



John C. Martin
Bryson C. Smith
Holland & Hart LLP

Richard E. Schwartz
Crowell & Moring LLP

January 8, 2020

The Honorable John H. Guthmann
Ramsey County District Court
1470 Ramsey County Courthouse
15 Kellogg Boulevard West
St. Paul, MN 55102

Re: Ramsey County Court File No. 62-CV-19-4626/Request to Conduct Michael Schmidt's Testimony via Interactive Video Teleconference

Dear Judge Guthmann:

Pursuant to rule 131 of the Minnesota Rules of General Practice governing the use of interactive video teleconference in civil cases, the Minnesota Pollution Control Agency ("MPCA") respectfully requests the Court to permit Mr. Michael Schmidt's testimony via interactive video teleconference ("ITV") on Tuesday, January 28, 2020.

When good cause exists, rule 131 of the Minnesota General Rules of Practice permits the use of ITV in civil cases. To determine "good cause," courts consider whether a timely objection has been made; whether any undue surprise or prejudice would result; the convenience of the parties, counsel, and the court; the cost and time savings; the importance and complexity of the proceeding; whether the proponent has been unable to procure the physical presence of a witness; the convenience to the parties and the proposed witness; whether the procedure would allow effective cross-examination; whether the surroundings maintain the solemnity and integrity of the proceedings; and other factors the court determines to be relevant. Minn. Gen. R. Prac. 131.02(d)(4).

Good cause exists to permit Mr. Schmidt's testimony through the use of ITV. As stated in his declaration (Attachment 1), Mr. Schmidt currently lives and works in Des Moines, Iowa. This Court cannot require him to come to St. Paul to testify. If he cannot testify from Des Moines, he may decide not to testify at all. Both parties have sought his testimony, so the Court will miss vital evidence if Mr. Schmidt is not allowed to testify from Des Moines. Permitting Mr. Schmidt to testify via ITV would not cause undue surprise to, or prejudice, Relators. Relators will have ample opportunity to cross examine Mr. Schmidt. In addition, permitting Mr. Schmidt to testify via ITV would not add to the evidentiary hearing's complexity.

MPCA suggests that Mr. Schmidt's testimony take place on Tuesday, January 28. Mr. Schmidt has listed January 28 among the dates he is available to testify. *See* Attachment 1.



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As prescribed under rule 131.03(a), MPCA is willing to incur any additional use or other fees over and above those normally incurred by the venue in making a video connection. Additionally, as required under rule 131.02(d)(1), this letter includes attached form notice (Attachment 2), advising Relators of their right to object to use of ITV, the consequences of failing to timely file an objection, the duty to exchange information under rule 131.04, and the prohibition on recording under rule 131.06(i).

We note that the Court may wish to consider this request in conjunction with MPCA's objection to Relators' deposition of Mr. Schmidt. For the reasons above, MPCA requests this Court to permit Mr. Michael Schmidt's testimony via interactive video teleconference on January 28, 2020.

Sincerely,

/s/ John C. Martin

John C. Martin
Bryson C. Smith
Holland & Hart LLP

/s/ Richard E. Schwartz

Richard E. Schwartz
Crowell & Moring LLP

cc: All Attorneys of Record