BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
ILLINOIS POWER GENERATING COMPANY, ILLINOIS POWER RESOURCES GENERATING, LLC, ELECTRIC ENERGY, INC. and VISTRA ENERGY CORP.	)	**PCB 19-078 (Enforcement – Water)**
	)	
Respondents.	)	

NOTICE OF FILING

To:

Don Brown, Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

Gregory E. Wannier
Bridget M. Lee
Megan Wachspress
2101 Webster St., Ste. 1300
Oakland, CA 94612
greg.wannier@sierraclub.org
bridget.lee@sierraclub.org
megan.wachspress@sierraclub.org

Faith E. Bugel
1004 Mohawk
Wilmette, IL 60091
fbugel@gmail.com

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board an **Agreed Motion for Entry of Discovery Agreements,** copies of which are hereby served upon you.

/s/ Ryan C. Granholm
Ryan C. Granholm

Dated: February 13, 2020

Daniel J. Deeb
Joshua R. More
Ryan C. Granholm
Schiff Hardin LLP
(312) 258-5500
233 South Wacker Drive, Ste. 7100
Chicago, IL 60606

Attorneys for Respondents

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	**PCB 19-078**
ILLINOIS POWER GENERATING COMPANY, ILLINOIS POWER RESOURCES GENERATING, LLC, ELECTRIC ENERGY, INC., and VISTRA ENERGY CORP.	)	**(Enforcement – Water)**
	)	
Respondents.	)	

Agreed Motion for Entry of Discovery Agreements

NOW COME Respondents Electric Energy, Inc.; Illinois Power Generating Company; Illinois Power Resources Generating, LLC; and Vistra Energy Corp. (collectively, "Respondents") by their attorneys, Schiff Hardin LLP, and Complainant Sierra Club ("Complainant") (collectively, the "Parties") and move the Hearing Officer, pursuant to 35 Ill. Admin. Code 101.500 & 101.502(a), for entry of the attached Agreement Regarding Preservation and Production of Electronically Stored Information and Documents; Stipulated Protective Order; and Agreed Order Regarding the Scope of Expert Discovery. In support of their motion the Parties state as follows:

1. On November 19, 2019, the Hearing Officer issued an initial discovery schedule in this matter. Pursuant to that discovery schedule, the Parties have issued their initial written discovery requests.

2. On January 15, 2020, the Parties informed the Hearing Officer that they intended to file a joint submission regarding discovery agreements.

3. To facilitate the exchange of discovery materials in this matter and to reduce the potential for future discovery disputes, the Parties have agreed to the terms of the following discovery agreements: Agreement Regarding Preservation and Production of Electronically Stored Information and Documents (attached as Exhibit A); Stipulated Protective Order (attached as Exhibit B); and Agreed Order Regarding the Scope of Expert Discovery (attached as Exhibit C) (collectively, the "Discovery Agreements").

WHERFORE, the Parties respectfully request that the Hearing Officer enter the attached Discovery Agreements.

Dated: February 13, 2020

/s/ *Greg Wannier*
Greg Wannier
Sierra Club Environmental Law Program
2101 Webster Street
Suite 1300
Oakland, CA 94612

Faith Bugel
1004 Mohawk
Wilmette, IL 60091

Bridget Lee
Sierra Club Environmental Law Program
50 F Street NW
Floor 8
Washington, D.C. 20001

Attorneys for Complainant

/s/ *Daniel J. Deeb*
Daniel J. Deeb
Joshua R. More
Ryan C. Granholm
Schiff Hardin LLP
(312) 258-5500
233 South Wacker Drive, Ste. 7100
Chicago, IL 60606

P. Stephen Gidiere III
Balch & Bingham LLP
1901 Sixth Avenue North, Ste, 1500
Birmingham, AL 35203-4642

Michael Raiff
Gibson, Dunn & Crutcher LLP
2100 McKinney Avenue, Ste. 1100
Dallas, TX 75201-6912

Attorneys for Respondents

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 13th day of February, 2020 I have served electronically the attached **Agreed Motion for Entry of Discovery Agreements**, upon the following persons by e-mail at the email addresses indicated below:

Don Brown, Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
don.brown@illinois.gov

Faith E. Bugel
1004 Mohawk
Wilmette, IL 60091
fbugel@gmail.com

Gregory E. Wannier
Bridget M. Lee
Megan Wachspress
2101 Webster St., Ste. 1300
Oakland, CA 94612
greg.wannier@sierraclub.org
bridget.lee@sierraclub.org
megan.wachspress@sierraclub.org

I further certify that my email address is rgranholm@schiffhardin.com; the number of pages in the email transmission is 41; and the email transmission took place today before 5:00 p.m.

/s/ *Ryan C. Granholm*
Ryan C. Granholm

Daniel J. Deeb
Joshua R. More
Ryan C. Granholm
Schiff Hardin LLP
(312) 258-5500
233 South Wacker Drive, Ste. 7100
Chicago, IL 60606

Attorneys for Respondents

EXHIBIT A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
ILLINOIS POWER GENERATING COMPANY, ILLINOIS POWER RESOURCES GENERATING, LLC, ELECTRIC ENERGY, INC., and VISTRA ENERGY CORPORATION,	)	**PCB 19-078 (Enforcement – Water)**
	)	
Respondents.	)	

AGREEMENT REGARDING PRESERVATION AND PRODUCTION OF ELECTRONICALLY STORED INFORMATION AND DOCUMENTS

WHEREAS, the Complainant Sierra Club and Respondents Illinois Power Generating Company, Illinois Power Resources Generating, LLC, Electric Energy, Inc., and Vistra Energy Corporation, (collectively, the "Parties") mutually seek to reduce the time, expense and other burdens associated with discovery of certain electronically stored information ("ESI"), documents and privileged materials, as described further below, and to better define the scope of their obligations with respect to preserving such information and materials;

WHEREAS, the Parties therefore are entering into this Agreement Regarding Preservation And Production of Electronically Stored Information and Documents ("Order") with the request that the Hearing Officer enter it as an Order;

NOW THEREFORE, it is hereby STIPULATED and ORDERED:

A. **Definitions.**

1. The term "Counsel" means outside counsel for the Parties and employees who work as in-house counsel for a Party or its parents, affiliates, or subsidiaries.

