

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)
)
 Complainants,)
)
 v.)
)
 MIDWEST GENERATION, LLC,)
)
 Respondents)

PCB No-2013-015
 (Enforcement – Water)

NOTICE OF FILING

To: John Therriault, Clerk
 Illinois Pollution Control Board
 James R. Thompson Center
 100 West Randolph Street, Suite 11-500
 Chicago, IL 60601

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

Persons included on the attached
 SERVICE LIST

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the attached **Agreed Motion for Entry of Stipulation and Order on Expert Discovery** copies of which are served on you along with this notice.

Respectfully submitted,

Jennifer L. Cassel
 Environmental Law & Policy Center
 35 E. Wacker Dr., Suite 1600
 Chicago, IL 60601
 jcassel@elpc.org
 ph (312) 795-3726

Dated: June 12, 2015

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**AGREED MOTION FOR ENTRY OF STIPULATION AND ORDER ON EXPERT
DISCOVERY**

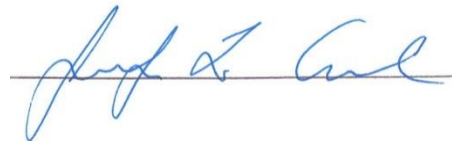
Sierra Club, Environmental Law and Policy Center, Prairie Rivers Network, and Citizens Against Ruining the Environment (“Citizens Groups”), by and through their undersigned counsel, hereby move for entry of the Stipulation and Order on Expert Discovery (“Stipulation and Order”), attached hereto as Exhibit A. In support of this motion, the Citizens Groups state as follows:

1. The Stipulation and Order defines Draft Reports as “any version of the expert report prior to the Final Expert Report authored or co-authored by any party’s testifying expert for the purposes of this litigation; except that a report will not be considered a ‘Draft Report’ if it is co-authored and if the final version of such report fails to clearly identify the individual opinions or contributions of each co-author.”
2. The Stipulation and Order defines “Final Expert Reports” as “the reports exchanged or that will be exchanged between the Parties on the dates specified in the May 5, 2015 scheduling order issued by the Hearing Officer in this action.”

3. The Stipulation and Order provides that Draft Reports created by any testifying experts in this action are protected from discovery unless the party seeking discovery shows substantial need and obtains an order from the hearing officer directing that a Draft Report be produced.
4. The Stipulation and Order does not, however, impede discovery concerning any opinions offered by any expert, or the development, foundation or basis of the opinions.
5. Entry of the Stipulation and Order will facilitate the timely production of the Final Expert Report without hindering any Party's ability to delve into the basis, foundation or development of a testifying expert witness's opinions.
6. Entry of the Stipulation and Order is not barred by Illinois law and is consistent with Federal Rule of Civil Procedure 26, under which draft expert reports are not discoverable. Fed. R. Civ. P. 26(b)(3)(A), (b)(3)(B) and (b)(4)(B).
7. Midwest Generation, LLC has represented that it agrees to the entry of the Stipulation and Order.

WHEREFORE, for the reasons stated above, the Citizens Groups, with agreement from Midwest Generation, LLC, respectfully request entry of the Stipulation and Order on Expert Discovery.

Respectfully submitted,



Jennifer L. Cassel
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*Attorney for ELPC, Sierra Club and
Prairie Rivers Network*

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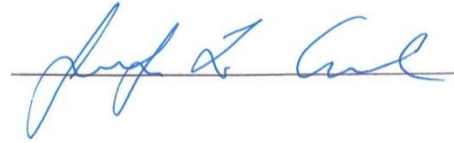
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312-726-5206 (fax)

Attorney for CARE

Dated: June 12, 2015

CERTIFICATE OF SERVICE

I, Jennifer L. Cassel, hereby certify that a true copy of the foregoing **Agreed Motion for Entry of Stipulation and Order on Expert Discovery** was served via United States Mail, postage prepaid, in Chicago, Illinois on June 12, 2015 upon the service list below.



Jennifer L. Cassel
Environmental Law & Policy Center
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ph (312) 795-3726

Dated: June 12, 2015

Jennifer T. Nijman
Nijman Franzetti LLP
10 South LaSalle Street, Suite 3600
Chicago IL, 60603

CT Corporate Systems
Midwest Generation, LLC
208 South LaSalle Street, Suite 814
Chicago, IL 60604

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

Exhibit A
Signed Stipulation and Order

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MIDWEST GENERATION, LLC,)	
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Respondent.)	

STIPULATION AND ORDER ON EXPERT DISCOVERY

Pursuant to Section 101.616(d) of the Illinois Pollution Control Board's ("Board") Regulations, 35 Ill. Adm. Code 101.616(d), Sierra Club, Environmental Law and Policy Center, Prairie Rivers Network, and Citizens Against Ruining the Environment ("Citizens Groups"), and Midwest Generation, LLC ("Respondent") (Collectively, "the Parties") by and through undersigned counsel, stipulate to the following limitations on Expert Discovery ("Stipulation and Order").

1. Limitation of Discovery Material

This Stipulation and Order shall govern discovery of Draft Reports created by any testifying experts during this action.

The Parties agree that, notwithstanding any Interrogatories or Requests for Production already propounded in this action, Draft Reports created by any testifying experts in this action are protected from discovery, unless the party seeking discovery shows substantial need and obtains an order from the Hearing Officer.

This agreement shall not impede discovery concerning any opinions offered by any expert, or the development, foundation or basis of the opinions.

2. Definitions

"Draft Reports" refers to any version of the expert report prior to the Final Expert Report authored or co-authored by any party's testifying expert for the purposes of this litigation; except that a report will not be considered a "Draft Report" if it is co-authored and if the final version of such report fails to clearly identify the individual opinions or contributions of each co-author.

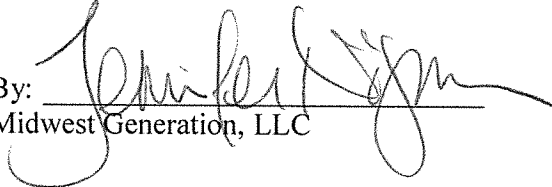
“Final Expert Report” refers to the reports exchanged or that will be exchanged between the Parties on the dates specified in the May 5, 2015 scheduling order issued by the Hearing Officer in this action.

ENTERED:

By: _____
Hearing Officer

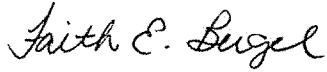
DATE: _____

AGREED:

By: 
Midwest Generation, LLC

AGREED:

By:



Sierra Club

AGREED:

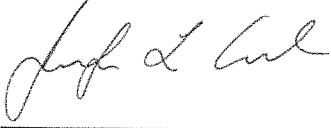
By:



Prairie Rivers Network,

AGREED:

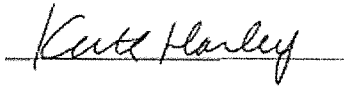
By:



Environmental Law & Policy Center

AGREED:

By:



Citizens Against Ruining the Environment