

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
)	
SIERRA CLUB, ENVIRONMENTAL)	
LAW AND POLICY CENTER,)	
PRAIRIE RIVERS NETWORK, and)	
CITIZENS AGAINST RUINING THE)	
ENVIRONMENT)	
)	PCB 2013-015
Complainants,)	(Enforcement – Water)
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondents.)	

NOTICE OF FILING

TO: John Therriault, Assistant Clerk	Attached Service List
Illinois Pollution Control Board	
James R. Thompson Center	
100 West Randolph Street, Suite 11-500	
Chicago, IL 60601	

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board Respondent's Motion to Stay Proceedings and Memorandum in Support of the Motion, copies of which are herewith served upon you.

MIDWEST GENERATION, LLC

By: /s/ Jennifer T. Nijman

Dated: February 19, 2014

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Respondent's Motion to Stay Proceedings and Memorandum in Support of the Motion were filed electronically on February 19, 2014 with the following:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

and that true copies were mailed by First Class Mail, postage prepaid, on February 19, 2014 to the parties listed on the foregoing Service List.

/s/ Jennifer T. Nijman

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Respondent.)	

RESPONDENT’S MOTION TO STAY PROCEEDINGS

Pursuant to 35 Ill. Adm. Code 101.514, Respondent, Midwest Generation, LLC (“MWG”), by its undersigned counsel, respectfully requests that the Board enter an order staying this proceeding for at least one year, with quarterly reports to the Board, in order to: (1) avoid potential conflicts arising from the U.S. Environmental Protection Agency’s (“U.S. EPA”) and the Illinois Environmental Protection Agency’s (“Illinois EPA”) proposed rules for the handling of coal ash; (2) allow NRG Energy, Inc.’s imminent acquisition and subsequent integration of MWG to proceed; (3) allow continued groundwater monitoring to assess the impact of MWG’s recent completion of actions undertaken pursuant to the Compliance Commitment Agreements (“CCAs”) that were accepted by the IEPA; and, (4) recognize that there is no ongoing environmental harm or prejudice to Complainants. In support of its Motion, MWG submits its Memorandum in Support of Motion to Stay Proceedings and states as follows:

- 1) In June 2012, Illinois EPA issued violation notices (“VNs”) to MWG regarding coal ash ponds at four of its electric generating stations (“Stations”).

2) Shortly after, on October 3, 2012, Complainants filed a Complaint against MWG for alleged violations relating to the same coal ash ponds at the same Stations.

3) On October 24, 2012, MWG entered into CCAs with Illinois EPA to address the alleged violations concerning the ash ponds at the Stations. The CCAs also addressed the core concerns raised by Complainants in their Complaint.

4) From the date the CCAs were issued, MWG executed and completed all the terms of the CCAs. In October 2013, MWG submitted Completion Statements for the Stations certifying that the actions in the CCAs were completed and continued monitoring will occur.

(Illinois EPA Compliance Statements for the Stations, attached as Exs. B – E)

5) In December, 2012, MWG and its parent company filed for bankruptcy protection in *In re: Edison Mission Energy, et al*, No. 12-49219, pending in the Northern District of Illinois Bankruptcy Court (“Bankruptcy Court”). The filing resulted in a stay of all proceedings, including the instant case.

6) On December 11, 2013, in response to Complainants’ motion, the Bankruptcy Court entered an order lifting the bankruptcy stay on the proceedings for this matter. On January 23, 2014, the Board accepted the Complaint for hearing.

7) On October 18, 2013, NRG Energy, Inc. (“NRG”) agreed to acquire MWG, including the Stations. (Affidavit of Maria Race, ¶3, attached as Ex. A). The NRG acquisition requires certain regulatory approvals, including the approval of the Bankruptcy Court and the Federal Energy Regulatory Commission (“FERC”). NRG has stated publicly on numerous occasions that it expects to close the acquisition by the end of the first quarter of 2014.

8) MWG submitted its Plan of Reorganization to the Court on December 19, 2013.

MWG's reorganization is premised on the acquisition by NRG. The Bankruptcy Court confirmation hearing for the reorganization plan is scheduled for later this month.

9) On January 29, 2014, the U.S. EPA entered into a consent decree in which it committed to issue the final rules for managing ash from coal-fired power plants by December 19, 2014. (*Appalachian Voices v. McCarthy*, D.D.C. No. 1:12-cv-00523, consent decree filed January 29, 2014). On October 28, 2013, Illinois EPA filed its Statement of Reasons for proposed regulations on management of coal ash. (*In the Matter of: Coal Combustion Waste (CCW) Ash Ponds and Surface Impoundments at Power Generating Facilities: Proposed New 35 Ill. Adm. Code 841*, PCB R14-10). The Illinois Pollution Control Board hearings regarding the proposed rulemaking are scheduled to begin on February 26, 2014.

10) The Board should stay this proceeding to await final publication of both the U.S. EPA regulations regarding managing coal ash and the proposed Illinois EPA ash pond regulations. The U.S. EPA regulations create particular uncertainty because U.S. EPA has not revealed whether the ash will be regulated as hazardous waste under Subtitle C of RCRA, or nonhazardous waste under Subtitle D of RCRA.

11) The Board should also stay this proceeding to allow the new owner of the Stations, NRG, to assume legal control of the Stations. At present, MWG is awaiting the necessary regulatory approvals for the pending acquisition, and MWG is not making any major changes or modifications to its operations until the new owners take control. NRG, as future owner, should determine the strategy for the litigation and the future of the Stations.

12) The Board should stay this proceeding to allow the continued groundwater monitoring to establish the impact of the actions undertaken pursuant to the CCAs, fulfilling the Board's authority to order that violations "cease and desist."

13) A stay in this proceeding will not cause any environmental harm, and will not cause any prejudice to the Complainants.

14) Per the requirements in 35 Ill. Adm. Code 101.514(a), a status report detailing the progress of the proceeding is provided in the attached Memorandum in Support.

WHEREFORE, Respondent, Midwest Generation, LLC, respectfully requests that the Board stay these proceedings for one year, with quarterly reports to the Board.

Respectfully submitted,

Midwest Generation, LLC

By: /s/ Jennifer T. Nijman
One of Its Attorneys

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PCB 2013-015
(Enforcement – Water)

RESPONDENT’S MEMORANDUM IN SUPPORT OF ITS
MOTION TO STAY PROCEEDINGS

Respondent, Midwest Generation, LLC. (“MWG”), submits this Memorandum in Support of its Motion to Stay Proceedings. The Illinois Pollution Control Board (“Board”) should grant the stay because: (1) the Federal and State proposed rules for managing coal ash from coal-fired power plants create uncertainty as to how MWG will be required to operate its Stations; (2) the future of the Stations is unknown in light of the pending acquisition of MWG by NRG Energy, Inc. (“NRG”), which depends upon the certain regulatory approvals, including by the Bankruptcy Court and the Federal Energy Regulatory Commission; (3) the Board should allow MWG to monitor the groundwater to establish that the alleged violations have ceased as a result of MWG’s compliance actions completed pursuant to Compliance Commitment Agreements (“CCAs”); and (4) a stay will not cause any environmental harm or prejudice to the Complainants.