2. The term "Draft," when used to describe either an electronic or hard copy document, means a preliminary version of a document that has been shared by the author with another person (by email, print, or otherwise) or that the author no longer intends to finalize or to share with another person.

3. The term "Parties" means the parties to this litigation, including their employees and agents.

4. The term "Policy" means a regular practice at an entity that managers know about and expect to be carried out.

B. **Scope.**

1. This Order shall govern the production of documents and ESI in the above-captioned matter.

C. **ESI.**

1. Preservation Not Required for ESI That Is Not Reasonably Accessible.

a. Except as provided in subparagraph b. below, the Parties need not preserve the following categories of ESI for this litigation:

i. Data stored in a backup system for the purpose of system recovery or information restoration, including but not limited to, disaster recovery backup tapes, continuity of operations systems, and data or system mirrors or shadows, if such data are routinely deleted or written over in accordance with an established routine system maintenance practice;

ii. Voicemail messages;

iii. Text messages, such as cell phone to cell phone SMS messages;

iv. Instant messages;

v. Electronic mail sent to or from personal mobile devices, such as wearable technology devices, smartphones, tablets, or laptops, provided that a copy of such email is routinely saved elsewhere;

vi. Other electronic data stored on a personal mobile device, such as calendar or contact data or notes, provided that a copy of such information is routinely saved elsewhere;

vii. Logs of calls made from cellular phones;

viii. Deleted computer files, whether fragmented or whole (but nothing in this Order authorizes the intentional deletion of ESI after the duty arose to preserve such ESI);

ix. Data stored in random access memory ("RAM"), cache memory, or in temporary or cache files, including internet history, web browser cache and cookie files, wherever located;

x. Data stored on photocopiers, scanners, and fax machines;

xi. Server, system, or network logs;

xii. Electronic data temporarily stored by scientific equipment or attached devices, provided that the data that is ordinarily preserved as part of a laboratory report is, in fact, preserved in its ordinary location and form; and

xiii. Data stored on legacy systems that were no longer in use five years before the complaint was filed.

b. Nothing in this Order prevents any Party from asserting that any other categories of ESI or other requested discovery are not reasonably accessible.

2. Use of Documents During Litigation. Notwithstanding any other provision of this Order, the Parties may take any of the following actions with respect to documents and ESI:

a. The Parties may continue to work, in the ordinary course of business, on documents that do not meet the definition of Draft in Part A. The Parties shall preserve Draft documents for discovery.

b. The Parties may delete, overwrite, or wipe ESI from devices that are being replaced, upgraded, reimaged, disposed of, or returned at the end of lease, provided that the potentially relevant ESI is first copied to a new location in a manner that preserves the data, including metadata, that will be produced pursuant this Order.

c. The Parties may copy data from one device to another, or from one location to another, provided that a copy of the ESI remains accessible in the first location, or the new copy is created in a manner that preserves the data, including metadata, that will be produced pursuant to this Order.

d. The Parties may load loose ESI into an enterprise content management system, provided that: (1) the enterprise content management system captures all of the metadata fields that must be produced under this Order and does not convert the format of the ESI in a way that makes it significantly less accessible; or (2) the Parties maintain a copy of the ESI in its native format and make their production from this native file collection.

e. The Parties may upgrade, patch, reprogram, or customize software that stores relevant data, even if such actions alter the way data is maintained, stored, or viewed.

f. The Parties may take any of the following actions with respect to data in a database, provided that it is part of the routine use of the database: input additional data; access data; update the software running the database; append new data; and modify existing data.

g. The Parties may edit or take down any data on a publicly accessible internet site, provided that a copy of any data which the Party has a legal duty to preserve is made before the change and is preserved for discovery.

h. The Parties may add data to an intranet or private website. The Parties may edit or take down any data on an intranet or private website, provided that a copy of any data which the Party has a duty to preserve is made before the change and is preserved for discovery.

i. The Parties may compress, decompress, encrypt, or decrypt data subject to preservation in this matter, provided that any data losses during such processes do not result in loss of any metadata required to be produced under this Order, or significantly degrade the quality of the data.

j. The Parties may update social media sites, but may not take affirmative steps to delete potentially relevant data.

3. Preservation Does Not Affect Discoverability, Admissibility or Claims of Privilege. By preserving documents or ESI for the purpose of this litigation, the Parties are not conceding that such material is discoverable or admissible. Nor are they waiving any claim of privilege, work product, or any other protections afforded by the Illinois Code of Civil Procedure, Illinois Supreme Court Rules, and the Illinois Administrative Code.

4. Other Preservation Obligations Not Affected. Nothing in this Order shall affect any other obligations of the Parties to preserve documents or information for other purposes, such as pursuant to court order, administrative order, statute, or in response to other anticipated litigation.

