



ILLINOIS CHAMBER
OF COMMERCE

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STATE OF ILLINOIS
Pollution Control Board

CHICAGO OFFICE
300 S. Wacker Drive
Suite 1600
Chicago, IL 60606

MAIN 312.983.7100
FAX 312.983.7101

www.ilchamber.org

April 24, 2012

Jennifer A. Burke
Board Member
Illinois Pollution Control Board
100 W. Randolph, 11-500
Chicago, IL 60601

PCB 12-121

PC# 1

Dear Ms. Burke:

As you and your office are frequently engaged with representatives of the environmental community, I think it appropriate that you be aware of the enclosed correspondence.

Sincerely,

Douglas L. Whitley
President and CEO



ILLINOIS CHAMBER
OF COMMERCE

April 23, 2012

Daniel Levin
Chairman
The Habitat Company, LLC
350 W. Hubbard St., Suite 500
Chicago, IL 60654

CHICAGO OFFICE
300 S. Wacker Drive
Suite 1600
Chicago, IL 60606
MAIN 312.983.7100
FAX 312.983.7101
www.ilchamber.org

Dear Mr. Levin:

As a board member of the Environmental Law and Policy Center (ELPC), I wanted you to learn directly from me of the attached correspondence. The Illinois Chamber of Commerce is communicating our disapproval of recent ELPC action to the members of the Illinois General Assembly and other governmental policy makers.

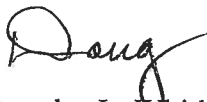
We wrote the letter because we were flabbergasted by the tone, timing and misleading information contained in a fundraising email from Howard Learner sent shortly after the agreement was announced on the future of the Fisk and Crawford coal plants.

This email simply went too far, didn't advance the debate and we considered it an over-the-top "end zone dance" in front of approximately 200 Midwest Generation employees and scores of contract construction workers who had just been informed their jobs would disappear. Like any other constituency, environmental groups need to be held to a standard of fairness and veracity. The attached letter is our attempt to call out the ELPC for failing to meet those standards.

I respectfully suggest it is not acceptable for environmental interests to say, do, or write anything they well please. Just because most corporations remain silent does not mean that the critics are always accurate or the justification is always right. We believe the ELPC should make a concerted effort to stay on the high road.

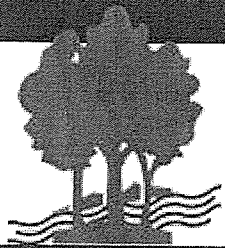
Thank you for your consideration. If you have any questions, you are welcome to contact me.

Sincerely,



Douglas L. Whitley
President and CEO

P.S. Please know that while Midwest Generation is aware of this letter, they did not ask for it. We sent it on behalf of our overall membership for many of them have shared with us similar experiences and observations.



ENVIRONMENTAL LAW & POLICY CENTER

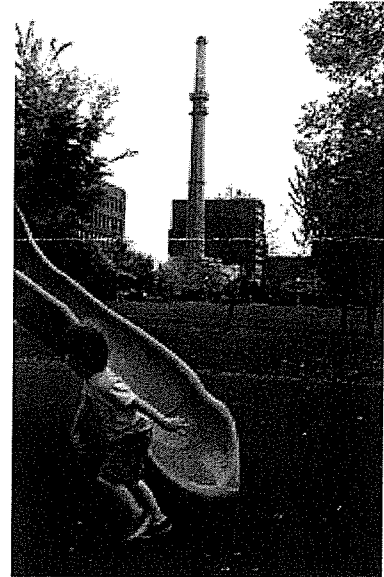
donate2012

Donate!



All of us are proud of the huge victory that ELPC and our many coalition partners achieved last week in finally shutting down Midwest Generation's highly-polluting old Fisk and Crawford coal plants in Chicago's Pilsen and Little Village neighborhoods. Along with the even older State Line coal plant shut down on the Chicago-Hammond border, **this is a turning point for our work to force the clean up or shut down of highly polluting old coal plants** that harm people's health, pollute our Great Lakes and emit large amounts of greenhouse gases that cause global warming.

Two more Chicago-area coal plants are "on the bubble" – Midwest Generation's Waukegan 7 & 8 and Joliet 6 plants. ELPC believes that **the next six months is the strategically pivotal time to accelerate and intensify our clean up or shut down advocacy focused on these coal plants**. Midwest Generation's new 10-K financial statements filed with the U.S. Securities and Exchange Commission and their recent statements to investors and analysts make clear their plans to decide by summer.



Please donate \$100 or more to help support ELPC's focused and effective public interest advocacy to help clean up or shut down the old Waukegan and Joliet coal plants. We need your financial support as well as your action engagement.

