

ILLINOIS POLLUTION CONTROL BOARD
May 22, 2020

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

HEARING OFFICER ORDER

On March 27, 2020, I approved, *via* e-mail, the parties proposed discovery schedule up to and including May 29, 2020. I memorialized my e-mail by an order on March 30, 2020. On April 1, 2020, complainants filed a motion for leave to designate substitute expert witnesses with supporting memorandum (Mot.). The complainants request to substitute their expert witnesses for the yet scheduled Board ordered remedy hearing in this matter. Mot. at 1-3. The Board had previously found that “the record lacks sufficient information to determine the appropriate remedy. “Therefore, the Board directs the hearing officer to hold additional hearings to determine the appropriate relief and any remedy...” *See* Board Interim Order, slip at 93 (June 20, 2019). Complainants identified two expert witnesses for the initial hearing in this matter but only Dr. Kunkel was deposed and later testified at hearing. Mot. at 2. As to Dr. Kunkel, complainants state that “a new expert would be better placed than Dr. Kunkel to address the issues that remain to be resolved in the remedy phase of the litigation.” *Id.*

On April 15, 2020, respondent filed its response. (Resp.) Citing case law, respondents argue that complainants offer no valid reasons for their motion to substitute expert witnesses. Resp. at 4-5. Respondent argues that “[c]omplainants do not state that Kunkel is unavailable due to retirement or illness, or that he has refused to continue as their expert.” Resp. at 5. Respondent questions whether the new expert’s testimony will contradict or be inconsistent with Dr. Kunkel’s previous testimony. *Id.*

On April 29, 2020, complainants filed a motion for leave to file a reply (Reply). For the most part, complainants argue that discovery has been reopened but do not elaborate on their request to substitute Dr. Kunkel for another expert.

On May 11, 2020, respondent filed a motion for leave to file a response or sur-reply. Respondent states that complainants reply offers no new arguments and should be rejected. *Id.* at 1-9.

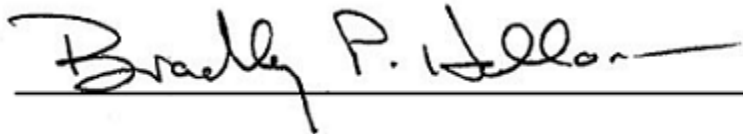
DISCUSSION AND ORDER

Other than complainants arguing that another expert would be “better placed” than Dr. Kunkel, complainants fail to state how the expert would be better placed. Complainants fail to discuss whether the new expert’s testimony would be inconsistent or contradict Dr. Kunkel’s earlier testimony.

The complainants are directed to file on or before June 1, 2020, a memorandum elaborating why Dr. Kunkel needs to be replaced and why a substitute expert would be better placed than Dr. Kunkel. The complainants are further directed to state whether the substituted expert testimony would be inconsistent and/or contradict Dr. Kunkel’s previous testimony. Respondent is directed to file its response on or before June 9, 2020.

The parties are directed to participate in a telephonic conference with the hearing officer on June 10, 2020, at 11:00 a.m. The complainants are directed to initiate the call with a call-in number.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Bradley P. Halloran". The signature is written in a cursive style and is positioned above a solid horizontal line.

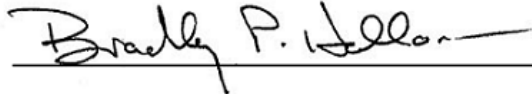
Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917
Brad.Halloran@illinois.gov

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed on May 22, 2020, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was e-mailed to the following on May 22, 2020:

Don Brown
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601

A handwritten signature in black ink that reads "Bradley P. Halloran" with a horizontal line underneath.

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

@ Consents to electronic service

SERVICE LIST

PCB 2013-015@
Jennifer T. Nijman
Nijman Franzetti LLP
10 S. LaSalle Street
Suite 3600
Chicago, IL 60603

PCB 2013-015@
Jeffrey Hammons
Environmental Law & Policy Center
35 E. Wacker Drive
Suite 1600
Chicago, IL 60601

PCB 2013-015@
Keith I. Harley
Chicago Legal Clinic, Inc.
211 W. Wacker Drive
Suite 750
Chicago, IL 60606

PCB 2013-015@
Abel Russ
Environmental Integrity Project
1000 Vermont Avenue NW
Suite 1100
Washington, DC 20005

PCB 2013-015@
Susan M. Franzetti
Nijman Franzetti LLP
10 S. LaSalle Street
Suite 3600
Chicago, IL 60603

PCB 2013-015@
Kristen L. Gale
Nijman Franzetti LLP
10 S. LaSalle Street
Suite 3600
Chicago, IL 60603

PCB 2013-015@
Greg Wannier
Sierra Club
85 Second Street
Second Floor
San Francisco, CA 94105

PCB 2013-015@
Kelly Emerson
Nijman Franzetti LLP
10 S. LaSalle Street
Suite 3600
Chicago, IL 60603

PCB 2013-015@
Faith Bugel
1004 Mohawk
Wilmette, IL 60091

PCB 2013-015@
James M. Morpew
Sorling, Northrup, Hanna, Cullen & Cochran,
Ltd.
1 North Old State Capitol Plaza, Suite 200
P.O. Box 5131
Springfield, IL 62705

PCB 2013-015@
Jennifer M. Martin
Heplerbroom LLC
4340 Acer Grove Drive
Springfield, IL 62711

PCB 2013-015@
Melissa S. Brown
Heplerbroom LLC
4340 Acer Grove Drive
Springfield, IL 62711

PCB 2013-015@
Brian J.D. Dodds
Heplerbroom LLC
4340 Acer Grove Drive
Springfield, IL 62711