

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

SIERRA CLUB,  
ENVIRONMENTAL LAW &  
POLICY CENTER; PRAIRIE  
RIVERS NETWORK and  
CITIZENS AGAINST RUINING      PCB No. 2013-015  
THE ENVIRONMENT,

Complainants,

vs.

MIDWEST GENERATION LLC,

Respondent.

TRANSCRIPT OF PROCEEDINGS at the  
hearing of the above-entitled cause, held at  
100 West Randolph Street, Chicago, Illinois on  
January 30, 2018, at the hour of 9:00 a.m.

MR. BRADLEY P. HALLORAN,

Hearing Officer

REPORTED BY: CHERYL L. SANDECKI, CSR, RPR  
LICENSE NO.: 084-03710

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1 THE HEARING OFFICER: Good morning, everyone.  
2 My name is Brad Halloran, the hearing officer  
3 with the Illinois Pollution Control Board. I'm  
4 also assigned to this matter entitled Sierra  
5 Club; Environmental Law and Policy Center;  
6 Prairie Rivers Network; Citizens Against Ruining  
7 the Environment are the complainants versus  
8 Midwest Generation LLC, the respondent. This  
9 docket is PCB 13-15. It's a citizen enforcement  
10 involving water.

11 Today is January 30, 2018. We were  
12 continuing this on record from yesterday,  
13 January 29, 2018. And I believe Ms. Race is  
14 still on the stand, and I think Ms. Franzetti is  
15 still directing her.

16 Before we begin, I would ask the court  
17 reporter to swear the witness in.

18 (Witness administered an oath.)

19 MARIA RACE,  
20 having been first administered an oath, was  
21 examined and testified as follows:

22 DIRECT EXAMINATION (RESUMED)

23 BY MS. FRANZETTI:

24 Q. Good morning, Ms. Race.

1 A. Good morning.

2 Q. We were talking about Joliet 29 station  
3 yesterday and we are going to continue to talk  
4 about it. I ask that the aerial be brought up  
5 of Joliet 29. And I'm going to ask you about  
6 the industrial facility that is -- was adjacent  
7 to Joliet 29 immediately to the west.

8 Do you recall -- are you familiar with  
9 the existence of that industrial property?

10 A. Yes, I am. It was formerly a  
11 Caterpillar property and then I believe has been  
12 made into some kind of an industrial group by  
13 CenterPoint.

14 Q. Okay. Now, do you know, was Midwest  
15 Gen at some point contacted by that property  
16 owner concerning requests relating to the Joliet  
17 29 property?

18 A. Yes. We --

19 Q. What was that contact about?

20 A. We received a request for an  
21 environmental land use control, which  
22 essentially means that -- and that resulted  
23 because they were in the state site remediation  
24 plan and they were trying to get a no-further

1 remediation letter to show that the site had  
2 been remediated as much as it needed to be by  
3 the state's point of view.

4 So the environmental land use control  
5 that they wanted from us was because there was  
6 the migration of metals onto our property. And  
7 so they requested the ELUC, E-L-U-C, to cover no  
8 potable water use within that -- the area that  
9 is denoted on this map to the west of the coal  
10 pile and coming down with that purple hash mark.

11 Q. And by the "purple hash mark area," you  
12 are referring to the aerial that's up on the  
13 screen that also is denoted ELUC?

14 A. Yes.

15 Q. Now, turning to Exhibit 611 that's in  
16 front of you, do you recognize that document?

17 A. Yes, I do.

18 Q. Is that the ELUC agreement that  
19 CenterPoint proposed to Midwest Gen to accept?

20 A. Yes, it is.

21 Q. This shows the draft ELUC for us to  
22 review at the time?

23 A. Okay.

24 Q. Now, turning to -- well, did Midwest

1 Gen decide to agree to the ELUC?

2 A. Yes, we did.

3 MS. FRANZETTI: I would move to admit  
4 Exhibit 611.

5 THE HEARING OFFICER: Ms. Bugel?

6 MS. BUGEL: We would object to foundation. I  
7 don't think it's been explained how it relates  
8 to the groundwater violations at issue.

9 THE HEARING OFFICER: Ms. Franzetti, do you  
10 want to delve into that a little more, please?

11 MS. FRANZETTI: With respect to Ms. Race, ask  
12 more questions? Or did you want me to respond?

13 THE HEARING OFFICER: I'm asking if you could  
14 ask some more questions. I think that would be  
15 the easiest way, please.

16 MS. FRANZETTI: All right.

17 BY MS. FRANZETTI:

18 Q. Ms. Race, with respect to CenterPoint's  
19 request for the ELUC, do you know generally what  
20 environmental conditions existed on the property  
21 that's subject to the proposed ELUC that  
22 prompted the need for the ELUC?

23 A. Yes. There were -- on the property  
24 that belonged to Caterpillar/CenterPoint, there



1 were investigation results showing that there  
2 were various heavy metals on the site and in the  
3 site soils and ash deposits on the eastern-most  
4 portion of the property.

5 Q. And with respect to Exhibit 611, if you  
6 look at the fourth paragraph down, it states [as  
7 read]: The potential for the detected metals to  
8 leech the groundwater and then migrate onto your  
9 property has been modeled. The modeling results  
10 indicate there exists potential for some of  
11 these constituents to migrate up 82 feet onto  
12 the Midwest Generation property. IEPA has  
13 provided technical approval of the modeling  
14 work.

15 Is that part -- is it your  
16 understanding that that was part of the basis  
17 that CenterPoint conveyed to Midwest Gen for why  
18 it needed to put an ELUC on the property?

19 A. Yes, that's absolutely the basis for  
20 it.

21 MS. FRANZETTI: I would move again for the  
22 admission of Exhibit 611.

23 THE HEARING OFFICER: Ms. Bugel?

24 MS. BUGEL: No objection.

1 THE HEARING OFFICER: Okay. Thank you.  
2 Respondent's 611 is admitted.

3 (Whereupon document so  
4 offered was received in  
5 evidence as Respondent's  
6 Exhibit No. 611.)

7 BY MS. FRANZETTI:

8 Q. Now, Ms. Race, you testified that  
9 Midwest Gen did agree to CenterPoint's request  
10 for this ELUC agreement. Would you turn to  
11 Exhibit 612 in your binder.

12 Do you recognize that document?

13 A. Yes, I do.

14 Q. What is that document?

15 A. This is the signed -- let me  
16 double-check that. Yes. This is the signed  
17 land use control document that was originally  
18 proposed and then agreed to by Illinois EPA and  
19 also us.

20 Q. Who signed it for Midwest Gen?

21 A. Fred McClusky.

22 Q. Who was Fred McClusky?

23 A. He was a vice president at Midwest  
24 Generation, and he was actually my boss's boss.

1 Q. And have you seen his signature before?

2 A. Yes.

3 Q. Does this appear to be his signature?

4 A. Yes, it does.

5 MS. FRANZETTI: I would move for the  
6 admission of Exhibit 612 into evidence.

7 MS. BUGEL: No objection.

8 THE HEARING OFFICER: Thank you, Ms. Bugel.  
9 Respondent's Exhibit 612 is admitted into  
10 evidence.

11 (Whereupon document so  
12 offered was received in  
13 evidence as Respondent's  
14 Exhibit No. 612.)

15 BY MS. FRANZETTI:

16 Q. Looking at the purple cross-hashed  
17 area, with respect to the ELUC area -- and  
18 Exhibit 612 references a 485-foot-wide setback  
19 zone depicted in Exhibit B. Is that on the  
20 screen, that purple hash-marked area, a fair and  
21 accurate representation of the property area  
22 covered by the ELUC that Midwest Gen agreed to?

23 A. Yes, it does.

24 Q. And what are the -- generally, what are

1 the restrictions on Midwest Gen's use of that  
2 ELUC area under the terms of the ELUC?

3 A. Under the terms of the ELUC, we were  
4 not to construct, install, maintain, or operate  
5 any water supply well within a 480-foot-wide  
6 setback zone. And that's shown in this Exhibit  
7 B.

8 Q. And with respect to soils in that area,  
9 any conditions on the soils?

10 A. Yes. Any contaminated groundwater or  
11 soil that is removed, excavated, or disturbed  
12 must be handled in accordance with any  
13 applicable laws and regulations.

14 Q. Now, with respect to the water supply  
15 well restriction you just testified to, did  
16 Midwest Gen have a water supply well in that  
17 area?

18 A. No. We had a water supply well to the  
19 west.

20 Q. And has Midwest Gen attempted to remove  
21 or disturb any soil in that area?

22 A. Not that I'm aware of.

23 Q. We are done with the ELUC, Ms. Race.

24 A. Okay.

1 Q. Now we are going to go back to the  
2 Joliet 29 hydrogeologic assessment plan and  
3 Midwest Gen's implementation of it.

4 Do you recall approximately when the  
5 Joliet 29 groundwater monitoring wells were  
6 installed and when the monitoring of those wells  
7 started?

8 A. Okay. So they were installed in 2010.

9 Q. And after they were installed, was it  
10 shortly after that that the monitoring of those  
11 wells started?

12 A. Yes.

13 Q. I'm going to ask you to turn to  
14 Exhibit 613 in your binder.

15 A. Yes.

16 Q. Do you recognize that document?

17 A. Yes, I do.

18 Q. Have you seen it before?

19 A. Yes, I have.

20 Q. Did you review this document back at or  
21 about the time it was prepared?

22 A. I did.

23 Q. With respect to this document, who was  
24 it submitted to?

1 A. It was submitted to Illinois EPA.

2 Q. And with respect to the groundwater  
3 monitoring well results for Joliet 29, what  
4 groundwater monitoring results does this report  
5 cover?

6 A. This report does not cover well  
7 results. It covers where the wells will be put  
8 in. So this was prior to installation.

9 Q. Okay. I'm going to go back to Exhibit  
10 12-C. That won't be in the binder. That'll be  
11 on your table.

12 A. Got it.

13 THE HEARING OFFICER: Is that Complainant's  
14 12-C?

15 MS. FRANZETTI: Yes, Complainant's 12-C. My  
16 apologies.

17 BY MS. FRANZETTI:

18 Q. What is Exhibit 12-C?

19 A. 12-C is the initial hydrogeologic  
20 assessment report for Joliet generating station  
21 number 29 that we submitted to Illinois EPA.

22 Q. So does that follow the hydrogeologic  
23 assessment plan submission?

24 A. Yes, it does. The plan was approved

1 and then we proceeded to install the wells and  
2 perform the tests that were in the plan.

3 Q. How many quarters of groundwater  
4 monitoring results does the Complainant's  
5 Exhibit 12-C contain?

6 A. Just one.

7 Q. Okay. Can you generally -- turn to  
8 page -- Bates page 6976 and 6977.

9 What type of information is contained  
10 on those two pages?

11 A. These are -- this is groundwater  
12 analytical results from the monitoring wells  
13 that we had installed. So this was from  
14 sampling that was done on December 6th, 2010.

15 Q. Is that the first quarter of sampling  
16 results?

17 A. Yes. Oh, and also December 7th. They  
18 weren't all sampled on the same day.

19 Q. Can you describe generally what the  
20 results showed from that first quarter of  
21 groundwater sampling?

22 A. Yes. Generally, we were receiving  
23 non-detects for most of the monitoring well  
24 results for all of the chemicals that are listed

1 here. There are one, two, three, four, five,  
2 six, seven, eight that appear to be above the  
3 groundwater remediation objective Class 1.

4 Q. And with respect to being above the  
5 Class 1 remediation objective with respect to  
6 manganese, was that detected above the  
7 standards?

8 A. Yes. In Monitoring Well-4 and  
9 Monitoring Well-7 -- let me look at this other  
10 page -- and Monitoring Well-9.

11 Q. Was any boron detected above the Class  
12 1 standard?

13 A. No.

14 Q. What about sulfate, to what extent was  
15 that detected?

16 A. There was one sample for sulfate in  
17 Monitoring Well-9 that was detected above the  
18 groundwater remediation objective.

19 Q. All the other wells were below the  
20 Class 1 standard?

21 A. Correct.

22 Q. Turn to chloride, the chloride results.

23 A. Okay.

24 Q. What did that show?



1           A.     Monitoring Well-10.  Monitoring Well-3,  
2     4, and 7 had chlorides above the groundwater  
3     remediation objective.

4           Q.     So out of all the constituents, was  
5     chloride the one detected the most frequently  
6     above the Class 1 standard?

7           A.     Yes, it was.

8           Q.     Now, did Midwest Gen continue to  
9     conduct sampling of these groundwater monitoring  
10    wells?

11          A.     Yes, we did.

12          Q.     How frequently?

13          A.     Quarterly.

14          Q.     Did IEPA order you to do that?

15          A.     No, they requested it.

16          Q.     Did you continue to submit the results  
17    to IEPA?

18          A.     Yes, we did.

19          Q.     And what was your role regarding the  
20    quarterly groundwater monitoring of the wells?

21          A.     I would review what was being submitted  
22    and have -- and then at some point I had a new  
23    employee or an intern that started reviewing the  
24    data in more detail and spot-checking it,

1 essentially, you know, going through these  
2 numbers and checking them against what was in  
3 various tables that were being prepared for us.

4 Q. All right. And then the intern would  
5 submit the results of their review to you?

6 A. Correct.

7 Q. I'm going to ask you to turn to, on  
8 your table, Complainant's Exhibit 24.5. It  
9 should be Patrick Engineering.

10 A. Okay. Got it.

11 Q. Now, do you recognize that as the  
12 Patrick Engineering amended report for the first  
13 quarter of 2012 regarding Powerton?

14 A. Yes, I do.

15 Q. Why was an amended report submitted to  
16 Illinois EPA?

17 A. An amended report was submitted to them  
18 because my employee found some transcription  
19 errors in their tables from between the  
20 laboratory data and the tables that they were  
21 using.

22 Q. And which tables who was using?

23 A. Patrick Engineering.

24 Q. Were those tables Patrick prepared?

1 A. Yes.

2 Q. So this report -- this amended report  
3 contained the corrected monitoring results based  
4 on the written laboratory reports?

5 A. That is correct.

6 MS. BUGEL: Objection to the leading nature  
7 of the questions.

8 THE HEARING OFFICER: Rephrase, please.

9 BY MS. FRANZETTI:

10 Q. What did this amended report contain?

11 A. It contained the corrected tables so  
12 that so you could see what the results actually  
13 were.

14 Q. And by "results actually were," what  
15 was the source of those results?

16 A. The Sovereign Trent Laboratory, or Test  
17 America at that point probably, laboratory  
18 results that we were just looking at a few  
19 minutes ago.

20 Q. Did this happen as to -- did this need  
21 to make corrections to originally submitted  
22 quarterly monitoring reports to Illinois EPA  
23 happen as to the other stations?

24 MS. BUGEL: Objection to the leading nature

1 of the questions.

2 THE HEARING OFFICER: Rephrase, please. Just  
3 try to rephrase.

4 BY MS. FRANZETTI:

5 Q. Did a need for correcting original  
6 reports occur with respect to any other station?

7 A. Yes. We found that there were several  
8 transcription errors and corrections needed to  
9 be sent to Illinois EPA for all of the stations.

10 Q. I'm going to ask you to turn to, again  
11 on your -- we are done with Complainant's 24.5.  
12 If you could find Complainant's Exhibit 36.

13 A. Okay. Just give me a minute here.

14 Q. Sure, sure.

15 THE HEARING OFFICER: We can go off the  
16 record for a second.

17 (Short pause in proceedings.)

18 THE HEARING OFFICER: All right. We are back  
19 on.

20 BY MS. FRANZETTI:

21 Q. Ms. Race, do you have Complainant's  
22 Exhibit 36 in front of you?

23 A. Yes, I do.

24 Q. Do you recognize that document?

1 A. Yes, I do.

2 Q. What is it?

3 A. This is a document that is an e-mail  
4 from Rick Frendt who was the consultant on the  
5 case, sort of -- I guess I would look at it as  
6 an e-mail where he was thinking out loud trying  
7 to figure out what was going on with the  
8 results --

9 MS. BUGEL: I'm going to object to the  
10 witness's speculation as to what Rick Frendt was  
11 thinking.

12 MS. FRANZETTI: I think she's just relaying  
13 her understanding of Mr. Frendt's e-mail to her.

14 MS. BUGEL: She is stating what he was  
15 thinking.

16 THE HEARING OFFICER: I'm sorry?

17 MS. BUGEL: My objection was to the fact that  
18 the witness is speculating as to what Richard  
19 Frendt was thinking.

20 THE HEARING OFFICER: Could you rephrase  
21 that, please, Ms. Franzetti.

22 BY MS. FRANZETTI:

23 Q. Ms. Race, what type of information was  
24 Mr. Frendt presenting to you in this e-mail?

1           A.     Rick and I would send e-mails back and  
2     forth to discuss what was going on with the data  
3     that we were receiving. This particular e-mail  
4     came after we were receiving -- we had received  
5     one set of sample results back from the  
6     monitoring wells. And this particular e-mail  
7     regards Powerton Station and that I was puzzled  
8     about the results of Powerton, and so we had  
9     discussed that. And he sent an e-mail  
10    explaining some initial thoughts that he was  
11    having.

12           Q.     And specifically with respect to what  
13    aspect of the field data from that first quarter  
14    of sampling was Mr. Frenndt addressing in this  
15    e-mail?

16           A.     There were several different wells at  
17    Powerton that were finished in different layers  
18    of material and for the groundwater. And Rick  
19    and I both didn't know that at the time.

20                   And so he and I were trying to figure  
21    out how the wells would make sense if they were  
22    all in one set of groundwater.

23           Q.     And did you figure that out based on  
24    the one quarter sampling?

1 A. No, we did not.

2 Q. Did you ultimately figure it out based  
3 on additional quarters of groundwater sampling?

4 A. Yes, we did. And I had a habit of  
5 using multiple consultants on projects. And so  
6 if -- I looked -- and maybe it's because I come  
7 from an academic environment, but I look at my  
8 consultants as a team. And I didn't really care  
9 which company they worked for as long as I had  
10 the right expertise and team.

11 And so when Rick Frenedt was puzzled  
12 about this, I asked Rich Gnat to -- who had  
13 worked with us extensively in our landfills to  
14 take a look at this data.

15 Q. And what was concluded about the  
16 question with respect to groundwater gradients  
17 after additional data was reviewed?

18 A. It was found that the reason that we  
19 couldn't understand this initially is because  
20 there were actually borings at two different  
21 levels of groundwater where there was some  
22 separation between the two.

23 Q. I'm going to move on to Complainant's  
24 Exhibit 16. So that should also be on the desk

1 by you.

2 Ms. Race, do you recognize  
3 Complainant's Exhibit 16?

4 A. Yes, I do.

5 Q. What is it?

6 A. This is an e-mail from Rick Frenndt to  
7 me copying Xin Ying Wang (phonetic), who was my  
8 employee at the time, with summaries of the data  
9 for each of the five ash pond sites.

10 Q. Did you review this report?

11 A. Yes, I did.

12 Q. Would you turn to Bates number 14162  
13 and going on to 63. Generally, what information  
14 is being presented on these two pages of  
15 Complainant's Exhibit 16?

16 A. This is an overall description of the  
17 ash pond evaluation and summary with the data  
18 that Rick Frenndt understood at that point in  
19 time.

20 Q. All right. And with respect to the  
21 information regarding groundwater gradient at  
22 Powerton, how at this time is Mr. Frenndt  
23 characterizing that groundwater gradient?

24 A. He is -- he is stating that if



1 Monitoring Well-6 and 8 are excluded from the  
2 analysis, that the direction of the groundwater  
3 flow is from the south to the north towards the  
4 river. He was still at this point puzzled over  
5 ground -- over Monitoring Well-6 and 8 and what  
6 they might indicate.

7 Q. Based on additional data review, did  
8 you agree with these conclusions by Mr. Frenedt?

9 A. At the time I wasn't sure that I  
10 understood them, and so I decided to ask others  
11 to take a look at it, other experts that I knew.

12 Q. What other experts did you ask?

13 A. Rick Frenedt -- or I mean, I'm sorry,  
14 Rich Gnat. Sorry about that.

15 And I might have also asked Bruce  
16 Hensil from Natural Resources Technology. I'm  
17 not sure if I did that.

18 Q. And did you ask them to take a look at  
19 the data --

20 A. Yes.

21 Q. -- with respect to groundwater  
22 gradient?

23 A. Yes, I did.

24 Q. And what did they advise you?

1           A.     They advised me that the wells were  
2 actually finished in two different groundwater  
3 spaces that were divided but still slightly  
4 connected by some soils that would allow them to  
5 not be totally connected.

6           Q.     So does that mean there were two  
7 different gradients?

8           A.     Yes.

9           Q.     And whereas Mr. Frendt was concluding  
10 that there was just one?

11          A.     Yes.

12          Q.     We are done with that exhibit,  
13 Ms. Race. We are going to move forward to  
14 June 2012.

15          MS. FRANZETTI: There has already been a  
16 stipulation, stipulation 54, that on June 11,  
17 2012, Illinois EPA issued violation notices,  
18 VNs, to Midwest Gen alleging violations of  
19 groundwater quality standards at the stations.

20          BY MS. FRANZETTI:

21          Q.     My question to you regarding the VNs  
22 is: Did the 2012 VNs include the monitoring  
23 results as amended by Midwest Gen's submissions  
24 that we were talking about just a few minutes

1 ago?

2 A. I believe they did not.

3 Q. Okay. So they had the original data  
4 that had not yet been corrected by Midwest Gen?

5 A. That's correct.

6 Q. Were you involved in the preparation of  
7 Midwest Gen's responses to the VNs?

8 A. Yes, I was.

9 Q. Ms. Race, I'm going to ask you to look  
10 at, in your book, Exhibits 622, 623, 624, and  
11 625. And my question is going to be whether  
12 those are the supplemental responses by Midwest  
13 Gen to the IEPA violation notices for Joliet 29,  
14 Waukegan, Powerton, and Will County  
15 respectively?

16 A. Yes, they are.

17 MS. FRANZETTI: I would move to admit Midwest  
18 Gen Exhibits 622 through 625.

19 THE HEARING OFFICER: Ms. Bugel?

20 MS. BUGEL: No objection.

21 THE HEARING OFFICER: Thank you, Ms. Bugel.

22 Respondent's Exhibits 622 through 625 are  
23 admitted. Thank you.

24

1 (Whereupon documents so  
2 offered were received in  
3 evidence as Respondent's  
4 Exhibits Nos. 622-625.)

5 BY MS. FRANZETTI:

6 Q. With respect to Midwest Gen's  
7 supplemental responses, Exhibits 622 through  
8 625, generally what did Midwest Gen advise the  
9 Illinois EPA regarding whether the ash ponds at  
10 the stations were a source of groundwater  
11 impacts?

12 A. Generally, what we stated is that we  
13 did not believe that our current operations of  
14 the ash impoundments were the source of the  
15 groundwater contamination.

16 Q. And what was the reason for that  
17 position?

18 A. Well, there were a number of reasons.  
19 I would say the primary reason is that we are on  
20 properties at the stations that are surrounded  
21 by other operations, old industrial area. There  
22 are, for example, the plumes that we were just  
23 talking about a few minutes ago with the  
24 environmental land use control. The

1 environmental land use control at Waukegan. The  
2 John Mansville Superfund site. You know, the  
3 tannery site generally which used borax in its  
4 operations. The boiler site which also used  
5 borax in its operations.

6 There were a number of other things  
7 that we knew about the surrounding locations  
8 that would lead us to believe that our  
9 groundwater monitoring wells were showing  
10 contamination from other sources.

11 Q. And with respect to, as you said, the  
12 current operation of the ponds, did the  
13 existence of liners form any part of the reason  
14 why Midwest Gen's position was the ash ponds  
15 weren't the source of the impacts?

16 A. Absolutely. Because by this time in  
17 2012 we had already done a number of ash pond  
18 re-linings. And we had found the Poz-o-Pac was  
19 intact at the ash ponds we had relined that had  
20 Poz-o-Pac up to that point.

21 The liners that we had in place at  
22 Waukegan were in good condition, had been  
23 replaced in the earlier 2000 time frame like  
24 2003, 2005, somewhere in there. And so we

1 believed that those liners were in good  
2 condition. And the liners that replaced the  
3 Poz-o-Pac or were added up on top of it also  
4 were in good condition.

5 Q. Generally, how long did it take to  
6 resolve the VNs with Illinois EPA?

7 A. It took a few months to resolve the  
8 VNs. They issued them in June, and I have to  
9 say that I was very surprise that they issued  
10 them. That really shocked me at the time.

11 And -- but we discussed with them quite  
12 a bit what they would want in a Compliance  
13 Commitment Agreement. Bill Buscher and Rick  
14 Cobb and I and my boss had numerous discussions  
15 with them about what would be acceptable. And  
16 so we then came up with a Compliance Commitment  
17 Agreement that everybody could live with.

18 And so in around October that  
19 Compliance Commitment Agreement was -- it was  
20 September when we signed it. And then they  
21 countersigned it the following month. I believe  
22 there was a 30-day window where they had to  
23 countersign it.

24 Q. In those discussions, and I think there

1 has already been testimony about the CCA terms,  
2 including replacement of some of the liners with  
3 HDPE liners, did that topic come up during those  
4 discussions, the use of an HDPE liner to reline  
5 certain of the ponds?

6 A. Yes, it did.

7 Q. And what was IEPA's reaction to the  
8 proposed use of an HDPE liner?

9 A. They found that acceptable.

10 Q. In the course of those discussions, did  
11 Midwest Gen present the IEPA with any  
12 information supporting the use of HDPE liners?

13 A. Yes. I believe that we also referred  
14 IEPA back to our original construction documents  
15 for other impoundments that we had put in place.  
16 There were no CCR rules at that point in time.  
17 There were no Illinois specific CCR rules.

18 And how we came up with the idea that  
19 HDPE would be an appropriate liner, we discussed  
20 that with them and they agreed to it. I can't  
21 remember specifically if we provided them with a  
22 document.

23 Q. Okay. After the Compliance Commitment  
24 Agreements were signed for the Midwest Gen

1 stations, was there work then that Midwest Gen  
2 had to perform to comply with the terms of those  
3 CCAs?

4 A. Yes. We had to close an impoundment  
5 that wasn't really much of an impoundment at one  
6 station. We had to -- we made the commitment to  
7 reline an impoundment at Powerton, I believe,  
8 and at Joliet.

9 Q. Now, in the fall of 2012, were you  
10 aware of any court filing that Midwest Gen made  
11 at that time?

12 A. Yes. We filed for bankruptcy.

13 Q. Did that impair or in any way adversely  
14 affect Midwest Gen's compliance with the terms  
15 of the CCA?

16 MS. BUGEL: Objection to the leading nature  
17 of the question.

18 MS. FRANZETTI: I will rephrase.

19 THE HEARING OFFICER: Thank you.

20 BY MS. FRANZETTI:

21 Q. Did that have any effect on Midwest  
22 Gen's compliance with the CCAs?

23 A. No, it did not. That was a very high  
24 priority item for us. And I was involved in



1 many discussions with the president of our  
2 company, and he was fully committed to ensuring  
3 that the money was spent on those things that  
4 needed to be done.

5 Q. Okay. I'm going to ask you to turn to  
6 Exhibit 626. Do you recognize that document?

7 A. Yes.

8 Q. What is it?

9 A. That's a compliant commitment  
10 acceptance for Joliet 29 that was sent by  
11 Michael Crumly of Illinois EPA to John Kennedy,  
12 who was the senior vice president of our  
13 company.

14 THE HEARING OFFICER: Just to make it clear  
15 on the record, it's Respondent's Exhibit 626.  
16 Thank you.

17 MS. FRANZETTI: Yes. I'm sorry.

18 I would move to admit Exhibit 626.

19 MS. BUGEL: No objection.

20 THE HEARING OFFICER: Thank you, Ms. Bugel.  
21 Respondent's Exhibit 626 is admitted.

22

23

24

1 (Whereupon document so  
2 offered was received in  
3 evidence as Respondent's  
4 Exhibit No. 626.)

5 BY MS. FRANZETTI:

6 Q. Turning to page 573 of Midwest Gen  
7 Exhibit 626, does that page under the  
8 Section III, Compliance Activities, and  
9 continuing on to the next page, page 574, does  
10 that describe the compliance activities that  
11 Midwest Gen agreed to perform under this  
12 Compliance Commitment Agreement for Joliet 29?

13 A. Yes, it does.

14 Q. And did this involve relining any of  
15 the ponds at Joliet 29?

16 A. Yes. Pond three needed to be relined  
17 with an HDPE liner within 90 days of the  
18 effective -- or an application for the  
19 construction permit to reline it had to be  
20 submitted within 90 days of the effective date  
21 of this CCA, which we did do.

22 And then we needed to install the  
23 liner, I believe before the end of this year, if  
24 I remember correctly, before the year was up of

1 the date of signing.

2 Q. With respect to the compliance  
3 activities, was maintaining the integrity of the  
4 pond liners at Joliet 29 any part of the  
5 compliance activities?

6 A. Yes.

7 MS. BUGEL: Objection. Leading.

8 THE HEARING OFFICER: Rephrase.

9 BY MS. FRANZETTI:

10 Q. What did the agreement contain with  
11 respect to the pond liners?

12 A. Well, the pond liners needed to be  
13 maintained. There had to be procedures that  
14 were followed to ensure that operating the ash  
15 removal equipment didn't damage the liners.

16 And also that the ash impoundments not  
17 be used as permanent disposal sites, but to  
18 continue operating the way they always had and  
19 have the ash removed and then appropriate  
20 inspections to make sure the liners were intact  
21 afterwards.

22 Q. What did Midwest Gen agree to with  
23 regard to groundwater monitoring?

24 A. We agreed to continue quarterly

1 groundwater monitoring of the existing 11 wells  
2 with -- for constituents that were agreed upon  
3 between us and EPA, and that we would report the  
4 findings within 30 days of the end of each  
5 quarter.

6 Q. And did Midwest Gen do that?

7 A. Yes, we did.

8 Q. With respect to subparagraph F at the  
9 bottom of that page, which reads [as read]:  
10 Midwest Generation shall submit an application  
11 to establish a Groundwater Management Zone (GMZ)  
12 pursuant to 35 Illinois Administrative Code Part  
13 620.250 within 90 days of the effective date of  
14 the CCA.

15 Do you understand what a GMZ is?

16 A. That's a Groundwater Management Zone.  
17 And it's a zone where Class 1 groundwater  
18 standards do not apply.

19 Q. Did Midwest Gen fulfill the GMZ  
20 requirement of the CCA?

21 A. Yes, we did.

22 MS. FRANZETTI: We have stipulation 55, that  
23 Joliet 29 Midwest Gen applied for a GMZ for the  
24 area including the ash ponds.

1 BY MS. FRANZETTI:

2 Q. I'm going to ask you to find on your  
3 desk there Exhibit 2 -- Complainant's  
4 Exhibit 242.

5 A. Okay.

6 Q. Do you recognize that exhibit?

7 A. Yes, I do.

8 Q. What is it?

9 A. This is the Groundwater Management Zone  
10 application that was put together by my employee  
11 Amy Hanrahan.

12 MS. FRANZETTI: Now, we also have Stipulation  
13 56, Illinois EPA approved the Joliet 29 GMZ on  
14 August 8, 2013.

15 BY MS. FRANZETTI:

16 Q. I'm going to ask you to turn back to  
17 your binder and look at Exhibit 627, Midwest Gen  
18 Exhibit 627.

19 Do you recognize that document?

20 A. Yes, I do.

21 Q. What is it?

22 A. It is a letter back from Illinois EPA  
23 acknowledging the submittal that we made  
24 containing the Groundwater Management Zone and

1 documenting that we had completed that as part  
2 of the requirements for the Compliance  
3 Commitment Agreement.

4 MS. FRANZETTI: Mr. Hearing Officer, I would  
5 move to admit -- I don't think I moved to admit  
6 Exhibit 626 -- so I'm going to move to admit  
7 both 626 and 627.

8 THE HEARING OFFICER: I think you did 626  
9 already.

10 MS. FRANZETTI: I did? Oh, okay.

11 THE HEARING OFFICER: But in any event,  
12 Ms. Bugel, 626 or 627 any objection?

13 MS. BUGEL: No objection.

14 THE HEARING OFFICER: All right. Thank you.  
15 626 and 627 is admitted.

16 (Whereupon document so  
17 offered was received in  
18 evidence as Respondent's  
19 Exhibit No. 627.)

