

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**NOTICE OF FILING**

TO: Don Brown, Assistant Clerk  
 Illinois Pollution Control Board  
 James R. Thompson Center  
 100 West Randolph Street, Suite 11-500  
 Chicago, IL 60601

Attached Service List

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board Respondent, Midwest Generation, LLC’s Objection and Appeal from Hearing Officer’s Ruling to Exclude Midwest Generation, LLC’s MWG Exhibit 662 and Memorandum in Support (non-disclosable document filed separately), a copy of which is hereby served upon you.

MIDWEST GENERATION, LLC

By:           /s/ Jennifer T. Nijman          

Dated: March 21, 2018

Jennifer T. Nijman  
Susan M. Franzetti  
Kristen L. Gale  
NIJMAN FRANZETTI LLP  
10 South LaSalle Street, Suite 3600  
Chicago, IL 60603  
(312) 251-5255

**SERVICE LIST**

Bradley P. Halloran, Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

Keith Harley  
Chicago Legal Clinic, Inc.  
211 West Wacker Drive, Suite 750  
Chicago, IL 60606

Faith E. Bugel  
Attorney at Law  
Sierra Club  
1004 Mohawk  
Wilmette, IL 60091

Eric DeBellis  
Jeffrey Hammons  
Jessica Dexter, also for Prairie Rivers Network and  
Sierra Club  
Environmental Law & Policy Center  
35 East Wacker Drive, Suite 1600  
Chicago, IL 60601

Abel Russ  
For Prairie Rivers Network  
Environmental Integrity Project  
1000 Vermont Avenue, Suite 1100  
Washington, DC 20005

Greg Wannier, Associate Attorney  
Sierra Club  
2101 Webster Street, Suite 1300  
Oakland, CA 94612

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing, Certificate of Service and Respondent, Midwest Generation, LLC's Objection and Appeal from Hearing Officer's Ruling to Exclude Midwest Generation, LLC's MWG Exhibit 662 and Memorandum in Support (non-disclosable document filed separately) was filed electronically on March 21, 2018 with the following:

Don Brown, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, IL 60601

and that true copies were emailed on March 21, 2018 to the parties listed on the foregoing Service List.

/s/ Jennifer T. Nijman

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	)	
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**MIDWEST GENERATION, LLC’S OBJECTION AND APPEAL FROM HEARING OFFICER’S RULING TO EXCLUDE MIDWEST GENERATION, LLC MWG EXHIBIT 662**

Pursuant to 35 Ill. Adm. Code 101.502(b), 101.518 and 101.626, Respondent Midwest Generation, LLC (“MWG”), by its undersigned counsel, submits to the Illinois Pollution Control Board (“Board”) this Objection and Appeal from the Hearing Officer’s ruling to exclude MWG Exhibit 662 and the Hearing Officer’s ruling to strike the testimony related to MWG Exhibit 662. In support of its Objection and Appeal, MWG submits its Memorandum in Support and states as follows:

- 1) On January 30, 2018, MWG moved to admit into evidence MWG Exhibit 662, Sierra Club’s 2014 Team IL-Beyond Coal Campaign Plan. (Attached to this motion as NDI-CONFIDENTIAL Attachment A).
- 2) Sierra Club objected to the admission of MWG Exhibit 662 claiming that it was not relevant and that it contained confidential information.

- 3) Instead of making a decision on the exhibit at the hearing, the Hearing Officer decided to treat the questions related to MWG Exhibit 662 as an offer of proof, and asked Complainants to brief the issues regarding MWG Exhibit 662. PCB13-15 Hearing Transcript, January 30, 2018, p. 238:5-14.
- 4) On February 5, 2018, Complainants filed a Renewed Motion to Exclude MWG Exhibit 662, and on February 9, 2018 MWG filed its Response. In its Response, MWG asserted, in part, that MWG Exhibit 662 was relevant and admissible under the Board's more lenient standards for the admission of evidence and because it explains the basis for this citizen enforcement action. *See* MWG's Response pp. 2-4.
- 5) On March 1, 2018, the Hearing Officer issued an order excluding MWG Exhibit 662 and striking the related testimony on the basis of relevancy.
- 6) MWG seeks this appeal of the Hearing Officer's decision because recent actions by Complainants have confirmed MWG's position that Complainants' appear to be continuing a practice of delay and causing additional costs to MWG as part of their "campaign" to shut down coal. MWG Exhibit 662 is relevant as support for that campaign.
- 7) On February 26, 2018, Complainants filed a Motion to Strike Portions of Respondent Expert's Reports and Testimony ("Motion to Strike"). Complainants' brought the Motion to Strike despite the fact that they had failed to object to any portion of the expert reports or testimony either prior to or at the hearing, and despite having explicit knowledge of the issue raised in the Motion to Strike. In fact, when the Hearing Officer admitted the expert reports and testimony that are the subject of Complainants' Motion to Strike, Complainants responded, "No Objections". PCB 13-15 Hearing Transcript, Feb. 2, 2018, p. 128:18.

- 8) MWG filed its Response to Complainants' Motion to Strike on March 20, 2018 and also filed a Motion for Sanctions. MWG requested sanctions because Complainants blatantly disregarded the Hearing Officer's Order and Board Rules by filing a post-hearing Motion to Strike without preserving the issue during the hearing or raising any timely objections.
- 9) When MWG received Complainants' Motion to Strike, MWG brought the issue of waiver to Complainants' attention and Complainants refused to withdraw their Motion to Strike, forcing MWG to expend additional costs to respond.
- 10) As MWG was preparing its Response, it became clear that Complainants' Motion to Strike was consistent with Complainants' overall pattern of conduct during the hearing, consisting of delay and efforts to force MWG to expend unnecessary costs and expense.
- 11) Further, On March 21, 2018, the day after MWG filed its response to Complainants' Motion to Strike, and with no notice or explanation to MWG or the Hearing Officer, Complainants filed an Amended Motion to Strike. MWG has not had an opportunity to review Complainants' *170 page* motion, and now MWG must expend even more time and resources comparing Complainants' two motions to confirm there is not any new or relevant information, and likely must also file a second Response to Complainants' Amended Motion.
- 12) Complainants' consistent actions of filing multiple variations of its filings and the apparent "pattern" of disorganization cannot be explained as anything other than intentional abuse of the process to cause MWG unnecessary expense.
- 13) While the Hearing Officer initially determined that MWG Exhibit 662 was not relevant, Complainants' Motion to Strike and subsequent, late-filed Amended Motion to Strike, confirms that MWG Exhibit 662 is very relevant. MWG Exhibit 662 supports MWG's claims that Sierra

Club's ultimate purpose is to cause as much expense and problems for MWG until MWG is forced to shut down its stations.

14) Taken together, the Motion to Strike, the Amended Motion to Strike, along with Complainants' pattern of disorganization at the hearing, demonstrates that MWG Exhibit 662 is relevant because it supports the conclusion that Complainants' intent is to cause undue expense to MWG.

15) The Board has repeatedly stated that it considers section 101.626(a) as a "relaxed standard." On that basis, the Board should reverse the Hearing Officer's decision to exclude MWG Exhibit 662. *People v. Atkinson Landfill Co.*, PCB No. 13-28, slip op. at 9 (Jan. 9, 2014).

WHEREFORE, for the reasons stated above, MWG requests that the Board reverse the Hearing Officer's order, admit MWG Exhibit 662, and reverse the Hearing Officer's decision to strike the related testimony.

Respectfully submitted,  
Midwest Generation, LLC  
By: /s/ Jennifer T. Nijman  
One of Its Attorneys

Jennifer T. Nijman  
Kristen L. Gale  
NIJMAN FRANZETTI LLP  
10 South LaSalle Street, Suite 3600  
Chicago, IL 60603  
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<b>MIDWEST GENERATION, LLC,</b>	)	
	)	
<b>Respondent.</b>	)	

**MEMORANDUM IN SUPPORT OF MIDWEST GENERATION, LLC’S  
OBJECTION AND APPEAL FROM HEARING OFFICER’S RULING TO  
EXCLUDE MIDWEST GENERATION LLC EXHIBIT 662**

Midwest Generation, LLC (“MWG”) submits this Memorandum in Support of its Objection and Appeal from the Hearing Officer’s Ruling to Exclude MWG Exhibit 662, Sierra Club’s 2014 Team IL-Beyond Coal Campaign Plan, and the Hearing Officer’s ruling to strike the related testimony. MWG seeks this appeal of the Hearing Officer’s decision because Complainants’ Motion to Strike a Portion of the Expert Report (“Complainants’ Motion”) or (“Motion to Strike”), their Amended Motion to Strike filed the day after MWG filed its Response, and the pattern of disorganization by Complainants at the hearing, have confirmed MWG’s position that Complainants’ appear to be continuing a practice of delay and causing additional costs to MWG as part of their “campaign” to shut down coal. MWG Exhibit 662 is relevant based on the Illinois Pollution Control Board’s relaxed standards for admission of evidence as support for that campaign. In support of its Objection and Appeal, MWG states as follows:



**I. Brief Background**

On January 30, 2018, during the direct examination of Ms. Maria Race, MWG presented MWG Exhibit 662, the 2014 Team IL – Beyond Coal Campaign Plan. (Attached to this motion as NON-DISCLOSABLE INFORMATION-CONFIDENTIAL Attachment A). On page one of the 2014 Team IL – Beyond Coal Campaign Plan, Sierra Club states that one of the specific campaign outcomes is “Secure retirement dates (no later than 2017) within 2014 for the Midwest Generation’s coal fleet with a flagship campaign focused on the Waukegan coal plant.” Attachment A, p. 1.<sup>1</sup> Ms. Race testified that she found the 2014 Team IL – Beyond Coal Campaign Plan through a Google search she was conducting in preparation for a meeting with Sierra Club and other groups concerning MWG’s Waukegan Station. PCB13-15 Jan. 30, 2018 Hearing Transcript, p. 236:2-8. Ms. Race testified that she was not aware of the document prior to her search and that she was shocked to find it. PCB13-15 Jan. 30, 2018 Hearing Transcript, p. 236:13-17. Ms. Race further testified that MWG Exhibit 662 showed her that meeting with the Sierra Club and other groups would not be productive or worthwhile because “they weren’t going to negotiate with us and try to do anything that was constructive.” PCB 13-15 Jan. 30, 2018 Hearing Transcript, pp. 236:23-237:6, 237:12-19.

Based upon the 2014 Team IL – Beyond Coal Campaign Plan she found online, Ms. Race realized that the Sierra Club was “very strategically trying to shut down coal and they are very – they used Waukegan as an example here.” PCB13-15 Jan. 30, 2018 Hearing Transcript, p. 236:23-237:10. At the hearing, Complainants objected to the admission of MWG Exhibit 662 claiming

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<sup>1</sup> For the purposes of this Appeal, MWG has agreed to treat the 2014 Team IL-Beyond Coal Campaign Plan as confidential. However, Complainants’ goal is to shut down coal plants is public and not confidential. *See* Attachment B, MWG’s Response to Complainants’ Motion to Exclude MWG Exhibit 662, Exhibit 1, pp. 8 (“But Pope had explained to Sheekey that shutting down coal plants at the state and local level could do even more...”)  
emphasis added.

that it was protected by a First Amendment privilege. PCB13-15 Jan. 30, 2018, p. 234:14-16. The Hearing Officer reserved his ruling on the admission of MWG Exhibit 662, took Ms. Race's testimony as an offer of proof, and requested a briefing. PCB13-15 Hearing Transcript, Jan. 30, 2018, p. 238:5-14.

On February 5, 2018, Complainants filed their Renewed Motion to Exclude MWG Exhibit 662, claiming that the document not relevant and was privileged under the First Amendment freedom of association privilege citing *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449 (1958). On February 9, 2018, MWG filed its response stating that MWG Exhibit 662 was relevant to show the actual purpose of Complainants' enforcement action and that the First Amendment Privilege freedom of association was entirely inapplicable. On March 1, 2018, the Hearing Officer decided to exclude MWG Exhibit 662 finding that it was not relevant. Because the Hearing Officer found the exhibit not relevant, he did not address Complainants' First Amendment claim.

