

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB,)
)
Complainant,)
) PCB 2014-134
v.) (Enforcement-Air)
)
AMEREN ENERGY MEDINA VALLEY)
COGEN, LLC)
)
and)
)
FUTUREGEN INDUSTRIAL ALLIANCE INC.,)
)
Respondents)

NOTICE OF FILING

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PLEASE TAKE NOTICE that I have today e-filed with the Office of the Clerk of the Pollution Control Board: RESPONDENT FUTUREGEN INDUSTRIAL ALLIANCE INC.'S ANSWER TO SIERRA CLUB'S COMPLAINT, a copy of which is herewith served upon you.

DATED this 8th day of August, 2014.

/s/ Kyle C. Barry

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**FUTUREGEN INDUSTRIAL ALLIANCE INC.'S
ANSWER TO SIERRA CLUB'S COMPLAINT**

Defendant FutureGen Industrial Alliance Inc. ("Alliance") by and through its undersigned counsel, in answer to Sierra Club's Complaint admits, denies, and alleges as follows:

The Alliance generally denies each and every allegation of the Complaint not expressly admitted. The Alliance also expressly denies some allegations without affecting its general denial of other allegations. The Alliance does not, and is not required to, respond to statements in the Complaint that are legal arguments or proposed conclusions of law. If an answer to any such allegation is required, the Alliance denies each such allegation that is not expressly admitted. To the extent that the Alliance incorporates Sierra Club's headings in this answer, the Alliance does so for organizational purposes only and does not admit any of the allegations contained in Sierra Club's headings.

In addition to the above general responses, the Alliance offers the following response to the specific allegations set forth in each numbered paragraph of Sierra Club's Complaint.

I. ANSWER

INTRODUCTION

1. Paragraph 1 is a characterization of Sierra Club's claim to which no response is required. To the extent that a response is required, while the Alliance admits that Sierra Club has filed a "citizen enforcement suit" under Section 31(d) of the Illinois Environmental Protection Act, 415 ILCS 5/31(d); 415 ILCS 5/9.1(d), the Alliance denies that Sierra Club is entitled to the relief it has requested.

2. Paragraph 2 is a summary of Sierra Club's requested relief to which no response is required. To the extent that a response is required, while the Alliance admits that Sierra Club seeks an order from the Board, the Alliance admits that it has secured from the Illinois Environmental Protection Agency – Bureau of Air – all applicable permits required by the CAA and/or Illinois' State Implementation Plan (SIP) and/or other state regulatory requirements.

3. Paragraph 3 is denied.

4. Paragraph 4 is denied.

5. Paragraph 5 is denied.

6. Paragraph 6 is denied.

PARTIES

The Alliance hereby incorporates all responses, facts and allegations set forth in the Paragraphs above and below as if fully set forth herein.

7. The Alliance is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7; they are therefore denied.

8. The allegations set forth in Paragraph 8 constitute a legal conclusion to which no response is required. To the extent a response is required, this Paragraph is denied.

9. The Alliance admits the first sentence of Paragraph 9. The Alliance further admits that AmerenEnergy Medina Valley Cogen, LLC (“Ameren”) is a direct, wholly owned subsidiary of Ameren Corporation, an investor-owned, publicly traded company. The Alliance denies the remaining allegations in Paragraph 9.

10. Paragraph 10 is admitted.

11. The Alliance is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first two sentences of Paragraph 11. They are therefore denied. All remaining allegations in this Paragraph are denied.

12. Paragraph 12 is denied.

13. Paragraph 13 is denied.

14. Paragraph 14 is denied.

15. Paragraph 15 is denied.

GENERAL ALLEGATIONS

The Alliance hereby incorporates all responses, facts and allegations set forth in the Paragraphs above and below as if fully set forth herein.

16. Paragraph 16 sets forth a legal conclusion to which no response is required. The Clean Air Act (“CAA”) is the best evidence of its contents. Because the allegations in Paragraph 16 consist of a re-characterization of the CAA, this Paragraph is denied.

17. Paragraph 17 sets forth a legal conclusion to which no response is required. The CAA is the best evidence of its contents. Because the allegations in Paragraph 17 consist of a re-characterization of the CAA, this Paragraph is denied.

18. The Alliance admits that it has received a state-issued permit from Illinois Environmental Protection Act to construct Boiler 7 and related ancillary and pollution control

equipment at the Meredosia facility. The CAA is the best evidence of its contents. Because the allegations in Paragraph 18 consist of a re-characterization of the CAA, this Paragraph is denied. All remaining allegations in this Paragraph are denied.

19. Paragraph 19 sets forth a legal conclusion to which no response is required. To the extent a response is required, the CAA and Illinois Environmental Protection Act are the best evidence of their contents. Because the allegations consist of re-characterization of CAA and Illinois Environmental Protection Act, the allegations in this Paragraph are denied to the extent they are inconsistent with the CAA and/or the Illinois Environmental Protection Act.

