

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**NOTICE OF FILING**

TO: Don Brown, Assistant Clerk  
 Illinois Pollution Control Board  
 James R. Thompson Center  
 100 West Randolph Street, Suite 11-500  
 Chicago, IL 60601

Attached Service List

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board Respondent, Midwest Generation, LLC’s Response to Complainants’ Objection to and Appeal of Hearing Officer’s Exclusion of Complainants’ Exhibit 37, a copy of which is hereby served upon you.

MIDWEST GENERATION, LLC

By:           /s/ Jennifer T. Nijman          

Dated: December 1, 2017

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

**SERVICE LIST**

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

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

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

Lindsay P. Dubin  
Eric DeBellis and Jessica Dexter, also for Prairie  
Rivers Network and Sierra Club  
Environmental Law & Policy Center  
35 East Wacker Drive, Suite 1600  
Chicago, IL 60601

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

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

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Respondent, Midwest Generation, LLC's Response to Complainants' Objection to and Appeal of Hearing Officer's Exclusion of Complainants' Exhibit 37 was filed electronically on December 1, 2017 with the following:

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

and that true copies were emailed on December 1, 2017 to the parties listed on the foregoing Service List.

/s/ Jennifer T. Nijman

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**MIDWEST GENERATION, LLC’S RESPONSE TO COMPLAINANTS’  
OBJECTION TO AND APPEAL OF HEARING OFFICER’S  
EXCLUSION OF COMPLAINANTS’ EXHIBIT 37**

The Illinois Pollution Control Board (“Board”) should affirm the Hearing Officer’s ruling to exclude Exhibit 37 because Complainants failed to make an adequate offer of proof regarding Exhibit 37 at the hearing and therefore have waived the issue. Even if the Board finds that Complainants made an adequate offer of proof, the exclusion of Exhibit 37 was harmless because Complainants entered other evidence with the same information and thus Exhibit 37 is simply cumulative. The Hearing Officer was correct to exclude Exhibit 37 because the document is not reliable evidence. Exhibit 37 is an unsigned, draft letter, the witness has no memory of ever preparing it, there is no final copy of the draft letter, and the witness testified that it would have been unusual for her to correspond with the person to whom the letter was addressed. The draft letter is not relevant evidence upon which a prudent person would rely because it is uncertain, speculative and not reliable. 5 ILCS 100/10-40, 35 Ill. Adm. Code 101.626(a).

**I. Background**

On October 23, 2017, while Complainants were questioning Ms. Maria Race<sup>1</sup>, Complainants moved to admit, as Exhibit 37, an unsigned draft letter addressed to Lynn Dunaway of the Illinois Environmental Protection Agency. (Attached to Complainants' Motion as Complainants' Exhibit 37). MWG objected to the admission of the exhibit because "... There [was] no basis to establish that [Ms. Race] wrote it. She doesn't remember it. It's not signed. It's not on letterhead. She has no recall of the contents other than what she is reading." (PCB13-15 Hearing Transcript, Oct. 23, 2017, p. 180:16-20, excerpt attached as Attachment A). The Hearing Officer agreed with MWG stating "That was going to be my ruling exactly. Sustained. I will take it as an offer of proof, Ms. Bugel." (Attachment A, PCB13-15 Hearing Transcript, Oct. 23, 2017, p. 180:21-23). Following the Hearing Officer's ruling, Complainants made no attempt to submit an offer of proof. Complainants did not describe with particularity the purpose of Exhibit 37, how Complainants believed Ms. Race would have testified about the exhibit, or how the exhibit is relevant to the claims Complainants have made. Instead, Complainants moved onto Group Exhibit F and made no further reference to Exhibit 37. (Attachment A, PCB13-15 Hearing Transcript, Oct. 23, 2017, p. 180:24 – 182:4).

**II. Complainants Did Not Make an Adequate Offer Of Proof**

In Illinois, in order to preserve for review an error in the exclusion of evidence, a party must make an adequate offer of proof. *People v. Andrews*, 146 Ill. 2d 413, 420-421, 588 N.E.2d 1126, 1131 (1992). In particular, the Illinois Supreme Court stated that "the purpose of an offer of proof is to disclose to the trial judge and opposing counsel the nature of the offered evidence and to enable a reviewing court to determine whether exclusion of the evidence was proper." *Id* at 421,

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<sup>1</sup> Maria Race was Director of Environmental Services for MWG and called as an adverse witness by Complainants.

