

In The Matter Of:

*Public Hearing for the Northern Illinois
Hydropower 401 Water Quality Certification*

*Hearing before Dean Studer
July 2, 2014*

*Marzullo Reporting Agency
345 North LaSalle, 1605
Chicago, IL 60654
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1 PUBLIC HEARING FOR THE NORTHERN ILLINOIS
2 HYDROPOWER 401 WATER QUALITY CERTIFICATION

3 July 2nd, 2014

4 6:30 a.m.

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8 Report of Proceedings had in the hearing of the
9 above-entitled cause before HEARING OFFICER DEAN STUDER,
10 taken before PAMELA A. MARZULLO, a Certified Shorthand
11 Reporter and Notary Public in and for the County of Cook and
12 State of Illinois, at 17840 East Laraway Road, Joliet,
13 Illinois, on July 2nd, 2014, at the hour of approximately
14 6:30 a.m

1 APPEARANCES :

2 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

3 MR. DEAN STUDER, Hearing Officer

4 MR. KEITH RUNGE, Permit Engineer, Bureau of Water

5 MR. ROBERT G. MOSHER, Manager Quality Standards Section,

6 Bureau of Water

7 MS. BARB LIEBEROFF, Community Relations Coordinator of

8 Community Relations

9 MS. SARA TERRANOVA, Assistant Counsel, Division of Legal

10 Counsel

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1 HEARING OFFICER STUDER: Good evening. We'll
2 go ahead and go on the record. I've got 6:31. My
3 name is Dean Studer, and I am the Hearing Officer
4 for the Illinois Environmental Protection Agency,
5 usually referred to as Illinois EPA.

6 On behalf of the Director Lisa Bonnett,
7 and Bureau of Water Chief Marcia Whillhite, I
8 welcome you to tonight's hearing. Illinois EPA
9 believes that this public hearing, and the overall
10 public comment process, are a crucial part of the
11 permit review process; and in this case, it's
12 actually a water quality certification.

13 As Hearing Officer, my primary purpose tonight is
14 is to ensure that this proceeding runs properly, in
15 accordance with established rules and in an orderly,
16 efficient manner.

17 Therefore, I will not generally be responding to
18 issues regarding the certification process or the proposed
19 water quality certification, but will refer these issues to
20 technical staff that are here with me tonight.
21 However, I will assist those members of the public making
22 comments at this hearing to stay focused on relevant issues.

23 We are primarily here to listen to your concerns,
24 but I will interrupt, if necessary, to ensure that we remain

1 on topic at this hearing.

2 This informational hearing is being held by the
3 Illinois Environment Protection Agency, Bureau of Water,
4 under the provisions of 35 Illinois Administrative Code 164
5 procedures for informational and quasi-legislative public
6 hearings; and under 35 Illinois Administrative Code Part
7 395, procedures and criteria for certification of
8 applications for federal permits or licenses for discharges
9 into waters of the state.

10 Copies of these regulations are available at the
11 website at Illinois Pollution Control Board. That is as at
12 www.ipcb.state.il.us; or if you do not have ready access to
13 the web, they are available from me on request.

14 The purpose of this hearing is to provide an
15 opportunity for the public to present information to the
16 Illinois EPA regarding the review of the Section 401 water
17 quality certification application associated with the
18 northern Illinois Hydropower.

19 Written comments will be accepted on this water
20 quality certification through August 1st, 2014. Please
21 ensure that you reference either Northern Illinois
22 Hydropower, or the Illinois EPA log number, which is
23 C-0408-08, on your comments to help ensure that they become
24 part of this hearing record.

1 The process for this hearing will be as follows:
2 I will finish reading this opening statement into the
3 record. After that, the panel from Illinois EPA will
4 introduce themselves, giving a brief overview of the
5 Section 401 water quality certification process and their
6 role in the Agency review of the proposed project.

7 Then Keith Runge, an engineer in the Division of
8 Water Pollution Control, will make a brief opening
9 statement. This will be followed by comments from the
10 public, starting with Damon, if I can pronounce the last
11 name, Zdunich

12 MR. ZDUNICH: Zdunich.

13 HEARING OFFICER STUDER: And, for the record,
14 it's Z-d-u-n-i-c-h. And he's representing Northern
15 Illinois Hydropower.

16 People will be called one at a time to
17 come forward and make comments on the record. This
18 hearing is the only opportunity that the public will
19 have to make oral comments on this 401 certification
20 application. After the hearing is adjourned,
21 comments must be submitted in writing to be included
22 in the record.

23 Comments may be submitted in hard copy by
24 regular mail or by E-mail. E-mail comments should

1 be directed to epa.publichearingcom@illinois.gov,
2 and that's epa dot p-u-b-l-i-c-h-e-a-r-i-n-g-c-o-m
3 at Illinois dot g-o-v.

4 E-mail comments will be accepted if
5 received by August 1st. E-mail comments must
6 specify either Northern Illinois Hydropower 401 in
7 the subject line, or specify the Illinois EPA log
8 number, and again that is C-0408-08.

9 E-mail comments originating on third-party
10 servers intended to send multiple comments of the
11 same or nearly the same content will not be accepted
12 without my prior approval.

13 E-mails received at
14 epa.publichearingcom@illinois.gov are automatically
15 sorted and distributed. So, it is critical that the
16 E-mails contain the words "Northern Illinois
17 Hydropower 401" in the subject line exactly as
18 indicated in the hearing notice, to ensure that they
19 become part of this hearing record.