MWG seeks this appeal of the Hearing Officer's decision because recent actions by Complainants have confirmed MWG's position that Complainants appear to be continuing a practice of delay and causing additional costs to MWG as part of their "campaign" to shut down coal. MWG Exhibit 662 is relevant as support for that campaign. On February 26, 2018, Complainants filed their Motion to Strike asking that the Hearing Officer strike portions of MWG's expert's report and testimony claiming that it did not meet the Illinois expert testimony requirements. As explained in MWG's Response to Complainants' Motion to Strike ("MWG's Response"), Complainants' Motion to Strike is frivolous and specious because it violates the Hearing Officer's order to admit the expert reports and testimony (with no objection by Complainants), and violates Illinois Pollution Control Board ("Board") rules and established Illinois law on waiver of objections. Further, on March 21, 2018, the day after MWG filed its

response to Complainants' Motion to Strike, and with no notice or explanation to MWG or the Hearing Officer, Complainants' filed an Amended Motion to Strike. MWG has not had an opportunity to review Complainants' *170 page* Amended Motion. Nevertheless, MWG must expend the time and resources comparing Complainants' two motions to confirm there is not any new or relevant information, and likely must also file a second Response to Complainants' Amended Motion.

After first requesting that Complainants withdraw their Motion to Strike, MWG filed a Motion for Sanctions pursuant to Section 101.800. 35 Ill. Adm. Code 101.800. ("MWG's Motion for Sanctions"). As explained in MWG's Motion for Sanctions, and supported by Complainants' Amended Motion to Strike, it is apparent that Complainants only brought their Motions to Strike to harass and cause MWG undue costs. Complainants' consistent actions of filing multiple variations of its filings and the apparent "pattern" of disorganization cannot be explained as anything other than an intentional abuse of the process to cause MWG unnecessary expense. MWG Exhibit 662, the 2014 Team IL – Beyond Coal Campaign Plan, provides additional support for the conclusion that Complainants, including Sierra Club, have only brought this lawsuit as part of a strategic campaign to force MWG to expend funds to ultimately shut the plants down. As part of MWG's request for relief in its Motion for Sanctions, MWG requests that as a sanction the Board grant this appeal and reverse the Hearing Officer's order excluding MWG Exhibit 662.

**II. Sierra Club's 2014 Team IL - Beyond Coal Campaign Is Relevant**

The Sierra Club's 2014 Team IL-Beyond Coal Campaign Plan, MWG Exhibit 662, is relevant under the Board's relaxed rules of evidence, and is relevant to support the conclusion that Sierra Club's actual purpose to bring this lawsuit was to cause MWG expense and undue harm.

**a. The Sierra Club's 2014 Team IL-Beyond Coal Campaign Plan is Relevant under 35 Ill. Adm. Code 101.626**

The Sierra Club's 2014 Team IL-Beyond Coal Campaign Plan is relevant to the issues in this matter and is a document upon which a prudent person relies upon. The Board rules provide that, in accordance with Section 10-40 of the Illinois Administrative Procedures Act, the Hearing Officer "will admit evidence that is admissible under the rules of evidence as applied in the civil courts of Illinois, except as otherwise provided in this Part." 35 Ill. Adm. Code 101.626. The Board's procedural rules, Section 101.626(a), state that the "hearing officer may admit evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged." 35 Ill. Adm. 101.626(a). The Board has stated that it considers section 101.626(a) as a "relaxed standard," *People v. Atkinson Landfill Co.*, PCB No. 13-28, slip op. at 9 (Jan. 9, 2014), and has stated that it "favors a liberal construction of admissible evidence." *McHenry County Landfill, Inc. v. County Board of McHenry County*, PCB Nos. 85-56; 85-61; 85-63; 85-64; 85-66 (consolidated) (Sept. 20, 1985) 1985 Ill. ENV LEXIS 255, \*12. Further, the Hearing Officer stated at the hearing on Oct. 23, 2017 that "the rules of evidence are a little more relaxed in administrative hearings." PCB13-15 Oct. 23, 2017, p. 47:10-11.

Under the Board Rules, a document that a prudent person would rely upon may be admitted by the hearing officer. 35 Ill. Adm. Code 101.626(a). Ms. Race testified that she relied upon the 2014 Team IL – Beyond Coal Campaign Plan in understanding the environmental issues related to the MWG Waukegan Station and whether MWG could have a productive meeting with Sierra Club and other groups. PCB 13-15 Jan. 30, 2018 Hearing Transcript, pp. 236:23-237:6, 237:12-19. Ms. Race also stated that based upon the 2014 Team IL – Beyond Coal Campaign Plan she found online, she realized that the Sierra Club was "very strategically trying to shut down coal and they are very – they used Waukegan as an example here." PCB13-15 Jan. 30, 2018 Hearing

Transcript, pp. 236:23-237:10. As the Hearing Officer stated on the first day of hearing: “I consider Ms. Race a reasonable and prudent person and she reviewed these documents and I don't think she would have reviewed them for a waste of time and, you know, that's all Section 101.626 requires.”

Oct. 23, 2017 Transcript, p. 126:7-12. Thus, as Ms. Race reviewed and relied on the 2014 Team IL – Beyond Coal Campaign Plan, under Section 101.626, it is admissible.

**b. The 2014 Team IL – Beyond Coal Campaign Plan Shows Sierra Club’s Actual Purpose**

The 2014 Team IL – Beyond Coal Campaign Plan, MWG Exhibit 662, is also relevant because it explains the basis for this citizen enforcement action. As MWG Exhibit 662 clearly states on page one, Sierra Club’s specific goal was to “secure retirement dates” for the MWG fleet. (Attachment A, p. 1). It was essential for Ms. Race, the person in charge of compliance at the four stations, to assess the validity of the claims being made against her actions and the programs she initiated as part of her job at MWG. Ms. Race thus had a personal stake in understanding Sierra Club’s motives in litigating an issue when the ash ponds have already been resolved to the satisfaction of the Illinois Environmental Protection Agency, the new Federal Coal Combustion Residual Rules were proposed and then enacted, and there is no risk to human health or the environment. *See, e.g.* Opening Statement, Transcript of October 23, 2017 Hearing, p. 19:9-11, 28:10-16.

Even more at odds with a legitimate claim of non-compliance is the fact that the Sierra Club’s expert agreed that the levels of the coal ash indicators of boron and sulfate in the groundwater at MWG’s Joliet 29 Station were below the Class I standard established in Section 620.410 of the Board Rules. (35 Ill. Adm. Code 620.410; PCB13-15 Transcript, October 27, 2017, pp. 246:4 – 250:20, 250:20 – 254:6). Nevertheless, as MWG stated at the end of its opening statement, “...even with all those changes and all that activity we still find ourselves here at this hearing...” (Oct. 23,

2017 Transcript, p. 28: 17-19). The 2014 Team IL-Beyond Coal Campaign Plan explains MWG's presence at the hearing because the document shows that this matter is part of a strategic campaign to force unnecessary costs on MWG and shut the plants down. As Ms. Race testified, the 2014 Team IL-Beyond Coal Campaign Plan shows that there is nothing that MWG could do to satisfy the Sierra Club – the case is not about compliance with the regulatory standards that were part of her job. PCB 13-15 Jan. 30, 2018 Hearing Transcript, pp. 236:23-237:6, 237:12-19, 236:23-237:10.

**c. Complainants' Frivolous Post-Hearing Motion to Strike Supports Admission of Exhibit 662**

Complainants' frivolous Motion to Strike, and its recent 170 page Amended Motion to Strike, provides further support that the 2014 Team IL-Beyond Coal Campaign Plan is relevant. The various motions and actions cannot be read and viewed in a vacuum. Taken together, as explained in MWG's Response and also in its Motion for Sanctions, the apparent purpose (or at the very least, the result) of Complainants' Motion to Strike, their recent Amended Motion to Strike, and Complainants' pattern of disorganization at the hearing, is to cause MWG as much expense and cost as possible. Complainants' motive to pursue this case and cause such expense and wasted time is clearly relevant. As is evidenced by MWG Exhibit 662, the 2014 Team IL-Beyond Coal Campaign Plan, Sierra Club's motivation throughout this matter was to further its goal of shutting the MWG stations that are the subject of their complaint.

Complainants' purpose is further supported by the public campaign widely touted by the Sierra Club. (See articles at Exhibit 1 of MWG's Response, included as Attachment B, C and D hereto). The public articles written about the campaign report that the Sierra Club's strategy is to attack the "economics" and consists of a "fight-everything-everywhere approach." (Attachment B, See Grunwald, Michael. "Inside the War on Coal." *Politico*, May 26, 2015, pp. 2, 6). In the LA

Times, Sierra Club's chief counsel was quoted as stating their goal: "We hope to clog up the system" (Attachment C, Pasternak, Judy. "Coal at heart of climate battle." *Los Angeles Times*, April 14, 2008, p.1). During a conference, the same Sierra Club leader stated, "We are fighting every single one of them [coal plants]" (Attachment D, Barber, Wayne, *Number of canceled coal power plants adding up*, S&P Global, Market Intelligence, Aug. 19, 2009, p. 1). The LA Times further quoted a lawyer for utilities and power plants stating, "The partners in the anti-coal crusade are picking fights over any and all generators that use coal 'regardless of merit'... they are doing it in a way that is unfair." (Attachment C, p.1). Of course, these sources are newspaper articles, which are generally afforded less weight as evidence. MWG Exhibit 662, the 2014 Team IL-Beyond Coal Campaign Plan, supports these articles in the words of the Sierra Club itself, and reveals the true purpose of Complainants' actions.

The Hearing Officer relies upon one case, *Ashland Chemical Co. v. EPA*, PCB 76-186, 1977 Ill. ENV LEXIS 105, Feb. 17, 1977, to state that when the action is has a justifiable basis in law the motive is not relevant. *Id* at 9. However, that case is entirely distinguishable from this matter. In that case, Ashland Chemical Co. was appealing a permit denial by the Illinois EPA. Ashland Chemical claimed that the permit denial was motivated in part by Illinois EPA's desire to keep a "potential enforcement action alive." *Id* at 7. However, there was no apparent support given for the motive for Illinois EPA's denial of the permit. Instead, Illinois EPA's denial was because Ashland Chemical's permit application was incomplete. *Id* at 6. Ashland did not submit any of the background data from their prior petition for variance, any information on the current impact on air quality, nor the projected impact for the permit period, in support of its permit as required under the rules. *Id*. The Board focused on whether Ashland met its burden of proof on the air quality data, so the Board did not even address the issue of motive. The Board stated it found, "that the

Agency's motives in denying the permit to be irrelevant..." simply because the Board was not addressing the issue of motive in its decision.

Here, the facts are entirely different. Unlike the Ashland matter, MWG has actual and specific support for its claim that the Sierra Club's intent is to cause unnecessary costs. In MWG Exhibit 662, Sierra Club specifically states that it seeks to influence a coal company's "ability to make money" as part its campaign. (*See* Ex. 662, p. 8). Moreover, this is an actual enforcement action based solely upon a groundwater monitoring program that MWG voluntarily agreed to conduct under the supervision of the Illinois EPA. Unlike Ashland Chemical, MWG has submitted all the information requested by the Illinois EPA and the conducted corrective actions that Illinois EPA requested. Moreover, as evidenced by the Sierra Club's expert testimony, the levels of the coal ash indicators in the groundwater at MWG's Joliet 29 Station were all below the Class I standard established in Section 620.410 of the Board Rules. (35 Ill. Adm. Code 620.410; PCB13-15 Transcript, October 27, 2017, pp. 246:4 – 250:20, 250:20 – 254:6) – yet Complainants continue to pursue claims against all MWG's stations.