*citing People v. Jackson*, 180 Ill. App. 3d 78, 91 (1989). Thus, when an objection to evidence offered at hearing is sustained, an adequate offer of proof makes known to the trial court the particular substance of the anticipated evidence, and “explicitly state what the excluded testimony would reveal and may not merely allude to what might be divulged by the testimony.” *People v. Andrews*, 146 Ill.2d at 421, *citing People v. Brown*, 104 Ill. App. 3d 1110, 1119 (1982). Importantly, the record must be sufficient for a court to “determine if the excluded evidence had any relevance to the proceedings at hand.” *People v. Andrews*, 146 Ill.2d at 422.

This Board has similarly required that a proper offer of proof be made. The Board has stated that an adequate offer of proof is an offer that “showed what the expected testimony would be, by whom it would be made and its purpose.” *Citizens Against Regional Landfill v. The County Board of Whiteside County and Waste Management of Illinois, Inc.*, PCB 92-156, \*2-3 (April 22, 1993), 1993 Ill. ENV LEXIS 444, \*2-3. If an offer of proof does not demonstrate to both the court and the reviewing courts the admissibility of the evidence, then the offer serves no purpose. *People ex rel. Fahner v. Hedrich*, 108 Ill. App. 3d 83, 91 (1982).

Here, Complainants made no record on which the Board could determine if the excluded Exhibit 37 has any relevance to these proceedings. At the hearing on October 23, 2017, Complainants only described Exhibit 37 as a letter from Maria Race to Lynn Dunaway of the Illinois EPA, regarding the Waukegan Station Groundwater Samples and which discusses “upgradient impacts to groundwater.” (Attachment A, PCB13-15 Oct. 23, 2017 Hearing Transcript, p. 177:20-24, 178:18-23, 180:2-12). Additionally, the witness, Ms. Race, described the letter as unsigned and not on letterhead and thus perhaps never sent. (Attachment A, PCB13-15 Oct. 23, 2017 Hearing Transcript, p. 178:1-16). Complainants did not describe any other details or specifics of Exhibit 37 that would demonstrate to the Board the admissibility of the evidence. In

particular, Complainants did not identify the date of the letter, the date or range of dates of the groundwater samples the letter purportedly discussed, the substance of the letter including the specifics related to the upgradient impacts, nor how the information in the letter relates to or is relevant to the claims Complainants have made. Ultimately, neither the Board nor MWG has any understanding of the nature of Exhibit 37 or its purpose, and thus there is insufficient information to overrule the Hearing Officer's decision to exclude the exhibit. *People v. Andrew*, 146 Ill. 2d at 421. As Complainants made an inadequate offer of proof, they have waived the issue on appeal and the Board should deny Complainants' motion.

### **III. The Exclusion of Exhibit 37 Was Harmless**

Even if the Board concludes that the Complainants' offer of proof was somehow adequate, exclusion of Exhibit 37 was harmless because the information in the exhibit is fully established in other admitted exhibits and thus merely cumulative. In *Aguinaga v. Chicago*, the court concluded that even though the trial court wrongfully barred the plaintiff from making an adequate offer of proof, the excluded evidence was cumulative and thus the exclusion was harmless. *Aguinaga v. Chicago*, 243 Ill. App. 3d 552, 568 (1st Dist. 1993) In *Aguinaga*, the plaintiff attempted to introduce evidence, to which the City objected, and despite the plaintiff's efforts, the trial court did not give the plaintiff an opportunity to present an adequate offer of proof. *Id* at 568. The court concluded that the trial court was wrong to prevent a proper offer of proof; however, the court found that the exclusion of the plaintiff's evidence was harmless. *Id* at 571-572. The court found that the excluded evidence was fully established by other evidence admitted at the trial and thus the excluded evidence was merely cumulative and exclusion of the evidence was harmless. *Id* at 573.

