

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB,)	
)	
Complainant,)	
)	
v.)	PCB 13-27
)	(Citizen Enforcement - Air)
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	
)	

NOTICE OF ELECTRONIC FILING

TO:

John Therriault, Assistant Clerk
Bradley Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
john.therriault@illinois.gov

David L. Wentworth II
Hasselberg, Williams, Grebe, Snodgrass &
Birdsall
124 SW Adams, Suite 360
Peoria, IL 61602-1320
dwentworth@hwgsb.com

David C. Bender
McGillivray, Westerberg & Bender
211 S. Paterson Street, Suite 320
Madison, WI 53703
bender@mwbattorneys.com

Zoran Balac
Goldstein & McClintock, LLP
208 S. LaSalle Street, Suite 1750
Chicago, IL 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board of the State of Illinois, **MIDWEST GENERATION, LLC'S ANSWER TO SIERRA CLUB'S COMPLAINT**, copies of which are herewith served upon you.

Dated: March 9, 2015

MIDWEST GENERATION, LLC,

/s/ Bina Joshi
Bina Joshi

Stephen J. Bonebrake
Bina Joshi
Schiff Hardin LLP
233 South Wacker Drive
Suite 6600
Chicago, Illinois 60606
(312) 258-5500

Andrew N. Sawula
Schiff Hardin LLP
One Westminster Place
Lake Forest, IL 60045
(847) 295-4336

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)
)
SIERRA CLUB,)
)
Complainant,)
)
v.) PCB No. 13-027
)
MIDWEST GENERATION, LLC,)
)
Respondent.)

**MIDWEST GENERATION, LLC'S
ANSWER TO SIERRA CLUB'S COMPLAINT**

Defendant Midwest Generation, LLC ("MWG"), for its Answer and Defenses to Sierra Club's Complaint ("Complaint"), allegations from which Complaint are fully set forth below, states as follows:

Opening Paragraph. This is a citizen enforcement proceeding pursuant to 415 ILCS 5/31(d), which authorizes any person to file a complaint with the Illinois Pollution Control Board ("the Board") against any person allegedly violating the Environmental Protection Act, any rule or regulation adopted under the Act, any permit term or condition of a permit, or any Board order. Complainant, the Sierra Club, by its undersigned counsel, complains of Respondent Midwest Generation, LLC, as follows:

ANSWER: Sierra Club's Opening Paragraph is a characterization of Sierra Club's claims to which no response is required. To the extent that a response is required, MWG admits that Sierra Club has initiated a "citizen enforcement proceeding" under 415 ILCS 5/31(d). To the extent the allegations in the Opening Paragraph mischaracterize 415 ILCS 5/31(d), MWG denies those allegations. MWG denies any remaining allegations in the Opening Paragraph, including any allegation that MWG has committed any violation and that the Board has jurisdiction over this matter and the authority to issue the requested relief.

1. Complainant, Sierra Club, is the nation's oldest and largest grassroots environmental organization. Sierra Club is an incorporated, not-for-profit organization with headquarters located at 85 Second Street, 2nd Floor, San Francisco, CA, 94105. Sierra Club's Illinois Chapter office is located at 70 E. Lake St., Suite 1500, Chicago, IL, 60601. Sierra Club's mission is to preserve, protect, and enhance the natural environment. Sierra Club has 641,000 members, including approximately 23,000 members in Illinois.

ANSWER: MWG is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 and, therefore, denies them.

2. Respondent, Midwest Generation, LLC (MWG), is a Delaware Limited Liability Company doing business in Illinois with principal executive offices at 235 Remington Boulevard, Suite A, Bolingbrook, Illinois 60440. MWG's registered agent is C T Corporation System, 208 S. LaSalle St., Suite 814, Chicago, Illinois 60604. MWG is a subsidiary of Edison Mission Energy ("EME"), of Santa Ana, California. EME is a subsidiary of Edison International, 2244 Walnut Grove Avenue, (P.O. Box 976), Rosemead, California, 91770.

ANSWER: MWG admits it is a Delaware Limited Liability Company and that CT Corporation is its registered agent. MWG is not a subsidiary of EME. MWG is without knowledge or information sufficient to form a belief as to the truth of the allegation concerning the current corporate relationship between EME and Edison International and, therefore, denies it. MWG denies the remaining allegations in Paragraph 2.