This matter is unique. MWG has found no similar case in which such an expansive citizen suit was brought for alleged contamination at four separate stations, particularly when the State and Federal Agencies are satisfied and there is no risk to human health or the environment. Moreover, as established at the hearing, no one knows the source of the constituents in the groundwater. PCB13-15 Oct. 27, 2017, p. 189:15-24, Jan. 29, 2018, p. 73:6-17, Feb. 1, 2018, 2018, p. 281:20-282:8, 287:11-19. There is no dispute that, after establishing corrective actions requested by Illinois EPA, including environmental land use controls ("ELUC") and groundwater management zones ("GMZ"), there is no risk to human health or the environment. 35 Ill. Adm. Code 742.1010, 620.250. As there are established land use and regulatory controls to protect human health and the



environment, no reasonable person would bring this case unless they actually held a motive to cause enormous expense, with the expressed purpose to shut the stations down. Attachment A, p.

1. Here, Complainants' motives are plain, and the Exhibit is relevant.

**III. Conclusion**

MWG requests that the Board reverse the Hearing Officer's order because MWG Exhibit 662, the 2014 Team IL – Beyond Coal Campaign Plan, and the testimony regarding MWG Exhibit 662, is clearly relevant under the Board's relaxed standards and as a sanction for Complainants' baseless Motion to Strike.<sup>2</sup>

Respectfully submitted,  
Midwest Generation, LLC

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

Jennifer T. Nijman  
Kristen L. Gale  
NIJMAN FRANZETTI LLP  
10 South LaSalle Street, Suite 3600  
Chicago, IL 60603  
312-251-5255

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<sup>2</sup> As explained in its Response to Complainants' Motion to Exclude MWG Exhibit 662, attached to this appeal as Attachment B, Complainants' claim of First Amendment freedom of association is not applicable to the document. Should Complainants make that meritless First Amendment claim again in their response, MWG reserves the opportunity to respond.

NON-DISCLOSABLE INFORMATION  
CONFIDENTIAL

**EXHIBIT A**

# **EXHIBIT B**

# POLITICO



Corbis

## The Agenda

FUTURE OF POWER

### **Inside the war on coal**

How Mike Bloomberg, red-state businesses, and a lot of Midwestern lawyers are changing American energy faster than you think.

By MICHAEL GRUNWALD | 05/26/2015 11:45 PM EDT

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The war on coal is not just political rhetoric, or a paranoid fantasy concocted by rapacious polluters. It's real and it's relentless. Over the past five years, it has killed a coal-fired power plant every 10 days. It has quietly transformed the U.S. electric grid and the global climate debate.

The industry and its supporters use "war on coal" as shorthand for a ferocious assault by a hostile White House, but the real war on coal is not primarily an Obama war, or even a Washington war. It's a guerrilla war. The front lines are not at the Environmental Protection Agency or the Supreme Court. If you want to see how the fossil fuel that once powered most of the country is being battered by enemy forces, you have to watch state and local hearings where utility commissions and other obscure governing bodies debate individual coal plants. You probably won't find much drama. You'll definitely find lawyers from the Sierra Club's Beyond Coal campaign, the boots on the ground in the war on coal.

Beyond Coal is the most extensive, expensive and effective campaign in the Club's 123-year history, and maybe the history of the environmental movement. It's gone largely unnoticed amid the furor over the Keystone pipeline and President Barack Obama's efforts to regulate carbon, but it's helped retire more than one third of America's coal plants since its launch in 2010, one dull hearing at a time. With a vast war chest donated by Michael Bloomberg, unlikely allies from the business world, and a strategy that relies more on economics than ecology, its team of nearly 200 litigators and organizers has won battles in the Midwestern and Appalachian coal belts, in the reddest of red states, in almost every state that burns coal.

"They're sophisticated, they're very active, and they're better funded than we are," says Mike Duncan, a former Republican National Committee chairman who now heads the industry-backed American Coalition for Clean Coal Electricity. "I don't like what they're doing; we're losing a lot of coal in this country. But they do show up."

Coal still helps keep our lights on, generating nearly 40 percent of U.S. power. But it generated more than 50 percent just over a decade ago, and the big question now is how

rapidly its decline will continue. Almost every watt of new generating capacity is coming from natural gas, wind or solar; the coal industry now employs fewer workers than the solar industry, which barely existed in 2010. Utilities no longer even bother to propose new coal plants to replace the old ones they retire. Coal industry stocks are tanking, and analysts are predicting a new wave of coal bankruptcies.

This is a big deal, because coal is America's top source of greenhouse gases, and coal retirements are the main reason U.S. carbon emissions have declined 10 percent in a decade. Coal is also America's top source of mercury, sulfur dioxide and other toxic air pollutants, so fewer coal plants also means less asthma and lung disease—not to mention fewer coal-ash spills and coal-mining disasters. The shift toward cleaner-burning gas and zero-emissions renewables is the most important change in our electricity mix in decades, and while Obama has been an ally in the war on coal—not always as aggressive an ally as the industry claims—the Sierra Club is in the trenches. The U.S. had 523 coal-fired power plants when Beyond Coal began targeting them; just last week, it celebrated the 190<sup>th</sup> retirement of its campaign in Asheville, N.C., culminating a three-year fight that had been featured in the climate documentary “Years of Living Dangerously.”

Beyond Coal isn't the stereotypical Sierra Club campaign, tree-huggers shouting save-the-Earth slogans. Yes, it sometimes deploys its 2.4 million-member, grass-roots army to shutter plants with traditional not-in-my-back-yard organizing and right-to-breathe agitating. But it usually wins by arguing that ditching coal will save ratepayers money.

Behind that argument lies a revolution in the economics of power, changes few Americans think about when they flick their switches. Coal used to be the cheapest form of electricity by far, but it's gotten pricier as it's been forced to clean up more of its mess, while the costs of gas, wind and solar have plunged in recent years. Now retrofitting old coal plants with the pollution controls needed to comply with Obama's limits on soot, sulfur and mercury is becoming cost-prohibitive—and the EPA is finalizing its new carbon rules as well as tougher ozone restrictions that should add to the burden. That's why the Sierra Club finds itself in foxholes with big-box stores, manufacturers and other business interests, fighting coal upgrades that would jack up electricity bills, pushing for cheaper renewables and energy efficiency instead. In a case I watched in Oklahoma City, every stakeholder supported Beyond Coal's push for a utility to buy more low-cost wind power—including a coalition of industrial customers that reportedly included a Koch Industries-owned paper mill.

“They’re not burning bras. They’re fighting dollar to dollar,” says attorney Jim Roth, who represented a group of hospitals on Beyond Coal’s side in the Oklahoma case. “They’ve become masters at bringing financial arguments to environmental questions.”

As the affordability case for coal has lost traction, the industry’s defenders have portrayed the war on coal as a war on reliability, an assault on 24-hour “baseload” plants that provide juice when the sun isn’t shining and the wind isn’t blowing. They ask how the Sierra Club expects America to run its refrigerators around the clock—since it also opposes nuclear power and has a separate Beyond Gas campaign. Duncan’s group started a Twitter meme warning that Americans could end up #ColdInTheDark, and even Bloomberg suggested to me in a recent interview that the Club’s leaders seem to want Americans to wear loincloths and live in caves.

In fact, neither the decline of coal, nor the boom in renewables has blacked out the grid, and Beyond Coal’s leaders are confident electricity markets can handle much more intermittent power. In any case, they see coal as the lowest-hanging fruit in the struggle to stabilize the climate, not only our dirtiest fossil fuel but the one with the cheapest alternatives. In the long run, combating global warming will depend on a multitude of factors, from electric vehicles to carbon releases from deforestation to methane releases from belching cows, but for the next decade, our climate progress depends mostly on reducing our reliance on the black stuff. Coal retirements have enabled Obama to pledge U.S. emissions cuts of up to 28 percent by 2025, which has, in turn, enabled him to strike a climate deal with China and pursue a global deal later this year in Paris.

“We’ve found the secret sauce to making progress in unlikely places,” says Bruce Nilles, who leads Beyond Coal from the Club’s San Francisco headquarters. “And every time we beat the coal boys, people say: ‘Whoa. It can be done.’”

The Sierra Club can’t claim full credit for the coal bust. It didn’t ratchet down the prices of gas, wind and solar or enact the flurry of EPA rules ratcheting up the price of coal, although its lobbyists and lawyers have pushed hard for government support for renewables while fighting in court over just about every coal-related regulation. It didn’t produce the energy efficiency boom that has reined in electricity demand, either. Still, a Bloomberg Philanthropies analysis found that at least 40 percent of U.S. coal retirements could not have happened without Beyond Coal’s advocacy. The status quo wields a lot of power in the heavily regulated power sector, where economics and mathematics don’t always beat politics and inertia. The case for change keeps getting stronger, but someone has to make the case.

When Mary Anne Hitt, Beyond Coal's national director, first visited Indianapolis to fight an inner-city plant, the headline in the Star was: "Beyond Coal's Director Faces Tough Sell in Indiana." But after two years of door-knocking, phone-banking and educating officials on the new realities of electricity, the Sierra Club and its local partners helped shut down the plant. Hitt has seen the same kind of miracle in Chicago, in Omaha, alongside a Paiute tribe reservation in Nevada, even in coal strongholds like Kentucky. It's starting to feel more like a pattern than a miracle.

"David is fighting Goliath every day, and David keeps winning," Hitt says.

Energy analysts have a way of making Goliath's new underdog status seem inevitable. Then again, it wasn't long ago that their burning question about the U.S. coal industry was not how fast it would go away, but how fast it would grow.

The story of coal is a rich vein in the American story, powering our industry, our railroads, our politics. For decades, the work of extracting coal after millions of years underground—so dangerous for some, so lucrative for others—was seen as God's work. The alchemy of converting coal into valuable energy was seen as a fulfillment of America's destiny to exploit nature for the benefit of mankind, even as the smog spewing out of coal smokestacks was seen as part of the dystopia of urban life.

These days, growing concerns about climate have heightened concerns about coal, which produces 75 percent of the power sector's carbon, and more emissions than all our cars and trucks combined. But even at the dawn of the 21<sup>st</sup> century, the George W. Bush administration's main concern about coal power and fossil energy in general was that the U.S. wasn't producing enough of it. In 2001, an energy task force led by Dick Cheney, after a series of secret meetings with fossil-fuel executives, called for a new power-plant construction boom, warning that the alternative was a national reprise of the rolling blackouts that had just roiled California. Utilities quickly proposed about 200 new coal plants, and faced no organized national opposition. Coal plants have a useful lifespan of at least 40 years, so the U.S. was poised to lock in a new generation of dirty power. And all that new capacity was poised to destroy any incentive to develop clean wind or solar power.

That's when the Sierra Club got into its first big coal fight over a proposed billion-dollar plant south of Chicago, a welcome-to-the-NFL episode. The Chicago area already had poor air quality—the coal plants around the Loop were known as the Ring of Fire—and local volunteers, led by an indefatigable German immigrant named Verena Owen, were desperate to block the project. Their cause seemed hopeless, but for Owen, who is now Beyond Coal's lead volunteer, it was personal. Her best friend had struggled to breathe



whenever the air was hazy and eventually died of lung disease, leaving behind a daughter in kindergarten. "I don't know how many people we ended up saving, but I know one we didn't," Owen says.

The first time Nilles, at the time a lawyer for the Sierra Club's Midwest office in Chicago, tried to attend a hearing about the plant, union members who supported the project came early and packed the hall while the Club was holding a news conference. Illinois regulators soon rubber-stamped the permit. Owen and Nilles can still recite the date and time of the news dump: Friday, Oct. 10, 2003, at 5:10 p.m., so the bureaucrats could ignore their calls and escape for the weekend. And the industry had an even easier time of it elsewhere. Nilles later reviewed the record for another billion-dollar plant that broke ground in Iowa about the same time, and discovered there hadn't been a single public comment in opposition.

