

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC – FISK)
GENERATING STATION,)
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTON AGENCY,)
)
Respondent.)

PCB 06-57
(CAAPP Permit Appeal—Air)

MIDWEST GENERATION, LLC – JOLIET)
GENERATING STATION,)
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTON AGENCY,)
)
Respondent.)

PCB 06-58
(CAAPP Permit Appeal—Air)

MIDWEST GENERATION, LLC –)
POWERTON GENERATING STATION,)
)
Petitioner,)
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v.)
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ILLINOIS ENVIRONMENTAL)
PROTECTON AGENCY,)
)
Respondent.)

PCB 06-59
(CAAPP Permit Appeal—Air)

MIDWEST GENERATION, LLC – WILL)
COUNTY GENERATING STATION,)
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Petitioner,)
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ILLINOIS ENVIRONMENTAL)
PROTECTON AGENCY,)
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Respondent.)

PCB 06-60
(CAAPP Permit Appeal—Air)

MIDWEST GENERATION, LLC –)
WAUKEGAN GENERATING STATION,)
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ILLINOIS ENVIRONMENTAL)
PROTECTON AGENCY,)
)
Respondent.)

PCB 06-146
(CAAPP Permit Appeal—Air)

NOTICE OF ELECTRONIC FILING

To: See attached Service List

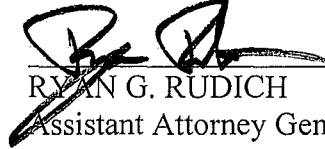
PLEASE TAKE NOTICE that on the 5th day of February, 2016, the Joint Response to Board Questions was filed electronically with the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and is hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
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State of Illinois

By:



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DATE: February 5, 2016

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JOINT RESPONSE TO BOARD QUESTIONS

Pursuant to the Hearing Officer Orders dated January 6, 2016, Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by Lisa Madigan, Attorney General of the State of Illinois, and Petitioner, MIDWEST GENERATION, LLC, by and through its attorneys, hereby submit the following joint response to the Illinois Pollution Control Board’s (“Board”) questions in the above-referenced cases.

INTRODUCTION

The Hearing Officer Orders directed the parties to respond to a set of six questions from the Board relating to the status of settlement discussions and appeal resolution. Below, the parties first provide brief background on the dockets, followed by the parties’ joint responses to the questions posed by the Board.

I. Background on PCB 06-57, PCB 06-58, PCB 06-59, PCB, 06-60, and PCB 06-146

PCB 06-57 is the appeal of the 2005 CAAPP permit for the Fisk Generating Station. PCB 06-58 is the appeal of the 2005 CAAPP permit for the Joliet Generating Station. PCB 06-59 is the appeal of the 2005 CAAPP permit for the Powerton Generating Station. PCB 06-60 is the appeal of the 2005 CAAPP permit for the Will County Generating Station. PCB 06-146 is the appeal of the 2006 CAAPP permit for the Waukegan Generating Station. As described in more detail below, the Illinois EPA has implemented a process to resolve the 2005/2006 CAAPP permit appeals for a group of Illinois power plants that includes each of these dockets.

II. The Parties' Answers to Board Questions 1-6

Board Question 1: Which permit conditions that were originally challenged have been resolved in settlement negotiations and which ones have not?

Answer: The Illinois EPA has jointly negotiated with permittees of a group of Illinois power plants to address common issues in their respective permit appeals, including the appeals of the Fisk, Joliet, Powerton, Will County and Waukegan CAAPP permits (the "Subject CAAPP Permits"). As a result, the parties have reached consensus regarding many of the contested conditions in the Subject CAAPP Permits. A permit for the Powerton facility has been issued, and the Petitioner expects to soon file a motion to voluntarily dismiss the appeal of that permit. In addition, Illinois EPA has prepared a draft permit for the Waukegan facility, received public comment on it, and is currently reviewing those comments in relation to the draft permit. With respect to the other Subject CAAPP Permits, there is a set of conditions and permitting edits unique to each facility that still must be addressed by Illinois EPA permitting staff and the Petitioner before the permitting documents can be released for public comment and review by the U.S. Environmental Protection Agency ("USEPA").

Board Question 2: How are the unresolved permit conditions different from those facilities where the appeal has been resolved, for example, Newton (PCB 06-68)?

Answer: Each facility has unique aspects about its configuration, emission units, operations, and/or applicable requirements that necessitate individual attention in the permitting documents. While the Subject CAAPP Permits share many common conditions and appeal points with Newton and the other facilities, the Subject CAAPP Permits require, or have required, plant-specific edits and changes to be made before public notice and USEPA review. With respect to the Fisk facility, coal is no longer burned as a fuel source; the Petitioner intends to continue only non-coal-fired generating capacity there. Petitioner is also in the process of ceasing use of coal as a fuel source at the Joliet facility.

Board Question 3: Ha[ve] the facilit[ies] been subject to new operational requirements since th[ese] appeal[s] began, for example, state mercury requirements?

Answer: Yes. Such requirements that are derived from the Clean Air Act will be incorporated into each of the Subject CAAPP Permits through the CAAPP's formal reopening process. The incorporation of these additional rules or regulations into a CAAPP permit is a procedural requirement of Title V permitting. However, the absence of such requirements in a CAAPP permit does not affect the ongoing responsibility of a source to comply with rules or regulations upon their dates of effectiveness.

Board Question 4: Do any of those new requirements concern the permit conditions challenged in th[ese] appeal[s]? If so, are the new requirements more stringent than the challenged permit conditions?

Answer: Based on the Illinois EPA's recent experience in working on permit reopenings, some of the additional requirements relate to, or overlap with, contested permit conditions. It is

possible that some may appropriately be considered more stringent. However, as previously noted, any such requirements will have applied independently to a given source from the date of effectiveness of the affected rule or regulation. The reopening process will ensure that each of the Subject CAAPP Permits contains all applicable requirements.

Board Question 5: When did the parties to th[ese] appeal[s] last meet to discuss settlement?

Answer: The Illinois EPA and Petitioner's counsel last met by conference call on January 20, 2016, to discuss issues related to CAAPP permit appeals for Petitioner's facilities as part of the ongoing joint negotiation process and have had several further communications since that conference call. They have also previously met numerous times, in-person and by phone, as part of the joint negotiation process, resulting in a resolution, in principle, of common issues. At this stage in the process, the parties are working through individual CAAPP permits with conference calls or in-person meetings, as needed.

Board Question 6: Which party made the last settlement proposal and who is reviewing that proposal? Does the proposal resolve the entire appeal or only one part of the appeal?

Answer: The parties are engaged in a systematic discussion on permit conditions for each of the outstanding appeals. The process will ultimately generate a set of permit changes that are acceptable to the parties and that must then be prepared for public notice and comment and USEPA review.

CONCLUSION

The parties continue to work diligently to resolve these complex permit appeals and to achieve the common goal of effective, up-to-date operating permits for the Fisk, Joliet,

Powerton, Will County and Waukegan facilities and will continue to participate in periodic status conferences with the Board Hearing Officer.

Respectfully submitted,

MIDWEST GENERATION, LLC

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY
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General of the State of Illinois

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Dated: February 5, 2016

CERTIFICATE OF SERVICE

I, RYAN G. RUDICH, an Assistant Attorney General, do certify that I caused to be served this 5th day of February, 2016, the attached Notice of Electronic Filing and Joint Response to Board Questions on the parties named on the attached service list by placing a true and correct copy in first class postage prepaid envelopes and depositing same with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.



RYAN G. RUDICH