5. Procedures for Production: The following procedures apply to producing documents or ESI.

a. Paper documents: Documents printed on paper that is 11 x 17 inches or smaller shall be scanned and produced by thumb drive, CD-ROM, DVD-ROM, or external hard drive, or by uploading them to a Sharefile or FTP site. Documents printed on larger paper may, at the producing Party's discretion, be produced on paper. Documents produced on paper must be produced as they are kept in the ordinary course of business.

b. Paper documents that are produced electronically shall be scanned as 300 dpi single-page black and white TIFF files, using CCITT Group IV compression. Each page shall be branded with a unique Bates number, which shall not be an overlay of the image. The images shall be accompanied by: (1) an OpticonTM and IPRO® "cross reference file" which associates each Bates number with its corresponding single-page TIFF image file; and (2) a "text load file" containing Concordance® delimited text that will populate fields in a searchable flat database environment, containing one line for each document and each of the applicable fields as described in Appendix A.

c. Word, WordPerfect, and PDF documents will be converted to single-page TIFF images and produced consistent with the specifications in subparagraph b., above, except that extracted text must be produced as separate text files and not as fields within the text load file. The full path to each text file should be included in the text load file.

d. If the document contains comments or tracked changes that are not part of the ordinary text, the TIFF images shall be generated based on how the document appears when first opened using view settings contained in the file.

e. Microsoft PowerPoint files will be processed and in native file format in a separate folder on the production media. The text load file shall contain a field that identifies the file path of the native file corresponding to each document, and the Parties shall provide a placeholder TIFF image that shows the name of the native file and has a Bates number;

f. E-mail and attachments will be produced according to the specifications in subparagraph b., above. If the producing Party redacts any part of the e-mail before producing it, OCR text may be provided in place of extracted text. E-mail attachments shall be processed as though they were separate documents, and the text load file shall include a field in which the producing Party shall identify, for each e-mail, the Bates range of any attachment;

g. Microsoft Excel files and other spreadsheets will be produced in native file format in a separate folder on the production media. The text load file shall contain a field that identifies the file path of the native file corresponding to each document, and the Parties shall provide a placeholder TIFF image that shows the name of the native file and has a Bates number;

h. Digital photographs will be produced as full color JPEG files at their original resolution or as color PDFs with Bates numbers branded onto them.

i. Embedded files shall be treated as though they were separate files, except that the text load file shall include a field in which the producing Party shall identify, for each document containing an embedded file, the Bates range of any such embedded file. This Bates range may be identified in the same field as the Bates range of an e-mail attachment.

j. Before any Party produces any ESI other than the ESI described in Paragraphs C.5(a)-(i), including data from databases, CAD drawings, GIS data, videos, etc., the Parties will meet and confer to determine a reasonably useable form for the production.

k. Except as expressly stated otherwise above, TIFF images produced in this matter may be black-and-white images (no shades of gray). Items containing color, such as maps and color pictures will be produced in color. They may be produced as JPEG images or as color PDFs with the addition of a white bar containing the Bates stamp number for the document.

l. Except as stated above, a Party need not produce the same electronically stored information in more than one form.

6. Deduplication

a. Global deduplication of e-mail. The Parties shall identify exact duplicates of e-mails based on one of the following methods, and shall produce only one copy from each set of exact duplicates:

i. comparing the MessageID or UNID metadata fields; or

ii. calculating and comparing the MD5 or SHA-1 hash value based on addresses, subject line, body, and attachment names.

b. The Parties hereby stipulate and agree that there shall be in this matter a rebuttable presumption of evidence that an e-mail correctly addressed to a recipient was actually delivered to that recipient's e-mail inbox.

c. Deduplication of ESI other than e-mail. The Parties shall identify exact duplicates of electronic files other than e-mail and attachments (for example, documents collected from a document management system) based on MD5 or SHA-1 hash values and shall, to the extent practicable, produce only one copy for each custodian that has possession or custody of the file. ESI that is not an exact duplicate may not be removed from the production,

absent documents that are not responsive or within the scope of discovery, or documents that are privileged.

7. Meet and Confer Requirements. Before filing any motion with the Board or the Hearing Officer regarding electronic discovery or evidence, the Parties will meet and confer in a good faith attempt to resolve such disputes. If the dispute is not resolved through the meet and confer process, the Party objecting to the requested discovery may thereafter move the Board or the Hearing Officer for appropriate relief with respect to the disputed discovery.

8. Third-Party Data. The Parties will meet and confer before serving any subpoenas in this matter on commercial e-mail providers, such as Google™ or Yahoo™, or any social media companies, such as Facebook™ or Twitter™.

D. **Limitations on Discovery.**

1. No Discovery of Material Not Required To Be Preserved. The Parties shall not seek discovery of items that need not be preserved pursuant to paragraph C.1 above. If any discovery request is susceptible of a construction that calls for the production of items that need not be preserved pursuant to Paragraph C.1, such items need not be searched for, produced, or identified on a privilege log.

2. Privileged Materials Located in the Files or Offices of Counsel. The Parties agree that, in response to discovery requests, the Parties need not search for and produce, nor create a privilege log for, any privileged or work product material, including ESI, that is located in the files or offices of Counsel.

E. **Protection of Privileges**.

1. The prosecution and defense of this action will require each Party to review and to disclose large quantities of information and documents, including ESI, through the discovery process.

2. Each Party is entitled to decide the appropriate degree of care to exercise in reviewing materials for privilege, taking into account the volume and sensitivity of the materials, the demands of the litigation, and the resources that the Party can make available. Disclosure of privileged or protected information or documents in discovery conducted in this litigation will not constitute or be deemed a waiver or forfeiture—in this or any other proceeding—of any claims of attorney-client privilege or work product protection that the disclosing Party would otherwise be entitled to assert with respect to the information or documents and their subject matter.

3. Because expedited or truncated privilege review is likely necessary for the just, speedy, and inexpensive resolution of this matter, the disclosure of privileged or protected information or documents in discovery conducted in this litigation will be deemed unintentional and inadvertent. Such disclosure will not constitute a waiver of the disclosing Party's right to claim any privilege or protection. The Parties shall not argue, in this forum or any other, that any privileges were waived as a result of disclosures in this litigation.

