

ILLINOIS POLLUTION CONTROL BOARD

MAY 17, 2023

IN THE MATTER OF:)
)
SIERRA CLUB, ENVIRONMENTAL)
LAW AND POLICY CENTER,) PCB 13-15
PRAIRIE RIVERS NETWORK,) (Citizens
and CITIZENS AGAINST) Enforcement-Water,
RUINING THE ENVIRONMENT,)

REPORT OF PROCEEDINGS at the hearing of

the above-entitled cause before HEARING OFFICER
BRADLEY P. HALLORAN, called by the Illinois
Pollution Control Board, taken by Jamye
Giamarusti, Certified Shorthand Reporter for the
State of Illinois, at 160 North LaSalle Street,
Room N-505, Chicago, Illinois, on the 17th day
of May, 2023, at the hour of 9:00 a.m.

REPORTED BY: Jamye Giamarusti, CSR

LICENSE NO.: 084-004183

1 APPEARANCES:

2
3 MR. BRADLEY HALLORAN, Hearing Officer;

4
5 SIERRA CLUB ENVIRONMENTAL LAW PROGRAM

6 MR. GREG WANNIER

7 MS. MEGAN WACHSPRESS

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9 San Francisco, CA 94105

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11 megan.wachspress@sierraclub.org

12 - and -

13 MS. FAITH BUGEL,

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15 Wilmette, IL 60091

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17 fbugel@gmail.com

18 On behalf of the Complainants;

19 ENVIRONMENTAL INTEGRITY PROJECT, by

20 MR. ABEL RUSS

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22 Washington, DC 20005

23 aruss@environmentalintegrity.org

24 On behalf of the Complainants,

Prairie Rivers Network;

NIJMAN & FRANZETTI, LLP, by

MS. JENNIFER NIJMAN

MS. KRISTEN GALE,

10 S. LaSalle Street, Suite 3600

Chicago, Illinois 60603

Kg@nijmanfranzetti.com

Jn@nijmanfranzetti.com

Representing the Respondent.

ALSO PRESENT:

Ms. Vanessa Horton;

Ms. Essence Brown.

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I N D E X

WITNESS	DX	CX	RDX	RCX
RICHARD GNAT (Adverse)				
By Ms. Bugel.....				8
By Mr. Russ.....				177

May 17, 2023

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2			
3	Complainant's Exhibit		
4	No. 1301	11	14
5	No. 1302	11	14
6	No. 1303	11	14
7	No. 1304	15	17
8	No. 1305	15	17
9	No. 1306	15	17
10	No. 1307	15	17
11	No. 1308	18	20
12	No. 1309	18	20
13	No. 1310	18	20
14	No. 1311	20	22
15	No. 1312	20	22
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24	No. 1321	51	57

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E X H I B I T S (CONTINUED)

NUMBER	MARKED FOR ID	ADMITTED
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1 THE HEARING OFFICER: Good morning,
2 everybody.

3 My name is Bradley Halloran. I'm the
4 hearing officer with the Illinois Pollution
5 Control Board.

6 This matter is continued on record from
7 yesterday. Today is May 17th. This is PCB
8 13-15. We're in the remedy stage. We're
9 starting redirect with Mr. Wannier and the
10 witness, Mr. Shefftz.

11 Before we proceed, Vanessa Horton would
12 like to state something for the record.

13 MS. HORTON: Hi. I'm Vanessa Horton,
14 attorney-adviser to Chair Currie.

15 In regards to the ex parte conversation
16 between her and representatives from NRG on
17 May 14, 2023, Chair Currie shared with me that
18 she would like for the record to show that she
19 believes the conversation was misinterpreted.

20 She believes that she was merely
21 sharing her understanding that NRG's finances
22 are not currently at issue in this case.

23 That's all. Thanks for your time.

24 THE HEARING OFFICER: Thank you, Ms. Horton.

1 Mr. Shefftz, you're still under oath.

2 THE WITNESS: Yes.

3 THE HEARING OFFICER: You may proceed,
4 Mr. Wannier.

5 Jamyne, this is in the nondisclosable
6 mode until I tell you otherwise. Thank you.

7 (WHEREUPON, said Record was
8 herein deemed nondisclosable
9 and removed from said Record.)

10 THE HEARING OFFICER: Let's go off the
11 record.

12 (WHEREUPON, a discussion was
13 held off the Record.)

14 THE HEARING OFFICER: We're back on the
15 record. It's approximately 10:05. Ms. Bugel
16 has her witness up here. I think it's Mr. Gnat.
17 If you raise your right-hand, Jamye will swear
18 you in.

19 (Witness sworn.)

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RICHARD GNAT,
called as an adverse witness herein, having been
first duly sworn, was examined and testified as
follows:

DIRECT EXAMINATION (ADVERSE)

BY MS. BUGEL:

**Q. Mr. Gnat, can you please state your
full name for the record.**

A. My name is Richard Gnat, G-N-A-T.

Q. Who do you work for?

A. KPRG and Associates.

Q. What is your position at KPRG?

A. I'm a principal and part owner of the
company.

**Q. What is KPRG's relationship with
Midwest Generation?**

A. We are a consultant for Midwest
Generation.

**Q. And you, yourself do some work for
Midwest Generation in your position at KPRG,
correct?**

A. Yes, I do.

**Q. What work are you currently doing for
Midwest Generation?**

1 A. Most of my work currently for Midwest
2 Generation is involved on helping with
3 compliance on the CCR rule, in particular the
4 groundwater monitoring program. We also
5 assisted in pulling together the initial
6 applications for permit to operate as well as
7 the initial application, construction permit
8 application for closure.

9 MS. BUGEL: Hearing Officer, Complainants
10 would like to make a motion under Rule 101.624
11 to treat Mr. Gnat as an adverse witness due to
12 his relationship with Respondent.

13 THE HEARING OFFICER: Ms. Gale.

14 MS. GALE: We would object. Mr. Gnat is a
15 principal of his own firm. As he said, Midwest
16 Generation is a client of his. He has many
17 other clients. And there's no reason that he
18 would need to be adverse. Other than working
19 for Midwest Generation at times, he is not an
20 employee of Midwest Generation, nor associated
21 with the company.

22 THE HEARING OFFICER: I'm going to grant
23 Ms. Bugel's motion and treat Mr. Gnat as an
24 adverse witness. You may proceed.

1 BY MS. BUGEL:

2 Q. So, Mr. Gnat, just to make certain
3 terminology clear on the record, do you call
4 compliance commitment agreements CCAs at times?

5 A. Yes.

6 Q. And do you have an understanding of
7 what CCR, what acronym that stands for?

8 A. Yes, coal combustion residual.

9 Q. Are you aware of two different CCR
10 rules that apply in this proceeding?

11 A. Yes, I am. It's the federal CCR rule
12 as well as the state CCR rule.

13 MS. GALE: Objection to the extent that she
14 said they apply to this proceeding. This
15 proceeding is related to -- the complaint is
16 related to 12A and 21D and the groundwater
17 protection rules under 620. There is no
18 application of the CCR rule.

19 THE HEARING OFFICER: Ms. Bugel.

20 MS. BUGEL: I'll restate the question to make
21 it clear on the record.

22 THE HEARING OFFICER: Thank you.

23 BY MS. BUGEL:

24 Q. Are you aware of two different CCR

1 rules that may get referenced in the course of
2 this proceeding?

3 A. Yes, I am.

4 Q. And one is the federal rule?

5 A. Correct.

6 Q. And one is the Illinois rule?

7 A. Yes, it is.

8 Q. For clarity in the record, if we are
9 referring to a CCR rule, is it agreeable to
10 refer to them as the federal CCR rule versus the
11 Illinois CCR rule just for clarity in the
12 record?

13 A. Individually, yes, because they're
14 different in and of themselves.

15 Q. Understood. Have you heard of the
16 acronym ASD?

17 A. Yes, I have.

18 Q. When we use the acronym ASD, just for
19 clarity in the record, does that generally
20 reference in this proceeding alternate source
21 demonstration?

22 A. Yes, it does.

23 (WHEREUPON, Exhibit Nos. 1301,
24 1302 and 1303 were marked for

1 identification.)

2 BY MS. BUGEL:

3 Q. We are placing in front of you our
4 first set of exhibits. We have marked these as
5 Exhibits 1301, 1302, and 1303. And Complainants
6 and Respondents came to an agreement that we
7 could treat these three as a group exhibit. I'm
8 just going to give Leah a minute to distribute
9 these documents.

10 And for the record, Exhibit 1301 --

11 MS. GALE: Can we wait?

12 MS. BUGEL: Sure. I was just going to read
13 the Bates numbers into the record.

14 For the record, Exhibit 1301 begins
15 with the Bates No. 63811; Exhibit 1302 begins
16 with the Bates No. 679775; and Exhibit 1303
17 begins with the Bates No. 118134.

18 BY MS. BUGEL:

19 Q. Do you have those in front of you?

20 A. Yes, I do.

21 Q. And, Mr. Gnat, can you generally
22 explain what these documents are?

23 A. Sure. The first one, 1301, is a CCR
24 quarterly groundwater monitoring report -- I'm

1 sorry -- CCA quarterly groundwater monitoring
2 report for Joliet Station No. 29 dated
3 October 7th, 2019.

4 Document 1302 is annual and quarterly
5 groundwater monitoring report for Joliet No. 29
6 Generating Station dated January 21st of 2021.

7 And Document 1303 is the CCA annual and
8 quarterly groundwater monitoring report for
9 Joliet No. 29 Station dated January 20th, 2022.

10 **Q. Can you generally explain what data is**
11 **found in these documents?**

12 A. Sure. The CCA, or the compliance
13 commitment agreement, requires quarterly
14 groundwater monitoring at agreed wells around
15 various -- three impoundments at the Joliet 29
16 station. Reports are submitted on a quarterly
17 basis. As an example, the one for October 7th,
18 2019. And then we also have an annual report
19 that's generated in conjunction with the fourth
20 quarterly report from the year.

21 **Q. Can you generally indicate where data**
22 **is found in these reports?**

23 A. Sure. The quarterly report is
24 supported by a set of figures, one which

1 includes groundwater flow, and then we have a
2 series of tables. Table 1 being groundwater
3 elevations from monitoring wells and the
4 following table being the tabulated data itself.

5 And then as an attachment, we include
6 the analytical data package from the lab for
7 each quarter. And then in the annual report, we
8 have a similar layout. We have the supporting
9 figures, followed by the elevation table, a
10 summary table of the groundwater data, and then
11 we just include the fourth quarter lab package
12 since the previous quarter lab packages are
13 included in the specific quarterly reports.

14 MS. BUGEL: Complainants move for the
15 admission of Exhibits 1301, 1302, and 1303 into
16 the record.

17 MS. GALE: No objection.

18 THE HEARING OFFICER: Okay. Thank you.

19 What exactly is a group exhibit? How
20 are we treating this any differently?

21 MS. BUGEL: Just asking the questions
22 collectively and then making a motion
23 collectively.

24 THE HEARING OFFICER: So it's clear for the

1 Board.

2 MS. BUGEL: Yeah. Just to make things move a
3 little faster.

4 THE HEARING OFFICER: Thank you.

5 MS. BUGEL: Thank you.

6 (WHEREUPON, Exhibit Nos. 1304,
7 1305, 1306 and 1307 were marked
8 for identification.)

9 BY MS. BUGEL:

10 Q. Okay. Complainants have the next set
11 of group exhibits which were also agreed. Leah
12 is going to distribute these. This consists of
13 Exhibits 1304, 1305, 1306, and 1307.

14 For the record, 1304 begins with Bates
15 No. 66096; Exhibit 1305 begins with Bates
16 No. 76563; Exhibit 1306 begins with Bates
17 No. 79904; and Exhibit 1307 begins with Bates
18 No. 188236.

19 Do you have those in front of you,
20 Mr. Gnat?

21 A. Yes, I do.

22 Q. Can you generally explain what these
23 documents are?

24 A. Sure. Exhibit 1304 is a quarterly

1 groundwater monitoring report for the Powerton
2 Generating Station dated October 7th, 2019.
3 Exhibit 1305 is the quarterly groundwater
4 monitoring report for the Powerton Generating
5 Station dated July 13th, 2020.

6 Exhibit 1306 is the annual and
7 quarterly groundwater monitoring report for
8 Powerton Station dated January 15th, 2021. And
9 Exhibit 1307 is also a CCA annual and quarterly
10 groundwater monitoring report from Powerton
11 Generating Station dated January 14th, 2022.

12 **Q. Thank you.**

13 **Can you explain what data is contained**
14 **in these documents?**

15 A. Sure. The Powerton station similar to
16 the Joliet 29 station is under a compliance
17 commitment agreement, which also requires us to
18 do quarterly groundwater monitoring at an agreed
19 upon set of wells.

20 This is the quarterly -- individual
21 quarterly reports are issued summarizing the
22 groundwater data from that quarter of sampling.
23 And then on an annual basis, there is an annual
24 report that also summarizes the fourth quarter

1 data but also evaluates for the overall year.

2 There's an annual report there for the
3 Powerton Generating Station as well.

4 **Q. Can you indicate where this data is**
5 **found in these exhibits?**

6 A. Sure. The reports are laid out similar
7 to the Joliet 29 station where we first have
8 supporting figures of the well locations on
9 individual groundwater flow maps for the two
10 groundwater units at the station.

11 And then that's followed by tables with
12 water levels supporting our interpretations for
13 the groundwater flow. That is followed by a set
14 of tables which summarizes the data for each
15 well from the quarterly sampling. And then that
16 is supported by the analytical data packages.

17 MS. BUGEL: Complainants move for the
18 admission of Exhibits 1304, 1305, 1306, and 1307
19 into the record.

20 MS. GALE: No objection.

21 THE HEARING OFFICER: Thank you. Exhibits
22 1304, 1305, 1306 and 1307 are admitted. Thank
23 you.

24

1 (WHEREUPON, Exhibit Nos. 1308,
2 1309, 1310 were marked for
3 identification.)

4 BY MS. BUGEL:

5 Q. We're distributing and placing in front
6 of people Exhibits 1308, 1309, and 1310.

7 For the record, Exhibit 1308 begins
8 with Bates No. 68260; Exhibit 1309 begins with
9 Bates No. 80157; and Exhibit 1310 begins with
10 118489.

11 Do you have those documents in front of
12 you now?

13 A. Yes, I do.

14 Q. Can you generally explain what these
15 documents are?

16 A. Sure. This is parallel set of
17 documents for the previous ones. These are for
18 the Waukegan Station, compliance commitment
19 agreement. And the first document,
20 Exhibit 1308, is the quarterly groundwater
21 monitoring report for Waukegan Generating
22 Station dated October 7th, 2019.

23 Exhibit 1309 is the annual and
24 quarterly groundwater monitoring report for the

1 Waukegan Station dated January 21st, 2021. And
2 Exhibit 1310 is the CCA slash permit annual and
3 quarterly groundwater monitoring report for the
4 Waukegan Station dated January 20th, 2022.

5 **Q. Can you explain what data is contained**
6 **in these documents?**

7 A. Sure. The Waukegan station is also
8 under the compliance commitment agreement like
9 the other two stations we talked about. One
10 slight difference at this point.

11 There was a modification to one of the
12 Waukegan dikes that required a permit from
13 Illinois EPA. And under that permit they issued
14 a requirement for some slightly modified
15 groundwater monitoring as opposed to what was
16 under the CCA.

17 And the Illinois EPA allowed us to use
18 permit monitoring to qualify to substitute for
19 our CCA monitoring program at the time.

20 **Q. Can you indicate where in these**
21 **documents that data is found?**

22 A. Sure. In the quarterly report,
23 Exhibit 1308, just like in the other documents,
24 the report figures are, the supporting figures

1 are right after the summary report that's
2 followed by the tables which include groundwater
3 elevations that support our interpretation of
4 groundwater flow beneath the impoundments; and
5 then followed by a data summary table of the
6 quarterly data which then as an attachment is
7 supported by the actual analytical data package
8 itself.

9 MS. BUGEL: Complainants move for the
10 admission of Exhibits 1308, 1309, 1310 into the
11 record.

12 THE HEARING OFFICER: Ms. Gale.

13 MS. GALE: No objection.

14 THE HEARING OFFICER: Complainants Exhibits
15 1308, 1309, and 1310 are admitted.

16 (WHEREUPON, Exhibit Nos. 1311,
17 1312, 1313 and 1314 were marked
18 for identification.)

19 BY MS. BUGEL:

20 **Q. We are distributing the next set of**
21 **exhibits. The next set are Exhibits 1311, 1312,**
22 **1313, and 1314.**

23 **For the record, Exhibit 1311 begins**
24 **with Bates No. 69946; Exhibit 1312 begins with**

1 **the Bates No. 76486; Exhibit 1313 begins with**
2 **the Bates No. 80050; and Exhibit 1314 begins**
3 **with the Bates No. 118379.**

4 **Do you have those documents in front of**
5 **you?**

6 A. Yes, I do.

7 **Q. Can you generally explain what these**
8 **are for the record?**

9 A. Sure. Exhibit 1311 is a quarterly
10 groundwater monitoring report for the Will
11 County Generating Station dated October 7th,
12 2019. Exhibit 1312 is another quarterly
13 groundwater monitoring report for the Will
14 County Generating Station dated July 13th, 2020.
15 Exhibit 1313 is an annual and quarterly
16 groundwater monitoring report for the Will
17 County Generating Station dated January 21st,
18 2021. And Exhibit 1314 is the CCA annual and
19 quarterly groundwater monitoring report for the
20 Will County Generating Station dated
21 January 20th, 2022.

22 **Q. Can you generally explain what data is**
23 **contained in these documents?**

24 A. Yes. The Will County station is also

1 under a compliance commitment agreement like the
2 other stations; again, with quarterly
3 groundwater monitoring for an agreed set of
4 parameters and an agreed set of wells.

5 We do quarterly reports, also followed
6 by an annual report which includes a fourth
7 quarter. The reports are structured in a manner
8 that parallels the other reports. We have the
9 supporting figures which include the groundwater
10 flow interpretation beneath the impoundments.
11 That's followed by tables which the first table
12 includes all of our water level data in support
13 of our flow evaluations.

14 And then Table 2 is a summary of the
15 quarterly groundwater monitoring data. That's
16 then followed by an attachment which includes
17 the analytical data package from which the table
18 summary was obtained.

19 MS. BUGEL: Complainants move for the
20 admission of Exhibits 1311, 1312, 1313, and 1314
21 into the record.

22 MS. GALE: No objection.

23 THE HEARING OFFICER: Thank you, Ms. Gale.

24 Complainants Exhibit 1311, 1312, 1313,

1 and 1314 will be admitted.

2 MS. BUGEL: Hearing Officer, due to the
3 volume of exhibits, we're not always able to
4 make four copies of everything. Would you be
5 opposed to you and Ms. Horton sharing a copy?

6 THE HEARING OFFICER: That's fine.

7 MS. BUGEL: Okay. Thank you.

8 (WHEREUPON, Exhibit No. 1315
9 was marked for identification.)

10 BY MS. BUGEL:

11 Q. We are placing in front of you what has
12 been marked as Exhibit 1315. And for the
13 record, Exhibit 1315 begins with Bates
14 No. 70527; do you see that?

15 A. Yes, I do.

16 Q. And you have that document in front of
17 you now?

18 A. Yes, I do.

19 Q. Are you familiar with this document?

20 A. Yes, I am.

21 Q. I realize you can't necessarily page
22 through the whole thing. But just at first
23 glance, does this appear to be a true and
24 accurate copy of this document?

1 A. Yes, it does.

2 **Q. For the record, can you please explain**
3 **what this document is?**

4 A. Sure. This is an alternate source
5 demonstration under the federal CCR rule for the
6 former ash basin located at the Powerton
7 Generating Station.

8 **Q. And KPRG prepared this alternate source**
9 **demonstration, correct?**

10 A. Yes, we did.

11 **Q. Can you please explain what an**
12 **alternate source demonstration is?**

13 A. Sure. Under the federal rule, an
14 alternate source demonstration, the initial
15 option for an alternate source demonstration
16 falls under the detection monitoring program for
17 a regulated unit.

18 A detection monitoring program is the
19 initial monitoring performed after the
20 background data sampling has been completed.
21 You initiate what's called detection monitoring
22 that requires sampling for seven parameters
23 called Appendix 3 parameters under the federal
24 CCR rule.

1 From the background sampling that was
2 done, some statistical background is generated,
3 and we would have a prediction limit, a
4 95 percent confidence prediction limit for those
5 seven parameters.

6 If one of your detection sampling
7 parameters at a well exceeds that prediction
8 limit, you resample to verify. And if you still
9 have an exceedance there, it's still above that
10 prediction limit, you have either a choice to do
11 an alternate source demonstration to determine
12 whether or not that potential statistically
13 significant increase is associated with the
14 regulated impoundment or might there be another
15 alternate source resulting in that detection.

16 The other option is then to shift over
17 from detection monitoring to assessment
18 monitoring.

19 **Q. Thank you. And just, again, for the**
20 **record, we may use the acronym ASD to stand for**
21 **alternate source demonstration.**

22 **KPRG prepared this document on behalf**
23 **of Midwest Generation, correct?**

24 A. Yes, we did.

1 Q. And you were involved in the
2 preparation of this document?

3 A. Yes, I was.

4 Q. And if you turn to Bates Page 70532,
5 your signature appears on this document,
6 correct?

7 A. Yes, it does.

8 Q. And can you please turn to Bates
9 Page 70528.

10 A. Okay.

11 Q. I'm looking at the second full
12 paragraph which is actually the first paragraph
13 after the indented block quote.

14 This paragraph discusses potential
15 statistically significant increases for
16 chloride, fluoride, sulfate and total dissolved
17 solids that were detected in the detection
18 monitoring; is that correct?

19 A. Correct. Those parameters specifically
20 at well five and then fluoride specifically at
21 well three and the other down-gradient wells did
22 not have any potential SSIs.

23 Q. Thank you. Can you please explain what
24 a statistically significant increase is?

1 A. That is when we have a detected value
2 during the monitoring that would be above the
3 95 percent confidence prediction limit and then
4 we went out and reverified that and that would
5 then be a potential statistically significant
6 increase over that value.

