

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) AS 2021-006
PETITION OF SOUTHERN ILLINOIS)
POWER COOPERATIVE FOR AN) (Adjusted Standard)
ADJUSTED STANDARD FROM)
35 ILL. ADMIN. CODE PART 845)
OR, IN THE ALTERNATIVE, A FINDING OF)
INAPPLICABILITY)

NOTICE OF ELECTRONIC FILING

To: Attached Service List

PLEASE TAKE NOTICE that on August 18, 2023, I electronically filed with the Clerk of the Illinois Pollution Control Board the **ENVIRONMENTAL GROUPS' COMMENTS OPPOSING SOUTHERN ILLINOIS POWER COOPERATIVE'S MOTION TO STRIKE**, copies of which are served on you along with this notice.

Dated: August 18, 2023

Respectfully Submitted,

/s/ Lauren Piette
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ENVIRONMENTAL GROUPS' COMMENTS OPPOSING MOTION TO STRIKE

Pursuant to 35 Ill. Admin. Code 101.628, 101.110, and 104.100, Earthjustice, Prairie Rivers Network, and Sierra Club (collectively, "Environmental Groups") file these comments opposing the Motion to Strike ("Motion") filed by Southern Illinois Power Cooperative ("SIPC") in this matter.

SIPC's Motion makes much of the fact that Environmental Groups are not parties to this proceeding.¹ The Groups have never claimed otherwise. Instead, Environmental Groups filed their comments opposing SIPC's Motion as *participants* in this proceeding.²

Board rules explicitly encourage comments from non-party participants in proceedings like this one. Section 104.100 states that the Board rules governing adjusted standards proceedings "must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all of the Board's adjudicatory proceedings."³ Part 101 (specifically Section 101.110) states: "The Board encourages public participation in all its proceedings," and further, "[a] person who wishes to participate in a Board adjudicatory proceeding and who is not a party will be considered a participant" Section 101.628(c) makes plain that "participants may file written public comments" as long as those public comments are "filed within 14 days after the close of the last hearing" or other date specified by the Hearing Officer.⁴ Comments "may . . . present legal argument citing legal authorities."⁵ Taken together, these provisions clearly allow Environmental Groups to participate and submit

¹ SIPC, Motion to Strike and for Leave to Reply, at 2 (Aug. 9, 2023) ("SIPC Motion").

² See, e.g., Env't Orgs., Request for Public Hearing, at 3 (June 9, 2021) ("We ask that the Board grant Environmental Organizations' request **so that we and other members of the public** may show that SIPCO does not meet the factors required to obtain an adjusted standard under Section 28.1 of the Illinois Environmental Protection Act") (emphasis added).

³ 35 Ill. Admin. Code 104.100(b). While this Section also states that the specific rules for adjusted standards proceedings apply when there is a conflict between those rules and the requirements of 35 Ill. Adm. Code 101, there are no provisions relating to public comment in the adjusted standards rules; accordingly, the public comment provisions in Section 35 Ill. Admin. Code 101 apply.

⁴ As discussed below, no Hearing Officer order or Board order specifying a different deadline for submission of public comments has been issued in this matter.

⁵ 35 Ill. Admin. Code 101.628(c)(2).

written comments in this docket, including the comments they filed in opposition to SIPC's Motion.

SIPC's argument that Environmental Groups' comments were "untimely" is likewise incorrect.⁶ Because they are participants in this proceeding, not parties, the fourteen-day response deadline that SIPC cites⁷ does not apply. Instead, Environmental Groups' comments were subject to the alternative deadlines set forth in Part 101 – and those deadlines have not passed. First, Section 101.612(a) requires the Hearing Officer to "establish a schedule to complete the record by hearing officer order," which can include deadlines for public comments. Section 101.628(c) then authorizes "participants" to submit written comments "subject to . . . the hearing officer's schedule for completing the record." More specifically, Section 101.628(c)(1) states:

Written public comments must be filed within 14 days after the close of the last hearing unless the hearing officer specifies a different date for submission of post-hearing comments. However, all public comments must be filed with the Board no later than 30 days before the decision date

SIPC requested a hearing in this proceeding,⁸ as did Environmental Groups.⁹ Neither SIPC nor Environmental Groups have withdrawn that request, nor has any hearing yet been held in this proceeding. The Hearing Officer has not yet set a schedule to complete the record, an alternate deadline to submit public comments, or a hearing date. Therefore, Environmental Groups' comments opposing SIPC's Motion were timely under the rules applicable to participants' written comments in this proceeding.

Simply put, SIPC's Motion lacks legal basis. Environmental Groups' comments on SIPC's Motion were permissible and timely under applicable Board rules. The Board should deny SIPC's Motion.

Respectfully Submitted,

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⁶ SIPC Motion at 3.

⁷ *See id.* at 2.

⁸ *See* SIPC, Amended Petition for an Adjusted Standard from 35 Ill. Admin. Code Part 845 or, in the Alternative, a Finding of Inapplicability, at 62 (Sept. 2, 2021).

⁹ *See* Env't Orgs., Request for Public Hearing (June 9, 2021); Order (June 17, 2021) (directing the Hearing Officer "to include the attorneys for the Environmental Organizations in discussions regarding setting the hearing date."). No publication of the Amended Petition was filed in the docket for this matter; accordingly, to the extent Environmental Groups have any obligation to re-request a hearing on the Amended Petition in this matter, that deadline has not yet passed. *See* 35 Ill. Admin. Code 104.420(a).

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CERTIFICATE OF SERVICE

The undersigned, Lauren Piette, an attorney, certifies that I have served by email the Clerk and by email the individuals with email addresses named on the Service List provided on the Board's website, *available at* <https://pcb.illinois.gov/Cases/GetCaseDetailsById?caseId=17037>, a true and correct copy of the **ENVIRONMENTAL GROUPS' COMMENTS OPPOSING SOUTHERN ILLINOIS POWER COOPERATIVE'S MOTION TO STRIKE**, before 5 p.m. Central Time on August 18, 2023. The number of pages in the email transmission is 6 pages.

Dated: August 18, 2023

Respectfully Submitted,

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