

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)
)
SIERRA CLUB,)
)
) Complainant,) PCB No-2019-078
) (Citizen Enforcement – Water)
)
v.)
)
ILLINIOS POWER GENERATING)
COMPANY, ILLINOIS POWER)
RESOURCES GENERATING, LLC,)
ELECTRIC ENERGY, INC., and VISTRA)
ENERGY CORPORATION,)
)
) Respondents.)

NOTICE OF ELECTRONIC FILING

To:

Brad Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601
brad.halloran@illinois.gov

Don Brown, Clerk of the Board
Illinois Pollution Control Board
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PLEASE TAKE NOTICE that today, I electronically filed with the Clerk of the Illinois Pollution Control Board: **COMPLAINANT'S PROPOSED DISCOVERY SCHEDULE**, a copy of which is served on you along with this notice.

Dated: November 1, 2019

/s/ Greg E. Wannier
Gregory E. Wannier
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Oakland, CA 94612
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Counsel for Sierra Club

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SIERRA CLUB,)	
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Complainant,)	PCB No-2019-078
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ILLINIOS POWER GENERATING)	
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ELECTRIC ENERGY, INC., and VISTRA)	
ENERGY CORPORATION,)	
)	
Respondents.)	

COMPLAINANT’S PROPOSED DISCOVERY SCHEDULE

Complainant Sierra Club submits for consideration a proposed schedule to govern discovery. In support of its proposal, Complainant states as follows:

1. By written order dated October 3, 2019, the Board directed the hearing officer and the parties “to proceed expeditiously with discovery and hearings on the alleged violations” and did so in recognition of Complainant’s concern over unnecessary delay. Complainant’s proposed discovery schedule would avoid further delay in the remediation of ongoing groundwater contamination.

2. Moreover, the Complainant’s proposed schedule is reasonable and provides ample time for the parties to engage in discovery given the nature of the claims at issue here. The Complaint presents straightforward claims of water pollution in violation of state law and itself presents evidence demonstrating that Respondents’ actions caused the unlawful pollution alleged—*i.e.*, Respondents’ own reporting of groundwater contamination and acknowledgement

that remediation is necessary.

3. As an example of a reasonable discovery timeline, Complainant includes as Attachment A the initial case timeline that Hearing Officer Halloran set in the enforcement case against Midwest Generation (PCB 13-15) (the “MWG groundwater case”). Here, Complainant has proposed a slightly shorter schedule to reflect the fact that the instant case involves only three sites (the MWG groundwater case involved four sites), reducing by about 25% the complexity and extent of the case.

4. While Complainant acknowledges that later developments in the MWG groundwater case extended the initial schedule, Complainant notes that there were unique circumstances in that case, having to do with individual counsel schedules and the size of the defense team, which resulted in delays on numerous occasions. Complainant has no reason to anticipate similar delays here; accordingly, the initial MWG groundwater case schedule is a more appropriate model than the amended schedule.

5. Complainant further notes that it of course intends to respond in a reasonable and accommodating manner should specific circumstances arise that might necessitate future extensions (as it did in the MWG groundwater case). But the mere possibility of future delay does not warrant the adoption of an elongated schedule now that unnecessarily delays the proceeding.

6. Complainant did discuss the schedule on multiple occasions, but was unable to reach agreement with Respondents on an appropriate schedule. This disagreement centered on Complainant’s concerns regarding Respondents’ continued efforts to delay the proceeding.

WHEREFORE, Complainant respectfully requests that the Board accept the following schedule:

1. Initial written interrogatories and document requests shall be issued by the parties on or before November 15, 2019;
2. Responses to initial written interrogatories and document requests shall be served on or before January 15, 2019, except that responses to requests to admit shall be answered in compliance with the Illinois Supreme Court Rules and the Illinois Code of Civil Procedure;
3. Depositions of lay or fact witnesses shall begin no earlier than February 10, 2020 and be completed on or before April 17, 2020, on which date fact discovery will be complete;
4. Complainant's written expert witness reports shall be served on or before June 1, 2020;
5. Respondents' written expert witness reports shall be served on or before July 10, 2020;
6. Complainant's written expert witness reply reports shall be served on or before August 3, 2020;
7. Depositions of expert witnesses shall begin no earlier than August 31, 2020 and be completed on or before October 2, 2020, on which date expert discovery shall be complete;
8. Dispositive motions shall be filed on or before December 4, 2020.

Respectfully submitted this Friday, November 1, 2019,

/s/ Greg E. Wannier
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Counsel for Sierra Club

Attachment A

RECEIVED
CLERK'S OFFICE

JUN 09 2014

ILLINOIS POLLUTION CONTROL BOARD
June 9, 2014

STATE OF ILLINOIS
Pollution Control Board

SIERRA CLUB, ENVIRONMENTAL LAW)	
AND POLICY CENTER, PRAIRIE RIVERS)	
NETWORK, and CITIZENS AGAINST)	
RUINING THE ENVIRONMENT,)	
)
Complainants,)	PCB 13-15
) (Citizen's Enforcement – Water)
)
v.)	
)
MIDWEST GENERATION, LLC.,)	
)
Respondent.)	

HEARING OFFICER ORDER

On May 12, 2014, the parties submitted their respective proposed discovery schedules. On May 14, 2014, a hearing officer order was issued setting June 16, 2014, as the date for the submission of initial requests for production, interrogatories and requests for admission. After reviewing both proposed discovery schedules, the remaining discovery schedule is as follows:

Deadline for production and responses to initial discovery requests is due on or before September 1, 2014.

Fact depositions begin on October 15, 2014.

Close of fact discovery on January 30, 2015.

Complainants' expert report due on March 2, 2015.

Respondent's expert report due on April 3, 2015.

Complainants' expert reply due on April 24, 2015.

Expert depositions begin on May 22, 2015.

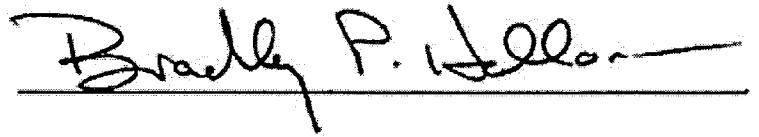
Close of expert discovery on July 24, 2015.

Deadline for dispositive motions due on or before September 18, 2015.

The parties or their legal representatives are directed to participate in a telephonic status conference with the hearing officer on June 12, 2014, at 11:30 a.m. The telephonic conference

must be initiated by the complainants, but each party is nonetheless responsible for its own appearance. At the conference, the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a solid horizontal line.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917
Brad.Halloran@illinois.gov

CERTIFICATE OF SERVICE

I, the undersigned, on oath state that:

I have served the attached **COMPLAINANT'S PROPOSED DISCOVERY SCHEDULE** by e-mail upon the following persons at the e-mail addresses identified below.

Brad Halloran, Hearing Officer
Illinois Pollution Control Board
brad.halloran@illinois.gov

P. Stephen Gidiere III
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My e-mail email address is bridget.lee@sierraclub.org.

The number of pages in the e-mail transmission is 9.

The e-mail transmission took place before 5:00pm Central Time on the date of November 1, 2019.

/s/ Bridget M. Lee
Bridget M. Lee