

**BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS**

<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>Complainants,</b>	)	<b>PCB No-2013-015</b>
	)	<b>(Enforcement -- Water)</b>
<b>v.</b>	)	
	)	
<b>MIDWEST GENERATION, LLC,</b>	)	
	)	
<b>Respondents</b>	)	

**NOTICE OF FILING**

To: Don Brown, Clerk  
Illinois Pollution Control Board  
100 West Randolph  
Suite 11-500  
Chicago, IL 60601

And Attached Service List

Please take note that on December 1, 2017, I filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached Complainants' Response to Midwest Generation, LLC's Motion to Clarify and Confirm the Hearing Officer's Limitation on the Use of the Historic Phase I and Phase II Reports, a copy of which is attached and served upon you.

Respectfully submitted,

          /s/ Gregory E. Wannier            
Gregory E. Wannier  
Staff Attorney  
Sierra Club Environmental Law Program  
2101 Webster St., Ste 1300  
Oakland, CA – 94612  
(415) 977-546 | greg.wannier@sierraclub.org

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**COMPLAINANTS’ RESPONSE TO MIDWEST GENERATION, LLC’S MOTION TO CLARIFY AND CONFIRM THE HEARING OFFICER’S LIMITATION ON THE USE OF THE HISTORIC PHASE I AND PHASE II REPORTS**

Complainants Citizens Against Ruining the Environment, Environmental Law & Policy Center, Prairie Rivers Network, and Sierra Club (“Complainants”), by their undersigned counsel, hereby submit this Response to Midwest Generation, LLC’s (“Respondent’s”) Motion to Clarify and Confirm the Hearing Officer’s Limitation on the Use of the Historic Phase I and Phase II Reports (“Respondent’s Motion”). In its motion, Respondent requested that “the Hearing Officer confirm that the parties’ use of or reliance on each of the Phase I and Phase II Reports identified as Exhibits 17D, 18D, 19D, 20D, 21 and 38, is limited to the information discussed at the hearing with Ms. Race.” (Mot. at 3.)

1. Respondent’s Motion grew out of an appeal made by Respondent’s attorney at trial that these issues be limited “for the purpose of relevancy” and to put Respondent on notice of which portions of the exhibits may be used in Complainants’ closing brief. Oct. 23, 2017 Transcript, p. 126:16-2 (“Ms. Nijman: In other words, the concern is that there is a discussion with Ms. Race on one issue and then the closing brief comes around and something is pulled out of the back of that report that has nothing to do with the testimony.”).
2. Without conceding that the only relevant content of these exhibits is the content discussed with Ms. Race—and even though the use of exhibits admitted at hearing is not

generally limited solely to the specific issues discussed at hearing—Complainants agreed to Respondent’s request that the use of the Phase I and Phase II Reports be limited to the issues discussed with Ms. Race. Oct. 23, 2017 Transcript, p. 127:4-6.

3. The majority of the issues discussed from the Phase I and Phase II Reports during the October 23, 2017 hearing in this matter pertained to (1) site plans of the Joliet 29, Powerton, Waukegan, and Will County plants in the Phase I and Phase II Reports, (2) groundwater elevation maps in the Phase II Reports, and (3) soil borings in the Phase II Reports.
4. Therefore, Complainants respectfully request that the Hearing Officer clarify and confirm that the parties may rely on all content in the following pages of the Phase I and Phase II Reports.

<b>Exhibit Number</b>	<b>Exhibit Name</b>	<b>Exhibit Pages that Parties May Use or Rely Upon</b>
Comp. Ex. 17D	ENSR Consulting, Phase II Environmental Site Assessment of the ComEd Powerton Generating Station, Route 29 & Mantino Road, Pekin, Illinois, (1998)	<ul style="list-style-type: none"> <li>• Bates MWG 13-15_3257: Executive Summary</li> <li>• Bates MWG 13-15_3297: Soil Boring/Monitoring Well Site Plan for the Powerton Plant</li> <li>• Bates MWG 13-15_3298: Groundwater Elevation Map for the Powerton Plant</li> <li>• Bates MWG 13-15_3299-3342: Logs of Boreholes B-1 to B-36 at the Powerton Plant</li> </ul>
Comp. Ex. 18D	ENSR Consulting, Phase II Environmental Site Assessment of the ComEd Will County Generating Station, (1998)	<ul style="list-style-type: none"> <li>• Bates MWG 13-15_5739: Site Plan for the Will County Plant</li> <li>• Bates MWG 13-15_5742: Soil Boring/Monitoring Well Site Plan for the Will County Plant</li> <li>• Bates MWG 13-15_5746-5763: Logs of Boreholes B-1 to B-18 at the Will County Plant</li> </ul>