In this case, Plaintiffs claim that Exhibit 37 is relevant and material because it refers to "upgradient impacts to groundwater" at the Waukegan Station and the installation of two new

wells. (Complainants' Motion, ¶14). However, Complainants introduced numerous exhibits regarding the upgradient impacts to the groundwater at the Waukegan Station. In particular, Complainants introduced: MWG's Response to the Illinois EPA Violation Notice for the Waukegan Station (Exhibit 10B); the Waukegan Hydrogeologic Assessment Report (Exhibit 14C); the Quarterly Groundwater Monitoring Results for the Waukegan Generating Station, (Exhibits 29E, 267P through 270P); the Groundwater Monitoring Reports for the Griess Pflieger Tanner Site, which is adjacent and upgradient to the Waukegan Station (Exhibits 39F through 42F); and, the Waukegan Tannery ELUC Lab Results, which are results for the monitoring wells upgradient to the Waukegan Station (Exhibits 229K through 235.5K). Additionally, Complainants introduced other exhibits regarding the two additional wells: documents from KPRG's files regarding the new wells at the Waukegan Station which includes five maps showing the locations of the two wells (Exhibit 264); and a January 15, 2013 Letter from MWG to Illinois EPA regarding the two wells at the Waukegan Station, which includes a map of the new wells and the boring logs. As there are numerous other exhibits regarding the upgradient impacts to groundwater and the two new wells at the Waukegan Station, Exhibit 37 is cumulative and the exclusion of the exhibit is harmless.

**IV. Exhibit 37 is Not Reliable And Thus Not Admissible**

**a. Only Relevant Evidence That is Reliable May Be Admitted into Evidence**

The Board's rules provide that, in accordance with Section 10-40 of the Illinois Administrative Procedures Act ("Illinois APA"), the Hearing Officer "will admit evidence that is admissible under the rules of evidence as applied in the civil courts of Illinois, except as otherwise provided in this Part." 35 Ill. Adm. Code 101.626. Section 10-40 of the Illinois APA states that, "irrelevant, immaterial, or unduly repetitious evidence shall be excluded,"...and the rules of evidence as applied in civil cases shall be followed. 5 ILCS 100/10-40.



Evidence is only relevant “if it has any tendency to make the existence of any fact that is of consequence to the determination of an action either more or less probable than it would be without the evidence.” *People v. Morgan*, 197 Ill. 2d 404, 455-56, 259 Ill. Dec. 405, 435, 758 N.E.2d 813, 843 (2001), *citing People v. Illgen*, 145 Ill. 2d 353, 364, 164 Ill. Dec. 599, 583 N.E.2d 515 (1991). However, evidence is not relevant if it is “remote, uncertain or speculative.” *Morgan*, 197 Ill.2d at 456, *citing People v. Cloutier*, 156 Ill. 2d 483, 501, 190 Ill. Dec. 744, 622 N.E.2d 774 (1993). A “court may reject evidence which it determines to be of little probative value because of its uncertainty or conjectural nature.” *People v. Bouska*, 118 Ill. App. 3d 595, 601, 74 Ill. Dec. 227, 231-32, 455 N.E.2d 257, 261-62 (1st Dist. 1983), *citing People v. Yuknis*, 79 Ill. App. 3d 243, 249, 398 N.E.2d 258 (1st Distr. 1979).

The Illinois APA allows for the admission of otherwise non-admissible evidence “if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.” 5 ILCS 100/10-40. The Board’s rules contain a similar exception in Part 101.626(a), which states that only evidence that is material, relevant and would be relied upon by prudent persons, may be admitted. 35 Ill. Adm. Code 101.626(a). Courts have interpreted this to mean that, while hearsay evidence is generally inadmissible in an administrative hearing, the administrative procedure rules create an exception to the rule, but only when the hearsay is reliable. *Metro Utility v. Illinois Commerce Comm'n*, 193 Ill. App. 3d 178, 185, 549 N.E.2d 1327, 1331, 140 Ill. Dec. 455 (1990) (emphasis added).

