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ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)	
)	
PROVISIONAL VARIANCES FROM)	RO1-31
WATER TEMPERATURE STANDARDS:)	(Rulemaking - Water)
PROPOSED NEW 35 Ill. Adm. Code 301.109)	

NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the **PRE-FILED TESTIMONY OF JULIA WOZNIAK, MIDWEST GENERATION EME, LLC FOR JUNE 20, 2001 BOARD HEARING**, a copy of which is herewith served upon you.

See attached Service List.

MIDWEST GENERATION EME, LLC

By: *Susan M. Franzetti*
Susan M. Franzetti

Dated: August 9, 2001

Susan M. Franzetti
Sonnenschein Nath & Rosenthal
8000 Sears Tower
Chicago, Illinois 60606

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROVISIONAL VARIANCES FROM) RO1-31
WATER TEMPERATURE STANDARDS:) (Rulemaking - Water)
PROPOSED NEW 35 Ill.Adm. Code 301.109)

**PRE-FILED TESTIMONY OF
JULIA WOZNIAK, MIDWEST GENERATION EME, LLC
FOR JUNE 20, 2001 BOARD HEARING**

I. INTRODUCTION

My name is Julia Wozniak. I am here to present testimony on behalf of Midwest Generation EME, LLC (“Midwest Generation”). I am a Senior Biologist employed by Midwest Generation EME, LLC in Chicago, IL. I hold a Bachelor of Science degree in Environmental Sciences, with a concentration in water/biological quality issues, from the University of Illinois at Urbana-Champaign, Illinois. I have been involved with environmental issues related to the electric power industry since 1982. My primary responsibility, in working for both Midwest Generation, and formerly for Commonwealth Edison Company, has been the development, coordination and execution of thermo-hydrodynamic modeling of complex powerplant/waterway interactions, compliance-related field monitoring and biological/chemical sampling activities. I have also actively participated in numerous state and federal rulemakings related to water matters and which have had the potential to impact our facilities’ discharge limitations.

Midwest Generation owns and operates seven fossil-fueled power plants in Illinois. Each plant uses surface water for condenser cooling purposes and is therefore subject to the federal and state water pollution rules, as well as certain site-specific requirements, regarding thermal discharges. I have been and continue to be responsible for NPDES permitting matters for the Midwest Generation generating stations. I have worked closely with Agency personnel in the past to determine appropriate requirements for specific provisional variance cases for our facilities. None of Midwest Generation’s facilities have needed to apply for a thermal provisional variance in the past five years. While we have not needed to use the relief afforded by a thermal provisional variance in the past several years, we strongly believe that the thermal provisional variance process is very important to the welfare of the public in times of severe weather conditions. We also believe that this proposed rule is not warranted by past history nor current regulatory needs. However, if it is determined to proceed with the adoption of additional rules specific to thermal provisional variances, then we wish to identify several areas of concern to us in the proposed rules and I am testifying today to identify and explain those concerns.

As a short term relief mechanism, a thermal provisional variance is typically sought under emergency conditions when extreme ambient environmental conditions dictate that a balance must be struck between compliance with existing thermal limitations and a continued supply of reliable power to the citizens of northern Illinois and surrounding states during times of extremely hot air temperatures. Such conditions more often than not include the concurrence of extremely high humidity, low river flows, elevated ambient water temperatures and the increased

demand for reliable power for air conditioning systems to protect human health, as well as other necessities of modern civilization. These are also situations during which some facilities' equipment succumbs to the stresses of operating at high loads under extremely taxing physical conditions. The loss of any generation unit during these times is especially critical, since power demand must continue to be met by the remaining generating capacity available. A continuous, reliable power supply is also essential during these periods in order to maintain the integrity of the power grid, thereby preventing widespread brown-outs and black-outs, as well as sustaining the ability to import power into our area from other sources, if conditions warrant. As power producers, we have an obligation to serve our customers, as well as to protect the environment. Achieving a reasonable balance that is acceptable to all is our ultimate goal.

