

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Commonwealth Edison Company,
Petitioner,

v.

Illinois Environmental Protection Agency,
Respondent.

PCB No. 04-215
(Trade Secret Appeal)

Midwest Generation EME, LLC,
Petitioner,

v.

Illinois Environmental Protection Agency,
Respondent.

PCB No. 04-216
(Trade Secret Appeal)

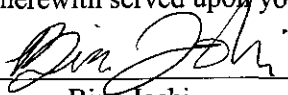
NOTICE OF FILING

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

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
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Paula Becker Wheeler
Assistant Attorney General
Office of the Attorney General
69 West Washington
Suite 1800
Chicago, Illinois 60602

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board **Petitioners' Unopposed Motion to Consolidate PCB 04-215 and PCB 04-216**, a copy of which is herewith served upon you.



Bina Joshi
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Dated: June 12, 2009

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PCB No. 04-215
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PETITIONERS' UNOPPOSED MOTION TO CONSOLIDATE
PCB 04-215 AND PCB 04-216

Pursuant to 35 Ill. Admin. Code § 101.406, Petitioner Midwest Generation EME, LLC ("Midwest Generation") and Petitioner Commonwealth Edison Company ("ComEd") jointly submit to the Illinois Pollution Control Board ("IPCB") this Unopposed Motion to Consolidate PCB 04-215 and PCB 04-216. In support of their motion the Petitioners state as follows:

1. On June 2, 2004, ComEd, the former owner of Midwest Generation's six coal-fired generating stations (the "Stations"), appealed a trade secret determination by the Illinois Environmental Protection Agency ("IEPA") denying trade secret protection to two documents:
1) excerpts from an accounting record referred to as a continuing property record ("CPR") (the

document will be referred to herein as the "CPR Excerpts") and 2) a document reflecting excerpts of Generating Availability Data System ("GADS") data which was generated by the North American Electric Reliability Council ("NERC") confidentially for ComEd (the document will be referred to herein as the "GADS Excerpts"). ComEd submitted these documents to the United States Environmental Protection Agency ("USEPA") pursuant to a Clean Air Act § 114 Information Request and provided a courtesy copy of the information to the IEPA. The appeal was designated as case number PCB 04-215.

2. On June 3, 2004, Midwest Generation also appealed the IEPA trade secret determination denying trade secret protection to the CPR Excerpts provided to USEPA and IEPA by ComEd. The appeal was designated as case number PCB 04-216.

3. On June 17, 2004, the IPCB issued an order directing Midwest Generation, ComEd and IEPA to address whether it would be appropriate to consolidate PCB 04-215 and PCB 04-216 for hearing. The IEPA filed a response in favor of consolidation. At the time, Midwest Generation and ComEd filed briefs opposing consolidation.

4. On July 7, 2005, the Board issued an order declining to consolidate PCB 04-215 and PCB 04-216. The Board found that consolidating the two trade secret appeals into one hearing runs the risks of not only potential confusion and waste, but prejudice through inadvertent unauthorized disclosures. Board Order at 5.

5. ComEd and Midwest Generation initially opposed consolidation, in part, because the parties believed Midwest Generation did not own or have access to the GADS Excerpts. Accordingly, if the cases were consolidated it would be difficult to prevent inadvertent disclosure of this information. The parties have subsequently learned that as a matter of policy, NERC provides this information to current owners of the assets. Thus, Midwest Generation now has

access to the GADS data from the period of time ComEd owned the Stations and, therefore this reason against consolidation no longer exists.

6. Further as discovery has proceeded, it has become evident that both proceedings will involve many of the same witnesses and legal issues. Consolidating both proceedings will serve the interest of conveniently and expeditiously deciding the appeals.

7. Previously Midwest Generation argued that consolidation would cause material harm to Midwest Generation because the Sierra Club had moved to intervene in ComEd's appeal, but not in Midwest Generation's appeal. Since that time, the Sierra Club moved to intervene in Midwest Generation's appeal and on August 18, 2005 the Board denied the Sierra Club's motion to intervene in both appeals. Thus, this reason against consolidation no longer exists. Also, Midwest Generation and ComEd opposed consolidation because Midwest Generation had filed a motion to reconsider the Board's Order of June 17, 2004 while ComEd had not. Petitioners previously argued material harm might result if the cases were consolidated and ComEd did not want to participate in the motion for reconsideration. This Motion has been decided. Therefore, the parties no longer oppose consolidation.

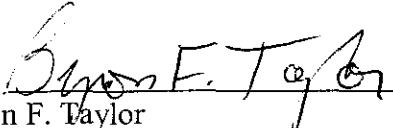
8. The IEPA does not oppose this motion.

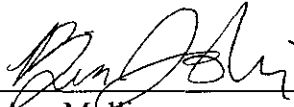
WHEREFORE, Midwest Generation and ComEd respectfully request that, pursuant to 35 Ill. Admin. Code § 101.406, the IPCB grant the parties' Joint Motion to Consolidate PCB 04-215 and PCB 04-216.

Dated: June 12, 2009

COMMONWEALTH EDISON COMPANY

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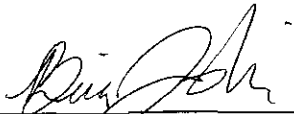
Attorney for Midwest Generation EME, LLC

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached **Petitioners' Unopposed Motion to Consolidate PCB 04-215 and PCB 04-216**, by U.S. Mail, upon the following persons:

To:	Illinois Pollution Control Board, attn: Clerk	Paula Becker Wheeler
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Dated: June 12, 2009

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