"Everything was going full speed in the wrong direction, and we had no capacity to fight," he says. "We realized we needed a strategy. Fast."

The strategy that Nilles devised was to fight every new plant from every conceivable environmental, economic and political angle. The Sierra Club began organizing boot camps to teach lawyers and volunteers around the region how to block coal permits. Demand for the seminars was so intense that, at one point, Nilles' boss had to remind him that Texas was not part of the Midwest. But he figured Texans who breathed air and drank water had as much to lose from exposure to coal-fired pollutants as Midwesterners had. Some of the Club's funders thought his fight-everything-everywhere approach was unrealistic during a national coal rush, but every proposed plant was in someone's backyard, and the Club had members in every corner of the country. Nilles couldn't imagine telling any of them their communities would have to be sacrificed for the greater tactical good.

Environmentalists have always been good at blocking stuff, and over the next few years, the kitchen-sink strategy produced some improbable victories. Nilles exploited threats to an endangered clover to delay the Chicago-area plant, and the utility eventually abandoned it. A local Sierra Club chapter stopped a massive plant in Kentucky coal country after a 63-day hearing, convincing regulators that the proposal had inadequate pollution controls, and that adequate controls would be exorbitant for ratepayers. These were shoestring crusades with expert witnesses crashing on the couches of volunteers, but the victories felt contagious, spreading hope to activists in other states who read about them on the Club's coal listserv.

Meanwhile, the Sierra Club was canvassing its members to develop a new long-term strategic plan. To the surprise of then-Director Carl Pope, they overwhelmingly wanted climate and energy to be the top priority, a major shift for a group that had emphasized wilderness conservation since its creation by the legendary outdoorsman John Muir. At a meeting in Tucson in early 2006, the Club's board voted to build the fledgling Midwestern anti-coal effort into a national campaign. Climate activists are often accused of wasting energy on symbolic movement-building efforts with relatively limited impact on emissions, like their crusades to stop Keystone and get universities to divest from fossil fuels. Beyond Coal's leaders do oppose the pipeline and support the divestment movement, but the rationale for the campaign was all about hunting where the ducks are.

"It was existential necessity: Look how many coal plants they want to build. Look how much carbon they'd produce. Well, it's game over if we don't stop them," Pope recalls. "If we were going to focus on climate, we had to focus on coal."

In a bow to political realism, the initial goal was to make sure coal was "mined responsibly, burned cleanly and disposed of safely." But the campaigners didn't really believe coal could be burned cleanly. The original mouthful of a mission soon evolved to "Move Beyond Coal," then just "Beyond Coal." It was a much simpler message, helping to unite a variety of activists—working for specific neighborhoods, Indian tribes, mountains targeted by mining outfits, public health, environmental justice, clean energy, and the climate—against a common enemy. The Sierra Club would be the one constant presence in the war on coal, but it began partnering with more than 100 local, regional and national groups in its battles around the country.

The campaign was remarkably successful. Nilles and his team scoured every permit application for vulnerabilities and managed to block all but 30 of the 200 plants proposed in the Bush era. The nice thing about fighting new plants was that they didn't exist yet, so it only took one deal breaker—too much smog in a high-smog area, too close to a national park, too expensive for ratepayers, whatever—to break a deal. Some of the plants that did get built still haunt Nilles, but those defeats did not doom the decarbonization of America. The game was not over.

By 2008, with the economy crashing and power demand slumping, utilities had stopped pushing new coal plants. That's when Nilles began plotting to go after old ones—an even tougher challenge, but a vital one to avoid the game-over scenario. He had moved to the liberal college town of Madison, and he was amazed that an old coal plant a mile from his home still had no pollution controls; it was way dirtier than the new plants he was fighting around the country. The nation's fleet of existing coal plants was still emitting nearly 2

billion tons of carbon and causing an estimated 13,000 premature deaths every year. It felt good to stop projects that would have increased those numbers, but Nilles wanted to use the Club's newfound expertise to reduce them.

"It's a lot easier to throw ourselves in front of bulldozers to stop something than it is to shut something down that's already part of the community, paying taxes, generating power, providing jobs," Nilles says. "But that's where the emissions are."

That was also the year Obama won the presidency, creating hope for stricter EPA regulation of sulfur, soot and ozone, plus the first-ever regulations of mercury, coal ash and carbon. As difficult as it would be to kill plants that had been operating for decades—two-thirds of the coal fleet predated the Clean Air Act of 1970—Nilles thought the combination of top-down rules from Washington and bottom-up pressure at state and local hearings could force utilities to confront investment decisions they had been delaying all those decades. Most utilities would need approval from their financial and environmental regulators before they could install expensive pollution controls. And while the utilities might be happy to charge their customers tens of millions of dollars for upgrades in order to comply with one new rule—plus a tidy profit they're usually guaranteed for capital improvements—utility commissions might not let them start down that road if they faced hundreds of millions of dollars in additional compliance costs from rules still to come.

Once again, the campaign produced some inspiring early wins, including the retirement of that antiquated plant near Nilles in Madison. He also filed a lawsuit against his alma mater, the University of Wisconsin, to get it off coal. The Club quickly found that when it could stop investor-owned utilities from getting a blank check to charge ratepayers for coal upgrades, they would usually shut down the plants rather than risk shareholder dollars. That was even true in coal country, where homeowners, businesses and regulators were just as allergic to pricey upgrades—and utilities were just as reluctant to foot the bill themselves. As Nilles' new deputy, Hitt, a West Virginia activist who had spent years trying to stop mining companies from blowing up mountains in Appalachia, found she could do more to protect the mountains by shutting down the plants that used their coal.

Beyond Coal had grown from three staffers to a 15-state operation, but it still lacked the scale to fight 523 plants all over the country. It needed to get a lot bigger. That's when the combative billionaire who has financed his own wars on guns, tobacco and Big Gulps took an interest in the war on coal.

Beyond Coal's pivotal moment came at a meeting in Gracie Mansion about, of all things, education reform. Michael Bloomberg, the Wall Street savant-turned media mogul-turned

New York City mayor, was looking for a new outlet for his private philanthropy. It quickly became clear that education reform would not be that outlet.

“It was a terrible meeting in every way, and Mike was angry,” recalls his longtime adviser, Kevin Sheekey. “I said: ‘Look, if you don’t like this idea, that’s fine. We’ll bring you another.’ He said: ‘No, I want another now.’”

As it happened, Sheekey had just eaten lunch with Carl Pope, who was starting a \$50 million fundraising drive to expand Beyond Coal’s staff to 45 states. The cap-and-trade plan that Obama supported to cut carbon emissions had stalled in Congress, and the carbon tax that Bloomberg supported was going nowhere as well. Washington was gridlocked. But Pope had explained to Sheekey that shutting down coal plants at the state and local level could do even more for the climate—and have a huge impact on public health issues close to his boss’s heart.

“That’s a good idea,” Bloomberg told Sheekey. “We’ll just give Carl a check for the \$50 million. Tell him to stop fundraising and get to work.”

Bloomberg had never thought of himself as a Sierra Club kind of guy. But he saw coal as a killer, as well as the main threat to the climate, and the Club was in the field doing something about it. His only demand was a more analytical approach to the war on coal, with measurable deliverables, complex predictive models for vulnerable plants, and KPI—Key Performance Indicators, as Pope later learned.

“The Sierra Club had never heard of KPI,” Pope says. “We just had a gut instinct for what would work. The mayor said: ‘Oh, no, no. This will be data-driven.’”

On a sweltering day in July 2011, Bloomberg announced his gift to the Club on a boat he had chartered on the Potomac River, in front of a 63-year-old coal plant he had always noticed on flights into Washington. He saw it as a perfect illustration of the city’s inability to get anything done.

“You’d think the politicians would at least care about the air they breathe themselves!” Bloomberg marveled to me in a recent interview.

That plant on the Potomac is now closed. So is the Massachusetts plant that Mitt Romney once said “kills people,” a line Obama actually used against him in coal-state campaign ads in 2012. So are all of Chicago’s plants, as Mayor Rahm Emanuel boasted in his first campaign ad in 2015. Overall, the 190 plants that U.S. utilities have agreed to retire will eliminate about one fourth of America’s coal-fired capacity, a total of 79 gigawatts. And for

every watt of coal capacity they're taking out of commission, they've already installed a watt of wind or solar capacity. The Clean Air Task Force estimate of coal-fired premature deaths is down to about 7,500 a year, a decrease of 5,500 since Beyond Coal went national. And Bloomberg's early support has helped attract more than \$100 million from top foundations and wealthy individuals like the Silicon Valley billionaire Tom Steyer, the climate movement's top political donor.

"It's a reminder that you can do a lot with no help from Congress," Bloomberg says. "I just wish we could point out the specific people who were saved."

To coal backers, Beyond Coal is pure urban elitist lunacy, the kind of nightmare you get when a nanny-state mayor from New York hooks up with eco-radicals from San Francisco and a liberal president in Washington. Republican Senator James Inhofe of Oklahoma—chairman of the Environment and Public Works Committee, author of "The Greatest Hoax," thrower of a Senate-floor snowball designed to highlight the folly of global-warming alarmism—told me it's hard to believe some Americans actually want to keep our abundant energy resources in the ground.

"It's a war on all fossil fuels, and coal is the No. 1 target," Inhofe says. "You got a president who doesn't care how many jobs it costs, and rich people who don't care how much money they spend. They can do a lot of damage."

I got to watch the war in Inhofe's state, and the damage wasn't getting done the way Inhofe imagined. The job creators were siding with the environmentalists. Economics was the most powerful weapon in the Sierra Club's arsenal.

At a dry hearing in a drab courtroom in Oklahoma City, a methodical Beyond Coal attorney named Kristin Henry, whose bio identifies her as "one of the few environmentalists who would never be caught wearing Birkenstocks," was pinning down an Oklahoma Gas & Electric executive with a barrage of wouldn't-you-agrees, isn't-it-trues, and would-it-be-fair-to-say's. The power company was out of compliance with a federal air-quality rule called "regional haze," so it was offering to convert one of its two coal plants into a natural gas plant. Henry knew she couldn't stop that. But OG&E also wanted to install massive new scrubbers on the other plant so it could keep burning coal for decades to come. Henry was determined to stop that.

In the 90 minutes Henry spent cross-examining OG&E's Joseph Rowlett in early March, she didn't ask a single question about climate or public health. She focused exclusively on OG&E's request for the largest rate increase in state history, a 15 percent hike to finance the

utility's \$700 million compliance plan. Through her deadpan, leading questions, she portrayed OG&E as a company desperate to get its customers to foot the bill to prop up an inefficient plant, pursuing retrofits it would never consider if its own shareholders had to swallow the costs, operating in a dream world where regional haze was coal's only challenge. At one point, she got Rowlett to admit his calculations assumed there would be no additional coal regulations for the next thirty years, even though the EPA intends to finalize at least four new coal regulations this year alone.

"Isn't it true you're assuming zero over the next 30 years?" Henry asked.

Rowlett paused a few seconds. "That's right," he replied.

The Sierra Club, even though it didn't sound much like the Sierra Club, was clearly in hostile political territory. Oklahoma Attorney General Scott Pruitt, a conservative Republican who has spearheaded a national campaign to protect fossil fuels from legal challenges, had joined OG&E in fighting the EPA haze rule all the way to the Supreme Court. Now he was supposed to be representing consumers at the OG&E hearing before the Oklahoma Corporation Commission, but he hadn't even filed a brief about the record rate hike. "That's unheard of," one commission official told me. Pruitt didn't attend the hearing, either—the day it began, he was in Tulsa with Mike Huckabee raising money for his PAC—but one of his deputies who did attend occasionally raised objections when OG&E witnesses were asked uncomfortable questions.

