
	13 A I suppose that it may depend on the	13	A Okay.
	14 complexity of the matter. When I was talking	34	Q Mhat percentage of your time would you
	15 before about the couple that I can sort of recall,	15	say is spent responding to FOTA requests?
	15 we're talking aboutI'm going to struggle to even	16	A Of course, it varies, but I would say it
	17 remember exactly what it was, but we're talking	17	could be upwaris of 10 percent to 15 percent. It
	16 about one or two data points that are critical to	13	seems to me that it takes up a lot of my time, and
	19 calculating emissions data, or actually 1, there's	I	. I'd consider that quite a bit of my time when
1	20 a time when somebody stamped something	26	that's not my job, quote, unquote. My job is to
1	21 confidential and they didn't mean to stamp it	21	be an enforcement attorney.
2	22 confidential.	22	Q Is it fair to say that you don't have say
	23 And so these are very minorthe ones	23	direct experience in business or industry?

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					-																										· · ·																			10
	24 A Yes. Z understand. If you're talking	Ounder They and a meaning and a meaning of the	191	0	20 A Brain-	18 ComEd and Midwest Gen determinations.	17 MS. MULITH: Q. That's right. Other than the	16 determination that he participated in defore?	15 MS. ALEXANDER: Do you mean other than the	14 Exhibit 37	13 or confidential under the part 1828 regulations,	12 about whather or not information is trade secret	11 O Rave you been involved in determinations	10 A That is accurate.	9 secret or confidential, is that accurate?	8 regulations that certain information was not trade	7 made one determination under the trade secret	6 Q You mentioned earlier that you had only		4 sure that we don't hapharardly release something	3 to in that matter part 130 regulations to make	2 secret, then we're really going to pay attention	1 we're looking at something's been claimad trade	Page 30		And so if we're looking a	. companies claim de ti	very, very sensitive towards mai	illinots ZEA of course is going	know if you'd say superseate the 120, but	part 130 regulations,	having said t	_	is supportering it would be handled patrix with		handles	as confidential whether the agenc	11 gets a request for information that's been marked	10 Q Can you explain to me when the agency		5	7 Q And part 1928 are the POIA regulations,	6 A Corract.	2. 	a g Part 135 is the trade secret regulation,	-			Page 29 descent from the second secon	Christopher R. Pressnall
8 (Pages 29 to 32)		moing to be trade socrat.	22 recipe, sort of the Coke, the recipe to Coke is	21 seen bafore it's a very sensitive issue of your	20 different trade secret matters up. But I have	Fulation was	er chriectly, it	determination involver	bur 0	assiatant counse. In my unit,	i i talak i		11 Q Who else was, who was involved in char		9 Gara and product formulation, sut I mayne be	I believe it had to do mining		6 🗘 Withat sise do you know adout Laws	r metter.	4 the Illingia Pollution Control Modia as a croge	12. BUT 1 CAIA.	put I didn't work on that and i wonty	I believe there was a market		OF AND	24 information was not confidential of trade secret?	23 Administrative Code part 130 that a company's	22 formal determinations under 35 Illinois	21 MS. MCLLIN: Q Are you aware of other agency	20 or read it back?	13 THE DEPONENT: Could you repeat the question		uab.	ant going to cut the witness	tere and the not part of the agency rec		14 L	dete	determinations uncer part inv orna: cu	a Are you aware of other age	Generally speaking.	? it factor into I quess my thought process, yes.		5 no. Have I looked at part 1828 and thought about	4 made a determination on this, here's what it is,	3 document, something that I sent out saying I've	44 1 1	1 about a formal determination again, and I will use	Page 31	
											-	•						•		•		·.	•					•						•		•	-				•			•	•					

