

ILLINOIS POLLUTION CONTROL BOARD
August 31, 2017

SIERRA CLUB, ENVIRONMENTAL)
LAW & POLICY CENTER,)
PRAIRIE RIVERS NETWORK AND)
CITIZENS AGAINST RUINING)
THE ENVIRONMENT,) No. PCB 13-15
)
Complainants,)
)
vs)
)
MIDWEST GENERATION, LLC,)
)
Respondent.)

REPORT OF THE PROCEEDINGS had at the hearing on a motion of the above-entitled cause before the Honorable BRADLEY HALLORAN, Hearing Officer of said Court, Room 9-040, The Thompson Center, Chicago, Illinois, on the 23rd day of October, 2017, at the hour of 9:07 a.m.

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1 HEARING OFFICER HALLORAN: Good
2 morning, everyone. My name is Bradley Halloran.
3 I'm a Hearing Officer here with the Illinois
4 Pollution Control Board. I'm also assigned to
5 this case. It's entitled Sierra Club,
6 Environmental Law & Policy Center, Prairie Rivers
7 Network and Citizens Against Ruining the
8 Environment, complainants, versus Midwest
9 Generation, LLC.

10 Periodically throughout the
11 hearing we'll just refer to complainants as
12 complainants or Citizens Group. It's docketed as
13 PCB 13-15. It's a water enforcement case. Today
14 is October 23rd, 2017. It's approximately 9:08.
15 This case was noticed up according to the board's
16 rules and will be conducted pursuant to Section
17 101 and 103 of the board's procedural rules. It
18 is noted that -- it was noticed up for Room 9-034,
19 but we are in Room 9-040. I have attached the
20 appropriate signage to 9-034 and the board's
21 office is upstairs directing anybody that wants to
22 come to 9-040.

23 The Citizens Group had
24 previously filed a motion for summary judgment

1 which the board denied. Reading from the board's
2 January 19th, 2017, order says "The Citizens Group
3 filed a complaint before the board alleging that
4 Midwest Gen through its management of coal ash at
5 the facilities caused or allowed open dumping --
6 dumping and water pollution violating the
7 Environmental Protection Act."

8 The order continues and states
9 "That construing the evidence in favor of the
10 party opposing summary judgment, the board finds
11 that whether historic ash areas are causes of
12 contamination is a genuine issue of material fact.
13 Therefore, the board denies the complainants'
14 motion for summary judgment."

15 So basically the board
16 bifurcated this hearing. We'll do damages and
17 remedy and if need be we'll move on at a later
18 date to -- excuse me. The first case will be
19 liability and then we'll move onto damages and
20 remedy at a later date if need be.

21 With that said, Ms. Bugel, would
22 you like to introduce yourself and your group.

23 MS. BUGEL: Yes, my name is Faith
24 Bugel. I am here representing Sierra Club. We

1 have three other attorneys with us today.

2 MS. DUBIN: I'm Lindsay Dubin.

3 MR. WANNIER: Greg Wannier.

4 MS. RUSS: Abel Russ.

5 MS. LAM: Sylvia Lam.

6 HEARING OFFICER HALLORAN: Okay.

7 For Midwest?

8 MS. NIJMAN: Good morning, Hearing
9 Officer. Jennifer Nijman for Midwest Generation.

10 I'm joined by Kristen Gale and Susan Franzetti.

11 HEARING OFFICER HALLORAN: Thank you
12 so much. Before we begin, a couple housekeeping
13 matters. On Thursday, October 19th, we had a
14 prehearing conference and a couple matters came
15 up.

16 On October 18th, the
17 complainants filed an objection and it states
18 complainants object to -- object to Midwest
19 Generation's amendment of their final order of
20 witnesses 11 days beyond the October 2nd, 2017,
21 deadline for establishing that list in a
22 prehearing memorandum. I denied their -- I denied
23 their objection and I found that they allege no
24 prejudice and they also have a right to cross. So

1 no harm, no foul. And also on October 17th I
2 received a call from -- is it October 18th? I
3 received a call from a group named Kindling Group
4 which runs documentaries and they were going to
5 video and audio this hearing.

6 I informed the parties on
7 October 19th of Kindling Group's intention and
8 prior to the conference call Midwest filed an
9 emergency motion objection and motion to bar
10 filming and memorandum in support, but prior to
11 that the contact person from Kindling Group
12 contacted me and said they will not be filming
13 or -- either video or audio taping today and so
14 I've held this motion.

15 I rendered it moot, but I will
16 put it aside in case we have to rule it on it at a
17 later date, but I ask and I direct anybody in the
18 audience not to video or audio tape this hearing.
19 We also have a public comment signup sheet in the
20 back as you walk in. You can signup there and
21 make a public comment and we will squeeze you in
22 one way or the other. With that said, any other
23 matters before if you have an opening, Ms. Bugel?

24 MS. BUGEL: I have a very brief

1 opening.

2 HEARING OFFICER HALLORAN: Okay.

3 MS. BUGEL: Good morning. This case
4 is about violations of ground -- groundwater
5 standards at four Midwest Generation facilities in
6 Illinois; Joliet 29, Powerton, Waukegan and Will
7 County. Complainants agree with the Environmental
8 Protection Agency on that point as will be shown
9 by violation notices issued by the Illinois
10 Environmental Protection Agency. The evidence
11 will show that the sources causing those
12 violations were not confined to select coal ash
13 ponds that have been relined at those four
14 facilities.

15 The evidence will show that coal
16 ash outside the ponds at Midwest Generation's
17 facilities is a source. This includes landfills,
18 old ash areas, old ash ponds among other sources.
19 The evidence will also show that unlined ponds
20 with ash in them remain at these facilities and
21 also remain a source. These are inactive ponds
22 that were not relined but also were not closed.
23 The evidence will also show that lined ponds are
24 sitting in the water table posing a risk and

1 finally the evidence will show that even after
2 select ponds were relined the level of
3 contamination in the groundwater has not abated.

4 HEARING OFFICER HALLORAN: Thank
5 you, Ms. Bugel. Ms. Nijman?

6 MS. NIJMAN: Yes. Thank you. Good
7 morning, again.

8 HEARING OFFICER HALLORAN: Good
9 morning.

10 MS. NIJMAN: This story starts for
11 Midwest Generation in 1999. That's when Midwest
12 Generation acquires and begins operating the four
13 plants at issue here. The case is really about
14 what Midwest Generation did once it got there, how
15 they acted with regard to the environment when
16 they took over facilities that had been operating
17 for many years, in some cases from the 1920s and
18 1930s, it's about the precautions Midwest Gen took
19 in handling coal ash, ash that is almost
20 exclusively bottom ash. And you're going to hear
21 testimony that bottom ash is different than fly
22 ash. Fly ash doesn't go to the Midwest Gen ponds.
23 Midwest Gen ships it offsite.

24 You'll hear that the ash

1 generated by these Midwest Generation stations has
2 been tested and isn't leaching coal ash
3 constituents. It's bottom ash that is easily
4 designated for reuse. I don't think many people
5 have seen bottom ash. We brought some. It's
6 sandy, it looks like dirt, it comes from the
7 burning of coal and drops to the bottom of the
8 furnace. You'll hear that the constituents that
9 you might find in bottom ash depends on the source
10 of the coal and it depends on the combustion
11 process and here you'll learn that the source of
12 the coal remained the same over Midwest Gen's
13 operation and the combustion process remained the
14 same.

15 So we're going to talk about how
16 Midwest Gen properly handled the ash at its
17 stations in its lined ponds or impoundments as
18 they're usually called. These impoundments were
19 permitted as part of Midwest Generation's NPDES
20 wastewater treatment permits. At least that's how
21 this case started, with allegations by the
22 complainants that the impoundments were causing
23 groundwater contamination.

24 Sometime after the case was

1 filed, the complainants added more claims about
2 old historic areas as we just heard. Those are
3 areas of old ash and you'll hear were placed long
4 before Midwest Generation got there. Why does
5 that matter? Well, because, again, this case is
6 what -- is about what Midwest Generation did when
7 they got there in 1999.

8 When they got there, took over
9 operations, they took a series of steps to assess
10 their sites. You will hear testimony that they
11 learned that the ponds or the impoundments at all
12 the four stations were built in about 1977, 1978
13 and more importantly learned that the ponds were
14 lined, lined with at least 12 inches and sometimes
15 36 inches of a concrete like material called
16 poz-o-pac. Again, most people haven't seen
17 poz-o-pac before. This is it. This was at the
18 bottom of the liners.

19 You're going to hear testimony
20 about this exact core sample, where it was taken
21 and when. So Midwest Gen takes over in 1999 and
22 finds most of its active ponds lined with this
23 poz-o-pac. And you'll hear Mr. Seymour.
24 Mr. Seymour is an expert engineer from the firm

1 called Geosyntec. He will tell you that it was
2 very unusual to find ponds at this time lined.
3 Not a lot of ash ponds were lined in the past.
4 The Midwest Gen ponds had lining.

5 So then Midwest Generation
6 recently takes over. They do something really
7 smart. They hire a woman named Maria Race.
8 You're going to hear a lot from Maria. The
9 complainants are actually going to call her in
10 their case, which makes things a little
11 complicated, but we discussed that we would make
12 that work. We'll call her again in our case.

13 You're going to learn that
14 Ms. Race comes on board as the environmental
15 program manager in charge of compliance and she
16 starts thinking about her responsibilities, her
17 O&M responsibilities, operation and maintenance,
18 and starts thinking that it would be good to
19 ensure that the ponds are in good shape. She
20 gathers all the old data about the ponds, all the
21 old drawings, all the old as-builts, she hires
22 consultants, a company named Natural Resource
23 Technology you'll hear a lot about and she begins
24 a long and complicated process of looking at the

1 ponds' impoundments at the stations in a very
2 scientific manner trying to prioritize where to
3 start with the ponds. You're going to hear about
4 the reports that the consultants NRT created and
5 how they prioritized the relining.

6 Ms. Race is going to explain how
7 they took a very conservative approach for the
8 pond assessments. They assumed that the poz-o-pac
9 that had been there since the late '70s might not
10 be in good shape. They made that assumption.
11 Now, they hadn't seen it. They had no evidence
12 either way, but they made an assumption. Based on
13 that assumption, Ms. Race starts planning an
14 extensive relining program. Now, relining doesn't
15 happen overnight. You're going to hear Ms. Race
16 talk about starting at about 2003 a relining
17 program for the next seven years. That means the
18 planning, the internal approvals, figuring out
19 operations, applying for permits, getting the
20 permits, doing the work and ensuring QAQC for all
21 that work.

22 So they start their work and
23 they find something really interesting about the
24 poz-o-pac liners at the bottom of the ponds. They

1 find that Ms. Race will tell you and several of
2 the station specialists will tell you Fred
3 Veenbaas who is an environmental specialist from
4 the Waukegan facility, Mark Kelly who is a
5 chemical specialist from Powerton, they're going
6 to tell you that when they went into the ponds and
7 saw the poz-o-pac, it was in really good shape
8 like this sample.

9 At the same time, Midwest Gen is
10 thinking about what's in the ash that is in the
11 ponds. If you recall how I said earlier that
12 Midwest Gen had tested their ash and knew it
13 wasn't leaching, well, specifically in 2- -- you
14 will hear testimony in 2004, 2007 and again in
15 2010, 2010, Midwest Gen takes samples of the
16 actual bottom ash from its ponds to see what's in
17 it. Those samples will be discussed by Maria Race
18 as well as Mr. Rich Gnat who is one of Midwest
19 Generation's longtime consultants from the firm of
20 KPRG. Midwest Generation's expert in this case
21 John Seymour who I mentioned from Geosyntec is
22 very experienced with ash ponds and you're going
23 to hear that he also relies on the pond ash sample
24 results.

1 Why? Because they show exactly
2 what could possibly leach, site specific samples
3 all below Class 1 groundwater standards for coal
4 ash constituents and, remember, the goal type, the
5 Wyoming low sulfur coal and the combustion process
6 don't change over time. So if what's in the ponds
7 is below the Class 1 standards, then how can that
8 be causing impact to groundwater? Mr. Seymour
9 will explain his conclusion to that regard.

10 The evidence will also show that
11 Midwest Gen took samples of some of the historic
12 areas of ash that the complainants later added to
13 this case. You'll hear Mr. Gnat from KPRG and
14 Maria Race describe the samples of those historic
15 areas. In 2004, 2005 and 2015, Midwest Gen
16 samples old ash areas in three of their -- three
17 different stations; Joliet, Powerton and Will
18 County. That told them that the historic ash was
19 also of little concern. In fact, it met the same
20 levels that could be used for beneficial use under
21 the Illinois regulations test. So Midwest Gen
22 knew that the old areas weren't causing a concern.

23 Now, while all of this is
24 happening, there is national news of spills of ash

1 from dammed ponds very different than the
2 situation we have here, but it only matters
3 because Illinois EPA starts responding and you'll
4 hear Maria Race testify that Illinois EPA in 2010
5 asks all the coal companies in Illinois to start
6 monitoring around their ash ponds. Midwest
7 Generation cooperates and some constituents are
8 detected.

9 You'll hear from Ms. Race that
10 the result of all of that was a complete
11 resolution with the Illinois EPA. They entered
12 into compliance commitment agreements to address
13 any constituents that were found in the
14 groundwater above the Class 1 groundwater
15 standards. Ms. Race will also tell you that
16 Midwest Gen did not think any groundwater impacts
17 were from the ponds and you'll see that the
18 letters -- you'll see that in the letters they
19 sent to Illinois EPA explaining. But they
20 cooperate, they work with IEPA.

21 Midwest Generation puts in place
22 environmental land use controls and, put more
23 significantly, groundwater management zones and as
24 the board is well-aware groundwater management

1 zones means that the Class 1, 2, 3 or 4
2 groundwater standards don't apply. Ms. Race will
3 tell you IEPA accepted the compliance commitment
4 agreements as resolution of the groundwater issues
5 at all four stations and then right after that the
6 complainants brought this suit.

7 So let's go back to my initial
8 premise that this case is about Midwest Gen's
9 story and what they did regarding their
10 attestations in 1999. Why is it so critical to
11 understand the actions they took? Complainants
12 would like you to think the case is very simple,
13 show you select constituents in the groundwater,
14 tell you it's above background and then it
15 must -- Midwest Gen is there so they must be
16 responsible.

17 If we think about the claims
18 that are being made at Midwest Generation, you'll
19 see that the facts of what we did are more
20 important. I'd like to start with the complaint
21 and the allegation in the complaint because there
22 is two counts, alleges groundwater contamination
23 and open dumping as counsel had mentioned. That
24 sounds simple, but, as I said, complainants allege

1 two possible sources at least, ash ponds and then
2 some known, some unknown historic ash areas.
3 That's at each of the stations. We have four
4 stations. Each of the stations has multiple
5 ponds. Each station needs to be considered
6 separately as the ponds do. There is nothing
7 simple about this case.

8 The best way to visualize it is,
9 again, looking at the language in the complaint.
10 The first claim is for groundwater. Up on the
11 screen let's consider what that is. Groundwater
12 pollution means you have to cause or threaten or
13 allow a discharge in violation of regs causing
14 water pollution or in violation of regulations or
15 standards. So to establish groundwater pollution,
16 you need to cause and allow. That's the key
17 language that informs this case. It's not a super
18 fun case, a CERCLA case where the statute defines
19 who the liable parties are and this is why the
20 history of Midwest Generation's actions since 1999
21 are key.

22 You're going to hear throughout
23 this next week that at least Midwest Gen did not
24 take any actions that caused or allowed a

1 discharge. In fact, the evidence will show that
2 they took steps to prevent any discharge.

3 Let's consider those steps
4 briefly and what precautions they took. Next
5 slide. Looking first so if you see this
6 connection for groundwater pollution you need
7 cause and allow, regulations and standard, and we
8 have two alleged sources. On the left side, the
9 permitted ash ponds. Talking about those first,
10 we already discussed the testimony you'll hear
11 about Ms. Race's investigations of the ponds. We
12 already discussed the tests of the pond ash
13 showing very low constituents of concern that
14 could leach out of the ash.

15 I mentioned Ms. Race will
16 discuss the Midwest Gen relining program that
17 began in the mid 2000's and continued through 2013
18 with the Compliance Commitment Agreements. You'll
19 hear from the station specialists and Midwest
20 Generation's expert how Midwest Gen used proper
21 construction techniques for their liners and a
22 highly non-permeable liner material called -- a
23 geomembrane called HDPE. I have a small sample of
24 HDPE. Again, I like to see these things since I

1 hadn't seen them before. High density
2 polyethylene plastic. HDPE.

3 This is the cushion material
4 that protects the HDPE. You'll hear from the
5 station engineers and the station chemist about
6 the strong quality assurance and quality control
7 to prevent leaks in the liners. Now, these are
8 operating stations. So, of course, you're going
9 to hear that there have been tears in the liners
10 from time to time, but the witnesses will tell you
11 those tears occur above the water line where the
12 liner is exposed to construction and other
13 equipment and the witnesses will tell you that
14 those ponds are regularly inspected and the tears
15 are always repaired and they will describe how the
16 poz-o-pac at the bottom of the ponds was in such
17 good shape that the liner consultants decided to
18 leave it in place and put the HDPE on top of the
19 poz-o-pac with a cushion between essentially
20 creating a double liner system.

21 Now, the ash in the ponds gets
22 removed from time to time often called dredging
23 and you'll hear how the ponds were designed to be
24 dredged so there are procedures in place to

1 protect the liners during that process. Ms. Race
2 and others will also discuss the groundwater
3 management zones in place at Joliet, Powerton and
4 Will County and at Waukegan -- Waukegan Ms. Race
5 will explain the ponds there previously lined with
6 a plastic called Hypalon and later relined with
7 HDPE. And, significantly, Illinois EPA agreed
8 with Midwest Generation that the ponds at Waukegan
9 were not the source of constituents. Mr. Lynn
10 Dunaway, environmental specialist with Illinois
11 EPA, stated during the Waukegan NPDES public
12 permit hearing written testimony "Currently we
13 don't believe the active ash ponds are the source
14 of contamination. There appears to be some other
15 source other than the active ash ponds."

16 Fred Veenbaas, the station's
17 environmental specialist, and our expert
18 Mr. Seymour, will all talk about the offsite
19 sources of contamination surrounding the facility
20 in Waukegan.

21 So we've talked how the evidence
22 will show Midwest Gen did not cause and allow a
23 discharge from the permitted ponds. Now, looking
24 to the historic areas. Again, Midwest Gen didn't

1 place the old ash at those facilities and you'll
2 hear that testimony. That was there long before
3 1999. Our expert will explain the ash testing in
4 three of the historic ash areas showing that it
5 was not -- is not leaching coal ash constituents.
6 And expert Mr. Seymour will explain that the
7 results of the historic ash testing is further
8 supported by groundwater monitoring results around
9 one of the former ash areas at a facility.

10 The complainants are also
11 alleging violations of open dumping. Now, they
12 are alleging it at three facilities, but not at
13 Joliet. Joliet 29 is certainly unique and
14 Mr. Seymour will explain that the levels of coal
15 ash constituent in the groundwater at Joliet are
16 very low, below Class 1 standards other than
17 chloride that is believed to be coming from salt
18 from the roads.

19 So here is the definition of
20 open dumping and I show it only again to focus on
21 the cause and allow language. You cannot just say
22 open dumping occurs because somebody is there. We
23 need to look at Midwest Gen's actions after they
24 took control of the facility. Now, for open

1 dumping, you need a cause and allow and you need
2 refuse and you need a disposal site. So let's
3 consider, again, the two areas we're looking at,
4 the permitted ponds and the historic ash areas.

5 Complainants have alleged there
6 is open dumping because they say ash is refuse and
7 the ponds are a disposal site. You'll hear Maria
8 Race talk about the ash ponds as a part of the
9 NPDES permit system, how they serve a very
10 specific purpose, how they are regularly -- the
11 ash is regularly removed, the ponds were lined
12 with poz-o-pac, they were relined to protect them
13 from damage. Bottom ash is removed from the
14 impoundments, usually for beneficial use.

15 Our expert John Seymour will
16 explain his opinion that the impoundments are not
17 causing contaminants in the groundwater. Again,
18 relying on the ash sampling exactly from those
19 ponds and looking at the liner construction. As
20 to the historic areas, it is very similar to the
21 groundwater claim. You'll hear Midwest Gen didn't
22 place the ash in those historic areas. They
23 conducted testing of those areas -- certain of
24 those areas. They know the ash was not leaching.

1 Mr. Seymour will explain his conclusion that the
2 historic fill is not causing the groundwater
3 impact. No other monitoring wells establish the
4 historic areas as a source.

5 So ultimately throughout this
6 hearing we're going to be going through this same
7 discussion for each of the stations, each of their
8 ponds and you'll hear about Midwest Gen's long
9 history of prevention that established Midwest Gen
10 did not cause or allow groundwater contamination
11 or open dumping. You're going to hear the
12 testimony about the current status of the stations
13 because it's important to understand where we are
14 today as well.

15 First, Midwest Gen completed all
16 the actions required by the Compliance Commitment
17 Agreements and its agreements with Illinois EPA
18 and Ms. Race will tell you Illinois EPA has
19 expressed no further concerns with the stations.
20 Second, Joliet 29 has converted to natural gas.
21 They don't produce any ash anymore. There were
22 three ponds at Joliet and you will hear that
23 Midwest Gen has already emptied out the ash from
24 one of its ponds, plans to empty out the second

1 pond in the summer and the third pond was a
2 finishing pond and took what's termed as a de
3 minimis amount of ash. At Will County, you'll
4 hear that Will County has already shut down one of
5 its units and it has also dewatered and no longer
6 uses two of its ponds and, third, you will hear
7 Ms. Race discuss the US EPA coal combustion rules.
8 Those are known as the CCR rule that came into
9 effect in 2015 after this case was filed.

10 Midwest Gen is well underway in
11 complying with those rules and that means that
12 some of their active ponds still in use at the
13 station are going to change to comply with the
14 rules, some may close, some may be rebuilt, there
15 is going to be a lot of activity relating to the
16 Federal Rules.

17 So even with all those changes
18 and all that activity we still find ourselves here
19 at this hearing, but we are ready to proceed and
20 we appreciate your time and patience and attention
21 for the week.

22 HEARING OFFICER HALLORAN: Thank
23 you, Ms. Nijman.

24 MS. NIJMAN: Thank you.

1 HEARING OFFICER HALLORAN: Ms.

2 Bugel?

3 MS. BUGEL: Yes, thank you.

4 HEARING OFFICER HALLORAN: Thank
5 you.

6 MS. BUGEL: Complainants move to
7 call Maria Race. We are bringing this motion
8 because she is an adverse witness.

9 HEARING OFFICER HALLORAN: Okay.
10 Terrific. Granted. Ms. Race, if you can raise
11 your right hand, Mr. Brickey will swear you in.

12 WHEREUPON:

13 MARIA RACE
14 called as a witness herein, having been first duly
15 sworn, deposeth and saith as follows:

16 MS. BUGEL: Hearing Officer,
17 complainants also ask permission to ask leading
18 questions since Ms. Race is an adverse witness.

19 HEARING OFFICER HALLORAN: You may.

20 MS. BUGEL: Thank you.

21 D I R E C T E X A M I N A T I O N

22 BY MS. BUGEL

23 Q. Good morning, Ms. Race.

24 A. Good morning.

1 Q. Can you please tell me who you work
2 for?

3 A. I work for NRG Energy.

4 Q. And what is your position?

5 A. I'm currently director of federal
6 environmental programs.

7 Q. And does NRG Energy own Midwest
8 Generation?

9 A. Yes, they do.

10 Q. Can you tell me what your job
11 responsibilities are as director of federal
12 environmental programs?

13 A. Mm-hmm. I work closely with the
14 senior vice president of environmental to
15 understand and assimilate the federal government
16 regulations into our position.

17 Q. Do your responsibilities include
18 environmental compliance?

19 A. Only insofar as they impact a couple
20 of stations in Illinois and that's only been for
21 the last couple of months.

22 Q. When you say a couple of stations in
23 Illinois, which stations are you referring to?

24 A. In this case, Waukegan.

1 Q. And you said -- you indicated that's
2 only been for a couple of months, correct?

3 A. Yes.

4 Q. Prior to that, what were your
5 responsibilities for environmental compliance?

6 MS. FRANZETTI: Objection.
7 Clarification. While she is director of federal
8 environmental programs or do you want her to go
9 back to her prior positions?

10 MS. BUGEL: My question is Ms. Race
11 indicated that it's only been for a couple of
12 months. So I'm referring to prior to that couple
13 of months.

14 HEARING OFFICER HALLORAN: Okay.
15 Just rephrase your question.

16 MS. BUGEL: Okay.

17 HEARING OFFICER HALLORAN: Thank
18 you. Sustained.

19 BY MS. BUGEL:

20 Q. Can you tell me how long you've been
21 director of federal environmental programs?

22 A. Since September of 2015. I think
23 that's right.

24 Q. And what was your position prior to

1 that?

2 A. I was director of asset management.

3 Q. And as director of asset management,
4 did you have any responsibilities for
5 environmental compliance?

6 A. No, but I was asked at times for
7 information on -- to facilitate environmental
8 compliance because I had a long history with the
9 sites.

10 Q. Can you tell me were you involved in
11 any investigation into groundwater impacts caused
12 by coal ash ponds at the four Midwest Generation
13 facilities in Illinois?

14 MS. NIJMAN: Object to form.
15 Assumes facts.

16 HEARING OFFICER HALLORAN: I'm
17 sorry. Object to form?

18 MS. NIJMAN: Object to form and the
19 question assumes facts.

20 HEARING OFFICER HALLORAN: Ms.
21 Bugel, could you rephrase?

22 MS. BUGEL: Okay.

23 HEARING OFFICER HALLORAN: Thank
24 you.

1 MS. BUGEL: Hearing Officer,
2 permission to approach the witness.

3 HEARING OFFICER HALLORAN: Yes, you
4 may.

5 MS. BUGEL: I did want to ask. We
6 have numerous exhibits today. Do you need me to
7 ask for permission to approach the witness every
8 time?

