

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>In the Matter of:</b>	)	
	)	
<b>SIERRA CLUB, ENVIRONMENTAL</b>	)	
<b>LAW AND POLICY CENTER,</b>	)	
<b>PRAIRIE RIVERS NETWORK, and</b>	)	
<b>CITIZENS AGAINST RUINING THE</b>	)	
<b>ENVIRONMENT</b>	)	
	)	<b>PCB 2013-015</b>
<b>Complainants,</b>	)	<b>(Enforcement – Water)</b>
	)	
<b>v.</b>	)	
	)	
<b>MIDWEST GENERATION, LLC,</b>	)	
	)	
<b>Respondent.</b>	)	

**NOTICE OF FILING**

TO: John Therriault, Assistant Clerk	Attached Service List
Illinois Pollution Control Board	
James R. Thompson Center	
100 West Randolph Street, Suite 11-500	
Chicago, IL 60601	

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board Midwest Generation, LLC's Proposed Discovery Schedule, a copy of which is herewith served upon you.

MIDWEST GENERATION, LLC

By: /s/ Jennifer T. Nijman

Dated: May 12, 2014

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Midwest Generation, LLC's Proposed Discovery Schedule which was filed electronically on May 12, 2014 with the following:

John Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, IL 60601

and that true copies were mailed by First Class Mail, postage prepaid, on May 12, 2014 to the parties listed on the foregoing Service List.

/s/ Jennifer T. Nijman

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<b>Complainants,</b>	)	<b>(Enforcement – Water)</b>
	)	
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	)	
<b>MIDWEST GENERATION, LLC,</b>	)	
	)	
<b>Respondent.</b>	)	

**RESPONDENT’S PROPOSED DISCOVERY SCHEDULE**

Respondent, Midwest Generation, LLC (“MWG”), by its undersigned counsel, submits its Proposed Discovery Schedule and states as follows:

1. Despite Complainants limited recitation of events in their Proposed Discovery Schedule, the parties actually are very close in reaching agreement on a discovery schedule, with only one difference remaining.
2. The dispute relates to ensuring sufficient time for submittals of expert reports and subsequent filing of dispositive motions.
3. In Complainants’ earlier discovery schedules of May 5-6, 2014, Complainants requested dates for submittal of both a Complainants’ Expert report as well as a Complainants’ Expert Reply report.
4. In order to attempt to meet an August 30, 2015 dated to file dispositive motions, Respondent requested that Complainants agree to shorten the date for filing the Expert *Reply*

Report. Complainants did not agree, nor did Complainants respond to Respondent's requests for clarification of the various start and end dates being proposed.

5. Respondent is concerned that at this stage of the matter, the parties do not know the number of experts or the scope of expert testimony. Respondent does not wish to enter into a discovery schedule that cannot be met as the case unfolds.

6. Based on the Complainants' Proposed Discovery Schedule, Complainants are seeking to file simultaneous expert reports, and Complainants have now clarified the start and end periods related to the various dates, as suggested.

7. As set forth below, Respondent requests that expert reports be filed sequentially, and that a shorter period is provided for Complainants' Expert Reply. The Expert Reply brief is optional and limited in scope, thus requires less time to prepare. The sequential filing of expert reports results in only a three week extension for the deadline for dispositive motions, from August 30, 2015 to September 25, 2015. In addition, there is general concern over schedules in August and the ability to complete the necessary review.

8. There is no prejudice to extending the schedule for a factually complicated case by three weeks, especially as the parties, at this time, do not know the number of fact or expert witnesses, or the volume of documents involved. The case involves four separate facilities, each with different geology and hydrogeology, different facts and requiring a different technical analysis.

WHEREFORE, Respondent requests that the Hearing Officer enter an Order with the following Discovery Schedule:

1. Complainants' Proposal: written interrogatories and document requests shall be issued by the parties on or before June 15, 2014.

Response: Agreed.

2. Complainants' Proposal: Responses to written interrogatories and document requests shall be served on or before September 1, 2014 except responses to requests to admit shall be answered in compliance with Illinois Supreme Court Rules.

Response: Agreed.

3. Complainants' Proposal: Depositions of lay or fact witnesses shall begin no earlier than November 1, 2014 and be completed on or before January 30, 2015.

Response: Agreed, however, Respondent suggests that the start date for such depositions be moved *earlier* – to October 15, 2014, to allow sufficient time for fact depositions to be scheduled.

4. Complainants' Proposal: Complainants' and Respondent's written expert reports shall be served on or before March 15, 2015.

Response: As proposed to Complainants on May 7, 2014, Respondent suggests that Complainants' Expert Report be served on March 6, 2015, and Respondent's Expert Report be served on April 10, 2015. Respondent further suggests that Complainants' Expert Reply report be served on May 1, 2015. This allows both parties five weeks for their expert to prepare their initial expert reports, and allows three weeks for Complainants' Expert Reply. Filing the reports sequentially will aid in developing the case for hearing so that the experts can properly assess the opinions presented.

5. Complainants' Proposal: Deposition of expert witnesses shall begin no earlier than May 1, 2015 and be completed on or before June 30, 2015.

Response: Respondent suggests that expert depositions begin four weeks after the receipt of expert reports and thus propose expert depositions begin June 1, 2015. Respondent

suggests that expert depositions be completed on or before July 30, 2015 to allow for the two months suggested by Complainants which is reasonable to conduct the depositions (depending upon the number of experts named).

6. Complainants' Proposal: Dispositive motions shall be filed on or before August 30, 2015.

Response: With expert depositions ending July 30, 2015, and allowing for time to obtain transcripts and prepare arguments, Respondent suggests that the deadline for dispositive motions be moved by only three weeks to September 25, 2015.

A chart reflecting the revised dates follows:

	Complainants' Proposed Discovery Schedule	Respondent's Proposed Discovery Schedule
Deadline for submission of initial RFPs, interrogatories & RFAs	6/15/2014	<b>6/15/2014 agreed</b>
Deadline for production and responses to initial discovery requests (except requests to admit)	9/1/2014	<b>9/1/2014 agreed</b>
Fact depositions begin	11/1/2014	<b>Suggest moving up to 10/15/14 to allow enough time for fact depositions/generally agreed</b>
Close of fact discovery	1/30/15	<b>1/30/15 agreed</b>
Complainants' expert report due		<b>3/6/15 (5 weeks)</b>
Respondent's Expert report DUE	Exchange reports 3/15/2015	<b>4/10/15 (5 weeks)</b>

Petitioners' Expert Reply due		<b>5/01/15 (3 weeks)</b>
Expert depositions begin	5/1/2015	<b>6/01/15</b>
Close of expert discovery	6/30/2015	<b>7/30/15</b>
Deadline for dispositive motions	8/30/2015	<b>9/25/15</b>

Respectfully submitted,

Midwest Generation, LLC

By: /s/ Jennifer T. Nijman  
One of Its Attorneys

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Dated: May 12, 2014