4. If a Party determines that it has produced a document upon which it wishes to make a claim of privilege, the producing Party shall, within 14 days of making such determination, give all counsel of record notice of the claim of privilege. The notice shall identify each such document and the date it was produced. If the producing Party claims that only a portion of a document is privileged, the producing Party shall provide, along with the

notice of the claim of privilege, a new copy of the document with the allegedly privileged portions redacted. Any Party that complies with this paragraph will be deemed to have taken reasonable steps to rectify disclosures of privileged or protected information or materials.

5. If a Party identifies a document that appears on its face or in light of facts known to the Party to be subject to another Party's claim of privilege, the Party identifying the potential claim of privilege is under a good-faith obligation to notify the Party holding the potential claim of privilege within five business days of identification. Such notification shall not waive the identifying Party's ability to subsequently challenge any assertion of privilege with respect to the identified document pursuant to Paragraph E.7. If the Party holding the potential claim of privilege wishes to assert a claim of privilege, it shall provide notice in accordance with Paragraph E.4 above within five business days of receiving notice from the identifying Party.

6. Upon receiving notice of a claim of privilege on a produced document, the receiving Party must promptly sequester the specified information and any copies it has and may not use or disclose the information until the claim is resolved. Copies of privileged documents or information that have been stored on electronic media that is not reasonably accessible, such disaster recovery backup media, are adequately sequestered as long as they are not restored; if such data is restored, the receiving Party must take steps to re-sequester the restored information. If the receiving Party disclosed the information before being notified, it must take reasonable steps to prevent further use of such information until the claim is resolved.

7. If a Party wishes to dispute a claim of privilege asserted under this Order, such Party shall, within 14 days and following a reasonable and good faith effort to reach agreement with opposing counsel, move the Board or the Hearing Officer for an order compelling disclosure of the information. To the extent a Party challenges a claim of privilege made

pursuant to Paragraphs E.4-5 of this Order, the Party must not assert, as a ground for compelling disclosure, the fact or circumstances of the Producing Party's disclosure of the information. Pending resolution of the motion, the Parties shall not use the challenged information for any other purpose and shall not disclose it to any person other than those required by law to be served with a copy of the sealed motion.

8. The Parties may stipulate to extend the time periods specified in Paragraphs E.4, 5 and 7 above.

9. Nothing in this Order overrides any attorney's ethical responsibilities to refrain from examining or disclosing materials that the attorney knows or reasonably should know to be privileged and to inform the disclosing Party that such materials have been produced.

10. The Party wishing to assert a claim of privilege retains the burden, upon challenge pursuant to Paragraph E.7, of establishing the applicability of the claimed privilege.

11. This Order does not preclude a Party from voluntarily waiving any claims of privilege.

F. **Preparation of Privilege Log.**

1. The Parties acknowledge that the prosecution and defense of this action will require each Party to review and to disclose large quantities of information and documents, including ESI, through the discovery process. Depending on the number of documents withheld as privileged by each Party, preparation of a document-by-document privilege log could be overly burdensome and not proportional to the needs of the case. Accordingly, the Parties agree that production of a categorical privilege log, which describes the nature of the documents or information not produced or disclosed in a manner that will enable the other Party to assess the claim, will satisfy the requirement to provide a log of privileged materials under this Order.

2. The obligation to provide any log of privileged or work product materials presumptively shall not apply to:

a. Communications exclusively between a Party and its Counsel;

b. Work product created by Counsel, or by an agent of Counsel, after January 1, 2010;

c. Internal communications within a law firm or the legal department or board legal committee of a corporation or another organization; or

d. Information not required to be disclosed pursuant to any other agreement between the Parties.

3. Embedded e-mails. An e-mail shall be treated as a single document regardless of the number of embedded emails contained within the message body. However, if an e-mail contains both privileged and non-privileged communications, the non-privileged communications must be produced. This requirement should be satisfied by producing the original of the embedded, non-privileged e-mail, but if the original is not available, it may be satisfied by producing a redacted version of the privileged e-mail.

G. **Costs of Document Production.** Unless the Board orders otherwise for good cause shown, each Party shall bear the costs of producing its own documents.

H. **Effect of Order.** The Parties' agreement to this Order is without prejudice to the right of any Party to seek an order from the Board to rescind or amend this Order for good cause shown. Nothing in this Order shall abridge the rights of any person to seek judicial review or to pursue other appropriate judicial action with respect to any discovery ruling made by the Board in this matter.

I. **Integration/Appendices.** The following documents are incorporated herein by reference:

"Appendix A" is a table describing the fields to be included in the databases produced by each Party.

