

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
)	
SIERRA CLUB, ENVIRONMENTAL)	
LAW AND POLICY CENTER,)	
PRAIRIE RIVERS NETWORK, and)	
CITIZENS AGAINST RUINING THE)	
ENVIRONMENT)	
)	PCB No-2013-015
Complainants,)	(Enforcement – Water)
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondents.)	

NOTICE OF FILING

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the attached **COMPLAINANTS' OPPOSITION TO ASSOCIATIONS' MOTION FOR LEAVE TO FILE REPLY TO COMPLAINANTS' OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF** copies of which are attached hereto and herewith served upon you.

Respectfully submitted,



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*Attorney for ELPC, Sierra Club and
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Dated: November 25, 2019

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
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SIERRA CLUB, ENVIRONMENTAL)	
LAW AND POLICY CENTER,)	
PRAIRIE RIVERS NETWORK, and)	
CITIZENS AGAINST RUINING THE)	
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)	(Enforcement – Water)
MIDWEST GENERATION, LLC,)	
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COMPLAINANTS’ OPPOSITION TO ASSOCIATIONS’ MOTION FOR LEAVE TO FILE REPLY TO COMPLAINANTS’ OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Pursuant to 35 Ill. Admin. Code 101.500(e) Complainants Sierra Club, Environmental Law and Policy Center, Prairie Rivers Network, and Citizens Against Ruining the Environment (“Complainants”) oppose Illinois Environmental Regulatory Group, the Illinois Coal Association, the Chemical Industry Council of Illinois, and the Illinois Chapter of the National Waste & Recycling Association (collectively, “the Associations”), Motion for Leave to File a reply in support of its motion for leave to file its Amicus Curiae brief (“Associations’ Motion for Leave to File”).

1. Under the Illinois Pollution Control Board’s (“Board”) procedural rules, a reply is not permitted except to “prevent material prejudice.” 35 Ill. Adm. Code 101.500(e). The Associations have failed to meet this standard because they have not demonstrated how they would be materially prejudiced if they were not allowed to reply.

2. The Associations argue that the Complainants mischaracterize the Associations’

arguments as facts outside the record or speculative statements. Complainants do not mischaracterize the arguments that the Associations made. This is illustrated by a statement from the Associations' own brief. First, the Associations argue that they did not raise facts not in evidence because they "have simply offered two uncontroversial factual points" Reply Br. at ¶ 5. The Associations do not explain how "simpl[e]" or "uncontroversial" facts are somehow not new evidence. The Associations then go on to reframe these facts as legal arguments in order to be consistent with the caselaw: "The Associations have simply raised arguments and legal conclusions" Reply Br. at ¶ 5 (citing *Holcomb State Bank v. Fed. Deposit Ins. Corp.*, 180 Ill. App. 3d 840, 847–48 (1989)) (drawing a distinction between facts and legal conclusions based on facts in the record). The Association may not characterize new facts as legal arguments or legal conclusions in order to avoid the prohibition on raising facts not in evidence.

3. The Associations also do not dispute that most of the arguments they raised were speculative, and speculative arguments are inadmissible. *Berke v. Manilow*, 63 N.E.3d 194, 200; 407 Ill. Dec. 270, 277 (Ill. App. 1st Dist. 2016); *North Shore Sanitary District v. EPA*, PCB No. 71-36, 1972 WL 5294, *3, *5-6 (1972).

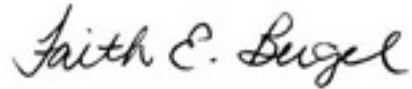
4. It is Complainants' position that additional motions and briefing regarding the Board's Interim Order of June 20, 2019 is not benefiting the Board or the parties to this case. The briefing on the Motion for Reconsideration has gone on for five months since the Board's Interim Order was issued in this case on June 20, 2019. The back and forth on the Amicus Curiae Motion has gone on for more than a month since that motion was filed on October 14, 2019. With that context, no party will be prejudiced by bringing an end to the motions and the briefing on the Board's Interim Order.

For the foregoing reasons, Complainants' request the Board deny the Associations'

Motion for Leave to File a reply in support of its motion for leave to file its Amicus Curiae brief.

Dated: November 25, 2019

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned, Jeffrey Hammons, an attorney, certifies that I have served electronically upon the Clerk and by email upon the individuals named on the attached Service List a true and correct copy of **COMPLAINANTS' OPPOSITION TO ASSOCIATIONS' MOTION FOR LEAVE TO FILE REPLY TO COMPLAINANTS' OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF** before 5 p.m. Central Time on November 25, 2019 to the email addresses of the parties on the attached Service List.

Respectfully submitted,

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