

**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	Attached Service List
Illinois Pollution Control Board	
James R. Thompson Center	
100 West Randolph Street, Suite 11-500	
Chicago, IL 60601	

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board Respondent, Midwest Generation, LLC's Motion for Leave to File *Instantly* a Supplement to Its Motion for Sanctions and Midwest Generation, LLC's Supplement to Its Motion for Sanctions, a copy of which is hereby served upon you.

MIDWEST GENERATION, LLC

By:     /s/ Jennifer T. Nijman    

Dated: March 27, 2018

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Kristen L. Gale  
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Oakland, CA 94612

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing, Certificate of Service and Respondent, Midwest Generation, LLC's Motion for Leave to File *Instante* a Supplement to Its Motion for Sanctions and Midwest Generation, LLC's Supplement to Its Motion for Sanctions was filed electronically on March 27, 2018 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 March 27, 2018 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>	)	
	)	
<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>	)	

**MIDWEST GENERATION LLC’S MOTION FOR LEAVE TO FILE *INSTANTER A* SUPPLEMENT TO ITS MOTION FOR SANCTIONS**

Respondent, Midwest Generation, LLC (“MWG”), by its undersigned counsel, submits this motion for leave to file *instanter* MWG’s Supplement to its Motion for Sanctions. In support of its Motion, MWG states as follows:

- 1) On March 20, 2018, MWG filed a Motion for Sanctions requesting that the Board sanction Complainants due to their pattern of causing undue delay and expense, based in part on Complainants’ Motion to Strike Portions of MWG’s Expert’s Report and Testimony, which violated the Board Rules and the Hearing Officer Order.
- 2) On March 21, 2018, Complainants filed an Objection to and Appeal of the Hearing Officer’s ruling to admit MWG Exhibit 649 (“Complainants’ Appeal”). Complainants’ Appeal has no basis and is further evidence of Complainants’ sanctionable conduct.
- 3) Complainants’ primary basis for their objection to the admission of MWG Exhibit 649 is that it is not admissible as a business record (Complainants’ Appeal, ¶¶20-24).

- 4) As is clear in the transcript and on the face of the exhibit, Exhibit 649 was admitted as a *public record*, and thus Complainants' objections to its admission as a business record are inapplicable. PCB13-15 Jan. 30, 2018 Hearing Transcript, p. 175:20 – 176:18.
- 5) On March 22, 2018, MWG contacted Complainants informing them that MWG Exhibit 649 was not admitted as a business record, but as a public record and requested that Complainants withdraw their motion. As of the time of filing this motion, Complainants have not responded.
- 6) In ruling on motions to supplement, the Board's guiding principles is to avoid material prejudice to either party. *In the Matter of: Proposed Site Specific Regulation Applicable to Ameren Energy Generating Company, Elgin, Amending 35 Ill. Adm. Code Part 901*, R04-11, 2004 Ill. ENV. LEXIS 242, (May 6, 2004) (Board granted petitioners motion to supplement the record finding that it would not prejudice the State.)
- 7) Here, MWG would be prejudiced if it were not allowed to supplement its motion for sanctions. Complainants' Appeal, filed the day after MWG's Motion for Sanctions, is yet another meritless motion and cause for undue time and expense, and provides additional evidence in support of MWG's Motion for Sanctions. Complainants' various actions cannot be read in a vacuum, but must be considered together.
- 8) Complainants are not prejudiced because they have not yet responded to MWG's Motion for Sanctions, and because MWG provided Complainants an opportunity to withdraw the Appeal.

WHEREFORE, for the reasons stated above, MWG requests that the Board grant MWG leave to file *instanter* the attached Supplement to its Motion for Sanctions.

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  
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312-251-5255

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>In the Matter of:</b>	)	
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<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>	)	

**MIDWEST GENERATION, LLC’S SUPPLEMENT TO ITS MOTION FOR SANCTIONS**

Respondent, Midwest Generation, LLC (“MWG”), by its undersigned counsel, submits this Supplement to its Motion for Sanctions filed with to the Illinois Pollution Control Board (“Board”) on March 20, 2018. Complainants’ meritless appeal of the Hearing Officer’s decision to admit MWG Exhibit 649 (“Complainants’ Appeal”) is yet another example of an action taken for the purpose of causing MWG undue cost and expense.

**A. Supplement to Section A of MWG’s Motion for Sanctions – The Brief Statement of Facts**

On January 30, 2018, during the direct examination of Ms. Maria Race, MWG presented MWG Exhibit 649. MWG Exhibit 649 contains Illinois EPA emails between Lynn Dunaway and Jaime Rabins dated January 6, 2015. On the top right corner of the document is a label identifying the document as “**IEPA EXHIBIT No. 64.**” The label reflects the fact that Illinois EPA filed the exact document during a separate matter before the Board in *Sierra Club et al. v. Illinois EPA and Midwest Generation, LLC*, PCB15-189, on June 26, 2015. That separate matter, PCB15-189, was

Sierra Club's appeal of the NDPES permit that Illinois EPA issued to MWG for MWG's Waukegan Station. MWG Exhibit 649 is listed as "Illinois EPA Exhibit 64" in Illinois EPA's Index to Permit Record filed by the Illinois EPA in the permit appeal. The Illinois EPA's Index to Permit Record for PCB15-189 that was filed with the Board is attached as Exhibit 1.