20 BY MS. FRANZETTI:

21 Q. Now, staying with the Compliance  
22 Commitment Agreement for Joliet 29, that  
23 included requiring Midwest Gen to reline pond  
24 three at the station. Was that done?

1           A.     Yes, it was done.

2           Q.     And I refer you to Exhibit 628 in your  
3 binder.

4                     Do you recognize that document?

5           A.     Yes, I do.

6           Q.     What is it?

7           A.     This is the permit from Illinois EPA to  
8 replace the liner for pond three.

9           Q.     What were the steps necessary to  
10 install the new liner in pond three?

11          A.     Well, like we had talked about before,  
12 for pond three -- you know, for each of these  
13 pond replacements, we had to ensure that there  
14 was an outage or something similar. I believe  
15 water in this case for pond three had to be  
16 rerouted because it was usually the discharge  
17 point.

18                     So it required quite a bit of  
19 engineering work to be done. Material that was  
20 not found to be in there that needed to be  
21 dredged so at least we didn't have that step.  
22 And then Poz-o-Pac was found to be there as  
23 well.

24          Q.     Okay. In terms of rerouting the water,

1 so did you have to empty the pond?

2 A. Yes, we did.

3 Q. Was that the first time you had ever  
4 done that?

5 MS. BUGEL: Objection to the leading nature  
6 of the questions.

7 MS. FRANZETTI: I don't think that's leading.

8 THE HEARING OFFICER: Let's go off the record  
9 for a minute.

10 (Discussion had off the  
11 record.)

12 THE HEARING OFFICER: We are back on the  
13 record. Ms. Bugel's objection is sustained.  
14 And if you could rephrase, please.

15 BY MS. FRANZETTI:

16 Q. Was there ever a time to your knowledge  
17 before this work was done on pond three that  
18 pond three had to be emptied?

19 A. No, not to my knowledge.

20 Q. Now, turn to --

21 MS. FRANZETTI: I'm going to move to admit  
22 Midwest Gen Exhibit 628 into evidence.

23 THE HEARING OFFICER: Any objection?

24 MS. BUGEL: No objection.



1 THE HEARING OFFICER: Thank you. Admitted,  
2 628.

3 (Whereupon document so  
4 offered was received in  
5 evidence as Respondent's  
6 Exhibit No. 628.)

7 BY MS. FRANZETTI:

8 Q. I am going to move to Exhibit 629.  
9 Please take a moment to look at it.

10 My question is simply: What is that  
11 document?

12 A. This is the construction documentation  
13 transmittal that was sent by Natural Resource  
14 Technology to Terry Kosmatka, who was the  
15 project manager at Joliet 29 station.

16 Q. And what type of information is  
17 contained in this document?

18 A. Well, this is the documentation of our  
19 consultant looking at who observed the process.  
20 So it lists things -- it has the start of the  
21 ash removal. It documents the replacement liner  
22 pre-construction meeting, when ash removal was  
23 completed, the start of the replacement liner  
24 subbase. And then as each event in putting

1 together this pond liner happened, documentation  
2 of those things.

3 Q. Would it be accurate to describe this  
4 as containing some of the as-built information  
5 of the pond liner?

6 A. Yes.

7 Q. Turning to page Bates number 33945.  
8 It's towards the back end but not all the way  
9 back.

10 A. Okay.

11 Q. Okay. At the top of the page it says  
12 [as read]: Certificate of acceptance of  
13 subgrade surface preparation for geomembrane  
14 installation.

15 What type of information is contained  
16 in this portion of the construction documents?

17 A. Well, this document is specific to  
18 south pond three, and it states that the  
19 subgrade is acceptable to lay the geotextile and  
20 geomembrane upon.

21 Q. Would you turn to the next page, Bates  
22 number 33947.

23 A. Okay.

24 Q. What information is contained in this

1 portion of the construction documents for pond  
2 three liner?

3 A. This also says that the geomembrane --  
4 HDPE geomembrane and geotextiles installed in  
5 the south ash pond three, that they were  
6 installed in accordance with the project  
7 specifications and manufacturer's  
8 recommendations.

9 Q. I'm going to ask you to keep going in  
10 the document to Bates page 33987. It's almost  
11 at the very back.

12 A. I have it.

13 Q. It appears to be a letter from Leak  
14 Location Services, Inc., dated October 7, 2013.  
15 What information is contained in this portion of  
16 the construction documents?

17 A. This portion of the construction  
18 document gives a report on the overall Leak  
19 Location survey of south pond three after the  
20 liner was installed but before it went back into  
21 service. And it includes a description of the  
22 impoundment and that no leaks were found during  
23 the survey that was performed.

24 MS. FRANZETTI: I would move to admit Midwest

1 Gen Exhibit 629 into evidence.

2 THE HEARING OFFICER: Ms. Bugel, any  
3 objection?

4 MS. BUGEL: No objection.

5 THE HEARING OFFICER: Thank you, Ms. Bugel.  
6 Respondent's Exhibit 629 is admitted.

7 (Whereupon document so  
8 offered was received in  
9 evidence as Respondent's  
10 Exhibit No. 629.)

11 BY MS. FRANZETTI:

12 Q. Ms. Race, approximately when was the  
13 Joliet 29 pond three relining completed?

14 A. In late 2013.

15 MS. FRANZETTI: We have stipulation 57, on  
16 October 9, 2013, Midwest Gen submitted to  
17 Illinois EPA its certification that all of the  
18 Joliet 29 CCA measures were successfully  
19 completed.

20 BY MS. FRANZETTI:

21 Q. I'm going to ask you to turn to  
22 Exhibit 630 in your binder.

23 A. Yes.

24 Q. Do you recognize that document?

1 A. Yes, I do.

2 Q. What is it?

3 A. This is a document stating that we have  
4 completed the compliance agreement measures for  
5 Joliet 29. And it is signed by John Kennedy,  
6 who is a senior vice president of generation at  
7 our company.

8 Q. Do you recognize Mr. Kennedy's  
9 signature?

10 A. Yes, I do.

11 MS. FRANZETTI: I would move to admit  
12 Exhibit 630 into evidence.

13 THE HEARING OFFICER: Ms. Bugel?

14 MS. BUGEL: No objection.

15 THE HEARING OFFICER: Thank you.

16 Respondent's Exhibit 630 is admitted.

17 (Whereupon document so  
18 offered was received in  
19 evidence as Respondent's  
20 Exhibit No. 630.)

21 BY MS. FRANZETTI:

22 Q. Ms. Race, you testified yesterday that  
23 you are generally familiar with the coal  
24 combustion residual rule, what we sometimes

1 refer to as the CCR rule, that US EPA adopted in  
2 December 2014. Do you remember that?

3 A. Yes, I do.

4 Q. Were you aware of how Midwest Gen  
5 assessed the effect of the CCR rule on its  
6 stations ash ponds?

7 A. Yes, I am aware of that.

8 Q. Can you tell us generally how Midwest  
9 Gen went about assessing whether the CCR rule  
10 would have an effect on any of its ash ponds?

11 A. Yes. What we did was take a look at  
12 each of our plants, what impoundments fit the  
13 definition of a CCR impoundment, or in one case  
14 a CCR landfill. And also took a look to see if  
15 we could close completely and clean, close, any  
16 of the impoundments before the rule came into  
17 effect so that those impoundments would not be  
18 part of the rule.

19 Q. With respect to Joliet 29 and pond  
20 three, what was the determination Midwest Gen  
21 made with respect to the application of the  
22 federal CCR rule?

23 MS. BUGEL: I'm going to object just to the  
24 question calling for a legal conclusion.

1 THE HEARING OFFICER: Okay. Overruled. She  
2 may answer if she is able.

3 THE WITNESS: We determined by looking at the  
4 characteristics of the impoundment and the fact  
5 that we had had sedimentation or total suspended  
6 solids testing done showing that there was no  
7 ash being received in the impoundment, because  
8 we also saw that there was no dredging required  
9 out of that impoundment before the liner was put  
10 in, that it was not covered under the CCR rule.

11 BY MS. FRANZETTI:

12 Q. When you make reference to that prior  
13 total suspended solid sampling of pond three,  
14 and I refer you back to Exhibit 602 that we  
15 discussed yesterday, and my question is simply:  
16 Is that the testing you were referring to in  
17 your answer?

18 A. Yes, it is.

19 Q. Are you aware generally whether there  
20 are any inspection requirements under the  
21 federal CCR rule?

22 A. Yes, there are inspection requirements.

23 Q. Are there any ash ponds today at Joliet  
24 29 that are subject to that inspection

1 requirement?

2 A. Yes. Today ash pond two is still  
3 subject to that requirement, even though at this  
4 point this is a gas-fired power plant.

5 Q. Is Midwest Gen conducting the  
6 inspections on pond two pursuant to the CCR  
7 rule?

8 A. Yes, we are, and documenting them  
9 online as appropriate and as required.

10 Q. Have you discovered any problems as a  
11 result of those inspections with pond two?

12 A. No.

13 Q. We are going to turn now to the  
14 Powerton Station.

15 A. Okay.

16 Q. And I will ask that the aerial of  
17 Powerton be brought up on the screen.

18 Ms. Race, you are generally familiar  
19 with the Powerton Station, aren't you?

20 A. Yes, I am.

21 Q. All right. I'm going to ask you, is  
22 that aerial map that we are showing on the  
23 screen a reasonably accurate depiction of the  
24 Powerton Station?



1           A.     Yes, it is.

2           MS. FRANZETTI: We have three stipulations on  
3 the Powerton Station: Stipulation 17, Midwest  
4 Gen operates the Powerton Electric Generating  
5 Station located in Pekin, Tazewell County,  
6 Illinois; stipulation 18, Midwest Gen has  
7 operated the Powerton Station since 1999; and  
8 stipulation 19, Midwest Gen leases the Powerton  
9 Station.

10          BY MS. FRANZETTI:

11           Q.     I'm going to ask you to turn back to  
12 Exhibit 631 in your binder.

13           A.     All right.

14           Q.     Ms. Race, what is Exhibit 631?

15           A.     This is the sale and retained tract  
16 exhibit from Commonwealth Edison that is dated  
17 January 29, 1999.

18           Q.     And, again, we have already gone over  
19 what the meaning is of a retained tract. Are  
20 there any retained tracts on the Powerton survey  
21 map?

22           A.     Yes. There were two retained tracts  
23 here.

24           Q.     Okay. Now looking up at the screen --

1 and if we can bring up retained tract areas.

2 Okay.

3 Do you see an area up on the screen  
4 that's denoted, not owned by MWG?

5 A. Yes, I do.

6 Q. Does that fairly depict the retained  
7 tract area that's shown on Exhibit 631?

8 A. It depicts one of them, yes.

9 Q. Okay. Do you know who retained  
10 ownership of that tract?

11 A. That was retained by Commonwealth  
12 Edison.

13 Q. After Midwest Gen purchased the  
14 Powerton Station from Commonwealth Edison, did  
15 it have any access rights to that area depicted  
16 as not owned by Midwest Gen?

17 A. No.

18 Q. Now, you also mentioned a second area  
19 referring to retained tracts. Is that shown up  
20 there on the aerial?

21 A. No, it is not.

22 Q. Where is it on the survey map  
23 Exhibit 631?

24 A. It is to the south and west of the

1 power plant, sort of kitty-corner from it.

2 Q. Do you know who retained ownership of  
3 that tract?

4 A. Commonwealth Edison.

5 Q. Did Midwest Gen have any access rights  
6 or control over that tract?

7 A. No.

8 MS. FRANZETTI: I would move to admit  
9 Exhibit 631.

10 THE HEARING OFFICER: Ms. Bugel?

11 MS. BUGEL: No objection.

12 THE HEARING OFFICER: Thank you, Ms. Bugel.  
13 Respondent's Exhibit 631 is admitted.

14 (Whereupon document so  
15 offered was received in  
16 evidence as Respondent's  
17 Exhibit No. 631.)

18 BY MS. FRANZETTI:

19 Q. Ms. Race, about how old is the Powerton  
20 Station?

21 A. Well, the Powerton Station units one  
22 through four were brought online in the 1920s.  
23 And then units five and six came on line in the  
24 early '70s, '73.

1 Q. Are units one through four currently  
2 operating?

3 A. No. Units one through four have been  
4 demolished.

5 Q. Do you about how long ago?

6 A. It was during the time that I worked at  
7 Midwest Generation, so maybe five or ten years  
8 ago.

9 Q. That they were demolished?

10 A. That they were demolished.

11 Q. When did they stop operating?

12 A. Oh, gosh. Before my time. I don't  
13 know.

14 Q. So which units are operating now?

15 A. Units five and six.

16 Q. And do you know approximately when  
17 those two units started operating?

18 A. 1971 and 1973.

19 Q. I'm going to ask you to go to  
20 Exhibit 632 in your notebook.

21 Do you recognize this document?

22 A. Yes, I do.

23 Q. What is it?

24 A. This is the Phase I Environmental Site

1 Assessment that was performed by ENSR.

2 Q. I'm going to ask you to turn to Bates  
3 number page 8516, specifically directing your  
4 attention to Section 2.4 entitled Site History.

5 Have you reviewed this part of this  
6 ENSR report before?

7 A. Yes, I have.

8 Q. What did it tell you about the site  
9 history?

10 A. It tells you the approximate time that  
11 it was constructed. They interviewed John  
12 Henderson, who was the compliance specialist at  
13 the time, and they noted that -- you know,  
14 basically they have a -- I mean, in this section  
15 it's just a history of what Mr. Henderson gave  
16 them.

17 Q. Okay. What did it tell you -- what did  
18 they report with respect to whether any land  
19 filling had occurred on the property? If you  
20 look at the third paragraph under 2.4.

21 A. Oh, the -- no evidence of land filling  
22 was observed in the photographs reviewed for the  
23 assessment.

24 MS. FRANZETTI: We would move to admit

1 Exhibit 632 into evidence.

2 THE HEARING OFFICER: Ms. Bugel?

3 MS. BUGEL: No objection.

4 THE HEARING OFFICER: Thank you.

5 Respondent's Exhibit 632 is admitted.

6 (Whereupon document so  
7 offered was received in  
8 evidence as Respondent's  
9 Exhibit No. 632.)

10 BY MS. FRANZETTI:

11 Q. Ms. Race, could you pull out exhibit --  
12 Complainant's Exhibit 17-D. It's the Powerton  
13 ENSR Phase II report.

14 A. Okay.

15 Q. If you could turn to page 4 of that  
16 document. It's Bates numbered 3260.

17 A. Okay.

18 Q. And the Section 1.4, Limitations.

19 A. Yes.

20 Q. Okay. You have already testified about  
21 this language with respect to the Joliet 29,  
22 Phase II report, which was Complainant's  
23 Exhibit 20-D. And was your understanding of the  
24 meaning of the information presented here,

1 particularly in this first paragraph, the same  
2 for this Powerton report as you've already  
3 testified to the Joliet 29 report in  
4 Exhibit 20-D?

5 A. Yes. The limitations described here is  
6 that this is a snapshot in time that took place  
7 between October 5th and November 3, 1998, and  
8 may have incomplete or different information at  
9 a different point in time.

10 Q. I'm going to ask you to turn to page 16  
11 of the report. It's Bates page 3272.

12 A. Okay.

13 Q. And what information is presented here?

14 A. This is a section of data assessment.  
15 And 4.1 discusses the extent of contamination at  
16 the site.

17 Q. And what did they find regarding  
18 groundwater contamination? You may have to turn  
19 a few pages.

20 A. Yeah. I need a minute.

21 Q. Take your time.

22 A. There were no constituents of concern  
23 detected at concentrations above the IEPA  
24 cleanup objective in the groundwater samples

1 collected.

2 Q. Now, if you would turn to table five of  
3 the report. It's at page 3291.

4 A. Yes.

5 Q. What type of information is contained  
6 in table five?

7 A. Table five contains laboratory analysis  
8 data from groundwater monitoring wells.

9 Q. And have you reviewed this table five  
10 before?

11 A. Yes, I have.

12 Q. Is the information in it consistent  
13 with ENSR's finding that no constituents of  
14 concern were detected above the Class 1 cleanup  
15 objectives?

16 A. Yes, it is.

17 Q. Now, you were asked back in October  
18 about the conclusion by ENSR in this Phase II  
19 report that there was no requirement under  
20 Illinois law to further investigate or remediate  
21 the property. Do you generally recall that?

22 A. Yes, I do.

23 Q. Why was that information relevant to  
24 Midwest Gen?



1           A.     Because we were an operating facility  
2     wanting to make sure that we were in compliance  
3     with the rules.

4           Q.     I'm going to ask you to bring up the  
5     aerial now for Powerton.

6                     Ms. Race, does this aerial show ash  
7     ponds at the Powerton Station?

8           A.     Yes, it does.

9           Q.     And approximately -- not approximately.  
10                    How many ash ponds are there at  
11     Powerton?

12           A.     Well, it depends on if you are talking  
13     about the CCR rule or not. So in this case just  
14     speaking from ponds that -- regardless of the  
15     rule at this point and the way that we may have  
16     seen this before the rule existed, there was the  
17     metal cleaning basin, the ash surge basin, the  
18     ash bypass basin, and the secondary basin.

19           Q.     On the aerial, there are three areas  
20     denoted in a purple color, which -- what are  
21     those?

22           A.     Those are the main components of the  
23     ash handling system. And the secondary ash  
24     basin that is above them was a finishing pond.

1 Q. Now, with respect to the ash in the  
2 Powerton ash ponds, did the ash remain in those  
3 ponds or was it periodically removed?

4 A. The ash was periodically removed from  
5 the ponds.

6 Q. Now, we are going to talk about each of  
7 the specific ponds.

8 MS. FRANZETTI: We have Stipulation 20, the  
9 ash surge basin was constructed in 1978 with a  
10 Poz-o-Pac liner on the bottom and a Hypalon  
11 liner on the sides.

12 BY MS. FRANZETTI:

13 Q. What is the purpose of the ash surge  
14 basin?

15 A. The ash surge basin is there to settle  
16 out the bottom ash that is processed in the  
17 facility, or the slag actually, as you can call  
18 it, since it's a cyclone unit.

19 Q. Would it be accurate to describe it as  
20 kind of the main ash pond?

21 A. Yes, it is the main ash pound.

22 Q. How often is ash removed from the ash  
23 surge basin?

24 A. Well, it used to be removed probably

1 every six to eight years, something like that.  
2 And now because the plant is operating less  
3 often, it won't be removed as often. But when  
4 it's necessary, when the ash impoundment starts  
5 to fill up, then it's time to de-water it and  
6 remove the ash.

7 Q. All right. Now, we will turn to the  
8 bypass basin.

9 A. Okay.

10 MS. FRANZETTI: We have two stipulations on  
11 this: Stipulation 28, the bypass basin had a  
12 Poz-o-Pac liner on the bottom and a Hypalon  
13 liner on the sides; Stipulation 30, the bypass  
14 basin receives ash when Powerton is emptying the  
15 ash surge basin.

16 BY MS. FRANZETTI:

17 Q. So about how often is the bypass basin  
18 used?

19 A. It's not used very often. It's used  
20 when the ash surge basin is out of service.  
21 Very similar to Joliet's situation.

22 Q. And about how often is ash removed from  
23 the ash surge basin?

24 A. I -- it really isn't necessary to

1 remove ash from the ash surge basin very often.  
2 I'm not even sure -- if I remember correctly,  
3 they may not have found ash in it -- very much  
4 ash in it when they relined it.

5 Q. Okay. Turning to the secondary ash  
6 basin. How is that used?

7 A. That is a polishing -- or finishing  
8 pond.

9 Q. And for which basin's effluent is the  
10 secondary ash basin used as a finishing pond?

11 A. The ash surge basin.

12 Q. So its function is similar to Joliet 29  
13 pond three?

14 A. Exactly.

15 Q. Is ash periodically removed from the  
16 secondary ash basin?

17 A. Ash was not found in that basin, so ash  
18 never needed to be removed from there. And I  
19 see it as very similar to Joliet's situation.

20 MS. FRANZETTI: Okay. We have Stipulation  
21 22, since before 1999, the secondary ash basin  
22 had a Hypalon liner.

23 BY MS. FRANZETTI:

24 Q. Now I'm going to turn to the metal

1 cleaning basin. What is its purpose?

2 A. It is there for materials that are  
3 cleaned out of equipment in the power plant.

4 MS. FRANZETTI: And we have Stipulation 25,  
5 the metal cleaning basin was constructed in 1978  
6 with a Poz-o-Pac liner on the bottom and a  
7 Hypalon liner on the sides. Stipulation 26, in  
8 2010 Midwest Gen relined the metal cleaning  
9 basin with a 60-millimeter HDPE liner. And  
10 Stipulation 27, the ash in the metal cleaning  
11 basin is dredged approximately on an annual  
12 basis.

13 BY MS. FRANZETTI:

14 Q. Turn to the former ash basin. What's  
15 its purpose?

16 A. The former ash basin is currently an  
17 emergency overflow for the ash surge basin.

18 Q. Did it have any different purpose  
19 before?

20 A. Yes. It once was the settling basin  
21 for the ash impoundment. I mean, it was the ash  
22 impoundment before the ash surge basin existed.

23 Q. Is it lined?

24 A. I don't know. I don't think it is.

1 Q. Okay. Turning to 2010 at Powerton, did  
2 Midwest Gen reline -- we can bring up the  
3 timeline now -- did Midwest Gen reline any of  
4 the ash basins?

5 A. Yes.

6 Q. Which ones?

7 A. We relined the bypass basin and...

8 Q. Do you recall if it was the metal  
9 cleaning basin?

10 A. Yes, the metal cleaning basin was the  
11 other one.

12 Q. And why did you reline these two ponds?

13 A. We were requested to reline them by the  
14 station. They needed to use those basins and  
15 wanted to reline them.

16 Q. Did you assist in the permitting side  
17 for the construction of those new liners?

18 A. Yes.

19 Q. I'm going to ask you to turn in your  
20 binder to Exhibit 633. It appears to be a  
21 series of e-mails with some calculations  
22 attached at the back involving you, Jamie  
23 Rabins, and Heather Simon of Natural Resource  
24 Technology. And this is in the

1 August/September 2010 time frame.

2           Would you take a moment to look at that  
3 and tell me if you recognize the e-mails  
4 contained in Midwest Gen Exhibit 633?

5           A.    Yes, I do.

6           Q.    What do these e-mails pertain to?

7           A.    They pertain to the liner design  
8 that -- and Heather Simon and Eric Splaychek  
9 (phonetic), our Natural Resources Technology  
10 consultants that we use for probably all of our  
11 liner replacements over the years. And so they  
12 were discussing with Jamie Rabins the materials  
13 that were going to be used in the liner  
14 construction.

15          Q.    And what was Mr. Rabins asking about?

16          A.    He was asking about whether or not the  
17 overburden stress on the liner was going to be  
18 adequate for having, you know, heavy machinery  
19 running over the liner.

20          Q.    And why would heavy machinery run over  
21 the liner?

22          A.    To remove the ash.

23          Q.    Now, what information did the NRT  
24 personnel you have just identified provide to

1 Mr. Rabins?

2 A. They provided calculations. And they  
3 also provided documentation of specifications  
4 regarding the CA6 material -- or the limestone  
5 material that was being placed above the 12-inch  
6 cushion layer.

7 Q. And what were they showing or providing  
8 to Mr. Rabins with regard to the CA6 layer?

9 A. That it has a higher sheer strength and  
10 materials that typically cover Geomembrane  
11 liners. So that they looked at it as a stronger  
12 material.

13 Q. And just so the record is clear, what  
14 pages of the document are the calculations by  
15 NRT concerning the construction specifications  
16 for this new liner contained on? Can you read  
17 the Bates numbers where those calculations are  
18 found?

19 A. 49296 through 49298.

20 Q. Okay. And what was the purpose of  
21 providing those calculations?

22 A. It was to ensure that Jamie was  
23 comfortable that we were using the appropriate  
24 specifications for the construction of the



1 liner.

2 MS. FRANZETTI: I would move to admit Midwest  
3 Gen Exhibit 633.

4 THE HEARING OFFICER: Ms. Bugel?

5 MS. BUGEL: No objection.

6 THE HEARING OFFICER: Thank you, Ms. Bugel.  
7 Respondent's Exhibit 633 is admitted.

8 (Whereupon document so  
9 offered was received in  
10 evidence as Respondent's  
11 Exhibit No. 633.)

12 BY MS. FRANZETTI:

13 Q. Ms. Race, let's turn to Exhibit 634 in  
14 your book. Do you recognize this document?

15 A. This is a permit modification for  
16 Powerton generating station regarding their RO  
17 waste.

18 Q. Okay. And this modifies what type of  
19 permit?

20 A. Their NPDES permit.

21 Q. So it would be accurate to say that  
22 this is the current NPDES permit for the  
23 Powerton Station?

24 A. Correct.

1           Q.     If you turn to page 2 of the permit, at  
2     the top it says Effluent Limitations and  
3     Monitoring and it's referring to outfall 001 ash  
4     treatment system effluent.

5           A.     What information is contained on this  
6     page of the permit?

7           A.     This contains the information regarding  
8     the receiving waters from each of the  
9     discharge -- discharge service water discharges  
10    by number.

11          Q.     Do any of these discharges refer to  
12    waste streams from the ash ponds?

13          A.     The ash treatment system effluent and  
14    depending upon if you look at it from a CCR rule  
15    perspective, possibly. Maybe the metal cleaning  
16    waste treatment system effluent or not because  
17    it's not in the CCR rule.

18          Q.     What does item number one describe on  
19    that list of what the discharge consists of?

20          A.     Ash treatment system effluent.

21          Q.     And approximately how much of the  
22    discharge is represented by that bottom ash in  
23    economizer ash sluice waste water?

24          A.     10.9 million gallons per pay.

1 MS. FRANZETTI: I would move to admit  
2 Exhibit 634 into evidence.

3 THE HEARING OFFICER: Ms. Bugel?

4 MS. BUGEL: We have an objection against many  
5 of these permits as not -- the discharge from  
6 the outfalls as not being relevant to whether  
7 the ponds and landfills are causing groundwater  
8 contamination.

9 THE HEARING OFFICER: Ms. Franzetti?

10 MS. FRANZETTI: We disagree and that it shows  
11 they are part of the treatment system at the  
12 plant and they are not threatening the  
13 groundwater.

14 THE HEARING OFFICER: Yeah, you know, I think  
15 it's relevant. In any event it will go to the  
16 weight and not the admissibility. So overruled.  
17 Exhibit 634 is admitted over objection.  
18 Respondent's Exhibit 634, thanks.

19 (Whereupon document so  
20 offered was received in  
21 evidence as Respondent's  
22 Exhibit No. 634.)

23 BY MS. FRANZETTI:

24 Q. I would like to have you turn to

1 Exhibit 635 in your binder, Ms. Race. It  
2 appears to be a report by Andrews Engineering  
3 dated June 8th, 2004, regarding report of  
4 sampling the limestone runoff basin, dredge  
5 spoil area, and coal combustion waste.

6           Would you just take a moment to look at  
7 it. My question is: Are you familiar with this  
8 document?

9           A. Yes, I am.

10          Q. Were you involved in requesting that  
11 Andrews Environmental Engineering prepare this  
12 document?

13          A. Yes, I was.

14          Q. What was the work that Andrews did to  
15 prepare this document?

16          A. Well, they needed to do three things  
17 for us. They needed to take -- they needed to  
18 dig test pits and do some sampling within the  
19 limestone basin, which is another basin on the  
20 east side of the property that was not part of  
21 our NPDES system but was -- did contain a liner  
22 and contain material that we wanted to see if it  
23 would qualify as coal combustion byproduct. And  
24 so they had to do that task.

1           They also -- we had dredge spoils that  
2 we needed sampled for -- just as a separate  
3 project because of the dredging that we would do  
4 from our intake or discharge at the Illinois  
5 River.

6           And then they also sampled coal  
7 combustion waste to see what the analytical  
8 results would be from our material.

9           Q.    With respect to the -- some of the  
10 analytical work they did, would you turn to page  
11 Bates 11305.  And specifically, Section 2.0 on  
12 that page, limestone runoff basin.  And would  
13 you just read to yourself that first paragraph.  
14 I'm going to have a question to you on that.

15          A.    Okay.

16          Q.    What's the limestone runoff basin?

17          A.    The limestone runoff basin is named  
18 that way because it was a historic basin that  
19 was used in the '70s for some experimental  
20 project.  I believe the Department of Energy may  
21 have been involved with it.  But that has no --  
22 no longer in operation and hasn't been since the  
23 '70s.  And so this basin is there and currently  
24 not being used as far as I know.

1 Q. So why was it sampled?

2 A. It was sampled because there were --  
3 there was equipment that was taken out of  
4 service and so the ash was cleaned out of it.  
5 It was put there for a temporary holding space  
6 until the beneficial use determination could be  
7 made.

8 Q. So what does this paragraph describe?

9 A. This describes how the limestone runoff  
10 basin was sampled.

11 So there were stakes put out. Test  
12 pits were located. I believe they randomized  
13 how they were going to -- which places they were  
14 going to sample from.

15 Q. Which test method did they use?

16 A. They used the neutral leech method,  
17 which is the method that's required by Illinois  
18 EPA to determine whether you can beneficially  
19 use a material.

20 Q. And is that also referred to as -- or  
21 known as ASTM D3987-85?

22 A. Yes, it is.

23 Q. And why was that method used?

24 A. Because Illinois EPA required it in

1 order to show that material like the bottom ash  
2 that was in those impoundments could be used  
3 beneficially for structural fill or any number  
4 of other things.

5 Q. Okay. And generally what were the  
6 results of this sampling in terms of whether the  
7 ash could be beneficially reused?

8 A. Generally the results were good and  
9 they could be beneficially used. I can't  
10 remember...

11 Q. Well, let me ask you to turn to  
12 page 11341, and tell me what information is  
13 contained in that table.

14 A. This table shows sampling results  
15 summary comparing the Class 1 groundwater  
16 quality standard to the test pit numbers for  
17 various chemical constituents. And what it's  
18 showing here is a lot of non-detects for the  
19 chemical constituents. And there were two test  
20 pits -- or one test pit that was above the  
21 groundwater quality standard for chromium and  
22 selenium.

23 Q. Okay. Taking chromium, is this showing  
24 that the Class 1 groundwater standard is 0.1 and

1 that the test result was 0.16?

2 A. Yes, it is.

3 Q. And with respect to selenium, is it  
4 showing the Class 1 groundwater standard as  
5 point -- is 0.05 and the test pit '03 result was  
6 0.08; is that correct?

7 A. It's -- yes.

8 Q. And test pit 13's result for selenium  
9 was 0.15, correct?

10 A. Correct.

11 Q. What's the SFA column?

12 A. I believe --

13 MS. BUGEL: I'm going to object. I believe  
14 there was a misstatement unto the evidence. I  
15 believe you just stated test pit 13, and I think  
16 you meant 15.

17 THE HEARING OFFICER: I think you are right.  
18 Sustained.

19 MS. FRANZETTI: Yes, yes.

20 BY MS. FRANZETTI:

21 Q. Correcting that to test pit 15, is the  
22 selenium result for test pit 15 0.15?

23 A. Correct.

24 Q. What is the column that's marked SFA-1



1 providing results on?

2 A. I believe -- well, let me look. This  
3 is an area of material that appeared to be set  
4 up in compressed flash.

5 Q. So that is not test results for the  
6 type -- for bottom ash which is what's in the  
7 ash ponds, right?

8 A. That is correct.

9 Q. Okay. Would you turn back to  
10 page 11344. It says at the top, table four,  
11 Midwest Generation Powerton Coal Combustion  
12 Waste Sampling Results Summary.

13 What type of information is contained  
14 in this table four?

15 A. Coal combustion waste sampling results  
16 for the 51 boiler, the 52 boiler, and then a  
17 bottom ash sample BA-01.

18 Q. And is Powerton the same as Joliet 29  
19 in that only bottom ash went to the ponds?

20 A. Yes.

21 Q. With respect to the bottom ash sampling  
22 results, what does table four show?

23 A. Table four shows that -- just give me a  
24 moment.

1 Q. Uh-huh.

2 A. Fly ash sample -- there are two fly ash  
3 samples here. One is from boiler 51 and one is  
4 from boiler 52. And in addition to these fly  
5 ash samples, one sample of bottom ash was also  
6 obtained.