II. Comments Concerning the Scope of Applicability of Proposed Section 301.109

The Agency's rule-making proposal sets forth how the Agency will exercise its provisional variance authority when evaluating requests for provisional variances from water temperature standards. The Illinois EPA appears to be providing guidance for the regulated community regarding the minimum appropriate conditions to be included in thermal provisional variances to ensure that no environmental harm will result from the provisional variance from the thermal limits. It is, however, also proposing certain additional and significant conditions that threaten to place an unreasonable burden on the applicant for such a variance.

With respect to the intended scope of applicability of proposed Section 301.109, it is unclear whether this section would apply to both emergency and non-emergency thermal provisional variance recommendations by the Agency. Part 180 contains different application requirements depending upon whether the applicant is requesting a non-emergency variance (Section 180.202) or an emergency variance (Section 180.204). Emergency variances may be requested when "emergency circumstances due to causes such as equipment malfunctions, extreme weather conditions or other unforeseeable events" occur. (See section 35 Ill. Adm. Code 180.204). The procedure for requesting an emergency variance is more streamlined than for a non-emergency variance. The Agency's proposed 301.109(a) language references "the contents required of any application for a provisional variance under 35 Ill. Adm. Code 180.202(b)." This appears to limit the applicability of proposed section 301.109(a) to non-emergency variance requests, as there is no reference made to section 180.204. However, as part of the recommendation to the Board that the Agency proposes to require of itself in this new rule, it has included the requirement that it "explain why the [weather and operational conditions] were not reasonably foreseeable based on historical weather patterns and predictable operational conditions." (Proposed section 301.109(a)(2)). There is no such requirement for the contents of an application for a non-emergency variance set forth in Section 180.202. However, emergency variance requests are allowed for "unforeseeable events." Thus, it appears that the Agency is either trying to add a new eligibility requirement, not included in section 180.202, for obtaining a non-emergency thermal variance, namely that the weather and operation conditions were not "foreseeable", or the Agency intends to apply proposed Section 301.109 only to emergency thermal variance requests.

The Agency needs to clarify the intended scope of its proposed new section 301.109 as to its applicability to non-emergency and emergency variance requests. If the Agency intends that proposed section 301.109 apply to non-emergency variance requests, then it should be

considered whether this expansion of the requirements for granting a non-emergency variance request to include the element of “unforeseeability” is proper given that existing section 180.202 does not contain any such requirement. Further, the Agency should explain why the element of unforeseeability should be included as a condition to granting a non-emergency thermal variance. Alternatively, if the Agency only intends proposed section 301.109 to apply to emergency thermal variance requests, i.e. those based on equipment failures, extreme weather conditions or other unforeseeable events, the proposed rule needs to be clarified to explain whether applicants for an emergency thermal provisional variance are to continue to follow Section 180.204 procedures or do they also have to provide information that addresses the new requirements for the Agency’s recommendation to the Board under proposed 301.109? The latter would seem to be the case as otherwise the Agency is left to figure out for itself issues, such as the foreseeability of the extreme weather conditions, from the discharger’s perspective. However, because the Agency has not proposed any changes to Part 180’s application requirements, it is unclear whether the applicant is supposed to address the new requirements proposed in section 301.109. If the applicant has no such responsibility to address the 301.109 requirements, then it is equally unclear on what basis the Agency is going to make the recommendation as proposed in section 301.109, as little or none of the information to be presented to the Board by the Agency is required to be submitted by the variance applicant.

III. Specific Comments on the Proposed Language of Section 301.109

A. Proposed Section 301.109(a)(2)

Proposed section 301.109(a)(2) requires that the Agency “[e]xplain why the conditions in subsection (a)(1) of this Section were not reasonably foreseeable based on historical weather patterns and predictable operational conditions.” This requirement imposes an impossible burden and responsibility for anticipating/forecasting critical environmental conditions on the Agency and, in all likelihood, on the applicant/discharger. This requirement is unworkable, ambiguous and should not be adopted.

