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,	)	
	)	
Respondent.	)	

NOTICE OF FILING

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the attached **COMPLAINANTS' MOTION FOR LEAVE TO REPLY, *INSTANTER*, TO MIDWEST GENERATION, LLC'S RESPONSE TO COMPLAINANTS' MOTION TO DESIGNATE SUBSTITUTE EXPERT WITNESSES** and **COMPLAINANTS' REPLY TO MIDWEST GENERATION, LLC'S RESPONSE TO COMPLAINANTS' MOTION TO DESIGNATE SUBSTITUTE EXPERT WITNESSES** copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

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Attorney for Sierra Club

Dated: April 29, 2020

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

COMPLAINANTS' MOTION FOR LEAVE TO REPLY, *INSTANTER*, TO MIDWEST GENERATION, LLC'S RESPONSE TO COMPLAINANTS' MOTION TO DESIGNATE SUBSTITUTE EXPERT WITNESSES

Pursuant to 35 Ill. Admin. Code. 101.501(e) and 101.502(a), Complainants respectfully request that the Hearing Officer grant Complainants' leave to file, instanter, the attached reply in response to Respondent Midwest Generation, LLC,'s ("MWG") Response to Complainants' Motion to Designate Substitute Expert Witnesses. In support of this Motion, Complainants state as follows:

1. On April 1, 2020, Complainants moved for leave to designate substitute expert witnesses for the remedy phase of this matter ("Motion").

2. On April 15, 2020, Respondent filed their response to Complainants' Motion ("Response").

3. The Response raised several new procedural and legal arguments. Specifically, Respondent argued, among other things, that the basis Complainants provided for substituting

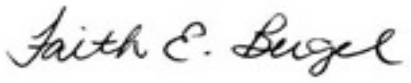
experts is the equivalent of "no basis," that discovery is somehow closed even though there is a remedy-phase discovery schedule, and that Supreme Court Rule 213 binds the substitute experts to the previous experts' disclosure and opinions even though the remedy-phase discovery schedule provides the opportunity for expert reports and expert depositions.

4. Complainants would be prejudiced if they were not allowed to address these new and harmful arguments because they find no support in law and could severely restrict Complainants' ability to propose a remedy in this case.

WHEREFORE, Complainants respectfully request that the Hearing Officer grant Complainants' Motion for Leave to Reply.

Dated: April 29, 2020

Respectfully submitted,



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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 ENVIRONMENT	)	
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	)	(Enforcement – Water)
MIDWEST GENERATION, LLC,	)	
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COMPLAINANTS' REPLY TO MIDWEST GENERATION, LLC'S RESPONSE TO COMPLAINANTS' MOTION TO DESIGNATE SUBSTITUTE EXPERT WITNESSES

Midwest Generation, LLC's ("MWG") response brief ("MWG Resp. Br.") in opposition to Complainants' motion fails to provide any legal authority to support denying Complainants' motion. First, MWG's entire response rests on the flawed premise that discovery has closed in the present case. In fact, the Board has reopened discovery for the remedy phase of this case, and the Hearing Officer issued an order requiring the parties to propose remedy-phase discovery schedules. Second, MWG's response brief cites a slew of cases, but none of them are analogous to the present case, and MWG provides no legal basis for denying Complainants' motion. Third, MWG's response brief makes a number of non-legal arguments that fail to overcome its legal deficiencies.

I. DISCOVERY IS OPEN IN THIS PROCEEDING

Contrary to MWG's assertions that Complainants are substituting witnesses after discovery has closed, discovery is very much open in this case. *See, e.g.*, Resp. Br. at 8, 13, 12, 15 ("Rule 213 . . . applies here and preludes Complainants from adding new, previously

undisclosed experts long after discovery is closed."). In its last three orders, the Board recognized the need for remedy-phase discovery in this case and the Hearing Officer ordered the parties to propose remedy-phase discovery schedules. In its April 16, 2020 Order, the Board specifically stated that its "February 6, 2020 Board order directed the parties to proceed expeditiously to discovery in the remedy phase of this matter." *Sierra Club et al., v. Midwest Generation*, LLC, PCB 13-15, Order at 2 (April 16, 2020) (emphasis added). In addition, the Hearing Officer's February 25, 2020 Order "directed the parties to file a proposed discovery schedule by March 9, 2020." *Sierra Club et al., v. Midwest Generation*, LLC, PCB 13-15, Hearing Officer Order (Feb. 25, 2020) (emphasis added).