But if the political deck seemed stacked against the Sierra Club, Henry held the economic cards. In Oklahoma, coal imported from Wyoming now costs more per kilowatt hour than the abundant gas under the ground or the wind that famously comes sweeping down the plain. In another recent haze case, the Sierra Club cut a deal requiring Oklahoma's other major utility to phase out its only coal plant and buy 200 megawatts of wind—and the bids came in so low, the utility ended up buying 600 megawatts of wind. That's why Wal-Mart, the hospital group and the coalition of industrial ratepayers all supported Beyond Coal's push for more wind in the OG&E case. Cheap electricity has a way of scrambling political alliances.

Henry and the lawyers for OG&E's corporate customers formed a kind of tag team, taking turns blasting the company for refusing to even study new wind power. They repeatedly pointed out that in-state competitors as well as Florida and New Mexico utilities were buying Oklahoma wind for just 2 cents per kilowatt hour, even cheaper than coal without pollution controls, while OG&E hadn't purchased new wind in four years—even though its ads boasted about its commitment to wind. When its witnesses claimed

their transmission lines were too congested to add new wind, Henry produced internal documents suggesting the congestion could be fixed for about 3 percent of the cost of the new coal scrubbers. As she pointed out, other Oklahoma utilities have much higher percentages of wind power on their systems.

Closing coal plants can sound radical, but Henry framed it for the Republican utility commissioners as the conservative response to EPA rules, avoiding the risk of “stranded” investments in outdated plants that might have to be shut down anyway. The most economical way to meet haze limits, she suggested, would be to stop burning the coal that causes the haze. Al Armendariz, who was Obama’s Dallas-based regional EPA administrator and is now Beyond Coal’s Austin-based regional representative, says the Club’s victories in states like Georgia, Mississippi and Kentucky have helped normalize the idea of abandoning coal in Oklahoma.

“We get respect because of our track record,” Armendariz says. “When we say a utility isn’t acting prudently, people can’t just dismiss us as ‘Oh, of course the Sierra Club says that.’ They see how we keep winning. They see these big industrial customers agreeing with us. Then they look at the numbers and see we’re right.”

Still, there’s no denying the war on coal is leading America into uncharted territory. The Sierra Club wants to eliminate all coal power by 2030, but what will replace it? Wind and solar, despite their rapid Obama-era growth, still make up just 5 percent of U.S. power capacity. And while technologies to store renewable energy (such as Tesla’s newly announced battery packs) are getting cheaper, they’re still a rounding error on the grid. Beyond Coal’s leaders are content to push cleaner power and let utilities figure out how to deliver it, but as OG&E Vice President Paul Renfrow told me: “That’s easy for them to say. We have to keep the lights on.”

Inhofe thinks the Sierra Club is simply obsessed with rooting out fossil fuels, citing “the guy who wants to crucify people” as an example of its extremism. He meant Armendariz, who left the EPA after he was caught on tape suggesting that harsh sanctions for law-breaking oil and gas companies could scare others into compliance, just as public crucifixions helped keep the peace in Roman times.

“The Sierra Club wants to stop coal now?” Inhofe asked. “You’ll see, they’ll be after gas next.”

Long-term, he’s right. While the Club accepted some donations from natural gas interests under Pope, it is now formally committed to eliminating gas as well as coal by 2030, and it

has helped block new gas plants in cities like Austin and Carlsbad, California. After its victory last week in Asheville, Beyond Coal vowed to keep fighting to overturn Duke Energy's decision to build a new gas plant to replace its 50-year-old coal plant. Even Bloomberg thinks the Club's opposition to the fracking boom that has helped replace so much domestic coal with domestic gas is silly.

That said, Beyond Coal's leaders, including Armendariz, understand that Beyond Gas is more aspirational than practical for now. They deeply prefer renewables to gas, but they almost as deeply prefer gas to coal. In Oklahoma City, Henry grilled OG&E witnesses about why they wanted to spend \$500 million on scrubbers for coal boilers that could be retrofitted to burn gas for just \$70 million. She shredded the implausible assumptions OG&E had made in its economic models to make scrubbing coal look cheaper than converting to gas, forcing one witness to admit gas prices were already 25 percent lower than his low-cost scenario. I sat in on one friendly lunch the Club's legal team had with lawyers for a Conoco Phillips front group; they all hoped to move OG&E beyond coal, and gas is clearly part of the short-term solution.

"We want to be principled but pragmatic," says Sierra Club Executive Director Michael Brune, who stopped the Club's gas-industry gifts when he took over in 2010. "We've wrestled with this, and there's a definite disagreement with Bloomberg. We don't see gas as an environmental fix. But we acknowledge that we still need some gas."

Coal is different. Bloomberg calls it "a dead man walking." When he made his initial gift to the Sierra Club, the goal was to secure the retirements of one third of the coal fleet by 2015. The Club is only slightly behind schedule, and in April, Bloomberg came to Washington to announce another \$30 million donation, with a new goal of retirement announcements for half of the fleet by 2017. "We're doubling down on an incredibly successful strategy," Bloomberg said.

The campaign's leaders believe coal has already passed a tipping point toward oblivion. Coal giants like Alpha Natural Resources, Arch Coal and Walter Energy are struggling to stay afloat. Just last week, in addition to the retirement announcement for the Asheville plant—as well as another for a Milwaukee plant that wasn't official enough for Beyond Coal to count as #191—the insurance giant AXA announced that it will sell off more than \$500 million worth of coal investments, the largest financial institution to flee the space to date, while the EPA announced it was closing a loophole that allowed virtually unlimited emissions from malfunctioning coal plants, a response to yet another Sierra Club lawsuit. And the more dirty plants get shut down, the more residents near other dirty plants are asking: Why not ours?



It's hard to change the status quo, no matter how compelling the economic logic. Beyond Coal does not just deploy data. It organizes rallies and petitions and float-ins on kayaks; it shames utility executives on billboards and airplane banners; it mobilizes its members to show up at boring hearings where showing up can make a difference. If the Oklahoma City case displayed the war on coal as a numerical dispute, another hearing I watched south of Detroit was more like a street fight.

River Rouge is a depressed community at the city's edge, a blightscape of boarded-up bungalows, overgrown lots and pawn shops. There's no grocery store and virtually no medical services, but there is a nice little park where kids play at the playground and adults fish in the Detroit River. Unfortunately, the park smells like rotten eggs, thanks to sulfur dioxide from a DTE Energy coal plant overlooking the playground. Michigan health officials have called this area "the epicenter of the state's asthma burden." The fish aren't safe to eat, either, though people eat them.

"It's just an unhealthy situation," says Alisha Winters, a local resident and mother of seven children, two with asthma. "They figure they can get away with dumping on us."

The EPA has called out this area's elevated sulfur dioxide levels, and last year Republican Governor Rick Snyder's administration floated a compliance plan that would have required DTE to upgrade the coal-fired River Rouge Power Plant or (more likely) close it. But DTE proposed an alternative plan with no costly upgrades, and the state quietly accepted it. The Sierra Club has been mobilizing opposition ever since, drawing an unusual coalition of local whites, African-Americans, Latinos and Arab-Americans—as well as a busload of white liberals from Ann Arbor—for an environmental hearing in mid-March. The hearing had to be moved from City Hall to a school auditorium to accommodate the groundswell of protests, a far cry from that Chicago-area hearing over a decade ago where the Sierra Club got frozen out.

"We're getting people to cross borders, physical and imaginary," says Rhonda Anderson, a sharecropper's daughter who is now an organizer for Beyond Coal.

If the Oklahoma City hearing was financial, the River Rouge hearing was political, a multiracial show of force in "I Love Clean Air" T-shirts. Every speaker opposed the DTE plan, including an Indian-American medical student, an Arab-American law student, an African-American asthma educator, a Latina anti-poverty activist and a white nun. Ebony Elmore, a child care provider who lives a block from the plant, talked about her four siblings and three nieces with asthma, as well as her two parents with pulmonary disease. I happened to ask Democratic Rep. Debbie Dingell, who was watching the testimony from

the side of the hall, why she was there, just as another resident started telling a story about an 11-year-old local girl who died because she couldn't get to her inhaler in time.

"That's why I'm here," Dingell whispered.

A few days later, Governor Snyder—whose top campaign supporters included one Michael Bloomberg—announced a new effort to cut Michigan's reliance on coal. That would have been a huge political burden for Snyder if he had run for president in a GOP primary, where "anti-coal" will be an epithet like "anti-gun" or "anti-freedom," but he decided not to run, and coal is becoming a huge economic burden for his industrial state.

The already frenetic national pace of plant retirements will have to double for Beyond Coal to meet its 2017 goal, but utilities will face daunting investment decisions over the next two years. The EPA recently settled a sulfur lawsuit with the Sierra Club that could replicate the River Rouge dilemma across the nation. The agency has also imposed regional haze plans that already are replicating the Oklahoma dilemma in Arizona, Arkansas and Texas. Today, Beyond Coal has more than 100 legal cases pending over power supply. Meanwhile, it's pursuing a new strategy on the power demand side, pushing blue states like Oregon to stop importing coal-fired electricity, which could shutter plants in red states like Montana. Even inside Texas, the Club has worked with relatively progressive cities like Austin, San Antonio and El Paso to replace their coal power with renewables.

Beyond Coal is also continuing to lobby and litigate in Washington, pushing Obama to drop his "all-of-the-above" approach to energy and formally enlist in the war on coal. Obama has not been as maniacally anti-coal as the industry suggests, punting on ozone rules in his first term to avoid alienating voters in Ohio, issuing relatively weak restrictions on coal ash, taking a lenient approach to mining on public land, floating carbon rules with mild targets for the most coal-reliant states. Still, when you add up all he's done and all he's doing, you get a tremendously uncertain regulatory environment. Senate Majority Leader Mitch McConnell of Kentucky—whose wife, Elaine Chao, recently quit the Bloomberg Philanthropies board over coal—has urged states to defy the Clean Power Plan, but utilities with fiduciary responsibilities don't engage in much civil disobedience. They have already shut down dozens of plants to comply with mercury rules the Supreme Court could still strike down, and they're starting to think about carbon, too.

Some coal advocates still hold out hope that the decline can be reversed if Republicans can win the presidency and keep Congress. "We've got a Congress that's sympathetic, but we've still got a bureaucracy running amok," says Mike Duncan, the RNC chairman-turned-coal

advocate. “That will play in 2016. Obviously, anytime you elect a leader, it’s important to this industry.”

If the EPA stands down under the next president, the pace of retirements could slow. But it probably won’t stop. The trends are too strong. Nilles recently met with leaders of the utility Southern Company, which has slashed its dependence on coal in half over the past five years. Its executives rejected his vision of a coal-free America by 2030, but some of them suggested 2050 could be realistic. In any case, the Sierra Club won a lot of coal fights during the pro-coal Bush administration, because they were ultimately local fights over local air.

The fights also have a global context. The Earth is already getting hotter, and the death of American coal would not avert a climate catastrophe if the rest of the world did not follow our lead. But the decline of American coal emissions will help U.S. negotiators insist that other countries do their part in the global negotiations in Paris. And while critics of climate action often grumble that it would be foolish for the U.S. to make sacrifices when China is still building a new coal plant every week, that’s no longer true. China actually decreased its coal use last year, and is shuttering all four plants in smog-shrouded Beijing. The trends killing coal in America—cheap gas, wind and solar; more energy efficiency; stricter regulations—are trending abroad as well. Cash-strapped U.S. mining firms are desperate to solve their domestic problems by selling more coal in foreign markets, but the Sierra Club has helped lead the fight to block six proposed coal export terminals in the Pacific Northwest, which will help keep even more coal in the ground.