20 E-mails arriving during normal business
21 hours at the Agency should receive an automated
22 reply from the server. I note that the server can
23 become quite busy in the minutes before the record
24 closes, so you may want to take this into account

1 when submitting your comments, as electronic
2 comments received after midnight, as the date is
3 changing to August 2nd, 2014, will not be considered
4 timely file.

5 I will also attempt to send a reply to
6 E-mail comments within a few business days,
7 indicating the exhibit number assigned to the
8 electronic submittal.

9 If you do not receive such a reply, you
10 can contact me, and I can obtain that information
11 and give it to you. Comments sent by regular mail
12 must be post marked no later than August 1st, 2014.

13 They should be addressed to Dean Studer,
14 Hearing Officer, Illinois Environmental Protection
15 Agency, office of Community Relations, Mail code 5,
16 regarding Northern Illinois Hydropower 401, 1021
17 North Grand Avenue East, P.O. Box 19276,
18 Springfield, Illinois, 62794-9276.

19 This contact information is included on
20 the notice of this public hearing. The hearing
21 notice is posted on the Illinois EPA's web page.

22 Once the hearing is adjourned tonight, the
23 comment period again remains open until August 1st.
24 Comments submitted in writing will be given the same

1 weight and considered in the same manner as
2 statements made on the record during this hearing.

3 Following the close of the comment period,
4 the Illinois EPA will develop a responsiveness
5 summary. In the responsiveness summary, Illinois
6 EPA will respond to all significant and relevant
7 issues raised during this hearing, or submitted in
8 writing prior to the close of the comment period.

9 The hearing transcript, and subsequent
10 response to the summary, will be posted on the
11 Illinois EPA's web page. The timing of the posting
12 of the hearing transcript on our web page will
13 depend on a number of factors, but largely on when I
14 get the transcript back from the court reporter.

15 All persons registering legibly or
16 submitting comments in this proceeding will be
17 notified when the responsiveness summary is
18 available.

19 The Illinois EPA has made a tentative
20 determination to issue the Section 401 water quality
21 certification in accordance with the provision of 35
22 Illinois Administrative Code Part 395.

23 However, any comments made as part of the
24 hearing and the public comment process may cause the

1 Agency to request the applicant to revise the
2 project to address the issue raised.

3 Issues that are relevant in this hearing
4 are those arising from the application for the 401
5 water quality certification and the anti-degradation
6 assessment specific to the 401 certification that
7 was included in the public notice fact sheet for
8 this 401 certification project.

9 Relevant issues include the mitigation of
10 wetland and stream impacts, as they relate to the
11 401 certification, impacts due to the discharge of
12 dredge and fill material into waters or into
13 wetlands.

14 Any person who wishes to comment tonight
15 may do so, as long as the comments are relevant to
16 the issues that I have just listed or to the water
17 quality certification in some way, and as long as
18 time permits.

19 If you filled out a registration card at
20 the door, you were asked to indicate if you wish to
21 speak at this hearing. If you wish to comment, but
22 have a time constraint, please see Barb Lieberoff at
23 the registration table, and we'll try and ensure
24 that you are called on earlier in the proceeding.

1 As an alternative, you may file written
2 comments before the comment period closes, and I
3 will include them as an exhibit in the hearing
4 record.

5 Written comments are given the same weight
6 and consideration as comments made orally during
7 this hearing. If anyone has exhibits that they want
8 to have entered into the record, you should give me
9 a copy and so indicate, and I will enter them into
10 the hearing record.

11 For the purpose of allowing everyone to
12 have a chance to comment, I will give everyone nine
13 minutes to comments. Once everyone that desires to
14 comment has been given that opportunity, if time
15 allows, I'll come back to those that have already
16 spoken but ran out of time.

17 If you have lengthy comments, I am
18 requesting that you submit them to me in writing
19 before the close of the comment period, and I will
20 make sure that they are included in the hearing
21 report as an exhibit.

22 When it is your turn to comment, if
23 someone else has said what you intended to say, you
24 may pass when your name is called. Persons coming

1 forward to provide comments should first clearly
2 state their name, and if applicable, identify any
3 governmental body, organization or association that
4 they represent.

5 You should also spell your last name so it
6 can be accurately reflected in the record. If there
7 are alternate spellings for your first name, also
8 spell your first name.

9 Comments should be: One, relevant to this
10 proceeding, as I had previously indicated; and two,
11 not repetitious. Please understand that making the
12 same point many times does not carry any more weight
13 in the record than the first time it is made.

14 Arguing or prolonged dialogue between
15 agency panel members or the public will not be
16 allowed. On a similar note, I will not allow anyone
17 other than the person who's been given the floor to
18 speak at one time.

19 Because of a verbatim record of this
20 hearing is being made for the administrative record
21 in this matter, I ask that you keep conversation and
22 noise levels to a minimum, so the court reporter can
23 hear and transcribe everything that is being said.

24 Comments are to be addressed to the

1 hearing panel. As Hearing Officer, I intend to
2 treat everyone here tonight in a professional manner
3 and with respect. I ask the same respect be shown
4 to those raising relevant issues.

5 While the issues discussed tonight may be
6 heartfelt concerns to many of us in attendance, this
7 is a public hearing, and everyone has a right to
8 comment on issues relevant to the water quality
9 certification process.

10 However, I intend to conduct an orderly
11 hearing, and I will monitor what is said to ensure
12 that the rules that I have just outlined are
13 followed.

