

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**NATURAL RESOURCES DEFENSE COUNCIL)
PRAIRIE RIVERS NETWORK, and)
SIERRA CLUB)**

Complainants,)

v.)

**PCB 13-65
(Citizens Enforcement - NPDES)**

**ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY and DYNEGY MIDWEST)
GENERATION, INC.)**

Respondents.)

NOTICE OF FILING

TO:

John Therriault, Assistant Clerk
Carol Webb, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Ann Alexander
Meleah Geertsma
Natural Resources Defense Council, Prairie
Rivers Network, and Sierra Club
2 North Riverside Plaza, Suite 2250
Chicago, Illinois 60606

Deborah Williams
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-927

Thomas Davis
Rachel Medina
Office of the Attorney General
Environmental Bureau
500 South Second Street
Springfield, IL 62706

Albert Ettinger
Sierra Club
53 W. Jackson, #1664
Chicago, Illinois 60604

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board, the attached **Motion to Extend Deadline**, copies of which are herewith served upon you.

DYNEGY MIDWEST GENERATION,


By: Amy Antonioli

Dated: August 2, 2013

Daniel Deeb
Amy Antonioli
SCHIFF HARDIN LLP
233 South Wacker Drive
Suite 6600
Chicago, Illinois 60606
Tel: 312-258-5500
aantonioli@schiffhardin.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

NATURAL RESOURCES DEFENSE COUNCIL)	
PRAIRIE RIVERS NETWORK, and)	
SIERRA CLUB)	
)	
Complainants,)	
)	
v.)	PCB 13-65
)	(Citizens Enforcement - NPDES)
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY and DYNEGY MIDWEST)	
GENERATION, INC.)	
)	
Respondents.)	

MOTION TO EXTEND DEADLINE

Respondent Dynegy Midwest Generation (“DMG”), by its attorneys, Schiff Hardin, LLP, pursuant to 35 Ill. Adm. Code §§ 101.500-.502, and 101.522, respectfully moves the Hearing Officer to extend the deadline for DMG to reply to the State’s Response to Dynegy’s Motion to Dismiss Petition to Modify, filed by the Illinois Attorney General’s Office (the “AGO”) and Plaintiffs’ Memorandum of Law in Opposition to Motion to Dismiss, filed by Natural Resources Defense Council, Prairie Rivers Network, and Sierra Club (the “Complainants”), (collectively, the “Responses”), through August 12, 2013. In this Motion, DMG delineates grounds for seeking leave to file a reply and for requesting this extension. In support of this Motion, DMG states as follows:

1. On June 17, 2013, DMG filed a Motion to Dismiss the Petition (“Motion to Dismiss”).
2. Both the AGO and Complainants requested an extension of time of more than two weeks to file their Responses to the Motion to Dismiss. The Hearing Officer granted those

unopposed requests by the Hearing Officer on July 8, 2013. DMG received the Responses on July 19, 2013.

3. Without delay, DMG sought leave to file a reply on July 22, 2013. The Hearing Officer granted DMG leave to reply within 15 days of receiving the Responses, or by August 5, 2013. The same day, on July 22, 2013, Hearing Officer Webb issued an order stating the same on the same (the "Order").

4. On July 29, 2013, counsel for plaintiff Natural Resources Defense Council ("NRDC") asserted by letter her position that the July 22, 2013 communication with Hearing Officer Webb was an inappropriate *ex parte* communication and requested that DMG file an additional motion. DMG responded by letter on July 31, 2013 demonstrating that the communication was a purely procedural matter that did not reflect on the substance of the proceedings. The letter also asked NRDC counsel, to provide an explanation of how she believed the communication somehow reflected on the substance of the pending proceeding. Counsel for NRDC responded by stating her dissatisfaction with DMG's response on August 1, 2013 but did not explain how the communicating at all reflected on the substance of the proceeding. Counsel for NRDC also threatened to file a motion to strike if DMG did not provide another motion.

5. Although DMG strongly and completely disagrees with the positions expressed by NRDC counsel, DMG recognizes that the NRDC's threat (unwarranted as it is) would extend this litigation and impose a further burden on the Board. With this in mind, in the interest of judicial economy, DMG seeks to extend the deadline of the order an additional week in order to

allow Complainants an opportunity to file pleadings opposing the Order and, allow the Hearing Officer rescind the Order, if she so chooses.

6. This matter is one of first impression before the Illinois Pollution Control Board ("Board"). It is the first time the Board has considered an enforcement action filed pursuant to 35 Ill. Adm. Code § 309.182, and the matter has not yet been accepted for hearing. DMG further asserts that the Responses contain significant misstatements and mischaracterizations of fact and law. A responsive pleading is necessary in order to correct the record and allow the Board to make a fully informed decision. Material prejudice would result were leave not granted.

7. Moreover, due to delay caused by correspondence with the Complainants regarding the Hearing Officer's July 22, 2013 Order, and to provide Complainants the opportunity to respond to DMG's motion for leave to file a reply in writing, good cause exists for granting an extension of the deadline.

WHEREFORE, DMG respectfully requests that the Hearing Officer extend the deadline for DMG to reply to the Responses to August 12, 2013 and to otherwise modify the Hearing Officer's July 22, 2013 Order as appropriate.

Respectfully submitted,

DYNEGY MIDWEST GENERATION

By: 

Dated: August 2, 2013

Amy Antonioli
Daniel Deeb
Stephen Bonebrake
SCHIFF HARDIN, LLP
233 S. Wacker Drive, Suite 6600
Chicago, Illinois, 60606
Phone: (312) 258-5500
Email: aa Antonioli@schiffhardin.com
ddeeb@schiffhardin.com
sbonebrake@schiffhardin.com

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 2nd day of August, 2013, I have served electronically the attached **Motion to Extend Deadline**, upon the following persons:

John Therriault, Assistant Clerk
Carol Webb, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

and electronically and by first class mail, postage affixed, upon:

Ann Alexander
Meleah Geertsma
Natural Resources Defense Council,
Prairie Rivers Network, and Sierra Club
2 North Riverside Plaza, Suite 2250
Chicago, Illinois 60606

Thomas Davis
Rachel Medina
Office of the Attorney General
Environmental Bureau
500 South Second Street
Springfield, IL 62706

Deborah Williams
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-927

Albert Ettinger
Sierra Club
53 W. Jackson, #1664
Chicago, Illinois 60604


By: Amy Antonioli

Dated: August 2, 2013

Daniel Deeb
Amy Antonioli
SCHIFF HARDIN LLP
233 South Wacker Drive
Suite 6600
Chicago, Illinois 60606
312-258-5500
aantonioli@schiffhardin.com