While there is an abundance of long-term weather forecast information available, there is still a considerable amount of uncertainty regarding the validity of any projections made for more than a 2-3 day period. Experienced forecasters in both the public and private sectors strive to make the best projections possible, employing their knowledge of weather patterns, radar and sophisticated models, but the accuracy of such predictions is not always borne out by actual conditions. Historical weather data, while interesting, does not follow any specific year-to-year trend as far as predicted occurrences of hot, dry spells. Power producers, and utilities in general, rely on such forecasting information for long-term planning purposes, but in the end, they are held to operate under whatever conditions are actually encountered. In the Chicago area, summer operations are geared towards meeting the conservative expectation: a period of hot, dry weather. This expected situation does not always occur, as we experienced with last year’s moderate summer; however, in most instances, it can be expected that hot, humid weather will be most prevalent in July and August of each year. Our generating stations can operate well under these conditions as long as they do not continue for an extended duration, and as long as sufficient water exists to dissipate the heat produced by the steam-electric generating process. A problem that often comes into play during prolonged hot weather is the concurrent lack of appreciable rainfall, which results in lower than normal river flows and less heat rejection

capacity. These adverse conditions cause the temperature of facility discharges to approach their maximum thermal limitations and/or to use a considerable number of allowable excursion hours. Anticipating the duration and magnitude of such events is beyond the current capabilities of both experienced weather forecasters and the regulated community.

In the past fifteen years, there have been only three instances when extreme weather conditions occurred. These events occurred in 1999, 1995 and 1988. During the last two weeks of July, 1999, the Midwest experienced a lengthy series of days with temperatures higher than 90 °F. The combination of high heat, record dew points, strong solar inputs and weak winds led to a dangerous situation for people. Before it was over, there were 127 deaths attributed to heat in Illinois; 105 additional deaths were reported in surrounding states. There were additional health, infrastructure and economic impacts that were also quite significant. It would be wrong to characterize this adverse weather pattern as "foreseeable." July, 1999 had a quite normal temperature history in the Midwest until the latter part of the month. Maximum temperature departures from normal were especially strong in the central band of the Midwest, reaching 8 or 9 °F in places for the 15-day period July 17 to 31. The minimum temperatures were also very high during the evenings, especially in Chicago. Therefore, there was no relief of a nightly cool down period to recover from the heat accumulated during the previous day. In Chicago, the in-city temperatures measured about 5 to 7 °F higher than surrounding suburban locations.

The prolonged period of high temperatures and widespread use of air conditioning brought new daily power use records in major Midwestern cities, including Chicago. These records were a result of the combination of high temperatures and the continuing growth in urban demand for electricity. Electrical generating and transmission equipment were also put under extreme stress during these conditions, resulting in breakdowns and shortages in available electrical capacity, along with widespread power outages due to transmission line failures.

The heat wave of 1999 is not an isolated event, in that there have been instances in previous years when unusually high, sustained temperatures have occurred. Another example is the heat wave of July 12-16, 1995, when 583 people died, making it the deadliest weather event of the century. Humidity was extremely high with dew point temperatures in the upper 70s to lower 80's. The hottest day was July 13. The high of 104 °F at O'Hare was the second highest official temperature in Chicago. The heat index peaked at 119 °F. This was the most intense combination of heat and humidity ever in Chicago. Before that, in 1988, there were 47 days with temperatures in the 90's and 7 days in the 100's, both records. Drought led to lower humidity and lower minimum temperatures than other hot summers. So, despite all of the high temperature days, 1988 ended up being less severe than the more recent summers of 1995 and 1999. However, under the Agency's proposal, it is possible to contend that the 1988 weather conditions made the 1995 and 1999 weather conditions "foreseeable." Clearly, they were not, as the Chicago area was not prepared for either set of weather conditions, as evidenced by the high number of human lives lost during both those summers.

It should be noted that all three of these extreme weather periods coincide with a majority of the thermal provisional variance requests documented in the Agency's submittal (IEPA Exhibit No. A). Another important consideration is that none of these extreme weather events were predicted in any precise, detailed way by long-range forecasts, nor could the duration and/or magnitude of the heat waves be projected by weather forecasting professionals even when conditions had already begun to deteriorate. These events did not follow any particular pattern or historically apparent trend. As such, they were not foreseeable nor do they make future extreme weather events "foreseeable."

