

State of Illinois
Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601
<http://www.ipcb.state.il.us/>

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JUL 29 2014

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the matter of:

SIERRA CLUB,

Complainant,

v.

AMEREN ENERGY MEDINA VALLEY
COGEN, LLC

and

FUTUREGEN INDUSTRIAL ALLIANCE
INC.,

Respondents.

PCB No. 2014-134
(Enforcement)



ORIGINAL

NOTICE OF FILING

To: AMERENENERGY MEDINA
VALLEY COGEN, LLC
James Michael Showalter
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FUTUREGEN INDUSTRIAL ALLIANCE
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VAN NESS FELDMAN LLP
719 Second Avenue, Suite 1150
Seattle, WA 98104
206-623-9372
Email: dnj@vnf.com

PLEASE TAKE NOTICE that on this date I filed with the Clerk of the Pollution Control Board of the State of Illinois Sierra Club's: MOTION FOR EXTENSION OF TIME TO

RESPOND TO MOTION FOR SUMMARY JUDGMENT AND MOTION TO EXPEDITE AND INCORPORATED MEMORANDUM IN SUPPORT (DIRECTED TO THE HEARING OFFICER). Pursuant to the Board's procedural rules, the documents referenced above are served upon Respondents addressed as set forth above by Federal Express. 35 Ill. Adm. Code 101.302(c).

Respectfully submitted,

/s/ Eric M. Schwing (by consent)

DATED: July 28, 2014

Eric M Schwing
Attorney at Law
1100 South 5th Street
Springfield, IL 62703
(217) 544-4440
Email: eric.schwing@comcast.net

Counsel for the Complainant

State of Illinois
Pollution Control Board
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AMERENENERGY MEDINA VALLEY)
COGEN, LLC)

PCB No. 2014-134
(Enforcement)

and)

FUTUREGEN INDUSTRIAL ALLIANCE)
INC.,)

Respondents.)

**SIERRA CLUB'S MOTION FOR EXTENSION OF TIME TO RESPOND TO MOTION
FOR SUMMARY JUDGMENT AND MOTION TO EXPEDITE AND
INCORPORATED MEMORANDUM IN SUPPORT
(DIRECTED TO THE HEARING OFFICER)**

Pursuant to 35 Illinois Administrative Code ("Ill. Admin. Code") § 101.516(a),
Complainant Sierra Club hereby files this motion for extension of time for filing responses to
Defendants' Motion for Summary Judgment and Motion for Expedited Consideration, and
incorporated memorandum in support, and further states as follows:

1. On June 11, 2014, Sierra Club filed this citizens enforcement action pursuant to

Illinois Environmental Protection Act Section 31(d), 415 ILCS 5/31 (d), against Respondents AmerenEnergy Medina Valley Cogen, LLC and FutureGen Industrial Alliance Inc. (collectively “Defendants”) with the Illinois Pollution Control Board (“IPCB”) on June 11, 2014.

2. According the IPCB’s recent order issued on July 24, 2014, all the Defendants filed a motion a motion for summary judgment pursuant to 35 Ill. Adm. Code 101.516, Section 2-1005 of the Illinois Code of Civil Procedure, 735 ICLS 5/2-1005, on July 15, 2014 and Defendant FutureGen Industrial Alliance, Inc. filed for expedite pursuant Illinois Admin. Code § 101.512 on July 16, 2014.

3. The certificate of service for these motions states that they were served via U.S. Mail on July 15, 2014 and July 16, 2014, respectively, but they were also informally emailed to Sierra Club’s counsel.

4. On July 24, 2014, the Pollution Control Board issued an order which, *inter alia*, denied the *pro hac vice* application of Sierra Club attorney Eva Schueller, Esq. for failure to comply with Supreme Court Rule 707.

5. That order granted Ms. Schueller leave up until August 25, 2014 to file a new appearance which fully complies with Rule 707.