Prior to the hearing in the current case (PCB13-015), MWG provided Complainants with a list of MWG proposed exhibits. In MWG's Request for Complainants' Pre-Hearing Agreement to Admit Witness Specific Exhibits, MWG clearly identified the document later identified as MWG Exhibit 649, as "2015 Illinois EPA email between Lynn Dunaway and Jaime Rabins, **filed with IPCB as Illinois EPA Exhibit 64 in *Sierra Club et al. v. Illinois EPA and Midwest Generation, LLC, PCB15-189, June 26, 2015***". See MWG's Request for Complainants' Pre-Hearing Agreement to Admit Witness Specific Exhibits (including Complainants' Response) attached as Exhibit 2, p. 9 (emphasis added).

At the hearing in this case, Ms. Race testified that the Illinois EPA "Exhibit No. 64" in the upper right of the document signified that it was an "an exhibit within [Illinois EPA's] permit record" and was available through the Freedom of Information Act. PCB13-15 Jan. 30, 2018 Hearing Transcript, pp. 175:20-176:11. She further testified that she received the document from Illinois EPA shortly after the Waukegan permit hearings. PCB13-15 Jan. 30, 2018 Hearing Transcript, pp. 176:13-18. Following Ms. Race's testimony that MWG Exhibit 649 was from the publicly-available Illinois EPA permit record, the Hearing Officer granted MWG's motion to admit the exhibit. PCB13-15 Jan. 30, 2018 Hearing Transcript, pp. 176:24-177:1.

**B. Supplement to Section C of the Motion for Sanctions - Complainants' Conduct of Ignoring Settled Law and Causing Undue Expense is Sanctionable**

e. Complainants' Motion Ignores the Basis for Admission of MWG Exhibit 649

Complainants' Appeal claims that MWG Exhibit 649 is not admissible as a business record. Complainants' Appeal, ¶¶ 20-24. Yet, as is clear on the face of MWG Exhibit 649 and in the



hearing transcript, MWG Exhibit 649 was admitted as *public record*. Under the public records exception to hearsay, Illinois courts have held that, “The prerequisite for admission of a public record as an exception to the hearsay rule is that the record is made in the ordinary course of business and that it is authorized by statute, agency regulation, or is required by the nature of the public office.” *People v. Williams*, 143 Ill. App. 3d 658, 663 (1st Dist. 1986) (citing, *People v. Hester*, 88 Ill. App. 3d 391, 395 (2nd Dist. 1980)).

Complainants briefly address the public records exception to the hearsay rule in their appeal. Complainants’ Appeal, ¶21. Yet, the case they use in support, *Castellari v. Prior*, PCB 86-79, 1987 WL 56063 (May 28, 1987), actually supports the admission of MWG Exhibit 649. In *Castellari v. Prior*, the complainants introduced copies of Illinois EPA letters and reports at the hearing, and testified that they had copied the letters and reports from the original documents in the Illinois EPA’s files located at the Illinois EPA office. *Id.* The Board found that the Illinois EPA letters and reports could “clearly be classified as the type of documents which could be admitted under the public records exception to the rule against hearsay rule (*sic*).” *Id.* at \*14. The Board upheld the Hearing Officer’s decision to admit the documents finding that they were public documents and that the “Board had no reason to doubt the authenticity of the exhibits...” *Id.* at \*15. The Board further noted that the respondent could have produced his own copies of the exhibits to challenge the complainants’ copies. *Id.*

The Board recently came to the same conclusion regarding another Illinois EPA document in another citizen suit brought by the Sierra Club. In *Sierra Club v. Ameren Energy Medina Valley Cogen, LLC and Futuregen Industrial Alliance, Inc.*, PCB 14-134, 2014 Ill. ENV. LEXIS 489, (Nov. 6, 2014), Sierra Club moved to strike the Illinois EPA’s Responsiveness Summary that was attached to Respondents’ motion for summary judgment, claiming that it was hearsay. *Id.* at 4. Agreeing with the Respondents, the Board rejected Sierra Club’s argument and held that the

Responsiveness Summary met the public records exception to the rule against hearsay because the document was “prepared in the course of Illinois EPA required duties.” *Id* at 5.