14 If the conduct of persons attending this
15 hearing should become unruly, I am authorized to
16 adjourn this hearing, should the actions warrant.
17 In such of a case, Illinois EPA would accept written
18 comments through the time indicated in the notice
19 for this hearing, and that again is August 1st.

20 Are there any questions for me on how I
21 will proceed tonight? Let the record indicate that
22 no one raised their hand.

23 For the record, I've indicated I have
24 entered the following exhibits into the record: .

1 Exhibit 1 is the notice of public hearing.

2 Exhibit 2 is the public notice fact sheet.

3 Exhibit 3 is a hearing request filed by
4 Prairie Rivers Network, Openlands and the Illinois
5 Chapter of the Sierra Club.

6 Exhibit 4 is a letter from Prairie Rivers
7 Network and the Illinois Chapter of the Sierra Club.

8 I will now ask Illinois EPA panel members
9 to introduce themselves and briefly describe their
10 role in the review of the 401 certification process.

11 This will be followed by Keith Runge
12 making a brief opening statement regarding the 401
13 process. And following this, I will allow those
14 that registered to speak to come forward as their
15 name is called to make statements.

16 MS. TERRANOVA: Hello. I'm Sara Terranova.
17 I'm with the Division of Legal Counsel.

18 MR. MOSHER: I'm Bob Mosher, and I am the
19 Manager of the Water Quality Standards Section, and
20 I supervise the individual Eric Runkel, who reviewed
21 the anti-degradation assessment for this project;
22 and Eric couldn't be here tonight, as he is sick,
23 but I have been involved in this project for several
24 years, actually from the very beginning of the

1 application several years ago.

2 MR. RUNGE: I'm Keith Runge, the Bureau of
3 Water Permits Section. I'm the permitting engineer.

4 Projects that include the discharge of
5 dredge and fill material into waters of the United
6 States are required to be covered by Water Quality
7 Certification, pursuant to Section 401 of the Clean
8 Water Act issued by the Illinois EPA.

9 Issuance of the 401 certification does not
10 have any effect or bearing on what is required by
11 Northern Illinois Hydropower by any other federal,
12 state or local regulations.

13 If issued, the water quality certification
14 is not an approval of any discharge resulting from
15 the completed Hydropower project. The project must
16 also meet other applicable permit requirements of
17 the Illinois Pollution Control Board.

18 The 401 review is focused on potential
19 impacts to water quality due to the proposed
20 construction activity.

21 The Illinois EPA received an application
22 on August 11th, 2009, from Illinois -- Northern
23 Illinois Hydropower, LLC, for 401 water quality
24 certification for the discharge of dredge and fill

1 material associated with construction of a
2 hydropower facility.

3 The proposed project is to consist of
4 modifying existing head gates at the Brandon Road
5 Lock and Dam. Four electrical generating units with
6 an electrical generating capacity of 7.8 megawatts
7 with new intakes and forebay structures, configuring
8 headrace channel, new tailrace, new transmission
9 license and appurtenant facilities will be added.

10 The Illinois EPA has reviewed the
11 certification application with regard to the
12 Illinois water quality standards and the
13 certification regulations.

14 Based on that review, the Illinois EPA
15 issued a public notice, including the
16 anti-degradation assessment fact sheet on March 6th,
17 2014, to seek public comments on the project.

18 HEARING OFFICER STUDER: Thank you. We have a
19 few people that have registered to speak this
20 evening. So, we'll go ahead and start taking public
21 comments.

22 The first person is Damon, if I can say
23 it, Zdunich. If you come forward to the mic. I do
24 want to point out these mics I believe are on the

1 same channel. So, only one of them will be
2 operative.

3 So, you'll have to turn yours on. As soon
4 as you turn yours on, there should be switch on the
5 top. Just pull it all the way until you see the red
6 switch.

7 MR. ZDUNICH: Hello. Can you hear me? Hello.
8 My name is Damon Zdunich, Z-d-u-n-i-c-h. Myself and
9 Dennis Cohil, that's C-o-h-i-l, sitting right here,
10 are the founders of Illinois Hydropower and the
11 principals of Northern Illinois Hydropower, and also
12 life-long Joliet residents, other than Dennis being
13 in Europe for a stint building steel mills and my
14 service in the U.S. Navy.

15 We both live within three miles of this
16 project. We're very familiar with the lock and damn
17 system in Illinois. We started this project back in
18 2001, doing initial research.

19 We applied for The federal Regulatory
20 Commission Preliminary Permit back in 2006, or I
21 should say we received Preliminary Permit back in
22 2006. We applied for the license application in
23 2009, as you can tell.

24 HEARING OFFICER STUDER: Can you speak closer

1 to the mic?

2 MR. ZDUNICH: I'll try now. We applied for the
3 final license application in 2009. One of the big
4 things about these hydro projects is the length of
5 time to develop them, and the regulatory
6 requirements to get to the finish line.

7 In the past couple years, the federal
8 government has recognized that. The Hydropower
9 Regulatory Efficiency Act passed Congress
10 unanimously. I want to reiterate unanimously.

11 It's very tough to get this Congress to
12 agree on anything, but they did in respect to
13 hydropower. President Obama then promptly signed
14 that.

15 In that regulatory process, for smaller
16 hydro projects, they wanted to streamline the
17 effort. That was followed by in 2014 by the Water
18 Resources Reforming Development Act. Congress
19 passed that, and it was promptly signed by the
20 President Obama.

