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September 4, 2012

VIA E-MAIL AND OVERNIGHT MAILIllinois EPA
Division of Public Water Supplies
Attn: Andrea Rhodes, CAS #19
P.O. Box 19276
Springfield, IL 62794-9276Re: Violation Notice: Midwest Generation, LLC, Will County Generating Station
Identification No.: 6283
Violation Notice No.: W-2012-00058

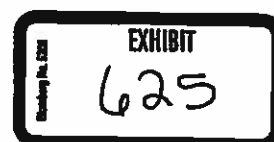
Dear Ms. Rhodes:

This letter is a supplemental response to the above-referenced June 11, 2012 Violation Notice ("VN") following the meeting between the Illinois Environmental Protection Agency ("Illinois EPA or the "Agency") and Midwest Generation, LLC ("MWG") on August 14, 2012.¹ MWG appreciated the opportunity to discuss the VNs and the underlying allegations with the Agency. The extensive participation at the August 14th meeting by Interim Director John Kim and Agency personnel was productive and helped to clarify the key issues. As a result, MWG believes it now has a better understanding of the Agency's views regarding resolution of this matter.

The August 14th meeting also helped MWG both to identify issues that warranted further attention and explanation in this supplemental response and to revise its proposed Compliance Commitment Agreement ("CCA") for the MWG Will County Generation Station ("Will County") for the Agency's consideration. Accordingly, this supplemental response does not repeat all of the information contained in MWG's July 27, 2012 response to the VN, but rather focuses on responding to the questions and concerns raised by the Agency during the meeting. It also includes a revised, proposed CCA which MWG submits should be acceptable to resolve the VN allegations based on the aforementioned August 14th meeting.

Central to the revised, proposed CCA and based largely on MWG's understanding of Agency staff's concerns as expressed during the August 14th meeting, MWG proposes to

¹ The August 14, 2012 meeting was held at the request of MWG, pursuant to Section 31(a)(4) of the Illinois Environmental Protection Act. 415 ILCS 5/31(a)(4).



establish a Groundwater Monitoring Zone ("GMZ") for the ash ponds pursuant to section 620.250 of the Illinois groundwater regulations. 35 Ill. Adm. Code §620.250. MWG will install two additional groundwater monitoring wells and conduct additional groundwater monitoring to assist in establishing the three dimensional boundaries of the GMZ. In addition, and reflective of concerns expressed by the Agency staff during the August 14th meeting, MWG proposes to enter into an Environmental Land Use Control ("ELUC") Agreement to incorporate the restrictions that are applicable to the GMZ and the continued groundwater monitoring program for the existing and new monitoring wells. These and other provisions of MWG's proposed CCA are summarized in Section II below.

By submitting this supplemental response, MWG does not waive any of its original objections to the VNs raised in our July 27th VN Response. Moreover, MWG does not, by submitting this supplemental response, make any admissions of fact or law, or waive any of its defenses to those alleged violations.

I. Supplemental Response to Alleged Violations in the VN

To answer questions presented at the August 14th meeting and further explain why the ash ponds at Will County Station are not causing a release into the groundwater, MWG has set forth below additional information concerning: (1) the treatment purpose and function of the ash ponds; (2) the condition of the liners underlying the ash ponds; and (3) why the alleged groundwater exceedances are not the result of releases from the ash ponds. While we may not embrace the Agency's views on each of the issues discussed, the discussion provided MWG with information that enables us to present a revised CCA that we believe addresses the questions and concerns expressed by the Agency.

A. The Treatment Purpose and Function of the Ash Ponds

As stated in MWG's July 27, 2012 VN Response, and discussed further during the August 14th meeting, the four ash ponds at Will County are not disposal sites, but are treatment ponds that remove ash from the ash wastewater. They are part of the Station's wastewater treatment system. As a primary treatment step in the wastewater treatment system, bottom ash wastewater is discharged to the ash ponds for settlement of suspended solids. The effluent from the ash treatment ponds (which is described as "bottom ash sluice water" in the Station's NPDES Permit #IL0002208) is then conveyed to the wastewater treatment plant for further treatment prior to discharge. The wastewater treatment system is permitted, pursuant to the Station's NPDES Permit. The treated final effluent is discharged to the Chicago Sanitary and Ship Canal (the "Canal") via Outfall 002 pursuant to the Station's NPDES permit (NPDES Permit #IL0002208).