It would not be economically justifiable for a power producer to install and maintain contingency back-up equipment, such as supplemental cooling systems, for situations which are, by their very nature, sporadic and unpredictable. Supplemental cooling towers were installed at our Joliet Generating Station #29 during the summer of 1999, in order to allow the station to continue to output needed power during extreme weather conditions, while maintaining compliance with all applicable thermal limitations. The decision to install 24 towers was based on several factors, including historical information on previous unit deratings taken during hot summers, previously experienced weather extremes, practical limitations related to costs, as well as the available physical space for installation of the cooling towers. The 24 Joliet towers are capable of cooling approximately one third of the station's thermal discharge by approximately 14 degrees Fahrenheit (design criteria). While the benefit of using the towers is appreciable, there will continue to be situations where they will not be able to prevent the station from the need to further derate in order to maintain compliance with thermal limits. This situation has already occurred this summer.

It is important to note that if sufficient cooling capacity were to be installed at the Joliet Station #29 to completely shield the facility from any thermally-related compliance problems under any type or duration of adverse weather conditions, an additional 62 cooling tower modules (of identical design as the existing 24) would be required at a cost of over \$124M, if the required amount of land were available for their construction. The sheer magnitude of this type of undertaking is clearly not practicable or technologically feasible for any power producer. Therefore, we continue to maintain our existing equipment to withstand the stresses of typical summer conditions, as well as meet our permit requirements. We must continue to rely on the regulatory exemptions available to cover those situations when extreme environmental conditions dictate that we continue to operate at higher loads, even when we are approaching our maximum thermal discharge limitations.

B. Proposed Section 301.109(a)(3).

Proposed section 301.109(a)(3) requires that the Agency "[l]ist any provisional variances that the Board issued to the petitioner within the preceding five calendar years with respect to any water temperature standard." Section 36(c) of the Environmental Protection Act (Act) provides that the provisional variances granted to any one person shall not exceed a total of 90 days during any calendar year. It does not in any way limit the number of provisional variances that may be granted over a five year period. To show compliance with the statutory 90-day annual restriction on provisional variances, it is reasonable to include in the Agency's recommendation a list of any previous variances for a particular facility within the calendar year.

However, to require a listing of provisional variances granted in prior years is unnecessary and irrelevant. It also wrongly implies that the mere fact that an applicant has been granted one or more previous variances is sufficient grounds to deny the instant request. Certainly, absent a further explanation and showing of why the granting of prior provisional variances were granted, the mere listing of prior variances does not provide truly relevant information. It certainly should not be grounds for denying a subsequent request. Any variances granted during prior years were determined by the Agency and the Board to have met the requirements of the Act and the regulations. They stand on their own merits, having been approved by both IEPA and the Board, based on conditions documented within the provisional variance petitions for the time period for which they were requested. The new proposed

requirement wrongly implies that if a facility was granted provisional variances in the past, this may jeopardize their ability to be granted a thermal provisional variance in the future. The approach is contrary to the purpose and intent of the thermal provisional variance as an emergency relief mechanism from adverse weather conditions that are often unpredictable and do not follow any clear historical trend.

C. Proposed Section 301.109(b)(2)(A)

Proposed Section 301.109(b)(2)(A) provides that the Agency may include a condition to the thermal provisional variance that requires the “petitioner to continuously monitor intake, discharge and receiving stream temperatures and to visually inspect intake and discharge areas at least three times daily to assess any mortalities to aquatic life.” Some of these additional monitoring requirements may be appropriate under certain circumstances. However, the requirement to continuously monitor receiving stream temperatures is not feasible and, at best, is unduly burdensome.

Although the Agency's states that the technical feasibility of continuous receiving stream temperature monitoring has been well documented, such monitoring is actually not feasible in most cases. (It is assumed here that the intended meaning of “receiving stream temperature” is equivalent to the temperature in the main body of the receiving stream in the immediate vicinity of the facility’s discharge. For clarity, such a definition of “receiving stream temperature” should be included in the proposed rule).