SO ORDERED this _____ day of _____, 2020

_____

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

Appendix A

Name of Field	Type of field	Contents				
		E-mail	**Word Processing or PDFs**	**Spreadsheets and Power Point Presentations**	**Digital Photos**	**Paper**
Bates Beg	Text	Bates number for the TIFF image of the first page	Bates number for the TIFF image of the first page	Bates number for the TIFF image of the first page, or, if spreadsheets are not TIFFed, the Bates number of the placeholder page	Bates number branded onto a JPEG file that has the same resolution as the native image file.	Bates number for the TIFF image of the first page
Bates End	Text	Bates number for the TIFF image of the last page	Bates number for the TIFF image of the last page	Bates number for the TIFF image of the last page or, if spreadsheets are not TIFFed, the Bates number of the placeholder page	Bates number branded onto the native image file	Bates number for the TIFF image of the last page
Attachment Range	Text	Bates number of the first page of the parent document and the last page of the last attachment.	"Attachments" include all embedded files and all documents (including e-mails) to which this file was attached or in which it was embedded. Bates number of the first page of the parent document and the last page of the last attachment is shown.	"Attachments" include all embedded files and all documents (including e-mails) to which this file was attached or in which it was embedded. Bates number of the first page of parent document and the last page of the last attachment is shown.	"Attachments" include all embedded files and all documents (including e-mails) to which this file was attached or in which it was embedded. Bates number of the first page of the parent document and the last page of the last attachment is shown.	"Attachments" include all document that were physically attached by clips, staples, or binding. Bates number of the first page of the parent document and the last page of the last attachment is shown.
Custodian	Text	The name of the person who had primary control over the location from which the document was collected.	The name of the person who had primary control over the location from which the document was collected	The name of the person who had primary control over the location from which the document was collected	The name of the person who had primary control over the location from which the document was collected	The name of the person maintaining the file from which the paper was obtained

Name of Field	Type of field	Contents				
		E-mail	Word Processing or PDFs	Spreadsheets and Power Point Presentations	Digital Photos	Paper
Sender Combined	Paragraph	"From" field	<blank>	<blank>	<blank>	<blank>
Addressee Combined	Paragraph	"To" field	<blank>	<blank>	<blank>	<blank>
CC Combined	Paragraph	"CC" field	<blank>	<blank>	<blank>	<blank>
BCC Combined	Paragraph	"BCC" field	<blank>	<blank>	<blank>	<blank>
Email Subject	Paragraph	"Subject" field	<blank>	<blank>	<blank>	<blank>
Email Sent Date	Date	The date and time the message was sent	<blank>	<blank>	<blank>	<blank>
Date Created	Date	<blank>	Date that a file was created	Date that a file was created	Date that a file was created	<blank>
Message ID	Text	For e-mails in Microsoft Outlook, the "Message ID" field; For e-mail stored in Lotus Notes, the UNID field	<blank>	<blank>	<blank>	<blank>
MD5 Hash	Paragraph	The MD5 hash value calculated based on addresses, subject line, body, and attachment names.	The MD5 hash value calculated when the file was collected (or, alternatively, when it was processed into the review database)	The MD5 hash value calculated when the file was collected (or, alternatively, when it was processed into the review database)	The MD5 hash value calculated when the file was collected (or, alternatively, when it was processed into the review database)	<blank>
File Name	Paragraph	<blank>	The name of the file	The name of the file	The name of the file	<blank>
Directory Path	Paragraph	<blank>	The name of the folder from which the file was obtained, including any parent folders that also contained responsive material.	The name of the folder from which the file was obtained, including any parent folders that also contained responsive material.	The name of the folder from which the file was obtained, including any parent folders that also contained responsive material.	The title of the folder in which the document was kept.

Name of Field	Type of field	Contents				
		E-mail	Word Processing or PDFs	Spreadsheets and Power Point Presentations	Digital Photos	Paper
File_Path	Paragraph	<blank>	The path to the native file on the production media (if it is being provided)	The path to the native file on the production media	<blank>	<blank>
Text_Path	Paragraph	The path to the extracted text file	The path to the extracted text file	The path to the extracted text file	<blank>	OCR Text or path to extracted text file

EXHIBIT B

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
ILLINOIS POWER GENERATING COMPANY, ILLINOIS POWER RESOURCES GENERATING, LLC, ELECTRIC ENERGY, INC., and VISTRA ENERGY CORPORATION,	)	**PCB 19-078 (Enforcement – Water)**
	)	
Respondents.	)	

STIPULATED PROTECTIVE ORDER

Complainant, Sierra Club, and Respondents Illinois Power Generating Company, Illinois Power Resources Generating, LLC, Electric Energy, Inc., and Vistra Energy Corporation, collectively "the Parties," have a mutual interest in the orderly and prompt production of discovery in the above-captioned matter (the "Action"). Accordingly, the Parties request entry of this Protective Order to limit the disclosure, dissemination, and use of confidential information that the Parties anticipation will be sought in discovery. Having reviewed the Parties' Stipulated Protective Order ("Protective Order") and for good cause shown, the Illinois Pollution Control Board's ("Board") Hearing Officer grants the Parties' request and hereby enters the following Protective Order:

1. **Confidential Information.** "CONFIDENTIAL INFORMATION" shall mean and include any document or other information provided in discovery in this Action (whether in hard copy or computer readable form, and including, but not limited to, any portion of deposition testimony, or response to an interrogatory, request for admission, and/or production), which contains information for which the producing Party has a good faith claim of need of protection from

disclosure under the Illinois Code of Civil Procedure, the Illinois Supreme Court Rules, the Illinois Administrative Code, including 35 Ill. Adm. Code 101.202 or other applicable law. CONFIDENTIAL INFORMATION includes but is not limited to confidential trade secret, commercial, financial, and protected critical infrastructure information. CONFIDENTIAL INFORMATION shall not include any discovery material which has been or becomes lawfully in the possession of the receiving Party through communications, other than production or disclosure in connection with this Action, and that is not covered by a separate non-disclosure or confidentiality agreement or order.

2. **Designation of Information.** The Parties may designate documents or other materials produced in this Action as CONFIDENTIAL by marking the document or other materials as "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER," or other similar designation.