7 THE HEARING OFFICER: Keep your voice up,
8 please.

9 MS. BUGEL: I'm asking you questions, but if
10 you need to face the court reporter so she can
11 get everything, please feel free to do so.

12 THE WITNESS: Sure.

13 BY MS. BUGEL:

14 **Q. To confirm the environmentalists' love**
15 **of acronyms, SSI stands for statistically**
16 **significant increase in this document, correct?**

17 A. Correct.

18 **Q. In this ASD, because the data were**
19 **inconclusive for some parameters, KPRG**
20 **recommended shifting to assessment monitoring,**
21 **correct?**

22 A. That is correct, yes.

23 MS. BUGEL: Complainants move for the
24 admission of 1315 into the record.

1 MS. GALE: No objection.

2 THE HEARING OFFICER: Exhibit 1315 by
3 Complainant is admitted.

4 (WHEREUPON, Exhibit No. 1316
5 was marked for identification.)

6 BY MS. BUGEL:

7 Q. We are turning to Exhibit 1316, and
8 Leah is placing in front of you an exhibit that
9 has been marked 1316. And for the record, that
10 begins with Bates No. 64906.

11 Can you explain what this document is
12 for the record, Mr. Gnat?

13 A. Sure. Exhibit 1316 is the CCR,
14 Compliance Annual Groundwater Monitoring and
15 Corrective Action Report for 2019 for the ash
16 bypass basin and ash surge basin at the Powerton
17 Generating Station dated January 31st, 2019.

18 Q. And KPRG also prepared this document on
19 behalf of Midwest Generation, correct?

20 A. Correct.

21 Q. Can you please turn to Bates
22 Page 64912.

23 A. Yes.

24 Q. Can you please turn to the second

1 paragraph, first sentence.

2 This states the completed initial
3 detection monitoring statistical evaluations
4 determined that there were potential SSIs in
5 various down-gradient monitoring wells relative
6 to establish background for all seven Appendix 3
7 parameters, not all parameters were above SSIs
8 at all well locations.

9 Did I read that correctly?

10 A. Yes, you did.

11 Q. And then this paragraph goes on to
12 state that an ASD was conducted, correct?

13 A. It was recommended. And, yes, it was
14 conducted.

15 Q. And the ASD is attached to this
16 groundwater monitoring report, correct? If it
17 helps, the 65103.

18 A. Yes, it is attached to this report.

19 Q. And just for the record, that ASD is
20 attached as Appendix B and the appendix appears
21 beginning with Bates Page 65103; do you see
22 that?

23 A. Yes.

24 Q. And turning to Bates page 65113, your

1 signature also appears on this ASD, correct?

2 A. Yes, it does.

3 Q. And then turning to Bates Page 65112,
4 just one page earlier, that contains the
5 beginning of the conclusions and the
6 recommendations; do you see that?

7 A. Yes, I do.

8 Q. And in this section, it indicates that
9 the data could not rule out the ash bypass basin
10 as a potential source, correct?

11 A. That is correct.

12 Q. The very last sentence of this
13 paragraph indicates that the monitoring well
14 network for the ash bypass basin, or ABB, and
15 the ash surge basin, appearing as ASB, are
16 somewhat integrated; is that correct?

17 A. Yes.

18 Q. And because of those two points, this
19 ASD recommends shifting from detection
20 monitoring to assessment monitoring, correct?

21 A. Correct. In accordance with the
22 federal CCR rule, yes.

23 MS. BUGEL: Complainants move for the
24 admission of Exhibit 1316 into the record.

1 THE HEARING OFFICER: Ms. Gale.

2 MS. GALE: No objection.

3 THE HEARING OFFICER: Thank you.

4 Complainants Exhibit 1316 is admitted.

5 (WHEREUPON, Exhibit No. 1317
6 was marked for identification.)

7 BY MS. BUGEL:

8 Q. Leah is placing in front of you an
9 exhibit that has been marked as 1317. For the
10 record, Exhibit 1317 begins with Bates
11 No. 65456; do you see that?

12 A. Yes, I do.

13 Q. And you have that document in front of
14 you now?

15 A. Yes.

16 Q. Can you please explain what this
17 document is?

18 A. This is the CCR Compliance Annual
19 Groundwater Monitoring and Corrective Action
20 Report for the year 2019 for the ash bypass
21 basin and ash surge basin dated January 31st,
22 2020. Again, it's under the federal CCR rule.

23 Q. And KPRG also prepared this document on
24 behalf of Midwest Generation, correct?

1 A. Yes, we did.

2 Q. Can you please turn to Bates
3 Page 65462?

4 A. Okay.

5 Q. And this has Section 4.1 labeled
6 alternate source demonstration; do you see that?

7 A. Yes, I do.

8 Q. And this indicates that an alternate
9 source demonstration was completed March 25th,
10 2019?

11 A. Yes, it does.

12 Q. And I'm turning to the second sentence
13 in Section 4.1, and this reads, Ash and water
14 samples were collected from each of the two
15 ponds, ASB and ABB, and analyzed using the
16 Leaching Environmental Assessment Framework,
17 with the acronym of L-E-A-F, method to determine
18 when the noted detections above GWPs may be
19 associated with an actual release from the
20 regulated units, or if another potential
21 historical source in the vicinity of the ash
22 ponds may be affecting the local groundwater
23 quality.

24 Now, I realize I didn't read that

1 verbatim because I pointed out the LEAF acronym,
2 but did I generally read that sentence
3 correctly?

4 A. Yes, you did.

5 Q. Do you recall, or if you need to, you
6 can flip to Appendix B, but would you have
7 signed the alternate source demonstration that
8 is attached to this document as well?

9 A. Yes, I did.

10 Q. So was it your choice of words to write
11 potential historical source in the vicinity of
12 the ash ponds in the sentence that I read from
13 on Page 65462?

14 A. Yes, it was.

15 Q. Do you recall giving a deposition in
16 this proceeding, it was now a couple of years
17 ago, but I was asking you questions?

18 A. Yes, I remember the deposition.

19 Q. And your deposition was under oath?

20 A. Yes, it was.

21 Q. Do you recall me asking these questions
22 and you giving these answers?

23 MS. GALE: Objection, improper impeachment.
24 He should have a copy of his deposition to look

1 at.

2 THE HEARING OFFICER: Yeah. Thank you.

3 Sustained.

4 MS. BUGEL: Okay. We've got a copy.

5 BY MS. BUGEL:

6 Q. Okay. So this is a condensed
7 transcript, but I'm looking at Page 20 that
8 contains deposition Pages 77 through 80. I'm
9 looking at Page 79 on those four pages beginning
10 at Line 7.

11 THE HEARING OFFICER: Tell me where you are
12 again.

13 MS. BUGEL: It's Pages 77 through 80 of the
14 deposition and those appear on Page 20 of the
15 document and I'm looking at Page 79, Line 7.

16 BY MS. BUGEL:

17 Q. Mr. Gnat, do you have that in front of
18 you?

19 A. Yes, I do.

20 Q. Question. Why did you use the words,
21 quote, potential historical source in the
22 vicinity of the ash ponds, end quote?

23 Ms. Gale. Objection to the extent the
24 answer calls for privileged conversations he may

1 have had.

2 Answer. I would defer to -- any
3 conversations I have on potential sources are
4 done in the presence of counsel.

5 Question. For alternate source
6 demonstration, counsel didn't direct you to do
7 that, right?

8 Objection, again, to the extent it
9 calls for a privileged conversation.

10 MS. GALE: Mr. Hearing Officer, I'm going to
11 object to this impeachment. The document that
12 he's discussing on this page is not the Powerton
13 CCR Compliance Annual Groundwater Monitoring
14 Report that's identified as 13-17.

15 MS. BUGEL: It is the Powerton alternate
16 source demonstration dated March 25th, 2019. So
17 it's the same document but with different Bates
18 numbers because different copies were provided.

19 THE HEARING OFFICER: Hopefully, the record
20 will reflect that.

21 BY MS. BUGEL:

22 Q. I'm going to pick up with Line 17.

23 Ms. Gale. Objection. Again to the
24 extent it calls for a privileged conversation.

1 **Line 19. Answer. Midwest Generation**
2 **requested me to do it.**

3 **So the question I have for you now with**
4 **that in front of you is, did Midwest Generation**
5 **request you to use the words potential**
6 **historical source in the vicinity of the ash**
7 **ponds?**

8 **A. The specific wording of potential**
9 **historic source, I mean, I may have used another**
10 **term, but the overall intent of what is being**
11 **said here and whether or not the specific**
12 **wording, you know, in reading back from the**
13 **transcript from three years ago, from my**
14 **deposition, you know, the specific wording,**
15 **maybe that was done with discussions on counsel,**
16 **but my intent certainly hadn't changed. There**
17 **is another source that's not a result of the**
18 **regulated unit.**

19 **Q. Okay. Thank you. We can set aside**
20 **your deposition transcript. We may refer back**
21 **to that.**

22 **You never investigated what the other**
23 **potential historical source in the vicinity of**
24 **the ash ponds might be, correct?**

1 A. That is correct. Under the federal
2 rule, the requirement is to determine whether or
3 not the regulated unit is the potential source
4 of the release as opposed to another source.

5 So, the specific source isn't
6 necessarily required to be identified under the
7 federal rule. But also, in reality, once you're
8 outside of the impoundment itself, you know,
9 whether or not that source has to be
10 specifically defined isn't necessarily the case.

11 **Q. Can you please turn to Bates**
12 **Page 65671. This is the appendix that contains**
13 **the ASD, correct?**

14 A. Correct.

15 **Q. Can you please turn to Bates page 65676**
16 **in that appendix. Do you see the discussion of**
17 **barium? And that's carrying over from**
18 **Page 65675 to 65676.**

19 A. Yes.

20 **Q. And the second full sentence on Page**
21 **65676 reads, These observations further indicate**
22 **a localized barium source other than the**
23 **regulated units. Do you see that?**

24 A. Yes, I do.

1 **Q. Was it your choice of words to**
2 **attribute the barium to a, quote, localized**
3 **source?**

4 A. You know, again, not perhaps
5 remembering exactly what I might have said in
6 the deposition, but certainly the meaning of
7 what is intended here was my meaning of a
8 localized barium source other than the regulated
9 unit.

10 **Q. And looking next at molybdenum -- I'm**
11 **going to spell that for the court reporter,**
12 **M-O-L-Y-B-D-E-N-U-M. That's the next discussion**
13 **on the page; do you see that?**

14 A. Yes, I do.

15 **Q. And looking at the very last sentence,**
16 **was it your choice of words to attribute**
17 **molybdenum to a, quote, localized source?**

18 A. Again, not to see what specifically was
19 said three years ago in regards to this, but
20 certainly the intent and the interpretation here
21 is my interpretation, yes.

22 **Q. And at the bottom of the page, do you**
23 **see the discussion of selenium?**

24 A. Yes, I do.

1 Q. Am I pronouncing that right?

2 A. Selenium.

3 Q. Can you please turn the page and refer
4 to the last sentence under the heading Selenium?

5 A. Okay.

6 Q. Do you see that this also attributes
7 the elevated selenium concentration in well MW15
8 to a different localized source?

9 A. Yes.

10 Q. Was it your choice of words to
11 attribute selenium to a localized source?

12 A. Again, not referencing back to my
13 three-year ago deposition, but certainly the
14 interpretation and intent was mine, yes.

15 Q. And looking at the heading Thallium on
16 that page, do you see that?

17 A. Yes, I do.

18 Q. And this also in the last sentence
19 attributes the elevated thallium concentration
20 in well MW17 to a different localized source; do
21 you see that?

22 A. Yes, I do.

23 Q. And was it your choice of words to
24 attribute the elevated thallium to a localized

1 **source?**

2 A. Again, the same answer relative to what
3 I might have said in my deposition. Certainly
4 the interpretation and intent was mine, yes.

5 MS. BUGEL: Complainants move for the
6 admission of Exhibit 1317 into the record.

7 THE HEARING OFFICER: Ms. Gale.

8 MS. GALE: No objection.

9 THE HEARING OFFICER: Complainants
10 Exhibit 1317 is admitted.

11 (WHEREUPON, Exhibit No. 1318
12 was marked for identification.)

13 BY MS. BUGEL:

14 Q. Okay. We are placing in front of you
15 an exhibit which has been marked as
16 Exhibit 1318. For the record, Exhibit 1318
17 begins with Bates No. 67097; do you see that?

18 A. Yes, I do.

19 Q. And you have that document in front of
20 you now?

21 A. Yes, I do.

22 Q. Can you please explain what this is for
23 the record?

24 A. This is, again, under the federal CCR

1 rule. This is the CCR compliance annual
2 groundwater monitoring and corrective action
3 report for the calendar year 18 dated January
4 31st, 2019.

5 Q. And KPRG prepared this document on
6 behalf of Midwest Generation, correct?

7 A. Yes, we did.

8 Q. ASD is also attached to this document,
9 correct?

10 A. Looking at the appendix page, yes,
11 Appendix B.

12 Q. Can you please turn to Bates
13 Page 67102?

14 A. Okay.

15 Q. On this page, there's a heading that
16 says alternate source demonstration?

17 A. Correct.

18 Q. And just to make it clear, the Annual
19 Groundwater Monitoring and Corrective Action
20 report, generally, if there's an ASD attached,
21 it will have a paragraph for two summarizing the
22 ASD?

23 A. That is correct, yes.

24 Q. Looking at the very last paragraph,

1 which is two sentences on this page, this
2 includes the conclusion that SSIs for boron, pH,
3 and sulfate were not the result of a release of
4 leachate from the east and west ash ponds; is
5 that correct?

6 A. Yes. That's part of the sentence.

7 Q. And it then goes on to attribute the
8 SSIs to other potential sources, correct?

9 A. Correct. It says, but rather from
10 other potential sources, yes.

11 Q. And then based on this conclusion,
12 among others, the ASD recommends continuing
13 detection monitoring, right?

14 A. That is correct, yes.

15 Q. And can you please turn to Bates
16 Page 67204.

17 You know, what? I'm just going to back
18 up a little bit. Let's start at 67196.

19 A. Okay.

20 Q. This is the alternate source
21 demonstration attached as Appendix B, correct?

22 A. Yes, it is.

23 Q. And then if we turn to Page 67204, your
24 signature appears on this document, correct?

1 A. Correct, yes.

2 Q. And then turning to 67203, this page
3 contains a conclusion/recommendations section;
4 do you see that?

5 A. Yes, I do.

6 Q. And the first sentence under that
7 heading states, based on the data evaluation and
8 discussions provided above, it is concluded that
9 the noted SSIs for boron, sulfate, and pH are
10 not the result of leakage of leachate from the
11 regulated units west and east ash ponds, but
12 rather from other potential historical sources;
13 do you see that?

14 A. Yes, I do.

15 Q. Was it your choice of words to use the
16 terminology "other potential historical
17 sources?"

18 A. Again, I'll have a similar answer. Not
19 reviewing or reading exactly what I said three
20 years ago, the intent and the interpretation is
21 certainly mine and is consistent with what was
22 previously said in the summary.

23 Q. And you never investigated what the
24 other potential historical sources might be,

1 **correct?**

2 A. Again, that is in accordance with the
3 federal rule. The determination has to be made
4 whether or not the release can be associated
5 with the specific regulated unit or units.

6 BY MS. BUGEL:

7 **Q. Mr. Gnat, I'm going to interrupt you.**
8 **You're giving a narrative answer to a yes or no**
9 **question.**

10 MS. GALE: Mr. Hearing Officer, I would
11 object to that characterization. He basically
12 said two sentences in giving context to his
13 answer.

14 THE HEARING OFFICER: I agree. Overruled.
15 You may continue, Mr. Gnat.

16 THE WITNESS: And it doesn't require that you
17 identify the specific other source. And in some
18 cases for issues that are outside of the
19 regulated unit, you don't necessarily need to
20 know what a specific source would be.

21 BY MS. BUGEL:

22 **Q. So I just want to confirm for the**
23 **record, you never investigated what the other**
24 **potential historical sources might be, correct?**

1 MS. GALE: Objection; asked and answered.

2 THE HEARING OFFICER: Overruled.

3 THE WITNESS: Yes, that is correct. That's
4 not part of the requirement.

5 (WHEREUPON, Exhibit No. 1319
6 was marked for identification.)

7 MS. BUGEL: We are going to turn to
8 Exhibit 1319. And Leah is going to place in
9 front of you a document that has been marked
10 Exhibit 1319.

11 Mr. Hearing Officer, Greg brought to my
12 attention that I did not move for the admission
13 of 1318. So I'm going to back up for a second.

14 Complainants move for the admission of
15 Exhibit 1318 into the record.

16 THE HEARING OFFICER: Ms. Gale.

17 MS. GALE: No objection.

18 THE HEARING OFFICER: Thank you.

19 Complainants Exhibit 1318 is admitted.

20 BY MS. BUGEL:

21 **Q. Now you have the document marked as**
22 **Exhibit 1319 in front of you?**

23 A. Yes, I do.

24 **Q. And that begins with Bates No. 72568;**

1 **do you see that?**

2 A. Yes, I do.

3 **Q. Can you explain what this is?**

4 A. This is, again, under the federal CCR
5 rule, the CCR Compliance Annual Groundwater
6 Monitoring and Corrective Action report for the
7 calendar year 2019 dated January 31st, 2020.

8 **Q. And KPRG prepared this document on
9 behalf of Midwest Generation, correct?**

10 A. Yes, we did.

11 **Q. Can you also confirm that this has an
12 ASD attached to this report?**

13 A. It's got the appendix breaker page, but
14 it does not include the ASD itself.

15 MS. BUGEL: Mr. Hearing Officer, we have the
16 correct copy. At the moment, I don't know where
17 it is. So we're going to skip this and come
18 back to it.

19 THE HEARING OFFICER: Let's go off the
20 record.

21 (WHEREUPON, a short break was
22 taken.)

23 THE HEARING OFFICER: We're back on the
24 record, but I do want to note that the people

1 from the Illinois Pollution Control Board here
2 today is Vanessa Horton, as we know, and we have
3 environmental scientist Essence Brown.

4 Thank you.

5 MS. BUGEL: Just for the record, we will come
6 back to Exhibit 1319 with a complete copy.

7 (WHEREUPON, Exhibit No. 1320
8 was marked for identification.)

9 BY MS. BUGEL:

10 **Q. We are turning to Exhibit 1320 and Leah**
11 **will begin distributing that. Exhibit 1320,**
12 **Bates No. 69436.**

13 **Mr. Gnat, do you have that in front of**
14 **you?**

15 A. Yes, I do.

16 **Q. Can you explain what document this is?**

17 A. Again, this is for under the federal
18 CCR rule. It's the CCR Compliance Annual
19 Groundwater Monitoring and Corrective Action
20 report for the calendar year 2018 dated January
21 31st, 2019.

22 **Q. KPRG prepared this document for Midwest**
23 **Generation, correct?**

24 A. Yes, we did.

1 Q. And this document also includes an ASD
2 as an attachment?

3 A. Yes, it does.

4 Q. Let's turn to that attachment Appendix
5 B. Appendix B appears at Bates Page 69517; do
6 you see that?

7 A. Yes, I do.

8 Q. If we proceed to Bates Page 69523, your
9 signature appears on this page, correct?

10 A. Yes, it does.

11 Q. Can we please turn one page earlier on
12 Page 69522, this contains the heading
13 Conclusions and Recommendations; do you see
14 that?

15 A. Yes, it does.

16 Q. And the first sentence under that
17 heading states, based on the data evaluation and
18 discussions provided above, it is concluded that
19 the noted SSIs for chloride, fluoride, and TDS
20 are not the result of leakage of leachate from
21 the regulated units, Ponds 2S and 3S, but rather
22 from other potential sources; do you see that?

23 A. Yes, I do.

24 Q. And, for the record, can you please

1 **indicate what the acronym TBS stands for?**

2 A. Total dissolved solids.

3 **Q. And did you as one of the authors of**
4 **this alternate source demonstration come to that**
5 **conclusion?**

6 A. To the conclusion that it's from other
7 potential sources rather than from the regulated
8 units, yes.

9 **Q. You never investigated what the other**
10 **potential sources might be, correct?**

11 A. Yes, under the federal rule, the
12 determination needs to be made whether or not
13 the regulated unit is the source of the
14 potential exceedance and, you know, identifying
15 the specific source outside of that unit isn't
16 necessarily always needed for subsequent
17 evaluations.

18 **Q. And just because my question was a**
19 **negative and a yes to a negative always gets**
20 **confusing, I just want to ask, you were saying,**
21 **yes, you never investigated what the other**
22 **potential sources might be?**

23 MS. GALE: Objection; asked and answered.

24 THE HEARING OFFICER: Ms. Bugel.

1 MS. BUGEL: He said, yes, but it could be
2 yes, I did, or, yes, I didn't, which is why I'm
3 re-asking the question. I rephrased the
4 question.

5 THE HEARING OFFICER: I thought you did. You
6 may answer if you're able.

7 THE WITNESS: We did not evaluate other
8 potential sources, no.

9 BY MS. BUGEL:

10 **Q. Did you investigate other potential**
11 **sources?**

12 A. No, we did not. That's not always
13 necessary outside of the boundaries of the unit
14 itself, no.

15 **Q. And the ASD recommends continuing**
16 **detection monitoring; is that correct?**

17 A. That is correct, yes.

18 MS. BUGEL: Complainants move for the
19 admission of Exhibit 1320 into the record.

20 THE HEARING OFFICER: Ms. Gale.

21 MS. GALE: No objection.

22 THE HEARING OFFICER: Complainants
23 Exhibit 1320 is admitted.

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(WHEREUPON, Exhibit No. 1321
was marked for identification.)

BY MS. BUGEL:

Q. We are now distributing our next exhibit. This has been marked as Exhibit 1321. And for the record Exhibit 1321 begins with Bates Page 112736. Do you see that?

A. Yes, I do.

Q. Can you explain what this document is?

A. Sure. Without going through each individual -- this document is a compendium of actual lab data from some groundwater monitoring that occurs at the Waukegan station. And just a little bit of background on that.

Upgradient to the Waukegan station, west of the Waukegan station, was a former tannery and there was also another site called the General Boiler, both highly industrial properties. There was a site investigation and remediation of the tannery to the west of the Waukegan property.