All of Midwest Generation’s generating stations discharge into waterways which are frequented by barge traffic, thereby making the placement of a continuous monitoring device in the main body of the receiving stream impossible. If there is a need to assess receiving stream temperature it perhaps could be accomplished by taking temperature measurements during the course of the proposed biological monitoring, which is discussed in Section E below. The measurements would not be continuous, but would provide adequate water temperature information that could be correlated with the findings of the biological monitoring program. This approach would provide the equivalent information that the Agency is looking for in a feasible manner.

D. Proposed Section 301.109(b)(2)(B)

Proposed Section 301.109(b)(2)(B) provides that the Agency may include a condition to the thermal provisional variance that requires “the petitioner to document environmental conditions during the term of the provisional variance, including the activities described in subsection (b)(2)(A) of this Section, and to submit the documentation to the Agency and the Department of Natural Resources within 30 days after the provisional variance expires.” As used in this subsection of the proposed rule, the meaning and scope of the phrase “environmental conditions” is unclear. It does not inform the regulated community of its proposed obligations. For example, there is no identification of the parameters or criteria to be documented. The discharger is not informed of the type of information this proposed condition requires it to collect. The proposed rule also does not allow sufficient time for the submittal of the required monitoring data and associated information required in subsections A, B and C of section 301.109(b)(2). At least, the discharger should be allowed to make one single submission to the

Agency, rather than three separate reports, to ease the reporting requirement, avoid unnecessary duplication of efforts, and potentially avoid confusion.

E. Proposed Section 301.109(b)(2)(C)

Proposed Section 301.109(b)(2)(C) provides that the Agency may include a condition to the thermal provisional variance that requires “the petitioner to immediately implement biological activities to characterize how aquatic life respond to the thermal conditions resulting from the provisional variance; to document these activities; and to submit the documentation to the Agency and the Department of Natural Resources within 30 days after the provisional variance expires.” The phrase “biological activities” is unclear. It would be both clearer and more accurate to use the phrase “biological monitoring.” Monitoring of the biological conditions in the receiving stream more accurately describes the true nature of the requirement. In its Statement of Reasons, the Agency itself refers to “monitoring” of biological conditions in describing this requirement rather than referring to the more ambiguous term “activities” generally. (See Agency Statement of Reasons at p. 4, bottom paragraph). In addition, the type of monitoring to be done, as well as the proposed frequency and duration, should be included in the requirements.

In our experience, the population which is most measurably responsive to short-term changes in thermal conditions is the fisheries community. During the period from May through September of each year, Midwest Generation routinely monitors the fish community in the vicinity of our larger stations. This long-term monitoring program has been in place for over 20 years, and provides an excellent basis from which to determine any short or long-term trends related to how fish respond to locally elevated temperatures. This existing monitoring program should be sufficient to satisfy the monitoring requirements for a provisional variance. Due to the nature of heated water, most thermal discharges are surface plumes, which are generally confined to the upper levels of the water column. As such, there would be no reason to suspect that the discharge would be in contact with and/or adversely affect the macroinvertebrate and/or shellfish communities present in the waterway. Any proposed monitoring requirement should be limited to monitoring biological conditions of the fish community. A requirement to monitor biological conditions beyond the fish community is not likely to provide necessary or helpful information to determine how the aquatic system responds to a temporary change in water column thermal conditions.

The proposed requirement to submit the required monitoring data within 30 days after the variance expires is too stringent. While the environmental conditions, intake and discharge temperatures and visual inspection information would be available within this timeframe, the biological monitoring data requires some additional processing and analysis which typically would require more than 30 days to complete. In addition, in order to be able to use and interpret the biological monitoring data in an effective and useful way, monitoring would need to be continued after the variance period expires to determine whether receiving stream conditions return to “normal”. This post-variance data may provide the most important indicator of the overall impact, or lack of any impact, of the thermal variance on the aquatic community. .