Neither the Board nor the Hearing Officer limited that discovery to merely "updating" liability-phase discovery. In the Hearing Officer's March 30, 2020 Order approving a partial discovery schedule, the parties were directed to propound new interrogatories and requests for production focused on remedy. Consequently, discovery is open in this matter, and Complainants are seeking to substitute expert witnesses at the very outset of remedy-phase discovery. Cases involving expert substitutions near or after the close of discovery or on the eve of trial are not analogous to the present case.

The cases cited by MWG's responsive brief at pages 4 through 13 all involve parties seeking to substitute an expert near or after the close of discovery or on the eve of a trial or hearing, and are therefore distinguishable and irrelevant to the present case. In cases where substitution occurs after discovery or on the eve of a trial, the party opposing substitution has a real argument that it is prejudiced by its inability to depose the new experts or its inability to prepare for new experts that might have opinions different than the original experts. But in the present case, where substitution is occurring months before any expert reports are due and even

more months before expert depositions and any hearing, there is no real argument that MWG is prejudiced by Complainants' request.

For instance, MWG cites *People v. Pruim*, PCB 04-207, Hearing Officer Order (Sept. 24, 2008), MWG Resp. Br. at 5, but that case is distinguishable because it involved complainant's disclosure of new experts only two months before the scheduled hearing, and after discovery had closed. *Id*. at 5. The hearing officer rescheduled the hearing to December 2, 2008, to give the respondent an opportunity to depose the new experts. *Id*. at 6. Although MWG claims the hearing officer in *Prium* limited the new experts to "original expert's report and deposition testimony," MWG Resp. Br. at 5, no such limitation actually exists in the text of the order in *Prium*.

MWG also cites *Nelson v. Upadhyaya*, 836 N.E.2d 784 (Ill. App. Ct. 1st Dist. Sept. 23, 2005), MWG Resp. Br. at 5, but that case is similarly distinguishable. The dicta in *Nelson* notes that the substitution occurred "[s]hortly before trial" due to an illness that rendered plaintiffs' original expert unavailable for trial, after which the defendants deposed the substitution expert "on the eve of trial." *Id*. at 786-87. Thus, unlike *Nelson*, we are not "shortly before trial" or "on the eve of trial." We are at least a year from any hearing on remedy and, prior to any hearing in this case, Complainants will make the appropriate expert disclosures, including expert reports, and MWG will have an opportunity to respond with their own report and depose our experts.

The next two cases cited by MWG are from Indiana and Nevada and therefore are not controlling authority. Even so, the crucial distinction between those cases and this case once more concerns the timing of the request to substitute experts and whether it occurs after or near the close of discovery. *Indiana Ins. Co. v. Valmont Elec. Inc*., No. TH97-0009-C-T/F, 2001 WL 1823587, (S.D. Ind. Dec. 27, 2001), MWG Resp. Br. at 5, is distinguishable because it involved

replacing an expert who had died but had previously submitted expert reports and been deposed, therefore discovery had closed by the time substitution occurred. The present case is in an entirely different position because discovery, including expert discovery, has been reopened for the purpose of remedy, so any lessons from *Indiana Ins. Co. v. Valmont Elec. Inc* are not applicable. Similarly, *U.S. ex rel. Agate Steel, Inc. v. Jaynes Corp.,* MWG Resp. Br. at 5, a federal court case from Nevada, is distinguishable from this case because it involves a request to substitute experts "in light of the looming discovery cutoff." No. 2:13-CV-01907-APG, 2015 WL 1546717, at *2 (D. Nev. Apr. 6, 2015). For that reason, the court limited the substituted expert's opinions to those of the original expert. *Id*. In the present case, we are nowhere near to any "looming discovery cutoff."