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	1 but it elso, it becomes a little bit more	i information that's there could be draft
	2 difficult because the different raw materials	2 memorandums, opinions, items that would interfere
	3 actually directly impact your emissions.	3 with my enforcement case. We could have a
•	4 So than it becomes a tough call as to	4 criminal investigation going on. I would make a
t set itt som	5 what's emissions data and what's trade secret.	5 determination that those are exempt from
	6 Because the smount of your raw materials in	6 disclosure.
	7 certain propertions may give a clue to another	7 Q When you make that determination that
	8 company of what your formulation is, then showing	8 items are exempt from disclosure, what is your
	S competitive advantage, but then again, that also	9 practice? Nould you writeI understand that you
	10 constitutes, it's what your emissions it's going	10 would write the letter, but would there be any
	11 to have emissions consequences.	11 other documentation that you would put in the file
	12 Q Are you familiar with any other formal	12 regarding that?
	13 determinations that IEPA made under the part 130	13 A Not other than stamp, taking a red stamp
t the terms to	14 regs?	14 and stamping it confidential for me and for the
	15 A I don't believe so.	15 person copying the file to know that I have made a
	16 Q About what year would you say the WIY	16 determination that this is not releasable,
e de la constante de la constan La constante de la constante de La constante de la constante de	17 determination was made?	17 0 If you determined that it is releasable.
	18 A I think it's WITCO, W-I-T-C-O, all one	13 what is your practice at that point, or do you
· · · ·	19 word.	19 greate any document at that point?
	20 Q Okay.	20 A No. Just, it's either released or it
	21 A Probably '98 or '99 I think when I first	21 ian't, and we say in the cover letter that here's
	22 started working here but 1, again, I don't	22 all the nonexampt materials, we've held back some
	23 specifically recall.	23 exempt materials, X, Y and 7 reasons. And you
	24 Q So it sounds like most of these issues	24 have to also I suppose understand what when I
	Page 34	Page 36
	1 are resolved informally, is that accurate?	1 talk, I talk about the bureau of air.
	2 A To my knowledge, yes.	2 Q Lunderstand.
	3 Q Are you familiar with any formal	3 A Every burgau does it differently.
	4 determinations by the JEPA under the part 1823	4 Q I understand.
	5 regulations?	5 A You might get a literilzed list from
	6 A May I look at the regulation?	6 another bureau.
	7 Q Sure.	7 Q Does the bureau of air have set policies
	8 A As far as decorminations made under the	E or procedures for how to handle a POIA request
	9 part 1823 regulations, I've probably made hundreds	9 under 13267
· · · · · · · · · · · · · · · · · · ·	10 of them.	10 A Tes. The bureau of air does.
	11 Q Are these formal determinations under	11 Q And what are those policies
anti ang	12 these regulations?	12 A And them again, when you talk about
a da ser a compositiones de la compositiones de la compositiones de la compositiones de la compositiones de la Compositiones de la compositiones de la compositiones de la compositiones de la compositiones de la compositione	13 A Again, I thinkand it's probably my	13 bureau of air, am I in the bureau of air or am I
	14 fault-but I'm getting hinged up on	14 in the division of legal counsel? It's kind of
	15 determinations. When I say I've made hundreds, in	15 a-wand that's a rhetorical question. It's kind of
	16 . looking at these regulations as I just did, it of	16 a, it's a mether world that I exist in, so when
	17 course contains the FOIA exemptions. If, for	17 you ask about the Eureau of air, I'm going to
	18 instance, scmebody is requesting a file broadly	16 answer about the bureau of air which is
	19.7 and my attorney notes are in that file, then I $_{\rm eff}$.	19 downstairs. The FOIA unit. Yes, they do.