The requirement for reliability equally applies to evidence that is a statement by a party opponent. Under the Rule 801(d)(2) of the Illinois Rules of Evidence, a statement by a party opponent is not hearsay if it is a party’s own statement or by a person authorized by the party to make the statement. Ill. S.Ct. R. Evid. 801(d)(2). However, even if an exception to the hearsay rule

may apply, the evidence must still be reliable. *In re Marriage of L.R.*, 202 Ill. App. 3d 69, 83, 559 N.E.2d 779, 788, 147 Ill. Dec. 439 (1990) (concluding that when certain statements lack sufficient indicia of reliability, application of an exception to the general rule against hearsay is not warranted). In *Ramirez v. FCL Builders, Inc.*, the court evaluated whether a report was improperly excluded even though it was a statement of a party opponent. *Ramirez v. FCL Builders, Inc.* 2014 IL App (1st) 123663 (1st Dist. 2014), ¶200. The trial court barred the admission of the report introduced by the defendant because the trial court found that the report was not reliable. *Ramirez v. FCL Builders, Inc.* 2014 IL App (1st) 123663 (1st Dist. 2014), \*¶200. The defendant argued that the report was admissible under the business records exception to the hearsay rule and the statement of a party opponent exception. *Id* at ¶201, ¶204. The appellate court agreed with the trial court that the report was not reliable, and thus the appellate court could not “find that it should have been admitted as an admission of a party opponent. *Id* at ¶204. *See also Mister v. Northeast Ill. Commuter R.R. Corp.*, 571 F.3d 696, 699 (7th Cir. 2009) (Seventh Circuit upheld the trial court’s refusal to admit a report even though the report was a statement by a party opponent, because the report was not reliable due to lack of precise factual statements).

**b. A Draft Letter That the Witness Speculates Was Never Sent to a Person with whom She Rarely Corresponded is Not Relevant Because it is Not Reliable and Not Commonly Relied Upon by Prudent Persons**

Exhibit 37 is not reliable evidence. Exhibit 37 is a letter in draft form that is not signed, and not finalized on letterhead. Moreover, Ms. Race had no memory of the letter and she testified that it would have been “unusual” for her to correspond with Lynn Dunaway at the Illinois EPA.

**i. It Was “Unusual” for Maria Race to Correspond with Lynn Dunaway**

Complainants distort Ms. Race’s testimony in an attempt to bolster their claims. Complainants argued that “Ms. Race also confirmed that she did correspond with ...Lynn Dunaway.” (Complainants’ Motion, ¶12). In truth, and as set forth below, Ms. Race clearly

testified that she did *not* usually correspond with Mr. Dunaway. In particular, Ms. Race stated that while she "maybe" corresponded with Mr. Dunaway "once or twice, it would have been unusual for me to have sent something to Lynn." (Attachment A, PCB13-15 Oct. 23, 2017 Hearing Transcript, p. 179:7-9). Additionally, Ms. Race never stated that her correspondence with Mr. Dunaway was generally about the "hydrogeologic investigations" as claimed by Complainants. (Complainants' Motion, ¶15). The portion of the transcript that Complainants cite to in support of their motion states:

- Q. And you did correspond with Lynn Dunaway at IEPA regarding the hydrogeologic assessments at Midwest Gen facilities, correct?
- A. Usually I corresponded directly with Bill Buscher if I was sending something in. I think -- and that would have made more sense to me if this had Bill Buscher's name on it or even Rick Cobb.
- Q. But you did correspond with Lynn Dunaway?
- A. Maybe once or twice, but it would have been unusual for me to have sent something to Lynn. It would have been more likely that I would have copied him and sent it to Bill's attention or something.  
(Attachment A, PCB13-15 Oct. 23, 2017 Hearing Transcript, p. 178:21-179:11)

Nothing in that exchange establishes that Ms. Race's correspondence was generally about the hydrogeologic investigations. In fact, that exchange shows that Ms. Race rarely if ever corresponded with Mr. Dunaway, but instead communicated with other people at Illinois EPA.

ii. Exhibit 37 is Speculative and Conjecture

Exhibit 37, an unsigned draft document that Ms. Race has no memory of preparing, is merely conjecture, uncertain, and speculative. When Complainants presented Exhibit 37 to Ms. Race, she immediately noted that it was unsigned and stated that it was "kind of odd" that it was not on letterhead. (Attachment A, PCB13-15 Oct. 23, 2017 Hearing Transcript, p. 178:1-4). Ms. Race continued by stating:

"It's not on letterhead either so I'm wondering if it was something we never sent or -- huh. Let me take a look at it. I don't remember writing this, but, you know, I just find it odd that

it's not on letterhead or anything because usually when I wrote a letter it would be on letterhead. So I find that odd and that it's not signed.”  
(PCB13-15 Oct. 23, 2017 Hearing Transcript, p. 178:9-16).

