

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB,)	
)	
Complainant,)	
)	PCB 2014-134
v.)	(Enforcement-Air)
)	
AMEREN ENERGY MEDINA VALLEY)	
COGEN, LLC)	
)	
and)	
)	
FUTUREGEN INDUSTRIAL ALLIANCE INC.,)	
)	
Respondents)	

NOTICE OF FILING

TO: Eric M. Schwing
1100 South 5th Street
Springfield, IL 62703
E: eric.schwing@comcast.net

Eva Schueller
Sierra Club Environmental Law Program
85 Second St., Second Floor
San Francisco, CA 94105
E: eva.schueller@sierraclub.org

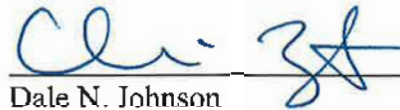
J. Michael Showalter
Renee Cipriano
Ashley Thompson
Schiff Hardin LLP
233 South Wacker Drive, Suite 6600
Chicago, IL 60606-6473
mshowalter@schiffhardin.com;
rcipriano@schiffhardin.com;
athompson@schiffhardin.com

Pollution Control Board, Attn: Clerk
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, IL 60601-3218

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board: (1) MOTION TO EXPEDITE; (2) DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO EXPEDITE; (3) DECLARATION OF KENNETH HUMPHREYS JR.; (4) DECLARATION OF CHRISTOPHER ZENTZ; and (5) CERTIFICATE OF SERVICE, a copy of which is herewith served upon you.

DATED this 16th day of July, 2014.

Van Ness Feldman LLP

A handwritten signature in blue ink, appearing to read "Dale N. Johnson", is written over a horizontal line.

Dale N. Johnson

Christopher D. Zentz

719 Second Avenue, Suite 1150

Seattle, WA 98104

T: 206-623-9372

E: dnj@vnf.com; cdz@vnf.com

TAB 1

MOTION TO EXPEDITE

Respectfully submitted this 16th day of July, 2014.

/s/ Christopher D. Zentz

Dale N. Johnson
Christopher D. Zentz
Van Ness Feldman LLP
719 Second Avenue, Suite 1150
Seattle, WA 98104-1728
Tel: 206-623-9372

Attorneys for Defendant
FutureGen Industrial Alliance, Inc.

/s/ J. Michael Showalter

Renee Cipriano
J. Michael Showalter
Ashley L. Thompson
Schiff Hardin LLP
233 South Wacker Drive, Suite 6600
Chicago, Illinois 60606
Tel: 312-258-5500

Attorneys for Defendant
AmerenEnergy Medina Valley Cogen, LLC

TAB 2

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO
EXPEDITE**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB,)	
)	PCB 2014-134
Complainant,)	(Enforcement-Air)
)	
v.)	
)	
AMEREN ENERGY MEDINA VALLEY)	
COGEN, LLC)	
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and)	
)	
FUTUREGEN INDUSTRIAL ALLIANCE INC.,)	
)	
Respondents.)	

DEFENDANTS’ MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO EXPEDITE

In support of their Motion for Expedited Review of the above captioned case pursuant to 35 Illinois Adm. Code 101.512 filed herewith, Defendants AmerenEnergy Medina Valley Cogen, LLC (“Ameren”) and the FutureGen Industrial Alliance Inc. (the “Alliance”) [collectively, “Defendants”] state as follows:

I. PRELIMINARY STATEMENT

Time is of the essence in this case. One billion dollars (\$1B) in contractually-obligated government funding and seven hundred million (\$700M) in commercial financing is at stake if this case is not resolved expeditiously. The Sierra Club filed the complaint in this case alleging that Defendants lack permits necessary to begin construction (“Claim”) shortly after the United States District Court for the Central District of Illinois (“U.S. District Court”) dismissed an identical claim.

The existence of this baseless Claim impedes the Defendants’ ability to finance and construct the FutureGen 2.0 Project (“Project”) at Ameren’s existing Meredosia Energy Center in Meredosia, Illinois, which is a state-of-the-art clean coal demonstration project funded in part by the United States Department of Energy (“USDOE”).

The Claim casts a dark shadow over the ongoing commercial financing effort, which raises substantial investor concern. In addition, the USDOE funding carries with it a spending deadline, and delays put this funding at risk of irrecoverable loss. If either the commercial financing cannot be secured or USDOE funding is lost, the project will terminate, playing right into the hands of the Plaintiff's strategy.

The Defendants request that this Board expedite review of this case, including accelerated consideration of the Defendants' Motion for Summary Judgment filed on July 15, 2014.

II. FACTUAL BACKGROUND

A. Procedural Background.

On December 9, 2013, the Sierra Club filed a citizen suit pursuant to 42 U.S.C. § 7604(a)(3) in U.S. District Court, based on the false premise that Ameren and the Alliance are proposing to construct the Project without the necessary federal air permit. Declaration of Christopher Zentz ("Zentz Decl.") attached hereto. The Sierra Club did not serve the summons and complaint on either Ameren or the Alliance until February 20, 2014. *Id.* At Defendants' request, the U.S. District Court expedited consideration of a motion to dismiss filed by Defendants on jurisdictional grounds. *Id.* On or about May 20, 2014, the U.S. District Court chose to abstain in favor of review of Sierra Club's claim by the State of Illinois and granted Defendants' motion to dismiss. *Id.* Sierra Club proceeded to file the instant complaint alleging violations of the Illinois Environmental Protection Act with this Board on or about June 11, 2014.