	20 will make a determination that we're not	20 They have sheets, carbon sheets that
	21 disclosing them: they are exempt from disclosura.	21 they'll get a filewhen I was talking about
	22 I will put that in the cover letter and	22 screening a filethey'll look at it, they'll have
arta de la constante Alta de la constante de la const	23 tell them they have a right to appeal. There	23 the exemptions listed out on that sheet, they'll
	24 could be opinions expressed, there could be draft	24 write a description of the document and put a code
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	1 about whether or not information has competitive	1 There's just a few of them that I can even recall,
ala da 😈 tra da	2 value to a company?	2 and they did from my best of my recollection
	3 A What do you mean by similar7	3 involve the issue of emissions data.
	4 Q Have you made any other determinations	4 G Do you remember the name of the companies
	5 regarding whether or not release of information	5 those matter involved?
	6 will cause a company competitive barm?	6 A I believe one of them was Fleischmann's
	7 A If you're askingwe're going back to	? vinegar, something similar to that.
	8 that determination question. If you're asking	8 Q Was that a determination regarding
	9 " have I authored or issued any determinations	9 whether or not caw material data information
a de la companya de La companya de la comp	10 making that decision, the answer would be no.	10 constituted emissions date?
	11 Have I at some point perhaps encountered	11 A I don't know if it was particularI'm
	12 information such as I talked about before whether	12 - not sure exactly. I don't recell the exact
	13 it would be a recipe or raw material usage and	13 particulars of it. I believe it had to do with 14 emissions data. I don't know if it wasactually
	14 whether that wouldI am familiar with the concept 15 of comparisive value and thinking about and	15 I don't think it was necessarily raw material
	15 of competitive value and thinking about and 16 addressing those issues butthat's my answer.	16 usage. I think it might have had to do with them
	17 Q Otay. In the pastyou testified that in	17 claiming their stack flow rate as trade secret.
	18 the past you had either called companies or	18 Q Was there an IEPA determination
	19 directed your project engineers to call companies	19 regarding?
	20 before you issued a denial regarding their trade	20 A No. That was a matter that was resolved.
	21 secret or confidential information. Why didn't	21 Q Bow was that resolved?
	22 you call Midwest Generation to discuss this issue	22 A Informally with the company withdrawing
	23 With them before you issued your desial?	23 their claim. To the best-this is what I have
	24 A I did not testify that I've ever made	24 heard. I didn't, wasn't involved in it
in e 👝 👘 📖	Page 106	Page 108
ang na 😈 ana sa k		
	1 such calls. What I stated was that I am aware in	 personally. I just, it was relayed to me through the grapewine, so to speak, that the matter had
	2 the past that individual engineers had contacted 3 companies in attempt to resolve some issues with	3 been resolved, the company had withdrawn the
· · · · · · · · · · · · · · · · · · ·	4 information that was claimed. It wasn't even	4 at issue claims.
	5 necessarily at my counsel that this was done.	5 Q So someone from IEFA celled the company?
	6 It was brought to my attention that the	6 A That is correct.
	7 material and the claims were being made. Because	7 .Q Are you aware of any other determinations
	8 I've had some past experience with trade secret	8 regarding the definition of emissions data in the
	9 matters, they bounced ideas off of me as to	9 context of the trade secret and FOIA rules?
	10 whether it should be claimed or not. I provided	10 A None that I couldmo.
	11 my input. Where it went from there, I was not	11 Q Are you aware of any agency guidance
