

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Midwest Generation EME, LLC,)	
Petitioner)	PCB 04-216
)	Trade Secret Appeal
v.)	
)	
Illinois Environmental Protection Agency,)	
Respondent)	

NOTICE OF FILING

To:	Dorothy Gunn, Clerk Illinois Pollution Control Board 100 West Randolph Suite 11-500 Chicago, Illinois 60601	Sheldon A. Zabel Mary A. Mullin Andrew N. Sawula Schiff Hardin LLP 6600 Sears Tower Chicago, Illinois 60606
	Brad Halloran Hearing Officer Illinois Pollution Control Board 100 West Randolph Suite 11-500 Chicago, Illinois 60601	

Please take notice that today we have filed with the Office of the Clerk of the Pollution Control Board via electronic filing Respondent's Response to Commonwealth Edison's Initial Requests for Admission. A copy is herewith served upon the assigned Hearing Officer and the attorneys for the Petitioner, Midwest Generation EME, LLC.

Dated: Chicago, Illinois
August 17, 2007

LISA MADIGAN, Attorney General of the
State of Illinois
MATTHEW DUNN, Chief, Environmental Enforcement/
Asbestos Litigation Division
ROSEMARIE CAZEAU, Assistant Attorney General
Chief, Environmental Bureau

BY: *Paula B. Wheeler*
Paula Becker Wheeler, Assistant Attorney General
69 West Washington Street, Suite 1800
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NOW COMES Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by LISA MADIGAN, Attorney General of the State of Illinois, and in response to Petitioner MIDWEST GENERATION EME, LLC's Initial Requests for Admission, answers and objects as follows:

I. GENERAL OBJECTIONS

A. Respondent objects to the Admission Requests on the ground that they seek information that is irrelevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. In particular, although the Pollution Control Board ("Board") specified in its June 17, 2004 order that hearings in this matter "will be based exclusively on the record before IEPA at the time it issued its trade secret determination" pursuant to 35 Ill. Admin. Code 105.214(a), and that "information developed after IEPA's decision typically is not admitted at hearing or considered by the Board"; and although the Board denied a motion in related case PCB 04-185 for reconsideration of this evidentiary restriction and a de novo hearing, Petitioner is seeking some information not in or directly pertinent to the administrative record, and/or developed after Respondent IEPA's decision.

B. Respondent objects to the Admission Requests on the ground that they call for information that is protected by, inter alia, the attorney-client privilege, the work product privilege, the joint prosecution privilege, and the deliberative process privilege.

C. Respondent objects to the Admission Requests on the ground that they are overbroad and burdensome.

D. Respondent objects to the Admission Requests on the ground that they are vague and/or ambiguous.

E. Respondent objects to the instructions and definitions to these Admission Requests insofar as they require Respondent to undertake or investigate or produce information in excess of what is required of it under the Illinois Code of Civil Procedure.

Responses to the Admission Requests shall not be construed as a waiver of these objections.

Admission Request No. 1:

Admit IEPA did not specifically determine that the CPR lacked competitive value.

Response to Admission Request No. 1:

Respondent objects to Admission Request No. 1 on the grounds specified in General Objection D. Without waiving such objections, Respondent neither admits nor denies Admission Request No. 1, but states in response that the IEPA, Bureau of Air, determined that, at a minimum, portions of Midwest Generation's CPR lacked competitive value.

Admission Request No. 2:

Admit that IEPA did not specifically determine that the CPR constituted emissions data.

Response to Admission Request No. 2:

Respondent objects to Admission Request No. 2 on the grounds specified in General Objection D. Without waiving such objections, Respondent denies Admission Request No. 2.

Admission Request No. 3:

Admit that the Record contains no document supporting any determination by IEPA that the CPR lacked competitive value.

Response to Admission Request No. 3:

Respondent denies Admission Request No. 3.

Admission Request No. 4:

Admit that IEPA did not consult or retain any expert when evaluation whether the CPR lacked competitive value.

