

ILLINOIS POLLUTION CONTROL BOARD

July 7, 2011

COMMONWEALTH EDISON COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 04-215
	)	(Trade Secret Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

ORDER OF THE BOARD (by A.S. Moore):

On December 15, 2011, Commonwealth Edison Company (ComEd) and Midwest Generation EME, LLC (Midwest) (collectively petitioners) jointly filed a motion to (1) vacate the two April 23, 2004 trade secret denials of the Illinois Environmental Protection Agency (IEPA) and (2) dismiss both ComEd's June 2, 2004 petition for review and Midwest's June 3, 2004 petition for review as moot. The basis for the joint motion was the withdrawal of Sierra Club's Freedom of Information Act (FOIA) request that IEPA disclose the materials submitted by ComEd and claimed by petitioners to be trade secret. IEPA opposed the joint motion. On April 7, 2011, the Board issued a final order granting the joint motion, vacating IEPA's trade secret determinations, dismissing the petitions as moot, and closing the dockets. On May 13, 2011, IEPA filed a motion for clarification and corresponding modification of the Board's April 7, 2011 order (Mot.). On May 27, 2011, petitioners filed a joint response (Resp.). Today's order rules upon IEPA's motion.

In the motion, IEPA claims that it is "unclear" as to whether several documents related to IEPA's vacated trade secret determinations are still pending or instead encompassed by the Board's April 7, 2011 final order. Mot. at 3-6. The documents with questionable status, according to IEPA, are as follows: (1) IEPA's February 26, 2004 request to ComEd, based upon receipt of Sierra Club's FOIA request, for a statement justifying the trade secret claim; (2)

ComEd's March 11, 2004 statement of justification to IEPA; and (3) Midwest's March 11, 2004 statement of justification to IEPA. *Id.*

Petitioners respond that these documents, as "[t]he necessary consequence of the Board's Order," are no longer pending before IEPA, and that IEPA's contrary suggestion would lead to an "absurd result." Resp. at 2. While petitioners believe it is unnecessary to clarify the Board's order, they do not object to the Board making explicit statements as to the status of the three documents. *Id.*

The Board agrees with petitioners as to the necessity of clarification, but finds no harm in explicitly stating what logically followed from the Board's April 7, 2011 final order. The Board therefore grants the Agency's motion and sets forth in the modified order below the disposition of the documents questioned by IEPA.

### **ORDER**

1. The Board vacates the following:
  - a. IEPA's February 26, 2004 request to ComEd for a statement justifying the trade secret claim;
  - b. ComEd's March 11, 2004 statement of justification submitted to IEPA;
  - c. Midwest's March 11, 2004 statement of justification submitted to IEPA;
  - d. IEPA's April 23, 2004 trade secret determination issued to ComEd; and
  - e. IEPA's April 23, 2004 trade secret determination issued to Midwest.
2. The Board dismisses the following:
  - a. ComEd's petition for review filed with the Board on June 2, 2004; and
  - b. Midwest's petition for review filed with the Board on June 3, 2004.

IT IS SO ORDERED.

Board Member C.K. Zalewski abstained.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2010); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final

orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 7, 2011, by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is fluid and cursive, with a long horizontal stroke at the end.

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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board