

**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 FILING**

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the attached **COMPLAINANTS' RESPONSE TO RESPONDENT'S MOTION FOR EXTENSION OF HEARING DATE**, copies of which are served on you along with this notice.

Respectfully submitted,



---

Lindsay Dubin  
Staff Attorney  
Environmental Law & Policy Center  
35 E. Wacker Dr., Suite 1600  
Chicago, IL 60601  
ldubin@elpc.org  
(312) 795-3712

Dated: June 15, 2017

**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	)	

**COMPLAINANTS’ RESPONSE TO RESPONDENT’S  
MOTION FOR EXTENSION OF HEARING DATE**

Complainants Sierra Club, Environmental Law & Policy Center (“ELPC”), Prairie Rivers Network, and Citizens Against Ruining the Environment (“CARE”), by their undersigned counsel, hereby submit this Response to the Motion for Extension of Hearing Date (“Motion”) submitted by Respondent Midwest Generation, LLC (“MWG”). The Hearing Officer should deny Respondent’s Motion for the following reasons:

1. As Respondent points out, on February 9, 2017, the Hearing Officer set the hearing dates for July 17 through 21, 2017. The parties have been aware of this hearing date fully five months in advance of the actual hearing. In-house counsel either was or should have been on notice as to the hearing date since February 9, 2017. Thus, the parties have been aware of the hearing schedule for a significant amount of time and have had ample opportunity to plan around this date.

2. Respondent misrepresented Complainants' counsels' statement as to their availability.

One of Complainants' counsel explicitly stated in an email to Respondent's counsel, "we do not yet have a response from all of Complainants, but initially as to scheduling, we are not available to reschedule the hearing any earlier than the last two weeks of September." After all counsel for Complainants conferred, they established that Complainants are not available to reschedule until the week of October 9, 2017 or later.

3. Respondent filed their motion for an extension when the hearing as scheduled was little more than a month away. Due to the parties planning around the hearing as scheduled and such late notice to reschedule, Complainants' schedules alone would require more than two and a half months of delay to the hearing in order to reschedule. That degree of delay is unacceptable at this stage in the proceedings because "all hearings should be completed as expeditiously as possible." *Village of Matteson v. World Music Theatre*, PCB No. 90-146, 1992 Ill. ENV LEXIS 416, at \*6 (1992).

4. The hearing date was published in order to provide public notice on June 6, 2017. The Board is reluctant to undertake the expense of rescheduling hearings after public notice due to the cost of republishing notice. *Sours Grain Co. v. Illinois EPA*, PCB No. 85-190, 1986 Ill. ENV LEXIS 338, at \*5 (1986).

5. In-house counsel being "unavailable" and the mere existence of a conflict are insufficient reasons to establish good cause to reschedule the hearing. "It is a fact of an attorney's life that conflicts arise . . . ." *Sours Grain Co. v. Illinois EPA*, PCB No. 85-190, 1986 Ill. ENV LEXIS 338, at \*3 (1986). The Board "cannot reschedule hearings whenever a conflict arises." *Id.* at \*3.

6. As per the Complaint, there is ongoing groundwater contamination taking place at the site. Delay allows the unresolved contamination to continue unabated.

For the reasons stated above, Complainants respectfully request that the Hearing Officer deny Respondent's Motion for Extension of Hearing Date.

Respectfully submitted,



---

Lindsay Dubin  
Jessica Dexter  
Eric DeBellis  
Staff Attorney  
Environmental Law & Policy Center  
35 E. Wacker Dr., Suite 1600  
Chicago, IL 60601  
ldubin@elpc.org  
(312) 795-3712

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

Faith E. Bugel  
1004 Mohawk  
Wilmette, IL 60091  
(312) 282-9119  
fbugel@gmail.com

Gregory E. Wannier  
2101 Webster St., Ste. 1300  
Oakland, CA 94612  
(415) 977-5646  
Greg.wannier@sierraclub.org

*Attorneys for Sierra Club*

Abel Russ  
Attorney  
Environmental Integrity Project  
1000 Vermont Avenue NW  
Washington, DC 20005

aruss@environmentalintegrity.org  
802-662-7800 (phone)  
202-296-8822 (fax)

*Attorney for Prairie Rivers Network*

Keith Harley  
Chicago Legal Clinic, Inc.  
211 W. Wacker, Suite 750  
Chicago, IL 60606  
kharley@kentlaw.iit.edu  
312-726-2938 (phone)  
312-726-5206 (fax)

Dated: June 15, 2017

*Attorney for CARE*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NOTICE OF ELECTRONIC FILING** and **COMPLAINANTS' RESPONSE TO RESPONDENT'S MOTION FOR EXTENSION OF HEARING DATE** were served electronically to all parties of record listed below, on June 15, 2017.

/s/ Matthew Glover  
Matthew Glover  
Legal Assistant  
Environmental Law & Policy Center  
35 E Wacker Drive. Suite 1600  
Chicago, Illinois 60601  
(312) 795-3719

**PCB 2013-015 SERVICE LIST:**

Jennifer T. Nijman  
Susan M. Franzetti  
Kristen L. Gale  
NIJMAN FRANZETTI LLP  
10 South LaSalle Street, Suite 3600  
Chicago, IL 60603

Gregory E. Wannier  
2101 Webster St., Ste. 1300  
Oakland, CA 94612  
(415) 977-5646  
Greg.wannier@sierraclub.org

Bradley P. Halloran, Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph St  
Suite 11-500  
Chicago, IL 60601

Abel Russ  
Attorney  
Environmental Integrity Project  
1000 Vermont Avenue NW  
Washington, DC 20005  
aruss@environmentalintegrity.org  
(802) 662-7800 (phone)  
(202) 296-8822 (fax)

Jessica Dexter  
Lindsay Dubin  
Eric DeBellis  
Environmental Law & Policy Center  
35 E. Wacker Dr., Suite 1600  
Chicago, IL 60601  
(312) 795-3726

Keith Harley  
Chicago Legal Clinic, Inc.  
211 W. Wacker, Suite 750  
Chicago, IL 60606  
kharley@kentlaw.iit.edu  
312-726-2938 (phone)  
312-726-5206 (fax)

Faith E. Bugel  
1004 Mohawk  
Wilmette, IL 60091  
(312) 282-9119  
fbugel@gmail.com