

**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,	)	
	)	
Respondents	)	

**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 WITNESS SPECIFIC EXHIBIT LIST**, copies of which are served on you along with this notice.

Respectfully submitted,



Lindsay Dubin  
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Dated: October 18, 2017

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

In the Matter of:	)	
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SIERRA CLUB, ENVIRONMENTAL	)	
LAW AND POLICY CENTER,	)	
PRAIRIE RIVERS NETWORK, and	)	
CITIZENS AGAINST RUINING THE	)	
ENVIRONMENT	)	
	)	
Complainants,	)	
	)	
v.	)	PCB No-2013-015
	)	(Enforcement – Water)
MIDWEST GENERATION, LLC,	)	
	)	
Respondent.	)	

**COMPLAINANTS' RESPONSE TO MIDWEST GENERATION LLC'S  
WITNESS SPECIFIC EXHIBIT LIST**

Pursuant to the Hearing Officer August 31, 2017 Order, the Environmental Law and Policy Center, Prairie Rivers Network, Citizens against Ruining the Environment, and Sierra Club (“Complainants”) submit their position on the authentication of Midwest Generation LLC’s (“MWG’s”) proposed exhibits for each witness. Additionally, Complainants submit their objections to MWG’s Witness Specific Exhibit List and Supplemental Witnesses List.

**I. Objections to MWG’s Supplemental Witnesses**

Complainants object to MWG’s amendment of their final order of witnesses 11 days beyond the October 2, 2017 deadline for establishing that list in the Pre-hearing Memorandum. MWG’s amendment added direct examination of Christopher Lux and Rebecca Maddox, who were not on MWG’s initial list and whom Complainants also will call for direct examination; and Mark Kelly and Fredrick Veenbaas, whom Complainants will not call for direct examination. MWG claims that this last-minute change is justified “[b]ecause Complainants

elected not to call two of the witnesses that Complainants had previously identified,” MWG Witness Specific Exhibit List at 1, but this is not a valid reason to designate witnesses 11 days after they were aware that Complainants would not be calling these witnesses and after including a final order of witnesses that only specifically identified three witnesses by name. In addition, that justification only applies to Mr. Kelly and Mr. Veenbaas, and does not justify MWG’s sudden decision to add direct testimony of Mr. Lux and Ms. Maddox.

**II. Complainants’ Position On the Authentication of MWG’s Proposed Witness Specific Exhibit List**

Complainants stipulate to the authenticity of the documents in MWG’s Witness Specific Exhibit List, meaning that they are what MWG purports them to be, with the exception of any document identified in the table below. Complainants reserve the right to object to any of the documents on MWG’s Witness Specific Exhibit list, including those not listed below, as to relevance, materiality, or on other grounds. 35 IAC 101.626(a), Ill. R. of Evid. 402, 403.

Without waiving any additional objections to documents on MWG’s Witness Specific Exhibit, complainants make the following objections to several specific exhibits:

- 1) Complainants object to the inclusion of documents that are completely irrelevant to this proceeding. In particular, Complainants do not believe that any “Beyond Coal Campaign” document is relevant to any of the questions scheduled to be addressed at this hearing.
- 2) Complainants object to the admission of any document that is not sufficiently identified on the record and provided to Complainants in advance of the hearing. This objection applies to exhibits 159, 163, 164, 165, and 168 on MWG’s Witness-Specific Exhibit List.

The list of documents to whose authenticity Complainants do not agree is below:

Exhibit	Set	First	Last	Description	Witness
30	MWG13-15	7392		Waukegan Water Balance (Confidential Business Information – NonDisclosable Information “NDI”)	Veenbaas
58	MWG13-15	17183		Illinois EPA’s approval of Joliet 29 GMZ	Gnat
76	MWG13-15	24935	24954	Will County water processes maps and pond drawings	Maddox
83	MWG13-15	29797		Historical memo regarding Will County	Maddox
124	MWG13-15	49273	49285	Valdes May 29, 2015 inspection of the Waukegan berms. Complainants do not object to the authenticity of this document with a corrected Bates range of 49272-49285.	Lux
126	MWG13-15	49268	49267	Waukegan construction documentation, 1977. Complainants do not object to the authenticity of this document with a corrected Bates range of 49268-49269.	Lux
159	NA	NA		Beyond coal campaign	Race
162	NA	NA		Temporal Trend Testing Results Notes by J. Seymour, Feb. 29, 2016	Seymour
163	NA	NA		May 27, 2010 ELUC at Joliet 29	Race
164	NA	NA		EPRI, 2009	Seymour
168	NA	NA		Samples of HDPE and geotextile	Seymour

Respectfully submitted,



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Dated: October 18, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **COMPLAINANTS' RESPONSE TO MIDWEST GENERATION LLC'S WITNESS SPECIFIC EXHIBIT LIST** was served electronically to all parties of record listed below, on October 18, 2017.

Respectfully submitted,



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