

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC)	
& INEOS JOLIET, LLC,)	
Petitioners,)	
v.)	PCB 16-19 (Midwest Generation)
)	PCB 16-24 (INEOS)
ILLINOIS ENVIRONMENTAL)	(Time-Limited Water Quality Standard)
PROTECTION AGENCY)	(Consolidated)
Respondent.)	

NOTICE OF FILING

To:

Don Brown, Clerk of the Board Illinois Pollution Control Board 60 E. Van Buren Street Suite 630 Chicago, IL 60605 don.brown@illinois.gov	Bradley P. Halloran Hearing Officer Illinois Pollution Control Board 60 E. Van Buren Street Suite 630 Chicago, IL 60605 Brad.Halloran@illinois.gov
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(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board Midwest Generation, LLC's Fifth Motion to Extend Stay of Proceedings, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: August 17, 2022

MIDWEST GENERATION, LLC

By: /s/ Vincent R. Angermeier

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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Midwest Generation, LCC's Fifth Motion to Extend Stay of Proceedings, via electronic mailing to the following:

<p>Sara Terranova Illinois Environmental Protection Agency 1021 N. Grand Avenue East P.O. Box 19276 Springfield, IL 62794-9276 sara.terranova@illinois.gov</p>	<p>Albert Ettinger Law Firm of Albert Ettinger 53 W. Jackson, Suite 1664 Chicago, IL 60604 ettinger.albert@gmail.com</p>
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Dated: August 17, 2022

/s/ Vincent R. Angermeier

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FIFTH MOTION TO EXTEND STAY OF PROCEEDINGS

Pursuant to 35 Ill. Adm. Code 101.514, Midwest Generation, LLC (MWGen), by one of its attorneys, Vincent R. Angermeier, respectfully requests that the Illinois Pollution Control Board, by and through its Hearing Officer, enter an order extending the stay in this consolidated proceeding while the Alternative Thermal Effluent Limitations (ATELs) for Joliet Generating Station 9 and Joliet Generating Station 29 (collectively, “the Stations”) are incorporated into each Station’s NPDES Permit.

In support of this motion, the MWGen states as follows:

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

2. On February 24, 2017, the variance petition was automatically converted to a Petition for a Time-Limited Water Quality Standard (TLWQS) by operation of 415 ILCS 5/38.5(c), 40 C.F.R. § 131.14.

3. On June 27, 2018, MWGen filed an amended TLWQS petition (the “TLWQS Petition”). The TLWQS Petition sought TLWQS variances connected to two segments of the Upper Illinois Waterway: (1) The Brandon Pool & Chicago Sanitary and Shipping Canal, both thermally affected by the WCGS; and (2) the Upper Dresden Island Pool (UDIP), the receiving water for the Joliet Stations.

4. On July 25th, 2019, the Board consolidated the MWGen TLWQS proceeding with PCB 16-14, which concerns a TLWQS petition filed by INEOS on July 21, 2015, and amended on July 26, 2018 (the “Consolidated TLWQS Proceeding”).

5. On November 7th, 2019, the Board granted the petition for ATEL relief for the WCGS. (PCB 18-58).

6. On November 27th, 2019, MWGen, INEOS, and the Illinois Environmental Protection Agency (the “Agency”) moved that the Board stay the Consolidated TLWQS Proceeding.

7. The joint motion argued that MWGen planned on seeking ATEL relief for each of the Joliet Stations. If granted, MWGen’s TLWQS petition would be mooted by the combined effect of those ATELS and the already-existing WCGS ATEL.

8. On December 5th, 2019, the Board granted the motion to stay proceedings. The Order states that: “The Board has reviewed the joint motion and agrees that it would now be more efficient to use the parties’ and the Board’s resources to review [MWGen]’s expected petition for alternative thermal effluent limitations than to proceed with IEPA’s recommendation on and the Board’s consideration of the TLWQS petitions.”

9. The Board’s order states further that the stay would last until the Board “reaches a final decision on [MWGen]’s petition for alternative limitations for the Joliet Stations.” PCB 16-19, *Order Granting Stay*, at p. 2 (Dec. 5, 2019).

10. On December 30th, 2019, MWGen filed ATEL petitions for each of the Joliet Stations. The proceedings were docketed at PCB 20-28 and PCB 20-39, and the Board consolidated those proceedings on February 6th, 2020.

