

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Plaintiffs,)

v.)

PCB 13 - 65
(CITIZEN ENFORCEMENT --
NPDES)

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

Defendants)

To:

John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, IL 60601

Persons on the attached service list

Please take notice that today I filed with the office of the Clerk of the Pollution Control Board my **Plaintiffs' Motion to Strike Defendant's Reply Memorandum** on behalf of the Natural Resources Defense Council, Prairie Rivers Network, and Sierra Club, a copy of which is hereby served on you.



By: _____
Ann Alexander, Natural Resources Defense Council

Dated: August 6, 2013

Ann Alexander
Meleah Geertsma
Natural Resources Defense Council
20 North Wacker Drive, Suite 1600
Chicago, Illinois 60606
312-651-7905 and -7904
312-234-9633 (fax)
*Counsel to Petitioners Natural Resources Defense Council,
Prairie Rivers Network, and Sierra Club, Inc.*



Albert Ettinger, IL Bar #3125045
53 W. Jackson, #1664
Chicago, Illinois 60604
Tel: (773) 818 4825

Attorney for the Sierra Club

SERVICE LIST

Deborah Williams
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
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Thomas Davis
Rachel R. Medina
Environmental Bureau/Springfield
Illinois Attorney General's Office
500 South Second Street
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Amy Antonioli
Daniel J. Deeb
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Schiff Hardin, LLP
6600 Willis Tower
233 South Wacker Drive
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**NATURAL RESOURCES DEFENSE COUNCIL)
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**PCB 13 - 65
(CITIZEN ENFORCEMENT --
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**ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY and DYNEGY MIDWEST)
GENERATION, INC.,)**

Defendants)

PLAINTIFFS’ MOTION TO STRIKE DEFENDANT’S REPLY MEMORANDUM

1. Plaintiffs Natural Resources Defense Council (“NRDC”), Prairie Rivers Network (“PRN”), and the Sierra Club (collectively, “Plaintiffs”) move to strike the Reply in Support of Motion to Dismiss (Reply) filed by Dynegy Midwest Generation, Inc. (Defendant) on August 5, 2013. Defendant has failed to comply with the Board’s rule set forth at 35 Ill. Admin. Code 101.500(e), pursuant to which a reply may only be filed upon grant of a motion for leave demonstrating material prejudice. As set forth below, permission to file a reply brief – and to file it outside the time allowed for a motion in the Board’s rules – was granted in an *ex parte* conversation with the hearing officer. The Reply itself is strictly a legal argument in response to Plaintiffs’ arguments, and contains no allegations that could support a claim of material prejudice.

2. On July 19, 2013 Plaintiffs filed their memorandum of law in opposition to Defendant’s Motion to Dismiss.

3. The Board's rules provide as follows concerning the filing of a reply brief in support of a motion:

The moving person will not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice. A motion for leave to file a reply must be filed with the Board within 14 days after service of the response.

35 Ill. Admin. Code § 101.500(e).

4. Notwithstanding this rule, Defendant failed to make any such motion. Instead, on July 22, 2013, the Hearing Officer filed an order indicating that Defendant's counsel had contacted her *ex parte* requesting leave to file a reply on or before August 5, and that she had granted such leave. The order is attached as Exhibit 1.

5. Plaintiffs thereafter sent a letter to Defendant's counsel expressing the view that the *ex parte* grant of leave to file a reply was inappropriate in view of 35 Ill. Admin. Code § 101.500(e). That letter, and subsequent correspondence with Defendant's counsel, is attached collectively as Exhibit 2. (The correspondence addresses the issues raised by Defendant in its Motion to Extend, *infra*, concerning prior Board precedent and a purported distinction between "procedure" and "substance.").

6. On August 2, 2013, Defendant filed a Motion to Extend Deadline (Motion to Extend), seeking to extend its time to file a reply. However, this filing did not purport to seek leave to file such a reply. While it asserted that Plaintiff's memorandum of law in opposition to their motion contained "misstatements and mischaracterizations of fact and law," the Motion to Extend set forth no facts in support of that assertion, nor any other basis for a claim of "material prejudice" pursuant to 35 Ill. Admin. Code § 101.500(e). The Motion to Extend is attached as Exhibit 3.