Initially, Defendants were not properly served. However, Sierra Club filed an Amended Notice of Complaint on June 25, 2014 and, in doing so, served the Defendants. Due to the significant time constraints associated with the Project and the threat to Project financing and construction posed by the Claim, Ameren and the Alliance have chosen to ignore the lack of

proper service and, instead, have decided to serve on Sierra Club this motion and a Motion for Summary Judgment.

B. Impact of Sierra Club Challenge on the Project.

The Defendants seek expedited disposition of this case as a matter of necessity. On August 5, 2010, USDOE Steven Chu and U.S. Senator Richard Durbin of Illinois announced an award of \$1B in funding for the Project. These funds were appropriated by the American Recovery and Reinvestment Act of 2009 (“ARRA”). Pub. L. No. 111-5. Pursuant to 31 U.S.C. Section 1552, the \$1B in federal funds made available under ARRA must be expended by the USDOE within five years of the end of the availability of the appropriation, which is September 30, 2015 (the “ARRA Spending Deadline”). The completion of the commercial financing transaction, and thus major construction spending, cannot occur prior to resolution of the instant case. Moreover, delays in major construction spending create a major financial threat that the full amount of ARRA funds for the Project cannot be spent and some or all of the ARRA funds will expire. Even if the threat of ARRA funding expiration did not exist, the complaint frustrates the ability of the Alliance to obtain private-sector commercial financing in a timely manner, thus imperiling the entire Project. Declaration of Ken Humphreys (“Humphreys Decl.”) filed herewith, ¶¶ 5-12.

As discussed in the Motion For Summary Judgment, the Project will convert an existing and currently idle electric generating plant in Meredosia, Illinois into a first-of-its-kind, coal-fueled, near-zero emissions power plant. The oxy-combustion technology deployed as part of the Project will reduce traditional pollutants to near-zero levels and will concentrate and pressurize carbon dioxide so that it can be transported via pipeline and then stored in a suitable geologic formation nearby. The success of this Project will pave the way for reducing emissions from coal electric generating plants across the country. As such, this is an important project for the Defendants and the federal government, and, of course, for our environment.

The Project schedule does not allow time for further and extended litigation delays. Humphreys Decl., at ¶¶ 6-12. To maintain the Project's schedule and maintain financial viability of the Project, it is critical that the pending Claim be resolved expeditiously. *Id.* at ¶ 12. Even if Congress were to extend the ARRA Spending Deadline, for a variety of reasons, a lengthy delay could result in USDOE withholding the ARRA funding for the Project. *Id.*, at ¶¶ 7-12. Even if Congress were to extend the ARRA Spending Deadline, the unresolved status of the Sierra Club's Complaint will prevent the commercial financing transaction from being concluded. *Id.*

Furthermore, if the Defendants were ultimately to prevail on the merits of the complaint on a normal schedule, the Alliance's commercial financing efforts will be damaged, as they have already been impacted. During March and April of 2014, the Alliance commenced a major effort to obtain equity funding for the Project to satisfy USDOE requirements. *Id.* at ¶ 9. The equity markets are extremely sensitive to risks posed by litigation delays, such as those posed by the pending Complaint. The Alliance has also commenced a major Project financing effort involving the debt markets. The debt markets are even more sensitive to litigation delays than equity markets. *Id.* Simply put, the mere presence of the Complaint is damaging to the Project and threatens the Alliance's ability to obtain the private-sector financing necessary for the Project to advance. *Id.*

[We have said this already]

III. ARGUMENT

The Board may grant expedited review of a claim if material prejudice will result from denial of the motion. 35 Ill. Adm. Code 101.512. Failure to grant Defendants' request for expedited review will result in severe prejudice to Defendants.

It is imperative that the Claim be resolved as soon as possible. Failure to do so could result in the loss of all or part of the \$1B in government funding for the Project, at a substantial loss to taxpayers, as well as the lost opportunity to complete this Project, which holds substantial

promise for both industry and the environment. Accordingly, the Defendants respectfully request that this Board grant the Motion to Expedite.

IV. CONCLUSION

For the reasons set forth herein, the Defendants respectfully request that this Board enter an order directing expedited review of this case.

Respectfully submitted this 16th day of July, 2014.

/s/ Christopher D. Zentz

Dale N. Johnson
Christopher D. Zentz
Van Ness Feldman LLP
719 Second Avenue, Suite 1150
Seattle, WA 98104-1728
Tel: 206-623-9372

Attorneys for Defendant
FutureGen Industrial Alliance, Inc.

/s/ J. Michael Showalter

Renee Cipriano
J. Michael Showalter
Ashley L. Thompson
Schiff Hardin LLP
233 South Wacker Drive, Suite 6600
Chicago, Illinois 60606
Tel: 312-258-5500

Attorneys for Defendant
AmerenEnergy Medina Valley Cogen, LLC

TAB 3

**DECLARATION OF
KENNETH HUMPHREYS JR**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB,)	
)	PCB 2014-134
Complainant,)	
)	DECLARATION OF KENNETH K.
v.)	HUMPHREYS JR. IN SUPPORT OF
)	DEFENDANTS' MOTION FOR
AMEREN ENERGY MEDINA VALLEY)	EXPEDITED REVIEW
COGEN, LLC)	
)	
and)	
)	
FUTUREGEN INDUSTRIAL ALLIANCE INC.,)	
)	
Respondents.)	

I, Kenneth K. Humphreys Jr. declare under penalty of perjury that the following is true and correct:

1. I am over eighteen years of age, have personal knowledge of the matters herein, and am competent to testify regarding all matters set forth herein.

