

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION ,LLC)	
WAUKEGAN GENERATING STATION,)	
Petitioner,)	
)	
v.)	PCB 12-121
)	(Variance – Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	
)	

NOTICE

TO:

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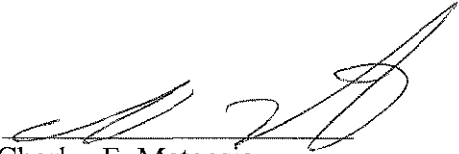
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Please find attached the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY RECOMMENDATION that was electronically filed with the Illinois Pollution Control Board today. If you have any questions, please feel free to contact me.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By:


Charles E. Matoesian
Assistant Counsel
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DATED: May 25, 2012
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC-)	
WAUKEGAN GENERATING STATION,)	
)	PCB 12-121
Petitioner,)	(Air - Variance)
vs.)	
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY RECOMMENDATION

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") by its attorney, Charles E. Matoesian, in response to the Petition for Variance of Midwest Generation, LLC-Waukegan Generating Station ("Midwest Generation" or "Petitioner") from the provisions of 35 Ill. Adm. Code 225.296(a)(l) and (c)(1) for the 12-month period beginning December 31, 2013, and ending December 31, 2014. Pursuant to Section 37(a) of the Illinois Environmental Protection Act ("Act") [415 ILCS 5/37(a)(2010)] and 35 Ill. Adm. Code 104.216, the Illinois EPA neither supports nor objects to the Illinois Pollution Control Board ("Board") granting Midwest Generation's petition as specified in this recommendation. In support of this recommendation, the Illinois EPA states as follows:

I. INTRODUCTION

1. On April 10, 2012, Petitioner, Midwest Generation, filed a petition seeking a variance from the provisions of 35 Ill. Adm. Code 225.296(a)(1) and (c)(1) of the Combined

- Pollutant Standard (“CPS”) for the 12 month period beginning December 31, 2013, and ending December 31, 2014.
2. The variance would be for Unit 7 at the Waukegan Generating Station (“Waukegan” or the “Station”). The variance will give Midwest Generation an additional year to install Flue Gas Desulfurization (“FGD”) equipment and convert the hot-side precipitator on that unit to a cold-side precipitator or shut down the unit.
 3. In return, Midwest Generation agrees to retire the coal-fired boilers at both the Fisk Generating station and the Crawford Generating station earlier than might otherwise be required under 35 Ill Admin. Code 225. Petition for Variance at 2-3.
 4. On April 24, 2012, the Illinois EPA published notice of Midwest Generation’s petition in the *Waukegan News Sun* pursuant to 415 ILCS 5/37(a)(2010) and 35 Ill. Adm. Code 104.214(a). Letter notice of the Petition was also sent on April 19, 2012, to numerous State Representatives and State Senators along with members of Congress, the Chairman of the Lake County Board and the Lake County State's Attorney. Many other interested parties were notified by letter, as well. Others were notified by e-mail. A few letters were returned as undeliverable and a second attempt to contact those people occurred where it was deemed necessary and prudent. All returned letters were added to the file. To date, no public comments have been received regarding this matter.
 5. Should any comments be received before the end of the comment period, the Agency will file an amendment to its Recommendation addressing any necessary issues.
 6. Pursuant to 35 Ill. Adm. Code 104.234, the Board accepted the Midwest Generation’s variance petition for hearing on April 30, 2012.

7. The Illinois EPA is required to make a recommendation to the Board on the disposition of a petition for variance within forty-five (45) days of filing of the petition or any amendment thereto or thirty (30) days before a scheduled hearing pursuant to 35 Ill. Adm. Code 104.216.

II. BACKGROUND

8. The Waukegan Generating Station, Agency I.D. No. 097190AAC, is an electric generating station owned and operated by Midwest Generation, LLC. The Waukegan Generating Station is located at 401 East Greenwood Avenue, Waukegan, Lake County, Illinois 60087-5197. Petition for Variance at 3.
9. Waukegan is a major source subject to the Clean Air Act Permitting Program ("CAAPP"). 415 ILCS 5/39.5 (2010). Petition at 6. The Illinois EPA issued a CAAPP permit to Midwest Generation for Waukegan on February 7, 2006. Id. As Petitioner states, this permit is under appeal at PCB 06-146. Id.
10. On July 19, 2007, the Illinois EPA issued Midwest Generation a construction permit authorizing the installation of activated carbon injection ("ACT") equipment at the Waukegan Station, as required by the CPS. Id. Midwest Generation appealed this permit at PB 08-020. Id. This permit has been partially stayed. Id. at 7.
11. On November 19, 2010, the Agency issued Midwest Generation a construction permit authorizing the installation of a dry sorbent injection system and the conversion of the hot-side ESP to a cold-side ESP for Waukegan Unit 7. Id. Midwest Generation has obtained a one-year extension for this permit. Id.
12. The Fisk Generating station is the subject of permit appeals at PCB 08-018 and PCB 06-

057. The Crawford Generating station is the subject of permit appeals at PCB 08-019 and PCB 06-056.

13. The Agency accepts and incorporates by reference the description of the facility in Part I, paragraphs one through six of the Petitioner's Petition labeled "Background". See Petition p 3-6.