7. On August 5, 2013, Defendant filed its Reply. The Reply likewise sets forth no facts that would support a claim of “material prejudice” under 35 Ill. Admin. Code § 101.500(e). The arguments set forth in the Reply consist solely of disagreements with Plaintiffs’ arguments concerning the proper interpretation of applicable law, and concerning public policy. The Reply contains no allegations that Plaintiffs misrepresented facts upon which they relied, failed to call the Board’s attention to authority, or any other comparable basis for a demonstration of substantial prejudice.

8. To allow a reply brief in a circumstance such as this, without a motion and with nothing more than argument about legal interpretation, would vitiate the purpose of 35 Ill. Admin. Code § 101.500(e), which is to ensure that reply briefs are not routinely allowed, and that any such brief is filed only upon motion and grant of leave.

Conclusion

For the foregoing reasons, Defendant’s Reply brief should be stricken and not considered by the Board.

Respectfully submitted this 6th day of August, 2013 by:



Ann Alexander, IL Bar # 6278919
Meleah Geertsma, IL Bar # 6298389
Natural Resources Defense Council
20 North Wacker Drive, Suite 1600
Chicago, IL 60606
Tel: (312) 651-7905

Attorneys for Petitioners NRDC, Sierra Club, and PRN



Albert Ettinger, IL Bar #3125045
53 W. Jackson, #1664
Chicago, Illinois 60604
Tel: (773) 818 4825

Attorney for the Sierra Club

EXHIBIT 1

ILLINOIS POLLUTION CONTROL BOARD

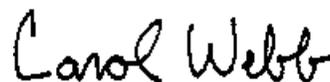
July 22, 2013

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

HEARING OFFICER ORDER

On July 22, 2013, respondent Dynegy Midwest Generation contacted the hearing officer to request leave to reply to the parties' responses to its motion to dismiss. The hearing officer granted leave to reply by August 5, 2013.

IT IS SO ORDERED.



Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
217/524-8509
Carol.Webb@illinois.gov

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on July 22, 2013, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on July 22, 2013:

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601



Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
217/524-8509
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SERVICE LIST

PCB 2013-065
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20 N. Wacker Drive
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Chicago, IL 60606-2903

PCB 2013-065
Ann Alexander
Natural Resources Defense Council
20 N. Wacker Drive
Suite 1600
Chicago, IL 60606-2903

PCB 2013-065
Dynergy Midwest Generation
604 Pierce Boulevard
O'Fallon, IL 62269

EXHIBIT 2

NATURAL RESOURCES DEFENSE COUNCIL

July 29, 2013

Via electronic mail and
United States Mail

Mr. Daniel J. Deeb
Schiff Hardin, LLP
6600 Willis Tower
233 South Wacker Drive
Chicago, IL 60606

Re: NRDC v. Dynegy, PCB 13-65 – reply memorandum

Dear Dan,

I recently received from the Board the attached notice indicating that on July 22, counsel for Dynegy spoke ex parte to the hearing officer in the captioned case with a request to file a reply brief, which she granted.

This ex parte contact concerning a substantive matter was not appropriate. As you are undoubtedly aware, the Board regulations require that a motion be filed leave to file a reply brief, and set a strict legal standard for granting such leave:

The moving person will not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice. A motion for leave to file a reply must be filed with the Board within 14 days after service of the response.

35 Ill. Admin. Code 101.500(e).

As we might very well have objected to such a motion, depending on the stated grounds for it, we will, if need be, move to strike any reply brief pursuant to the rule cited above. We

believe the easier course of action for all concerned would be for you to make a proper motion for leave.

Very truly yours,

A handwritten signature in blue ink that reads "Ann Alexander". The signature is written in a cursive style with a light blue background behind the text.

Ann Alexander

Enc.

cc: Hon. Carol Webb
Amy Antolelli
Stephen J. Bonebrake
Thomas Davis
Rachel R. Medina
Deborah Williams

ILLINOIS POLLUTION CONTROL BOARD

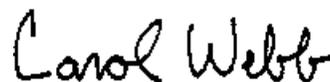
July 22, 2013

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

HEARING OFFICER ORDER

On July 22, 2013, respondent Dynegy Midwest Generation contacted the hearing officer to request leave to reply to the parties' responses to its motion to dismiss. The hearing officer granted leave to reply by August 5, 2013.