2. I am the chief executive officer of the FutureGen Alliance (the "Alliance"), a non-profit corporation and international consortium of companies that will build and operate the FutureGen 2.0 clean energy project in Morgan County, Illinois (the "Project"). I have led the Alliance since September 2010, when the U.S. Department of Energy ("USDOE") restructured the FutureGen project to be the world's first large-scale, near-zero emissions power plant using carbon capture and storage ("CCS") and oxy-combustion technologies. I previously served as the Alliance's managing director. Prior to this role with the Alliance, I was Director of the Carbon Management Initiative and was Sustainable Technology Development Chief Engineer at Battelle Memorial Institute, a non-profit dedicated to developing innovative energy solutions and preserving natural resources. I have spent the last 20 years working in the energy sector on public and private sector ventures and am a recognized expert in CCS technology.

3. I graduated from West Virginia University and have a master's degree in engineering management from Washington State University.

4. The Alliance is a non-profit corporation created to benefit the public interest and the interests of science through research, development, and demonstration of near-zero emissions coal technology. The Alliance is partnering with the USDOE on the Project. Members of the Alliance include some of the world's largest coal producers, coal users, and coal equipment suppliers. The active role of industry in the Project ensures that the public and private sector share the cost and risk of developing and demonstrating for full-scale commercial application the advanced technologies used in the Project.

5. On August 5, 2010, USDOE Secretary Steven Chu and U.S. Senator Richard Durbin of Illinois announced an award of one billion dollars (\$1B) in funding for the Project. In September 2010, the Alliance signed a Cooperative Agreement with USDOE to develop, in partnership with Ameren, the FutureGen 2.0 project. The Project is a commercial-scale oxy-combustion energy project that will use CCS technology, which has never been demonstrated on a full-scale electric utility application anywhere in the world. The Project is a public-private partnership, with costs shared by USDOE, the Alliance, and the other project partners. The Project consists of three distinct, but related components: (i) An oxy-combustion coal-fueled electric power generation plant with carbon dioxide capture technology (the "Power Plant"); (ii) a carbon dioxide pipeline ("CO₂ Pipeline") that will transport carbon dioxide from the Power Plant to a deep geologic carbon dioxide storage site ("the Storage Facility"); and (iii) the Storage Facility, where the carbon dioxide will be injected into a deep geologic formation and permanently stored. The Alliance is working with Ameren Energy Medina Valley Cogen, LLC, and other private entities to develop the Project as a coal-fueled oxy-combustion power plant with emissions far lower than conventional coal-fueled power plants.

6. The \$1B in federal funds were appropriated by the American Recovery and Reinvestment Act of 2009 ("ARRA"). Pub. L. No. 111-5. Pursuant to 31 U.S.C. § 1552, the \$1B in federal funds made available under ARRA must be expended by the USDOE within five years of the end of the availability of the appropriation, which is September 30, 2015 (the "ARRA Spending Deadline"). The completion of the commercial financing transaction, which is

a prerequisite to major construction spending, cannot occur prior to resolution of the instant case. Moreover, delays in major construction spending financially threaten the ability to spend the full amount of ARRA funds for the Project, as some or all of the ARRA funds may expire.

7. Even without the risk of the ARRA funding expiration, the Claim frustrates the ability of the Alliance to obtain private-sector commercial financing in a timely manner, thus imperiling the entire Project.

8. If Congress extended the ARRA Spending Deadline, the unresolved status of the Sierra Club's Claim will still prevent the commercial financing transaction from being concluded.

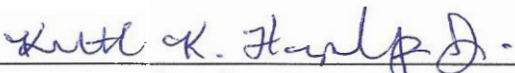
9. Furthermore, if the Defendants prevail on the merits of the Claim on a normal schedule, the Alliance's commercial financing efforts have been and will continue to be negatively impacted. During March and April of 2014, the Alliance undertook a major effort to obtain equity funding for the Project to satisfy USDOE requirements. The equity markets are extremely sensitive to risks posed by litigation delays, such as those posed by the pending Claim. The Alliance has also undertaken a major Project financing effort involving the debt markets. The debt markets are even more sensitive to litigation delays than equity markets. To date, neither the equity or debt markets will finance the Project while the Claim remains outstanding. Therefore, the mere presence of the Claim is damaging to the Project and threatens the Alliance's ability to obtain the private-sector financing necessary for the Project to advance.

10. Failure to obtain firm commercial financing commitments will likely result in a decision by USDOE to withdraw ARRA funding for the Project. The Claim complicates the Alliance's ability to obtain private-sector financing and, therefore, also threatens continued USDOE funding of the Project. The ARRA Spending Deadline, and thus the schedule for the Project, does not allow additional time for extended litigation delays. To maintain the Project's schedule and necessary compliance with the ARRA Spending Deadline, it is critical that the Claim be resolved as expeditiously as possible.

11. In addition to the impact of the Claim on financing, litigation delays associated with the Claim subject the Project to greater cost uncertainty. Project vendors are subject to market forces and price their services based on current or anticipated market costs and the availability of sub-contractor services and equipment. Litigation delay increases the risk that the Alliance will be unable to obtain timely and economical agreements with vendors, or worse, that essential equipment or services will become unavailable. As noted above, inability of the Project to obtain timely and economical agreements with vendors will in turn adversely impact the Project's financing efforts and the availability of continued ARRA funding.

12. The Project schedule does not allow time for further and extended delays associated with the Claim. To maintain the Project's schedule and maintain financial viability of the Project, it is critical that the pending Claim be resolved expeditiously. Delay in resolving the Claim risks disruption of the Project schedule such that ARRA funds cannot be spent before the ARRA Spending Deadline. If it appears that sufficient time does not remain to productively spend all or nearly all ARRA funding before the ARRA Spending Deadline—with a portion of the construction funding therefore expiring-mid-construction—USDOE could prevent commencement of construction and direct early termination of the Project.