There will be no formal surrender in the war on coal, no battleship treaty to mark the end. But Beyond Coal’s leaders believe they can finish most of their work setting the U.S. electric sector on a greener path over the next five years. The next phase of the war on carbon would be to try to electrify everything else—cars and trains that use oil-derived gasoline and diesel, as well as homes and businesses that rely on natural gas and heating oil. Nilles hopes power companies like OG&E and DTE that Beyond Coal has spent the last decade fighting with—but then cutting deals with—can become allies in Phase Two. And allies will be vital, because if King Coal seems like a rich and powerful enemy, it’s a pushover compared to Big Oil.

“Once we’ve taken out coal, we’ll need to take on oil, and who better to help than our new friends in the utility sector who can make money from electrification?” Nilles says with a grin. “It’s a long fight. This is how we win.”

# **EXHIBIT C**

← Back to Original Article

The Nation

## Coal at heart of climate battle

Environmental groups go to court to stop each new power plant and force Washington to address the issue.

April 14, 2008 | Judy Pasternak | Times Staff Writer

WASHINGTON — Every time a new coal-fired power plant is proposed anywhere in the United States, a lawyer from the Sierra Club or an allied environmental group is assigned to stop it, by any bureaucratic or legal means necessary.

They might frame the battle as a matter of zoning or water use, but the larger war is over global warming: Coal puts twice as much temperature-raising carbon dioxide into the atmosphere as natural gas, second to coal as the most common power plant fuel.

The plant-by-plant strategy is part of a campaign by environmentalists to force the federal government to deal with climate change. The fights are scattered from Georgia to Wyoming, from Illinois to Texas, but the ultimate target is Washington, where the Bush administration has resisted placing limits on carbon dioxide and Congress has yet to act on a global warming bill.

The campaign against new coal-powered plants has infuriated utilities, which say the environmentalists' tactics are an abuse of the regulatory and judicial systems. They are counterpunching with ads, lobbying and court briefs of their own, bringing the clash over coal to a pitch that rivals the environmental and legal fights over nuclear power decades ago.

The environmental coalition, which includes the Natural Resources Defense Council, Environmental Defense Fund and Environmental Integrity Project, claims 65 victories over the last three years. The Sierra Club is coordinating opposition to about 50 additional power plant proposals.

"We have a national presence, so we're sort of mission control," said Pat Gallagher, director of the Sierra Club's environmental law program.

The goal: "We hope to clog up the system," said David Bookbinder, the Sierra Club's chief climate counsel. "It's putting pressure on Congress to put together a comprehensive plan."

Utilities and industry groups acknowledge that the environmentalists have been responsible for stopping some coal plants that otherwise would have been built. But the number is "nowhere near" 65, said Jeff Holmstead, a former EPA official who is now an industry lobbyist.

The partners in the anti-coal crusade are picking fights over any and all generators that use coal "regardless of merit," said Brendan Collins, a lawyer in Philadelphia who represents utilities and power plant developers. "They are doing it in a way that is unfair."

Since a meeting in Washington last summer, the partners in the anti-coal crusade have been focusing more squarely on carbon dioxide emissions in their local skirmishes, hoping to create precedents for dealing with a pollutant that is not federally regulated.

Their first high-profile victory came in Kansas last October, when state regulators denied a request by Sunflower Electric Co. for an air-quality permit for two 700-megawatt generators that would run on coal in the town of Holcomb.

The Sierra Club petitioned the state's health and environment secretary, Roderick L. Bremby, to deny the air-quality permit on grounds of carbon dioxide emissions.

"I believe it would be irresponsible to ignore emerging information about the contribution of carbon dioxide and other greenhouse gases to climate change and the potential harm to our environment and health if we do nothing," Bremby said at the time.

Ever since, the state courts and Legislature have been haggling over coal and carbon dioxide in Kansas, and Sunflower has been unable to proceed.

Nick Persampieri, a Denver-based attorney for the environmental law firm Earthjustice, represents the Sierra Club in opposition to the Sunflower plant. He works closely with the Sierra Club's Kansas chapter. "You could argue that power plants harm everyone all over the country, but we always have somebody local to help us get standing" in court, he said.

Bookbinder is the Sierra Club's point man against a proposed power plant on tribal land in Utah, a case that shows the scope of the anti-coal push.

Usually he focuses on big-picture, national litigation from his Capitol Hill office. Bookbinder was one of the original petitioners in last spring's landmark Supreme Court decision that the EPA has authority to regulate carbon dioxide as a pollutant. But when he found himself with a block of free time last fall, he told Sierra Club headquarters in San Francisco, "I'll take a coal plant."

He received this mission: Halt a project by six electric cooperatives that run the Bonanza generator on the Uintah and Ouray Indian reservation. The co-ops, operating as Deseret Power, want to add a new unit with the capacity to manufacture 110 megawatts of electricity, about a fifth the capacity of the average power plant.

Bookbinder spied a big opportunity in the small project. Because the Bonanza plant is on property held in trust for Indians by the U.S. government, it was the Environmental Protection Agency, not a state, that issued the permit allowing the co-ops to proceed.

Bookbinder persuaded an administrative appeals board to consider overruling the EPA's permit on the grounds that it would vent more than 3 million tons of carbon dioxide into the atmosphere each year. Oral arguments are scheduled for late May, and a decision is expected near the end of the summer.

If Bookbinder is successful, a ruling would affect any project that comes before the EPA, which has permitting authority for power plants in eight states, all federally owned land, Puerto Rico, Guam and the Northern Mariana Islands.

Deseret's lawyer, Steffen N. Johnson, declined comment.

But this time, industry groups are jumping into the fray in a big way. "Where it's going to be precedential, we will be getting involved," said Russell Frye, who filed a half-inch-thick brief last month that supports the power plant on behalf of seven powerful trade associations, including the American Petroleum Institute, Chamber of Commerce of the United States, the American Chemistry Council and the National Assn. of Manufacturers.

Various business groups are discussing how to handle the environmentalists' challenges in a more comprehensive way, but industry sources said their members have such a wide range of positions on climate change that it's been difficult. Some suggest bringing conspiracy charges against the environmentalists if they can find instances in which the national groups recruited locals to allow them to file legal papers that they couldn't have filed otherwise. But "no one has the guts," said one industry lawyer.

Instead, Collins and two law partners wrote an article for the spring 2008 issue of the American Bar Assn.'s natural resources journal, advising clients to build in schedule and budget delays due to litigation -- because it is inevitable.

"It's good for lawyers. It's good for me," said Frye. "But it's not particularly constructive to have all these symbolic gestures that may gum up the works but won't necessarily advance what we as a society ought to be doing."

Stopping the Bonanza plant, he said, "might not give you more bang for the buck than controlling an existing source" of carbon dioxide emissions, "or replacing light bulbs."

Members of the environmental law brigade concede that stopping new plants may not be as effective in reducing emissions as getting the oldest, dirtiest, least efficient coal plants offline. Coal supplies half of America's electricity.

"We'll need to find a way to go after them, too," Persampieri said.

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judy.pasternak@latimes.com

# **EXHIBIT D**

# Number of canceled coal power plants adding up

EXCLUSIVE

Wednesday, 19 August 2009 9:37 AM ET

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By Wayne Barber

By whatever accounting, scores of proposed coal plants have been postponed or canceled outright in recent years. Even so, a number have been built and utilities continue to forge ahead with development and construction plans for others.

The Sierra Club on July 9 claimed that since the beginning of 2001, 100 proposed coal-fired power plants have been canceled. That announcement came after Utah-based [Intermountain Power Agency \(/web/client?auth=inherit#company/profile?KeyProductLinkType=2&id=4060685\)](/web/client?auth=inherit#company/profile?KeyProductLinkType=2&id=4060685) decided to [abandon \(/web/client?auth=inherit#news/article?KeyProductLinkType=2&id=9763623\)](/web/client?auth=inherit#news/article?KeyProductLinkType=2&id=9763623) plans for a new coal-fired unit.

The Sierra Club tracks a long [list \(/web/client?auth=inherit#news/docviewer?KeyProductLinkType=2&id=9781848\)](/web/client?auth=inherit#news/docviewer?KeyProductLinkType=2&id=9781848) of halted coal plants. While the list includes a handful of coal-to-gas and coal-to-liquid facilities, the vast majority are power generation units. As of early July, the Sierra Club said it had achieved "victory" over 101 proposed coal-fired projects.

During a March conference in Arlington, Va., David Bookbinder, the Sierra Club's chief climate counsel, made clear his organization's blanket opposition to coal plants. "We are [fighting \(/web/client?auth=inherit#news/article?KeyProductLinkType=2&id=9241837\)](/web/client?auth=inherit#news/article?KeyProductLinkType=2&id=9241837) every single one of them," Bookbinder said.

An SNL review of U.S. coal-fired power plants of 50 MW and greater found just over 6,000 MW of new capacity has come online at 14 different sites since 2001, with more under construction.

As for delays, SNL found more than 120 projects have been postponed or terminated. While some of the postponed units might still be built, it appears Sierra Club's claim of stalling 100 new coal units is not far off the mark.

## Even plants under construction still face challenges

Even developers well under way with construction are still facing legal fights.

Some of the projects in this category include [Basin Electric Power Cooperative \(/web/client?auth=inherit#company/profile?KeyProductLinkType=2&id=4058640\)](/web/client?auth=inherit#company/profile?KeyProductLinkType=2&id=4058640)'s [Dry Fork Station \(/web/client?auth=inherit#powerplant/powerplantprofile?KeyProductLinkType=2&id=7672\)](/web/client?auth=inherit#powerplant/powerplantprofile?KeyProductLinkType=2&id=7672) in Wyoming; [Dominion Resources Inc. \(/web/client?auth=inherit#company/profile?KeyProductLinkType=2&id=4001616\)](/web/client?auth=inherit#company/profile?KeyProductLinkType=2&id=4001616)'s [Virginia City Hybrid \(/web/client?auth=inherit#powerplant/powerplantprofile?KeyProductLinkType=2&id=8087\)](/web/client?auth=inherit#powerplant/powerplantprofile?KeyProductLinkType=2&id=8087) plant in the Virginia coalfields and [Duke Energy Corp. \(/web/client?auth=inherit#company/profile?KeyProductLinkType=2&id=4121470\)](/web/client?auth=inherit#company/profile?KeyProductLinkType=2&id=4121470)'s [Cliffside \(/web/client?auth=inherit#powerplant/powerplantprofile?KeyProductLinkType=2&id=2376\)](/web/client?auth=inherit#powerplant/powerplantprofile?KeyProductLinkType=2&id=2376) expansion project in North Carolina.

Opponents of the Dry Fork plant made arguments Aug. 13 before the Wyoming Supreme Court. Virginia City foes recently [won \(/web/client?auth=inherit#news/article?KeyProductLinkType=2&id=9910510\)](/web/client?auth=inherit#news/article?KeyProductLinkType=2&id=9910510) an air permit victory in a Richmond, Va., court. Meanwhile, the Duke expansion continues to face legal opposition in North Carolina.



Also common are cases such as [Seminole Electric Cooperative Inc. \(/web/client?auth=inherit#company/profile?KeyProductLinkType=2&id=4062856\)](#) in Florida, which has won many if not all of its permits for its proposed [Seminole \(/web/client?auth=inherit#powerplant/powerplantprofile?KeyProductLinkType=2&id=6217\)](#) 3 plant, but faces an uncertain future. Seminole Electric [expects \(/web/client?auth=inherit#news/article?KeyProductLinkType=2&id=9752353\)](#) a ruling on a Sierra Club challenge to the proposed unit in the fourth quarter of this year, spokesman Jeff Fela said Aug. 14. The new plant is being challenged in Florida's First District Court of Appeals.

A couple of sites that were once proposed for some type of coal power plant have been revised to coal-to-gas or coal-to-liquids proposals. [Peabody Energy Corp. \(/web/client?auth=inherit#company/profile?KeyProductLinkType=2&id=4065857\)](#), for example, is looking at a coal-to-gas facility where it had once planned to develop the [Thoroughbred \(/web/client?auth=inherit#powerplant/powerplantprofile?KeyProductLinkType=2&id=552\)](#) project in western Kentucky.