9 HEARING OFFICER HALLORAN: No. No.

10 MS. BUGEL: Thank you.

11 HEARING OFFICER HALLORAN: Thank
12 you.

13 BY MS. BUGEL:

14 Q. I'm handing you what has been marked
15 as Complainants' Group Exhibit 1A.

16 (Document marked as Complainants
17 Exhibit No. 1A for
18 identification.)

19 BY MS. BUGEL:

20 Q. And is that -- I apologize. I
21 thought we had them bundled together, but we did
22 not. We're handing you what has been marked as
23 Complainants' Exhibit 1A and are you familiar with
24 that document?

1 A. Yes, I am.

2 Q. And can you please indicate -- can
3 you please describe what that document is?

4 A. This document is a violation notice
5 that was addressed to my boss at the time Bill
6 Constantelos for Waukegan Generating Station.

7 Q. And as part of Group Exhibit 1A we
8 are passing you what has been marked as 2A, 3A and
9 4A and I apologize. Let me just make that clear
10 for the record.

11 (Documents marked as
12 Complainants Exhibit No.'s
13 2A-4A for identification.)

14 MS. BUGEL: This is Group Exhibit A
15 made up of Exhibit's 1A, 2A, 3A and 4A.

16 MS. FRANZETTI: All right. Just for
17 clarification --

18 HEARING OFFICER HALLORAN: I'm
19 sorry, Ms. Franzetti.

20 MS. FRANZETTI: You go ahead.

21 HEARING OFFICER HALLORAN: So we're
22 back on a group exhibit now 1A?

23 MS. BUGEL: I misspoke. Hearing
24 Officer, it's Group Exhibit A and as part of it it

1 has -- it is documents 1A, 2A, 3A and 4A.

2 HEARING OFFICER HALLORAN: I don't
3 see any of these markings.

4 MS. BUGEL: Okay. I only marked the
5 exhibit for the witness. We stickered the exhibit
6 for the witness.

7 HEARING OFFICER HALLORAN: How do I
8 know which one I'm looking at here?

9 MS. NIJMAN: May I ask a procedural
10 question as well? I'm just a little confused.
11 Starting with an exhibit are we doing A, B, C, D?

12 MS. BUGEL: So just for the record
13 what we have done is whenever we have a group
14 exhibit it has a letter and the individual
15 exhibits are numbered. So we will be going
16 sequentially with numbers, but when it's a group
17 exhibit it will be followed by a letter. So the
18 group exhibit is A and the numbering 1A, 2A, 3A
19 and 4A indicates that it's part of a group
20 exhibit.

21 MS. NIJMAN: Okay.

22 MS. FRANZETTI: Can we go off the
23 record?

24 HEARING OFFICER HALLORAN: Yes.

1 (Whereupon, a break was taken
2 after which the following
3 proceedings were had.)

4 HEARING OFFICER HALLORAN: We're
5 back on the record.

6 BY MS. BUGEL:

7 Q. Complainants have put in front of
8 you four documents marked 1A through 4A. For the
9 record, let's look at 1A first.

10 Does that appear to be a
11 violation notice for Waukegan Generating Station?

12 A. Yes.

13 Q. And that has been marked as 1A for
14 the record. Referring to 2A, does that appear to
15 be a violation notice for Will County Generating
16 Station?

17 A. Correct, it does.

18 Q. And that has been marked as Exhibit
19 2A for the record.

20 Referring to Exhibit 3A, does
21 that appear to be a violation notice for Joliet 29
22 Generating Station?

23 A. Yes.

24 Q. And that has been marked as Exhibit

1 3A for the record.

2 And referring to Exhibit 4A,
3 does that appear to be a violation notice for
4 Powerton Generating Station?

5 A. Yes.

6 Q. And that has been marked Exhibit 4A
7 for the record.

8 Referring to these four exhibits
9 together, are you familiar with these documents?

10 A. Yes, I am.

11 Q. Can you please describe what they
12 are?

13 A. These are violation notices that
14 were sent to Bill Constantelos regarding each of
15 these stations.

16 Q. And do these documents have -- do
17 these letters have attachments?

18 A. Yes, they do. Each one has one
19 attachment it looks like.

20 Q. And are you familiar with those
21 attachments?

22 A. Yes, I am.

23 Q. And, again, referring to them
24 together, can you please describe what those

1 attachments are?

2 A. For example, the one labeled 3A for
3 Joliet 29 states that it is Violation Notice
4 2012-00059 and it has a list of parameters and
5 sample values, the groundwater standard and
6 collection date.

7 Q. And is there a similar attachment to
8 each of these four documents?

9 A. Yes, there is.

10 Q. And referring to page one of one of
11 these attachments.

12 MS. FRANZETTI: Counsel, objection.
13 I think you should specify which document you want
14 her to look at.

15 HEARING OFFICER HALLORAN: Just --
16 just object to your foundation and then your
17 grounds and I will answer, but, yeah, you can --
18 page one of what?

19 MS. BUGEL: What -- the point is it
20 doesn't matter which one she looks at.

21 HEARING OFFICER HALLORAN: So --

22 MS. BUGEL: Because --

23 HEARING OFFICER HALLORAN: Humor me.

24 MS. BUGEL: Absolutely.

1 HEARING OFFICER HALLORAN: And when
2 you say what the attachment --

3 BY MS. BUGEL:

4 Q. Ms. Race, can you please look at
5 Exhibit 1A?

6 A. Okay.

7 Q. And do you see midway through the
8 page where it says "Violation description"?

9 A. Yes.

10 Q. And under that, do you see where it
11 says "Operations at ash impoundments have resulted
12 in violations of the groundwater quality standards
13 at monitoring well M1 for the following
14 constituents"?

15 A. Yes, I see that.

16 Q. And do you know if each of the
17 attachments has similar language identifying
18 individual wells?

19 A. Yes, it appears to be the case.

20 Q. So is it accurate to say the
21 attachments go on to list specific constituents
22 for which violations are described?

23 MS. FRANZETTI: Objection to form.
24 They're alleged violations, not violations.

1 MS. BUGEL: I'm sorry. But the
2 letter itself doesn't say alleged violations. The
3 letter -- the attachment says violations.

4 HEARING OFFICER HALLORAN:
5 Overruled. You may answer.

6 MS. FRANZETTI: If I can just for
7 the record, second paragraph at the front page
8 says "Hereby provides notice of alleged
9 violations."

10 MS. BUGEL: The language I am
11 referring to does not say alleged violations. It
12 just says violations.

13 HEARING OFFICER HALLORAN: Like on
14 Attachment A violation description?

15 MS. BUGEL: Violation description
16 and then the sentence we -- I read aloud
17 "Operations at ash impoundments have resulted in
18 violations."

19 HEARING OFFICER HALLORAN:
20 Overruled. You can cross to get your point
21 across, Ms. Franzetti. Thank you. You may
22 proceed.

23 BY THE WITNESS:

24 A. Can you repeat the question?

1 MS. BUGEL: Can you repeat the
2 question, please?

3 HEARING OFFICER HALLORAN: Just ask
4 me and I'll ask Mr. Brickey.

5 MS. BUGEL: Okay.

6 HEARING OFFICER HALLORAN:
7 Mr. Brickey, will you please read Ms. Bugel's last
8 question back.

9 (Whereupon, the record was read
10 as requested.)

11 BY THE WITNESS:

12 A. No, it lists specific parameters for
13 which violations are alleged.

14 BY MS. BUGEL:

15 Q. Is it accurate to say the attachment
16 lists the dates on which the violations occurred?

17 MS. FRANZETTI: Same objection.
18 Standing objection to the use of the term
19 violation.

20 HEARING OFFICER HALLORAN:
21 Overruled. You may answer, Ms. Race.

22 BY THE WITNESS:

23 A. The attachment A states the
24 collection date for each of the parameters.

1 BY MS. BUGEL:

2 Q. Ms. Race, prior to -- sorry. Just
3 one more question.

4 If you flip to the second page
5 of Exhibit 1A, your name appears as a cc on these
6 letters, is that correct?

7 A. That's correct.

8 Q. And do you know if your name appears
9 as a cc on all four letters?

10 A. That's correct.

11 MS. BUGEL: And complainants move
12 for Group Exhibit A consisting of Complainants'
13 Exhibit's 1A through 4A to be admitted into
14 evidence.

15 MS. FRANZETTI: No objection.

16 HEARING OFFICER HALLORAN: Thank
17 you. Group A, 1A through 3A -- excuse me -- 4A is
18 admitted into evidence.

19 MS. BUGEL: Thank you.

20 HEARING OFFICER HALLORAN: Thank
21 you.

22 BY MS. BUGEL:

23 Q. Ms. Race, the attachments to these
24 letters indicate -- lists certain monitoring wells

1 at the four Midwest Gen facilities, correct?

2 A. Yes.

3 Q. And are you familiar with those
4 monitoring wells?

5 A. I'm familiar with the locations of
6 some of the wells better than others.

7 Q. Are you familiar with the process,
8 and I'm not talking about the physical process,
9 but I'm talking more about the decision-making to
10 install those monitoring wells --

11 A. Yes, I am.

12 Q. -- and the reasons that they were
13 installed?

14 A. I'm familiar with the reasons that
15 we agreed to install them.

16 Q. And it was in communication with
17 IEPA -- was there communication with IEPA involved
18 in the installation of the monitoring wells?

19 A. Yes, there was.

20 Q. And were you involved in those
21 communications with IEPA?

22 A. Yes, I was.

23 Q. And did IEPA first contact Midwest
24 Generation to seek the installation of monitoring

1 wells?

2 A. No.

3 Q. Can you explain how -- can you
4 explain how that process came about?

5 MS. FRANZETTI: Objection to form.
6 Witness said they didn't first contact.

7 MS. BUGEL: Okay.

8 MS. FRANZETTI: So, vague.

9 MS. BUGEL: I'll rephrase the
10 question.

11 BY MS. BUGEL:

12 Q. Can you explain how the process of
13 installing the monitoring wells came about?

14 A. It was a long process. It started
15 during the US EPA reaction to the TVA Kingston
16 spill and US EPA and Illinois EPA began a process
17 by which they were looking to see if there were
18 any ash impoundments in the state that were
19 similar to the TVA impoundment and they found that
20 there were none in our -- in our facilities and
21 that was the beginning and then over time in
22 discussions with Illinois EPA they wanted to
23 figure out if the ash impoundments were leaking
24 and asked to -- asked us to install the wells

1 voluntarily, which we did.

2 Q. Thank you. I am going to refer
3 to -- Strike that.

4 And you were involved in that
5 process that you just described?

6 A. I was involved in the discussions
7 with the agency.

8 Q. And were you -- were you involved in
9 Midwest Generation's decision to install
10 monitoring wells?

11 A. I was involved in providing
12 information to the executives who made the final
13 decision. Will I need these still?

14 Q. You can set them aside. Thank you.

15 MS. FRANZETTI: Can I go off the
16 record?

17 HEARING OFFICER HALLORAN:

18 Mr. Brickey, we're off the record.

19 (Whereupon, a discussion was had
20 off the record.)

21 HEARING OFFICER HALLORAN: We're
22 back on the record.

23 MS. BUGEL: Complainants have marked
24 a document Complainants' Exhibit 5. The title of

1 this document is Midwest Generation, LLC's
2 Response to Complainants' Fourth Set of Document
3 Requests, Second Set of Interrogatories and Second
4 Set of Requests for Admission.

5 (Document marked as Complainants
6 Exhibit No. 5 for
7 identification.)

8 MS. FRANZETTI: I'm sorry. Can we
9 go off the record one more time?

10 HEARING OFFICER HALLORAN: Let's go
11 off the record --

12 MS. FRANZETTI: I don't understand
13 the marking.

14 HEARING OFFICER HALLORAN: Excuse
15 me, Ms. Franzetti. Can you give me a second?

16 MS. FRANZETTI: I just want to
17 explain.

18 HEARING OFFICER HALLORAN: Okay.
19 Mr. Brickey, we can go off the record.

20 (Whereupon, a discussion was had
21 off the record.)

22 HEARING OFFICER HALLORAN: We're
23 back on the record. Thank you.

24 MS. NIJMAN: I also object to the

1 use of discovery materials. I'm putting in the
2 record -- an objection on the record because I'm a
3 little confused about calling the witness in --
4 our witness in their case, but discovery is used
5 as you know for cross-examination. It's not an
6 exhibit, per se. So to the extent it's being used
7 as an exhibit, I don't know, is this
8 cross-examination?

9 HEARING OFFICER HALLORAN: Well, as
10 you know, the rules of evidence are a little more
11 relaxed in administrative hearings. I think -- I
12 think -- I think I'll overrule your objection, but
13 just make clear, Ms. Bugel, what the heck is going
14 on.

15 MS. BUGEL: Absolutely.

16 HEARING OFFICER HALLORAN: Thank
17 you.

18 MS. BUGEL: Thank you.

19 BY MS. BUGEL:

20 Q. Ms. Race, you have lawyers
21 representing -- I'm sorry. Let me rephrase that.

22 Ms. Race, Midwest Generation has
23 lawyers representing them in this action, correct?

24 A. We have lawyers assisting us in

1 this, but I don't know what representing means in
2 this context.

3 Q. So do you -- I can -- is Nijman
4 Franzetti, the law firm, assisting Midwest
5 Generation in this action?

6 A. Yes, that's what I believe.

7 Q. And that includes Susan Franzetti?

8 A. Correct.

9 Q. And that includes Jennifer Nijman?

10 A. Correct.

11 Q. And your lawyers have prepared
12 documents to submit in this proceeding, is that
13 correct?

14 MS. FRANZETTI: Objection to form.
15 Lack of foundation as to what she knows about the
16 lawyers doing.

17 HEARING OFFICER HALLORAN:

18 Sustained.

19 BY MS. BUGEL:

20 Q. Do you know if your lawyers have
21 prepared documents in this proceeding?

22 A. I assume that they have prepared
23 documents for review by people like my boss.

24 Q. And have you, yourself, reviewed

1 some of those documents?

2 A. Documents that would have occurred
3 since I guess April of 2014 it would be very
4 unlikely that I reviewed.

5 Q. And the document I've placed in
6 front of you, are you familiar with this document?

7 A. I'm not familiar with this document,
8 no.

9 Q. Can you turn to the last page of
10 this document?

11 A. Mm-hmm.

12 MS. BUGEL: And that's page 17 and
13 for the record we have a full copy of this
14 document and we also have an excerpted copy simply
15 because we did not want to put a bunch of
16 unnecessary material into the record. So we have
17 excerpted it. I can put the full copy in front of
18 the witness and have her compare it if --

19 MS. FRANZETTI: I don't know why
20 you're doing that. So, I mean, yes, you could do
21 that, but I don't know what the purpose is.

22 MS. BUGEL: To authenticate it. But
23 I will -- that's okay. I will keep going.

24

1 BY MS. BUGEL:

2 Q. Ms. Nijman, looking -- I'm sorry.
3 Ms. Race, looking at the last page, is that your
4 attorney's name, does that appear on this page?

5 A. Jennifer Nijman and Susan Franzetti
6 and Kristen Gale all appear on this page.

7 Q. And on the signature line, do you
8 see Jennifer Nijman's name?

9 A. I do see her name.

10 Q. And I have an unmarked -- this is
11 not supposed to say -- I have an unmarked copy of
12 the full document that I'm placing in front of
13 Ms. Race and if you could glance at that. The
14 exhibit we have passed you is excerpted.

15 Just aside from the fact that
16 this document has been excerpted, does it
17 otherwise appear to be a true and accurate copy?

18 A. That would be hard for me to tell
19 without really reading the whole thing. I don't
20 know.

21 MS. BUGEL: Complainants move for
22 Exhibit 5 to be admitted into evidence.

23 MS. FRANZETTI: Objection. This
24 witness said she is not familiar with it. You

1 haven't laid a proper foundation with this
2 witness. So I would object to its introduction.

3 HEARING OFFICER HALLORAN:

4 Sustained.

5 MS. BUGEL: Can we go off the record
6 for a minute?

7 HEARING OFFICER HALLORAN: Yes,
8 we're off the record.

9 (Whereupon, a discussion was had
10 off the record.)

11 HEARING OFFICER HALLORAN: Let's go
12 back on the record. We're back on the record.
13 Ms. Franzetti objected to -- would you state your
14 objection again, Ms. Franzetti.

15 MS. FRANZETTI: Well, I objected to
16 the introduction of this document through this
17 witness because -- and use with this witness
18 because this witness has said she is not familiar
19 with the document. She hasn't seen it before and
20 so there is a lack of foundation to introduce this
21 exhibit Complainants' 5 through this witness.

22 HEARING OFFICER HALLORAN: Well,
23 I'll tell you what. I will let it in. It will go
24 in not necessarily -- it will go in for the

1 weight, not the admissibility. So Exhibit 5 is
2 admitted, the full copy.

3 MS. BUGEL: Very good. Thank you.

4 MS. FRANZETTI: Is there an exhibit
5 number for the full copy?

6 MS. BUGEL: Since it's the full copy
7 that went in and not the excerpts, why don't we
8 mark it Exhibit 5 and the excerpts are not an --

9 HEARING OFFICER HALLORAN: An
10 exhibit?

11 MS. BUGEL: -- an exhibit.

12 MS. FRANZETTI: Your transcript,
13 though, has questions and answers on the excerpt.
14 I don't think you want to switch the number, do
15 you want to call it 5A?

16 MS. BUGEL: Why don't we call it
17 5.5.

18 MS. NIJMAN: Oh, boy.

19 MS. BUGEL: For the record, I have
20 what has been marked as Complainants' Exhibit 6.

21 HEARING OFFICER HALLORAN: Let's
22 hold on, Ms. Bugel. I still don't have
23 Complainants' Exhibit 5.5, the full request to
24 admit document request. Thank you. So you're

1 taking back Exhibit 5 then?

2 MS. BUGEL: The excerpt did -- did
3 not go into the record, right. For the record, I
4 have what has been marked as Complainants' Exhibit
5 6.

6 The title of this document is
7 Midwest Generation, LLC's Supplemental Response to
8 Complainants' Second Set of Interrogatories that
9 I'm placing in front of you.

10 (Document marked as Complainants
11 Exhibit No. 6 for
12 identification.)

13 BY MS. BUGEL:

14 Q. Are you familiar with this document?

15 MS. NIJMAN: Mr. Hearing Officer,
16 I'm sorry. I have to object in this whole line of
17 questioning with the discovery. The Illinois
18 courts have made it very clear that Rule 212(c) is
19 not a -- cannot be used to sweep the relevant
20 information into a record. The discovery
21 responses are certainly permissible for use on
22 cross-examination if you have a question about
23 them, but simply putting them in because you want
24 to put them in that's not what discovery is for

1 and that's not the purpose.

2 HEARING OFFICER HALLORAN: Well, she
3 has questions and, again, we're not in circuit
4 court, Ms. Nijman.

5 MS. NIJMAN: Understood.

6 HEARING OFFICER HALLORAN: The rules
7 are a little more relaxed here. I think it is
8 what it says it is, but she hasn't moved it yet.

9 MS. NIJMAN: I was also referring to
10 the prior exhibit where there were no questions
11 asked about the whole exhibit and yet now it's in
12 the record.

13 HEARING OFFICER HALLORAN: Okay.
14 Well, she asked a few questions.

15 MS. NIJMAN: Only if the witness had
16 information about it and the witness had none.

17 HEARING OFFICER HALLORAN: Thank
18 you, Ms. Nijman. Your objection is on the record.

19 MS. NIJMAN: Thank you. We move to
20 strike.

21 HEARING OFFICER HALLORAN: I'm
22 sorry?

23 MS. NIJMAN: We would move to strike
24 all testimony regarding these discovery materials.

1 HEARING OFFICER HALLORAN: Okay.

2 Denied. Ms. Bugel, you're up.

3 MS. BUGEL: Thank you.

4 BY MS. BUGEL:

5 Q. I'm placing a document in front of
6 you that has been marked as Complainants' Exhibit
7 6, are you familiar with this document?

8 A. Yes.

9 Q. If you turn to the last page, does
10 your signature appear on this document?

11 A. Yes, it does.

12 Q. Can you please describe this
13 document for the record?

14 A. This document is called the Midwest
15 Generation, LLC Supplemental Response to
16 Complainants Second Set of Interrogatories.

17 Q. And if you turn to pages two to
18 three, do you see a description -- do you see
19 point A discussing Joliet 29?

20 A. Yes, I see point A.

21 MS. FRANZETTI: Objection.

22 Objection to form. I'm not there yet. Counsel,
23 is it at the bottom?

24 MS. BUGEL: Bottom of page two.

1 MS. FRANZETTI: Very bottom starting
2 at the second to last line?

3 MS. BUGEL: Yes.

4 MS. FRANZETTI: Thank you.

5 BY THE WITNESS:

6 A. Yes.

7 BY MS. BUGEL:

8 Q. Do you see the discussion for Joliet
9 29?

10 A. Yes, I see the discussion.

11 Q. Is that information about Joliet
12 still accurate?

13 A. Point A states that the electric
14 at -- the last sentence states that the electric
15 leak location method was used when the HDPE lining
16 was installed at Joliet 29 impoundments. So, yes,
17 that's true. That -- the electric leak location
18 method was used on the liners as they were
19 installed. That is true.

20 Q. Okay. And is it also true that the
21 electric leak location method was used on other --
22 the other liners at the other facilities, the
23 other HDPE liners at the other facilities when
24 they were installed?

1 MS. FRANZETTI: Objection to form.

2 Compound. You're asking her about --

3 HEARING OFFICER HALLORAN:

4 Sustained.

5 MS. FRANZETTI: -- the liner?

6 HEARING OFFICER HALLORAN:

7 Sustained. Ms. Bugel?

8 BY MS. BUGEL:

9 Q. Do you know if the electric leak
10 location method has been used at other facilities?

11 A. Yes, it has been.

12 Q. Do you know when it has been used?

13 A. When the liners are installed.

14 Q. And which liners are you referring
15 to?

16 A. Letter B Powerton in the document
17 you were discussing, letter -- letter C Will
18 County and letter D Waukegan states for the record
19 that the electrical leak location method was used
20 during installation.

21 Q. All right.

22 MS. BUGEL: Complainants move for
23 Exhibit 6 to be admitted into evidence.

24 HEARING OFFICER HALLORAN: Midwest?

1 MS. NIJMAN: Same objections.

2 Standing objection.

3 HEARING OFFICER HALLORAN: It's

4 admitted over objection.

5 BY MS. BUGEL:

6 Q. Complainants have what has been

7 marked as Complainants' Exhibit 7.

8 For the record, this is titled

9 Respondent Midwest Generation, LLC's Supplemental

10 Response to Complainants First Set of

11 Interrogatories.

12 (Document marked as Complainants

13 Exhibit No. 7 for

14 identification.)

15 BY MS. BUGEL:

16 Q. We're placing this document in front

17 of you, Ms. Race.

18 Are you familiar with this

19 document?

20 A. Yes, I am.

21 Q. And if you turn to the last page,

22 does your signature appear?

23 A. Yes, it does.

24 Q. And can you describe this document

1 for the record?

2 A. This is a supplemental response to
3 the complainants first set of interrogatories.

4 Q. And if you turn to page three, the
5 full paragraph appearing at the top of that page
6 beginning Joliet 29 station, do you see that
7 paragraph?

8 A. Yes, I do.

9 Q. And do you see where it indicates
10 that in the first sentence that Joliet 29 station
11 has three active ash ponds?

12 A. I see that. However, I think it's
13 important to keep in mind that ash pond has
14 several different meanings under various
15 regulations.

16 Q. And are those three ash ponds at
17 Joliet still active?

18 A. No, they are not, not all three.

19 Q. Are any of those ponds still active?

20 MS. FRANZETTI: Objection to form in
21 terms of the intended meaning of active, is it
22 being ash added or taken away?

23 HEARING OFFICER HALLORAN:

24 Sustained. Ms. Bugel?

1 BY MS. BUGEL:

2 Q. You said not all three. Can you
3 please clarify what you meant by that?

4 A. Because Joliet 29 has converted to
5 natural gas from coal, there is no longer any ash
6 being placed in impoundment two which is the only
7 impoundment that would still be considered -- I
8 don't know -- I guess you could consider it active
9 at Joliet until it is cleaned out. Pond three is
10 a polishing pond and is not considered an ash pond
11 under the CCR rules and ash pond one was not
12 covered under the CCR rules because it was cleaned
13 out before the rules came into effect.

14 MS. BUGEL: Complainants move for
15 Exhibit 7 to be admitted into evidence.

16 MS. NIJMAN: Same objection.

17 HEARING OFFICER HALLORAN: Admitted
18 over objection, standing objection.

19 MS. NIJMAN: Mr. Hearing Officer, if
20 we're done with discovery responses as evidence,
21 we renew our motion to strike all testimony and
22 the actual exhibits from the record.

23 HEARING OFFICER HALLORAN: The
24 record will so note, but overruled. The board

1 will take a look at it. Thank you, Ms. Nijman.

2 MS. BUGEL: For the record,
3 complainants have marked Complainants' Exhibit 7.5
4 and this -- this is Bates MWG 13-15_12847 and
5 this -- the top of this exhibit says -- wait a
6 minute. This is marked non-disclosable
7 information.

8 MS. NIJMAN: Can we see it?

9 MS. FRANZETTI: Counsel, why don't
10 you let us see a copy of it.

11 HEARING OFFICER HALLORAN: If that's
12 the case, everyone has to leave the room.

13 MS. BUGEL: Okay.

14 HEARING OFFICER HALLORAN: Let's go
15 off the record, Steve.

16 (Whereupon, a break was taken
17 after which the following
18 proceedings were had.)

19 HEARING OFFICER HALLORAN: Steven,
20 back on the record, please. You may proceed,
21 Ms. Bugel.

22 MS. BUGEL: Thank you.

23 BY MS. BUGEL:

24 Q. Ms. Race, do you know what kind of

1 coal is burned at the -- Strike that. Let me --
2 Ms. Race, do you know what kind of coal was burned
3 at the four Midwest Generation facilities and for
4 the record when I refer to the four Midwest
5 Generation facilities, I'm referring to Joliet 29,
6 Powerton, Waukegan and Will County, do you know
7 what kind of coal was burned at the four Midwest
8 Generation facilities in the period from 2010
9 through 2012?