7 Q. And is that one sample of bottom ash  
8 results reported under the column BA-01 on table  
9 four?

10 A. Yes.

11 Q. And what do those results show?

12 A. Those results show mostly non-detects  
13 and that there is nothing that results in above  
14 Class 1 groundwater quality standard exceedents.

15 Q. So what did this assessment by Andrews  
16 Engineering tell you regarding the bottom ash,  
17 the quality or constituents of the bottom ash  
18 being generated at Powerton that was being sent  
19 to the ash ponds?

20 MS. BUGEL: Objection. Calls for  
21 speculation.

22 THE HEARING OFFICER: Could you rephrase,  
23 please. Sustained.

24

1 BY MS. FRANZETTI:

2 Q. What did the analytical test results on  
3 the bottom ash that was sampled by Andrews  
4 Engineering tell you about the nature of the  
5 bottom ash being sent to the ash ponds?

6 MS. BUGEL: Hearing Officer, my objection is  
7 that she is asking the witness to draw a broader  
8 conclusion about these test results when these  
9 test results, number one, they speak for  
10 themselves. Number two, it's speculative and  
11 prejudicial to say that that somehow reflects  
12 all the bottom ash being sent to the ponds.

13 THE HEARING OFFICER: Well, I'm going to  
14 overrule it and you can bring it up on your  
15 cross to flesh that out. So the answer stands.  
16 Or has she responded?

17 MS. FRANZETTI: No, not yet.

18 THE HEARING OFFICER: Okay. So overruled.  
19 You may proceed.

20 MS. BUGEL: Could you read back the question,  
21 please?

22 MS. FRANZETTI: I will restate it.

23 MS. BUGEL: Okay.

24

1 BY MS. FRANZETTI:

2 Q. What did the bottom ash sampling  
3 results shown here on table four tell you about  
4 the nature of the bottom ash being sent to the  
5 ash ponds at Powerton?

6 A. Well, to begin with, the coal that we  
7 were using didn't -- it was sub-bituminous  
8 Wyoming coal and didn't change over periods of  
9 time. We were always using that.

10 So my conclusion in looking at the  
11 bottom ash results was that the bottom ash was  
12 suitable for beneficial use and met the standard  
13 that was required under the Illinois  
14 Environmental Protection Act.

15 Q. Okay. Do you recall whether the  
16 Powerton ash ponds were included in that NRT  
17 pond's ranking and prioritizing work for  
18 relining the ponds that we were talking about  
19 yesterday?

20 A. Yes, they were included.

21 Q. Do you recall whether NRT made the same  
22 recommendation regarding the type of liner for  
23 the relining of the Powerton ash ponds as it did  
24 for Joliet 29?

1 A. Yes, they did.

2 MS. FRANZETTI: I'd move to admit into  
3 evidence Midwest Gen Exhibit 635.

4 MS. BUGEL: Aside from our objection on the  
5 record as to the line of questioning, we have no  
6 further objection.

7 THE HEARING OFFICER: Okay. Thank you.  
8 Respondent's Exhibit 635 is admitted subject to  
9 Ms. Bugel's objections.

10 (Whereupon document so  
11 offered was received in  
12 evidence as Respondent's  
13 Exhibit No. 635.)

14 MS. FRANZETTI: On the timeline I'm going to  
15 move forward now to 2008 but still on Powerton.

16 BY MS. FRANZETTI:

17 Q. I'm going to refer you back to  
18 Exhibit 621. And this is the July 15th, 2009,  
19 Midwest Generation letter to Illinois EPA with  
20 regard to both the development of the  
21 groundwater monitoring plan and the  
22 hydrogeologic assessment plan for Powerton.

23 Turning, if you would, to page 297 of  
24 that document. Does Section E on that page

1 provide information on the three Powerton  
2 Station ash ponds?

3 A. Yes, it does.

4 Q. Now, one of those is referred to as  
5 "emergency overflow basin." Can you explain  
6 what that is referring to?

7 A. Yes. The emergency overflow basin was  
8 a -- formerly the ash basin for bottom ash  
9 settling at the plant and was directly to, like,  
10 the northeast of where the current ash surge  
11 basin is.

12 Q. And I think we have talked about the  
13 other ash basins and ponds that are referenced  
14 there in Section E.

15 So my just general question is: What  
16 did Midwest Gen advise the Illinois EPA  
17 concerning the potential for groundwater  
18 migration from the Powerton ash ponds?

19 A. We did not believe that the ash ponds  
20 were leaking and that we did not believe that  
21 there was groundwater -- that there was any  
22 migration to groundwater from the ash  
23 impoundments.

24 Q. And what was the primary reason for

1 Midwest Gen's conclusion?

2 A. Well, you know, we knew after we  
3 started installing the ash liner -- ash  
4 impoundment liners that the Poz-o-Pac that we  
5 were seeing was in good condition and so we  
6 fully expected it to be in good condition  
7 everywhere.

8 Q. Could you turn to page 299 of the  
9 document. Using the Bates number, 299.

10 A. Got it.

11 Q. All right. And with respect to  
12 Powerton, what information regarding the  
13 presence of wells, potable wells, does this  
14 portion of the report present to IEPA?

15 A. It identifies six wells that were  
16 within this 2,500-foot radius that Illinois EPA  
17 wanted us to look at to see if there were  
18 potable wells. Those six wells actually are  
19 station wells. And they were not downgradient  
20 of the ash impoundments.

21 Q. Are all six of them station wells?

22 A. I believe so.

23 Q. Do you want to take a look at this  
24 paragraph to make sure?

1 A. Sure.

2 Two of them are potable water supplies  
3 for Powerton. And it looks like there are four  
4 others as well, which I was -- I had forgotten.  
5 So I misspoke.

6 Q. And, I'm sorry, "four others," what do  
7 you mean?

8 A. There must be four other wells, but  
9 they are not downgradient of ash impoundments.

10 Q. Okay. But they're not station wells  
11 either?

12 A. On Bates page 303, Monitoring Well-9  
13 and 10 are on station property. Other wells  
14 that are listed here are not.

15 Q. Okay.

16 A. And they are not downgradient of the  
17 ash impoundments.

18 Q. Were the two wells that were the  
19 station water supply wells, were those  
20 downgradient from the ash ponds?

21 A. No, they were not -- are not.

22 Q. So none of the six wells were  
23 downgradient of the ash ponds?

24 A. Correct.



1 Q. Just as with Joliet 29, did Midwest Gen  
2 proceed to install groundwater monitoring wells  
3 around the ash ponds and conduct quarterly  
4 monitoring of them?

5 A. Yes, we did.

6 Q. I'm going to ask you to pull out  
7 Complainant's Exhibit 13-C.

8 THE HEARING OFFICER: I'm thinking about  
9 taking a break in about five.

10 MS. FRANZETTI: I was just going to ask you  
11 about that.

12 THE WITNESS: I found it.

13 BY MS. FRANZETTI:

14 Q. Okay. With respect to Complainant's  
15 Exhibit 13-C that's previously been identified  
16 as the Powerton hydrogeologic report, is that  
17 the initial report on the monitoring wells  
18 installed at Powerton in the first round of  
19 groundwater sampling?

20 A. Yes, it is.

21 Q. Do you recall how many monitoring wells  
22 were installed at Powerton?

23 A. There were several. Initially we put  
24 in ten monitoring wells.

1 Q. Okay. And generally where were they  
2 located in relation to the ash ponds?

3 A. In discussions with Illinois EPA, we  
4 proposed and installed them around all the ash  
5 impoundments.

6 Q. Could you turn to page 7100 --

7 A. Got it.

8 Q. -- of Complainant's Exhibit 13-C.  
9 What does this figure show?

10 A. This figure shows the location of the  
11 monitoring wells at Powerton Station.

12 Q. Okay. Now I'm going to ask you to look  
13 back up at the -- at your screen, the aerial,  
14 and bring up the -- if you could bring up the  
15 aerial map and bring up the groundwater  
16 monitoring well depictions.

17 Does the aerial with those red flags  
18 with MW and a number on each of the flags, does  
19 that generally accurately depict the location of  
20 the monitoring wells Midwest Gen installed  
21 around the Powerton ash ponds?

22 A. After 2011, there were additional wells  
23 that were installed at the request of Illinois  
24 EPA beyond what was on this exhibit.

1 Q. Right.

2 A. But, yes, that -- those are the  
3 locations.

4 Q. So that exhibit is just showing the  
5 original wells installed?

6 A. Correct.

7 Q. And on the aerial here, this is the  
8 originals plus the additional ones installed?

9 A. Correct.

10 Q. Do you recall approximately how many,  
11 once all the wells were installed, there were?

12 A. Gosh, close to 20. Like 17, 19, yeah.  
13 Around 20.

14 Q. Now, do you know from your work in  
15 overseeing this, are some of the wells  
16 upgradient, some downgradients, how were the  
17 wells placed?

18 A. Yes. The upgradient wells that are  
19 largely like MW-9, MW-16, the wells to the south  
20 of the property.

21 Q. Now, if you could turn to page 7095 in  
22 Complainant's 13-C. It's table two, Groundwater  
23 Analytical Results.

24 What groundwater analytical results are

1 being presented here with respect to the  
2 quarterly sampling?

3 A. These are the first quarterly sampling  
4 results that we received based upon the original  
5 well arrangement that was agreed upon with  
6 Illinois EPA in the hydrogeologic assessment  
7 plan.

8 Q. Now, some of the numbers in this table  
9 are in boldface font and most of them aren't.  
10 What's your understanding of the significance of  
11 the values that are in bold font?

12 A. The numbers that are in bold font  
13 exceed the groundwater quality standard Class 1.

14 Q. Okay. And out of the approximately 20  
15 chemical names on this table, which ones have  
16 any exceedents as of the Class 1 standards?

17 A. Manganese and boron.

18 Q. And with respect to -- let's take boron  
19 first. In how many wells was any elevated boron  
20 detected?

21 A. Just one.

22 Q. With respect to -- and if you need to  
23 either refer to the diagram in this document or  
24 up on the screen, which -- was that well an

1 upgradient or downgradient well?

2 A. That's an upgradient well.

3 Q. What's the well number?

4 A. Monitoring Well-9.

5 Q. Now let's turn to sulfate.

6 Was any sulfate detected above the  
7 Class 1 standard?

8 A. No, it was not.

9 Q. And so the only other detection above  
10 the Class 1 standard was for manganese, correct?

11 A. Correct.

12 Q. And Midwest Gen continued this  
13 quarterly groundwater monitoring?

14 A. Yes, we did.

15 MS. FRANZETTI: Okay. Now would be good for  
16 a break if that's okay.

17 THE HEARING OFFICER: Let's take a break for  
18 15. But I do want to note for the record that  
19 there are no members of the public here, and I  
20 don't think there were any yesterday as well  
21 other than what's affiliated with -- in respect  
22 to the parties.

23 Yes, Mr. Wannier?

24 MR. WANNIER: Yeah, Your Honor, before we go

1 off the record, we -- complainants have, I think  
2 we mentioned yesterday, three to four -- two to  
3 four members of the public that would be  
4 interested in coming in and giving public  
5 comment. I believe we discussed yesterday that  
6 there was some flexibility when they come in.

7 We're working now to figure out what  
8 day would work best, but we are expecting that  
9 would be either later in the week this week or  
10 Monday of next week.

11 THE HEARING OFFICER: Okay. You suggested  
12 later in the week this week and I said okay.  
13 And so I was thinking perhaps after lunch or  
14 whatever is convenient for your public comment.

15 MS. LAUGHRIDGE GALE: Mr. Hearing Officer, do  
16 we have -- our concern with public comment  
17 before we are finished with our case-in-chief is  
18 that it will interfere or -- you know, we  
19 have to -- we need time to do our own  
20 case-in-chief first.

21 So we would only object that any time  
22 taken by public comment would interfere with  
23 what we are trying to do here.

24 My understanding is is under the rules

1 public comments are only allowed at your  
2 discretion and when time and facilities allow.  
3 And so our only request and our objection to any  
4 public comment before we are done with our  
5 case-in-chief is that we are allowed to finish  
6 what we are doing here first.

7 THE HEARING OFFICER: Your objection is so  
8 noted, and I don't agree with you. Mr. Wannier  
9 said there was three or four people about five  
10 minutes a piece.

11 MR. WANNIER: Yes. I mean, I don't think it  
12 would take more than 20 minutes, max 30. I  
13 would be surprised if it went beyond 30.

14 THE HEARING OFFICER: Okay. In any event, I  
15 do also want to note for the record we have  
16 Senior Mark Powell, we have attorney advisor  
17 Jason James here again today from the board, and  
18 we also have had technical unit -- Anand Rao  
19 from the technical unit, and Chloe Cummings, our  
20 newest intern.

21 I'll see you in 15. Thank you. We are  
22 off the record.

23

24

1 (Whereupon, a recess was had at  
2 10:39 a.m., after which the  
3 hearing was resumed at  
4 10:55 a.m. as follows:)

5 THE HEARING OFFICER: All right. We are back  
6 on the record. It's approximately five to  
7 11:00.

8 Before the break, we talked as an  
9 aside. Midwest appears to have -- take issue  
10 with possible public comment due to the fact  
11 that it may cut into their case-in-chief time.  
12 They want to get done about Monday or Tuesday.  
13 But I have been assured that public comment will  
14 take no longer than 20 minutes tops.

15 I would time them if Midwest feels the  
16 need for me to time them. But I think we can  
17 get through this, and it's entirely my  
18 discretion. And it was discussed somewhat in an  
19 e-mail sent from Mr. Wannier to me and the rest  
20 of the parties regarding public comments.

21 The Board welcomes them and I think we  
22 can find the time. If we can't, we'll just cut  
23 lunch and breaks short and proceed.

24 So in any event, Ms. Franzetti and



1 Ms. Race, you are on.

2 MS. FRANZETTI: Thank you, Mr. Halloran.

3 BY MS. FRANZETTI:

4 Q. Ms. Race, I'm going to show you -- I'm  
5 going to go back to Joliet 29, just briefly.  
6 Something I neglected to do.

7 MS. FRANZETTI: Mr. Halloran.

8 THE HEARING OFFICER: Thank you.

9 BY MS. FRANZETTI:

10 Q. This is Midwest Gen Exhibit 663.  
11 Ms. Race, would you take a moment to look  
12 through that. It appears to be a hardcopy of  
13 the Joliet 29 timeline of events that we have  
14 been showing up on the screen and on your  
15 monitor. And if you would just take a moment to  
16 look through that.

17 I don't want to go back over the  
18 contents that it contains. But is this a  
19 generally reasonable and fair summary of the  
20 events relating to the Joliet 29 station  
21 including its ash ponds?

22 A. Yes, it is.

23 MS. FRANZETTI: Mr. Hearing Officer, we would  
24 move to admit Exhibit 663. We believe it would

1 be helpful to the Board and to you in terms of  
2 the review of the transcript since there have  
3 been repeated references to the timeline.

4 THE HEARING OFFICER: Ms. Bugel?

5 MS. BUGEL: We do have an objection to  
6 Exhibit 663. It is due to the photo that  
7 appears on the first page. Above it, obviously,  
8 there is a statement, 1978, and then a reference  
9 that Joliet number 29 ponds, one, two, and three  
10 constructed with Poz-o-Pac liner, and then there  
11 is a photo under that.

12 Our objection is beginning with  
13 foundation of the photo and then the -- what it  
14 claims to represent, the photo. And it's --  
15 it's not identified well.

16 It is -- if they are claiming that's a  
17 core sample of Poz-o-Pac, it is not clear  
18 whether that is from Joliet. And it's not clear  
19 that that can represent the condition of the --  
20 any Poz-o-Pac liner in its totality.

21 THE HEARING OFFICER: Okay. Thank you for  
22 putting your objection in the record.

23 Ms. Franzetti.

24 MS. FRANZETTI: Mr. Halloran, we believe that

1 that is just meant to be an example of a sample  
2 of Poz-o-Pac which we had here at the October  
3 hearing, with that clarification. Does that  
4 address counsel's concern?

5 MS. BUGEL: No, it does not.

6 THE HEARING OFFICER: Okay. I will ask the  
7 Board to take note of Ms. Bugel's objections,  
8 Ms. Franzetti's explanation, and I will admit  
9 Exhibit 663 of Respondent's into evidence over  
10 objection.

11 (Whereupon document so  
12 offered was received in  
13 evidence as Respondent's  
14 Exhibit No. 663.)

15 MS. FRANZETTI: And similarly, I'm going to  
16 take -- never mind.

17 BY MS. FRANZETTI:

18 Q. Ms. Race, I'm going to direct your  
19 attention to Exhibit 636 in your binder.

20 Do you recognize that document as a  
21 copy of the Powerton Compliance Commitment  
22 Agreement that was signed by Midwest Gen?

23 A. Yes, I do.

24 Q. And turning to the last page of the

1 document, do you recognize the signature under  
2 the heading for respondent?

3 A. Yes, I do. It's for John Kennedy, the  
4 senior vice president of generation for Midwest  
5 Gen at the time.

6 MS. FRANZETTI: All right. I would move to  
7 admit Exhibit 636.

8 THE HEARING OFFICER: Ms. Bugel?

9 MS. BUGEL: We have no objection.

10 THE HEARING OFFICER: Okay. Thank you.  
11 Respondent's Exhibit 636 is admitted.

12 (Whereupon document so  
13 offered was received in  
14 evidence as Respondent's  
15 Exhibit No. 636.)

16 BY MS. FRANZETTI:

17 Q. Would you turn to page Bates 554 of  
18 Exhibit 636, Section III, Compliance Activities.

19 Does this section list the activities  
20 that Midwest Gen agreed to undertake pursuant to  
21 this agreement?

22 A. Yes, it does.

23 Q. And with respect to Powerton, was the  
24 obligation to continue to remove ash from the

1 pond similar to the Joliet 29 commitment?

2 A. Yes, it was.

3 Q. And were there also obligations  
4 about -- during removal of the ash protecting  
5 the liner's integrity and inspecting the liners  
6 similar to what you have already testified to as  
7 to the Joliet 29 station?

8 A. Yes, there is.

9 Q. Now, with respect to groundwater  
10 monitoring wells -- and I'm moving down to  
11 paragraph 5(D), as in dog, of the document --  
12 was there anything included under the compliance  
13 activities for Midwest Gen relating to  
14 groundwater monitoring wells?

15 A. Yes. A new well needed to be installed  
16 and monitored just like the other 15 existing  
17 groundwater monitoring wells at that time.

18 Q. And what was the purpose of that  
19 additional groundwater monitoring well?

20 A. Illinois EPA wanted to have a well that  
21 they thought might be more in the background on  
22 the property. More, you know, upgradient from  
23 the existing wells.

24 Q. Okay. With respect to any relining of

1 ponds, did Midwest Gen agree to do any relining?

2 A. Yes.

3 Q. What ponds did it agree to reline?

4 A. The ash surge basin and the secondary  
5 ash settling basin.

6 Q. And were there any provisions in here  
7 with respect to a Groundwater Management Zone?

8 A. Yes, there are.

9 Q. And did Midwest Gen agree to establish  
10 a groundwater monitoring zone?

11 A. Yes. And we did submit the application  
12 to establish Groundwater Management Zone, and  
13 that was accepted by Illinois EPA.

14 Q. All right. Were there any provisions  
15 in here relating to establishing an ELUC, an  
16 environmental land use control?

17 A. Yes, there were. And that area was to  
18 cover the same area as the Groundwater  
19 Management Zone. And it was to be established  
20 and was accepted by Illinois EPA as well.

21 Q. Okay. With respect to -- I'm going to  
22 ask you to turn to page 555, and specifically  
23 subparagraph L. It pertains to the east yard  
24 runoff basin.

1           Why were there requirements in here  
2 relating to monitoring the east yard runoff  
3 basin?

4           A.    I think that IEPA wanted to ensure that  
5 the ash listing was going to either the bypass  
6 basin or the ash surge basin and that -- because  
7 the east yard runoff basin is a storm water  
8 basin that only small incidental amounts of ash  
9 might end out in the east ash basin.

10          Q.    Did Midwest Gen perform all of the  
11 compliance activities described in this  
12 Section III of Exhibit 636?

13          A.    Yes, we did.

14          MS. FRANZETTI:  Okay.  Now, we have a  
15 stipulation, Stipulation 62, provides on  
16 October 17, 2013, sorry, Midwest Gen submitted  
17 to Illinois EPA its certification that all of  
18 the Powerton CCA measures were successfully  
19 completed.

20          BY MS. FRANZETTI:

21          Q.    I'm going to ask you to turn to Exhibit  
22 637 in your binder.

23                    Is that the certification that Midwest  
24 Gen submitted to Illinois EPA that all the

1 Powerton CCA measures were successfully  
2 completed?

3 A. Yes, it is.

4 MS. FRANZETTI: I would move to admit  
5 Exhibit 637.

6 MS. BUGEL: No objection.

7 THE HEARING OFFICER: Thank you, Ms. Bugel.  
8 Respondent's Exhibit 637 is admitted.

9 (Whereupon document so  
10 offered was received in  
11 evidence as Respondent's  
12 Exhibit No. 637.)

13 MS. FRANZETTI: Stipulation number 58 states  
14 that at Powerton, Midwest Gen applied for a GMZ  
15 that covers the eastern part of the station  
16 including the ash ponds.

17 BY MS. FRANZETTI:

18 Q. Ms. Race, if you would, on your table  
19 find Complainant's Exhibit 254.

20 A. All right.

21 Q. Is that the Powerton GMZ application  
22 Midwest Gen submitted to Illinois EPA?

23 A. Yes, it is.

24 MS. FRANZETTI: Now, Stipulation number 59 is



1 that Illinois EPA approved the Powerton GMZ on  
2 October 3, 2013.

3 BY MS. FRANZETTI:

4 Q. Now back to your binder, Exhibit 638.

5 It appears to be IEPA's approval of the Powerton  
6 GMZ.

7 A. Correct.

8 Q. Is it?

9 A. Correct, it is.

10 MS. FRANZETTI: I would move to admit  
11 Exhibit 638.

12 THE HEARING OFFICER: Ms. Bugel?

13 MS. BUGEL: No objection.

14 THE HEARING OFFICER: Thank you, Ms. Bugel.  
15 Respondent's Exhibit 638 is admitted.

16 (Whereupon document so  
17 offered was received in  
18 evidence as Respondent's  
19 Exhibit No. 638.)

20 BY MS. FRANZETTI:

21 Q. Ms. Race, directing your attention to  
22 the screen and the area that's got green slanted  
23 hashmarks on it, do you see where I'm referring  
24 to?

1 A. Yes, I do.

2 Q. Do you know what that area is  
3 depicting?

4 A. Yes. That area depicts the area above  
5 the Groundwater Management Zone and the  
6 environmental land use control agreement that  
7 were approved by Illinois EPA.

8 Q. Is it a reasonably accurate depiction  
9 of the area -- the identical area of the ELUC  
10 and the GMZ?

11 A. Yes.

12 MS. FRANZETTI: Now we have Stipulation  
13 number 60, states that at Powerton, Midwest Gen  
14 applied for an ELUC that covers the eastern part  
15 of the station including the ash ponds.

16 BY MS. FRANZETTI:

17 Q. If you can find Exhibit 253,  
18 Complainant's Exhibit 253, I would ask you to  
19 confirm whether that is a copy of Midwest Gen's  
20 ELUC application for the Powerton plant.

21 A. Yes, it is.

22 MS. FRANZETTI: And Stipulation number 61 is  
23 that Illinois EPA approved the Powerton ELUC on  
24 October 26, 2013.

1 BY MS. FRANZETTI:

2 Q. Now, if you go back to your binder,  
3 Exhibit 639, I'm going to ask you if that is a  
4 copy of Illinois EPA's approval of the Powerton  
5 ELUC?

6 A. This is the Groundwater Management Zone  
7 application's review by Illinois EPA. They had  
8 a comment about what was upgradient and --

9 Q. Let me help you out on the ELUC. Why  
10 don't you review to yourself the last paragraph  
11 on that first page.

12 A. Illinois EPA agreed that the ELUC  
13 should be -- proceed with as proposed.

14 Q. All right. And ask for a copy of it  
15 after it was filed?

16 A. Correct.

17 Q. Did Midwest Gen, in fact, record the  
18 ELUC with the county recorder's office?

19 A. Yes.

20 MS. FRANZETTI: I would move to admit  
21 Exhibit 639.

22 THE HEARING OFFICER: Ms. Bugel?

23 MS. BUGEL: No objection.

24 THE HEARING OFFICER: Thank you.

1 Respondent's Exhibit 639 is admitted.

2 (Whereupon document so  
3 offered was received in  
4 evidence as Respondent's  
5 Exhibit No. 639.)

6 BY MS. FRANZETTI:

7 Q. Now, turning back to the two Powerton  
8 ash ponds that Midwest Gen agreed to reline  
9 under the CCA, were you again monitoring that  
10 relining project?

11 A. Yes.

12 Q. Okay. Similar to the other relining  
13 projects you have already described, did that  
14 relining of those two ponds, the secondary basin  
15 and the ash surge basin, include removing the  
16 material and the pond, preparing the subgrade,  
17 and installing the HDPE liner?

18 A. That's true for the ash surge basin.  
19 However, for the secondary basin, there was  
20 really nothing to remove.

21 Q. Okay.

22 A. To dredge.

23 MS. FRANZETTI: All right. Can we bring the  
24 timeline back up and go to 2013.

1           Stipulation number 21 is that in 2013  
2 Midwest Gen relined the ash surge basin with a  
3 60-mil HDPE liner.

4           Stipulation number 24, in 2013, Midwest  
5 Gen relined the secondary ash settling basin  
6 with a 60-mil HDPE liner.

7 BY MS. FRANZETTI:

8           Q.    When the ash surge basin was relined,  
9 was the condition of the existing Poz-o-Pac  
10 liner observed?

11          A.    Yes, it was, and it was in good  
12 condition.

13          Q.    Moving forward to 2014 on the timeline,  
14 after NRG purchased Powerton and the federal CCR  
15 rules were adopted at the end of 2014, did  
16 Midwest Gen conduct a review of the Powerton ash  
17 ponds to determine whether or not they were  
18 regulated under the federal CCR rule?

19          A.    Yes, we did.

20          Q.    And are you familiar with the results  
21 of that review?

22          A.    Yes, I am.

23          Q.    Did that review conclude whether any of  
24 the ponds at Powerton were not regulated by the

1 federal CCR rule?

2 A. Yes. Of the impoundments we have just  
3 described, the secondary basin was not covered  
4 by the rule.

5 Q. The secondary ash basin?

6 A. The secondary ash basin.

7 Q. On what basis or information was it  
8 concluded that the secondary ash basin was not  
9 regulated by the CCR rules?

10 A. It's the same basis for Joliet pond  
11 three, which is that it is basically a finishing  
12 pond and is not accumulating ash.

13 Q. Same question with respect to the  
14 former ash basin. How did the CCR rules  
15 regulate, if they did, the former ash basin at  
16 Powerton?

17 A. The former ash basin is covered under  
18 the CCR rule.

19 Q. And so what did Midwest Gen have --  
20 decide to do with regard to the former ash  
21 basin?

22 A. Midwest Generation will be going  
23 through closure on the former ash basin.

24 Q. And why did they decide to go through

1 closure?

2 A. Because the impoundment really is  
3 rarely used and it just was prudent to do that  
4 at this point in time, it made sense.

5 Q. Okay. Does that involve at all  
6 removing the water in the former ash basin?

7 A. Yes, it will involve removal of the  
8 water in the ash basin and moving the material  
9 from the north -- I think it's the north side of  
10 the basin to the south side of the basin.  
11 Because it's cut by a rail loop right now.

12 Q. What's cut by a rail loop?

13 A. The impoundment. The old ash basin has  
14 a rail loop that runs across the middle of it.  
15 And so in order to close it, the south portion  
16 of it will be filled in with part of the  
17 material from the north portion.

18 Q. Okay. So is there already a plan for  
19 how the closure --

20 A. Yes, there is already a plan.

21 Q. And do you know approximately when  
22 that's going to occur?

23 A. I believe it's 2020.

24 Q. What about the ash surge basin, is that

1 affected by the CCR rule?

2 A. Yes. It is part of the CCR rule. And  
3 so we are doing everything that's required for a  
4 CCR basin, you know, inspections and -- annual  
5 inspections. We have to document things online  
6 in a file for the station so that the public can  
7 see it.

8 We have to ensure that, you know, as --  
9 that we are following best practices. If ash is  
10 removed, that we are doing inspections of the  
11 liner. Just those types of things.

12 Q. Any plans to close that pond?

13 A. Not that I'm aware of.

14 Q. Okay. Ms. Race, I'm going to hand you  
15 what has been marked as Midwest Gen Exhibit 664.  
16 Take a minute, if you need it.

17 Ms. Race, I have put before you what's  
18 been marked as Midwest Gen Exhibit 664, entitled  
19 Powerton Timeline of Events. It is basically a  
20 copy of what we have periodically been referring  
21 to and showing up on the screen and on your  
22 monitor with respect to the events at the  
23 Powerton Station from the beginning of its  
24 operations through to the present, basically,



1 and with respect to the ash ponds.

2 And if you would just take a moment to  
3 look at that, my question is: Is that a  
4 reasonably accurate summary of the relevant  
5 events relating to the Powerton Station?

6 A. Yes, it is.

7 MS. FRANZETTI: I would move to admit  
8 Exhibit 664.

9 THE HEARING OFFICER: Ms. Bugel?

10 MS. BUGEL: Complainants have the same  
11 objection to 664 that we did to 663 regarding  
12 the photo on the first page. I won't repeat the  
13 details of that, but it's the same objection.

14 In addition, I do notice that there is  
15 a photo also on -- included on the second to  
16 last page, and we would object to the photo  
17 again because it's not clear what this photo  
18 claims to represent. One concern I would point  
19 out is from the photo, it appears that this ash  
20 basin is empty.

21 And, again, I just have a concern  
22 regarding why, how, and what it claims to  
23 present.

24 THE HEARING OFFICER: Are you talking about

1 the panoramic view of the entire basin from the  
2 northeast corner facing southwest?

3 MS. BUGEL: Yes.

4 THE HEARING OFFICER: Ms. Franzetti?

5 MS. FRANZETTI: Yes. Mr. Halloran, what we  
6 can do is, is rather than admit the entire  
7 exhibit right now, we would move to admit  
8 everything but that photo. And then when  
9 Mr. Kelly testifies, we will come back to that  
10 photo and have him explain what it is depicting.

11 THE HEARING OFFICER: Okay. Ms. Bugel,  
12 subject to your objection regarding the  
13 Poz-o-Pac liner core or that core -- was it the  
14 coal ash -- are you fine with that, if we --

15 MS. BUGEL: Subject to my objection about the  
16 Poz-o-Pac core, I am fine with Ms. Franzetti's  
17 suggestion as to saving the panoramic view photo  
18 for later.

19 THE HEARING OFFICER: Okay. Let's do that.  
20 Let's take that photo out of Respondent's  
21 Exhibit 664 and maybe address it later.

22 MS. FRANZETTI: Okay. Do you want to  
23 physically remove it?

24 THE HEARING OFFICER: Physically remove it.

1 MS. FRANZETTI: Yeah, okay.

2 THE HEARING OFFICER: And then I would ask  
3 the board to note Ms. Bugel's objection and  
4 Ms. Franzetti's explanation regarding the  
5 Poz-o-Pac photo and both Exhibit 663 and 664 on  
6 the first page.

7 So Respondent's Exhibit 664 is  
8 admitted.

9 (Whereupon document so  
10 offered was received in  
11 evidence as Respondent's  
12 Exhibit No. 664.)

13 MS. FRANZETTI: Mr. Halloran, do you want us  
14 to take back your copy of the photo and give it  
15 back to you when you get to it?

16 THE HEARING OFFICER: Yes, thank you.

17 MS. FRANZETTI: All right. We are going to  
18 turn to the Waukegan station. If we can bring  
19 up the aerial photo of the Waukegan station,  
20 please.

21 We have two stipulations: Stipulation  
22 32, Midwest Gen owns and operates the Waukegan  
23 Electric Generating Station located in Waukegan,  
24 Lake County, Illinois; and Stipulation 33,

1 Midwest Gen has owned and operated the Waukegan  
2 station since 1999.

3 BY MS. FRANZETTI:

4 Q. Ms. Race, are you familiar with the  
5 Waukegan station?

6 A. Yes, I am.

7 Q. Is what's shown on the screen a  
8 reasonably accurate aerial photograph of the  
9 Waukegan station?

10 A. Yes, it is.

11 Q. I'm going to ask you to look at 640 in  
12 your binder --

13 A. Okay.

14 Q. -- what appears to be a survey of the  
15 Waukegan station and ask you if you recognize it  
16 and, if so, what is it.