As part of that, that investigation was done I believe under the site remediation program which allows for evaluation of old

1 brownfield sites, which is the way most
2 brownfields are evaluated in the State of
3 Illinois much less in other states that allows
4 for some risk-based corrective action under the
5 Tiered Approach to Corrective Action Objectives,
6 I believe, TACO.

7 And so under TACO, they had defined
8 that there was groundwater contamination leaving
9 the property. Their property is upgradient of
10 the Midwest Generation Waukegan property. So it
11 was migrating onto Midwest Generation property.

12 In order for the tannery site to obtain
13 closure without additional remediation of that
14 contaminated groundwater leaving their property
15 and impacting our property, Midwest Generation
16 was approached and requested if they would be
17 willing to sign an Environmental Land Use
18 Control, or ELUC, E-L-U-C.

19 And that basically says that Midwest
20 Generation understands that some of this
21 contamination is coming onto their property from
22 off-site and that they agree with allowing this.
23 And with part of the ELUC that is placed on the
24 deed of the Midwest Gen property, it restricts

1 the ability to use that groundwater contaminated
2 by the tannery site for potential potable
3 purposes.

4 And with that, there was a series of
5 what are called ELUC wells that were installed
6 by the tannery consultant on our property as
7 well. And those we sampled on a quarterly basis
8 despite they're not required to be sampled.

9 This is a voluntary action that's performed by
10 Midwest Generation, and we sampled those on a
11 quarterly basis.

12 Those are called the ELUC well
13 samplings, even though on the titles of these
14 reports it says the Waukegan station permit. It
15 is not part of our personal requirement. It is
16 a voluntary action that is done by Midwest
17 Generation on a quarterly basis.

18 It appears, without going through each
19 one of these individual lab packages, that these
20 are the lab packages that have been provided
21 that summarize that ELUC sampling for whatever
22 specific date that this particular package might
23 be.

24 **Q. And your name appears on the cover page**

1 I'll call it for these tests?

2 A. Correct. It's attention to my name,
3 yes.

4 Q. And you said "on our property." When
5 you said "our," you were referring to Midwest
6 Gen property?

7 A. That is correct, yes.

8 Q. And the data contained these analytical
9 reports since they're bundled together, that
10 data does not appear in groundwater monitoring
11 reports that Midwest Generation sends to IEPA
12 pursuant to the compliance commitment agreement,
13 correct?

14 A. That is correct, yes.

15 Q. And similarly the data in these
16 analytical reports does not appear in the
17 groundwater monitoring reports that Midwest Gen
18 completes pursuant to the federal CCR rule,
19 correct?

20 A. Please let me check on that. There's
21 actually some overlap, and that's why I wanted
22 to check and just verify. So, for example,
23 while MW14 is identified here in these data
24 packages as an ELUC well, well MW14 is also one

1 of our identified upgradient monitoring wells in
2 our federal CCR groundwater monitoring program
3 as well as in our state CCR monitoring program.

4 So in that sense there is some overlap
5 between ELUC wells and some of the wells that we
6 use in our CCR monitoring program.

7 Q. Thank you for the clarification. Let
8 me ask one follow-up question. Do all of the
9 ELUC wells overlap with the wells used for
10 purposes of monitoring under the federal CCR
11 rules?

12 A. No, they don't. No.

13 Q. So some of the data in these analytical
14 reports that are Exhibit 1321 do not also appear
15 in the monitoring reports prepared pursuant to
16 the federal CCR rule, correct?

17 A. Correct.

18 MS. BUGEL: Complainants move for the
19 admission of Exhibit 1321 into the record.

20 MR. WANNIER: Mr. Hearing Officer, we don't
21 object to the entire exhibit, but what we would
22 object to is, as he testified, there's some
23 duplication in these reports, so we would object
24 to --

1 THE HEARING OFFICER: There's some -- I'm
2 sorry.

3 MS. GALE: Duplication in these reports and
4 so we object to the use or the duplication of
5 the results in any analysis or post-hearing
6 briefing.

7 THE HEARING OFFICER: You mean as a
8 cumulative type of situation?

9 MS. GALE: Correct. Communicative and
10 duplicative. So, for example, as he pointed out
11 in -- Mr. Gnat, what exhibit were you looking
12 at?

13 THE WITNESS: That was 1318.

14 MS. GALE: Mr. Gnat pointed out in 1318,
15 monitoring well 18 --

16 THE WITNESS: 14.

17 MS. GALE: I'm sorry?

18 MS. BUGEL: Monitoring well 14.

19 MS. GALE: Thank you. Exhibit 1318, results
20 from monitoring well 14 are in that exhibit and
21 those results are also in Exhibit 1321.

22 I appreciate that Complainants would
23 like the data from the monitoring wells that are
24 not in, for example, 1318, but I would object to

1 use of the duplication of the wells.

2 And the reason we're doing this,
3 Mr. Hearing Officer, to give context, is at the
4 last hearing the Complainants put up a chart
5 where they listed and counted each exceedance.
6 And so we would object to the counting of
7 duplication of these exceedance.

8 MS. BUGEL: In concept, I think Complainants
9 can agree to that limitation. My concern is
10 that that's a very complicated and subjective
11 description of events from the last hearing and
12 what this limitation is. I mean, can I agree to
13 double dipping? Yeah. I can agree to no double
14 dipping. Is there a good definition of double
15 dipping on the record? I don't think there is.

16 THE HEARING OFFICER: I'm going to allow it,
17 but subject to Midwest's objection as far as I
18 would direct the Board to disregard any
19 duplication, cumulative numbers, reports, that's
20 about the best I can do at this point.

21 So Complainant's Exhibit 1321 is
22 admitted subject to Midwest's objection and my
23 directive. Thank you.

24 MS. BUGEL: Hearing Officer, could we go off

1 the record just for one minute.

2 THE HEARING OFFICER: Sure. We're off the
3 record.

4 (WHEREUPON, a discussion was
5 held off the Record.)

6 THE HEARING OFFICER: Back on the record.
7 Thank you, Jamye.

8 (WHEREUPON, Exhibit No. 1322
9 was marked for identification.)

10 BY MS. BUGEL:

11 Q. Complainants are distributing a
12 document which has been marked Exhibit 1322.
13 And for the record, Exhibit 1322 begins with
14 Bates No. 113394.

15 Mr. Gnat, do you have that in front of
16 you?

17 A. Yes, I do.

18 Q. Looking at that very first page, does
19 your name appear on the Test America Analytical
20 Report?

21 A. Yes, it does.

22 Q. So these were directed to your
23 attention?

24 A. Yes, they were.

1 **Q. Can you explain what this document is?**

2 A. Sure. These are, again, analytical
3 results, analytical packages directly from the
4 laboratory. They're for sampling that occurred
5 in -- well, the date of this lab package is
6 March 10th, 2017. I should add the previous
7 Exhibit 1312 that is also dated March 10th,
8 2017.

9 And this summarizes data for wells 8
10 and 9, MW8 and MW9, that are not part of the
11 Waukegan permit sampling.

12 **Q. When you say these are not part of the**
13 **Waukegan permit sampling, what are you referring**
14 **to?**

15 A. The sampling that's done on a quarterly
16 basis in accordance with the station
17 construction permit for when they modified their
18 dikes, and that is the sampling being done in
19 place of the compliance commitment agreement
20 sampling that was previously in place.

21 **Q. And do the data from this sampling**
22 **analysis appear in the groundwater monitoring**
23 **reports that Midwest Gen sends to IEPA?**

24 A. Not in the quote, unquote permit

1 monitoring reports. However, again, for
2 example, well 9 is also part of the CCR
3 monitoring network. So, that is certainly
4 included in the CCR data that's submitted under
5 both the federal rule and under the state rule.

6 **Q. Let me just ask a couple follow-up**
7 **questions. You said well 9 is included in the**
8 **reports prepared pursuant to the federal CCR**
9 **rule, correct?**

10 A. Yes, it is.

11 **Q. Is well 8 included in the reports**
12 **prepared pursuant to the federal CCR rule?**

13 A. That is what I'm checking for us right
14 now. No, it is not.

15 **Q. So these reports contain data that is**
16 **not included in the reporting prepared pursuant**
17 **to the federal CCR rule, correct?**

18 A. For well 8, that is correct.

19 **Q. And also just to confirm for the**
20 **record, Exhibit 1322 is also a bundle of Test**
21 **America Analytical Reports, correct?**

22 A. Yes, it is.

23 **Q. And by bundle I mean more than one.**

24 A. Correct. With different dates now

1 looking at them. For example, there's another
2 one here for November 27, 2018. So it appears
3 to be a series of quarterly reports, quarterly
4 analytical data packages.

5 MS. BUGEL: Complainants move for the
6 admission of Exhibit 1322 into the record.

7 THE HEARING OFFICER: Ms. Gale.

8 MS. GALE: Mr. Hearing Officer, as I said
9 earlier, the same would -- we're not objecting
10 to the admission of the document. We'll be
11 requesting the same limitation that -- I wrote
12 it down. Hang on.

13 To direct the Board to disregard any
14 duplicative results as he stated. Monitoring
15 well 9 is in the federal and state CCR result
16 packages and so there should be no duplication
17 of those results.

18 THE HEARING OFFICER: Thank you. I'll accept
19 Complainant's Exhibit 1322, but subject to the
20 duplicative, cumulative nature of it as
21 explained by Ms. Bugel, Ms. Gale, and Mr. Gnat,
22 and I would ask the Board to disregard the
23 cumulative numbers, reports.

24 Thank you. Admitted.

1 MS. BUGEL: Okay. Thank you.

2 (WHEREUPON, Exhibit No. 1323
3 was marked for identification.)

4 BY MS. BUGEL:

5 Q. Complainants are placing in front of
6 you an exhibit that we have marked as 1323. For
7 the record, this begins with Bates No. 115224;
8 do you see that?

9 A. Yes, I do.

10 Q. And you have this document in front of
11 you now?

12 A. Yes, I do.

13 Q. Can you explain what this document is?

14 A. Sure. It is a data summary posting.
15 We call these 60-day reports. This is done
16 under the Illinois state CCR rule. And under
17 the Illinois rule, you have to submit a summary
18 of your quarterly sampling data for the full
19 list of CCR parameters listed in the rule within
20 60 days of completion of your last day of
21 groundwater sampling.

22 So this particular document in front of
23 me usually I know that postings include a
24 Midwest Generation transmittal letter on top.

1 That's not here. But this one is specifically
2 for Midwest Generation Station Joliet No. 29 for
3 Pond 2, which is the regulated unit.

4 **Q. When you said we call these 60-day**
5 **reports, who is the "we" that you're referring**
6 **to?**

7 A. KPRG.

8 **Q. KPRG was involved in the preparation of**
9 **this document?**

10 A. Yes.

11 **Q. Is there a summary table that appears**
12 **in this document?**

13 A. Yes, it does. There are two summary
14 tables. Table 1 is a summary table of the full
15 list of analytical parameters less turbidity.

16 And just as a little context as I
17 discussed under the federal rule, we had
18 Appendix 3 parameters for detection monitoring,
19 and then if you go into assessment monitoring,
20 you have do an additional list of Appendix 4
21 parameters.

22 Under the state CCR rule, there's no
23 distinction between detection and assessment
24 monitoring. And there's, in fact, even a

1 requirement for quarterly monitoring for the
2 full list of what would be both Appendix 3 and
3 Appendix 4 parameters under the federal rules.
4 The state rule has them all lumped together.

5 And then in addition, they added the
6 field measurement of turbidity as a requirement.
7 And so the turbidity measurements we have in a
8 separate table as Table 2.

9 **Q. And just to clarify for the record,**
10 **turbidity data are collected as part of the**
11 **state CCR rule requirements, right?**

12 A. Correct.

13 **Q. And turbidity data are not collected**
14 **under the federal CCR rule requirements,**
15 **correct?**

16 A. Correct.

17 **Q. Do you know if Midwest Gen's**
18 **groundwater samples that are submitted for**
19 **analysis pursuant to the federal CCR rule are**
20 **field filtered?**

21 A. Under the federal CCR rule, no, they
22 are not. The requirement is for total metals
23 and total metals do not include field filtering.

24 **Q. Do you know if Midwest Gen's**

1 **groundwater samples that are submitted for**
2 **analysis pursuant to the compliance commitment**
3 **agreement with Illinois EPA are field filtered?**

4 A. Currently for the Powerton station, for
5 Joliet 29 station and for Will County station,
6 the CCA agreement calls for dissolved metals
7 which requires field filtering in the field.
8 So, those are field filtering.

9 At Waukegan, when we were doing the CCA
10 sampling, they were field filtered; however,
11 when we had that transition with the permit, as
12 I mentioned before, under the permit with the
13 new parameter list that they provided there,
14 that was for total metals, just like under the
15 CCR rules. So at the Waukegan station at the
16 present time, none of the samples are field
17 filtered.

18 **Q. Are Midwest Gen's groundwater samples**
19 **that are submitted -- I'm sorry. Let me strike**
20 **that and rephrase that.**

21 **Are Midwest Gen's groundwater samples**
22 **that are used for reporting pursuant to the**
23 **Illinois CCR rule field filtered?**

24 A. No. Any samples for the CCR rule

1 regardless of federal or state are for totals,
2 total inorganics, total metals. And those do
3 not allow for field filtering of samples.

4 **Q. Did Midwest Gen submit reports pursuant**
5 **to the compliance commitment agreement that were**
6 **also used for reporting pursuant to the Illinois**
7 **CCR rule?**

8 MS. GALE: Objection; vague.

9 THE HEARING OFFICER: Can you read the
10 question back, please, Jamey.

11 (WHEREUPON, said Record was
12 read as requested.)

13 THE HEARING OFFICER: Could you rephrase,
14 Ms. Bugel, please.

15 BY MS. BUGEL:

16 **Q. Did Midwest Gen use the same sampling**
17 **results data to submit reports pursuant to the**
18 **Illinois compliance commitment agreements and**
19 **also the Illinois CCR rule?**

20 MS. GALE: Objection; vague, foundation.

21 MS. BUGEL: I'm just trying to find out if
22 the same data was used for reporting under both
23 the CCA and the Illinois CCR rule.

24 THE HEARING OFFICER: Could you break it down

1 maybe? I don't know.

2 MS. BUGEL: Let me try asking it that way.

3 BY MS. BUGEL:

4 Q. Mr. Gnat, was the same data used to
5 submit reports pursuant to the Illinois
6 compliance commitment agreements and also the
7 Illinois CCR rule?

8 A. The CCA data would not fulfill the
9 requirements of the federal CCR rule or the
10 state CCR rule since those are field filtered,
11 and, therefore, dissolved parameters. And, in
12 fact, the lists are different as well.

13 So we're serving various masters in all
14 these sampling programs so to speak. So it's
15 not only the fact that they're dissolved. So
16 they're field filtered, the CCA samples. The
17 list is also slightly different.

18 So between the field collection method
19 and the actual parameter list, it does not meet
20 the requirements of what would be for anything
21 substantive for the CCR rule.

22 Now, was some of that information
23 perhaps used in the understanding of groundwater
24 quality in the area, sure. And I believe in our

1 previous hearings, it was even determined by
2 both sides and agreed to by both sides that
3 really at these sites, the differences in
4 concentrations between dissolved and totals were
5 not all that different. In other sites, they
6 might be. But in these, they were for the most
7 part pretty much the same.

8 But, no, you cannot use CCA data to
9 fulfill a CCR requirement. And certainly
10 anything for KPRG that we've done, we've never
11 used CCA data to fulfill a CCR requirement.

12 MS. BUGEL: Okay. No further questions on
13 this exhibit.

14 Complainants move for the admission of
15 Exhibit 1323 into the record.

16 THE HEARING OFFICER: 1323.

17 MS. BUGEL: Ms. Gale.

18 MS. GALE: No objection.

19 THE HEARING OFFICER: Thank you.

20 Complainants Exhibit 1323 is admitted.

21 (WHEREUPON, Exhibit No. 1324
22 was marked for identification.)

23 BY MS. BUGEL:

24 **Q. Complainants are putting in front of**

1 you Exhibit 1324. For the record, this begins
2 with Bates No. 115601. Do you have that in
3 front of you?

4 A. Yes, I do.

5 Q. Can you please explain what this
6 document is?

7 A. This document is similar to the one
8 that we just discussed for Joliet No. 29
9 station. Same document except for the Waukegan
10 Generating Station for the east and west ash
11 ponds. And there's a data summary posting of,
12 what I referred to before, as the 60-day report,
13 which in this case it summarizes the first
14 quarter 2022 sampling data under the state CCR
15 rule.

16 Q. Was KPRG involved in the preparation of
17 this document?

18 A. Yes.

19 Q. Does this document also include one or
20 more summary tables?

21 A. Yes, it does. And normally, like I
22 said, it usually has a Midwest Generation
23 transmittal letter on it as well. Table 1 is a
24 summary table of the full list of the Part 845

1 parameters, 845.600 parameters. And Table 2 is
2 the turbidity data.

3 **Q. Does Table 1 contain data from**
4 **monitoring wells that would not be included in**
5 **results that Midwest Generation submits pursuant**
6 **to the compliance commitment agreement with**
7 **Illinois EPA?**

8 MS. GALE: Objection; vague.

9 THE HEARING OFFICER: Clarify that,
10 Ms. Bugel.

11 MS. BUGEL: All right.

12 THE HEARING OFFICER: Thank you.

13 BY MS. BUGEL:

14 **Q. What monitoring wells does this contain**
15 **data from?**

16 A. The printing is fairly small on this.
17 So, quite honestly, without a magnifying glass,
18 which I do have one in my briefcase, if I need
19 to pull it out, I will, but, honestly, with this
20 lighting and my aged eyes, I cannot give you the
21 specific numbers here. I don't want to misstate
22 anything on this form.

23 MS. BUGEL: Mr. Hearing Officer, we have a
24 magnifying glass. May we approach the witness

1 to provide it to him?

2 THE HEARING OFFICER: You may.

3 MS. GALE: Mr. Hearing Officer, I object to
4 the extent that I also have a hard time reading
5 this document.

6 THE HEARING OFFICER: Well, if Mr. Gnat
7 explains it on record, would that suffice? I
8 mean, do you need to look at it right now? Do
9 we have other magnifying glasses in the room?

10 MS. BUGEL: Can we go off the record?

11 THE HEARING OFFICER: Yes. We're off the
12 record.

13 (WHEREUPON, a discussion was
14 held off the Record.)

15 THE HEARING OFFICER: We're back on the
16 record. It looks like most people can see the
17 numbers now.

18 BY MS. BUGEL:

19 **Q. Mr. Gnat, can you see now what**
20 **monitoring wells are contained in Table 1?**

21 A. Sure. Well, MW09 upgradient monitoring
22 well, MW11 upgradient monitoring well, MW14,
23 upgradient monitoring well, MW01 down gradient
24 monitoring well, MW02 down gradient monitoring

1 well, MW03 down gradient monitoring well, and
2 MW16 down gradient monitoring well.

3 **Q. Are there wells included in this table**
4 **that are not part of the CCA monitoring well**
5 **reporting?**

6 A. Yes, there are. But, again, this
7 reporting is totally different from CCA
8 reporting.

9 **Q. Thank you. And --**

10 A. Can I make one clarification on that,
11 though?

12 **Q. Yes.**

13 A. Being Waukegan kind of the -- where the
14 CCA has been altered to the permit monitoring.
15 And the permit monitoring also is total metals
16 just like for CCR data.

17 So the list of parameters is slightly
18 different, but for any overlap in the
19 parameters, the wells 1, 2, 3, 4, and I believe
20 16 are part of that monitoring.

21 So those are all for whatever overlap
22 in the parameters is, those are also totals. So
23 there is some overlap in the data for Waukegan
24 here specifically.

1 **Q. Okay. Understood.**

2 MS. BUGEL: Complainants move for the
3 admission of Exhibit 1324 into the record.

4 THE HEARING OFFICER: Ms. Gale.

5 MS. GALE: Same objection as we made before
6 as Mr. Gnat clarified. There's some overlap and
7 duplication in various reports and we don't
8 object to the document going in for the data,
9 including any data that would be duplicative.

10 THE HEARING OFFICER: Was that 1323? Because
11 you have a duplicative --

12 MS. BUGEL: I'm sorry. That was my fault.
13 Let me restate the motion.

14 Complainants move for the admission of
15 Exhibit 1323. Wait a minute. 1324. We did not
16 have a duplicative exhibit. I got confused.

17 THE HEARING OFFICER: Okay. I was just
18 trying to clarify. All right.

19 So Complainant's Exhibit 1324 is
20 admitted subject to Midwest concerns about the
21 duplication and the cumulative numbers and
22 reports. So I would direct the Board to
23 disregard such. Complainants Exhibit 1324 is
24 admitted.

1 MS. BUGEL: Thank you.

2 (WHEREUPON, Exhibit No. 1325
3 was marked for identification.)

4 BY MS. BUGEL:

5 Q. Complainants now have Exhibit 1325 and
6 Leah is placing copies in front of you. And for
7 the record, Exhibit 1325 begins with Bates
8 No. 115942; do you see that?

9 A. Yes, I do.

10 Q. And you have this exhibit in front of
11 you now?

12 A. Yes, I do.

13 Q. Can you explain what this document is?

14 A. Sure. This is under I believe the
15 federal CCR rule. This is the CCR groundwater
16 monitoring report, Powerton Generating Station,
17 for the ash bypass basin and ash surge basin
18 dated January 26th, 2022.

19 Q. Do you want to look at the date on
20 that?

21 A. I'm sorry. July 26th, 2022. This is
22 for the second quarter 2022 sampling.

23 Q. You were involved in the preparation of
24 this report, correct?

1 A. Correct.

2 **Q. Can you explain what data are included**
3 **in this report?**

4 A. This report summarizes the second
5 quarter 2021. I'm sorry. That's when it
6 started. The second quarter of 2022 sampling
7 under the federal CCR rule for the ash bypass
8 basin and ash surge basin at the Powerton
9 station.

10 **Q. Are there wells covered in this report**
11 **that would not be included in reporting under**
12 **the compliance commitment agreements?**

13 A. Give me a minute to digest your
14 question. The way I understand your question
15 is, Are there wells in this report that are not
16 included as part of the compliance commitment
17 agreement?