Apparently, because the ash ponds perform a wastewater treatment function and are not disposal sites, it was suggested by Agency personnel during the August 14th meeting that the ash ponds may be subject to the design criteria for treatment works set forth in Part 370 of the Illinois Pollution Control Board Regulations, referencing generally section 370.930 thereof

entitled "Waste Stabilization Ponds and Aerated Lagoons," and more specifically, section 370.930(d)(2)(D) entitled "Pond Bottom" as the relevant criteria for the liners that should be installed in ash ponds. 35 Ill. Adm. Code § 370.930. Part 370 is not applicable to existing treatment works like the ash ponds at the Will County Station. The Part 370 regulations only apply to new construction of waste collection and treatment works. As stated in section 370.100, the purpose of these regulations is to "establish criteria for the design and preparation of plans and specifications for wastewater collection and treatment systems." 35 Ill. Adm. Code § 370.100 (see also § 370.200). There are no provisions or requirements in the Part 370 regulations that require existing treatment works to be modified or replaced to meet Part 370 criteria. As discussed below, there is no indication that the condition of the existing Poz-o-Pac liners in the ash ponds is causing any adverse impacts to the groundwater in the vicinity of the ponds. With respect to the high-density polypropylene ("HDPE") liner that is in place in Pond 3S, this liner already provides an equivalent level of protection to that specified in section 370.930(d)(2)(D).

B. The Liners in the Ash Ponds are Preventing Releases to Groundwater

As MWG explained in its July 27th letter and August 14th meeting, the Will County ash ponds are different from other ash impoundments in Illinois. They are neither disposal sites nor abandoned ponds. They are relatively small, active, treatment ponds from which ash is routinely removed. Moreover, they are fully lined to prevent releases to groundwater. The liners underlying the ash ponds at Will County are in excellent condition. MWG previously instituted a program to evaluate its ash ponds. Pond 3S at Will County Station was the first pond to have its liner replaced under this program. Prior to the replacement of the Pond 3S liner, all of the liners on the Will County Station ash ponds were constructed at the same time and using the same material, which consisted of two 6-inch layers of compacted Poz-o-Pac, followed by 12 inches of 90% compacted fill with an additional two 6-inch layers of compacted Poz-o-Pac and a bituminous coating on top. When MWG started the Pond 3S liner replacement project, it found that the existing liner was intact and in almost perfect condition. A core sample of the Pond 3S liner was retained by the station and a photograph of it is attached as Attachment A. As can be seen in the photograph, the core is solid without any cracks, seams, or other signs of distress. The Pond 3S Poz-o-Pac/bituminous material liner was in such good condition and thicker than expected that it was a significant challenge to remove it from Pond 3S so that the new liner could be installed. Because the Pond 3S new liner project showed that the condition and integrity of its Poz-o-Pac/bituminous liner was excellent, and the other three ash ponds were similarly constructed, the other ash ponds' liners were not replaced. Therefore, the remaining three ponds continue to have liners (both sides and bottoms) consisting of two 6-inch layers of compacted Poz-o-Pac, followed by 12 inches of 90% compacted fill with an additional two 6-inch layers of compacted Poz-o-Pac and a bituminous coating on top.

Because the work to replace the Pond 3S liner had commenced by the time the excellent condition of the existing Poz-o-Pac liner was discovered, the work proceeded and a new HDPE liner was installed in Pond 3S. The existing Poz-o-Pac liner on the sides of Pond 3S remained in

place, with the new HDPE liner placed on top of it, providing even greater protection against the release of ash constituents.

In sum, the evidence from the Pond 3S HDPE relining project demonstrates that the previously existing Poz-o-Pac liner in Pond 3S was in excellent condition at the time of its replacement. The fact that all of the other ash pond liners were constructed of the same material, in the same manner, and at the same time supports the conclusion that the ash ponds are not the cause of the alleged groundwater impacts.