10 A. The type of coal that was used at
11 Waukegan, Will County and Joliet 29 was all
12 Wyoming subbituminous coal. The type of coal that
13 was used at Powerton was subbituminous Wyoming
14 coal as well and I know that at some point, and I
15 don't know if it was during that period of time,
16 there was a very small amount of bituminous coal
17 from Illinois that was also burned at Powerton,
18 but I don't know the details of that and I'm not
19 entirely sure. Also there is one other thing.
20 There was a pilot project with Biomass that I
21 actually managed at Joliet -- no. Wait. Sorry.
22 That was on the nine side. So forget it. Sorry
23 about that.

24 MS. BUGEL: For the record, we have

1 what has been marked as Complainants' Exhibit 8B.
2 Again, the B after this is the designation that
3 shows that it will be part of a group exhibit. We
4 will pass them out one at a time. This has --
5 begins with Bates MWG 13-15_364 and it -- for the
6 record, it is a letter from Nijman Franzetti to
7 Andrea Rhodes dated July 27th, 2012.

8 (Document marked as Complainants
9 Exhibit No. 8B for
10 identification.)

11 MS. BUGEL: Again, for the record,
12 when we use the letter designation following a
13 number, it means we're using it as part of a group
14 exhibit. I now have what has been marked as
15 Complainants' Exhibit 9B. This is Bates Midwest
16 Gen -- I'm sorry. MWG 13-15_384.

17 (Document marked as Complainants
18 Exhibit No. 9B for
19 identification.)

20 MS. BUGEL: It is a letter from
21 Nijman Franzetti to Andrea Rhodes dated July 27th,
22 2012, and this one is in reference to the Powerton
23 station whereas the first one, Complainants'
24 Exhibit 8B, was in reference to the Joliet

1 station. I'm handing you that exhibit.

2 BY THE WITNESS:

3 A. I have Joliet here and this is
4 Powerton.

5 BY MS. BUGEL:

6 Q. And this is Powerton.

7 A. Okay.

8 HEARING OFFICER HALLORAN: Thank
9 you.

10 MS. BUGEL: I have what has been
11 marked as Complainants' Exhibit 10B. This begins
12 at Bates MWG 13-15_407. It is dated July 27th,
13 2012. It is a letter from Nijman Franzetti to
14 Andrea Rhodes and this one is in reference to the
15 Waukegan Generating Station.

16 (Document marked as Complainants
17 Exhibit No. 10B for
18 identification.)

19 MS. BUGEL: For the record, I have
20 what has been marked as Complainants' Exhibit 11B.

21 (Document marked as Complainants
22 Exhibit No. 11B for
23 identification.)

24 MS. BUGEL: The number -- the Bates

1 on this is MWG 13-15_421. The date on this is
2 July 27th, 2012. It is a letter from Andrea
3 Rhodes -- I'm sorry. From Nijman Franzetti to
4 Andrea Rhodes and this one is in reference to the
5 Will County Generating Station.

6 BY MS. BUGEL:

7 Q. And, Ms. Race, do you see the
8 documents that I've put in front of you?

9 A. Yes, I do.

10 Q. Are you familiar with these
11 documents?

12 A. Yes, I'm familiar with the
13 documents.

14 Q. And can you describe for the record
15 what these are?

16 MS. FRANZETTI: Objection to form.
17 I think it's too compound. They should be gone
18 through individually in fairness to the witness.

19 HEARING OFFICER HALLORAN:
20 Sustained. I agree.

21 MS. BUGEL: Okay.

22 BY MS. BUGEL:

23 Q. Let's look at the first one 8B. Can
24 you describe for the record what this document is?

1 A. This document is a response to the
2 June 11th, 2012, violation notice.

3 Q. Okay. And can you turn to page 369
4 of this document. It's page six of the document
5 that has the Bates MWG 13-15_369 on it.

6 A. Yes.

7 MS. BUGEL: I'm trying to find my
8 spot. Give me a moment, please. I apologize.
9 I'm having a little trouble finding my spot.

10 HEARING OFFICER HALLORAN: Ms. Race,
11 just for the record, you've been up there for a
12 while. I plan on taking a break by 11:00.

13 THE WITNESS: Okay.

14 MS. BUGEL: It's because I was on
15 the wrong page.

16 BY MS. BUGEL:

17 Q. Can you turn to page MWG 13-15_370.
18 Do you see at the top of this page the statement
19 "While boron is a primary indicator of potential
20 coal ash impacts to groundwater, there are only
21 two alleged exceedances of boron in the monitoring
22 well MW-11" --

23 A. Yes, I see that.

24 Q. -- do you see where it says that?

1 And just to be clear, Nijman Franzetti was writing
2 this letter on behalf of Midwest Generation?

3 A. Yes, they were writing this letter
4 on behalf of Midwest Generation.

5 Q. Okay.

6 A. Or let's see -- yeah, Midwest
7 Generation in 2012.

8 Q. And turning to Exhibit 9B, can you
9 look at Bates page 389, please.

10 A. Mm-hmm.

11 Q. Do you see the very last paragraph
12 on that page? It's a partial paragraph.

13 A. Mm-hmm. Yes, I do.

14 Q. Do you see where it says "Boron and
15 sulfate are constituents known to be associated
16 with coal ash"?

17 A. I see that.

18 Q. And, again, Nijman Franzetti was
19 writing this letter to IEPA on behalf of Midwest
20 Generation?

21 A. Yes, they were.

22 Q. Can you please turn to Exhibit 10B.
23 And can you please -- can you please turn to Bates
24 page 412. And do you see the third full paragraph

1 on that page?

2 A. Yes, I do.

3 Q. Do you see the second sentence in
4 that paragraph?

5 A. Yes.

6 Q. And it states "Boron is generally
7 considered a primary indicator compound of ash
8 impacts to groundwater"?

9 A. Yes, I see that.

10 Q. And, again, Nijman Franzetti was
11 writing this letter to Illinois EPA on behalf of
12 Midwest Generation?

13 A. Yes, they were.

14 Q. Okay. Last, but not least, turning
15 to 11B. Can you please turn to page -- Bates page
16 MWG 13-15_427.

17 A. Okay.

18 Q. And do you see the first full
19 paragraph on that page?

20 A. Yes, I do.

21 Q. And can you turn to the third to
22 last sentence of that paragraph?

23 A. Okay.

24 Q. And it states "This is particularly

1 true of boron and sulfate levels which are two
2 typical ash leachate indicators," do you see where
3 it says that?

4 A. Yes, I do.

5 Q. And, again, Midwest -- I'm sorry.
6 Nijman Franzetti was writing this letter on behalf
7 of Midwest Generation to IEPA?

8 A. Correct.

9 MS. BUGEL: And complainants move
10 for Group Exhibit B consisting of Exhibit's 8B
11 through 11B into evidence.

12 HEARING OFFICER HALLORAN: Ms.
13 Nijman, Ms. Franzetti?

14 MS. FRANZETTI: No objection.

15 HEARING OFFICER HALLORAN: Thank
16 you. So admitted. So it's Complainants' Group
17 Exhibit B, 8B through 11B?

18 MS. BUGEL: Yes.

19 HEARING OFFICER HALLORAN: Thank
20 you. Ten more minutes we'll take a break.

21 MS. BUGEL: Okay. I have what has
22 been marked as Complainants' Exhibit 12C. Again,
23 the C designation indicates that this is part of a
24 group exhibit.

1 (Document marked as Complainants
2 Exhibit No. 12C for
3 identification.)

4 MS. BUGEL: This 12C begins at Bates
5 range MWG 13-15_6964 and this is the Hydrogeologic
6 Assessment Report for Joliet Generating Station
7 29. That is the title that appears on the
8 document. I have what has been marked as
9 Complainants' Exhibit 13C.

10 (Document marked as Complainants
11 Exhibit No. 13C for
12 identification.)

13 MS. BUGEL: This begins at Bates
14 range MWG 13-15_7081. The title that appears on
15 this document is Hydrogeologic Assessment Report
16 Powerton Generating Station and I -- I have what
17 has been marked as Complainants' Exhibit 14C.

18 (Document marked as Complainants
19 Exhibit No. 14C for
20 identification.)

21 MS. BUGEL: This begins at Bates
22 range MWG 13-15_7148. The title of this document
23 appears to be Hydrogeologic Assessment Report
24 Waukegan Generating Station. I'm placing it in

1 front of you.

2 (Document marked as Complainants
3 Exhibit No. 15C for
4 identification.)

5 MS. BUGEL: And last one.

6 Complainants' Exhibit 15C I have what has been
7 marked as Complainants' Exhibit 15C. The Bates
8 range is -- begins at MWG 13-15_7230 and the title
9 that appears on this document is Hydrogeologic
10 Assessment Report.

11 BY MS. BUGEL:

12 Q. And, Ms. Race, could you please turn
13 to Exhibit 12C?

14 A. Okay.

15 Q. And that appears to be a document
16 entitled Hydrogeologic Assessment Report Joliet
17 Generating Station 29, do you see that?

18 A. Yes, I do.

19 Q. Are you familiar with this document?

20 A. Yes, I am.

21 Q. Can you describe for the record what
22 this document is?

23 A. This is a document that was prepared
24 at the request of Illinois EPA. It's a

1 hydrogeologic assessment report and it covered the
2 onsite ash pond areas at the Joliet Generating
3 Station 29.

4 Q. And was this document prepared by --
5 by Patrick Engineering?

6 A. This document was prepared partly by
7 Patrick Engineering, but partly with our input as
8 well.

9 Q. And the name Patrick Engineering
10 appears on the cover of this document, correct?

11 A. Correct.

12 Q. And Patrick prepared this document
13 on Midwest Generation's behalf as -- let me
14 rephrase that.

15 Patrick -- you indicated that
16 Midwest Generation and Patrick worked together on
17 the preparation of this document, is that correct?

18 A. Correct.

19 Q. And Patrick's work on this document
20 was on behalf of Midwest Generation, is that
21 correct?

22 A. Correct.

23 Q. And would you call them a contractor
24 for Midwest Generation?

1 A. A consultant.

2 Q. And did they have certain
3 responsibilities as a consultant for Midwest
4 Generation?

5 MS. FRANZETTI: Objection to form.
6 Vague.

7 HEARING OFFICER HALLORAN: Sustained
8 Ms. Bugel, rephrase.

9 MS. BUGEL: Okay.

10 BY MS. BUGEL:

11 Q. Did they have a consulting contract
12 with Midwest Generation?

13 A. Yes.

14 Q. Did they have certain
15 responsibilities under their contract?

16 A. They had a contract, a general
17 contract, for time and materials and then we would
18 ask them to do specific projects and within the
19 project scope they were responsible for that
20 piece.

21 Q. Understood. Thank you. Was
22 performance of a hydrogeological assessment one of
23 the tasks that Midwest Generation asked Patrick to
24 perform?

1 A. Yes.

2 Q. And did -- did Midwest Generation
3 ask Patrick to do that assessment for all four
4 Midwest Generation facilities?

5 A. Patrick worked on all four of these
6 facilities where the reports are sitting in front
7 of me now.

8 Q. And you described 12C, is it
9 accurate to say that there are -- that these four
10 reports are -- Strike that.

11 We were talking about 12C. Does
12 this report contain the results of the
13 hydrogeological assessment performed for Midwest
14 Generation at the Joliet Generating Station?

15 A. It includes the hydrogeologic
16 assessment that has the initial results for
17 groundwater monitoring whether or not there was
18 potable well use in the nearby area and
19 characterization of the hydrogeology in the area
20 as well.

21 Q. And do all four reports contain a
22 similar list of items that you just described?

23 A. Yes, they do.

24 Q. And Patrick was involved in all four

1 reports, correct?

2 A. Patrick was involved in all four of
3 these initial hydrogeologic assessment reports.

4 Q. And was one of Patrick's tasks for
5 Midwest Gen the installation of monitoring wells
6 at all four facilities?

7 A. I'm trying to remember if they
8 actually did the installation, but they were
9 responsible for ensuring that it occurred and they
10 would have overseen it, but it looks like
11 according to what I'm seeing here is that they did
12 do the borings.

13 Q. Okay. Again, turning to the first
14 exhibit, 12C, can you please turn to page 6981?

15 A. Okay.

16 Q. And you had just mentioned borings.
17 Looking at 6981, do you see the symbols on this
18 that are indicated with the letter MW then a dash
19 and followed by a number?

20 A. Yes.

21 Q. Do you know what those symbols
22 represent?

23 A. Those are monitoring wells.

24 Q. And is it accurate to say that for

1 each monitoring well a boring would need to have
2 been drilled?

3 A. Yes, the monitoring wells have to be
4 bored into the ground and then screened at an
5 appropriate level.

6 Q. And then for each boring, would
7 there be a boring log generally?

8 A. In these reports, there is a boring
9 log.

10 Q. So page 6981 is Patrick's
11 representation of the locations at Joliet where
12 the borings were drilled, correct?

13 A. Where the monitoring wells were put
14 in, correct.

15 Q. And a boring would have needed to
16 have been drilled where a monitoring well was put
17 in, correct?

18 MS. FRANZETTI: Objection. Asked
19 and answered.

20 HEARING OFFICER HALLORAN:
21 Sustained.

22 BY THE WITNESS:

23 A. And I might add I might be using the
24 terminology wrong. I'm not a geologist.

1 BY MS. BUGEL:

2 Q. And looking at the locations on this
3 map where the monitor -- where the designations
4 for the monitoring wells are installed, is it
5 accurate to say that this map indicates that the
6 monitoring wells were installed outside of the
7 existing ash ponds?

8 A. Yes, the monitoring wells were
9 installed outside the existing ash pond number two
10 under the CCR rules and under the -- around ash
11 pond one which is no longer in service and ash
12 pond three which is not an ash pond under the CCR
13 rules.

14 Q. And this map represents -- indicates
15 that -- uses the term ash pond three for ash pond
16 three, is that correct?

17 A. That's correct. And that's because
18 it's part of -- it's a finishing pond for the ash
19 pond treatment system.

20 Q. Okay. Could you please turn to
21 Exhibit 13C and, again, for the record this is the
22 hydrogeologic assessment report for Powerton
23 Generating Station, can you please turn to page
24 7100?

1 A. Okay.

2 Q. And similar -- again, this map is
3 Patrick Engineering's representations of the
4 locations at Powerton where the monitoring wells
5 were installed, correct?

6 A. This is the correct depiction of the
7 monitoring wells at that point in time. There
8 were other monitoring wells added later or at
9 least one more.

10 Q. And, again, the same question. Does
11 this map indicate that the monitoring wells were
12 installed outside of the existing ash ponds?

13 A. Yes.

14 Q. And can you please turn to Exhibit
15 14C which is the hydrogeologic assessment report
16 for Waukegan Generating Station and could you
17 please turn to page 7164?

18 A. Okay.

19 Q. And, again, this map is also Patrick
20 Engineering's representation of locations at
21 Waukegan where the monitoring wells were
22 installed, is that correct?

23 A. Correct.

24 Q. And this map also indicates that the

1 monitoring wells were outside of the existing ash
2 ponds?

3 A. Correct.

4 Q. Last one. Exhibit 15C. Page 7248
5 and this is the hydrogeologic assessment report
6 for Will County.

7 HEARING OFFICER HALLORAN: What
8 page, Ms. Bugel? I'm sorry.

9 MS. BUGEL: Page 7248.

10 HEARING OFFICER HALLORAN: Thank
11 you.

12 BY MS. BUGEL:

13 Q. And, again, this map is Patrick --
14 Patrick's representation of the locations at Will
15 County where the monitoring wells were installed?

16 A. This is correct.

17 Q. And this, too, indicates that the
18 monitoring wells were installed outside of the
19 existing ash ponds?

20 A. Yes, and these are the locations
21 that Illinois EPA approved for all of the
22 stations.

23 Q. Okay.

24 MS. BUGEL: Hearing Officer, I

1 notice it's after 11:00. I do have a lot more
2 questions about these exhibits. Did you want to
3 pause for --

4 HEARING OFFICER HALLORAN: Is that
5 okay with you?

6 MS. BUGEL: It's just fine with me.

7 MS. FRANZETTI: Yes.

8 HEARING OFFICER HALLORAN: Let's do
9 11:20. Off the record. Thank you.

10 (Whereupon, a break was taken
11 after which the following
12 proceedings were had.)

13 HEARING OFFICER HALLORAN: Okay.
14 We're back on the record. Citizens Group is
15 ready. Ms. Bugel?

16 MS. BUGEL: Yes. The very last
17 thing I should have done before our break was
18 complainants move for Group Exhibit C consisting
19 of Complainants' Exhibits 12C through 15C to be
20 admitted into evidence?

21 MS. FRANZETTI: No objection.

22 HEARING OFFICER HALLORAN: Thank
23 you, Ms. Franzetti. So moved into evidence.

24 MS. BUGEL: And --

1 HEARING OFFICER HALLORAN: Let me
2 just -- Complainants' Group Exhibit 12C, 13C, 14C,
3 15C admitted. Thank you.

4 MS. BUGEL: Yes. Thank you.

5 BY MS. BUGEL:

6 Q. And, again, turning back to Exhibit
7 12C, can you please turn to Bates page -- I'm
8 sorry. Wrong one.

9 We're going to turn to 13C, not
10 12C. And could you please turn to page 7111.
11 And, Ms. Race, are you familiar with -- do you
12 know what this page represents?

13 A. I'm not a geologist, but I know
14 roughly what the page is saying.

15 Q. Is it accurate to describe this as a
16 boring log?

17 A. Yes, it is.

18 Q. And it contains a record of what was
19 found in the soil/rock boring?

20 A. As they precede down in elevation.

21 Q. And do you see at the very -- under
22 the column that says soil/rock description, do you
23 see where it says black coal cinders?

24 A. Yes, I see that.

1 MS. FRANZETTI: Just objection to
2 form. It says trace black coal cinders.

3 HEARING OFFICER HALLORAN:
4 Sustained.

5 BY MS. BUGEL:

6 Q. I'm looking at page 7111 at the very
7 top of the column after dark brown silty clay,
8 does it say black coal cinders? Ms. Race, do you
9 see that?

10 A. Yes.

11 Q. And it does not say trace there,
12 does it?

13 A. It does not say trace there.

14 Q. And if we go down, it then says dry
15 and then further down it says red coal cinders
16 after porous gravel, do you see that?

17 A. Yes, I see that.

18 Q. And then if you go further down it
19 says trace black coal cinders, do you see that?

20 A. Yes.

21 Q. And on the left-hand column, do you
22 see that it indicates depth in feet?

23 A. Yes, I do.

24 Q. And the same strata marking goes to

1 17 feet, do you see that?

2 A. Yes, but on the right-hand side it
3 tells you for each sample type what the depth of
4 that material is.

5 Q. Okay.

6 A. So it doesn't mean that the black
7 coal cinders that you see at 455.8 feet elevation
8 go all the way down to 438. That's my
9 understanding anyway.

10 Q. Okay. Thank you. We can set aside
11 13C for a moment and go to 14C. And in 14C, can
12 you turn to page 7167?

13 A. Okay.

14 Q. And on 7167 under soil rock
15 description at the very top, do you see where it
16 says black cinders?

17 A. Yes, I see that.

18 Q. And then further down towards the
19 very bottom of that column the second entry from
20 the bottom of that column, do you see where it
21 says occasional black coal cinders?

22 A. Yes, I see that.

23 Q. And then under that, do you see
24 where it says occasional black coal cinders?

1 A. Occasional black cinders, yes.

2 Q. Occasional black cinders. I'm
3 sorry. I misread that. Thank you.

4 Okay. Can you turn a couple
5 pages later to the boring log for MW-3.

6 MS. FRANZETTI: Bates page, counsel,
7 please.

8 MS. BUGEL: We are looking at 71 --
9 I'm just making sure. 7171. Bates 7171 for the
10 record.

11 BY THE WITNESS:

12 A. Okay.

13 BY MS. BUGEL:

14 Q. And in this boring log, do you see
15 that it indicates ash, for example, at the very
16 end of the first entry under soil rock
17 description?

18 A. Yes, I see that that is part of the
19 description.

20 Q. Okay. I think we can turn to
21 Exhibit 15C. 15C and we can turn to Bates page
22 7251. And this appears to be the boring log for
23 B-MW-1, do you see that?

24 A. Yes, I see that.

1 Q. And at the -- under soil/rock
2 description, it says black coal cinders, do you
3 see that?

4 A. Yes, I see that.

5 Q. And next page the boring log for
6 MW-2 at Bates page 7252 at the very top of the
7 column soil rock description it says black coal
8 ash, do you see that?

9 A. Yeah, that is part of the
10 description.

11 Q. And then further down where the
12 strata changes at 8.5 feet it says black coal
13 cinders, do you see that?

14 A. Yes, I see that as part of the
15 description.

16 Q. And turning the page to page 7253 at
17 the very top of soil rock description it says
18 black coal ash, do you see that?

19 A. Yes, I see that's part of the
20 description there.

21 Q. And then on page 7254 next page the
22 boring log for B-MW-4 it indicates black ash at
23 the top of the column soil rock description?

24 A. Yes, that is part of the

1 description.

2 Q. Okay. We can set that aside. You
3 can set aside the hydrogeological assessment
4 reports for now. I have what has been marked as
5 Complainants' Exhibit 16 and for the record
6 this -- the title of this is Ash Pond Data Summary
7 and it's Bates MWG 13-15_14157 and for the record
8 it appears to be an e-mail from Richard Frenedt to
9 Maria Race. I'm placing that in front of you.

10 (Document marked as Complainants
11 Exhibit No. 16 for
12 identification.)

13 BY MS. BUGEL:

14 Q. Are you familiar with this document?

15 MS. NIJMAN: Can you just hold on
16 one second, counsel, before you start looking at
17 it?

18 THE WITNESS: Okay.

19 MS. FRANZETTI: You can go ahead.

20 MS. BUGEL: Except Ms. Nijman just
21 took Ms. Race's copy. So, I can't.

22 BY MS. BUGEL:

23 Q. Are you familiar with this document?

24 A. I haven't seen it for a while.

1 Q. Does your name appear on this
2 document?

3 A. Yes.

4 Q. And does the name Richard Frendt
5 appear on this document?

6 A. Yes.

7 Q. And do you know who Richard Frendt
8 is?

9 A. Yes, he is the consultant for
10 Patrick Engineering that we used for the
11 hydrogeologic assessments.

12 Q. And to the best of your knowledge,
13 was Patrick Engineering a consultant for Midwest
14 Generation at the time of this e-mail?

15 A. Yes. Well, let me think. 2012.
16 Let me not answer that so rapidly. I think they
17 were still at this point. Let me think. Okay.
18 Yes, I believe they were at that time.

19 Q. And on this page, the second --
20 well, the sentence that begins after the dash this
21 indicates "Here are some brief summaries of the
22 data for each of the five ash pond sites," do you
23 see that?

24 A. Yes, I do see that.

1 Q. Does that refresh your memory as to
2 what this document is?

3 A. I think so.

4 MS. BUGEL: And complainants move
5 for Complainants' Exhibit 16 to be moved into
6 evidence.

7 MS. FRANZETTI: Objection to the
8 admission of it other than perhaps the front page
9 e-mail. She didn't prepare this document. She --
10 this is a Patrick Engineering document.

11 MS. NIJMAN: This is hearsay.

12 MS. BUGEL: Patrick Engineering was
13 a contractor -- consultant for Midwest Generation.
14 This falls within the hearsay objection -- the
15 hearsay exception of an admission of a party
16 opponent, an adverse party, because they were a
17 contractor.

18 MS. NIJMAN: That only applies if
19 the witness is unavailable and she has not
20 established that Mr. Frendt or Patrick Engineering
21 was unavailable. It's a hearsay statement taken
22 out of court.

23 HEARING OFFICER HALLORAN: You know
24 what, I'm going to go back to my old reliable

1 procedural rules 101.626. "The hearing officer
2 may admit evidence that is material, relevant, and
3 would be relied upon by prudent persons in the
4 conduct of business." So overruled.

5 MS. NIJMAN: May I also point out if
6 it's going to the truth of the matter, it's a
7 draft document and can't be used for the truth of
8 what's stated in there.

9 HEARING OFFICER HALLORAN: Okay.
10 You can save that for the record. Ms. Bugel,
11 Exhibit 16 is admitted over objection.

12 MS. NIJMAN: Move to strike any
13 testimony related to Exhibit 16 --

14 HEARING OFFICER HALLORAN: Denied.

15 MS. NIJMAN: -- and evidence.

16 BY MS. BUGEL:

17 Q. Okay. And turning to page 14169,
18 please. So I have -- let's turn to page 14167 and
19 the second paragraph under analytical results and
20 the second sentence of that paragraph this says
21 "The concentrations of boron, iron, manganese,
22 chloride and total dissolved solids are higher,
23 sometimes significantly higher in the up gradient
24 well MW-5 than in the down gradient wells," do you

1 see where it says that?

2 A. Yes, I do see that.

3 Q. And turning now to page 14169.

4 MS. NIJMAN: Again, Mr. Hearing
5 Officer, I'm not sure just asking a witness to say
6 what is on the piece of paper then using that as
7 an establishment of an admission or the truth of
8 that document that is simply not appropriate.
9 It's a draft document. It's not appropriate for
10 admission or for use in that sense.

11 HEARING OFFICER HALLORAN: Ms.
12 Bugel?

13 MS. NIJMAN: It is a hearsay
14 statement and Mr. Patrick -- Patrick Engineering
15 is not here to tell us.

16 HEARING OFFICER HALLORAN: Right.
17 This is an e-mail, correct, Ms. Nijman?

18 MS. NIJMAN: It's a document
19 attached to an e-mail.

20 MS. BUGEL: It's a document attached
21 to an e-mail. I do not -- I disagree with
22 Ms. Nijman. I believe it still comes in under
23 multiple hearsay exceptions including a statement
24 of a party opponent, a statement by a contract --

1 an agent of Midwest Generation and just because
2 it's a draft document does not mean that
3 there's -- that it is not admissible. There is no
4 rule of evidence you can cite saying draft
5 documents are not admissible and we've established
6 that Patrick did a significant amount of work for
7 Midwest Generation related to the ash pond
8 investigations.