Comp. Ex. 19D	ENSR Phase II Environmental Site Assessment Waukegan Generating Station	<ul style="list-style-type: none"> <li>• Bates MWG 13-15_45814: Site Plan for the Waukegan Plant</li> <li>• Bates MWG 13-15_45817: Soil Boring/Monitoring Well Site Plan for the Waukegan Plant</li> <li>• Bates MWG 13-15_45820-45842: Logs of Boreholes B-1 to B-23 at the Waukegan Plant</li> </ul>
Comp. Ex. 20D	ENSR, Phase II Environmental Site Assessment for Joliet 29 (Dec. 1998).	<ul style="list-style-type: none"> <li>• Bates MWG 13-15_23339: Site Plan for the Joliet 29 plant</li> <li>• Bates MWG 13-15_23342: Soil Boring/Monitoring Well Site Plan for the Joliet 29 plant</li> <li>• Bates MWG 13-15_23344-23349: Logs of Boreholes at the Joliet 29 plant</li> </ul>
Comp. Ex. 21	ENSR, Phase I Environmental Site Assessment for Joliet 29 (Oct. 1998)	<ul style="list-style-type: none"> <li>• Bates MWG 13-15_25149: Site Plan for the Joliet 29 plant</li> </ul>
Comp. Ex. 38	ENSR, Phase I Environmental Site Assessment of the ComEd Waukegan Generating Station, (Oct. 1998)	<ul style="list-style-type: none"> <li>• Bates MWG 13-15_12012: Site Plan for the Waukegan plant</li> </ul>

Respectfully submitted,



Lindsay Dubin  
 Environmental Law & Policy Center  
 35 E. Wacker Dr., Suite 1600  
 Chicago, IL 60601  
 ldubin@elpc.org  
 (312) 795-3726

*Attorney for ELPC, Sierra Club and  
 Prairie Rivers Network*

Faith E. Bugel  
1004 Mohawk  
Wilmette, IL 60091  
(312) 282-9119  
[fbugel@gmail.com](mailto:fbugel@gmail.com)

Gregory E. Wannier  
2101 Webster St., Ste. 1300  
Oakland, CA 94612  
(415) 977-5646  
[Greg.wannier@sierraclub.org](mailto:Greg.wannier@sierraclub.org)

*Attorneys for Sierra Club*

Abel Russ  
Attorney  
Environmental Integrity Project  
1000 Vermont Avenue NW  
Washington, DC 20005  
[aruss@environmentalintegrity.org](mailto:aruss@environmentalintegrity.org)  
802-482-5379

*Attorney for Prairie Rivers Network*

Keith Harley  
Chicago Legal Clinic, Inc.  
211 W. Wacker, Suite 750  
Chicago, IL 60606  
[kharley@kentlaw.iit.edu](mailto:kharley@kentlaw.iit.edu)  
312-726-2938 (phone)  
312-726-5206 (fax)  
*Attorney for CARE*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NOTICE OF ELECTRONIC FILING** and **COMPLAINANTS' RESPONSE TO MIDWEST GENERATION, LLC'S MOTION TO CLARIFY AND CONFIRM THE HEARING OFFICER'S LIMITATION ON THE USE OF THE HISTORIC PHASE I AND PHASE II REPORTS** were electronically filed on December 1, 2017 and copies were served on all parties of record listed below by email on December 1, 2017.

/s/ Lauren Hogrewe  
Lauren Hogrewe  
Legal Assistant  
Sierra Club Environmental Law Program  
2101 Webster St., Ste 1300  
Oakland, CA – 94612  
(415) 977-5789 |  
[lauren.hogrewe@sierraclub.org](mailto:lauren.hogrewe@sierraclub.org)

**SERVICE LIST**  
PCB No-2013-015

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

Abel Russ  
Attorney  
Environmental Integrity Project  
1000 Vermont Avenue NW  
Washington, DC 20005  
[aruss@environmentalintegrity.org](mailto:aruss@environmentalintegrity.org)  
(802) 662-7800 (phone)  
(202) 296-8822 (fax)

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

Faith E. Bugel  
1004 Mohawk Wilmette, IL 60091  
[fbugel@gmail.com](mailto:fbugel@gmail.com)  
(312) 282-9119 (phone)

Keith Harley  
Chicago Legal Clinic, Inc.  
211 W. Wacker, Suite 750  
Chicago, IL 60606  
[kharley@kentlaw.iit.edu](mailto:kharley@kentlaw.iit.edu)  
312-726-2938 (phone)  
312-726-5206 (fax)

Gregory E. Wannier  
2101 Webster St., Ste. 1300  
Oakland, CA 94612 (415) 977-5646  
[Greg.wannier@sierraclub.org](mailto:Greg.wannier@sierraclub.org)