I. PROCEDURAL BACKGROUND

On October 3, 2012, Complainants filed a seven count complaint against MWG. Counts 1, 2 and 3 allege violations of Section 21(a) of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/21(a)) and 40 C.F.R. §§257.1 and 257.3-4, at the MWG Generating Stations in: Pekin, Tazewell County, Illinois ("Powerton Station"); Waukegan, Lake County, Illinois ("Waukegan Station"); and, Romeoville, Will County, Illinois ("Will County Station"). Counts 4, 5, 6, and 7 allege violations of Sections 12(a) and 12(d) of the Act (415 ILCS 5/12(a), (d)), 35 Ill. Admin. Code §§ 620.115, 620.301(a), and 620.405, and violations of the Class I and Class II Groundwater Quality Standards at the Powerton Station, Waukegan Station, Will County Station, and the MWG Generating Station in Joliet, Will and Kendall Counties, Illinois ("Joliet 29 Station"). The violations alleged in the Complaint are nearly identical to the violations alleged by the Illinois Environmental Protection Agency ("Illinois EPA") in Violation Notices ("VNs") issued in June 2012. MWG resolved the VNs by entering into CCAs with the Illinois EPA on October 24, 2012. (See Affidavit of Maria Race "Race Affidavit" ¶2, attached as Exhibit A)

On November 5, 2012, Respondents filed a Motion to Dismiss the Complaint because it was duplicative of the VNs, and frivolous because the alleged violations were resolved by CCAs. During the pendency of the Motion, on December 17, 2012, MWG filed for bankruptcy protection, in *In re: Edison Mission Energy, et al*, No. 12-49219, pending in the Northern District of Illinois Bankruptcy Court ("Bankruptcy Court"), and notified the Board of the automatic stay of proceedings mandated by the Bankruptcy Court rules.

The Board granted the stay on February 7, 2013. On February 5, 2013, Complainants sought permission from the Bankruptcy Court to lift the automatic stay for the Board to adjudicate the Motion to Dismiss. The Bankruptcy Court granted Complainants their request and

on May 22, 2013 Complainants notified the Board that the Bankruptcy Court had lifted the stay for the sole purpose of adjudicating MWG's Motion to Dismiss.

After receiving the final briefs on the Motion to Dismiss, on October 3, 2013, the Board denied MWG's Motion, but struck the portions of Counts 1, 2, and 3 that alleged violations of 40 C.F.R. §§257.1 and 257.3-4 on the basis that the Board did not have the authority to enforce federal regulations. The Board did not accept the complaint for hearing because the Bankruptcy Court had lifted the stay for the sole purpose of adjudicating the Motion to Dismiss. The Board directed the parties to notify the Board if the Bankruptcy Court lifted the stay for the entire Board proceeding.

On Complainants' request, the Bankruptcy Court lifted the stay for this Board proceeding on December 11, 2013 but prohibited Complainants from seeking to enforce any monetary penalty against MWG. Shortly thereafter, Complainants notified the Board of the Bankruptcy Court's decision and on January 23, 2014 the Board accepted the Complaint for hearing. The Board ordered the Respondent to answer the Complaint by March 24, 2014.

II. FACTUAL BACKGROUND

Since the Complaint was filed, key events have occurred that now require a stay of this proceeding, including: agency rulemakings related to the management of coal ash; the sale of MWG to a new company; and MWG's resolution of the alleged violations.

A. U.S. EPA and Board Rulemaking for the Management of Coal Ash

Both the United States Environmental Protection Agency ("U.S. EPA") and the Board are conducting rulemakings concerning the management of coal ash at coal-fired power plants. The U.S. EPA rulemaking for the management of coal ash has been ongoing since 2010. ("Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of

Coal Combustion Residuals From Electric Utilities; Proposed Rule,” 75 Federal Register 118 (June 21, 2010), pp. 35128-35264). Although the rules previously were uncertain and vague as to timing, on January 29, 2014, the U.S. EPA entered into a consent decree requiring that it issue final rules for the management of coal ash by December 19, 2014. (*Appalachian Voices v. McCarthy*, D.D.C. No. 1:12-cv-00523, *consent decree filed January 29, 2014*). While it is still unknown whether the U.S. EPA will regulate coal ash as hazardous waste under Subtitle C of RCRA or nonhazardous waste under Subtitle D of RCRA, the date certain for publication of the final rule will resolve that issue. Until then, there remains an uncertainty for all power-plants, including the MWG Stations, on how the ultimate coal ash rules will alter coal ash management.

Parallel to the U.S. EPA rulemaking, the Board is presently conducting hearings on the Illinois EPA proposed regulations for the management of coal ash in *In the Matter of: Coal Combustion Waste (CCW) Ash Ponds and Surface Impoundments at Power Generating Facilities: Proposed New 35 Ill. Adm. Code 841*, PCB R14-10. The first hearing on the proposed rules is scheduled for February 26, 2014.

B. Purchase of MWG

On October 18, 2013, NRG agreed to acquire MWG. (Race Affidavit ¶3). The purchase requires certain approvals, including approval by both the Bankruptcy Court and the Federal Energy Regulatory Commission (“FERC”). 11 U.S.C. §§ 101-1532; 16 U.S.C. § 824b (2006). While approval by the Bankruptcy Court is anticipated in early 2014, the FERC approval date is unknown. In the interim, MWG cannot, and should not, propose any actions or pursue any specific strategy for the Stations until NRG finalizes the acquisition and takes legal control of the company. As contemplated by the pending transaction, NRG ultimately will control the future of the Stations.

C. Execution and Completion of the CCAs

In response to Illinois EPA's VNs to MWG for alleged groundwater contamination from the ash ponds, MWG entered into CCAs to resolve the alleged violations. The ash ponds that were the subject of the VNs are the same ash ponds at issue in this Complaint. MWG has timely complied with each of the terms in the CCAs, as described below, and certified completion of the CCAs in the attached Illinois EPA Compliance Statements ("Compliance Statements"). (Exs B-E, Illinois EPA Compliance Statements for the Stations, and Race Affidavit, ¶4). By undertaking these compliance actions, MWG is not in violation of the Illinois Environmental Protection Act, 415 ILCS 5/et seq., or the Board regulations, 35 Ill. Adm. Code et seq.

1. Joliet 29 Station CCA and Compliance Actions

As set forth in the CCA for the Joliet 29 Station, MWG was required to conduct specific compliance actions to resolve the alleged violations in VN-W-2012-00059. MWG committed to conduct groundwater sampling on a quarterly basis, to submit an application for a construction permit and reline an ash pond, Pond #3, with a 60 mil thick high density polyethylene ("HDPE") liner, and to establish a Groundwater Management Zone ("GMZ") for the area under the Joliet 29 Station.

