BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
AMENDMENTS TO 35 ILL. ADM. CODE	)	R15-21
PART 214, SULFUR LIMITATIONS, PART	)	(Rulemaking - Air)
217, NITROGEN OXIDES EMISSIONS, AND	)	
PART 225, CONTROL OF EMISSIONS	)	
FROM LARGE COMBUSTION SOURCES	)	

NOTICE

TO: John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601-3218

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board MIDWEST GENERATION, LLC'S RESPONSE TO COMMENTS, a copy of which is herewith served upon you.

Dated: September 11, 2015

Respectfully submitted,

MIDWEST GENERATION, LLC

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MIDWEST GENERATION, LLC'S RESPONSE TO COMMENTS

Midwest Generation, LLC ("MWG") respectfully submits this response to the written comments submitted to the Board on August 28, 2015 by the Office of the Illinois Attorney Generation (the "ILAG"), by Citizens Against Ruining the Environment ("CARE") and jointly by Sierra Club ("SC") and the Environmental Law and Policy Center ("ELPC"). These four commenters (collectively the "Commenters") have submitted comments challenging certain aspects of Illinois EPA's ("IEPA") proposed rules in this proceeding as they apply to MWG's electric power generating stations (the "Proposed Rules").

In its written comments (the "CARE Comments") CARE requests that Will County 4 remain subject to an FGD requirement under the existing Combined Pollutant Standards ("CPS"), 35 IAC §§ 225.291 through 225.298, and the other Commenters join in that request as well. The ILAG further requests in its written comments (the "ILAG Comments") that the Board reject all of IEPA's proposed amendments to 35 IAC Part 217 and 35 IAC Part 225, which includes the CPS. SC and ELPC also urge the Board in their comments (the "SC and ELPC Comments") to adopt a supplemental limit for the Powerton station.

MWG responds below to the Commenters' requests to change IEPA's Proposed Rules. For the reasons set forth below and in the written comments earlier submitted to the Board on August 28, 2015 by MWG (the "MWG Comments") and IEPA (the "IEPA Comments"), the

Board should reject the Commenters' requests to disregard IEPA's careful, comprehensive analyses and to modify IEPA's Proposed Rules.

A. IEPA's Proposed Part 217 and 225 Changes Are Necessary Elements of IEPA's Proposed Rules

In its comments, the ILAG asks the Board to reject all of the amendments to Part 217 and Part 225 requested by IEPA in the Proposed Rules. CARE, SC and ELPC (CARE, SC and ELPC collectively the "NGOs") request that the Board reject IEPA's proposed amendment to the CPS that would eliminate an FGD requirement for Will County 4. According to the Commenters, such rule changes should be sought if at all by MWG in some separate proceeding, such as an adjusted standard, variance or revised rule.[1] ILAG Comments at 4, 7; CARE Comments at 11-13. In support of its position the ILAG claims that the Part 214 rule changes proposed by IEPA are sufficient by themselves for this rulemaking and that the Part 217 and Part 225 amendments proposed by IEPA are unrelated and not needed. The NGOs likewise claim that IEPA's proposal to amend the CPS to provide an FGD exemption for Will County 4 exemption is "extraneous" or not "linked" to the rest of IEPA's Proposed Rules and should be rejected by the Board for this reason. CARE Comments at 13; SC and ELPC Comments at 13.

The ILAG and NGOs offer a myopic view of IEPA's Proposed Rules that ignores the very substantial and necessary interconnections between the various elements of IEPA's proposal and that the Proposed Rules provide major net environmental benefits and make economic and technical sense only if they are adopted as whole. The ILAG and NGOs offer no meaningful analysis of whether and how IEPA's proposed amendments to Part 217 or Part 225

[1] CARE suggests that a variance is possible but the ILAG asserts that IEPA's proposed changes to the CPS are permanent and could not be obtained through a variance. CARE Comments at 11; ILAG Comments at 7. Their disagreement is irrelevant as all of the elements of IEPA's Proposed Rules should be implemented in this rulemaking not some other proceeding.

are related to IEPA's proposed amendments to Part 214. Indeed, the ILAG and the NGOs do not even mention any of IEPA's specific proposed amendments to Part 217 or Part 225 except IEPA's proposed amendment to the current CPS FGD requirement at Will County 4. They completely ignore the substantial costs that MWG would incur under the Proposed Rules to reduce SO2 emissions beyond that required by the current CPS and beyond that required to attain the NAAQS. *See* IEPA Comments at 27-28; MWG Comments at 4-5, 16. They blithely assume that MWG should incur tens of millions of dollars in additional costs to install FGD at Will County 4 even though that FGD is not necessary for this rulemaking, in light of the major SO2 emission reductions that MWG has offered, and such additional costs would make the Proposed Rules economically unreasonable. Further, they fail to recognize that imposing such additional costs upon MWG would be fundamentally unfair given that MWG is one of only "two or three" companies that will be required to incur any costs to reduce actual emissions under the Proposed Rules. IEPA Comments at 25.

The ILAG and NGO Comments offer no valid reason for disregarding IEPA's careful, comprehensive analyses and resulting Proposed Rules. IEPA has found that its proposed Part 217 and Part 225 amendments are a necessary part of this rulemaking, including because the Part 217 and Part 225 changes are required to impose the necessary obligation to cease burning coal at four MWG units and to specify how those units are regulated under Part 217 and Part 225 when they no longer burn coal. *See, e.g.*, IEPA's Comments at 36. Indeed, IEPA has concluded that if the Part 225 and Part 217 changes are not included in this rulemaking IEPA would be required to do more and different modeling to support an alternative rule that would relax SO2 emission rates on MWG's proposed gas conversion units and could impose lower SO2 emission

rates on other sources and even new SO2 emission rates for sources that are not even currently subject to the Proposed Rules. *Id.* at 28, 36.

