

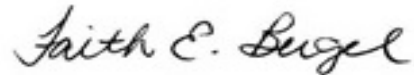
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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 THE BOARD'S ORDER, AND TO REJECT JONATHAN SHEFFTZ'S OPINIONS AND REPORTS** 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

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SIERRA CLUB, ENVIRONMENTAL)	
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MIDWEST GENERATION, LLC,)	
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**COMPLAINANTS’ RESPONSE TO MIDWEST GENERATION, LLC’S
MOTION TO RECONSIDER THE BOARD’S ORDER, AND TO
REJECT JONATHAN’S SHEFFTZ’S OPINIONS AND REPORTS**

I. Argument

Midwest Generation, LLC (“MWG”) is apparently terrified that, despite its technical expertise, the Board will misuse the opinions and reports of Complainants’ economic expert, Jonathan Shefftz, to make factual findings on subjects on which Mr. Shefftz did not even opine. MWG now raises for the *fourth* time the admissibility of those opinions and reports. MWG’s motion is completely meritless and should be denied for two obvious reasons.

First, MWG’s motion is based on a repetition of its earlier arguments as indicated by attaching its two previous briefs to its Motion for Reconsideration. Complainants will resist the temptation to now restate all of Complainants prior arguments showing the errors of MWG’s re-repeated arguments.¹ It is sufficient now to note that MWG’s arguments should be rejected

¹ Complainants incorporate those previous arguments by reference and they are available at the Board’s offices (non-disclosable version) and at <https://pcb.illinois.gov/documents/dsweb/Get/Document-108832> and

because they “are repetitive of the prior arguments which have been duly considered and rejected by the Board.” *City of Geneva v. Kane County*, PCB 94-58, slip op. at 2 (Oct. 6, 1994).

Second, MWG’s motion is based on a misrepresentation of the Board’s October 5, 2023 Order. Contrary to MWG’s misrepresentation, the Board did not rely on the matters presented in Table 6 to the report from withdrawn-expert Dr. Kunkel as the basis for admission of the Shefftz opinions or reports. Instead, the Board correctly notes that Mr. Shefftz used numbers from Table 6 in showing the implications of the application of the economics that Mr. Shefftz presented and notes that MWG argued that Table 6 double-counted certain identified cost. Oct. 5, 2023 Bd. Order at 13. The Board then discusses the established law stating that an expert opinion may be based on “hypothetical assumptions [that] are with the realm of circumstantial or direct evidence.” Oct. 5, 2023 Bd. Order at 14. Two pages after the reference to Table 6, the Board finds, without mentioning Table 6, that the minimal test for admission of opinions based on hypothetical assumptions had been met in the case of the Shefftz opinions. In so finding, the Board states “The Board again finds that the opinions relied upon reasonable assumptions arising from the factual evidence in this case.” Oct. 5, 2023 Bd. Order at 15

Mr. Shefftz has presented an economic methodology for calculating the costs avoided by MWG through delay of compliance with environmental regulations. He used Table 6 to show how the methodology works. No one, particularly not Mr. Shefftz, claims that the Board should rely blindly on the Table 6 figures. If the Board finds that the Table 6 figures used by Mr. Shefftz double-counted certain costs—or more broadly, when the Board determines a remedy that has an estimated cost—it will be easy enough to use the Shefftz model to calculate the costs avoided using the revised figures.

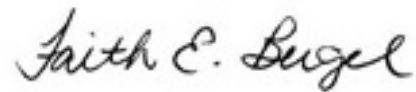
<https://pcb.illinois.gov/documents/dsweb/Get/Document-108831> (redacted public versions) should the Board want to review them.

II. Conclusion

MWG's motion for reconsideration is based on a rehash of arguments that have been considered and rejected multiple times, and on a misrepresentation of the Board's Oct. 5, 2023 Order. It should be denied.

Dated: November 21, 2023

Respectfully submitted,



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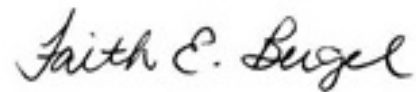
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CERTIFICATE OF SERVICE

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 THE BOARD'S ORDER, AND TO REJECT JONATHAN SHEFTZ'S OPINIONS AND REPORTS** 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 cursive script that reads "Faith E. Bugel".

Faith E. Bugel

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