	12 involved.	12 . wither formal or informal on the interpretation of
	13 Q Other than the WITCO determination that	13 the term smissions data?
	14 we talked about previously and the Midwest	14 A No, I'm not. What is the normal course
	15 Generation/ComEd determinations, have you been	15 of business is to look at the definition of
	16 involved in any determination either formal or	16 emissions data, parhaps the CFR federal definition
	17 informal under the trade secret rules or the part	17 and the discussion that may accompany that, and 18 then try to think through it logically in any
a anna an	18 1826 rules regarding whether or not information 19 constitutes emissions data?	18 then try to think through it logically in any 19 given mituation whether this would constitute
	20 A You said other than the WITCD which we	20 emissions data or act. As I've testified to
	21 previously spoke of and the instant satter?	21 before, scmetimes it gets to be a very gray lime
	22 C That's right.	22 as to trade secret varsus emissions data.
	23 A I have, I have vaguely referred to	23 Q You mentioned discussions of the CFR
	24 matters in which we have bounced ideas off of.	24 rules. I presume you're referring to the
i para 🖤 👘 🖁		27 (Pages 105 to 108)
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	Respondent.		NUMBER MARKED FOR IDENTIFICATION
		13	Exhibit Number 1 (Marked prior to deposition.)
	DISCOVERY DEPOSITION of CHRISTOPHER P.	1	Exhibit Number 2 30
	ROMAINE, taken in the above-entitled case before	14	Exhibit Number 3 44
	Rhonda K. O'Neal, CSR, RPR, a Notary Public of	1	Exhibit Number 4 52
	Sangamon County, acting within and for the County	15	Exhibit Number 5 53
	of Sangamon, State of Illinois, at 3:00 o'clock P.M., on March 16, 2006, at 1021 North Grand	1	Exhibit Number 6 65
	Avenue East, Springfield, Sangamon County,	16	Exhibit Number 7 71
	Illinois, pursuant to subpoena.	17	
		18	
		19	
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	APPEARANCES :	1	STIPULATION'
	SCHIFF HARDIN, LLP	2	It is stipulated and agreed, by and between the parties hereto, through their
	BY: Mary Ann Mullin, Attorney at Law Sheldon A. Zabel, Esg.	3	attorneys, that the discovery deposition of
	6600 Sears Tower	4	CHRISTOPHER P. ROMAINE may be taken before Rhonda
	Chicago, Illinois 60606		K. O'Neal, a Notary Public, Certified Shorthand Reporter, and Registered Professional Reporter,
	On behalf of Complainant/Petitioner	5	upon oral interrogatories, on the 16th of March
	Midwest Generation EME, LLC.	6	A.D., 2006, at the instance of the Complainants/Petitioners at the hour of 3:00
	SIDLEY AUSTIN, LLP		o'clock P.M., 1021 North Grand Avenue East,
	BY: Byron F. Taylor, Esq. Roshna Balasubramanian, Attorney at Law	7	Springfield, Sangamon County, Illinois; That the oral interrogatories and the
	One South Dearborn		answers of the witness may be taken down in
	Chicago, Illinois 60603	9	shorthand by the Reporter and afterwards
	On behalf of Complainant/Petitioner	10	transcribed;
	Commonwealth Edison Company.		That all requirements of the rules and
	MS. ANN ALEXANDER	11	regulations promulgated under the Pollution Control Board of the State of Illinois and the
	MS. PAULA BECKER WHEELER	12	Rules of the Supreme Court as to dedimus, are
	Assistant Attorneys General 188 Randolph Street	1.	expressly waived;
	Twentieth floor	13	That any objections as to competency,
	Chicago, Illinois 60601	14	materiality or relevancy are hereby reserved, but
	On behalf of Respondent	15	any objection as to the form of question is waived unless specifically noted;
		16	That the deposition, or any parts thereof
	•	17	may be used for any purpose for which discovery
		17	depositions are competent, by any of the parties hereto, without foundation proof;
		18	
		10	That any party hereto may be furnished
		19	copies of the deposition at his or her own expense.
		20	• • • • •
		21 22	
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		23	

