

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,)	
)	
Complainants,)	
)	
v.)	PCB No-2013-015
)	(Enforcement – Water)
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

NOTICE OF FILING

To: Attached Service List

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the attached **MOTION FOR EXTENSION OF TIME TO RESPOND TO COMPLAINANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**, copies of which are served on you along with this notice.

Respectfully submitted:
MIDWEST GENERATION, LLC.

By /s/ Kristen L. Gale
One of Its Attorneys

Dated: June 14, 2016

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Respondent, Midwest Generation LLC's Motion for Extension of Time to Respond to Complainants' Motion for Partial Summary Judgment filed electronically on June 14, 2016 with the following:

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

and that true copies were mailed by First Class Mail, postage prepaid, on June 14, 2016 to the parties listed on the foregoing Service List.

/s/ Kristen L. Gale

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**MOTION FOR EXTENSION OF TIME TO RESPOND TO COMPLAINANTS’
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Respondent, Midwest Generation, LLC, (“MWG”) by and through counsel, requests that the Illinois Pollution Control Board (“Board”) enter an order extending the time to respond to Complainants’ Motion for Partial Summary Judgment. In support of its motion, Respondent states the following:

1. On June 1, 2016, Complainants filed a Partial Motion for Summary Judgment. Attached to that motion was a Memorandum in Support, which is 46 pages.¹ The formatting of the memorandum is 11.5 point font in violation of Board Rule 101.302(g) requiring that the type in the body of the text not be less than 12 point font. 35 Ill.Adm.Code 101.302(g). Additionally, much of Complainants’ motion is single spaced, including a footnote that fills an entire page. *See Complainants’ Memorandum*, FN3. Attached to the extensive motion and memorandum are 81 exhibits, totaling over 5,000 pages.

¹ Board Rule 101.302(k) limits all motions, memorandums and briefs to 50 pages. 35 Ill.Adm.Code 101.302(k).

2. MWG was finally served with Complainants' Partial Motion and the attached exhibits on June 7, 2016.

3. Pursuant to Board Rule 101.500(d), a party may request that the Board grant additional time to respond to a motion. 35 Ill. Adm. Code 101.500(d).

4. Respondent requests an extension of time to respond to Complainants' motion to July 26, 2016. This extension is reasonable and appropriate because of the scope and complexity of Complainants' motion. Specifically:

a) Complainants' motion contains 137 allegedly statements of undisputed facts citing to over 81 exhibits in support.

b) Some of the statements of undisputed facts cite to numerous documents to allegedly establish them. For example, *see* Complainants' Statement of Undisputed Facts, No. 10, ¶2, No. 20, ¶ 2, and No. 117, each citing five lengthy reports as exhibits. *Complainants' Memorandum*, pp. 7, 11, 25.

c) Many of the citations to the documents are incomplete and do not cite to a corresponding map or other identifying document to locate the areas Complainants are describing. For instance, in both No. 4, ¶4 and No. 10, ¶2, Complainants do not cite to or identify a map to locate the boring locations they are identifying. *Complainants' Memorandum*, pp. 5 and 7.

d) It is almost impossible to delineate the areas at each of the Stations Complainants seek to identify for their Partial Motion for Summary Judgment. In a single, page-long footnote, Complainants attempt to define portions of the four separate Stations that are subject to the motion. *See Complainants' Motion*, FN3. However, the definition is not inclusive, but is actually exclusive, in that Complainants state it is all

areas, except certain defined areas. For instance, the definition of the “Historic Coal Ash” at Will County includes all areas that have ash, except for five distinct areas. *See Complainants’ Memorandum*, FN3, ¶2. Later, Complainants state that the “Historic Ash Areas” do not include the areas covered by the Compliance Commitment Agreements with Illinois EPA nor the areas cited to by MWG’s expert. *See Complainants’ Memorandum*, FN3, ¶6. The reader is forced to attempt to piece together the locations Complainants are discussing in their motion.

e) Moreover, there are multiple inconsistencies in the descriptions of the areas addressed in the motion, further complicating MWG’s efforts to respond. For instance, in defining the “Historic Coal Ash” at Will County, Complainants state that “‘Historic Coal Ash’ at Will County also does not include coal ash in the boiler slag stockpile located near the retention basin...” *See Complainants’ Memorandum*, FN3, ¶2. Yet, Complainants identify the boiler slag stockpile as “Historic Coal Ash” in No. 6 of their Statement of Undisputed Facts under the heading stating that there is Historic Coal Ash at all four stations. *See Complainants’ Memorandum*, pp. 4 and 6. Similar inconsistencies occur in Complainants’ definition of “Historic Coal Ash” at Powerton. Complainants define “Historic Coal Ash” at Powerton to exclude six different areas of the Station, one such area being the Limestone Basin. *Complainants’ Memorandum*, FN3, ¶4. At the same time, Complainants again apparently seek to include the Limestone Basin by asserting that it contains coal ash in No. 11 of the Statement of Undisputed Facts under the same Historic Coal Ash heading. *See Complainants’ Memorandum*, pp. 4 and 7.

f) Once accounting for the improper font and the extensive single spacing, Complainants' motion exceeds the 50 page limit set forth in Board Rule 101.302 (k). 35 Ill. Adm. Code 101.302(k).

6. There are no further dates on the discovery schedule and no scheduled hearing date, so an extension for filing the response does not prejudice any party.

7. MWG contacted Complainants and requested that they agree to this extension; Complainants declined the request.

WHEREFORE, MWG respectfully requests an extension of time allowing them until July 26, 2016, to respond to Complainants' Motion for Partial Summary Judgment.

MIDWEST GENERATION, LLC.

By /s/ Kristen L. Gale
One of Its Attorneys

June 14, 2016

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