3. **Disclosure, Use, and Handling of Documents.** The receiving Party shall not disclose or make available any material designated as CONFIDENTIAL to any person other than:

a. Employees of the receiving Party who are assisting with this litigation;

b. Counsel of record and other attorneys assisting a Party with this litigation, including in-house counsel, and their stenographic, clerical and paralegal employees whose duties and responsibilities require access to such materials;

c. Any witness testifying at deposition or trial;

d. Retained consultants or experts for the parties (as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials);

e. Court reporters and their employees in the performance of their official duties;

f. Persons or entities (and their employees) retained by counsel for any Party to provide litigation support services (e.g., photocopying, data entry, data processing, computer imaging, organizing, storing, retrieving data in any form or medium, etc.) in this Action; and

g. The Board, Hearing Officer, Board personnel and stenographic and video reporters engaged in proceedings incident to this Action.

No Party or other person permitted to access CONFIDENTIAL INFORMATION pursuant to this Agreement shall use such CONFIDENTIAL INFORMATION for any purpose other than in connection with the prosecution or defense of this Action.

4. Prior to any disclosure to any individual described in Paragraph 3(c)-(f), that individual must agree to maintain the confidentiality of documents and other materials marked CONFIDENTIAL by executing the attached "Acknowledgement of Protective Order" in the form attached to the Order as **Exhibit 1**. For the limited purpose of the enforcement of the Protective Order, individuals signing the "Acknowledgement of Protective Order" thereby consent to the jurisdiction of the Board or any appropriate court of law.

5. This Protective Order applies to CONFIDENTIAL INFORMATION disclosed or used during depositions in this Action, provided that counsel for the producing Party designates the relevant portions of the deposition transcript as CONFIDENTIAL.

a. Counsel for the Party making such a claim shall provide written notice to all counsel of record within thirty (30) days after receipt of the deposition transcript. Prior to the expiration of that 30-day period, all deposition

transcripts shall be treated as CONFIDENTIAL, unless otherwise agreed by the parties.

b. All designated testimony and all CONFIDENTIAL INFORMATION attached as an exhibit to a deposition in this Action shall be protected from disclosure by this Protective Order.

6. If a Party objects to the designation of information as CONFIDENTIAL, the Party making the designation and the Party objecting to the designation will meet and confer in good faith regarding any dispute over the designation. If, after meeting and conferring, the Parties are unable to resolve such a dispute, the challenging Party may ask the Board or the Hearing Officer to determine the validity of the designation. The disputed CONFIDENTIAL INFORMATION shall continue to be treated as CONFIDENTIAL under the terms of this Protective Order unless or until the Board or the Hearing Officer rules to the contrary.

7. **Filing Documents with the Board.** Any depositions, exhibits, pleadings or other documents or materials designated as CONFIDENTIAL and filed with the Board shall be filed under seal and only in paper in accordance with 35 Ill. Adm. Code 101.302(h)(3).

8. **Inadvertent Production.** The production in discovery of any information without an appropriate designation of confidentiality shall not in any way prejudice the producing Party and shall not be deemed a waiver or impairment of the CONFIDENTIAL nature of any such information. A producing Party shall have forty-five (45) days after one of its counsel becomes aware that CONFIDENTIAL INFORMATION has been produced in which to request its return via written notice. If a producing Party timely requests the return of CONFIDENTIAL INFORMATION, any party to which such material was produced shall, within fourteen (14) days after the request, delete the produced CONFIDENTIAL INFORMATION and all data associated

with such CONFIDENTIAL INFORMATION (including images and metadata such as extracted text) from any database or document management system containing the CONFIDENTIAL INFORMATION and associated data, return to the producing Party any disk or other media containing CONFIDENTIAL INFORMATION, return to the producing Party or destroy all paper copies of CONFIDENTIAL INFORMATION, request in writing that any third-party to whom the CONFIDENTIAL INFORMATION was provided do the same, and provide a written certification to the producing Party that the receiving Party has followed such procedures. The receiving Party is not required to delete data from any backup, disaster recovery or otherwise inaccessible location. The receiving Party has the responsibility to take reasonable steps to ensure that any third party to which it provided documents produced in this Action which a producing Party later claims are CONFIDENTIAL INFORMATION are destroyed or returned as outlined in this paragraph. If the receiving Party wishes to challenge the producing Party's confidentiality designation, it must follow the procedure set forth in Paragraph 6 of this Protective Order. Upon receiving confirmation that the receiving Party has complied with its obligations under this Paragraph 8, the producing Party shall re-produce the CONFIDENTIAL INFORMATION at issue with the CONFIDENTIAL designation.

9. If a Party identifies information on its face or in light of facts known to the Party to be CONFIDENTIAL INFORMATION but that has not been designated as such, the Party identifying such CONFIDENTIAL INFORMATION is under a good-faith obligation to notify the producing Party. Such notification shall not waive the identifying Party's ability to subsequently challenge any assertion of confidentiality with respect to the identified information. If the producing Party wishes to designate the identified document or information as CONFIDENTIAL,

it shall provide notice in accordance with Paragraph 8 within five business days of receiving notice from the identifying Party.

10. **Conclusion of Litigation.** The provisions of this Protective Order regarding the use and disclosure of CONFIDENTIAL INFORMATION shall survive the conclusion of the litigation. All qualified persons to whom documents or information designated by any Party as CONFIDENTIAL have been disseminated or made available, even after the conclusion of this litigation, shall be under a continuing duty not to reveal such information so long as such information is not otherwise available to the public. The Parties' counsel shall maintain a list or log of all persons to whom an opposing Party's documents or things marked as CONFIDENTIAL have been disseminated and counsel shall also maintain copies of the signed Acknowledgments. The list or log and the written Acknowledgments of Protective Order shall remain confidential and not discoverable by an opposing Party, unless otherwise ordered by the Board in connection with an alleged breach of this Order or an Acknowledgment.