MWG has completed all of the compliance actions to resolve the alleged violations at Joliet 29. MWG timely completed the installation of the HDPE liner under Pond #3. (Race Affidavit, ¶5). All of the ash ponds at Joliet 29 Station are now completely lined with state-of-the art HDPE liners to prevent any potential impacts to groundwater. (Race Affidavit, ¶6). On January 18, 2013, MWG submitted a GMZ application to the Illinois EPA for the Station. (Illinois EPA August 8, 2013 Letter attached as Ex. F). On August 8, 2013, Illinois EPA approved the GMZ as described in

the application. (Ex. F). Upon the establishment of the GMZ, the Joliet 29 Station is in compliance with the groundwater standards alleged in the VN and in Complainants' Complaint. (35 Ill. Adm. Code 620.450(a)(3)).¹ MWG will monitor the groundwater under the Joliet 29 Station on a quarterly basis. (Race Affidavit ¶7)

MWG submitted a Compliance Statement for the Joliet 29 Station to the Illinois EPA on October 9, 2013. (Ex. B). In the Compliance Statement, MWG certified to the Illinois EPA that it successfully completed all of the terms in the CCA for the Joliet 29 Station.

2. Powerton Station CCA and Compliance Actions

In the Powerton Station CCA, MWG committed, *inter alia*, to install an additional groundwater monitoring well and to sample the groundwater on a quarterly basis. MWG also committed to reline two ash ponds, the Ash Surge Basin and the Secondary Ash Settling Basin, with a 60 mil thick HDPE liner, to establish a GMZ for the area under the Powerton Station, and to enter into an Environmental Land Use Control ("ELUC") for the area of the Powerton Station associated with the GMZ.

Within a year of signing the CCA, MWG executed all of the compliance actions in the agreement. (Race Affidavit, ¶4). MWG completed the installation of the HDPE liners under the Secondary Ash Settling Basin and the Ash Surge Basin and installed the additional groundwater monitoring well at the Powerton Station. (Race Affidavit ¶8). All of the ash ponds at Powerton are now fully lined to prevent any potential impact on the groundwater. (Race Affidavit ¶9). MWG timely submitted a GMZ application to the Illinois EPA, and on October 3, 2013, Illinois EPA approved the GMZ as described in the

¹ Illinois EPA did not require an Environmental Land Use Control for Joliet 29 because it determined that there were no potential groundwater receptors in the area.

application. (Illinois EPA October 3, 2013 Letter attached as Ex. G). By creating the GMZ, the Powerton Station is in compliance with the groundwater standards alleged in both the VN and in Complainants' Complaint. (35 Ill. Adm. Code 620.450(a)(3)). MWG will monitor the groundwater under the Powerton Station on a quarterly basis. (Race Affidavit ¶10). On August 26, 2013, Illinois EPA approved the ELUC for the Powerton Station, which prevents any use or consumption of the groundwater. (Illinois EPA August 26, 2013 Letter attached as Ex. H)

On October 17, 2013, MWG submitted a Compliance Statement for the Powerton Station to the Illinois EPA. (Ex. C). By submitting the Compliance Statement, MWG certified that it had successfully completed all of the measures in the CCA for the Powerton Station.

3. Waukegan Station CCA and Compliance Actions

In the Waukegan Station CCA, MWG committed to conduct compliance actions to resolve the alleged violations in VN-W-2012-00056. These compliance actions included installing two additional groundwater monitoring wells, continuing quarterly groundwater sampling, and entering into an ELUC to cover the area of the Waukegan Station not already included in an existing ELUC. Because the ash ponds at Waukegan had recently been relined with HDPE liners, there was no need to include relining in the CCA. (Race Affidavit ¶12)

Following execution of the CCA, MWG timely completed all of the compliance actions at Waukegan Station. (Race Affidavit ¶4). MWG installed the two additional groundwater monitoring wells and has continued to monitor the groundwater wells on a quarterly basis. (Race Affidavit ¶11). On August 26, 2013, MWG received Illinois EPA's

approval of the application for the ELUC on the relevant portion of the Waukegan property to prevent any use or consumption of the groundwater. (Illinois EPA August 26, 2013 Letter attached as Ex. I). On October 21, 2013, MWG submitted to the Illinois EPA the Compliance Statement, in which MWG certified that it had successfully completed all of the measures in the Waukegan CCA. (Ex. D)

4. Will County Station CCA and Compliance Actions

As outlined in the Will County CCA, MWG committed to divert all process waters from two of the ash ponds at Will County and remove the two ponds from service. MWG also committed to relining an ash pond, Pond 2S, with a 60 mil thick HDPE liner, establishing a GMZ for the area of the Will County Station, and entering into an ELUC for the relevant area of the Will County Station associated with the GMZ.

MWG timely completed all of agreed upon compliance actions. (Race Affidavit ¶4). MWG diverted all process waters from the two ash ponds at the Will County Station and removed the ponds from service. (Race Affidavit ¶15). MWG completed the installation of the HDPE liner under Pond 2S at Will County Station; thus, all the remaining ash ponds at the Will County Station are lined with HDPE liners to prevent potential impacts to the groundwater. (Race Affidavit ¶¶13 & 14). MWG timely submitted a GMZ application to the Illinois EPA for the Will County Station, and on September 26, 2013, Illinois EPA approved the modified GMZ as described in the application, including the ELUC attached to the GMZ application. (Illinois EPA July 2, 2013 Letter attached as Ex. J & Illinois EPA September 26, 2013 Letter attached as Ex. K). Upon the establishment of the ELUC and GMZ, use or consumption of the groundwater is prevented and the Joliet 29 Station is in compliance with the groundwater

standards alleged in the VN and in Complainants' Complaint. (35 Ill. Adm. Code 620.450(a)(3)). Finally, MWG is monitoring the groundwater under the Station on a quarterly basis. (Race Affidavit ¶16).

Upon completion of all the actions under the Will County CCA, MWG submitted a Compliance Statement to the Illinois EPA on October 17, 2013 certifying that it successfully completed all of the terms in the CCA for the Will County Station. (Ex. E)

III. ARGUMENT IN SUPPORT OF STAY

The Board should stay this proceeding: (1) to await the Federal and State rules on managing coal ash; (2) to allow NRG's acquisition of MWG to be approved by the Bankruptcy Court and FERC; (3) to avoid costly and inefficient allocation of resources while allowing MWG's compliance actions to establish that any continuing violations have ceased; and (4) because there is no ongoing environmental harm or prejudice to the Complainants by granting the stay.

A motion to stay must have sufficient information detailing why a stay is needed. 35 Ill. Adm. Code 101.514. The decision to grant or deny a motion for stay is vested in the sound discretion of the Board. *People v. State Oil Co.*, PCB 97-103 (May 15, 2003), *aff'd sub nom State Oil Co. v. PCB*, 352 Ill. App. 3d 813 (2nd Dist. 2004). In determining whether a stay is justified, the Board may consider factors including comity for other proceedings and prevention of multiplicity and vexation. *Midwest Generation EME, LLC v. IEPA*, PCB 04-216, slip op at 4 (Apr. 6, 2006). The Board may also consider any risk of ongoing environmental harm, *North Shore Sanitary District v. Illinois EPA*, PCB 03-146, March 20, 2003, and any prejudice to the non-moving party. *Herrin Security Bank v. Shell Oil Company*, PCB 94-178, May 18, 1995.