9 HEARING OFFICER HALLORAN: I'm
10 standing on my initial ruling. So you may
11 proceed, Ms. Bugel. Your objection is so noted,
12 Ms. Nijman, for the record.

13 BY MS. BUGEL:

14 Q. Do you see where MW-5 is indicated
15 on this map?

16 A. Yes, I do.

17 Q. And you've seen borings in the
18 vicinity of MW-5, have you not?

19 MS. FRANZETTI: Objection to the
20 form literally.

21 HEARING OFFICER HALLORAN: Are we on
22 Bates stamp 14165 or --

23 MS. BUGEL: We're on page 14169.

24 HEARING OFFICER HALLORAN: Okay.

1 Ms. Franzetti, your objection?

2 MS. FRANZETTI: That question is
3 vague. I can't tell if she literally saw them
4 doing the borings?

5 HEARING OFFICER HALLORAN:
6 Sustained. Ms. Bugel?

7 BY MS. BUGEL:

8 Q. Ms. Race, have you seen boring logs
9 in the vicinity of MW-5?

10 MS. FRANZETTI: Objection. Vague.
11 The vicinity of the location where the boring was
12 taken --

13 MS. BUGEL: Yes.

14 MS. FRANZETTI: -- is vague.

15 HEARING OFFICER HALLORAN: Yeah.
16 Could you rephrase, Ms. Bugel? I agree with
17 Ms. Franzetti.

18 MS. BUGEL: Okay.

19 BY MS. BUGEL:

20 Q. Ms. Race, have you ever seen any
21 evidence of ash in the area where MW-05 is
22 located?

23 MS. NIJMAN: Object to foundation.

24 HEARING OFFICER HALLORAN:

1 Overruled. You may answer if you're able.

2 BY THE WITNESS:

3 A. I have never personally seen ash in
4 the vicinity of MW-5.

5 BY MS. BUGEL:

6 Q. Have you ever seen boring logs
7 indicating ash in the borings near to MW-05?

8 A. I don't remember. I just can't
9 recall right now.

10 MS. BUGEL: Hearing Officer, if
11 you'll just give me one moment.

12 BY MS. BUGEL:

13 Q. Ms. Race, do you recall giving a
14 deposition in this proceeding?

15 A. Yes, I do. Three years ago.

16 Q. And -- and do you recall in that
17 deposition discussing ash in the vicinity of MW-05
18 or MW-5?

19 A. Ash in the vicinity is different
20 than ash in a boring, isn't it?

21 Q. Okay. Do you recall me asking you
22 the question "What is the basis for your
23 understanding that there is ash shown to be in
24 that area?"

1 MS. FRANZETTI: Objection to form.

2 There -- there is no impeachment going on here.

3 HEARING OFFICER HALLORAN: Hopefully

4 she is going to get to it. Ms. Bugel?

5 MS. BUGEL: I am going to get to it.

6 HEARING OFFICER HALLORAN: Okay.

7 Sustained.

8 BY THE WITNESS:

9 A. My understanding is that there is an
10 area on one of these maps that is -- labels it
11 somehow that makes it appear that there might be
12 ash in that area on that -- on the west side of
13 monitoring well five.

14 BY MS. BUGEL:

15 Q. And have you ever seen borings --
16 borings or a boring log that show ash to be in
17 that area?

18 A. I'm not sure. I would have to see
19 the boring logs again for that area and I think
20 they're probably in documents that you have here.

21 Q. Do you recall stating in your
22 deposition "I believe I have seen borings
23 independently that show ash to be in that area,
24 bottom ash"?

1 MS. FRANZETTI: Objection to form.
2 Not clear what in that area means in the context
3 of the deposition questioning.

4 HEARING OFFICER HALLORAN:
5 Sustained.

6 BY MS. BUGEL:

7 Q. Do you recall discussing MW-5 at
8 Waukegan in your deposition?

9 A. I don't recall my entire deposition,
10 but if there is something in particular you are
11 trying to get to, maybe you can help me.

12 Q. Okay. Have you ever heard of the
13 area in the vicinity of MW-5 termed the former ash
14 disposal area?

15 A. I believe there is a map somewhere
16 and I'm not sure which document it's in that does
17 have that label.

18 Q. And have you --

19 A. It's not a document that I prepared.

20 Q. And have you ever seen borings from
21 the area labeled on that map former ash disposal
22 area that independently show ash to be in that
23 area?

24 MS. FRANZETTI: Objection to form.

1 I don't know what map we're talking about.

2 MS. BUGEL: The map that --

3 HEARING OFFICER HALLORAN: If she
4 can answer, she may. Overruled.

5 BY THE WITNESS:

6 A. This map doesn't have more borings
7 on it that would indicate that. I'm not sure what
8 you mean exactly. I mean, if I could see a boring
9 log, I could tell you, but --

10 BY MS. BUGEL:

11 Q. So is your answer right now that you
12 do not ever recall seeing boring logs with ash in
13 them from either the vicinity of MW-05 or from the
14 area that you referenced on a map in your last
15 answer?

16 A. I think that would be misleading
17 because I just don't remember.

18 Q. Okay. Can you please turn to Bates
19 page 14167 and do you see this third bullet point
20 on this page?

21 A. Under conclusions?

22 Q. Yes, under conclusions.

23 A. Yes, I see that.

24 Q. Do you see where it says "The

1 elevated concentrations of compounds of interest
2 in MW-5 appear to be the result of the well being
3 installed in the former ash disposal area and not
4 a result of leakage from the current ash ponds,"
5 do you see that statement?

6 A. Yes, I see that.

7 Q. And let's turn to page 14164 and do
8 you see the last bullet on that page?

9 A. Yes, I do.

10 Q. Do you see where it says "While not
11 necessary at this time, additional investigations
12 into the nature of the groundwater elevations at
13 MW-6 and MW-8 can include the installation of
14 groundwater level transducers or the performance
15 of a tracer test in the ponds closest to MW-7," do
16 you see where it states that?

17 A. Okay. So this is Powerton now?

18 Q. Yes, this is Powerton.

19 A. So, yes, I do see where it says
20 that.

21 Q. Do you know if Midwest Generation
22 ever installed groundwater level transducers at
23 Powerton?

24 A. I don't know.

1 Q. Do you know if Midwest Generation
2 ever performed a tracer test at Powerton?

3 A. I don't know as I sit here.

4 Q. You can set this exhibit aside.

5 MS. NIJMAN: Move to strike all
6 testimony related to Exhibit 16 as previously
7 stated.

8 HEARING OFFICER HALLORAN:
9 Overruled. I think I've already made my ruling,
10 but the board knows that you are not happy with my
11 ruling. So they'll take a look at it. I think
12 while I'm on the subject, I think you have ten
13 days --

14 MS. NIJMAN: Fourteen days.

15 HEARING OFFICER HALLORAN: -- to
16 file your objections after the transcript is in.

17 MS. NIJMAN: That's correct.

18 HEARING OFFICER HALLORAN: It used
19 to be like seven days from today.

20 MS. NIJMAN: Yeah, I think it's 14
21 days from the date of the transcript.

22 HEARING OFFICER HALLORAN: Fourteen.
23 Okay. I'll check. Sorry, Ms. Bugel.

24 MS. NIJMAN: Thank you.

1 MS. BUGEL: Just for the record --
2 Strike that. We -- can I have Exhibit 17?

3 MS. NIJMAN: Is this
4 non-disclosable, Faith?

5 MS. BUGEL: I'm sorry?

6 MS. NIJMAN: Is this non-disclosable
7 information?

8 MS. BUGEL: No, it's not. Just
9 so -- we have no intentions -- I have no
10 intentions of using additional non-disclosable
11 information with Ms. Race today.

12 MS. NIJMAN: Thank you.

13 BY MS. BUGEL:

14 Q. I have what has been marked as
15 Complainants' Exhibit 17D.

16 (Document marked as Complainants
17 Exhibit No. 17D for
18 identification.)

19 BY MS. BUGEL:

20 Q. This is titled Commonwealth Edison
21 Company Phase Two Environmental Site Assessment
22 Powerton Generating Station that I'm placing in
23 front of you.

24 HEARING OFFICER HALLORAN: Thank

1 you.

2 BY MS. BUGEL:

3 Q. Are you familiar with this document?

4 A. I'm familiar with it, yes.

5 Q. And can you describe what this is
6 for the record?

7 A. Sure. This is a Phase Two
8 Environmental Site Assessment that was done under
9 the direction of Commonwealth Edison when they
10 were selling the power plants in question.

11 Q. And do you know who they sold the
12 power plants in question to?

13 A. Midwest Generation.

14 Q. And did you see one -- one of these
15 for each of the four Midwest Generation
16 facilities?

17 A. Yes, I have.

18 Q. And are you aware of whether these
19 Phase Two Environmental Site Assessments -- I'm
20 sorry.

21 Let me -- are you aware of
22 whether this phase two Exhibit 17D contains boring
23 logs?

24 A. It should, certainly does, yes.

1 Q. And can you please turn to page
2 3309.

3 A. Okay.

4 Q. And that is the boring log for bore
5 hole B10, do you see that?

6 A. Yes, I do.

7 Q. And under description
8 classification, do you see in parenthesis where it
9 says coal/slag?

10 A. Yes.

11 MS. FRANZETTI: I'm going to object
12 at this point because this -- there is no
13 foundation for getting into this document with
14 this witness. It's not been admitted into
15 evidence, she did not prepare it, it was not
16 prepared for Midwest Gen and now we're going into
17 a lot of questions about the contents of this
18 document. So that's the basis for my objection.

19 HEARING OFFICER HALLORAN: Thank
20 you. Ms. Bugel?

21 MS. BUGEL: She said she's reviewed
22 this document. It is admissible because Midwest
23 Generation is in privity with Commonwealth Edison
24 as the purchaser of the property and Ms. Race has

1 established that she had responsibility for
2 environmental issues and reviewed the document.

3 MS. FRANZETTI: With respect to the
4 privity comment, I do not -- there is no rule of
5 evidence that says that a company that buys a
6 piece of property from another company is bound by
7 any document prepared by the prior company. This
8 was not a merger. This was a purchase of an
9 asset.

10 HEARING OFFICER HALLORAN: Yeah. I
11 agree. I'm going to sustain your objection,
12 Ms. Franzetti. However, you may continue,
13 Ms. Bugel, as an offer of proof.

14 MS. BUGEL: Okay.

15 HEARING OFFICER HALLORAN: So any
16 questions you ask of Ms. Race is an offer of
17 proof.

18 MS. BUGEL: Okay.

19 BY MS. BUGEL:

20 Q. Ms. Race, was it your practice to
21 review environmental site assessments that were
22 available when -- for properties that Midwest
23 Generation was purchasing?

24 A. If I became aware of a document,

1 then I would review it if it regarded the
2 environmental compliance or anything interesting
3 environmentally at the sites.

4 Q. And environmental site assessments
5 relate to the environmental compliance, correct?

6 A. It's a historic document because I
7 don't know how it was prepared. I don't -- I
8 didn't direct it. I wasn't even working at
9 Midwest Generation at the time of the sale. So,
10 for me, I looked at it as a historic document that
11 gave me some information that could be helpful at
12 times of interest.

13 Q. And the information that it gave
14 you, in what way was that helpful at times?

15 A. Well, sometimes when I would look at
16 the information, you know, something like these
17 borings you could look at it and think, well, this
18 is what they were finding the way that they were
19 sampling, you know, in this area or if you looked
20 at one of the maps in here you could gather
21 information about where an old switch yard was or,
22 you know, if the coal pile had always been in the
23 same place and things like that. You would just
24 look for information and I wasn't looking at it as

1 the Gospel truth, but it would give me additional
2 information when we were performing work.

3 Q. When -- do you know when phase two
4 environmental site assessments are conducted? For
5 instance, what triggers a phase two environmental
6 site assessment instead of stopping at a phase
7 one?

8 MS. FRANZETTI: Objection to form.
9 There has been no foundation laid that this
10 witness is familiar enough with environmental site
11 assessments to answer questions about what order
12 they're performed in, et cetera. There is just no
13 foundation that this witness has personal
14 knowledge of --

15 HEARING OFFICER HALLORAN: It goes
16 to the weight, not the admissibility. Overruled.
17 You may answer if you're able and you can cross if
18 you'd like.

19 BY THE WITNESS:

20 A. I'm not entirely sure what that is
21 except that in my experience whenever there has
22 been a sale for anything from, you know, the coal
23 plants to the wind farm phase ones and twos were
24 done.

1 BY MS. BUGEL:

2 Q. So phase ones and phase twos are
3 standard practice when industrial property is
4 being sold?

5 A. I don't know.

6 MS. FRANZETTI: Objection.
7 Mischaracterization of the witness's testimony.

8 HEARING OFFICER HALLORAN:
9 Sustained. Rephrase.

10 BY MS. BUGEL:

11 Q. You've seen phase two -- phase ones
12 and phase twos for pieces of property being bought
13 and sold by Midwest Gen, correct?

14 A. Or Edison Mission Energy.

15 Q. Have you ever in your experience at
16 Midwest Gen or Edison Mission Energy seen an
17 industrial property bought or sold without a phase
18 one?

19 A. I think that when NRG, and I don't
20 know this for a fact so maybe I shouldn't venture
21 here, but I think when NRG purchased Midwest
22 Generation I'm not sure that a new phase one was
23 performed, but I'm not entirely sure.

24 Q. Is that the only example you can

1 think of?

2 MS. FRANZETTI: Objection to form.

3 That's an example of a major company buying

4 several properties. So I think you're

5 mischaracterizing --

6 MS. BUGEL: That's an example of a

7 major company --

8 MS. FRANZETTI: -- her testimony.

9 HEARING OFFICER HALLORAN: Counsel,

10 counsel, remember at the beginning off the record

11 I asked you not to talk over each other and stop

12 when I talk?

13 MS. BUGEL: Okay. I apologize.

14 HEARING OFFICER HALLORAN: Ms.

15 Franzetti, you may continue and then, Ms. Bugel,

16 you can respond.

17 MS. FRANZETTI: I'm objecting to her

18 mischaracterization of the testimony because she

19 says is that the only example and that example

20 involves purchasing multiple station's properties.

21 So it's a mischaracterization to say it's only one

22 time.

23 HEARING OFFICER HALLORAN: Okay.

24 Overruled. You can clear it up on cross.

1 Ms. Bugel, you can continue or Ms. Race can answer
2 if she is able.

3 BY MS. BUGEL:

4 Q. And NRG's purchase of Midwest
5 Generation was a purchase of the whole company
6 Midwest Generation, correct?

7 A. I'm not sure of the way that it
8 worked financially. I do know that NRG bought all
9 of the wind farms and the power plants that
10 Midwest Generation and Edison Mission Energy was
11 operating.

12 MS. BUGEL: If you give me one
13 moment, please.

14 BY MS. BUGEL:

15 Q. And can you turn to page one,
16 please?

17 A. Of document -- of 17D?

18 Q. Yeah, and that's Bates page 3257.

19 A. All right.

20 Q. Do you see the sentence in the
21 middle of the first paragraph "Phase two ESA
22 activities consisted of advancement of soil
23 borings, installation of monitoring wells and
24 collection of surface and subsurface soil sediment

1 and groundwater samples," do you see that?

2 A. Oh, right up here in the first
3 paragraph?

4 Q. Yes.

5 A. I'm sorry. I was looking in the
6 middle of the page, but, yes, I do see that now.

7 Q. And do you see the next sentence
8 after that "The purpose of the phase two ESA was
9 to investigate the potential presence of
10 contamination in the areas of environmental
11 concern identified in the phase one environmental
12 site assessment phase one ESA," do you see that?

13 A. Yes, I do.

14 MS. BUGEL: Hearing Officer, I would
15 offer that this -- we've laid out the purpose of
16 the phase two ESA and the witness has indicated
17 that, when available, she reviews phase two ESA's.
18 Obviously, this is not binding on Midwest Gen, but
19 this is still evidence that is -- that meets the
20 board's standard of being evidence that the board
21 may reasonably rely upon.

22 HEARING OFFICER HALLORAN: Is this a
23 publicly available document?

24 MS. NIJMAN: It is not.

1 MS. FRANZETTI: No.

2 HEARING OFFICER HALLORAN: Is this a
3 publicly available --

4 MS. BUGEL: I -- I don't believe so,
5 but it's -- I think it's -- I think we've
6 established that this is a business record, a
7 fair, somewhat routine to be done when companies
8 are buying and selling property. The purpose of
9 it is laid out right here in the first paragraph
10 and the witness reviewed it and says she relies on
11 the documents of this type.

12 HEARING OFFICER HALLORAN: Okay.
13 I'm going to still go with my original ruling as
14 an offer of proof and you can complain to the
15 board or follow up with the board 14 days after
16 the transcript is available.

17 MS. BUGEL: Okay.

18 HEARING OFFICER HALLORAN: Thank
19 you.

20 MS. BUGEL: So it's out right now?

21 HEARING OFFICER HALLORAN: Right.
22 I'm taking it as an offer of proof, but not into
23 evidence, correct.

24 MS. BUGEL: It's not into evidence.

1 Am I still permitted to ask the witness further
2 questions about it or no?

3 HEARING OFFICER HALLORAN: In the
4 parameters of an offer of proof.

5 MS. BUGEL: Okay.

6 HEARING OFFICER HALLORAN: Just let
7 me know when you're -- when you're finished.

8 MS. BUGEL: Can we go off the record
9 for a second?

10 HEARING OFFICER HALLORAN: Sure.
11 We're off the record for a second.

12 (Whereupon, a break was taken
13 after which the following
14 proceedings were had.)

15 HEARING OFFICER HALLORAN: We're
16 back on the record. Ms. Bugel?

17 (Document marked as Complainants
18 Exhibit No. 18D for
19 identification.)

20 BY MS. BUGEL:

21 Q. I am placing in front of you what
22 has been marked as Complainants' Exhibit 18D.
23 Sorry. Let me -- I handed that to you too soon.
24 And the title of the document is Commonwealth

1 Edison Company Phase Two Environmental Site
2 Assessment and it's Bates MWG 13-15_5699 and it's
3 for Will County Generating Station, are you
4 familiar with this document?

5 A. Yes, I am familiar with this
6 document.

7 Q. And have you previously reviewed
8 this document as well?

9 A. Yes, I have previously reviewed this
10 document.

11 Q. And Commonwealth Edison was the
12 previous owner of the Will County Generating
13 Station?

14 A. Yes, they were.

15 Q. And Midwest Generation purchased the
16 Will County Generating Station from ComEd?

17 A. Yes.

18 Q. And this phase two also contains
19 boring logs for the site?

20 A. Yes, it does.

21 MS. BUGEL: We will do -- I'll just
22 do them one at a time.

23 HEARING OFFICER HALLORAN: Okay.

24 MS. BUGEL: Hearing Officer, we

1 would move for Complainants' Exhibit 18D to be
2 moved into evidence.

3 HEARING OFFICER HALLORAN: Midwest?

4 MS. FRANZETTI: Same objection by
5 Midwest as to Exhibit 17D for 18D.

6 MS. BUGEL: And complainants would
7 offer the same response and ask the same questions
8 of the witness as we did for 17D -- as we did for
9 17D, we would ask the same questions for 18D as an
10 offer of proof.

11 HEARING OFFICER HALLORAN: Correct.
12 I sustained Midwest's objection and I will take it
13 as an offer of proof. So noted on the record.
14 Thank you.

15 MS. BUGEL: And complainants have
16 what has been marked as Complainants' Exhibit 19D
17 and this is the Commonwealth Edison Company Phase
18 Two Environmental Site Assessment for Waukegan
19 Generating Station beginning at Bates 45779. I'm
20 placing that in front of you.

21 (Document marked as Complainants
22 Exhibit No. 19D for
23 identification.)

24

1 BY MS. BUGEL:

2 Q. Are you familiar with this document?

3 A. Yes, I am.

4 Q. And have you previously reviewed
5 this document?

6 A. Yes, I have reviewed this document
7 before.

8 Q. And to the best of your
9 recollection, does this also contain boring logs?

10 A. Yes, it does.

11 MS. BUGEL: And, Hearing Officer,
12 complainants move for Exhibit 19D to be admitted
13 into evidence.

14 MS. FRANZETTI: Same objection as to
15 17D and 18D for 19D.

16 HEARING OFFICER HALLORAN: Okay.
17 Sustained. I'll take it as an offer of proof.

18 MS. BUGEL: And, for the record, may
19 we note we would ask the same questions of the
20 witness for the offer of proof?

21 HEARING OFFICER HALLORAN: So noted.
22 Thank you.

23 BY MS. BUGEL:

24 Q. And complainants -- we have what has

1 been marked as Complainants' Exhibit 20D and this
2 is the Commonwealth Edison Company Phase Two
3 Environmental Site Assessment Bates 23301 for
4 Joliet 29 Generating Station.

5 Are you familiar with this
6 document?

7 A. Yes, I am.

8 Q. And have you previously reviewed
9 this document?

10 A. Yes, I have.

11 Q. And do you -- does this document
12 also contain boring logs to the best of your
13 recollection?

14 A. I'm just looking right now to see if
15 it does. Yes, I see monitoring well construction
16 and some boring logs, yes.

17 MS. BUGEL: And, Hearing Officer, my
18 questions about this one would actually be a
19 little bit different.

20 HEARING OFFICER HALLORAN: You may
21 proceed.

22 MS. BUGEL: Thank you.

23 BY MS. BUGEL:

24 Q. Can you please turn to page 25 --

1 wait a minute. Wrong page. 23339. Again, 23339.

2 A. Okay.

3 Q. And does that appear to be a map
4 representing the Joliet Generating Station and
5 property?

6 A. Yes, it appears to be a map that
7 ENSR put together of Joliet Generating Station 29.

8 Q. And does that map indicate -- are
9 you familiar with the abandoned ash disposal area
10 at Joliet?

11 A. I am familiar with an area where
12 there is ash on the -- which side of the property
13 is this? It must be northeast side of the
14 property because we have -- it's part of our NPDES
15 storm water permit.

16 Q. And do you see the abandoned ash
17 disposal area is still at Joliet?

18 A. I don't think I would characterize
19 it that way, but I believe that there is still ash
20 being maintained under a cap with vegetation on it
21 at Joliet in the northeastern area of the property
22 if I've got my directions right. Yeah, I think I
23 do.

24 MS. FRANZETTI: I'm sorry to

1 interrupt. Can I get the page number that we're
2 on because --

3 HEARING OFFICER HALLORAN: 23339.

4 MS. BUGEL: 23339. It just says
5 ash landfill on mine.

6 MS. NIJMAN: Yeah, we can't find
7 where it says abandoned ash landfill. Can you
8 point that out, Faith?

9 MS. BUGEL: Okay. That question
10 wasn't about the document. That was about -- that
11 was asking the witness --

12 THE WITNESS: Well, all right. That
13 kind of clarifies it, but I think my answer would
14 be the same.

15 BY MS. BUGEL:

16 Q. My only question about the
17 document --

18 A. I know the -- I guess the way I
19 would answer it is I know that there is an ash
20 fill area in the northeastern section of the
21 property that we maintain under our NPDES storm
22 water permit or storm water plan under our NPDES
23 permit.

24 Q. And how did you come to know that

1 there was an ash fill area on the property in the
2 location that you just described?

3 A. Just from reviewing the NPDES
4 documents when I was first working there. I
5 actually didn't probably see this document for two
6 or three years.

7 Q. Okay.

8 MS. BUGEL: Okay. And I have no
9 further questions about this document in the offer
10 of proof.

11 HEARING OFFICER HALLORAN: Okay.

12 MS. BUGEL: Complainants would move
13 to admit Complainants' Exhibit 20D into evidence.

14 HEARING OFFICER HALLORAN: Midwest,
15 Ms. Franzetti, give me your full objection,
16 please.

17 MS. FRANZETTI: Okay.

18 HEARING OFFICER HALLORAN: I know
19 it's the same as the others.

20 MS. FRANZETTI: All right. We
21 object to this on the grounds that it is not a
22 business record of Midwest Gen and it is not
23 admissible under any other hearsay exception to
24 the rules of evidence. This and the other three

1 are reports that were prepared for a completely
2 different corporate entity, namely Commonwealth
3 Edison Company. It was not prepared for Midwest
4 Gen and I would further point out that in each of
5 these reports at the end of the introductory
6 section in the last paragraph it states, quote,
7 this report and all field data notes and
8 laboratory test data, hereinafter collectively
9 information, were prepared by ENSR solely for the
10 benefit of ENSR's client ComEd. ENSR's client may
11 release this information to third-parties who may
12 use and rely upon the information at their own
13 discretion.

14 However, any use or reliance
15 upon this information by a party other than
16 parties identified shall be solely at the risk of
17 such third-party and without recourse to ENSR.
18 This information -- and it goes on at the end to
19 say "This information shall not be used or relied
20 upon by a party which does not agree to be bound
21 by the above statement."

22 There is no evidence that
23 Midwest Gen agreed to be bound by those statements
24 and that is an additional reason why this is

1 unreliable information with respect to Midwest
2 Gen's ownership and operation of these stations.

3 HEARING OFFICER HALLORAN: What page
4 were you reading from?

5 MS. FRANZETTI: I was --
6 specifically for that one, but it's the same
7 statement on all of them, I was referring to
8 Exhibit 20D this phase two report for Joliet 29
9 and the Bates number is Midwest Gen 13-15_23309.

10 HEARING OFFICER HALLORAN: But
11 Ms. Race did rely on them from time to time for
12 all four of these exhibits?

13 MS. NIJMAN: She said.

14 MS. FRANZETTI: I think rely is too
15 strong of a word. She used it as a source of
16 information at times.

17 HEARING OFFICER HALLORAN: Okay.
18 Thank you. All right. So I'm taking them as an
19 offer of proof. Exhibit's -- what is it -- 20,
20 19, 18 and 17.

21 MS. BUGEL: Can I get a response on
22 the record to Ms. Franzetti's last statement?

23 HEARING OFFICER HALLORAN: Sure.

24 MS. BUGEL: We would point out that

1 the hearsay objection governed by Rule
2 801(d)(2)(f) a statement of a party opponent -- it
3 comes in as a statement of a party opponent when
4 the statement was made by an entity in privity
5 with a party and privity -- transferred property
6 is privity. That puts Midwest Generation in
7 privity of a property.