11. Within sixty (60) days of the entry of a final, non-appealable order terminating the litigation, or any appeal thereof, or any settlement of the Action, all CONFIDENTIAL INFORMATION and all copies thereof shall be destroyed or returned to the producing Party. Upon request, the receiving Party shall provide a written certification to counsel for the producing Party of such return or destruction. Notwithstanding the foregoing, counsel may retain deposition and hearing transcripts, and all exhibits thereto, as well as copies of papers filed in this Action which contain CONFIDENTIAL INFORMATION, provided such transcripts and papers are maintained in accordance with the restrictions contained in this Protective Order. Parties and counsel may also retain notes, correspondence and work product which contain CONFIDENTIAL

INFORMATION, provided such notes, correspondence and work product are maintained in accordance with the restrictions contained in this Protective Order.

12. For the limited purpose of the enforcement of the Protective Order following termination of this litigation, the Board retains and shall have jurisdiction over all parties to this Action, as well as individuals agreeing to be bound by its terms.

13. **No Waiver.** This Protective Order does not preclude, upon an appropriate showing, either (i) the producing Party from seeking and obtaining additional protection for specific material, or (ii) any Party from seeking and obtaining relief from some or all of the restrictions contained in this Protective Order.

14. Nothing herein shall impose any restriction on the use or disclosure by a Party of its own documents or information.

15. Nothing in this Protective Order shall be deemed a waiver of any Party's right to (a) oppose production of any material for lack of relevancy, because they contain privileged information, or on any other grounds; or (b) object on any ground to the admission in evidence in this proceeding of any CONFIDENTIAL INFORMATION.

16. Party participation in this Protective Order shall not be construed 1) as an admission that the information claimed as CONFIDENTIAL INFORMATION is, as a matter of law, confidential or 2) as a waiver of any right to challenge such claim. Nothing in this Protective Order precludes any Party from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order.

17. **Remedies.** The Parties agree that a breach of the provisions of this Protective Order by a Party will cause irreparable harm to the other Parties, and therefore agree that injunctive relief,

and injunctive relief alone, is the appropriate means to enforce this Protective Order as to the Parties.

18. **Unauthorized Disclosure of Confidential Information.** If a Party learns that, by inadvertence, it has disclosed CONFIDENTIAL INFORMATION to any person or in any circumstances not authorized under this Protective Order, the receiving Party must immediately: (a) notify in writing the producing Party and counsel for the Parties of the unauthorized disclosure(s); (b) use its best efforts to retrieve all copies of the CONFIDENTIAL INFORMATION; and (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order. Such inadvertent or unintentional disclosure of CONFIDENTIAL INFORMATION shall not be deemed a waiver in whole or in part of a Party's or non-Party's claim of confidentiality with respect to the information so disclosed.

19. **Third Parties**. If any non-Party receives a discovery request or subpoena seeking documents or tangible things and the requested documents or tangible things contain information entitled to confidential treatment pursuant to this Protective Order, the non-Party may designate such material as CONFIDENTIAL INFORMATION in accordance with the terms of this Protective Order. Non-Party material designated as such shall be subject to all of the conditions and limitations set forth in this Protective Order. Any non-Party that desires to protect its claim of confidentiality by adhering to these procedures submits to the jurisdiction of the Board with regard to any proceedings relating to the non-Party's claim of confidentiality, and bears the burden of establishing its claim of confidentiality in such proceedings.

20. Until such time as this Protective Order has been entered by the Board, the Parties agree that upon execution by the Parties, it will be treated as though it had been so ordered.

IT IS ORDERED this ____ day of _____, 2020.

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

SUBMITTED BY:

Sierra Club
Complainant

ILLINOIS POWER GENERATING COMPANY,
ILLINOIS POWER RESOURCES GENERATING, LLC,
ELECTRIC ENERGY, INC., and
VISTRA ENERGY CORPORATION
Respondents

/s/ Greg Wannier
Greg Wannier
Sierra Club Environmental Law Program
2101 Webster Street
Suite 1300
Oakland, CA 94612

Faith Bugel
1004 Mohawk
Wilmette, IL 60091

Bridget Lee
Sierra Club Environmental Law Program
50 F Street NW
Floor 8
Washington, D.C. 20001

Attorneys for Complainant

/s/ Daniel Deeb
Daniel J. Deeb
Joshua R. More
Schiff Hardin LLP
(312) 258-5500
233 South Wacker Drive, Ste. 7100
Chicago, IL 60606

P. Stephen Gidiere III
Balch & Bingham LLP
1901 Sixth Avenue North
Suite 1500
Birmingham, AL 35203-4642

Michael Raiff
Gibson, Dunn & Crutcher LLP
2100 McKinney Avenue
Suite 1100
Dallas, TX 75201-6912

Attorneys for Respondents

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
ILLINOIS POWER GENERATING COMPANY, ILLINOIS POWER RESOURCES GENERATING, LLC, ELECTRIC ENERGY, INC., and VISTRA ENERGY CORPORATION,	)	**PCB 19-078 (Enforcement – Water)**
	)	
Respondents.	)	

EXHIBIT 1 - ACKNOWLEDGMENT OF PROTECTIVE ORDER

I declare under penalty of perjury under the laws of Illinois that I have read and fully understand the attached Stipulated Protective Order entered by the Board in the above-captioned action, and agree to comply with and be bound by the provisions of said Protective Order. I will not divulge the content of any documents, materials or information designated as CONFIDENTIAL to persons other than those specifically authorized by said Protective Order, and will not copy or use, except solely for the purpose of this action and for no other purpose, any documents, materials or information obtained pursuant to said Protective Order.

