

ILLINOIS POLLUTION CONTROL BOARD

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APR 07 2017

STATE OF ILLINOIS  
Pollution Control Board

In the Matter of: )  
)  
SIERRA CLUB )  
)  
Complainant, )  
)  
v. )  
)  
MIDWEST GENERATION, LLC, )  
)  
Respondent )

PCB No-2013-027  
(Citizens Enforcement – Air)

NOTICE OF ELECTRONIC FILING

TO:

Don Brown, Clerk  
Bradley Halloran, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
don.brown@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

Sean P. Williams  
Goldstein & McClintock, LLP  
208 S. LaSalle Street  
Suite 1750  
Chicago, IL 60601

Andrew N. Sawula  
Schiff Hardin LLP  
One Westminster Place  
Lake Forest, IL 60045

Stephen J. Bonebrake  
Bina Joshi  
Schiff Hardin LLP  
233 South Wacker Drive  
Suite 6600  
Chicago, Illinois 60606

PLEASE TAKE NOTICE that on this date I filed electronically with the Office of the Clerk of the Pollution Control Board of the State of Illinois the attached **Joint Motion to Dismiss Without Prejudice and Stipulation on Costs and Fees**, copies of which are herewith served upon you.

Dated: 6<sup>th</sup> April, 2017

Respectfully Submitted,

*Faith E. Bugel*

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Faith E. Bugel  
Attorney at Law  
1004 Mohawk  
Wilmette, IL 60091  
(312) 282-9119

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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**PARTIES' JOINT MOTION TO DISMISS WITHOUT PREJUDICE**

Pursuant to Section 101.500(a) of the Pollution Control Board General Rules, Complainant Sierra Club, Inc., and Respondent Midwest Generation, LLC (“MWG”) (collectively, the “Parties”) jointly move the Illinois Pollution Control Board (“Board”) to dismiss the Complaint in this action without prejudice. In support of this motion, the Parties state as follows:

1. On December 15, 2012, Complainant filed a Complaint relating to four MWG power stations: the Joliet Generating Station in Will County, Illinois (the “Joliet Station”); the Powerton Generating Station in Tazewell County, Illinois (the “Powerton Station”); the Waukegan Generating Station in Lake County, Illinois (the “Waukegan Station”); and the Will County Generating Station in Will County, Illinois (the “Will County Station”) (collectively, the “Stations”). (Compl. Par. 3.)

2. The Complaint contains two counts, both of which are premised on the 2010 1-hour SO<sub>2</sub> National Ambient Air Quality Standard (the “1-hour SO<sub>2</sub> NAAQS”). (Compl. ¶¶ 31-34.) The first count alleges that the Stations violate the Illinois Environmental Protection Act § 9(a) by emitting SO<sub>2</sub> air pollution that causes ambient air quality to exceed the 1-hour SO<sub>2</sub>

NAAQS. (Compl. ¶ 32.) The second count alleges that the Stations violate 35 IAC § 201.141, and consequently Section 9(a), “by emitting or threatening to emit SO<sub>2</sub> 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 SO<sub>2</sub> NAAQS . . . .” (Compl. ¶ 34.), MWG denies the allegations.

3. After the complaint was filed, the State of Illinois took several actions in relation to the 1-hour SO<sub>2</sub> NAAQS. First, on April 28, 2015, the Illinois Environmental Protection Agency (“IEPA”) initiated a rulemaking action before the Board, “Amendments to 35 ILL. Adm. Code Part 214, Sulfur Limitations, Part 217, Nitrogen Oxides Emissions, and Part 225, Control of Emissions from Large Combustion Sources” pertaining to areas designated as nonattainment with respect to the 1-hour SO<sub>2</sub> NAAQS for the purpose, among others, of “satisfy[ing] Illinois’ obligation to submit a State Implementation Plan . . . to the United States Environmental Protection Agency . . . regarding these nonattainment areas.” (PCB R15-21, Statement of Reasons, at 1 (Apr. 28, 2015).) The SO<sub>2</sub> nonattainment areas addressed by this rulemaking were comprised of the Lemont nonattainment area (“NAA”), which includes part of Cook County (Lemont Township) and part of Will County (DuPage and Lockport Townships), and the Pekin NAA, which includes part of Tazewell County (Cincinnati and Pekin Townships) and part of Peoria County (Hollis Township). 40 CFR § 81.314. The Will County Station and the Joliet Station are located in or near the Lemont NAA, and the Powerton Station is located in the Pekin NAA. Subsequently, the State adopted these rules (PCB R15-21, Notice of Adopted Rulemaking; 51 Ill. Reg. Vol. 39, at 16174 (Dec. 18, 2015)), and submitted them as the Nonattainment State Implementation Plan for the 1-hour SO<sub>2</sub> NAAQS to U.S. EPA for approval. 81 Fed. Reg. 14736, 14737 (Mar. 18, 2016).

