

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PROPOSED SITE SPECIFIC)
RULE FOR CITY OF SPRINGFIELD,)
ILLINOIS, OFFICE OF PUBLIC)
UTILITIES, CITY WATER, LIGHT) R09-8
AND POWER AND SPRINGFIELD) (Site Specific Rulemaking – Water)
METRO SANITARY DISTRICT)
FROM 35 ILL. ADM. CODE)
SECTION 302.208(g))

NOTICE OF FILING

TO: Mr. John Therriault Marie E. Tipsord
Assistant Clerk of the Board Hearing Officer
Illinois Pollution Control Board Illinois Pollution Control Board
100 West Randolph Street James R. Thompson Center
Suite 11-500 100 West Randolph, Suite 11-500
Chicago, Illinois 60601 Chicago, Illinois 60601
(VIA ELECTRONIC MAIL) **(VIA U. S. MAIL)**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board **PETITIONERS' MOTION DIRECTED TO THE HEARING OFFICER TO STRIKE PRE-FILED QUESTIONS OR TO CLARIFY** and **PETITIONERS' MOTION DIRECTED TO THE HEARING OFFICER TO EXCLUDE WITNESSES OF PRAIRIE RIVERS NETWORK**, copies of which are herewith served upon you.

Respectfully submitted,

CITY OF SPRINGFIELD, ILLINOIS,
OFFICE OF PUBLIC UTILITIES,
CITY WATER, LIGHT AND POWER,

and

SPRINGFIELD METRO SANITARY
DISTRICT,

Date: December 12, 2008

By: /s/ Christine G. Zeman
One of Their Attorneys

Katherine D. Hodge
Christine G. Zeman
HODGE DWYER ZEMAN
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Post Office Box 5776
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IN THE MATTER OF:

PROPOSED SITE SPECIFIC)	
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ILLINOIS, OFFICE OF PUBLIC)	
UTILITIES, CITY WATER, LIGHT)	R09-8
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METRO SANITARY DISTRICT)	
FROM 35 ILL. ADM. CODE)	
SECTION 302.208(g))	

PETITIONERS' MOTION DIRECTED TO THE HEARING OFFICER TO STRIKE PRE-FILED QUESTIONS OR TO CLARIFY

NOW COME the Petitioners, City of Springfield, Illinois, Office of Public Utilities, City Water, Light and Power ("CWLP") and Springfield Metro Sanitary District ("District") (collectively "Petitioners"), by and through their attorneys, HODGE DWYER ZEMAN, and pursuant to the Procedural Rules of the Illinois Pollution Control Board ("Board") at Sections 101.500(d), 101.502, 101.610(n) and 102.420 (35 Ill. Adm. Code §§ 101.500(d), 101.502, 101.610(n) and 102.420), move to strike the "Pre-Filed Questions from Prairie Rivers Network Regarding R2009-008" ("Pre-Filed Questions"), or in the alternative, request that the Hearing Officer clarify her November 6, 2008 Hearing Officer Order ("November 6, 2008 Order"). In support of their Motion to Strike or to Clarify, Petitioners state that the Pre-Filed Questions fail to comply with the Hearing Officer's directive at the close of the November 3, 2008 Merit and Economic Hearing ("November 3, 2008 Hearing") or with the November 6, 2008 Order, as follows:

1. The instant Petition for Site Specific Rule ("Petition"), seeking to establish an alternative water quality standard for boron was filed with the Board on August 29, 2008, concurrent with the filing of two additional motions, including a Motion for

Expedited Review, which was granted by the Board in its First Notice Opinion and Order dated September 16, 2008. The Board also noted in its First Notice Opinion and Order that it “received no responses to the motions.”

2. By Hearing Officer Order on September 19, 2008, the November 3, 2008 Hearing was scheduled and pre-filing deadlines were set, requiring pre-filed testimony be filed fifteen days before the hearing. Petitioners filed Pre-Filed Testimony for their seven (7) witnesses by the October 20, 2008 deadline, and thereafter, on October 29, 2008, the Illinois Environmental Protection Agency (“Agency”) filed the Pre-Filed Testimony of Robert Mosher and, with regard to the same, counsel for the Agency made an oral Motion for Leave to File Instanter at hearing.