IEPA is the state agency with technical environmental expertise -- not the ILAG and not the NGOs. IEPA, not the ILAG or NGOs, has supported its proposals and assertions with extensive modeling and analyses. IEPA, not the ILAG or NGOs, has implemented the CPS, including through permitting. IEPA, not the ILAG or NGOs, understands the linkage of the commitment to cease burning coal at certain units to the proposed SO2 emission rates in Part 214, has carefully assessed the details of the proposed amendments to Part 217 and Part 225, identifying inconsistencies and provisions precluding the fuel conversions, and comprehends why those amendments must be implemented in this rulemaking. And it is IEPA, not the ILAG or NGOs, whose opinions and proposals should receive deference from the Board. For these reasons alone, the Board should adopt IEPA's proposed amendments to Part 225 and Part 217. If there were any doubt, however, even a superficial review of IEPA's proposed Part 217 and Part 225 amendments and the opposing comments clearly demonstrates why IEPA is correct.

1. IEPA's Proposed Amendments to Part 217 and Part 225 Are Central to MWG's Compliance Plans and the Proposed Rules

The comments by the ILAG and NGOs reflect a fundamental misunderstanding of the outreach process and negotiations that led to the Proposed Rules and the important interconnections between the various elements of the Proposed Rules. They offer irrelevant, erroneous arguments and ignore the construction of the Proposed Rule as a whole.

Instead of offering any real analysis of the relationship between the various elements of IEPA's Proposed Rules, the ILAG speculates that IEPA's proposed Part 225 and Part 217 amendments are not really important to MWG's plans and were not a condition to MWG's offer

to cease combusting coal at four units. ILAG's Comments at 2-3. Aside from being irrelevant, this speculation is simply false.

The ILAG claims that MWG announced a business decision in August, 2014 to convert the three Joliet units and retire Will County 3.[2] ILAG Comments at 2. The ILAG seems to imply that MWG's business decision to cease combusting coal at these four units was made with no consideration of the regulatory changes needed to facilitate that decision and that somehow undercuts the need for IEPA's proposed amendments to Part 225 and 217. As discussed further below, those amendments are a necessary part of this rulemaking, including because absent the Board's adoption of IEPA's proposed CPS amendments there is no prohibition on coal combustion at these units. Further, MWG's motivation for proposing the cessation of coal combustion at four units is irrelevant to this rulemaking. The cessation of coal combustion provides major reductions of SO2 and other emissions regardless of motivation. The resulting emissions reductions, in turn, are central to IEPA's SO2 NAAQS attainment plans and could aid Illinois with other environmental requirements as well. *See, e.g.*, IEPA Comments at 27-28, 30-31.

The IL AG's suggestion that IEPA's proposed amendments to Part 225, including to the CPS, and Part 217 are irrelevant to MWG's decision to propose the cessation of coal combustion

[2] The ILAG cites to an August 4, 2015 public statement by NRG, MWG's ultimate parent company, to incorrectly imply that Will County 3 has already permanently retired. ILAG Comments at 3. That public statement merely reflects the fact that at this time Will County 3 is not combusting coal. That is entirely consistent with IEPA's proposed amendments to the CPS, which if adopted would prohibit coal combustion at Will County 3 as of April 16, 2015. 35 IAC § 225.294(d) (IEPA proposed rule). As MWG mentioned in its prior comments, no final decision has been made about whether Will County 3 will continue to operate and with what fuel. It is IEPA's proposed amendments to the CPS that, if adopted by the Board, would prohibit the combustion of coal at Will County 3 and the Joliet units. In the interim, Will County 3 and the Joliet units maintain their operating permits to combust coal.

at four units, is simply untrue. ILAG Comments at 2-3. MWG discussed multiple times with IEPA before the August, 2014 announcement cited by the ILAG at page 2 of its comments whether the CPS allowed the cessation of coal combustion as a compliance method, what CPS and Part 217 changes were required if the conversions were to occur and how these issues interrelated with IEPA's need to promulgate additional SO2 requirements to address the two areas in Illinois in nonattainment with the new 1-hour SO2 NAAQS. These discussions and IEPA's resulting proposed rule amendments were and are integral components of MWG's business plan. MWG has supported the Proposed Rules because they reflect the outcome of MWG's discussions with IEPA that started well before August 2014. That outcome includes IEPA's proposed amendments to the CPS that exempt Will County 4 from an FGD requirement under the CPS, that allow fuel conversions as a CPS compliance method (in place of coal-firing with FGD) and that address how MWG's units are to be regulated under Part 217 and Part 225.

The FGD relief at Will County 4 and other CPS and Part 217 amendments proposed by IEPA were core, necessary elements of MWG's outreach discussions with IEPA and are core, necessary elements of IEPA's Proposed Rules as a whole. The ILAG incorrectly speculates, with no support, that MWG did not make its offer to cease combusting coal at four units contingent upon relief from the Will County 4 FGD requirement and the other CPS and Part 217 changes proposed by IEPA. ILAG Comments at 3. The similar claim by the NGOs that IEPA's proposed Will County 4 FGD exemption is "extraneous" or not linked to this rulemaking likewise incorrectly assumes that without that proposed exemption MWG still would have offered a prohibition on coal combustion at four MWG units and IEPA still would have proposed stringent SO2 emission rates that assume that prohibition. CARE Comments at 13; SC and ELPC Comments at 13. IEPA recognizes that absent MWG's offer to cease combusting coal at

four units IEPA would have proposed less stringent SO2 emission requirements for the four MWG units subject to that offer. IEPA Comments at 27-28, 36. In turn, MWG requested the Will County 4 FGD exemption to provide an option to keep the Will County plant in operation.