Here, MWG Exhibit 649 is clearly a public record and the Hearing Officer admitted it as such. As is shown on its face, MWG Exhibit 649 is Illinois EPA Exhibit No. 64 that Illinois EPA filed on June 26, 2015 as part of the Illinois EPA permit record in *Sierra Club et al. v. Illinois EPA and Midwest Generation, LLC*, PCB15-189. *See* Exhibit 1. As stated on the first page of Exhibit 1, the Illinois EPA prepared the permit record as part of Illinois EPA’s duties under 35 Ill. Adm. Code 105.212 and 105.116. Further, at the hearing, Ms. Race testified that MWG Exhibit 649 was an exhibit in the permit record for the Waukegan permit hearings, she received it from Illinois EPA at about the time of the Waukegan permit hearings, and it was available through FOIA. PCB13-15 January 30, 2018 Hearing Transcript, p. 175:20-176:18. After laying the foundation that MWG Exhibit 649 was a public record, the Hearing Officer admitted the exhibit. PCB13-15 January 30, 2018 Hearing Transcript, p. 176:19-177:1.

Complainants were fully aware of the source of MWG Exhibit 649 because it is clearly labelled as an IEPA exhibit and MWG described it as such before the hearing in its Request for Pre-hearing Agreement to Admit Exhibits. *See* Ex. 2. Considering that Sierra Club was the complainant in PCB15-189, they likely have a copy of the exhibit in their file. If Complainants actually doubted the authenticity of the exhibit, then as the Board stated in *Castellari v. Prior*, Sierra Club could have produced their own copy of the exhibit to challenge the MWG’s copy. *Castellari v. Prior*, at 15.

**C. Supplement to Section D – Conclusion**

a. The Board Should Sanction Complainants for Causing MWG Undue Costs

Complainants’ Appeal of the admission of MWG Exhibit 649 is meritless because the appeal claims that MWG Exhibit 649 is not admissible as a business record. Yet, as is evident on the

exhibit and in transcript, MWG Exhibit 649 was admitted as a *public record*. Complainants' appeal entirely ignores the Hearing Officer's basis for admitting the document. Complainants fail to address the fact that emails by Illinois EPA personnel, in a document filed by and relied on by Illinois EPA and included in a public record before the Board, are inherently reliable as public records.

Complainants' Appeal ignores the actual basis for the admission of the Exhibit 649 as a public record, ignores the fact that Illinois EPA filed the document with the Board in another matter, and ignores the Board's previous decisions for almost identical types of Illinois EPA documents. Complainants fail to even identify for the Board the true nature of the exhibit as previously filed ("**IEPA EXHIBIT No. 64**") and fail to inform the Board of relevant case law when Sierra Club was a party to that case. *Sierra Club v. Ameren Energy Medina Valley Cogen, LLC and Futuregen Industrial Alliance, Inc.*, PCB 14-134. The logical conclusion is that Complainants filed their Appeal in order to cause MWG to waste time and spend unnecessary costs.

b. Requested Sanctions

Under the Board Rules, sanctions may include barring the offending person from filing pleadings or documents relating to issues to which the failure relates, and may also include striking any portion of the offending party's pleadings. 35 Ill. Adm. Code 100.800(b)(3) and (5). As is evident in Complainants' meritless appeal of the admission of MWG Exhibit 649, Complainants are repeatedly filing frivolous motions for the sole purpose of harassing MWG and cause it undue costs. Complainants' Appeal supports MWG's request that the Board overrule the Hearing Officer's exclusion of MWG Exhibit 662, the 2014 Team IL – Beyond Coal Campaign Plan.

MWG does not file its sanctions request lightly and is fully aware of the gravity of the request. As stated in MWG's Motion for Sanctions, without sanctions in cases like this one, parties appearing before the Board are encouraged to bypass applicable rules, conduct inefficient

proceedings, and file motions that have no basis in fact or law. MWG requests that the Board grant MWG's Motion for Sanctions and issue an order with the relief requested in its Motion for Sanctions.

Respectfully submitted,  
Midwest Generation, LLC

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

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# **EXHIBIT 1**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

SIERRA CLUB, NATURAL RESOURCES, )  
RESOURCES DEFENSE COUNCIL, )  
PRAIRIE RIVERS NETWORK, and )  
ENVIRONMENTAL LAW & POLICY )  
CENTER )

Petitioner, )

v. )

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY )

Respondent. )

**RECEIVED**  
CLERK'S OFFICE

JUN 26 2015

STATE OF ILLINOIS  
Pollution Control Board

PCB No. 2015-189  
(Third Party NPDES Appeal)



**ORIGINAL**

**NOTICE OF FILING**

PLEASE TAKE NOTICE that on Friday, the 26th day of June 2015, I filed with the Clerk of the Illinois Pollution Control Board the Administrative Record containing pages (0001-1114) and Index to the Administrative Record on behalf of Respondent, Illinois Environmental Protection Agency. The Administrative Record and Index are attached hereto and hereby served upon persons listed in the Service List.