3. At the November 3, 2008 Hearing, the Hearing Officer scheduled an additional hearing for December 16, 2008, in order to fulfill the statutory obligations of Section 27(b) of the Illinois Environmental Protection Act (415 ILCS 5/27(b)) and the Board’s request made to the Department of Commerce and Economic Opportunity (“DCEO”) to conduct an economic impact study. The Hearing Officer noted that requests were made of Petitioners and the Agency for additional information, and set a deadline of November 21, 2008, for such additional information to be filed.

4. At the November 3, 2008 Hearing, the Hearing Officer further stated:

And if anyone has questions on that material, they should file those questions by December 5th.

TR at 80. (Emphasis added.)

5. Following the November 3, 2008 Hearing, the Hearing Officer issued her November 6, 2008 Order reiterating her statement regarding the additional information to

be filed and the December 16, 2008 hearing date, as noted above. The November 6, 2008

Order stated:

If after reviewing that material there are additional questions of either the Springfield or the Agency, those questions must be filed no later than December 5, 2008.

November 6, 2008 Order. (Emphasis added.)

6. On November 21, 2008, Petitioners and the Agency filed additional information, as requested at the November 3, 2008 Hearing and as directed by the Hearing Officer per the Hearing Transcript and the November 6, 2008 Order. Petitioners filed reports and data, identifying in their November 21, 2008 Post-Hearing Document Submittal where in the Petition or exhibits attached to the Petition, primarily the Technical Support Document (“TSD”), said reports were referenced or what the data represented. In addition, the Agency filed data on November 21, 2008.

7. Despite the fact that the November 6, 2008 Order and the Hearing Officer’s directive at the November 3, 2008 Hearing authorizing questions on the additional material filed, based upon review of such additional information, nevertheless, on December 8, 2008, counsel for Petitioners received Prairie Rivers Network’s (“PRN”) Pre-Filed Questions. PRN asked 29 questions, only a few of which relate in any way to the additional information filed by Petitioners and the Agency in their post-hearing document submittals. The bulk of the questions asked are either irrelevant to this rulemaking or are far beyond the scope of the Petition and testimony at the November 3, 2008 Hearing, appearing to be used, instead, as discovery for information pertaining to the Hunter Lake proposal of the City of Springfield (“City”) and a Section 401 water quality certification pending with the Agency, which are distinct from the Petition here.

See, e.g., question numbers 1, 4, 18 and 27. For the few questions that relate to the additional information filed, it appears that the additional information was not reviewed by PRN, as the questions ask for information answered in the additional information filed. *See, e.g.*, question numbers 9, 10 and 16, and the data presented in the post-hearing document submittals of Petitioners and the Agency. Further, for some questions that may relate to the additional information, such as numbers 27, 28 and 29, such questions do not relate to this Site Specific Rule. Other questions, such as numbers 15, 19 and 24, concern issues for which testimony was presented at the November 3, 2008 Hearing. Other questions ask the parties to develop new information, such as question number 8. Further, many of the questions could have been raised at the November 3, 2008 Hearing, when all eight (8) witnesses who pre-filed testimony were present, instead of at this late date or for the next hearing, especially when many witnesses' schedules are uncertain. *See, e.g.*, question numbers 2, 5, 7, 11, 12, 13 and 18.

8. Only one more hearing is scheduled in this matter, the December 16, 2008 hearing, which is scheduled for the purpose of addressing the Board's request to DCEO and addressing questions arising from review of the additional information. As noted, PRN's Pre-Filed Questions do not appear to relate to or arise from review of the additional information; indeed, in many cases, some questions could have been asked at the November 3, 2008 Hearing when all eight (8) witnesses who pre-filed testimony were present. With regard to other questions, it appears PRN did not even review the additional information filed, or it would have its questions answered. In other instances, PRN's questions are so broad as to be well beyond the scope of this rulemaking and relate to other projects of the City, not this proposed Site Specific Rule.

9. Section 101.500(d) of the Board's Procedural Rules (35 Ill. Adm. Code § 101.500(d)) provides that:

[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion. Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 14 day response period except in deadline driven proceedings where no waiver has been filed. Parties may request that the Board grant more time to respond by filing a motion for extension of time.