Dated: _____

_____
Signature

_____
Name

_____
Title

_____
Address

_____
Telephone Number

EXHIBIT C

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
ILLINOIS POWER GENERATING COMPANY, ILLINOIS POWER RESOURCES GENERATING, LLC, ELECTRIC ENERGY, INC., and VISTRA ENERGY CORPORATION,	)	**PCB 19-078 (Enforcement – Water)**
	)	
Respondents.	)	

AGREED ORDER REGARDING THE SCOPE OF EXPERT DISCOVERY

Complainant Sierra Club and Respondents Illinois Power Generating Company, Illinois Power Resources Generating, LLC, Electric Energy, Inc., and Vistra Energy Corporation (collectively, the "Parties" and each a "Party") have a mutual interest in reducing the burden and uncertainty of expert discovery, without unduly affecting the Parties' ability to test the accuracy, reliability, or truth of any testimony, expert opinion, or evidence, and in ensuring that litigation efforts are proportional to issues in dispute in this case. This Agreed Order Regarding the Scope of Expert Discovery ("Agreed Order") describes information related to a witness under Illinois Supreme Court Rule 213(f)(2) or 213(f)(3).

Having reviewed the Agreed Order, and for good cause shown, the Illinois Pollution Control Board's ("Board") Hearing Officer grants the Parties' request and hereby enters the following Agreed Order:

1. **Expert Witness.** "Expert" means any witness under Illinois Supreme Court Rule 213(f)(2) or 213(f)(3). Except as expressly stated below, nothing in this Agreed Order is intended to alter or affect the Parties' obligations to comply with the

requirements and provisions of Illinois Supreme Court Rule 213(f)(2) or 213(f)(3).

2. **Expert Drafts**. All drafts and pre-final versions of an Expert's report, affidavit, or declaration, and all communications regarding such drafts and pre-final versions, shall be outside the scope of discovery. "Drafts and pre-final versions" shall be interpreted broadly, including to encompass the following:

a. Drafts and pre-final versions of the Expert's report, affidavit, or declaration, as well as any draft or preliminary spreadsheets, tables, or other analyses, outlines, or notes, that were created by the Expert (or by persons employed by or otherwise working with or for the Expert) as part of preparing his/her report, affidavit, or declaration in this action;

b. Drafts and pre-final versions exchanged between the Expert and persons employed by or otherwise working with or for the Expert;

c. Drafts and pre-final versions exchanged between the Expert (or persons employed by or otherwise working with or for the Expert) and a non-testifying consultant;

d. Drafts and pre-final versions exchanged between the Expert (or persons employed by or otherwise working for the Expert) and a Party;

e. Drafts and pre-final versions exchanged between the Expert (or persons employed by or otherwise working for the Expert) and another Expert. However, if one testifying Expert ("Expert A") relies on a document authored by another Expert ("Expert B"), the version of the document relied on is subject to discovery from Expert A.

3. **Communications Regarding Expert Drafts and Reports.**

Communications in any form (including electronic, written, and verbal) about drafts, pre-final versions (as defined in Paragraph 2), and final versions of Expert reports, affidavits, or declarations, between (i) a Party or any other representative thereof (including counsel and employees, consultants, or other experts) and the Expert, and (ii) the Expert and persons employed by or otherwise working for the Expert, shall be outside the scope of discovery.

4. **Communications Between a Party and its Experts**. Communications in any form (including electronic, written, and verbal) between an Expert (or persons employed by or otherwise working for the Expert) and the Party or any other representative thereof (including counsel and employees, consultants, or other experts) shall be outside the scope of discovery, except to the extent that such communications contain assumptions, facts or data that the Expert relied on in support of his or her opinions.

5. **Other Communications.**

Communications in any form (including electronic, written, and verbal) between an Expert and persons employed by or otherwise working for the Expert shall be outside the scope of discovery, except to the extent that such communications contain assumptions, facts or data that the Expert relied on in support of his or her opinions, but only if such assumptions, facts or data have not otherwise been disclosed.

6. **Expert Work in Other Cases.** Final expert reports and related exhibits, deposition transcripts and related exhibits, declarations, affidavits, and trial testimony and related exhibits generated by the testifying Expert in another action that cover the same subject matter on which the testifying Expert is expected to offer an opinion in this matter shall be discoverable, subject to claims of privilege or confidential business information and

the terms of any protective order entered in another action.

7. **Expert Depositions.** Each Party will pay for travel expenses and the time that Party's own Experts spend in deposition. Each Party will decide the location of the depositions of that Party's own Experts.

8. **Inadvertent Disclosure.** To the extent that any Party obtains through inadvertent disclosure any information, documents, or communications described herein as outside the scope of Expert discovery, such information, documents and communications shall not be filed or presented for admission into evidence or sought in discovery by that Party in this action or any other litigation.

SUBMITTED BY:

Sierra Club
Complainant

/s/ Greg Wannier
Greg Wannier
Sierra Club Environmental Law Program
2101 Webster Street
Suite 1300
Oakland, CA 94612

Faith Bugel
1004 Mohawk
Wilmette, IL 60091

Bridget Lee
Sierra Club Environmental Law Program
50 F Street NW
Floor 8
Washington, D.C. 20001

ILLINOIS POWER GENERATING COMPANY, ILLINOIS POWER RESOURCES GENERATING, LLC, ELECTRIC ENERGY, INC., and VISTRA ENERGY CORPORATION
Respondents

/s/ Daniel J. Deeb
Daniel J. Deeb
Joshua R. More
Schiff Hardin LLP
(312) 258-5500
233 South Wacker Drive, Ste. 7100
Chicago, IL 60606

P. Stephen Gidiere III
Balch & Bingham LLP
1901 Sixth Avenue North
Suite 1500
Birmingham, AL 35203-4642

Michael Raiff
Gibson, Dunn & Crutcher LLP
2100 McKinney Avenue

Attorneys for Complainant

Suite 1100
Dallas, TX 75201-6912

Attorneys for Respondents