18 **Q. Yes.**

19 A. I believe there are, yes.

20 **Q. Would those be wells 17, 18, and 19?**

21 A. Correct.

22 **Q. So this report includes data that would**
23 **not appear in reports prepared pursuant to the**
24 **compliance commitment agreement, correct?**

1 A. That is correct. It also includes
2 data -- well, not to confuse two totally
3 separate programs. CCR program, not filtered,
4 total metals, different list of parameters, some
5 overlap. CCA program, dissolved metals,
6 slightly different list of parameters. So the
7 two don't get mixed.

8 MS. BUGEL: Thank you.

9 Complainants move for the admission of
10 Exhibit 1325 into the record.

11 THE HEARING OFFICER: Ms. Gale.

12 MS. GALE: Mr. Hearing Officer, as stated
13 earlier, we don't object to the admission of the
14 document. But as he stated, there is some
15 overlap of wells and so we would request a
16 direction related to duplicity.

17 THE HEARING OFFICER: Complainants Exhibit
18 No. 1325 is admitted subject to Midwest's
19 objection regarding the duplicative and
20 cumulative nature, so I would direct the Board
21 to disregard any of that. Thank you.

22 We're off the record now.

23 (WHEREUPON, a discussion was
24 held off the Record.)

1 THE HEARING OFFICER: We're back on the
2 record. I just want to clarify that we're
3 admitting Complainant's Exhibit 1325 subject to
4 Midwest's objection of the cumulative nature of
5 any lab reports or numbers. I'm going to direct
6 the Board to disregard that. Thank you.

7 MS. BUGEL: Thank you.

8 THE HEARING OFFICER: We're off the record.

9 (WHEREUPON, a lunch break was
10 taken.)

11 THE HEARING OFFICER: We're back on the
12 record. We're back from lunch. It's
13 approximately 1:15. Mr. Gnat is still on the
14 stand. Ms. Bugel is directing as an adverse.

15 You may continue.

16 MS. BUGEL: Thank you.

17 BY MS. BUGEL:

18 Q. This morning we passed out an exhibit
19 that had been marked as 1319 and we realized we
20 were missing the appendix to that. So, this
21 afternoon, if people want to pull out their copy
22 of 1319, we are distributing the appendix, so
23 people can attach B.

24 What I'm going to suggest is that we

1 **now realize there are two copies of Page 72667.**
2 **So, if we can pull -- no. It's attached to**
3 **different things. There will be two copies of**
4 **Page 72667 in that.**

5 THE HEARING OFFICER: Just purge. Just
6 talking out loud. This kind of shades of five
7 years ago with exhibits.

8 MS. BUGEL: I apologize. We're trying to do
9 much better with exhibits than five years ago.

10 Mr. Hearing Officer, can we go off the
11 record for a second?

12 THE HEARING OFFICER: Sure. Off the record.

13 (WHEREUPON, a discussion was
14 held off the Record.)

15 THE HEARING OFFICER: Back on the record,
16 Jamyne. Thank you.

17 MS. BUGEL: So this morning we distributed
18 1319. This afternoon we've added the appendix.
19 And what I am realizing now is that there are
20 two copies of Page 72667. So in the exhibit,
21 that will appear twice.

22 BY MS. BUGEL:

23 **Q. Mr. Gnat, do you have both pieces of**
24 **that document in front of you now?**

1 A. Yes, I do.

2 Q. Let me ask you: Aside from the
3 duplicate Page 72667, does this copy now appear
4 to be a true and accurate copy of the original
5 document?

6 A. Yes, it does.

7 Q. And for the record, can you please
8 explain what this document is?

9 A. The whole document or just Appendix B?

10 Q. The whole document.

11 A. The whole document, Exhibit 1319, is
12 federal CCR Compliance Annual Groundwater
13 Monitoring and Corrective Action report for
14 calendar year 2019 for the Waukegan Generating
15 Station dated January 31st, 2020.

16 Q. KPRG prepared this document on behalf
17 of Midwest Generation, correct?

18 A. Correct.

19 Q. And this annual report also has an ASD
20 attached to it, correct?

21 A. That is correct, yes.

22 Q. And the ASD appears in Appendix B
23 beginning at Page 72667?

24 A. Yes.

1 Q. And if you turn to Page 72672, your
2 signature appears on that ASD, correct?

3 A. Yes, it does.

4 Q. And this morning we talked about
5 Exhibit 1318. Do you still have 1318 nearby?

6 A. Yes, I do.

7 Q. And Exhibit 1318 included an ASD for
8 Waukegan as well, correct?

9 A. That is correct, yes.

10 Q. Are these different ASDs?

11 A. Yes, they are.

12 Q. So there were two different ASDs for
13 Waukegan two years in a row, correct?

14 A. Right. This most recent one that we're
15 looking at now is part of Exhibit 1319. It was
16 dated March 11, 2019 and that was specifically
17 for some calcium and total dissolved solids
18 analyses that were only with MW16.

19 Q. So there were different parameters that
20 were being covered in these two different ASDs,
21 correct?

22 A. As well as different wells, yes.

23 Q. Can you please turn to the Page 72672
24 again. And this is in Exhibit 1319 just to be

1 clear for the record. Does this page have the
2 heading conclusion/recommendations?

3 A. Yes, it does.

4 Q. And the last sentence of the last
5 bullet states, The fluctuating TDS
6 concentrations at MW16 are correlated to
7 fluctuations in TDS at upgradient well MW05
8 which is believed to have water quality impacted
9 by other potential sources, with an s in
10 parentheses, and not associated with a potential
11 release of leachate from the ash pond regulated
12 units; do you see that sentence?

13 A. Yes, I do.

14 Q. And based on this conclusion, among
15 others, the ASD recommends detection monitoring,
16 correct?

17 A. That is correct, relative to the
18 impoundments, yes.

19 MS. BUGEL: Complainants move for the
20 admission of Exhibit 1319 into the record.

21 THE HEARING OFFICER: Ms. Gale.

22 MS. GALE: No objection.

23 THE HEARING OFFICER: Thank you.

24 Exhibit 1319 is admitted into evidence.

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(WHEREUPON, Exhibit No. 1326
was marked for identification.)

BY MS. BUGEL:

Q. Complainants are distributing an exhibit which has been marked as 1326. Do you have 1326 in front of you now?

A. Yes, I do.

Q. For the record, Exhibit 1326 begins at Bates Page 116082; do you see that?

A. Yes, I do.

Q. Can you please explain what this document is?

A. Again, this is under the federal CCR rule. It's the CCR detection groundwater monitoring report for the Waukegan Generating Station. It's dated July 27th, 2022. And this is specifically in regards to samples collected during the second quarter of 2022.

Q. And KPRG prepared this report on behalf of Midwest Generation, correct?

A. Yes.

Q. And you were involved in the preparation of this report, correct?

A. Yes.

1 **Q. Can you please explain what data are**
2 **included in this report?**

3 A. Sure. So, after the written summary,
4 we have a figure which shows the two regulated
5 units, the east pond and the west ash pond, the
6 monitoring well network associated with the
7 federal CCR program.

8 And then we have a summary data table,
9 Table 1, which is a summary data of the
10 monitoring. And these are for the seven
11 Appendix 3 parameters as -- those are the seven
12 parameters of the federal CCR Appendix 3 for
13 detection monitoring. And that's followed up
14 with an attachment one, the analytical data
15 package that supports the data and tables.

16 **Q. July 27th, 2022, by that date would**
17 **Waukegan have shifted to what you were calling**
18 **the permit monitoring?**

19 A. Yes, yes. Waukegan was under permit
20 monitoring in place of CCA monitoring so to
21 speak.

22 **Q. Does this report include data from**
23 **wells that would not be included in reporting**
24 **under permit monitoring?**

1 A. There is an overlap. Some wells are in
2 the permit monitoring and some are not, I
3 believe. That is correct, yes. Some are; some
4 are not.

5 MS. BUGEL: Complainants move for the
6 admission of Exhibit 1326 into the record?

7 THE HEARING OFFICER: Ms. Gale.

8 MS. GALE: Same as before. We do not object
9 to the admission of this document, but request
10 the same limitation and direction that you made
11 with the others.

12 As the witness testified, there are
13 some overlaps in the data in these with the
14 Waukegan permit with the permit monitoring.

15 THE HEARING OFFICER: Thank you, Ms. Gale.

16 Complainant's Exhibit 1326 is admitted.
17 No objection. Although, I would direct the
18 Board to disregard any overlap, cumulative or
19 duplicative, and not duplicitous.

20 Exhibit 1326 is admitted, subject to
21 those conditions, and I direct the Board to
22 disregard. Thank you.

23 MS. BUGEL: Thank you.

24

1 (WHEREUPON, Exhibit No. 1327
2 was marked for identification.)

3 BY MS. BUGEL:

4 Q. We are now distributing what has been
5 marked as Exhibit 1327. Do you have
6 Exhibit 1327 in front of you?

7 A. Yes, I do.

8 Q. And for the record, Exhibit 1327 begins
9 with Bates Page 116118. Do you see that?

10 A. Yes, I do.

11 Q. Can you please explain what this
12 document is?

13 A. Sure. This, again, is under the
14 federal CCR rule. This is the CCR groundwater
15 detection monitoring report for the Joliet
16 No. 29 Station dated July 26th, 2022. It was
17 for the first semi-annual sampling.

18 Q. And KPRG prepared this report on behalf
19 of Midwest Generation, correct?

20 A. Yes, we did.

21 Q. And you were involved in the
22 preparation of this report, correct?

23 A. Yes, I was.

24 Q. Can you explain what data are included

1 **in this report?**

2 A. Sure. After the summary text letter
3 there, we have the supporting figure which shows
4 the ash pond two, which is the only regulated
5 unit under the federal CCR rule and the
6 associated monitoring well network.

7 And that's followed by the supporting
8 table, which is Table 1, which, again, has the
9 seven Appendix 3 federal parameters which are
10 part of the detection monitoring requirements.
11 And that is then supported by the analytical
12 data package in Attachment 1.

13 **Q. Table 1 includes data through the**
14 **second quarter of 2022, correct?**

15 A. Yes. May 26th was the sample date for
16 these four wells and that is second quarter of
17 2022.

18 MS. BUGEL: Complainants move for the
19 admission of Exhibit 1327 into the record.

20 THE HEARING OFFICER: Ms. Gale.

21 MS. GALE: No objection.

22 THE HEARING OFFICER: Complainant's
23 Exhibit 1327 is admitted.

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(WHEREUPON, Exhibit No. 1328
was marked for identification.)

BY MS. BUGEL:

**Q. We are now placing in front of you what
has been marked as Exhibit 1328. And for the
record, this Exhibit 1328 begins with Bates
No. 116146; do you see that?**

A. Yes, I do.

**Q. Can you please explain what this
document is?**

A. This document is titled the Initial
Assessment Monitoring Data Evaluation CCR
Groundwater Monitoring Will County Station,
specifically for ponds 2 south, 3 south, and I
believe this is a federal CCR compliance
document.

**Q. KPRG prepared this on behalf of Midwest
Generation, correct?**

A. That is correct, yes.

**Q. You were involved in the preparation of
this report?**

A. Yes, I was.

**Q. Can you please explain what data are
included in this report?**

1 A. Yes. Just give me a minute to quickly
2 review over the report content.

3 **Q. Sure.**

4 A. This is somewhat of a follow-up
5 assessment report for ponds 2 south, 3 south,
6 wherein the previous sampling we had a chloride
7 concentration in one of the monitoring wells,
8 specifically well MW11, that was above the
9 established statistical background prediction
10 limit source of potential SSI.

11 We completed an alternate source, or
12 ASD, alternate source demonstration, for the
13 chloride at well 11 and that determination was
14 not conclusive. We couldn't rule out that, in
15 fact, and I believe it was pond 2S, that we
16 thought might, in fact, be associated with the
17 elevated chloride.

18 And so the program was moved from
19 detection monitoring to assessment monitoring.
20 And the first step in assessment monitoring
21 under the federal rule is to do a round of
22 groundwater sampling for the full list of
23 Appendix 3 and Appendix 4 parameters.

24 And once you get that data, you take a

1 look at what was detected in the Appendix 4
2 parameters. And you go out and do a second
3 round of sampling for only those Appendix 4
4 parameters that were detected. And the
5 Appendix 3 parameters are always done.

6 So, this basically identifies what that
7 first round of assessment sampling was. It
8 identified that all the Appendix 4 parameters,
9 which ones we detected, which ones we didn't
10 detect. And then saying that once we go out and
11 do the second round of sampling, as required
12 under the federal rule under the assessment
13 program, we'll then calculate the site specific
14 groundwater protection standards for those
15 Appendix 4 parameters being detected and then do
16 comparisons to those from there, and then within
17 the federal rule, the pathway depending on the
18 results of that as to which way you go down
19 after initiating the assessment monitoring.

20 **Q. Are monitoring wells MW 11 and MW12**
21 **part of the CCA monitoring program?**

22 A. No. I believe the CCA monitoring
23 program is through MW10, but I would have to
24 verify. I would have to go back and take a look

1 at a CCA report and verify that. I know MW12 is
2 not in the CCA network. I forget if MW11 is or
3 not.

4 **Q. Can you take a minute in a CCA report**
5 **that's on the table and confirm?**

6 A. Sure.

7 MS. NIJMAN: Do you want to direct him to one
8 of your exhibits?

9 MS. BUGEL: That will take me a minute to
10 find as well.

11 THE WITNESS: I've got it right here. Thank
12 you. I can confirm that wells 11 and 12 are not
13 part of the CCA monitoring well network.

14 MS. BUGEL: Okay. Complainants move for the
15 admission of Exhibit 1328 into the record.

16 THE HEARING OFFICER: Ms. Gale.

17 MS. GALE: Again, no objection to the
18 document being admitted. But we request, as he
19 alluded to, there are CCA wells identified in
20 here and so there's some duplication. And so we
21 ask for the same direction for this document.

22 THE HEARING OFFICER: Thank you.

23 Complainant's Exhibit 1328 is admitted.
24 I would direct the Board to disregard the

1 cumulative or duplicate numbers that Mr. Gnat
2 was saying in the CCA wells. I would direct
3 them to disregard that. Thank you.

4 BY MS. BUGEL:

5 Q. I'm going to move forward and just turn
6 away from the exhibits for a moment.

7 I wanted to ask you one of KPRG's
8 contracts with Midwest Generation involves soil
9 borings, correct?

10 MS. GALE: Objection. Vague, foundation.

11 THE HEARING OFFICER: Sustained.

12 Can you rephrase, Ms. Bugel?

13 BY MS. BUGEL:

14 Q. Does KPRG ever do soil borings for
15 Midwest Generation?

16 A. Yes.

17 Q. Has KPRG taken soil borings at Joliet?

18 A. Yes, we have.

19 Q. Has KPRG taken any soil borings since
20 October of 2017 at Joliet 29?

21 A. I believe we have, yes.

22 Q. Do you know if those borings were
23 limited to the vicinity of MW09?

24 A. That is correct. We did an

1 investigation to evaluate the anomalous
2 groundwater quality data that was really
3 isolated to MW09. So Midwest Generation asked
4 to us to do some soil borings in the area and
5 collect some other samples as well to kind of
6 evaluate as to, you know, is this an isolated
7 kind of anomaly here or is there something that
8 may be associated with what we were seeing in
9 terms of the water quality in well 9.

10 **Q. Besides those borings in the vicinity**
11 **of MW09, has KPRG done any other soil borings at**
12 **Joliet 29 since October of 2017?**

13 A. Not that I was involved with. I know
14 that there was some other work done with the
15 underground tank removal. I don't know if the
16 person involved with that did additional
17 borings. I don't know if that was done with
18 borings or not.

19 **Q. In your deposition, you and I talked**
20 **about bathymetric surveys; do you recall that?**

21 A. Yes.

22 **Q. I want to set aside bathymetric surveys**
23 **and ask has KPRG done any investigation at**
24 **Joliet 29 to identify the volume of coal ash in**

1 **any areas outside of ponds since October**
2 **of 2017?**

3 A. I don't know the date of the study, but
4 certainly ponds 1 and 3 were evaluated for the
5 nature of sediment and the amount of sediment in
6 those ponds. And the determination there was
7 made that that sediment accumulation is not
8 associated with CCR. And so, therefore, those
9 ponds were agreed, by the state, that they are
10 not CCR ponds.

11 **Q. I'm going to just clarify my question.**
12 **I'm wondering if KPRG has done any**
13 **investigation to identify the volume of coal ash**
14 **outside of any pond at Joliet 29 since October**
15 **of 2017?**

16 A. Our work has been focused on compliance
17 with the CCR rule, which is focused on the pond.
18 So, the ponds are regulated units. So, that's
19 what we'd be focused on.

20 **Q. So, the answer is, no, KPRG has not**
21 **done any investigation into the volume of ash**
22 **outside of ponds at Joliet 29?**

23 A. That's correct. I know that some other
24 borings were done to the northeast recently by

1 the Army Corps of Engineers. I looked at those
2 borings. I didn't notice any CCR materials in
3 there. They logged fill and gravel, sand and
4 gravel, but certainly no CCR materials. KPRG
5 did not do any borings outside of the ponds.

6 **Q. Aside from groundwater monitoring and**
7 **aside from the borings that we've discussed by**
8 **the Army Corps of Engineers and the borings in**
9 **the vicinity of MW09, do you know of any**
10 **sampling of CCR at Joliet since October of 2017?**

11 A. Not that I'm aware of. Other
12 contractors may have, but not that I'm aware of.

13 **Q. And aside from --**

14 A. Excuse me. Can I clarify one thing?
15 I'm sorry.

16 **Q. Sure.**

17 A. There was -- I know that in support of
18 the initial permit -- it was either the initial
19 permit application under the state rule or the
20 initial construction application. There was an
21 ash sample collected that is representative of
22 the ash that would have been in pond two.

23 When pond two was cleaned out of ash,
24 excavated of ash, that ash was trucked over to

1 the other side of the river. And we know where
2 it was placed right at the surface there.

3 So, we know where it was within that
4 area. And so that ash was sampled in support of
5 the permit application. So, that was one
6 sampling that KPRG did do.

7 **Q. Okay. Thank you for the clarification.**
8 **Aside from any alternate source**
9 **demonstrations, do you know of any testing of**
10 **leachate from CCR material that has been done at**
11 **Joliet 29 since October of 2017?**

12 A. Outside of the LEAF testing that we did
13 for ASDs, not that I'm aware of, no.

14 (WHEREUPON, Exhibit No. 1329
15 was marked for identification.)

16 BY MS. BUGEL:

17 **Q. Okay. We are distributing what has**
18 **been marked as Exhibit 1329.**

19 MS. GALE: Can we go off the record for a
20 second, Mr. Hearing Officer?

21 THE HEARING OFFICER: Yes.

22 (WHEREUPON, a discussion was
23 held off the Record.)

24 THE HEARING OFFICER: Back on the record.

1 BY MS. BUGEL:

2 Q. We have placed in front of you what has
3 been marked as Exhibit 1329. Are you familiar
4 with this document?

5 A. Yes, I am.

6 Q. Can you please tell us what this
7 document is for the record?

8 A. Sure. This is an ash removal
9 documentation document. So, to put it into
10 context, earlier that year, KPRG was requested
11 by Midwest Generation to perform some sampling
12 in the area in the northwest part of Joliet 29
13 station that had some ash placement on the
14 ground. There was a desire to evaluate whether
15 that ash may be used for beneficial reuse.

16 And so under the state program, there's
17 a specific analytical method, a neutral leach
18 test method. I forget the ASTM number,
19 specifically. But that will allow for the
20 classification of the material as to whether or
21 not it could be used for engineering purposes
22 for beneficial reuse.

23 So, we did a grid sampling and
24 analyses. And we identified that there were a

1 couple of grids, one or two grids that had some
2 elevated concentrations, I don't remember
3 offhand if it was lead or whatnot, that would be
4 above what would be allowable for being able to
5 use the ash as beneficial reuse.

6 So, we determined that if we remove
7 that volume of ash within the grid that had the
8 elevated lead and copper, that the remaining
9 ash, the remaining mass of ash would qualify
10 under the rule that it would be able to be used
11 for beneficial reuse.

12 So, this document summarizes the
13 removal of that ash with the elevated lead and
14 copper and other documentation associated with
15 the excavation and transport and disposal of
16 that ash.

17 **Q. Your answer talked about removal of the**
18 **remaining ash, after the ash with the elevated**
19 **constituents was disposed of, your answer talked**
20 **about the removal of the remaining ash for**
21 **beneficial reuse.**

22 THE WITNESS: No, I don't think I ever said
23 removal of remaining ash. I said that the
24 remaining mass of ash would qualify for

1 beneficial reuse.

2 BY MS. BUGEL:

3 Q. Do you know if that remaining mass of
4 ash that would qualify for beneficial reuse was,
5 in fact, removed?

6 A. Not that I'm aware of.

7 Q. Turning to the first page of the
8 letter, Bates 18824, I know this is not a great
9 copy, and it looks like KPRG would normally
10 appear at the top of that page, but it's faded;
11 do you see that?

12 A. Yes, I do.

13 Q. Aside from that area where it's faded,
14 does this appear to be a true and accurate copy
15 of this document?

16 A. Yes, it does.

17 Q. And turning to Bates Page 18826, your
18 signature appears on this, correct?

19 A. Yes, it does.

20 Q. And this letter discusses grid
21 sampling, and I believe your first answer
22 mentioned grid sampling, correct?

23 A. Yes.

24 Q. Can you explain what grid sampling is?

1 A. Taking a series of samples from a -- in
2 a grid pattern. So you establish a grid on the
3 ground, depending on the size of the particular
4 grid you stake out, and then you can choose,
5 okay, am I going to sample the middle of the
6 grid, grid intersections. It can be random
7 grids. There can be a whole variety of ways in
8 which to implement a grid sampling program.

9 **Q. So, in this investigation at Joliet 29,**
10 **do you know how far apart the samples in the**
11 **grid were?**

12 A. Offhand I do not remember. I would
13 have to go back to the initial report. It was
14 done back in 2005. Unless I mentioned it here
15 in the introductory paragraph. It doesn't
16 mention it here. I would really have to go back
17 and see the original document that discussed the
18 actual grid sampling.

19 **Q. Do you recall if KPRG did the grid**
20 **sampling in-house within your company?**

21 MS. GALE: Objection; vague.

22 THE WITNESS: Yeah. Our personnel did it. I
23 don't remember if I was out there or not. For
24 the drill rig itself, we hire a contractor for

1 the geoprobe rig. We do not have our own
2 drilling equipment, but we do have our own
3 personnel out doing it, logging the hole and
4 collecting the sample.