35 Ill. Adm. Code § 101.500(d). (Emphasis added.)

10. Section 101.502 of the Board's Procedural Rules (35 Ill. Adm. Code § 101.502) provides at subsection (a) that "[t]he hearing officer has the authority to rule on all motions that are not dispositive of the proceeding. . . . The duties and authorities of the hearing officer are further set out in Section 101.610 of this Part." 35 Ill. Adm. Code § 101.502(a).

11. Section 101.610(n) of the Board's Procedural Rules (35 Ill. Adm. Code § 101.610(n)) provides that:

[t]he hearing officer has the duty to manage proceedings assigned, to set hearings, to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear, complete, and concise record for timely transmission to the Board. The hearing officer has all powers necessary to these ends, including the authority to:

* * *

- n) Rule on any motion directed to the hearing officer or deferred to the hearing officer by the Board in accordance with Section 101.502 of this Part.

35 Ill. Adm. Code § 101.610(n).

12. Section 102.420 of the Board's Procedural Rules (35 Ill. Adm. Code § 102.420) provides that "[a]s necessary to conduct the regulatory hearing, the hearing officer will have the same authorities in rulemaking proceedings as those set forth in 35 Ill. Adm. Code 101.Subpart F." 35 Ill. Adm. Code § 102.420.

13. Petitioners now move the Hearing Officer to strike PRN's Pre-Filed Questions, as such Pre-Filed Questions fail to comply with the Hearing Officer's prior directive and the November 6, 2008 Order, and striking PRN's Pre-Filed Questions in whole (or in part) is, therefore, necessary.

14. In the alternative, Petitioners seek clarification of the prior directive and the November 6, 2008 Order, so as to do substantial justice between the parties. Specifically, Petitioners request not only that the directive and November 6, 2008 Order be clarified as to what additional questions may be asked, but also allow Petitioners (and the Agency) to respond in writing after the December 16, 2008 hearing. In that regard, Petitioners note that CWLP has made every possible effort to cooperate with PRN and/or its counsel Mr. Albert Ettinger, of the Environmental Law and Policy Center ("EL&PC"), in providing opportunities beyond and/or outside this regulatory process to provide information and answer questions.

15. As early as December 28, 2006, CWLP had communications with counsel for EL&PC, potentially for PRN, to discuss reported boron exceedances in discharges governed by CWLP's National Pollutant Discharge Elimination System permit.

16. On December 29, 2006, CWLP willingly provided EL&PC information summarizing the issue CWLP faced regarding boron and CWLP's efforts and involvement with the Agency in an ongoing quest to remedy the boron exceedance issue.

17. Thereafter, counsel for Petitioners exchanged several telephone calls with EL&PC and representatives of PRN before Petitioners filed their initial filing with the Board on August 29, 2008. During those communications, counsel for both parties discussed the proposal itself and the possibility of an opportunity for PRN and Petitioners to participate in an informal meeting to discuss the details of the proposal. Due to their schedules, it was understood that such meeting would occur after the filing of the Petition and accompanying motions, including the Motion for Expedited Review.

18. On August 29, 2008, Petitioners filed their initial filing, which included the Petition, TSDs as exhibits to the Petition, a Motion to Waive Requirement to Submit 200 Signatures, a Motion for Expedited Review and Appearances.

19. To date, PRN has not responded to Petitioners' Motion for Expedited Review.

20. As a courtesy, also on August 29, 2008, counsel for Petitioners provided copies of the Petition and the supporting TSDs to counsel for PRN via electronic mail, and also continued discussions of scheduling an informal meeting between PRN and Petitioners to discuss the proposal.

21. The intended purpose of an informal meeting between PRN and Petitioners was to allow PRN to question Petitioners' witnesses in an effort to provide clarification to PRN regarding the proposal.

22. On September 16, 2008, the Board issued its First Notice Opinion and Order in the matter.

23. On September 22, 2008, Petitioners filed their Statement Addressing Section 102.210(c), and, as a courtesy, forwarded a copy of the same via electronic mail to counsel for PRN.

24. On September 30, 2008, counsel for PRN and Petitioners, as well as employees and consultants of Petitioners, participated in a telephone conference in an effort to allow PRN to present any questions it had for Petitioners regarding the proposal. While Petitioners had initially suggested an in-person meeting, PRN chose to participate in the meeting only by telephone.