21 In that act, Congress declares that it is
22 the policy of the United States that the development
23 of non-federal hydroelectric power at Corps of
24 Engineers civil works projects, including locks and

1 dams, shall be given priority. Our government thus
2 recognizes the importance of these smaller projects
3 to meet the country's future energy needs.

4 Northern Illinois Hydro has invested
5 substantial time and money and effort in complying
6 with the regulatory requirements. In money alone,
7 we've spent over \$2 million on the Brandon Road
8 Project, 500,000 for the environmental and
9 regulatory assistance and necessary steps that we
10 had to take.

11 Over the past six years, we have met with
12 numerous IEPA and IDNR staff to ensure that this
13 project is developed in a responsible manner, and
14 that this green energy project will comply with the
15 state's very stringent conditions, during
16 construction and afterwards while operating.

17 We have committed to both IDNR and IEPA
18 staff our engineering design will reflect their
19 concerns. We committed to IDNR that we will work
20 with them to replace and improve any habitat lost as
21 a result of construction.

22 We have also committed to the state on
23 numerous occasions that once operational, we will
24 adhere to the state standards regarding the water

1 quality or else simply not operate.

2 We have reduced the overall size of this
3 project by 23 percent, and a resulting power
4 generation by approximately 22 percent, as a result
5 IDNR's request for 1,000 CFS per cubic feet per
6 second bypass at all times.

7 There is substantial project undertakes,
8 as we see it. The Brandon project will generate 8
9 megawatts or just under 8 megawatts of renewable
10 energy. That's enough power to supply electricity
11 for approximately 5,500 homes.

12 This is a clean green energy project that
13 will improve the quality of life for the Joliet area
14 by reducing air pollution. This project will
15 replace 23,000 tons of coal annually. It will
16 reduce greenhouse gas emissions for 40,000 tons
17 annually. It will produce 100-percent renewable
18 energy.

19 Hydropower is the most dependable form of
20 green energy. You can't depend on solar when the
21 sun isn't shining, nor when wind isn't blowing, but
22 hydro is considered by far the most the dependable
23 by the electric utility; therefore, it is also
24 considered base-load power.

1 Hydropower is great for the Joliet area.
2 There will be over 300 jobs created once
3 construction commences. We have already hired
4 numerous engineering and environmental firms, local
5 firms at that, to provide a preliminary engineering
6 and environmental services.

7 Once construction takes place, there will
8 be union carpenters, laborers, electricians,
9 millwrights, welders, ironworkers, building this
10 hydropower plant.

11 Concrete will come from the local plant.
12 Steel will be fabricated locally, and we have
13 already met with local fabricators. We had
14 originally thought that we would be buying steel
15 produced locally, but that last steel mill, that
16 last bar mill, recently shut down.

17 Overall, 75 percent of the cost will be
18 local. That is great for the Joliet area. The
19 Joliet area, the economy is hurting and is
20 struggling to come back from the recession. This
21 and other infrastructure projects will help the
22 economy recover.

23 When the president talks about creating
24 infrastructure projects that help a wide swath in

1 the economy, nothing beats hydropower.

2 In summary, this project is proposed with
3 substantial protection during construction,
4 mitigation and habitat improvement measures that
5 will meet the state's requirements.

6 The project will provide good clean
7 renewable energy. The project will provide
8 much-needed jobs for the Joliet area and the state.

9 The project will pay local state and
10 federal taxes. The project will use a federally
11 owned and operated damn that is necessary for
12 commerce in the region and poses no additional
13 effects on the system, except to run the water
14 through the turbines.

15 The project, as proposed, only has
16 benefits. Everyone, everyone loses if this project
17 is not constructed as now proposed. Thank you.

18 HEARING OFFICER STUDER: Thank you. Dennis
19 Cohil.

20 MR. COHILL: Can you hear me? The following
21 are some of the people and organizations who support
22 this project, but were unable to attend.

23 The Will County Thomas Thanes,
24 T-h-a-n-e-s, manager of Joliet; and Russ Slinkerd,

1 Slinkerd, Joliet Region Chamber of Commerce; Larry
2 Walsh, Will County Executive; Wayne Beasley,
3 B-e-a-s-l-e-y, business representative of Local 174
4 carpenters; John Scheidt, S-c-h-e-i-d-t, president
5 of Will and Grundy County Building Trades Council;
6 Doc Gregory, G-r-e-g-o-r-y, vice-president Will
7 County -- Will and Grundy County Building Trades
8 Council; also the Village of Hanna Board (phonetic)
9 agreed to support this project.

10 For Grundy County, we have Ron Severson,
11 Severson, Chairman of Grundy County Board; and
12 Richard Kopczick, K-o-p-c-z-i-c-k, Mayor of Morris;
13 Nancy Norton; Ammer, A-m-m-e-r, Grundy County
14 Economic Development Commission.

15 We also met with numerous Congressmen at
16 the state and federal level who have supported this
17 project. The project was also supported by
18 President Barack Obama, while he was a senator from
19 the State of Illinois. Thank you.

20 HEARING OFFICER STUDER: Thank you. Albert
21 Ettinger.

22 MR. ETTINGER: Okay. I don't have a terribly
23 polished presentation today. I am Albert Ettinger,
24 E-t-t-i-n-g-e-r. I'm a life member of the Sierra

1 Club. I recreate in this area frequently. I've
2 been -- I went to the Brandon Road Bridge an hour
3 ago, and I looked at the water then.

