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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Midwest Generation, L.L.C.'s Subdocket D First Notice Opinion and Order Reply Comments were filed electronically on December 12, 2014 with the following:

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and that true copies were mailed by First Class Mail, postage prepaid, on December 12, 2014 to the parties listed on the foregoing Service List.

/s/ Susan M. Franzetti

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
WATER QUALITY STANDARDS AND) **R08-09 Subdocket D**
EFFLUENT LIMITATIONS FOR THE) **(Rulemaking-Water)**
CHICAGO AREA WATERWAY SYSTEM)
AND LOWER DES PLAINES RIVER)
PROPOSED AMENDMENTS TO 35 ILL.)
ADM. CODE 301, 302, 303, AND 304)

MIDWEST GENERATION, LLC'S
SUBDOCKET D FIRST NOTICE OPINION AND ORDER REPLY COMMENTS

I. Introduction

Despite the substantial amount of time invested in Subdocket D by the Board and the participating parties, the issues surrounding the adoption of thermal standards for the Subdocket D UAA waters are still vigorously debated with little or no consensus as to what the thermal standards should contain. Several participants, including the Illinois Environmental Protection Agency (“Illinois EPA” or the “Agency”), the United States Environmental Protection Agency (“U.S. EPA”) and Midwest Generation, LLC (“Midwest Generation”) submitted First Notice Opinion and Order comments opposing the Board’s suggestions. In its First Notice Opinion and Order, the Board has explained why the Illinois EPA’s proposed thermal standards are scientifically unsound and inconsistent with the Clean Water Act and its implementing regulations.¹ While the Board acknowledged the underlying methodology used to prepare the Midwest Generation thermal standards proposals, it expressed concerns relating to the species and data used to support the proposals and the absence of witness testimony in support of the proposals.

In their First Notice Opinion comments, both the Illinois EPA and the U.S. EPA continue to assert that the Board should adopt the Illinois EPA’s proposed thermal standards. But they do not address any of the significant scientific deficiencies in the Agency’s thermal standards proposal that the Board described in its First Notice Opinion. There plainly is no defensible basis on which to proceed to adopt the Agency’s proposed thermal standards.

¹ First Notice Opinion and Order, R08-9(D), Sept. 18, 2014, pp. 204-05 (“Board’s First Notice Opinion”).

Regarding the Board's suggested approach of defaulting to the General Use numeric thermal standards, both agencies contend—without any scientific support—that some of the General Use standard's narrative provisions must be adopted. But these provisions are patently inapplicable to the effluent-dominated and modified Upper Dresden Island Pool Use (“UDIP”) and Aquatic Life Use B (“ALU B”) waters. Neither Agency provides any explanation for why the Board should adopt an approach so inconsistent with the Board's actions in Subdocket C where aquatic life use designations lower than General Use were adopted.

Midwest Generation addressed the Board's questions regarding the Midwest Generation proposed thermal standards in its First Notice Comments, enabling the Board to find that the proposed standards are scientifically sound and consistent with the Clean Water Act.² But should the Board still have concerns, then the sound and defensible path forward is for the Board to create a new subdocket for the thermal standards in which the parties can work to address and satisfactorily resolve the issues and concerns the Board has identified with the various thermal standards alternatives. Continuing the necessary work to identify scientifically sound thermal standards that are adequately, but not overly, protective of the new use designations for the UAA waters is a reasonable and defensible approach under the circumstances. The suggested alternative of expanding the proposed application of the General Use thermal standards to include narrative provisions that are unworkable in these lower quality waters only succeeds in making the application of the outdated General Use thermal standards even more arbitrary and unreasonable.

In both its Post-Hearing Comments and First Notice Comments, Midwest Generation has explained, in detail, why the record supports the adoption of either of Midwest Generation thermal standards proposals. Midwest Generation will not repeat those points here. However, if the Board concludes otherwise, then the subdocket approach is truly the Board's only other practical option. The Illinois EPA's procedural concern that it did not have an opportunity to question a witness concerning Midwest Generation's thermal standards proposals could be addressed in a newly-created thermal standards subdocket.³ Although the subdocket approach will postpone somewhat the adoption of thermal standards, this approach is far superior to adopting outdated, inapplicable and overly stringent General Use thermal standards which

² Midwest Generation First Notice Comments, PC1418, pp. 11-20 (“Midwest Gen. Comments”).