4. Second, the IEPA recommended to the U.S. EPA that Lake County, Illinois, the county in which the Waukegan plant is located, be designated attainment. This recommendation was supported by air quality characterization documentation that included modeling and was required by U.S. EPA's 1-Hour SO<sub>2</sub> NAAQS rulemaking. (Ex. A, Letter from Alec Messina, Acting Director, IEPA, to Robert Kaplan, Acting Regional Administrator, U.S. EPA Region V (Jan. 12, 2017)).

5. U.S. EPA has not made a final decision on either of these submittals and, as a result, it is not possible to ascertain how any U.S. EPA decision will impact on Complainant's claims, if at all. Further, even though U.S. EPA's review of the State submittals is pending, the duration of that review is uncertain. In these circumstances, the benefits of continuing to delay this case for the purpose of awaiting additional action by the regulators are outweighed by the burden on the Parties and the Board of maintaining this proceeding over an extended time frame. Thus, in the interest of efficiency, the Parties agree to a voluntary dismissal of Complainant's claims without prejudice.

6. The Parties agree, per the attached stipulation, that each Party is to bear its own costs, expenses and fees related to this matter.

#### CONCLUSION

For these reasons, the Parties respectfully request that this Board grant this motion and dismiss the Complaint without prejudice, each party to bear its own costs, expenses and fees related to this matter.

Respectfully submitted,

SIERRA CLUB

MIDWEST GENERATION, LLC

By:

*Faith E. Bugel*

\_\_\_\_\_  
Faith E. Bugel

By:

*Stephen J. Bonebrake*

\_\_\_\_\_  
One of Its Attorneys

Faith E. Bugel  
Attorney at Law  
1004 Mohawk Rd.  
Wilmette, IL 60091  
(312) 282-9119

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

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


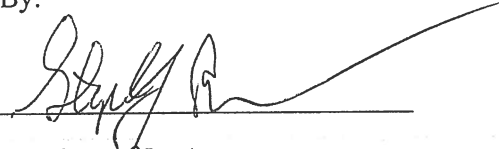
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	)	
Respondent	)	

**STIPULATION ON COSTS AND FEES**

IT IS HEREBY STIPULATED AND AGREED by and between Complainant and Respondent that each party is to bear its own costs, expenses and attorneys' fees related to this matter.

Respectfully submitted,

SIERRA CLUB	MIDWEST GENERATION, LLC
By:	By:
	
_____ Faith E. Bugel	_____ One of Its Attorneys
Faith E. Bugel Attorney at Law 1004 Mohawk Rd. Wilmette, IL 60091 (312) 282-9119	Stephen J. Bonebrake Bina Joshi Schiff Hardin LLP 233 South Wacker Drive Suite 6600 Chicago, IL 60606 (312) 258-5500
	Andrew N. Sawula Schiff Hardin LLP One Westminster Place Lake Forest, IL 60045 (847) 295-4336

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served on the date of 6<sup>th</sup> April, 2017 the attached **Joint Motion to Dismiss Without Prejudice and Stipulation on Costs and Fees**, upon the following persons by electronic mail/U.S. Mail/FedEx, with proper postage or delivery charges prepaid:

@ Consents to email service

PCB 2013-027 @  
Stephen J. Bonebrake  
Schiff Hardin, LLP  
6600 Willis Tower  
233 S. Wacker Drive  
Chicago, IL 60606-6473

PCB 2013-027 @  
Bina Joshi  
Schiff Hardin, LLP  
6600 Willis Tower  
233 S. Wacker Drive  
Chicago, IL 60606-6473

PCB 2013-027  
David C. Bender  
McGillivray, Westerberg & Bender, LLC  
211 S. Paterson Street  
Suite 320  
Madison, WI 53703

PCB 2013-027 @  
Andrew N. Sawula  
Schiff Hardin, LLP  
6600 Willis Tower  
233 S. Wacker Drive  
Chicago, IL 60606-6473

PCB 2013-027  
David L. Wentworth II  
Hasselberg, Williams, Grebe, Snodgrass &  
Birdsall  
124 SW Adams, Suite 360  
Peoria, IL 61602-1320

PCB 2013-027  
Sean P. Williams  
Goldstein & McClintock, LLP  
208 S. LaSalle Street  
Suite 1750  
Chicago, IL 60601

Respectfully Submitted,



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Akriti Bhargava  
Litigation Assistant  
Sierra Club  
2101 Webster St., Suite 1300  
Oakland, CA – 94612  
415-977-5629  
[akriti.bhargava@sierraclub.org](mailto:akriti.bhargava@sierraclub.org)