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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 Response to Complainants' Second Motion for Leave to File Amended Complaint was filed electronically on January 27, 2015 with the following:

John Therriault, Assistant Clerk
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and that true copies were mailed by First Class Mail, postage prepaid, on January 27, 2015 to the parties listed on the foregoing Service List.

/s/ Jennifer T. Nijman

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 2013-015
Complainants,)	(Enforcement – Water)
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

MIDWEST GENERATION LLC’S RESPONSE TO COMPLAINANTS’ SECOND MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

Pursuant to 35 Ill. Adm. Code 101.500(d), Respondent, Midwest Generation, LLC (“MWG”), by its undersigned counsel, respectfully submits this Response to Complainants’ Second Motion for Leave to File Amended Complaint (“Second Motion”). Although MWG does not conceptually oppose Complainants’ Second Motion, MWG again objects to specific statements in the proposed Amended Complaint as failing to meet the Board’s previous Order. Additionally, MWG had requested an extension of discovery solely to file written requests regarding the new provisions of the Amended Complaint. Complainants requested that the extension apply to them as well. MWG agrees to extend the requested period for written discovery to all parties.

1) On December 15, 2014, Complainants filed a Motion for Leave to File Amended Complaint. Attached to the Motion was a proposed Amended Complaint and exhibits. Complainants stated that since filing of the original Complaint, they had become aware of additional facts at each site, (First Motion for Leave, ¶3). Complainants stated that the changes to

the Complaint did “not require modification of the discovery schedule...” (First Motion for Leave, ¶9).

2) On December 29, 2014, MWG filed a Response to the Motion for Leave to File an Amended Complaint objecting to certain terms and allegations in the proposed Amended Complaint. Specifically, MWG objected to the proposed Amended Complaint as written because it included language that the Board had stricken in its October 3, 2013 Order. Additionally, MWG requested that the Board modify the discovery schedule for the sole purpose of allowing MWG to serve additional written discovery upon Complainants regarding the new allegations and to respond to the Amended Complaint.

3) Before the Board could issue a decision on the First Motion for Leave, on January 14, 2015, Complainants filed a Second Motion for Leave to File Amended Complaint, with a new proposed Amended Complaint and exhibits.¹ In their motion, Complainants state that they have removed all references to “other waste” and “have removed the portions of counts 1-3 that have been dismissed by the board.” (Second Motion for Leave, ¶15, ¶14). Additionally, in Complainants’ Second Motion for Leave to Amend Complaint, Complainants do not object to MWG’s request for extension of the discovery schedule to file written requests, but asked that it be extended to all parties. (Second Motion for Leave, ¶13).

4) In the proposed Amended Complaint attached to the Second Motion for Leave to File Amended Complaint, all references to “other waste” have been removed. However, the proposed Amended Complaint retains allegations of violations of the federal regulations. Paragraphs 43, 46, and 49 of the proposed Amended Complaint allege that the groundwater samples violated the Appendix I MCLs. (proposed First Amended Complaint, ¶¶ 43, 46, & 49).

¹ We assume Complainants are withdrawing their First Motion for Leave to File an Amended Complaint.

5) For the same reasons MWG objected to the first proposed Amended Complaint, MWG objects to the proposed Amended Complaint as written because it includes language that has been stricken by the Board in its October 3, 2013 Order. (MWG Response, ¶¶7-9 and *Sierra Club et al v. Midwest Generation, LLC, Order of the Board*, October 3, 2013, p. 27). MWG requests again that in granting Complainants' Motion, the Board direct Complainants to re-file an Amended Complaint in which the allegations of violations of the federal RCRA regulations are stricken.

6) Further, MWG does not object to including the Complainants in an extension to the discovery schedule for written discovery, as requested by MWG, regarding the additional allegations in the Amended Complaint. Accordingly, MWG requests that the Board modify the discovery schedule to allow the parties to serve additional written discovery. Additionally, MWG requests that the Board modify the discovery schedule to allow MWG to respond to the Amended Complaint.

WHEREFORE, in the event this Board grants Complainants' Motion for Leave, that the Board further grant MWG's requests as follows:

- (a) Direct Complainants to withdraw the First Motion for Leave to File Amended Complaint;
 - (b) Grant Midwest Generation, LLC's and Complainants' request for a 60 day extension of the discovery schedule to allow the parties to serve written discovery, and to allow Midwest Generation, LLC to answer or otherwise respond to the Amended Complaint;
- and,

(c) Order Complainants to strike the portions of its Amended Complaint consistent with the Board's prior Order of October 3, 2013.

Respectfully submitted,

Midwest Generation, LLC

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

Dated: January 27, 2015

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