EXECUTED on July 15, 2014.



Kenneth K. Humphreys Jr., Declarant

TAB 4

DECLARATION OF
CHRISTOPHER ZENTZ

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB,)
)
 Complainant,) PCB 2014-134
) (Enforcement-Air)
)
 v.)
)
 AMEREN ENERGY MEDINA VALLEY)
 COGEN, LLC)
)
 and)
)
 FUTUREGEN INDUSTRIAL ALLIANCE INC.,)
)
 Respondents.)

**DECLARATION OF CHRISTOPHER D. ZENTZ IN SUPPORT OF
DEFENDANTS' MOTION TO EXPEDITE**

I, Christopher D. Zentz, state as follows:

1. I am over eighteen years of age, have personal knowledge of the matters herein, and am competent to testify regarding all matters set forth herein.

2. Attached hereto as **Exhibit A** is a true and correct copy of Complainant Sierra Club's Amended Notice of Filing and Complaint filed with the Pollution Control Board on June 30, 2014.

3. Attached hereto as **Exhibit B** is a true and correct copy of Illinois Adm. Code, Title 35, 101 Subpart A; 35 Ill. Adm. Code 101.512.

4. Pursuant to 35 Ill. Adm. Code 101.512 and based upon the declaration of Kenneth K. Humphreys Jr. filed herewith, I declare that the facts cited in the Motion to Expedite, and Memorandum of Law in Support of the Motion to Expedite, filed herewith are true.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 16th day of July, 2014.



Christopher D. Zentz
Van Ness Feldman LLP
719 Second Avenue, Suite 1150
Seattle, WA 98104-1728

EXHIBIT A

State of Illinois
Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601
<http://www.ipcb.state.il.us/>

RECEIVED
CLERK'S OFFICE
JUN 30 2014
STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the matter of:

SIERRA CLUB,)
)
Complainant,)
)
vs.)
)
AMEREN ENERGY MEDINA VALLEY)
COGEN, LLC)
)
and)
)
FUTUREGEN INDUSTRIAL ALLIANCE)
INC.,)
)
Respondents.)

 ORIGINAL

PCB No. -- 14-134

AMENDED NOTICE OF FILING

PLEASE TAKE NOTICE that on June 11, 2014 I filed with the Clerk of the Pollution Control Board of the State of Illinois: a COMPLAINT, a copy of which is attached hereto and herewith served upon you; and an ENTRY OF APPEARANCE for Eric Schwing, and MOTION TO APPEAR PRO HOC VICE and APPEARANCE for Eva Schueller, copies of which are attached hereto and herewith served upon you. Pursuant to the Board's procedural rules, the documents referenced above are served upon Respondents addressed as set forth above by Certified Mail. 35 Ill. Admin. Code 103.204(a). Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in

this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1-19 (2007), to correct the violations alleged in the Complaint filed in this case.

Respectfully submitted,

/s/ Eric Schwing

*Eric Schwing
w/ permission*

DATED: June 25, 2014

Eric M Schwing
Attorney at Law
1100 South 5th Street
Springfield, IL 62703
217-544-4440
Email: eric.schwing@comcast.net

Eva Schueller
Associate Attorney
Sierra Club Environmental Law Program
85 Second St., Second Floor
San Francisco, CA 94105
Email: eva.schueller@sierraclub.org
Tel: (415) 977-5637

Counsel for the Complainant

RECEIVED
CLERK'S OFFICE
JUN 30 2014
STATE OF ILLINOIS
Pollution Control Board

CERTIFICATE OF SERVICE

I hereby certify that I did on June 25, 2014, send by certified mail, return receipt requested, with postage thereon fully prepaid, by depositing in a United States Post Office in San Francisco, California, a true and correct copy of the following instruments, entitled: AMENDED NOTICE OF FILING, ENTRY OF APPEARANCE for Eric Schwing, MOTION TO APPEAR PRO HAC VICE and APPEARANCE for Eva Schueller, and COMPLAINT, in the above-captioned matter, to the following parties:

TO: AMERENENERGY MEDINA
VALLEY COGEN, LLC
Jacqueline K. Voiles
200 W. Washington St.
Springfield, IL 62701

FUTUREGEN INDUSTRIAL ALLIANCE
Standard Corporate Services
1315 W Lawrence Ave
Springfield, IL 62704

as authorized by the Clerk of the Illinois Pollution Control Board under 35 Ill. Admin. Code §§ 101.302(c), 101.304(c).

DATED: June 25, 2014

/s/ Eric Schwing

E. Schwing
w/ permission

Eric M Schwing
Attorney at Law
1100 South 5th Street
Springfield, IL 62703
217-544-4440
Email: eric.schwing@comcast.net
Counsel for the Complainant

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature <input checked="" type="checkbox"/> <i>C. Jacobson</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee	
	B. Received by (Printed Name) <i>C. JACOBSON</i>	C. Date of Delivery <i>6/16/2014</i>
1. Article Addressed to: FUTUREGEN INDUSTRIAL ALLIANCE Dale N Johnson VAN NESS FELDMAN LLP Suite 1150 719 Second Avenue Seattle, WA 98104	D. Is delivery address different from item 1? <input checked="" type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from) <u>7014 0510 0000 9385 7158</u>		
PS Form 3811, February 2004	Domestic Return Receipt	102595-02-M-1540

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature <input checked="" type="checkbox"/> <i>J. Thieriault</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
	B. Received by (Printed Name) <i>J. THIERIAULT</i>	C. Date of Delivery <i>6/16/14</i>
1. Article Addressed to: Pollution Control Board Attn: Clerk 100 West Randolph Street, James R. Thompson Center, Suite 11-500 Chicago, Illinois 60601-3218	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from service of) <u>7011 0470 0003 2574 1077</u>		
PS Form 3811, February 2004	Domestic Return Receipt	102595-02-M-1540