25. On October 16, 2008, PRN informed counsel for Petitioners that representatives of PRN who participated in the joint telephone conference would be present at the November 3, 2008 Hearing and would have questions at that time, as they did.

26. On October 20, 2008, Petitioners filed with the Board Pre-filed Testimony of their witnesses in support of the proposal, including testimony of Don Schilling, William Brown, Deborah Ramsey, Jeff Bushur, Dave Farris, Gregg Finigan and Don Brown.

27. From October 21 through October 29, 2008, counsel for Petitioners and PRN exchanged a number of telephone calls in an effort to keep each other updated with regard to preparations for the November 3, 2008 Hearing. Specifically, on October 29, 2008, counsel for both parties discussed PRN's potential questions, or, more specifically, the subject areas for such questions, for the November 3, 2008 Hearing. At that time, PRN informed Petitioners of only a few limited subject areas about which PRN intended to question Petitioners at hearing.

28. PRN filed no pre-hearing questions or a list of possible witnesses prior to the November 3, 2008 Hearing.

29. The November 3, 2008 Hearing was then held before the Board, wherein Petitioners presented a number of witnesses to testify in support of the proposal. PRN representatives were present at hearing, asked questions, and requested additional information, which was provided in Petitioners' Post-Hearing Document Submittal on November 21, 2008.

30. On November 21, 2008, in accordance with discussion at the November 3, 2008 Hearing and in the November 6, 2008 Order, Petitioners submitted their Post-Hearing Document Submittal and provided for the record materials that were requested either by the Board or PRN at hearing. On that same day, as a courtesy, counsel for Petitioners forwarded a copy of the same to PRN.

31. On or about November 24, 2008, Ms. Traci Barkley for PRN requested an additional report that Petitioners had not included in their Post-Hearing Document Submittal, as it had not been specifically discussed at hearing and was only referenced generally in the Petition and TSD.

32. On December 1, 2008, Petitioners freely provided the report to Ms. Barkley for PRN, and filed the same with the Board on December 3, 2008.

33. On or about December 4, 2008, PRN informed counsel for Petitioners of PRN's intent to offer at least one expert at the hearing scheduled for December 16, 2008.

34. On December 5, 2008, PRN filed its Pre-Filed Questions with the Board, which repeated some questions asked and answered at the November 3, 2008 Hearing, and also include questions that are irrelevant and outside of the scope of the rulemaking,

most of which also do not relate to the additional information in Petitioners' Post-Hearing Document Submittal of November 21, 2008.

35. Pursuant to Section 101.502 of the Board's Procedural Rules, the Hearing Officer has the authority to rule on this Motion. *See also* 35 Ill. Adm. Code §§ 102.420 and 101.610(n).

36. In this case, as discussed in Section 101.500(d) of the Board's Procedural Rules, the Hearing Officer must grant this Motion prior to expiration of the 14-day response period generally allowed in order to prevent undue delay or material prejudice. The Board has taken such action in previous regulatory proceedings, including *In the Matter of: Proposed Site Specific Regulation Applicable to Ameren Energy Generating Company, Elgin, Amending 35 Ill. Adm. Code Part 901*, wherein, in the Board's November 6, 2003 First Notice Opinion and Order, it relied upon Section 101.500(d) for its ruling on a Motion for Expedited Review. In doing so, the Board stated "[a] review of the record indicates that undue delay and material prejudice would result if the motion were not addressed at this time. Accordingly, the Board will rule on the motion for expedited review." First Notice Opinion and Order of the Board, *In the Matter of: Proposed Site Specific Regulation Applicable to Ameren Energy Generating Company, Elgin, Amending 35 Ill. Adm. Code Part 901* at 2 (Ill.Pol.Control.Bd. Nov. 6, 2003). The Board ultimately granted the Motion for Expedited Review, and found that material prejudice would result if the motion was denied. *Id.*, *see also* Order of the Board, *In the Matter of: Revisions to Antidegradation Rules: 35 Ill. Adm. Code 302.105, 303.205, 303.206, and 106.990 – 106.995* (Ill.Pol.Control.Bd. Feb. 1, 2001).