C. The Ash Ponds are not causing a Release to Groundwater

As stated in MWG's July 27th VN Response, the groundwater monitoring well data does not support the contention that the ash ponds are a source of the alleged groundwater impacts.² For most parameters, the distribution and observation of concentrations is random and inconsistent. Generally, the parameters detected in downgradient monitoring wells (relative to the respective ash ponds) are at equivalent or lower concentrations of constituents than in the associated upgradient well for a given ash pond. Moreover, there are more exceedances of the groundwater standards in these upgradient wells than in the downgradient wells. Based on the August 14th meeting discussion, MWG understood that the Agency acknowledged that the data does not conclusively show that the ash ponds are the cause of the groundwater exceedances. For these reasons, MWG maintains its position that the monitoring data does not provide an adequate, scientific basis on which to conclude that the Will County ash ponds are causing the alleged violations.

II. Supplemental Compliance Commitment Agreement

Based on and in response to the August 14th meeting discussion, MWG has revised its proposed Compliance Commitment Agreement ("CCA") terms which were submitted in its July 27, 2012 VN Response.

The revised CCA terms are set forth below and a draft CCA is enclosed for the Agency's review. The revised CCA terms include the establishment of a Groundwater Management Zone ("GMZ") and an Environmental Land Use Control ("ELUC") Agreement on the relevant portion of the Will County Station property. An aerial map of the Will County Station showing the proposed extent of the GMZ is enclosed as Attachment B for the Agency's review and reference in considering the proposed GMZ boundaries. As shown on the aerial map's depiction of the GMZ area, there is a portion of the proposed GMZ area which is designated as "ComEd Retained Tract." It is MWG's understanding that ComEd is the current owner of this area of the proposed GMZ. MWG recognizes that the approval of this portion of the GMZ by ComEd is a necessary step before the Agency can approve the proposed boundaries of the GMZ. MWG will use its best efforts to obtain ComEd's approval of this portion of the GMZ. With regard to the

² MWG incorporates by reference all of its discussion and explanation of the groundwater monitoring results in the July 27, 2012 VN Response.

proposed ELUC, MWG is proposing that the ELUC apply only to the portion of the GMZ owned by MWG. This will still allow the continuing groundwater monitoring obligations to be incorporated into the terms of the ELUC, while avoiding the need to obtain a second, separate ELUC agreement from ComEd for the small portion of the GMZ over which it retains ownership. MWG is willing to discuss its proposed approach to the GMZ and ELUC further with the Agency to get its insights and to work through these issues cooperatively.

MWG believes this revised CCA should be an acceptable resolution to the VN issued to the Will County Station. As stated in the July 27th VN Response, there is no threat to human health presented by the alleged exceedances of the groundwater standards. There are no potable water wells within the 2,500 foot radius of the Site in the shallow aquifer, and the shallow groundwater discharges to either the Des Plaines River or the Canal. Neither the Des Plaines River nor the Canal is used as a drinking water source near the station. The production water wells that are located on-site are deep wells screened in the Cambro-Ordovician sandstones below the Maquoketa Shale which is a regional aquitard separating the deeper aquifers from the shallow groundwater which is the subject of the VN. In the absence of any potable groundwater receptors or use, groundwater at the Will County site does not pose any risk to human health.

The modified CCA terms are as follows:

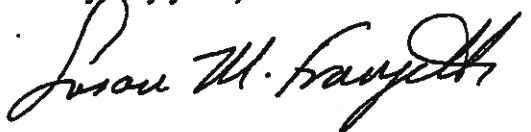
- A. The ash ponds will not be used as permanent disposal sites and will continue to function as treatment ponds to precipitate ash. Ash will continue to be removed from the ponds on a periodic basis.
- B. The ash treatment ponds will be maintained and operated in a manner which protects the integrity of the existing liners. During the removal of ash from the ponds, appropriate procedures will be followed to protect the integrity of the existing liners, including operating the ash removal equipment in a manner which minimizes the risk of any damage to the liner.
- C. During the ash removal process, visual inspections of the ponds will be conducted to identify any signs of a breach in the integrity of the pond liners. In the event that a breach of the pond liners is detected, MWG will notify the Agency and will implement the correction action plan.
- D. MWG proposes to establish a Groundwater Management Zone ("GMZ") pursuant to section 620.250 of the Illinois groundwater regulations. 35 Ill. Admin. Code § 620.250. MWG will use its best efforts to obtain the timely approval of the portion of the proposed GMZ which is owned by Commonwealth Edison ("ComEd") from the owner.
 - a. The proposed eastern, western and vertical boundaries of the three dimensional GMZ are defined as follows:

- i. The eastern GMZ boundary is defined by the portion of the shoreline of the Chicago Sanitary and Ship Canal which borders the Waukegan Station Property.
 - ii. The western boundary is defined is defined by the portion of the shoreline of the Des Plaines River which borders the Waukegan Station Property.
 - iii. The vertical boundary of the GMZ is the top of the Maquoketa Shale, which is estimated in the MWG Hydrogeologic Assessment Report to be approximately 140 feet below ground surface.
- b. To define the northern and southern boundaries of the GMZ, MWG will install two additional groundwater monitoring wells within 60 days of the effective date of the CCA. The northern boundary well will be installed approximately 300 feet north of monitoring well MW-01. The southern boundary well will be installed approximately 300 feet to the south/southeast of monitoring well MW-06.
 - c. The two new monitoring wells shall be sampled twice. The sampling protocol and analytical parameters for the two new monitoring wells shall be the same as for the existing groundwater monitoring wells. The first sampling event shall be conducted not later than 90 days from the effective date of the CCA. The second sampling event shall coincide with the next quarterly monitoring of the existing groundwater monitoring wells and shall be separated by an interval of at least 60 days from the first sampling event.
 - d. MWG shall submit a summary report to the Illinois EPA defining the GMZ (the "GMZ Report") within 45 days of receipt of all analytical data from the second round of sampling of the two new monitoring wells and the existing monitoring wells. The GMZ Report also will contain a report on the status of MWG's efforts to obtain approval of the portion of the GMZ owned by ComEd.
- E. As an institutional control to accompany the GMZ, MWG will enter into an ELUC to cover the area of the Will County Station property which is contained within the GMZ, except for that portion of the GMZ area which is owned by ComEd. MWG will submit a proposed, draft ELUC to the Illinois EPA for review and comment within 90 days of the effective date of the CCA. A final proposed ELUC, incorporating the completed delineation of the GMZ boundaries, will be presented to the Agency for review and approval with the GMZ Report.

- F. MWG will continue to monitor the groundwater through the existing five groundwater monitoring wells and the new, additional proposed groundwater monitoring well and report its findings to IEPA. The continuing groundwater monitoring requirements will be included in the requirements of the ELUC described in sub-paragraph E above. The ELUC terms will include a provision which allows MWG the right to request the Agency's approval of a cessation of all or some of the monitoring requirements based on future monitoring results.

This letter constitutes our supplemental response to, and modified CCA for, the Violation Notice W-2012-00058. MWG also reserves the right to raise additional defenses and mitigation arguments as may be necessary, in defense of the allegations listed in the Violation Notice in the event of any future enforcement. We believe that this supplemental response is responsive to all of the Agency's comments and concerns expressed in our meeting, and represents an appropriate resolution to the VN. Should you have any additional questions or concerns, please do not hesitate to contact me.

Very truly yours,



Susan M. Franzetti
Counsel for Midwest Generation, LLC

Enclosure

cc: Maria L. Race, Midwest Generation, LLC

The following information is provided for your information. The information is provided for your information and is not intended to be used for any other purpose. The information is provided for your information and is not intended to be used for any other purpose. The information is provided for your information and is not intended to be used for any other purpose.

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Attachment A

[Faint signature and text]



HAY

HAY

GENERAL

Table with multiple columns and rows of text, likely a newspaper or document.