³ Illinois EPA Response to First Notice Comments, PC1409, pp. 6-7.

threaten to compel most, if not all, dischargers to these waters to seek site-specific relief for their thermal discharges.

The subdocket alternative also provides an opportunity to bring the Illinois thermal standards into the 21st Century and to ensure that the Board adopts standards that are no stricter than necessary to protect the designated uses of the UDIP and ALU B waters. At present, with all of the information that has been presented and reviewed, both the Agency and interested stakeholders are better informed about the issues that need to be addressed when updating thermal standards and how to appropriately utilize relevant thermal and aquatic life data for these waters. While taking another “crack” at these issues may at first seem off-putting, the subdocket approach is far more likely to produce a defensible outcome and is clearly preferable to the default application of the outdated and inapplicable General Use thermal standards to these lower-quality waters.

II. A Subdocket Approach Provides the Opportunity for Adopting Scientifically Sound Thermal Water Quality Criteria that are Consistent with the Clean Water Act.

Earlier in these proceedings, the Board was asked to create a new subdocket for chloride issues. It declined to do so, observing that (1) the parties had not indicated what new information could justify the creation of a new Subdocket and, (2) the Board was satisfied that there was sufficient evidence in the record to move forward with the proposed chloride standards.⁴ The Board is confronted with a very different situation here. The Board itself has already identified material thermal standards information that it believes is missing from the record; the creation of a new subdocket is the logical way to get and use that information to derive appropriate thermal standards. Further, as discussed here and in previous comments, the Board’s proposal to apply General Use thermal standards to the Chicago Area Waterway System (CAWS) and UDIP waterways will impose overly stringent limitations on dischargers.

A. A new Subdocket would allow the Board to adopt Thermal Standards supported by sound scientific methods.

In its First Notice, the Board commented favorably on the methodology used by EA to develop the standards proposed by Midwest Generation.⁵ The methodology behind both of these proposals was indeed robust; most notably, the 2007 EA proposal was endorsed by Dr. Charles

⁴ Board Order, R08-9(D), Mar. 6, 14.

⁵ Board’s First Notice Opinion at p. 210.

Coutant, a nationally recognized and respected thermal standards expert: He is the principal author of the Heat and Temperature chapter of the National Academy of Sciences/National Academy of Engineering report Water Quality Criteria-1972, and a co-author of the U.S. EPA's 1977 interagency guidance for implementing Section 316(a) of the Clean Water Act.⁶ To quote Dr. Coutant: "[C]arefully developed and thoughtfully analyzed field data are scientifically superior to extrapolations from laboratory-derived temperature requirements for evaluating fish community responses to temperature."⁷ This is an important point: Because of their real-world basis, the EA thermal standards can take appropriate and reasonable account of the ability of fish to avoid thermally enhanced waters or to acclimate.⁸

But the Board has expressed its reluctance to adopt the EA standards proposed by Midwest Generation, citing in part the procedural objections of the Agency, which complains that it was denied a chance to cross-examine Midwest Generation's experts about the standards.⁹ The benefits of such a cross-examination are speculative. Indeed, the IEPA does not explain what questions it would like to have asked. But if the Board thinks that further vetting of the Midwest Generation proposed thermal standards would be helpful, it should pursue that vetting; passing up a scientifically sound and well-supported proposal to instead default to an outdated General Use standard that was never designed to apply to the waters at issue here would be unwise.

The same supporting rationale applies to the Board's concerns surrounding Midwest Generation's alternative proposal to adopt the AS 96-10 standard for the UDIP. The Board's concern that the AS 96-10 standard might be outdated is hard to understand; should not similar concerns block the extension of the General Use criteria, which predate the AS 96-10 thermal standards by over two decades? Further, AS 96-10's "age" is somewhat overstated; the Board reviewed the merits of the AS 96-10 standard in 2000 and unanimously found that the relevant factors required to justify the Board's original decision to grant an adjusted standard had not changed.¹⁰ Alternatively, by opening a thermal standards subdocket, the Board will have an opportunity to determine if AS 96-10 adequately reflects current conditions. This determination

⁶ See Coutant Letter dated August 9, 2007, (Attachment E to Midwest Generation's Post-Hearing Comments, PC1403, at Exhibit E, Apr. 30, 2014).

⁷ *Id.* at 1.

⁸ See Board's First Notice Opinion at p. 153.

⁹ *Id.* at p. 210.