Finally, MWG cites both *Smith v. Murphy* and *Firstar Bank v. Pierce*, MWG Resp. Br. at 8, but yet again neither case supports MWG's position here because they both seek to resolve actual instances of prejudice. *Smith v. Murphy* is distinguishable because it involved naming a new expert three days before trial was scheduled to begin. 994 N.E.2d 617, 621-22 (Ill. App. Ct. 1st. Dist. July 16, 2013) (plaintiff disclosed a new expert on October 14, 2011 and trial was scheduled October 17, 2011). *Firstar Bank v. Peirce* is distinguishable because it involved expert testimony that was not disclosed in plaintiffs' answer to defendant's Rule 213 interrogatory. 714 N.E.2d 116, 120-21 (Ill. App. Ct. 1st Dist. June 30, 1999). The present case is different because we are not three days from a hearing and not even at the stage of answering interrogatories. Consistent with the remedy-phase discovery schedule in this case, Complainants will answer interrogatories and supplement those answers based on Complainants' new experts' remedy-phase expert reports. Again, MWG will be able to rebut with their own reports and depose the new experts.

In sum, the present case is distinguishable from all of the caselaw provided by MWG because we are not on the verge of any hearing, and any hearing in the present case will be preceded by a full and complete remedy-phase discovery schedule with both written discovery and depositions. MWG will not suffer any surprise or prejudice because both parties proposed discovery schedules that provide for disclosures in written discovery and written expert reports, a period for expert depositions, and a period for MWG's expert to respond to Complainants' expert with a written rebuttal report. *See* Ex. B to Complainants' Motion for Leave to Substitute Expert Witnesses. These are nothing close to the circumstances presented by any of the cases MWG cites where courts felt the need to interfere with a party's right to designate the expert witnesses of its choice – and so none of those citations offer any guidance here.

II. COMPLAINANTS HAVE PROVIDED A BASIS TO SUBSTITUTE THEIR EXPERTS

MWG, in arguing that Complainants have not provided a basis to substitute experts, completely disregarded the reasons that Complainants provided for substituting experts. MWG's manipulation of the facts is especially egregious regarding Complainants' expert David Schlissel. David Schlissel is working at a reduced load and declined to continue under contract with Complainants for this phase of the case. Comp's Br. at 6-7. MWG characterizes this as a desire to "slow-down" while disingenuously attributing that statement to Complainants, and then argues that Mr. Schlissel is not actually slowing down because he conducted a webinar in conjunction with a report that he wrote. MWG Resp. Br. at 6. MWG's argument here is both wholly unsupported and highly improper: MWG is unqualified to opine on the propriety of Mr. Schlissel's decisions about how to manage his life and career and has no basis to dispute Complainants' statement that Mr. Schlissel has informed us he is unwilling to continue as an expert in this case. Any amateur conjecturing by MWG's attorneys on Mr. Schlissel's career

should be ignored as groundless and improper. Furthermore, MWG's claim that Complainants "are not prevented from calling … Schlissel as [our] expert witness" is nonsensical: that is exactly what Complainants are prevented from doing since Mr. Schlissel is unwilling to appear for us and continue to engage in expert work on our behalf.

Similarly, Complainants indicated in their initial brief in support of their motion that Dr. Kunkel is no longer the best-placed expert for this matter. Comp. Brief at 6. As an initial matter, MWG erroneously claims that "Complainants fail to mention Kunkel" in our motion at all. MWG Resp. Br. at 4. This is false. Complainants discussed Dr. Kunkel both in our Motion and in our Brief. Mot at ¶ 5; Comp. Br. at 6-7. While Complainants acknowledge that we could have provided more detail on this point, we do not believe it either appropriate or necessary to provide that level of detail at this time, particularly given that MWG will have an entire discovery process to acquire any information it wants about Complainants' substitute expert. And in any event, MWG overreaches when it claims that Complainants provided "no reasoning or basis." MWG Resp. Br. at 4. Further, MWG acknowledges that there can be a whole range of reasons for a party to no longer be able to call the same expert witness and concedes that one of these is when a "party could not continue to rely on the expert's opinions." MWG Resp. Br. at 4. This is virtually the same reason that Complainants have provided for needing to substitute both Mr. Schlissel and Dr. Kunkel, so MWG's own discussion of cases supports granting Complainants' Motion.