F. Proposed Section 301.109(b)(2)(D)

In section 301.109 (b)(2)(D), the Agency proposes to require “the petitioner to immediately notify the Agency and the Department of Natural Resources of any unusual conditions, including mortalities to aquatic life; to immediately take action to remedy the problem; to investigate and document the cause and seriousness of the unusual conditions while providing updates to the Agency and the Department of Natural Resources as changes occur until normal conditions return; to notify the Agency and the Department of Natural Resources when normal conditions return; and to submit the documentation to the Agency and the Department of Natural Resources within 30 days after normal conditions return.”

The meaning of “unusual conditions” is unclear, particularly in the context of a thermal provisional variance. What does the Agency/IDNR consider an “unusual condition” versus a “usual condition”, particularly when most thermal variances are granted, by their very nature, during times of “unusual” weather and receiving water conditions? Further, some differentiation must be made between temporary effects and more permanent effects (e.g. fish avoidance versus fish kill). In other words, any temporary effect, albeit unusual, should not trigger any notification requirement but a potentially permanent, damaging effect would require notice. Otherwise, a permittee may need to contact both agencies on at least a daily basis to report any further changes in temperature and flow conditions, and any new aquatic life observations, in order to ensure that compliance with this proposed reporting requirement for “unusual conditions” is maintained.

We also believe that the proposed requirement to take immediate action “to remedy the problem” is both unclear and inconsistent with the decision to allow a provisional variance. The proposed regulatory language does not explain what is considered a “problem” that must be “remedied” by the discharger. Assuming that the discharger is operating within the provisions of the provisional variance that it has been granted, then is it a “problem” that the receiving stream temperatures have increased, as expected, as a result of the discharge? Is it a “problem” that some fish mortality has occurred? Depending upon the meaning of the term “problem” that requires a remedial response, the proposed requirement threatens to effectively negate the decision to grant the provisional variance. It requires the discharger to address any changes in conditions in the receiving stream without a clear showing of causation, without any due process protections and with the potential of very little environmental benefit.

The need to take immediate remedial action is not warranted, and may be detrimental, unless and until the conditions are properly investigated and appropriate findings and recommendations for any necessary remedial action are reviewed and approved by the Agency. The proposed rule also improperly lacks any provision that allows a petitioner to challenge the Agency’s demand for remedial action before the Board. For example, there are times during severe summers when fish kills occur even without the presence of any industrial discharges. Decreasing station loading under these circumstances would not provide any significant benefit. If an investigation does indicate that the environmental conditions are caused by the thermal discharge, the proposed remedial action required under this rule could be interpreted to include a decrease in thermal loading to the receiving stream. Such a result could jeopardize Illinois’ power supply during critical demand periods. Before any such action is required, it is imperative that the situation should be carefully reviewed to balance the relative hardships and benefits to be

obtained by such action. This is particularly true where the effect of the proposed requirement for immediate remedial action may be to spare fish at the potential cost of human lives.

Midwest Generation recommends that each situation must be assessed on a case-by-case basis. Remedial action should not be required where the adverse impact caused by the granting of the provisional variance is a temporary one. Therefore, the phrase "to immediately take action to remedy the problem" should be deleted. Any change to the rules should limit any potential remedial action requirements to permanent, adverse environmental impacts to the receiving stream that are directly caused by the thermal discharge during the term of the provisional variance. It should provide that these impacts will be assessed on an individual basis. Any determination of remedial actions which effectively negate the allowances provided in the original provisional variance must be subject to review. Also, as remedial action could take many different forms, such as an extended period of additional biological monitoring, the appropriate submittal date for this additional information should be determined on a case-by-case basis.

G. Proposed Section 301.109(b)(2)(E)

Proposed Section 301.109(b)(2)(E) allows the Agency to condition a thermal provisional variance on the requirement that a petitioner "develop and implement a response and recovery plan to address any adverse environmental impact due to thermal conditions resulting from the provisional variance, including loss and damage to aquatic life." This proposed rule is too broad in scope. This requirement should be applied only to facilities which violate their provisional variance limitations (or have done so in the past). We also submit that this requirement should apply only to non-temporary adverse impacts, as discussed above, and should not be part of the normal thermal provisional variance process.