Absent the FGD relief at Will County 4 IEPA's Proposed Rules would be economically unreasonable and unfair given the cost to MWG of the fuel conversions and that those conversions and resulting extremely low proposed SO2 emission rates essentially eliminate the converted units from SO2 NAAQS nonattainment culpability, providing an easier path to an SO2 NAAQS compliance strategy. MWG Comments at 27-29. MWG would not have supported the Proposed Rules, including a prohibition on coal combustion at four MWG units without IEPA's proposed changes to Part 225 and Part 217. Indeed, MWG could still withdraw its support and reevaluate its business plan, including the currently planned cessation of coal combustion at four units, if the Part 225 and Part 217 changes are not adopted.

Citing to a recent court decision in which both the ILAG and CARE are plaintiffs, the ILAG suggests that IEPA's proposed transfer of the CPS FGD exemption from Joliet 6 to Will County 4 is part of a continuing strategy through which MWG has "fought for decades to avoid and delay cleaning up coal-fired power plants such as Joliet and Will County." ILAG Comments at 2. This is a misleading statement in multiple respects and clearly contrary to MWG's actions.

The ILAG's assertion ignores MWG's history of emission reduction actions since MWG began operating the Illinois coal-fired power plants. For instance, just in the last several years MWG has installed ACI for mercury control and SNCR for NOx control across its coal-fired fleet. Further, MWG is installing ESP upgrades and FGD at Powerton and Waukegan. It is perplexing that the ILAG would accuse MWG of dragging its feet on pollution controls at the Joliet and Will County stations in the same proceeding in which MWG has offered to switch

fuels, and thus drastically reduce SO2 and other emissions, at four of the five operating units at those two plants. Even more perplexing, the ILAG attacks IEPA's Proposed Part 217 and 225 revisions that are necessary to accommodate those fuel switches, as discussed below.

The litigation cited by the ILAG does not support its assertion. In that litigation, both the trial court and the United States Court of Appeals for the Seventh Circuit rejected the ILAG's asserted New Source Review claims against MWG based upon the alleged modifications of a prior owner. *U.S. v. Midwest Generation, LLC*, 720 F.3d 644 (7th Circuit 2013). No adverse inference should be drawn against MWG from unproven allegations, especially when those allegations include dismissed claims based upon the alleged conduct of another person. Indeed, one wonders why such dismissed claims were brought in the first place. MWG timely satisfies its environmental obligations. The Proposed Rules are a reasonable and fair means to attain the SO2 NAAQS while recognizing the substantial obligations and costs imposed upon MWG to reduce SO2 emissions beyond levels required to attain to the SO2 NAAQS.

2. The Part 217 and Part 225 Amendments are Necessary to Implement IEPA's SO2 NAAQS Attainment Plan

As noted above, the ILAG and NGOs counter IEPA's proposed Part 217 and Part 225 amendments with only vague suggestions of alternative relief and unsupported opinions and speculation while avoiding any review of the specific proposed amendments. A review of IEPA's proposed amendments to Part 217 and Part 225 shows that IEPA correctly concluded that such amendments should be included in this rulemaking.

IEPA proposes to amend 35 IAC § 217.342 to make clear that an MWG unit that converts to a fuel other than coal remains in the CPS and exempt from the NOx requirements in 35 IAC Part 217, Subpart M. IEPA's Statement of Reasons ("SOR") at 10. Absent this amendment it would be unclear whether converted units are subject to the NOx rate in the CPS

or in Part 217, Subpart M. Thus, this amendment is needed for compliance certainty. In addition, if the Subpart M NOx emission rate applied it would drive additional NOx emissions controls. The costs of such additional controls were not and are not part of MWG's conversion plans. Additional controls, if feasible, would raise the costs of the conversions and require a reanalysis of the project economics. This is a critical amendment to MWG and a necessary component of an economically reasonable rulemaking.

IEPA's proposed amendments to Part 225 largely are necessary to allow or otherwise address the conversion of units to a fuel other than coal. In turn, the conversions provide substantial emission reductions upon which IEPA relies for SO2 NAAQS attainment. Some amendments are also designed to provide compliance certainty or avoid economic waste while others are intended to control SO2 emissions at units that do not convert from coal, such as Will County 4. MWG illustrates these points through a few examples.

IEPA proposes CPS amendments to clarify that once a unit is converted from coal to another fuel, like natural gas, mercury standards no longer apply. *See, e.g.*, 35 IAC § 225.294(a), (b) and (m) (IEPA proposed rule). Mercury emissions are not a concern at units combusting natural gas. SOR at 11-12. Thus, mercury control and monitoring is not needed for converted units and imposing related requirements would accomplish nothing but economic waste. If that irrational outcome were to occur, MWG would have to reconsider the decision to proceed with the conversions. Thus, this change was necessary to allow the conversions upon which IEPA relies for its SO2 attainment plan.

IEPA proposes that Will County 3 and the three coal-fired Joliet units be required to cease combusting coal. 35 IAC §§ 225.294(d) and 225.296(b) (IEPA proposed rule). IEPA relies upon the required fuel conversions for its proposed SO2 emission rate for these units.