IT IS SO ORDERED.



Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
217/524-8509
Carol.Webb@illinois.gov

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on July 22, 2013, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on July 22, 2013:

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601



Carol Webb
Hearing Officer
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SERVICE LIST

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PCB 2013-065
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PCB 2013-065
Ann Alexander
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PCB 2013-065
Dynergy Midwest Generation
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July 31, 2013

VIA E-MAIL

Ms. Ann Alexander
Natural Resources Defense Council
20 North Wacker Drive, Suite 1600
Chicago, IL 60606

Re: **NRDC Letter Dated July 29, 2013**
PCB 13-65

Dear Ann:

The above-referenced letter contends that a July 22, 2013 communication with Hearing Officer Webb constituted an inappropriate *ex parte* communication regarding a substantive matter. We strongly disagree – Hearing Officer Webb’s Order of July 22, 2013 was not at all improper.

You are likely aware that communications which are procedural in nature are not considered to be *ex parte* communications. The July 22, 2013 communication referenced by your letter was such a communication. Inarguably, motions for leave to file a responsive pleading are procedural – they do not reflect on the substance of a proceeding. Indeed, motions for leave have been expressly characterized by the Board as procedural (see, for example, *Illinois v. Joslyn MFG.*, PCB 83-83 (October 6, 1983)). It may also interest you to see the attached highly analogous 2004 Board opinion which found a very similar communication to not be an *ex parte* communication.

Should you disagree with the above and yet believe that an additional motion is somehow warranted, please let me know. In doing so, we ask that you kindly advise how you believe the communication at issue substantively reflects on the proceedings.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel J. Deeb', with a stylized flourish above it.

Daniel J. Deeb

Enc.

cc: Hearing Officer Webb (via email w/ attachment)
Amy Antonioli (via email w/ attachment)
Stephen J. Bonebrake (via email w/ attachment)
Thomas Davis (via email w/ attachment)
Rachel Medina (via email w/ attachment)
Deborah Williams (via email w/ attachment)

2004 WL 1809061 (Ill.Pol.Control.Bd.)

Illinois Pollution Control Board
State of Illinois

*1 PEOPLE OF THE STATE OF ILLINOIS EX REL. GARY W. PACK, MCHENRY COUNTY STATE'S ATTORNEY, COMPLAINANT

v.

MICHAEL STRINGINI, RESPONDENT

PCB 01-43

August 5, 2004

(Enforcement - RCRA)

ORDER OF THE BOARD

This matter is before the Board on a June 23, 2004 motion for an interlocutory appeal of a June 21, 2004 hearing officer filed by the People of the State of Illinois, through Gary Pack, McHenry County State's Attorney (People).

The case concerns a facility leased by Stringini from approximately 1980 to 1984 to allegedly reclaim metals from foundry sand. On October 16, 2003, the Board issued an interim order that granted the People's motion for summary judgment as to counts I, II, III, IV, VI, VIII, X and XI of the complaint; and granted Stringini's motion for summary judgment regarding count IX. The Board also found a genuine issue of fact exists as to allegations in count V and VII. On December 4, 2003, the Board issued an order that granted the People's motion to dismiss counts V and VII and directed the parties to proceed to hearing and present Board with sufficient evidence to allow Board to assess civil penalty on counts I, II, III, IV, VI, VIII, and XI of the complaint.

A hearing was held on March 23, 2004. Hearing Officer Bradley Halloran issued a hearing report on April 6, 2004 that, *inter alia*, set a briefing schedule requiring the People's post-hearing brief be filed before May 3, 2004; Stringini's post-hearing brief be filed before June 2, 2004; and the People's reply be filed before June 17, 2004.

The People timely filed their brief on April 14, 2004. On June 21, 2004, the hearing officer granted Stringini's motion for extension of time until June 29, 2004, to file his brief; and gave the People until July 16, 2004, to file a reply.

On June 23, 2004, the People filed the instant motion. Stringini filed his brief (a letter he characterized as a response to

the post-hearing brief) on June 29, 2004, but did not specifically respond to the People's motion.