WHEREFORE, Petitioners, City of Springfield, Illinois, Office of Public Utilities, City Water, Light and Power and Springfield Metro Sanitary District respectfully request that the Hearing Officer strike PRN's Pre-Filed Questions in whole (or in part), or in the alternative, clarify what questions can be appropriately asked at the hearing scheduled for December 16, 2008, and allow the Petitioners to respond in writing to PRN's Pre-Filed Questions that the Hearing Officer deems responsive to her prior directive and the November 6, 2008 Order.

Respectfully submitted,

CITY OF SPRINGFIELD, ILLINOIS,
OFFICE OF PUBLIC UTILITIES,
CITY WATER, LIGHT AND POWER,

and

SPRINGFIELD METRO SANITARY
DISTRICT,

Date: December 12, 2008

By: /s/ Christine G. Zeman
One of Their Attorneys

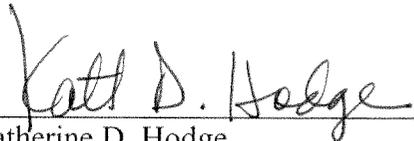
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AFFIDAVIT

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

Katherine D. Hodge, being first duly sworn on oath, affirms that, based upon appropriate inquiry, the facts set forth in the Petitioners' Motion Directed to the Hearing Officer to Strike Pre-Filed Questions or to Clarify above are true and correct.

FURTHER AFFIANT SAYETH NOT.

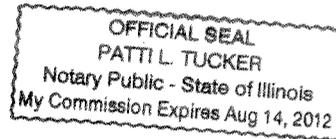


Katherine D. Hodge

Subscribed and sworn to before me
this 12th day of December, 2008.



Notary Public



CWLP:002/Fil/Motion to Strike Pre-Filed Questions or to Clarify (3)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PROPOSED SITE SPECIFIC)	
RULE FOR CITY OF SPRINGFIELD,)	
ILLINOIS, OFFICE OF PUBLIC)	
UTILITIES, CITY WATER, LIGHT)	R09-8
AND POWER AND SPRINGFIELD)	(Site Specific Rule – Water)
METRO SANITARY DISTRICT)	
FROM 35 ILL. ADM. CODE)	
SECTION 302.208(g))	

PETITIONERS' MOTION DIRECTED TO THE HEARING OFFICER TO EXCLUDE WITNESSES OF PRAIRIE RIVERS NETWORK

NOW COME the Petitioners, City of Springfield, Illinois, Office of Public Utilities, City Water, Light and Power (“CWLP”) and Springfield Metro Sanitary District (“District”) (collectively “Petitioners”), by and through their attorneys, HODGE DWYER ZEMAN, and pursuant to the Procedural Rules of the Illinois Pollution Control Board (“Board”) at Sections 101.500(d), 101.502, 101.610(n) and 102.420 (35 Ill. Adm. Code §§ 101.500(d), 101.502, 101.610(n) and 102.420) and Hearing Officer Orders, move the Hearing Officer to enter an Order excluding witnesses of Prairie Rivers Network (“PRN”) from testifying at the hearing scheduled for December 16, 2008. In support of their Motion to Exclude, Petitioners state as follows:

1. Section 101.500(d) of the Board’s Procedural Rules (35 Ill. Adm. Code § 101.500(d)) provides that:

[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion. Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 14 day response period except in deadline driven proceedings where

no waiver has been filed. Parties may request that the Board grant more time to respond by filing a motion for extension of time.

35 Ill. Adm. Code § 101.500(d). (Emphasis added.)

2. Section 101.502 of the Board's Procedural Rules (35 Ill. Adm. Code § 101.502) provides at subsection (a) that "[t]he hearing officer has the authority to rule on all motions that are not dispositive of the proceeding. . . . The duties and authorities of the hearing officer are further set out in Section 101.610 of this Part." 35 Ill. Adm. Code § 101.502(a).

3. Section 101.610(n) of the Board's Procedural Rules (35 Ill. Adm. Code § 101.610(n)) provides that:

[t]he hearing officer has the duty to manage proceedings assigned, to set hearings, to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear, complete, and concise record for timely transmission to the Board. The hearing officer has all powers necessary to these ends, including the authority to:

* * *

n) Rule on any motion directed to the hearing officer or deferred to the hearing officer by the Board in accordance with Section 101.502 of this Part.