Further, those required conversions yield other emission reductions, such as reductions in greenhouse gases. *See, e.g.,* IEPA's Technical Support Document ("TSD") at 10. Thus, the cessation of coal combustion required by IEPA's proposed CPS amendments is integral to its overall rule proposal, attainment plans and other state and federal air program requirements.

Because IEPA proposes amendments to the CPS that would prohibit coal combustion at four MWG units, it also needs to propose that such units be allowed to cease combusting coal and use another fuel, such as natural gas, as a means to comply with Section 225.296(b) of the CPS. 35 IAC § 225.296(b) (IEPA proposed rule). Absent this change, for any unit that is subject to the CPS fuel conversions could not be used to comply with current 35 IAC § 225.296(b). Instead, such units would be required to shutdown entirely or to install "FGD equipment" even though they convert to another fuel. 35 IAC §225.296(b). There is no basis to require shutdown of these units. As for the only other alternative under the current CPS, MWG has already discussed the significant costs for FGD equipment. MWG Comments at 16. Converted units emit practically no SO2. Imposing FGD equipment costs on converted units would be economically wasteful and unreasonable. MWG would not proceed with conversions if doing so required the installation of completely unnecessary and expensive FGD on inherently clean fuel sources. This proposed rule change too was necessary to allow the conversions upon which IEPA relies for its SO2 attainment plan.

Under IEPA's Proposed Rules converted units remain subject to the CPS NOx system rate but not the CPS SO2 system rate. 35 IAC § 225.295(a) and (b) (IEPA proposed rule). Absent IEPA's proposed CPS amendments, and assuming that converted units remain subject to the current CPS, the very low SO2 emission rate from the converted units could be averaged against the CPS SO2 system rate. Indeed, according to SC and ELPC once an MWG unit was

covered under the CPS, such as the Joliet units, those units remain subject to the CPS forever. SC and ELPC Comments at 13. Thus, the Joliet units would remain subject to the CPS SO2 system emission rate after fuel conversion. As MWG earlier explained, the current CPS does not require operation of FGD equipment at any particular level of emission reduction, thus the CPS SO2 system rate is what drives CPS SO2 emission control. MWG Comments at 11-12. Thus, for instance, absent IEPA's proposed amendments to 35 IAC § 225.295(b) MWG could substantially reduce through conversions the SO2 emission rate from the three Joliet units, and substantially increase SO2 emission rates at other units, such as Will County 4, and still comply with the CPS. In this way IEPA's proposed changes to the CPS actually reduce the fleet wide allowable SO2 emissions and protect against SO2 emission increases at Will County 4 that could otherwise result from the fuel conversions. This is true even if the Will County 4 FGD requirement were to be retained, a point that the ILAG and NGOs miss entirely.

IEPA proposes to transfer the CPS FGD exemption from Joliet 6 to Will County 4. 35 IAC § 225.296(b) (IEPA proposed rule). This proposed CPS amendment recognizes the substantial emission reductions provided by MWG through the proposed CPS amendments that would, if adopted, prohibit coal combustion at four MWG units, including Joliet 6. The proposed Will County 4 FGD amendment is also necessary for the Proposed Rules as a whole to make economic sense. MWG is required to spend hundreds of millions of dollars to convert units, including Joliet 6, from coal to another fuel to comply with the Proposed Rules. IEPA Comments at 28. Requiring an additional expenditure of tens of millions of dollars for trona injection or other FGD systems at Will County 4 would be economically unreasonable. Indeed, such an expensive requirement would cause MWG to reconsider whether its compliance plan, including the conversions upon which IEPA relies in this rulemaking, makes economic sense.

IEPA proposes to amend the CPS to clarify that a unit converted to another fuel remains in the CPS. *See, e.g.*, 35 IAC § 225.291 (IEPA proposed rule). Absent such an amendment there would be a question about whether such units were subject to the CPS following conversion. These and other proposed CPS amendments are necessary so that IEPA, MWG, citizen groups and others know what requirements apply following conversion.

Finally, it is worth noting that even if the necessary Part 217 and Part 225 amendments otherwise could be pursued in an alternative proceeding, and that is not a viable alternative for the reasons mentioned above, there simply is no time for a subsequent proceeding or guarantee that a subsequent proceeding would yield all of the necessary amendments. IEPA's SO2 NAAQS plan is already overdue. A variance could not be used given the permanent nature of IEPA's proposed revisions to Part 217 and Part 225, as even the ILAG recognizes. ILAG Comments at 7. An adjusted standard or rulemaking would take many months if not years, especially given the issues that have already been raised. In the interim, and even assuming that a later proceeding would generate all of the needed rule amendments, IEPA would have an incomplete and inadequate SO2 NAAQS submittal and for all of the reasons mentioned above compliance obligations would remain confused and uncertain. MWG's decision to pursue the fuel conversions would need to be immediately revaluated.

A review of IEPA's proposed amendments to Part 217 and Part 225 shows that IEPA correctly concluded that such amendments are linked with and necessary to implement IEPA's plan to reduce SO2 emissions to attain the SO2 NAAQS. The Board should adopt in this rulemaking IEPA's proposed amendments to Part 217 and Part 225.