¹⁰ Board Order, AS96-10, Mar. 16, 2000 at p. 4.

should not take very long; the changes to the Chicago Sanitary & Ship Canal ("CSSC") and UDIP since 2000 are not extensive and appear to be limited to the construction of the Aquatic Nuisance Species electric barrier and the closure of Fisk and Crawford. The construction of the barrier is not reasonably viewed as having caused a "change" in the resident aquatic community, but rather has imposed a barrier to aquatic migration through the CSSC. The closure of the Fisk and Crawford stations has likely somewhat lowered the ambient temperatures in the upper portion of the CSSC, but due to the unchanged nature of the CSSC habitat conditions, this change is unlikely to have significantly affected the resident aquatic community.

B. The Board's proposed default to General Use Standards is not defensible and conflicts with prior Board Decisions finding such Standards inapplicable to these waters.

As the First Notice comments the Board has received show, the proposed adoption of the General Use numeric standards has taken many of the stakeholders in this process by surprise. As a result, the Board has heard no testimony from, or cross-examination of, experts supporting this proposal. The Board's current plan would be a reversal of decades of recognition of the undisputed fact that General Use standards apply to high-quality, natural water bodies, not to man-made canals or highly modified river segments dominated by effluent flows. This understanding is about as old as the Board itself. For instance, in a 1972 Board Opinion concerning proposed water quality standards and effluent limitations, Docket No. 71-14, in discussing the principle underlying the "General Standards," (now referred to as "General Use Standards,") the Board noted that the standards were not meant to apply to the "few highly industrialized streams consisting primarily of effluents in the Chicago area."¹¹ The Board went on to note that "the evidence establishes that . . . meeting the [General Use] aquatic temperature standards in these same areas, as well as in the adjacent section of the Des Plaines River, would require cooling towers costing tens of millions of dollars and produce doubtful benefits in terms of stream improvements."¹² The Board reiterated this understanding in its adoption of the AS 6-10 Standard, relying heavily upon the fact that both the CSSC and UDIP were part of a "very artificial and significantly modified waterway that is limited in terms of habitat."¹³

¹¹ See Board Opinion, dated March 7, 1972, *In the Matter of Effluent Criteria, et al.*, Docket Nos. R70-80, R71-14 and R71-20, at p. 4.

¹² *Id.*

¹³ See Board Order, AS96-10, Oct. 3, 1996, at pp.6-7.

Indeed, in Subdocket C the Board seemed to recognize the unnatural nature of the water bodies involved in this rulemaking. The Board considered and rejected the idea of designating the UDIP as a General Use water, recognizing that the effluent-dominated UDIP could not fully meet the Clean Water Act's aquatic life goal.¹⁴ It also zeroed in on the conclusion that the CSSC should not be held to stricter thermal standards because the CSSC is subject to "irreversible modifications and is not capable of supporting non-tolerant aquatic life."¹⁵

C. Thermal standards are a Uniquely Complicated Issue, Deserving of their own Subdocket.

While any additional delay in this rulemaking process would, generally speaking, be undesirable, taking additional time to make sure the correct thermal standards are chosen is the responsible thing to do. Indeed, other state governments have pursued this same course by investing more time and resources into developing innovative and tailored approaches to regulating thermal discharges. For instance, Wisconsin recently completed a fifteen-year re-fashioning of its thermal standards.¹⁶ One product of Wisconsin's significant rulemaking effort was the creation of a water-body classification specifically for wastewater effluent channels; this classification carries relaxed temperature standards. Wisconsin also included within its updated thermal standards an established variance procedure covering "dissipative cooling" for domestic treatment works (*e.g.*, publicly owned treatment works) to provide relief from daily maximum "acute" thermal standards.¹⁷ Similarly, in updating its thermal water quality criteria, Wyoming also adopted criteria specific to effluent-dominated waters, subjecting them to general, narrative requirements that they not cause harmful acute or chronic effects to aquatic life.¹⁸

Also noteworthy is Colorado, which has adopted regulations based on scientific concepts that would not be out of place here. Colorado regulations include an "air temperature

¹⁴ Board Order, R09-09(C), Feb. 6, 2014, at p. 10.

¹⁵ *Id.* at 11.

¹⁶ Wisc. Dep't Natural Resources, CR No. 07-111, Report to Legislature pt.1, p. 1, *available at* https://docs.legis.wisconsin.gov/code/chr/related/2007/cr_07_111/cr_07_111_agency_report_to_legislature_part_1.pdf.