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

By: 

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Robert W. Petti  
Assistant Attorneys General  
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Dated: June 26, 2015

RECEIVED  
CLERK'S OFFICE

JUN 26 2015

STATE OF ILLINOIS  
Pollution Control Board

SERVICE LIST

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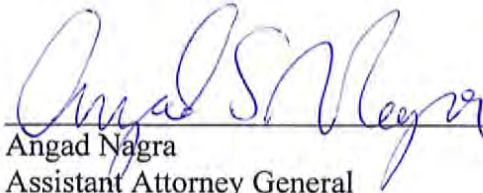
RECEIVED  
CLERK'S OFFICE

JUN 26 2015

STATE OF ILLINOIS  
Pollution Control Board

**CERTIFICATE OF SERVICE**

I, Angad Nagra, an Assistant Attorney General, certify that on the 26<sup>th</sup> day of June, 2015, I caused to be served by U.S. Mail, the foregoing Notice of Filing and Administrative Record, to the parties listed above, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



Angad Nagra  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB, NATURAL )  
 RESOURCES DEFENSE COUNCIL, )  
 PRAIRIE RIVERS NETWORK, and )  
 ENVIRONMENTAL LAW & POLICY )  
 CENTER, )  
 )  
 Petitions, )  
 )  
 v. )  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY and )  
 MIDWEST GENERATION, LLC )  
 )  
 Respondents. )

PCB 15-189  
(Third Party NPDES Appeal)

RECEIVED  
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 JUN 26 2015  
 STATE OF ILLINOIS  
 Pollution Control Board

 ORIGINAL

**RECORD**

Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), in accordance with the procedural rules of the Illinois Pollution Control Board ("Illinois PCB") as set forth in 35 Ill. Adm. Code 105.212 and 105.116, files as its Record in this cause the Illinois EPA's record of National Pollutant Discharge System ("NPDES") Permit number IL0002259, issued to Midwest Generation, LLC ("Midwest Generation") on March 25, 2015, which is attached and consists of the following documents:

Permit File Documents

1. IN THE MATTER OF: PROPOSED DETERMINATION OF THERMAL STANDARDS FOR ZION AND WAUKEGAN GENERATING STATIONS (PCB 77-82, August 3, 1978). (pp. 1-3)
2. Letter dated October 18, 2004, from Fred McCluskey, Vice President Technical Services, Midwest Generation, to Blaine Kinsley, Illinois EPA, Bureau of Water, Industrial Permits. (pp. 4-5)
3. Letter dated November 22, 2004, from Julia Wozniak, Senior Biologist, Midwest Generation, to Alan Keller, Manager, Bureau of Water, Permit Section. (pp. 6-24)

4. Letter dated January 21, 2005, from Maria Race, Senior Environmental Engineer, Midwest Generation, to Division of Water Pollution Control ("DWPC"), Permit Section, with attached Forms 1 and 2C of NPDES permit renewal application. (pp. 25-110)
5. Phase II Existing Facility Intake Performance Standards Proposal for Information Collection pages 1, 20, and Appendix A Figure 1, June 2005. (pp. 109-111)
6. Email on August 8, 2006, from Julia Wozniak to Jaime Rabins, DWPC, Permit Section. (pp. 112-113)
7. Engineer review notes dated August 16, 2006, prepared by Jaime Rabins. (pp. 114-119)
8. Facility review dated January 19, 2007, dated January 19, 2007. (pp. 120-125)
9. Memorandum and letters dated February 23, 2007, from Blaine Kinsley to Manager, DWPC/Field Operations Section ("FOS"); Army Corps of Engineers, Chicago District; Midwest Generation; and U.S. EPA Region V, with attached draft permit and public notice/fact sheet. (pp. 126-143)
10. Memorandum dated March 20, 2007, from Benjamin Grumbles, Assistant Administrator, U.S. EPA, to Regional Administrators. (p. 144)
11. Emails on April 9, 2007, between Maria Race and Jaime Rabins. (pp. 145-146)
12. Email on April 18, 2007, from Maria Race to Jaime Rabins. (p. 147)
13. Emails on May 7, 2007, from Julia Wozniak to Blaine Kinsley and Jaime Rabins, with attached March 20, 2007 memorandum. (pp. 148-151)
14. Letter dated January 3, 2008, from Maria Race to Jaime Rabins. (p. 152)
15. Letter dated September 2, 2009, from Maria Race, stating address change. (p. 153)
16. Emails on September 2 and 24, 2009, between Maria Race and Jaime Rabins, and on September 29, 2009, between Gina Hamlin and Jaime Rabins. (pp. 154-155)
17. Address correction form received on August 27, 2010. (p. 156)
18. Letter dated September 29, 2011, from Robert Mosher, BOW, Water Quality Standards, to Amy Hanrahan, Midwest Generation. (p. 157)
19. Email dated October 21, 2011, from Darin LeCrone, Manager, Industrial Unity, DWPC, to Leslie Lowry, Jaime Rabins, Shu-Mei Tsai, Brian Cox, and Mark Liska, all DWPC/Permit Section. (p. 158)
20. Email on November 9, 2011, from Jaime Rabins to Amy Hanrahan. (p. 159)

