

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
)	
SIERRA CLUB, ENVIRONMENTAL)	
LAW AND POLICY CENTER,)	
PRAIRIE RIVERS NETWORK, and)	
CITIZENS AGAINST RUINING THE)	
ENVIRONMENT)	
)	PCB No-2013-015
Complainants,)	(Enforcement – Water)
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

NOTICE OF FILING

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the attached **COMPLAINANTS' OPPOSITION TO MIDWEST GENERATION'S MOTION FOR LEAVE TO FILE, *INSTANTER*, ITS REPLY IN SUPPORT OF ITS MOTION FOR RECONSIDERATION**, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,



Jeffrey Hammons
Environmental Law & Policy Center
1440 G Street NW
Washington, DC 20005
JHammons@elpc.org
(785) 217-5722

*Attorney for ELPC, Sierra Club and
Prairie Rivers Network*

Dated: November 11, 2019

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MIDWEST GENERATION, LLC,)	
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COMPLAINANTS’ OPPOSITION TO MIDWEST GENERATION’S MOTION FOR LEAVE TO FILE, *INSTANTER*, ITS REPLY IN SUPPORT OF ITS MOTION FOR RECONSIDERATION

Pursuant to 35 Ill. Admn. Code 101.500(e) Complainants Sierra Club, Environmental Law and Policy Center, Prairie Rivers Network, and Citizens Against Ruining the Environment (“Complainants”) oppose Midwest Generation LLC’s (“MWG”) Motion for Leave to File, *Instanter*, Its Reply in Support of Its Motion for Reconsideration (“MWG’s Motion for Leave”).

I. MWG FAILED TO ESTABLISH THAT MATERIAL PREJUDICE WOULD BE PREVENTED BY BEING ALLOWED TO FILE ITS REPLY BRIEF WITH REGARD TO CERTAIN ISSUES.

Under the Illinois Pollution Control Board’s (“Board”) procedural rules, a reply memorandum is not permitted except to “prevent material prejudice.” 35 Ill. Adm. Code 101.500(e). MWG has failed to meet this standard because, contrary to MWG’s assertion, the arguments raised in Complainants’ October 14, 2019 Opposition to MWG’s Motion for Reconsideration are all relevant, responsive, and not outside the scope of MWG’s Motion for Reconsideration and MWG has not demonstrated how it would be materially prejudiced if it

were not allowed to reply.

A. Complainants' Arguments Concerning Section 620.450(a)(5) are Relevant, Responsive, and Not Outside the Scope of MWG's Motion for Reconsideration.

In its Motion for Reconsideration and Memorandum in Support, MWG argued that the Board committed legal error by failing to follow 35 Ill. Adm. Code 620.250(c) because the Board failed to make a finding regarding “the applicable standard set forth in Subpart D,” which “refers to the Groundwater Quality Standards in section 620.450(a) of the Board’s rules.” MWG Memorandum in Support of its Motion for Reconsideration at 11 (filed Sept. 9, 2019). MWG was the first to raise the issue of Section 620.450(a), and it did so multiple times in its Motion for Reconsideration and Memorandum in Support. *See* MWG Motion for Reconsideration at 3-4 (filed Sept. 9, 2019); MWG Memorandum in Support of its Motion for Reconsideration at 2-3, 7, 10-11, 15-18, 22, 44 (filed Sept. 9, 2019).

Complainants directly responded to MWG’s argument on the issue of applicable standards set forth in section 620.450(a). *See* Complainants’ Opposition to MWG’s Motion for Reconsideration at 7-10 (filed Oct. 14, 2019). As a result, MWG’s Motion for Leave’s argument that Complainants’ responsive briefing on Section 620.450(a) is “outside the scope” lacks any merit. Therefore, MWG’s Motion for Leave failed to demonstrate that “material prejudice” would occur unless it is allowed to respond to Complainants’ Section 620.450(a) arguments. The Board should deny MWG’s Motion for Leave.

B. Complainants' Arguments Concerning MWG's GMZ Applications and Section 620.250(a) are Relevant, Responsive, and Not Outside the Scope of MWG's Motion for Reconsideration.

In its Memorandum in Support of its Motion for Reconsideration, MWG argued that the Board “mistakenly applied” Section 620.250(a)(2) when it should have applied Section 620.250(a)(1) to determine whether MWG’s GMZs had expired. *See* MWG Memorandum in

Support of its Motion for Reconsideration at 8 (filed Sept. 9, 2019).

Complainants directly responded to this issue by pointing out that no evidence on the record supported MWG's position that its GMZs were pursuant to Section 620.250(a)(1) and that the only evidence on the record supported a finding that they were pursuant to Section 620.250(a)(2) because MWG's own GMZ applications stated that they were being filed pursuant to Section 620.250(a)(2). *See* Complainants' Opposition to MWG's Motion for Reconsideration at 6 (filed Oct. 14, 2019).