As part of the normal provisional variance justification process, an applicant is required to discuss the possible environmental impacts of the proposed thermal variance on the receiving stream. In most instances, the period of time during which the variance is being sought is already the hottest part of the year, when the aquatic community has already been subjected to elevated water temperatures (either due to natural or industrial sources). As the Agency noted in its Statement of Reasons for the proposed rules, the provisional variance requests made in the past for fossil-fueled stations were for an extension of the number of allowable excursion hours within which the stations were allowed to operate under their NPDES permits. They were not requested or granted to include an exemption from maximum temperature discharge limitations. As such, during these types of extreme summer conditions, extending the amount of time which the aquatic community is exposed to elevated temperatures should not be expected to have any permanent adverse impact, as these organisms have either already been acclimated to these temperatures or will seek out portions of the waterway out of the direct influence of the power plant's thermal discharges. This has been documented in previous studies as a temporary situation; once the water temperature diminishes, the fish population in the immediate area returns. (Ref.: 2000 Lower Des Plaines River Fisheries Investigation RM 274.4-296.4, and previous studies)

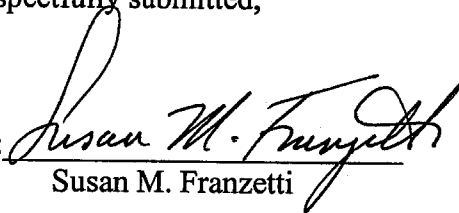
The requirement to develop and implement a recovery plan should only be implemented when it is apparent from the daily surveillances and required biological monitoring that there is a significant, detrimental impact to the aquatic community in the vicinity of the discharge (which

would most likely be due to an exceedance of the allowable thermal limitations). The details of this plan would need to be established in accordance with and responsive to the specific conditions encountered. Additionally, although the Agency states in its Statement of Reasons that the requirement to develop and implement a plan to address any adverse environmental impact of the provisional variance is "technically feasible and economically reasonable" for the subject facilities, the proposed rule does not limit or condition the contents of the proposed plan to remedial activities that are both technically feasible and economically reasonable.

We appreciate the opportunity to review and comment on this rule. While we believe that there has been an insufficient showing of the need for this proposed rule, we have submitted these observations in an effort to identify for the Board the additional problems presented by the proposed language of the rule. We support the proposal by IERG to incorporate certain of the proposed rule's provisions into the existing Agency Part 180 regulations. We believe that the relevant facts and circumstances show that by making certain modifications to the Part 180 regulations, as contained in the IERG suggested language, the Agency can achieve its stated goal of informing the regulated public of how it will handle future requests for thermal provisional variances.

Midwest Generation reserves the right to supplement or modify this pre-filed testimony.

Respectfully submitted,

By: 
Susan M. Franzetti

Dated: August 9, 2001

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CERTIFICATE OF SERVICES

Susan M. Franzetti hereby certifies that she caused a true and correct copy of the foregoing **PRE-FILED TESTIMONY OF JULIA WOZNAK, MIDWEST GENERATION EME, LLC FOR JUNE 20, 2001 BOARD HEARING** to be served on:

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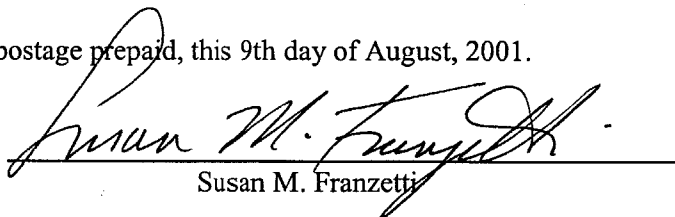
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by first class mail, properly addressed and with postage prepaid, this 9th day of August, 2001.


Susan M. Franzetti

THIS FILING IS SUBMITTED ON RECYCLED PAPER