8 In addition, this is an ancient
9 document as well and statements in ancient
10 documents are the hear -- fall within the hearsay
11 objection under Rule 803.16. I'm sorry. A
12 hearsay exception. Finally, I object to the part
13 that Ms. Franzetti read into evidence which, to
14 me, sounds like ENSR's release from liability as
15 opposed to something broader than that that
16 governs future purchasers and I also think that
17 Ms. Race as you pointed out, Hearing Officer, she
18 did review those documents. She is in
19 environmental compliance. Phase twos are common
20 when property is being transferred and that makes
21 this not -- reliable evidence, reasonable -- the
22 reliable evidence that a reasonable person would
23 rely on in this proceeding.

24 HEARING OFFICER HALLORAN: Okay.

1 Thank you, Ms. Bugel. Anything else?

2 MS. FRANZETTI: No.

3 HEARING OFFICER HALLORAN: Okay.

4 Thank you.

5 MS. BUGEL: Can I have one moment to
6 confer with counsel?

7 HEARING OFFICER HALLORAN: I'm
8 thinking about a lunch in about 13 minutes if that
9 helps.

10 (Whereupon, a break was taken
11 after which the following
12 proceedings were had.)

13 HEARING OFFICER HALLORAN: We're
14 back on the record.

15 BY MS. BUGEL:

16 Q. I have what has been marked as
17 Complainants' Exhibit 21. It is -- it begins
18 Bates page 25139. It is titled Commonwealth
19 Edison Company Phase One Environmental Site
20 Assessment of Commonwealth Edison Joliet 29
21 Generating Station and I am placing it in front of
22 you.

23 Are you familiar with this
24 document, Ms. Race?

1 (Document marked as Complainants
2 Exhibit No. 21 for
3 identification.)

4 MS. NIJMAN: I'm sorry. Is this an
5 offer of proof?

6 HEARING OFFICER HALLORAN: We
7 haven't gotten there yet I don't think. This is
8 slightly different she said. So we'll see when we
9 get there I guess, Ms. Nijman.

10 BY THE WITNESS:

11 A. I have seen this document before.

12 BY MS. BUGEL:

13 Q. And have you -- you've reviewed this
14 document before?

15 A. Yes, I have reviewed it, but I
16 probably haven't spent that much time with it
17 because it wasn't readily available. I think it
18 was in storage.

19 Q. Do you recall when you first
20 reviewed it?

21 A. Maybe 2003, 2002. Something like
22 that.

23 Q. And, specifically, can you turn to
24 page -- I need my copy. Can you please turn to

1 page 25149.

2 A. Yes.

3 Q. Have you reviewed this map before?

4 A. It looks similar to the one that was
5 in the phase two document that you showed me
6 earlier.

7 Q. And do you notice any differences
8 from the earlier map?

9 MS. FRANZETTI: Objection to form.
10 I'm not sure what's covered by differences.

11 HEARING OFFICER HALLORAN:
12 Sustained.

13 BY MS. BUGEL:

14 Q. You said it looks similar to. Do
15 you see anything --

16 A. Nothing is jumping out at me as
17 being different.

18 Q. Okay. For what purpose did you
19 review this document?

20 A. Just to see what a prior
21 consultant's thoughts were on the site.

22 HEARING OFFICER HALLORAN: Prior
23 consultants what?

24 THE WITNESS: Thoughts were.

1 BY MS. BUGEL:

2 Q. And those thoughts would be related
3 to environmental issues because this is an
4 environmental site assessment?

5 A. Yes.

6 MS. BUGEL: Complainants offer
7 Complainants' Exhibit 21 into evidence.

8 HEARING OFFICER HALLORAN: Ms.
9 Franzetti?

10 MS. FRANZETTI: Same objection as
11 before. This is, again, a report by ENSR for
12 Commonwealth Edison. It is not a business record
13 of Midwest Generation.

14 MS. BUGEL: Same response as before.
15 This is an environmental document. It relates to
16 environmental issues at the site. Ms. Race is --
17 in one of her responsibilities is environmental
18 issues and she has reviewed this document and it
19 is -- meets the board's test of evidence a
20 reasonable person would rely on.

21 HEARING OFFICER HALLORAN: I'll take
22 it as an offer of proof. So Exhibit 21 is taken
23 as an offer of proof.

24 We have about five or six

1 minutes and I'm hoping to take a lunch break. I
2 don't know how many more witnesses or questions
3 you have for Ms. Race.

4 MS. BUGEL: I would say we're about
5 halfway done with Ms. Race.

6 HEARING OFFICER HALLORAN: When do
7 you think -- when do you think a good time to
8 stop?

9 MS. BUGEL: If you want -- right now
10 is a fine time to stop if we can stop.

11 HEARING OFFICER HALLORAN: Okay.
12 Let's go off the record for a minute.

13 (Whereupon, a break was taken
14 after which the following
15 proceedings were had.)

16 HEARING OFFICER HALLORAN: Back on
17 record. We're going to take an hour lunch so
18 hopefully everybody will be back by, what is that,
19 1:25. Thank you.

20 (Whereupon, a break was taken
21 after which the following
22 proceedings were had.)

23 HEARING OFFICER HALLORAN: Thank
24 you. We're back on the record. It is

1 approximately 1:28. Over lunch I reviewed my
2 decision regarding these ComEd Phase Two
3 Environmental Site Assessment exhibits and I
4 wanted to make my ruling while Ms. Race was still
5 here.

6 You know, looking at this rule I
7 don't even have to get to any hearsay issues. I
8 consider Ms. Race a reasonable and prudent person
9 and she reviewed these documents and I don't think
10 she would have reviewed them for a waste of time
11 and, you know, that's all Section 101.626
12 requires. So I'm reversing my offer of proof
13 rulings on Complainants' Exhibit 17D, 18D, 19D,
14 20D and Exhibit 21.

15 MS. NIJMAN: We would ask that the
16 ruling be limited then to -- for the purpose of
17 relevancy the questions that are actually asked
18 from that document. In other words, the concern
19 is that there is a discussion with Ms. Race on one
20 issue and then the closing brief comes around and
21 something is pulled out of the back of that report
22 that has nothing to do with the testimony.

23 HEARING OFFICER HALLORAN: I grant
24 that. Ms. Bugel, do you understand in your -- in

1 your hearing brief, your -- your briefing is
2 limited to the questions you have asked of
3 Ms. Race regarding these exhibits?

4 MS. BUGEL: Okay. Well, then I
5 would like the opportunity to go back and ask
6 additional questions.

7 HEARING OFFICER HALLORAN: That's
8 why I reversed my position now while Ms. Race is
9 still in front of me.

10 MS. BUGEL: Thank you. May I have
11 one moment to confer with co-counsel?

12 HEARING OFFICER HALLORAN: Yes.
13 We're off the record again.

14 (Whereupon, a discussion was had
15 off the record.)

16 HEARING OFFICER HALLORAN: We're
17 back on the record, Ms. Bugel. Ms. Race, you're
18 still under oath. Thank you.

19 MS. BUGEL: I'm taking a moment just
20 to go back to my previous questions.

21 BY MS. BUGEL:

22 Q. Can we please turn back to Exhibit
23 17D.

24 A. Yes.

1 Q. And turning to page 3309, please.

2 We -- we had discussed that one. I didn't
3 realize. Let's turn to page 33 -- Bates page
4 3310, do you have that page in front of you?

5 A. Yes, I do.

6 Q. And do you see where this boring log
7 refers to slag/coal?

8 A. I see it.

9 Q. And slag is a form of bottom ash,
10 correct?

11 A. Yes.

12 Q. And can you turn to boring log --
13 the boring log for bore hole B-12 at Bates page
14 3311, do you see this page?

15 A. Yes, I do.

16 Q. And do you see that this boring log
17 also indicates under description classification
18 slag/coal?

19 A. Yes, and brown coarse sand with
20 silt, moist and loose as well.

21 Q. And turning to the boring log for
22 B-13 on page 3312, do you have that in front of
23 you?

24 A. Yes, I do.

1 Q. And if you look in the first box
2 under description classify -- second box first one
3 after ground service -- surface, do you see that
4 indicates slag/coal?

5 A. Yes, along with silty clay, brown
6 coarse sand loose, dark gray silty clay and
7 something else.

8 Q. And the box above it also indicates
9 slag/coal?

10 A. Yes.

11 Q. And if we can turn two pages to the
12 boring log for B-14 and we can go to the second
13 page of that -- wait a minute.

14 First page of that boring log at
15 3314. The last -- second to last box under
16 description classification says sand, dark brown
17 sand with slag, dense, moist, do you see that?

18 A. Yes, I do.

19 Q. And then underneath that it says
20 slag/coal?

21 A. Yes, I see that.

22 Q. Okay. Now, we can turn to B-21.

23 A. Which Bates number is that?

24 Q. That should be 3321. I think it's

1 two pages. No, it's not. 3321 under description
2 classification again in the middle of the box, do
3 you see where it says slag/coal?

4 A. Yes, and topsoil on top of that.

5 Q. Okay. And boring log B-22 next page
6 3322 under description classification under fill
7 the first thing listed is slag/coal?

8 A. Yes, I see that.

9 Q. So boring log B-23, which is two
10 pages later on page 3324 the boring log for B-23
11 under description classification under fill slag,
12 do you see that?

13 A. Where it says six inches slag dark
14 brown, silty sand, dry to moist, with slag and
15 gravel, that?

16 Q. Yes.

17 A. Yes, I see that.

18 Q. And beneath that it says slag/coal?

19 A. Yes, I see that.

20 Q. And then beneath that it says 12
21 inches slag/coal?

22 A. Yes, I see that.

23 Q. If we could turn to the boring log
24 for B-27, and that is on page 3328. Under

1 description classification, the first box after
2 ground surface topsoil/fill 24 inches coal/slag,
3 do you see that?

4 A. Yes, I do see that.

5 Q. And two more boxes down -- I'm
6 sorry. The next box down says same as above?

7 A. Yes, I see that.

8 Q. And then one more box down says
9 coal/slag?

10 A. Yes, I see that.

11 Q. I'm done with this exhibit -- no,
12 I'm not. Wait a minute. I think I've got it.

13 Can we turn -- could you turn
14 back to pages -- let's see. Page 3297.

15 A. Okay. I've got it.

16 Q. And does this appear to be ENSR's
17 representation of the soil borings and monitoring
18 well site plan?

19 A. Yes, it does.

20 Q. And it indicates soil borings with
21 B then a dash and then a number and monitoring
22 wells with MW then a dash and then a number?

23 A. Yes.

24 Q. And the next page, which is 3298, is

1 ENSR's representation of groundwater elevations,
2 do you see that?

3 A. Yes, I do see that.

4 Q. Okay.

5 A. It's a groundwater elevation map.

6 Q. Yes. Thank you. And can we turn to
7 Exhibit 18D, please. And we are now on Exhibit
8 18D, the Phase Two Environmental Site Assessment
9 for Will County. Could you turn to page 5739.

10 A. Okay. I've got it.

11 Q. And that page is ENSR's site
12 representation of a site plan for the Will County
13 Generating Station?

14 A. Yes.

15 Q. And then if we go to page 5742, this
16 is ENSR's representation of the soil
17 boring/monitoring well site plan?

18 A. Yes, I see that.

19 Q. And it represents where they -- it
20 represents for soil borings B dash and then a
21 number and then -- I'll pause. It represents soil
22 borings with B dash and then a number?

23 MS. FRANZETTI: Objection to form.

24 The represents part, this witness didn't prepare

1 this document and hasn't been established that she
2 ever previously used this part of the report. If
3 the question is simply is that what this page
4 says, I don't have any objection, but represents
5 is unclear.

6 HEARING OFFICER HALLORAN: I agree,
7 Ms. Franzetti. Ms. Bugel?

8 MS. BUGEL: Okay.

9 BY MS. BUGEL:

10 Q. And does this page state that soil
11 borings are shown with a B, a dash and then a
12 number?

13 A. Yes, it does.

14 Q. And monitoring wells are shown with
15 MW, a dash and then a number?

16 A. Yes.

17 MS. NIJMAN: Mr. Hearing Officer,
18 I'm just going to renew my objection in the sense
19 that stating what the document says and referring
20 her to a page to say that's what the document says
21 does not make the document relevant.

22 HEARING OFFICER HALLORAN: Okay.
23 The objection is so noted.

24 MS. NIJMAN: Thank you.

1 MS. BUGEL: Okay.

2 HEARING OFFICER HALLORAN: I've
3 already ruled on 101.626. So, you know, Ms. Race
4 looked at it, reviewed it, it was important to
5 her.

6 MS. NIJMAN: Then she should be
7 instructed that if she doesn't recall seeing that
8 page, she should not testify as to that page
9 unless she recalls something about it.

10 HEARING OFFICER HALLORAN: That's
11 true. Maybe you can do it on cross if that's the
12 case.

13 MS. NIJMAN: Thank you.

14 HEARING OFFICER HALLORAN: Thank
15 you. If we get there.

16 BY MS. BUGEL:

17 Q. Turning to the first log of the
18 borings on page 5747, did you review the borings
19 in this document?

20 A. I have -- I would have to guess and
21 I would say that if I guessed I looked at a few of
22 them, but probably not all of them.

23 Q. Okay. We can set that exhibit aside
24 and then for Waukegan this is Complainants'

1 Exhibit 19D and it's the Phase Two Environmental
2 Site Assessment for Waukegan.

3 Could you please first turn to
4 Bates page 45815 when you --

5 MS. FRANZETTI: I'm sorry, counsel.
6 45185?

7 THE WITNESS: 815.

8 MS. FRANZETTI: Thank you.

9 BY MS. BUGEL:

10 Q. When you reviewed this document, did
11 you look at this page of the document?

12 A. I'm not sure, but I would assume I
13 did or I may not have looked at this page. I
14 might have focused more on 45814 because it was a
15 site plan.

16 Q. Okay. So you believe you focused
17 more on 45814?

18 A. Mm-hmm.

19 Q. Okay. Very good. And did you
20 review -- if you turn to page 45821, did you
21 review the boring logs in this document?

22 A. I'm on the wrong page. I'm not sure
23 that I did to be honest. I may have. We can set
24 this document aside. I'm going to jump ahead in

1 my exhibit list just to cover all the phase one
2 and two ESA's at the same time. I am passing you
3 what has been marked as Complainants' Exhibit 38.

4 (Document marked as Complainants
5 Exhibit No. 38 for
6 identification.)

7 MS. BUGEL: Its title is
8 Commonwealth Edison Company Phase One
9 Environmental Site Assessment of Commonwealth
10 Edison Waukegan Generating Station.

11 MS. NIJMAN: We would have the same
12 standing objection and motion to strike on these
13 documents.

14 HEARING OFFICER HALLORAN: Okay.
15 Overruled. The record will so note. Thank you.
16 At least for now the witness hasn't answered
17 whether she's reviewed these or not.

18 BY MS. BUGEL:

19 Q. And are you familiar with this
20 document?

21 A. I have seen it before, yes.

22 Q. And can you please turn to page
23 12012.

24 A. Okay.

1 Q. Do you recall reviewing this page of
2 this document? And, for the record, it states
3 site plan.

4 A. I believe I remember reviewing this
5 document.

6 Q. And the question was do you remember
7 reviewing this page of this document?

8 A. I think I reviewed this page, but
9 it's been 15 years probably since I saw it or, I
10 mean, since I first saw it anyway.

11 Q. Okay.

12 A. But I think I did review this page.

13 Q. Okay. Thank you. We can set -- one
14 question about this page.

15 Do you see where it says former
16 slag/fly ash storage area and that is in the lower
17 left-hand corner of the map -- sorry -- of the
18 site plan?

19 A. I do see where it says that.

20 Q. And has Midwest Generation installed
21 a liner under the former slag/fly ash storage
22 area?

23 A. No, Midwest Generation has not
24 installed a liner under a former slag/fly ash

1 storage area.

2 MS. BUGEL: And complainants move
3 for Complainants' Exhibit 38 to be admitted into
4 evidence.

5 HEARING OFFICER HALLORAN: Ms.
6 Nijman?

7 MS. FRANZETTI: Same objections as
8 to the historic nature of the document not done
9 for this company. Hearsay.

10 HEARING OFFICER HALLORAN: Thank
11 you. Overruled based on 101.626. Thank you.
12 Complainants' Exhibit 38 is admitted.

13 (Document marked as Complainants
14 Exhibit No. 22 for
15 identification.)

16 BY MS. BUGEL:

17 Q. Okay. I have what has been marked
18 as Complainants' Exhibit 22 and it is an e-mail
19 and the title -- the subject line of the e-mail is
20 subgrade for Joliet 29 ash pond two liner. I am
21 placing that in front of you.

22 Are you familiar with this
23 document?

24 A. I have seen this document before.

1 Q. And can you describe what it is?

2 A. It is an e-mail from Eric Tlachac --
3 I don't know how to pronounce his name -- Tlachac
4 to me regarding the subgrade for the Joliet 29 ash
5 pond two liner.

6 Q. And Eric Tlachac he works for
7 Natural Res- -- I'm sorry -- Natural Resource
8 Technology?

9 A. Correct.

10 Q. And Natural Resource Technology,
11 were they a contractor for Midwest Generation?

12 A. They were a consultant for us and
13 they put together the construction permit for the
14 liners, the liners that we put into the
15 impoundments.

16 Q. So this e-mail was about work that
17 Natural Resource Technology was doing for Midwest
18 Generation?

19 A. Yes.

20 Q. And this e-mail discusses in the
21 second paragraph down leaving a four to six-inch
22 layer of bottom ash above the poz-o-pac when
23 relining ash pond two, is that correct?

24 A. Yes, Eric states in the e-mail that

1 there is four to six, and I'm assuming he means
2 inches here, of bottom ash above the poz-o-pac and
3 it will make an excellent bedding layer for the
4 geomembrane. So it's being used as structural
5 fill.

6 Q. And you agreed with Eric's proposal
7 to leave that four to six-inch layer of bottom ash
8 in place above the poz-o-pac?

9 A. Yes, I did.

10 MS. BUGEL: Complainants move for
11 Exhibit 22 to be moved into evidence.

12 HEARING OFFICER HALLORAN: Midwest?

13 MS. FRANZETTI: No objection.

14 HEARING OFFICER HALLORAN: Thank
15 you. Complainants' Exhibit 22 is admitted. No
16 objection.

17 (Document marked as Complainants
18 Exhibit No. 23 for
19 identification.)

20 BY MS. BUGEL:

21 Q. I have what is marked as
22 Complainants' Exhibit 23 and for the record this
23 is an e-mail and subject line is Powerton's
24 Groundwater Well Installation Document. I'm

1 placing them in front of you.

2 HEARING OFFICER HALLORAN: Thank
3 you.

4 BY MS. BUGEL:

5 Q. Are you familiar with this document?

6 A. I'm not sure. Let me take a look at
7 it. I'm not sure I remember this exact document,
8 but I do remember the occasion that she's
9 mentioning.

10 Q. Okay. So your e-mail is on -- your
11 name is on this e-mail as a recipient, correct?

12 A. Correct, but I get a lot of e-mails.

13 Q. And Amy Hanrahan who wrote this
14 e-mail worked for Midwest Generation?

15 A. Yes, she did.

16 Q. And attached to this e-mail is a
17 letter from Amy to IEPA?

18 A. Yes.

19 Q. And your name also appears as a cc
20 on this letter?

21 A. Yes, it does.

22 Q. And this letter was about installing
23 a groundwater monitoring well number 16 at
24 Powerton?

1 A. Yes, it is.

2 Q. And it attached -- the attachments
3 show the location of where that well was
4 installed?

5 A. Yes. I know that Lynn Dunaway came
6 and met with our consultant to figure out where to
7 put the well and so then the well was installed in
8 accordance with that location.

9 Q. And the attachments also include the
10 boring log for that well installation?

11 A. Is this all that's in this -- would
12 have been in this package?

13 Q. This is all that is in this package.

14 A. Because it doesn't look like
15 installation documentation. This looks like --
16 just like two pages. I'm not sure that this is
17 everything or maybe it is. I don't know. I don't
18 remember the letter frankly, but I do remember the
19 occasion where we made an agreement about where to
20 put the well and I believe that Amy wrote this and
21 it's true, but I don't know if this is complete.

22 MS. BUGEL: Complainants move for
23 Exhibit 23 to be admitted into evidence.

24 MS. FRANZETTI: No objection.

1 HEARING OFFICER HALLORAN: Thank
2 you, Ms. Franzetti. Complainants' Exhibit 23 is
3 admitted into evidence.

4 MS. BUGEL: Complainants next set of
5 exhibits is also a group exhibit. It is -- just
6 for the record it is a bundle of groundwater
7 monitoring reports. Complainants and respondents
8 have worked together to try to identify a set of
9 groundwater monitoring reports that do not
10 constitute hundreds of documents, but instead an
11 agreed shortened list.

12 HEARING OFFICER HALLORAN: Thank you
13 for that.

14 MS. BUGEL: Complainants have
15 bundled these together as a group exhibit. This
16 would be Group Exhibit E and it includes Exhibit's
17 24E through 30.5E. So that would be eight
18 documents if my math is correct.

19 MS. FRANZETTI: Thirty-six?

20 MS. BUGEL: 24E through 30.5.

21 MS. FRANZETTI: Oh, 30.5. Sorry. I
22 just heard 35.

23 MS. BUGEL: So we are -- we have
24 bundled these already. So we're passing the whole

1 bundle so I am passing you what has been marked as
2 Complainants' Exhibit's 24E through 30.5E.

3 MS. FRANZETTI: If I can just -- can
4 I ask a question --

5 HEARING OFFICER HALLORAN: Yes, you
6 may.

7 MS. FRANZETTI: -- to understand the
8 bundle?

9 HEARING OFFICER HALLORAN: Yes, you
10 may.

11 MS. FRANZETTI: Does the bundle
12 include the corrected monitoring data that was
13 submitted to IEPA because of, you know, some
14 transcription errors in the original reports? Did
15 you include the amended reports or the corrected
16 reports in this bundle?

17 MS. BUGEL: I have lost my page in
18 my outline. Okay. Here -- in amongst here is the
19 groundwater monitoring report for quarter one 2012
20 at Bates 4063 to 4064. I believe that is one of
21 the reports that was amended. However, we are
22 including that for the purposes of the boring logs
23 attached to it and not to rely on the analytical
24 data and I think that -- I don't believe there are

1 any other that were amended. However, in the
2 course of this hearing, if we discover that there
3 were amended reports in here and we want to add
4 the amended reports, we would not object to
5 supplementing the exhibit.

6 HEARING OFFICER HALLORAN: Okay.
7 Which exhibit did you -- as far as the amended
8 report that I have now that you amended and --

9 THE WITNESS: This doesn't look
10 like -- I don't know. They're just kind of out of
11 order. This says May of 2012 and then the next
12 one is August of 2011.

13 MS. BUGEL: Can I --

14 HEARING OFFICER HALLORAN: Okay. We
15 can go off the record.

16 (Whereupon, a break was taken
17 after which the following
18 proceedings were had.)

19 HEARING OFFICER HALLORAN: We're
20 back on the record.

21 MS. BUGEL: We -- we are handing the
22 witness a group exhibit that has been marked with
23 an E to indicate Group Exhibit E and within this
24 exhibit we have first Complainants' Exhibit 24E,

1 which begins at Bates range MWG 13-15_4044 and it
2 is the quarterly groundwater monitoring results
3 first quarter 2012 Powerton Generating Station
4 bypass cleaning basin.

5 (Document marked as Complainants
6 Exhibit No. 24E for
7 identification.)

8 MS. BUGEL: Second is Complainants'
9 Exhibit 25E. This is -- begins at Bates page MWG
10 13-15_38471 and it is the quarterly groundwater
11 monitoring results second quarter 2011 Joliet 29
12 Generating Station.

13 (Document marked as Complainants
14 Exhibit No. 25E for
15 identification.)

16 MS. BUGEL: Third is Complainants'
17 Exhibit 26E beginning at page MWG 13-15_39620 and
18 it is the quarterly groundwater monitoring results
19 first quarter 2011 Powerton Generating Station.

20 (Document marked as Complainants
21 Exhibit No. 26E for
22 identification.)

23 MS. BUGEL: Next is Complainants'
24 Exhibit 27E at page MWG 13-15_40005 and it is the

1 quarterly groundwater monitoring results third
2 quarter 2011 Powerton Generating Station bypass
3 cleaning basin.

4 (Document marked as Complainants
5 Exhibit No. 27E for
6 identification.)

7 MS. BUGEL: The next set -- or next
8 exhibit is Complainants' Exhibit 28E at page MWG
9 13-15_40589. It is the groundwater monitoring
10 results April 2012 Powerton Generating Station
11 metal cleaning basin.

12 (Document marked as Complainants
13 Exhibit No. 28E for
14 identification.)

15 MS. BUGEL: The next one is
16 Complainants' Exhibit 29E page MWG 13-15_41609.
17 The quarterly groundwater monitoring results
18 fourth quarter 2012 Waukegan Generating Station.

19 (Document marked as Complainants
20 Exhibit No. 29E for
21 identification.)

22 MS. BUGEL: The next document is
23 Complainants' Exhibit 30E MWG 13-15_42345. It is
24 the quarterly groundwater monitoring results

1 second quarter 2011 for Will County Generating
2 Station. That has a staple sticking out. Okay.

3 (Document marked as Complainants
4 Exhibit No. 30E for
5 identification.)

6 MS. BUGEL: The last one is
7 Complainants' Exhibit 30.5. That was missing an E
8 on it so I have added an E to my copy to make it
9 clear that it's part of Group Exhibit E. The --
10 and this is -- begins at page MWG 13-15_40045 and
11 these are the quarterly groundwater monitoring
12 results fourth quarter 2011 Powerton Generating
13 Station bypass cleaning basin.

14 (Document marked as Complainants
15 Exhibit No. 30.5E for
16 identification.)