Because MWG was the first to argue about whether it's GMZ was pursuant to Section 620.250(a)(1) or (a)(2), MWG's Motion for Leave's argument that Complainants' response is "outside the scope" is baseless. Therefore, MWG's Motion for Leave failed to show that "material prejudice" would occur unless it is allowed to respond to Complainants' Section 620.250(a) arguments. The Board should deny MWG's Motion for Leave.

C. Complainants' Arguments Regarding Burden of Proof in an Enforcement Case are Relevant, Responsive, and Not Outside the Scope of MWG's Motion for Reconsideration.

In its Memorandum in Support of its Motion for Reconsideration, MWG argued that the Board applied the wrong burden of proof. *See* MWG Memorandum in Support of its Motion for Reconsideration at 23-28 (filed Sept. 9, 2019). Complainants directly responded to MWG's arguments on this issue. *See* Complainants' Opposition to MWG's Motion for Reconsideration at 19-24 (filed Oct. 14, 2019).

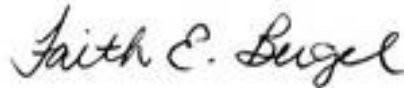
MWG's assertion that Complainants' arguments on this issue are somehow "outside the scope" of its initial Motion for Reconsideration is unfounded. Therefore, MWG's Motion for Leave did not prove that "material prejudice" would occur unless it is allowed to respond to Complainants' burden of proof arguments. The Board should deny MWG's Motion for Leave.

VIII. CONCLUSION

For the foregoing reasons, Complainants request the Board deny MWG's Motion for Leave to File, *Instantly*, Its Reply in Support of its Motion for Reconsideration.

Dated: November 11, 2019

Respectfully submitted,



Faith E. Bugel
1004 Mohawk
Wilmette, IL 60091
(312) 282-9119
FBugel@gmail.com

Gregory E. Wannier
2101 Webster St., Ste. 1300
Oakland, CA 94612
(415) 977-5646
Greg.Wannier@sierraclub.org

Attorneys for Sierra Club

Abel Russ
Attorney
Environmental Integrity Project
1000 Vermont Avenue NW
Washington, DC 20005
802-662-7800 (phone)
ARuss@environmentalintegrity.org

Attorney for Prairie Rivers Network

Jeffrey Hammons
Environmental Law & Policy Center
1440 G Street NW
Washington, DC 20005
JHammons@elpc.org
(785) 217-5722

Attorney for ELPC, Sierra Club and

Prairie Rivers Network

Keith Harley
Chicago Legal Clinic, Inc.
211 W. Wacker, Suite 750
Chicago, IL 60606
312-726-2938
KHarley@kentlaw.iit.edu

Attorney for CARE

CERTIFICATE OF SERVICE

The undersigned, Jeffrey Hammons, an attorney, certifies that I have served electronically upon the Clerk and by email upon the individuals named on the attached Service List a true and correct copy of **COMPLAINANTS' OPPOSITION TO MIDWEST GENERATION'S MOTION FOR LEAVE TO FILE, INSTANTER, ITS REPLY IN SUPPORT OF ITS MOTION FOR RECONSIDERATION** before 5 p.m. Central Time on November 11, 2019 to the email addresses of the parties on the attached Service List.

Respectfully submitted,

/s/ Jeffrey Hammons
Jeffrey Hammons
Environmental Law & Policy Center
35 E. Wacker Dr., Suite 1600
Chicago, IL 60601
jhammons@elpc.org
(785) 217-5722

PCB 2013-015 SERVICE LIST:

Jennifer T. Nijman
Kristen L. Gale
NIJMAN FRANZETTI LLP
10 South LaSalle Street, Suite 3600
Chicago, IL 60603
jn@nijmanfranzetti.com
kg@nijmanfranzetti.com

Gregory E. Wannier
Sierra Club Environmental Law Program
2101 Webster St., Ste. 1300
Oakland, CA 94612
greg.wannier@sierraclub.org

Bradley P. Halloran,
Hearing Officer
Illinois Pollution Control Board
100 West Randolph St., Suite 11-500
Chicago, IL 60601
Brad.Halloran@illinois.gov

Abel Russ
Environmental Integrity Project
1000 Vermont Avenue NW
Washington, DC 20005
aruss@environmentalintegrity.org

Faith E. Bugel
1004 Mohawk
Wilmette, IL 60091
fbugel@gmail.com

Keith Harley
Chicago Legal Clinic, Inc.
211 W. Wacker, Suite 750
Chicago, IL 60606
Kharley@kentlaw.edu