20. Paragraph 20 sets forth a legal conclusion to which no response is required. To the extent a response is required, the CAA and CFR § 52.21 *et seq.* are the best evidence of their contents. Because the allegations consist of re-characterizations of the CAA and CFR § 52.21 *et seq.* the allegations in this Paragraph are denied to the extent they are inconsistent with the CAA and/or the CFR § 52.21 *et seq.*

21. Paragraph 21 sets forth a legal conclusion to which no response is required. To the extent a response is required, CAA and CFR § 52.21 *et seq.* are the best evidence of its contents. Because the allegations consist of re-characterization of CAA and CFR § 52.21 *et seq.* the allegations in this Paragraph are denied to the extent they are inconsistent with the CAA and/or the CFR § 52.21 *et seq.*

22. Paragraph 22 sets forth a legal conclusion to which no response is required. To the extent a response is required, CFR § 52.21 *et seq.* is the best evidence of its contents. Because the allegations consist of re-characterization of CFR § 52.21 *et seq.* the allegations in this Paragraph are denied to the extent they are inconsistent with CFR § 52.21 *et seq.*

23. Paragraph 23 sets forth a legal conclusion to which no response is required. To the extent a response is required, CFR § 52.21 *et seq.* is the best evidence of its contents. Because the allegations consist of re-characterization of CFR § 52.21 *et seq.* the allegations in this Paragraph are denied to the extent they are inconsistent with CFR § 52.21 *et seq.*

24. Paragraph 24 sets forth a legal conclusion to which no response is required. To the extent any response is required, Paragraph 24 is denied.

25. Paragraph 25 sets forth a legal conclusion to which no response is required. To the extent any response is required, Paragraph 25 is denied.

26. Paragraph 26 sets forth a legal conclusion to which no response is required. To the extent any response is required, Paragraph 26 is denied.

27. Paragraph 27 sets forth a legal conclusion to which no response is required. To the extent any response is required, Paragraph 27 is denied.

28. Paragraph 28 sets forth a legal conclusion to which no response is required. To the extent any response is required, Paragraph 28 is denied.

29. Paragraph 29 is denied.

30. Paragraph 30 attempts to summarize the CAA and consists of legal conclusions. No response is required. To the extent any response is required, Paragraph 30 is denied to the extent the allegations contained therein are inconsistent with the CAA.

31. Paragraph 31 attempts to summarize the CAA and consists of legal conclusions. No response is required. To the extent any response is required, Paragraph 31 is denied to the extent the allegations contained therein are inconsistent with the CAA.

32. Paragraph 32 is denied. The Alliance affirmatively avers that it applied for and received all necessary and appropriate permits required under the CAA and/or the State Implementation Plan for the Project and that no further air permits are required.

FIRST CLAIM

The Alliance hereby incorporates all responses, facts and allegations set forth in the Paragraphs above and below as if fully set forth herein.

33. The Alliance hereby incorporates all responses, facts and allegations set forth in paragraphs 1-32 above and in the paragraphs below as if fully set forth herein.

34. Paragraph 34 is denied.

35. Paragraph 35 is denied.

PRAYER FOR RELIEF

This constitutes Sierra Club's prayer for relief, to which no response is required. Sierra Club is not entitled to its requested relief. To the extent a response is required, the Alliance denies that Sierra Club is entitled to the relief sought in Paragraphs 1 through 5 of its Prayer for Relief.

II. DEFENSES AND AFFIRMATIVE DEFENSES TO ALL CLAIMS

The Alliance hereby incorporates all responses, facts and allegations set forth in the Paragraphs above and below as if fully set forth herein.

Based on these facts, and other such facts as may be established, the Alliance asserts the following affirmative defenses upon information and belief:

1. Sierra Club's claims fail to state a claim upon which relief can be granted.
2. Sierra Club lacks standing for the claims alleged in the Complaint.
3. Sierra Club's claims are moot and/or are not ripe for adjudication.

**III. RESERVATION OF RIGHT TO ADD COUNTERCLAIMS
AND CROSS-CLAIMS**

The Alliance reserves the right to amend this response by adding other defenses, affirmative defenses, counterclaims and cross-claims in the event additional facts are identified.

DATED this 8th day of August, 2014.

/s/ Kyle C. Barry

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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached NOTICE OF FILING; RESPONDENT FUTUREGEN INDUSTRIAL ALLIANCE INC.'S ANSWER TO SIERRA CLUB'S COMPLAINT; and this CERTIFICATE OF SERVICE by U.S. mail and e-mail upon the following persons:

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DATED this 8th day of August, 2014.

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