B. The ILAG and NGO Comments Ignore the Record and Suggest the Board Adopt Poor Policy Choices

The ILAG Comments suggest that the Board should accept the emission reduction benefits from the fuel conversions that MWG offered during the IEPA rulemaking outreach process while rejecting the Will County 4 FGD exemption and other CPS and Part 217 amendments that were a condition of that offer and necessary to clarify regulatory requirements compelled by the previously unforeseen fuel conversions. ILAG Comments at 7-8. The NGO comments, on the other hand, assert that the CPS may never be revised because it resulted from a prior understanding with IEPA. CARE Comments at 2-4; SC and ELPC Comments at 10-14. Both are extreme positions that would create nonsensical, bad precedent and policy.

The ILAG requests that the Board adopt the IEPA proposed Part 214 emission limits for MWG's plants while rejecting IEPA's proposed Part 225 and Part 217 changes regardless of IEPA's outreach and negotiations with MWG that led to the Proposed Rules. For the reasons discussed above, IEPA's Part 214, Part 217 and Part 225 rule proposals are in fact inexorably intertwined and the Board should reject the ILAG's request for that reason.

If the Board is nonetheless inclined to consider the argument, however, the Board should also consider the ramifications of the argument. It has been IEPA's practice for many years to conduct outreach to affected sources and others before proposing a rule to the Board. One benefit of this process is the possibility of reaching agreement with various parties before IEPA proposes a rule to the Board. Any such agreements can make the rulemaking process more efficient and can lead to a better result in multiple ways. For instance, the outreach process may lead to the identification and correction of inaccuracies in IEPA's draft of the rule. Further, as in this case it may lead a source or company to volunteer emission reductions. Importantly, the

process works well to avoid proposals and potential outcomes that may unnecessarily drive business and industry out of the state.

The ILAG Comments effectively urge the Board to disregard this IEPA process and all of its benefits and cherry pick from the Proposed Rules only those things that the ILAG would like to see in the final rule. But the rule changes that IEPA proposes to the Board arise from MWG's consideration of business options and a resulting comprehensive proposal to IEPA. In turn, IEPA's proposal to the Board is an integrated, comprehensive package of amendments that necessarily includes IEPA's proposed CPS and Part 217 amendments. Indeed, MWG is already proceeding in good faith based upon IEPA's proposal, including the cessation of coal combustion at Will County 3. If the Board were to adopt the position urged by the IL AG it would be sending a message to the regulated community that it should never voluntarily offer emission reductions. Instead, sources should hold all of their potential compromises and arguments about a proposed rule until after IEPA files the rule proposal with the Board. That would lead to a very inefficient rulemaking process with a greater probability of flawed rules that may not yield optimal environmental benefits.

Of course, MWG is not suggesting that the Board abdicate its role as the promulgator of environmental rules in this state. MWG is suggesting, though, that when IEPA has undertaken extensive outreach and conducted the related thorough and detailed analyses in support of a proposed rule that achieves its regulatory objective, as in this case, the Board should give due deference to the IEPA proposal and consider the good faith reliance on such a proposal by affected sources.

The NGO assertion that the CPS FGD exemption may not be transferred from Joliet 6 to Will County 4 because once a rule like the CPS is adopted it should never be changed is bad

policy and legally flawed. CARE Comments at 2-4; SC and ELPC Comments at 10-14. First this position is clearly inconsistent with the need to periodically revise rules to address later arising revised standards and new rulemakings, such as new or different federal requirements. The CPS is no different than other Illinois rules, including the various other rules adopted over time that resulted in whole or in part from agreements or understandings reached through IEPA's rulemaking outreach process. When rules are adopted they are the law until changed. Rules are not permanent in the form adopted and forever unchangeable. Adopting such a position would handcuff the state and prevent needed rule changes. The NGOs cite to no statute or other authority and there is none that would forever prohibit CPS amendments.

Second, this assertion reflects a clear misunderstanding about the Proposed Rules. As discussed above, to accommodate the fuel conversions upon which IEPA relies in this rulemaking for SO2 emission reductions, the CPS must be revised, including to allow conversions as a means to comply with the CPS and to clarify how converted units are regulated under the CPS. MWG assumes that the NGOs are in favor of the emission reductions that flow from the cessation of coal combustion at Will County 3 and the Joliet units under the Proposed Rules. Further, as discussed above, IEPA's proposed amendment to the CPS SO2 system rate is actually intended to protect against an SO2 emission increase at Will County 4 and other MWG units that may continue to combust coal after some MWG units convert to another fuel. However, the NGO position that the CPS may not be revised would block that protection if conversions occur or prevent the fuel conversions and resulting emission reductions. The Board should reject the NGO argument that the CPS may not be amended.

C. IEPA's Proposed Rules, Including the Will County 4 FGD Exemption, Yield Emission Reductions Beyond Those Required by the CPS and to Attain the SO2 NAAQS.

As discussed in prior comments, the Proposed Rules, including the Will County 4 FGD exemption and the prohibition on coal combustion at four other MWG units, would yield SO2 emission reductions beyond those required to attain the SO2 NAAQS and beyond those required by the current CPS. *See, e.g.*, IEPA Comments at 27. Further, the Proposed Rules are expected to provide substantial reductions in other pollutants through IEPA's proposed CPS prohibition on the combustion of coal at four MWG units. *Id.* Of course, there is a significant cost that MWG must bear to provide these emission reductions. *See, e.g.*, IEPA Comments at 28.

The NGOs in their comments avoid any discussion of the emission reduction benefits from IEPA's proposed amendments to the CPS and Part 214 or the related costs imposed upon MWG. Instead, they claim that one IEPA proposed CPS amendment, the proposed FGD exemption for Will County 4, should be rejected. According to the NGOs the current CPS Joliet 6 FGD exemption should not be transferred to Will County 4 because doing so threatens nonattainment in the Lemont area and Joliet 6 and Will County 4 do not cause the same impacts in that area. This myopic view of the Proposed Rules contradicts key findings by IEPA and ignores important related considerations, including required emission reductions at other units under the Proposed Rules.