6. Sierra Club has just become aware of that ruling today, July 28, 2014, and must now take all the appropriate steps to remedy that issue and ensure that Ms. Schueller is properly admitted in this proceeding consistent with all the requirements of Rule 707. At the same time, Sierra Club is endeavoring to address the Defendants’ other pending motions.

7. Based on the July 15, 2014 mailing date on the certificate of service for Defendants’ motion for summary judgment, and the July 16, 2014 mailing date for Defendants’ motion to expedite, the fourteen (14) day response deadline set forth at 35 Ill. Adm. Code § 101-

500(d), the four (4) day mailbox rule set forth at 35 Ill. Adm. Code § 101.300(d), and the weekend and holiday carry-over provision set forth 35 Ill. Adm. Code § 101.300(a), Sierra Club has reason to believe that its current deadlines for filing responses to the pending motions for summary judgment and to expedite is close of business on Monday, August 4, 2014.

8. However, to ensure that Sierra Club's responses to the pending motions are timely filed and served and to allow Sierra Club to address the new *pro hac* issues it has just learned about, Sierra Club hereby moves for a limited extension of time which would allow Sierra Club to file responses to Defendants' motions for summary judgment¹ and to expedite up to and on **August 25, 2014**.

9. In the alternative, if the IPCB or the Hearing Officer is not inclined to grant an extension that conforms to the deadlines imposed by the order on the *pro hac* issue, Sierra Club respectfully requests that an extension be granted that allows Sierra Club to serve its responses to the Defendants' motion for summary judgment and to expedite up to and on **August 4, 2014**.

10. For all the foregoing reasons and for good cause shown, Sierra Club respectfully requests that this motion be granted as requested.

Respectfully submitted,

/s/ Eric M. Schwing (by consent)

DATED: July 28, 2014

Eric M. Schwing
Attorney at Law
1100 South 5th Street
Springfield, IL 62703
(217) 544-4440
Email: eric.schwing@comcast.net

¹ Please note that Sierra Club's response to summary judgment will include a request for a more substantial extension to respond to the pending summary judgment motion in order to complete discovery and obtain evidence that can otherwise not be procured and that will allow Sierra Club to more adequately respond to the contentions made by Defendants.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB,)
)
 Complainant,)
)
 v.)
) PCB No. 2014-134
 AMERENENERGY MEDINA VALLEY) (Enforcement)
 COGEN, LLC)
)
 and)
)
 FUTUREGEN INDUSTRIAL ALLIANCE)
 INC.,)
)
 Respondents.)

CERTIFICATE OF SERVICE

I, the undersigned, on oath or affirmation certify that on July 28, 2014, I have served the attached MOTION FOR EXTENSION OF TIME TO RESPOND TO MOTION FOR SUMMARY JUDGMENT AND MOTION TO EXPEDITE AND INCORPORATED MEMORANDUM IN SUPPORT (DIRECTED TO THE HEARING OFFICER), via Federal Express, upon the following persons in the above-captioned matter:

TO: AMERENENERGY MEDINA VALLEY COGEN, LLC James Michael Showalter Renee Cipriano Ashley Thomson SCHIFF HARDIN LLP 233 South Wacker Drive, Suite 6600 Chicago, IL 60606-6473 312-258-5561 Email: mshowalter@schiffhardin.com	FUTUREGEN INDUSTRIAL ALLIANCE Dale N Johnson Christopher D. Zentz VAN NESS FELDMAN LLP 719 Second Avenue, Suite 1150 Seattle, WA 98104 206-623-9372 Email: dnj@vnf.com
--	--

as authorized by the Clerk of the Illinois Pollution Control Board under 35 Ill. Adm. Code §§ 101.302(c), 101.304(c), and Illinois Supreme Court Rule 12.

DATED: July 28, 2014

Eva Schueller
Environmental Law Program
Sierra Club
85 Second Street
San Francisco, CA 94105
(415) 977-5637

Subscribed to and sworn before me

this 28th day

of July, 2014.



Notary Public

My commission expires: 09/09/2015