21. Letter dated November 17, 2011, from Amy Hanrahan to Robert Mosher. (p. 160)
22. 15-day notice review notes dated November 23, 2011, prepared by Jaime Rabins. (pp. 161-162)
23. Public notice material for December 2, 2011 posting. (pp. 163-167)
24. Letters dated November 30, 2011, from Darin LeCrone to Municipal Clerk, Waukegan, Illinois; Midwest Generation; and Edward Karecki, U.S. Fish & Wildlife Service, Chicago Field Office. (pp. 168-191)
25. E-mails between Jaime Rabins and Ann Alexander, Senior Attorney, Midwest Program, Natural Resources Defense Council, and Amy Hanrahan, with attached letter dated December 27, 2011, from Ann Alexander to Jaime Rabins. (pp. 192-196)
26. Email on December 28, 2011, from Darin LeCrone to Alan Keller. (pp. 197-198)
27. Letter dated January 12, 2012, from Amy Hanrahan to Darin LeCrone, with attachments. (pp. 199-238)
28. Emails on July 13, 2012, from Susan Franzetti of Nijman Franzetti LLP to Deborah Williams, Illinois EPA, Division of Legal Counsel, and July 17, 2012, from Deborah Williams to Jaime Rabins, with attached letter dated June 14, 1974, from Commonwealth Edison to A. H. Manzardo, Chief, Permit Branch, Region V, U.S. EPA. (pp. 239-244)
29. Draft Special Condition language, w/o email on August 14, 2012, from Deborah Williams to Alan Keller, Sanjay Sofat, Darin LeCrone, Jaime Rabins, and Marcia Willhite (pp. 245-247)
30. Letters dated February 6, 2013, from Darin LeCrone to Edward Karecki, Municipal Clerk of Waukegan, Illinois, and Midwest Generation, with attached draft permit and public notice/fact sheet. (pp. 248-270)
31. 30-day notice review notes dated October 5, 2013, prepared by Jaime Rabins. (pp. 271-275)
32. Letter dated November 2, 2012, from Julia Wozniak to Darin LeCrone, with attachments. (276-361)
33. 15-day notice review notes dated November 8, 2012, prepared by Jaime Rabins. (pp. 362-364)
34. Emails on February 1, 2013, among Mark Joseph, Darin LeCrone and Jaime Rabins. (pp. 365-366)

35. Public notice material for February 8, 2013 posting. (pp. 367-370)
36. Letter dated March 11, 2013, from Julia Wozniak to Darin LeCrone, with attachments. (pp. 371-470)
37. Email on March 11, 2013, from Erin Morse, Legal Assistant, Environmental Law and Policy Center, to Jaime Rabins, with attachments. (pp. 471-507)
38. Emails on June 25, 2013, from Charles Parnell, Vice President, Public Affairs, Midwest Generation, to Ken Page, Environmental Justice Office and Barb Lieberoff, Community Relations, Illinois EPA, with attachments, and forwarded by Ken Page to Jaime Rabins, Sanjay Sofat, Alan Keller, and Darin LeCrone. (pp. 508-510)
39. Letter dated July 22, 2013, from Julia Wozniak to Jaime Rabins, with attachment. (pp. 511-515)
40. Emails on July 10, 19 and 23, 2013, between Jaime Rabins and Julia Wozniak. (pp. 516-517)
41. Email on July 24, 2013, from Maria Race to Jaime Rabins, with attachments. (pp. 518-575)
42. Emails on July 25, 2013, between Roy Smogor, DWPC, and Jaime Rabins, and among Jaime Rabins, Roy Smogor, and Scott Twait, Water Quality Standards, DWPC. (pp. 576-577)
43. Email on July 26, 2013, from Julia Wozniak to Jaime Rabins. (pp. 578-580)
44. Announcement for NPDES hearing on July 31, 2013. (p. 581)
45. Memorandum dated November 20, 2013, from Scott Twait to Jaime Rabins. (pp. 582-583)
46. Emails on May 16 and 19, 2014, between Jaime Rabins and Julia Wozniak. (pp. 584-586)
47. Address correction form dated June 23, 2014. (pp. 587-588)
48. Emails on July 19 and 22, 2011, January 29 and 30, 2013, and May 16, 2014, between Jaime Rabins and Brian Koch, on May 19, 2014 from Brian Koch to Scott Twait, and on May 20, 2014 from Scott Twait to Jaime Rabins. (pp. 589-591)
49. Emails on August 6 and 9, 2014, between Jaime Rabins and Julia Wozniak. (pp. 592-593)
50. Email on August 18, 2014, from Darin LeCrone to Sean Ramach and Patrick Kuefler, U.S. EPA, with attached proposed NPDES permit. (pp. 594-606)