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature <input checked="" type="checkbox"/> <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
	B. Received by (Printed Name) <i>[Signature]</i>	C. Date of Delivery <i>6-17-14</i>
1. Article Addressed to: AMERENENERGY MEDINA VALLEY COGEN, LLC James Michael Showalter Rence Cipriano Ashley Thomson SCHIFF HARDIN LLP Suite 6600 233 South Wacker Drive Chicago, IL 60606-6473	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from sen) <u>7014 0510 0000 9385 7141</u>		
PS Form 3811, February 2004	Domestic Return Receipt	102595-02-M-1540

State of Illinois
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<http://www.ipcb.state.il.us/>

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STATE OF ILLINOIS
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PCB No. -- 14-134

NOTICE OF FILING

To: AMERENENERGY MEDINA VALLEY COGEN, LLC
James Michael Showalter
Renee Cipriano
Ashley Thomson
SCHIFF HARDIN LLP
Suite 6600
233 South Wacker Drive
Chicago, IL 60606-6473
312-258-5561
Email: mshowalter@schiffhardin.com

FUTUREGEN INDUSTRIAL ALLIANCE
Dale N Johnson
VAN NESS FELDMAN LLP
Suite 1150
719 Second Avenue
Seattle, WA 98104
206-623-9372
Email: dnj@vnf.com

PLEASE TAKE NOTICE that on this date I filed with the Clerk of the Pollution Control Board of the State of Illinois: a COMPLAINT, a copy of which is attached hereto and herewith

served upon you; and an ENTRY OF APPEARANCE for Eric Schwing, and MOTION TO APPEAR PRO HOC VICE and APPEARANCE for Eva Schueller, copies of which are attached hereto and herewith served upon you. Pursuant to the Board's procedural rules, the documents referenced above are served upon Respondents addressed as set forth above by Certified Mail. 35

III. Admin. Code 103.204(a). Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1-19 (2007), to correct the violations alleged in the Complaint filed in this case.

Respectfully submitted,

/s/ Eric Schwing

E. Schwing
w/ permission

DATED: June 11, 2014

Eric M Schwing
Attorney at Law
1100 South 5th Street
Springfield, IL 62703
217-544-4440
Email: eric.schwing@comcast.net

Eva Schueller
Associate Attorney
Sierra Club Environmental Law Program
85 Second St., Second Floor
San Francisco, CA 94105
Email: eva.schueller@sierraclub.org
Tel: (415) 977-5637

Counsel for the Complainant

CERTIFICATE OF SERVICE

I hereby certify that I did on June 11, 2014, send by certified mail, return receipt requested, with postage thereon fully prepaid, by depositing in a United States Post Office in San Francisco, California, a true and correct copy of the following instruments, entitled: NOTICE OF FILING, ENTRY OF APPEARANCE for Eric Schwing, MOTION TO APPEAR PRO HAC VICE and APPEARANCE for Eva Schueller, and COMPLAINT, in the above-captioned matter, to the following parties:

TO: AMERENENERGY MEDINA
VALLEY COGEN, LLC
James Michael Showalter
Renee Cipriano
Ashley Thomson
SCHIFF HARDIN LLP
Suite 6600
233 South Wacker Drive
Chicago, IL 60606-6473
312-258-5561
Email: mshowalter@schiffhardin.com

FUTUREGEN INDUSTRIAL ALLIANCE
Dale N Johnson
VAN NESS FELDMAN LLP
Suite 1150
719 Second Avenue
Seattle, WA 98104
206-623-9372
Email: dnj@vnf.com

as authorized by the Clerk of the Illinois Pollution Control Board under 35 Ill. Admin. Code §§ 101.302(c), 101.304(c).

DATED: June 11, 2014

/s/ Eric Schwing

E. Schwing
w/permission

Eric M Schwing
Attorney at Law
1100 South 5th Street
Springfield, IL 62703
217-544-4440
Email: eric.schwing@comcast.net
Counsel for the Complainant

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the matter of:

SIERRA CLUB,)
)
 Complainant,)
)
 vs.)
)
 AMEREN ENERGY MEDINA VALLEY)
 COGEN, LLC)
)
 and)
)
 FUTUREGEN INDUSTRIAL ALLIANCE)
 INC.,)
)
 Respondents.)

PCB No. --

ENTRY OF APPEARANCE

TO: Clerk of the Illinois Pollution Control Board and All Parties of Record.

Please enter my appearance as counsel of record in this case for:

SIERRA CLUB, Complainant.

Respectfully submitted,

/s/ Eric Schwing

*Subl
w/permission*

DATED: June 11, 2014

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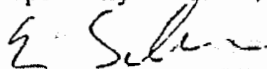
ENTRY OF APPEARANCE

TO: Clerk of the Illinois Pollution Control Board and All Parties of Record.

Please enter my appearance as counsel of record in this case for:

SIERRA CLUB, Complainant.

Respectfully submitted,



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COMPLAINT

1. This is a "citizen enforcement suit" under Section 31(d) of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/31(d); 415 ILCS 5/9.1(d); *Sierra Club v. Midwest Generation, LLC*, PCB 13-15, slip op. at 24 (Oct. 3, 2013).

2. Sierra Club seeks an order requiring the Respondents, AmerenEnergy Medina Valley Cogen, LLC and FutureGen Industrial Alliance, Inc., to comply with federal requirements as incorporated into Illinois law, with respect to the proposed construction of a new coal-fired Boiler #7 at the Meredosia Energy Center power plant located in Meredosia, Illinois.