SC and ELPC complain that exempting Will County 4 from an FGD requirement threatens attainment of the SO2 NAAQS in the Lemont area. SC and ELPC Comments at 8-10. This is directly contrary to IEPA's position that its modeling and other analyses demonstrate that the Lemont area would attain without an FGD at Will County 4. *See, e.g.*, IEPA Comments at 27. It is also contrary to their expert's testimony that on its face IEPA's modeling showed attainment in that area. IEPA Comments at 26. SC and ELPC have not offered their own

modeling, but instead complain that IEPA's modeling is simply not "conservative" enough for their tastes. SC and ELPC Comments at 6. They want the Board to send the proposed rule back to IEPA for still more modeling. *Id*. at 19. The SO2 NAAQS rule submittal by Illinois is already overdue and the Board should not cause further delay by requiring still more modeling based upon generalized claims that IEPA's modeling to date is not "conservative" enough.

CARE compares Joliet 6 and Will County 4 emissions and certain operating characteristics for the years 2012 through 2014 and concludes that Joliet 6 and Will County 4 are not "comparable units," including because Will County 4 emitted more SO2 emissions than Joliet 6. CARE Comments at 5-6.[3] In fact, CARE says that "Will County 4 is roughly equivalent to two Joliet 6-sized units." *Id.* From this observation CARE concludes that IEPA's proposed transfer of the FGD exemption from Joliet 6 to Will County 4 should be rejected by the Board because it would create an SO2 emission increase that impacts the Lemont nonattainment area. A major problem with this conclusion is that it ignores the emission reductions from other units that must cease combusting coal under IEPA's Proposed Rules, including another unit at that same Will County plant.

IEPA's proposed revisions to the CPS prohibit the combustion of coal not just at Joliet 6, but also at Will County 3 and Joliet 7 and 8. Thus, any assessment of the impact of IEPA's Proposed Rules on the Lemont nonattainment area must include all of these units.

[3] SC and ELPC also claim that Joliet 6 and Will County 4 are not comparable because there was an "understanding" that the future life of Joliet 6 was limited. SC and ELPC Comments at 14. They have offered no evidence of such an understanding and IEPA personnel involved with the CPS rulemaking have no such recollection. IEPA Comments at 26-27. MWG is not aware of any commitment to cease operation of Joliet 6 at any particular time. If there were any such commitment that would have been reflected in the CPS, which set forth the shutdown dates for certain other units. 35 IAC§ 225.294(b). IEPA correctly concludes that the life of Joliet 6 under the CPS is indefinite. IEPA Comments at 27.

Considering these other units makes a meaningful difference in the analysis and conclusion. The following table presents the 2012-2014 SO2 emissions from Will County 4 and the four units that would be prohibited from burning coal under IEPA's Proposed Rules:

Actual Annual SO2 Emissions in Tons Per Year			
	2012	2013	2014
Joliet 6	2,211	3,059	2,554
Joliet 7	5,362	6,166	5,430
Joliet 8	5,787	6,237	4,816
Will County 3	2,848	3,030	3,144
Will County 4	5,437	5,806	5,805

Will County 3, which of course is located at the same plant as Will County 4, emitted 3,144 tons of SO2 emissions in 2014. *See also*, TSD at 17, Table 4. Will County 3's SO2 emissions, like the SO2 emissions of Joliet 6, would be practically eliminated by the cessation of coal combustion required by IEPA's proposed amendment of the CPS. Adding Will County 3's SO2 emissions in 2014 to those of Joliet 6 yields 5,698 tons of SO2 emissions from these two units in 2014. This level of SO2 emissions in 2014 is very close to the level of SO2 emissions from Will County 4 in 2014, 5,805 tons. In other words, the SO2 emissions in 2014 from two units that may no longer combust coal under IEPA's proposed amendments to the CPS are roughly comparable to the SO2 emissions of Will County 4 in that same year. Joliet 7 and 8, however, also may not combust coal under IEPA's proposed CPS amendments so their SO2 emissions also must be considered. In 2014, Joliet 7 had SO2 emissions of 5,430 tons, and Joliet 8's SO2 emissions were 4,816 tons. Applying CARE's comparison approach, when all three Joliet units and Will County 3 are considered the 2014 SO2 emission levels that would be practically eliminated by IEPA's proposed prohibition on coal combustion at these units (over 15,000 tons) dwarf Will County 4's SO2 2014 emissions. The same applies for the years 2012

and 2013. In CARE's words, there are more than "two Joliet 6 sized units" that must cease combusting coal under IEPA's Proposed Rules.

CARE next argues that, based upon IEPA's earlier SO2 NAAQS nonattainment recommendations, the Joliet units are not located in the Lemont nonattainment area identified by IEPA and thus the emission reductions from the Joliet units required by IEPA's Proposed Rules do not provide comparable emission benefits to what would occur if the Will County 4 FGD requirement were retained. CARE Comments at 7-9. In a slight variant SC and ELPC assert that the Will County 4 FGD requirement should be retained because the Joliet units and Will County 4 do not equally impact all areas, including the peak receptor, in the Lemont nonattainment area. SC and ELPC Comments at 8-10. These arguments for several reasons do not support rejection of IEPA's proposed Will County 4 FGD exemption.