FACTUAL BACKGROUND

3. Midwest Generation, LLC ("MWG") owns and operates four coal fired power plants in Illinois:

- a. The Joliet #9 and #29 Generating Station ("Joliet") in Joliet, Will and Kendall Counties. Joliet #9 is a 360 MW rated coal-fired unit located at 1601 Patterson Road, Joliet, Illinois. Joliet #29 includes units 7 and 8, which are rated at 660 MW each, and located at 1800 Channahon Road, Joliet. Units 7 and 8 are single turbine generators powered by two boilers each.
- b. The Powerton Generating Station, in Pekin, Tazewell County, Illinois ("Powerton"). Powerton includes units 5 and 6, which are rated at 893 MW each. Powerton is located at Route 29 and Mantino Road, Pekin.

- c. The Waukegan Generating Station in Waukegan, Lake County, Illinois ("Waukegan"). Waukegan includes units 7 and 8, rated at 326 and 355 MW, respectively. Waukegan is located at 10 Greenwood Avenue, Waukegan, Illinois.
- d. The Will County Generating Station, in Romeoville, Will County, Illinois ("Will County"). Will County includes units 3 and 4, rated at 299 MW and 598 MW, respectively, and is located at 529 Romeo Road, Romeoville.

ANSWER: MWG admits that it operates coal-fired units at Joliet Generating Station, including two coal-fired units that are denominated Units 7 and 8 at Joliet #29, and it admits that Joliet #29 is located at 1800 Channahon Road, Joliet, Will County, Illinois. MWG admits that it operates two coal-fired units that are denominated Units 5 and 6 at the Powerton Generating Station, which is located in Pekin, Tazewell County, Illinois. MWG admits that it operates two coal-fired units that are denominated Units 7 and 8 at the Waukegan Generating Station, which is located in Waukegan, Lake County, Illinois. MWG admits that it operates two coal-fired units denominated Units 3 and 4 at the Will County Generating Station, which is located in Romeoville, Will County, Illinois. MWG also admits that it owns the Waukegan and Will County Generating Stations and one of the Joliet coal-fired units alleged. MWG denies the remaining allegations in Paragraph 3.

4. MWG's coal-fired power plants release significant amounts of the air pollutant sulfur dioxide (SO₂), which the United States Environmental Protection Agency ("USEPA") and the Illinois Environmental Protection Agency have determined poses a threat to human health and the environment when present in the air in sufficient concentrations.

ANSWER: MWG admits that its four Illinois plants with currently operating coal-fired units emit sulfur dioxide emissions (SO₂), and that USEPA has determined that SO₂ can pose a threat to human health and the environment when present at certain elevated concentrations. MWG denies the remaining allegations of Paragraph 4.

5. During 2011, the last full year of emission data, the MWG plants released SO₂ into the air in the following quantities, according to data from the USEPA:

Unit		2011 Annual SO ₂ Emissions (in tons)
Joliet #9		4,070
Joliet #29, Unit 7	Boiler 1	2,695
	Boiler 2	2,724
Joliet #29, Unit 8	Boiler 1	3,681
	Boiler 2	3,861
Powerton 5	Boiler 1	5,133
	Boiler 2	5,116
Powerton 6	Boiler 1	5,742
	Boiler 2	5,842
Waukegan 7		3801
Waukegan 8		6127
Will County 3		3,343
Will County 4		4,956

ANSWER: MWG admits that the plants identified had SO₂ emissions in 2011. MWG denies the remaining allegations in Paragraph 5.

6. At elevated concentrations, SO₂ directly impairs human health by causing and exacerbating respiratory conditions, such as asthma, and cardiovascular illness. 61 Fed. Reg. 25,566, 25,570-76 (May 22, 1996).

ANSWER: To the extent the allegations in Paragraph 6 mischaracterize 61 Fed. Reg. 25,566 (May 22, 1996), MWG denies those allegations. MWG is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations in Paragraph 6 and, therefore, denies them.