MWG cites *Seef v. Ingalls Mem'l Hosp*, MWG Resp. Br. at 7, but that case is distinguishable because it concerned an expert providing opinions at trial that were not previously disclosed during discovery. 724 N.E.2d 115, 126-27 (Ill. App. Ct. 1st Dist. Dec. 30, 1999). None of the circumstances in *Seef* apply to the present case. Further, the court's

interpretation of Illinois Supreme Court Rule 213 in *Seef* supports Complainant's motion in this case. As the court explained, in order to properly disclose an expert's opinion pursuant to Rule 213, the opinions must be "provided in the discovery deposition or a Rule 213(g) interrogatory." *Id*. at 126. Consistent with *Seef*'s interpretation of Rule 213, Complainants' will respond to MWG's interrogatories seeking expert opinions and Complainants' new experts will provide opinions on the issue of remedy in remedy-phase expert reports and/or in expert deposition, which MWG will be allowed to rebut with their own reports and during depositions. Nothing in the *Seef* opinion supports MWG's position.

III. MWG IS NOT PREJUDICED

Prejudice has a specific definition in the present context and it is not simply the expenditure of any resources, as MWG suggests. MWG Resp. Br. at 9. As discussed in Complainants' brief in support of our initial motion, prejudice is the inability to depose a new expert, retain a rebuttal expert, or prepare and construct a trial strategy. *Smith v. Murphy*, 994 N.E.2d at 622; *Firstar Bank v. Peirce,* 714 N.E.2d at 120-21. There would be no prejudice of that nature to MWG in the present case.

MWG argues that it is prejudiced because of the impact on liability-phase evidence. MWG Resp. Br. at 8-9, but that position does not meet the definition of prejudice, as discussed above. *Smith v. Murphy*, 994 N.E.2d at 622; *Firstar Bank v. Peirce,* 714 N.E.2d at 120-21. There would be no impact on the existing record by allowing Complainants to substitute experts. There was no use of either Dr. Kunkel's remedy report or David Schlissel's report in the liability phase, as indicated by the fact that these are not exhibits in the hearing record. *See, e.g.,* MWG Resp. Br. at 2 (attaching remedy reports to Brief instead of citing to record). While Kunkel did write a report on remedy, it was not introduced or entered as an exhibit at the liability-phase hearing. *See, e.g.,* Hearing Ex. 401, 407, 408, 412 (Dr. Kunkel's other reports but not the remedy report).

No other evidence relies on Mr. Schlissel's and Dr. Kunkel's remedy reports with the trivial exception of a single line in one of Dr. Kunkel's four expert reports that were admitted as exhibits, which stated that Dr. Kunkel believed the remedy he proposed was economically reasonable – a point that was not even relevant for the liability phase and not referenced at all the liability-phase hearing. See Hearing Ex. 407 at 11.

The liability-phase record and remedy-phase expert opinions are not interdependent, as MWG suggests. The current record is the liability phase record, and that will not change. The Board made its findings of fact, covered in 56 single-spaced pages of its opinion, and none of them concerned remedy except for its order to conduct the remedy phase of this proceeding. *Sierra Club v. Midwest Generation*, LLC, PCB 13-15, Interim Order at 20-77 (June 20, 2019). MWG claims that it relied on the expert remedy opinions for liability phase but never explains how it did so and never provides a single citation to the liability-phase record that relies on remedy-phase expert opinions. Thus, MWG's claims about prejudice due to the impacts on liability-phase evidence ring hollow.

MWG again cites *Smith v. Murphy*, MWG Resp. Br. at 13, and it is once again distinguishable from the present case. While the court barred the untimely disclosure of expert opinions, the court did so because the opinions were disclosed nine months after expert disclosures were due and five months after discovery had closed and the case on the verge of trial. 994 N.E.2d at 621 (disclosure occurred on October 14, 2011 and discovery closed on May 24, 2011 and trial was set for October 17, 2011). Contrary to the circumstances in *Smith v. Murphy*, all expert discovery and disclosures in the present case are scheduled to occur according to a forthcoming remedy-phase discovery schedule set by the Hearing Officer.

Complainants agree with MWG that Rule 213 requires more exacting standards than

former Rule 220 and that courts will not allow parties to deviate from the strict disclosure requirements, but the forthcoming remedy-phase expert discovery schedule allows all parties the opportunity to comply with Rule 213's disclosure requirements. MWG emphasizes the *Smith v. Murphy* court's statement looking unfavorably on "starting expert discovery all over again," but that statement is inapplicable because expert discovery has already been reopened for the remedy phase of the present case.

