

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) AS 2021-001
PETITION OF MIDWEST)
GENERATION, LLC FOR AN)
ADJUSTED STANDARD FROM) (Adjusted Standard)
845.740(a) AND FINDING OF)
INAPPLICABILITY OF PART 845)
(JOLIET 29 STATION))

NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board Midwest Generation, LLC's Motion to Withdraw Its Request for Hearing on Its Petition for a Finding of Inapplicability of Part 845 to Ponds 1 And 3, a copy of which is herewith served upon you.

Dated: May 25, 2022

MIDWEST GENERATION, LLC

By: /s/Kristen L. Gale

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing, and Midwest Generation, LLC's Motion to Withdraw Its Request for Hearing on Its Petition for a Finding of Inapplicability of Part 845 to Ponds 1 And 3 was electronically filed on May 25, 2022 with the following:

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and that copies were sent via e-mail on May 25, 2022 to the parties on the service list.

Dated: May 25, 2022

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) AS 2021-001
Petition of Midwest Generation, LLC's)
Petition for an Adjusted Standard from)
845.740(a) and Finding of Inapplicability)
of Part 845 (Joliet 29 Station))

**MIDWEST GENERATION, LLC'S MOTION TO WITHDRAW ITS REQUEST FOR
HEARING ON ITS PETITION FOR A FINDING OF INAPPLICABILITY
OF PART 845 TO PONDS 1 AND 3**

Pursuant to Sections 101.500(a) and 104.420(b) of the Illinois Pollution Control Board ("Board") regulations, 35 Ill. Adm. Code 101.500(a), 104.420(b), Midwest Generation, LLC ("MWG"), moves to withdraw its request for a public hearing on that portion of its petition that requests the Board find that Part 845 does not apply to Ponds 1 and 3 at the Joliet 29 Station. MWG is seeking to withdraw its public hearing request because both MWG and the Illinois Environmental Protection Agency agree that Part 845 does not apply to Joliet 29 Station Ponds 1 and 3. Unless the Board determines that a hearing is necessary to address MWG's requested relief regarding the inapplicability of Part 845, a hearing on this portion of MWG's petition is not necessary and the Board may proceed to decide this request for relief based on the parties' filings. If this motion is granted, the hearing scheduled for June 28 and 29, 2022 will focus solely on that portion of MWG's petition for adjusted standard which seeks a Board determination that it may reuse the liner in Pond 2.

In support of this motion, the MWG state as follows:

1. On May 11, 2021, MWG filed its Petition for an Adjusted Standard ("Petition") from 845.740(a) and Finding of Inapplicability of Part 845. In the Petition, MWG made two requests: (1) that the Board allow MWG to decontaminate and retain its existing liner in Pond 2 and (2) that the Board find that the Part 845 rules are inapplicable to Ponds 1 and 3 because they are process water basins that do not accumulate CCR.

2. MWG's Petition presents separate requests for an adjusted standard for Pond 2 and a finding of inapplicability for Ponds 1 and 3 separately. The Petition Content Requirements are separately set forth in the Petition for each of the two requests for relief. *See* MWG Petition, § III. MWG also requested a hearing for on the Petition. *See* MWG Pet. § III.j.

3. On September 22, 2021, Illinois EPA filed its Recommendation to the Board. The Illinois EPA stipulated that Ponds 1 and 3 are not CCR surface impoundments subject to Part 845, and did not object to the Board granting MWG's its Petition, as long as neither Ponds 1 or 3 were used to treat, store or dispose of CCR in the future. *See* Illinois EPA Sept. 22, 2021, Rec. § IV. The Illinois EPA did not request a hearing. *Id.*

4. On February 4, 2022, the Illinois Environmental Protection Agency ("Illinois EPA") filed with the Board its Recommendation for Pond 2 at the Joliet 29 Station, requesting that the Board deny MWG's Petition, and on March 24, 2022, MWG responded and disputed many of the Illinois EPA's claims. *See* Illinois EPA Feb. 4, 2022 Rec., § IV; MWG Response.

5. The hearing on MWG's Petition is scheduled for June 28 and 29, 2022.

6. Section 104.420(b) of the Board rules states that "Where all parties and participants who have requested a hearing under this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board in its discretion deems it advisable." 35 Ill Adm. Code 104.420(b).

7. Because Illinois EPA stipulates Ponds 1 and 3 are not CCR surface impoundments and does not object to the Board granting MWG's request that the Board find that Part 845 does not apply to Ponds 1 and 3, MWG and Illinois EPA agree that a hearing on this requested relief is not necessary "unless the Board in its discretion deems it advisable."

8. Only MWG has filed a request for public hearing in this matter.

9. The Board has previously granted a petition for a finding of inapplicability of Part 845 to a process water basin, without requiring a hearing. On February 17, 2022, the Board found that the Service Water Basin at the MWG Powerton Station was not subject to Part 845 as long as it was not used for the future treatment, storage, or disposal of CCR. *See In the Matter of: Midwest Generation LLC's Petition for an Adjusted Standard and Finding of Inapplicability for the Powerton Station*, PCB 21-02, Feb. 17, 2022. As it did here, the Illinois EPA stipulated that the Powerton Station Service Water Basin was not subject to Part 845 and it did not object to the Board granting MWG's petition. *Id.*, p. 5.

10. Illinois EPA does not object to MWG's motion.

WHEREFORE, for the reasons stated above, Midwest Generation, LLC, respectfully requests that the Board grant its motion to withdraw its request for a hearing on its petition for a finding of inapplicability of Part 845 to Ponds 1 and 3, and that the hearing scheduled for June 28 and 29, 2022 focus solely on MWG's petition for adjusted standard to reuse the liner in Pond 2.

Respectfully submitted,

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One of its Attorneys

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