7. In 2010, the USEPA determined that the existing National Ambient Air Quality Standards (“NAAQS”) for sulfur dioxide (SO₂), which had not been modified since 1971, were inadequate to protect human health and established a more stringent NAAQS. 75 Fed. Reg. 35,520 (June 22, 2010). Specifically, exposures to sufficient SO₂ concentrations for as little as five (5) minutes produce adverse respiratory impacts. 75 Fed. Reg. at 35,546. Based on a correlation to those impacts and concentrations of SO₂ measured over a one-hour period, the USEPA established the NAAQS at 75 parts per billion (or 196 ug/m³ of air). Id. at 35,546-48.

ANSWER: To the extent the allegations in Paragraph 7 mischaracterize 75 Fed. Reg. 35,520 (June 22, 2010), MWG denies those allegations. MWG is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations in Paragraph 7, and, therefore, denies them.

8. Because it seeks to protect from short-term spikes in air pollution that cause negative health effects, the standard looks specifically at the maximum 1-hour concentration each day. *Id.* at 35,538, 35,548. That is, it seeks to prevent spikes in short term concentrations of SO₂ in the air by preventing concentrations above 75 ppb in the highest 1-hour period of the day, and determines compliance based on the 4th highest such period each year.

ANSWER: Paragraph 8 sets forth legal conclusions to which no response is required. To the extent the allegations in Paragraph 8 require a response, MWG denies them.

9. The new 1-hour SO₂ NAAQS went into effect on August 23, 2010. 75 Fed. Reg. at 35,520.

ANSWER: To the extent the allegations in Paragraph 9 mischaracterize 75 Fed. Reg. 35,520 (June 22, 2010), MWG denies those allegations. To the extent any remaining allegations in Paragraph 9 require a response, MWG denies them.

LEGAL BACKGROUND

10. The Illinois Environmental Protection Act prohibits any person from:

Caus[ing] or threaten[ing] or allow[ing] the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under [the Environmental Protection] Act.

415 ILCS 5/9(a).

ANSWER: MWG admits that Paragraph 10 accurately quotes a portion of 415 ILCS 5/9(a). The remaining allegations of Paragraph 10 set forth legal conclusions to which no

response is required. To the extent those remaining allegations require a response, MWG denies them.

11. For purposes of this provision, "air pollution" is defined as "the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property." 415 ILCS 5/3.115.

ANSWER: MWG admits Paragraph 11 accurately quotes from 415 ILCS 5/3.115.

The remaining allegations in Paragraph 11 set forth legal conclusions to which no response is required. To the extent those remaining allegations require a response, MWG denies them.

12. A "contaminant" is "any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source." 415 ILCS 5/3.165. SO₂ is a contaminant.

ANSWER: MWG admits that Paragraph 12 accurately quotes from 415 ILCS 5/3.165.

The remaining allegations in Paragraph 12 set forth legal conclusions to which no response is required. To the extent those remaining allegations require a response, MWG denies them.

13. A violation of Section 9(a) of the Act occurs when a person either emits or threatens to emit a contaminant in a concentration that would injure human, plant or animal life or interfere with enjoyment of life or property, or when a person violates a regulation or standard adopted by rule.

ANSWER: Paragraph 13 sets forth legal conclusions to which no response is required.

To the extent the allegations in Paragraph 13 require a response, MWG denies them.

14. Because the USEPA established the 1-hour SO₂ NAAQS at a level necessary to protect human health and welfare, emissions by any person (when combined with the emissions from other sources) that cause or threaten to cause violations of the NAAQS violate Section 9(a).

ANSWER: Paragraph 14 sets forth legal conclusions to which no response is required.

To the extent the allegations in Paragraph 14 require a response, MWG denies them.

15. SO₂ emissions threaten to cause violations of the NAAQS when they are emitted in amounts that ambient air impact analysis, such as a computer dispersion model, shows that the NAAQS could be violated.

ANSWER: Paragraph 15 sets forth legal conclusions to which no response is required.

To the extent the allegations in Paragraph 15 require a response, MWG denies them.

16. One of the regulations adopted by the Board pursuant to the Environmental Protection Act is 35 Ill. Admin. Code § 201.141. That Rule prohibits any person from causing or threatening or allowing “the discharge or emission of any contaminant into the environment... so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois... or so as to prevent the attainment or maintenance of any applicable ambient air standard.”