3. As a result of burning coal, Boiler #7 will emit thousands of tons of carbon dioxide, nitrous oxides, nitrogen oxides, sulfur oxides, particulate matter and carbon monoxide each year. Those pollutants contribute to climate change, respiratory distress, cardiovascular disease, and even premature mortality. Nitrogen oxides and sulfur oxides in the air also contribute to acid rain, which sterilizes lakes and damages property, crops and forests. The presence of these pollutants in the atmosphere is also associated with increased hospital admissions and emergency room visits.

4. Respondents' current minor source permit allows it to emit 1,691.7 tons per year of the air pollutant nitrogen oxides (NOx). A 2013 Chrysler/Jeep Patriot two-wheel drive emits 0.10 grams/mile of NOx. So 12,780.037 people, about the entire population of the state of Illinois, could each drive Jeep Patriots 12,000 miles per year to equal the NOx emissions from the Respondents' coal-burning power plant. NOx emissions are a very serious matter. Not only is NOx a harmful pollutant in its own right, it transforms into particulate matter less than 2.5 microns in diameter once it is emitted into the ambient air and also contributes to ozone, commonly referred to as smog, formation. *New York v. EPA*, 133 F.3d 987, 989 (7th Cir. 1998). Morgan County is designated attainment for ozone, not because it has low ozone levels, but because it has no ozone monitor. Nearby Jersey County is violating the national ambient air quality standard for ozone based on 2010 – 2012 data. The Illinois Environmental Protection Agency has admitted that Jersey County remained in violation of the national ambient air quality standard based on 2011 – 2013 data. Similarly, neighboring Sangamon County's available ozone data indicates that it has unsafe ozone levels based on 2011 and 2012 data.

5. Respondents propose to construct Boiler #7 without first obtaining a Prevention of Significant Deterioration (PSD) permit authorizing that construction as required by the Illinois and federal law, without meeting emission limits that are "best available control technology," without installing appropriate technology to control emissions of nitrogen oxides, sulfur dioxides, particulate matter, and other pollutants, and without making a determination that emissions increases from the modifications would not cause or contribute to a violation of any National Ambient Air Quality Standard or applicable maximum allowable increases.

6. Respondents' own analysis already shows that Boiler #7 will contribute to violations of the public health based sulfur dioxide and nitrogen oxides national ambient air quality standards, thus endangered the health of innocent people including Sierra Club members.

PARTIES

7. Complainant Sierra Club is an incorporated, not-for-profit organization with its headquarters at 85 Second Street, 2nd Floor, San Francisco, California, and its Illinois Chapter Office at 70 E. Lake Street, Suite 1500, Chicago, Illinois 60601. Its purpose is to preserve, protect, and enhance the natural environment. Its mission includes reducing and eliminating pollution from the mining, combustion, water consumption and waste disposal of coal, which negatively affects Sierra Club's members as well as members of the public. Sierra Club has over a million members and supporters nationwide, including over 23,000 members and supporters in Illinois.

8. Sierra Club is a "person" within the meaning of 415 ILCS 5/31(d).

9. AmerenEnergy Medina Valley Cogen, LLC is a corporation organized under the laws of Illinois. It is a subsidiary of Ameren Energy Resources Company, LLC which is a non-

rate regulated, that is "merchant," electric generating company. AmerenEnergy Resources, LLC is a subsidiary of Ameren Corporation, an investor-owned, publicly traded, electric company.

10. FutureGen Industrial Alliance, Inc. is a nonprofit corporation organized under the laws of Delaware.

11. Sierra Club has members who live, work, engage in other economic activity, garden and recreate around and downwind from the Meredosia Energy Center. These members are and will be impacted negatively by pollution from the Meredosia Energy Center. The health and welfare of Sierra Club's members, as well as their enjoyment of outdoor activities, has been and will be harmed by pollution from the Meredosia Energy Center. In addition, Respondents' violation of the Illinois Environmental Protection Act and the Clean Air Act denies Sierra Club and its members information which Sierra Club and its members are entitled to under the law.

12. Furthermore, Respondents' violation of the law denies Sierra Club and its members procedural and due process protections which Sierra Club and its members are entitled to under Illinois law and the United States Constitution.

13. These injuries are traceable to Respondents' violation of the Illinois Environmental Protection Act set forth in this complaint.

14. An order of this Board enjoining Respondents from constructing Boiler #7 without a PSD permit, will delay pollution and also require significant decreases in pollution. The delay and reductions in air pollution will redress the injuries to Sierra Club's members. In addition, an order of this Board enjoining Respondents from constructing Boiler #7 without a PSD permit, will provide Sierra Club and its members with information and procedural and due

process protections which Sierra Club and its members are entitled to under the Illinois Environmental Protection Act, the Clean Air Act and the Constitution.

15. Sierra Club members' injuries would also be redressed in part by any civil penalties awarded pursuant to Illinois law, including a beneficial mitigation project, and other required mitigation measures.

GENERAL ALLEGATIONS

16. The Clean Air Act, relevant provisions of which are incorporated into Illinois law, requires that the United States Environmental Protection Agency (US EPA) promulgate National Ambient Air Quality Standards (NAAQS), which are upper limits on air pollution in the ambient air, to protect public health and welfare, 42 U.S.C. § 7409.

17. The Clean Air Act also requires US EPA to designate areas where the air quality meets or exceeds NAAQS for each pollutant. An area that meets the NAAQS for a particular pollutant is termed an "attainment" area, whereas an area that exceeds the NAAQS is a "nonattainment" area. Areas for which there is insufficient information to determine compliance with NAAQS are "unclassifiable," 42 U.S.C. § 7407(d).