14. To the best of the Agency's knowledge, there are no state air pollution enforcement actions currently pending before the Board.

15. The Petitioner appears to be involved in one case in the United States Court of Appeals for the 7th Circuit, *United States v. Midwest Generation*, 12-1026 (2012).

III. RELIEF REQUESTED

16. The variance would be for Unit 7 at the Waukegan plant. *Id.* at 9.

17. The provisions from which Midwest Generation seeks relief- are as follows:

Section 225.296 Combined Pollutant Standard: Control Technology Requirements for NO_x, SO₂, and PM Emissions

a) General Technology Requirements for NO_x and SO₂.

1) On or before December 31, 2013, the owner or operator must either permanently shut down or install and have operational FGD equipment on Waukegan 7;

c) Control Technology Requirements for PM. The owner or operator of the two specified EGUs listed in this subsection that are equipped with a hot-side ESP must replace the hot-side ESP with a cold-side ESP, install an appropriately designed fabric filter, or permanently shut down the EGU by the dates specified. Hot-side ESP means an ESP on a coal-fired boiler that is installed before the boiler's air-preheater [SIC] where the operating temperature is typically

at least 5500 F, as distinguished from a cold-side ESP that is installed after the air pre-heater where the operating temperature is typically no more than 3500 F.

1) Waukegan 7 on or before December 31, 2013....

35 Ill. Adm. Code 225.296 (a)(1) and (c)(1).

18. The variance will give Midwest Generation an additional year to install FGD equipment and convert the hot-side precipitator on that unit to a cold-side precipitator or shut down the unit. *Id.* at 9-10.
19. Petitioner stresses that it is not that it cannot comply with the CPS. *Id.* at 16. Rather, it would be expensive and inefficient for it to do so. *Id.* Moreover, since its request results in a net environmental benefit, it would be arbitrary and unreasonable to make it comply with 35 Ill. Adm. Code 225.296(a)(1) and (c)(1) of the CPS.

IV. FACTS PRESENTED IN THE PETITION

20. As required by 35 Ill. Adm. Code 104.216(a), the Illinois EPA has investigated the facts alleged in Midwest Generations Variance Petition. To date, no public comments have been received.
21. In order to achieve compliance with the CPS, Midwest Generation requests a variance for one year from 35 Ill. Adm. Code 225.296(a)(1) and (c)(1) in order to allow the Petitioner to assess the economic situation for continued operation of Waukegan 7 and either install a dry sorbent injection system and convert the hot-side ESP to a cold-side ESP or, shut down the unit.
22. Midwest Generation examined several options to comply with the requirements of

Section 225.296(a)(1) that FGD equipment be installed or the unit shuts down by 2013. Id. at 10.

23. If allowed to delay the installation of the dry sorbent system by a year, Midwest Generation states that it can install both the Unit 7 dry sorbent system and the Unit 8 dry sorbent system at the same time. Id. This, Midwest Generation believes, will lead to significant cost savings. Id.
24. Midwest Generation also points out that they will need to convert the ESP from hot-side to cold-side and they obtained a permit for this when they obtained the construction permit for installing the dry sorbent injection system. Id.
25. The conversion of the ESP will also require the shutdown of Unit 7 for an extended time which must be coordinated with PJM, the regional transmission system operator. Id. at 13. This will also affect the timing of the construction activities. Id.
26. In the meantime, the USEPA developed a new regulatory framework. Concerning mercury, delaying the replacement of the hot-side ESP will further delay for control of mercury and other hazardous air pollutants from coal-fired boilers, but they will still be controlled and Waukegan will still reduce mercury emissions significantly prior to implementation of the federal Mercury Air Toxics Standard (“MATS”). Id. at 13.
27. After the promulgation by the USEPA of the MATS, USEPA also promulgated the Cross-State Air Pollution Rule (“CSAPR”). Petitioner points out that the Clean Air Mercury Rule (“CAMR”) and Clean Air Interstate Rule (“CAIR”), which formed the basis of the CPS, were both replaced by CSAPR and MATS. The new CSAPR is significantly more stringent than CAIR, but it has been appealed and it is uncertain if

the deadlines in the CSAPR will also be delayed, or if the conditions of the CSAPR will change assuming it survives the appeal. *Id.* at 15-16. The one-year extension granted by the variance will help to synchronize all of these various timing requirements. *Id.* at 15.