5 BY MS. BUGEL:

6 **Q. So would KPRG make the decision as to**
7 **how many samples would be taken in the grid?**

8 A. Right. By the time we're out in the
9 field to implement a grid sampling program,
10 that's already defined and determined, and we
11 usually lay out the grid before we bring the
12 drill rig out.

13 **Q. And when you say defined and**
14 **determined, would that have been KPRG personnel**
15 **who define it?**

16 A. In this particular case, I believe,
17 yes, we did. I've also had instances where the
18 client calls up and says, hey, I'd like to you
19 do a 100-foot grid or something. And he tells
20 us in this case, if I remember right, it was at
21 our discretion.

22 **Q. And in this case, do you recall what**
23 **informed the decision as to how many samples**
24 **were taken?**

1 A. That was somewhat judgmental based on
2 the size of the area, professional judgment.
3 Then, as I was reading through here to see if
4 the size of the grid was identified, you know,
5 it's typical of programs where you can have a
6 second phase of sampling.

7 In this case, we identified an area
8 that was elevated in lead. And to try and get a
9 better definition on that, we went in and did
10 additional sampling on a tighter network closer
11 in to see if we can limit that area within that
12 initial grid to where the exceedance was.

13 **Q. This letter I know discusses outlier**
14 **concentrations based on ASTM. I'm having**
15 **trouble finding my quote, and I apologize. But**
16 **I'll represent that this letter discusses**
17 **outlier concentrations.**

18 MS. GALE: Objection to the extent she can't
19 find it in the document.

20 THE HEARING OFFICER: Sustained.

21 MS. BUGEL: Hearing Officer, may I have a
22 moment to find my quote?

23 THE HEARING OFFICER: Yes.

24 MS. BUGEL: Found it.

1 BY MS. BUGEL:

2 Q. Looking at the first page of the
3 letter, the third sentence which begins,
4 Although most of the material was statistically
5 determined to meet the established criteria for
6 classification of CCB, one area in the vicinity
7 of geoprobe boring GP-14A, see Figure 1 in
8 summary report dated August 18th, 2005,
9 indicated outlier concentrations of lead and
10 copper based on the neutral leach test utilizing
11 test method ASTM D3987-85; do you see that
12 sentence?

13 A. Yes, I do.

14 Q. Can you please explain to me what
15 outlier concentrations are?

16 A. Sure. So, when we did the initial
17 sampling, we evaluated all of that entire
18 sampling data set statistically. And what we
19 found was that the values at all other locations
20 were fairly similar, but at GP-14A for lead and
21 copper, those values were higher than anywhere
22 else. They were an outlier. And because of
23 those values, the entire data set for lead and
24 copper would not meet the qualifications of

1 beneficial reuse.

2 So, if we removed those elevated
3 concentrations from that volume and then
4 recalculated the volume, we, in fact, would pass
5 and it would be appropriate to be able to use
6 that ash for beneficial reuse. And that's how
7 we focused in on the area to remove. And that
8 then summarizes the removal of that material.

9 **Q. The leach test selected here was**
10 **ASTM -- I'm sorry. Let me rephrase that.**

11 **The leach testing used test method ASTM**
12 **D3987-85, correct?**

13 A. That is correct, yes.

14 **Q. Did KPRG select test method ASTM**
15 **D3987-85?**

16 A. No. That is a state requirement in the
17 statutes. This is the leaching test method.
18 It's also called neutral leach, I believe. That
19 is the method that needs to be used if you want
20 to try and qualify for CCB. If you use a
21 different test method, you can't meet the
22 requirement of the regulation.

23 MS. BUGEL: Complainants move for the
24 admission of Exhibit 1329 into the record.

1 THE HEARING OFFICER: Ms. Gale.

2 MS. GALE: No objection.

3 THE HEARING OFFICER: Complainant's
4 Exhibit 1329 is admitted.

5 BY MS. BUGEL:

6 Q. Since October of 2017, have you
7 conducted any sampling and testing such as that
8 performed in the exhibit we just discussed at
9 Joliet to determine whether material may be
10 classified as coal combustion byproduct to
11 facilitate potential beneficial reuse?

12 MS. GALE: I would object as asked and
13 answered. She just went before this whole
14 process of asking if he had done any soil
15 borings or done any samplings throughout the
16 station and so now we're doing this again.

17 MS. BUGEL: This is one question about
18 testing for beneficial reuse. It's a different
19 question.

20 THE HEARING OFFICER: I'll allow it, if you
21 can answer, Mr. Gnat.

22 THE WITNESS: Not that I remember. At least
23 not KPRG. I don't know if other contractors
24 were asked.

1 BY MS. BUGEL:

2 Q. Has KPRG since October of 2017 done any
3 sampling and testing akin to what we just
4 discussed in this exhibit at any other facility
5 of Midwest Generation, in particular Will
6 County, Powerton, and Waukegan, to determine
7 whether material may be classified as coal
8 combustion byproduct to facilitate beneficial
9 reuse?

10 MS. GALE: Objection; compound. She's asking
11 about four different stations.

12 THE HEARING OFFICER: Yeah. I think you're
13 going to have to break it down. I know we're
14 trying to move it along.

15 MS. BUGEL: We'll do it one at a time.

16 BY MS. BUGEL:

17 Q. Since October of 2017, has KPRG
18 conducted any sampling or testing similar to
19 what we just discussed with Exhibit 1329 to
20 determine whether material may be classified as
21 coal combustion byproduct to facilitate
22 potential beneficial reuse at Waukegan?

23 A. At Waukegan, not that I'm aware of, or
24 not that I recall.

1 Q. Since October of 2017, has KPRG
2 conducted any sampling or testing similar to
3 that in Exhibit 1329 to determine whether
4 material may be classified as coal combustion
5 byproduct to facilitate the potential beneficial
6 reuse from the Powerton facility?

7 A. Not that I recall, no.

8 Q. Since October of 2017, has KPRG
9 conducted any sampling or testing akin to that
10 which we discussed regarding Exhibit 1329 to
11 determine whether material may be classified as
12 coal combustion byproduct to facilitate the
13 potential beneficial reuse from Will County?

14 A. I believe there was some sampling done.
15 I don't recall if it would be pre or post the
16 date that you're using in 2017.

17 (WHEREUPON, Exhibit No. 1330

18 was marked for identification.)

19 BY MS. BUGEL:

20 Q. All right. We go going to move on to
21 the next exhibit, which has been marked as
22 Exhibit 1330. Leah is now putting that in front
23 of you. The Bates number on the very first page
24 is very, very hard to see.

1 **So, for the record, the Bates number on**
2 **the second page of this exhibit is 79494; do you**
3 **see that?**

4 A. Yes, I do.

5 **Q. So, presumably the Bates number on the**
6 **first page is 79493. But, for the record, that**
7 **is hard to read; do you see that?**

8 A. Yes, I do.

9 **Q. Are you familiar with this document?**

10 A. Yes, I am.

11 **Q. Can you describe what it is?**

12 A. Yes. This is a document that
13 summarizes a soil grid boring program that KPRG
14 was requested to do in the area to the west of
15 the west ash pond at Waukegan Station.

16 **Q. Looking at the very first page that**
17 **says sampling grid exhibit, can you describe**
18 **what this is?**

19 A. Yes. Like I said, usually when you do
20 these, you have your grid established ahead of
21 time. So, we had our surveying firm Ruetigger
22 Tonelli & Associates lay out the grid for us.
23 And this is a 50-by-50 grid, I believe.

24 They mark the center point of each

1 grid, which was then the basis of our sampling
2 locations. So, then we went in with a drill rig
3 and each of the Xs in the middle of the grid box
4 is a boring location where we collected samples.

5 **Q. This shows that there were 40 borings,**
6 **correct?**

7 A. That is correct, 40 borings.

8 **Q. There would have been a boring at each**
9 **X on the samples grid exhibit, correct?**

10 A. Yes.

11 **Q. Do you know who decided on the number**
12 **of borings?**

13 A. That was decided by myself and Tim
14 Stoner who's an engineer with our company. I
15 think this is a 100-foot grid with the grid
16 points in the center at 50-feet and center of
17 each grid.

18 And that's, you know, somewhat
19 judgmental and somewhat taken from if we were to
20 be very conservative in terms of other programs
21 within the State of Illinois that we would do
22 brownfield sites. Because, quite honestly,
23 outside of the regulated units themselves, the
24 old plants are really no different than any

1 other industrial brownfield facility across the
2 state. And there's a very successful program
3 that those are dealt with under, various things,
4 but a lot of them are dealt with under the SRP.

5 **Q. Mr. Gnat, I feel like you've gone very**
6 **far afield with the question at this point.**

7 A. I'm sorry. I was talking about how we
8 came up with the basis of my grid.

9 MS. GALE: I would like to ask him to finish
10 his sentence. She asked him why he came up with
11 the basis of the grid --

12 THE HEARING OFFICER: I agree. He can
13 continue.

14 MS. GALE: Thank you.

15 THE WITNESS: And so based on our experience
16 with working with the SRP program, you know, we
17 want it to be very conservative saying, boy, if
18 we're going to do anything, let's do a little
19 bit of overkill.

20 So, that's how we came up with our
21 sample grid and 40 samples for 10 acres.

22 BY MS. BUGEL:

23 **Q. After the first page on the grid**
24 **exhibit, are the next 40 pages the boring logs**

1 **for each one of those samples?**

2 A. That is correct. They are the boring
3 logs. And I specifically was asking the field
4 geologist to identify, you know, obviously any
5 ash materials or whatnot, but also ideally to be
6 able to extend the boring to what looks like
7 native materials; in this case, the
8 fine-to-medium beach type sand.

9 And also to identify on the borings
10 where possible if wet conditions were
11 encountered. And that, again, being important
12 because that suggests that that's where the
13 saturated ash would start if there was ash.
14 Obviously, in some of these borings, we do have
15 ash.

16 **Q. Okay. Can you please turn to Bates**
17 **No. 79503.**

18 A. I have it here.

19 **Q. Does this boring log indicate that ash**
20 **was found in the boring?**

21 A. Yeah. In the very first description
22 there, we have brown clay topsoil, slight moist
23 six-inch layered gray silt, slightly moist, and
24 ash.

1 **Q. Does this boring log indicate that**
2 **there was any wet material in the boring?**

3 A. At about just under 4 feet, it has
4 above which is saying matrix with some ash in
5 the matrix and then it says wet.

6 And, again, a person who looks at these
7 things to get an understanding of the system
8 itself, further on down it says very moist. And
9 so, you know, a description of some native
10 material actually, the fine-to-medium sand,
11 beach sand, it says very moist.

12 So, the water table itself is actually
13 a little bit deeper. Because where we have it,
14 3-and-a-half feet there where it says wet, if
15 that was the true water table, we would see wet
16 conditions all the way down.

17 It's the definition of a water table.
18 Everything is saturated beneath it. What this
19 suggests is that we may have some perched water
20 sitting up within this area at about
21 3-and-a-half feet. Yet, you get passed that
22 area, you're still in moist material. You're
23 not in saturated material. So, you're not at
24 the water table within this boring.

1 **Q. I would like to turn to Page 79512,**
2 **please. Have you found that page?**

3 A. Yes, I have.

4 **Q. Does this boring log indicate that ash**
5 **was found in the boring?**

6 A. Yes. I'm reading through the
7 description here. At about 4-and-a-half feet or
8 so, it indicates that there's some ash mixed in
9 with that gray silt matrix, that silty sand
10 matrix that was discussed.

11 **Q. Does this boring log indicate that**
12 **material was wet?**

13 A. Yes. It indicates wet material. And
14 then at 9 feet, which is the start of native
15 material here, there's a fine-to-medium sand, a
16 of black peat layer that's slightly moist. And
17 then it appears to get saturated, probably
18 representative or it could be representative of
19 the water table at that point, at about
20 10-and-a-half, just under 11 feet.

21 **Q. You said that occurs at about**
22 **10-and-a-half or 11 feet, correct?**

23 A. Yeah. Where it we have as above, which
24 is regarding the native material and wet.

1 **Q. But then it doesn't go back to moist**
2 **blow that, correct?**

3 A. That's correct. And if it went back to
4 moist, it would have been noted just like we
5 have here where it went from wet, then it went
6 back to moist, and then wet.

7 And since we extended the boring to
8 15 feet, if it came out of that wet zone, that
9 would have been noted on the log.

10 **Q. So at 10-and-a-half to 11 feet, this is**
11 **not the scenario you discussed of perched water,**
12 **correct?**

13 A. That is correct. And this is in the
14 native material at this point.

15 **Q. So does that mean the fill is saturated**
16 **to its deepest extent from 10-and-a-half feet**
17 **down?**

18 MS. GALE: Objection; mischaracterizes the
19 documents. It's 10-and-a-half feet down because
20 it's native.

21 THE HEARING OFFICER: He can answer if he's
22 able.

23 THE WITNESS: That's correct. So, on this
24 boring, the depth of fill ends at about 9 feet

1 below surface. And then we start with the
2 description of what's native material. It's a
3 brown-gray fine-to-medium sand, slightly moist,
4 and it's got a little layer of black peat on top
5 that.

6 And then that native material, this
7 isn't ash, gets saturated again over
8 10-and-a-half feet. And I believe since I'm not
9 seeing any designation that loses its
10 saturation, that that's probably the top of the
11 water table at that point.

12 BY MS. BUGEL:

13 **Q. I realize the confusion in my question.**
14 **So just to clarify for the record,**
15 **starting at between 5 and 5-and-a-half feet, you**
16 **have fill that is wet, correct?**

17 A. Correct.

18 **Q. And that extends, it would have**
19 **remained wet until 9 feet, correct?**

20 A. That's what it would appear, yes.

21 **Q. And then starting at about 9 feet, you**
22 **have native material, correct?**

23 A. Yes.

24 **Q. And then that is wet at about**

1 **10-and-a-half feet, correct?**

2 A. Correct. The native material
3 originally is logged here as slightly moist and
4 then wet at 10-and-a-half feet, correct.

5 **Q. And then that would have stayed wet**
6 **until the end of the boring, correct?**

7 A. At 15 feet, yes.

8 **Q. Is there ever an indicator used in**
9 **boring logs to show when groundwater is**
10 **encountered?**

11 MS. GALE: Objection; vague.

12 THE WITNESS: Can you restate your question?

13 THE HEARING OFFICER: Rephrase that question.

14 BY MS. BUGEL:

15 **Q. Le me start this a different way then.**

16 **Looking in the lower left-hand corner**
17 **of the boring log found at 79512, there's a**
18 **little box that says groundwater data, correct?**

19 A. Yes.

20 **Q. Under that it has a little black**
21 **triangle that says depth wall drilling, correct?**

22 A. Correct.

23 **Q. If that little black triangle appeared**
24 **in the boring log, what would that indicate to**

1 **you?**

2 A. So that indication we would generally
3 have if we were constructing monitoring wells
4 within this boring. So, let's just say you have
5 a boring, you drill it, and you record saturated
6 conditions, water table where it's saturated
7 from that point below your boring, you would
8 identify that on the boring log at that depth
9 interval with a filled-in triangle.

10 And then after drilling, you come back
11 two hours later, four hours later, the next day,
12 and see where that water level might have
13 changed. It could have gone up a little bit,
14 maybe down a little bit, but that water level
15 might have changed.

16 And then you verify that that doesn't,
17 you know -- it basically reaches a static-type
18 water level where it doesn't change. And that
19 you would then indicate on the log with an open
20 triangle.

21 These aren't things that you
22 necessarily have on every log for every reason.
23 It's just part of this particular log program
24 that we were using at the time, as you can see,

1 an IEPA program.

2 Q. Let me ask you a couple more questions
3 about this exhibit here.

4 Were there any leach tests performed on
5 the material from these borings?

6 A. Yes.

7 Q. Do those test results appear in this
8 exhibit?

9 A. I would have to go through and see if
10 they are. This does not appear to include the
11 LEAF test data. Our approach here was to go out
12 and do the soil borings, collect the ash
13 samples. We collected two to three samples per
14 borings.

15 We analyzed those samples for the full
16 set of CCR parameters as they're defined in the
17 federal and state rule, short of turbidity,
18 state rule. Turbidity is a groundwater
19 parameter, not a soil parameter.

20 And then once we got that data, we took
21 a look at it and chose a subset of three
22 locations based on what we saw as the more
23 elevated concentrations and we tried to get
24 three samples that kind of crossover the whole

1 thing instead of maybe having three samples from
2 one-third of the area. We wanted to make sure
3 that the area was covered by what would be the
4 higher total values for the metals.

5 And then we sent that subset of three
6 samples off to a specialty lab, Test America
7 Lab, I believe, in Tennessee for LEAF test
8 analysis. I do not see the LEAF test analysis
9 in this data package.

10 **Q. Is the LEAF test a leach test?**

11 A. Yes, it is.

12 **Q. Do you know who selected the LEAF test**
13 **as the leach test to be performed on those**
14 **samples?**

15 A. That was KPRG's recommendation. That's
16 the LEAF test we also used, as you probably are
17 aware after reviewing our alternate source
18 demonstrations. We used the LEAF test in that
19 as well. And we somewhat did a shift towards
20 the LEAF test, quite honestly, based on some of
21 the previous hearings and so on.

22 It was clearly a test that appeared to
23 be preferentially preferred by the environmental
24 groups. And, quite honestly, they're good tests

1 and they provide a lot of good information. And
2 so we shifted to using LEAF tests.

3 Q. One more follow-up question about the
4 boring log found at 71912.

5 Based on your answer to my previous
6 questions about this boring log, the absence of
7 the black triangle groundwater icon does not
8 mean that there is no groundwater appearing in
9 this boring, correct?

10 A. That is correct. On this boring, as I
11 said, there's a time when I would use those and
12 a time when I wouldn't. And one of the reasons
13 I would is because the purpose of these here is
14 so that you have depth while drilling and depth
15 after drilling.

16 These are soil borings that go into a
17 sandy material that unless you would leave your
18 augers in the ground or your geoprobe in the
19 ground to keep the hole open, you can't take
20 water levels overtime in the hole. As soon as
21 you pull that out, the boring collapses.

22 So, in this case, I wouldn't give
23 you -- I provide a dark triangle, but I wouldn't
24 be able to provide a triangle that's not filled

1 in because after drilling, unless I had the
2 equipment sit there for potentially half a day
3 at each boring, you know -- so, you're not
4 providing the information that that's intended
5 for.

6 If I had to put a solid black triangle
7 on this boring log, it would be at about just
8 past 10-and-a-half feet.

9 **Q. Understood.**

10 MS. BUGEL: Complainants move for
11 Exhibit 1330 into the record.

12 THE HEARING OFFICER: Ms. Gale.

13 MS. GALE: No objection.

14 THE HEARING OFFICER: Complainant's
15 Exhibit 1330 is admitted.

16 MS. BUGEL: Just for clarification, we have a
17 document that's Bates 108719. We have not
18 marked this as an exhibit. We are not intending
19 to move it into the record. But we have two
20 copies available should Mr. Gnat need to
21 reference a copy for the questions I'm about to
22 ask him.

23 And due to the length of this, I only
24 have two copies. We have excerpts of the pages

1 I'm asking.

2 BY MS. BUGEL:

3 Q. We have placed a document in front of
4 you. This has Bates No. 108719. And for the
5 record, this has a title of application for
6 initial operating permit Joliet No. 29
7 Generating Station; do you see that?

8 A. Yes, I do.

9 Q. And KPRG prepared this operating permit
10 application on behalf of Midwest Generation,
11 correct?

12 A. That's correct. But just to clarify, a
13 very large application package, KPRG was the
14 central point to pull everything together.
15 There are portions of this package that, say,
16 would be prepared by another contractor or
17 consultant of Midwest Generation.

18 They provide that to us and we were
19 incorporating that into the document as a whole.
20 There are certain portions of this that KPRG
21 prepared in and of itself.

22 Q. Were you involved in the preparation of
23 this permit application?

24 A. I was involved in portions of it. One

1 of our senior engineers was the hub, if you want
2 to call it, that pulled everything together and
3 helped do the engineering portions of it. I was
4 involved in preparing Section 9 of the
5 application.

6 **Q. This operating permit application**
7 **pertains to just pond two at Joliet 29, correct?**

8 A. That is correct, yes.

9 **Q. Part of the operating permit**
10 **application requires a designation of a closure**
11 **prioritization category for pond 2, correct?**

12 A. Correct.

13 **Q. One factor that is considered when**
14 **identifying a closure prioritization category is**
15 **the proximity to an area of environmental**
16 **justice concern, correct?**

17 MS. GALE: Objection to the extent of
18 foundation. If he knows.

19 THE HEARING OFFICER: He can answer, if he's
20 able. Overruled.

21 THE WITNESS: I'm aware of various
22 intricacies and the requirements and so on of
23 the engineering portions of the rule. I would
24 have to go back and reference for myself. You

1 know, that's associated with a portion of this
2 application that I was not involved with.

3 And not that I haven't heard that, but
4 I would have to go back and read the rule if
5 you're going to be asking any specific question
6 about it.

7 BY MS. BUGEL:

8 Q. I'm just going to turn to Bates
9 Page 108745. Do you have that page in front of
10 you?

11 A. Yes, I do.

12 Q. And do you see that Section 20.0
13 closure priority categorization?

14 A. Yes, I do.

15 Q. And the first sentence under that
16 heading says, Based on Section 845.700(g), the
17 category designation for pond 2 is Category 3.

18 The Category 3 designation for pond 2
19 is based on the following:

20 Pond 2 is an inactive surface
21 impoundment; there are no potable wells or
22 setbacks of existing water supply wells down
23 gradient, and as such, Midwest Generation, LLC,
24 MWG, is not aware of any imminent threat to any

1 human health or the environment; the Illinois
2 EPA EJ Start tool found at, and then an internet
3 address is given, was used to determine that
4 Pond 2 is located within one mile of an area of
5 environmental justice concern.

6 Do you see that?

7 A. Yes. You read what's on the paper
8 here. I'm familiar that pond 2 is certainly not
9 active at this point. And the potable water
10 well search was part of Section 9, which I was
11 involved with, so I can attest to that.