51. Emails on August 26, 2014, between Jaime Rabins and Julia Wozniak. (p. 607)
52. Emails on August 28, 2014, between Jaime Rabins and Julia Wozniak. (pp. 608-610)
53. Emails on August 28 and 29, and September 3, 2014, between Jaime Rabins and Julia Wozniak. (pp. 611-614)
54. Emails on September 3, 2014, between Jaime Rabins and Julia Wozniak. (p. 615)
55. Emails on September 5, 8 and 9, 2014, between Jaime Rabins and Julia Wozniak. (pp. 616-617)
56. Emails on September 23, 2014, between Jaime Rabins and Scott Twait. (p. 618)
57. Emails on September 26, 2014, between Jaime Rabins and Julia Wozniak. (p. 619)
58. Letter dated November 25, 2014, from Kevin Pierard, Chief, NPDES Programs Branch, U.S. EPA, Region 5, to Alan Keller. (pp. 620-623)
59. Emails on December 2, 2014, from Darin LeCrone to Jaime Rabins, from Jaime Rabins to Darin LeCrone and Scott Twait, and from Scott Twait to Jaime Rabins and Darin LeCrone, and on December 3, 2014, from Darin LeCrone to Scott Twait and Jaime Rabins and from Scott Twait to Darin LeCrone and Jaime Rabins. (pp. 624-626)
60. Emails on December 3, 2014, from Darin LeCrone to Scott Twait and Jaime Rabins, from Jaime Rabins to Darin LeCrone, and from Scott Twait to Jaime Rabins and Darin LeCrone. (pp. 627-630)
61. Emails on December 2, 3 and 5, 2014, between Jaime Rabins and Julia Wozniak. (pp. 631-633)
62. 30-day notice review notes dated December 9, 2014, prepared by Jaime Rabins. (pp. 634-638)
63. Fact Sheet: Final Rule on Coal Combustion Residuals Generated by Electric Utilities, December 2014. (pp. 639-642)
64. Emails on January 6, 2015, between Jaime Rabins and Lynn Dunaway, Groundwater Section. (pp. 643-644)
65. Email on January 27, 2015, from Julia Wozniak to Roger Callaway, with attachment. (pp. 645-654)
66. Engineer note dated February 25, 2015, prepared by Jaime Rabins. (p. 655)

67. Responsiveness Summary, March 25, 2015. (pp. 656-682)
68. Letter dated March 25, 2015, from Alan Keller to Midwest Generation. (p. 683)
69. Letter dated March 25, 2015, from Alan Keller to U.S. EPA Region 5. (p. 684)
70. Letter dated March 25, 2015, from Alan Keller to Midwest Generation, with attached renewed NPDES Permit No. IL0002259. (pp. 685-703)

Hearing File Documents

71. Transcript of informational public hearing held July 31, 2013. (pp. 704-872)
72. Hearing exhibits list, with attached exhibits. (pp. 873-1104)

Respectfully Submitted,

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

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Dated: June 26, 2015

## **EXHIBIT 2**

**BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD**

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

**MWG’S REQUEST FOR COMPLAINANTS’ PRE-HEARING AGREEMENT TO  
ADMIT WITNESS-SPECIFIC EXHIBITS<sup>1</sup>**

**RICHARD GNAT**

	DOCUMENT NO.	DESCRIPTION	WITNESS	COMP. AGREE TO ADMIT
1.	MWG13-15 12809-12820	KPRG and Associates, Inc. 2004, Waukegan	Gnat	Yes
2.	MWG13-15 18823-19015	KPRG Joliet 29 Ash removal report	Gnat	Yes
3.	MWG13-15_19430-19441	KPRG, Joliet #29 Former Ash Burial Area Runoff Erosion Repair Documentation, (Sept. 26, 2009)	Gnat	Yes
4.	MWG13-15_19461- 19468	KPRG, Joliet #29 Former Ash Burial Area Runoff Erosion Repair Documentation, (Sept. 26, 2010)	Gnat	Yes
5.	MWG13-15_19474-19481	KPRG, Joliet #29 Former Ash Burial Area Runoff Erosion Repair, (Sept. 26, 2012)	Gnat	Yes

<sup>1</sup> This list contains exhibits that Complainants previously agreed are authentic. See Complainants’ Response to Midwest Generation LLC’s Witness Specific Exhibit List, Oct. 18, 2017, p.4. Thus, it is not a complete list of MWG’s proposed exhibits and MWG reserves the right to add exhibits as the hearing proceeds.