17 Do you recognize Exhibit 640, Ms. Race?

18 A. Yes, I do.

19 Q. What is that document?

20 A. This is the ALTA survey, title survey,  
21 that was done for Commonwealth Edison upon the  
22 sale to Midwest Generation of the Waukegan  
23 coal-fired generating station.

24 Q. And are there any retained tracts for

1 the Waukegan station that ComEd did not sell to  
2 Midwest Gen in 1999?

3 A. Yes, there are.

4 Q. And where is that retained tract on the  
5 survey using just direction, southwest,  
6 northwest, whatever?

7 A. To the northwest of the property.

8 Q. And is that the area that is -- is that  
9 area depicted up on the aerial?

10 Ms. Race, can you describe -- we don't  
11 have it outlined -- but generally where that  
12 area is that's the retained tract?

13 A. Sure. There is an area that is  
14 directly to the west of the station that is a  
15 switch yard area, like I described earlier,  
16 with --

17 Q. Do you mind going up there and actually  
18 pointing to it so we all have a sense of where  
19 it is.

20 A. Sure. So this is the area where the  
21 switch yard is (indicating). And the retained  
22 tract is through here (indicating). And I  
23 believe -- I don't remember -- it goes all the  
24 way -- yes. And then all the way over here to

1 the road (indicating). And then comes down  
2 basically down here (indicating).

3 Q. Okay. So it's like an upsidedown L  
4 shape --

5 A. Yeah.

6 Q. -- running along the west side of the  
7 station up towards the north, hanging a right?

8 A. Yes, exactly.

9 Q. Okay. With respect to that area,  
10 again, did Midwest Gen have any rights to use  
11 that area in any way or have any access rights  
12 to it?

13 A. We did have access rights to the road  
14 that runs around it so that we could -- and also  
15 the train tracks there that we use for coal. So  
16 those two things, but otherwise, no.

17 Q. Not to the property itself?

18 A. Not to the property itself.

19 Q. Okay. Does the -- does the Waukegan  
20 station have any ash ponds?

21 A. Yes, it does.

22 MS. FRANZETTI: Okay. We have Stipulation  
23 34, that the east pond and the west pond at  
24 Waukegan were originally constructed in 1977

1 with a Hypalon liner.

2 BY MS. FRANZETTI:

3 Q. Now I will stay with the aerial  
4 photograph here. Can -- do those blue areas on  
5 the aerial identify the east pond and the west  
6 pond?

7 A. Yes, they do.

8 Q. And I take it the east pond is the one  
9 on the right towards Lake Michigan?

10 A. Yes, it is.

11 Q. And the west pond is the one to the  
12 left of the east pond on that aerial; is that  
13 correct?

14 A. Yes, it is.

15 MS. FRANZETTI: We have stipulation 37, that  
16 only one pond, the east pond or west pond, is in  
17 service at a time.

18 Stipulation 35, in 2003, Midwest Gen  
19 relined the east pond with a 60-mil HDPE liner.

20 Stipulation 36, in 2004, Midwest Gen  
21 relined the west pond with a 60-mil HDPE liner.

22 BY MS. FRANZETTI:

23 Q. So now I am going to ask you to find  
24 Exhibit 44 on your table.

1 A. There we go.

2 Q. Take a moment to review Exhibit 44.  
3 You were asked questions about it, but it was  
4 back in the October hearing. So can you take a  
5 moment to just refresh your recollection about  
6 the e-mails that are contained in Exhibit 44.  
7 And then tell me when you are done.

8 A. Yes, I'm ready.

9 Q. All right. Do you generally recall  
10 that you were asked some questions about  
11 Exhibit 44 in October's hearing?

12 A. Yes.

13 Q. I want you now to go back to your  
14 binder and look at Exhibit 641, which you were  
15 not asked about in October. And if you would  
16 just take a moment to review Exhibit 641. It's  
17 one page of e-mails between yourself and Jamie  
18 Rabins and also between Jamie Rabins and Julia  
19 Wozniak of September 3, 2014. Tell me when you  
20 are ready.

21 A. I'm ready.

22 Q. Do the e-mails that are in -- well,  
23 first of all, do you recognize the e-mails in  
24 Exhibit 641?



1           A.     Yes, I do.

2           Q.     Do the e-mails in Exhibit 641 have any  
3     relation to the e-mails that are contained in  
4     Exhibit 44?

5           A.     Yes, they do.

6           Q.     How are these e-mails related to each  
7     other?

8           A.     Well, actually, part of Exhibit 44 is  
9     identical -- one page of it is identical to the  
10    Bates page here, 44617.

11          Q.     And do the e-mails that -- that are  
12    highlighted in Exhibit 641, do -- are those the  
13    follow-up e-mails to the rest of the e-mails  
14    that are in Exhibit 644?

15          A.     Yes, they are, because the other  
16    e-mails were dated at an earlier date.

17          Q.     Okay.  So what was -- what was the  
18    nature of the information that was being  
19    presented or discussed, I guess I should say,  
20    with Illinois EPA by yourself and Julia Wozniak  
21    of Midwest Gen?

22          A.     Julia at that point was managing NPDES  
23    permitting and hadn't been part of the whole  
24    history, and so she was asking questions that

1 Jamie Rabins had asked her and she wanted to --  
2 he wanted to understand better when the liners  
3 were lined because he was looking at doing  
4 probably a permit renewal at that point, I would  
5 think. I know that in 2013 or so there was a  
6 hearing.

7 Q. All right. So Ms. Wozniak's primary  
8 responsibility at that time was with regard to  
9 NPDES permitting issues, is that what you are  
10 saying?

11 A. Correct.

12 Q. And you get brought into this e-mail  
13 chain with respect to Mr. Raven's questions  
14 about the relining of the ponds?

15 A. Correct. Because I was the one with  
16 the historical information because I was  
17 managing the NPDES permitting during the time  
18 period that he is asking about in the early  
19 2000's.

20 Q. Okay. So what did you tell Mr. Rabins,  
21 Illinois EPA, regarding when each of the  
22 Waukegan ponds was relined?

23 A. Well, one of the questions that he had  
24 was whether or not IEPA issued a permit to

1 reline the ponds, was a permit applied for. And  
2 we said, no, because we were told by Illinois  
3 EPA that since largely the same design was used  
4 that we would not need to apply for a new permit  
5 because we were replacing like with like and  
6 they saw it as a maintenance rather than a new  
7 construction permit requirement.

8 Q. So is this an instance of this like  
9 being replaced with like that you have  
10 previously testified about?

11 A. Correct.

12 Q. Okay. So in Exhibit 44, if you go back  
13 to that, you are telling IEPA that a relining  
14 occurred in 2001. Do you see that at the very  
15 top e-mail from you to Lynn Dunaway, August 28,  
16 2014?

17 A. Give me a minute here.

18 Can you repeat the question?

19 Q. It's specifically with regard to the  
20 e-mail at the top of Exhibit 44.

21 A. Uh-huh.

22 Q. It's from you to Lynn Dunaway,  
23 August 28, 2014, regarding the Waukegan station.  
24 And it says [as read]: I know that they were

1 already lined when I started working here in  
2 2001. We relined them in the 2002 time frame.  
3 I don't remember if we had a construction  
4 permit.

5 A. Correct.

6 Q. Is that accurate in terms of, were they  
7 relined twice in just a couple of years?

8 A. No. I believed in 2001 -- I think  
9 because I was new at that job -- that the  
10 material that they were lined with was HDPE, but  
11 I believe it was actually Hypalon.

12 Q. Okay. So was there any relining of the  
13 Waukegan ponds before 2003?

14 A. No.

15 MS. BUGEL: Hearing Officer, I just want to  
16 object for the record. I feel like the  
17 questions have drifted into repeated leading  
18 questions.

19 THE HEARING OFFICER: Ms. Franzetti, I have  
20 noted that as well. So please --

21 MS. FRANZETTI: Okay.

22 BY MS. FRANZETTI:

23 Q. Had any regulatory agency requested the  
24 relining of these ponds?

1           A.    Of the ponds in 2003 and 2005, no, they  
2 had not.

3           Q.    Was there a regulatory requirement that  
4 they be relined?

5           A.    No, there was not.

6           Q.    Why was it done?

7           A.    It was done for maintenance purposes.  
8 The plant decided that it was time to reline the  
9 ponds. And so they relined one basin while the  
10 other one was in service. And then when the  
11 other basin went out of service, they relined  
12 that one.

13          Q.    And as part of the relining project,  
14 was any sampling done of the bottom ash in the  
15 ponds?

16          A.    I believe there was some sampling  
17 performed of the bottom ash in the ponds.

18          Q.    Now, going back to your overall  
19 relining of the ponds program, that was  
20 Exhibit 607 -- if you need to refer to it after  
21 I ask my question, feel free to -- but were the  
22 Waukegan ponds included in that chart you made  
23 of the relining program for the Waukegan ash  
24 ponds?

1 A. Yes, they were -- well, wait a minute.

2 Let me check it.

3 Q. Okay. Check it.

4 A. 607.

5 Q. Yeah.

6 A. No, they are not.

7 Q. You made that chart after 2005?

8 A. Yes.

9 Q. What's the reason why the Waukegan  
10 ponds aren't on there for relining?

11 A. I wouldn't have thought they needed to  
12 be relined further for quite some time.

13 Q. Does the ash remain in the Waukegan  
14 ponds or is it, you know, routinely removed?

15 A. It's routinely removed from the ash  
16 impoundment. So if the west ash basin is in  
17 service, then the ash is being removed from the  
18 east ash basin, and likewise.

19 Q. And about how often is the ash removed?

20 A. It was removed about annually, so every  
21 other year from each station -- from each  
22 impoundment. However, the station is operating  
23 now at a lesser capacity factor, so it probably  
24 won't be removed quite as often.

1 Q. I am going to ask you to turn to --  
2 well, before I do that, I'm sorry.

3 MS. FRANZETTI: I would move to admit  
4 Exhibit 640 and 641 into evidence.

5 THE HEARING OFFICER: Ms. Bugel?

6 MS. BUGEL: No objection to 640. No  
7 objection to 641.

8 THE HEARING OFFICER: Thank you. 640 and 641  
9 of Midwest are admitted.

10 (Whereupon documents so  
11 offered were received in  
12 evidence as Respondent's  
13 Exhibits Nos. 640 and 641.)

14 BY MS. FRANZETTI:

15 Q. Turning to Exhibit 642 in your binder,  
16 it appears to be an NPDES permit for the  
17 Waukegan generating station. Do you recognize  
18 it?

19 A. Yes, I do.

20 Q. And what is it?

21 A. It is a modification of the NPDES  
22 permit that we -- we had asked for -- we had  
23 asked for some modifications to the permit at  
24 the time that we were going through renewal.

1 But we were afraid it would slow the renewal  
2 down, so these modifications were incorporated  
3 later.

4 Q. Is this the current permit -- current  
5 NPDES permit for the Waukegan station?

6 A. Yes, it is.

7 Q. I would like you to turn to page 5 of  
8 the NPDES permit. And similar to what we have  
9 gone over for Joliet 29 and for Powerton, what  
10 type of information is shown on page 5 of the  
11 NPDES permit for Waukegan?

12 A. The type of information shown here are  
13 for outfall C01, the wastewater treatment  
14 system. It states of what the discharge  
15 consists. So bottom ash sluice water,  
16 1.6 million gallons per day. And some other  
17 various assorted runoff from the plant  
18 operations.

19 MS. FRANZETTI: I would move to admit  
20 Exhibit 642 into evidence.

21 THE HEARING OFFICER: Ms. Bugel?

22 MS. BUGEL: We have the same objection to  
23 this NPDES permit as articulated to the other  
24 NPDES permits.



1 THE HEARING OFFICER: Okay, thanks. I do  
2 find it more relevant than not. And I would  
3 note for the Board it goes to the weight, not to  
4 the admissibility. So 642 of Midwest is  
5 admitted over objection.

6 (Whereupon document so  
7 offered was received in  
8 evidence as Respondent's  
9 Exhibit No. 642.)

10 BY MS. FRANZETTI:

11 Q. Bringing back up the Waukegan timeline,  
12 do you have an understanding of how long ago the  
13 Waukegan station began operating?

14 A. Yes. Waukegan started operating in  
15 1923.

16 Q. How many units are currently operating  
17 at Waukegan?

18 A. Two units.

19 Q. And did there used to be more?

20 A. Yes, there were six units at one time.

21 Q. With respect to the units that are  
22 currently operating -- and, I'm sorry, did you  
23 say two or three?

24 A. Two. Two operating -- two operating

1 units now.

2 Q. Okay. Do you know what numbers those  
3 are?

4 A. Seven and eight.

5 Q. And about how long have they been  
6 operating?

7 A. They have been operating since 1958 and  
8 1962.

9 Q. Okay. And approximately how long ago  
10 did the units that are no longer operating stop  
11 operating?

12 A. They stopped operating quite some time  
13 ago. In the late '70s. I'm not sure of the  
14 exact date.

15 MS. FRANZETTI: If I can just have a moment.

16 (Short pause in proceedings.)

17 BY MS. FRANZETTI:

18 Q. You have been to the Waukegan station,  
19 correct?

20 A. Correct.

21 Q. You have been there a lot of times,  
22 would you say, over the course of your career?

23 A. Correct, yes.

24 Q. Okay. Have you seen -- and I'm going

1 to go back to the aerial now. Have you seen the  
2 property that's located immediately to the north  
3 of the Waukegan station property?

4 A. Yes, I have.

5 Q. Are you generally familiar with what  
6 that property is?

7 A. Yes, I am.

8 Q. What is it?

9 A. That is the Johns Manville Superfund  
10 site.

11 Q. Is there any active Johns Manville  
12 operation in that property to the north?

13 A. There are cleanup operations ongoing,  
14 but no, you know, physical like power plant or  
15 something like that. No industrial operations  
16 beyond cleanup.

17 Q. And how did you become aware that  
18 that's the Johns Manville Superfund site? Have  
19 you had communications with Johns Manville about  
20 it?

21 A. I actually have had some communications  
22 with them over the years, largely due to the  
23 sand issue that they have with the contamination  
24 and asbestos. But also they had contacted me

1 one time anecdotally about an arsenic plume that  
2 they were seeing on their property.

3 Q. From your involvement in looking at  
4 information or responding to questions about  
5 that Superfund site, do you have any  
6 understanding of how long the operations had  
7 gone on at the Johns Manville property?

8 A. I would say that it was probably  
9 similar to the units one to five operation.  
10 Probably operating since the '20s and, you know,  
11 into the '70s, '80s time frame.

12 Q. Okay. Now I'm going to move to the  
13 property to the west of the Waukegan station.

14 Do you have any knowledge of how that  
15 property has been used?

16 A. Yes. The property to the west has been  
17 used as a former tannery site. So, you know,  
18 literally a place where tanners worked with  
19 acids and a lot of chemicals to take the hair  
20 off of animals. And there was a lot of  
21 contamination there at that site.

22 And then below that to the south was a  
23 boiler site that also is closed but had a number  
24 of contaminants that are well-established within

1 Illinois EPA's records because they have been  
2 involved in state site remediation programs as  
3 well.

4 MS. BUGEL: I'm going to object to the long  
5 narrative answer and the speculation that was  
6 contained in the answer. The assumption of  
7 facts, the claims of knowledge of what is in  
8 IEPA records without documentation, and the  
9 claims as to knowledge of how a tannery works.

10 MS. FRANZETTI: I'm willing to ask some more  
11 follow-up questions to lay the foundation.

12 THE HEARING OFFICER: Please do. I agree  
13 with Ms. Bugel at this point, but please follow  
14 up. Thank you.

15 BY MS. FRANZETTI:

16 Q. How did you become aware of this  
17 tannery site?

18 A. I became first aware of the tannery  
19 site because we were approached when I was first  
20 working at Midwest Generation to get an  
21 environmental land use control by Pete McCauley  
22 who worked for Commonwealth Edison.

23 Q. And why did ComEd want an ELUC or  
24 environmental land use control for --

1 MS. BUGEL: Objection. I apologize for  
2 interrupting. Objection. Calls for  
3 speculation.

4 MS. FRANZETTI: I will rephrase it.

5 BY MS. FRANZETTI:

6 Q. What did this representative, Pete  
7 McCauley --

8 A. Uh-huh.

9 Q. -- tell you was the reason or reasons  
10 why ComEd was requesting an ELUC from Midwest  
11 Gen?

12 MS. BUGEL: And I'm going to object to this  
13 question also calling for hearsay.

14 THE HEARING OFFICER: Overruled. You may  
15 answer if you are able.

16 THE WITNESS: Pete McCauley told me that in  
17 their site investigations that they had found  
18 that there were some plumes of chemical coming  
19 onto our site, including arsenic, and that  
20 because of that they wanted to make an agreement  
21 with us that we wouldn't use our potable water  
22 and do that through an ELUC.

23 BY MS. FRANZETTI:

24 Q. Now, with respect to ComEd's

1 investigation, was there any actual sampling  
2 involved?

3 A. Yes, there was sampling involved, and I  
4 received all of that material from Pete  
5 McCauley.

6 Q. And by "that material," do you mean the  
7 sampling results that ComEd obtained from doing  
8 that investigation?

9 A. Yes. I had a couple of giant binders  
10 full of sampling results from that site.

11 Q. And did you review that data?

12 A. Yes, I did.

13 Q. And what did that review tell you about  
14 what the data showed with regard to impacts?

15 A. Between that and the modeling data that  
16 they had also had performed by a gentleman at  
17 URS, and then I believe he changed companies to  
18 another company, but he had found that there was  
19 a plume of arsenic, iron, and manganese coming  
20 onto our site.

21 And so the ELUC was to cover those  
22 things. And they wanted to monitor our site to  
23 make sure that -- to see where the extent of the  
24 contamination might have gone.

1 Q. Now, earlier you started talking about  
2 the history of the tannery site. Did you ever  
3 receive information about the history of the  
4 tannery site to review?

5 A. Yes. That was in the documentation I  
6 received from Mr. McCauley.

7 Q. And did you review that information?

8 A. Yes, I did.

9 MS. FRANZETTI: With that follow up line of  
10 questioning, Mr. Hearing Officer, I would submit  
11 that the prior answer that was objected to  
12 should stand. The requisite foundation for her  
13 knowledge of those facts has been laid.

14 MS. BUGEL: I believe that there hasn't been  
15 any response to my objection regarding  
16 presumptions as to IEPA.

17 MS. FRANZETTI: Oh. You know what, that part  
18 I don't have a problem with. But  
19 everything else I believe is --

20 THE HEARING OFFICER: Okay. The record will  
21 so note. Accepted. Thank you.

22 BY MS. FRANZETTI:

23 Q. With respect to your exhibit book  
24 there, would you turn to Exhibit 643, please.



1 Do you recognize that document?

2 A. Yes, I do.

3 Q. What is it?

4 A. This is the radial investigation report  
5 for the tannery that we are talking about that  
6 was received by IEPA on April 4, 1994.

7 Q. Who prepared it?

8 A. It was prepared by Metcalf & Eddy.

9 Q. For who?

10 A. For Commonwealth Edison.

11 Q. Now, is this part of historical site  
12 operations of the tannery that you were  
13 referring to in your prior answer that you  
14 reviewed?

15 A. That is correct.

16 MS. FRANZETTI: I would move to admit Exhibit  
17 643 into evidence.

18 MS. BUGEL: No objection.

19 THE HEARING OFFICER: Thank you, Ms. Bugel.  
20 Respondent's Exhibit 643 is admitted.

21 (Whereupon document so  
22 offered was received in  
23 evidence as Respondent's  
24 Exhibit No. 643.)

1 BY MS. FRANZETTI:

2 Q. Can I ask you to turn to page Bates  
3 number 47089. At the top it should say,  
4 Section 2.0, Site Background?

5 A. Yes, it does.

6 Q. All right. And can you take a moment  
7 to review particularly under Section 2.2, Site  
8 History, and my question is: Did this provide  
9 information relating to the types of chemicals  
10 that were involved in the tannery process that  
11 used to operate on that property?

12 A. This document does show impacts that  
13 would be attributed to the tannery process and  
14 the types of chemicals that were used on site.

15 Q. Do any of the chemicals listed include  
16 borax?

17 A. Yes, they do.

18 Q. Other than a tannery process, does this  
19 report note any other historical use of the  
20 tannery property?

21 A. Yes.

22 Q. What is that other use besides a  
23 tannery?

24 A. Falcon Marine Company used a portion of

1 the area for winter storage of boats and  
2 recreational vehicles and that there was  
3 evidence of dumping of miscellaneous materials  
4 apparent in this area during previous site  
5 investigations.

6 Q. Okay. And turning to page Bates 47180.  
7 I'm going backwards now in the document. No,  
8 I'm not. I'm sorry. 47181, keep going.

9 A. Okay.

10 Q. What type of information is shown in  
11 the document beginning at page 47181?

12 A. This is the boring log for well  
13 number -- Monitoring Well Number 5.

14 Q. And what does that boring log  
15 information generally show with respect to --  
16 and I'm specifically directing you to the fourth  
17 and fifth layers that are shown in that boring?

18 A. Well, in the fourth and fifth layers,  
19 dark gray, wet loose poorly graded fine to very  
20 fine sand, trace medium sand, trace to little  
21 silt, and trace organic material.

22 Q. And now go backwards to the page right  
23 before it, 47180, and compare the fourth and  
24 fifth layers there. Are they similar or are

1 there different materials contained in that  
2 bore?

3 A. In this boring for Monitoring Well-4,  
4 in the fourth layer it states [as read]: Medium  
5 density very poorly graded fine to very fine  
6 sand, trace medium and coarse sand, trace coal  
7 and peat material.

8 So the trace coal is different than in  
9 the other boring log.

10 Q. And moving down to the fifth layer, is  
11 there any coal material or peat material  
12 identified there?

13 A. Yes, there is.

14 Q. Now, go back to the next page, page  
15 181, and go up to the top layer of the boring --  
16 the information presented for the top layer of  
17 that boring.

18 A. Okay.

19 Q. And what did that show?

20 A. It showed also very loose well-graded  
21 fine and medium sand, little coarse sand, trace  
22 to little fine angular slag and gravels, and a  
23 trace of silt.

24 Q. The reference to angular slag, what

1 does that mean to you?

2 A. That sounds like slag from a coal fired  
3 unit to me.

4 Q. Is slag sometimes used in these boring  
5 reports to have a meaning similar to ash  
6 material?

7 A. Yes, it usually --

8 MS. BUGEL: Objection. Calls for  
9 speculation.

10 THE HEARING OFFICER: Could you rephrase  
11 that. I think you can work it out.

12 MS. FRANZETTI: Okay.

13 BY MS. FRANZETTI:

14 Q. Ms. Race, have you worked in the past  
15 with this boring log information?

16 A. Yes.

17 Q. And have you actually at times spoken  
18 to people who -- the outside consultants who  
19 analyzed boring results?

20 A. Yes, I have.

21 Q. And in those conversations, what have  
22 you learned in terms of the use of the term  
23 "slag" and at times the use of the word "ash" in  
24 describing the contents of boring logs?

1           A.     Slag is a type of bottom ash.  It's  
2     specific generally to cyclone boilers.

3           Q.     I'm going to turn now to Exhibit 644 in  
4     your book.  It appears to be the Phase II  
5     remedial investigation report, former  
6     Griess-Pflager Tannery Site, Waukegan, Illinois.  
7     It's got a stamp received site -- stamp received  
8     date November 30, 1995.

9                     Do you recognize this document?

10          A.     Yes, I do.

11          Q.     What is it?

12          A.     This is a Phase II document for the  
13     tannery of which we have been speaking that was  
14     prepared by Metcalf & Eddy for Commonwealth  
15     Edison.

16          Q.     How did you get this document?

17          A.     I got this from Mr. McCauley.

18          Q.     Who worked for ComEd?

19          A.     Who worked for ComEd.

20          Q.     And why was he providing you with this  
21     document?

22          A.     I asked him for --

23                 MS. BUGEL:  Objection.  Withdrawn.

24                 THE HEARING OFFICER:  Ms. Bugel?

1 MS. BUGEL: Withdrawn.

2 THE HEARING OFFICER: Thank you.

3 You may proceed.

4 THE WITNESS: I asked him for all the  
5 information regarding the tannery site so that I  
6 could make a judgement about the environmental  
7 land use control agreement.

8 BY MS. FRANZETTI:

9 Q. And what -- just generally, what type  
10 of information does a Phase II report like this  
11 provide to you regarding ComEd's request for an  
12 ELUC from Midwest Gen for a portion of the  
13 Waukegan station property?

14 A. Well, it gives you an idea of, a  
15 snapshot in time again, of what they found, and  
16 the dates that are listed in this document,  
17 about the sampling results of well borings or  
18 soil sampling that was performed at the tannery  
19 site.

20 Q. Was any groundwater monitoring  
21 performed as part of this Phase II?

22 A. Yes.

23 Q. Turning to page 46627, Section 4.0,  
24 Nature and Extent of Contamination. And the

1 first section on this page is 4.1, Groundwater.

2 Do you see where I'm referring to?

3 A. Yes, I do.

4 Q. What type of information did this  
5 section of the report provide to you?

6 A. This provides a summary of analytical  
7 results. You know, it's basically the first  
8 part of the groundwater description for the  
9 nature and extent of contamination.

10 Q. Okay. What did you learn about the  
11 groundwater conditions at the adjacent tannery  
12 site from the information presented in this part  
13 of the report?

14 A. That, indeed, as Mr. McCauley of ComEd  
15 had represented, that groundwater containing  
16 arsenic exceeding the Illinois Class 1 standard  
17 had migrated to the eastern edge of the tannery  
18 property.

19 Q. Continuing on in this section of the  
20 report, and particularly with respect to  
21 pages -- let me get the page 46629, Bates  
22 number, and continuing over to page 46630, was  
23 there also additional information on other  
24 contaminants presented in this report?



1           A.     Yes, other contaminants that were above  
2     the Class 1 standard were cadmium, mercury,  
3     lead, manganese, iron. Also total dissolved  
4     solids.

5                     And it notes that total chromium  
6     concentrations from Phase I sampling event are  
7     comparable to those obtained for filtered Phase  
8     II sampling samples.

9           Q.     And what does that mean?

10          A.     In the field when you're taking a  
11     groundwater sample, you have a choice to either  
12     filter it or not filter it before it goes to the  
13     laboratory for testing.

14          Q.     And so what was that telling you about  
15     filtered and non-filtered results?

16          A.     Well, it --

17          MS. BUGEL: I'm going to object to the line  
18     of questioning. It is calling for expert  
19     opinions.

20          THE HEARING OFFICER: Overruled. You may  
21     proceed.

22          THE WITNESS: It's saying that the total  
23     chromium -- that the results for a filtered  
24     sample and unfiltered sample were basically the

1 same.

2 BY MS. FRANZETTI:

3 Q. Let me take you back to page 46627.  
4 Did this report provide you with any information  
5 relating to the extent of the arsenic  
6 contamination or the arsenic plume?

7 A. It -- this doesn't contain the modeling  
8 that was done later, but it does give you an  
9 idea of where they are finding arsenic in the  
10 wells and that they need to install more wells  
11 in order to find out more information.

12 Q. And did the information here show that  
13 the arsenic plume had actually migrated over to  
14 Midwest Gen property?

15 A. They knew that it had migrated to the  
16 eastern edge of the property. Give me a minute  
17 here.

18 Q. Okay.

19 A. And, yes, two monitoring wells were  
20 installed as part of the Phase II-A  
21 investigation. This was a multi-phased  
22 investigation, which is why I need to look at  
23 the document.

24 And, yes, they had installed two

1 additional monitoring wells on Waukegan's  
2 property and found that arsenic had migrated  
3 there at this point in time.

4 MS. FRANZETTI: I would move to admit  
5 Exhibit 644.

6 THE HEARING OFFICER: Ms. Bugel?

7 MS. BUGEL: No objection.

8 THE HEARING OFFICER: Thank you.

9 Respondent's Exhibit 644 is admitted.

10 (Whereupon document so  
11 offered was received in  
12 evidence as Respondent's  
13 Exhibit No. 644.)

14 BY MS. FRANZETTI:

15 Q. I'm going to turn to Exhibit 645.  
16 Would you take a moment to look at it and tell  
17 me if you recognize the document.

18 A. Yes, I do.

19 Q. What is it?

20 A. This is a remedial objectives report --  
21 remediation objective report that was put  
22 together by RETEC, the group that initially was  
23 doing the modeling for Commonwealth Edison for  
24 the tannery site.

1 Q. How did you get this document?

2 A. I asked for this document in 2002 when  
3 we were looking at the environmental land use  
4 control. So this came as a large package of  
5 documents.

6 Q. And when you referenced you were  
7 looking at the environmental land use control,  
8 the one that ComEd was requesting Midwest Gen  
9 accept and agree to?

10 A. Correct. So this was part of the large  
11 document request that I received.

12 Q. Okay. Generally, what kind of  
13 information was ComEd providing to you in  
14 Exhibit 645, the remediation objectives report?

15 A. Generally, what types of exposures  
16 could happen, whether there were, you know,  
17 groundwater soil, et cetera, exposures. And so  
18 what the remediation should be.

19 Q. Let me direct your attention to  
20 pages 46255 and 56 of this document. It's going  
21 to be about 20 or so-ish pages in. Tell me when  
22 you're there.

23 A. I am there.

24 Q. All right. Specifically as to

1 groundwater contamination, how did ComEd propose  
2 to address the groundwater contamination per  
3 this report?

4 A. Commonwealth Edison was looking at a  
5 variety of ways that they could possibly deal  
6 with the contamination. And in the case of  
7 46255 -- is that the page you want me at?

8 Q. Uh-huh.

9 A. -- they were looking particularly at  
10 objectives for direct contact pathways. So, for  
11 example, to address exceedents of the arsenic  
12 action level of 800 milligrams per kilogram in  
13 certain areas, all the soil with concentrations  
14 exceeding that level would be removed and  
15 disposed of off-site.

16 Q. And would they do anything else with  
17 respect to the preventing exposure to the soils?

18 A. Yes. That -- they looked at that as  
19 reducing the average concentration of arsenic in  
20 the area that they were modeling. So there  
21 wouldn't be as much arsenic in the future coming  
22 on to the site.

23 Q. And did they -- besides removing the  
24 soil, what were they going to do about the

1 impacted groundwater?

2 A. The impacted groundwater was the reason  
3 that they wanted the environmental land use  
4 control, so that we would make the commitment  
5 not to use the groundwater and to -- if soil was  
6 disturbed and it had been impacted by the  
7 groundwater, that we would appropriately manage  
8 it. Or if our workers were in contact with  
9 those soils, would deal with that appropriately.

10 Q. Was ComEd going to do anything to treat  
11 the arsenic in the groundwater to reduce it?

12 A. No.

13 MS. FRANZETTI: I would move to admit  
14 Exhibit 645 into evidence.

15 MS. BUGEL: No objection.

16 THE HEARING OFFICER: Thank you, Ms. Bugel.  
17 Respondent's Exhibit 645 will be admitted.

18 (Whereupon document so  
19 offered was received in  
20 evidence as Respondent's  
21 Exhibit No. 645.)

22 BY MS. FRANZETTI:

23 Q. Turning to Exhibit 646, this appears to  
24 be an ELUC agreement. Do you recognize it?

1 A. Yes, I do.

2 Q. And what is it?

3 A. The -- it is an environmental land use  
4 control agreement that was made by Midwest  
5 Generation for the property at Waukegan station  
6 to limit the land use related to the  
7 environmental contamination that was coming from  
8 the tannery site.

9 Q. Okay. If you turn to page 12721 of  
10 this ELUC agreement. And it has a figure on  
11 there, and there is a dark black area on that  
12 figure. What is the significance of that  
13 darkened black area on that figure?

14 A. That area shows the area of the  
15 environmental land use control agreement.

16 Q. And did Midwest Gen agree to this --  
17 enter into this ELUC for ComEd?

18 A. Yes, we did.

19 Q. All right. Now, directing your  
20 attention up to the screen, there is a purple  
21 hash-marked area outlined on the aerial map of  
22 Waukegan. Is that a reasonably accurate  
23 depiction of the area of the ELUC that Midwest  
24 Gen agreed to enter into with ComEd?

