

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL. ADM. CODE) R15-21
PART 214, SULFUR LIMITATIONS, PART) (Rulemaking - Air)
217, NITROGEN OXIDES EMISSIONS, AND)
PART 225, CONTROL OF EMISSIONS)
FROM LARGE COMBUSTION SOURCES)

NOTICE

TO: John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601-3218

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board the Notice and Objection of Midwest Generation to Presentation of Ranajit Sahu's Testimony at the Hearing Scheduled for July 29, 2015, a copy of which is herewith served upon you.

Dated: July 28, 2015

Respectfully submitted,

MIDWEST GENERATION, LLC

By: 

Stephen J. Bonebrake

Stephen J. Bonebrake
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Chicago, Illinois 60606
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Lake Forest, IL 60045
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**OBJECTION OF MIDWEST GENERATION TO
PRESENTATION OF RANAJIT SAHU'S TESTIMONY
AT THE HEARING SCHEDULED FOR JULY 29, 2015**

Midwest Generation, LLC ("MWG"), by and through its undersigned counsel, hereby objects to the presentation of Ranajit Sahu's testimony for questions at the hearing scheduled for tomorrow, July 29, 2015. For the reasons set forth below, presenting such testimony and requiring related questions at the hearing tomorrow would deprive other interested parties of appropriate and necessary time to prepare, and would be fundamentally unfair and prejudicial to the parties and the preparation of an adequate, impartial and complete record. For these reasons, as described more fully below, the testimony and related questions should be presented at the hearing scheduled for August 4, 2015 or, in the alternative, such testimony should be stricken:

1. More than two months ago the hearing officer in this matter issued an order with a schedule that set three hearing dates in this matter, including July 29, 2015 and August 4, 2015. See May 27, 2015 Hearing Officer Order (the "Scheduling Order"). The Scheduling Order also set July 17, 2015 as the date to pre file testimony for the July 29 and August 4, 2015 hearings.

2. On July 15, 2015, the Sierra Club moved for an extension of time to file its testimony, requesting an extension to July 24, 2015 from July 17, 2015. Sierra Club asserted in that motion that it needed more time to obtain and asses information related to the proposed rules even though the proposed rules were filed in April, 2015, Illinois EPA ("IEPA") had been

working on the proposed rules for months if not years before filing and Sierra Club had an opportunity to raise questions for IEPA at the first hearing, on July 8, 2015. Indeed, Sierra Club could have pre filed written questions before that hearing seeking any information it wanted IEPA to provide, but it failed to do so. There is certainly at least an open question about whether Sierra Club could have and should have obtained any needed information in time to comply with the July 17, 2015 testimony filing date. Presumably to help address timing concerns, Sierra Club indicated in that motion that IEPA would be prepared to ask questions related to its testimony at the August 4, 2015 hearing.

3. MWG had concerns about that motion because of the compressed time frame it would cause for preparation related to any testimony filed by Sierra Club. If granted, the motion would eliminate from an already compressed schedule one week of preparation time that MWG and other interested parties and the public would have had under the Scheduling Order. Nonetheless, the hearing officer granted the motion the next day, on July 16, 2015, without time for other interested parties to file any response to the motion with timing or other concerns.

4. On July 24, 2015 Sierra Club filed the testimony of Ranajit Sahu and H. Andrew Gray. That testimony was not provided electronically and was not available on the Board's website until the morning of July 27, 2015. On the first page of the written testimony of Mr. Sahu Sierra Club indicated that it would present his testimony on August 4, 2015. This was consistent with the motion for more time earlier filed by Sierra Club. MWG remained concerned about whether adequate time was available to prepare questions related to the testimony of Messrs. Gray and Sahu, but if the testimony were not presented for questions until August 4, 2015 at least interested parties would have several days to review the testimony and prepare related questions for the hearing.

5. Just before close of business on July 27, 2015, counsel for MWG received a voice mail message from the hearing officer indicating that Sierra Club had filed a notice stating that the testimony of Mr. Sahu would be presented at the hearing on July 29, 2015. That voice mail was retrieved after business hours. That notice was not provided electronically and was not available on the Board's web site until the morning of July 28, 2015. The notice failed to state any reason why Sierra Club changed its prior position, as set forth in its motion for an extension of time to file testimony and in the filed written testimony of Mr. Sahu, that the testimony of Mr. Sahu would be presented on August 4, 2015. Nor did Sierra Club explain how presenting Mr. Sahu for questions at the July 29, 2015 hearing, just two days after the testimony became available and Sierra Club advised of its intent to present Mr. Sahu at the July 29, 2015 hearing, would not be unfair and prejudicial to other interested parties and the public.

6. Whether or not Sierra Club intends to deprive other interested parties and the public of an adequate opportunity to prepare questions for Mr. Sahu, that is the effect of Sierra Club's game plan. MWG, other interested parties and the public did not have access to the testimony until the morning of July 27, 2015. And Sierra Club's notice of intent to present Sahu's testimony on July 29, 2015 was not available until today, July 28, 2015. At most, other interested parties will have less than two full days to review testimony and to prepare related questions if Mr. Sahu's testimony is presented at the hearing on July 29, 2015, and they could not have known that such expedited preparation was even necessary until around the close of business on July 27, 2015 when the hearing officer, rather than Sierra Club, notified them.

7. Providing only two days or less to review the 15-pages of testimony by Mr. Sahu, together with the large testimony attachments, to consult as needed with clients and to prepare related questions is simply inadequate, unfair and prejudicial. This is true even if counsel for

interested parties had nothing else to do other than prepare for the July 29, 2015 hearing. Permitting Sierra Club's requested time for presenting Mr. Sahu for questions would deprive the other parties of an adequate opportunity to prepare for hearing, and would undermine the adequacy and completeness of the rulemaking record. In short, allowing the presentation of Mr. Sahu's testimony for questions tomorrow, rather than at the August 4, 2015 hearing, would be unfair and prejudicial.

For the foregoing reasons, Mr. Sahu should be presented for questions related to his testimony at the hearing on August 4, 2015 or his testimony should be stricken.

Dated: July 28, 2015

Respectfully submitted,

MIDWEST GENERATION, LLC

By:



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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, affirm that I have served the attached NOTICE and OBJECTION OF MIDWEST GENERATION TO PRESENTATION OF RANAJIT SAHU'S TESTIMONY AT THE HEARING SCHEDULED FOR JULY 29, 2015 upon the following person by emailing it to the email address indicated below:

Daniel Robertson, Hearing Officer
Illinois Pollution Control Board
daniel.robertson@illinois.gov

I affirm that my email address is sbonebrake@schiffhardin.com; the number of pages in the email transmission is 7; and the email transmission took place today before 5:00 p.m.

I also affirm that I am mailing the attached by first-class mail from Chicago, Illinois, with sufficient postage affixed, to the following persons:

SEE ATTACHED SERVICE LIST

Dated: July 28, 2015

Respectfully submitted,

MIDWEST GENERATION, LLC

By: _____


Stephen J. Bonebrake

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