ANSWER: MWG admits the allegations in the first sentence of Paragraph 16. MWG admits that Paragraph 16 accurately quotes a portion of 35 Ill. Admin. Code § 201.141. The remaining allegations in Paragraph 16 set forth legal conclusions to which no response is required. To the extent those remaining allegations require a response, MWG denies them.

17. SO₂ is an “air contaminant” within the meaning of 35 Ill. Admin. Code § 201.141, as defined in 35 Ill. Admin. Code § 201.102.

ANSWER: Paragraph 17 sets forth legal conclusions to which no response is required.

To the extent the allegations in Paragraph 17 require a response, MWG denies them.

18. The 1-hour SO₂ NAAQS promulgated at 40 C.F.R. § 50.17 is promulgated by the USEPA pursuant to its authority under the Clean Air Act, 42 U.S.C. § 7401, et seq., and is therefore an “applicable ambient air standard” as that term is used in 35 Ill. Admin. Code § 201.141. See 35 Ill. Admin. Code § 201.102.

ANSWER: Paragraph 18 sets forth legal conclusions to which no response is required.

To the extent the allegations in Paragraph 18 require a response, MWG denies them.

19. 35 Ill. Admin. Code § 201.141 is violated by emitting SO₂ in amounts that, together with the emissions from other sources, are demonstrated to either cause or threaten a violation of the 1-hour SO₂ NAAQS, or amounts that threaten to prevent the maintenance of that NAAQS.

ANSWER: Paragraph 19 sets forth legal conclusions to which no response is required.

To the extent the allegations in Paragraph 19 require a response, MWG denies them.

20. MWG's SO₂ emissions and threatened emissions of SO₂ are in such amounts that they would cause, and threaten to cause, violations of the 1-hour SO₂ NAAQS. Therefore, they violate Section 9(a) of the Act and 35 Ill. Admin. Code § 201.141.

ANSWER: All allegations in Paragraph 20 are denied.

21. The MWG plants have permitted SO₂ emission limits of 1.8 pounds of SO₂ per million Btus of heat input (lb/MMBtu). MWG's plants could exceed these rates if the sulfur content of the coal they fire is sufficiently high.

ANSWER: The currently applicable operating permits for Joliet Generating Station, Powerton Generating Station, Waukegan Generating Station, and Will County Generating Station (the "MWG plants") speak for themselves. MWG denies the allegations in the first sentence of Paragraph 21 to the extent they mischaracterize the applicable MWG plants' operating permits. MWG denies the remaining allegations in Paragraph 21.

22. The 1.8 lb/MMBtu limits apply on a longer-term basis than an hour, which means that during any particular hour, emissions from MWG's plants can vastly exceed 1.8 lb/MMBtu. However, even at 1.8 lb/MMBtu, MWG's emissions threaten to cause violations of the 1-hour SO₂ NAAQS. Based on computerized dispersion modeling, emissions by MWG's plants could result in the following concentrations of SO₂ (on a 1-hour basis, expressed as the three year average of the fourth daily maximum one-hour concentration), before including the concentration added by other facilities:

Facility	Concentration (µg/m ³)
Joliet	768.6
Powerton	819.5
Waukegan	404.2
Will County	398.8

ANSWER: The allegations in the first and second sentence of Paragraph 22 set forth legal conclusions to which no response is required. To the extent the legal conclusions in the

first and second sentence of Paragraph 22 require a response, MWG denies them. MWG is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 22 and, therefore, denies them.

23. The background concentration in the area(s) impacted [sic] the MWG plants are at least the following:

Facility	Background concentration ($\mu\text{g}/\text{m}^3$)
Joliet	30.5
Powerton	31
Waukegan	32.7
Will County	34.8

ANSWER: MWG is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 and, therefore, denies them.