Furthermore, that quote in *Smith v. Murphy* must be read in context: the court in that case emphasized that prejudice only occurs if the non-moving party is unable to depose the new expert and retain an expert to rebut the new expert. 994 N.E.2d at 622 ("The disclosure of a new expert would be prejudicial to defendants' case because it would be unlikely that the defendants would be able to depose the new expert and retain their own expert to rebut the plaintiff's new expert so close to trial. It would require starting expert discovery all over again for a case that was filed in 2007."). In the present case, liability-phase expert discovery will not need to be done "all over again" because the Board has made its liability findings and ordered the remedy phase to begin. Likewise, the parties have already envisioned remedy-phase expert discovery will occur, as demonstrated by the schedules both parties submitted to the Hearing Officer on March 23, 2020, which provided for new expert disclosures, reports, and depositions. *See* Ex. B to Complainants' Motion for Leave to Substitute Expert Witnesses. MWG will not be prejudiced because it will have the ability to depose the new experts and to retain new rebuttal experts.

MWG cited to *People ex rel. DOT v. Firstar Ill*, MWG Resp. Br. at 11, but that case is distinguishable because the issue in that case was whether a trial court is required to reopen discovery after its decision was reversed and remanded by an appellate court. 851 N.E.2d 682, 687 (Ill. App. Ct. 2nd Dist. May 18, 2006). In the present case, discovery is already reopened for

purposes of remedy.

IV. ALLOWING NEW EXPERTS DOES NOT CONFLICT WITH BIFURCATION

Allowing Complainants to substitute experts is also not at odds with the purpose of bifurcation in this case. Bifurcation allows the Hearing Officer and Board to only address remedy issues if necessary and only after finding violations. *Sierra Club v. Midwest Generation, LLC*, PCB 13-15, Hearing Officer Order, (Feb. 9, 2017) (reserving ruling on a motion in limine "until when and if a hearing on remedy is held"). Consequently, the Board, the Hearing Officer, and the parties are now addressing remedy-phase issues because the Board concluded that MWG has violated Section 12(a), 12(d), and 21(a) of the Environmental Protection Act year, after year, after year. *Sierra Club v. Midwest Generation*, LLC, PCB 13-15, Interim Order at 92-93 (June 20, 2019) (citing 415 ILCS 5/12(a), 12(d), 21(a)).

As part of addressing remedy-phase issues, both the Board and the Hearing Officer have concluded that reopening discovery for the remedy phase is essential. *Sierra Club et al., v. Midwest Generation*, LLC, PCB 13-15, Order at 2 (April 16, 2020); *Sierra Club et al., v. Midwest Generation*, LLC, PCB 13-15, Hearing Officer Order (Feb. 25, 2020). Furthermore, the Board cannot make findings on remedy if it is constrained in the way MWG argues it should be. MWG suggests that the Board may only consider the expert opinions expressed in reports and depositions that occurred in 2015-2016 and which relied on evidence that is now 5 years old. Such an outcome flies in the face of the purpose of bifurcating this matter and fails to consider that many circumstances have changed in the 5 years since the first round of expert reports were disclosed in this case. Consequently, allowing Complainants to substitute experts and allowing those experts to be unfettered by earlier expert disclosures and opinions is not at all inconsistent with the purposes of bifurcating this case.

MWG cited to *Charter Hall Homeowner's Assoc. and Jeff Cohen v. Overland*

Transportation System, Inc. and D.P. Cartage, Inc., MWG Resp. Br. at 11, but it provides no relevant legal authority because discovery was not reopened for remedy in that case. PCB 98-81, Hearing Officer Order (May 12, 1998). Likewise, MWG cited to Johns *Manville v. Illinois Department of Transportation*, MWG Resp. Br. at 11, but that case is distinguishable because the Board's order on liability limited the remedy proceedings to three narrow issues. PCB 14-3, Interim Order at 22 (Dec. 15, 2017). In the present case, the Board's interim liability order remanded for further proceedings on remedy, including discovery on all remedy issues, and with no limitation on what the scope of the remedy phase shall include. Contrary to MWG's assertions, discovery is already reopened in this matter, so *Charter Hall Homeowner's Assoc.* and *Johns Manville* are neither relevant nor analogous.