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EXHIBIT C

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1 between a utility and an independent po	wer l located?
2 producer?	2 A Somewhere in the Chicago Bedford Park
3 A No. By that I mean that there	e's a lot of 3 area is what I recall.
4 terminology going on, and I think I kno	w what a 4 Q You also indicated that you were involu
5 utility used to be, but I'm not sure I	understand 5 in a denial of trade secret protection related t
6 what a utility is anymore.	6 a facility in Danville?
7 MR. ZABEL: Off the record.	7 A It was the Tepak (sp) facility. They
8 (Discussion off the rec	cord.) 8 were represented by Air Floyd (sp).
9 MS. MULLIN: Q Is it fair to say t	that you've 9 Q And what kinds of information did the
10 never been involved in a formal agency	denial of 10 denial involve?
11 trade secret status apart from the Midw	vest Gen and 11 A I don't recall that case as clearly. I
12 ComEd matters at issue in this case and	
13 matter?	13 information that was involved.
14 A No.	14 Q Was the basis, was the agency's basis f
15 Q What were the ones the constraint	
16 other denials you were involved with?	16 data?
17 A I think I was peripherally inv	volved in 17 A Yes. That's my recollection.
18 the matter involving Clorox bleach.	ere was a 18 Q In both of these matters, did the source
19 matter involving a company in Danville	
20 secret.	20 A I don't specifically recall.
21 Q Let's go back to Clorox bleach	
22 second. About what time was that denia	· · · · · · · · · · · · · · · · · · ·
23 A I don't recall.	23 Q Were they formal agency denials?
24 Q Can you give me a decade?	24 A Since they both led to actions before t
1 A I think it was in probably the	
2 early 2000.	
	2 Q Okay. What other trade secret denials
3 Q What kinds of information did	
3 Q What kinds of information did 4 involve?	
• • • • • • • • • • • • • • • • • • • •	that denial 3 were you involved in? 4 A I don't recall whether we issued a trad
4 involve?	that denial 3 were you involved in? 4 A I don't recall whether we issued a traduust going 5 secret denial to Conoco chillips or not. Maybe
<pre>4 involve? 5 MS. ALEXANDER: At this point I'm j</pre>	that denial 3 were you involved in? 4 A I don't recall whether we issued a trad ust going 5 secret denial to Conoco Phillips or not. Maybe ve made in 6 Conoco Phillips in Hartford.
 4 involve? 5 MS. ALEXANDER: At this point I'm junction 6 to state for the record my objection I'm 	that denial 3 were you involved in? 4 A I don't recall whether we issued a trad ust going 5 secret denial to Conoco Phillips or not. Maybe ve made in 6 Conoco Phillips in Hartford bject to 7 •Q
 4 involve? 5 MS. ALEXANDER: At this point I'm julies 6 to state for the record my objection I' 7 the other two cases, which is that we object 	that denial 3 were you involved in? 4 A I don't recall whether we issued a trad ust going 5 secret denial to Conoco Phillips or not. Maybe ve made in 6 Conoco Phillips in Hartford bject to 7 •Q
 4 involve? 5 MS. ALEXANDER: At this point I'm juice 6 to state for the record my objection I'm 7 the other two cases, which is that we ob 8 any questions regarding previous determination 	that denial 3 were you involved in? 4 A I don't recall whether we issued a trad ust going 5 secret denial to Conoco Phillips or not. Maybe ve made in 6 Conoco Phillips in Hartford bject to 7 •Q And what was the kind of information at inations as 8 issue in the denial in the Conoco Phillips? 9 A It was information described in the s
 4 involve? 5 MS. ALEXANDER: At this point I'm juice 6 to state for the record my objection I'm 7 the other two cases, which is that we ob 8 any questions regarding previous determinants 9 being 	that denial 3 were you involved in? 4 A I don't recall whether we issued a trad ust going 5 secret denial to Conoco Phillips or not. Maybe ve made in 6 Conoco Phillips in Hartford bject to 7 •Q And what was the kind of information at inations as 8 issue in the denial in the Gonoco Phillips? 9 A It was information described in the # ight. 10 change in emissions that would occur with the
 involve? MS. ALEXANDER: At this point I'm juice to state for the record my objection I'm the other two cases, which is that we obtain any questions regarding previous determing being MS. MULLIN: Relevancy objection, respective 	that denial 3 were you involved in? 4 A I don't recall whether we issued a trad ust going 5 secret denial to Conoco thillips or not. Maybe ve made in 6 Conoco Phillips in Hartford bject to 7 •Q And what was the kind of information at inations as 8 issue in the denial in the Conoco finilips? 9 A It was information described in the ight. 10 change in emissions that would occur with the we're going 11 project, the subject of the application. That's
 involve? MS. ALEXANDER: At this point I'm juice to state for the record my objection I'm of the other two cases, which is that we obtain any questions regarding previous determance being MS. MULLIN: Relevancy objection, row of the matching of the matching of the matching objection, row of the matching of the matching of the matching objection, row of the matching o	that denial 3 were you involved in? 4 A I don't recall whether we issued a trad ust going 5 secret denial to Conoco thillips or not. Maybe ve made in 6 Conoco Phillips in Hartford bject to 7 •Q And what was the kind of information at inations as 8 issue in the denial in the Conoco fhillips? 9 A It was information described in the ight. 10 change in emissions that would occur with the we're going 11 project, the subject of the application. That's
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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Amended Motion to Compel Respondent's Discovery Responses, by U.S. Mail, upon the following persons:

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

Lisa Madigan Matthew Dunn Ann Alexander Paula Becker Wheeler Office of the Attorney General 188 West Randolph Street, Suite 2000 Chicago, Illinois 60601

Dated: March 23, 2007

Respectfully submitted,

MIDWEST GENERATION EME, LLC

By: <u>/s/ Mary Ann Mullin</u> Mary Ann Mullin

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One of the Attorneys for Midwest Generation EME, LLC

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