4 So, I definitely am familiar with this
5 area. I would want to emphasize tail water below
6 the Brandon Road Lock and Dam is some of the best
7 habitat in the area, and it's been well established
8 in the proceeding that we worked in, that that area
9 of the Brandon Road tail waters is very important to
10 the ecology of the entire area, which is why we are
11 so concerned about this project.

12 At the same time, there is also another
13 set of issues, the invasive species and the problem
14 with the Asian carp. We're going to be looking at a
15 number of projects with regard specifically to the
16 Brandon Road Lock and Dam and the Asian carp, and
17 we'll want to make sure anything that is done with
18 regard to this project is consistent with whatever
19 is done by the Corps of Engineers and others, in
20 trying to increase the invasive species barrier at
21 the Brandon Lock and Dam.

22 In this letter, which I helped draft,
23 although I'm not named on it, we objected to the
24 certification. I want to emphasize that we could

1 only object or not object based on the information
2 that we had in the public notice.

3 Unfortunately, or fortunately, we don't
4 get much time. We have 35 days to either speak or
5 forever hold our peace on these things. So, in some
6 cases regrettably, although I don't think
7 regrettably in this case, because I think we're
8 learning things.

9 We are required to call for a public
10 hearing, in order to get the information that we
11 need to understand the project, which in this case
12 potentially affects a very important area.

13 With that, I'm going to ask -- I'm going
14 to ask questions, to the extent you can handle them
15 on the spot, that would be good, but we certainly
16 expect to see responses in the responsiveness
17 summary.

18 The two primary concerns we have or we
19 stated, I mentioned them already, the three primary
20 concerns is the dissolved oxygen levels in what's
21 called the Upper Dresden Pool that we've been
22 talking about.

23 The second major problem is the habitat in
24 the Brandon Road tail waters; and the third problem,

1 as I mentioned, was the invasive species barrier,
2 and how this work will be tailored to make sure that
3 either alone or together they don't increase the
4 likelihood of invasive species going north in the
5 system.

6 With regard to the dissolved oxygen
7 question, what we saw in the information we had is
8 not very comforting, because we know that the upper
9 Dresden Highland Pool, and the pool immediately
10 above called the Brandon Pool, often or sometimes
11 suffer from low dissolved oxygen levels.

12 The data that we were given was the
13 increase in DO would be no greater than
14 .7 milligrams per liter and 1.8 milligrams per
15 liter. Well, the standard is 4 milligrams per
16 liter, or 3.5 milligrams per liter is what we're
17 looking at.

18 So, obviously when compared to the
19 standard, 1.8 is a great deal. So, that was the
20 problem, and so we need to sharpen our consideration
21 there and tell us more about when and where we
22 expect that 1.8, because the 1.8 decrease is
23 occurring when the water would otherwise be 4.1. We
24 got a very severe violation of dissolved oxygen

1 standards.

2 We're also not clear from this where the
3 dissolved oxygen is being measured. It's just in
4 the nature of things from dams that you're going to
5 have a very high dissolved oxygen level immediately
6 below the damn.

7 So, yes, I'm fairly confident this will
8 not cause violations in the dissolved oxygen
9 standard immediately below the spillway.

10 The problem is that the system, as it's
11 developed now, as we're looking at it, it's often
12 followed by some overflows. In fact, when I was out
13 there a few hours ago, it was very high, and it was
14 quite obvious that the Water Reclamation District
15 and others had to put some things there that we may
16 not have wanted there.

17 It is also very full of nutrients. So,
18 what we are seeing at times low levels of dissolved
19 oxygen in the Dresden -- upper Dresden Pool. The
20 violations will not manifest themselves immediately
21 below the dam. They will manifest themselves when
22 below that, probably between here and the I55 bridge
23 or below that.

24 And, so, the system as it's currently

1 constituted, with the other things going on there,
2 really requires that DO boost that is getting at the
3 dam to avoid violations downstream, at least that is
4 what we're looking at.

5 Also, we were troubled with statements
6 saying, "Well, we don't see any DO violations
7 there," or things like that, because we do not know
8 of any regular monitoring in these areas.

9 The Water Reclamation District had
10 continuous dissolved oxygen monitoring in Lockport.
11 There is some equipment maintained by Midwest
12 Generation at the I55 bridge.

13 There is no -- that's the only 24-hour
14 data that we know of that was kept. I'm not sure
15 the Water Reclamation District is even maintaining
16 the CDOT equipment at Lockport anymore. They've
17 been systematically reducing the amount of dissolved
18 oxygen monitoring they have been doing, with the
19 permission of to IEPA.

20 Some of the data that we're seeing from
21 the Midwest Generation has not always been
22 comforting, as far as dissolved oxygen levels; and
23 the data that we have taken ourselves from below the
24 I55 bridge and in that area has shown clear

1 violations of dissolved oxygen standards, not caused
2 by the way by obviously the hydro project at this
3 point.

4 They are caused by nitrification. We're
5 seeing DO levels of say 9 in the afternoon, and 1.5
6 in the early morning hours is the data that we
7 collected several years ago.

8 You wouldn't see that phenomenon now
9 because the water is very high, and I'm certain
10 that's not the problem we're having right now. If
11 we have low DO now, it would be caused by CSOs.