35 Ill. Adm. Code § 101.610(n).

4. Section 102.420 of the Board's Procedural Rules (35 Ill. Adm. Code § 102.420) provides that "[a]s necessary to conduct the regulatory hearing, the hearing officer will have the same authorities in rulemaking proceedings as those set forth in 35 Ill. Adm. Code 101.Subpart F." 35 Ill. Adm. Code § 102.420.

5. CWLP has made every possible effort to cooperate with PRN and/or its counsel Mr. Albert Ettinger, of the Environmental Law and Policy Center ("EL&PC"), in

providing opportunities beyond and/or outside this regulatory process to provide information and answer questions. *See* Petitioners' Motion Directed to the Hearing Officer to Strike Pre-Filed Questions or to Clarify, which was filed simultaneously with this Motion.

6. As early as December 28, 2006, CWLP had communications with counsel for EL&PC, potentially for PRN, to discuss reported boron exceedances in discharges governed by CWLP's National Pollutant Discharge Elimination System permit.

7. On December 29, 2006, CWLP willingly provided EL&PC information summarizing the issue CWLP faced regarding boron and CWLP's efforts and involvement with the Illinois Environmental Protection Agency ("Agency") in an ongoing quest to remedy the boron exceedance issue.

8. Thereafter, counsel for Petitioners exchanged several telephone calls with EL&PC and representatives of PRN before Petitioners filed their initial filing in this matter with the Board on August 29, 2008. During those communications, counsel for both parties discussed the proposal itself and the possibility of an opportunity for PRN and Petitioners to participate in an informal meeting to discuss the details of the proposal. Due to their schedules, it was understood that such meeting would occur after the filing of the Petition for Site Specific Rule ("Petition") and accompanying motions.

9. On August 29, 2008, Petitioners filed their initial filing, which included the Petition seeking to establish an alternative water quality standard for boron, TSDs as exhibits to the Petition, a Motion to Waive Requirement to Submit 200 Signatures, a Motion for Expedited Review and Appearances.

10. The Board granted Petitioners' Motion for Expedited Review in its First Notice Opinion and Order dated September 16, 2008, wherein the Board also stated that it "received no responses to the motions."

11. To date, PRN has not responded in any way to Petitioners' Motion for Expedited Review.

12. As a courtesy, also on August 29, 2008, counsel for Petitioners provided copies of the Petition and the supporting TSDs to counsel for PRN via electronic mail, and also continued discussions of scheduling an informal meeting between PRN and Petitioners to discuss the proposal.

13. The intended purpose of an informal meeting between PRN and Petitioners was to allow PRN to question Petitioners' witnesses in an effort to provide clarification to PRN regarding the proposal.

14. On September 16, 2008, the Board issued its First Notice Opinion and Order in the matter.

15. On September 22, 2008, Petitioners filed their Statement Addressing Section 102.210(c), and, as a courtesy, forwarded a copy of the same via electronic mail to counsel for PRN.

16. On September 30, 2008, counsel for PRN and Petitioners, as well as employees and consultants of Petitioners, participated in a telephone conference in an effort to allow PRN to present any questions it had for Petitioners regarding the proposal. While Petitioners had initially suggested an in-person meeting, PRN chose to participate in the meeting only by telephone.

17. On October 16, 2008, PRN informed counsel for Petitioners that representatives of PRN who participated in the joint telephone conference would be present at the November 3, 2008 Merit and Economic Hearing (“November 3, 2008 Hearing”) and would have questions at that time, as they did.

18. On October 20, 2008, Petitioners filed with the Board Pre-filed Testimony of their witnesses in support of the proposal, including testimony of Don Schilling, William Brown, Deborah Ramsey, Jeff Bushur, Dave Farris, Gregg Finigan and Don Brown.

19. From October 21 through October 29, 2008, counsel for Petitioners and PRN exchanged a number of telephone calls in an effort to keep each other updated with regard to preparations for the November 3, 2008 Hearing. Specifically, on October 29, 2008, counsel for both parties discussed PRN’s potential questions, or, more specifically, the subject areas for such questions, for the November 3, 2008 Hearing. At that time, PRN informed Petitioners of only a few limited subject areas about which PRN intended to question Petitioners at hearing.

