

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.)	

NOTICE OF FILING

TO: Don Brown, 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 Respondent, Midwest Generation LLC's Application for Non-Disclosure, copies of which are herewith served upon you.

MIDWEST GENERATION, LLC

By: /s/ Kristen L. Gale

Dated: February 14, 2017

Jennifer T. Nijman
Susan M. Franzetti
Kristen L. Gale
NIJMAN FRANZETTI LLP
10 South LaSalle Street, Suite 3600
Chicago, IL 60603
(312) 251-5255

SERVICE LIST

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Jennifer L. Cassel
Lindsay P. Dubin, also for Prairie Rivers Network
and Sierra Club
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601

Keith Harley
Chicago Legal Clinic, Inc.
211 West Wacker Drive, Suite 750
Chicago, IL 60606

Abel Russ
For Prairie Rivers Network
Environmental Integrity Project
1000 Vermont Avenue, Suite 1100
Washington, DC 20005

Faith E. Bugel
Attorney at Law
Sierra Club
1004 Mohawk
Wilmette, IL 60091

Greg Wannier, Associate Attorney
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Respondent, Midwest Generation LLC's Application for Non-Disclosure was filed electronically on February 14, 2017 with the following:

Don Brown, 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 February 14, 2017 to the parties listed on the foregoing Service List.

/s/ Kristen L. Gale

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APPLICATION FOR NON-DISCLOSURE

Pursuant to 35 Ill. Adm. Code 130.404, Respondent, Midwest Generation, LLC (“MWG”), submits this application for Non-Disclosure of articles filed in the above captioned matter and states the following:

1) Pursuant to the schedule set by the Hearing Officer, Sierra Club, Environmental Law and Policy Center, Prairie Rivers Network and Citizens Against Ruining the Environment (“Complainants”) and MWG (together, the "Parties") have been engaging in written and oral discovery.

2) On October 6, 2014, in order to share Non-Disclosable information, as that term is defined in 35 Ill. Adm. Code 101.202, MWG filed a motion for Entry of an Agreed Protective Order for Non-Disclosable Information.

3) Since October 6, 2014, the Parties have filed the following pleadings pursuant to the Agreed Protective Order for Non-Disclosable Information:

- a. Complainants' Motion *In Limine* to Exclude Expert Testimony of David Callen and Memorandum in Support filed on May 20, 2016; Redacted Pursuant to the Agreed Protective Order for Non-Disclosure.
- b. Complainants' Motion for Partial Summary Judgment, Memorandum in Support and Exhibits filed on June 1, 2016; Redacted Pursuant to the Agreed Protective Order for Non-Disclosure
- c. MWG's Response to Complainants' Motion *In Limine* to Exclude Expert Testimony of David Callen filed on June 10, 2016
- d. Complainants' Proposed Reply Brief in Support of Motion *in Limine* to Exclude Expert Testimony filed on June 21, 2016.
- e. MWG's Objection to Complainants' Motion for Leave to Reply in Support of its Motion *In Limine* filed on June 23, 2016.
- f. Complainants' Reply in Support of Complainants' Motion for Partial Summary Judgment filed on September 2, 2016.

4) To satisfy the requirements as set forth in 35 Ill. Adm. Code § 130.404(e) and the Hearing Officer's February 1, 2017 Order, and in addition to the declarations stated in the Agreed Protective Order for Non-Disclosable Information, MWG states:

- a. The Articles consist of the following collections of documents:
 - i. NRG's financial information related to a NRG Credit Agreement Signed July 1, 2011, amended Feb. 6, 2013, amended June 4, 2013.
 - ii. Deposition testimony of David Callen, Mark Kelly, Rebecca Maddox, Maria Race, John Seymour, Fredrick Veenbaas, and Richard Frendt.
 - iii. MWG's Response to U.S.EPA Questionnaire for the Steam Electric Power Generating Effluent Guidelines, October 12, 2010.
 - iv. An Affidavit of David Callen attached to MWG's Response to Complainants' Motion *In Limine*, June 9, 2016.
 - v. MWG's Fourth Supplemental Response to Complainants' First Set of Interrogatories and Production of Documents, Dec. 7, 2015.
 - b. The Articles constitute "confidential data submitted by any person" under 35 Ill. Adm. Code § 101.202, because they contain confidential proprietary information such as terms of credit, operating statements, and other highly sensitive business information of the electronic generating industry
 - c. The reasons for requesting the non-disclosure is the Agreed Protective Order of Non-Disclosable Information signed by all Parties and filed with the Illinois Pollution Control Board on October 6, 2014.
- 5) Persons familiar with the financial articles are limited to MWG's officers, directors, and accounting personnel. Persons familiar with the USEPA Questionnaire and the

information related to such Article are limited to MWG's environmental personnel and the expert named for this lawsuit. MWG has protected these Articles from disclosure since the date on which each was created, because MWG and its officers, directors, accounting personnel, environmental personnel, representatives, and agents have regarded and continue to regard the Articles as confidential, proprietary information;

- 6) An affidavit verifying the facts set forth in the application is attached;
- 7) MWG agrees to waive decision deadlines in accordance with 35 Ill. Adm. Code 130.204.

Respectfully submitted,

MIDWEST GENERATION, LLC.

By /s/ Kristen L. Gale
One of Its Attorneys

Dated: February 14, 2017

Jennifer T. Nijman
Susan M. Franzetti
Kristen L. Gale
NIJMAN FRANZETTI LLP
10 South LaSalle Street, Suite 3600
Chicago, IL 60603
312-251-5255

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**

Complainants,

v.

MIDWEST GENERATION, LLC,

Respondent.

**PCB 2013-015
(Enforcement – Water)**

AFFIDAVIT OF KRISTEN L. GALE

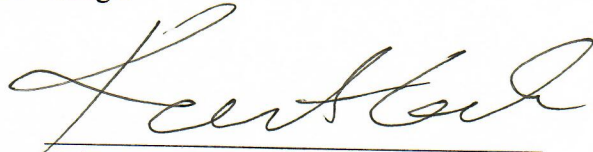
1. MWG seeks to identify certain Articles filed with the Illinois Pollution Control Board as Non-Disclosable Information, as that term is defined in 35 Ill. Adm. 101.202 (the "Articles") and pursuant to the Agreed Protective Order of Non-Disclosable Information filed with the Illinois Pollution Control Board on October 6, 2014.

2. The Articles constitute "confidential data submitted by any person" under 35 Ill. Adm. Code § 101.202, because they contain confidential proprietary information such as terms of credit, operating statements, and other highly sensitive business information of the electronic generating industry

3. The reasons for requesting the non-disclosure is the Agreed Protective Order of Non-Disclosable Information signed by all Parties and filed with the Illinois Pollution Control Board on October 6, 2014

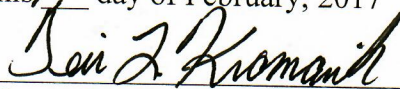
I have personal knowledge of the facts stated herein. I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge.

FURTHER AFFIANT SAYETH NOT.



Kristen L. Gale

Sworn and subscribed before me
this 14th day of February, 2017


Notary Public

