

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

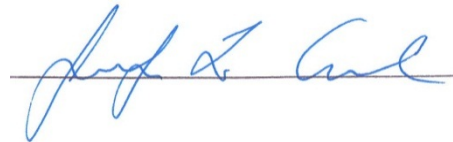
In the Matter of:)	
)	
SIERRA CLUB, ENVIRONMENTAL)	
LAW AND POLICY CENTER,)	
PRAIRIE RIVERS NETWORK, and)	
CITIZENS AGAINST RUINING THE)	
ENVIRONMENT)	
)	PCB No-2013-015
Complainants,)	(Enforcement – Water)
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondents)	

NOTICE OF ELECTRONIC FILING

To: Attached Service List

PLEASE TAKE NOTICE that on December 28, 2012, I electronically filed with the Clerk of the Illinois Pollution Control Board: **CITIZEN GROUPS’ NOTICE OF PENDING BANKRUPTCY AND MOTION FOR AN EXTENSION OF TIME TO RESPOND TO RESPONDENT’S MOTION TO DISMISS**, a copy of which is served on you along with this notice.

Respectfully submitted,



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Dated: Dec 28, 2012

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
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SIERRA CLUB, ENVIRONMENTAL)	
LAW AND POLICY CENTER,)	
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CITIZEN GROUPS’ NOTICE OF PENDING BANKRUPTCY AND MOTION FOR AN EXTENSION OF TIME TO RESPOND TO RESPONDENT’S MOTION TO DISMISS

NOW COME the Complainants, Sierra Club, Environmental Law and Policy Center (“ELPC”) and Prairie Rivers Network (collectively, “Citizens Groups”), pursuant to 35 Ill. Adm. Code 101.500(d) and 101.522, and request that the Hearing Officer grant Citizens Groups an extension of time to respond to Respondent Midwest Generation, LLC (“MWG”)’s Motion to Dismiss through and including January 11, 2013. In support of this unopposed motion, Citizens Groups state as follows:

1. On December 17, 2012, MWG, and 16 affiliated entities, filed a petition in the United States Bankruptcy Court for the Northern District of Illinois seeking protection under Chapter 11 of the United States Bankruptcy Code.
2. Pursuant to 11 U.S.C. § 362(a)(1), the filing of a bankruptcy petition “operates as a stay, applicable to all entities, of the commencement or continuation, including the issuance or

employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced” before the filing of the bankruptcy petition.

3. No exception to the automatic stay provisions of the Bankruptcy Code applies directly to this pending action against MWG. *See, e.g., In re Chateaugay Corp.*, 118 B.R. 19 (Bankr. S.D.N.Y. 1990) (citizen environmental enforcement action not subject to the bankruptcy code’s exception to the automatic stay for governmental units to enforce police and regulatory power). *See also Hilles Motors, Inc. v. Hawaii Auto Dealers’ Association*, 997 F.2d 581 (9th Cir. 1993) (requiring courts to give exceptions to the automatic stay provisions in the bankruptcy code the narrowest possible construction to afford debtors the broadest possible protection through the automatic stay).

4. The Environmental Law & Policy Center first brought the bankruptcy case to the attention of the Illinois Pollution Control Board by letter dated December 21, 2012 and electronically docketed as “comments” on that date. The December 21, 2012 letter is incorporated here by reference; however, to avoid any uncertainty about the status of this matter, the Environmental Law and Policy Center submits this unopposed formal motion for an extension of time to respond to MWG’s motion to dismiss.

5. On December 28, 2012, MWG electronically filed with the Illinois Pollution Control Board a *Notice of Bankruptcy Stay for Edison Mission Energy, et al.*, advising of the bankruptcy filing and the existence of the automatic stay.

6. A motion for an extension of time may be granted for good cause shown. 35 Ill. Adm. Code 101.522. The Board has “wide discretion in determining what constitutes good cause.” *People v. Env’tl. Health and Safety, Inc.*, PCB 05-51, 2006 Ill. ENV LEXIS 198, *6 (Apr. 6, 2006).

7. Citizens Groups will be prejudiced if the requested extension is not granted because responding to MWG's pending motion to dismiss this proceeding may well be construed as the continuation of an action, commenced prior to the filing of a bankruptcy petition, against MWG, a debtor, in violation of the bankruptcy code's automatic stay provisions.

WHEREFORE, Petitioners request that the Hearing Officer grant Citizens Groups' unopposed request for an extension of time for the Citizens Groups to respond to MWG's pending motion to dismiss until at least January 11, 2013.

Respectfully submitted,



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*Attorneys for ELPC, Sierra Club and
Prairie Rivers Network*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **CITIZEN GROUPS' NOTICE OF PENDING BANKRUPTCY AND MOTION FOR AN EXTENSION OF TIME TO RESPOND TO RESPONDENT'S MOTION TO DISMISS** was served to all parties of record listed below by United States Mail, postage prepaid, on December 28, 2012.

/s/ Erin Morse
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PCB 2013-051 SERVICE LIST:

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