¹⁷ Wis. Admin. Code NR 104.2(1), 106.59(4), 106.59(6).

¹⁸ WY. Dep't Environmental Quality, *Water Quality Rules and Regulations*, ch.1 § 25(a), (d). In recent revisions to their regulations, Oregon recognized the need to "review and refine the beneficial use designations for [man-made] water bodies." Ore. Dep't of Environmental Quality, Temperature Water Quality Standard Implementation, p. 18, *available at* <http://www.deq.state.or.us/wq/pubs/imds/Temperature.pdf> Although Oregon has yet to return to this issue, their highlighting of it shows that it is of special significance and warrants further regulatory attention.

exemption” which allows for water temperatures to be exceeded during unusually warm days.¹⁹ As noted in Ingredion’s First Notice comments, the increasing unpredictability of the weather makes it difficult for dischargers to these UAA waters to comply with temperature limits during unseasonably warm winter days.²⁰ The Colorado thermal regulations also incorporate an exception for periods of unusually low flow, a condition also prevalent in the CSSW and UDIP due to the artificially controlled flow regime, which makes compliance with thermal standards unusually difficult.²¹

It is critical that the Board adopt modern thermal standards that keep pace with regulators in other states by taking advantage of current scientific knowledge and acknowledging the realities of the conditions prevalent in the CSSC and UDIP.²² To say these are effluent-dominated waters is almost an understatement: These waters sometimes consist *entirely* of effluent put out by the Stickney Water Reclamation Plant, the largest activated sludge treatment plant in the world.²³ “Effluent dominated rivers have unique characteristics and problems associated with them that are not the same as naturally occurring water bodies.”²⁴ Indeed, the differences reach down into the microbial level, with significantly different biota present in effluent-dominated waters when compared with natural waters.²⁵ The issue of how to adopt proper thermal standards for effluent-dominated, highly modified waters is critically important here.

The results other states have had after thoroughly addressing the complex issues involved in promulgating modern thermal water quality standards is presented here to show the Board that the derivation of practical standards is a necessarily difficult task. This proceeding has been hampered from its inception by the Agency’s decision to push forward for years with a thermal

¹⁹ 5 Colo. Code Reg. § 1002-31, at tbl. 1(5)(c)(i).

²⁰ Ingredion Inc.’s First Notice Comments, PC1421 at pp. 5-6.

²¹ 5 Colo. Code Reg. § 1002-31, at tbl. 1(5)(c)(i). Both the temperature excursion and the low-flow excursion were adopted “[d]ue to the complexity of a temperature standard and the potential for natural systems to have temperatures exceeding the numeric standards.” *Id.* at 172.

²² Iowa is also worth noting. Although Iowa does not have a specific category for effluent-dominated waters, its regulations acknowledge the need for site-specific criteria to be used in lieu of numeric criteria where “the chemical characteristics of the surface water such as . . . temperature . . . differ significantly from the characteristics used in setting the statewide criteria.” Iowa Admin. Code r. 61.2(5)(c)(2). That is certainly the case here.

²³ Bradley Drury, et al., *Wastewater Treatment Effluent Reduces the Abundance and Diversity of Benthic Bacterial Communities in Urban and Suburban Rivers*, 79 *Applied & Environmental Microbiology* 1897, 1897 (Mar 2013), available at <http://aem.asm.org/content/79/6/1897.full.pdf>.

²⁴ Annalisa Onnis-Hayden, et al., Northeastern University Center for Urban Environmental Studies, *Effluent Dominated Waters 2* (2006), available at http://iris.lib.neu.edu/cgi/viewcontent.cgi?article=1000&context=ceus_pubs,

²⁵ Drury et al., at p. 1904.

proposal that had not been subjected to any sort of peer-review process. Even after the flaws in that proposal were identified through hearing testimony, there was no attempt at stakeholder outreach or to create a work group that could have devoted resources to further evaluation and review of the thermal water quality standards issues. Midwest Generation's alternative proposals also were ignored by the Agency. In sum, unlike the processes other states have followed to update their temperature standards and tailor them to updated use classification systems, the process here suffered from a lack of attention to very complex thermal standards issues.

Midwest Generation recites this history not for the purpose of casting blame, which admittedly does not lie solely with the Agency, but rather to explain to the Board why, given the circumstances, it should open a new thermal standards subdocket instead of proceeding with the adoption of General Use thermal standards. Plainly stated, adopting the General Use thermal standards would be a failure and a waste of the resources invested in this UAA rulemaking proceeding to date. The above examples of how other states have addressed the process of updating their thermal standards show that the additional commitment of time and resources to the thermal standards questions will pay far more dividends for the Board, for the Agency, and for the stakeholders to this process.