Response to Admission Request No. 4:

Respondent objects to Admission Request No. 4 on the grounds specified in General Objection A. Without waiving such objections, Respondent admits Admission Request No. 4.

Admission Request No. 5:

Admit that no person who assisted in determining that the CPR lacked competitive value had experience in owning, operating, managing, or running a coal-fired generating station.

Response to Admission Request No. 5:

Respondent objects to Admission Request No. 5 on the grounds specified in General Objection A. Without waiving such objections, Respondent admits Admission Request No. 5.

Admission Request No. 6:

Admit that IEPA used a different definition of "emissions data" for the Midwest Generation Determination than had previously been applied in other IEPA evaluations of trade secret claims. (See, e.g., 3/17/06 Romaine Dep. 126:6-12.)

Response to Admission Request No. 6:

Respondent objects to Admission Request No. 6 on the grounds specified in General Objection D, and on the grounds that it calls for a legal conclusion. Without waiving such objections, Respondent denies that the IEPA used a different definition of emissions data in the Denial than had previously been applied in other IEPA evaluations of trade secret claims.

Admission Request No. 7:

Admit that IEPA's interpretation of emissions data, as it has evolved, is not reflected in its entirety in any Illinois statute, regulation, guidance document, or other IEPA-issued publication or authority.

Response to Admission Request No. 7:

Respondent objects to Admission Request No. 7 on the grounds specified in General Objection D, and on the grounds that it calls for a legal conclusion. Without waiving such objections, Respondent denies Admission Request No. 7.

Admission Request No. 8:

Admit that IEPA's definition of "emissions data" has evolved over time. (*See, e.g., 3/17/06 Romaine Dep. 126:6-12.*)

Response to Admission Request No. 8:

Respondent denies Admission Request No. 8.

Admission Request No. 9:

Admit that the most recent modification of IEPA's definition of "emissions data" occurred in conjunction with IEPA's issuance of the Midwest Generation Determination. (*See, e.g., 3/17/06 Romaine Dep. 106.*)

Response to Admission Request No. 9:

Respondent denies Admission Request No. 9.

Admission Request No. 10:

Admit that IEPA does not contend that the CPR, in its entirety, is publicly available.

Response to Admission Request No. 10:

Respondent admits Admission Request No. 10.

Dated: Chicago, Illinois
August 17, 2007

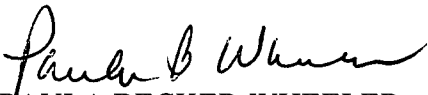
Respectfully submitted,

LISA MADIGAN, Attorney General of the
State of Illinois

MATTHEW DUNN, Chief, Environmental
Enforcement/ Asbestos Litigation Division

ROSEMARIE CAZEAU
Assistant Attorney General
Chief, Environmental Bureau

By:


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STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

CHRISTOPHER PRESSNALL, being first duly sworn upon oath, deposes and states that he is an Assistant Counsel with the Division of Legal Counsel, Illinois Environmental Protection Agency, the Respondent in this cause; that he has read Petitioner Requests for Admission and the foregoing responses given thereunder by him; and that to the best of his knowledge, information and belief, said responses are true, correct and complete in accordance with the request.



CHRISTOPHER PRESSNALL

SUBSCRIBED AND SWORN to before me
this 16 day of August, 2007.

NOTARY PUBLIC



RECEIVED
ATTORNEY GENERAL

AUG 17 2007

ENVIRONMENTAL

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CERTIFICATE OF SERVICE

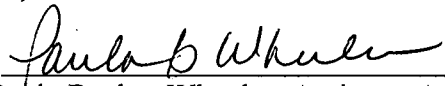
I hereby certify that on the 17th day of August, 2007 I caused to be served the attached copies of a Notice of Filing, and Respondent's Response to Petitioner Midwest Generation EME, LLC's Initial Requests for Admission, by hand delivery, to:

Sheldon A. Zabel
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Brad Halloran
Hearing Officer
Illinois Pollution Control Board
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Chicago, Illinois 60601

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