

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC)
Petitioner,)
v.) PCB 16-19 (Time-Limited Water Quality
ILLINOIS ENVIRONMENTAL) Standard Variance)
PROTECTION AGENCY)
Respondent.)

NOTICE OF FILING

To:

Don Brown, Clerk of the Board Illinois Pollution Control Board James R. Thompson Center, Suite 11-500 100 W. Randolph Street Chicago, IL 60601 don.brown@illinois.gov	Sara Terranova Illinois Environmental Protection Agency 1021 N. Grand Avenue East P.O. Box 19276 Springfield, IL 62794-9276 sara.terranova@illinois.gov
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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board Petitioner Midwest Generation, LLC's Motion for Leave to Amend Its Petition for Time-Limited Water Quality Standard, a copy of which is herewith served upon you.

Dated: January 25, 2019

MIDWEST GENERATION, LLC

By: /s/ Susan M. Franzetti

Susan M. Franzetti
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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Petitioner, Midwest Generation, LLC's Motion for Leave to Amend Its Petition for Time-Limited Water Quality Standard, via electronic mailing to the following:

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Dated: January 25, 2019

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MIDWEST GENERATION, LLC)	
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v.)	PCB 16-19
ILLINOIS ENVIRONMENTAL)	(Time-Limited Water Quality Standard)
PROTECTION AGENCY)	
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**PETITIONER’S MOTION FOR LEAVE TO AMEND ITS PETITION
FOR TIME-LIMITED WATER QUALITY STANDARD**

Midwest Generation, LLC, (“MWGen”), by and through its attorneys, hereby submits to the Illinois Pollution Control Board (the “Board”) its Motion for Leave to Amend Its Petition for Time-Limited Water Quality Standard in the above-captioned matter.

1. On July 1, 2015, MWGen filed a Petition for Variance for the Will County and Joliet Stations, pursuant to Section 35 of the Illinois Environmental Protection Act (the “Act”).

2. On February 24, 2017, MWGen’s variance petition was automatically converted to a Petition for a Time-Limited Water Quality Standard (“TLWQS”) by operation of 415 ILCS 5/38.5(c).

3. On April 12, 2017, the Board ruled that MWGen’s “converted” variance petition did not substantially comply with Section 38.5(e) of the Act, an entirely new provision of the Act that was enacted after MWGen filed its 2015 petition.

4. On April 26, 2018, the Board adopted the TLWQS regulations and required MWGen to file an amended TLWQS petition by July 26, 2018.

5. On June 27, 2018, nearly one month before the deadline, MWGen filed an amended TLWQS petition (the “Amended Petition”). The Amended Petition was substantially different

from MWGen's 2015 petition because it addressed the new petition requirements under Section 38.5 and eliminated the request for relief pursuant to Section 35 of the Act.

6. A copy of the Amended Petition was delivered to the U.S. Environmental Protection Agency ("U.S. EPA").

7. Under 35 Ill. Admin. Code 104.570(a), a TLWQS is not effective for Clean Water Act purposes until approved by the U.S. EPA.

8. The Board's TLWQS regulations seek to avoid "extended delays at the federal level and last-minute, previously unexplained, variance disapprovals" by the U.S. EPA. *Regulatory Relief Mechanisms: Proposed New 35 Ill. Adm. Code Part 104.Subpart E*, R 18-18, slip op. at 8 (Feb. 8, 2018). The regulations do so by encouraging parties to begin informal discussions with U.S. EPA representatives early in the petition process.

9. On December 10th, 2018, representatives of MWGen, the U.S. EPA, and the Illinois Environmental Protection Agency ("IEPA"), met in person and by conference call to discuss the Amended Petition. In that discussion, the U.S. EPA asked questions regarding and requested additional information or clarification of certain portions of the Amended Petition. MWGen provided responses to the U.S. EPA's comments. The U.S. EPA agreed to continue the discussions upon its review of the additional information provided by MWGen.

10. However, on December 22nd, 2018, the federal government shut down and the U.S. EPA personnel involved in this matter are not available to continue the discussions concerning the TLWQS Petition. But based on the December 10, 2018 discussion, MWGen anticipates that further amendments to its Amended Petition will be needed to address the comments and questions raised by U.S. EPA, but the specific content of those amendments cannot be determined until the discussions with the U.S. EPA and IEPA are completed.

11. Once the discussions with U.S. EPA and IEPA are concluded, MWGen will be able to amend its petition to address the U.S. EPA's areas of interest. This may serve to shorten the overall duration of this proceeding by addressing U.S. EPA's areas of interest sooner rather than later. However, because the date by which the federal government shutdown affecting the U.S. EPA discussions will end is unknown, MWGen cannot provide the Board with a date certain for filing the amendments.

12. Accordingly, once the U.S. EPA shutdown ends, MWGen will promptly provide the Board a progress update on the expected length of the remaining discussions with IEPA and U.S. EPA as soon as it is able to resume contact with the U.S. EPA personnel involved in this matter. At that time, it is also expected that MWGen will be able to provide the Board with a date certain by which MWGen will be able to file an amended petition. Additionally, MWGen will continue to provide progress updates to the assigned Hearing Officer during scheduled status conferences. (The next status conference in this proceeding is scheduled for January 31st, 2019.) If the Board has begun reviewing the current petition for substantial compliance under 35 Ill. Adm. Code 104.545, MWGen respectfully requests that the Board suspend that review so that MWGen, IEPA, and U.S. EPA can conclude their discussions and the amendments can be presented for the Board's review and consideration.

12. MWGen has conducted outreach to the IEPA. The IEPA has advised MWGen's counsel that it has no objection to the relief requested in this motion.

WHEREFORE, Midwest Generation, LLC, respectfully requests that the Board grant its Motion for Leave to Amend Its Petition for Time-Limited Water Quality Standard.

Respectfully submitted,

Midwest Generation, LLC

By: /s/Susan M. Franzetti
Susan M. Franzetti

Dated: January 25, 2019

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