Case law supports a stay under circumstances similar to the instant case. The Board has previously stayed proceedings to allow a U.S. EPA proceeding to conclude, thus avoiding any uncertainty or multiplicity. *U.S. Steel v. Illinois EPA*, PCB 10-23, slip op. at 12. (Feb. 2, 2012) (Board found that “the present uncertainty over the impact that the U.S. EPA proceeding could have on this appeal supports a stay.”). Similarly, in *Midwest Generation EME, LLC v. IEPA*, PCB 04-216 (Apr. 6, 2006), the Board stayed a proceeding while the U.S. EPA was conducting its own determination of a matter almost identical to the matter in front of the Board.

The Board has also granted stays to allow for business decisions to conclude. In *Herrin Security Bank v. Shell Oil Company*, PCB 94-178, May 18, 1995, the Board stayed a matter to conserve resources while awaiting a decision from the Office of the State Fire Marshall (“OSFM”) on whether the Bank’s remediation of a leaking underground storage tank (“LUST”) was eligible for reimbursement from the OSFM LUST fund. The Board concluded that a stay would contribute to the expeditious resolution of the action. *Id* at 1.

Further, the Board has stayed State and citizen enforcement proceedings “to allow sufficient time to proceed with technical work underway at the site. “*People of the State of Illinois v. White & Brewer Trucking*, PCB 97-11, January 18, 2001, slip op. at 1. In *Edward M. Pearl v. Biocoastal Corp. et al*, PCB 96-265, April 3, 1997, the Board stayed the proceeding to allow the Respondent to proceed with remediation under the Illinois Site Remediation Program. The Board granted the stay based upon the Respondent’s statement that allowing it to remediate “will achieve the same corrective action that [the Complainant] seeks, and will promote the integrity of the environment.” *Id*, slip op. at 3. In considering a stay, the Board will also consider any ongoing environmental harm, (*North Shore Sanitary District v. Illinois EPA*, PCB 03-146,

March 20, 2003, slip op. at 3), and any potential prejudice to the non-moving party. *Herrin Security Bank*.

The Board has previously held that a stay is proper for merely one of the above reasons; here, four distinct bases support issuing a stay of this proceeding. First, the U.S. EPA just agreed to issue the long awaited final rules for managing coal ash from coal-fired power plants by December 19, 2014. These rules will dictate whether the coal ash should be managed under the hazardous waste provisions in Subtitle C of RCRA, or the nonhazardous waste provisions in Subtitle D of RCRA. The final rule will directly impact MWG's management of its ash ponds at the Stations, and a stay would avoid the uncertainty and potential multiplicity of requirements under the federal regulations. This is equally true when considering the State's proposed rules for handling coal ash, currently scheduled for hearing in front of the Board. Second, MWG is in the midst of a bankruptcy and potential purchase by NRG. Because of the imminent purchase, MWG is restricted in its ability to make key business decisions until NRG assumes legal and operational control. As a new owner, NRG is entitled to determine the litigation strategy in this matter, and to set the policy decisions for the future of the Stations at issue. Third, MWG has addressed the alleged violations through the response actions required under the CCAs. The Board should allow the opportunity for those actions to establish that MWG has ceased and desisted from any further alleged violations of the Act or the Board regulations. Moreover, because MWG has executed compliance actions that resolved the alleged violations, there is no ongoing environmental harm at the Stations and a stay would not prejudice the Complainants.

A. A Stay Will Avoid Wasteful Multiplicity in Response Activities Due to the New Federal and State Regulations

Granting a stay of this case will avoid wasteful multiplicity in response activities that will likely be caused by the issuance of the U.S. EPA final rule on managing coal ash and the new

Board regulations on coal ash. In a consent order filed on January 29, 2014, the U.S. EPA committed to publish the final rules for managing coal ash at coal-fired power plants by December 19, 2014. (*Appalachian Voices v. McCarthy*, D.D.C. No. 1:12-cv-00523, *consent decree filed January 29, 2014*). At this time, the U.S. EPA has not indicated whether it intends to regulate coal ash under either Subtitle C or D of RCRA. Similar to *U.S. Steel v. Illinois EPA*, U.S. EPA's indecisiveness in its promulgation of the rules creates considerable uncertainty on the impact the regulations will have on MWG's management of its ash ponds. There is now a date certain by which the rules will be issued and the expected rules will undoubtedly impact the management of the ash ponds. The new Illinois regulations for coal ash under consideration by the Board double the uncertainty on how MWG will be required to manage its coal ash. While the State's intent for the management of coal ash is slightly clearer from Illinois EPA's Statement of Reasons filed on October 28, 2013, the Board may modify the proposed rules based upon the hearings scheduled through May 2014. The Board should stay this proceeding to avoid any multiplicity or vexation to MWG on coordinating its responsibilities under the new Federal and State regulations.

B. The Board Should Extend Consideration and Comity to the Pending Approval of MWG's Acquisition by NRG

A stay in this matter is also justified because of comity and consideration for the Bankruptcy Court and FERC approval of the acquisition of MWG by NRG. Until the acquisition is approved and consummated, MWG cannot and should not make any binding, strategic business decisions on behalf of its likely future owner. The ash ponds are an integral part of the Stations' operations and any further compliance actions would be a significant expenditure. Any decision made now by MWG could be abrogated by NRG upon it taking control, further delaying the eventual resolution of this matter. NRG is entitled to make its own decisions

regarding the future of the Stations. A stay until after the requisite regulatory approvals and completion of the transaction would allow NRG to evaluate the future of the Stations and any additional proposed compliance action, and as in *Herrin*, could contribute to the expeditious resolution of this action.

C. A Stay will give Consideration to the CCA Process and Avoid Response Activities that Conflict with the CCAs

The Board should also give consideration to the CCA process in granting the stay.

Following execution of the CCA terms, all of the ash ponds at the Stations are lined with a 60-mil HDPE liner, a liner expressly recognized by the Board regulations as sufficient to prevent the release of constituents from landfills to the environment. (35 Ill. Adm. Code 811.306(d)). Thus, MWG has further ensured against any potential release of constituents from the ash ponds. The CCAs also involved implementing ELUCs and GMZs to more generally address the groundwater beneath the Stations.² Once the approved GMZs were created, the Class I, II, III, and IV groundwater standards do not apply to the groundwater area under the Stations and MWG is not in violation of the groundwater standards in the Board Regulations. (35 Ill. Adm. Code 620.450(a)(3)). Any potential risk to public health has ceased via the establishment of the ELUCs at three of the Stations, and the absence of any potable groundwater receptors at the Joliet 29 Station.