12 So, that is the dissolved oxygen problem.
13 So, we're very concerned that the boost that
14 dissolved oxygen that the system is now getting from
15 the dam is maintained, and also we're very concerned
16 about where we're monitoring; and that estimate of,
17 as I said, .7 to 1.8 is not very comforting in the
18 system in which we're talking about low levels
19 otherwise.

20 The second major issue we were talking
21 about was the habitat. Again, I can't see from
22 this, and we did not have an opportunity -- I am not
23 really comfortable myself, and perhaps some of the
24 gentlemen that are here from the proponent can show

1 us, I'm not really clear in my own head exactly what
2 is proposed to be built, or what are they going to
3 put where.

4 What kinds of structure is going in? You
5 know, what is there now that will not be there as a
6 result of this? I don't see any sort of engineering
7 drawings or things, and we would like to see
8 something like that, because the key thing is that
9 right now, that habitat immediately in the Brandon
10 Road tail waters is very important.

11 If you go out there, there is a lot of
12 birds there. We've done a lot of work there. I was
13 very pleased to see Mr. Yoder here. He has done
14 work on the habitat there.

15 I think we can all confirm that is one of
16 the best parts of habitat in the entire system. So,
17 where are you going to put your concrete would be
18 very important relative to the habitat in the area.

19 And then finally, as I mentioned, it is
20 not clear to us how this is going to mesh with the
21 endangered or with the work to prevent the invasive
22 species.

23 I guess a question of the Agency, too,
24 which there are things here that are mentioned in

1 the fact sheet, but I didn't see any draft
2 conditions.

3 We would hope and expect there would be
4 conditions in the 401 certification saying, you
5 know, "We are certifying this on the following
6 conditions," such as maintaining the 1,000 CFS and
7 things like that.

8 Maybe that's to come, but we haven't
9 really seen the conditioning language and expect
10 that that will be somewhere. Maybe I missed
11 something, or is that coming later, and the Agency
12 can deal with that?

13 So, I've thrown a lot of questions on the
14 table. I believe -- I don't know how many other
15 witness are here. So, I hope we'll have time to
16 address some of those tonight, if there are more
17 witnesses than I anticipate. Maybe we can't.

18 HEARING OFFICER STUDER: We should have time to
19 address those. The reason I'm not speaking into
20 this I think these are on the same channel.

21 As long as that's turned on, when he turns
22 this on, we'll lose power to both of them. Only one
23 can work at a time.

24 MR. ETTINGER: I can hear you just fine. As we

1 all know, she is the only person that really
2 matters.

3 HEARING OFFICER STUDER: I think those in the
4 back can, too. Keith, do you have any response to
5 the issues, as far as the conditions that Albert had
6 raised in the question he had?

7 You're going to have to speak up because
8 you are not miced.

9 MR. RUNGE: The cert will have conditions in
10 it, with respect to the 1,000 CFS spill. There will
11 also be some language in there about, you know,
12 always meeting the water quality standards, and do
13 you have anything to say?

14 MR. MOSHER: I remember Albert's last question,
15 and it seemed that it was grounded to you.

16 MR. RUNGE: There will be language in the cert
17 addressing the 1,000CF S. There will be some
18 language in there addressing DO; and then there's
19 also the standard special condition that they cannot
20 violate water quality standards during operation.

21 MR. ETTINGER: With regard to the 1,000 CFS,
22 there was some discussions of various proposals.
23 Just reading the facts sheet wasn't clear to me.

24 There were various proposals that were

1 made by the applicant to do various things, which
2 were rejected because they were not adequate.

3 For example, with regard to operations
4 modification letter of the anti-dissolve oxygen,
5 does the applicant, NIH, propose to operate either
6 or both the crestgates or headgates in conjunction
7 with the proposed project?

8 The alternative involved automatically
9 increasing the spill through the gates to enhance
10 the DO concentrations generation was reduced. NIH
11 included a provision to monitor and record data for
12 two years and then work with IEPA to determine if
13 modifying operation was necessary.

14 This alternative did not adequately
15 address anti-degradation, in terms of either water
16 quality or habitat quality. This -- sorry, the
17 alternative was rejected.

18 Am I understanding that that alterative
19 was rejected because it was proposed as an
20 alternative to maintaining the 1,000 CFS?

21 MR. MOSHER: Yes, that's correct.

22 MR. ETTINGER: That is what I was wondering. I
23 didn't quite understand that. Because standing
24 alone, it wasn't clear why we would reject that.

1 So, wherever it says here the alternative
2 was rejected, I should understand that to mean that
3 the agency insisted on maintaining the 1,000 CFS as
4 opposed to other dissolved oxygen measures that the
5 applicant has suggested; is that correct?

6 MR. MOSHER: That's correct. There is a dual
7 reason. We believe the minimum 1,000 CFS spill not
8 only helps maintain dissolved oxygen, but it also is
9 important to preserve habitat.

10 MR. ETTINGER: I threw a lot of other things on
11 the table. You can deal with them now, or we can
12 let other people speak and see if you want to deal
13 with them later.

14 HEARING OFFICER STUDER: The only other person
15 registered to speak is Tyler. We can go back and
16 forth.

17 MR. ETTINGER: You want to speak now, or you
18 want to have them answer questions?

19 MR. ROTCHE: We can do a few questions.

20 MR. ETTINGER: Okay. Well, if the applicant is
21 willing to answer, whether you are, one of the ones
22 I raised was coordinating -- one of the questions I
23 raised was coordinating with the invasive species.