18. Respondents propose to construction Boiler #7 in Morgan County, Illinois. At the times relevant to this complaint, Morgan County was classified as either "attainment" or "unclassifiable" for all pollutants. This classification is largely due to the lack of ambient air monitors in Morgan County.

19. The Clean Air Act's Prevention of Significant Deterioration (PSD) Program, incorporated into Illinois law through Illinois Environmental Protection Act Section 9.1(d), applies to major stationary sources of pollution in areas designated attainment or unclassifiable.

20. Under the Clean Air Act's PSD program, a new major source of air pollution cannot be constructed, and an existing major source of air pollution cannot undergo a "major modification," without a permit. *See* 42 U.S.C. §§ 7475(a) (prohibiting the construction of a major emitting facility without PSD review, issuance of a PSD permit, and imposition of BACT limits) and 7479(2)(C) ("construction" includes the "modification" of a source or facility); 40 C.F.R. § 52.21(a)(2)(iii)(2013). Therefore, any major stationary source in an attainment or unclassifiable area that proposes to construct a new major stationary source or "major modification" must first obtain a PSD permit.

21. Included in the definition of "major source" are fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input. 40 C.F.R. § 52.21(b)(1)(i)(a).

22. A project of adding a new unit at an existing major stationary source is a major modification triggering PSD requirements if the new unit causes both a significant emission increase and a significant net emission increase. 40 C.F.R. § 52.21(a)(2)(iv)(a)(2013).

23. The test to determine the emission increase when a new emission unit is added is the actual to potential test. 40 C.F.R. § 52.21(a)(2)(iv)(d)(2013).

24. The Meredosia Energy Center and Boiler #7 units are electric utility steam generating units because they are "steam electric generating unit[s] constructed for the purpose of supplying more than one third of [their] potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale." 40 C.F.R. §52.21(b)(31)(2013).

25. Boiler #7 has the "potential to emit," as that term is defined in 40 C.F.R. 52.21(b)(4)(2013), in excess of 100 tons per year of the following pollutants: nitrogen oxides, sulfur dioxide, carbon monoxide, and ozone and in excess of 100,000 tons per year of the following pollutants: carbon dioxide equivalent (CO_{2e}).

26. Boiler #7 is a "major emitting facility," as that term is used in 42 U.S.C. § 7475(a) and "major stationary source," as that term is used in 40 C.F.R. § 52.21(b)(1)(2013).

27. Meredosia Energy Center has the "potential to emit," as that term is defined in 40 C.F.R. 52.21(b)(4)(2013), in excess of 100 tons per year of the following pollutants: nitrogen oxides, sulfur dioxide, carbon monoxide, particulate matter, particulate matter less than 10 microns in diameter (PM₁₀), particulate matter less than 2.5 microns in diameter (PM_{2.5}) and ozone and in excess of 100,000 tons per year of the following pollutants: carbon dioxide equivalent (CO_{2e}).

28. Meredosia Energy Center is a "major emitting facility," as that term is used in 42 U.S.C. § 7475(a) and "major stationary source," as that term is used in 40 C.F.R. § 52.21(b)(1)(2013).

29. The construction of Boiler #7 will cause a significant emission increase and a significant net emission increase for the following pollutants: PM, PM₁₀, PM_{2.5}, nitrogen oxides, sulfur dioxide, ozone, sulfuric acid mist, fluorides, carbon monoxide and CO_{2e}.

30. For areas located in areas designated as "attainment" or "unclassifiable," the PSD programs require units undertaking major modifications to "apply best available control technology for each air contaminant for which it would be a significant net emissions increase at the source." 42 U.S.C. § 7475(a)(4) (a major emitting facility that commences "construction,"³

the definition of which includes modification, is "subject to the best available control technology for each pollutant subject to regulation under this chapter" that are emitted or result from the modification).

31. The PSD program also requires the owners or operators of a proposed major modification to demonstrate that allowable emission increases from such modification would not cause or contribute to air pollution in violation of either (1) any national ambient air quality standard in any air quality control region or (2) any applicable maximum allowable increase over the baseline concentration in any area. 42 U.S.C. § 7475(a)(3).

32. Ameren failed to obtain from US EPA a permit pursuant to the PSD program for the construction of Boiler # 7.

FIRST CLAIM

(Major Modification Without a PSD Permit)

33. Paragraphs 1 through 32 are incorporated herein by reference.

34. Respondents propose to construct or are constructing Boiler # 7, which is a new or modified major emitting facility, without a permit required under the PSD program.

35. Based upon the foregoing, Respondents have violated and continue to violate Section 9.1(d) of the Illinois Environmental Protection Act, which incorporates Section 165(a) of the Clean Air Act, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21(a)(2)(iii)(2013) into Illinois law. Unless restrained by an order of this Board, these and similar violations of the PSD provisions of the Act are and will be ongoing.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing, the Sierra Club requests that this Board:

1. Permanently enjoin Respondents from proposing to or constructing Boiler # 7, except in accordance with the Illinois Environmental Protection Act, the Clean Air Act, and any applicable regulatory requirements;
2. Order Respondents to apply for and obtain a PSD permit from the United States Environmental Protection Agency in conformity with the requirements of the PSD provisions of the Clean Air Act, as incorporated into Illinois law, before proposing to or constructing Boiler #7;
3. Order Respondents to pay civil penalties under 415 ILCS 5/42; including a potential beneficial mitigation project;
4. Declare that Respondents were required to obtain a PSD for Boiler # 7;
5. Award any other relief that the Board finds just and equitable.

