

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC )  
 )  
 Petitioner, ) PCB 20-38 & 20-39  
 ) (Thermal Demonstration - Water)  
 ILLINOIS ENVIRONMENTAL ) (Consolidated)  
 PROTECTION AGENCY )  
 )  
 Respondent. )

**NOTICE OF FILING**

To:

Don Brown, Clerk of the Board Illinois Pollution Control Board James R. Thompson Center, Suite 11-500 100 W. Randolph Street Chicago, IL 60601 <a href="mailto:don.brown@illinois.gov">don.brown@illinois.gov</a>	Sara Terranova – Assist Counsel Illinois Environmental Protection Agency 1021 N. Grand Avenue East P.O. Box 19276 Springfield, IL 62794 <a href="mailto:sara@terranova@illinois.gov">sara@terranova@illinois.gov</a>
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PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board Midwest Generation, LLC’s Response to Illinois EPA Recommendation, a copy of which is herewith served upon you.

Dated: May 20, 2020

MIDWEST GENERATION, LLC

By:     /s/Susan M. Franzetti    

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing, and Midwest Generation, LLC's Response to Illinois EPA Recommendation was electronically filed on May 20, 2020 with the following:

Don Brown, Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
Chicago, IL 60601  
[don.brown@illinois.gov](mailto:don.brown@illinois.gov)

and that copies were emailed on May 20, 2020 to the parties listed above.

Dated: May 20, 2020

/s/Susan M. Franzetti \_\_\_\_\_

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC	)	
Petitioner,	)	
v.	)	PCB 20-38 & 20-39
ILLINOIS ENVIRONMENTAL	)	(Thermal Demonstration – Water)
PROTECTION AGENCY	)	(Consolidated)
Respondent.	)	

**MIDWEST GENERATION, LLC’S RESPONSE TO ILLINOIS EPA  
RECOMMENDATION**

Midwest Generation, LLC, (“MWGen”) by its attorneys, submits the following response to the Recommendation of the Illinois Environmental Protection Agency (the “Agency”) to the Illinois Pollution Control Board (the “Board”) regarding MWGen’s Petitions (the “Petitions”) to Approve Alternate Thermal Effluent Limitations for the Joliet 9 Generating Station and Joliet 29 Generating Station (the “Stations”).

**I. INTRODUCTION**

In accordance with the requirements of Part 106, Subpart K of Title 35 of the Illinois Administrative Code (the “Subpart K” regulations), the Agency filed its Recommendation on April 29, 2020. The Recommendation states that the Agency agrees that the numerical alternative effluent limits proposed in MWGen’s Petitions will not result in any appreciable harm to the balanced, indigenous population of fish, shellfish, and wildlife (“BIP”) in the Upper Dresden Island Pool (“UDIP”) or in waters known as the “Five-Mile Stretch.” Accordingly, the “Upper Dresden Island Pool Use” standards (the “UDIP” standards), that became applicable July 1, 2018, are more stringent than necessary to protect the BIP. Additionally, the General Use thermal standards that apply to the Five-Mile Stretch (but for the Adjusted Standard the Board established in AS 96-10 (Oct. 3, 1996)) are also more stringent than necessary to protect the BIP in that waterway.

The Agency also notes that the Illinois Department of Natural Resources has advised that it regards as “unlikely” the potential for the proposed alternative thermal limitations (“AELs”) to produce adverse impacts on threatened or endangered species in the UDIP and Five-Mile Stretch (specifically, the banded killifish). The Agency states that the Petitions have met all of the content requirements outlined in Subpart K.

Based on MWGen’s demonstrations in support of these conclusions, the Agency recommends that the Board grant the relief MWGen requests in its Petition. But the Agency has placed three conditions on that recommendation

- **First:** MWGen’s request for a 5% excursion value for the Far-Field (Five-Mile Stretch) area should be modified to 2%.
- **Second:** The cooling towers at Joliet 29 Generating Station “should be used prior to and during excursion hours when possible.”
- **Third:** Three downstream thermal dischargers (ExxonMobil, INEOS, and Stepan Chemical Company) should “be allowed to take advantage of the AELs adopted by the Board.”

MWGen has no objection to the first recommendation because it reflects an unintentional, typographical error in just one of the instances in MWGen’s Petition where it requested a 2% excursion value for the Far-Field (Five-Mile Stretch) AEL. MWGen also does not object to the other two Agency recommendations but does wish to provide further information and clarification on both conditions for the Board’s consideration.