In their Complaint, Complainants request that the Board order MWG to cease and desist from causing future violations of the Act and regulations, which the Board is authorized to award.³ By fully executing all of the terms of the CCAs, installing state-of-the-art liners at all of

² A GMZ is an area of groundwater being managed to mitigate impairment caused by contaminants. 35 Ill. Adm. Code 740.120.

³ The Board has the authority, pursuant to Section 33(b) of the Act (415 ILCS 5/33(b)) to order a party to cease and desist from violations of the Act and the Board Regulations, but does not have the authority to award injunctive relief. *Dayton Hudson Corp. v. Cardinal Industries, Inc.* PCB 97-134, August 21, 1997, slip op at 7.

the ash ponds, and establishing ELUCs and GMZs at the Stations, MWG has therefore presumptively “ceased and desisted” from any continuing violations. All that remains is to continue to conduct the quarterly sampling to validate that these actions, including the new HDPE liners, are having an effect. The Board has previously supported a stay to allow technical work and corrective actions to take effect. *Bicoastal & White & Brewer*. The Board’s reasoning was that the actions being undertaken would achieve the same results of the corrective action sought by the Complainants. *Id.* Here, the actions MWG has completed pursuant to the CCAs have already achieved the same results as those sought by the Complainants and which the Board has authority grant, i.e. a cease and desist order from future violations. MWG is conducting required groundwater monitoring and time is required to allow the Illinois EPA approved actions to improve groundwater. A stay will avoid wasteful multiplicity and vexation while MWG confirms that the compliance actions have had the necessary effect.

D. A Stay is Appropriate Because There is No Risk of Environmental Harm

A stay in this manner is further justified because these proceedings do not involve a risk of ongoing environmental harm. *See North Shore Sanitary District v. Illinois EPA*, PCB 03-146, March 20, 2003, slip op. at 3, (Board granted stay of permit appeal in part because “no environmental harm will come from granting a stay”). To the extent harms existed, they have been addressed. MWG has already instituted compliance actions that will resolve the allegations in the Complaint, as described above. Moreover, there is no public harm because all persons are prevented from contact with the impacted groundwater by the establishment of the ELUCs at three of the Stations, and the absence of public groundwater use at the Joliet 29 Station.

E. Complainants Will Not Be Prejudiced by Granting a Stay

Complainants will not be prejudiced by the grant of a stay in this matter. In *Herrin Security Bank*, the Board found, over the objection of the Respondent, that a stay was appropriate and the Respondent would not be prejudiced by a pause in the proceeding. *Id* at 1. Although the Board in *Herrin Security* acknowledged that it could proceed to determine liability, the Board determined that a stay would “contribute to the expeditious resolution of this action.” *Id*. Here, a stay would avoid unnecessary litigation expenses and contribute to the expeditious resolution of this action. Before any party expends significant funds on the litigation, it would be expedient and cost effective to wait for the final Federal and Illinois rules on ash ponds, to allow the new owner to determine the litigation strategy and future of the ash ponds, and to allow groundwater monitoring to proceed to establish the effectiveness of the compliance actions already taken. Both parties’ arguments in this litigation may change based on the outcome of these factors. Complainants are not prejudiced because MWG completed the compliance actions to resolve the legal violations alleged in the Complaint. Groundwater monitoring will assess whether those actions are succeeding. Although Complainants may argue they are entitled to determine whether penalties should be assessed against MWG for past violations, the Bankruptcy Court order precludes any efforts to enforce a finding of penalties at this time.

IV. CONCLUSION

A stay of this proceeding is appropriate given the recent circumstances surrounding coal ash regulations and the status of MWG. Granting a stay will: (1) avoid any multiplicity or vexation caused by the Federal and State rules on coal ash currently under consideration; (2) give the new owners time to effectively understand the alleged violations in this matter and determine the future of the Stations; (3) avoid the costly and inefficient allocation of resources by allowing

LIST OF EXHIBITS

- A. Affidavit of Maria Race
- B. Illinois EPA Compliance Statement for the Joliet 29 Station
- C. Illinois EPA Compliance Statement for the Powerton Station
- D. Illinois EPA Compliance Statement for the Waukegan Station
- E. Illinois EPA Compliance Statement for the Will County Station
- F. Illinois EPA August 8, 2013 Letter regarding the Joliet 29 GMZ
- G. Illinois EPA October 3, 2013 Letter regarding the Powerton GMZ
- H. Illinois EPA August 26, 2013 Letter regarding the Powerton GMZ and ELUC
- I. Illinois EPA August 26, 2013 Letter regarding the Waukegan ELUC
- J. Illinois EPA July 2, 2013 Letter regarding the Will County GMZ & ELUC
- K. Illinois EPA September 26, 2013 Letter regarding the Will County GMZ & ELUC

SIERRA CLUB, ET AL. V. MIDWEST GENERATION, LLC PCB 13-15

**RESPONDENT'S MOTION AND MEMORANDUM
TO STAY PROCEEDINGS**

EXHIBIT A

AFFIDAVIT OF MARIA RACE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
)	
SIERRA CLUB, ENVIRONMENTAL)	
LAW AND POLICY CENTER,)	
PRAIRIE RIVERS NETWORK, and)	
CITIZENS AGAINST RUINING THE)	
ENVIRONMENT)	
)	PCB 2013-015
Complainants,)	(Enforcement – Water)
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

AFFIDAVIT OF MARIA RACE

Maria Race, being first duly sworn on oath, deposes and states as follows:

1. I am the Director of Environmental Services for Midwest Generation EME, LLC (“MWG”) which operates electric generating stations in Illinois; including the electric generating stations located in: Pekin, Tazewell County, Illinois (“Powerton Station”); Waukegan, Lake County, Illinois (“Waukegan Station”); Romeoville, Will County, Illinois (“Will County Station”), and Joliet, Will and Kendal Counties, Illinois (“Joliet 29 Station”).
2. On October 24, 2013, Illinois EPA issued Compliance Commitment Agreements (“CCAs”) the Powerton Station, Waukegan Station, Will County Station and Joliet 29 Station to resolve violation notices issued for the ash ponds at each of the stations.
3. On October 18, 2013, NRG Energy, Inc. entered into an agreement to purchase MWG and its Stations, including the Powerton Station, Waukegan Station, Will County Station, and Joliet 29 Station.

4. Since issuance of the CCAs, MWG has timely complied with the corrective actions required in each of the CCAs.

Joliet 29 Station Corrective Actions

5. MWG completed the installation of the 60 mil thick high density polyethylene ("HDPE") liner under Pond #3 at the Joliet Station 29.
6. Following construction of the Pond #3 liner, all of the ash ponds at Joliet 29 are lined with an HDPE liner.
7. Pursuant to the CCA and the GMZ, MWG is continuing to monitor the groundwater under the Joliet 29 Station on a quarterly basis.

Powerton Station Corrective Actions

8. MWG completed the installation of the HDPE liners under the Secondary Ash Settling Basin and the Ash Surge Basin and installed the additional groundwater monitoring well at the Powerton Station.
9. Following construction of the Secondary Ash Settling Basin and the Ash Surge Basin liners, all of the ash ponds at Powerton are lined with an HDPE liner.
10. Pursuant to the CCA and the GMZ, MWG is continuing to monitor the groundwater under the Powerton Station on a quarterly basis.