1 A. Yes, it is.

2 Q. And that area -- the ELUC area is  
3 entirely on Midwest Gen property, correct?

4 A. Correct.

5 Q. With respect -- give me just a moment.

6 If you go to page 12717, do you see a  
7 signature on that page?

8 A. Yes, I do.

9 Q. And that is the signature of Georgia  
10 Nelson. Was she the president at that time of  
11 Midwest Gen?

12 A. Yes, she was.

13 Q. Okay. Was she president, in part,  
14 during the time you worked there?

15 A. Yes, she was.

16 MS. FRANZETTI: I would move for Exhibit 646  
17 to be admitted into evidence.

18 MS. BUGEL: No objection.

19 THE HEARING OFFICER: Thank you.

20 Respondent's Exhibit 646 is admitted.

21 (Whereupon document so  
22 offered was received in  
23 evidence as Respondent's  
24 Exhibit No. 646.)



1 BY MS. FRANZETTI:

2 Q. Turn to page 12714 of the ELUC,  
3 Exhibit 646, specifically starting at the bottom  
4 of that page, Section 6, Indemnity, and going  
5 over on to the top of the next page. If you  
6 would just read that to yourself for the moment,  
7 and then I have a question.

8 A. Okay.

9 Q. What's your understanding of this  
10 indemnity provision of the ELUC?

11 A. That if iron, manganese, or arsenic,  
12 which are known as the hazardous materials in  
13 here, are released, that Commonwealth Edison  
14 takes on the entire liability for that.

15 Q. And are you referring to the last part  
16 of that section at the top of page 12715?

17 A. Yes, I am.

18 Q. And so that refers to this indemnity  
19 obligation relating to [as read]: The presence,  
20 discharge, disposal, migration, or release of a  
21 hazardous or toxic waste substance or  
22 constituent as defined in any applicable  
23 federal, state, or local law, ordinance or  
24 regulation, including without limitation, iron,

1 manganese, and arsenic.

2 So those three were specified, correct?

3 A. Correct.

4 Q. Was it limited to only those three in  
5 where it says including without limitation?  
6 What's your understanding?

7 A. It doesn't necessarily have to be  
8 limited.

9 Q. Okay. Did ComEd have to do any  
10 continued groundwater monitoring --

11 A. Yes.

12 Q. -- as part of this ELUC agreement?

13 A. Yes, they did.

14 Q. All right. And do you know how  
15 frequently, approximately?

16 A. It was semiannual for a while, and they  
17 also -- and I don't remember all the details.  
18 But it depends upon which constituent it is and  
19 whether or not it seems to be increasing,  
20 whether they can drop -- or if it's decreasing  
21 after a certain number of years, they can drop  
22 the sampling to annual or every five years or  
23 something like that.

24 Q. Okay. I want you to take a look --

1 it's going to be on your desk, not in your  
2 binder -- at Exhibit 41.

3 A. Okay. I have a 41-F.

4 Q. Yes.

5 A. Okay.

6 Q. Exhibit 41-F appears to be an Andrews  
7 Engineering evaluation of the RETEC reports of  
8 the tannery site. Do you recognize this  
9 document?

10 A. Yes, I do.

11 Q. What is it?

12 A. It's a document that we asked Andrews  
13 Environmental Engineering to put together to  
14 review the reports by RETEC. We, essentially,  
15 wanted a consultant of our own to look at the  
16 work RETEC was doing and make sure that it made  
17 sense.

18 Q. And these are the RETEC reports for  
19 ComEd on the tannery site?

20 A. The sampling results.

21 Q. Okay. What did Andrews conclude based  
22 on its review of the RETEC sampling results?

23 MS. BUGEL: Objection. Calls for  
24 speculation.

1 THE HEARING OFFICER: Rephrase.

2 BY MS. FRANZETTI:

3 Q. Ms. Race, did you review this  
4 Exhibit 41-F that Andrews prepared at your  
5 request?

6 A. Yes, I did.

7 Q. And based on that review, do you have  
8 an understanding of what Andrews concluded with  
9 regard to its analysis of the RETEC reports,  
10 including their sample results?

11 A. Yes.

12 Q. What's that understanding?

13 A. Well, my understanding is that there  
14 were some -- there were ways in which our  
15 consultant considered what RETEC did to be  
16 inaccurate.

17 Q. In what respect?

18 A. Like, for example, an arsenic -- it was  
19 different for each thing. So for arsenic, there  
20 were high levels in the groundwater consistently  
21 at monitoring well MW-11, which led them to  
22 believe that the source concentration at the  
23 location was higher than the average value they  
24 were using in their modeling.

1 Q. That RETEC was using in its modeling?

2 A. That RETEC -- so in other words, there  
3 were things that were skewing the numbers to be  
4 lower in the modeling than we were actually  
5 seeing in real life, like arsenic, for example.

6 Q. Okay. Would it be accurate to say then  
7 that Andrews thought that the RETEC modeling may  
8 have understated the actual degree of  
9 contamination?

10 A. Yes, that's true.

11 Q. Did Andrews basically conclude that  
12 concentrations of arsenic, iron -- arsenic and  
13 iron were exceeding the applicable groundwater  
14 standards?

15 A. Yes. And the other thing to note is  
16 that because there was a transcription error in  
17 the RETEC report, there were -- they were using  
18 those incorrect iron results to do calculations  
19 that were carrying forward because every time  
20 they did a report, they would still include  
21 those two numbers. So finding those numbers and  
22 that they needed to be corrected was also  
23 another thing that Andrews did.

24 Q. All right. Does that pretty well cover

1 the Andrews conclusions with respect to the  
2 arsenic and iron --

3 A. Yes.

4 Q. -- exceedents? Okay. I would move --  
5 oh, that's already admitted. I don't need to  
6 admit that.

7 Moving on, if you can find Exhibit  
8 42.5, Complainant's Exhibit 42.5.

9 A. I have a 42.5-F.

10 Q. Yes, sorry. I keep dropping the F. I  
11 don't know why.

12 This looks like it's a July 21, 2016,  
13 URS report to a Mark Castro, senior remediation  
14 project manager at Commonwealth Edison. Do you  
15 recognize this document?

16 A. Yes, I do.

17 Q. And what is this document?

18 A. This is one of the documents that we  
19 receive on a regular basis from URS from David  
20 Merry, who was the modeler doing trend analyses  
21 for what's going on at the ELUC area. So this  
22 is Commonwealth Edison's consultant making their  
23 report to Commonwealth Edison and providing it  
24 to us.

1 Q. And what type of information are they  
2 basing the report on?

3 A. The information that they are receiving  
4 from monitoring wells.

5 Q. From sampling those wells?

6 A. Sampling, sampling.

7 Q. Now, on page 3, are you copied on this  
8 letter?

9 A. Yes, I am.

10 Q. And was that typical, that you would be  
11 sent copies of these letters during this time  
12 frame?

13 A. Yes. Generally it would be the station  
14 environmental specialist and myself.

15 Q. Okay. What did this report tell you  
16 particularly as to arsenic in terms of whether  
17 or not the concentrations of arsenic in the  
18 groundwater were increasing or decreasing or  
19 something else?

20 A. That there are no significant downward  
21 trends of arsenic, so they have to continue  
22 monitoring on an annual basis.

23 Q. So it's not decreasing?

24 A. It's not decreasing.

1 Q. What did it tell you about total  
2 dissolved solids concentrations in the  
3 groundwater?

4 A. That the groundwater monitoring had to  
5 change back from every five years to annually  
6 since there's an increasing trend in total  
7 dissolved solids.

8 Q. Turning to table two that's attached to  
9 this letter, it's at Bates 61558, what type --

10 A. I'm sorry. Table two?

11 Q. Yes. It should be Bates 61558.

12 A. Okay. Thank you.

13 Q. What type of information is contained  
14 in table two?

15 A. Table two has the groundwater  
16 analytical results specifically from the Midwest  
17 Generation ELUC area.

18 Q. Okay. And just for the record, does  
19 that area contain monitoring wells MW-10 through  
20 MW-15?

21 A. Yes, it does.

22 Q. Do you have a -- do you know whether  
23 those wells are downgradient or upgradient of  
24 the tannery property?



1 A. Yes, they are downgradient.

2 Q. So they should be monitoring  
3 groundwater that is migrating off of the tannery  
4 property, is that your understanding --

5 A. Correct.

6 Q. -- of what their purpose is?

7 A. Correct.

8 Q. All right. So in 2016, what  
9 constituents did URS sample and what's reported  
10 here?

11 A. They sampled for arsenic, iron,  
12 manganese, and total dissolved solids.

13 Q. Okay. And with respect to those  
14 parameters that they sampled for in the wells on  
15 Midwest Gen's property in the ELUC area, what  
16 are they showing in terms of the levels of  
17 manganese, arsenic, iron, and total dissolved  
18 solids?

19 A. Monitoring Wells 10 and 11 are showing  
20 relatively high numbers. Arsenic is above the  
21 Groundwater 1 standard, for example. And some  
22 of the other wells -- I mean, there are detects  
23 in almost every well. And the only non-detect  
24 is for arsenic in monitoring well 13 and on

1 12/17/2003. So this shows several -- you know,  
2 like, 2003, 2004, the two sampling episodes in  
3 2004. And so you're not seeing any real  
4 non-detects here.

5 Q. Okay. I'm going to ask you to turn to  
6 Exhibit 19-D. That's, again, going to be in  
7 your pile --

8 A. Okay.

9 Q. -- not in your binder. And it should  
10 say Commonwealth Edison Company on the front,  
11 Phase II Environmental Site Assessment.

12 A. I might need a little help with this.  
13 I can't find it.

14 Q. Okay.

15 A. It's right in front of me. Thank you.

16 Q. Okay. Looking at Exhibit 19-D, do you  
17 recognize the document?

18 A. Yes, I do.

19 Q. What is it?

20 A. This is the Commonwealth Edison Phase  
21 II Environmental Site Assessment that was done  
22 by ENSR in November of 1998.

23 Q. Okay. And is this similar report in  
24 terms of the type and nature of information it

1 contained to the ENSR Phase II reports we have  
2 already discussed with respect to Joliet and  
3 Powerton?

4 A. Yes.

5 Q. And did you utilize this report in the  
6 same way as you've already testified you would  
7 use the information in it for Powerton and  
8 Joliet 29?

9 A. Yes.

10 Q. And turn to page 45800. It's, again,  
11 Section 4.1.4. That's entitled groundwater --

12 A. I see that.

13 Q. -- do you see where I'm referring to?

14 Okay. Now, specifically on this  
15 report, in that section, what did this report  
16 tell you?

17 A. It says that [as read]: Arsenic is the  
18 only constituent of concern detected at  
19 concentrations above the IEPA cleanup  
20 objectives.

21 And that was at that time in 1998.

22 Q. Okay. So arsenic is there in 1998.  
23 Can you tell which area that arsenic has been  
24 detected in at that time?

1           A.    [As read]: A construction debris area  
2   that's in the southwestern corner of the  
3   facility by Monitoring Well 11 adjacent to the  
4   former tannery property owned by Commonwealth  
5   Edison.

6           Q.    Okay. Moving ahead to 2009, if we can  
7   go to the timeline, please.

8                    The ash ponds at Waukegan, they were  
9   also the subject of Illinois EPA's request that  
10   Midwest Gen do a hydrogeologic assessment of its  
11   stations, correct?

12          A.    Correct.

13          Q.    Okay. So when Midwest Gen submitted  
14   the preliminary hydrogeologic assessment and  
15   potable well survey that was Exhibit 621, did  
16   that also cover Waukegan?

17          A.    Let me take a look.

18          Q.    Sure.

19          A.    Yes, it did.

20          Q.    And what did that assessment tell the  
21   IEPA regarding the condition of the ash ponds at  
22   the Waukegan station?

23          A.    That they had been relined relatively  
24   recently and they were in good condition.

1 Q. What did it tell them about their liner  
2 condition before the recent relinement?

3 A. That it was -- they were in good  
4 condition then as well.

5 Q. Regarding the potable wells portion --  
6 I'm sorry, let me rephrase that.

7 Regarding the potable wells survey  
8 portion of the report, what did the report tell  
9 Illinois EPA about the presence of any potable  
10 wells?

11 A. That there were eight potable  
12 industrial well -- use wells within 2,500 feet  
13 of Waukegan's ash impoundments, but they are --  
14 the ash ponds are located in close proximity to  
15 Lake Michigan and groundwater is believed to  
16 flow towards the lake; therefore, none of the  
17 potable wells used for drinking water supplies  
18 to the east or south of the ash pond would be  
19 impacted if there was a release.

20 Q. Okay. So were any of those potable  
21 wells downgradient of the ash pound?

22 A. No, they were not.

23 Q. Did IEPA ask Midwest Gen to install  
24 groundwater monitoring wells at Waukegan?

1 A. Yes, they did.

2 Q. And did it?

3 A. Yes.

4 Q. And you are familiar with the  
5 installation and monitoring of those wells?

6 A. Yes, I am.

7 Q. Let's bring up the aerial map, okay.  
8 And you see a bunch of red flags with  
9 numbers up there?

10 A. Yes.

11 Q. Based on your familiarity with the  
12 monitoring well network installed at the  
13 Waukegan station, does the aerial with those red  
14 flags reasonably and accurately depict the  
15 location of the monitoring wells installed at  
16 the Waukegan station?

17 A. It represents the current wells  
18 installed at the station.

19 Q. So was this done in more than one  
20 phase, the installation of the wells?

21 A. Yes, it was.

22 Q. Okay. Do you recall generally  
23 approximately how many wells were installed in  
24 Phase I? And by that, I mean most of them or

1 half?

2 A. No. In Phase I of the groundwater  
3 monitoring that we were doing around the ash  
4 impoundments, only five wells were installed.  
5 And then IEPA wanted us to install several other  
6 wells after we started getting results back.

7 Q. Okay.

8 A. Which we did do.

9 Q. Can I direct your attention to the  
10 grassy area to the west of the ash ponds. Do  
11 you understand generally where I'm referring to  
12 on the aerial?

13 A. Yes, I do.

14 Q. Okay. Now, with respect to that  
15 area -- and I want you to turn back to -- on  
16 Exhibit 19-D, actually, there is actually a map  
17 right here (indicating).

18 A. All right.

19 Q. If you could go to Bates number 45814  
20 on Complainant's Exhibit 19-D.

21 A. Okay.

22 Q. Is that area to the west of the ponds  
23 there shown on that figure?

24 A. Yes.

1 Q. How is it identified on that figure?

2 A. It is called a former slag/fly ash  
3 storage area.

4 Q. Now, do you know, has Midwest Gen  
5 determined if there is ash in that area?

6 A. No, we haven't done any sampling  
7 specifically to understand that.

8 Q. Okay. Has any environmental agency  
9 requested that you investigate that area?

10 A. No.

11 Q. Do the CCR rules -- the federal CCR  
12 rules require any investigation or work in this  
13 area?

14 A. No.

15 Q. Does the ComEd tannery site ELUC cover  
16 any of that area?

17 A. Yes, it does.

18 Q. During your communications with ComEd  
19 in connection with the tannery ELUC, has ComEd  
20 ever raised a concern about this area?

21 A. No.

22 Q. Okay. Did any of your prior coal ash  
23 sampling results play any role in Midwest Gen  
24 not investigating this area?



1           A.     We had coal ash sampling rules that  
2     showed that the coal ash could be used for  
3     beneficial use, so that plays one part of it.  
4     But beyond that, the drawings that I have seen  
5     of this area identify this as an area that is --  
6     is to be seeded. I don't know any more about it  
7     than that.

8           Q.     Okay. I'm going to turn to  
9     Complainant's Exhibit 14-C. So, again, that's  
10    not in your binder, but it should be.

11          A.     I'm getting them all messed up.

12          Q.     That's all right. You're entitled.

13          A.     Okay.

14          Q.     Do you recognize that document?

15          A.     Yes, I do.

16          Q.     What is that document?

17          A.     This is the hydrogeologic assessment  
18    report that was prepared for the Waukegan  
19    generating station and IEPA by Patrick  
20    Engineering and submitted to Illinois EPA in  
21    February of 2011.

22          Q.     Okay. Like the other reports like this  
23    one we have already discussed relating to Joliet  
24    29 and Will County, does this report just

1 contain the results of the first round of  
2 quarterly groundwater sampling?

3 A. Yes, it does.

4 Q. What did the results of that first  
5 quarter groundwater sampling show?

6 A. Well, the first round showed that  
7 Monitoring Well 5, which was the upgradient  
8 monitoring well from the ash impoundments, was  
9 higher in many constituents than the  
10 downgradient wells were.

11 Q. Okay. Did that surprise you?

12 A. Yeah.

13 Q. All right. What --

14 A. In a way but -- let me continue -- in a  
15 way it did not because I know this is an old  
16 historical area.

17 Q. And so why is the fact that it's an old  
18 historical area relevant to the discovery of  
19 impacts in a well that's upgradient to the ash  
20 pond?

21 A. Well, the way that IEPA described this  
22 assessment is the assessment was all about  
23 understanding whether the ash impoundments were  
24 leaking. And so this did not -- did not show

1 whether or not the ash impoundments were  
2 leaking, because Monitoring Well 5, which was  
3 the upgradient monitoring well, was higher in  
4 many contaminants than the downgradient wells.

5           However, knowing the history of the  
6 site and that the tannery site was located to  
7 the west and that there was an environmental  
8 land use control, I wasn't surprised to see that  
9 there were results that might correspond to that  
10 and to the other things that we have talked  
11 about with the tannery in an upgradient well.  
12 But it didn't succeed in really showing whether  
13 a monitoring well -- or whether the ash  
14 impoundments were leaking, which was what we  
15 were telling IEPA to begin with.

16           Q.    Okay.  And so is that part of the  
17 reason why more wells were added?

18           A.    Yes.

19           Q.    Okay.  And when those wells were added,  
20 did they continue to be monitored?

21           A.    Yes.

22           Q.    And in the end, it is the result of  
23 that additional -- those additional wells, the  
24 additional monitoring, what did you conclude --

1 Midwest Gen conclude regarding the ash ponds  
2 leaking?

3 A. We believe that the ash ponds are not  
4 leaking, the liners are in good condition, and  
5 that they're migrations from off-site sources,  
6 and it just doesn't make sense that the ash  
7 impoundments are leaking when you have an  
8 upgradient well that's higher in contaminants  
9 than a downgradient well.

10 Q. And that upgradient well is, in turn,  
11 downgradient of, for example, the tannery site,  
12 correct?

13 A. Correct.

14 Q. Turn to Exhibit 647. This appears to  
15 be the Compliance Commitment Agreement Midwest  
16 Gen entered into with IEPA for the Waukegan  
17 site; is that correct?

18 A. Correct.

19 Q. And turning to page Bates number 567,  
20 3, Compliance Activities, does that describe the  
21 compliance sections that Midwest Gen agreed to  
22 do under the terms of this Compliance Commitment  
23 Agreement?

24 A. Correct.

1 Q. Okay. With respect to those  
2 activities, are they similar to the other  
3 Compliance Commitment Agreement terms we have  
4 reviewed in terms of removing the ash,  
5 maintaining the liners, visual inspection of the  
6 ponds?

7 A. Correct.

8 Q. Did you also agree to install any  
9 additional monitoring wells?

10 A. Yes, two additional wells.

11 Q. Generally, to what direction were those  
12 wells to be installed in?

13 A. To the west.

14 Q. You also agreed to continue quarterly  
15 monitoring of all the wells?

16 A. Yes, we did.

17 Q. Now, did this Compliance Commitment  
18 Agreement also involve a new ELUC agreement to  
19 be entered into by Midwest Gen?

20 A. Yes, it did.

21 Q. And now would this be, though, for a  
22 different portion of the property as opposed to  
23 the tannery site ELUC?

24 A. Yes, it basically would start where the

1 ELUC of the tannery left off and go all the way  
2 to the waterway.

3 Q. Okay. Was there any requirement to  
4 reline the ponds included in this CCA?

5 A. No, there was not.

6 Q. IEPA did not request that you do that  
7 as part of this settlement?

8 A. No. As a matter of fact, Lynn Dunaway,  
9 who is an IEPA groundwater expert, stated that  
10 he doesn't believe that the ash impoundments are  
11 leaking.

12 Q. Do you recall being present at a public  
13 hearing back in 2013 where Mr. Dunaway was --  
14 was present regarding some permitting of the  
15 Waukegan plant?

16 A. Yes, I was there.

17 Q. You were there.

18 Do you recall generally why that public  
19 hearing was held?

20 A. It was held for the -- for the NPDES  
21 permit renewal process. And a public hearing  
22 was requested and so a public hearing was held.

23 Q. Okay. Did you stay for the entire  
24 hearing?

1 A. Yes, I did.

2 Q. And in addition to Mr. Dunaway, were  
3 any other Illinois EPA personnel present?

4 A. Yes, there were other people present.  
5 Such as Darin LeCrone, I believe he was there.  
6 And he is like the head of the permit writers in  
7 the industrial permitting section.

8 Q. All right. At that meeting, do you  
9 recall generally what Mr. Dunaway said when he  
10 was asked questions about the active ash ponds?

11 MS. BUGEL: Objection. Calls for hearsay.

12 THE WITNESS: Yeah.

13 THE HEARING OFFICER: Ms. Franzetti?

14 MS. FRANZETTI: No, this is at a public  
15 hearing on the NPDES permit where Mr. Dunaway is  
16 appearing as a representative of the state. I  
17 believe that is reliable, useful information for  
18 the Board to know about in this case. It should  
19 not be excluded as unreliable hearsay.

20 MS. BUGEL: Mr. Dunaway's statements may be  
21 reliable, but we don't have any verification  
22 that the witness's ability -- memory ability to  
23 repeat those statements' articulation is  
24 accurate as to the witness -- Mr. Dunaway's

1 statements.

2 MS. FRANZETTI: She was present, Mr. Hearing  
3 Officer.

4 THE HEARING OFFICER: You know, that's  
5 enough, please. I will take it under Section  
6 101.626. Objection overruled.

7 You may answer, if you can remember.

8 MS. FRANZETTI: I will rephrase the question.

9 BY MS. FRANZETTI:

10 Q. What do you recall Mr. Dunaway stating  
11 with respect to whether the active ash ponds at  
12 the Waukegan station were a current source of  
13 contamination?

14 A. Mr. Dunaway stated that he did not  
15 believe that the current ash impoundment  
16 activity was creating any -- well, the current  
17 ash ponds were not leaking as they were lined.

18 Q. I'm going to direct your attention to  
19 Exhibit 648.

20 Do you recall Midwest Gen obtaining a  
21 copy of the transcript from this public hearing  
22 at which Mr. Dunaway made the statement you have  
23 just testified to?

24 A. Yes, I do. It's available online.



1 Q. Okay. And would you turn to -- this  
2 document does not contain the entire transcript,  
3 but it does contain page Bates numbered 29975.  
4 Would you please take a moment to review  
5 Mr. Dunaway's statement and going on to 29976,  
6 and tell me if that is the portion of  
7 Mr. Dunaway's statement regarding the ash ponds  
8 that you have just testified to.

9 A. Mr. Dunaway states [as read]:  
10 Currently we don't believe the active ash ponds  
11 are the source of contamination. There appears  
12 to be some other source other than the active  
13 ash ponds.

14 MS. FRANZETTI: We would move to admit  
15 Midwest Gen Exhibit 648 into evidence.

16 THE HEARING OFFICER: Did we look at 647 as  
17 well, or you haven't moved that yet?

18 MS. FRANZETTI: Oh, I'm sorry. Can I also  
19 move 647 into evident, please.

20 THE HEARING OFFICER: Ms. Bugel, Respondent's  
21 Exhibit 647, any objection?

22 MS. BUGEL: Hearing Officer, could I ask for  
23 a moment to confer with co-counsel?

24 THE HEARING OFFICER: Sure. We can go off

1 the record.

2 (Short pause in proceedings.)

3 THE HEARING OFFICER: We are on the record.

4 Yes, Ms. Bugel?

5 MS. BUGEL: Just starting as to 648, starting  
6 as to 648, we object. Our main objection is  
7 based on the fact that this is an excerpt from  
8 the transcript and we do want the rest of the  
9 transcript for context. And --

10 MS. FRANZETTI: If I can respond to that?

11 THE HEARING OFFICER: Yes, you may.

12 MS. FRANZETTI: Counsel, on the review of the  
13 exhibits before this hearing, on which this was  
14 provided to you as an excerpt, specifically just  
15 the cover page and the two Bates numbers, you  
16 agreed to the admission of this exhibit.

17 MS. BUGEL: Okay. We did --

18 MS. FRANZETTI: If you wanted the entire  
19 transcript, you could have raised it then and we  
20 would provide it. We can still provide it  
21 afterwards, but I do not believe it should be a  
22 condition for the introduction of these pages.

23 THE HEARING OFFICER: Is that on the list  
24 anywhere, your agreement for exhibits, that I

1 have?

2 MS. FRANZETTI: It was e-mailed to you,  
3 Mr. Halloran, on Monday -- a week ago Monday.

4 Go ahead, Kristen.

5 MS. LAUGHRIDGE GALE: I'm sorry. If I recall  
6 correctly, we received that you guys, and I  
7 think you cc'd Mr. Halloran on Monday, so nine  
8 minus seven, January 22nd.

9 MS. FRANZETTI: Here. Do you want to -- this  
10 is the page that has this exhibit.

11 MS. BUGEL: Thank you. Okay. I apologize,  
12 that was in error. I apologize and that was in  
13 error. And we maintain this objection right now  
14 to the excerpt.

15 MS. FRANZETTI: Again, Mr. Halloran, this is  
16 the relevant portion of the permit hearing  
17 transcript. The entire portion is available  
18 online. If Counsel would like to admit it in  
19 their part of this matter, you can. But I  
20 really don't think it needs to be included in  
21 this particular exhibit.

22 THE HEARING OFFICER: I mean, I agree, it is  
23 online. I can take administrative notice of it.  
24 But what I will do is I will accept it over

1 objection, Respondent's Exhibit 648, with the  
2 caveat that Midwest is to supply the whole  
3 transcript. Is tomorrow going to be okay?

4 MS. FRANZETTI: I think so. I don't think  
5 it's that huge in terms of printing it out.

6 THE HEARING OFFICER: Okay.

7 MS. FRANZETTI: So we will bring a hardcopy  
8 of it.

9 THE HEARING OFFICER: So 648 is admitted  
10 subject to the rest of the transcript.

11 MS. BUGEL: And at this time we just want to  
12 renew our objection to the hearsay testimony and  
13 move to strike that portion of the witness's  
14 testimony given on the Lynn Dunaway statements.

15 THE HEARING OFFICER: All right. Overruled.

16 MS. FRANZETTI: And 647 is admitted?

17 MS. BUGEL: Let me just go -- I didn't deal  
18 with that.

19 MS. FRANZETTI: That's just the signed CCA.

20 MS. BUGEL: Okay. No objection to 647.

21 THE HEARING OFFICER: Thank you.

22

23

24

1 (Whereupon documents so  
2 offered were received in  
3 evidence as Respondent's  
4 Exhibits Nos. 647 and 648.)

5 THE HEARING OFFICER: Do you want to take a  
6 lunch pretty soon?

7 MS. FRANZETTI: Yes. Actually, if we get  
8 done with this exhibit, that would be fine to  
9 break for lunch.

10 THE HEARING OFFICER: Okay, continue. Thank  
11 you.

12 BY MS. FRANZETTI:

13 Q. Do you have Exhibit 649 in front of  
14 you, Ms. Race?

15 A. Yes, I do.

16 Q. It looks like it's an e-mail from Lynn  
17 Dunaway to Jamie Rabins with cc to Bill Buscher  
18 dated January 6, 2015. Do you recognize this  
19 document?

20 A. Yes, I do.

21 Q. And what is it?

22 A. It's a document from Lynn Dunaway to  
23 Jamie Rabins talking about the regulations and  
24 the coal ash impoundments. Talking about that

1 hearing.

2 Q. Does it also -- in Mr. Dunaway's e-mail  
3 to Mr. Rabins that's at the top of the page,  
4 first page, does he talk about the CCA terms for  
5 the Waukegan station?

6 A. Yes, he does.

7 Q. And does he address the issue of why  
8 there wasn't a corrective action requirement and  
9 a GMZ included in the CCA?

10 A. Yes, he does.

11 Q. And what is his explanation for why  
12 that was not included in the CCA?

13 A. Because the CCA that was approved  
14 didn't include a corrective action. So,  
15 therefore, there was no Groundwater Management  
16 Zone.

17 Q. And why didn't it?

18 A. Because he didn't believe it was  
19 required.

20 Q. And why does -- what does he state as  
21 the reason why it wasn't required?

22 A. Because the active ponds are not the  
23 likely source of contaminants in the  
24 groundwater.

1 MS. FRANZETTI: Thank you. I would move to  
2 admit Exhibit 649 into evidence.

3 THE HEARING OFFICER: Any objection,  
4 Ms. Bugel?

5 MS. BUGEL: Complainants object to this  
6 exhibit being brought into evidence as hearsay.  
7 And also Complainants would move to strike the  
8 witness's testimony on this exhibit also as  
9 hearsay. Ms. Race's name doesn't appear on this  
10 e-mail. She has no first-hand knowledge.

11 THE HEARING OFFICER: Is that -- I missed  
12 that part of the testimony, Ms. Race does not  
13 have any first-hand knowledge of this e-mail?

14 MS. FRANZETTI: Well, Ms. Race -- if I can  
15 ask --

16 THE HEARING OFFICER: You may.

17 MS. FRANZETTI: -- some foundational  
18 questions.

19 BY MS. FRANZETTI:

20 Q. Ms. Race, do you notice the reference  
21 to IEPA Exhibit number 64 in the upper right?

22 A. Yes, I do.

23 Q. Do you know what that signifies?

24 A. Yes. That is an exhibit within

1 their --

2 Q. Permit record?

3 MS. BUGEL: Objection. Leading. The

4 witness --

5 THE HEARING OFFICER: Sustained.

6 MS. BUGEL: -- was trying to answer.

7 The attorney is --

8 THE HEARING OFFICER: Sustained.

9 THE WITNESS: It is an exhibit within their  
10 permit record that is available through FOIA,  
11 Freedom of Information Act.

12 BY MS. FRANZETTI:

13 Q. And did you obtain this document from  
14 the IEPA?

15 A. Yes.

16 Q. At or about the time of the Waukegan  
17 permit hearings?

18 A. A little later, I think.

19 MS. FRANZETTI: I would renew my request to  
20 admit Exhibit 649.

21 THE HEARING OFFICER: Ms. Bugel?

22 MS. BUGEL: We maintain our hearsay  
23 objection.

24 THE HEARING OFFICER: Okay. Overruled then,



1 101.626. Respondent's Exhibit 649 is admitted.

2 (Whereupon document so  
3 offered was received in  
4 evidence as Respondent's  
5 Exhibit No. 649.)

6 MS. FRANZETTI: We could break for lunch now.  
7 I have three or four more questions on Waukegan.  
8 I can either do those and then we break and  
9 we're done with the Waukegan station, or we can  
10 break right now.

11 THE HEARING OFFICER: Let's take a break.  
12 Come back here at a quarter 2:00. We're off the  
13 record.

14 (Whereupon, a recess was had at  
15 12:46 p.m., after which the  
16 hearing was resumed at  
17 1:53 p.m. as follows:)

18 THE HEARING OFFICER: All right. We are back  
19 on the record. It's approximately 1:50. Thanks  
20 for your prompt return.

21 Ms. Race is on the stand still under  
22 oath, and she is on direct by Ms. Franzetti.

23 You may proceed.

24 MS. FRANZETTI: Thank you, Mr. Hearing

1 Officer. I'm just going to read joint  
2 Stipulation 63, which states, at Waukegan,  
3 Midwest Gen applied for an ELUC that covers the  
4 remaining Waukegan station property that was not  
5 already included in the existing former tannery  
6 site ELUC including the ash ponds.