## **II. RESPONSE TO AGENCY RECOMMENDED CONDITIONS**

### **A. MWGen is Only Requesting a 2% Excursion Value for the Far-Field AEL.**

MWGen did not intend to request a 5% excursion-hour value for the Five-Mile Stretch. The figure that appears on page 32 of each of the two MWGen Petitions was a typographical error. MWGen is seeking an AEL for the Five-Mile Stretch that is largely identical to the existing

adjusted thermal standards in AS 96-10, including the 2% excursion-hour allowance from those standards.

MWGen is attaching Exhibit A, which is a corrected statement of its requested relief for the two Stations that includes the request for a 2% excursion hour allowance.

**B. The Joliet 29 Cooling Towers are Used to Minimize Excursion Hours.**

The Agency's second condition regarding the use of the Joliet 29 cooling towers is consistent with MWGen's historical operation of the cooling towers. MWGen has no objection to the substance of the Agency's recommendation. Today and historically, MWGen operates the Joliet 29 cooling towers as necessary to minimize the use of excursion hours. MWGen's historical operation of these towers, and the beneficial effect it has had on the Joliet 29 Station's thermal discharges, are reflected in the findings of the Demonstration Study that the proposed AELs will not result in any appreciable harm to the BIP. The Agency's Recommendation acknowledges and accepts that the towers are "currently used to avoid or limit the excursion hours,"

But the language of the Agency's suggested AEL condition does not clearly convey its intended meaning. MWGen appreciates the Agency's attempt to account for the mechanical and meteorological obstacles to using the cooling towers as well as their intended use to minimize excursion hours. The suggested language of the condition, however, could be mistakenly interpreted to require MWGen to operate the cooling towers essentially all the time, even when not necessary to minimize the use of excursion hours.

The Agency suggests that the cooling towers be operated "prior to and during excursion hours when possible." But, any hour of operation could be sometime "prior to" the commencement of use of an excursion hour. Accordingly, MWGen proposes that the Agency's suggested AEL

language should be modified to provide that: “MWGen will continue to operate its Joliet 29 Generating Station Cooling Towers to minimize the use of excursion hours when possible.”

**C. The Thermal Demonstration Accounts and Allows for Downstream Dischargers’ Historical Thermal Discharges.**

Federal regulations call for thermal demonstrations to account for “interaction of [the discharger’s] thermal component with other pollutants and the additive effect of other thermal sources to [aquatic life] . . . .” *See* 40 C.F.R. § 125.73(c)(1)(i)); *see also* 40 C.F.R. § 125.73(a) (requiring that demonstration show that “considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected,” the proposed variance will assure the protection and propagation of a balanced indigenous community). MWGen followed that instruction. And although nothing in state or federal regulations specifically requires that an AEL petitioner show that they are not depriving other dischargers of assimilative capacity,<sup>1</sup> the Thermal Demonstration shows that the Joliet Stations can operate under the proposed thermal AELs without causing other dischargers to violate the thermal standards set in their permits.

But the Thermal Demonstration assumes that the downstream dischargers will maintain historical thermal discharge practices and does not account for a significant increase in their respective thermal discharges. In making its recommendation, the Agency may have intended that allowing the downstream dischargers to take advantage of the AELs adopted by the Board in this proceeding would be conditioned upon the maintenance of historical thermal discharges without

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<sup>1</sup> *In re Public Service Company of Indiana, Inc.*, 1 E.A.D. 590 (E.A.B. 1979) (“The decision to grant or deny a request for less stringent thermal limitations pursuant to § 316(a) hinges solely on proof of the biological effects of the discharges.”)

any significant increase in the discharge temperature or volume. But the Agency's recommendation does not express this concern.

MWGen does not object to affording the downstream dischargers the opportunity to take advantage of the extensive and significant work that MWGen and its environmental consultant put into (1) developing the proposed AELs and (2) demonstrating that those AELs would not harm the BIP. The downstream dischargers should not have to go to the time and expense of duplicating that research. But MWGen is concerned that, if the volume and temperature of the thermal downstream discharges increases significantly in the future, it could reduce the existing thermal assimilative capacity in the UDIP and in the immediate area of the I-55 Bridge that was the basis for the Thermal Demonstration Study's conclusion that the BIP will be protected by the AELs. This change in thermal conditions could force the Joliet Stations to reduce production of electricity at times when production (particularly a summer heat wave) is critical and could have financial consequences for MWGen due to its commitments to the PJM Interconnection regional transmission organization.