Other coal power plant proposals, while alive, are not exactly on the front burner. [Tondu Corp. \(/web/client?auth=inherit#company/profile?KeyProductLinkType=2&id=4102671\)](#)'s [TES Filer City \(/web/client?auth=inherit#powerplant/powerplantprofile?KeyProductLinkType=2&id=6733\)](#) project in Michigan appears to fit this description.

"We are still reviewing it," Tondu Corp. President Joe Tondu said. "We are waiting for the right economic environment and today just isn't it." Renewable energy projects seem to be about the only things going forward right now, Tondu said.

A few coal plants announced a few years ago were never much more than "paper projects" studied as a means to exploit certain coal reserves, another industry source said.

### **DOE continues to track coal plant status**

In April, the U.S. Department of Energy issued its latest ["Tracking New Coal-Fired Power Plants \(/web/client?auth=inherit#news/docviewer?KeyProductLinkType=2&id=9781793\)"](#) report, which indicated a drop in the number of coal plants being advanced since its previous report. DOE said, however, that most plants that get suspended or canceled usually suffer this fate during the early stages of development.

"Actual plant capacity, commissioned since 2000, has been far less than new capacity announced; the year 2002 report of announcements reflected a schedule of over 36,000 MW to be installed by 2007, whereas [roughly] 4,500 MW (12%) were achieved," DOE said in its April report.

"Delays and cancelations have been attributed to regulatory uncertainty (regarding climate change) or strained project economics due to escalating costs in the industry," DOE said. Though not mentioned in the April DOE report, many power companies lately have also cited reduced electric demand forecasts.

In April, DOE characterized 27 generating units totaling 16,054 MW as being "under construction." In January 2008, DOE had listed 28 units totaling more than 16,300 MW as being under construction.

## Plants postponed or terminated

Majority owner/developer	Power plant name	State	Capacity (MW)	Estimated year in service	Development status	Date postponed/terminated
Wellington Development Corp.	Greene Energy Resource Recovery Project	PA	525.00	2012	Postponed	NA
EnviroPower LLC	Kentucky Mountain Power	KY	525.00	NA	Postponed	NA
Global Energy Inc.	Lima Energy IGCC	OH	540.00	2010	Postponed	NA
Black Hills Energy Capital Inc.	Comanche Park	MT	200.00	2011	Postponed	NA
Clean Coal Power Resources Inc.	Fayette County Project	IL	2,400.00	2010	Postponed	NA
Hannahville Indian Community	Hannahville Industrial Park	MI	1,000.00	NA	Postponed	NA
GenPower LLC	McDowell County	WV	600.00	2009	Postponed	NA
Great Northern Power Development LP	Nelson Creek Coal	MT	500.00	2012	Postponed	NA
Nordic Energy	Nordic Energy Ohio Power Project	OH	850.00	2010	Postponed	NA
NV Energy	Ely Energy Center	NV	1,500.00	2015	Postponed	2009
NV Energy	Ely Energy Center IGCC	NV	1,000.00	NA	Postponed	2009
American Electric Power Co.	Great Bend IGCC	OH	629.00	2017	Postponed	2009
Energy Louisiana LLC	Little Gypsy Repowering	LA	530.00	NA	Postponed	2009
Tenaska Inc.	Taylorville Energy Center IGCC	IL	630.00	2014	Postponed	2009
LS Power Group	White Pine County	NV	1,590.00	2010	Postponed	2009
Estill County Energy Partners	Estill County	KY	110.00	NA	Postponed	2008
NRG Energy Inc.	Montville IGCC	CT	752.00	2012	Postponed	2008
Madison Power Corp.	Marion Gasification (IGCC)	IL	600.00	NA	Postponed	2007
Corn Belt Energy Corp.	Prairie Energy Power Plant	IL	82.00	NA	Postponed	2007
Public Service Co. of Colorado	Xcel Energy IGCC - CO	CO	325.00	NA	Postponed	2007
Appalachian Power Co.	Mountaineer IGCC	WV	629.00	2012	Postponed	2006
Calista Corp.	Bethel Coal	AK	100.00	2010	Postponed	2005
EnviroPower LLC	Old Ben No. 24	IL	600.00	2010	Postponed	2003
Illinois Energy Group LLC	Franklin Energy Associates	IL	1,500.00	NA	Terminated	NA
LS Power Group	LS Power Sussex	VA	1,600.00	NA	Terminated	NA
ArLight Capital Partners LLC	Southern Illinois Clean Energy Centre	IL	545.00	NA	Terminated	NA
Babcock & Brown LP	Pampa IGCC	TX	800.00	NA	Terminated	NA
Westmoreland Coal Co.	Gascoyne 500	ND	500.00	NA	Terminated	NA
Northwest Energy Development LLC	Lower Columbia Clean Energy IGCC	OR	520.00	2011	Terminated	NA
Usibelli Coal Mine Inc.	Emma Creek Energy Project	AK	200.00	2014	Terminated	NA
Bechtel Power Corp.	Otter Creek Energy Project	MT	750.00	2010	Terminated	NA
National RE/sources	Twin River Energy Center IGCC	ME	700.00	2013	Terminated	NA
Colt LLC	Colt Coal IGCC	IL	544.00	NA	Terminated	2009
LS Power Group	Elk Run	IA	750.00	NA	Terminated	2009
LS Power Group	Five Forks	VA	800.00	NA	Terminated	2009
Southern Montana Electric Generation and Transmission Cooperative Inc.	Highwood Generating Station	MT	250.00	NA	Terminated	2009
LS Power Group	Mid-Michigan Energy	MI	750.00	NA	Terminated	2009
Interstate Power and Light Co.	Sutherland Coal	IA	649.00	NA	Terminated	2009
Peabody Energy Corp.	Thoroughbred Energy Complex	KY	1,500.00	NA	Terminated	2009
SG Somerset Power LLC	SG Somerset Project	PA	300.00	NA	Terminated	2009
Radar Acquisitions Corp.	Buick Power Project	CO	500.00	NA	Terminated	2008
Southern Illinois University	Carbondale	IL	200.00	NA	Terminated	2008
FutureGen Industrial Alliance Inc	FutureGen IGCC	IL	275.00	NA	Terminated	2008
Buffalo Energy Partners Co. LLC	Glenrock IGCC	WY	1,100.00	NA	Terminated	2008
Dynegy Inc.	High Plains	CO	600.00	NA	Terminated	2008
NRG Energy Inc.	Huntley IGCC	NY	680.00	NA	Terminated	2008
Indeck-Elwood LLC	Indeck-Elwood CenterPoint	IL	990.00	NA	Terminated	2008
Agrium US Inc.	Kenai Blue Sky	AK	200.00	NA	Terminated	2008
Associated Electric Cooperative Inc.	Norborne	MO	689.00	NA	Terminated	2008
Energy Northwest	Pacific Mountain IGCC	WA	600.00	NA	Terminated	2008
Wallula Resource Recovery LLC	Wallula IGCC	WA	600.00	NA	Terminated	2008
Western Greenbrier Co-Generation LLC	Western Greenbrier Co-Production Demonstration Project	WV	98.00	NA	Terminated	2008
Southwestern Power Group II LLC	Bowie IGCC	AZ	600.00	NA	Terminated	2007
Rentech Energy Midwest Corp.	East Dubuque	IL	76.00	NA	Terminated	2007
Florida Power & Light Co.	Glades Power Park	FL	1,960.00	NA	Terminated	2007
Sempra Generation	Granite Fox	NV	1,200.00	NA	Terminated	2007
NRG Energy Inc.	Indian River IGCC	DE	752.00	NA	Terminated	2007
Tondu Corp.	Nueces IGCC	TX	600.00	NA	Terminated	2007
Southern Co.	Orlando IGCC	FL	300.00	NA	Terminated	2007
Matanuska Electric Association Inc.	Palmer Coal Facility	AK	100.00	NA	Terminated	2007
Oklahoma Gas and Electric Co.	Red Rock Generating Facility	OK	885.00	NA	Terminated	2007
Tenaska Inc.	Sallisaw Project	OK	760.00	NA	Terminated	2007
Great Northern Properties LP	South Heart	ND	500.00	NA	Terminated	2007
Florida Municipal Power Agency	Taylor Energy Center	FL	800.00	NA	Terminated	2007
Bull Mountain Development Inc.	Roundup Power Project - IGCC	MT	690.00	NA	Terminated	2006
EnviroPower LLC	Calvert City Riverport	KY	550.00	NA	Terminated	2006
Dominion Energy Inc.	Conneaut	OH	600.00	NA	Terminated	2006
Westmoreland Coal Co.	Gascoyne Station	ND	175.00	NA	Terminated	2006
Sempra Generation	Idaho Valley	ID	600.00	NA	Terminated	2006
Peabody Energy Corp.	Mustang Energy Project	NM	300.00	NA	Terminated	2006
LS Power Associates LP	Pee Dee Project	SC	1,100.00	NA	Terminated	2006
Tondu Corp.	Crossroads IGCC	IN	530.00	NA	Terminated	2005
Deseret Generation & Transmission Cooperative	Deseret Power Rangley Colorado Plant	CO	80.00	NA	Terminated	2005
EnviroPower LLC	EnviroPower Fayette	IN	525.00	NA	Terminated	2005
Sempra Generation	Glenns Ferry Coal	ID	750.00	NA	Terminated	2005
Composite Power Corp.	Hanford CEDOC	WA	2,500.00	NA	Terminated	2005
EnviroPower LLC	Kentucky Eastern	KY	524.00	NA	Terminated	2005
Dairyland Power Co-op	Mitchell Coal	IA	400.00	NA	Terminated	2005
Peabody Energy Corp.	Peabody Four Corners Project	NM	1,500.00	NA	Terminated	2005
Great River Energy	Rosemont Dakota	MN	250.00	NA	Terminated	2005
FPL Group Inc	St. Lucie SW	FL	1,700.00	NA	Terminated	2005
Integrus Energy Group Inc	Cassville Energy Center	WI	200.00	NA	Terminated	2004
EnviroPower LLC	EnviroPower Somerset	PA	525.00	NA	Terminated	2004
Global Energy Inc.	Kentucky Pioneer Energy Project	KY	540.00	NA	Terminated	2004
Tondu Corp.	Manistee Saltwork	MI	425.00	NA	Terminated	2004
CME North American Merchant Energy	New Hope Energy	TN	1,500.00	NA	Terminated	2004
Colorado Springs Utilities	Ray D Nixon Fluidized Bed	CO	227.00	NA	Terminated	2004
LS Power Group	Rosemount	MN	550.00	NA	Terminated	2004
Composite Power Corp.	Bear Creek Power Plant	MT	2,000.00	NA	Terminated	2003
Tennessee Valley Authority	Bellefonte IGCC	AL	1,500.00	NA	Terminated	2003
Globaltex Industries Inc.	Cherry Point	WA	249.00	NA	Terminated	2003
Edison Mission Energy	Collins Coal Conversion	IL	1,089.00	NA	Terminated	2003
EnviroPower LLC	EnviroPower Sullivan	IN	524.00	NA	Terminated	2003
Tri-State Generation & Transmission Association Inc.	Las Animas Station	CO	1,260.00	NA	Terminated	2003

