

ILLINOIS POLLUTION CONTROL BOARD
February 21, 2008

IN THE MATTER OF:)
)
PETITION OF MIDWEST GENERATION,) AS 07-3
L.L.C., WAUKEGAN GENERATING) (Adjusted Standard – Air)
STATION FOR AN ADJUSTED)
STANDARD FROM 35 ILL. ADM. CODE)
225.230)

ORDER OF THE BOARD (by G.T. Girard):

On December 6, 2007, Environmental Law & Policy Center (ELPC) filed a motion to intervene in this adjusted standard proceeding. On January 14, 2008, Midwest Generation, L.L.C. (Midwest Generation) timely filed a motion to strike the motion to intervene. On January 23, 2008, ELPC filed a motion to withdraw and refile the motion to intervene. On February 7, 2008, Midwest Generation filed a motion for leave to file a reply to ELPC's motion to withdraw and refile. On February 11, 2008, the Illinois Environmental Protection Agency (Agency) filed a response to ELPC's January 23, 2008 motion.

The motion to strike asks that the December 6, 2007 motion to intervene be stricken with prejudice, because Midwest Generation had not been served a copy of the motion to intervene. ELPC's motion to withdraw seeks to withdraw the motion to intervene and to refile to correct errors in serving Midwest Generation.

The motion for leave to file a reply interprets the motion to withdraw as a response to the motion to strike and seeks leave to reply. In the reply, Midwest Generation offers no response to the renewed motion to intervene "because the Board has not yet ruled" on the outstanding motions. The reply asks that if the Board grants the motion to renew the motion to intervene that the Board set a time certain for responses to that motion.

The Agency response was timely filed and the Agency responded to the issues raised in the renewed motion to intervene.

The Board finds that Midwest Generation suffered no prejudice as a result of ELPC's failure to timely serve the December 6, 2007 motion to intervene, as the Board did not rule on that motion. The Board therefore grants the motion to withdraw the December 6, 2007 motion to intervene and denies the motion to strike. The Board also grants Midwest Generation's motion to file a reply and directs Midwest Generation to file a response to the renewed motion to intervene by March 6, 2008. The Board will consider the Agency's response along with Midwest Generation's response when ruling on the renewed motion to intervene.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 21, 2008, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board