Waukegan Station Corrective Actions

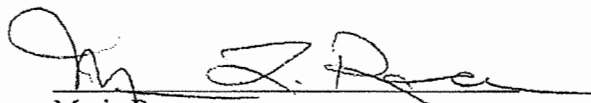
11. MWG timely installed the two additional groundwater monitoring wells at the Waukegan Station and has continued to monitor the groundwater wells on a quarterly basis.
12. MWG had relined the ash ponds at the Waukegan Station in 2002 with a high-density polyethylene ("HDPE") liner.

Will County Station Corrective Actions

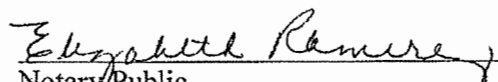
13. MWG completed the installation of the HDPE liners under Pond 2S at Will County Station.
14. Following construction of the Pond 2S liner, all of the ash ponds at Will County Station are lined with an HDPE liner.
15. MWG has diverted all process waters from two of the ash ponds at the Will County Station and has removed the two ash ponds from service.
16. Pursuant to the CCA and the GMZ, MWG is continuing to monitor the groundwater under the Will County Station on a quarterly basis
17. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the Midwest Generation, LLP Motion to Stay and Memorandum in Support of Stay and in the attached exhibits are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that it verily believes the same to be true.

I have personal knowledge of the facts stated herein.

FURTHER AFFIANT SAYETH NOT.


Maria Race

Sworn and subscribed before me
this 19th day of February 2014


Notary Public



SIERRA CLUB, ET AL. V. MIDWEST GENERATION, LLC PCB 13-15

**RESPONDENT'S MOTION AND MEMORANDUM
TO STAY PROCEEDINGS**

EXHIBIT B

**ILLINOIS EPA COMPLIANCE STATEMENT
FOR THE JOLIET 29 STATION**



Maria L. Race
Director
Environmental Services

October 9, 2013

Illinois Environmental Protection Agency
Compliance Assurance Section #19
Bureau of Water
1021 North Grand Avenue East
Springfield, IL 62702

RE: Violation Notice W-2012-00059 - Joliet 29

To Whom It May Concern:

Enclosed please find the signed Compliance Statement for Joliet 29 which acknowledges that all Compliance Commitment Agreement (CCA) measures have been successfully completed.

Please call me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Maria Race', is written over a horizontal line.

Maria Race
Director
Environmental Services

Enclosure

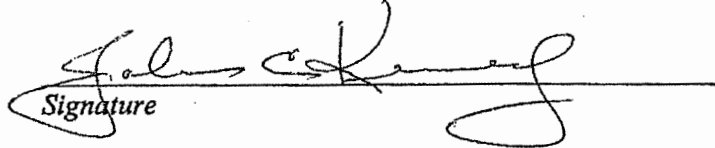
cc: Christopher Foley
Peter O'Day - Joliet Station
Susan Franzetti - Nijman and Franzetti Law

Illinois EPA Compliance Statement

The owner of the facility must acknowledge that all compliance commitment agreement (CCA) measures have been successfully completed.

Please complete, sign, and return.

I John Kennedy (print name), hereby certify that all violations addressed in Violation Notice (VN) number W-2012-00059 have been addressed and that all CCA measures were completed on 10/09/13 (date).


Signature

Sr. Vice President, Generation
Title

630 771 7800
Telephone Number

10/09/13
Date

Be sure to retain copies of this document for your files. Should you need additional notification forms, please contact this office at (217)785-0561. Return this completed form to:

Illinois Environmental Protection Agency
Compliance Assurance Section #19
Bureau of Water
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

"Any person who knowingly makes a false, fictitious, or fraudulent material statement, orally or in writing, to the Agency,.....related to or required by this Act, a regulation adopted under this Act, any federal law or regulation for which the Agency has responsibility, or any permit, term, or condition thereof, commits a Class 4 felony..." (415 ILCS 5/44(h) (8))

SIERRA CLUB, ET AL. V. MIDWEST GENERATION, LLC PCB 13-15

**RESPONDENT'S MOTION AND MEMORANDUM
TO STAY PROCEEDINGS**

EXHIBIT C

**ILLINOIS EPA COMPLIANCE STATEMENT
FOR THE POWERTON STATION**



MIDWEST
GENERATION EME, LLC

An EDISON INTERNATIONAL® Company

Maria L. Race
Director
Environmental Services

October 17, 2013

Illinois Environmental Protection Agency
Compliance Assurance Section #19
Bureau of Water
1021 North Grand Avenue East
Springfield, IL 62702

RE: Violation Notice W-2012-00057 - Powerton

To Whom It May Concern:

Enclosed please find the signed Compliance Statement for Powerton which acknowledges that all Compliance Commitment Agreement (CCA) measures have been successfully completed.

Please call me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Race".

Maria Race
Director
Environmental Services

Enclosure

cc: Christopher Foley
Bill Gaynor - Powerton Station
Susan Franzetti - Nijman and Franzetti Law

235 Remington Blvd.
Suite A
Bolingbrook, IL 60440
Tel: 630 771 7862
Fax: 312 788 5526
mrace@mwgen.com

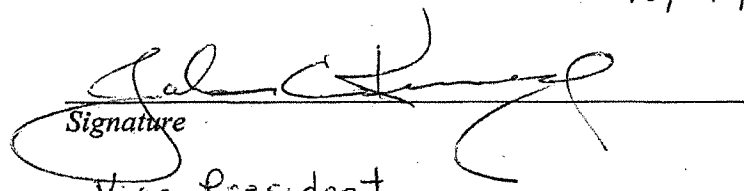
Powerton

Illinois EPA Compliance Statement

The owner of the facility must acknowledge that all compliance commitment agreement (CCA) measures have been successfully completed.

Please complete, sign, and return.

I, John Kennedy (print name), hereby certify that all violations addressed in Violation Notice (VN) number W-2012-00057 have been addressed and that all CCA measures were completed on 10/17/2013 (date).


Signature

Vice President
Title

630-771-7800
Telephone Number

OCTOBER 17, 2013
Date

Be sure to retain copies of this document for your files. Should you need additional notification forms, please contact this office at (217)785-0561. Return this completed form to:

Illinois Environmental Protection Agency
Compliance Assurance Section #19
Bureau of Water
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

"Any person who knowingly makes a false, fictitious, or fraudulent material statement, orally or in writing, to the Agency,related to or required by this Act, a regulation adopted under this Act, any federal law or regulation for which the Agency has responsibility, or any permit, term, or condition thereof, commits a Class 4 felony..." (415 ILCS 5/44(h) (8))

SIERRA CLUB, ET AL. V. MIDWEST GENERATION, LLC PCB 13-15

**RESPONDENT'S MOTION AND MEMORANDUM
TO STAY PROCEEDINGS**

EXHIBIT D

**ILLINOIS EPA COMPLIANCE STATEMENT
FOR THE WAUKEGAN STATION**



October 22, 2013

Illinois Environmental Protection Agency
Compliance Assurance Section #19
Bureau of Water
1021 North Grand Avenue East
Springfield, IL 62702

RE: Violation Notice W-2012-00056 – Waukegan Station

To Whom It May Concern:

Enclosed please find the signed Compliance Statement for Waukegan Station which acknowledges that all Compliance Commitment Agreement (CCA) measures have been successfully completed.

