

ILLINOIS POLLUTION CONTROL BOARD
January 11, 2018

SIERRA CLUB, ENVIRONMENTAL LAW)
AND POLICY CENTER, PRAIRIE RIVERS)
NETWORK, and CITIZENS AGAINST)
RUINING THE ENVIRONMENT,)
)
Complainants,)
)
v.) PCB 13-15
) (Citizen’s Enforcement – Water)
MIDWEST GENERATION, LLC.,)
)
Respondent.)

HEARING OFFICER ORDER

Hearings were held on October 23, 24, 25, 26 and 27, 2017 in this enforcement case. On November 13, 2017, the respondent filed a “Motion to Clarify and Confirm the Hearing Officer’s Limitation on the use of the Historic Phase I and Phase II Reports.” (Mot.). On December 1, 2017, the complainants filed its response (Resp.). On December 15, 2017, respondent filed a motion for leave to file a reply with the reply attached (Reply). Also on December 15, 2017, the complainants filed its opposition to respondent’s motion to file a reply. On December 29, 2017, complainants filed a motion for leave to file a sur-reply and response (Sur-reply).

In respondent’s motion, it requests that I clarify a ruling I made at the hearing on October 23, 2017. Mot. at 1-3. Specifically, the motion seeks to clarify my ruling pertaining to complainants Exhibits 17D (1998 Phase II report for the Powerton Station); Exhibit 18D (1998 Phase II report for the Will County Station); Exhibit 19D (1998 Phase II report for the Waukegan Station; Exhibit 20D (1998 Phase II report for the Joliet Station); Exhibit 21 (1998 Phase I report for the Joliet 29 Station). *Id.* Reversing my earlier ruling based on Section 101.626 of the Board’s procedural rules, I allowed these exhibits to be received in evidence over objection but limited the use of these exhibits to the questions asked and the responses elicited from the witness about these exhibits. Complainants did not object. *Id.*; Attachment A, Transcript at 126-127.

Subsequent my ruling regarding complainants Exhibits 17D, 18D, 19D, 20D and 21, complainants moved its Exhibit 38 into evidence that was a 1998 Phase I report for the Waukegan Station. *Id.*; Attachment A, Transcript at 138. I allowed Exhibit 38 in evidence over objection based on my prior rulings pertaining to Exhibits 17D, 18D, 19D, 20D and 21. Respondent’s objections were the same. *Id.* at 2-3, Attachment A, Transcript at 138. Complainants did not object. *Id.*

Respondent requests that I “confirm that the parties’ use of or reliance on each 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.” Mot. at 3.

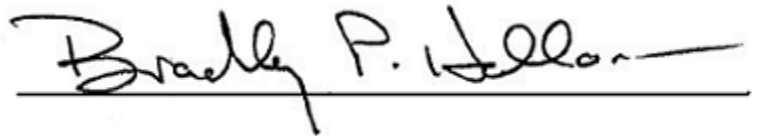
In complainants’ response, they apparently agree with respondent that the use and reliance of the exhibits in question is limited to the specific questions asked and responses elicited. Resp. at 1-2. It appears that complainants then attempt to enlarge my ruling regarding the exhibits and request that I specifically find that the complainants can in general use and rely on the content of specific pages of the various exhibits. Resp. at 2-3.

My ruling at the October 23, 2017, hearing stands. The parties may only use and rely on the specific questions asked and the responses elicited regarding complainants Exhibits 17D, 18D, 19D, 20D, 21, and 38. Any attempt by complainants to enlarge my ruling is denied.

Respondent’s motion to file a reply and complainants motion to file a sur-reply are denied. Denial of the motions do not materially prejudice either party nor do the motions aid in the resolution of respondent’s motion to clarify. Both parties have adequately stated their respective positions without need for additional argument. 35 Ill. Adm. Code 101.500(e); People v. Peabody Coal Company, PCB 99-1340, slip. at 3 (April 18, 2002).

The parties or their legal representatives are directed to participate in a telephonic status conference with the hearing officer on January 16, 2018, at 11:30 a.m. The telephonic status conference must be initiated by the complainants but each party is nonetheless responsible for its own appearance.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Bradley P. Halloran". The signature is written in a cursive style and is positioned above a solid horizontal line.

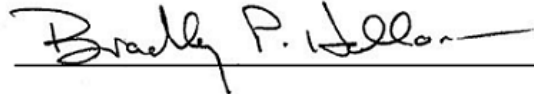
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed on January 11, 2018, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was e-mailed to the following on January 11, 2018:

Don Brown
Illinois Pollution Control Board
James R. Thompson Center
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Chicago, Illinois 60601

A handwritten signature in black ink that reads "Bradley P. Halloran" with a horizontal line underneath.

Bradley P. Halloran
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@ Consents to electronic service

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