17 MS. BUGEL: I note for the record
18 that this copy was not a color copy. If anybody
19 is concerned and wants to substitute a color copy,
20 we can agree to do so, especially if it creates
21 any issues for the site plans or site maps.

22 HEARING OFFICER HALLORAN: Ms.
23 Bugel, you said this was 30.5?

24 MS. BUGEL: 30.5E.

1 HEARING OFFICER HALLORAN: Thanks.

2 MS. BUGEL: Okay.

3 BY MS. BUGEL:

4 Q. I am placing that group exhibit in
5 front of you and, Ms. Race, are you familiar with
6 the documents that I've placed in front of you?

7 A. Yes, I am.

8 Q. And can you just briefly explain
9 what those documents are?

10 A. Well, the -- the first document
11 is -- and all the documents are from our
12 consultant Patrick Engineering and they are being
13 sent to Illinois EPA and giving quarterly
14 groundwater monitoring results in various
15 quarters.

16 Q. And creating these documents was
17 part of their work for Midwest Generation, one of
18 the tasks under their contract?

19 A. At one point we were using them for
20 monitoring the groundwater at the sites.

21 Q. And did part of the task of
22 monitoring the groundwater involve providing
23 reports with the results of monitoring the
24 groundwater?

1 A. Yes.

2 Q. And you indicated at one point
3 Patrick Engineering did that work, do you know how
4 long a period Patrick did that work for?

5 A. I think it was maybe until the
6 second quarter or third quarter of 2012.

7 Q. And they -- Patrick Engineering
8 provided these reports on a regular basis?

9 A. Yes, they were quarterly from the
10 time that we started doing monitoring and I think
11 that would have been 2011.

12 Q. And they also provided attached lab
13 analyses as part of the reports?

14 A. Correct, along with the QAQC
15 results. You know, it was a full analytical
16 report from Test America.

17 MS. BUGEL: Complainants move for
18 Complainants' Group Exhibit E consisting of
19 Exhibit's 24E through 30.5E to be moved into
20 evidence.

21 MS. FRANZETTI: No objection with
22 the proviso that there were amendments to certain
23 reports that --

24 HEARING OFFICER HALLORAN: That's

1 the proviso I was looking for and I'm not sure
2 which one it was, what exhibit.

3 MS. BUGEL: Complainants can
4 supplement this exhibit with the amendment to the
5 first quarter 2012 results that appear at Bates
6 range 4063 and I believe that's the first --

7 THE WITNESS: Do you need this?

8 MS. BUGEL: Thanks. The -- let me
9 say. I believe there is an amendment to first
10 quarter 2012 quarterly groundwater monitoring
11 results for Powerton Generating Station bypass
12 cleaning basin that begins on Bates page 4044. We
13 can look for that amendment and supplement the
14 exhibit with it.

15 HEARING OFFICER HALLORAN: Okay.

16 MS. FRANZETTI: Which is -- which is
17 Exhibit 24E, correct?

18 MS. BUGEL: 24E, yes.

19 HEARING OFFICER HALLORAN: Thank
20 you.

21 MS. BUGEL: And complainants are
22 submitting -- I have the next exhibit that has
23 been marked, Complainants' Exhibit 31, and this is
24 an e-mail from Richard Frenedt to Maria Race

1 subject Former Ash Pond at Powerton that I'm
2 placing in front of you.

3 HEARING OFFICER HALLORAN: Thank
4 you.

5 (Document marked as Complainants
6 Exhibit No. 31 for
7 identification.)

8 BY MS. BUGEL:

9 Q. And are you familiar with this
10 document?

11 A. Yes, I am.

12 Q. Can you describe what it is, please?

13 A. It is an e-mail from Rick Frenedt to
14 me attaching a boring location plan for
15 geotechnical work that was done in the vicinity of
16 the ash pond at Powerton when a rail loop was
17 being put in.

18 Q. And you referenced the ash pond at
19 Powerton, is that the former ash pond?

20 A. Yes.

21 Q. And this document was created by
22 Patrick Engineering?

23 A. Let me look. Yes, this document was
24 created on a different project however by Patrick

1 Engineering. It was created for -- they were
2 looking at the structural stability of the fill
3 for putting a rail line over the top of it.

4 Q. And the former ash pond at Powerton
5 is also known as the old ash pond, correct?

6 MS. FRANZETTI: Objection to form.
7 By who?

8 HEARING OFFICER HALLORAN:
9 Sustained.

10 MS. FRANZETTI: Vague.

11 BY MS. BUGEL:

12 Q. Have you heard the former ash pond
13 at Powerton also called the old ash pond?

14 A. I've heard it called a number of
15 different things. It also -- it's been called an
16 emergency overflow. There are a number of
17 different names that I think I've heard over the
18 years.

19 Q. If you turn to page 14226 --

20 A. Mm-hmm.

21 Q. -- and in that figure or map towards
22 the middle is the term old ash pond, do you see
23 that?

24 A. Yes, I do see that.

1 Q. And is that marking the pond that
2 you also called the former ash pond?

3 A. Yes, I believe it's the same pond
4 and this is the one that actually has been
5 bifurcated by a rail line and they did use that
6 structural fill.

7 Q. As part of that geotechnical work
8 that Patrick was doing, do you know if they did
9 borings?

10 A. Actually, I don't -- I know that
11 they did borings by knowing the engineers in the
12 department, but I didn't have the borings done.
13 So I didn't review them at the time they were done
14 or anything, but what I did in this e-mail is ask
15 for them.

16 Q. So the boring logs that appear as an
17 attachment to this e-mail you did not review
18 those?

19 A. I probably did review them, but I
20 didn't -- I didn't create -- you know, like they
21 weren't a project of mine that I created, but I
22 asked to take a peek at them because they were
23 near this basin that was in -- in the back and I
24 knew that the rail line had been put through

1 there.

2 Q. And do you know where the borings
3 were taken?

4 A. Well, if you follow the mapping, I
5 would assume they were taken at all these
6 indications taken on the map, but I don't know
7 that for a fact because I wasn't in charge of the
8 project, but that's what makes sense to me.
9 That's the way I took it when I read it.

10 Q. Could you turn to page 14247.

11 A. Yes.

12 Q. The work -- the geotechnical work
13 related to the rail line, do you know if that was
14 done in 2012?

15 A. You know, it seems like it was
16 earlier and actually it says drilling started in
17 2008. Yeah, because I think I ended out -- I got
18 the loop track award actually for working with
19 folks as a team on the environmental permitting
20 piece of the rail line and that would have been
21 earlier because I think I got that in 2010.

22 Q. Okay. All right. So I was just
23 trying to understand. It looks like Richard
24 Frenndt's e-mail was from 2012, but the borings

1 appear to be from 2008?

2 A. Correct.

3 Q. Okay.

4 A. This -- this was a job that I knew
5 had happened because I had done some work with the
6 Army Corps of Engineers and talked to them about
7 the rail line and that type of thing and so I knew
8 this work existed and had been done and so I asked
9 for the geotechnical work that had been done in
10 2008.

11 MS. BUGEL: And complainants move
12 for Complainants' Exhibit 31 to be admitted into
13 evidence.

14 MS. FRANZETTI: No objection.

15 HEARING OFFICER HALLORAN: Thank
16 you. Complainants' Exhibit 31 is admitted into
17 evidence.

18 MS. BUGEL: And complainants we have
19 marked an exhibit Complainants' Exhibit 32
20 beginning at Bates page 13746 -- or consisting of
21 one page and this is an e-mail with the subject
22 Borings in Ash Pond and Possible Use of Slag or
23 Bottom Ash. I am placing that document in front
24 of you.

1 MS. FRANZETTI: Just give us a
2 minute, counsel.

3 (Document marked as Complainants
4 Exhibit No. 32 for
5 identification.)

6 BY MS. BUGEL:

7 Q. Are you familiar with this document?

8 A. Let me just read it real fast. Yes,
9 I am familiar with this.

10 Q. Can you please describe what it is?

11 A. It's an e-mail from Jeff Schuh who
12 was at Patrick Engineering on the civil
13 engineering side. So he was one of Rick Frenndt's
14 colleagues. And it was sent to me and to Jeff
15 Bard who was my colleague at Midwest Generation
16 who was the expert on CCR and CCR regulations and
17 CCR beneficial use. And CCR means coal combustion
18 residuals. I'm sorry I'm using an acronym.

19 HEARING OFFICER HALLORAN: Thank
20 you.

21 BY THE WITNESS:

22 A. As part of this work in 2008 that we
23 were just talking about and putting in the rail
24 line what the folks at Patrick Engineering wanted

1 to do is leave the slag as structural fill in
2 place and then perhaps even use additional slag to
3 bring it up and that's what is the subject of this
4 e-mail.

5 BY MS. BUGEL:

6 Q. And so you mention that this e-mail
7 discusses leaving the slag in place?

8 A. Correct.

9 Q. Was the slag, in fact, left in place
10 in the former ash pond at Powerton in relation to
11 this work?

12 A. I actually think that it was, but I
13 don't know that it was because once we would have
14 said, you know -- like I, myself, would have said
15 that it was okay, but I don't know what they
16 actually did on the engineering side. So I don't
17 know if it was left in place or not.

18 Q. And if you can look at the second
19 paragraph or the paragraph that begins after
20 number three, the third sentence in this
21 paragraph, do you see it says "We did not sample
22 for any environmental reason, and I don't intend
23 to"?

24 A. Yes, I see that.

1 Q. Do you -- after this e-mail, do you
2 know if any environmental sampling was done at the
3 former ash pond?

4 A. I don't know if they did any
5 environmental sampling in 2008. I mean, we later
6 did work and, you know, this hydrogeological
7 assessment around that ash impoundment.

8 Q. Besides the hydrogeological
9 assessment around the former ash pond, do you know
10 of any other environmental sampling that was done
11 at the former ash pond?

12 A. Well, we have the monitoring wells
13 that stayed in place there and have been monitored
14 quarterly, but other than that, I don't know of
15 other environmental -- I can't think of anything
16 beyond that.

17 Q. And you also --

18 A. That Midwest Generation did I should
19 say.

20 Q. And you had mentioned using slag to
21 bring -- I'm not sure. I may need some
22 clarification on this. Bringing something up and
23 out of the water?

24 A. Well, what the project was was to

1 build -- bifurcate this -- this large impoundment
2 and I got to tell you it looks like a pond with
3 trees and everything around it and it's vegetated
4 and so we ended up talking to the Corps about it
5 and ensuring what we needed to do got done
6 permitting-wise, but what we were doing was
7 putting a rail line across that and they didn't
8 want it to get inundated by the water. So they
9 wanted to build up that level to ensure that it
10 wasn't underneath -- the rail line was never
11 underwater because it would be taking coal cars
12 across it and it's very unstable if you have water
13 come up on the tracks.

14 Q. So then the next paragraph down
15 where it's saying the other question if we let the
16 ash stay, it can additional slag -- I'm sorry.

17 Can additional ash be used or
18 slag to bring a fill up and out of the water,
19 that -- your understanding is that what they were
20 referring to, bringing the rail line --

21 A. Yes.

22 Q. -- up out the water?

23 A. Yes, I believe they were talking
24 about bringing more of the fill that was in the

1 pond and bringing up that level of structural fill
2 so that it was above the water and then they would
3 have brought in something to incapsulate it and
4 that would have been where they put the rail line.

5 Q. And that is, in fact, what they did?

6 A. I don't know. I mean, what they
7 were asking for is, you know, is this a
8 possibility and I know Jeff and I talked about it
9 at the time and we didn't have a problem with that
10 practice at all for them to use it as structural
11 fill.

12 Q. And it goes onto say "We may be able
13 to find larger diameter slag that meets leach
14 test," do you see where it says that?

15 A. Yes.

16 Q. Do you know if that leach testing
17 was ever done?

18 A. I don't know.

19 MS. BUGEL: Complainants move for
20 Complainants' Exhibit 32 to be admitted into
21 evidence.

22 MS. FRANZETTI: No objection.

23 HEARING OFFICER HALLORAN: Thank
24 you, Ms. Franzetti.

1 BY MS. BUGEL:

2 Q. I have what's been marked as
3 Complainants' Exhibit 33.

4 (Document marked as Complainants
5 Exhibit No. 33 for
6 identification.)

7 BY MS. BUGEL:

8 Q. And the first page of this says
9 secondary ash basin permit and I cannot read the
10 last word. It looks like Weir vest, but I don't
11 know what that is.

12 A. Can I add something on the last
13 answer? Is that possible? Is that okay to do?

14 Q. Yes.

15 A. What I would say is that there was
16 testing done on some Powerton slag. So -- and I
17 know that that's probably in this file somewhere.
18 So there is, you know, like a standard sample that
19 was done and I don't think it would have changed
20 over time. So I think that would have
21 represented -- although I don't know for sure what
22 they did because they would have done it on
23 their -- the engineering side and probably more
24 with Jeff than with me, but they're -- there is a

1 sample out there.

2 Q. But that testing that you just
3 referred to or that sample out there, do you know
4 if it was from the former ash pond?

5 A. No, it wasn't from there, but it was
6 slag from the units.

7 Q. Again, referring back to what has
8 been marked as Complainants' Exhibit 33. If you
9 turn to the second page, the subject line says
10 Transmittal of the Application for Permit or
11 Construction Approval Supporting Documents Midwest
12 Generation Powerton Secondary Ash Settling Basin
13 Liner Replacement.

14 MS. FRANZETTI: Excuse me. We don't
15 have a copy of the exhibit.

16 HEARING OFFICER HALLORAN: Exhibit
17 33 neither do I.

18 MS. NIJMAN: Thank you.

19 HEARING OFFICER HALLORAN: Thank
20 you.

21 BY MS. BUGEL:

22 Q. Are you familiar with this document?

23 A. Yes, I am.

24 Q. And can you describe what it is,

1 please?

2 A. Sure. We were applying for a permit
3 for construction approval for the secondary ash
4 settling basin liner replacement at Powerton.

5 Q. And did you say that was to re--
6 reline the secondary ash settling basin?

7 A. Yes.

8 Q. And if you turn to page 9728. Are
9 you familiar with these pages of this document?

10 A. I was at one time, but, yeah, I
11 mean, I -- I certainly have looked at them before.

12 Q. And are you familiar with the bottom
13 of the pond elevation at the secondary ash
14 settling basin?

15 A. No, I'm not familiar with that.
16 Like I wouldn't know those off the top of my head.

17 Q. And --

18 A. But I do remember that the river
19 water rose up to probably, you know -- it got up
20 very high in elevation during the big flooding
21 that happened and that was around 470 probably.

22 Q. When was that flooding?

23 A. It wasn't in the plant proper, but
24 it was maybe -- I don't know. I can't remember

1 the year.

2 Q. And these drawings, do you know if
3 the project went forward to reline the secondary
4 ash settling basin?

5 A. Yes.

6 MS. BUGEL: Complainants move for
7 Complainants' Exhibit 33 to be admitted into
8 evidence.

9 MS. FRANZETTI: Just a moment. No
10 objection.

11 HEARING OFFICER HALLORAN: No
12 objection?

13 MS. FRANZETTI: No objection.

14 HEARING OFFICER HALLORAN:
15 Complainants' Exhibit 33 is admitted into
16 evidence.

17 BY MS. BUGEL:

18 Q. And the flooding that you just
19 mentioned when you said the river water rose up,
20 do you know if the groundwater rose up at the same
21 time?

22 A. I don't remember.

23 MS. FRANZETTI: Objection. Lack of
24 foundation as to her measuring groundwater

1 conditions.

2 HEARING OFFICER HALLORAN:

3 Sustained. Ms. Bugel?

4 MS. BUGEL: Okay.

5 BY MS. BUGEL:

6 Q. At Powerton, are you familiar with
7 groundwater elevations?

8 A. No.

9 MS. BUGEL: Can I have a moment off
10 the record to confer with counsel?

11 HEARING OFFICER HALLORAN: Off the
12 record, Steven. Thank you.

13 (Whereupon, a break was taken
14 after which the following
15 proceedings were had.)

16 HEARING OFFICER HALLORAN: We're
17 back on the record.

18 MS. BUGEL: Just so it's clear
19 despite the fact that this document has a
20 confidential stamp across it, we have confirmed
21 that it is not non-disclosable.

22 HEARING OFFICER HALLORAN: Thank you
23 for that clarification.

24 MS. BUGEL: Okay. I have what has

1 been marked as Complainants' Exhibit 34.

2 (Document marked as Complainants
3 Exhibit No. 34 for
4 identification.)

5 BY MS. BUGEL:

6 Q. It is a Natural Resource Technology
7 technical memorandum number one and I am placing
8 it in front of you.

9 A. Okay.

10 Q. And are you familiar with this
11 document?

12 A. Yes, I am.

13 Q. Can you describe what it is?

14 A. Yes, when I was starting out at
15 Midwest Generation, I was managing NPDES permit
16 applications and so around the time that they
17 started doing permit renewals I was looking at the
18 liners for all the impoundments, not just the ash
19 impoundments, and thinking about how could we set
20 about replacing the liners over a long period of
21 time and create sort of an operations and
22 maintenance program to ensure that it wasn't done
23 just, you know, like one plant happened to have
24 extra money one year or a good outage so they

1 would do it upon replacement maybe before another
2 impoundment that had been more years since they
3 replaced it. So trying to do it in sort of a
4 scientific way. So this was a document that was
5 put together based on a lot of data review online
6 and a couple inputs from us by NRT.

7 Q. And just to confirm that was for all
8 four Midwest Gen facilities?

9 A. Yes.

10 Q. And did that include an
11 investigation of the condition of the pond liners?

12 A. No.

13 Q. And you've reviewed the results of
14 the assessment?

15 A. Yes.

16 Q. And if you turn to page 23614, does
17 this impoundment matrix contain some of the
18 results of -- and I'm going to refer to Natural
19 Resource Technology as NRT for the record.

20 Does this contain some of the
21 results of NRT's evaluation?

22 A. It contains the best results they
23 could come up with the information that they had
24 at hand in 2005.

1 Q. And this table includes south --
2 sorry -- let me -- south ash impound one, right?

3 A. We're on 23614?

4 Q. Yes.

5 A. Yes, it does include that.

6 Q. And it also includes north ash
7 impoundment?

8 A. It looks like, yeah, that's a little
9 cut off, but yes.

10 Q. And the liners for -- the liner for
11 south ash impoundment one has not been replaced
12 since this evaluation, is that right?

13 A. Let me think. Yes, that is correct.

14 Q. And the liner for north ash
15 impoundment, which got cut off here, also has not
16 been replaced, is that right?

17 A. That is correct.

18 Q. And those liners were installed in
19 1977, correct?

20 A. Yes, at the same time as ash
21 impoundments two and three.

22 Q. And both -- and I'm going to refer
23 to these as one north and one south, is that okay?

24 A. Sure.

1 Q. Both one north and one south are
2 inactive, is that correct?

3 A. Yes, they're both inactive.

4 Q. And that means they've been removed
5 from service, correct?

6 A. They have been removed from service,
7 but they do still receive storm water.

8 Q. And they still have ash in them,
9 correct?

10 A. Yes, they do still have ash in them.

11 Q. And they have never been dredged?

12 A. They have been dredged before I
13 think, but they haven't been dredged recently as
14 far as I know. Like I was saying, I haven't been
15 involved for a couple of years.

16 Q. And they have not been capped,
17 correct?

18 A. As far as I know, they have not been
19 capped.

20 Q. And they're open to precipitation?

21 A. As far as I know, they're open to
22 precipitation.

23 MS. BUGEL: And complainants move
24 for Complainants' Exhibit 34 to be admitted into

1 evidence.

2 MS. FRANZETTI: No objection.

3 HEARING OFFICER HALLORAN: Thank
4 you.

5 MS. BUGEL: If you want to keep this
6 close by, we're going to actually refer to this
7 once again.

8 HEARING OFFICER HALLORAN:
9 Complainants' Exhibit 34 is admitted. No
10 objection.

11 MS. BUGEL: I have what has been
12 marked as Complainants' Exhibit 35.

13 BY MS. BUGEL:

14 Q. And this -- if you turn to the
15 second page, this is an e-mail or appears to be an
16 e-mail from Bill Buscher to Maria Race on Waukegan
17 and it starts with Waukegan was moved down into
18 priority two category?

19 A. Okay.

20 Q. I'm placing that document in front
21 of you. Are you familiar with this document?

22 A. Yes, I am.

23 Q. Can you explain what it, please?

24 A. Well, there are two parts to this

1 e-mail. Bill Buscher is the supervisor of
2 hydrogeology and compliance unit groundwater
3 section at Illinois EPA. One piece of it was he
4 stated that Waukegan was moved down into the
5 priority two category and that the following were
6 added to priority one and two categories
7 respectfully, but I don't see two things here. So
8 that part of it doesn't make sense.

9 Q. And there is a portion of it that is
10 redacted, though?

11 A. Oh, maybe that's what it is then.
12 Okay.

13 Q. And this is related to groundwater
14 sampling results? I'm sorry. I'll strike that
15 and rephrase it. Does this also discuss
16 groundwater sampling results?

17 A. Let me think about the timing of
18 this. Well, the hydrogeologic assessment plan was
19 submitted and approved. Is this him talking or me
20 talking? That's where I'm confused. The second
21 part I don't know this -- this part of the e-mail
22 that looks like it's different type.

23 Q. Understood. Let me ask a different
24 question then. The priority one and two

1 categories were related that the hydrogeologic
2 assessment and -- the hydrogeologic assessment?

3 MS. FRANZETTI: Objection to form.
4 Counsel is testifying.

5 MS. BUGEL: Okay.

6 HEARING OFFICER HALLORAN:
7 Sustained. Ms. Bugel, rephrase.

8 BY MS. BUGEL:

9 Q. Do you know what the priority one
10 and two categories were?

11 A. I know that Illinois EPA put
12 together a priority one and maybe more pri- -- I
13 mean, they had an order of priority and I don't
14 remember how many categories there were and it had
15 to do with ash impoundments in the state, but I
16 don't remember their criterion or anything more
17 about it than that.

18 Q. Okay.

19 MS. BUGEL: And complainants move
20 for Complainants' Exhibit 35 to be admitted into
21 evidence.

22 MS. NIJMAN: I would object as to
23 hearsay, out of court statement that she did not
24 write and doesn't really recall or understand

1 portions of it.

2 HEARING OFFICER HALLORAN: Yeah.

3 Ms. Bugel?

4 MS. BUGEL: Okay.

5 HEARING OFFICER HALLORAN: That
6 piqued my interest.

7 MS. BUGEL: Yeah. Yeah. If -- I
8 would submit this is eligible for the business
9 record exception to hearsay as e-mails fall within
10 the category of business records. I can ask a
11 couple more questions to establish that.

12 HEARING OFFICER HALLORAN: Ms.
13 Nijman?

14 MS. NIJMAN: If we didn't prepare
15 it, I'm not sure an e-mail -- I think the law has
16 come out pretty clearly in the state that an
17 e-mail that you didn't prepare does not fall
18 within the business record. It certainly wouldn't
19 go to the truth of the e-mail because we would
20 have no way of establishing it. Everyone has
21 e-mails. That would mean every e-mail is a
22 business record and that's not the case.

23 MS. BUGEL: And, in addition, this
24 is a public record because it is from the

1 Illinois -- the Illinois Environmental Protection
2 Agency and if Bill Buscher and Maria Race
3 regularly communicated by e-mail about the issues
4 in this e-mail, then it would be both a public
5 record exception and a business record exception.

6 MS. NIJMAN: We have no evidence of
7 regular communication, nor do we have any evidence
8 that this is a business record or public. I mean,
9 it's just an e-mail.

10 HEARING OFFICER HALLORAN: Public if
11 you -- I don't know if it is public. And, again,
12 Ms. Race is a bit confused about this. I just --
13 you know, I don't even think a reasonable person
14 could rely on this. Yeah, you know, there is too
15 many ifs, ands and buts. I'll take it as an offer
16 of proof.

17 MS. BUGEL: Understood.

18 HEARING OFFICER HALLORAN: Thank
19 you. Complainants' Exhibit 35 is taken as an
20 offer of proof.

21 BY MS. BUGEL:

22 Q. And I have what has been marked as
23 Complainants' Exhibit 36.

24

1 (Document marked as Complainants
2 Exhibit No. 36 for
3 identification.)

4 BY MS. BUGEL:

5 Q. This is also an e-mail subject
6 matter is Data Tables for Ash Pond Investigations
7 that I'm placing in front of you and are you
8 familiar with this document?

9 A. Yes, I am.

10 Q. And can you explain what it is,
11 please?

12 A. It is an e-mail from Rick Frenndt of
13 Patrick Engineering to me which includes data
14 tables for the very first sampling that we did of
15 the wells that Illinois EPA wanted us to put in
16 for the hydrogeologic assessment. So this is
17 before the assessment is completed.

18 Q. Okay. And this was during the time
19 that Patrick Engineering was working as a
20 consultant for Midwest Generation?

21 A. Yes.

22 Q. And it also discusses hydraulic
23 evidence at Will County?

24 A. Correct, it discusses that, but I

1 think he was grappling with the data and had just
2 taken a first look at the first samples that we
3 had ever gotten and was trying to find out what it
4 meant and was sort of speaking out loud here, so
5 to speak. Just thinking about what does it mean
6 and --

7 MS. BUGEL: Okay. Complainants move
8 for Complainants' Exhibit 36 to be admitted into
9 evidence.

10 MS. FRANZETTI: No objection.

11 HEARING OFFICER HALLORAN: Thank you
12 Complainants' Exhibit 36 is admitted.

13 BY MS. BUGEL:

14 Q. I have what has been marked as
15 Complainants' Exhibit 37.

16 (Document marked as Complainants
17 Exhibit No. 37 for
18 identification.)

19 BY MS. BUGEL:

20 Q. And this is a -- appears to be a
21 letter and the subject line is Waukegan Station
22 Groundwater Samples and it is Bates range MWG
23 13-15_818 to 819. Are you familiar with this
24 document?