Here's why your donation is needed to help ELPC:

1. Make the Economic Case to the Public and Policymaker: Because they are "merchant" unregulated coal plants, Midwest Generation cannot clean up the plants by charging the costs of retrofits with modern pollution control equipment to the public. Likewise, if Midwest Generation shut down the coal plants, that won't have an impact on rates. Most of the power from these old coal plants is being sold to out-of-state customers "through the grid." Other states get the power. Edison International, the Rosemead, California-based company that is the parent to Midwest Generation and Edison Mission Energy, has gotten the profits, and we get the pollution.

2. Make the Public Health Impacts and Costs Case to the Public and Policymakers: The pollution from these coal plants is harming people's health, causing premature deaths and increased heart attacks, asthma attacks, emergency room visits, hospital admissions, and lost workdays. ELPC's 2010 report, *Midwest Generation's "Unpaid Health Bills": The Hidden Public Costs of Soot and Smog From the Waukegan Coal Plant in Illinois*, explains that particulate pollution from this plant, alone, imposes economic costs totaling \$520-\$690 million since 2002. Coal plants produce 60% of the mercury pollution, which has been linked to fetal brain damage and children's developmental health problems, in the Great Lakes. ELPC attorneys and advocates are working to ensure the U.S. EPA's Mercury and Air Toxics Standard and the Illinois mercury pollution reduction standards are implemented fully and fairly.



3. Make the Environmental Case to the Public and Regulatory Agencies:

The Waukegan coal plants' mercury pollution has helped create an intense mercury "hot spot" in Lake Michigan right off the shoreline, according to the National Oceanic and Atmospheric Administration. Likewise, Midwest Generation's failure to install cooling towers under Clean Water Act standards to reduce thermal, hot water discharge is harming Lake Michigan and aquatic habitat and fish populations in our Great Lakes. ELPC public interest attorneys will be working to achieve Midwest Generation's long-delayed compliance with Clean Water Act standards.

4. Make the Clean Energy Jobs Creation Case to the Public and Policymakers:

If Midwest Generation invests in modern pollution control equipment to retrofit and clean up the Joliet and Waukegan coal plants, then that will create jobs. If the coal plants are shut down, operating jobs will be lost, but site remediation and redevelopment jobs will be created. Growing

the clean renewable energy sector in Illinois will spur economic growth with hundreds of growing businesses and thousands of jobs, as demonstrated by ELPC's report: *Clean Energy Supply Chain in Illinois: Wind, Solar and Geothermal*.

5. Make the Reliability Case to the Public and Transmission Grid Regulators: The Waukegan 7 & 8 and Joliet 6 coal plants are not needed to meet electricity demand in Illinois. To head off rhetorical complaints that closing these coal plants would hurt reliability, ELPC is retaining a transmission grid consultant to work with our attorneys in examining grid reliability and support.

This is a **turning point time for clean air and public health** in Illinois and the Midwest. The progress is a result of economic factors combined with more than a decade of strategic legal, policy and media advocacy by ELPC and our coalition partners, including the Respiratory Health Association of Metropolitan Chicago and the Sierra Club.

Please help ELPC seize this key strategic opportunity over the next six months by making a special contribution to support our intensified and focused advocacy work to force the clean up or shut down of the Waukegan 7 & 8 and Joliet 6 coal plants:

- Please make a donation to ELPC today to support our Clean Air and Clean Energy advocacy teams on these targeted actions.
- Please make a donation to our affiliate, the ELPC Action Fund, which engages in hard-hitting advocacy to ensure that politicians don't weaken vital Clean Air Act standards to protect children's health and our environment. (Donations to the ELPC Action Fund are not tax-deductible.) Find out more about the ELPC Action Fund.

Please help ELPC accelerate our successful advocacy that is achieving progress and results in these challenging times. Thank you for all that you are doing to help protect our health and environment in ways that achieve economic growth and progress together. We can and are making a difference.

Best Wishes,

Howard A. Learner
Executive Director



ILLINOIS CHAMBER
OF COMMERCE

April 23, 2012

The Honorable John J. Cullerton
327 Statehouse
Springfield, IL 62706

CHICAGO OFFICE
300 S. Wacker Drive
Suite 1600
Chicago, IL 60606

MAIN 312.983.7100
FAX 312.983.7101

www.ilchamber.org

Dear President Cullerton:

I am asked from time to time why businesses have trepidation about negotiating with environmental groups. The reasons are usually quite simple. In general, the business community perceives environmental groups as rarely satisfied. The groups have misrepresented facts about business operations before, during and *after* agreements are reached. They use their influence to leverage the power of government to negotiate a tough agreement with a highly regulated industry and then, as a non-affected party with no follow up responsibilities or obligations to meet, continue to push for additional changes as if nothing had been achieved. Meanwhile, industry is usually left with the obligations to satisfy strict, burdensome, expensive and time sensitive requirements.

