

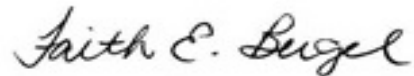
**BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS**

SIERRA CLUB, PRAIRIE RIVERS )  
NETWORK, and NATIONAL )  
ASSOCIATION FOR THE )  
ADVANCEMENT OF COLORED PEOPLE, )  
Complainants, )  
v. ) PCB 18-11  
(Enforcement – Water)  
CITY WATER, LIGHT and POWER, )  
Respondent. )

**NOTICE OF FILING**

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the attached **COMPLAINANTS' MOTION FOR HEARING TO BE HELD BY VIDEOCONFERENCE AND EXPERT WITNESS TO TESTIFY REMOTELY**, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,



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*Attorney for Sierra Club, NAACP,  
and Prairie Rivers Network*

Dated: January 7, 2022

**BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS**

SIERRA CLUB, PRAIRIE RIVERS )  
NETWORK, and NATIONAL )  
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**COMPLAINANTS' MOTION FOR HEARING TO BE HELD BY  
VIDEOCONFERENCE AND EXPERT WITNESS TO TESTIFY REMOTELY**

Pursuant to 35 Ill. Admin. Code. §101.600(b), Complainants respectfully request that the Board order that the forthcoming hearing in this matter take place by videoconference and allow case participants and witnesses, including expert witnesses, to attend and testify remotely (by Zoom, Webex, or a similar videoconference platform). Pursuant to Section 101.500, and at the direction of Hearing Officer Carol Webb, this motion is directed to the Board. 35 Ill. Admin. Code. §101.500; *Sierra Club v. City Water, Light and Power*, PCB 18-11, Hearing Officer Order (Dec. 17, 2021). In support of this motion, Complainants state as follows:

1. Rule 101.600(b) provides that:

Any Board hearing may be held by videoconference. Upon its own motion or the motion of any party, the Board or the hearing officer may order that a hearing be held by videoconference. In deciding whether a hearing should be held by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness.

35 Ill. Admin. Code. §101.600(b).

2. As the following statements demonstrate, witness availability, cost effectiveness,

efficiency, and the public interest all weigh in favor of holding the hearing by videoconference and allowing witnesses to testify remotely.

3. The Board Rules are silent as to whether witnesses may offer testimony in hearings remotely. The Board Rules state that the “Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance when the Board's procedural rules are silent.” 35 Ill. Admin. Code §101.100(b). Illinois Supreme Court Rule 241 provides that “[t]he court may, upon request or on its own order, for good cause shown and upon appropriate safeguards, allow a case participant to testify or otherwise participate in a civil trial or evidentiary hearing by video conferencing from a remote location.” This rule thus supports allowing the hearing in this matter to be held by videoconference and allowing all case participants including expert witnesses to attend remotely.

4. Both the specific health risks to Complainants’ expert witness, Mark Hutson, and the general risk to public health posed by Covid-19 by an in-person hearing, weigh in favor of conducting the hearing in this matter by videoconference and allowing all case participants and witnesses to appear and testify remotely.

5. Governor Pritzker’s most recent Executive Order relating to Covid-19 was issued on December 10, 2021, less than one month ago. That Executive Order finds that “since early March 2020, Illinois has faced a pandemic that has caused extraordinary sickness and loss of life.” It goes on to find that “Illinois continues to respond to the public health disaster caused by Coronavirus Disease 2019 (COVID-19), a novel severe acute respiratory illness that spreads rapidly through respiratory transmissions.”

6. The Governor’s December 10, 2021, Executive Order extended more than twenty of his prior executive orders pertaining to COVID-19 to January 8, 2022 at the earliest, due to the

ongoing pandemic.<sup>1</sup> In large part, these prior executive orders were extended due to the Delta and Omicron variants. *Id.* Gov. Pritzker's Executive Order 2021-32 found in December that "the Omicron variant has been classified as a variant of concern that has led public health experts to emphasize the importance of Covid-19 mitigations and precautions." *Id.*