In its motion, the People assert that the hearing officer allowed Stringini to file its motion to extend time by facsimile through an *ex parte* communication. The People contend that the hearing officer did not indicate how he authorized Stringini to file via facsimile, and it can therefore only be concluded that the authorization came in an *ex parte* communication with Stringini. The People further assert that extensions are to be granted on only good cause and Stringini's motion to extend contains no such basis. The People assert that Board Members and employees are prohibited by the Board's regulations from engaging in *ex parte* communications designed to influence a party's action.

Pursuant to 35 Ill. Adm. Code 101.518, the Board may consider interlocutory appeals from a hearing officer order. In this instance, the Board will accept the motion. Initially, the Board will consider the implication that the hearing officer improperly engaged in *ex parte* communications with Stringini. *Ex parte* communications are defined in the Board's regulations as a communication between a person who is not a Board member or employee and a Board member or employee that reflects on the substance of a pending Board proceeding that takes place outside the record of the proceeding. 35 Ill. Adm. Code 101.202. Communications regarding matters of procedure and practice are specifically exempted from the definition. *Id.*

*2 The Board finds that the communications between Hearing Officer Halloran and Stringini were proper. The communications were procedural in nature and did not reflect on the substance of the proceeding. Accordingly, Hearing Officer Halloran did not violate the prohibitions contained in 35 Ill. Adm. Code 101.114.

In addressing the motion for extension itself, the Board affirms Hearing Officer Halloran's decision. The hearing officer is familiar with the procedural history of the case, and in his discretion granted the motion for extension of time. The Board finds that no material prejudice resulted from this action, and Stringini's June 29, 2004 response is accepted. The People are hereby given until August 19, 2004, to file any reply to the response.

IT IS SO ORDERED.

G.T. Girard

2004 WL 1809061 (Ill.Pol.Control.Bd.)

END OF DOCUMENT

26750-0018

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DRAFT

NATURAL RESOURCES DEFENSE COUNCIL

August 1, 2013

Via electronic mail and
United States Mail

Mr. Daniel J. Deeb
Schiff Hardin, LLP
6600 Willis Tower
233 South Wacker Drive
Chicago, IL 60606

Re: NRDC v. Dynegey, PCB 13-65 – reply memorandum

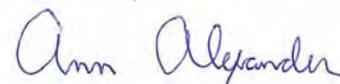
Dear Dan,

I am in receipt of your letter dated July 31.

Thank you for attempting to address our concerns, but you have not satisfied them. There is no valid comparison between a request made *ex parte* for permission to file motion papers via facsimile, as in *People v. Stringini*, PCB 01-43, and a request made *ex parte* for leave to reply without any motion at all. Any general distinction between “substantive” and “procedural” relief is irrelevant in this context given that the Board’s rules expressly require that leave to reply be sought by motion, and establish a substantive – and stringent – standard for the granting of such relief.

For this reason, should you file your reply brief without first seeking leave in a formal motion as required under 35 Ill. Admin. Code 101.500(e), we will file a motion to strike that reply.

Very truly yours,



Ann Alexander

Ann Alexander

Enc.

cc: Hon. Carol Webb
Amy Antolelli
Stephen J. Bonebrake
Thomas Davis
Rachel R. Medina
Deborah Williams

EXHIBIT 3

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)
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**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: aantonioli@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
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Springfield, IL 62794-927

Albert Ettinger
Sierra Club
53 W. Jackson, #1664
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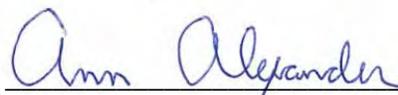

By: Amy Antonioli

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

CERTIFICATE OF SERVICE

I, Ann Alexander, the undersigned attorney, hereby certify that I have served the attached **Motion to Strike Defendants' Reply Memorandum** upon the persons listed in the foregoing Notice of Filing, by depositing said documents in the United States Mail, postage prepaid, from 20 North Wacker Drive, Suite 1600, Chicago, IL 60606, before the hour of 5:00 p.m., on this 6th day of August, 2013.

A handwritten signature in blue ink that reads "Ann Alexander". The signature is written in a cursive style and is positioned above a horizontal line.

Ann Alexander, Natural Resources Defense Council