III. The Board's Decision Not to Adopt the General Use Narrative Standards Was Correct.

Without acknowledging that the General Use numeric standards were never intended to apply to the lower use UAA waters, the Illinois EPA, the U.S. EPA and the Environmental Groups urge the Board to make the application of General Use standards even more indefensible by proceeding further to selectively incorporate only certain portions of the General Use thermal standards, namely Sections 302.211(b), (c) and (d). They contend that their incorporation is essential to making the standards "approvable," without any explanation as to why the adoption of these narrative General Use provisions would somehow "cure" the purported deficiency in the Board's First Notice approach.

The Environmental Groups also contend that the Board unintentionally omitted the General Use Narrative Standards (302.211(b)-(d)) from its proposed thermal standards. That this omission was intentional is clear from the Board's First Notice Opinion—the Board was clearly not attempting to cut-and-paste selective General Use thermal narrative standards into the new thermal rules to be codified in Section 302.408. The Board's approach showed an appreciation of

the fact that the General Use narrative standards, even more than the numeric standards, are clearly inapplicable to these UAA waters and their application would be wholly unjustified and arbitrary.

The reasons for the Board's supposed "omission" of the General Use narrative standards are readily apparent, which is also a probable reason why neither agency tried to provide substantive reasons to support their inclusion. They are standards which, as discussed above, were never intended to apply to the highly modified, flow-controlled, effluent-dominated waterways at issue here. By their express terms, Sections 302.211(b) through (d) cannot be applied to these waters because they are not "natural" waterways. Section 302.211(b) addresses "no abnormal temperature changes ... unless caused by natural conditions." There are no "natural conditions" for the highly modified and flow-controlled UDIP. The man-made CSSC also clearly has no "natural conditions." What is "abnormal" for a natural waterbody may instead be entirely "normal" for the UDIP and CSSC. Without further definition of what qualifies as "abnormal" or "normal" for these UAA waters, subparagraph (b)'s language is impermissibly vague. If Section 302.211(b) is applied to these UAA waters, dischargers will not be able to determine when their thermal discharges will or will not comply with this narrative standard.

The same is true of the narrative standard in Section 302.211(c) which requires that "[t]he normal daily and seasonal temperature fluctuations which existed before the addition of heat due to other than natural causes shall be maintained." There were no "normal daily and seasonal temperature fluctuations" for the CSSC because it is a purely man-made channel that has had thermal discharges essentially since its creation. For the UDIP, its channelized and flow-controlled conditions have existed for decades and there is certainly no evidence in this record as to what its "normal daily and seasonal temperature fluctuations" may have been before any "unnatural" sources added heat.

And finally, the same fatal problems characterize the last of the three suggested additional narrative standard presented for the Board's consideration. Section 302.211(d), sometimes described as the "5° F Delta T Rule," prohibits temperature rises above "natural temperatures" by more than 5° F. What are the "natural temperatures" for the CSSC and UDIP? There is not a shred of evidence in this record indicating what these "natural temperatures" are that must not be exceeded by more than 5° F. Consequently, dischargers are left in the dark as to

what the regulations require of them. Again, the proposed inclusion of Section 302.211(d) would incorporate an impermissibly vague thermal narrative standard into the new rules.

The Environmental Groups attempt to justify the inclusion of the Section 302.211(d) narrative standard by contending it will protect against cold shock. The Environmental Groups provide no support for this contention and the record is devoid of any such support. The Board already has been provided with numerous comments explaining why cold shock is not and has not been an issue in these particular waters. It is simply unnecessary to include Section 302.211(d) for the purported purpose of preventing cold shock. Additionally, as Midwest Generation has said before, if the Board were to decide that a cold shock provision is needed, it should include the cold shock provision Midwest Generation has suggested for consideration.