28. The Illinois EPA has reviewed the information supplied by the Petitioner and found it to be accurate. The calculations concerning emission reductions are also accurate.
29. Accordingly, the Petitioner's variance results in a net environmental benefit.

V. ENVIRONMENTAL IMPACT

30. Petitioner asserts that there are two monitoring stations operated by the Agency located in Lake County: "No. 24 at the Waukegan North Fire Station, AIRS Code 170971002, and No. 25 at Zion Camp Logan, AIRS 170971007. 2010 AQ Rpt., p. 34. Ozone is monitored at the Waukegan North Fire Station: ozone and PM_{2.5} are monitored at the Zion Camp Logan monitor." *Id.* at 5-6. The Waukegan station closed down in 2010. There is also a monitoring station in Northbrook, 170314201.
31. There have been 19 exceedances of the National Ambient Air Quality Standard ("NAAQS") for ozone measured at these monitoring stations for either the 1 hour standard or the 8 hour standard during the 2009, 2010, and 2011 ozone season. Quality assured data is not yet available for 2012.
32. The central argument of Midwest Generation is that the accelerated decision to close (or retrofit) the coal-fired boilers at Fisk and Crawford and the reductions that will occur as the result of the decision will more than compensate for the increased pollution from delaying the retrofit of Waukegan 7. The emission reductions presented by the Petitioner assume that the Fisk and Crawford units would remain operating and they would not

upgrade their pollution control equipment until required to do so by the CPS. This analysis allows several years worth of avoided emissions to offset the single additional year of emissions from Waukegan 7.

33. Based on the available information, Midwest Generation has shown that there will be an environmental benefit to the granting of the variance. The CPS requires the Petitioner to achieve a system-wide SO₂ emission rate of 0.44 lb/mmBtu in calendar year 2013. Id. at 17. The early retirement of the coal-fired units at Crawford and Fisk, based upon when the CPS would have required retrofitting them with pollution control equipment, gives the Petitioner cumulative estimated reductions (considering the increase in emissions from Waukegan 7 for one year) of SO₂ of 32,231 tons for years 2013 through 2018, particulate matter reductions of 5,602 tons for years 2013 through 2018 and NO_x emissions reductions of 9,556 tons for years 2013 through 2018 should the variance be granted (obviously more emission reductions if Fisk and Crawford close in September, 2012). See Table 1, Petition p. 21. Mercury emissions will, however, increase by 20 pounds. Id.
34. Petitioner notes that the USEPA has stated that while mercury is a concern, there is a greater concern for fine particulate matter emissions. Midwest Generation stresses that the reduction in PM precursors, SO₂ and NO_x, outweighs any deferral in the reduction of mercury that would be required under the CPS. Id. at 23.
35. Furthermore, the Petitioner states that because of the persistent and bioaccumulative nature of mercury, the reductions in mercury emissions from Fisk and Crawford because of the early closure, mitigate the extra year of mercury emissions from Waukegan 7. Id.

at 20. The Illinois EPA agrees, especially considering the vast difference in emissions avoided compared to emissions produced.

36. Petitioner stresses that it will operate and comply with all other provisions of the CPS during the term of the Variance. *Id.* at 23 – 24.

VI. ARBITRARY AND UNREASONABLE HARDSHIP

37. In considering whether to grant or deny a variance pursuant to Section 35(a) of the Act, the Board is required to determine whether the Petitioner has shown that it would suffer an arbitrary or unreasonable hardship if required to comply with the regulation or permit requirement at issue. The Act provides that “The Board may grant individual variances beyond the limitations prescribed in this Act, whenever it is found, upon presentation of adequate proof, that compliance with any rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship.” 415 ILCS 5/35(a)(2010).
38. Petitioner states that the need for the variance results from two factors. First, the ongoing deterioration in energy market prices combined with substantial new federal environmental regulations have made continued investment in the Petitioner’s fleet questionable and subject to reconsideration at this time. *Id.* at 2. Second, the CPS requires Waukegan Unit 8 to be retrofitted with FGD equipment by December 31, 2014, and Petitioner has determined that it can gain cost and other efficiencies by concurrent bidding of the two construction projects together for concurrent building. *Id.* Unit 7 will comply with the State’s unit-by-unit limitations by the CPS’s January 1, 2015 deadline. *Id.* at 19-20.