7 And joint Stipulation 64, Illinois EPA  
8 approved the Waukegan ELUC on August 26, 2013.

9 BY MS. FRANZETTI:

10 Q. Ms. Race, would you look at Exhibit 650  
11 that's in front of you.

12 A. Okay.

13 Q. Can you identify what that document is?

14 A. Yes. This is a letter from Illinois  
15 Environmental Protection Agency to Midwest  
16 Generation, John Kennedy, stating that the ELUC  
17 that was submitted in response to the Compliance  
18 Commitment Agreement has been accepted and that  
19 we should proceed to have it drawn up as  
20 proposed.

21 Q. And you are copied on that letter?

22 A. Yes, I am.

23 MS. FRANZETTI: I would move to admit Exhibit  
24 650 into evidence.

1 MS. BUGEL: No objection.

2 THE HEARING OFFICER: Thank you.

3 Respondent's Exhibit 650 is admitted.

4 (Whereupon document so  
5 offered was received in  
6 evidence as Respondent's  
7 Exhibit No. 650.)

8 BY MS. FRANZETTI:

9 Q. Did Midwest Gen complete the pond's  
10 relining and conducted the additional  
11 requirements in the Waukegan Compliance  
12 Commitment Agreement?

13 A. In the Waukegan Compliance Commitment  
14 Agreement, there wasn't a requirement for a pond  
15 relining.

16 Q. Oh, I'm sorry, I misspoke. Thank you.  
17 Did it complete the other remaining  
18 requirements in the Compliance Commitment  
19 Agreement?

20 A. Yes, we did.

21 MS. FRANZETTI: Joint Stipulation 65 states,  
22 on August 22nd, 2013, Midwest Gen submitted to  
23 Illinois EPA its certification that all of the  
24 Waukegan CCA measures were successfully

1 completed.

2 BY MS. FRANZETTI:

3 Q. Would you turn to Exhibit 651.

4 A. Okay.

5 Q. Please review that exhibit and tell me  
6 whether you recognize it.

7 A. I do recognize it.

8 Q. And what is it?

9 A. It is a compliance statement showing  
10 that we are -- we have finished all the  
11 Compliance Commitment Agreement requirements  
12 from IEPA. And this is signed by John Kennedy,  
13 who was the senior VP of generation at that  
14 point in time.

15 MS. FRANZETTI: Move to admit Exhibit 651  
16 into evidence.

17 MS. BUGEL: No objection.

18 THE HEARING OFFICER: Respondent's Exhibit  
19 651 admitted.

20 (Whereupon document so  
21 offered was received in  
22 evidence as Respondent's  
23 Exhibit No. 651.)

24

1 BY MS. FRANZETTI:

2 Q. Ms. Race, once the CCR rules were  
3 adopted in 2014 -- I'm speaking about the  
4 federal CCR rules -- did Midwest Gen determine  
5 whether they regulated any of the ash ponds at  
6 Waukegan?

7 A. Yes, we did.

8 Q. And did they?

9 A. Yes, they cover Waukegan east and west  
10 ash ponds.

11 Q. Are those the only active ash ponds at  
12 Waukegan?

13 A. Correct.

14 Q. Now I'm going to turn to Will County  
15 station. No, I'm not. I have one more thing.

16 I'm handing you, Ms. Race, what's been  
17 marked as Midwest Gen Exhibit 665. It is a copy  
18 of the timeline that we have been periodically  
19 showing at times on the screen and on your  
20 monitor. Would you take a moment to look  
21 through that document.

22 And my question is: Is this generally  
23 an accurate summary of the relevant events  
24 relating to the Waukegan station that you have

1 been testifying to in this proceeding?

2 A. Yes, it is.

3 MS. FRANZETTI: Midwest Gen would move for  
4 the introduction into evidence of Exhibit 665,  
5 is useful and helpful to the Board's review of  
6 this matter.

7 THE HEARING OFFICER: Ms. Bugel?

8 MS. BUGEL: We object to Exhibit 665 simply  
9 because it contains material that we objected to  
10 in the course of testimony. Specifically, there  
11 are statements on the second -- let me see if  
12 it's -- the second to last page. There are  
13 statements from the two exhibits that we  
14 objected to as hearsay. Those also appear in  
15 this document. So we object to the content, the  
16 hearsay content.

17 THE HEARING OFFICER: Okay. And I know what  
18 I did then, I overruled you on the hearsay  
19 exhibits -- or objections.

20 And I -- Ms. Franzetti, anything you  
21 want to add?

22 MS. FRANZETTI: The only thing is that you  
23 did request that Midwest Gen submit a complete  
24 copy of the NPDES public hearing transcript

1 tomorrow as a condition of the admission of that  
2 exhibit, and we will do that. So with that, we  
3 don't believe that the basis for the objection  
4 to be sustained.

5 THE HEARING OFFICER: Okay. The record will  
6 so note that you will supply me tomorrow with  
7 that. And I'm going to admit Exhibit 665 from  
8 Midwest over objection.

9 (Whereupon document so  
10 offered was received in  
11 evidence as Respondent's  
12 Exhibit No. 665.)

13 BY MS. FRANZETTI:

14 Q. Ms. Race, one other last question on  
15 Waukegan. Did Midwest Gen record the ELUC that  
16 was Exhibit 650?

17 A. Yes, we did.

18 Q. Now turning to Will County station.  
19 And turn to Exhibit 652 in the binder in front  
20 of you. That appears to be a Phase I  
21 Environmental Site Assessment of the Will County  
22 station by ENSR for Commonwealth Edison dated  
23 October 1998.

24 Do you recognize that document?

1 A. Yes, I do.

2 Q. What is it?

3 A. This is a Phase I that was performed  
4 for Commonwealth Edison in October -- and the  
5 report is dated October of 1998.

6 Q. I am going to ask you to turn to  
7 page 2-7 of the report. It's at Bates number  
8 29515, specifically Section 2.4 that's entitled  
9 Site History.

10 A. So could you repeat the number?

11 Q. 29515, the Bates number. And the  
12 report pagination, it's page 2-7.

13 A. Thank you. I found it.

14 Q. Okay. And specifically Section 2.4  
15 entitled Site History, is that a portion of the  
16 report you've reviewed before?

17 A. Yes, it is.

18 Q. And what type of information does that  
19 portion of the report contain?

20 A. It contains information from the person  
21 who -- it explains who actually assisted and  
22 answered the questions that ENSR had about the  
23 site. It describes what aerial photographs  
24 there were or assessment records that were



1 available. And also the adjacent site history.

2 Q. And what did ENSR conclude from its  
3 review of that historical information concerning  
4 prior usage of the property?

5 A. That the area is bordered to the north  
6 by a road, Romeo Road, beyond which is wooded  
7 land. To the east is the Chicago Sanitary and  
8 Ship Canal. And to the south is Material  
9 Services Corporation. And to the west is the  
10 Des Plaines River.

11 Q. With respect to the prior use of the  
12 property and any disposal activities, did they  
13 make any findings? Still in that section.

14 A. Just give me a minute.

15 Q. Uh-huh.

16 A. It states that no evidence of land  
17 filling was observed in the photographs.

18 Q. And I ask you to turn back towards the  
19 front of the document, Bates page 29507 through  
20 29508. This is the Sections 1.2, Study  
21 Limitations section. Take a moment to look at  
22 this.

23 And my question is: Does this section  
24 contain similar information to the prior Phase

1 II reports we've already reviewed regarding  
2 Joliet 29, Powerton and Waukegan that had the  
3 same limitations section in the report?

4 A. Yes, it has the same limitations  
5 described in it that the other reports have.

6 Q. And did you use this report in the same  
7 manner as you've described using those other  
8 Phase II reports?

9 A. Yes, I did.

10 Q. Turning to Exhibit 18-D. That won't be  
11 in your binder but is on the table.

12 A. Okay. Just give me a minute. Okay,  
13 I've got it.

14 Q. Have you -- you've testified about this  
15 report, you've seen it before, correct?

16 A. Correct.

17 Q. Okay. And does your approach to the  
18 use of this report, Exhibit 18-D and how you  
19 used it that you've testified to now with  
20 respect to the prior exhibit, Exhibit 18 -- I'm  
21 sorry, Exhibit 652, as well as the other  
22 stations, apply as well to this report? Did you  
23 use this report similarly?

24 A. Yes, I did.

1 MS. FRANZETTI: All right. Let's go to the  
2 aerial map of Will County. I will just note a  
3 couple of stipulations.

4 Stipulation 40, Midwest Gen owns and  
5 operates the Will County Electric Generating  
6 Station located in Romeoville, Will County,  
7 Illinois.

8 Stipulation 41, Midwest Gen has owned  
9 and operated the Will County station since 1999.

10 BY MS. FRANZETTI:

11 Q. I'm going to ask you first to refer to  
12 Exhibit 653 in your book.

13 Do you recognize Exhibit 653?

14 A. Yes. This is an ALTA survey, title  
15 survey that was done at the time of the sale  
16 from Midwest Gen -- or from Commonwealth Edison  
17 to Midwest Generation.

18 Q. And as on some of the other survey maps  
19 for the other stations, are there any retained  
20 tracts on this survey?

21 A. Yes, there is a retained tract that is  
22 near the center of the site.

23 Q. Is that retained tract showed on the  
24 aerial map that's on the screen and on your

1 monitor with the black dotted outline to it?

2 A. Yes, it is.

3 Q. Then that says, not owned by Midwest  
4 Gen?

5 A. Correct.

6 Q. Is that a fair and accurate  
7 representation of the area that is identified as  
8 the retained tract on the survey marked as  
9 Exhibit 653?

10 A. Yes.

11 Q. Does Midwest Gen control that area?

12 A. No.

13 Q. ComEd continues today to own that area  
14 of the property?

15 A. Yes.

16 MS. FRANZETTI: Stipulation 42, Will County  
17 has one active electric generating unit, unit  
18 four.

19 BY MS. FRANZETTI:

20 Q. Did Will County used to have additional  
21 operating units?

22 A. Yes. Units one, two, and three.

23 MS. FRANZETTI: I forgot to move, and I will  
24 move now for admission of Exhibit 653.

1 MS. BUGEL: No objection.

2 THE HEARING OFFICER: 653, what about 652?

3 MS. FRANZETTI: I will like to move to admit  
4 that one as well.

5 THE HEARING OFFICER: Ms. Bugel, 652?

6 MS. BUGEL: No objection to either 652 or  
7 653.

8 THE HEARING OFFICER: Thank you.

9 Respondent's Exhibits 652 and 653 are admitted.

10 (Whereupon documents so  
11 offered were received in  
12 evidence as Respondent's  
13 Exhibits Nos. 652 and 653.)

14 BY MS. FRANZETTI:

15 Q. With respect to those additional units  
16 that used to operate at Will County, do you know  
17 at its peak how many units used to operate at  
18 Will County?

19 A. There were four units at Will County at  
20 its peak.

21 Q. Okay. And do you recall generally, can  
22 you walk us through when the other units  
23 operated?

24 A. Sure. In 1955, Will County began

1 operation of units one and two. In 1957, unit  
2 three started up. And in 1963, unit four  
3 started up.

4 Q. Was it during Midwest Gen's ownership  
5 since 1999 that one or more of the units were  
6 deactivated?

7 A. Yes.

8 Q. When was the first unit deactivated?  
9 Approximately is fine.

10 A. Probably around 2010. Let me think for  
11 a minute here. December of 2010. Well, units  
12 one and two were deactivated, and unit three was  
13 deactivated later than that, more recently.

14 Q. All right. Do you recall what year  
15 unit three was deactivated? If you do. If you  
16 don't, it's okay.

17 A. Around 2013, 2014, somewhere in there.

18 Q. All right. We can help with the  
19 timeline. Let's take a look at --

20 A. 2015. April 15th of 2015.

21 Q. Does that refresh your recollection?

22 A. Yes.

23 Q. Okay. Now, let's go back to the aerial  
24 of Will County.

1           On what side of the Will County station  
2 are the ash ponds located?

3           A.    They are located on the west side of  
4 the station.

5           Q.    Now, you see on the aerial we've got  
6 two areas that are in blue. Can we start with  
7 those two areas, and would you tell us what  
8 those depict.

9           A.    Sure. The areas in blue that are  
10 denoted on the overhead are ash pond number two  
11 and ash pond number three. Sometimes called two  
12 south or 2S and 3S.

13          Q.    Okay. And the two areas that are  
14 outlined in green, do you recognize those areas?

15          A.    Yes. Those are ponds number one north  
16 and one south.

17          Q.    So does the aerial reasonably depict  
18 the location and size of the ash ponds?

19          A.    Yes.

20          MS. FRANZETTI: Now, we have Stipulation 44,  
21 pond 1N, 1S, 2S, and pond 3S were each  
22 originally constructed in 1977 with a Poz-o-Pac  
23 liner.

24                Stipulation 43, there are two active

1 ash ponds at the Will County station, pond two  
2 south, which is 2S, and pond three south, which  
3 is 3S.

4 BY MS. FRANZETTI:

5 Q. You have already identified those up on  
6 the aerial, but which one is 2S and which one is  
7 3S?

8 A. 3S is the one furthest to the south.  
9 So if you think of it that way, it's one south,  
10 two south, three south, and each one goes  
11 further south.

12 Q. Okay.

13 MS. FRANZETTI: We have stipulation 45, pond  
14 2S has a concrete Geocell on the sides of the  
15 basin.

16 Stipulation 46, only one pond, 2S or  
17 3S, is in service at a time.

18 Stipulation 47, pond 2S or pond 3S are  
19 dredged approximately on an annual basis.

20 And Stipulation 48, there are two  
21 inactive ponds at the Will County station, ponds  
22 one north, or 1N, and one south, or 1S.

23 BY MS. FRANZETTI:

24 Q. Can you see those on the aerial photo?



1           A.     Yes, I can.

2           Q.     And pond 1N versus pond 1S, can you  
3 just distinguish them up there?

4           A.     Sure. 1S is the one that's directly to  
5 the north of pond 2S. And then the one that's  
6 directly to the north of that is one north.

7           MS. FRANZETTI: Stipulation 49, ponds 1N and  
8 1S at the Will County generating station have  
9 Poz-o-Pac liners.

10          BY MS. FRANZETTI:

11          Q.     Have you seen any documentation on how  
12 thick the liners on ponds 1N and 1S are?

13          A.     Yes.

14          Q.     And do you recall what that  
15 documentation indicated the thickness of the  
16 liners under those ponds was?

17          A.     I believe that there were -- if I  
18 remember correctly, there were six 6-inch  
19 layers, or lifts, as they are called in the  
20 documents, on the sides. And then there was  
21 a -- two 6-inch lifts and fill material, and two  
22 more 6-inch lifts in the base. That what I  
23 believe I remember.

24          MS. BUGEL: Can I just interrupt just to make

1 sure the -- I want to make sure the transcript  
2 is clear, that Ms. Race seemed to repeat six  
3 twice. So it was six 6-inch lifts. Just so it  
4 doesn't appear as 6-inch lifts.

5 THE HEARING OFFICER: I'm sure the record so  
6 notes, you know, and you can clean it up on  
7 cross too. But this might be better. Thank  
8 you.

9 MS. FRANZETTI: Can I have a moment?

10 THE HEARING OFFICER: Yes, you can go off the  
11 record.

12 (Short pause in proceedings.)

13 THE HEARING OFFICER: We are back on the  
14 record.

15 BY MS. FRANZETTI:

16 Q. Putting before you Midwest Gen  
17 Exhibit 500, and just briefly, what is this  
18 document?

19 A. This document is a pond  
20 characterization that I had an intern put  
21 together in the summer so that we would be able  
22 to describe all of our -- all of our  
23 impoundments, not just ash impoundments. And it  
24 has the information that she pulled from

1 as-built drawings that she found at the  
2 stations.

3 Q. And would you take a look at the Will  
4 County ponds section of this document and tell  
5 me whether or not it provides information from  
6 those construction documents with respect to the  
7 depth of the liners?

8 A. Yes, it does.

9 Q. And is the -- what page are you looking  
10 at?

11 A. At MWG 13-15\_5.

12 Q. Is the information that's presented in  
13 Midwest Gen Exhibit 501, as to the depth of the  
14 liners in the Will County ponds, consistent with  
15 the testimony that you've just provided?

16 A. No, it is not.

17 Q. What does it state?

18 A. Six 6-inch lifts of Poz-o-Pac with a  
19 bituminous carrying coat.

20 Q. So how is that different from what you  
21 testified to?

22 A. Because I had miss-remembered that  
23 there were -- that there was a -- two 6-inch  
24 lifts and fill material and two 6-inch lifts. I

1 have it confused with some other impoundment.

2 Q. And, in fact, instead of that, how is  
3 the liner constructed at Will County?

4 A. The liner is constructed with six  
5 6-inch layers of Poz-o-Pac that have a  
6 bituminous carrying coat over the top of them.  
7 And just to -- you know, the way that this says  
8 lifts I think is confusing. It's actually --  
9 that means layers. So six -- you would pour a  
10 6-inch layer. Let it set. Pour a 6-inch layer,  
11 do whatever engineering work you need to do,  
12 until you have 36 inches of Poz-o-Pac.

13 Q. Ms. Race, I'm done with that exhibit.  
14 Now I will have you go back to the other binder  
15 and look at Exhibit 654.

16 A. Okay.

17 Q. There you go.

18 Do you recognize Exhibit 654?

19 A. Yes, I do.

20 Q. What is that document?

21 A. This is a document describing the ash  
22 impoundments at Will County station, all of  
23 them.

24 Q. And what type of document is it?

1 A. It is an as-built drawing.

2 Q. Have you seen this document before?

3 A. Yes, I have.

4 Q. Was this part of the information that  
5 was used to prepare Exhibit 500 that we were  
6 just looking at?

7 A. Oh. Yes.

8 MS. FRANZETTI: I would move to admit  
9 Exhibit 654.

10 MS. BUGEL: I don't have an objection, but I  
11 would just make a clarification for the record.  
12 There is one page on which the Bates number is  
13 almost illegible. Do you want to represent for  
14 the record what page that is?

15 MS. FRANZETTI: Sure.

16 MS. BUGEL: I think it's -- or do you want me  
17 to? I can do it.

18 MS. FRANZETTI: If you can, I have no  
19 objection.

20 MS. BUGEL: I believe, for the record, that  
21 it's Bates MWG 13-15\_37214. Oh, and the name of  
22 the drawing, for the record, is Ash Pond  
23 Sections Eight Details.

24 THE WITNESS: I'm looking at 213. Got it.

1 MS. FRANZETTI: With that taken care of, I  
2 would re-move to admit Exhibit 654.

3 MS. BUGEL: No objection.

4 THE HEARING OFFICER: Okay. So that's  
5 Bates-stamped 37214 that I wrote in here?

6 MS. FRANZETTI: The first page is 37213.  
7 Bates is illegible on the next page. But the  
8 exhibit goes through Bates 37217.

9 THE HEARING OFFICER: Okay. I'm looking at  
10 Bates stamp -- okay. It's exhibit -- forgive  
11 me. 654, Bates stamp 37213, what, MWG 13-15,  
12 37213, and the next one should be 37214,  
13 correct?

14 MS. FRANZETTI: Correct.

15 THE HEARING OFFICER: Okay. That's what I  
16 have. Admitted. Thank you. I wrote it down on  
17 the page.

18 (Whereupon document so  
19 offered was received in  
20 evidence as Respondent's  
21 Exhibit No. 654.)

22 BY MS. FRANZETTI:

23 Q. Were any borings ever taken of the  
24 bottom of the ash pond?

1           A.     One of the ash ponds at Will County had  
2 a boring taken of it.

3           Q.     And do you recall what the results of  
4 that boring indicated?

5           A.     We were testing it for permeability.  
6 And the permeability turned out to be somewhere  
7 around one times ten to the negative fifth  
8 centimeters per second.

9           Q.     Do you recall what the boring showed in  
10 terms of any information regarding the depth of  
11 the liner?

12          A.     The boring -- can I ask a question?

13          Q.     Well, maybe it would help if I refer  
14 you over to Exhibit 510.

15                 I'm putting before you what has been  
16 marked as Midwest Gen Exhibit 510. Do you want  
17 to take a moment to look at that document. And  
18 my question is: Do you recall whether the  
19 boring taken from the bottom of the pond at Will  
20 County provided any information with respect to  
21 the depth of the liner, the thickness of the  
22 liner?

23                 I'll tell you what, Ms. Race, in the  
24 interest of time, I am going to rephrase the

1 question and ask you a different question.

2 If you go to page 34271, can you tell  
3 what the depth of the boring was that was taken  
4 from the bottom of the pond?

5 A. The depth of the boring, it goes from 0  
6 down to 36 inches before the core -- before they  
7 stop actually pushing through the core. So they  
8 never do encounter the bottom of the third layer  
9 of Poz-o-Pac.

10 Q. Then what is --

11 A. So there is still Poz-o-Pac there, but  
12 they just don't go all the way down to the very  
13 bottom of it when they are taking the core.

14 Q. So they went down with the boring  
15 36 inches; is that correct?

16 A. Correct.

17 Q. That was the depth of the boring?

18 A. That was the depth of the boring.

19 Q. And the boring at that depth had not  
20 yet reached the bottom or broken through the  
21 bottom of the Poz-o-Pac liner?

22 A. That's correct.

23 Q. What does that indicate to you with  
24 respect to the thickness of the Poz-o-Pac liner?



1 A. That it is deeper than 36 inches.

2 Q. Since 1977, has any portion, any slice  
3 of the liners in either pond 1N or 1S been  
4 removed?

5 A. No.

6 Q. So they still have the same liner  
7 system thickness as was installed originally --

8 A. Yes.

9 Q. -- in the '70s?

10 A. Yes.

11 MS. FRANZETTI: Stipulation 50 is, ponds 1N  
12 and 1S were removed from service in 2010 and  
13 neither received any ash or process water.

14 BY MS. FRANZETTI:

15 Q. Are any of the four ponds that are at  
16 the Will County station disposal sites?

17 A. No.

18 Q. And why is that?

19 A. Because the ash is removed.

20 Q. I'm going to ask you to go back to the  
21 binder with the exhibits in the 600 series and  
22 turn to Exhibit 655.

23 A. Okay.

24 Q. Do you recognize that document?

1 A. Yes, I do.

2 Q. What is it?

3 A. This is an NPDES permit for Will County  
4 station.

5 Q. Can you turn to page 5 of the permit.  
6 These individual pages don't have Bates numbers.  
7 You have to look at the upper left-hand corner.

8 A. Thank you.

9 Q. What type of information is shown on  
10 page 5 of the Will County NPDES permit?

11 A. Page 5 has outfall 002. The recycle  
12 wastewater treatment system blowdown. It  
13 includes a discharge of ash sluice system  
14 blowdown, which includes bottom ash sluice water  
15 from units one, two, three, and four of the slag  
16 tank overflow sumps and various other  
17 intermittent flows.

18 Q. And so is that the bottom ash sluice  
19 water from the ponds?

20 A. Yes.

21 Q. I want to go to the topic of the  
22 relining of the Will County ash ponds, basically  
23 ponds 2S and 3S. And I'm going to need you to  
24 go back to Exhibit 607.

1 A. Okay.

2 Q. All right. Now, we've previously  
3 talked about Exhibit 607. That's your chart of  
4 the pond's relining program at Midwest Gen,  
5 correct?

6 A. Correct.

7 Q. Now, with respect to Will County ponds,  
8 which one was going to be relined first?

9 A. Will County south ash impoundment  
10 three.

11 Q. So what we have been calling 3S?

12 A. Yes, 3S.

13 Q. And then when was pond 2S going to be  
14 relined?

15 A. Shortly thereafter, the following year.

16 Q. All right. Would you look at your  
17 comments in the column marked Comments. And  
18 with respect to these Will County ponds, would  
19 you read what your comment is and whether it's  
20 the same for both ponds?

21 A. Sure. My comment is [as read]: Weir  
22 needs work. Risk of another TVA?

23 Q. What did that comment mean?

24 A. Well, it was two-fold. I had been

1 talking with Illinois EPA about what they  
2 perceived as their ideas of what would be a risk  
3 of another TVA. Like, could you have --

4 MS. BUGEL: I'm going to object to the  
5 speculation as to what IEPA perceived.

6 THE HEARING OFFICER: Yeah. Is there another  
7 way you could rephrase that, Ms. Franzetti.

8 MS. FRANZETTI: I will try.

9 THE HEARING OFFICER: Thank you.

10 BY MS. FRANZETTI:

11 Q. Ms. Race, what questions was the IEPA  
12 asking you about these ponds that prompted you  
13 to write that comment?

14 A. IEPA asked whether our impoundments  
15 were going to be at risk of another TVA  
16 situation.

17 Q. And so what does the comment "weir  
18 needs work" refer to?

19 A. That was a note to myself. I had run  
20 into a situation at Joliet, and their coal  
21 ash -- not coal ash -- coal pile runoff  
22 impoundment where they had a French drain system  
23 and the rock in it was getting in the way and  
24 they had to replace all of the rock. And so I

1 was wondering if the same thing could have  
2 happened at Will County. But then when I --  
3 upon further investigation, I found out that  
4 their drain -- their weir is not a French drain,  
5 therefore, that fear went away.

6 Q. And so did you conclude the risk went  
7 away too?

8 A. The risk went away of another TVA  
9 because the weir didn't need work. The weir was  
10 fine. And the weir didn't set up any type of  
11 over-topping, you know, to happen.

12 Q. If you would turn to the liner notes  
13 portion of Exhibit 607. And what does it state  
14 for the Will County ponds?

15 A. [As read]: 12 inches Poz-o-Pac poor  
16 condition.

17 Q. All right. Did you later learn any  
18 additional information regarding the liner's  
19 condition and their thickness?

20 A. Yes. We later found out that the liner  
21 thickness was much more than 12 inches and it  
22 was in great condition.

23 Q. And how much more than 12 inches did  
24 you find out the thickness of those liners was?

1           A.     36 inches total.

2           Q.     All right.  Now, according to your  
3 chart, when were these two ponds, ponds 2S and  
4 3S, going to be relined?

5           A.     2008 and 2009.

6           Q.     Okay.  And did that happen?

7           A.     I know that the impoundments were  
8 actually done, and I think the years are about  
9 right.

10          Q.     If we turn to the timeline, with  
11 respect to Will County 3S, if you go up to  
12 September 2009, it notes [as read]:  Will County  
13 pond 3S relined with HDPE.

14                   Does that refresh your recollection as  
15 to when 3S was relined?

16          A.     Yes.  3S was relined in September of  
17 2009, and it was the first of the two that was  
18 relined.

19          Q.     And then moving on in the timeline?

20          A.     So it would have been put back into  
21 service, and then pond 2S would have gone  
22 through the process of being dredged and, et  
23 cetera, and --

24          Q.     Did you ever get to reline pond 2S?

1           A.     Eventually, yes.

2           Q.     Did the CCR rules play any role in  
3 affecting when 2S was going to be relined?

4           A.     Let me refresh my memory.  Now, the CCR  
5 rule was enacted in 2014 and came into effect in  
6 2015.  Could I see more of the timeline?

7           Q.     Sure, yeah.

8                     With respect to -- I'm going to direct  
9 your attention to June in 2010 when EPA formally  
10 proposed the rules.

11          A.     Okay.  I see.

12          Q.     Now, I want to go back to January,  
13 about six months before then, EPA stated its  
14 intent to propose regulating CCR as a hazardous  
15 waste.

16                     So does either of those help refresh  
17 your recollection?

18          A.     Yes, that does.  When US EPA decided to  
19 propose regulation of CCR as a hazardous waste,  
20 we were hesitant to move forward with any  
21 further lining at that point unless it was  
22 absolutely necessary because we weren't sure  
23 what the rule would actually promulgate in terms  
24 of liner requirements.

1 Q. So were you concerned about putting in  
2 a liner that would wind up not satisfying the  
3 federal rules once they were final?

4 A. Correct.

5 Q. So did -- well, let's turn back to  
6 Exhibit 501. We have to go back to the other  
7 book here.

8 Looking at Exhibit 501, it appears to  
9 be an application for a permit to reline ponds  
10 2S and 3S at Will County. Do you recognize that  
11 document?

12 A. Yes, I do.

13 Q. Would you flip through it and see  
14 whether or not you'd actually signed that  
15 document?

16 A. The letter was signed for me by our  
17 administrative assistant.

18 Q. Okay. But you were in charge of that  
19 application?

20 A. Yes.

21 Q. And was it an application for a permit  
22 to reline ponds 2S and 3S?

23 A. Yes, it is.

24 Q. What kind of liner was going to be



1 installed?

2 A. HDPE.

3 Q. Okay. Now, referring to page 2 of the  
4 application.

5 A. After all of the figures, I'm assuming?

6 Q. Yeah. Well, what I'm --

7 A. So this --

8 Q. And you can use whatever you want, but  
9 the question is, was any portion of the existing  
10 Poz-o-Pac liner going to be removed as part of  
11 the relining?

12 A. Yes, it was.

13 Q. Do you recall approximately how much of  
14 the existing Poz-o-Pac liner was going to be  
15 removed?

16 A. I believe it was the top 12 inches.

17 Q. Take your time.

18 A. The removal and replacement of the  
19 upper two existing layers of Poz-o-Pac and 6  
20 inches of existing fill were going to be  
21 replaced with a 60-mil HDPE liner.

22 Q. And how thick is a layer? If two  
23 layers were going to be removed, how much was  
24 going to be removed in inches?

1           A.     12 inches.

2           Q.     Now, with respect to -- and, again, we  
3 are talking about -- I want to talk about pond  
4 3S that actually got relined.

5                     Was that how the work was done, was  
6 some portion of the Poz-o-Pac removed?

7           A.     Yes, it was.

8           Q.     To your recollection, what was the  
9 condition of the Poz-o-Pac that was reported  
10 during the removal operation?

11          A.     My recollection from talking to people  
12 at the station is that it was in good condition  
13 and they actually questioned whether they had to  
14 remove it because it seemed like it was in great  
15 shape, and whether we could change the design,  
16 and I said no, we needed to stick with what we  
17 had the permit for.

18          Q.     Okay. I'm going to go back to -- we  
19 are done with that exhibit. I'm going to go  
20 back to Exhibit 621. And this is -- you've  
21 already testified about this exhibit. It's the  
22 preliminary hydrogeologic assessment and potable  
23 well survey report. I want to just talk about  
24 Will County, and that should start at Bates

1 ending in 295.

2 A. I've got it.

3 Q. Can you describe generally what the  
4 hydrogeologic information for Will County was  
5 that is included in this assessment report?

6 A. The information included here was an  
7 evaluation of the hydrogeology in the vicinity  
8 of the ash ponds, the potable well survey within  
9 2,500-foot radius of the station's ash ponds,  
10 and the assessment of the potential for any  
11 impacts to existing potable water wells in the  
12 area.

13 Q. Okay. What was the nature of the  
14 geology in the area of Will County station?

15 A. It included slurry and dolomite from  
16 near the ground surface to a depth of  
17 approximately 55 feet, with shale approximately  
18 55 to 100 feet below ground surface, and  
19 limestone approximately 100 to 145 feet below  
20 ground surface underlying the dolomite.

21 Q. Is there a more common term used  
22 sometimes to refer to slurry and dolomite?

23 A. Limestone.

24 Q. Is it sometimes referred to as bedrock?

1 A. Uh-huh. Yes.

2 Q. What did the potable well survey for  
3 Will County station show? And by that, I mean,  
4 were there any wells, and if so, where were  
5 they?

6 A. The wells that existed for Will County,  
7 there were wells at the site itself. And then  
8 there were some other wells that were not  
9 downgradient of the ash impoundments within  
10 2,500 feet.

11 Q. Were there any wells downgradient of  
12 the ash ponds?

13 A. No, there were not.

14 Q. And the onsite wells, how deep were  
15 those?

16 A. Those are beneath the shale layer.

17 Q. So roughly more than how many feet?

18 A. More than 2,000 feet.

19 Q. Okay. Do those wells draw groundwater  
20 from the area underlying the ponds?

21 A. Yes, they do.

22 Q. But down at a depth of greater than?

23 A. 2,000 feet.

24 Q. Okay. What conclusion did the

1 assessment reach regarding whether there was any  
2 risk posed to human health if a release from the  
3 ash ponds occurred?

4 A. That there was no risk. There was no  
5 reasonable basis to expect that a release from  
6 this facility would pose any risk to human  
7 health.

8 Q. Now I'm going to go to January 2000 --  
9 no, excuse me, let me rephrase.

10 Just as with the other plants or  
11 stations, at Will County, did Midwest Gen agree  
12 to install -- install and then start monitoring  
13 the groundwater monitoring network?

