

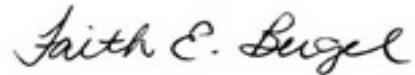
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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' RESPONSE TO MIDWEST GENERATION, LLC'S MOTION TO RECONSIDER AND CLARIFY THE BOARD'S ORDER REGARDING COMPLAINANT EXHIBIT 1408** copies of which are attached hereto and herewith served upon you.

Respectfully submitted,



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Attorney for Sierra Club

Dated: November 21, 2023

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
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SIERRA CLUB, ENVIRONMENTAL)	
LAW AND POLICY CENTER,)	
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CITIZENS AGAINST RUINING THE)	
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)	(Enforcement – Water)
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

**COMPLAINANTS’ RESPONSE TO MIDWEST GENERATION, LLC’S
MOTION TO RECONSIDER AND CLARIFY THE BOARD’S ORDER
REGARDING COMPLAINANT EXHIBIT 1408**

I. Argument

Midwest Generation, LLC’s (“MWG”) argument in favor of its Motion to Reconsider and Clarify the Board’s Order the Board’s Order Regarding Complainant Exhibit 1408 (“MWG’s Motion”) practically refutes itself. After rehashing its meritless arguments regarding the authenticity and admissibility of the IEPA’s legally-required report regarding facts and law that are directly relevant to this matter, MWG cites multiple cases that actually have admitted just such a report. MWG Mot. at 6-9.

The principal new basis for MWG’s Motion appears to be its own self-serving interpretation of what it claims to be the Board unstated reasoning in those cited cases. Specifically, MWG argues that the Board should give little weight to Ex. 1408 because it previously gave little weight to admitted reports in cited cases, even though there is *no actual*

evidence that the Board in fact gave little weight to the admitted reports in question. MWG then asks the Board, without even seeing what part of Ex. 1408 that Complainants will cite, to “clarify” that Ex. 1408 will be given little weight across the board. This is absurd. There will be plenty of opportunity in the post-hearing briefing for MWG to argue about the weight to be given Ex. 1408 with regard to specific facts for which it is cited without wasting the Board’s and both parties’ resources by asking the Board to determine what weight it will give to Ex. 1408 in advance.¹

Complainants will neither repeat nor respond to the purely repetitive and meritless arguments that underlie MWG’s Motion except for two arguments, which are worth brief emphasis.² First, MWG’s quibbling with the authenticity of Ex. 1408 does not pass the straight-face test. As the Board recognized, Ex. 1408 was filed on October 31, 2022 with the Board’s Clerk by an IEPA attorney who signed a notice of filing. Bd. Order, PCB 13-15, slip op. at 16 (Oct. 5, 2023). Regarding admissibility, as Complainants have previously explained, Ex. 1408 is a report *required to be filed* by IEPA, it covers the same ash areas covered in this proceeding, and it is, therefore, “reliable and relevant” to this proceeding. *Id.* at 17.

Finally, MWG complains that certain exhibits to Ex. 1408 were not written by IEPA officials (MWG Mot. for Reconsideration at 6)—but that hardly makes them inadmissible. Obviously, IEPA often relies on outside parties to do studies which it then adopts as part of its work. There is nothing inherently wrong with this and it is obviously necessary if IEPA is to function. Reports that have been reviewed and included in filings by IEPA are certainly the type

¹ Are we to have now a whole series of motions to “clarify” various parts of the evidence in advance of the post-hearing briefs? Would that serve any purpose other than to allow MWG to multiply the number of times that it presents redundant arguments to the Board?

² Complainants have previously responded to MWG’s baseless claims as to the admissibility of Ex. 1408, and incorporates those previous arguments by reference. Complainants brief on this matter are available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-108781> should the Board want to review them.

of evidence that would be “relied on upon by prudent persons in the conduct of serious affairs.”

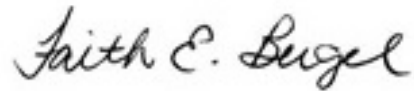
35 Ill. Adm. Code §101.626.

II. Conclusion

The Board was decidedly correct in upholding the admission Ex. 1408 and there is no reason to determine now the amount of weight to be given to that piece of evidence. Plainly, Ex. 1408 should be considered together with the totality of evidence as to the particular matters for which it is offered.

Dated: November 21, 2023

Respectfully submitted,



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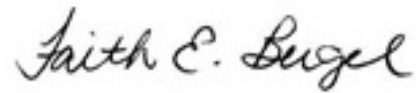
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CERTIFICATE OF SERVICE

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' RESPONSE TO MIDWEST GENERATION, LLC'S MOTION TO RECONSIDER AND CLARIFY THE BOARD'S ORDER REGARDING COMPLAINANT EXHIBIT 1408** before 5 p.m. Central Time on November 21, 2023 to the email addresses of the parties on the attached Service List. The entire filing package, including exhibits, is 7 pages.

Respectfully submitted,

A handwritten signature in black ink that reads "Faith E. Bugel". The signature is written in a cursive, flowing style.

Faith E. Bugel

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