39. Petitioner demonstrates that there is a net benefit to the environment from the early closure of Fisk and Crawford stations, in exchange for a delay of one year to control or close Waukegan Unit 7. *Id.* at 22. Thus, the hardship to the Petitioner should the variance not be granted outweighs any impact on human health and the environment. *Id.* Petitioner claims that none of these conditions were foreseen when the CPS was written, and therefore, to enforce the CPS as written would impose undue economic hardship on it. *Id.* at 2. Should the Board not grant the variance, Petitioner states that it will have to incur the added costs from not taking advantage of the efficiencies in bidding out the work on Units 7 and 8. Petitioner notes that if it is required to retrofit Unit 7 by the current timeline in the CPS, the costs might be economically impractical and result in the *permanent* closure of Unit 7 and the subsequent loss of jobs. *Id.* at 10. Petitioner states that it does not seek a CPS fleet-wide increase in emissions, and that the shutdown of Fisk and Crawford will more than offset the one-year delay in achieving any emission reductions from Waukegan Unit 7 by the installation of FGD.
40. It is correct that the regulatory regime which formed the CPS has changed dramatically. USEPA has issued new, and quite different, rules to replace CAIR and CAMR. The Petitioner is also correct in stating that the closing of the coal-fired boilers at Fisk and Crawford will compensate for running the Waukegan 7 an extra year without FGD.

VII. CONSISTENCY WITH FEDERAL LAW

41. Pursuant to Section 35 of the Act [415 ILCS 5/35 (2010)] and 35 Ill. Adm. Code 104.208(a), all petitions for variance must be demonstrated to be consistent with federal law. Midwest Generation states in its Petition that “[t]he provisions from which Midwest

Generation seeks relief are not currently part of the Illinois SIP and are not federally enforceable and are consistent with federal laws." Id. at 25.

42. The variance provisions of the Act and the Board's procedural regulations have been approved as part of the Illinois State Implementation Plan ("SIP") to achieve the NAAQS for ozone in the greater Chicago ozone attainment area. However, in order for U.S. EPA to recognize the substance of this variance and to incorporate the provisions into federal law, any variance granted to Midwest Generation by the Board in this proceeding must be submitted to USEPA as a SIP revision. In order to meet the requirements of Section 110(a) of the Clean Air Act, a public hearing must be held on the proposed variance before it may be submitted as a SIP revision.
43. Petitioner asserts that at the time of filing, it was consistent with Federal law. Id. at 25. However, the Illinois EPA has submitted portions of the CPS as amendments to the Illinois SIP for purposes of satisfying the Best Available Retrofit Technology ("BART") program (regional haze). Id. Petitioner notes that because the USEPA has not yet approved this SIP revision, it is not currently part of the Illinois SIP and thus the variance is consistent with Federal law. Id. Should the BART/Regional Haze SIP be approved by the USEPA, the Petitioner states that the variance would still cause no negative impacts on the Illinois EPA's calculations regarding emission levels. Id. at 26. In addition, the Petitioner is willing to request that the Illinois EPA submit the variance order along with updated emission calculations as another SIP amendment. Id.
44. Concerning mercury emissions, it was not a part of the Illinois BART/Regional Haze SIP submittals. Id. at 26. Thus the one year reduction in mercury control efficiency, has no

import under the Clean Air Act. Id. at 27.

45. It is probable that USEPA will concur with such a SIP revision as there will be a significant decrease in SO₂ and NO_x emissions due to the early closure of the Fisk and Crawford stations. The Illinois EPA will submit a Board order granting the variance to USEPA as a SIP revision.

VIII. COMPLIANCE PLAN

46. As explained above, Midwest Generation has proposed an early closure of the coal-fired boilers at its Fisk and Crawford stations, provided that it is granted an additional year to install FGD equipment and convert the hot-side precipitator on Waukegan 7 to a cold-side precipitator, or, alternatively, to shut down the unit.
47. Although the relief requested would extend the compliance date for Waukegan 7 for up to a year, the compliance plan suggested by Midwest Generation under Part VI of the Petition is reasonable.

IX. RECOMMENDATION AND CONCLUSION

48. Pursuant to Section 35 of the Act [415 ILCS 5/37(a) (2010)] and 35 Ill. Adm. Code 104.216(b), the Illinois EPA must prepare a recommendation for the Board.
49. As explained above, Midwest Generation's proposal is expected to result in a net environmental benefit.

WHEREFORE, for the reasons stated herein, the Illinois EPA neither supports nor objects to the Board granting Midwest Generation's Petition for Variance.

Respectfully Submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: 

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DATED: May 25, 2012
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STATE OF ILLINOIS)
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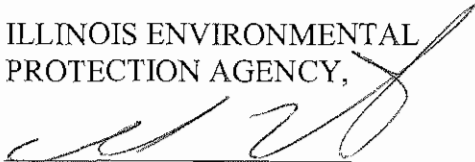
I, the undersigned, an attorney, state that I have served electronically the attached the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY RECOMMENDATION upon the following persons:

TO:

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