	<b>DOCUMENT NO.</b>	<b>DESCRIPTION</b>	<b>WITNESS</b>	<b>COMP. AGREE TO ADMIT</b>
6.	MWG13-15 19483-19483	KPRG, Joliet #29 Former Ash Burial Area Runoff Inspection 2013, (Aug. 21, 2013)	Gnat	Yes
7.	MWG13-15 43868-43869	Richard Gnat CV	Gnat	Yes
8.	MWG13-15 44147-44147	Letter from Richard Gnat to Peter O'Day, Ash Burial Runoff Inspection (Aug. 28, 2014)	Gnat	Yes
9.	MWG13-15_44148-44152	Letter from Richard Gnat to James DiCola, Erosion Repair Documentation (Sept. 22, 2011)	Gnat	Yes
10.	MWG13-15 48644	Aerial of Waukegan Station	Gnat	No
11.	Demonstrative	Poz o pac core sample, taken by R Gnat, for Will County	Gnat	No
12.	Demonstrative	Groundwater summary results table updated to 2017, prepared by R Gnat	Gnat	Cannot determine (See Note)



	<b>DOCUMENT NO.</b>	<b>DESCRIPTION</b>	<b>WITNESS</b>	<b>COMP. AGREE TO ADMIT</b>
11.	MWG13-15_30429-30432	Powerton Secondary Ash Basin Construction Permit	Kelly	Yes
12.	MWG13-15_33998-34157	Construction documentation for the Ash Surge basin at Powerton	Kelly	Yes
13.	MWG13-15_34158-34267	Construction documentation and for the Secondary Ash basin, Powerton	Kelly	Yes
14.	MWG13-15_44124	Mark Kelly CV	Kelly	Yes
15.	MWG13-15_49099-49256	Construction documentation for the Metal Cleaning Basin and Bypass Basin	Kelly	Yes
16.	MWG13-15_50093-50094	July 30, 2015 Illinois EPA letter to Powerton regarding CCA modification	Kelly	Yes

**BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD**

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

**FRED VEENBAAS**

	<b>DOCUMENT NO.</b>	<b>DESCRIPTION</b>	<b>WITNESS</b>	<b>COMP. AGREE TO ADMIT</b>
1.	MWG13-15 44629-44630	Fred Veenbaas CV	Veenbaas	Yes
2.	MWG13-15_49268-49269	Waukegan construction documentation, 1977	Veenbaas	No
3.	Demonstrative	Sample of Bottom ash, taken by F Veenbaas	Veenbaas	Cannot determine (See Note)

**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>Complainants,</b>	)	<b>PCB 2013-015</b>
	)	<b>(Enforcement – Water)</b>
<b>v.</b>	)	
	)	
<b>MIDWEST GENERATION, LLC,</b>	)	
	)	
<b>Respondent.</b>	)	

**MARIA RACE**

	DOCUMENT NO.	DESCRIPTION	WITNESS	COMP. AGREE TO ADMIT
1.	MWG13-15_36-65	LaFarge hauling information	Race	No
2.	MWG13-15_142	Chart of Ash Pond relining	Race	No
3.	MWG13-15_201-209	Caterpillar request for an ELUC at Joliet 29	Race	No
4.	MWG13-15_293-305	July 15, 2009 Letter from Midwest Generation to Illinois Environmental Protection Agency (“Illinois EPA”)	Race	Yes
5.	MWG13-15_442	Joliet 29 Supplemental Response to the Violation Notice	Race	Yes
6.	MWG13-15_452-491	Waukegan Supplemental Response to the Violation Notice	Race	Yes
7.	MWG13-15_492-505	Powerton Supplemental Response to the Violation Notice	Race	Yes
8.	MWG13-15_506-521	Will County Supplemental Response to the Violation Notice	Race	Yes
9.	MWG13-15_552-558	Compliance Commitment Agreement (“CCA”) acceptance for Powerton	Race	Yes
10.	MWG13-15_559-564	The CCA acceptance for Will County	Race	Yes
11.	MWG13-15_565-570	The CCA acceptance for Waukegan	Race	Yes

	<b>DOCUMENT NO.</b>	<b>DESCRIPTION</b>	<b>WITNESS</b>	<b>COMP. AGREE TO ADMIT</b>
12.	MWG13-15_571-576	The CCA acceptance for Joliet 29	Race	Yes
13.	MWG13-15_611-621	The Will County ELUC application	Race	Yes
14.	MWG13-15_791	Illinois EPA's approval of Will County ELUC	Race	Yes
15.	MWG13-15_795-796	Will County Compliance Statement	Race	Yes
16.	MWG13-15_797-798	Powerton Compliance Statement	Race	Yes
17.	MWG13-15_801-802	Joliet 29 Compliance Statement	Race	Yes
18.	MWG13-15_805-806	Waukegan Compliance Statement	Race	Yes
19.	MWG13-15_813	Illinois EPA approval of the Will County Hydrogeologic Plan	Race	Yes
20.	MWG13-15_814	Illinois EPA approval of the Joliet 29 Hydrogeologic Plan	Race	Yes
21.	MWG13-15_815	Illinois EPA approval of the Waukegan Hydrogeologic Plan	Race	Yes
22.	MWG13-15_816-817	Illinois EPA approval of the Powerton Hydrogeologic Plan	Race	Yes
23.	MWG13-15_11302-11492	2004 Andrews Environmental Report	Race	Yes
24.	MWG13-15_12713 to 12738	Tannery ELUC at Waukegan	Race	Yes
25.	MWG13-15_16564	Illinois EPA's approval of the Will County GMZ	Race	Yes
26.	MWG13-15_18053-18054	Joliet 29 Construction Permit for Ponds 1 and 2	Race	Yes
27.	MWG13-15_18115 to 18131	Commonwealth Edison Company Joliet 29 Construction Documentation, 1978	Race	No
28.	MWG13-15_18133 to 18189	Joliet 29, Pond 1 and 2 Construction Permit application	Race	Yes
29.	MWG13-15_23618-23629	NRT, Technical Memorandum No. 3, Impoundment Liner Upgrade Priority, and Liner System Options and Cost (Oct. 13, 2006).	Race	Yes
30.	MWG13-15_23630-23641	NRT Nov. 22, 2006 impoundment assessment	Race	Yes
31.	MWG13-15_23856-23866	Powerton 2013 ELUC	Race	Yes

