

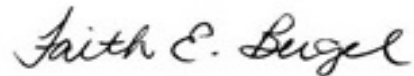
**BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS**

SIERRA CLUB, PRAIRIE RIVERS	)	
NETWORK, and NATIONAL	)	
ASSOCIATION FOR THE	)	
ADVANCEMENT OF COLORED PEOPLE,	)	
	)	
Complainants,	)	
	)	PCB 18-11
v.	)	(Enforcement – Water)
	)	
CITY WATER, LIGHT and POWER,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the attached **COMPLAINANTS' AMENDED MOTION FOR EXPERT WITNESS TO TESTIFY REMOTELY**, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,



Faith E. Bugel  
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*Attorney for Sierra Club*

Dated: January 26, 2021

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

SIERRA CLUB, PRAIRIE RIVERS )  
NETWORK, and NATIONAL )  
ASSOCIATION FOR THE )  
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Complainants, )  
 ) PCB 18-11  
v. ) (Enforcement – Water)  
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CITY WATER, LIGHT and POWER, )  
 )  
Respondent. )

**COMPLAINANTS' AMENDED MOTION FOR EXPERT  
WITNESS TO TESTIFY REMOTELY**

Pursuant to 35 Ill. Admin. Code. §101.500, Complainants respectfully amend  
COMPLAINANTS' MOTION FOR HEARING TO BE HELD BY VIDEOCONFERENCE  
AND EXPERT WITNESS TO TESTIFY REMOTELY ("ORIGINAL MOTION"). The  
Original Motion requested that the Board order that the forthcoming hearing in this matter take  
place by videoconference and allow case participants and witnesses, including expert witnesses,  
to attend and testify remotely (by Zoom, Webex, or a similar videoconference platform). In order  
to resolve the only area of disagreement between Complainants and Respondent, Complainants  
hereby amend their motion to solely request that their expert witness be permitted to attend the  
hearing remotely and to provide testimony remotely. To be clear, Complainants no longer  
request that the hearing be held remotely, and Complainants shall ensure that all persons  
representing or appearing on behalf of Complainants (including parties and attorneys) shall  
appear in person with the sole exception of Complainants' expert witness, Mark Huston.  
Pursuant to Section 101.500, and at the direction of Hearing Officer Carol Webb, this motion is

directed to the Board. 35 Ill. Admin. Code. §101.500; *Sierra Club v. City Water, Light and Power*, PCB 18-11, Hearing Officer Order (Dec. 17, 2021). In support of this motion,

Complainants state as follows:

1. Rule 101.600(b) provides

Any Board hearing may be held by videoconference. Upon its own motion or the motion of any party, the Board or the hearing officer may order that a hearing be held by videoconference. In deciding whether a hearing should be held by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness.

35 Ill. Admin. Code. §101.600(b). As the discussion below indicates, expert witness, Mark Hutson's availability weighs in favor allowing Mr. Hutson to testify remotely.

2. The Board Rules are silent as to whether witnesses may offer testimony in hearings remotely. The Board Rules state that the "Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance when the Board's procedural rules are silent." 35 Ill. Admin. Code §101.100(b). Illinois Supreme Court Rule 241 provides that "[t]he court may, upon request or on its own order, for good cause shown and upon appropriate safeguards, allow a case participant to testify or otherwise participate in a civil trial or evidentiary hearing by video conferencing from a remote location." This rule supports allowing Complainants' expert witness to attend remotely.

3. The specific health risks to Complainants' expert witness, Mark Hutson, posed by Covid-19 by an in-person hearing weigh in favor of allowing him to appear and testify remotely.

4. Governor Pritzker's most recent Executive Order relating to Covid-19 was issued on January 13, 2022. That Executive Order finds that "since early March 2020, Illinois has faced a pandemic that has caused extraordinary sickness and loss of life." It goes on to find that "Illinois continues to respond to the public health disaster caused by Coronavirus Disease 2019 (COVID-

19), a novel severe acute respiratory illness that spreads rapidly through respiratory transmissions.”

5. The Governor’s January 13, 2022, Executive Order extended more than twenty of his prior executive orders pertaining to COVID-19 to February 5, 2022 at the earliest, due to the ongoing pandemic.<sup>1</sup> In large part, these prior executive orders were extended due to the Delta and Omicron variants. *Id.* Gov. Pritzker’s Executive Order 2021-32 found in December that “the Omicron variant is more transmissible than prior variants and has led to significant increases in the number of COVID-19 cases.” *Id.*

6. One of the orders extended was Executive Order 2021-12. *Id.* Executive Order 2021-12 acknowledges the risk faced by older adults and encourages older adults (along with unvaccinated individuals and those with higher-risk health conditions) to “minimize in-person contact with others to the extent possible.”<sup>2</sup> Complainants’ expert witness is an older adult over the age of 65. *See* ORIGINAL MOT., Mark Hutson Affidavit, Att. A. As a result, Complainants’ expert witness is an individual who should “minimize in-person contact with others” pursuant to Executive Order 2021-12. Further, Mr. Hutson resides in Colorado, so attending this hearing in person would require travel by plane and all the in-person contact that results from interstate travel (e.g., presence in airports and hotels, use of ride sharing services). *See* ORIGINAL MOT., Mark Hutson Affidavit, Att. A. The Board can minimize the in-person contact required of Mr. Hutson by allowing him to attend and testify at the hearing remotely. Further, cost-effectiveness and efficiency also weigh in favor of allowing Mr. Hutson to attend the hearing remotely because

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<sup>1</sup> <https://www.illinois.gov/government/executive-orders/executive-order.executive-order-number-32.2021.html>.

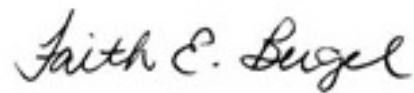
<sup>2</sup> <https://www.illinois.gov/government/executive-orders/executive-order.executive-order-number-12.2021.html>

the time and cost of interstate travel are avoided.

WHEREFORE, Complainants amend their earlier motion and respectfully request that the Board order that Mr. Hutson may attend and testify remotely at the forthcoming liability hearing in this matter.

Dated: January 26, 2022

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned, Faith E. Bugel, an attorney, certifies that I have served electronically upon the Clerk and by email upon the individuals named on the attached Service List a true and correct copy of **COMPLAINANTS' AMENDED MOTION FOR EXPERT WITNESS TO TESTIFY REMOTELY** before 5 p.m. Central Time on January 26, 2022 to the email addresses of the parties on the attached Service List. The entire filing package, including exhibits, is 6 pages.

Respectfully,

/s/ Faith E. Bugel  
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