Attachment B



NOTE:
BACKGROUND MAP RETRIEVED FROM GOOGLE MAPS 2012



K P R C <small>ENGINEERING CONSULTANTS & ARCHITECTS, INC.</small>	
PROPOSED GROUNDWATER MANAGEMENT ZONE EXTENT WILL COUNTY STATION ROMEOVILLE, ILLINOIS	
Scale: 1" = 300' Date: August 31, 2012 KPRC Project No. 18311.4	FIGURE 1

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)
)
Midwest Generation, LLC)
Will County Generating Station)
Romeoville, Will County, Illinois)
IEPA ID #170001464029)
)
)
)
)
)

ILLINOIS EPA VN W-2012-00058
BUREAU OF WATER

COMPLIANCE COMMITMENT AGREEMENT

I. Jurisdiction

1. This Compliance Commitment Agreement ("CCA") is entered into voluntarily by the Illinois Environmental Protection Agency ("Illinois EPA") and Midwest Generation, LLC, Will County Generating Station ("Respondent") (collectively, the "Parties") under the authority vested in the Illinois EPA pursuant to Section 31(a)(7)(i) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(a)(7)(i).

II. Allegation of Violations

2. Respondent owns and operates a coal-fired electrical generating station at 529 East Romeo Road in Romeoville, Will County, IL.
3. Pursuant to Violation Notice ("VN") W-2012-00058, issued on June 11, 2012, the Illinois EPA contends that Respondent has violated the following provisions of the Act and Illinois Pollution Control Board ("Board") Regulations:
 - a) Section 12 of the Illinois Environmental Protection Act, 415 ILCS 5/12
 - b) 35 Ill. Adm. Code 620.115, 620.301, 620.401, 620.405, and 620.410

III. Compliance Activities

4. On July 27, 2012, the Illinois EPA received Respondent's response to VN W-2012-00058, which included proposed terms for a CCA. On August 14, 2011, the Parties met at the Illinois EPA offices to discuss the violation notice and July 27th response. On _____, 2012, the Illinois EPA received Respondent's supplemental reply to the VN in response to Illinois EPA's comments at the meeting. The Illinois EPA has reviewed Respondent's proposed CCA terms, as well as considered whether any

additional terms and conditions are necessary to attain compliance with the alleged violations cited in the VN.

5. Respondent agrees to undertake and complete the following actions, which the Illinois EPA has determined are necessary to attain compliance with the allegations contained in VN W-2012-00058:

- a) The ash ponds will not be used as permanent disposal sites and will continue to function as treatment ponds to precipitate ash. Ash will continue to be removed from the ponds on a periodic basis.
- b) The ash treatment ponds will be maintained and operated in a manner which protects the integrity of the existing liners. During the removal of ash from the ponds, appropriate procedures will be followed to protect the integrity of the existing liners, including operating the ash removal equipment in a manner which minimizes the risk of any damage to the liner.
- c) During the ash removal process, visual inspections of the ponds will be conducted to identify any signs of a breach in the integrity of the pond liners. In the event that a breach of the pond liners is detected, MWG will notify the Agency and will implement a correction action plan.
- d) A Groundwater Management Zone ("GMZ") pursuant to section 620.250 of the Illinois groundwater regulations, 35 Ill. Admin. Code § 620.250, shall be established as follows.
 - (1) The eastern, western and vertical boundaries of the three dimensional GMZ are defined as:
 - i. Eastern boundary: the portion of the shoreline of the Chicago Sanitary and Ship Canal which borders the Waukegan Station Property.
 - ii. Western boundary: the portion of the shoreline of the Des Plaines River which borders the Waukegan Station Property.
 - iii. Vertical boundary: the top of the Maquoketa Shale, which is estimated to be approximately 140 feet below ground surface.
 - (2) To define the northern and southern boundaries of the GMZ, MWG will install two additional groundwater monitoring wells within 60 days of the effective date of the CCA. The northern boundary well will be installed approximately 300 feet north of monitoring well MW-01. The southern boundary well will be installed approximately 300 feet to the south/southeast of monitoring well MW-06.
 - (3) The two new monitoring wells shall be sampled twice. The sampling protocol and analytical parameters for the two new monitoring wells

shall be the same as for the existing groundwater monitoring wells. The first sampling event shall be conducted not later than 90 days from the effective date of the CCA. The second sampling event shall coincide with the next quarterly monitoring of the existing groundwater monitoring wells and shall be separated by an interval of at least 60 days from the first sampling event.