Please call me with any questions.

Sincerely,

Maria Race
Director
Environmental Services

Enclosure

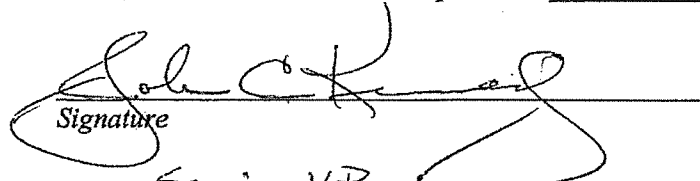
cc: Christopher Foley
Fred Veenbaas – Waukegan Station
Susan Franzetti - Nijman and Franzetti Law

Illinois EPA Compliance Statement

The owner of the facility must acknowledge that all compliance commitment agreement (CCA) measures have been successfully completed.

Please complete, sign, and return.

I John C. Kennedy (print name), hereby certify that all violations addressed in Violation Notice (VN) number W-2012-00056 have been addressed and that all CCA measures were completed on OCTOBER 21, 2013 (date).


Signature
Senior VP
Title

630-771-7800
Telephone Number

OCTOBER 21, 2013
Date

Be sure to retain copies of this document for your files. Should you need additional notification forms, please contact this office at (217)785-0561. Return this completed form to:

Illinois Environmental Protection Agency
Compliance Assurance Section #19
Bureau of Water
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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SIERRA CLUB, ET AL. V. MIDWEST GENERATION, LLC PCB 13-15

**RESPONDENT'S MOTION AND MEMORANDUM
TO STAY PROCEEDINGS**

EXHIBIT E

**ILLINOIS EPA COMPLIANCE STATEMENT
FOR THE WILL COUNTY STATION**



Maria L. Race
Director
Environmental Services

October 17, 2013

Illinois Environmental Protection Agency
Compliance Assurance Section #19
Bureau of Water
1021 North Grand Avenue East
Springfield, IL 62702

RE: Violation Notice W-2012-00058 – Will County

To Whom It May Concern:

Enclosed please find the signed Compliance Statement for Will County which acknowledges that all Compliance Commitment Agreement (CCA) measures have been successfully completed.

Please call me with any questions.

Sincerely,

Maria Race
Director
Environmental Services

Enclosure

cc: Christopher Foley
Beckie Maddox – Will County Station
Susan Franzetti - Nijman and Franzetti Law

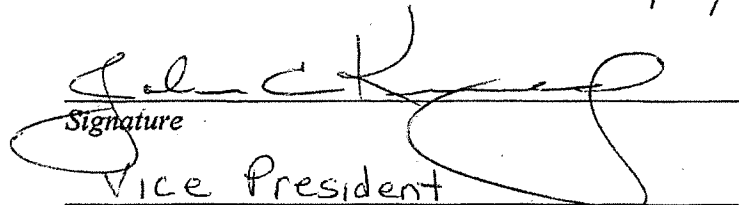
Will County

Illinois EPA Compliance Statement

The owner of the facility must acknowledge that all compliance commitment agreement (CCA) measures have been successfully completed.

Please complete, sign, and return.

I John Kennedy (print name), hereby certify that all violations addressed in Violation Notice (VN) number W-2012-00058 have been addressed and that all CCA measures were completed on 10/17/2013 (date).


Signature

Vice President
Title

630-771-7800
Telephone Number

OCTOBER 17, 2013
Date

Be sure to retain copies of this document for your files. Should you need additional notification forms, please contact this office at (217)785-0561. Return this completed form to:

Illinois Environmental Protection Agency
Compliance Assurance Section #19
Bureau of Water
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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SIERRA CLUB, ET AL. V. MIDWEST GENERATION, LLC PCB 13-15

**RESPONDENT'S MOTION AND MEMORANDUM
TO STAY PROCEEDINGS**

EXHIBIT F

**ILLINOIS EPA AUGUST 8, 2013 LETTER
REGARDING THE JOLIET 29 GMZ**



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217)782-2829

PAT QUINN, GOVERNOR

LISA BONNETT, DIRECTOR

August 8, 2013

Midwest Generation EME, LLC
235 Remington Blvd., Suite A
Bolingbrook, IL 60440

Attn: Amy Hanrahan
Senior Environmental Engineer

RECEIVED

AUG 12 2013

ENVIRONMENTAL SERVICES
MIDWEST GENERATION EME, LLC

Dear Ms. Hanrahan,

The Agency is in receipt of the January 18, 2013 submittal containing the Groundwater Management Zone application for Joliet #29 Generating Station. The submission of the application is a requirement of the Compliance Commitment Agreement executed on October 24, 2012. After review of the application, the Agency hereby gives approval of the Groundwater Management Zone for the facility. If you have further questions, please do not hesitate to call me.

Sincerely,

A handwritten signature in cursive script, appearing to read "William E. Buscher".

William E. Buscher, P.G.
Manager, Hydrogeology and Compliance Unit
Groundwater Section
Bureau of Water

CC: Andrea Rhodes
Amy Zimmer
Bill Buscher
Maria Race
Susan Franzetti
Basil Constantelos

SIERRA CLUB, ET AL. V. MIDWEST GENERATION, LLC PCB 13-15

**RESPONDENT'S MOTION AND MEMORANDUM
TO STAY PROCEEDINGS**

EXHIBIT G

**ILLINOIS EPA OCTOBER 3, 2013 LETTER
REGARDING THE POWERTON GMZ**

SIERRA CLUB, ET AL. V. MIDWEST GENERATION, LLC PCB 13-15

**RESPONDENT'S MOTION AND MEMORANDUM
TO STAY PROCEEDINGS**

EXHIBIT H

**ILLINOIS EPA AUGUST 26, 2013 LETTER
REGARDING THE POWERTON GMZ AND ELUC**



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217)782-2829

PAT QUINN, GOVERNOR

LISA BONNETT, DIRECTOR

217-785-0561

August 26, 2013

John Kennedy
Senior Vice President, Generation
235 Remington, Suite A
Bolingbrook, IL 60440

**Re: Groundwater Management Zone Application
Proposed CCA Amendment
Violation Notice: W-2012-00057
Midwest Generation, LLC, Powerton Generating Station; ID Number: 6282**

Dear Mr. Kennedy:

The Illinois Environmental Protection Agency ("Illinois EPA") has reviewed the Groundwater Management Zone ("GMZ") application submitted as required by the approved Compliance Commitment Agreement ("CCA"), in response to the Violation Notice dated June 11, 2012.

The Illinois EPA has the following comment on the GMZ application that was submitted in response to Item 5(g) of the approved CCA for your consideration and appropriate action.

