

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

MIDWEST GENERATION, LLC,)	
WILL COUNTY GENERATING STATION)	
)	
Petitioner,)	
)	
v.)	PCB No. 2006-156
)	(Permit Appeal - Air)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE

To:	Dorothy Gunn, Clerk	Sheldon A. Zabel
	Illinois Pollution Control Board	Kathleen C. Bassi
	100 West Randolph Street	Stephen J. Bonebrake
	Suite 11-500	Kavita M. Patel
	Chicago, Illinois 60601	Schiff Hardin, LLP
		6600 Sears Tower
	Bradley P. Halloran	233 South Wacker Drive
	Hearing Officer	Chicago, Illinois 60606
	James R. Thompson Center,	
	Suite 11-500	
	100 West Randolph Street	
	Chicago, Illinois 60601	

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the **MOTION FOR LEAVE TO FILE SURREPLY AND SURREPLY** of the Respondent, Illinois Environmental Protection Agency, a copy of which is herewith served upon the assigned Hearing Officer and the attorneys for the Petitioner.

Respectfully submitted by,

_____/s/_____
Robb H. Layman
Assistant Counsel

Dated: May 26, 2006
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 524-9137

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
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MIDWEST GENERATION, LLC,)	
WILL COUNTY GENERATING STATION)	
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)	
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MOTION FOR LEAVE TO FILE SURREPLY

NOW COMES the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA” or “Respondent”), by and through its attorneys, and moves the Illinois Pollution Control Board (“Board”) for leave to file a Surreply to the Petitioner’s, MIDWEST GENERATION, LLC, (hereinafter “Midwest Generation” or “Petitioner”), recent responsive pleading concerning its Request for Stay. In support of this Motion, the Respondent states as follows:

1. On March 3, 2006, the Illinois EPA granted a construction permit, Construction Permit No. 06020009, to Midwest Generation for the construction of new wet dust extractor control devices for the Unit 3 and Unit 4 coalAs part of its Petition, Dynegy Midwest sought a stay of the effectiveness of the entire CAAPP permit.
2. On or about April 7, 2006, Petitioner filed a petition with the Board seeking an appeal of the Illinois EPA’s permitting decision. The Illinois EPA received an electronic version of the appeal on the same date. Formal notice of the appeal was served on the Illinois EPA on April 11, 2006.

3. The Illinois EPA electronically filed a Response in Opposition to the Petitioner's Request for Stay with the Board on April 25, 2006.

4. On or about May 12, 2006, Petitioner filed a Motion for Leave and an accompanying Reply to the Illinois EPA's Response in Opposition to Petitioner's Request for Stay with the Board. The Illinois EPA received an electronic version of the appeal on the same date. Formal notice of the appeal was served on the Illinois EPA on May 15, 2006.

5. In accordance with the Board's procedural requirements, the Illinois EPA possesses no formal right to file additional responsive pleadings except as may permitted by the Board or a hearing officer to prevent material prejudice. Any such reply or surreply must be filed with the Board within 14 days after service of the response. *See, 35 Ill. Adm. Code 101.500(e).*

6. In its recent Reply, Petitioner asserts several legal-related arguments concerning the Illinois Administrative Procedure Act ("APA"), *5 ILCS 100/10-65(b)(2004)*, that are, in fact, misstatements of applicable law. This filing is necessary to avoid undue prejudice arising from those misstatements. The Board has previously held that a surreply is an appropriate filing when brought to correct misstatements contained in briefing documents. *See, Illinois Ayers Oil Company v. Illinois EPA, PCB No. 03-214, UST Appeal (August 5, 2004).*

WHEREFORE, the Illinois EPA respectfully seeks leave from the Board to file the attached Surreply in the above-captioned matter.

Respectfully submitted by,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

_____/s/_____
Robb H. Layman
Assistant Counsel

Dated: May 26, 2006
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 524-9137

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of May 2006, I did file, by electronic mail, the following instruments entitled **MOTION FOR LEAVE TO FILE SURREPLY and SURREPLY** to:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

and further, that I arranged for a true and correct copy of the same foregoing instruments to be sent, on the 30th day of May 2006, by First Class Mail with postage thereon fully paid and deposited into the possession of the United States Postal Service, to:

Bradley P. Halloran
Hearing Officer
James R. Thompson Center
Suite 11-500
100 West Randolph Street
Chicago, Illinois 60601

Sheldon A. Zabel
Kathleen C. Bassi
Stephen J. Bonebrake
Joshua R. More
Kavita M. Patel
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6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606

_____/s/_____
Robb H. Layman
Assistant Counsel