- (4) MWG shall submit a summary report to the Illinois EPA defining the GMZ (the "GMZ Report") within 45 days of receipt of all analytical data from the second round of sampling of the two new monitoring wells and the existing monitoring wells.
- e) As an institutional control to accompany the GMZ, MWG will enter into an ELUC to cover the area of the Will County Station property which is contained within the GMZ. MWG will submit a proposed, draft ELUC to the Illinois EPA for review and comment within 90 days of the effective date of the CCA. A final proposed ELUC, incorporating the completed delineation of the GMZ boundaries, will be presented to the Agency for review and approval with the GMZ Report.
- f) MWG will continue to monitor the groundwater through the existing groundwater monitoring wells and the two new groundwater monitoring wells and report its findings to IEPA. The continuing groundwater monitoring requirements will be included in the requirements of the ELUC described in subparagraph (e) above. The ELUC terms will include a provision which allows MWG the right to request the Agency's approval of a cessation of all or some of the monitoring requirements based on future monitoring results.

IV. Terms and Conditions

6. Respondent shall comply with all provisions of this CCA, including, but not limited to, any appendices to this CCA and all documents incorporated by reference into this CCA. Pursuant to Section 31(a)(10) of the Act, 415 ILCS 5/31(a)(10), if Respondent complies with the terms of this CCA, the Illinois EPA shall not refer the alleged violations that are the subject of this CCA, as described in Section II above, to the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violations occurred. Successful completion of this CCA or an amended CCA shall be a factor to be weighed, in favor of the Respondent, by the Office of the Illinois Attorney General in determining whether to file a complaint on its own motion for the violations cited in VN W-2012-00058.
7. This CCA is solely intended to address the violations alleged in Illinois EPA VN W-2012-00058. The Illinois EPA reserves, and this CCA is without prejudice to, all rights of the Illinois EPA against Respondent with respect to noncompliance with any term of this CCA, as well as to all other matters. Nothing in this CCA is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the

Illinois EPA may have against Respondent, or any other person as defined by Section 3.315 of the Act, 415 ILCS 5/3.315. This CCA in no way affects the responsibilities of Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act, and the Board Regulations.

8. Respondent represents that it has entered into this CCA for the purpose of settling and compromising the alleged violations in VN W-2012-00058. By entering into this CCA and complying with its terms, Respondent does not admit the allegations of violation within VN W-2012-00058 and this CCA shall not be interpreted as including such admission.
9. Pursuant to Section 42(k) of the Act, 415 ILCS 5/42(k), in addition to any other remedy or penalty that may apply, whether civil or criminal, Respondent shall be liable for an additional civil penalty of \$2,000 for violation of any of the terms or conditions of this CCA.
10. This CCA shall apply to and be binding upon the Illinois EPA, and on Respondent and Respondent's officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondent, as well as upon subsequent purchasers of Respondent's facility.
11. In any action by the Illinois EPA to enforce the terms of this CCA, Respondent consents to and agrees not to contest the authority or jurisdiction of the Illinois EPA to enter into or enforce this CCA, and agrees not to contest the validity of this CCA or its terms and conditions.
12. This CCA shall only become effective:
 - a) If, within 30 days of receipt, Respondent executes this CCA and submits it, via certified mail, to Andrea Rhodes, CAS, CAS #19, Illinois EPA, Division of Public Water Supplies, P.O. Box 19276, Springfield, IL 62794-9276. If Respondent fails to execute and submit this CCA within 30 days of receipt, via certified mail, this CCA shall be deemed rejected by operation of law; and
 - b) Upon execution by all Parties.
13. Pursuant to Section 31(a)(7.5) of the Act, 415 ILCS 5/31(a)(7.5), this CCA shall not be amended or modified prior to execution by the Parties. Any amendment or modification to this CCA by Respondent prior to execution by all Parties shall be considered a rejection of the CCA by operation of law. This CCA may only be amended subsequent to its effective date, in writing, and by mutual agreement between the Illinois EPA and Respondent's signatory to this CCA, Respondent's legal representative, or Respondent's agent.

AGREED:

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY:

BY: _____
Mike Crumly
Manager, Compliance Assurance Section
Division of Public Water Supplies
Bureau of Water

DATE: _____

FOR RESPONDENT:

BY: _____
Susan M. Franzetti
Counsel for Midwest Generation, LLC

DATE: _____