CARE is confused about IEPA's prior nonattainment determinations.[4] The IEPA nonattainment recommendation upon which CARE relies was based upon monitoring data. IEPA Comments at 31. IEPA has modeled SO2 emissions from the Joliet units and determined that they impact the Lemont nonattainment area. *Id.* at 30. This is why the Joliet units, including Joliet 6, are included in IEPA's Proposed Part 214 SO2 rules. IEPA Comments at 30. Even SC and ELPC acknowledge this. SC and ELPC Comments at 9. Thus, contrary to CARE's assertions that the Joliet units do "not contribute to nonattainment in the Lemont area," SO2 emission

[4] CARE apparently is also confused about the SO2 emission rate proposed by IEPA for Will County 4. CARE attacks a so-called "alternative" SO2 emission rate proposed for Will County 4 by IEPA based upon a fleet average. CARE Comments at 9-10. There is no such thing. IEPA has proposed a unit-specific SO2 emission rate for Will County 4. *See* 35 IAC § 214.603(f) (IEPA proposed rule). A fleet average SO2 emission rate does apply under the CPS, but IEPA is not proposing to change that rate other than to make it more stringent by excluding converted units from the average. 35 IAC § 225.295(b) (IEPA proposed rule).

reductions from the Joliet units benefit the Lemont nonattainment area. IEPA Comments at 30-31.

While SC and ELPC acknowledge that the Joliet units have been modeled as impacting the Lemont nonattainment area, they ask the Board to ignore the benefits to the Lemont nonattainment area from the proposed cessation of coal combustion at the Joliet units. It may well be true as SC and ELPC assert that Will County 4 SO2 allowable emissions are modeled to impact the peak receptor in the Lemont nonattainment area more than the Joliet units' allowable emissions under the Proposed Rules. SC and ELPC Comments at 9. But that does not mean that the practical elimination of SO2 emission reductions from the Joliet units has no benefits for the Lemont nonattainment area. For instance, SC and ELPC's comments show that emissions from Joliet 6, 7 and 8 were modeled to have a significant impact at a receptor in the Lemont nonattainment area. SC and ELPC Comments at 9, Table 3. Indeed, the modeled numeric impact from Joliet 7 and 8 at that receptor exceeds the modeled numeric impact of Will County 4 at the so-called peak receptor. Compare Tables 3 and 4 at page 9 of SC and ELPC Comments. The modeled impact of the Joliet units essentially disappears once the Joliet units are modeled with IEPA's proposed Part 214 SO2 emission rate, which shows the substantial benefit of the Joliet fuel conversions on the Lemont nonattainment area. IEPA Comments at 25-26. The benefits of the proposed Joliet fuel conversions on the Lemont nonattainment area are undeniable. All modeled locations within the Lemont nonattainment area attain the SO2 NAAQS under IEPA's Proposed Rules, including the Will County 4 FGD exemption, and thus all locations within that area are protected with an adequate margin of safety.[5] *See* IEPA Comments at 26-29; MWG Comments at 9. At bottom, the NGOs' arguments seem to simply prefer that

[5] If the NGOs believe that the SO2 NAAQS is not adequately protective of human health then their quarrel is with USEPA. Any such disagreement cannot be resolved in this proceeding.

some locations within the Lemont nonattainment area receive more benefits from MWG's substantial emission reductions than others. That is no reason to disregard or change IEPA's proposed CPS and other rules amendments.

The NGOs also ignore that SO2 emissions from the Joliet and Will County plants combined are projected by IEPA to be lower with IEPA's proposed rule amendments, including the Will County 4 FGD exemption, than without. *See, e.g.*, TSD at 17, Table 4; IEPA Comments at 27-28. They also fail to recognize, as discussed above, that the Joliet unit conversions were voluntarily offered by MWG as part of a package of rule changes that included the Will County 4 FGD exemption. Given the cost of the fuel conversions required by the Proposed Rules and that an FGD at Will County 4 is not required to attain the SO2 NAAQS, absent relief from the current CPS Will County 4 FGD requirement the Proposed Rules are not economically reasonable.

Finally, the NGOs incorrectly assume that transferring the CPS FGD exemption to Will County 4 would increase SO2 emissions from the Will County plant. There are multiple flaws in this assumption.

First, the NGOs completely disregard IEPA's proposed requirement to prohibit coal combustion at Will County 3 and the resulting emission reductions from the Will County plant. 35 IAC § 225.294(d) (IEPA proposed rule); TSD at 17, Table 4. Indeed, Will County 3 is conspicuous by its absence from the NGO comments. CARE Comments at 5-9; SC and ELPC Comments at 8-10. This is a glaring omission given that Will County 3 is at the same plant as Will County 4 and the practical elimination of Will County 3's SO2 emissions under the Proposed Rules should directly benefit the same area that is claimed by the NGOs to be impacted by the absence of an FGD requirement at Will County 4. In the only reference to Will County 3

SC and ELPC state that "even with Will County 3 converting from coal," Will County 4 continues to impact a receptor. SC and ELPC Comments at 9. That is a meaningless, non sequitur reference to Will County 3 that fails to address the benefits to the Lemont nonattainment area of the cessation of coal combustion at Will County 3 as required by the Proposed Rules.