14 A. Yes, we did.

15 Q. I'm going to ask you to find  
16 Complainant's Exhibit 15-C.

17 A. Okay.

18 Q. Is that the hydrogeologic assessment  
19 report for Will County?

20 A. Yes, it is.

21 Q. And just like the other stations you  
22 have already testified about, did that report  
23 provide information regarding the first round of  
24 groundwater sampling of the monitoring well

1 network Midwest Gen installed at Will County?

2 A. Yes, it did.

3 Q. What did the results of the first round  
4 of sampling indicate?

5 A. The first -- if I flip back to the  
6 monitoring reports and the sampling results that  
7 we receive from the various monitoring wells --  
8 let me see if there's a table here.

9 Q. You might want to look at page 7243.

10 A. Thank you.

11 Q. Table two, if you are looking for  
12 monitoring results.

13 A. That's what I was looking for is this.

14 What it showed at these wells is that  
15 there were very few results that were above the  
16 groundwater remediation objective. And so the  
17 results that we were seeing were sulfates, a  
18 couple for manganese -- three for manganese. So  
19 the results that were basically very low level,  
20 not -- not an area that seemed like it was  
21 highly contaminated based upon all the well data  
22 that we got from one sample.

23 Q. Were those upgradient or downgradient  
24 well or both?

1 A. Both.

2 Q. Okay. Now I'm going to have you go  
3 back to 600 series.

4 A. All right.

5 Q. And I'm going to ask you to go to  
6 Exhibit 656.

7 A. Okay.

8 Q. Is that the Compliance Commitment  
9 Agreement that Midwest Gen signed with the IEPA  
10 for Will County?

11 A. Yes, it is.

12 Q. And similar to the other CCAs we've  
13 already looked at, does Section III beginning at  
14 Bates 561 list the compliance activities that  
15 Midwest Gen was to perform under this CCA?

16 A. Yes, it does.

17 Q. And as with the other ones, did Midwest  
18 Gen agree to visually look at the pond liners  
19 when ash is removed for any tears or breaches in  
20 the liners and continue to do the quarterly  
21 groundwater monitoring?

22 A. Yes, we did.

23 Q. Did they agree to reline pond 2S?

24 A. Yes.

1 Q. What type of liner?

2 A. A 60-mil thickness HDPE liner.

3 Q. Is that described in sub graph F?

4 A. Yes.

5 Q. And then was there any GMZ established  
6 at Will County?

7 A. Yes, there was a GMZ established.

8 Q. Was there any ELUC that was to be  
9 established?

10 A. Yes.

11 MS. FRANZETTI: I would move for the  
12 admission of Exhibit 656.

13 THE HEARING OFFICER: Ms. Bugel?

14 MS. BUGEL: No objection.

15 THE HEARING OFFICER: Thank you. So  
16 admitted.

17 Did we move for Respondent's  
18 Exhibit 655?

19 MS. FRANZETTI: No, we didn't. I would move  
20 for the admission of 655.

21 MS. BUGEL: I apologize, I need to go back  
22 and see what 655 is.

23 MS. FRANZETTI: I apologize too, Faith. I  
24 keep skipping exhibits. It's the application



1 for the construction approval to reline the  
2 ponds.

3 MS. BUGEL: 655?

4 MS. FRANZETTI: Oh, all right. I flipped to  
5 many pages.

6 THE HEARING OFFICER: No, it's the permit.

7 MS. FRANZETTI: The NPDES permit.

8 MS. BUGEL: And we would object to the NPDES  
9 permit on the same grounds as our previous NPDES  
10 permit objections.

11 THE HEARING OFFICER: Okay. My grounds are  
12 the same as before. So I overrule. And I will  
13 allow over objection Respondent's Exhibit 655  
14 and 656.

15 (Whereupon document so  
16 offered was received in  
17 evidence as Respondent's  
18 Exhibits Nos. 655 and 656.)

19 MS. FRANZETTI: Thank you.

20 THE HEARING OFFICER: Thank you.

21 BY MS. FRANZETTI:

22 Q. Turning to Exhibit 657 in your binder.  
23 Please identify that document.

24 A. This document is a liner replacement

1 document for Will County station for pond 2S.

2 Q. Now, you were here in October, I  
3 believe, when Becky Maddox testified regarding  
4 the permit to reline ponds 2S and 3S. Do you  
5 recall that generally?

6 A. Yes, generally.

7 Q. So why was a second permit issued for  
8 the relining? Let me clarify.

9 We looked a little while ago at  
10 Exhibit 502.

11 A. Correct.

12 Q. And that was a permit that covered  
13 relining of both 2S and 3S. So my question is:  
14 Why did you have to get another construction  
15 permit for 2S? Why didn't the Exhibit 502  
16 construction permit app cover that as well?

17 A. Because we wanted to -- if I recall  
18 correctly, we wanted to change the construction  
19 methodology.

20 Q. And was there any issue with IEPA that  
21 it had been too long since the other permit had  
22 been issued?

23 A. I don't recall that.

24 Q. Okay. Did Midwest Gen reline pond 2S?

1 A. Yes.

2 Q. And what did that entail?

3 A. That entitled taking the impoundment  
4 out of service. Letting the ash that was in the  
5 impoundment de-water. And then removing the ash  
6 that was there. And then taking the existing  
7 12-inch top layer of polyethylene liner and  
8 6-inch fill layer removed permanently from the  
9 ash pond and replace it with the new 60-mil HDPE  
10 geomembrane liner.

11 Q. Now, there was also reference in the  
12 prior document to a concrete Geocell. Do you  
13 know what that is?

14 A. A concrete Geocell is an area where you  
15 can put ash material.

16 Q. Okay. Do you know why that was part of  
17 the new liner design?

18 A. I do not recall.

19 Q. Okay. Do you know what its purpose is?  
20 Is it a purpose for stability or is it to  
21 protect the liner?

22 A. I would assume that it would be there  
23 to protect the liner because the membrane layer  
24 would be something that would act as a cushion

1 for placement of more material.

2 Q. Referring back to the CCA compliance  
3 activities, do you recall that they included the  
4 requirement not to send process water to ponds  
5 1N and 1S?

6 A. Yes.

7 Q. And were those ponds -- at the time of  
8 the CCA, were those ponds already out of use?

9 A. Yes, they were -- they were out of use  
10 because it -- those were impoundments that were  
11 fed by units one and two which had closed.

12 Q. Okay. So what did Midwest Gen do to  
13 comply with the requirement that no process  
14 water be sent to pond 1N and 1S?

15 A. We did some rerouting of the water so  
16 that any stormwater or such that would start to  
17 accumulate in those impoundments would be  
18 redirected to an existing ash impoundment that  
19 was operating.

20 Q. And so today since the CCA was signed,  
21 up to today, has any process water been routed  
22 to ponds 1N and 1S?

23 A. No.

24 Q. So given that, do the federal rules

1 apply to those two ponds?

2 A. No, they do not.

3 Q. Okay. With respect to the compliance  
4 commitment activity of establishing a GMZ, was  
5 that done?

6 A. Yes, it was.

7 MS. FRANZETTI: Now, Stipulation 66 is,  
8 Midwest Gen applied for a GMZ that covers the  
9 middle part of the station including the ash  
10 ponds.

11 So can we bring up the aerial on the  
12 screen. And I -- and the GMZ tab.

13 BY MS. FRANZETTI:

14 Q. Ms. Race, do you see the green slashed  
15 area on the aerial?

16 A. Yes, I do.

17 Q. Does that area reasonably accurately  
18 depict the area that is covered by the GMZ  
19 application Midwest Gen made for Will County?

20 A. Yes, it does.

21 Q. Would you turn to Complainant's  
22 Exhibit 276.

23 You have before you Complainant's  
24 Exhibit 276. Can you identify that agreement?

1           A.     This is the Compliance Commitment  
2 Agreement for the Groundwater Management Zone.  
3 This is the Groundwater Management Zone  
4 application that we performed under the  
5 Compliance Commitment Agreement.

6           MS. FRANZETTI:   And Stipulation 67 is that  
7 Illinois EPA approved the Will County GMZ on  
8 July 2, 2013.

9           BY MS. FRANZETTI:

10          Q.     I'm now going to ask you to go to  
11 Exhibit 658 in your binder.

12          A.     Okay.

13          Q.     What is that document?

14          A.     This document is Illinois EPA's  
15 approval of the ash pond Groundwater Management  
16 Zone application and the environmental land use  
17 control document.  And they made a couple of  
18 additions to the GMZ.

19          Q.     Did they approve it?

20          A.     Yes, they did.

21          Q.     Does that document reflect that  
22 approval?

23          A.     Yes, it does.

24          MS. FRANZETTI:   We move to admit Exhibit 658

1 into evidence.

2 THE HEARING OFFICER: Ms. Bugel?

3 MS. BUGEL: No objection.

4 THE HEARING OFFICER: Thank you.

5 (Whereupon document so  
6 offered was received in  
7 evidence as Respondent's  
8 Exhibit No. 658.)

9 BY MS. FRANZETTI:

10 Q. I'm going to turn to the CCA agreements  
11 requirement that Midwest Gen establish an ELUC  
12 at the Will County station.

13 THE HEARING OFFICER: Respondent's  
14 Exhibit 658 is admitted into evidence.

15 MS. FRANZETTI: Thank you.

16 THE HEARING OFFICER: Thank you.

17 MS. FRANZETTI: Stipulation 67 provides, at  
18 Will County, Midwest Gen applied for an ELUC  
19 that covers the middle part of the station  
20 including the ash ponds.

21 BY MS. FRANZETTI:

22 Q. Exhibit 659, would you turn to that in  
23 your book and identify that document?

24 A. Yes. This is the ELUC that Midwest

1 Generation applied for as a result of the  
2 Compliance Commitment Agreement. It was the  
3 proposed ELUC to the Will County station.

4 Q. Flip to the next one, Exhibit 660.  
5 What is that document?

6 A. This is a document written by Illinois  
7 EPA that approves the GMZ.

8 Q. Did it approve anything other than the  
9 GMZ?

10 A. And the modifications to the proposed  
11 ELUC boundary map.

12 MS. FRANZETTI: Okay. I would move to admit  
13 both Exhibits 659 and 660.

14 MS. BUGEL: No objection.

15 THE HEARING OFFICER: Thank you. 659 and  
16 660, Respondent's exhibits are admitted.

17 (Whereupon documents so  
18 offered were received in  
19 evidence as Respondent's  
20 Exhibits Nos. 659 and 660.)

21 THE HEARING OFFICER: And before I go any  
22 farther, did I miss Respondent's Exhibit 657?  
23 Did we talk about that yet, or no?

24 MS. BUGEL: I believe we've talked about it.



1 MS. FRANZETTI: It was the pond 2S  
2 construction permit.

3 THE HEARING OFFICER: Right. Did you move  
4 for that, or no?

5 MS. FRANZETTI: Do you think I did?

6 MS. LAUGHRIDGE GALE: I think you did. I  
7 think it was --

8 MS. FRANZETTI: I don't have a very good  
9 track record though on moving for admission, so  
10 we might as well be sure and I will move again  
11 for admission of that exhibit.

12 THE HEARING OFFICER: Okay. Ms. Bugel?

13 MS. BUGEL: I'm now flipping back to it. No  
14 objection.

15 THE HEARING OFFICER: All right.  
16 Respondent's Exhibit 657 is admitted.

17 (Whereupon document so  
18 offered was received in  
19 evidence as Respondent's  
20 Exhibit No. 657.)

21 MS. FRANZETTI: All right. Stipulation 69 is  
22 that Illinois EPA approved the Will County ELUC  
23 on September 26, 2013.

24

1 BY MS. FRANZETTI:

2 Q. Did Midwest Gen then record the ELUC?

3 A. Yes, we did.

4 MS. FRANZETTI: And Stipulation 70, on  
5 October 17, 2013, Midwest Gen submitted to  
6 Illinois EPA its certification that all of the  
7 Will County CCA measures were successfully  
8 completed.

9 BY MS. FRANZETTI:

10 Q. So would you look at Exhibit 661,  
11 please.

12 A. Yes. I have it.

13 Q. What is that document?

14 A. This is my letter to Illinois EPA  
15 showing that we had -- with a signed compliance  
16 statement showing that we had successfully  
17 completed all the Compliance Commitment  
18 Agreement measures.

19 MS. FRANZETTI: Move to admit Exhibit 661.

20 THE HEARING OFFICER: Ms. Bugel?

21 MS. BUGEL: No objection.

22 THE HEARING OFFICER: Thank you. 661 is  
23 admitted.

24

1 (Whereupon document so  
2 offered was received in  
3 evidence as Respondent's  
4 Exhibit No. 661.)

5 BY MS. FRANZETTI:

6 Q. Regarding the two active ponds at Will  
7 County, ponds 2S and 3S, how do the CCR rules  
8 affect those ponds?

9 A. Those two ponds are part of the CCR  
10 rules.

11 Q. And is Midwest Gen following the CCR  
12 rules with respect to those ponds?

13 A. Yes, we are. We do our inspections,  
14 our annual reports, fugitive dust emission  
15 reporting, everything that is part of the CCR  
16 rule.

17 Q. Ms. Race, I'm putting in front of you  
18 Exhibit 666. If you would take a look at  
19 Exhibit 666, please.

20 A. Sure.

21 Q. And that is a copy of the timeline that  
22 we've been referring to at times in your  
23 testimony regarding Will County. And if you  
24 could just take a moment to look through it.

1           Does it accurately reflect the relevant  
2 events at Will County station with regard to its  
3 operation and the ash ponds?

4           A.     Yes, it does.

5           MS. FRANZETTI:  And Counsel and Mr. Hearing  
6 Officer, I'm going to anticipate an issue here.  
7 There is a picture of one of the ash ponds that  
8 is on the third to last page of the exhibit.  
9 And Ms. Gale is pointing out to me that this  
10 picture is a duplicate of the picture included  
11 in Exhibit 510 that has already been admitted,  
12 and specifically on the Bates page 34309 of  
13 Exhibit 510.

14           So given that that's already introduced  
15 into evidence, I think it is appropriate and  
16 admissible to have it included in this exhibit.

17           THE HEARING OFFICER:  Ms. Bugel?

18           MS. BUGEL:  So, yeah, I agree, we would  
19 object to the photo.  I think it's appropriate  
20 and admissible to have it in 510 because it's  
21 got context there, whereas here it loses that  
22 context.

23           And, in addition, we do have other  
24 objections to 666.  Again, the same photo of --

1 appears on the first page. We have the same  
2 objection here as we did to that photo on other  
3 timelines.

4 In addition, I've noticed on page 3  
5 there is a statement in bold under April through  
6 May 2009 where it says [as read]: IEPA asked  
7 Illinois coal-fired power plants to install  
8 groundwater monitoring.

9 There is a statement in bold beneath  
10 that where I don't believe we have had any  
11 testimony on that statement. There is no  
12 foundation for it. It appears to be hearsay.

13 So I would object on that ground as  
14 well.

15 THE HEARING OFFICER: Ms. Franzetti?

16 MS. FRANZETTI: May I ask a question with  
17 regard to the -- a question of the witness with  
18 regard to the April to May 2009?

19 THE HEARING OFFICER: Sure, try to clear it  
20 up. Thank you.

21 BY MS. FRANZETTI:

22 Q. Ms. Race, do you remember speaking to  
23 Illinois EPA during the April/May 2009 time  
24 period when it had asked Midwest Gen to install

1 groundwater monitoring well networks at ash  
2 ponds at Will County and other stations?

3 A. Yes, I do.

4 Q. And did those conversations with  
5 Illinois EPA include any discussion of whether  
6 in that period, April to May 2009, any of the  
7 other Illinois companies with ash ponds at their  
8 generating stations were agreeing or had agreed  
9 to install the monitoring well networks?

10 MS. BUGEL: And I'm going to object to the  
11 question because it's asking not just for  
12 hearsay, which I would believe would be IEPA's  
13 statements, but hearsay within hearsay if it was  
14 other companies' statements to IEPA that then  
15 were communicated to the witness.

16 THE HEARING OFFICER: Could you rephrase the  
17 question -- or not rephrase it.

18 Court Reporter, could you read the  
19 question back, please.

20 (Whereupon, the record was read  
21 as requested.)

22 THE HEARING OFFICER: Yeah, I agree.

23 Ms. Franzetti, can you rephrase possibly?

24 MS. FRANZETTI: Okay. I will try again, yes.

1 BY MS. FRANZETTI:

2 Q. Ms. Race, before Midwest Gen agreed to  
3 put in the groundwater monitoring networks it  
4 did, did it ask IEPA whether any other companies  
5 had agreed to put in monitoring well networks  
6 for their ash ponds?

7 THE WITNESS: Yes, we --

8 MS. BUGEL: Same objection.

9 THE HEARING OFFICER: She may answer if she  
10 is able.

11 THE WITNESS: Yes, we asked Illinois EPA and  
12 we also asked other companies directly, because  
13 I had been working with other companies on  
14 Title V permitting, so it gave me an opportunity  
15 to ask that question.

16 BY MS. FRANZETTI:

17 Q. Okay. Do you recall what other  
18 companies you asked?

19 MS. BUGEL: Same objection. This is still  
20 hearsay because it's about the other company's  
21 statement and there is no hearsay exception that  
22 applies here.

23 THE HEARING OFFICER: You know, I don't think  
24 it makes any difference, but I agree with

1 Ms. Bugel. I think, you know, we've beat this  
2 to death. So I would sustain Ms. Bugel's  
3 objection to "(others do not)." I don't know  
4 how we could, you know, do that, cross it off,  
5 redact it.

6 MS. FRANZETTI: We can redact it.

7 THE HEARING OFFICER: Is that --

8 MS. BUGEL: That is fine.

9 THE HEARING OFFICER: Would that be fine?

10 MS. BUGEL: That would resolve that  
11 objection. We still --

12 THE HEARING OFFICER: Okay. If you let me  
13 finish, thank you. I know it's getting late in  
14 the day, but sometimes I like to talk.

15 And also, I'm addressing the picture of  
16 the Poz-o-Pac. I know the transcript has your  
17 objections on record and it has Ms. Franzetti's  
18 explanation. And I would go a step farther  
19 regarding this photo, and I think there was two  
20 other photos of the Poz-o-Pac, I would just ask  
21 the Board to disregard this picture of the  
22 Poz-o-Pac.

23 In relation to this photo, the view of  
24 basin from north slope facing southeast, it's



1 the third to the last page, I would allow it and  
2 overrule Ms. Bugel's objection.

3 And you can talk now. Thank you.

4 MS. BUGEL: Thank you. Considering the  
5 Hearing Officer's ruling on the photo of the  
6 Poz-o-Pac, can we have that redacted?

7 THE HEARING OFFICER: I will just ask the  
8 Board to disregard. If you want to file an  
9 appeal later, that's fine.

10 Okay. I'm going to hand my exhibits --  
11 I'm not going to say it -- to Ms. Franzetti and  
12 she can redact the others to not, I'm sorry.  
13 666.

14 BY MS. FRANZETTI:

15 Q. Would you turn to Exhibit 662.

16 MS. BUGEL: Hearing Officer, before we begin  
17 any discussion as to this exhibit, we -- I --  
18 this exhibit raises a number of, what I would  
19 phrase, serious objections both to the --  
20 it's -- the title of it is 2014 Team IL-Beyond  
21 Coal Campaign Plan.

22 THE HEARING OFFICER: What exhibit?

23 MS. BUGEL: Exhibit 662.

24 THE HEARING OFFICER: All right. Go ahead.

1 MS. BUGEL: Beyond Coal Campaign was a Sierra  
2 Club campaign. As a result, we believe there  
3 is -- it is not possible for the witness to  
4 authenticate this exhibit. She has no  
5 first-hand knowledge of it. It was not created  
6 by Midwest Gen. It was created by Sierra Club.

7 In addition, we believe it is -- it's  
8 not at all relevant to the case at issue here  
9 and whether Midwest Gen has violated Illinois  
10 groundwater standards. It is prejudicial and it  
11 is -- there are privileges related to this as  
12 well.

13 I'm not aware of how Midwest Gen got  
14 this exhibit, but to me it looks like an  
15 internal document that is First Amendment  
16 privileged as well.

17 THE HEARING OFFICER: Okay. I'm going to let  
18 Ms. Franzetti briefly respond, but I'm also  
19 going to ask most probably if you can brief your  
20 objection and it's due by, we can say Thursday,  
21 to this exhibit.

22 MS. FRANZETTI: Mr. Hearing Officer, I would  
23 like to ask the witness questions of how she  
24 came to obtain this document, which I think will

1 respond directly to certain of Counsel's  
2 objections.

3 THE HEARING OFFICER: Okay.

4 MS. FRANZETTI: But the -- on some of her  
5 other objections, the document is very relevant  
6 because it discloses and reveals this Beyond  
7 Coal Campaign that the Sierra Club had, who is  
8 one of the complainants in this proceeding,  
9 whose goal was to simply shut down coal-fired  
10 generating stations. And we believe that is  
11 very relevant evidence.

12 One can tell by how strenuously Counsel  
13 is objecting to it that reveals what the true  
14 motive is here for this lawsuit which really has  
15 little or nothing to do with the ash at the  
16 stations, whether in the ponds, or found there  
17 historically.

18 THE HEARING OFFICER: Okay. Thank you. You  
19 may proceed with a couple questions, but I will  
20 probably ask for briefing on this issue. Thank  
21 you.

22 BY MS. FRANZETTI:

23 Q. Turning to Exhibit 662, do you  
24 recognize that exhibit?

1 A. Yes, I do.

2 Q. Is that a document that you found?

3 A. Yes. I found this document by doing a  
4 Google search online with a couple of different  
5 environmental groups that I was familiar with in  
6 Waukegan because I was getting ready for a  
7 meeting with my then boss John Bailor and we  
8 wanted to better understand what to expect.

9 Q. So I understand you correctly, you  
10 personally found a copy of this document on the  
11 internet?

12 A. I did.

13 Q. Were you aware of its existence before  
14 you found it on the internet?

15 A. No.

16 Q. Had anybody told you that it existed?

17 A. No. Frankly, I was shocked to find it.

18 Q. And with respect to this document, what  
19 did you find -- did you find any of the  
20 information in this document relevant with  
21 respect to Sierra Club's plans relating to the  
22 Waukegan station?

23 A. Well, I think the conclusion that I  
24 drew from reading through this was that even if

1 John and I met with the group's -- with Clean  
2 Lake County Power Group, or whatever the name  
3 was of that group at the time, there was a  
4 consortium of various groups, that we wouldn't  
5 be able to achieve any kind of synergy with  
6 them. That they're very strategically trying to  
7 shut down coal and they are very -- they used  
8 Waukegan as an example here. And I was really  
9 shocked when I found this. I didn't expect to  
10 see that shutdown was the end result.

11 Q. End result of what?

12 A. End result of their campaign, that --  
13 that it wouldn't be -- I guess, I advised my  
14 then boss that it wouldn't be worthwhile to  
15 carry on any type of discussions with Sierra  
16 Club or the Clean Lake Power Group because it  
17 didn't make sense, because they weren't going to  
18 negotiate with us and try to do anything that  
19 was constructive.

20 Q. Did this document refer to any other  
21 Midwest Gen stations besides Waukegan?

22 A. Let me refresh my memory.

23 I don't believe so. And I'm not seeing  
24 it here just on a cursory quick look through.

1 They're very focused on a Dynegy plant and the  
2 Waukegan plant.

3 MS. FRANZETTI: Mr. Hearing Officer, I would  
4 move to admit Exhibit 662.

5 THE HEARING OFFICER: Yeah, I think what we  
6 will do is we'll treat this as an offer of  
7 proof. So everything you have asked Ms. Race  
8 will be in an offer of proof.

9 And with that said, I would invite  
10 Ms. Bugel to ask a few questions of Ms. Race, if  
11 you would like, within the offer of proof. And  
12 then I will ask you to brief it and have it on  
13 my desk no later than Friday, if you choose to  
14 ask her questions within an offer of proof.

15 MS. BUGEL: Can I have a moment to consult  
16 with Counsel?

17 THE HEARING OFFICER: Sure.

18 MS. BUGEL: So our concern here is, first of  
19 all, we have no idea how this ended up on the  
20 internet. And First Amendment privilege cannot  
21 be inadvertently waived or accidentally waived by  
22 accidental disclosure. So that's a concern.

23 In addition, you know, I think I  
24 maintain the other authenticity relevance and

1 foundation objections.

2 And an additional objection is we --  
3 due to the confidential nature of this document,  
4 we believe any testimony of -- regarding the  
5 document, even the questions that have just been  
6 asked and answered, should be confidential in  
7 the transcript.

8 I don't believe we have any further  
9 objections to this right now. But due to the  
10 seriousness of the concerns, especially First  
11 Amendment concerns, I would ask that before  
12 there is any further questioning, we just  
13 brief -- have an opportunity to go to briefing.

14 THE HEARING OFFICER: Okay. Very well. Do  
15 you think you could brief it -- I was just  
16 looking, I don't know -- by Thursday and  
17 response by Friday, or brief it the openings on  
18 Friday and then response is due Monday and I can  
19 do an oral ruling?

20 MS. FRANZETTI: Friday/Monday, I think, would  
21 work for us.

22 MR. WANNIER: Friday/Monday works for us.

23 MS. BUGEL: Friday/Monday is preferable.

24 MS. FRANZETTI: May I ask one question?

1 THE HEARING OFFICER: Sure. On the record

2 or --

3 MS. FRANZETTI: Yes.

4 THE HEARING OFFICER: On the record.

5 MS. FRANZETTI: Yes. May I ask that Counsel  
6 describe what First Amendment right she is  
7 referring to so we can start to look at that for  
8 response purposes?

9 MS. BUGEL: Can I allow Mr. Wannier to  
10 respond?

11 THE HEARING OFFICER: Yes, please do.

12 MS. BUGEL: Thank you.

13 MR. WANNIER: Sure. So under the First  
14 Amendment, freedom of association includes a  
15 protection under the U.S. Supreme Court case  
16 NAACP versus Patterson of internal  
17 communications, that and secrets, it has been  
18 very well established in case law. And that has  
19 been applied to prevent internal communications  
20 from all types of groups all over the country  
21 from becoming publicly revealed in any sort of  
22 litigation.

23 THE HEARING OFFICER: When was the last time  
24 the U.S. Supreme Court cited the case you just



1 cited?

2 MR. WANNIER: That is -- well, the U.S.  
3 Supreme Court wrote this case. I don't know  
4 when the last time is that they cited it  
5 offhand.

6 THE HEARING OFFICER: Okay.

7 MR. WANNIER: I can look up the year of the  
8 case.

9 THE HEARING OFFICER: No, that's fine. You  
10 can -- I was just curious because I think I  
11 remember that from law school days but...

12 MR. WANNIER: Well, I can tell you that  
13 they -- the U.S. District Court for the Central  
14 District of Illinois cited this case in a  
15 different Sierra Club proceeding just one year  
16 ago that I was actually involved in, which is  
17 how I know about it. But if you want to see  
18 some briefing, it's on the record in that case.

19 THE HEARING OFFICER: Okay.

20 MS. FRANZETTI: May I show Counsel the  
21 redacted portion of Exhibit 666?

22 MS. BUGEL: Thank you. Very good.

23 MS. FRANZETTI: Is that acceptable?

24 MS. BUGEL: Yes.

1 MS. FRANZETTI: And, Mr. Hearing Officer,  
2 here is, per your request, the redacted version  
3 of Exhibit 666.

4 THE HEARING OFFICER: Okay. I'm sorry,  
5 Ms. Court Reporter, What I'm going to do is have  
6 the parties brief this issue that we were just  
7 talking about regarding Exhibit 662. The  
8 opening brief is due by Friday, the sooner the  
9 better on Friday. And then responses on Monday.  
10 And, hopefully I will have enough time to take a  
11 look at it and make a ruling on Monday or at the  
12 very latest Tuesday morning. That's about the  
13 best I can do.

14 MR. WANNIER: And between now and Friday, I  
15 can clarify for the record that the Supreme  
16 Court case name is NAACP versus Alabama, ex rel.  
17 Patterson, 357 U.S. 449, and it was decided in  
18 1958.

19 MS. FRANZETTI: I'm sorry, 357 U.S. 449?

20 MR. WANNIER: Yes, decided in 1958.

21 MS. FRANZETTI: 1958?

22 MR. WANNIER: Yeah.

23 THE HEARING OFFICER: And also while that was  
24 going on, Ms. Franzetti handed me Respondent's

1 Exhibit 666 with the requested redaction on  
2 page 3 right after MWG agrees. And Counsel for  
3 the Citizen's Group is fine with that. So  
4 Exhibit 666 is admitted.

5 (Whereupon document so  
6 offered was received in  
7 evidence as Respondent's  
8 Exhibit No. 666.)

9 MS. BUGEL: And, Hearing Officer, we would  
10 also move to strike the testimony about this  
11 exhibit that is already -- Exhibit 662 that's  
12 already in the record.

13 THE HEARING OFFICER: I can't do that, but  
14 you can note that in your briefing; and if need  
15 be, we can redact it later.

16 MS. BUGEL: Very good.

17 THE HEARING OFFICER: Thank you.

18 MS. FRANZETTI: No further questions of  
19 Ms. Race.

20 THE HEARING OFFICER: Thank you. Let's take  
21 a break. Come back here about 3:35.

22 Ms. Bugel, then Ms. Race is your  
23 witness and we can start on cross then.

24 MS. BUGEL: Very good.

1 (Whereupon, a recess was had at  
2 3:20 p.m., after which the  
3 hearing was resumed at  
4 3:40 p.m. as follows:)

5 THE HEARING OFFICER: We are back on the  
6 record. It's about twenty to 4:00. Ms. Race is  
7 still on the stand. Ms. Bugel is ready to cross  
8 her.

9 Before we go any farther, I wanted to  
10 let everybody know, and for the record, that our  
11 chairperson Katie Papademetriou is here and our  
12 intern Chloe Cummings, and they're in the back.

13 In any event, you may proceed,  
14 Ms. Bugel. Thank you.

15 MS. BUGEL: Thank you very much.

16 CROSS-EXAMINATION

17 BY MS. BUGEL:

18 Q. Ms. Race, you testified today about  
19 Geocell, correct?

20 A. Correct.

21 Q. And you indicated that Geocell was not  
22 used at pond three south for Will County?

23 A. I believe that's the case, as I sit  
24 here.

1 Q. And Geocell was installed at pond two  
2 south at Will County?

3 A. I believe so.

4 Q. And it was not used at any other  
5 Midwest Generation pond that was relined at any  
6 of the four locations at issue in this matter,  
7 correct?

8 A. As I sit here, I believe that is  
9 correct.

10 Q. And just to confirm, it was installed  
11 on the side slopes of pond three south, correct?

12 A. Correct.

13 Q. And it was not installed on the bottom  
14 of pond three south?

15 A. I am not certain of that.

16 Q. And do you know if it was installed on  
17 the ramp into the pond three south?

18 A. I am not certain without looking at the  
19 design documents.

20 Q. Are there design documents that have  
21 been used as an exhibit that would refresh your  
22 memory?

23 A. I think so.

24 Q. And I apologize, I am not able to tell

1 you the exhibit number.

2 MS. BUGEL: Perhaps Kristen or Susan can.

3 MS. FRANZETTI: Counsel, you may want to  
4 refer the witness to Midwest Gen 510,  
5 Exhibit 510.

6 THE HEARING OFFICER: Ms. Franzetti -- excuse  
7 me, Ms. Bugel -- do I have those exhibits up  
8 here, the 500 --

9 MS. FRANZETTI: They were used with Becky  
10 Maddox.

11 THE HEARING OFFICER: Okay. Here it is.  
12 Okay. Thank you.

13 MS. FRANZETTI: My problem is the tabs aren't  
14 fives, they're just one, two, three, four.

15 THE HEARING OFFICER: Understood. Thank you.  
16 And we are on exhibit?

17 MS. FRANZETTI: 510.

18 MS. BUGEL: 510, thank you.

19 THE WITNESS: I am reviewing the documents  
20 that were -- are the as-built drawings. And I  
21 can see that at the weir and Geocell section  
22 that it was installed there. When I look at the  
23 ramp section, I can see that the Geocell was  
24 installed there as well on the ramp.