Respectfully submitted,

/s/ Eric Schwing

E. Schwing
w/ permission

DATED: June 11, 2014

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Attorney for the Complainant Sierra Club

NOTICE TO RESPONDENT

NOTE: THIS STATEMENT MUST BE INCLUDED IN THE SERVICE OF THE FORMAL COMPLAINT ON THE RESPONDENT

INFORMATION FOR RESPONDENT RECEIVING FORMAL COMPLAINT

Please take notice that today I filed with the Clerk of the Illinois Pollution Control Board (Board) a formal complaint, a copy of which is served on you along with this notice. You may be required to attend a hearing on a date set by the Board.

Information about the formal complaint process before the Board is found in the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.*) and the Board's procedural rules (35 Ill. Adm. Code 101 and 103). These can be accessed at the Board's Web site (www.ipcb.state.il.us). The following is a summary of some of the most important points in the Act and the Board's procedural rules. It is provided for general informational purposes only and does not constitute legal advice or substitute for the provisions of any statute, rule, or regulation:

Board Accepting Formal Complaint for Hearing; Motions

The Board will not accept this formal complaint for hearing if the Board finds that it is either "duplicative" or "frivolous" within the meaning of Section 31(d) of the Act (415 ILCS 5/31(d)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202). "Duplicative" means that an identical or substantially similar case is already pending before the Board or in court. See 35 Ill. Adm. Code 103.212(a) and item 10 of the formal complaint.

"Frivolous" means that the formal complaint seeks relief that the Board does not have the authority to grant, or fails to state a cause of action upon which the Board can grant relief. For example, the Board has the authority to order a respondent to stop polluting and pay a civil penalty, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does not have the authority, however, to award attorney fees to a citizen complainant. See 35 Ill. Adm. Code 103.212(a) and items 5 and 9 of the formal complaint.

If you believe that this formal complaint is duplicative or frivolous, you may file a motion with the Board, within 30 days after the date you were served with the complaint, requesting that the Board not accept the complaint for hearing. The motion must state the facts supporting your belief that the complaint is duplicative or frivolous. Memoranda, affidavits, and any other relevant documents may accompany the motion. If you need more time than 30 days to file a motion alleging that the complaint is duplicative or frivolous, you must file a motion for an extension of time within 30 days after service of the complaint. A motion for an extension of time must state why you

need more time and the amount of additional time you need. Timely filing a motion alleging that the complaint is duplicative or frivolous will stay the 60-day period for filing an answer to the complaint. See 35 Ill. Adm. Code 103.204, 103.212(b).

All motions filed with the Board's Clerk must include an original, nine copies, and proof of service on the other parties. Service may be made in person, by U.S. mail, or by messenger service. Mail service is presumed complete four days after mailing. See 35 Ill. Adm. Code 101.300(c), 101.302, 101.304.

If you do not respond to the Board within 30 days after the date on which the complaint was served on you, the Board may find that the complaint is not duplicative or frivolous and accept the case for hearing. The Board will then assign a hearing officer who will contact you to schedule times for telephone status conferences and for hearing. See 35 Ill. Adm. Code 103.212(a).

Answer to Complaint

You have the right to file an answer to this formal complaint within 60 days after you receive the complaint. If you timely file a motion alleging that the complaint is duplicative or frivolous, or a motion to strike, dismiss, or challenge the sufficiency of the complaint, then you may file an answer within 60 days after the Board rules on your motion. See 35 Ill. Adm. Code 101.506, 103.204(d), (e), 103.212(b).

The Board's procedural rules require the complainant to tell you as respondent that:

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. 35 Ill. Adm. Code 103.204(f).

Necessity of an Attorney

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. See 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless wish to have an attorney prepare an answer and any motions or briefs, and present a defense at hearing.

Costs

In defending against this formal complaint, you are responsible for your attorney fees, duplicating charges, travel expenses, witness fees, and any other costs that you or your attorney may incur. The Board requires no filing fee to file your answer or any other document with the Board. The Board will pay any hearing costs (e.g., hearing room rental, court reporting fees, hearing officer expenses).

If you have any questions, please contact the Clerk's Office at (312) 814-3629.

EXHIBIT B

Joint Committee on Administrative Rules
ADMINISTRATIVE CODE

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD
PART 101 GENERAL RULES
SECTION 101.512 MOTIONS FOR EXPEDITED REVIEW

Section 101.512 Motions for Expedited Review

- a) Motions for expedited review must be directed to the Board. All motions for expedited review must contain a complete statement of the facts and reasons for the request and must be accompanied by an oath or affirmation attesting that the facts cited are true.
- b) In acting on a motion for expedited review, the Board will, at a minimum, consider all statutory requirements and whether material prejudice will result from the motion being granted or denied.
- c) The Board will grant a motion for expedited review consistent with available resources and decision deadlines.

TAB 5

CERTIFICATE OF SERVICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB,)	
)	
Complainant,)	
)	PCB 2014-134
v.)	(Enforcement-Air)
)	
AMEREN ENERGY MEDINA VALLEY)	
COGEN, LLC)	
)	
and)	
)	
FUTUREGEN INDUSTRIAL ALLIANCE INC.,)	
)	
Respondents)	

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached (1) DEFENDANTS' MOTION TO EXPEDITE; (2) DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO EXPEDITE; (3) DECLARATION OF KENNETH HUMPHREYS JR.; (4) DECLARATION OF CHRISTOPHER ZENTZ; and (5) this CERTIFICATE OF SERVICE by U.S. mail and e-mail upon the following persons:

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DATED this 16th day of July, 2014.

A handwritten signature in blue ink, appearing to read "Dale N. Johnson", is written over a horizontal line.

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