1 MS. NIJMAN: Ms. Bugel, our copy is
2 unsigned. Is yours unsigned as well?

3 THE WITNESS: It's not on letterhead
4 either. So it's kind of odd.

5 MS. BUGEL: Yes, this copy is
6 unsigned and we did not ever receive a signed copy
7 of this.

8 BY THE WITNESS:

9 A. It's not on letterhead either so I'm
10 wondering if it was something we never sent or --
11 huh. Let me take a look at it. I don't remember
12 writing this, but, you know, I just find it odd
13 that it's not on letterhead or anything because
14 usually when I wrote a letter it would be on
15 letterhead. So I find that odd and that it's not
16 signed.

17 BY MS. BUGEL:

18 Q. But it does have your name on it, on
19 the second page, correct?

20 A. That's correct.

21 Q. And you did correspond with Lynn
22 Dunaway at IEPA regarding the hydrogeologic
23 assessments at Midwest Gen facilities, correct?

24 A. Usually I corresponded directly with

1 Bill Buscher if I was sending something in. I
2 think -- and that would have made more sense to me
3 if this had Bill Buscher's name on it or even Rick
4 Cobb.

5 Q. But you did correspond with Lynn
6 Dunaway?

7 A. Maybe once or twice, but it would
8 have been unusual for me to have sent something to
9 Lynn. It would have been more likely that I would
10 have copied him and sent it to Bill's attention or
11 something.

12 Q. And you have no reason to believe,
13 though, that this letter is a fake, right?

14 A. No, I have no reason to believe
15 that. I just don't know. That's all. I don't
16 know if it was final or a draft or -- you know.

17 Q. And this -- this document does
18 discuss impacts seen at various monitoring wells,
19 correct?

20 A. It discusses the water level and
21 chemistry data from the initial six rounds of
22 quarterly sampling.

23 Q. And the second paragraph down --

24 A. Showing that the liners are

1 performing properly.

2 Q. The second paragraph down talks
3 about noted up gradient impacts to groundwater
4 Midwest Generation in consultation with IEPA
5 installed two addition -- additional monitoring
6 wells?

7 A. Yes, I do see that. There was --
8 the site area is surrounded by a Tannery and
9 Boiler property and that's, you know, been -- we
10 are surrounded by industrial sites that have known
11 plumes coming onto our site. So that was a big
12 concern.

13 MS. BUGEL: And complainants move
14 for Complainants' Exhibit 37 to be admitted into
15 evidence.

16 MS. NIJMAN: Objection. There is no
17 basis to establish that she wrote it. She doesn't
18 remember it. It's not signed. It's not on
19 letterhead. She has no recall of the contents
20 other than what she is reading.

21 HEARING OFFICER HALLORAN: That was
22 going to be my ruling exactly. Sustained. I will
23 take it as an offer of proof, Ms. Bugel.

24 MS. BUGEL: Okay.

1 HEARING OFFICER HALLORAN: Thank
2 you. Just to let everybody know I got a call at
3 3:00. I'll take a break then.

4 MS. BUGEL: Thank you.

5 HEARING OFFICER HALLORAN: And we're
6 still on the record. It is my admonishment that
7 the various conference calls we had I would like
8 to wrap this up by 4:30 or so. I'm just worried
9 about Ms. Race having to come back here tomorrow.

10 MS. FRANZETTI: Well, she -- we
11 anticipated that might be the case. So thank you
12 for your concern, but we're prepared for that.

13 HEARING OFFICER HALLORAN: All
14 right. Thank you. You may proceed, Ms. Bugel.

15 MS. BUGEL: Thank you. And I don't
16 have a lot left. I would expect a half-hour or
17 less.

18 HEARING OFFICER HALLORAN: Do you
19 want to take a break now then?

20 MS. BUGEL: We can knock out ten --
21 we can probably do the next group exhibit in that
22 time.

23 HEARING OFFICER HALLORAN: Okay.

24 MS. BUGEL: So we've got Group

1 Exhibit F and I will read this all into the
2 record. So I have what has been marked
3 Complainants' Group Exhibit F consisting of 39F,
4 40F, 41F and 42F.

5 (Document marked as Complainants
6 Exhibit No. 39F for
7 identification.)

8 MS. BUGEL: 39F is -- begins on
9 Bates number MWG 13-15_5114. I'll say that again.
10 5114 and this is the annual groundwater -- annual
11 groundwater monitoring report July 2013
12 environmental land use control implementation.

13 (Document marked as Complainants
14 Exhibit No. 40F for
15 identification.)

16 MS. BUGEL: The second document is
17 Exhibit 40F. It is marked Bates number MWG
18 13-15_11924. It is the semiannual groundwater
19 monitoring report December 2003 environmental land
20 use control implementation. And the next document
21 is Complainants' Exhibit 41F.

22 (Document marked as Complainants
23 Exhibit No. 41F for
24 identification.)

1 MS. BUGEL: It is Bates number MWG
2 13-15_46113 and it is the former Griess Pflieger
3 Tannery site. Pflieger, P-F-L-E-G-E-R, monitoring
4 results review. And the last document is
5 Complainants' Exhibit 42F. Bates number MWG
6 13-15_46194 and the cover page says analytical
7 data 2001, 2002. The second page says groundwater
8 analytical data for Midwest Generation Waukegan
9 Generating Station.

10 (Document marked as Complainants
11 Exhibit No. 42F for
12 identification.)

13 MS. FRANZETTI: Just an objection
14 for the record. We -- we have been trying to
15 accept and deal with plaintiffs -- complainants'
16 approach to these group exhibits, but at first
17 blush this seems to be all over the map in terms
18 of documents that were never together as a group
19 in our files and which deal with different things.
20 You know, July 2013 monitoring report, December
21 2003, ten years earlier, November 2005 totally
22 different wells in a totally different area not
23 owned by Midwest Gen. It -- it just seems unfair
24 to the witness to put to them as a group four

1 completely separate documents to address at one
2 time. Why can't counsel simply hand the witness a
3 single exhibit to question her on instead of this
4 grouping of documents that counsel has put
5 together, but were not together in the files of
6 the producing party?

7 HEARING OFFICER HALLORAN: Ms.
8 Bugel?

9 MS. BUGEL: Yes. Honestly, the part
10 of this is just to make the process less tedious
11 instead of more tedious. These -- we've grouped
12 these documents together because they are all
13 related to the Waukegan environmental land use
14 control that you look at Waukegan and the data in
15 these is all related to that. So we -- obviously
16 complainants have had a lot of exhibits that we
17 believe are critical to the record in this case
18 and the decision in this case and by grouping them
19 together it is purely an attempt to make this go
20 faster for all of us so the witness doesn't have
21 to be on the stand as long. That's why.

22 HEARING OFFICER HALLORAN: My
23 concern is you had about a year to do this. In
24 fact, we had the first hearing scheduled for,

1 what, June or July and I would've expected the
2 parties have gotten together and figured something
3 out on these instead of on the day of the hearing.

4 MS. BUGEL: We have spent time
5 negotiating exactly which of these documents are
6 relevant out of hundreds. So that -- and -- and I
7 know I did communicate an attempt -- an intent to
8 handle some documents as group exhibits.
9 Obviously this one we didn't come to an agreement
10 on, but when we're dealing with the data where
11 we're just trying to get it into the record
12 because witnesses rely on it, we did this to
13 expedite it.

14 HEARING OFFICER HALLORAN: Well, my
15 thought is to have Ms. Race proceed to see if she
16 can answer the questions that are about to be
17 proposed and if she can't, then we're going to
18 have to figure out another way.

19 MS. NIJMAN: And just to be clear,
20 we were not asked whether we would agree to these
21 group exhibits or not. We were told of the
22 complainants' intent to submit some group
23 exhibits, but we didn't know what those would be
24 other than the groundwater data that we agreed to.

1 MS. BUGEL: And we were negotiating
2 which sets of groundwater data -- we've had --
3 counsel -- opposing counsel and I have had a long
4 back and forth on which sets of documents we
5 wanted in and that negotiation was going on as
6 little as 48 hours ago still.

7 HEARING OFFICER HALLORAN: That's
8 not the point.

9 MS. NIJMAN: But you've never asked
10 us about this so we weren't prepared.

11 HEARING OFFICER HALLORAN: Let's
12 continue and see if Ms. Race is going to be
13 confused by this or -- and then we'll have to stop
14 it if she is.

15 MS. BUGEL: Okay.

16 BY MS. BUGEL:

17 Q. I am placing the four documents just
18 identified in front of you. Are you familiar with
19 these documents?

20 MS. FRANZETTI: Objection to form.
21 Asking about all four in one question --

22 HEARING OFFICER HALLORAN:
23 Sustained.

24

1 BY MS. BUGEL:

2 Q. Okay. Looking a 39F, are you
3 familiar with this document?

4 A. I'm familiar with documents like
5 this. We would get these on a regular basis from
6 URS or before that it was another company from the
7 person David Meiri who does the modeling for
8 Commonwealth Edison.

9 Q. And on the first one, does your name
10 appear as a cc on that document?

11 A. Yes, it does.

12 Q. And --

13 A. And generally I would get the three
14 copies and I would disburse them to the site.

15 Q. And you indicated that these were
16 sent to you regularly, is that correct?

17 A. Maybe once a year.

18 Q. And are you familiar with what these
19 reports contained?

20 A. Yes, I know that they have the
21 groundwater analytical results from the ELUC area
22 from the monitoring wells there.

23 THE COURT REPORTER: What is the --

24 THE WITNESS: ELUC. Environmental

1 land use control.

2 BY MS. BUGEL:

3 Q. And can you turn to Exhibit 40F.

4 A. Just a second.

5 Q. Sure. Does your name also appear as
6 a cc on that document?

7 A. Yes.

8 Q. And is it your understanding that is
9 a letter forwarding the same -- not the same, but
10 also forwarding data related to the ELUC at
11 Waukegan?

12 A. Yes, it is. They kept the same
13 consultant even when he changes companies. So
14 they're both his documents.

15 Q. And can you turn to 41F?

16 A. Yes.

17 Q. And does your name appear on that
18 document as well?

19 A. Yes.

20 Q. And is it your understanding this is
21 also forwarding the groundwater monitoring results
22 for the ELUC at Waukegan?

23 A. No, this is a different document.

24 This is a document that was done by Sean Chisek,

1 C-H-I-S-E-K, of Andrews Environmental Engineering.
2 They -- I had them take a look at the work that
3 Retec, R-E-T-E-C, put together to take a look at
4 the groundwater monitoring reports for me back in
5 2005.

6 Q. Okay. And can you turn to Exhibit
7 42F.

8 A. Okay.

9 Q. And does your name appear on that
10 exhibit?

11 A. Yes, it does.

12 Q. And is that also groundwater
13 monitoring results for the ELUC at Waukegan?

14 A. I don't know that the ELUC was in
15 place yet. He may have just been doing
16 groundwater analytical monitoring because I seem
17 to remember the ELUC going into place in 2002 or
18 '03 and this doesn't mention it so it makes me
19 think this was done when he was just doing
20 groundwater analytical work.

21 Q. Would it still contain groundwater
22 monitoring results for Waukegan?

23 A. Yes, done under his purview.

24 Q. Okay.

1 MS. BUGEL: Complainants move for
2 Complainants' Group Exhibit F consisting of
3 Exhibit's 39F to 42F to be admitted into evidence.

4 HEARING OFFICER HALLORAN: Midwest?

5 MS. FRANZETTI: No objection to any
6 of the individual documents. We just don't agree
7 with the grouping of the documents.

8 HEARING OFFICER HALLORAN: Thank
9 you. So noted for the record. Group Exhibit F;
10 39, 40, 41 and 42 admitted. All right. Let's
11 take a break. Be back in 15, please. Thank you.

12 (Whereupon, a break was taken
13 after which the following
14 proceedings were had.)

15 HEARING OFFICER HALLORAN: We're
16 back on the record. It is approximately 3:18,
17 October 23rd, 2017. Ms. Bugel, you may continue.

18 MS. BUGEL: Thank you.

19 BY MS. BUGEL:

20 Q. We were looking at Exhibit 34 before
21 and I ask you -- I think you kept it here the --
22 if we can just turn to page 23616.

23 A. Okay.

24 Q. And this page has the -- what NRT

1 calls the impoundment matrix for Waukegan, right?

2 A. Yes.

3 Q. And it has an evaluation of the
4 condition of the ash ponds at Waukegan?

5 A. No, not exactly. It has the -- what
6 we gave them was two sets of data. One of them
7 was I had had an intern one summer that went and
8 looked at as-built drawings and made a document
9 called something like site characterization or
10 something like that that had all of our
11 impoundments in them and the sizes they are and
12 that type of thing. So they have that information
13 in here. The other information that they have in
14 here that we gave them was H -- whether it's HDPE
15 or poz-o-pac or whatever, but I don't know what
16 else they would have had at this point except for
17 the soil borings that we had KPRG do around some
18 of the impoundments to see what type of soil was
19 there.

20 Q. And so just a little bit of
21 background. The ponds at Waukegan are termed the
22 east ash impoundment and the west ash impoundment,
23 correct?

24 A. Or sometimes I'll say basin instead

1 of impoundment for Waukegan east ash basin, west
2 ash basin.

3 Q. And just to clarify, both the east
4 and the west ash basins had been relined prior to
5 this evaluation, correct?

6 A. Yes, they had both. Because this
7 was 2005 and I think they had both been done by
8 then 2002, 2003 timeframe.

9 Q. And if you look at the row for liner
10 constructed, this indicates liner constructed in
11 2002 --

12 A. Yeah.

13 Q. -- for both ponds?

14 A. Mm-hmm. Although to me that doesn't
15 seem right that they would have been in the same
16 year, but maybe they were. One might have been
17 about 2003-ish.

18 Q. All right. We can set that aside
19 and I have what we have marked as Complainants'
20 Exhibit 43 and it is an e-mail from Maria Race to
21 Lynn Dunaway subject is Waukegan Information and
22 I'm placing that document in front of you.

23

24

1 (Document marked as Complainants
2 Exhibit No. 43 for
3 identification.)

4 BY THE WITNESS:

5 A. Okay.

6 BY MS. BUGEL:

7 Q. Are you familiar with this document?

8 A. I think -- yes, I am familiar with
9 this document.

10 Q. And can you please describe what it
11 is?

12 A. It's called Waukegan Information and
13 it is a set of information, a few bullet points to
14 describe the Waukegan ash water operations and my
15 guess is that this might have been done around the
16 time of NPDES renewal.

17 Q. Okay. And do you see the third
18 bullet down?

19 A. Yes.

20 Q. And you indicated that bottom ash is
21 cinder like material, correct?

22 A. Correct.

23 Q. And then -- that's all the questions
24 I have about this document.

1 A. Okay.

2 MS. BUGEL: Complainants move for
3 Complainants' Exhibit 43 to be admitted into
4 evidence.

5 MS. FRANZETTI: No objection.

6 HEARING OFFICER HALLORAN: Thank
7 you. Complainants' Exhibit 43 is admitted.

8 BY MS. BUGEL:

9 Q. And I have what has been marked as
10 Complainants' Exhibit 44 at Bates 44615, an
11 e-mail, and the subject line is also Waukegan
12 Station and I'm placing this in front of you.

13 (Document marked as Complainants
14 Exhibit No. 44 for
15 identification.)

16 BY MS. BUGEL:

17 Q. Are you familiar with this document?

18 A. It looks like it's a series of
19 e-mails. It is kind of confusing. It looks like
20 these e-mails have something to do with NPDES
21 because Julia Wozniak is in it, but I don't
22 remember this specifically. It just looks kind of
23 confusing.

24 Q. Okay. And your name appears on the

1 top e-mail in the string. On page 44615, your
2 name appears in the from column?

3 A. Right.

4 Q. And it's to -- also to Lynn Dunaway?

5 A. Mm-hmm.

6 Q. And you indicate in the first line
7 of this e-mail that -- I'm sorry. Just for the
8 record this is also about Waukegan station?

9 A. Yes, it is about Waukegan ash ponds,
10 at least on the first page.

11 Q. And in the first line, you indicated
12 that they were already lined when I started
13 working here in 2001 with HDPE, do you see that?

14 A. Yes, I do.

15 Q. And do you think that that is
16 referencing the Waukegan ash ponds, right?

17 A. Yes, I do think that that's
18 referencing it.

19 Q. And is that accurate?

20 A. I think it's accurate. It is an
21 interesting question because when they replaced
22 the material, I remember my boss saying "We want
23 to replace like with like. We want something
24 that's equivalent or better" and so at that point

1 in time I would have thought that it was HDPE
2 because we relined with HDPE, but in reviewing
3 some of the documents I had for this trial I have
4 seen that it might not have been HDPE, but another
5 like Hypalon plastic, something like that, but I'm
6 not entirely sure that that's accurate.

7 MS. BUGEL: Complainants move for
8 Complainants' Exhibit 44 to be admitted into the
9 record.

10 MS. FRANZETTI: I -- I would object
11 to the composition of Complainants' Exhibit 44
12 because note at the bottom of each of the pages
13 it's got a page number one, it's not been
14 established that this is a single e-mail chain,
15 which you seem to be implying by making it a
16 single exhibit. So I -- I -- I object on that
17 basis in terms of this artificially constructed
18 document that it is one entire e-mail chain.

19 MS. BUGEL: Okay.

20 HEARING OFFICER HALLORAN: Ms.
21 Bugel?

22 MS. BUGEL: Well, I take exception
23 to the characterization of what we were implying.
24 I do see what counsel is referring to and we

1 could -- if you give me a moment to confer, we can
2 come up with a plan.

3 HEARING OFFICER HALLORAN: Yeah, we
4 can go off the record.

5 (Whereupon, a discussion was had
6 off the record.)

7 HEARING OFFICER HALLORAN: We're
8 back on the record. It is my understanding that
9 Complainants' Exhibit 44 is Bates stamped 44615
10 through 44616 and we may or may not --
11 complainants may or may not address the page two
12 of the e-mail at 44617 and that's it. So
13 Complainants' Exhibit 44 is admitted without
14 objection.

15 MS. NIJMAN: I'm sorry. So we're
16 just talking about the first page 44615 then,
17 correct?

18 HEARING OFFICER HALLORAN: And
19 44616, right, or no?

20 MS. FRANZETTI: No, I don't think
21 so.

22 MS. NIJMAN: It should be a
23 different issue.

24 MS. BUGEL: We can -- we will get

1 you a clean copy today that just has the first
2 page, just 44615 with none of the other e-mails
3 attached.

4 MS. NIJMAN: The second -- second
5 page has a different subject matter. Everything
6 is different.

7 HEARING OFFICER HALLORAN: All
8 right. We'll hold off on Complainants' Exhibit 44
9 for now.

10 MS. BUGEL: Okay. Very good. Thank
11 you.

12 HEARING OFFICER HALLORAN: I doubt
13 you can do it today since we're planning to wrap
14 up.

15 MS. BUGEL: Okay.

16 BY MS. BUGEL:

17 Q. I have what has been marked as
18 Complainants' Exhibit 45.

19 (Document marked as Complainants
20 Exhibit No. 45 for
21 identification.)

22 BY MS. BUGEL:

23 Q. The subject line is Report for
24 Geomembrane Leak Location Survey of the Metal

1 Cleaning Basin at the Midwest Generation Powerton
2 Plant in Pekin on Leak Location Services
3 letterhead. I'm placing that in front of you.

4 Are you familiar with this
5 document?

6 A. I have seen this document before.

7 Q. And can you please describe what it
8 is?

9 A. It says Report for Geomembrane Leak
10 Location Survey of Metal Cleaning Basin at Midwest
11 Generation Powerton Plant in Pekin, Illinois.

12 Q. And does this appear to be a true
13 and accurate copy?

14 A. Yes, but where is the rest of the
15 package that goes with this? There should be a
16 lot more here.

17 Q. What do you -- can you tell me what
18 else you think should be there?

19 A. Well, this is a survey that is being
20 done on the floor area of the metal cleaning basin
21 and this was done in concert with putting in the
22 new liner. So this is part of the liner report.
23 So where is the rest of the construction report
24 for the liner that goes with this?

1 Q. Understood.

2 A. So usually if I got this, it would
3 be in a big package with, you know, here is your
4 liner construction, here is your leak testing. So
5 this is leak testing showing that the Leak
6 Location Services found a three-inch diameter
7 puncture which would have been fixed then.

8 Q. Right. Okay. Do you know if Leak
9 Location Services was a contractor for Midwest
10 Generation?

11 A. I'm not sure if they were a
12 contractor for us or a subcontractor for the
13 construction company and I wouldn't know that.
14 That would have been done by our engineering
15 people.

16 MS. BUGEL: Complainants move for
17 Complainants' Exhibit 45 to be admitted into
18 evidence.

19 MS. FRANZETTI: My objection is that
20 they have taken a document -- a piece of a
21 document based on the witness's testimony out of
22 context from what it was included in, which I
23 think is kind of ironic given the complainants'
24 tendency to group exhibits together into a group

1 exhibit that never were together, but this time
2 they're pulling out a specific piece of an actual
3 group of documents that was together according to
4 the witness in the file.

5 MS. BUGEL: I realize exhibits may
6 be grouped together in a file or documents may be
7 grouped together in a file, but that doesn't mean
8 that the documents in that file are all one
9 document. This if you refer to the Bates page
10 29836 it says page five of five.

11 So from this document itself,
12 nothing -- it is not clear that something is
13 actually missing just because of -- you know, for
14 the project according to the witnesses's
15 testimony. It might be bundled with other
16 documents, it doesn't mean that those are
17 essentially all one exhibit.

18 HEARING OFFICER HALLORAN: I'm going
19 with the witness -- witness testimony and it is
20 incomplete and I agree with Ms. Franzetti and I'll
21 take it as an offer of proof. It is an incomplete
22 document.

23 BY MS. BUGEL:

24 Q. I have what has been marked as

1 Complainants' Exhibit 46 and this indicates that
2 Pat- -- it's on Patrick Engineering -- it says
3 Patrick Engineering at the top of the page meeting
4 minutes, meeting date May 5th, 2010. I'm placing
5 this document in front of you.

6 (Document marked as Complainants
7 Exhibit No. 46 for
8 identification.)

9 BY MS. BUGEL:

10 Q. Are you familiar with this document?

11 A. I have seen it before.

12 Q. Can you please describe what it is?

13 A. Yes, Patrick Engineering took
14 meeting minutes at a meeting that Midwest
15 Generation and others had with IEPA.

16 Q. And do you know what the subject
17 matter of that meeting was?

18 A. Well, it says the project is -- is
19 the Midwest Generation ash pond investigation
20 plans and the purposes of the scope of the
21 investigations. So -- and then it goes into a
22 summary of the meeting. I don't remember all the
23 details of the meeting, but, you know, I can read
24 through this.

1 Q. And your name appears on that
2 document?

3 A. Yes, I was at whatever meeting this
4 was.

5 Q. And Patrick Engineering was a
6 consultant for Midwest Generation at the time of
7 that -- that that document was written?

8 A. Yes, this was May 5th of 2010. So
9 let me think. This would have been maybe after
10 one sampling episode of the hydrogeologic
11 assessment.

12 Q. And does this appear to be a true
13 and accurate copy of those meeting minutes?

14 A. Yes, it does.

15 MS. BUGEL: I would move for
16 Complainants' Exhibit 46 to be admitted into
17 evidence.

18 HEARING OFFICER HALLORAN: Midwest?

19 MS. FRANZETTI: No objection.

20 HEARING OFFICER HALLORAN: Thank
21 you. Complainants' Exhibit 46 is admitted.

22 BY MS. BUGEL:

23 Q. And I have what has been marked as
24 Complainants' Exhibit 47.

1 (Document marked as Complainants
2 Exhibit No. 47 for
3 identification.)

4 BY MS. BUGEL:

5 Q. At the top it indicates IEPA Meeting
6 Re: MWG Ash Pond, Wednesday, May 5th, 2010, that
7 I am placing in front of you.

8 Are you familiar with this
9 document?

10 A. It appears it is meeting notes. I
11 don't think I'm familiar with the document,
12 though.

13 Q. Do you see your name or your --

14 A. Yes. Yes, I see Maria R which has
15 to be me.

16 Q. And do you know if this was the same
17 meeting that we just discussed?

18 A. Based upon the date and the start
19 time that both indicate, they would have been the
20 same date, the same meeting, but I don't know
21 whose notes these are and they don't look -- I
22 doubt if they're mine because I wouldn't write
23 Maria R. That wouldn't make sense.

24 MS. BUGEL: Complainants move for

1 Complainants' Exhibit 47 to be admitted into
2 evidence.

3 MS. FRANZETTI: Objection to this
4 one. The witness is not familiar with it. She
5 doesn't believe she wrote it. She doesn't know
6 who wrote it. There is no foundation to admit
7 this document.

8 HEARING OFFICER HALLORAN: It's
9 pretty weak. Ms. Bugel, any response?

10 MS. BUGEL: I would just say that
11 the witness's name does appear in this document
12 and it is documentation of the same meeting that
13 was just documented in previous notes which
14 authenticates the document.

15 HEARING OFFICER HALLORAN: I think
16 she testified she isn't sure if it was the same
17 meeting, but, nevertheless, I think it's pretty
18 weak on foundation. I'll take it as an offer of
19 proof. Thank you.

20 BY MS. BUGEL:

21 Q. And I have what has been marked as
22 Complainants' Exhibit 48.

23

24

1 (Document marked as Complainants
2 Exhibit No. 48 for
3 identification.)

4 BY MS. BUGEL:

5 Q. It is an e-mail with the subject
6 matter Will County South Ash Pond Liner Design
7 Status. I'm placing it in front of you and are
8 you familiar with this document?

9 A. I believe this is a true e-mail, but
10 a lot of this regards the engineering and it's
11 really a discussion between the engineering staff
12 Blake Connolly and Jim Salt and Mike Prosecki were
13 all engineering and operations type people and so
14 I think my only concern with this document if I
15 would have been the -- I wanted to ensure the
16 proper forms had been put together for the permit
17 application, but, beyond that, I don't really
18 remember it.

19 Q. But your name does appear on this
20 document?

21 A. Yes, it does.

22 Q. And you've testified earlier today
23 that you do -- you did have correspondence with
24 Eric J. Tlachac?

1 A. Mm-hmm.

2 Q. And Eric Tlachac worked for Natural
3 Resource Technology?

4 A. Correct.

5 Q. And Natural Resource Technology was
6 a consultant for Midwest Generation?

7 A. Correct, but at this point they're
8 still working on the design and they're drafting
9 things and getting it ready to go. So nothing has
10 been finalized here yet and it sounds like the
11 document that I saw earlier was further along in
12 this process.