12 I did not look up the specific website
13 here that's referenced in regards to evaluating
14 the Illinois EJ Start tool. I was not
15 associated with taking a look at that website.

16 Q. Do you have any reason to question the
17 accuracy of the material that is included in
18 Section 20.0?

19 MS. GALE: Objection. He just said he didn't
20 do it.

21 THE HEARING OFFICER: I agree. Sustained.

22 (WHEREUPON, Exhibit No. 1331
23 was marked for identification.)

24 MS. BUGEL: Okay. We can set that aside.

1 BY MS. BUGEL:

2 Q. We are placing in front of you what has
3 been marked as Exhibit 1331. Exhibit 1331
4 begins at Bates Page 110625. Do you see that?

5 A. Yes, I do.

6 Q. Are you familiar with this document?

7 A. Yes, I am.

8 Q. Can you explain for the record what
9 this document is?

10 A. Sure. Similar to what we just looked
11 at for the Joliet No. 29 station, this is the
12 application for initial operating permit for the
13 Waukegan Generating Station. It's dated
14 October 29th, 2021.

15 Q. Does this copy of this document appear
16 to be true and accurate, and I realize there are
17 thousands of pages, but just at first glance?

18 A. Yes, it does.

19 Q. KPRG prepared this application for
20 Waukegan Generating Station on behalf of Midwest
21 Generation, correct?

22 A. Correct. Again, in a similar fashion
23 as I talked about for Joliet Station where we
24 were kind of the hub, that certain of these

1 sections were developed by other consultants or
2 other contractors for Midwest Generation.

3 We were the clearinghouse pulling
4 everything together as well as being assigned
5 certain aspects of this package. The
6 engineering side of our house did some of the
7 engineering ones, and I was involved with
8 Section 9 in particular.

9 But, obviously, the Section 9
10 requirements in this application are the same
11 ones that there are in the previous ones.

12 That is, again, the groundwater
13 monitoring information and the
14 hydrogeology/geology part of this application is
15 what I was involved with.

16 **Q. Did KPRG select the contractors that**
17 **prepared the other parts of the application?**

18 A. No, we did not.

19 **Q. Do you know who selected the**
20 **contractors?**

21 A. I believe these are all Midwest
22 Generation consultants or contractors with the
23 specific expertise needed.

24 **Q. This application pertains to both the**

1 east pond and the west pond at Waukegan

2 **Generating Station, correct?**

3 A. Yes, that is correct.

4 **Q. Can you please turn to Bates**

5 **Page 110658.**

6 A. Okay.

7 **Q. Does this section contain the written**
8 **closure plan for both the east ash pond and the**
9 **west ash pond?**

10 A. Section 10, yes, is the written closure
11 plan for the east 10.1, east ash pond, 10.2 west
12 ash pond.

13 MS. GALE: Objection; mischaracterizes the
14 document. It actually says it's included as
15 Attachment 10-1 -- I'm sorry. Is it 10-1? This
16 section isn't actually the plan.

17 THE HEARING OFFICER: The record will so
18 reflect.

19 MS. BUGEL: Okay. And I will rephrase the
20 question.

21 BY MS. BUGEL:

22 **Q. Section 10.1, east ash pond, does this**
23 **indicate that the written closure plan is**
24 **included as Attachment 10-1?**

1 A. Yes, it does.

2 Q. And turning the page to Section 10.2
3 pertains to the west ash pond, correct?

4 A. Yes, it does.

5 Q. Does this section indicate that the
6 written closure plan is included as Attachment
7 10.2?

8 A. Correct.

9 Q. Thank you for the correction.

10 Turning back to Section 10.1, does this
11 indicate that the east ash pond will be closed
12 with the CCR remaining in place?

13 MS. GALE: Objection to the extent it
14 mischaracterizes the document. It's not just
15 remaining in place.

16 THE WITNESS: The only statement in 10.1,
17 and, again, not being involved in the
18 engineering aspects of the closure design, but
19 this says, a final cover system will be
20 constructed consisting of an HDPE geomembrane
21 infiltration control layer and vegetative
22 earthen erosion control layer.

23 So without going through and taking a
24 look at the closure plan, I can't verify your

1 statement.

2 BY MS. BUGEL:

3 Q. Can you look at the very first line?
4 Does this sentence say, The east ash pond will
5 be closed with the CCR remaining in place and
6 constructing a final cover system in accordance
7 with Section 845.750?

8 A. Yes. I'm sorry. I started with
9 sentence two. But, yes, that is what sentence
10 one says.

11 Q. Do you have any idea if this is still
12 the current plan for how to close the east ash
13 pond at Waukegan?

14 A. I'll be honest with you. I know that
15 there have been, based on the public hearing and
16 so on, that there have been some different ideas
17 being badgered around by the engineers, but I do
18 not know what the current status is.

19 Q. Could you please turn to Page 110661?

20 A. Okay.

21 Q. And this contains Section 20.0 closure
22 priority categorization; do you see that?

23 A. Yes, I do.

24 Q. And under that Section 20.1 says east

1 ash pond?

2 A. Yes.

3 Q. Do you see that the category
4 designation for the east ash pond is Category 3?

5 A. Yes, I do.

6 Q. And starting with the second sentence
7 under east ash pond, the Category 3 designation
8 for the east ash pond is based on the following,
9 and I realize there are three bullet points, but
10 one of the items, the third bullet point says,
11 Midwest Generation used the Illinois EPA EJ
12 Start tool found at, and a website is given, to
13 determine that the Waukegan Generating Station,
14 401 East Greenwood Ave, Waukegan, 60087, east
15 ash pond is within one mile of an area of
16 environmental justice concern.

17 Do you see that?

18 A. Yes, I do.

19 Q. Can you please turn to the next page,
20 Bates Page 110662. Without reading this whole
21 thing into the record again, I'm just going to
22 ask a couple of quick questions.

23 Do you see that the west ash pond was
24 designated a Category 3 designation?

1 A. Yes.

2 MS. GALE: I'm going to object again. He's
3 just reading from this document. He testified
4 that he only did Section 9, and this is
5 Section 20.

6 MS. BUGEL: Mr. Hearing Officer, this
7 document, the very page we're looking at, at the
8 bottom says KPRG and Associates.

9 Mr. Gnat has testified that he is a
10 principal at KPRG and that he was involved in
11 the preparation of this application.

12 MS. GALE: If I may respond, Mr. Hearing
13 Officer.

14 THE HEARING OFFICER: Yes, you may.

15 MS. GALE: He testified that it was a
16 collective endeavor with other consultants and
17 that his company was the hub of the information.
18 As you can tell, this is a voluminous document
19 requiring many hands to lighten the load.

20 And so that they collected this
21 information, yes. But whether he personally has
22 information on what is stated on Page 110662 has
23 not been demonstrated.

24 THE HEARING OFFICER: Your objection is

1 noted. The Board will take a look at it and
2 read it accordingly. You may resume.

3 MS. BUGEL: Thank you.

4 BY MS. BUGEL:

5 Q. Mr. Gnat, do you see that the third
6 bullet point indicates that the Category 3
7 designation for the west ash pond was based in
8 part on Midwest Generation using the Illinois
9 EPA EJ Start tool found at, with a website
10 given, to determine that the Waukegan Generating
11 Station, 401 East Greenwood Avenue, Waukegan,
12 60087, west ash pond is within one mile of
13 area of environmental justice concern; do you
14 see that?

15 MS. GALE: Same objection.

16 THE HEARING OFFICER: Overruled. You may
17 answer, if you're able.

18 THE WITNESS: That is in the third bullet,
19 yes.

20 MS. BUGEL: Complainant's move for the
21 admission of Exhibit 1331 into the record.

22 THE HEARING OFFICER: Ms. Gale.

23 MS. GALE: We had discussed this exhibit with
24 the Complainant. It is huge. And as we told

1 you, we didn't think the entire document needed
2 to be admitted as an exhibit, particularly since
3 we talked about three pages.

4 While KPRG collected this information,
5 this witness for half of this information didn't
6 even know the foundation of it other than
7 reading from the document.

8 So, we would object to the admission of
9 the entire document.

10 THE HEARING OFFICER: Well, I guess, No. 1,
11 normally a party objects because the whole
12 document is not in front of them and now you're
13 objecting because the whole document is in front
14 of him.

15 MS. GALE: I guess my objection is relevance,
16 sir, to be clear.

17 THE HEARING OFFICER: Okay. Ms. Bugel,
18 before I rule.

19 MS. BUGEL: Yes. We did propose to excerpt
20 the document and introduce it that way and
21 Midwest Generation would not agree to that. So,
22 I agree with the predicament of it's no to the
23 whole and no to part of it as well.

24 In addition, Mr. Gnat testified that

1 KPRG, you know, that the front pages of the
2 application have KPRG on every single page. His
3 firm assisted in the preparation of this
4 application, oversaw it. He also testified that
5 it was Midwest Gen consultants who participated
6 in the other parts.

7 So, the document is relevant not just
8 for the area of environmental justice concerns
9 that is indicated, but also for the closure
10 plans that are attached at the back and that we
11 did discuss.

12 We could go page by page through the
13 whole document and establish the relevance of
14 other parts of it. But instead of belaboring
15 that exercise, we are offering it now. This
16 goes to the heart of what's being discussed
17 because it goes to how the ponds are going to be
18 closed and that goes to remedy.

19 MS. GALE: Mr. Hearing Officer, if I might
20 respond to a couple of things. And maybe there
21 was a miscommunication here. But what Ms. Bugel
22 proposed, as I understood it, was simply to
23 bring only his excerpts. And I had said you
24 need to bring the whole thing to make it

1 available for us to look at. I did not suggest
2 that excerpts would not be admissible.

3 Secondly, as it relates to the closure
4 plan, he specifically testified he did not write
5 the closure plan. And she did not look at
6 attachment 10-1 and 10-2, which are the actual
7 closure plans. It has not been established that
8 that closure plan is relevant, nor the actual
9 foundation available.

10 Finally, her suggestion that this goes
11 to the heart of this issue, certainly we would
12 agree that Midwest Gen, as we have said before,
13 is following the law. But I would caution
14 everyone to think that the issue of whether
15 they're complying with -- if there is no
16 complaint here that there's any compliance issue
17 under Part 845.

18 THE HEARING OFFICER: So, would it do any
19 good -- I mean, it sounds like you're troubled
20 by the fact there's more than the fact that you
21 guys didn't -- she didn't take out the excerpts
22 and just submit that.

23 So if you guys get together and she
24 just takes out the docs that you were talking

1 about, everything would be fine?

2 MS. GALE: Yeah. Again, we wanted to know
3 why they wanted this document.

4 MS. BUGEL: I'm surprised by Midwest Gen's
5 indication that they would agree to excerpts.
6 We had many conversations and e-mails flying
7 back and forth about exhibits, and I always
8 heard that Midwest Gen was dead-set against
9 excerpts. So, I'm very surprised by this today.

10 Secondly, this is obviously a massively
11 document-heavy proceeding. I think we have
12 established relevance. This is a document
13 that's related to closure of the ponds and
14 closure of the ponds is at the heart of the
15 remedy that we're talking about.

16 THE HEARING OFFICER: Here's my decision.
17 I'm ready to admit it under 101.626, but if you
18 guys want to get together and pull out the
19 excerpts that you're speaking of and then maybe
20 we can work something out.

21 But that's my ruling right now unless
22 you want me to forego that for now and maybe you
23 guys can work it out later.

24 MS. BUGEL: I'm not hopeful as to working it

1 out, I just have to say.

2 THE HEARING OFFICER: Okay. Over objection,
3 Complainant's Exhibit No. 1331 is admitted.

4 MS. GALE: Mr. Hearing Officer, if I may
5 suggest, I just thought of this now, so forgive
6 me. When we had this discussion over the Phase
7 1 and Phase 2 reports in the first hearing, and
8 at that instance, our request was to limit the
9 document to what was to be discussed at the
10 hearing.

11 Our concern here with this document is
12 that we discussed six pages. And then later on
13 because the whole thing is admitted,
14 Complainants look on a different page and pull
15 something out and we've not had an opportunity
16 with the witness to have a description of what's
17 on there.

18 And, again, you know, lots of e-mails,
19 much effort, perhaps there's been a
20 miscommunication, but our concern is, well,
21 frankly, a surprise. So, if we have a
22 limitation of what's discussed, that would be
23 acceptable.

24 THE HEARING OFFICER: Yeah. My suggestion

1 is, because it sounds like you were amendable
2 before, Ms. Bugel, just taking out the excerpts.
3 I don't know. Maybe I'm mishearing things. I
4 wasn't privy to the e-mails, discussions,
5 whatever.

6 But my thought now is to set this
7 aside, maybe you guys can talk about it at a
8 break or get back tomorrow and we can talk about
9 it then.

10 MS. BUGEL: So, Mr. Hearing Officer, I would
11 be happy to entertain that. Just off the cuff,
12 my concerns are twofold.

13 First of all, this is a document
14 prepared by Midwest Gen with their consultants.
15 Mr. Gnat testified that the consultants who have
16 prepared other parts of this document were
17 selected by Midwest Gen.

18 I am baffled that they could have an
19 objection to statements prepared by their
20 consultants for them, their agents with their
21 oversight, with KPRG's oversight.

22 Second, I'm honestly not prepared today
23 with further questions. So, I feel that I've
24 been taken by surprise, too. Maybe I can get

1 prepared overnight or maybe -- our team is
2 working on, you know, to prepare for the next
3 witnesses to come.

4 THE HEARING OFFICER: Okay. I'm not happy
5 with this at all, again. But I will take it
6 under 101.626. And that's it. I wish you guys
7 could work things out or communicate a little
8 bit beforehand. Thank you.

9 MS. BUGEL: Mr. Hearing Officer, I'm looking
10 at the time and how long we've been going and
11 I'm wondering if this is a good time for our
12 break.

13 THE HEARING OFFICER: All right. I don't
14 know how much time you have left, Ms. Bugel.
15 Maybe, again, I misheard. I thought you had a
16 little bit to go or halfway to go and we started
17 at 10:00 o'clock.

18 MS. BUGEL: I have about five or six pages of
19 questions left.

20 THE HEARING OFFICER: Looks like we'll just
21 wrap up the direct as adverse today and move on
22 for tomorrow.

23 MS. BUGEL: Okay.

24 THE HEARING OFFICER: All right. We're off

1 the record.

2 (WHEREUPON, a discussion was
3 held off the Record.)

4 THE HEARING OFFICER: We're back on the
5 record at approximately 3:05. We're in the
6 middle of direct. Ms. Bugel.

7 Before we go on, I still want to note
8 that Vanessa Horton and Essence Brown are still
9 here from the pollution control board.

10 MS. BUGEL: So returning to our next
11 document, this is another document where we have
12 questions for the witness. We're not making it
13 an exhibit. We have two copies for the witness
14 to refresh his recollection and a copy for
15 opposing counsel. It's really just very short
16 questions about this one.

17 BY MS. BUGEL:

18 **Q. So, Mr. Gnat, we've placed in front of**
19 **you document with a Bates No. 117229. Do you**
20 **have that in front of you?**

21 A. Yes, I do.

22 **Q. Are you familiar with this document?**

23 A. This is the Illinois CCR application
24 for Initial Construction Permit for the Waukegan

1 Generating Station dated January 28th, 2022.

2 **Q. And KPRG prepared this document on**
3 **behalf of Midwest Generation?**

4 A. Again, similar to the initial
5 construction permit applications, KPRG acted as
6 kind of the central hub. Various other
7 consultants provided input on various sections.
8 We developed various sections as well.

9 I was personally involved with
10 Section 9 of the construction permit
11 application, which is basically the same as the
12 Section 9 in the initial operating permit.

13 I was also involved in Section 8, which
14 is a groundwater modeling -- a three-dimensional
15 numerical groundwater modeling that was required
16 as part of support for assisting the engineers
17 to provide the engineering side of the house
18 with the information to help evaluate closure
19 alternatives.

20 **Q. This permit application is dated**
21 **January 28th, 2022; is that correct?**

22 A. Correct.

23 **Q. Do you know if this was submitted after**
24 **the operating permit application?**

1 A. Yes, it was.

2 Q. Do you know if the plan to close the
3 east pond with CCR remaining in place is
4 consistent with this permit application?

5 MS. GALE: Objection; foundation.

6 THE HEARING OFFICER: Jamye, could you read
7 the question back.

8 (WHEREUPON, said Record was
9 read as requested.)

10 THE HEARING OFFICER: Overruled. He can
11 answer, if he's able.

12 THE WITNESS: I wasn't involved in developing
13 that portion. However, I was involved in the
14 groundwater modeling in support of that. And
15 that was certainly one of the alternatives being
16 evaluated.

17 I was also present at the public
18 meeting presenting the groundwater aspects of
19 the modeling and so on. And that certainly was
20 one of the alternatives presented at the public
21 meeting as well.

22 (WHEREUPON, Exhibit No. 1332
23 was marked for identification.)

24

1 BY MS. BUGEL:

2 Q. Okay. We can set this aside. We are
3 placing in front of you what has been marked as
4 Exhibit 1332. Do you have this in front of you?

5 A. Yes, I do.

6 Q. And for the record, it begins with
7 Bates No. 125605. Are you familiar with this
8 document?

9 A. Yes, I am.

10 Q. Can you please explain for the record
11 what this is?

12 A. This is under the state CCR rule, the
13 application for initial operating permit for
14 ponds one north and one south for Will County
15 Generating Station dated March 31st, 2022.

16 Q. KPRG was involved with the preparation
17 of this document, correct?

18 A. Again, in a similar fashion as the
19 other ones we talked about, KPRG was kind of the
20 central hub bringing in information and reports,
21 evaluations from other consultants involved, as
22 well as doing several sections ourselves as
23 well.

24 I was involved with the Section 9, the

1 groundwater monitoring, all the
2 geology/hydrogeology aspects of this permit
3 application.

4 Q. I realize this is a lengthy document,
5 but does this appear to be a true and accurate
6 copy?

7 A. I believe so.

8 Q. And this operating permit application
9 pertains to both ponds one north and one south
10 at the Will County Generating Station, correct?

11 A. Yes, it does.

12 Q. And in this application, pond one north
13 is referred to as the number 1 and then an N,
14 right?

15 A. Yes.

16 Q. And in this application, pond one south
17 is referred to as the number 1 and then an S,
18 right?

19 A. Yes.

20 Q. This operating permit contains the
21 closure plans for both one north and one south,
22 correct?

23 A. Yes, it does.

24 Q. Can you please --

1 MS. GALE: Objection to the
2 mischaracterization. I believe it contains the
3 preliminary closure plan as is described in
4 Section 10?

5 MS. BUGEL: I'm happy to rephrase the
6 question.

7 BY MS. BUGEL:

8 Q. This operating permit contains the
9 preliminary closure plans for both ponds one
10 north and one south, correct?

11 A. Correct. That's the title of
12 Section 10, yes, Preliminary Closure Plan.

13 Q. Can you please turn to Bates
14 Page 125639.

15 A. Okay.

16 Q. Does Section 10.0 appear on this page?

17 A. Yes, it does.

18 Q. Does that heading appear Preliminary
19 Closure Plan?

20 A. Yes. 10.0, Preliminary Closure Plan.

21 Q. In the very first sentence, does this
22 indicate that both ponds one north and one south
23 will be closed with CCR remaining in place and
24 topped with a final cover system?

1 A. Correct. Yes, it does.

2 **Q. Do you know if that is still the**
3 **current plan to close ponds one north and one**
4 **south?**

5 MS. GALE: Objection; foundation.

6 THE HEARING OFFICER: If he knows, he can
7 answer. Overruled.

8 THE WITNESS: I do know that the final
9 decision -- there's a follow-up document to
10 these operating permits, which are the
11 construction permits, applications. And within
12 the context of the construction permit, I was
13 involved in groundwater modeling in support of
14 evaluations of various alternatives. And so
15 that was certainly one of the alternatives
16 that's being evaluated.

17 Is that going to be the final ultimate
18 decision? That I do not know.

19 BY MS. BUGEL:

20 **Q. Do you know if a construction permit**
21 **application for the ponds one north and one**
22 **south at Will County has been submitted to the**
23 **Illinois EPA?**

24 A. I know they're being prepared. I don't

1 know if it was submitted or when the date of
2 that submittal was. I know a public meeting is
3 coming up.

4 **Q. Can you turn to Bates Page 125651.**

5 A. Okay.

6 **Q. This page contains analytical results**
7 **from groundwater monitoring, correct?**

8 A. That is correct. Table 9-4.

9 **Q. And this contains results from**
10 **monitoring wells 13, 14 and 15, correct?**

11 A. Among other wells, yes, 13, 14 and 15
12 are on this table, in addition to upgradient
13 wells 1, 2, 3 and 4. And then additional down
14 gradient wells 7, 8 and 9.

15 **Q. Are you familiar with this page of the**
16 **permit application?**

17 A. Yes, I am.

18 **Q. And were you involved in the**
19 **preparation of this table for the permit**
20 **application?**

21 A. Yes, I was.

22 **Q. Do you know if data from wells 13, 14**
23 **and 15 is submitted to the Illinois EPA pursuant**
24 **to the compliance commitment agreement for Will**

1 **County?**

2 A. No. Wells 13, 14 and 15 were installed
3 directly as a result of the passage of the
4 Illinois EPA CCR rule, the state CCR rule.
5 Ponds one north, one south were not part of the
6 federal CCR rule.

7 And in order for us to maintain
8 compliance with the number of groundwater
9 monitoring requirements under the state rule, we
10 installed these wells. So, well past the start
11 of the CCA monitoring and certainly not part of
12 the CCA monitoring.

13 **Q. In addition to the table that we're**
14 **looking at, are there other groundwater**
15 **monitoring results provided as part of this**
16 **application?**

17 A. You know, I don't remember if -- I
18 believe that there might be an attachment
19 because some of these wells do cover an earlier
20 range. Well 9 is also part of, I believe, the
21 monitoring network for the ash ponds 2 south, 3
22 south, and several of these wells are part of
23 CCA.

24 So, some of that data might have been

1 provided in an appendix just as additional
2 background information to help get a flavor for
3 water quality, but certainly not in any specific
4 interpretations or data comparisons that would
5 be intended to meet the CCR rule itself.