7. One of the orders extended was Executive Order 2021-12. *Id.* Executive Order 2021-12 acknowledges the risk faced by older adults and encourages older adults (along with unvaccinated individuals and those with higher-risk health conditions) to "minimize in-person contact with others to the extent possible."<sup>2</sup> Complainants' expert witness is an older adult over the age of 65. *See* Mark Hutson Affidavit, attached. As a result, Complainants' expert witness is an individual who should "minimize in-person contact with others" pursuant to Executive Order 2021-12. Further, Mr. Hutson resides in Colorado, so attending this hearing in person would require travel by plane and all the in-person contact that results from interstate travel (e.g., presence in airports and hotels, use of ride sharing services). *See* Mark Hutson Affidavit, attached. The Board can minimize the in-person contact required of Mr. Hutson and all case participants by allowing this hearing to be held by video conference and allowing all case participants, including witnesses, to attend and testify at the hearing remotely. Further, cost-effectiveness and efficiency also weigh in favor of allowing Mr. Hutson to attend the hearing remotely because the time and cost of interstate travel are avoided.

8. Finally, the public interest weighs in favor of holding the hearing by video conference and allowing witnesses to attend remotely by videoconference because, consistent with

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<sup>1</sup> <https://www.illinois.gov/government/executive-orders/executive-order-executive-order-number-32.2021.html>.

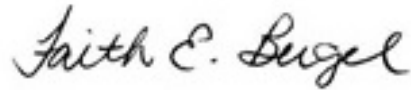
<sup>2</sup> <https://www.illinois.gov/government/executive-orders/executive-order-executive-order-number-12.2021.html>

Executive Order 2021-32, it “minimiz[es] physical interactions between people who are not fully vaccinated and who do not reside in the same household [which] is critical to slowing the spread of COVID-19.”<sup>3</sup>

WHEREFORE, Complainants respectfully request that the Board order that the forthcoming hearing in this matter take place by videoconference and allow case participants and witnesses, including expert witnesses, to attend and testify remotely.

Dated: January 7, 2022

Respectfully submitted,



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<sup>3</sup> <https://www.illinois.gov/government/executive-orders/executive-order.executive-order-number-32.2021.html>.

**BEFORE THE POLLUTION CONTROL BOARD  
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NETWORK, and NATIONAL	)	
ASSOCIATION FOR THE ADVANCEMENT	)	
OF COLORED PEOPLE,	)	
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Complainants,	)	
	)	PCB 18-11
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	)	
Respondent.	)	

**AFFIDAVIT OF MARK HUTSON**

1. I have been retained by Sierra Club to act as an expert witness and have written three expert reports in this case.

2. I have communicated with Counsel for Sierra Club (“Counsel”) regarding my attendance at a hearing and potential hearing dates for this case. In those conversations, Counsel communicated to me that I am required to appear at any hearing in this case in person.

3. I am 66 years old. I am fully vaccinated for Covid-19 but because of my age and the risks that older adults face of severe illness from Covid-19, I make significant efforts to minimize my exposure and reduce my risk of a Covid-19 infection.

4. I reside in Littleton, Colorado so an in-person hearing in this case would require me to travel interstate and also require a hotel stay.

5. In order to minimize my risk I have not travelled outside of the Denver area since January 2020. I have provided remote expert testimony in 3 other proceedings during this same time period.

6. In December, 2021, because of the Omicron variant and rising Covid-19 cases, I

expressed my concerns about attending an in-person hearing to Counsel. At this time, because Covid-19 cases are dramatically increasing, I am not willing to travel to or offer in-person testimony hearing in this case but I am willing and available to offer remote testimony by video-conference.

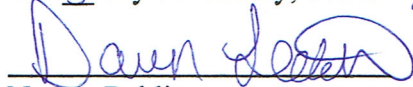
I have personal knowledge of the facts stated herein. I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge.

**FURTHER AFFIANT SAYETH NOT.**

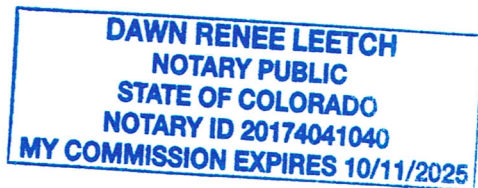


Mark Hutson

Sworn and subscribed before me  
this 5 day of January, ~~2021~~ 2022



Notary Public



**CERTIFICATE OF SERVICE**

The undersigned, Faith E. Bugel, 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 HEARING TO BE HELD BY VIDEOCONFERENCE AND EXPERT WITNESS TO TESTIFY REMOTELY** before 5 p.m. Central Time on January 7, 2022 to the email addresses of the parties on the attached Service List. The entire filing package, including exhibits, is 8 pages.

Respectfully,

/s/ Faith E. Bugel

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PCB 2018-11

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