13 Q. And you believe this is a true and
14 accurate copy of this e-mail?

15 A. Correct. And I do remember the
16 concern about the reduction in capacity, not so
17 much on the -- not so much the engineering, but
18 that they needed that capacity in the impoundment
19 and they didn't want to reduce it if possible.

20 Q. Can you look at the last full
21 paragraph on the first page 13737, do you see that
22 paragraph?

23 A. Yes, I do.

24 Q. Not the last partial one, but the

1 last full one and this discusses leaving a 12-inch
2 thick random fill layer beneath -- I'm sorry. I'm
3 sorry. I realize I'm -- this proposes to remove
4 the top 12 inches of the existing liner (poz-o-pac
5 according to the Harza drawing and the drawing
6 number that you provided to us) and some of the
7 12-inch thick random fill layer beneath assuming
8 they are still intact, do you see where it says
9 that?

10 A. Yes, I do.

11 Q. Do you know if that will -- if
12 Midwest Gen went forward with that proposal as
13 written there?

14 A. I don't know.

15 Q. And then if you keep reading it --
16 at the very end of that paragraph proposes leaving
17 a secondary 12-inch thick layer of poz-o-pac
18 beneath the replacement liner, do you see that?

19 A. Yes, I do.

20 Q. Do you know if the layer -- the
21 12-inch thick layer of poz-o-pac was left beneath
22 the replacement liner?

23 A. I think it was, but I'm not entirely
24 sure.

1 Q. And would that be true at both Will
2 County ponds two and three?

3 A. That, I don't know. Those were more
4 engineering decisions. I just -- I just wanted to
5 ensure that they were getting their permits, their
6 construction permits. So this would have still
7 been in process. They were thinking it through.
8 I don't think they made a decision yet from the
9 looks of this.

10 MS. BUGEL: Complainants move for
11 Complainants' Exhibit 48 to be admitted into
12 evidence.

13 HEARING OFFICER HALLORAN: Midwest?

14 MS. FRANZETTI: No objection.

15 HEARING OFFICER HALLORAN: Okay.
16 Thank you. Complainants' Exhibit 48 admitted.

17 BY MS. BUGEL:

18 Q. And I have what has been marked as
19 Complainants' Exhibit 49 and this is called --
20 it's a document that says Geosyntec Consultants at
21 the top, History of Construction East and West Ash
22 Basins Waukegan Station October 2016 that I'm
23 placing --

24 MS. NIJMAN: Hold on a second.

1 THE WITNESS: I'll wait.

2 MS. BUGEL: Jennifer, yours might
3 not be marked.

4 MS. NIJMAN: Okay.

5 MS. FRANZETTI: With an exhibit
6 number.

7 MS. BUGEL: With an exhibit number.

8 MS. FRANZETTI: That's fine.

9 MS. BUGEL: Complainants' Exhibit
10 49.

11 MS. FRANZETTI: We got it.

12 HEARING OFFICER HALLORAN: Thank
13 you.

14 (Document marked as Complainants
15 Exhibit No. 49 for
16 identification.)

17 BY MS. BUGEL:

18 Q. And are you familiar with this
19 document?

20 A. No, I'm not actually. This would
21 have been done when I was no longer involved with
22 the station October 2016 if -- if there was
23 something else that happened in October 2016.

24 MS. BUGEL: I won't -- we're not

1 going to move for this one to be moved into
2 evidence. I have no further questions.

3 HEARING OFFICER HALLORAN: Thank
4 you. Would you like this back?

5 MS. BUGEL: Yes, I would love that
6 back.

7 THE WITNESS: Something more to
8 carry.

9 HEARING OFFICER HALLORAN: We have
10 about 40 minutes, do you want to start?

11 MS. FRANZETTI: I think so.

12 HEARING OFFICER HALLORAN: Okay.

13 MS. FRANZETTI: At least let's go a
14 little bit.

15 HEARING OFFICER HALLORAN: Okay.
16 We're still on the record. Thank you.

17 MS. FRANZETTI: Off the record.

18 HEARING OFFICER HALLORAN: Off the
19 record.

20 (Whereupon, a break was taken
21 after which the following
22 proceedings were had.)

23 HEARING OFFICER HALLORAN: We're
24 back on the record.

1 C R O S S E X A M I N A T I O N

2 BY MS. FRANZETTI

3 Q. Ms. Race, I want to direct your
4 attention to Complainants' Exhibit 8B. It is the
5 July 27th, 2012, Midwest Generation response to
6 the violation notice issued by the Illinois EPA
7 for Joliet 29 Generating Station and I want to
8 direct your attention to Bates page 370 using the
9 last three digits.

10 A. Okay.

11 Q. Complainants' counsel asked you
12 about the opening sentence at the top of this
13 document that says "While boron is a primary
14 indicator of potential coal ash impacts to
15 groundwater, there are only two alleged
16 exceedances of boron in monitoring well MW-11," do
17 you understand that sentence to mean that boron is
18 the only indicator of coal ash?

19 A. No, I don't.

20 Q. Is it your understanding that there
21 are other indicators?

22 A. Yes, it depends largely on the type
23 of coal that is being burned and also the type of
24 equipment that it's being burned in whether it's a

1 cyclone boiler or not and that type of thing. So
2 you'll end up with a different suite of metals
3 that will show up.

4 Q. And I believe complainants' counsel
5 also asked you about boron and sulfates being
6 indicators of coal ash, would you agree with the
7 statement that they're the only two indicators of
8 coal ash?

9 A. No. I mean, I think the important
10 thing to remember is that with coal it's -- it's
11 being dug out of the ground and it's a fossilized
12 thing that wherever the animal or plants happen to
13 fall and die they are surrounded by all these
14 other minerals and constituents and eventually all
15 of that becomes the coal.

16 Q. I'm going to remove Exhibit 8B so we
17 don't get confused. I'm going to put in front of
18 you Complainants' Exhibit 1A, 2A, 3A and 4A and so
19 it's already been established through your
20 testimony in response to complainants' counsel's
21 questions that these four documents are the
22 violation notices that were issued to Midwest Gen
23 for the four individual stations at issue in this
24 matter, do you recall that testimony?

1 A. I do recall that testimony.

2 Q. Now, you were also asked about the
3 Appendix A to each of these documents, do you
4 recall being asked about Appendix -- or Attachment
5 A?

6 A. Yes, I do.

7 Q. And you were -- complainants'
8 counsel kept referring to violations that were
9 referenced in Attachment A, correct?

10 A. Correct.

11 Q. Well, now I'd like you to turn back
12 to the first page and let's just take whichever
13 one you have in your hand, is it Exhibit --

14 A. It's Exhibit 4A.

15 Q. 4A. Would you look at the second
16 paragraph?

17 A. The Illinois EPA -- do you want me
18 to read it?

19 Q. No, I just want you to look at it
20 for the moment --

21 A. Okay.

22 Q. -- and read it to yourself.

23 A. Okay.

24 Q. All right. Now, with respect to

1 that sentence, my question is did the Illinois --
2 is it your understanding that that portion of the
3 Illinois EPA's violation notice says that these
4 are alleged violations including what's included
5 in Attachment A?

6 A. Yes, as set forth in Attachment A.

7 Q. And if you look at the other three
8 violation notices, Complainants' Group Exhibit's
9 1A, 2A and 3A, is the exact same statement made in
10 each of those that the only thing included in
11 those violation notices are alleged violations?

12 A. As set forth in Attachment A, yes.

13 Q. Thank you. You can put those aside.
14 I need to go to Exhibit 14C.

15 A. Here it is. And can you go to
16 page -- bear with me.

17 HEARING OFFICER HALLORAN: Which
18 exhibit was that, Ms. Franzetti?

19 THE WITNESS: Fourteen.

20 MS. FRANZETTI: 14C as in cat.

21 HEARING OFFICER HALLORAN: Thank
22 you.

23 BY MS. FRANZETTI:

24 Q. Now, Ms. Race, you were asked a

1 number of questions with respect to 14C
2 particularly with respect to the boring logs that
3 begin approximately -- well, not approximately.
4 Begin at page 7167 using the last four digits of
5 the Bates number on this document, can you turn to
6 that page?

7 A. Yes.

8 Q. And you were asked various questions
9 with regard to whether or not there were cinders
10 noted on the boring log that is at page 7167, do
11 you recall those questions?

12 A. Yes, I do.

13 Q. And do you recall that in response
14 to the questions you were referring to, well,
15 that's part of the information, do you recall that
16 testimony?

17 A. Correct.

18 Q. What did you mean by, well, that's
19 part of the information?

20 A. Well, from observing people when
21 they're doing borings, they will bore down a
22 certain number of depth and then they will take a
23 bit of that sample and then they will look at it
24 and characterize it. So, in this case, it is for

1 the first part of the depth which goes from 0 to
2 13.5 feet, it is characterized as fill and of
3 soil -- soil rock description is brown fine sand,
4 fine gravel, black cinders, ash.

5 Q. Can you tell from this whether it
6 was all ash that was in that area of the boring?

7 A. No, you really -- when -- when they
8 put these together, it's just an observation from
9 that expert geologist of like what -- what does
10 this look like.

11 Q. So can you tell how much ash --

12 A. No.

13 Q. -- was in that area?

14 A. You can't tell.

15 Q. It could be very little ash,
16 correct?

17 A. Yes, it could be very little cinders
18 or ash.

19 Q. And we know there is at least also
20 sand and gravel, not exclusively ash, that's
21 there?

22 A. Correct.

23 Q. So there could be a whole heck of a
24 lot of sand and gravel and very little ash?

1 A. Correct.

2 Q. I'm going to ask you to turn briefly
3 to Exhibit 15C. This was the same type of report,
4 hydrogeologic assessment report per Will County
5 February 2011 prepared by Patrick Engineering.
6 You were also asked questions about the boring log
7 information in this document and if I asked you
8 the same questions I just asked you with respect
9 to 14C as to 15C these references to cinders that
10 also contain references to other types of
11 material, would your answers be the same?

12 A. Yes, they would be the same.

13 Q. Okay. Moving on. I'm going to ask
14 you to go to Exhibit 16. And I'm going to direct
15 your attention to the page numbered 14167 using
16 the last five digits of the Bates number.

17 A. Okay.

18 Q. Do you recall being asked by
19 complainants' counsel about the third bullet
20 listed on this page under the section entitled
21 conclusions?

22 A. Yes, I do.

23 Q. And this third bullet referred to
24 groundwater elevation data show that MW-5 is an up

1 gradient well. The elevated concentrations of
2 compounds of interest in MW-5 appear to be the
3 result of the well being installed in a former ash
4 disposal area and not a result of leakage from the
5 current ash ponds.

6 What was your understanding of
7 that statement with respect to the degree of
8 certainty as to what the source was of the data
9 being referenced here, the elevated concentrations
10 in MW-5?

11 A. I think that the fact that he is
12 saying -- and, you know -- and we discussed this
13 quite a bit actually. He says "Appears to be the
14 result," meaning that he wasn't sure because we
15 did have the Tannery site and the Boiler site
16 nearby and not to mention the John -- Johns
17 Manville site to the north. So he was looking at
18 all things at that point.

19 Q. Now, just briefly going up to the
20 second paragraph on that same page 14167. It
21 states that Patrick compared up gradient well
22 concentrations with down gradient well
23 concentrations. The concentrations of boron,
24 iron, manganese, chloride, and total dissolved

1 solids are higher, sometimes significantly higher,
2 in the up gradient well MW-5 than in the down
3 gradient wells.

4 What was your understanding
5 about that portion of this report by Patrick?

6 A. That there were higher
7 concentrations of constituents of the ones you
8 just mentioned in the up gradient well. I mean, I
9 took it for what it was worth.

10 Q. What does up gradient mean in this
11 context, what was your understanding?

12 A. So up gradient for me is because I'm
13 not a geologist, but my thinking about it is it's
14 something -- the way that water is going to flow
15 by gravity. So you flow from up gradient to down
16 gradient. So, in this case, the well --
17 monitoring well five is up gradient of the other
18 monitoring wells that were in at that time.

19 Q. Up gradient of what?

20 A. Up gradient of the ash impoundments.

21 Q. And so what did this indicate to you
22 in terms of whether or not the impoundments were a
23 source of the elevated concentrations of the
24 parameters referenced in this paragraph?

1 A. That they weren't a source, that the
2 ponds themselves weren't a source.

3 Q. Okay.

4 A. Because I would have expected to see
5 higher concentrations in the down gradient wells.

6 Q. Now, I want you to turn -- stay with
7 that same exhibit, Exhibit 16, turn to page Bates
8 14164.

9 A. Okay.

10 Q. And in the second bullet under the
11 caption next steps, you were asked about this
12 document and particularly the bullet says "While
13 not necessary at this time, additional
14 investigations into the nature, the groundwater
15 elevations at MW-6 and MW-8 could include the
16 installation of groundwater level transducers or
17 the performance of a tracer test in the ponds
18 closest to MW-7," do you see where I'm reading
19 from?

20 A. Yes, I do.

21 Q. Now, are you -- have you ever used a
22 groundwater level transducer?

23 A. I have not.

24 Q. All right. Do you know what the

1 purpose is then of a groundwater transducer?

2 A. My -- I would only -- I could only
3 guess.

4 Q. I don't want you to guess. Then
5 there is also reference to performance of a tracer
6 test in the ponds, do you see that?

7 A. Yes, I do.

8 Q. Do you know what a tracer test is?

9 A. Well, generally speaking, a tracer
10 test is when you place a dye into water and then
11 watch where it goes.

12 Q. Do you -- did you ever have some
13 understanding here as to whether or not this
14 additional information which is prefaced with
15 "while not necessary at this time" was even for
16 the purpose of trying to determine the source of
17 elevated levels in groundwater?

18 A. I do not.

19 Q. Could it have been for the purpose
20 suggested, and hence not necessary at this time,
21 to determine more about groundwater elevation
22 information?

23 A. Well, my --

24 MS. BUGEL: Objection. Calls for

1 speculation.

2 MS. FRANZETTI: I'll rephrase it.

3 HEARING OFFICER HALLORAN: Okay.

4 Thank you.

5 BY MS. FRANZETTI:

6 Q. Did you have any understanding after
7 reading this report that you received as to
8 whether or not this additional information that
9 was being referenced in this section of the report
10 was being suggested for the purpose of further
11 evaluating groundwater elevations?

12 A. Yes, because that's what would make
13 sense because water is what would be flowing from
14 one place to another. So it wouldn't tell you
15 anything about ash, for example, but it would tell
16 you something about the water flowing from up
17 gradient to down gradient.

18 Q. You can put aside Exhibit 16.

19 Now, I want to go back to those
20 big, thick documents that are next to you.

21 A. All right.

22 Q. The phase two reports and let's just
23 put them right like this here.

24 A. Okay.

1 Q. Okay. So I've placed in front of
2 you, Ms. Race, Complainants' Exhibit's 17D, 18D,
3 19D and 20D. These are the -- reference phase two
4 ENSR reports that were prepared for Commonwealth
5 Edison.

6 MS. FRANZETTI: And this questioning
7 is without waiving our objection to the decision
8 on allowing these documents into -- into evidence.

9 HEARING OFFICER HALLORAN: So noted.

10 BY MS. FRANZETTI:

11 Q. With respect to these documents,
12 Ms. Race, first of all, ENSR was not Midwest
13 Generation's consultant, correct?

14 A. Correct.

15 Q. Did ENSR become Midwest Generation's
16 consultant after Midwest Gen purchased these
17 stations?

18 A. They did not become my consultant.
19 I don't know if someone else hired them or
20 something.

21 Q. Right. You have no --

22 A. I have no knowledge.

23 Q. -- knowledge of ENSR being -- I'm
24 sorry. We can't both talk at one time.

1 A. Sorry.

2 Q. You have no knowledge of ENSR having
3 been retained as a consultant regarding these
4 stations by Midwest Generation, correct?

5 A. Correct.

6 Q. And that applies for during the
7 whole time you were involved with the ash pond,
8 groundwater monitoring work, the relining work of
9 the ponds, ENSR never did any work for you?

10 A. Correct.

11 Q. Now, with respect to these phase two
12 reports, you said you had looked at them.

13 Now, you joined Midwest Gen, I
14 believe you've already testified, in 2001,
15 correct?

16 A. Correct.

17 Q. Did you look at them right after you
18 joined?

19 A. No.

20 Q. All right. Was it some period of
21 time after you joined?

22 A. Yeah, at least a couple of years. I
23 didn't really even know about them.

24 Q. Now, with respect to these reports,

1 do you have any idea what ENSR did in terms of
2 quality assurance or quality control procedure or
3 program to apply to the data that is -- or
4 information that's presented in those reports?

5 A. No, and actually it's not even
6 immediately obvious because they didn't include,
7 you know, QAQC's in their analytical reports. So
8 I don't know what was -- you know, if there was
9 flag data, I don't know why.

10 Q. And you previously made a comment in
11 your testimony in answer to Ms. Bugel's questions
12 that you didn't consider these reports the Bible,
13 do you remember saying that?

14 A. Yeah.

15 Q. What did you mean by that?

16 A. I think I said Gospel.

17 Q. Oh, sorry.

18 A. I looked at the data -- or I looked
19 at these documents for their historic information
20 that if someone asked me a question from a site, I
21 might go back and take a peek and look and see did
22 we ever have a well at this -- did they ever put a
23 well in over here or did they ever monitor for
24 anything over here. You know, if somebody had a

1 question, I might go back and look at these, but
2 they were really for historic information for me.
3 I didn't pay a lot of attention to them.

4 Q. Now, I want to turn to the Joliet 29
5 phase two report that is Exhibit --

6 A. 20D.

7 Q. Thank you. Can you go to the back
8 end of that report to the boring logs.

9 A. Okay. Hang on.

10 Q. It's okay. I should try and find
11 it.

12 A. I turned them upside down.

13 Q. I'll help you out. Go to Bates
14 23345.

15 A. 23345. Okay.

16 Q. Now, this is as we've just said the
17 phase two report for Joliet 29, correct?

18 A. Correct.

19 Q. Would you read from the top box of
20 page 23345 the first page of the boring logs what
21 location it says this boring log information is
22 for?

23 A. Joliet No. 9 Power Station.

24 Q. Is that a totally different

1 generating station from Joliet 29?

2 A. Yes.

3 Q. In terms of the information you see
4 here for the boring logs, if you keep flipping the
5 pages of the boring logs, does it keep saying
6 Joliet 9 and not Joliet 29?

7 A. Yes.

8 Q. So is it your understanding this
9 appears to be a mistake by ENSR and it put the
10 wrong boring log information in here for Joliet
11 29?

12 A. Yes.

13 Q. Did you look at the rest of this
14 report and any of the other reports to try and
15 check whether or not ENSR also made mistakes in
16 the other reports?

17 A. No, not that kind of detail.

18 Q. So you don't know whether or not
19 there aren't other mistakes in the rest of these
20 reports, correct?

21 A. Correct.

22 Q. Ms. Race, I'm done with all those.

23 A. Okay.

24 MS. FRANZETTI: If I can have a

1 minute, Mr. Hearing Officer.

2 HEARING OFFICER HALLORAN: Yes.

3 BY MS. FRANZETTI:

4 Q. Ms. Race, I lied. We're not done.

5 A. Okay.

6 Q. But, you know what, we can just use
7 one of them to -- to start with and let's do it in
8 correct number order here. So bear with me again.
9 Let's do 17 first.

10 Ms. Race, I've put back in front
11 of you Complainants' Exhibit 17D, which is the
12 phase two report for, bear with me, Powerton.

13 A. Yes.

14 Q. And I'm going to direct you to the
15 page with the Bates number 3277.

16 A. It doesn't look the same. I'm
17 looking at 76. Sorry.

18 Q. And on that page, does it state --
19 and this is -- I'm sorry. If you go to the prior
20 page, this is part of Section 4.2 entitled
21 Potential Contaminant Exposure Pathways, right?

22 A. Correct.

23 Q. And the sentence on page 3277 is,
24 quote, there is no requirement under Illinois

1 environmental law to further investigate or
2 remediate this property, do you see that?

3 A. Yes, I do.

4 Q. Do you recall that that was a
5 portion of the report you did review before?

6 A. Yes.

7 Q. And was that a portion of the report
8 that was relevant with respect to the work you
9 were doing with respect to the stations and their
10 ash ponds?

11 A. Yes, and I'm sure that I discussed
12 it with my boss.

13 Q. Now, I'm going to ask you to go to
14 18D.

15 A. The address is incorrect on that
16 one. Just saying.

17 Q. Okay. Ms. Race, directing your
18 attention to Complainants' Exhibit 18D,
19 specifically the page ending in Bates number 5723
20 and, again, I'm under the section entitled 4.2
21 Potential Contaminant Exposure Pathways and do you
22 see the same sentence that we just reviewed in the
23 prior exhibit that reads at the bottom, quote,
24 there is no requirement under Illinois

1 environmental law to further investigate or
2 remediate this property?

3 A. Yes.

4 Q. And if I asked you the same
5 questions that I asked you with respect to that
6 sentence in Exhibit 18 -- 17D, would your answers
7 be the same?

8 A. Yes, they would.

9 Q. Ms. Race, I'm now going to turn your
10 attention to Complainants' Exhibit 19D, the page
11 ending in Bates number 45801. Same section of the
12 report as in the other two reports Section 4.2
13 Potential Contaminant Exposure Pathways and is it
14 correct that the exact same sentence is also in
15 here as the conclusion that, quote, there is no
16 requirement under Illinois environmental law to
17 further investigate or remediate this property?

18 A. Correct.

19 Q. And so with respect to this -- the
20 Waukegan Generating Station report if I asked you
21 the same questions with respect to this identical
22 statement as I've already asked you with respect
23 to the other exhibit, would your answers be the
24 same?

1 A. Yes.

2 Q. And, lastly, Exhibit 20D. If you go
3 to Bates page number 23324 and, again, it's in the
4 same part of the report Section 4.2 Potential
5 Contaminant Exposure Pathways and the same
6 sentence "There is no requirement under Illinois
7 environmental law to further investigate or
8 remediate this property" and again this is the
9 Joliet 29 property, if I asked you the same
10 questions regarding this exhibit in that statement
11 as I have in the first report that we discussed
12 here, would your answers be the same?

13 A. Yes.

14 Q. I'm going to ask you to go to
15 Exhibit 22.

16 MS. NIJMAN: Mr. Hearing Officer,
17 did you want us to tie up at any time?

18 HEARING OFFICER HALLORAN: As I
19 stated before, about 4:30 I'd like to tie up.

20 MS. FRANZETTI: We don't have to be
21 out of the room at 4:30?

22 HEARING OFFICER HALLORAN: Well, tie
23 it up at 4:30.

24 MS. FRANZETTI: So you want me to go

1 a few more minutes?

2 HEARING OFFICER HALLORAN: Yeah,
3 that would be great. I know Ms. Bugel has some
4 redirect. You can save that for tomorrow --

5 MS. BUGEL: Absolutely.

6 HEARING OFFICER HALLORAN: -- as an
7 adverse. Thank you.

8 MS. FRANZETTI: You know, this is
9 probably a good break. I'm going to ask you a few
10 questions on this exhibit, but then it's probably
11 a good breaking point.

12 HEARING OFFICER HALLORAN: Okay.

13 BY MS. FRANZETTI:

14 Q. I'm showing you Exhibit 22 which has
15 previously been identified and admitted as an
16 e-mail dated October 24th, 2007, to you from
17 Mr. Tlachac or however that name is pronounced of
18 NRT and with respect to this e-mail, it refers to
19 a question regarding the ash and it talks about
20 this four to six -- four to six what you described
21 as probably inches of bottom ash above the
22 poz-o-pac and how that could make an excellent
23 bedding layer for the geomembrane.

24 It goes onto provide "We just

1 did a cover project that way this summer on an ash
2 landfill in Wisconsin."

3 What was your understanding of
4 that part of NRT's e-mail, what were they trying
5 to tell you there?

6 A. Well, my understanding from that
7 part of the e-mail is that that would be an
8 acceptable use from their perspective and actually
9 probably a preferable one because you're not
10 using -- from my perspective, you're not using a
11 raw material, you're actually using something --
12 you're recycling, you know, coal combustion
13 bi-product onsite.

14 Q. And was it your understanding what
15 they were telling you was this had -- this type of
16 approach had already been done at a different
17 location in Wisconsin?

18 A. Yes.

19 Q. So you -- you wouldn't have been a
20 guinea pig with respect to this possible approach
21 of leaving some of the bottom ash above the
22 poz-o-pac?

23 A. Correct.

24 Q. Now, with respect to this, do --

1 with respect to how this relining was actually
2 done, did I understand your testimony correctly
3 that you were actually not sure whether or not the
4 bottom ash was left in place?

5 A. I'm not sure if it was left in
6 place.

7 MS. FRANZETTI: Mr. Hearing Officer,
8 I think this is a good breaking point. I don't
9 have that much more, but I have enough more that
10 we're not going to get done.

11 HEARING OFFICER HALLORAN: Okay.
12 Terrific. Thank you so much. I'm going to close
13 the hearing now and continue it tomorrow October
14 24th at 9:00 a.m. and I just want to note for the
15 record there has been no -- nobody from the public
16 here other than the people affiliated with the
17 respective parties and I want to thank you --
18 Pollution Control Board employees, I want to thank
19 you for your civility and professionalism. Thank
20 you so much.

21 MS. FRANZETTI: Thank you,
22 Mr. Hearing Officer.

23 THE WITNESS: Thank you.

24 MS. BUGEL: Thank you.

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF COOK)
4

5 I, Steven Brickey, Certified Shorthand
6 Reporter, do hereby certify that I reported in
7 shorthand the proceedings had at the trial
8 aforesaid, and that the foregoing is a true,
9 complete and correct transcript of the proceedings
10 of said trial as appears from my stenographic
11 notes so taken and transcribed under my personal
12 direction.

13 Witness my official signature in and for
14 Cook County, Illinois, on this _____ day of
15 _____, A.D., 2017.

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24



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