20. PRN filed no pre-hearing questions or a list of possible witnesses prior to the November 3, 2008 Hearing.

21. The November 3, 2008 Hearing was then held before the Board, wherein Petitioners presented a number of witnesses to testify in support of the proposal. PRN representatives were present at hearing, asked questions, and requested additional information, which was provided in Petitioners’ Post-Hearing Document Submittal on November 21, 2008.

22. During the November 3, 2008 Hearing, however, PRN made absolutely no suggestion that it planned to present witnesses at the hearing scheduled for December 16, 2008.

23. On November 21, 2008, in accordance with discussion at the November 3, 2008 Hearing and in the November 6, 2008 Hearing Officer Order, Petitioners submitted their Post-Hearing Document Submittal and provided for the record materials that were requested either by the Board or PRN at hearing. On that same day, as a courtesy, counsel for Petitioners forwarded a copy of the same to PRN.

24. On or about November 24, 2008, Ms. Traci Barkley for PRN requested an additional report that Petitioners had not included in their Post-Hearing Document Submittal, as it had not been specifically discussed at hearing and was only referenced generally in the Petition and TSD.

25. On December 1, 2008, Petitioners freely provided the report to Ms. Barkley for PRN, and filed the same with the Board on December 3, 2008.

26. On or about December 4, 2008, PRN informed counsel for Petitioners of PRN's intent to offer at least one expert at the hearing scheduled for December 16, 2008.

27. On December 5, 2008, PRN filed its "Pre-Filed Questions from Prairie Rivers Network Regarding R2009-008" ("Pre-Hearing Questions") with the Board, which repeated some questions asked and answered at the November 3, 2008 Hearing, and also include questions that are irrelevant and outside of the scope of the rulemaking, most of which also do not relate to the additional information in Petitioners' Post-Hearing Document Submittal of November 21, 2008.

28. On December 9, 2008, PRN provided to counsel for Petitioners via electronic mail an outline of the issues PRN's proposed witness intended to cover during the hearing scheduled for December 16, 2008.

29. As detailed above, Petitioners have made considerable efforts prior to and throughout this rulemaking proceeding to keep PRN informed as to the status of the same, and to provide PRN with any information it requested in order to answer any questions or concerns PRN had about Petitioners' proposal.

30. PRN, however, has not preserved its right to present witnesses at the hearing scheduled for December 16, 2008. First, PRN made no objection to Petitioners' Motion for Expedited Review. PRN also only suggested to Petitioners prior to the November 3, 2008 Hearing that it had limited issues to raise at hearing. PRN filed no pre-filed testimony in advance of the November 3, 2008 Hearing, nor did it make any suggestion at hearing that it planned to present witnesses at the hearing scheduled for December 16, 2008. It was not until on or about December 4, 2008, that PRN informed counsel for Petitioners that PRN intended to offer at least one witness at the hearing scheduled for December 16, 2008, and it was not until December 5, 2008, that PRN filed its Pre-Filed Questions. Because of its inaction and delay in action, PRN has not preserved its right to present witnesses at the hearing scheduled for December 16, 2008.

31. Petitioners, by presenting its seven (7) witnesses at the November 3, 2008 Hearing, were fully prepared to answer PRN's questions, and did so, at that time. The November 3, 2008 Hearing was the appropriate time for PRN to present its witnesses as well, especially given the fact that it was not known before that time whether there would be any additional hearings in this matter.

32. As a result, Petitioners would be unfairly prejudiced if PRN were allowed to present witnesses at the hearing scheduled for December 16, 2008.

33. Pursuant to Section 101.502 of the Board's Procedural Rules, the Hearing Officer has the authority to rule on this Motion. *See also* 35 Ill. Adm. Code §§ 102.420 and 101.610(n).