- 1) Part II, Item 5 of the GMZ application: Monitoring wells MW-1, MW-9, MW-10 and MW-16 are all described as "generally up gradient monitoring wells". The Illinois EPA agrees that MW-16 is an up gradient monitoring well. The Illinois EPA does not agree that MW-1, MW-9 and MW-10 are reliably up gradient of historical ash related activities that may impact groundwater quality proximate to these wells. The Illinois EPA would characterize MW-1, MW-9 and MW-10 as side gradient or intermediate wells. An amended response to Item 5 designating wells MW-1, MW-9 and MW-10 as side gradient or intermediate wells should be submitted to the Illinois EPA. The amended response may be submitted without resubmitting the entire GMZ application.

The Illinois EPA has reviewed the draft environmental land use control ("ELUC") submitted in response to Item 5(h) of the approved CCA. The Illinois EPA has no further comment on the ELUC as drafted. Midwest Generation should proceed with the ELUC as proposed. Please submit a copy of the filed ELUC to the Illinois EPA.

cc: Basil G. Constantelos
Midwest Generation EME, LLC
235 Remington Blvd, Suite A
Bolingbrook, IL 60440

Amy Hanrahan
Midwest Generation EME, LLC
235 Remington Blvd, Suite A
Bolingbrook, IL 60440

Maria Race
Midwest Generation EME, LLC
2535 Remington Blvd, Suite A
Bolingbrook, IL 60440

Susan M. Franzetti
10 South LaSalle St.
Suite 3600
Chicago, IL 60603

SIERRA CLUB, ET AL. V. MIDWEST GENERATION, LLC PCB 13-15

**RESPONDENT'S MOTION AND MEMORANDUM
TO STAY PROCEEDINGS**

EXHIBIT I

**ILLINOIS EPA AUGUST 26, 2013 LETTER
REGARDING THE WAUKEGAN ELUC**



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217)782-2829

PAT QUINN, GOVERNOR

LISA BONNETT, DIRECTOR

217-785-0561

August 26, 2013

John Kennedy
Senior Vice President, Generation
235 Remington, Suite A
Bolingbrook, IL 60440

**Re: Groundwater ELUC
Violation Notice: W-2012-00056
Midwest Generation, LLC, Waukegan Generating Station; ID Number: 6281**

Dear Mr. Kennedy:

The Illinois Environmental Protection Agency ("Illinois EPA") has received the Environmental Land Use Control ("ELUC") submitted as required by the approved Compliance Commitment Agreement ("CCA"), in response to the Violation Notice dated June 11, 2012.

The Illinois EPA has reviewed the draft environmental land use control ("ELUC") submitted in response to Item 5(f) of the approved CCA. The Illinois EPA has no further comment on the ELUC as drafted. Midwest Generation should proceed with the ELUC as proposed. Please submit a copy of the filed ELUC to the Illinois EPA.

Questions regarding this matter should be directed to Illinois EPA, Bureau of Water, Lynn Dunaway at 217/785-4787. Written communications should be directed to Illinois EPA – DPWS, Attn: Andrea Rhodes, MC #19, 1021 North Grand Ave East, Springfield, IL 62702.

Sincerely,

A handwritten signature in cursive script that reads "William E. Buscher".

William E. Buscher, PG
Manager, Hydrogeology and Compliance Unit
Groundwater Section
Division of Public Water Supplies
Bureau of Water

cc: Andrea Rhodes
Mike Crumly
Lynn Dunaway
Basil G. Constantelos
Maria Race
Amy Hanrahan
Susan M. Franzetti

4302 N. Main St., Rockford, IL 61103 (815)987-7760
595 S. State, Elgin, IL 60123 (847)608-3131
2125 S. First St., Champaign, IL 61820 (217)278-5800
2009 Mall St., Collinsville, IL 62234 (618)346-5120

9511 Harrison St., Des Plaines, IL 60016 (847)294-4000
5407 N. University St., Arbor 113, Peoria, IL 61614 (309)693-5462
2309 W. Main St., Suite 116, Marion, IL 62959 (618)993-7200
100 W. Randolph, Suite 10-300, Chicago, IL 60601 (312)814-6026

cc: Basil G. Constantelos
Midwest Generation EME, LLC
235 Remington Blvd, Suite A
Bolingbrook, IL 60440

Amy Hanrahan
Midwest Generation EME, LLC
235 Remington Blvd, Suite A
Bolingbrook, IL 60440

Maria Race
Midwest Generation EME, LLC
2535 Remington Blvd, Suite A
Bolingbrook, IL 60440

Susan M. Franzetti
10 South LaSalle St.
Suite 3600
Chicago, IL 60603

SIERRA CLUB, ET AL. V. MIDWEST GENERATION, LLC PCB 13-15

**RESPONDENT'S MOTION AND MEMORANDUM
TO STAY PROCEEDINGS**

EXHIBIT J

**ILLINOIS EPA JULY 2, 2013 LETTER
REGARDING THE WILL COUNTY GMZ & ELUC**

SIERRA CLUB, ET AL. V. MIDWEST GENERATION, LLC PCB 13-15

**RESPONDENT'S MOTION AND MEMORANDUM
TO STAY PROCEEDINGS**

EXHIBIT K

**ILLINOIS EPA SEPTEMBER 26, 2013 LETTER
REGARDING THE WILL COUNTY GMZ & ELUC**



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217)782-2829

PAT QUINN, GOVERNOR

LISA BONNETT, DIRECTOR

September 26, 2013

John Kennedy, Vice President
Midwest Generation, LLC.
235 Remington Blvd, Suite A
Bolingbrook, Illinois 60440

Re: Midwest Generation, LLC. – Will County Power Station Ash Pond Groundwater
Management Zone Application Modification

Dear Mr. Kennedy:

This letter is in response to the transmittal letter dated September 4, 2013, which was sent by Richard Gnat, P.G. of KPRG and Associates, Inc. on behalf of Midwest Generation. The document contained requested onsite potable well information, and modifications to the Proposed ELUC Boundary Map, which is part of the Will County Power Station Ash Pond Groundwater Management Zone Application (GMZ). The Illinois Environmental Protection Agency has reviewed information and approves the modifications to the GMZ.

Thank you for your attention to these matters. If you have any questions concerning this letter, please contact me or Carl Kamp at 217-785-4787.

Sincerely,

A handwritten signature in cursive script, appearing to read "William E. Buscher".

William E. Buscher, P.G.
Manager, Hydrogeology and Compliance Unit
Division of Public Water Supplies
Bureau of Water

CC: Richard Gnat
Maria Race
Rick Cobb
Darin LeCrone
Carl Kamp
Records

CC Addresses:

Richard Gnat, P.G.
KPRG & Associates, Inc.
14665 W. Lisbon Road, Suite 2B
Brookfield, Wisconsin 53005

Maria Race, Environmental Program Director
Midwest Generation EME, LLC
235 Remington Blvd., suite A
Bolingbrook, IL. 60440