	<b>DOCUMENT NO.</b>	<b>DESCRIPTION</b>	<b>WITNESS</b>	<b>COMP. AGREE TO ADMIT</b>
32.	MWG13-15_23974-75	Illinois EPA's approval for the Powerton ELUC	Race	Yes
33.	MWG13-15_23977	Illinois EPA's approval of the GMZ for Powerton	Race	Yes
34.	MWG13-15 24052	Illinois EPA's approval of Waukegan's ELUC	Race	Yes
35.	MWG13-15_29936, 29975 - 29976	July 13, 2013 Waukegan NPDES permit filed testimony (excerpt)	Race	Yes
36.	MWG13-15_30588-30591	Will County Pond 2S Permit for Relining, 2013	Race	Yes
37.	MWG13-15_33867-33997	Construction Documentation for Pond 3 at Joliet 29	Race	Yes
38.	MWG13-15_39445-39461	Powerton Hydrogeologic Assessment Plan	Race	Yes
39.	MWG13-15_39462-39478	Waukegan Hydrogeologic Assessment Plan	Race	Yes
40.	MWG13-15_39479-39495	Will County Hydrogeologic Assessment Plan	Race	Yes
41.	MWG13-15_39496-39512	Joliet 29 Hydrogeologic Assessment Plan	Race	Yes
42.	MWG13-15_43863-43864	Maria Race CV	Race	Yes
43.	MWG13-15 44275 - MWG13-15_44278	Joliet 29 Ash Pond 3 Construction Permit	Race	Yes
44.	MWG13-15_46211- 46594	Retec Remediation Objectives Report for the Former Griess-Pfleger Tannery Site, 2002 Waukegan	Race	No
45.	MWG13-15_46595 – 46711	Phase II Remedial Investigation Report at the Former Griess-Pfleger Tannery Site	Race	No
46.	MWG13-15_46712- 46926	Appendices to the Tannery Phase II	Race	No
47.	MWG13-15_46927 – 47075	Appendices to the Tannery Phase II	Race	No
48.	MWG13-15_47076 - 47291	Remedial Investigation Report – Phase I for the Former Griess-Pfleger Tannery Site, V. 1 of 3	Race	No
49.	MWG13-15 47292 – 47492	Remedial Investigation Report – Phase I for the Former Griess-Pfleger Tannery Site, V. 2 of 3	Race	No

	<b>DOCUMENT NO.</b>	<b>DESCRIPTION</b>	<b>WITNESS</b>	<b>COMP. AGREE TO ADMIT</b>
50.	MWG13-15_47493- 47711	Remedial Investigation Report – Phase I for the Former Griess-Pfleger Tannery Site, V. 3 of 3	Race	No
51.	MWG13-15_47712- 48402	Remedial Investigation Report for the Former Griess-Pfleger Tannery Site, Data	Race	No
52.	MWG13-15_48403-48438	Survey maps of the Stations	Race	No
53.	MWG13-15_49257-49267	Will County soil removal records	Race	No
54.	MWG13-15_49293-49298	September 14, 2010 NRT email and supporting calculations	Race	Yes
55.	MWG13-15_49362- 49507	Joliet 29 Pond 1 and 2 Construction documentation	Race	Yes
56.	MWG13-15_49742-49753	Joliet 29 Pond 3 effluent results	Race	No
57.	MWG13-15_50550	2015 Illinois EPA email between Lynn Dunaway and Jaime Rabins, filed with IPCB as Illinois EPA Exhibit 64 in <i>Sierra Club et al. v. Illinois EPA and Midwest Generation, LLC</i> , PCB15-189, June 26, 2015	Race	No
58.	MWG13-15_57517 – 57533	Joliet 29 boring logs, ENSR Phase II	Race	No
59.		MWG's NPDES permit IL0002208	Race	No
60.		MWG's NPDES permit IL0002259	Race	No
61.		MWG's NPDES permit IL0002232	Race	No
62.		MWG's NPDES permit IL0064254	Race	No