24. Therefore, the MWG plants threaten to cause concentrations, based on emissions of 1.8 lb SO₂/MMBtu, in combination with the emissions from other air pollution sources, of at least the following concentrations in the areas downwind from each respective plant:

Facility	Modeled Facility Impact at 1.8 lb/MMBtu ($\mu\text{g}/\text{m}^3$)	Background concentration ($\mu\text{g}/\text{m}^3$)	Threatened Facility Impact With Contribution From Other SO ₂ Emission Sources (Background) ($\mu\text{g}/\text{m}^3$)
Joliet	768.6	30.5	799.1
Powerton	819.5	31	850.5
Waukegan	404.2	32.7	436.9
Will County	398.8	34.8	433.6

ANSWER: MWG is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 and, therefore, denies them.

25. Additionally, the MWG plants threaten violations of the 1-hour SO₂ NAAQS at their reported maximum 1-hour coincidental emission rate at each plant. For 2010, at the highest 1-hour emission rate for all boilers at each plant, computerized dispersion modeling shows that the MWG plants threaten violations of the 1-hour SO₂ NAAQS.

ANSWER: MWG denies that its plants “threaten violations of the 1-hour SO₂ NAAQS” and that they can “violate” the NAAQS. MWG is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 25 and, therefore, denies them.

26. Using the maximum coincidental emission rates for all boilers at each MWG plant, as reported in USEPA emission data, the MWG plants threaten to cause air quality impacts as follows:

Facility	Modeled Facility Impact Based on 2010 Reported Maximum Emission Rate (µg/m ³)	Threatened Facility Impact With Contribution From Other SO ₂ Emission Sources (Background) (µg/m ³)
Joliet	250.1	281.6
Powerton	555.5	586.5
Waukegan	223.3	255.3
Will County	177.6	212.5

ANSWER: MWG is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 and, therefore, denies them.

27. Existing ambient air quality monitoring in Illinois is not sufficient to identify all locations where existing sources are causing violations of the 1-hour SO₂ NAAQS. Therefore, as USEPA noted when promulgating the NAAQS, modeling is “the most technically appropriate, efficient, and readily available method for assessing short-term ambient SO₂ concentrations in areas with large point sources.” Final Rule, 75 Fed. Reg. 35,551, 570 (“[I]t is more appropriate and efficient to principally use modeling to assess compliance for medium to larger sources”).

ANSWER: MWG denies that the NAAQS can be “violated” and that modeling may be used to determine NAAQS attainment status. MWG admits that Paragraph 27 accurately quotes portions of 75 Fed. Reg. 35,551 (June 22, 2010). The remaining allegations in Paragraph

27 set forth legal conclusions to which no response is required. To the extent those remaining allegations require a response, MWG denies them.

28. To ensure that the MWG plants do not cause or threaten to cause violations of the 1-hour SO₂ NAAQS, and do not threaten to interfere with maintenance of the 1-hour SO₂ NAAQS, the emissions from the plants must be limited to the rate that, together with contributions from other pollution sources, does not result in SO₂ concentrations that exceed the 1-hour SO₂ NAAQS. Based on computer dispersion modeling conducted for the MWG plants, emissions from the plants must be limited to the following rates during every hour to ensure that the 1-hour SO₂ standard is met:

Facility		Current Emission Limit (in lbs/MMbtu)	Necessary Limit (in lbs/MMBtu) to Prevent Causing or Contributing to Violation of NAAQS or Interference with Maintenance	Current Emission Limit (in lb/hr)	Necessary Limit (in lbs/hour) to Prevent Causing or Contributing to Violation of NAAQS or Interference with Maintenance
Joliet	Unit 6	1.8	0.396	6378	1375
	Unit 7, Boiler 1	1.8	0.396	10863	2342 (both Unit 7 boilers, combined)
	Unit 7, Boiler 2	1.8	0.396		
	Unit 8, Boiler 1	1.8	0.396	11497	2478 (both Unit 8 boilers, combined)
	Unit 8, Boiler 2	1.8	0.396		
Powerton	Unit 5, Boiler 1	1.8	0.36	29643	5975 (plant-wide)
	Unit 5, Boiler 2	1.8	0.36		
	Unit 6, Boiler 1	1.8	0.36		
	Unit 6, Boiler 2	1.8	0.36		
Waukegan	Unit 7	1.8	0.72	5860	2370
	Unit 8	1.8	0.72	5514	2230
Will County	Unit 7	1.8	0.72	5357	2168
	Unit 8	1.8	0.72	10020	4055

ANSWER: All allegations in Paragraph 28 are denied.