At least the Environmental Group's comments recognize and admit that the adoption of the narrative standards would make these rules so onerous that even the nominal thermal discharges associated with public treatment works could not consistently achieve compliance. For this reason, the Environmental Groups concede that the thermal standards would need to contain exceptions for the Metropolitan Water Reclamation District of Greater Chicago's ("MWRD") O'Brien and Calumet water reclamation plants discharges because there is no practical way for these plants to achieve compliance.²⁶ But the problem with this proposed exemption is that there is no lawful basis on which the Board may exempt these dischargers from compliance with the proposed narrative thermal standards. The U.S. EPA has made clear in its denial of the Citgo variance, and in its proposed Clarifications Rule²⁷, that an exemption from a water quality standard must be based on at least one of the six UAA factors set forth in 40 C.F.R. §131.10(g). No such showing has been made for either the O'Brien or the Calumet plants' thermal discharges. But the mere fact that the Environmental Groups concede that these two plants would need such an exemption is telling evidence that the General Use standards should not be applied. Further, if there are to be any exemptions granted, the Environmental Groups' suggestion is only the first drop of a flood of site-specific relief requests by other dischargers that would follow if the Board revisits its decision to reject the General Use narrative provisions.

Midwest Generation urges the Board not to "cherry pick" among any of the narrative standards contained in the General Use thermal standards. Such an approach would only serve to

²⁶ Environmental Groups' First Notice Comments, PC1422, at p. 3.

²⁷ See 78 Fed. Reg. 54517 (Sept. 4, 2013).

make the thermal water quality standards even more unreasonable and ill-suited to these waters. There is no suggestion that any of these three narrative standards are scientifically sound as applied to these waters.²⁸ There is also no defense to the vagueness issues that their inclusion would raise. Finally, it is not justifiable to selectively include only these three narrative provisions rather than any of the other narrative conditions in the General Use thermal standards. For example, the Board has proposed to delete the narrative provision in Section 302.211(e) which provides that the 60° and 90° numeric standards are to be met “at representative locations in the main river.” What is the justification for not also including this narrative condition that specifies the relevant in-stream compliance locations applicable to the numeric General Use Standards? Similarly, the General Use narrative standard in subparagraph (i) requires that a complaint be filed before any corrective measures to thermal discharges may be imposed and that any such requirement to implement corrective measures must be based on a finding that the heated effluent causes “significant ecological damage” to the receiving stream. Inexplicably, none of the commenters asked to include this narrative standard.

Midwest Generation certainly does not support the proposed adoption of the numeric General Use thermal standards. But the suggestion that additional General Use thermal narrative standards must be included as well truly makes the application of such standards completely unworkable and unjustified for UAA waters which have lower designated aquatic life uses. The proposed inclusion of these narrative standards throws any scientific or sound reasoning out the window

IV. Conclusion

For the reasons set forth in Midwest Generation’s First Notice Comments, Midwest Generation requests that the Board adopt either of the EA thermal standards previously proposed. Alternatively, for the reasons set forth above, the Board should create a new subdocket so that it

²⁸In what appears to be a gambit to make the inclusion of General Use narrative standards more palatable, the Environmental Groups speculate about the future of the Joliet and Will County Stations, contending without any factual support that these stations should be able to achieve compliance without the need for any variance from the General Use thermal standards. See Environmental Groups’ First Notice Comments at p. 4. It should be apparent to the Board from Midwest Generation’s previous testimony regarding its stations’ thermal discharges, as well as its First Notice Comments, that a thermal variance would be unavoidable for all three of these stations in the event the General Use thermal standards were to be adopted. Under the future plans for these stations (see Midwest Generation’s First Notice Comments at pp. 2-3), they all will continue operating. The Joliet Stations will be converted to natural gas, but such a conversion does not change the temperature of the discharges. Similarly, while the Will County Station will be capable of generating less electricity upon the closure of one of its two remaining units, this also will not change the temperature of the discharges from the remaining unit in operation.

can fully consider Midwest Generation's proposed thermal standards, including any reasonable additions or modifications to those standards. The 2007 EA standards in particular are the most defensible and appropriate thermal standards before the Board. These proposed standards are both scientifically sound and consistent with the Clean Water Act's requirements. In the alternative, the Board should adopt one of the other alternatives described in Midwest Generation's First Notice Comments, such as the 2003 EA thermal standards, or the AS 96-10 standards, which are still overly protective but less objectionable than General Use thermal standards.

Finally, the Board should explicitly reject the suggestion that the proposed rules be changed to apply certain of the General Use thermal narrative standards to the CSSC and UDIP. The Board correctly recognized the first time around that these narrative provisions do not apply to these waters and would be much more stringent than necessary to preserve the present aquatic life uses of those water bodies. None of the participants has provided any persuasive reason to revisit that decision.

Respectfully submitted,

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