34. In this case, as discussed in Section 101.500(d) of the Board's Procedural Rules, the Hearing Officer must grant this Motion prior to expiration of the 14-day response period generally allowed in order to prevent undue delay or material prejudice. The Board has taken such action in previous regulatory proceedings, including *In the Matter of: Proposed Site Specific Regulation Applicable to Ameren Energy Generating Company, Elgin, Amending 35 Ill. Adm. Code Part 901*, wherein, in the Board's November 6, 2003 First Notice Opinion and Order, it relied upon Section 101.500(d) for its ruling on a Motion for Expedited Review. In doing so, the Board stated "[a] review of the record indicates that undue delay and material prejudice would result if the motion were not addressed at this time. Accordingly, the Board will rule on the motion for expedited review." First Notice Opinion and Order of the Board, *In the Matter of: Proposed Site Specific Regulation Applicable to Ameren Energy Generating Company, Elgin, Amending 35 Ill. Adm. Code Part 901* at 2 (Ill.Pol.Control.Bd. Nov. 6, 2003). The Board ultimately granted the Motion for Expedited Review, and found that material prejudice would result if the motion was denied. *Id.*, *see also* Order of the Board, *In the Matter of: Revisions to Antidegradation Rules: 35 Ill. Adm. Code 302.105, 303.205, 303.206, and 106.990 – 106.995* (Ill.Pol.Control.Bd. Feb. 1, 2001).

WHEREFORE, Petitioners, City of Springfield, Illinois, Office of Public Utilities, City Water, Light and Power and Springfield Metro Sanitary District respectfully request that the Hearing Officer exclude PRN from presenting witnesses at the hearing scheduled for December 16, 2008.

Respectfully submitted,

CITY OF SPRINGFIELD, ILLINOIS,
OFFICE OF PUBLIC UTILITIES,
CITY WATER, LIGHT AND POWER,

and

SPRINGFIELD METRO SANITARY
DISTRICT,

Date: December 12, 2008

By: /s/ Christine G. Zeman
One of Their Attorneys

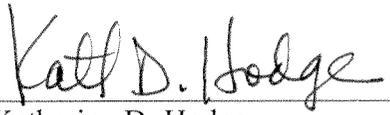
Katherine D. Hodge
Christine G. Zeman
HODGE DWYER ZEMAN
3150 Roland Avenue
P.O. Box 5776
Springfield, Illinois 62705
(217) 523-4900

AFFIDAVIT

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

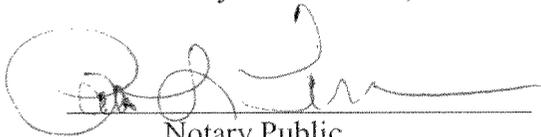
Katherine D. Hodge, being first duly sworn on oath, affirms that, based upon appropriate inquiry, the facts set forth in the Petitioners' Motion Directed to the Hearing Officer to Exclude Witnesses of Prairie Rivers Network above are true and correct.

FURTHER AFFIANT SAYETH NOT.

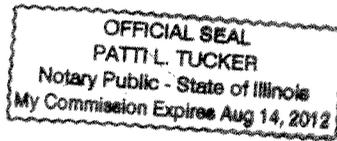


Katherine D. Hodge

Subscribed and sworn to before me
this 12th day of December, 2008.



Notary Public



CWLP:002/Fil/Mtn to Exclude Witnesses of PRN(2)

CERTIFICATE OF SERVICE

I, Christine G. Zeman, the undersigned, certify that I have served the attached PETITIONERS' MOTION DIRECTED TO THE HEARING OFFICER TO STRIKE PRE-FILED QUESTIONS OR TO CLARIFY and PETITIONERS' MOTION DIRECTED TO THE HEARING OFFICER TO EXCLUDE WITNESSES OF PRAIRIE RIVERS NETWORK, upon:

Mr. John Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Albert F. Ettinger, Esq.
for Prairie Rivers Network
c/o Environmental Law and Policy Center
35 East Wacker Drive
Suite 1300
Chicago, Illinois 60601
aettinger@elpc.org

Joey Logan-Wilkey, Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
joey.loganwilkey@illinois.gov

Michael D. Mankowski
Assistant Attorney General
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62706
mmankowski@atg.state.il.us

via electronic mail on December 12, 2008; and upon:

Matthew Dunn, Chief
Environmental Bureau
Office of the Attorney General
69 West Washington Street, 18th Floor
Chicago, Illinois 60602

Marie E. Tipsord
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Bill Richardson, Chief Legal Counsel
Illinois Department of Natural Resources
One Natural Resources Way
524 S. Second Street
Springfield, Illinois 62702-1271

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on December 12, 2008.

By: /s/ Christine G. Zeman
Christine G. Zeman