11. In support of the ATELS requested in the petitions, MWGen filed Thermal Demonstration Reports (prepared pursuant to 35 Ill. Admin. Code 106.1120) showing that those

limits would assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in the UDIP.

12. The Thermal Demonstration Reports accounted for the fact that the UDIP receives additional thermal loading from a downstream discharger, Flint Hills Resources (INEOS's predecessor-in-interest). The report found that, so long as INEOS continues discharging heat at historical levels, no adverse ecological impact would be created by granting alternative thermal effluent relief to the Joliet Stations.

13. On July 8th, 2021, the Board granted ATEL relief for the Joliet Stations but did not extend that relief to the downstream dischargers as suggested by the Illinois Environmental Protection Agency (the "Agency").

14. No person filed an appeal challenging the Board's July 8, 2021 Order.

15. On August 3, 2021, MWGen and INEOS filed a Second Joint Motion to Extend Stay of Proceedings, noting that the stay protections remained necessary, because the ATEL relief would be of unclear effect until incorporated into each Station's NPDES permit.

16. On August 17, 2021, the Hearing Officer granted the Second Joint Motion, but directed that the stay of proceedings would expire on January 1, 2022.

17. On November 17, 2021, the Agency reissued the NPDES permit for the WCGS. (IL0002208). The permit incorporates the alternative thermal effluent limitations established by the Board.

18. On December 9, 2021, MWGen filed a Third Motion to Extend Stay of Proceedings, noting that the stay protections remained necessary, because the ATEL relief for the Joliet Stations would be of unclear effect until incorporated into each Station's NPDES permit.

19. On December 21, 2021, the Hearing Officer granted the Motion and extended the stay of proceedings to May 1, 2022.

20. On April 25th, 2022, MWG filed a Fourth Motion to Extend Stay of Proceedings, noting that the stay protections remained necessary, because the ATEL relief for the Joliet Stations would be of unclear effect until incorporated into each Station's NPDES permit.

21. On June 24, 2022, the Hearing Officer granted the Motion and extended the stay of proceedings to September 1, 2022.

22. As of the date of this filing, the Agency has not modified or reissued the Joliet Stations' NPDES permits to include the ATELS. Until the ATELS granted by the Board's July 8, 2021 Order are incorporated into the respective NPDES permits for the two Joliet Stations, it is not clear whether the Board-approved ATELS eliminate the applicability of the existing thermal water quality standards that could otherwise apply in the absence of the ATELS.

23. The stay of the applicability of the existing thermal water quality standards to the MWGen Joliet Stations continues while the TLWQS petition remains pending. Because there is still some uncertainty as to when the Agency will incorporate the Joliet Stations' ATELS into their NPDES permits and, until that is accomplished, whether the Stations are subject to the thermal limits in 35 Ill. Admin. Code 302.408, the MWGen is requesting that its TLWQS petition remain pending but stayed.

24. Even if the permits are reissued immediately, the stay of proceedings should continue. The ATEL relief will not be definite until the United States Environmental Protection Agency's right to object to the reissued permit expires. 40 C.F.R. § 123.44. This would take 60 days, meaning that the ATEL would still be provisional well after the current stay expires.

25. Now that the Board has approved ATELS for the Joliet Stations, continued work on the TLWQS petitions is unlikely to be a productive use of the Board's and parties' resources. *See State v. Bd. of Trustees of U. of Ill.*, PCB Nos. 13-35; 13-36, slip op. at 13 (PCB 2013) (granting stay

where doing so would “help to avoid the potentially unnecessary expenditure of resources by the parties and the Board”).

26. Similarly, although the Board disfavors “indefinite stays” (*See, e.g., Site-Specific Rule for the Closure of Ameren Energy Resources Ash Ponds: Proposed New 35 Ill. Adm. Code 840, Subpart B, R13-19, slip op. at 2 (PCB 2013)*), the incorporation of the ATELS into the NPDES permits is reasonably expected not to take a significant amount of time, since the Board has already directed the Agency to modify the permits “expeditiously.”

WHEREFORE, Midwest Generation, LLC, respectfully requests the Illinois Pollution Control Board, by and through its Hearing Officer, stay proceedings in this matter until December 1, 2022.

Counsel for MWGen has spoken with Agency counsel, who confirms that the Agency does not object to either request.

Respectfully submitted,

Midwest Generation, LLC

By: /s/Vincent R. Angermeier
One of Its Attorneys

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