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Alliant Energy Corp.	Power Iowa	IA	400.00	NA	Terminated	2003
LS Power Group	Sequoyah Energy Station	OK	1,000.00	NA	Terminated	2003
EnviroPower LLC	EnviroPower Petersburg	IN	524.00	NA	Terminated	2002
RRI Energy Inc.	Hopi-Reliant	AZ	1,200.00	NA	Terminated	2002
Dominion Resources Inc.	Island Creek Mine	WV	450.00	NA	Terminated	2002
Duke Energy Americas LLC	Isle of Wight	VA	700.00	NA	Terminated	2002
Great River Energy	North Dakota Coal Facility	ND	500.00	NA	Terminated	2002
ALLETE Inc.	Rapids Power Cogen eration	MN	225.00	NA	Terminated	2002
SynFuel Technologies LLC	SynFuels Enid	OK	600.00	NA	Terminated	2002
<b>Terminated or postponed expansions at existing plants</b>						
NRG Energy Inc.	Big Cajun 2 (Unit BC24)	LA	705.00	2010	Postponed	2009
Sierra Pacific Power Co.	Valmy (Unit 3)	NV	500.00	NA	Postponed	2009
PacifiCorp	Hunter (Unit 4)	UT	575.00	NA	Postponed	NA
Kansas City, City of	KCK BPU (Unit 2)	KS	235.00	2012	Postponed	2007
Dynegy Midwest Generation Inc.	Baldwin Energy Complex (Unit 4)	IL	1,500.00	NA	Terminated	NA
AES Corp.	Jennison (Unit 3)	NY	500.00	NA	Terminated	NA
Minnkota Power Cooperative Inc.	Milton R. Young (Unit 3)	ND	500.00	2015	Terminated	NA
Basin Electric Power Cooperative	Leland Olds Repowering (Unit 1)	ND	640.00	NA	Terminated	NA
Western Farmers Electric Cooperative Inc.	Hugo 2 (Unit 2)	OK	750.00	2012	Terminated	NA
AES Corp.	Shady Point (Unit GEN3)	OK	600.00	NA	Terminated	2009
Wisconsin Power and Light Co.	Nelson Dewey CFB (Unit 3)	WI	300.00	NA	Terminated	2008
Optim Energy LLC	Twin Oaks Power (Unit 3)	TX	600.00	NA	Terminated	2008
Luminant Holding Co. LLC	Big Brown (Unit 3)	TX	800.00	NA	Terminated	2007
Duke Energy Carolinas LLC	Cliffside (Unit 7)	NC	800.00	2012	Terminated	2007
Intermountain Power Agency	Intermountain (Unit 3)	UT	900.00	NA	Terminated	2007
PacifiCorp	Jim Bridger (Unit 5)	WY	750.00	NA	Terminated	2007
Luminant Holding Co. LLC	Lake Creek Coal (Unit ST3)	TX	800.00	NA	Terminated	2007
Luminant Holding Co. LLC	Martin Lake (Unit 4)	TX	800.00	NA	Terminated	2007
Luminant Holding Co. LLC	Monticello ST (Unit 4)	TX	800.00	NA	Terminated	2007
Luminant Holding Co. LLC	Morgan Creek Coal (Unit 7)	TX	800.00	NA	Terminated	2007
Tampa Electric Co.	Polk IGCC (Unit 6)	FL	630.00	NA	Terminated	2007
Luminant Holding Co. LLC	Tradinghouse Coal (Unit 3)	TX	1,600.00	NA	Terminated	2007
Luminant Holding Co. LLC	Valley Coal (Unit 4)	TX	800.00	NA	Terminated	2007
AES Corp.	Somerset ST (Unit 2)	NY	700.00	NA	Terminated	2006
Mirant Corp.	Lovett - Repowering (Unit 1)	NY	400.00	2012	Terminated	2006
Gainesville Regional Utilities	Deerhaven FB	FL	220.00	2013	Terminated	2005
Wisconsin Electric Power Co.	South Oak Creek (Unit 9)	WI	600.00	NA	Terminated	2003

Source: SNL Financial

**Planned plants**

Majority owner/developer	Power plant name	State	Capacity (MW)	Estimated year in service	Development status
Tondu Corp.	Filer IGCC	MI	120.00	NA	Announced
Future Fuels LLC	Good Spring IGCC	PA	150.00	NA	Announced
M&M Energy LLC	Great Lakes Energy & Research Park	MI	250.00	NA	Announced
Holland, City of	James De Young CFB	MI	78.00	NA	Announced
Wolverine Power Supply Cooperative Inc.	Rogers City (Wolverine)	MI	600.00	NA	Announced
NRG Energy Inc.	Sam Bertron IGCC	TX	600.00	NA	Announced
Consumers Energy Co.	Bay City	MI	830.00	2017	Announced
Southern California Edison Co.	Emery IGCC	UT	500.00	2017	Announced
Lansing Board of Water & Light	Erickson FB	MI	250.00	2017	Announced
Old Dominion Electric Cooperative	Cypress Creek Power Station	VA	1,500.00	2016	Announced
Tenaska Inc.	Tenaska Trailblazer Energy Center	TX	600.00	2015	Announced
American Municipal Power Inc.	American Municipal Power Generating Station	OH	960.00	2014	Advanced development
Las Brisas Energy Center LLC	Las Brisas	TX	1,320.00	2013	Announced
Summit Power Group Inc.	Odessa IGCC Facility	TX	345.00	2013	Announced
Power4Georgians LLC	Washington County Power Station	GA	850.00	2013	Announced
White Stallion Energy Center LLC	White Stallion	TX	1,320.00	2013	Announced
Mississippi Power Co.	Kemper County IGCC	MS	582.00	2013	Advanced development
South Carolina Public Service Authority	Pee Dee Station	SC	1,200.00	2013	Advanced development
North American Power Group Ltd.	Two Elk Two	WY	586.00	2012	Announced
The ERORA Group	Cash Creek Project IGCC	KY	565.00	2012	Advanced development
LS Power Group	Longleaf	GA	1,200.00	2012	Advanced development
Robinson Power Co. LLC	Beech Hollow Power Project	PA	279.00	2011	Announced
Jamestown Board of Public Utilities	Jamestown Clean Coal Project	NY	50.00	2011	Announced
Excelsior Energy Inc.	Mesaba Coal IGCC	MN	1,200.00	2011	Announced
Energy Development Group	Pocatello IGCC	ID	520.00	2011	Announced
Sithe Global Power	Toquop Coal	NV	750.00	2011	Announced
Hunton Energy	Lockwood IGCC	TX	1,200.00	2011	Advanced development
DKRW Energy LLC	Medicine Bow Coal	WY	350.00	2010	Announced
Sithe Global Power	Desert Rock	NM	1,500.00	2010	Advanced development
Nevco Energy Co. LLC	Sigurd	UT	270.00	2010	Advanced development
NRG Energy Inc.	Big Cajun 1 FB	LA	230.00	2009	Advanced development
<b>Expansions planned at existing plants</b>					
Deseret Generation & Transmission Cooperative	Bonanza Power Plant Expansion (Unit 2)	UT	86.00	--	Advanced development
Seminole Electric Cooperative Inc.	Seminole (Unit 3)	FL	750.00	2016	Advanced development
Otter Tail Power Co.	Big Stone II (Unit 1)	SD	540.00	2015	Advanced development
International Power PLC	Coleto Creek II (Unit 1)	TX	650.00	2015	Announced
Sunflower Electric Power Corp.	Holcomb Expansion (Unit 5T1)	KS	895.00	2013	Advanced development
East Kentucky Power Cooperative Inc.	J.K. Smith Fluidized Bed (Unit 5T1)	KY	278.00	2013	Advanced development
ReNu Power LLC	E.S. Joslin Repower (Unit 1)	TX	300.00	2012	Advanced development
NRG Energy Inc.	Limestone (Unit 3)	TX	800.00	2012	Announced
Hastings, City of	Whelan Energy Center (Unit 2)	NE	220.00	2011	Advanced development
Alaska Industrial Development and Export Authority	Healy Clean Coal (Unit 1A)	AK	50.00	2010	Announced

Source: SNL Financial

**Plants under construction**

Majority owner/developer	Power plant name	State	Capacity (MW)	Estimated year in service	Construction began
Sithe Global Power	River Hill Coal	PA	580.00	2013	NA
Southwestern Electric Power Co.	John W. Turk, Jr. UPC	AR	618.00	2012	2008
Virginia Electric and Power Co.	Virginia City Hybrid Energy Center	VA	614.00	2012	2008
Dynegy Inc.	Sandy Creek	TX	900.00	2012	2007
North American Power Group Ltd.	Two Elk One	WY	290.00	2012	2005
Basin Electric Power Cooperative	Dry Fork Station	WY	390.00	2011	2007
GenPower Holdings LP	Longview Power	WV	700.00	2011	2007
Peabody Energy Corp.	Prairie State Energy Campus	IL	1,600.00	2011	2007
Formosa Plastics Corp.	Formosa Point Comfort	TX	286.20	2010	2007
Great River Energy	Spiritwood Energy	ND	99.00	2010	2007
Dynegy Inc.	Plum Point Energy	AR	665.00	2010	2006
Wisconsin Electric Power Co.	Elm Road Generating Station	WI	1,230.00	2010	2005
Luminant Holding Co. LLC	Oak Grove Project	TX	1,602.00	2009	2007

**Expansions under construction at existing plants**

Duke Energy Carolinas LLC	Cliffside (Unit 6)	NC	800.00	2012	2008
Duke Energy Indiana Inc.	Edwardsport IGCC (Unit 9)	IN	600.00	2012	2008
Kansas City Power & Light	Iatan 2 (Unit 2)	MO	850.00	2010	2006
Louisville Gas and Electric Co.	Trimble County (Unit 2)	KY	761.30	2010	2006
CPS Energy	J.K. Spruce (Unit 2)	TX	760.00	2010	2006
City Utilities of Springfield	Southwest Power Station (Unit ST2)	MO	275.00	2010	2006
Black Hills Power Inc.	Wygen 3 (Unit 5)	WY	90.00	2010	2008
Public Service Co. of Colorado	Comanche (Unit 3)	CO	780.00	2009	2006
Cleco Power LLC	Rodemacher 3 (Unit 3)	LA	661.00	2009	2006
Luminant Holding Co. LLC	Sandow (Unit 5)	TX	569.30	2009	2007
Salt River Project	Springerville 4 (Unit 4)	AZ	401.00	2009	2007
City Water Light and Power	Dallman (Unit 4)	IL	200.00	2009	NA

Source: SNL Financial

**Operating plants**

Majority owner	Power plant	State	Capacity (MW)	First year in service
Newmont Mining Corp.	TS Power Plant	NV	200.00	2008
Black Hills Corp.	Wygen 2	WY	90.00	2008
Bicent Power LLC	Rocky Mountain Power	MT	107.00	2006
Black Hills Corp.	Wygen 1	WY	90.00	2003
SUEZ Energy Generation	Red Hills	MS	440.00	2001

**Expansions completed at existing plants**

Archer-Daniels-Midland Co.	Clinton (Unit 1A)	IA	75.00	2008
Archer-Daniels-Midland Co.	Clinton (Unit 2A)	IA	105.00	2009
East Kentucky Power Cooperative Inc.	H.L. Spurlock (Unit 4)	KY	278.00	2009
Omaha Public Power District	Nebraska City (Unit 2)	NE	670.80	2009
South Carolina Public Service Authority	Cross (Unit 4)	SC	652.00	2008
Wisconsin Public Service Corp.	Weston (Unit 4)	WI	595.00	2008
South Carolina Public Service Authority	Cross (Unit 3)	SC	555.50	2007
Manitowoc, City of	Manitowoc (Unit 9)	WI	58.40	2007
MidAmerican Energy Co.	Walter Scott, Jr. Energy Center (Unit 4)	IA	818.00	2007
Tri-State G & T Association Inc.	Springerville (Unit 3)	AZ	400.00	2006
Archer-Daniels-Midland Co.	Decatur (Unit GEN 8)	IL	105.00	2005
East Kentucky Power Cooperative Inc.	H.L. Spurlock (Unit 3)	KY	268.00	2005
RRI Energy Inc.	Seward Waste Coal (Unit 1)	PA	521.00	2004

Source: SNL Financial

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