29. MWG has and will continue to emit and threaten to emit SO₂ in amounts that cause violations of the 1-hour SO₂ NAAQS, or prevent maintenance of the NAAQS in the areas downwind from the plants. In 2011, MWG emitted SO₂ in amounts that exceed the maximum pounds per hour set forth in Appendix A to this Complaint, which include periods in 2010 and 2011. Additional violations likely occurred in 2012, which are known to the Respondent by comparing its emission data to the rates identified in the table in paragraph 28 above, but for which data were not available to the public at the time of this filing.

ANSWER: All allegations in Paragraph 29 are denied.

OTHER PENDING PROCEEDINGS

30. The Respondent is involved in several pending proceedings before the Board, including a proceeding for variance from other regulations not at issue in this case, PCB 2013-024, and various permit appeal actions, PCB 2010-098, 2008-020, 2008-019, 2008-018, 2008-009, 2007-101, 2006-156, 2006-146, 2006-060, 2006-059, 2006-058, 2006-057, 2006-056. While some of those proceedings may involve the same plants and SO₂ emissions, generally, Complainant understands that none involve 1-hour SO₂ impacts or the regulations at issue in this case. Additionally, Respondent is the Defendant/Appellee in *U.S. v. Midwest Generation, LLC, et al.*, Docket # 12-1026 (7th Cir.). That case involves alleged unpermitted illegal modifications made to some of the same power plants at issue here, and resulting violations of emission standards, but Complainant understands that it does not involve 1-hour SO₂ NAAQS or the regulations at issue herein.

ANSWER: MWG admits it is currently a party in the following permit appeal actions pending before the Board: PCB 2010-098, 2008-020, 2008-019, 2008-018, 2008-009, 2007-101, 2006-156, 2006-146, 2006-060, 2006-059, 2006-058, 2006-057, 2006-056. MWG admits it was a party to the variance proceeding PCB 2013-024, but denies that PCB 2013-024 is pending before the Board. MWG admits it was an appellee in *U.S. v. Midwest Generation, LLC, et al.*, Docket # 12-1026 (7th Cir.). The remaining allegations of Paragraph 30 consist of Sierra Club's characterization of its claims in this action and Sierra Club's characterizations of other actions before the Board and in Federal Court, which characterizations require no response. To the extent those remaining allegations require a response, MWG denies them.

COUNT 1

Causing or Threatening Discharge of SO₂ so as to Cause Air Pollution, in Violations[sic] of Section 9(a) of the Environmental Protection Act, 415 ILCS 5/9(a)

31. Paragraphs 1-30 are realleged and incorporated herein by reference.

ANSWER: MWG repeats and incorporates its answers to Paragraphs 1-30 as and for its answer to Paragraph 31.

32. MWG, by emitting SO₂ in amounts that exceed those set forth in the table in paragraph 28 causes, threatens, or allows emissions that, either alone or in combination with SO₂ emissions from other sources, cause ambient air quality to exceed the 1-hour SO₂ NAAQS, which are set to protect human health and the environment, and therefore causes or tends to cause air pollution in violation of Section 9(a) of the Act, 415 ILCS 9(a).

ANSWER: All allegations in Paragraph 32 are denied.

COUNT 2

Causing or Threatening Discharge of SO₂ to as to Violate 35 Ill. Admin. Code § 201.141 By Discharging SO₂ So As to Cause or Tend to Prevent Attainment or Maintenance of the 1- hour SO₂ NAAQS

33. Paragraphs 1-30 are realleged and incorporated herein by reference.

ANSWER: MWG repeats and incorporates its answers to Paragraphs 1-30 as and for its answer to Paragraph 33.

34. MWG, by emitting or threatening to emit SO₂ into the environment in amounts that, either alone or in combination with contaminants from other sources, prevent the attainment or maintenance of the 1-hour SO₂ NAAQS, MWG causes, threatens, or allows emissions that violate 35 Ill. Admin. Code § 201.141, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a).

ANSWER: All allegations in Paragraph 34 are denied.