6 **Q. Can you please turn to Page 125681.**

7 A. Okay.

8 **Q. Does this contain further analytical**
9 **results related to groundwater monitoring at the**
10 **Will County station?**

11 A. I believe what we have here is a sample
12 of ash that was collected. One of the
13 requirements of the permit, I believe, I don't
14 remember if it's the operating permit or the
15 construction permit or both, is ash chemistry.

16 And, specifically, we collected a
17 sample of ash from these impoundments. And so
18 this is actually an ash sample as part of
19 background information on the nature of ash
20 relative to the parameters that are used in
21 groundwater monitoring.

22 **Q. And your name appears on the cover**
23 **sheet of this document, correct?**

24 A. That is correct, yes.

1 **Q. Do you know if the fall preliminary**
2 **closure plans are also included as attachments**
3 **to this permit application?**

4 A. I would have to see what attachments
5 those are.

6 **Q. And just in order to orient you a**
7 **little bit, do you know if the preliminary**
8 **closure plan is included as Attachment 10 to the**
9 **permit application?**

10 A. I'm trying to get to the attachment.
11 Here is Attachment 10. The title page for
12 Attachment 10 Preliminary Closure Plan starts at
13 Bates Page 126011.

14 Yes, this does appear to be included
15 within this document stamped off by Josh
16 Davenport, who is a senior engineer, Illinois
17 certified engineer out of our Wisconsin office.

18 **Q. Is that out of KPRG's Wisconsin office?**

19 A. Yes.

20 MS. BUGEL: Complainants move for the
21 admission of Exhibit 1331 into the record.

22 THE HEARING OFFICER: Ms. Gale.

23 MS. GALE: Mr. Hearing Officer, we have the
24 same objection to this exhibit. And to clarify

1 our objection of relevancy, as we discussed with
2 complainants, our concern is that this is a
3 voluminous document and we've talked about maybe
4 10 pages and that if it gets admitted into
5 evidence and then a page that was undiscussed is
6 taken out of context and there's no witness here
7 to describe it.

8 THE HEARING OFFICER: Yeah, I agree. And I'm
9 willing to set this aside, as well as 1331, if
10 the parties can work it out and just submit the
11 excerpts that Mr. Gnat talked about.

12 This is voluminous. It hasn't been
13 talked about. I know, Ms. Bugel, I think you
14 said you can go page by page I think and discuss
15 it, but, you know --

16 MS. BUGEL: Mr. Hearing Officer, what we have
17 tried to do as quickly as possible is ask
18 questions to point in the direction of the
19 relevant parts of this document.

20 But what I haven't had time to do is
21 confer with my whole team and make sure that I'm
22 hitting everything that we believe is relevant.
23 I think we have. Mr. Gnat is on right now. I
24 can confer with my team, but I'm virtually at

1 the very end of my --

2 THE HEARING OFFICER: Like before, I thought
3 I requested from 1331, you know, I can set that
4 aside, as well as this. And I'm going to be
5 here tomorrow or later on, if you need more time
6 to confer, and then we'll talk further about
7 these two exhibits. But for right now, I'm
8 going to set 1332 aside and I'll wait on both
9 your decisions on what to do with them.

10 MS. BUGEL: Mr. Hearing Officer, I think you
11 might have admitted the last exhibit.

12 THE HEARING OFFICER: I know. I can reverse
13 my --

14 MS. BUGEL: Okay.

15 THE HEARING OFFICER: I'm just going to leave
16 it status quo and then we can go back and figure
17 that out.

18 MS. BUGEL: Okay. I want to make sure there
19 won't be an objection to Complainants recalling
20 Mr. Gnat after we've had time to confer.

21 MS. NIJMAN: That's a whole different thing.

22 MS. GALE: Well, this hasn't been discussed.

23 THE HEARING OFFICER: Let's go off the
24 record.

1 (WHEREUPON, a discussion was
2 held off the Record.)

3 THE HEARING OFFICER: Back on the record.

4 MS. BUGEL: Changing course.

5 BY MS. BUGEL:

6 Q. Mr. Gnat, in the last hearing, we
7 discussed -- and by last hearing, I mean, five
8 years ago -- we discussed an area at Joliet
9 where you conduct walkover inspections; do you
10 remember that?

11 A. Yes, I do.

12 MS. GALE: Objection to the extent she said
13 Joliet. I would object to that as vague.

14 MS. BUGEL: I'll rephrase the question.

15 BY MS. BUGEL:

16 Q. Mr. Gnat, at the last hearing five
17 years ago, you discussed conducting walkover
18 inspections at Joliet 29, correct?

19 A. Correct.

20 Q. And these walkover inspections at
21 Joliet 29 take place at the former ash burial
22 area on the northeast side of the Joliet 29
23 property, correct?

24 MS. GALE: Objection to the extent it

1 mischaracterizes the description.

2 THE HEARING OFFICER: Ms. Bugel rephrase.

3 MS. BUGEL: This is the exact terminology
4 that Mr. Gnat uses in his letter report on the
5 former ash burial area.

6 THE HEARING OFFICER: Ms. Gale.

7 MS. GALE: Can we see the report?

8 MS. BUGEL: I can pull it up electronically,
9 the letters about Mr. Gnat's walkover
10 inspection.

11 THE HEARING OFFICER: We're still on the
12 record. We can't keep going on and off.

13 MS. BUGEL: May I ask another question to
14 help establish.

15 THE HEARING OFFICER: Yes, you may.

16 BY MS. BUGEL:

17 Q. Mr. Gnat, are you familiar with the
18 terminology former ash burial area on the
19 northeast side of Joliet 29?

20 A. Yes, I am.

21 Q. Is that the terminology that you use in
22 your letters after you conduct a walkover
23 inspection of that area?

24 A. I don't remember if that's the exact

1 wording, if it's ash placement area, something
2 on that order.

3 My understanding for some background on
4 that is it's based on a figure from a Phase 2
5 that was performed by ENSR, and they had some
6 areas identified. I do not know what the source
7 of their identification of those areas or
8 whatnot, but that's the area that's being
9 referred to.

10 **Q. The area where you conduct a walkover**
11 **inspection is on the northeast side of the**
12 **Joliet 29 property, correct?**

13 A. Correct.

14 **Q. This walkover inspection is related to**
15 **compliance with a NPDES permit for Joliet 29,**
16 **correct?**

17 A. No. My understanding it's for their
18 stormwater inspection annual walkover.

19 **Q. And you do not conduct walkover**
20 **inspections at any other area at the Joliet 29**
21 **property, correct?**

22 A. Correct.

23 **Q. And part of your walkover inspection**
24 **includes walking the banks of the Des Plaines**

1 **River on the northeast side of the Joliet 29**
2 **property, correct?**

3 A. Correct. It starts with the banks of
4 the inlet that comes in off of the Des Plaines
5 River, and then also after the inlet and
6 upstream of that inlet along the Des Plaines
7 River bank, correct.

8 Q. And you do not walk the bank of the
9 Des Plaines River downstream of the inlet, is
10 that correct, at the Joliet 29 property?

11 A. That is correct. Along the inlet
12 itself.

13 Q. You do not conduct walkover inspections
14 at any other Midwest Gen plants besides Joliet
15 29, correct?

16 MS. GALE: Objection; compound. There's
17 three other plants.

18 THE HEARING OFFICER: Sustained.

19 BY MS. BUGEL:

20 Q. You do not conduct walkover inspections
21 at the Waukegan Generating Station, correct?

22 MS. GALE: Objection to vague; walkover. Are
23 we talking about a stormwater walkover?

24 THE HEARING OFFICER: Can you clarify,

1 Ms. Bugel, please.

2 MS. BUGEL: Yes. I will lay some foundation.

3 BY MS. BUGEL:

4 Q. Do you conduct walking inspections of
5 any area at the Waukegan plant for purposes of
6 CCR groundwater monitoring?

7 A. When I am at the Waukegan plant and
8 doing -- I don't do the sampling itself at this
9 point. I have more junior people doing the
10 sampling. But if I'm doing anything in support
11 of that, I'm in the vicinity of the impoundments
12 and certainly look around. Am I doing an
13 inspection that's specifically required under a
14 permit? No. I mean, there is no specific
15 requirement.

16 Q. I'm going to turn to discussion of
17 Powerton. Has KPRG taken any soil borings at
18 Powerton since October of 2017?

19 A. I know that we installed some
20 additional monitoring wells in support of the
21 state CCR program for the Metals Cleaning Basin.
22 So, those are borings that are then obviously
23 converted to monitoring wells and constructed
24 and completed as monitoring wells.

1 Other than that, perhaps collection of
2 some ash samples in support of any LEAF testing
3 or in support of the permit that might have
4 occurred. I'm trying to do it relative to pre
5 or post the date that you said there. Other
6 than that, I'm not sure I'm aware of any.

7 **Q. Okay. What monitoring wells did you**
8 **install at Powerton? And I think you said in**
9 **reference to the Metals Cleaning Basin.**

10 A. Wells 21 and 22.

11 **Q. And besides wells 21 and 22, has KPRG**
12 **taken any soil borings at Powerton since October**
13 **of 2017?**

14 A. Again, with that date, I know we
15 installed well 19. I don't know the date, was
16 that pre or post. Well 18 was prior to that
17 date. So, if anything, it might have been well
18 19. But, again, relative to that date, pre or
19 post, I'm not sure.

20 **Q. Aside from monitoring wells 19, 21 and**
21 **22, has KPRG taken any soil borings at Powerton**
22 **since October of 2017?**

23 A. Not soil borings. I know that there
24 was some -- I believe it was post the date

1 you're providing there in '17, some additional
2 sediment sampling from the service water basin
3 based on discussions and so on with Illinois
4 EPA. I don't know if there was any other
5 sampling that might have been done by
6 Mr. Davenport from our office in support of that
7 study.

8 **Q. Mr. Gnat, I'm asking just about soil**
9 **borings. I'm not asking about sediment**
10 **sampling.**

11 MS. GALE: I would just object to the
12 direction of the witness. He is trying to
13 answer her questions.

14 THE HEARING OFFICER: Yeah. I agree. I
15 think you got to let Mr. Gnat finish and then
16 you can ask your other question, if there is
17 one.

18 BY MS. BUGEL:

19 **Q. Mr. Gnat, do you understand if there's**
20 **a distinction between sediment sampling and soil**
21 **borings?**

22 A. Yes.

23 **Q. I'm going to limit my question to soil**
24 **borings.**

1 **Has KPRG taken any soil borings besides**
2 **in relation to the installation of monitoring**
3 **wells 19, 21 and 22 at Powerton since October**
4 **of 2017?**

5 MS. GALE: Object to asked and answered. He
6 just answered this prior question, I don't think
7 so, and then he went on to describe other
8 sampling done.

9 MS. BUGEL: And because of his answer where
10 he was merging sediment sampling with soil
11 borings --

12 THE HEARING OFFICER: I agree. It was
13 dovetailed.

14 Mr. Gnat, you can answer, if you're
15 able.

16 THE WITNESS: Not that I'm aware of.

17 BY MS. BUGEL:

18 **Q. I am limiting my question to CCR**
19 **material outside of ponds. So I just want to**
20 **make that clarification as I asked this**
21 **question.**

22 Do you know of any investigation to
23 identify the volume of CCR material outside of
24 ponds in any area at Powerton since October

1 of 2017?

2 A. Not that KPRG was involved with. I do
3 not know if any other contractors might have
4 been asked.

5 Q. And now since we've discussed alternate
6 source demonstrations at length today, I'm
7 setting those aside.

8 Aside from alternate source
9 demonstrations, do you know of any sampling of
10 CCR material that has been done at Powerton
11 since October of 2017?

12 A. I'm not understanding the distinction
13 previous your previous question and this one.
14 It sounded like the same question to me. I'm
15 sorry.

16 Q. The previous question was about
17 identifying the volume of CCR material. Now I'm
18 asking about sampling of CCR material.

19 A. Material in the ponds then -- outside
20 of ponds versus in the ponds this time?

21 Q. Oh, okay. I'm setting aside alternate
22 source demonstrations because I know there was
23 sampling for alternate source demonstrations.

24 Now I'm asking about CCR material

1 **generally, whether it's inside or outside a**
2 **pond.**

3 A. Not that KPRG was involved in, at least
4 not that I'm aware of.

5 Q. **And also setting aside alternate source**
6 **demonstrations since we've already talked about**
7 **those, do you know of any testing of leachate**
8 **from CCR material that has been done at Powerton**
9 **since October of 2017?**

10 A. Not that I'm aware of.

11 Q. **Have you ever walked the bank of the**
12 **Illinois River at Powerton looking for CCR**
13 **seeps?**

14 MS. GALE: Objection; foundation.

15 THE HEARING OFFICER: Ms. Bugel.

16 MS. BUGEL: I'll rephrase.

17 BY MS. BUGEL:

18 Q. **Mr. Gnat, do you ever walk the bank of**
19 **the Illinois River at Powerton?**

20 A. No. I haven't found the need to, and I
21 can give you the reason for that.

22 Q. **I'm going to move on because I don't**
23 **want to keep you on the stand longer than**
24 **necessary.**

1 **Has KPRG ever been involved in sampling**
2 **of shallow sediments in the Illinois River at**
3 **Powerton?**

4 A. No, we have not.

5 **Q. I just have a few more questions along**
6 **the same lines about Waukegan.**

7 **Do you know if any new monitoring wells**
8 **have been installed at Waukegan since 2017?**

9 A. I don't think so, no. I think those
10 were all installed pre-2017.

11 **Q. We talked about a Waukegan field**
12 **investigation earlier with those soil borings**
13 **and the grid patterns.**

14 **Setting aside that, do you know if any**
15 **other soil borings have been taken at Waukegan**
16 **since 2017?**

17 A. I'm not aware of anything by KPRG.
18 Perhaps another consultant or contractor might
19 have been contracted to do it, but I don't know.

20 **Q. And have you ever walked the shoreline**
21 **of Lake Michigan at the Waukegan station?**

22 A. Yes, I have.

23 **Q. Have you walked the shoreline of Lake**
24 **Michigan at the Waukegan station for the purpose**

1 **of looking for CCR seeps?**

2 A. Not for that specific purpose. But as
3 I walked that, if I saw something, I certainly
4 would have noted it.

5 **Q. Has KPRG ever investigated any shallow**
6 **sediments from Lake Michigan for evidence of CCR**
7 **contamination at Waukegan?**

8 A. No, we have not.

9 **Q. Now, I have the same line of questions**
10 **for you, a similar line of questions about Will**
11 **County.**

12 **Do you know if any new monitoring wells**
13 **have been installed at Will County since October**
14 **of 2017?**

15 A. Yes, I believe that wells 13, 14 and
16 15, down gradient of ponds one north, one south,
17 I believe were installed post-2017.

18 **Q. And for what purpose were those wells**
19 **installed?**

20 A. For meeting the compliance for ponds
21 one north and one south which fell under the
22 jurisdiction of the new Illinois EPA CCR rule
23 that became effective there in 2021.

24 **Q. Do you know when those were installed?**

1 A. Circa, I want to say February, March,
2 April 2021 time frame, somewhere in there.

3 Q. And aside from wells 13, 14 and 15, do
4 you know of any other monitoring wells that have
5 been installed at Will County since October
6 of 2017?

7 A. Not that I'm aware of.

8 Q. Just to be clear, this next question is
9 about areas outside of ponds.

10 Do you know if there has been any
11 investigation to identify the volume of CCR in
12 any area outside of the ponds at Will County
13 since October of 2017?

14 A. Not that KPRG has been involved with,
15 not that I'm aware of.

16 Q. And since we've discussed alternate
17 source demonstrations a little bit, I'm going to
18 accept that out of the following question.

19 Aside from any alternate source
20 demonstration, do you know of any sampling of
21 CCR material at Will County since October
22 of 2017?

23 A. Yes.

24 Q. Okay. What was that?

1 A. I believe there was ash sampling done
2 in support of the initial application permits
3 for possibly both ponds, two south, three south,
4 as well as one north and one south. I believe
5 there was ash sampling done.

6 **Q. And aside from ash sampling done in**
7 **support of permit applications, do you know of**
8 **any other sampling of CCR material at Will**
9 **County since October of 2017, and I'm also going**
10 **to set aside alternate source demonstrations?**

11 A. I wouldn't see a reason -- KPRG has,
12 but I wouldn't see a reason to. The plant's no
13 longer burning coal, not generating ash. Ash
14 has already been sampled and analyzed.

15 You've collected the same sample,
16 analyzing the same thing. You're not gaining
17 any additional information.

18 **Q. Aside from alternate source**
19 **demonstrations, do you know of any testing of**
20 **CCR material leachate that have been done at**
21 **Will County since October of 2017?**

22 A. No, I haven't. You know, kind of the
23 same answer. We've got leachate data. There's
24 ash no longer being generated. There's no

1 specific reason to keep generating leachate
2 data.

3 **Q. Have you walked the banks of the**
4 **Des Plaines River at Will County Station?**

5 A. Of the Des Plaines River -- the ash
6 ponds that are there along the Des Plaines
7 River, I don't walk it for any specific permit
8 reason like I did there for Joliet 29.

9 But when I am at the facility, I do
10 walk along where our perimeter walls are and
11 that's right where the embankment is to the
12 Des Plaines River. So, I have visually looked
13 at it and so on, yes.

14 **Q. Have you walked the embankment that you**
15 **reference looking for CCR seeps?**

16 A. If I would see something, I would
17 certainly make a note of it. I have not seen
18 any seeps in that area, no.

19 **Q. And you said embankment. I want to**
20 **understand.**

21 **When you say embankment, are you**
22 **referring to the bank of the Des Plaines River?**

23 A. Correct. So, at the plant where we
24 have our wells along the west side of the ponds,

1 which is the down gradient side, right there we
2 have a fence line. And then you've got a drop
3 off, a bank drop off to the Des Plaines River.

4 There isn't much area there. It's
5 right along the river, yeah. So, it's the bank
6 of the river.

7 **Q. Have you ever inspected any of the**
8 **shallow sediments from the Des Plaines River at**
9 **Will County for evidence of CCR contamination?**

10 A. Not KPRG, not that I'm aware of.

11 **Q. I have a few questions for you about**
12 **the term background.**

13 **Are you familiar with the term**
14 **background as it's used in the context of**
15 **groundwater monitoring?**

16 A. Yes, I am.

17 **Q. Do you have an understanding of what**
18 **the term background is in the context of**
19 **monitoring whether a pond may be leaking or**
20 **releasing?**

21 A. Yes, I do.

22 **Q. In that context, is knowing background**
23 **important?**

24 A. Yes, it is.

1 **Q. Is your definition of background in**
2 **that context of whether a pond may be leaking or**
3 **releasing, is your definition of background the**
4 **chemistry of the water immediately prior to**
5 **passing the boundary of that unit?**

6 MS. GALE: Objection; vague. She said that
7 unit. I mean, is she talking about in
8 generality?

9 THE HEARING OFFICER: Can you rephrase that,
10 Ms. Bugel. I know it's getting late in the day.

11 MS. BUGEL: That's okay.

12 BY MS. BUGEL:

13 **Q. In the context of whether a pond may be**
14 **leaking or releasing, is your definition of**
15 **background the chemistry of water immediately**
16 **prior to passing the boundary of the pond?**

17 A. I think that's a little -- let me
18 clarify two issues here.

19 You've got background of a well that
20 can be constructed in an area that is, you know,
21 certainly well away from the unit and providing
22 as clean water as possible as you can get in,
23 you know, 80-, 90-year old industrial
24 facilities. But sometimes you do have

1 constraints.

2 But regardless if I, at some point,
3 have to make an evaluation of the leakage of
4 that pond, there's also a background right there
5 at the pond, to know exactly what is the quality
6 of the water, not just background as unimpacted
7 as possible from any type of operations at an
8 industrial facility. It's really to evaluate
9 that pond.

10 You also need to understand, if
11 possible, the water chemistry, as what you just
12 said, of immediately prior to that water passing
13 under the pond. So, you know, two slightly
14 types of background. The one for the final
15 evaluation is the one closest to the pond
16 itself.

17 **Q. Can you please refer to your deposition**
18 **transcript. I'm looking at Page 3 of the**
19 **document, but Page 12 of the actual transcript.**

20 **Starting on Page 11, do you remember me**
21 **asking you this question:**

22 **Question. So, let's talk about the CCA**
23 **monitoring. What is your understanding of the**
24 **definition of background for that purpose?**

1 **Answer. My definition of background**
2 **for the CCA monitoring, which my understanding**
3 **is basically a program to determine to monitor**
4 **whether or not the ponds may be leaking or**
5 **releasing.**

6 **So, background for that, it's important**
7 **to know what is the chemistry of the water**
8 **immediately prior to passing the boundary of the**
9 **unit.**

10 MS. GALE: And I would only object as to
11 improper impeachment. Her original question was
12 not about the CCA monitoring.

13 THE HEARING OFFICER: I agree.

14 THE WITNESS: My answer is completely
15 consistent with what you asked. Because under
16 CCR, the CCR rule, which we've been talking both
17 CCA and CCR, there's a very specific definition
18 and you try and meet that definition of
19 background as best as you can at these old
20 industrial facilities.

21 But then if you do have an SSI and you
22 have to evaluate, is it the impoundment that's
23 causing this SSI? That background value, quite
24 honestly, by the definition of the rule has some

1 value but very little value of answering the
2 question, Is a pond leaking. I need to know as
3 much as I can close to the pond.

4 Under the CCA agreement, there is no
5 background definition that they have in the CCR
6 rule. And that's why I discussed these two
7 different things. The CCA rule, the way I have
8 it discussed here is exactly what I said. If I
9 have to look at the pond itself, this unit, I
10 need to know what the quality of water is
11 immediately upgradient to the pond, which is
12 exactly consistent with what I just told you.

13 My distinction was with the fact that
14 we're constantly crossing CCR rule versus CCA
15 monitoring, two totally different programs,
16 totally different programs. My answer was
17 consistent with my deposition.

18 BY MS. BUGEL:

19 **Q. Mr. Gnat, do you agree that it is**
20 **important to have a representative background?**

21 MS. GALE: Objection. Vague; foundation;
22 misstates.

23 THE HEARING OFFICER: Ms. Bugel.

24 MS. BUGEL: I'll withdraw the question.

1 THE HEARING OFFICER: Thank you.

2 (WHEREUPON, Exhibit No. 1333
3 was marked for identification.)