24 Does anybody want to address that subject?

1 MR. ZDUNICH: What's the problem?

2 MR. ETTINGER: I don't know what you are
3 putting there, so I don't know what the problem is.
4 If you were to open a big hole in the dam for a
5 while to do the work, that would present a problem.

6 So, I don't know exactly what's being
7 proposed. So, I guess I'm just asking have you
8 coordinated with the Corps and looked at what
9 they're proposing, in terms of they are looking at
10 new work on the locks to prevent invasive species
11 coming through?

12 I assume you're not going to touch
13 anything like that. I don't know.

14 MR. COHILL: To begin with, the equipment which
15 we didn't go into detail with, is double-regulated
16 turbines, which means they have blades that are
17 adjustable, and they also have wickets which are
18 adjustable.

19 What happens is when you run the turbine,
20 you will open your wicket gates, and you will have
21 to run at a certain speed, because you have to make
22 60-cycle power. Okay?

23 So, you run -- you got the turbine blades
24 moving, the water is flowing downstream. Carp or

1 any other invasive species can't swim upstream.
2 They go up through the dam, I mean, through the
3 lock, but they can't go up through the turbine.
4 Okay?

5 When the turbine shuts down, the wicket
6 gates close, so there is no opening. So, they can't
7 get through the turbine that way either. So, in
8 other words, they can't swim upstream through the
9 turbine, I guess is what I'm saying.

10 MR. ETTINGER: The turbine is at the bottom?

11 MR. COHILL: At the bottom, right.

12 MR. ETTINGER: But there is wicket gates that
13 would prevent anything from coming in?

14 MR. COHILL: Right, they are part of the
15 turbine. They are right in with the turbine blades.

16 MR. ETTINGER: And then the other major set of
17 questions I had how it might potentially affect
18 habitat and tail water, what work is proposed, is
19 some level of dredging proposed or something, in
20 connection with the work that you are doing?

21 What sort of heavy equipment will you have
22 in the tail waters that might affect the habitat
23 there?

24 MR. COHILL: Temporarily you're going to do

1 construction. You have the water where you are
2 going to build the powerhouse obviously. The
3 powerhouse is going along the bank.

4 We're really minimizing, you know, the
5 degradation during construction of the tail water;
6 and of course when we're operating, we have actually
7 gone -- we started out -- you know, the standard
8 design in the United States right now, maybe the
9 world is, you know, less turbines, but big ones.

10 Okay?

11 The bigger the turbine, the bigger the
12 trench you have to dig. Okay? Now what we finally
13 ended up here at Brandon, we ended up with four
14 turbines, but they are smaller turbines. They are
15 about two meters. That is about six foot in
16 diameter, and they are shallower.

17 I don't know by how much, much, much
18 shallower than one of the original large turbines
19 that we were going to put in. So, that way we felt
20 we're spreading out the amount of water that is
21 flowing from the turbine area.

22 Instead of coming in one big gush, it's
23 coming like before; and also, it's shallower, and
24 we're affecting less, you know, the habitat area.

1 MR. ZDUNICH: And the footprint of the project
2 is considerably smaller, the cofferdam is
3 considerably smaller.

4 MR. COHILL: The width of the powerhouse, plus
5 the length of the powerhouse, and the length of the
6 amount of trenching you have to do, the amount of
7 excavation you need to do in front of the turbines.

8 MR. ETTINGER: Okay. That's my questions for
9 now. I would appreciate it in your final statement,
10 if you guys have some sort of pictures or some sort
11 of thing of what there was. I am not looking for
12 engineering designs, but just something so we have a
13 little better idea what's going in where.

14 HEARING OFFICER STUDER: Thank you. We'll see
15 if we can get that. Tyler?

16 MR. ROTCHE: Good evening. My name is Tyler
17 Rotche, R-o-t-c-h-e. I'm with Prairie Rivers
18 Network. Prairie Rivers Network is a state
19 affiliate of the National Wildlife Federation, a
20 nonprofit organization, that strives to protect the
21 river steams and lakes of Illinois and to promote
22 the lasting health and beauty of the watershed
23 communities.

24 So, I have a question on invasive species

1 as well. So, how has the agency considered
2 potential impacts of this project on the movement of
3 the invasive species?

4 MR. MOSHER: We're familiar with the system as
5 it currently exists. There's a lock. If Asian carp
6 want to lock through with a barge, I don't see any
7 reason why they can't do that; or, you know, other
8 things are favorable for them. They have passage
9 upriver through the existing lock.

10 With that piece of knowledge, we didn't
11 further consider the movement of Asian carp. They
12 can already go. What's more to consider?

13 If the Army Corps of Engineers has plans,
14 I assume they will -- I believe they have some
15 control over this project, since it's, you know,
16 their dam. Is it their dam or IDNR's dam? It's
17 their dam.

18 You know, that's a bit of coordination I
19 can't accomplish. I don't know what someone is
20 thinking of doing in the future. So, the immediate
21 answer to that question was: Asian carp already
22 have access upriver.

23 This project isn't going to change that,
24 and I think you heard from the developer that they

1 don't think they will be able to go through the
2 turbine.

3 MR. ROTCHE: Okay. Second set of questions is
4 related to the use of attainability analysis. So,
5 there is an expectation that dissolved oxygen
6 standards will become more stringent, as the result
7 of use of the attainability analysis proceeding now
8 before the Illinois Pollution Control Board.