Ms. Race was uncertain about the contents of the letter and the form of the letter – that it was not on letterhead nor signed. MWG stated as such during the hearing: “There is no basis to establish that she wrote it. She doesn't remember it. It's not signed. It's not on letterhead. She has no recall of the contents other than what she is reading.” (Attachment A, PCB13-15 Oct. 23, 2017 Hearing Transcript, p. 180:16-20). The Hearing Officer agreed stating: “That was going to be my ruling exactly. Sustained.” (Attachment A, PCB13-15 Oct. 23, 2017 Hearing Transcript, p.180:21-22).

Exhibit 37 is uncertain and not relevant evidence because it is only a draft, it was never mailed, and the witness had no memory of preparing the letter or any personal knowledge of its contents. As the witness had no recollection of preparing the letter, Ms. Race may not be the actual author. Instead, she may have reviewed a draft, concluded there were inaccuracies and decided not to send it. There is an additional level of uncertainty as Ms. Race did not usually correspond with Mr. Dunaway, and found the form of the document “...kind of odd.” (Attachment A, PCB13-15 Oct. 23, 2017 Hearing Transcript, p. 178:4). Quite simply, there are too many uncertainties related to Exhibit 37 and the Hearing Officer was correct to exclude the document. *Morgan*, 197 Ill.2d at 456, *In re Marriage of L.R.*, 202 Ill. App. 3d 69. Even under the more permissive rules of the Board and the Illinois APA, the Hearing Officer was correct to exclude Exhibit 37 because the information contained is uncertain and speculative, and thus not reliable. *Metro Utility*, 193 Ill. App. 3d at 185. Moreover, even if Exhibit 37 falls within the hearsay exception of statement by a party opponent, because it is not reliable, it is not admissible and should not be admitted into evidence. *Ramirez*, 2014 IL App (1st) 123663, ¶200, ¶204.

**c. Complainants Reliance on *Castellari v. Prior* Is Inapplicable**

Complainants' reliance upon *Castellari v. Prior*, PCB86-79 (May 28, 1987), 1987 Ill. ENV LEXIS 311, is inapplicable, and if anything, further supports exclusion of Exhibit 37. In *Castellari*, the respondent appealed the admission of observation logs written by the complainants. *Id* at \*16. Complainants claimed that they were admissible under the past recollection recorded exception to the hearsay rule. *Id*. In reviewing the criteria under the rule, the Board quoted *Dyan v. McDonald's Corporation*, 125 Ill. App. 3d 972, 466 N.E.2d 958, 970 (1st Dist. 1984). In particular, the Board stated, quoting from *Dyan*, “[i]n determining the admissibility of a document under this hearsay exception, the court should be primarily concerned with the reliability of the proffered document and apply the above criteria accordingly.” *Id*, emphasis added. The Board further explained that “the reliability of the past recollection recorded evidence must be established to the extent that it outweighs the inability of the opponent to cross-examine the witness directly due to the witnesses' lack of present memory.” *Id* at 18. In *Castellari*, the Board found that observation logs were reliable, and that even though the witnesses did not completely lack any recollection of the logs, the logs qualified for the past recollection recorded evidence exception. *Id* at 18-19.

The *Castellari* case concerns the past recollection recorded exception to hearsay, and Complainants have made no claim that Exhibit 37 is admissible under that exception to the hearsay rule. Regardless, as established in *Castellari* and similarly in *In re Marriage of L.R. Ramirez*, and *Mister*, any document admissible under an exception to the hearsay rule must be reliable. *See supra* Section IV.a. If the evidence is not reliable, then it is not admissible under any of the exceptions to the hearsay rule. *In re Marriage of L.R.* As established above, Exhibit 37 is not reliable because of the numerous levels of uncertainty surrounding it.

For the foregoing reasons, MWG requests that the Board affirm the Hearing Officer's decision to exclude Exhibit 37.

Respectfully submitted,  
Midwest Generation, LLC

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

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

# **ATTACHMENT A**

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.



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.)