1                   And that is on Bates page MWG  
2   13-15\_34432, I believe.

3   BY MS. BUGEL:

4           Q.   And does that refresh your  
5   recollection -- does Exhibit 510 refresh your  
6   recollection as to the response to my previous  
7   question about whether Geocell was installed on  
8   the bottom of the pond?

9           A.   No.  I believe Geocell was not  
10   installed on the bottom.  However, there is the  
11   Poz-o-Pac, the cushion layer, the 6-inch warning  
12   layer, and the geotech style in the drawing.

13          Q.   And it was your testimony that Geocell  
14   helps to protect the liner, correct?

15          A.   Correct.

16          Q.   And do you agree that it helps to  
17   protect a liner from damage during dredging?

18          A.   I don't know what it would mean to  
19   protect -- whether that additional protection  
20   would be necessary in the design of the bottom  
21   compared to the ramp.

22          Q.   Let me clarify my question.

23                   Do you agree that Geocell helps protect  
24   the side slopes of a pond from damage to a liner

1 during dredging?

2 A. Our engineer specified what they  
3 thought was appropriate for the protection of  
4 the impoundment during ash handling by  
5 equipment.

6 Q. And does that specification include  
7 Geocell?

8 A. Yes.

9 Q. Can you please turn to exhibit --  
10 Respondent's Exhibit 647. And that would be  
11 from your notebooks today.

12 A. I have it.

13 Q. And just for the record, does this  
14 appear to be the signed Compliance Commitment  
15 Agreement for Waukegan?

16 MS. FRANZETTI: We can stipulate that that's  
17 the case if it will help move it along. It's  
18 already been admitted as to the Waukegan CCA.

19 MS. BUGEL: Okay. Very good.

20 BY MS. BUGEL:

21 Q. And can you please state what your role  
22 was at Midwest Gen at the time of the signing of  
23 the CCAs?

24 A. Sure. I was director of compliance for



1 the environmental services group at this time.

2 Q. And I believe you indicated earlier in  
3 testimony that you know who John Kennedy is.

4 A. Yes, I do.

5 Q. And I'm not referring to John F.  
6 Kennedy, former president.

7 And turning to page 569, John Kennedy  
8 signed the CCAs for Midwest Generation, correct?

9 A. Correct.

10 Q. And since I'm asking about them  
11 collectively, that question was about all four  
12 even though we're just looking at Waukegan. He  
13 would have signed all four?

14 A. I believe he signed all four.

15 Q. And he was senior vice president of  
16 generation -- I realize you already stated that.  
17 Moving on.

18 So John Kennedy agreed to the CCAs on  
19 behalf of Midwest Generation, correct?

20 A. Correct.

21 Q. And that would be indicated by, above  
22 his name, do you see where it says for  
23 respondent?

24 A. Yes, I do see that.

1 Q. And who is Michael Crumly?

2 A. He is the manager of compliance  
3 assurance section for the division of public  
4 water supplies at the bureau of water at  
5 Illinois EPA.

6 Q. And Michael Crumly signed the CCAs for  
7 the Illinois Environmental Protection Agency,  
8 correct?

9 A. Correct.

10 Q. And turning to page -- Bates page 566,  
11 this states under 3(a), [as read]: Operations  
12 at ash impoundments have resulted in violations  
13 of the groundwater quality standards at  
14 monitoring wells MW-1, MW-2, MW-3, MW-4, and  
15 MW-5. And then it has citations to Illinois  
16 statutes and regulations that follow, correct?

17 MS. FRANZETTI: I'm going to object.  
18 Mischaracterizing. That sentence begins with,  
19 [as read]: Pursuant to the violation notice  
20 issued on June 11th, the Illinois EPA contends  
21 that respondent has violated the following  
22 provisions.

23 So it's taken out of context.

24 THE HEARING OFFICER: Ms. Bugel?

1 MS. BUGEL: I disagree. I believe that's a  
2 standalone sentence under 3(a).

3 THE HEARING OFFICER: Okay. The record will  
4 reflect. And, please, no speaking objections.

5 You may continue, Ms. Bugel.

6 BY MS. BUGEL:

7 Q. Do you see where it says that?

8 A. I do see where it says that.

9 Q. Okay. And, again, even though we just  
10 have Waukegan in front of us, referring to all  
11 four Midwest Gen CCAs, Midwest Generation did  
12 the first draft of the CCAs, correct?

13 A. I know that we submitted a letter in  
14 which we suggested some CCA agreements.

15 Q. And when you say "submitted a letter,"  
16 is it fair to say that Midwest Gen proposed the  
17 sum CCA agreements that you referred to to IEPA  
18 in that letter?

19 A. That is correct.

20 Q. And some of the contents of the CCAs  
21 were informed by the groundwater monitoring  
22 results, correct?

23 A. Correct.

24 Q. And, for instance, just one example,

1 requirements for -- or provisions -- let me  
2 rephrase that.

3 Provisions in the CCA regarding  
4 insulation of new monitoring wells would have  
5 been informed by the results of the existing  
6 groundwater monitoring, correct?

7 A. Not always. Sometimes we found that  
8 Illinois EPA wanted additional wells in areas  
9 that perhaps we didn't agree with but they  
10 considered it something that they wanted. So it  
11 wasn't always informed by the other groundwater  
12 monitoring wells.

13 Q. Aside from the exception that you just  
14 noted, were some of the groundwater monitoring  
15 wells proposed in the CCAs informed by the  
16 results of the existing monitoring?

17 A. I suppose you could say that.

18 Q. And the monitoring and analysis of the  
19 monitoring results was performed, in part, by  
20 Patrick Engineering up until the time of the  
21 CCAs, correct?

22 A. Correct.

23 Q. And referring to Exhibits 613 through  
24 616 --

1           A.     I have them.

2           Q.     -- Exhibits 613 through 616 are the  
3 hydrogeologic assessment plans for the four  
4 locations; do you see that?

5           A.     Yes, I do.

6           Q.     And the monitoring was based on -- in  
7 part on these four hydrogeologic assessment  
8 plans, correct?

9           A.     Can you clarify what monitoring you  
10 mean?

11          Q.     The groundwater monitoring results  
12 between 2010 and the time of the CCAs that we  
13 were just discussing.

14          A.     This hydrogeologic assessment plan was  
15 established before monitoring wells were  
16 installed and suggested where the wells might be  
17 installed.

18          Q.     Were wells installed in accordance with  
19 some of the suggestions in these plans?

20          A.     Yes.

21          Q.     And these four hydrogeologic assessment  
22 plans were also written, in part, by Patrick  
23 Engineering, correct?

24          A.     Correct.

1 Q. And I would like to turn to -- we are  
2 done with those exhibits for now.

3 And I would like to turn to  
4 Exhibits 17-D, 18-D, 19-D, and 20-D. And those  
5 are Complainant's exhibits.

6 A. Thank you. I'm ready.

7 Q. Okay. Thank you.

8 And those are the Phase IIs for the  
9 four locations, correct?

10 A. Correct.

11 Q. And your testimony yesterday indicated  
12 that you viewed these as not gospel, correct?

13 A. Correct.

14 Q. And you also said you viewed these as  
15 just a snapshot, correct?

16 A. Correct.

17 Q. And you indicated that specifically  
18 turning to 20-D, page 23308 -- referring to  
19 page 23308 to 09, you have those in front of  
20 you?

21 A. Yes, I do.

22 Q. And the limitations in Section 1.4, you  
23 interpreted that as meaning that Midwest Gen  
24 should not rely on these, correct?

1           A.     I interpret these to mean that ENSR  
2 prepared these solely for the benefit of their  
3 client, which was Commonwealth Edison, and that  
4 any use or reliance on the information is at the  
5 risk of the third party, which would be us,  
6 Midwest Generation. And that, for example, in  
7 the pages that you've pointed out here, that  
8 this is the information that was collected at  
9 Joliet taking place between October 7th and 27th  
10 of 1998. And that's the way that I understand  
11 this.

12           Q.     Do you recall yesterday saying  
13 something to the effect that you believed you  
14 should not rely on these documents as a result  
15 of those limitations?

16           MS. FRANZETTI: Objection. I think it's a  
17 mischaracterization of testimony.

18           THE HEARING OFFICER: Ms. Bugel?

19           MS. BUGEL: Obviously we do not have a  
20 transcript yet, so I did have in my notes that  
21 she said we shouldn't rely on it.

22           THE HEARING OFFICER: Okay. I'm going to  
23 overrule it. She can answer if she's able  
24 because I don't remember.

1 THE WITNESS: Could you repeat the question,  
2 please?

3 BY MS. BUGEL:

4 Q. Do you recall stating yesterday that as  
5 a result of Section 1.4, Limitations, you said  
6 that Midwest Generation, or we, shouldn't rely  
7 on it?

8 A. I think that I would qualify that to --  
9 and I probably did somehow qualify that to say  
10 that I think it provides information that I'm  
11 interested in seeing, but at the same time I  
12 understand that reliance on this is at my own  
13 risk.

14 Q. And do you recall stating that you  
15 believed Midwest Generation should develop its  
16 own information instead of relying on the  
17 information in this document?

18 A. I don't remember saying that.

19 Q. You don't remember saying we should  
20 develop our own information?

21 A. No, I don't remember the context for  
22 that.

23 Q. Do you agree that if the information in  
24 this document is just a snapshot, then over time



1 Midwest Generation should develop its own  
2 information as to circumstances in these reports  
3 instead of relying on these reports?

4 MS. FRANZETTI: I'm going to object to the  
5 form. That's a very broad question,  
6 "circumstances."

7 THE HEARING OFFICER: Sustained. Rephrase.

8 MS. BUGEL: Okay. I will move on.

9 BY MS. BUGEL:

10 Q. Do you recall stating Midwest Gen is  
11 concerned about operating in compliance with the  
12 law generally?

13 A. I recall saying that we have a  
14 commitment to environment over production, which  
15 means environmental compliances, you know, takes  
16 precedent over everything else the same way that  
17 safety does.

18 Q. I would like to turn to page 23324  
19 in -- again, in Exhibit 20-D, which is the Phase  
20 II for Joliet.

21 You did rely on the statement in these  
22 Phase IIs that there is no requirement under  
23 Illinois environmental law to further  
24 investigate or remediate this property, correct?

1           A.     I relied on that as well as the  
2 information that I received from our own folks,  
3 our consultants, our legal counsel. And so it  
4 wasn't just based upon what's written in this  
5 report.

6           Q.     And can you please turn to the site  
7 plan for the Joliet Phase II. And I am trying  
8 to find a page number for that. Page 23339.

9           A.     I have it.

10          Q.     Thank you.

11                   And you -- did Midwest Generation  
12 develop its own information about the ash  
13 landfill on the northeast part of the property  
14 as depicted in this site plan?

15          A.     We had information -- northeast. Okay.  
16 We developed information during inspections that  
17 would ensure that there were soils and seeding  
18 grasses growing in that area. So we had regular  
19 inspections and managed that area in accordance  
20 with our NPDES stormwater permit.

21          Q.     Did Midwest Generation ever take  
22 borings from that area to the best of your  
23 knowledge?

24          A.     No.

1           Q.     Did Midwest Generation ever conduct  
2 leech tests of the ash buried in that area to  
3 the best of your knowledge?

4           A.     As far as I know, we did not.

5           Q.     Did Midwest Generation ever attempt to  
6 estimate the volume of ash buried in that area  
7 to the best of your knowledge?

8           A.     As far as I know, we did not and we  
9 were not asked to.

10          Q.     And you testified that Midwest  
11 Generation needed to ensure that that area stays  
12 covered, correct?

13          A.     Correct. That is what our NPDES  
14 stormwater plan states that we need to do.

15          Q.     What is that area covered with?

16          A.     Covered with soils and is seeded with  
17 vegetation that looks like a grassy area.

18          Q.     Is that cover impermeable?

19          A.     I do not know how it was constructed  
20 originally.

21          Q.     Did Midwest Generation ever attempt to  
22 get information on how that cover was  
23 constructed originally?

24          A.     Not that I'm aware of. And even in the

1 CCR regulations, that's not a requirement.

2 Q. And do you know if that cover is  
3 designed to prevent infiltration of rain water?

4 A. I do not.

5 Q. Do you know how thick that cover is?

6 A. I do not.

7 Q. And turning to the ash landfill that  
8 is -- appears in the southwest portion of the  
9 Joliet 29 property as depicted on the site  
10 plan -- do you see where that appears?

11 A. Yes, I do.

12 Q. Did Midwest Generation ever develop its  
13 own information about that ash landfill?

14 A. No, we did not.

15 Q. Did Midwest Generation ever take  
16 borings from that area?

17 A. Not that I'm aware of.

18 Q. Did Midwest Generation ever conduct  
19 leech tests for the ash buried in that area?

20 A. Not that I'm aware of.

21 Q. Did Midwest Generation ever attempt to  
22 estimate the volume of the ash buried in that  
23 area?

24 A. No, we have not.

1 Q. And to the best of your knowledge, the  
2 ash landfill in the -- strike that. Do you know  
3 if -- strike that.

4 Can you please turn to Exhibit 19-D.  
5 And can you please turn to Bates page 457 -- I  
6 want the site plan, bear with me. On  
7 page 45814.

8 A. I have that.

9 Q. And this depicts the former slag/fly  
10 ash storage area in the lower left-hand corner  
11 of the site plan, correct?

12 A. Correct.

13 Q. And did Midwest Generation ever develop  
14 its own information about the former slag/fly  
15 ash disposal area at Waukegan?

16 A. The only information that we developed  
17 regarded the environmental land use control,  
18 which covers half of it from the tannery and the  
19 other half of it towards -- going towards the  
20 lake. And we have installed monitoring wells in  
21 that area.

22 Q. Did Midwest Generation ever conduct  
23 leech tests for the ash buried in that area?

24 A. We don't know that there is ash buried

1 in that area. We haven't done investigation  
2 within this whole area to characterize it.

3 Q. And have you ever seen borings that  
4 show ash to be in the area designated on this  
5 figure as the former slag/fly ash storage area?

6 A. I don't recall whether there was ash in  
7 the borings for the monitoring wells that were  
8 installed in those areas.

9 MS. FRANZETTI: Counsel, I don't know what  
10 you have handed the witness.

11 MS. BUGEL: We've handed the witness a copy  
12 of her deposition transcript. I have an  
13 excerpted -- we are getting another copy.

14 MS. FRANZETTI: I understand. But unless  
15 this is impeachment or refreshing recollection,  
16 I will be objecting.

17 BY MS. BUGEL:

18 Q. And can you please turn to page 88.

19 A. Yes.

20 Q. Line 19 at the bottom of 88, I'm just  
21 going to read that for context.

22 And that says, [as read]: Referring  
23 to a different exhibit and the second  
24 sentence of that bullet says, the

1 elevated concentrations of compounds of  
2 interest in MW-5 appear to be the result  
3 of a well being installed in the former  
4 ash disposal area and not a result of  
5 leakage from the current ash ponds.

6 Do you see where it says that?

7 Answer: Yes.

8 Question: Did you form an  
9 independent conclusion of whether you  
10 agreed with that or not?

11 By Ms. Nijman: In her layperson  
12 understanding of it. This is written by  
13 a consultant.

14 The Witness: I have -- I have an  
15 opinion that there is ash shown to be in  
16 that area but that does not make it a  
17 former ash disposal area.

18 By Ms. Bugel: Question: What is  
19 the basis for your understanding that  
20 there is ash shown to be in that area?

21 Answer: I believe I have seen  
22 borings independently that show ash to be  
23 in that area -- bottom ash.

24 Does that refresh your recollection?

1           A.     I, at this point, don't recall this.  
2     But it looks as though what I was saying --  
3     although I don't know the whole context -- is  
4     that there might be ash in that vicinity of  
5     where -- I believe the way that this is set up,  
6     you had asked about Monitoring Well 5 here. So  
7     are we still talking about Monitoring Well 5?

8           Q.     We are talking about Monitoring Well 5.

9           A.     Okay. So at this point, which was  
10    several years ago now when I did my deposition,  
11    I remembered that there was shown to be ash in  
12    Monitoring Well 5. But as I sit here today, I  
13    do not remember that.

14          Q.     Okay. And referring still to --  
15    referring back to Complainant's Exhibit 19-D,  
16    and referring again to Bates page 45814,  
17    referring again to the former slag/fly ash  
18    storage area, to the best of your knowledge, the  
19    former slag/fly ash storage area at Waukegan as  
20    indicated in Complainant's Exhibit 19-D is not  
21    capped, correct?

22          A.     I'm not certain. I know I have seen  
23    drawings that show seeding in this area, but I  
24    don't know what is there or whether it was or



1 was not capped.

2 Q. Aside from seeding in that area, have  
3 you ever seen any other indication of that area  
4 being capped?

5 A. No, I have not. And I haven't seen any  
6 other indication that that area was of either  
7 the former slag/fly ash storage area as it's  
8 listed here or what occurred in that area.

9 Q. And in your experience, would seeding  
10 prevent infiltration of rain water?

11 A. In my experience, not speaking of this  
12 particular situation, but in my experience  
13 generally, if you -- if there have been landfill  
14 designs where it was -- there was a clay cap  
15 that would be put on and then soil and seeding.  
16 And I have seen that occur before in landfill  
17 settings.

18 In this particular situation, I don't  
19 know anything about what occurred here.

20 Q. So just to confirm, you have seen no  
21 indication that a clay clap was installed in the  
22 former slag/fly ash storage area?

23 A. No, and I also don't know that it was  
24 necessary.

1 Q. And in the boring log for Midwest  
2 Generation Well Number 5 -- Monitoring Well  
3 Number 5 there was no indication of that  
4 encountering a clay cap, correct?

5 A. I'm not entirely sure that this drawing  
6 depicts exactly where Midwest Generation Well  
7 Number 5 was and whether it is in this area  
8 that's labeled here or whether it's closer to  
9 the impoundment because this is a very inexact  
10 drawing.

11 Q. But my question was: There was no  
12 indication in the boring log for MW-5 that it  
13 encountered any sort of clay cap, correct?

14 A. I do not recall that, what was in that  
15 boring at this point.

16 Q. Would that boring appear in the  
17 Patrick -- it's going to take us a moment it  
18 find that.

19 THE HEARING OFFICER: We can go off the  
20 record.

21 (Short pause in proceedings.)

22 THE HEARING OFFICER: We are back on the  
23 record.

24 BY MS. BUGEL:

1 Q. We are on 14-C and we are on Bates  
2 page 7175, which is the boring log for MW-5.  
3 Have you found that?

4 A. Yes, I have.

5 Q. And do you agree this is the boring log  
6 for well MW-5?

7 A. Yes, it is.

8 Q. And in reviewing that boring log, do  
9 you see any indication of a cap -- of the boring  
10 encountering a cap?

11 A. It looks as though in the top of the  
12 strata there is dark brown silky clay topsoil.

13 Q. And to what depth?

14 A. It looks -- I think it's two -- about a  
15 half a foot, so six inches.

16 Q. And in your experience, have you ever  
17 seen a clay cap that is six inches deep?

18 A. In my experience, I have not seen -- I  
19 have not installed a clay cap that was -- at  
20 all. So I have not seen one that is six inches  
21 deep.

22 Q. I understand that you haven't installed  
23 one at all, but you testified that one of your  
24 responsibilities at Midwest Gen is landfill

1 management, correct?

2 A. Correct.

3 Q. And does that mean you have some  
4 experience with landfills?

5 A. The type of landfill that I have  
6 experience with is an unconventional landfill  
7 because it does not have a soil cover. It has  
8 water as its daily cover. So we -- until we  
9 close it, we will not create a cap for it.

10 Q. And have you had any experience -- I'm  
11 sorry, let me rephrase that.

12 Have you reviewed documentation of  
13 closed landfills at all?

14 A. Yes, I have reviewed documentation of  
15 landfill designs.

16 Q. Does that include closed and capped  
17 landfills?

18 A. I have reviewed documentations in my  
19 current job of caps for a landfill at one of our  
20 stations that is not closed but has a cap.

21 Q. And how deep is that cap?

22 A. I cannot recall, to be honest with you,  
23 and I don't want to guess.

24 Q. Have you ever reviewed any

1 documentation of a capped landfill that has a  
2 cap that is six inches of clay?

3 MS. FRANZETTI: Objection. Asked and  
4 answered.

5 THE HEARING OFFICER: Ms. Bugel?

6 MS. BUGEL: I don't think --

7 THE HEARING OFFICER: Well, she answered she  
8 doesn't know and it's been asked before, so  
9 sustained.

10 MS. BUGEL: All right.

11 BY MS. BUGEL:

12 Q. Okay. We were still referring to  
13 Exhibit 19-D, page 45814. To the best of your  
14 knowledge, is the former slag/fly ash storage  
15 area at Waukegan lined?

16 A. I don't know that there is a former  
17 slag/fly ash storage area that still exists or  
18 ever existed there. And I don't know if this  
19 potential storage area had a liner or not for  
20 that reason. I don't know anything about it.

21 Q. And let me just ask, the area on this  
22 map that is depicted as the former slag/fly ash  
23 storage area, have you ever seen any indication  
24 that there is a liner in that area?

1 MS. FRANZETTI: Objection. Lack of  
2 foundation. You haven't established she could  
3 have seen under the ground in that area.

4 MS. BUGEL: Well, the question is not about  
5 seeing under the ground. It's about  
6 documentation of a liner.

7 THE HEARING OFFICER: Could you please read  
8 the question back that Ms. Franzetti has an  
9 objection to, please.

10 (Whereupon, the record was read  
11 as requested.)

12 THE HEARING OFFICER: She can answer if she  
13 is able. Overruled.

14 THE WITNESS: I don't know how I would have  
15 seen any indication of a liner in that area  
16 because we haven't -- okay.

17 So the design documents that I have  
18 seen for the bottom ash selling basins that are  
19 adjacent have also areas -- area next to it  
20 where this is labeled that says area to be  
21 seeded. And that is the only thing that I have  
22 ever seen in documentation about this area that  
23 we're -- you know, was part of the as-built  
24 drawings in 1977, '78 time frame.

1 BY MS. BUGEL:

2 Q. And you did not receive any as-built  
3 drawings for the area on this map that is  
4 depicted as the former slag/fly ash storage  
5 area, correct?

6 MS. FRANZETTI: Objection. Lack of  
7 foundation. You haven't -- she has not  
8 established anything was ever built in that area  
9 for there to be as-builts.

10 THE HEARING OFFICER: Ms. Bugel?

11 MS. BUGEL: That's the question. We are  
12 trying to find out if anything was ever built in  
13 that area, therefore, trying to find out if they  
14 received as-built drawings for that area.

15 MS. FRANZETTI: But this witness has said she  
16 doesn't know. She's answered that question.

17 THE HEARING OFFICER: Let's try one more  
18 time. If you can answer, please do. But I sort  
19 of agree with Ms. Franzetti, we kind of have  
20 been there and she doesn't know.

21 MS. BUGEL: I'm just trying to find out if  
22 she received as-built drawings for that area and  
23 then we can move on.

24 THE HEARING OFFICER: It sounds like a yes or

1 no, yes or no, so...

2 THE WITNESS: No.

3 BY MS. BUGEL:

4 Q. And turning to Exhibit 20-D, we're  
5 going to the site plan again, which is  
6 page 23339.

7 A. I have it.

8 Q. We were talking about the ash landfill  
9 in the northeast corner of the property as  
10 depicted on this page. Do you see that?

11 A. Yes, I do.

12 Q. One more question. Have you ever seen  
13 any indication that the ash landfill in the  
14 northeast portion of the property is lined?

15 A. I do not agree that this is necessarily  
16 an ash landfill. I don't know about what is  
17 there except what is in our NPDES stormwater  
18 permit. And I do not have -- I have never seen  
19 any as-built drawings showing anything about  
20 this area.

21 Q. And when you've referenced "as-built  
22 drawings," that includes as-built drawings about  
23 a liner in that area, correct?

24 A. Correct.



1 THE HEARING OFFICER: It's 4:30. We can go  
2 another 20 minutes and then call it a day.  
3 Thank you.

4 BY MS. BUGEL:

5 Q. Does Midwest Generation have any plans  
6 to remove the ash that is in the area marked as  
7 the ash landfill on this site plan in the  
8 northeast corner of the property?

9 A. No. And it is not required under the  
10 CCR rule. And we don't know what is there  
11 except for what we have in our stormwater plan  
12 for NPDES.

13 Q. And turning to the place on the site  
14 plan in the southwest corner of the property  
15 that is marked with ash landfill on this site  
16 plan, to the best of your knowledge, is that --  
17 is there a cap over the landfill in that portion  
18 of the property?

19 A. I don't know that that's a landfill and  
20 I don't know that there is ash there and I have  
21 never seen any drawings that show that there is  
22 any facility of any kind there.

23 Q. And when you say you have never seen  
24 any drawings, that includes never seeing any

1 drawings that a cap was installed in that  
2 portion of the property, correct?

3 A. Correct.

4 Q. And to the best of your knowledge, the  
5 ash landfill in the southwest portion of the  
6 property as indicated on this site plan is not  
7 lined, correct?

8 A. I do not know that it is an ash  
9 landfill, and I have never seen any  
10 documentation of as-built drawings showing a  
11 liner there.

12 Q. And I just have one more question about  
13 19-D before we completely put that away.

14 Could you please turn to Bates  
15 page 45817.

16 A. I have it.

17 Q. And this is the soil boring monitoring  
18 well site plan for this Phase II, correct?

19 A. It's the soil boring monitoring well  
20 site plan, yes.

21 Q. And you've reviewed this soil boring  
22 monitoring well site plan before today, correct?

23 A. Correct, but not for some time.

24 Q. And you indicated earlier, I believe,

1 that arsenic was detected in a well on the  
2 Waukegan site, correct?

3 A. Arsenic was detected in monitoring  
4 wells that were installed by Commonwealth Edison  
5 to understand the tannery site extent of  
6 contamination.

7 Q. Do those -- do the borings for those  
8 monitoring wells appear in this site plan?

9 MS. FRANZETTI: I'm going to object to form.  
10 Lack of foundation. This is the ENSR document  
11 and she is asking about a separate ComEd tannery  
12 investigation.

13 THE HEARING OFFICER: Ms. Bugel?

14 MS. BUGEL: I may have my notes wrong. I  
15 thought there was -- I thought Ms. Race said  
16 arsenic was detected in one of these wells. If  
17 the answer is no --

18 THE WITNESS: I do not know.

19 BY MS. BUGEL:

20 Q. Okay. Let me just clear this up for  
21 the record.

22 Do you know if arsenic was detected in  
23 any of the wells that appear in this site plan?

24 A. I do not know without looking at the

1 monitoring results because it's been very long  
2 since I've looked at these.

3 Q. Okay. Do you want to look back at the  
4 monitoring results?

5 A. Sure. For which well?

6 Q. Okay. Can you turn to Bates  
7 page 45800.

8 A. All right. I have it.

9 Q. Earlier today, did you testify that  
10 this indicated that arsenic was detected in the  
11 groundwater?

12 A. Arsenic was the only constituent of  
13 concern detected at concentrations above the  
14 IEPA cleanup objectives, is what is stated in  
15 this report.

16 Q. And turning to page 45816, do you  
17 know --

18 A. I'm sorry, just a moment. I have my  
19 pages turned around. Okay.

20 Q. Do you know where that was detected in  
21 the monitoring wells that appear on this page?

22 A. I think you mean 45817?

23 Q. 45817, thank you.

24 A. At what is labeled as the construction

1 debris area, there is Monitoring Well 11, which  
2 looks like it's right on the border, not  
3 actually at the construction debris area as it's  
4 labeled here. Monitoring Well 11 is right on  
5 the border between the tannery and the Midwest  
6 Gen -- now Midwest Gen property.

7 Q. And I believe in October you testified  
8 that it is your practice to review soil boring  
9 monitoring well site plans in the Phase IIs,  
10 correct?

11 A. I would have looked at them sometime  
12 ago when I first became aware of them.

13 Q. Including this soil boring monitoring  
14 well site plan, correct?

15 A. Correct.

16 Q. That is all the questions I have about  
17 this exhibit.

18 MS. BUGEL: I could do one more exhibit. I  
19 have one short one, Mr. Hearing Officer?

20 THE HEARING OFFICER: Okay. Let's do that.  
21 Thank you, Ms. Bugel.

22 BY MS. BUGEL:

23 Q. Could you please turn to Exhibit 606.

24 A. I have it.

1 Q. And could you please turn to  
2 page 23637.

3 A. Okay.

4 Q. And yesterday I believe you testified  
5 about the relining program that Midwest  
6 Generation began, correct?

7 A. Correct.

8 Q. And on page 23637, this shows a  
9 sequence to the relining program, correct?

10 A. It shows a sequence to the relining  
11 program that is based upon a number of different  
12 factors.

13 Q. And in relining ponds, did Midwest  
14 Generation follow the sequence that is laid out  
15 here?

16 A. Let's see. No, we did not.

17 Q. And how did Midwest Gen vary from the  
18 sequence laid out here?

19 A. Well, the schedule that we had  
20 originally set up here was considered to be a  
21 living document. And there were a number of  
22 impoundments that in our internal ranking system  
23 that was basically within our system.

24 We -- there were several impoundments

1 that were ranked similarly. And so we could  
2 interchange those if we needed to with the ash  
3 impoundments -- Joliet ash impoundments one and  
4 two, we did line those. The Will County south  
5 ash impoundment three was lined. And  
6 approximately these years are about right,  
7 however Will County south ash impoundment two  
8 was relined later.

9           And at that point, we -- I know that we  
10 lined a couple of other basins for Powerton.  
11 And when the CCR proposed rule came out, we  
12 became concerned that the liner program that we  
13 put in place might not match what the final  
14 federal rule was. And so we paused with the  
15 exception of impoundments where the sites wanted  
16 to do the replacement, such as Powerton, and  
17 with the metal cleaning basin and one other  
18 basin there.

19           And so the sequence -- we didn't follow  
20 exactly the sequence, but I also felt that we  
21 had flexibility in here, especially after some  
22 of the information that we developed as part of  
23 the process of doing the liner replacements for  
24 ash impoundment two and one at Joliet 29, for

1 example, where we saw the Poz-o-Pac was in good  
2 shape, which validated our view that the liner  
3 replacements were --

4 Q. I'm going to interrupt because this has  
5 turned into a narrative.

6 A. Okay.

7 MS. FRANZETTI: I object to the comment. She  
8 asked a very broad question of how did  
9 everything change.

10 THE HEARING OFFICER: I agree. Sustained.

11 BY MS. BUGEL:

12 Q. Can you please tell me, Will County  
13 south ash impoundment one that appears in the  
14 2015 line, that did not get relined, correct?

15 A. That is correct.

16 Q. And 2016 Will County north ash  
17 impoundment, that also did not get relined,  
18 correct?

19 A. That's correct, and it's because those  
20 two impoundments are out of service.

21 MS. BUGEL: And that's all the questions I  
22 have about this document.

23 THE HEARING OFFICER: All right. Thank you,  
24 Ms. Bugel.



1 I think it's a good time to stop.

2 We're about 20 minutes over my closing time,  
3 4:30, so it's about ten till 5:00.

4 My understanding is we probably will  
5 start off with the non-disclosable stuff  
6 tomorrow morning. And this will be continued on  
7 record until tomorrow morning, January 30th, at  
8 9:00 a.m.

9 MS. FRANZETTI: Mr. Halloran, can we get just  
10 a rough idea in terms of having other witnesses  
11 ready tomorrow timing wise, if Counsel has a  
12 sense, might you be done before lunchtime?

13 MS. BUGEL: Yes, I think so. Let me look  
14 here.

15 THE HEARING OFFICER: Do we need this on the  
16 record?

17 MS. FRANZETTI: Oh, no. Sorry.

18 THE HEARING OFFICER: Thank you. Have a  
19 great evening.

20 (The proceedings adjourned at  
21 4:49 p.m. and will resume  
22 January 31, 2018, at 9:00 a.m.)  
23  
24

1 STATE OF ILLINOIS

2 COUNTY OF COOK

3 I, Cheryl L. Sandeck, and a Certified  
4 Shorthand Reporter of the State of Illinois, do  
5 hereby certify that I reported in shorthand the  
6 proceedings had at the taking of said hearing  
7 and that the foregoing is a true, complete, and  
8 correct transcript of my shorthand notes so  
9 taken as aforesaid, and contains all the  
10 proceedings given at said hearing.

11

12

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14

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16 CHERYL L. SANDECKI, CSR, RPR  
17 C.S.R. License No. 084-03710

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