9 Has the Agency examined whether this
10 project might cause or contribute to a violation of
11 the new standard?

12 MR. MOSHER: Well, we have put the applicant on
13 notice, and I believe Keith mentioned that the
14 certification will make note that they are not to
15 cause or contribute to water quality standards
16 violations.

17 We've got them monitoring DO upstream.
18 So, they know what the current condition is on a
19 day-to-day basis. We had them model the
20 diminishment of DO, once their project is in place
21 and the turbine is operating.

22 So, they have all the tools they need to
23 hold themselves under the provision of the
24 certification to not cause or contribute to

1 dissolved oxygen water quality standard violations.

2 I know we had numerous discussions with
3 them to that effect. So, I know they are well aware
4 of it. They have stated that there will be times
5 they'll have to shut it down because of dissolved
6 oxygen possibly.

7 MR. ROTCHE: Okay. So, data in the record
8 indicates that dissolved oxygen -- indicates
9 dissolved oxygen violations, and potentially even
10 super saturation, which indicates violations of
11 water quality standards and potential violations of
12 the Agency's proposed amendments to the effective
13 Standard 3.2.203, and that is occurring now before
14 the Facilities Bill. So, I guess just more
15 additional clarification on --

16 MR. MOSHER: Let me stop you there for a
17 minute. There's no official Illinois EPA
18 determination that 302.203 is violated in the river
19 at this location or anywhere downstream, that I'm
20 aware of.

21 So, maybe you have data that says that,
22 and we haven't seen it. Maybe it would be good if
23 you gave us the data that you've been looking at.

24 MR. ROTCHE: And then just for a clarification

1 on the Brandon Road DO assessment study plan, it
2 looks like it's beginning with -- that was the 2014
3 January, I think it came out, it looks like it
4 begins with 5 milligrams per liter upstream
5 concentration, when sampling indicates a potential
6 for much lower concentrations. I just wondered why
7 that is.

8 MR. MOSHER: They were asked to model to show
9 what a worst-case dissolved oxygen diminishment
10 would be, and they're not allowed to -- they
11 wouldn't be allowed to operate if DO was 2.6, or
12 whatever that low number was upstream, because they
13 would only be contributing to the violation of the
14 standard.

15 So, it was important to us to see what the
16 effect of DO diminishment would be, but not at such
17 a low -- at that low range of dissolved oxygen.
18 It's not going to be operating then. So, its's not
19 important to model it then.

20 MR. ROTCHE: But levels lower than 5 were taken
21 into account in the model?

22 MR. COHILL: I won't state it for sure, but I
23 believe there was very low flow. We wouldn't be
24 running anyway.

1 The turbines need a certain amount of flow
2 to operate. When the flow gets low enough, of
3 course we have the 1,000 CFS bypass. So, we
4 probably would be down, shut down.

5 MR. MOSHER: I was going to say we had our
6 water quality standard section engineer look at the
7 model, and he's not here tonight.

8 What I would do is if you have very
9 specific questions is to submit them, and he will
10 respond to those and give you the answers that you
11 are seeking I think.

12 MR. ROTCHE: Okay. That's all the questions I
13 have. Thank you.

14 HEARING OFFICER STUDER: Okay. You have
15 additional?

16 MR. ETTINGER: I was a little confused. Bob
17 said you were going to monitor DO above the dam.
18 Are you also monitoring below, and where would you
19 be putting that monitor?

20 MR. RUNGE: We're monitoring above, and we're
21 also monitoring below. I'm not exactly sure where
22 we're going to be monitoring. I think that is
23 something to be worked out.

24 MR. MOSHER: He means they are going to be

1 monitoring.

2 MR. RUNGE: Yeah, not us.

3 MR. MOSHER: We are going to make them monitor.

4 MR. ETTINGER: Okay, I understand. So, as I
5 understand it, a condition of the permit will be
6 there will be monitoring, and at an appropriate
7 location at the Brandon Pool and a monitoring at the
8 at appropriate location in the upper Dresden Pool;
9 and I would just suggest in selecting those
10 locations, you're going to have to use some care to
11 determine where you are likely to find the DO
12 setting, because you're not going to find a
13 violation obviously directly below the spillway,
14 even if there is an effect.

15 It will be somewhat downstream, in which
16 worst-case scenario, again, let's say it's coming
17 over the spillway at 6, and the dam is lowering it
18 by 1.7, you won't find the sag right at the end of
19 the spillway, it will be a little ways down from
20 there. So, that will have to be monitored.

21 HEARING OFFICER STUDER: Is there anyone else
22 that has an issue or comment they would like to make
23 on the record?

24 Let the record indicate no one raised

1 their hand. I thank everyone for their attendance
2 here this evening. I remind everyone that the
3 comment period is open until the 1st of August in
4 this proceeding.

5 This hearing is adjourned.

6 (WHICH WERE ALL THE PROCEEDINGS HAD.)

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1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF C O O K)
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4 PAMELA A. MARZULLO, C.S.R., being first duly sworn,
5 says that she is a court reporter doing business in the city
6 of Chicago; that she reported in shorthand the proceedings
7 had at the Proceedings of said cause; that the foregoing is
8 a true and correct transcript of her shorthand notes, so
9 taken as aforesaid, and contains all the proceedings of said
10 meeting.

11 _____
12 PAMELA A. MARZULLO
13 License No. 084-001624

14 SUBSCRIBED AND SWORN TO
15 before me this ____ day
16 of _____ 2014.

17 _____
18 Notary Public
19
20
21
22
23
24