I'm sharing this view with you today because recent activities by Howard Learner and the Environmental Law and Policy Center (ELPC) have provided perfect examples of all these trends.

Promises made, promised kept....but it's not enough!

In 2006, Midwest Generation (and other owners of coal-generated power plants in Illinois) negotiated an historic agreement with the Illinois Environmental Protection Agency (IEPA) that was praised by environmental groups but, very soon after, attacked by the same groups because it didn't go far enough. For the past six years, Midwest Generation has done two things. They honorably kept their end of the agreement by spending more than \$150 million to upgrade their plants (while planning for up to nearly a billion dollars of additional investments); and they fended off perpetual proposals and assaults from the ELPC and other environmental groups seeking to supersede the agreement in a way that would effectively shut down its plants.

But it doesn't stop there.

In February Chicago Mayor Rahm Emmanuel, Midwest Generation, ELPC, Sierra Club and Natural Resources Defense Council (NRDC) signed agreements that included three components:

- Midwest Generation would agree to shut down its Fisk and Crawford plants (both of which were part of the 2006 agreement) – one by the end of 2012 and one by no later than the end of 2014.
- The environmental organizations agreed not to oppose a variance from the 2006 agreement between Midwest Generation and the IEPA – a variance that would give a one-year extension (from the end of 2013 to the end of 2014) on certain pollution control deadlines at Midwest Generation's Waukegan plant.
- The environmental organizations agreed to drop certain litigation against all six of Midwest Generation's coal-fired generation plants in the state.

In essence, the company voluntarily negotiated a new agreement that does, in fact, supersede its 2006 agreement with the state with respect to its operations in Chicago. From the perspective of the Illinois Chamber, we're disappointed by the continued assault upon the company and its assets following a rational negotiation process that established a clear compliance path to resolution. Now that the plants will close ahead of the original agreed-upon timetable set up in 2006 with the



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IEPA, it is of little consequence whether the decision was a matter of economics, politics or environmental pressure (or a bit of all three). However, it clearly illustrates the difficulty of doing business in a state where there is little regard for stability and predictability for a business or for the men and women who work at those plants.

Even more disappointing was that, before the ink was dry on the agreements, Howard Learner sent out a fundraising email to his contact list. This email, which is enclosed, is a perfect example of why the business community finds it difficult to negotiate with environmental groups like the ELPC:

Bad faith – the tone and content of the email presents a disingenuous impression that lends people to believe that Midwest Generation has not kept (or will not keep) its end of the agreement. History shows the exact opposite. Whether one talks about the 2006 agreement, the recent agreement or any conversation in-between, Midwest Generation is spending hundreds of millions of dollars to meet its obligations and keep its commitments. It's the environmental groups that keep asking for changes, agitating and maneuvering for other ways (such as filing law suits and seeking more government intervention) to shut down the plants.

Misinformation, part one – the fundraising letter includes language citing Midwest Generation's Waukegan plant as a mercury "hot spot." What the ELPC chooses to ignore, fails to acknowledge or tell its own supporters is that Midwest Generation has spent millions of dollars on mercury control measures as agreed to with the IEPA. As a result of that investment, mercury emissions have decreased 70 percent since 2008 and will have decreased by more than 90 percent by 2014. As additional perspective, the Obama Administration's much-heralded new rules on mercury emissions don't take effect until April of 2015 and aren't as stringent as what the company agreed to in Illinois. The company has received neither recognition nor credit for the huge gains and exceptional performance.

Misinformation, part two – the email states that Midwest Generation is flouting Clean Water Act mandates on cooling towers. This is also misleading. The company complies with all federal and state permits issued under the Clean Water Act. Potential new cooling tower regulations are making their way through the Federal rulemaking process, but they are not in effect. There are differing opinions as to the cost-benefit of cooling towers near waterways; but one thing is clear - Midwest Generation is not out of compliance with the Clean Water Act. Period.

There is more, but you get the idea: The ELPC negotiates an agreement; and then, immediately moves the goal posts. This rhetoric and assault upon employers goes to the heart of the ELPC's credibility when it comes to future discussions on these important issues. Successful negotiations towards progress are usually highly dependent upon respect, confidence, trust, reliability, honesty and character. It is our experience that some environmental organizations have performed in a less than honorable manner and have little conscience over the tactics they chose to employ. It certainly gives us and our members pause; and it's something the Chamber, as well as other employers and investors, will remember when invited to sit at the same table as the ELPC in the future.

Thank you for reading this; and if you have any questions, please feel free to contact me.

Sincerely,

Douglas L. Whitley
President and CEO