RELIEF REQUESTED

WHEREFORE, Petitioners[sic] request that this Board:

1. Authorize a hearing in this matter at which time Respondent will be required to answer to the allegations herein.

2. Find and declare that Respondent, Midwest Generation, LLC has violated the Illinois Environmental Protection Act's prohibitions on causing or threatening air pollution at its Joliet, Powerton, Waukegan, and Will County plants.

3. Find and declare that Respondent, Midwest Generation, LLC, has violated the Illinois Environmental Protection Act's prohibition on violating 35 Ill. Admin. Code 201.141 by emitting or threatening to emit air pollution that prevents the attainment or maintenance of the 1-hour SO₂ NAAQS.

4. Impose civil penalties under 415 ILCS 5/42.

5. Order Respondent, under 415 ILCS 5/33, to:
 - Cease and desist from emissions that, alone or in combination with emissions from other sources, cause or threaten to cause violations of the 1-hour SO₂ NAAQS,
 - Limit SO₂ emissions to the hourly rates determined necessary to prevent any violation of the 1-hour SO₂ NAAQS,
 - Further reduce SO₂ emissions to offset unlawful past SO₂ emissions; and
6. Grant such other relief as the Board deems just and proper.

ANSWER: MWG denies that Sierra Club is entitled to any relief whatsoever.

ADDITIONAL DEFENSES

Without altering the burden of proof, MWG asserts the following additional defenses and any and all further defenses that become available or are identified during this action, including through discovery, and specifically reserves the right to amend this Answer for purposes of asserting additional defenses.

1. Sierra Club's Complaint fails to state a claim upon which relief can be granted.
2. Sierra Club lacks standing to assert the claims asserted in the Complaint.
3. Sierra Club's claims are moot and not ripe for adjudication.
4. Defendant has not received fair notice of the interpretations or applications of law advanced in the Complaint. Accordingly, Sierra Club's efforts to retroactively enforce those interpretations and applications deprive Defendant of Due Process of law and Equal Protection of the laws as guaranteed by the 5th and 14th Amendments of the Constitution of the United States, the Administrative Procedure Act, 5 U.S.C. § 551 et seq., and Article 1, Section 2 of the Illinois Constitution.
5. Sierra Club's claims are barred, in whole or in part, by the doctrines of estoppel, waiver and acquiescence. MWG has reasonably relied upon affirmative conduct, interpretations and representations by the Illinois Environmental Protection Agency ("IEPA") and the United States Environmental Protection Agency ("USEPA") and long-standing acquiescence by IEPA and USEPA to interpretation and application by regulatory agencies and regulated industries of key terms and requirements of the statutes and regulations MWG is claimed to have violated.
6. Sierra Club's claims are barred, in whole or in part, because the Illinois Pollution Control Board does not have jurisdiction over the asserted claims and does not have authority to grant the relief requested in the Complaint.

Andrew N. Sawula
Schiff Hardin LLP
One Westminster Place
Lake Forest, IL 60045
(847) 295-4336

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 9th day of March, 2015, I have served the attached **MIDWEST GENERATION, LLC'S ANSWER TO SIERRA CLUB'S COMPLAINT** by first class U.S. mail, postage affixed, upon:

David L. Wentworth II
Hasselberg, Williams, Grebe,
Snodgrass & Birdsall
124 SW Adams, Suite 360
Peoria, IL 61602-1320
dwentworth@hwgsb.com

David C. Bender
McGillivray, Westerberg & Bender
211 S. Paterson Street, Suite 320
Madison, WI 53703
bender@m wattorneys.com

Zoran Balac
Goldstein & McClintock, LLP
208 S. LaSalle Street, Suite 1750
Chicago, IL 60601

Bradley Halloran, Hearing Officer
John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
Brad.halloran@illinois.gov

/s/ Bina Joshi
Bina Joshi

Stephen J. Bonebrake
Bina Joshi
Schiff Hardin LLP
233 South Wacker Drive
Suite 6600
Chicago, Illinois 60606
(312) 258-5500

Andrew N. Sawula
Schiff Hardin LLP
One Westminster Place
Lake Forest, IL 60045
(847) 295-4336