

ILLINOIS POLLUTION CONTROL BOARD
July 18, 2017

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.)

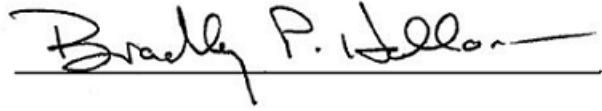
HEARING OFFICER ORDER

On May 22, 2017, Midwest Generation, LLC (Midwest Gen) filed a motion *in limine* seeking to limit expert testimony at hearing (Mot.). Midwest Gen requested that the Hearing Officer limit expert testimony to only the information in the expert reports submitted and the expert depositions taken during discovery. That is, Midwest Gen asks the Hearing Officer to prohibit experts' testimony concerning discovery documents developed after an expert's deposition. On June 8, 2017, Sierra Club, Environmental Law & Policy Center, Prairie Rivers Network, and Citizens Against Ruining the Environment (collectively, Environmental Groups) submitted a response opposing the motion (Resp.).

The Board's procedural rules are silent on this issue, so Illinois Supreme Court Rules 213(f) and 213(g) guide the Hearing Officer's ruling. *See* 35 Ill. Adm. Code 101.100(b). Rule 213(f) requires a party, upon written interrogatory, to identify a controlled expert witness's opinions and the opinions' bases. Rule 213(g) then limits the expert's testimony at trial to the information disclosed in the interrogatory's answer. Though Rule 213 does not directly apply to Board procedures, its intent still provides general guidance: the rule is intended "to prevent unfair surprise at trial, without creating an undue burden on the parties before trial." Committee Comment to Ill. Sup. Ct. R. 213(f).

Rule 213 does not guide the Hearing Officer to limit expert testimony to exchanged reports and deposition testimony, as Midwest Gen requests. *See* Mot. at ¶ 4. The Environmental Groups argue that discovery produced after the experts' depositions may be used to expand upon experts' already-stated opinions. Resp. at 4. Although the experts have not stated exactly how post-deposition discovery informs their opinions, it would be unduly restrictive to completely bar experts from testifying about these documents. The testimony at hearing from Environmental Groups' experts may rely on discovery documents produced after those experts' depositions in order to elaborate previously disclosed opinions. The motion is denied.

IT IS SO ORDERED.

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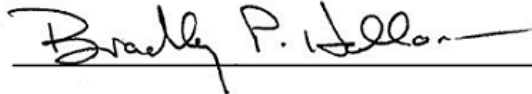
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed on July 18, 2017, 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 July 18, 2017:

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

Bradley P. Halloran
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