Second, the NGOs seem to assume that the presence of the CPS FGD requirement at Will County 4 means that SO2 emissions from Will County 4 would be lower. This is not necessarily correct. As MWG has explained, the CPS does not require the operation of FGD equipment at any particular level, the CPS SO2 System rate is the driver for emission levels at the units within that system and the CPS SO2 system rate is effectively more stringent under the Proposed Rules because after the fuel conversions only the five remaining CPS units combusting coal, including Will County 4, would be subject to the CPS system rate. MWG Comments at 11-12. MWG still would need to operate Will County 4 and those four other coal-fired units (two units each at Powerton and Waukegan) to meet the CPS SO2 system rate, and that rate does not change under the Proposed Rules. Thus, IEPA has predicted that SO2 emissions (in tons per year) under the Proposed Rules will not increase at Will County 4. TSD at 17, Table 4. When the Will County 3 SO2 emission reductions required by IEPA's proposed CPS amendments are factored in, IEPA predicts that overall Will County plant SO2 emissions will decrease, not increase. TSD at 17; IEPA Comments at 27.

For these reasons and those set forth in MWG's Comments and IEPA's Comments, the Board should reject the Commenters' request that Will County 4 remain subject to an FGD requirement under the CPS. IEPA has correctly determined that the Proposed Rules, including the Will County 4 exemption, will provide for attainment in the Lemont nonattainment area and yield emission reductions beyond those required by the CPS. There is no need for further

emission requirements or controls at Will County 4. Further, imposing an expensive FGD requirement at Will County 4 that is not needed for SO2 NAAQS attainment would make the Proposed Rules economically unreasonable and fundamentally unfair in light of the costs that MWG must incur to comply with the rules as proposed by IEPA. If MWG were to desire to operate Will County 4 at levels of operation that require additional SO2 emission control, nothing in IEPA's Proposed Rules would prohibit the future installation of FGD or implementation of some other SO2 control strategy.

If the Board, however, believes that additional SO2 emission requirements should be imposed on Will County 4, then MWG urges the Board to adopt the alternative Part 214 SO2 emission rate for Will County 4 identified by IEPA in its comments. IEPA Comments at 29-30. As IEPA explained, this alternative, more stringent allowable SO2 emission rate would provide a substantial, albeit unnecessary, further margin for attainment protection in the Lemont nonattainment area. *Id*.

D. No Supplemental Limit Should Be Imposed on the Powerton Station

In their comments, SC and ELPC assert that Powerton's actual emission rates are variable. SC and ELPC Comments, at 18. SC and ELPC thus now concede that emission variability exists even though their expert Mr. Sahu earlier claimed that variability did not exist to support IEPA's proposed 30-day averaging period. Prefiled Testimony of Ranajit (Ron) Sahu on Behalf of Sierra Club and ELPC, at 10-12. That variability supports the 30-day averaging period proposed by IEPA for the Powerton plant, and there is no objection in the written comments by SC and ELPC to a 30-day averaging period. They do argue, however, that this variability indicates that a supplemental limit should be adopted. At this point then the sole issue seems to be whether a supplemental limit should be imposed in addition to the 30-day rolling average emission rate that IEPA has proposed.

In support of their requests for a supplemental limit SC and ELPC rely upon certain USEPA guidance, which is already part of the record. SC and ELPC Comments at 16-18. SC and ELPC point out various statements in that guidance that suggest that supplemental limits in some circumstances may be helpful and required by state agencies. *Id*. SC and ELPC then leap to the conclusion that USEPA's "guidance demonstrates that USEPA does not view a 30-day average based on the appropriate conversion factor and methodology alone as sufficient to protect from spikes that pose a risk to the NAAQS, as IEPA suggested in its presentation to the Board." SC and ELPC Comments, at 17. This is an irrelevant and untenable reading of USEPA's potential position given that USEPA, the issuer of that guidance, has in fact already determined that the 30-day rolling average emission rate proposed by IEPA without any supplemental limit is adequate and appropriate. IEPA Comments at 20-21. In short, SC and ELPC claim that USEPA's guidance should be read to require a supplemental limit for Powerton even though the issuer of that guidance has determined otherwise.

The Board should deny SC and ELPC's request for a supplemental limit. There is no factual or legal basis to impose a supplemental limit at Powerton. If, however, the Board determines that a supplemental limit is necessary it should adopt the supplemental limit identified by IEPA in its comments. IEPA Comments at 23-24.

CONCLUSION

For the foregoing reasons and those presented in the earlier filed comments of MWG and IEPA, MWG respectfully requests that the Board adopt the rules as proposed by IEPA in this proceeding.

Dated: September 11, 2015

Respectfully submitted,

MIDWEST GENERATION, LLC

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
AMENDMENTS TO 35 ILL. ADM. CODE	)	R15-21
PART 214, SULFUR LIMITATIONS, PART	)	(Rulemaking - Air)
217, NITROGEN OXIDES EMISSIONS, AND	)	
PART 225, CONTROL OF EMISSIONS	)	
FROM LARGE COMBUSTION SOURCES	)	

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, affirm that I have served the attached NOTICE and MIDWEST GENERATION, LLC'S RESPONSE TO COMMENTS upon the following person by emailing it to the email address indicated below:

Daniel Robertson, Hearing Officer
Illinois Pollution Control Board
Daniel.robertson@illinois.gov

I affirm that my email address is sbonebrake@schiffhardin.com; the number of pages in the email transmission is 28; and the email transmission took place today before 5:00 p.m.

I also affirm that I am mailing the attached by first-class mail from Chicago, Illinois, with sufficient postage affixed, to the following persons:

SEE ATTACHED SERVICE LIST

Dated: September 11, 2015

Respectfully submitted,

MIDWEST GENERATION, LLC

By: /s/ Stephen J. Bonebrake
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