

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
)  
PETITION OF MIDWEST GENERATION, LLC, ) AS 07-03  
WAUKEGAN GENERATING STATION ) (Adjusted Standard- Air)  
FOR AN ADJUSTED STANDARD FROM )  
35 ILL.ADM.CODE 225.230 )  
)

NOTICE OF FILING

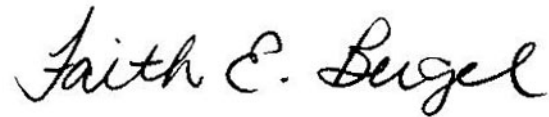
To:

John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph  
Chicago, IL 60601

Persons included on the  
**ATTACHED SERVICE LIST**

**PLEASE TAKE NOTICE** that we have today filed with the Office of the Clerk of the Pollution Control Board **MOTION FOR LEAVE TO FILE REPLY TO RESPONSE OF ILLINOIS EPA**, copies of which are herewith served upon you.

Respectfully Submitted,



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**Faith E. Bugel**  
Environmental Law & Policy Center  
35 E. Wacker Dr. Suite 1300  
Chicago, IL 60601

DATED: March 3, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
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PETITION OF MIDWEST GENERATION, LLC, ) AS 07-03  
WAUKEGAN GENERATING STATION ) (Adjusted Standard- Air)  
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**MOTION FOR LEAVE TO FILE REPLY TO RESPONSE OF ILLINOIS EPA**

NOW COMES the Environmental Law and Policy Center (“ELPC”), by and through counsel, and, pursuant to 35 Ill. Admin. Code 101.500(e), requests leave to file a reply to the Illinois Environmental Protection Agency’s Response to the Environmental Law & Policy Center’s Renewed Motion to Intervene (“Renewed Motion”). Illinois EPA filed its response to the Renewed Motion electronically on February 11, 2008 (“Response”), and the agency and ELPC have agreed to a service receipt date of February 22, 2008. As Midwest Generation has not yet filed its response to the Renewed Motion to Intervene, ELPC respectfully requests leave to reply to Illinois EPA’s Response within 14 days of receiving service of Midwest Generation’s response. In support of this motion, ELPC states as follows:

1. ELPC requests that the Board consider paragraphs 1 through 3 of its Renewed Motion for Leave to Intervene, filed January 22, 2008, as incorporated in this Motion as background.
2. On February 7, 2008, Midwest Generation filed a Reply to Environmental Law and Policy Center’s Response to Midwest Generation’s Motion to Strike. The Reply describes several scenarios that could result from the Board’s ruling on the company’s Motion to Strike, filed on January 14, 2008. The Reply requests that, if the Board does not grant the Motion to Strike with prejudice or “views ELPC’s motions filed in response to Midwest

Generation's Motion to Strike as motions rather than a response," the Board establish a response schedule for each of the motions. Reply at 4.

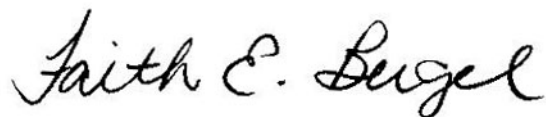
3. On February 11, 2008, the Illinois EPA filed with the Board its Response to the Environmental Law & Policy Center's Motion to Withdraw and Refile Motion to Intervene, In Response to Midwest Generations' Motion to Strike, and Renewed Motion to Intervene. The Illinois EPA's filing is styled as and contains a substantive response to ELPC's Renewed Motion to Intervene. See Response at ¶¶ 5 to 17.
4. Pursuant to 35 Ill. Admin. Code 101.500(e), ELPC must file a motion for leave to reply within 14 days of service of a response. On February 11, Illinois EPA sent an email containing an electronic copy of the agency's Response to ELPC attorneys Faith Bugel and Meleah Geertsma. From this date until February 21, 2008, Meleah Geertsma monitored mail received at ELPC's offices for items addressed to Faith Bugel. At no time during this period did she find a hardcopy of Illinois EPA's Response. On the morning of February 21, 2008, Meleah Geertsma called Rachel Doctors, attorney of record for Illinois EPA, to inquire about service of the Response. Rachel Doctors represented that she had indeed mailed the Response, but did not send it by certified mail and thus could not provide confirmation of the Response's delivery date. At this time, Meleah Geertsma and Rachel Doctors agreed that, if ELPC did not receive the Response in the mail by February 22, 2008, they would stipulate to a service receipt date of February 22, 2008.
5. Meleah Geertsma monitored mail received at ELPC until February 22 and did not find a service copy of Illinois EPA's Response. Thus, as ELPC is filing this motion within 14 days of the agreed upon service receipt date of Illinois EPA's Response, this motion is timely filed.

6. ELPC also contacted Illinois EPA concerning consolidation of its replies to Illinois EPA's and Midwest Generation's responses to the Renewed Motion to Intervene and Rachel Doctors, representing the Illinois EPA, indicated that Illinois EPA would agree to the consolidation of ELPC's replies.
7. On February 21, 2008, the Board issued an order granting ELPC's motion to withdraw the December 6, 2007 motion to intervene, denying Midwest Generation's motion to strike, and directing Midwest Generation to file a response to ELPC's renewed motion to intervene by March 6, 2008. The effect of the order thus was to leave only the Renewed Motion to Intervene at issue before the Board.
8. ELPC seeks leave to reply to address the arguments raised by Illinois EPA in its Response. Not allowing such reply would materially prejudice ELPC, as it would prevent full participation by a public interest organization representing members directly affected by the implementation of Illinois regulations controlling mercury pollution from the electric generating facility at issue in this case, with interests unique from those of the state agency responsible for implementing regulations across the state as a whole.
9. ELPC also seeks an extension of time in which to file a reply to the Illinois EPA's Response, in order to consolidate this reply with ELPC's reply to Midwest Generation's response to the Renewed Motion to Intervene. ELPC anticipates that Midwest Generation will put forth arguments in its response similar to, and potentially overlapping with, those in the Illinois EPA's Response. ELPC therefore anticipates seeking leave to reply to Midwest Generation's response once the response is filed. The extension requested in the present motion would reconcile the currently disparate briefing schedules and serve

efficiency by allowing ELPC to provide the Board with a single reply brief addressing all issues raised by Petitioner Midwest Generation and the Illinois EPA.

WHEREFORE, for the reasons set forth above, ELPC seeks leave to reply to the Response of Illinois EPA within 14 days of receipt of service of Midwest Generation's response.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Faith E. Bugel".

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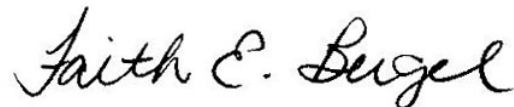
**Faith E. Bugel**  
Environmental Law & Policy Center  
35 E. Wacker Dr. Suite 1300  
Chicago, IL 60601

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on this 3rd day of March, 2008, I have served electronically the attached **MOTION FOR LEAVE TO FILE REPLY TO RESPONSE OF ILLINOIS EPA** upon the following persons:

John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601

and electronically and by first class-mail with postage thereon fully prepaid and affixed to the persons listed on the **ATTACHED SERVICE LIST**.



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**Faith E. Bugel**  
Environmental Law & Policy Center  
35 E. Wacker Dr. Suite 1300  
Chicago, IL 60601

DATED: March 3, 2008

**SERVICE LIST**

(AS 07-03)

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