It is also procedurally unclear how the downstream dischargers would be allowed to "take advantage of" the AELs adopted by the Board. Will the Board grant them AEL relief in this proceeding or does a downstream discharger file its own Subpart K petition to request such relief? MWGen's interest is in avoiding any delay in this proceeding. As the Board is aware, MWGen's separate TLWQS Petition proceeding, PCB 16-19, has been stayed pending the Board's final decision in this proceeding. MWGen seeks to avoid any delay in this proceeding that might jeopardize the continuation of the stay in its TLWQS proceeding. Hence, in the event that there are any additional steps that the downstream dischargers must take to afford themselves the opportunity to obtain AELs, MWGen requests that the Board instead move forward with

a decision on MWGen's Subpart K Petitions here and advise the downstream dischargers how to proceed separately to obtain AEL relief if needed. MWGen also prefers that the issue of the downstream dischargers' AEL relief be dealt with in a separate proceeding or subdocket so that, in the event there are any contested issues relating to any downstream discharger's AEL relief, it will not jeopardize or delay any AEL relief afforded to MWGen in this proceeding.

MWGen believes that the downstream dischargers should be afforded the opportunity to file their own Subpart K petitions. MWGen's Thermal Demonstration discusses the downstream dischargers, and MWGen anticipates that each of them would be able to file Subpart K petitions relying on that demonstration with few or no modifications. The Agency's recommendation here should reassure the downstream dischargers that they will face few obstacles in pursuing this relief. Finally, whether the Board conditions MWGen's thermal AEL on regulatory relief for the downstream dischargers or directs those dischargers to file separate Subpart K petitions, MWGen requests that the relief limit those dischargers to thermal loading in line with their historical practices, which were the basis of and modeled in MWGen's Thermal Demonstration.

MWGen respectfully requests that the Board review the Agency's proposed conditions with the above considerations in mind.

Dated: May 20, 2020

MIDWEST GENERATION, LLC

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# **EXHIBIT A**

### Corrected Statement of Requested Relief

In lieu of the General Use thermal water quality standards contained in 35 Ill. Adm. Code 302.211 and the Upper Dresden Island Pool Use thermal water quality standards provisions contained in 35 Ill. Adm. Code 302.408 (c)-(f), and (i), MWGen respectfully requests that the Board find that the attached Demonstration Report adequately demonstrates that the following thermal effluent limits will allow for the protection and propagation of a balanced indigenous, community in the UDIP and Five-Mile Stretch:

(1) Water temperature at representative locations in the UDIP shall not exceed the maximum limits listed below for more than 5% of the time in a calendar year. Moreover, at no time shall water temperature exceed the daily maximum limit by more than 1.7°C (3°F).

(2) Water temperature at representative locations in the Five-Mile Stretch shall not exceed the maximum limits listed below for more than 2% of the time in a calendar year. Moreover, at no time shall water temperature exceed the daily maximum limit by more than 1.7°C (3°F).

(3) Proposed Near-Field (UDIP) and Far-Field (Five-Mile Stretch) Numeric Thermal Alternative Effluent Limits for Joliet Generating Station 9 and Joliet Generating Station 29:

<b>Month</b>	<b>Proposed Near-Field AELs for Joliet Stations 9 and 29 (°F)</b>	<b>Proposed Far-Field AELs for Joliet Stations 9 and 29 (°F)</b>
<b>January</b>	65	60
<b>February</b>	65	60
<b>March</b>	70	65
<b>April</b>	80	73
<b>May</b>	85	85
<b>June</b>	93	90
<b>July</b>	93	91
<b>August</b>	93	91
<b>September</b>	93	90
<b>October</b>	90	85
<b>November</b>	85	75
<b>December</b>	70	65

(4) For purposes of this AEL, the “Five-Mile Stretch” refers to the segment of the Lower Des Plaines River running from the I-55 Bridge (River Mile 277.9) to the Illinois River (River Mile 273.0).

The above-proposed near-field thermal alternative effluent limits for the Joliet Stations are effective at the edge of each Station’s respective 26-acre mixing zone, as determined for compliance monitoring purposes through the continued use of the Joliet Stations Near-Field Models under the terms of their respective NPDES Permits. As discussed above, these proposed seasonally-based thermal AELs will operate in lieu of the Upper Dresden Island Pool (c), (d), and (e) narrative criteria, which will not apply to the UDIP under the proposed AEL. *See* 35 Ill. Adm. Code 304.141(c). Similarly, the General Use Standard narrative criteria (35 Ill. Adm. Code 302.211(b)-(d)) will not apply to the Five-Mile Stretch.