V. SUBSTITUTE EXPERTS DESIGNATED CONSISTENT WITH THE REMEDY-PHASE DISCOVERY SCHEDULE ARE NOT BOUND BY EARLIER OPINIONS

Finally, MWG attempts to craft a new law out of whole cloth when it claims that any new expert substituted by Complainants must be bound by the earlier opinions of Dr. Kunkel and Mr. Schlissel. MWG cites to Supreme Court Rule 213 for this proposition but ignores that a new expert is only bound by an earlier expert's disclosures when there are no disclosures for the new expert and discovery is closed. *See, e.g., Nelson v. Upadhyaya*, 836 N.E.2d at 786-87 (substitution occurred "[s]hortly before trial" and substitute expert was deposed "on the eve of trial."). In this case, no party has failed to comply with Rule 213. We are not in the situation of a new expert offering an opinion at trial without prior disclosure in a report, written discovery, or a deposition. To the contrary, the discovery schedules proposed by both parties in this matter on March 23, 2020 contained timeframes for written discovery, expert reports, and expert depositions. *See* Ex. B to Complainants' Motion for Leave to Substitute Expert Witnesses. Complainants have every intention of providing MWG with expert disclosures in the form of

interrogatory responses, document request responses, expert reports, and a deposition any expert Complainants retain for this matter. As a result, all of the cases on which MWG relies where an expert offers an opinion at trial that was not disclosed in written discovery or an expert deposition are completely distinguishable and irrelevant. It is only in those instances of lack of disclosure and discovery being closed that a new expert is bound by earlier disclosures.

Thomas v. Johnson Controls Inc., cited by MWG, does not suggest any differently. 801 N.E.2d 90 (Ill. App. Ct. 1st Dist. Nov. 21, 2003); MWG Resp. Br. at 13. In *Thomas v. Johnson Controls*, the Appellate Court held that defendant was prejudiced and the trial court erred by allowing plaintiff to rely on evidence that was produced "on the eve of trial" while barring defendant from offering a rebuttal expert on the evidence. *Id*. at 95. Obviously, again, this has no bearing on the present case because Complainants are not disclosing evidence (or anything else) on the eve of trial. *Sullivan v. Edward Hospital*, also cited by MWG, MWG Resp. Br. at 13, is distinguishable because it involved an expert opinion that was not disclosed in response to a Rule 213(g) interrogatory. 209 806 N.E.2d 645, 651-52 (Ill. Sup. Ct. Feb. 5, 2004). In the present case, any expert opinions on remedy will be provided in the appropriate disclosure through responses to interrogatories and as part of forthcoming remedy-phase expert reports and depositions.

Further, MWG ignores that Dr. Kunkel would not be bound in any event by his own liability-phase report and deposition, especially in light of (1) discovery reopening, (2) forthcoming remedy-phase expert reports, and (3) remedy-phase expert depositions. Nothing would stop Dr. Kunkel from changing his opinions in the remedy phase of this case based on the 5 years' worth of evidence and information accumulated since he prepared his original expert reports in 2015. His previous opinions would not be binding on him in an updated report or

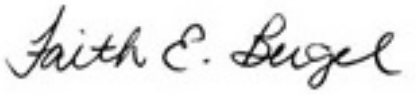
deposition. *See, e.g., Wakeford v. Rodehouse Restaurants of Missouri, Inc.*, 584 N.E.2d 963, 969 (1991), *aff'd*, 610 N.E.2d 77 (1992). There is no legal support for MWG's assertion that a substitute expert should be bound by 5-year old evidence and opinions even though the original expert would not face a similar restraint.

V. CONCLUSION

For the foregoing reasons, the Hearing Officer should grant Complainants' Motion for Leave to Designate Substitute Expert Witnesses.

Dated: April 29, 2020

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' MOTION FOR LEAVE TO REPLY, *INSTANTER*, TO MIDWEST GENERATION, LLC'S RESPONSE TO COMPLAINANTS' MOTION TO DESIGNATE SUBSTITUTE EXPERT WITNESSES** and **COMPLAINANTS' REPLY TO MIDWEST GENERATION, LLC'S RESPONSE TO COMPLAINANTS' MOTION TO DESIGNATE SUBSTITUTE EXPERT WITNESSES** before 5 p.m. Central Time on April 29, 2020 to the email addresses of the parties on the attached Service List. The entire filing package, including exhibits, is 19 pages.

Respectfully submitted,

/s/ Jeffrey Hammons
Jeffrey Hammons

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