4 BY MS. BUGEL:

5 Q. Last exhibit, 1333. We are placing in
6 front of you what has been marked as
7 Exhibit 1333. And for the record, this begins
8 Bates No. 116241. Do you see that?

9 A. Yes, I do.

10 Q. Are you familiar with this document?

11 A. Yes, I am.

12 Q. It was prepared by KPRG?

13 A. Yes, it was.

14 Q. It was prepared for Midwest Generation?

15 A. Yes, it was.

16 Q. This is another alternate source
17 demonstration, correct?

18 A. That is correct, yes.

19 Q. Can you please explain further what
20 this document is.

21 A. Sure. If I remember correctly, earlier
22 today we had looked at the report prior to this
23 one where we identified during our detection
24 monitoring, this is under the federal CCR rule,

1 that we had a potential statistically
2 significant increase for chloride specifically
3 at down gradient monitoring well MW11.

4 The recommendation was to do an
5 alternate source demonstration to evaluate the
6 nature of that potential SSI exceedance. And so
7 this is the alternate source demonstration that
8 was completed in regards to the chloride in
9 MW11.

10 The conclusion was that the exceedance
11 may, in fact, be associated with a potential
12 release from, I believe, it was pond 2S as we
13 evaluated the data. And so we recommended,
14 therefore, to shift from detection monitoring to
15 assessment monitoring in accordance with the
16 requirements of the federal rule.

17 **Q. And this also has your signature on**
18 **Bates Page 116245?**

19 A. Yes, it does.

20 **Q. Can you please turn to Page 116244?**

21 A. Okay.

22 **Q. Bear with me while I get there. This**
23 **page has a heading Conclusion/Recommendations;**
24 **do you see that?**

1 A. Yes.

2 Q. Looking at the first sentence under
3 Conclusions/Recommendations, do you see where it
4 says, quote, based on the discussions provided
5 above, it is not believed that pond 3S is the
6 source of down gradient chloride impacts at
7 monitoring well MW11; however, the data relative
8 to the pond 2S does not allow for that
9 conclusion to be reached based on the following.

10 Do you see where it says that?

11 A. Yes, I do.

12 Q. Then it goes on to provide a couple of
13 bullet points?

14 A. Yes.

15 Q. And the site shifted to assessment
16 monitoring, correct?

17 A. Yes, it did.

18 Q. And the ASD could not rule out pond 2S
19 as the source of down gradient chloride impacts,
20 right?

21 A. That is correct, yes.

22 MS. BUGEL: Thank you. I have no further
23 questions for this witness.

24 THE HEARING OFFICER: Thank you, Ms. Bugel.

1 MS. BUGEL: Wait. I'm sorry, Mr. Hearing
2 Officer. My colleague and I are ready to
3 discuss questions about the lengthy applications
4 today. We actually don't need to wait until
5 after.

6 So right now I want to go back and just
7 move for Exhibit 1333 to be admitted into the
8 record.

9 THE HEARING OFFICER: Ms. Gale.

10 MS. GALE: No objection.

11 THE HEARING OFFICER: Thank you.

12 MR. WANNIER: Complainant's Exhibit 1333 is
13 admitted into evidence.

14 MS. BUGEL: And if my colleague and I can
15 have a moment to confer, then I think I can be
16 prepared with questions on the two long
17 applications that we had reserved.

18 THE HEARING OFFICER: We're off the record.

19 (WHEREUPON, a discussion was
20 held off the Record.)

21 THE HEARING OFFICER: Back on the record.
22 It's approximately 4:05. Mr. Russ is going to
23 ask Mr. Gnat some questions on direct as
24 adverse.

1 You may proceed, Mr. Russ.

2 MR. RUSS: Thank you.

3 DIRECT EXAMINATION (ADVERSE)

4 BY MR. RUSS:

5 Q. Hello, Mr. Gnat.

6 Can you look at Exhibit 1331 again. I
7 want to first try to establish how long it is.
8 The Bates number on the very first page is
9 110625, right?

10 A. Yes.

11 Q. And the Bates number on the very last
12 page is 111264, right?

13 A. Yes, it is.

14 Q. And on the pdf I'm looking at, that
15 makes it a 640-page document; does that sound
16 about right?

17 A. Sounds about right; didn't do the math.

18 Q. Could you flip to the table of
19 contents, which I believe begins on Bates
20 Page 110634.

21 A. Yes.

22 Q. And I believe you said earlier that
23 KPRG was responsible for being the hub compiling
24 the document, but also specifically for putting

1 **together Section 9?**

2 A. I was involved with Section 9. Other
3 engineers in our office were involved in various
4 other sections. And then there were other
5 engineering firms assigned to other, you know,
6 aspects of this as well.

7 **Q. Okay.**

8 A. And then Josh Davenport, our senior
9 engineer in my office, was kind of the
10 clearinghouse and hub, bringing everything
11 together and pulling the permit together itself.

12 **Q. Okay. Thanks.**

13 **So just looking at the table of**
14 **contents, do you remember which sections other**
15 **KPRG staff might have been responsible for?**

16 A. I'm sure I don't remember all of them.
17 I would imagine we were involved with the
18 history of construction, the type of CCR and
19 surface impoundment.

20 **Q. So that's Section 1?**

21 A. Yeah. Parts of Section 1. Then there
22 are parts of Section 1 that we weren't involved
23 with. The area capacity curve, spillway
24 diversion capacities and calculations,

1 surveillance maintenance repair construction
2 specifications, record of structural -- I do not
3 believe we were involved in any of those.

4 Section 2, we probably were involved
5 with that. I'm not sure on the location
6 standards. We may have been involved in part of
7 it. But, for example, seismic impact zones, we
8 do not have a structural engineer to do any
9 seismic-type evaluations.

10 Section 6, the slow protection
11 documentation. Again, that goes back, I
12 believe, to a structural engineering evaluation.
13 We were involved with the emergency action plan,
14 fugitive dust control plan. Obviously,
15 Section 9 there.

16 Section 10, or at least parts of
17 Section 10 and 11. I'm not sure about 12. We
18 probably did the summary on Section 13. So, 14
19 through 19 are certainly something that would be
20 provided to us to pull together. Again,
21 structural stability assessment, we do not have
22 a structural engineer on staff. So on and so
23 forth.

24 And then we probably had some

1 involvement on that closure priority
2 characterization. We talked about that. I knew
3 at least on the first two bullets, but I wasn't
4 involved in looking up on the website.

5 Q. Okay. Thank you.

6 And then at the bottom of that page
7 that you were just looking at, it starts to list
8 the tables and figures, right?

9 A. Correct.

10 Q. Those all, except for figures 11 and
11 12, all of the tables and all of the figures are
12 nine-dash something, correct?

13 A. Right. There's a Table 2, but then
14 everything else is tables and figures in support
15 of Section 9, or Attachment 9, which is the
16 groundwater aspects of it.

17 Q. And does Attachment 9 go with your
18 Section 9?

19 A. Yes.

20 Q. Scrolling down to page, flipping in
21 your case, I'm going to try to go where tables
22 and figures start. I don't think there's a page
23 number in the table of contents, but it might
24 actually be easier for you than for me. It

1 looks like the tables start at 110663; is that
2 right?

3 A. Yes, they do.

4 Q. And flipping to the end of the figures.

5 A. Figures or tables?

6 Q. Figures. Going right through the
7 tables and also the figures, that brings us to
8 Page 110689; is that right?

9 A. The last figure would be on page -- the
10 page after that is 110690, so I really can't
11 make out the number on the figure, but that
12 would be sequential, yes.

13 Q. So then the tables and figures appear
14 to take up from 663 to 689, 26 pages.

15 A. Yes.

16 Q. Okay. Thanks. Can you now flip to the
17 beginning of Attachment 9.

18 A. Okay.

19 Q. I believe that's on Bates Page 110854?

20 A. Yes, it is.

21 Q. Now, can you flip to the beginning of
22 Attachment 10 just to establish where Attachment
23 9 ends.

24 A. Yes.

1 Q. I believe that's on Bates Page 111161?

2 A. That is correct.

3 Q. So, subtracting, if I'm doing the math
4 in my head, and I'm not doing it very
5 successfully --

6 A. Plus or minus 300 pages.

7 Q. Yeah. Plus or minus 300 pages. Thank
8 you. Okay. So I guess what I'm getting at, of
9 this document, KPRG was responsible for
10 Section 9 of the text, bits and pieces of the
11 other sections of the text, 26 pages of tables
12 and figures, and over 300 pages in one
13 attachment.

14 That's the majority of the document,
15 which we could excerpt, but it seems to me to be
16 more reasonable to just take the exhibit as it
17 is rather than try to excerpt 350 pages of a
18 600-page document out of order.

19 We would have to include the front
20 matter, of course, so that's, like, another 10
21 pages of, you know, the title page and the
22 contents and all of that.

23 MS. NIJMAN: Is this argument now?

24 MR. RUSS: No. I'm moving to admit

1 Exhibit 1331 again, renewing the motion to admit
2 this document. And I think it's logistically
3 much more responsible to admit the document in
4 its entirety since we're going to be excerpting
5 the majority of it otherwise, if you see what I
6 mean.

7 MS. GALE: Mr. Hearing Officer, if I could
8 respond. His exercise of going through the
9 pages did not resolve the issue that I described
10 earlier, relevancy and potential surprise.

11 Mr. Gnat has fully admitted that he wrote
12 Attachment 9 and he was fully involved.

13 They haven't asked a single question
14 about that attachment. So we would continue to
15 object to the admission of this document, not
16 because it's authentic, not because he wasn't
17 involved, not because they used over 50 percent,
18 but because they haven't demonstrated how they
19 want to use this document.

20 And our concern is, which we've said
21 repeatedly, is surprise. And that this whole
22 document gets in and then it's used in some
23 manner that we cannot counter later.

24 THE HEARING OFFICER: Are you planning to ask

1 Mr. Gnat questions on 300 pages or whatever the
2 total was that Mr. Gnat --

3 MR. RUSS: So, I could. There's certainly
4 relevant information in most of the attachments,
5 certainly in all the tables and figures.

6 It seems like an inefficient use of our
7 time and resources. It seems unusual to me to
8 require demonstration of relevance for every
9 page in a document that's facially relevant.

10 Most of the documents in this matter
11 we've established relevance by looking at a few
12 of the key pages as being emblematic of the rest
13 of the content. I think this is a similar
14 situation.

15 Attachment 9 is all about groundwater
16 and geology and hydrology, which goes to the
17 characterization of the site, where the coal ash
18 is, where the groundwater is, how the
19 groundwater flows, all of that type of
20 information that would be relevant to a remedy.
21 I could go through page by page. I don't
22 believe that it's necessary.

23 THE HEARING OFFICER: Ms. Gale.

24 MS. GALE: We have never suggested they go

1 through each page by page. And the other
2 documents that we've had no objection to
3 admission, they've pointed out specific
4 paragraphs or specific sentences on one page of
5 the document. And that is because, you know, it
6 is one document with one writer.

7 In this instance, it is a collection of
8 documents by various writers. And if he wants
9 to ask certain questions about Attachment 9 to
10 Mr. Gnat, then we can see if the whole thing can
11 get in. But I've never suggested that we would
12 go page by page.

13 My suggestion is that this document is
14 huge written by multiple writers. Again, our
15 issue is what he talks about is how this is
16 relevant. That is our concern.

17 THE HEARING OFFICER: Mr. Russ.

18 MR. WANNIER: Two points. One, yeah, I'm
19 absolutely happy to go through page by page if
20 that's what we want to do.

21 THE HEARING OFFICER: Well, not page by page.
22 Specifically, I think Attachment 9, which I
23 haven't been to yet.

24 MR. RUSS: So the problem is Attachment 9 is

1 actually a series of Attachment 9-1, 9-2, and
2 I'm worried about getting another objection
3 about we only asked questions about 9-1.
4 There's multiple subsections of Attachment 9.

5 The tables and figures, I just don't
6 know what to anticipate in terms of an
7 objection. I don't know how much they're asking
8 us to go through.

9 The second point I want to make is the
10 only other way for us to establish authenticity
11 or relevance of the rest of the document is to
12 bring in all the other authors to try and figure
13 who wrote what section, find out who those
14 people are, get them all in.

15 I think there are a lot of documents in
16 this case presumably that were compiled by one
17 consultant that had multiple people working on
18 them either within the firm or from outside the
19 firm. This hasn't come up before. We are
20 feeling, you know, frustration and a lot of
21 surprise because we tried to talk about this in
22 the form of excerpts and that was rebuffed.

23 So, we brought the whole thing, we've
24 brought it all out. It was a logistical

1 nightmare. And here we are trying to do what
2 they thought they wanted us to do and it's not
3 working and it is very frustrating.

4 THE HEARING OFFICER: Ms. Gale.

5 MS. GALE: Mr. Hearing Officer, a few things.
6 We are entitled to know why they think this
7 document is relevant. And that is our issue
8 here.

9 Mr. Russ has just said there's a whole
10 bunch of information that they would find useful
11 for their analysis and for their conclusions.
12 And we have a right to understand why they find
13 that useful so we can rebut that information.

14 Now, I agree. We've had discussions
15 about this document and we were very clear to
16 them that we objected to the use in this -- we
17 actually had no idea why they were using this
18 document.

19 This document has an application
20 submitted pursuant to an entirely different
21 program that is not in the complaint. They
22 didn't make clear why they wanted this
23 information. But our issue, again, I'm
24 repeating myself, and they have yet to address

1 is, why do they want this information and how
2 are they going to use it which would give us an
3 opportunity to rebut what they may use it for.

4 THE HEARING OFFICER: Mr. Russ.

5 MR. RUSS: My understanding is that we have
6 raised many of the specific issues that we want
7 to talk about in this document with opposing
8 counsel. I also disagree with the idea that
9 we're obligated to establish how we're going to
10 use every page of the document before we
11 introduce it. So I find that objectionable as
12 well.

13 What we can do is ask questions
14 about -- I don't really see a path forward
15 except to ask questions about the tables, the
16 figures, the texts, the attachment, to
17 establish -- I mean, I don't really believe that
18 we're obligated to establish how we're going to
19 use every section or every page of the document,
20 but to establish relevance, happy to do it.

21 THE HEARING OFFICER: Ms. Gale.

22 MS. GALE: I don't understand what he was
23 proposing. But to establish relevance, we argue
24 that Mr. Gnat's testimony and the case law is

1 pretty clear that --

2 THE HEARING OFFICER: Again, I let 1331 in
3 under a relaxed standard, but 600 pages versus
4 what really was discussed, I just don't think
5 it's fair maybe to the Board or to Midwest just
6 to give this -- how many pages are both of them,
7 I don't know -- to sort through. And some of
8 them weren't even written by Mr. Gnat. So, I
9 don't know.

10 MS. GALE: One last thing. We did make it
11 clear that we objected to the relevancy of this
12 document. This is not a surprise to them. In
13 fact, it's on the thing that we filed with you
14 in May 3rd.

15 MR. RUSS: I think in response to what you
16 said, Mr. Hearing Officer, I do think we know
17 which part Mr. Gnat wrote. So we would move to
18 introduce the whole document. I know there
19 would be an objection and you would deny it.

20 We would then move to admit an excerpt
21 of the pieces that he wrote. That would still
22 be 300-something pages.

23 THE HEARING OFFICER: It's better than it is
24 now from my part. Okay. Ms. Gale.

1 MS. GALE: If they were to talk about it with
2 him, that's something we can work with.

3 THE HEARING OFFICER: But they're not going
4 to talk about each and every page.

5 MS. GALE: Agreed. I'm not suggesting and we
6 have never suggested each and every page. So I
7 just want to clarify that mischaracterization of
8 what we suggested.

9 MS. NIJMAN: If I can just add that I think
10 the law is quite clear that a witness can
11 testify. The testimony itself is not
12 irrelevant. They can ask the question. It's
13 whether the document comes in with all the extra
14 stuff.

15 THE HEARING OFFICER: I understand,
16 Ms. Nijman. Thank you. I think we did that
17 yesterday.

18 MS. WACHSPRESS: Mr. Hearing Officer, if I
19 may, in their opening statements, Respondents
20 made much of their compliance with the Illinois
21 and federal regulations. Now their objection to
22 this is on the basis of relevance on the
23 argument that because this has to do with the
24 845 regulatory scheme, it's irrelevant to the

1 question of the violations and the potential
2 remedy.

3 THE HEARING OFFICER: That's opening
4 statement. It's not evidence.

5 MS. WACHSPRESS: Thank you.

6 THE HEARING OFFICER: I think we're going to
7 have to ask some general questions on the
8 sections that you want in, but we're not going
9 to do it today. It's about 4:28 I think. Our
10 clock is a little slow. We can start tomorrow
11 with your questions.

12 To let this whole thing in is not
13 really fair to anybody, you know, with just the
14 minimal amount of questions you've asked so far.

15 MR. RUSS: That's fine.

16 THE HEARING OFFICER: Okay. Anybody have any
17 housekeeping matters other than to tomorrow at
18 9:00 a.m. I'm going to reserve my rulings on
19 1332, and I could revise my ruling on 1331.

20 You all have a good evening. Thank
21 you.

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(WHEREUPON, the proceedings
were concluded at 4:29.m.)
(WHEREUPON, which were all
proceedings had in
above-entitled cause on said
date and time.)

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4
5 JAMYE GIAMARUSTI, being first duly sworn,
6 on oath says that she is a court reporter doing
7 business in the City of Chicago; and that she
8 reported in shorthand the proceedings of said
9 hearing, and that the foregoing is a true and
10 correct transcript of her shorthand notes so
11 taken as aforesaid, and contains the proceedings
12 given at said hearing.

13
14
15 _____
16 Certified Shorthand Reporter
17
18
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24

<p style="text-align: center;">A</p> <p>a.m 1:17 191:18 ABB 30:14 32:15 ABEL 2:13 ability 53:1 able 23:3 50:6 97:4,10 103:5 110:6 113:22 119:24 122:20 132:17 142:11 160:15 above-entitled 1:11 192:5 absence 119:6 absolutely 185:19 accept 61:18 165:18 acceptable 137:23 accumulation 93:7 accuracy 124:17 accurate 23:24 79:4 98:14 125:16 144:5 acres 109:21 acronym 10:7 11:16,18 25:20 32:17 33:1 49:1 acronyms 27:15 acted 141:5 action 28:15 31:19 41:2,19 46:6 47:19 52:4 52:5 53:9,16 79:13 179:13 active 124:9 actual 20:7 32:19 51:12 67:19 99:18 135:6,8 170:19 add 59:6 190:9 added 64:5 78:18 addition 64:5 133:24 147:12 148:13</p>	<p>additional 52:13 63:20 92:16 101:10 147:13 149:1 157:20 159:1 166:17 address 124:3 187:24 admissible 135:2 admission 14:15 17:18 20:10 22:20 27:24 30:24 40:6 45:12,14 50:19 55:19 61:6,10 68:14 73:3,14 76:9,13 81:20 84:6,9 86:19 90:15 103:24 132:21 133:8 150:21 183:15 185:3 admit 136:17 182:24 183:1,3 189:20 admitted 4:2 5:2 17:22 20:15 23:1 28:3 31:4 40:10 45:19 50:23 57:22 61:24 68:20 73:20,24 76:18 81:24 84:16,20 86:23 90:18,23 104:4 120:15 133:2 137:3,13 151:4 152:11 176:7,13 183:11 admitting 77:3 adverse 3:3 8:2,5 9:11,18,24 77:14 139:21 176:24 177:3 afield 109:6 aforesaid 193:11 afternoon 77:21</p>	<p>78:18 aged 70:20 agents 138:20 ago 33:17 36:13 38:19 39:13 43:20 78:7,9 153:8,17 agree 44:14 52:22 57:9,12,13 109:12 124:21 133:21,22 135:12 136:5 151:8 159:14 160:12 171:13 172:19 187:14 agreeable 11:9 agreed 13:14 15:11 16:18 22:3,4 68:2 93:9 190:5 agreement 12:6 13:13 16:17 18:19 19:8 22:1 54:12 59:19 65:3,6 66:5 70:6 75:17,24 147:24 172:4 agreements 10:4 66:18 67:6 75:12 ahead 107:20 akin 105:3 106:9 allow 57:16 66:3 96:19 104:20 175:8 allowable 97:4 allowed 19:17 allowing 52:22 allows 51:24 52:3 alluded 90:19 altered 72:14 alternate 11:20 24:4,8,12,14,15 25:11,15,21 32:6 32:8 33:7 35:5</p>	<p>35:15 41:16 42:20 49:4 88:11,12 95:8 118:17 161:5,8 161:21,23 162:5 165:16,19 166:10,18 173:16 174:5,7 alternatives 141:19 142:15 142:20 146:14 146:15 amendable 138:1 America 58:19 60:21 118:6 amount 93:5 191:14 analyses 80:18 96:24 analysis 56:5 59:22 64:19 65:2 118:8,8 187:11 analytical 14:6 17:16 20:7 22:17 54:8,16 55:13 58:19 59:2,3 60:21 61:4 63:15 83:14 86:11 96:17 147:6 149:8 analyzed 32:15 117:15 166:14 analyzing 166:16 annual 13:4,7,18 14:7 16:6,9,23 16:23 17:2 18:23 19:2 21:15,18 22:6 28:14 31:18 35:13 41:1,18 46:5 47:18 79:12,19 155:18 anomalous 92:1</p>	<p>anomaly 92:7 answer 34:24 35:2 36:1 40:2 43:18 44:8,13 50:6 93:20 97:17,19 98:21 104:21 113:21 119:5 122:19 132:17 142:11 146:7 159:13 160:9,14 166:23 171:1,14 172:16 answered 45:1 49:23 104:13 160:5,6 answering 172:1 answers 33:22 anticipate 186:6 anybody 191:13 191:16 apart 99:10 apologize 78:8 101:15 appear 23:23 34:14 54:10,16 55:14 58:19 59:22 75:23 78:21 79:3 98:10,14 114:20 117:7,10 125:15 144:5 145:16,18 150:14 181:13 APPEARANCES 2:1 appeared 115:23 118:22 appearing 30:15 119:8 appears 26:5 29:20 30:1 42:24 48:5,9 53:18,24 61:2 63:11 79:22 80:2 98:18 112:17 149:22</p>
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