

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: Don Brown, Clerk	Attached Service List
Illinois Pollution Control Board	
60 E. Van Buren St., Ste. 630	
Chicago, Illinois 60605	

PLEASE TAKE NOTICE that I have electronically filed today with the Illinois Pollution Control Board the **MIDWEST GENERATION, LLC'S MOTION FOR EXTENSION OF TIME TO FILE POST-HEARING BRIEF**, a copy of which is herewith served upon you.

Respectfully submitted:
MIDWEST GENERATION, LLC.

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

Dated: October 16, 2023

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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 File Post-Hearing Brief was filed electronically on October 16, 2023 with the following:

Don Brown
Illinois Pollution Control Board
60 E. Van Buren Street, Ste. 630
Chicago, IL 60605

and that true copies were emailed on October 16, 2023 to the parties listed on the foregoing Service List.

/s/ Kristen L. Gale

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
)	(Enforcement – Water)
Complainants,)	
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

MOTION FOR EXTENSION OF TIME TO FILE POST-HEARING BRIEF

Respondent, Midwest Generation, LLC, (“MWG”), requests that the Hearing Officer enter an order granting MWG’s request to extend the time to file its post-hearing brief to March 1, 2024.

In support of its motion, MWG states the following:

1. On May 15-19, 2023, and continuing to June 12-15, 2023, the Parties participated in hearing on the remedy phase of the above captioned matter.

2. On June 22, 2023, the Parties entered an agreed post-hearing briefing schedule. In the Order adopting the Parties’ agreed schedule, post-hearing briefs would be due 90 days after the Illinois Pollution Control Board (“Board”) issued its orders on any interlocutory appeals. Contemplating that the Board could decide the interlocutory appeals in or around October 2023, and out of concern for conflicts with the Thanksgiving and Christmas holidays, the parties specifically noted that the date for post-hearing briefs could be extended. The agreed briefing schedule states that “the due dates *are subject to possible extensions based upon timing of the Board’s decisions and concurrence of other events (i.e. – holidays).*” Ex. 1 (emphasis added).

3. On October 5, 2023, the Board issued its opinion on the interlocutory appeals and stated that pursuant to the agreed schedule providing for 90 days, post-hearing briefs would be due on January 4, 2024.

4. Under Board Rule 101.522, the Hearing Officer may extend the time for filing any document or doing any act required by the rules for good cause shown and after notice to the opposite party. 35 Ill. Adm. Code 101.522.

5. Here, MWG requests an extension to March 1, 2024, to file its post-hearing brief. This extension is for good cause because of the scope and complexity of this matter, and due to conflicts in scheduling. The remedy phase includes evaluating whether a remedy is required at each of MWG's four stations, and if a remedy is required, what that remedy should be under the factors in Section 33(c) of the Illinois Environmental Protection Act ("Act"). 415 ILCS 5/33(c). Additionally, this phase also includes evaluating if a penalty is required, and if so, the correct value of any penalty, under factors in Section 42(h) of the Act. 415 ILCS 5/42(h).

6. Counsel for MWG has consulted with its clients, who have numerous conflicts in December and early January, including related to the holidays, preventing their availability to sufficiently engage in finalizing MWG's post-hearing brief. Additionally, MWG's counsel both have long scheduled commitments and vacations in November and December. Thus, MWG requires additional time to adequately address the significant issues that need to be presented in its post-hearing brief.

7. Both the Hearing Officer and the Board have noted the length and complexity of this proceeding and have granted appropriate extensions, including most recently, granting an extension to Complainants to change the hearing date, ultimately resulting in a delay of the hearing for four months.

8. As a reminder, the following sets out the circumstances surrounding Complainants request to delay the hearing date. On December 15, 2022, the Hearing Officer issued an order scheduling the hearing on remedy for January 30, 2023. The January 30, 2023 date was chosen after much discussion and coordination. In fact, MWG agreed to proceed on January 30, 2023 even though counsel for MWG was out for the month of December for a major surgery.¹ Accordingly, the public was notified of the hearing via a public notice in the Daily Herald and Pekin Daily Times, as well as the publicly available Board website.

9. Regardless, in late December 2022, Complainants filed their motion to cancel the hearing stating that they were not ready for the hearing due to challenges to adequately prepare and personal reasons for one of their counsel. In consideration of Complainants' personal challenges, and despite the inconvenience to MWG, MWG did not object to Complainants' request.

10. When the parties prepared the agreed schedule, they included a provision that the due dates could extend due to the concurrence of other events, specifically including holidays, so an extension for filing MWG post-hearing brief does not prejudice any party.

11. Even though Complainants received an extension for the date of the hearing – without objection - Complainants have informed MWG counsel that they will not agree to this motion. Complainants gave no basis for their refusal, other than “there is plenty of time to get the briefs done...”

¹ The MWG counsel was Kristen L. Gale and the major surgery was a donation of two-thirds of her liver to a relative.

WHEREFORE, MWG respectfully requests an extension of time until March 1, 2023, to file its post-hearing brief.

MIDWEST GENERATION, LLC.

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

Date: October 16, 2023

Jennifer T. Nijman
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EXHIBIT 1

Sierra Club, et al v. Midwest Generation, LLC

AGREED POST-HEARING BRIEFING SCHEDULE

Interlocutory Appeals of Hearing Officer Decisions during Hearing Due	21 days after the Illinois Pollution Control Board (“Board”) receives the last hearing transcript from the second set of hearings scheduled for June 12-16
Responses to Interlocutory Appeals Due	21 days after Interlocutory Appeals filed
Simultaneous Post Hearing Briefs Due	90 days after the last Board Decision on the Interlocutory Appeals
Simultaneous Responses to Post Hearing Briefs Due	45 days after the Post Hearing Briefs are filed

- 1) The Parties agree that the due dates are subject to possible extensions based upon timing of the Board’s decisions and concurrence of other events (*i.e.* – holidays).
- 2) The Parties agree that the Post-Hearing Briefs may not exceed 85 pages, which does not include appendices containing relevant material. *See* May 30, 2018 Hearing Officer Order; 35 Ill. Adm. Code 101.302(k).
- 3) The Parties agree that the Responses to the Post-Hearing Briefs may not exceed 50 pages, which does not include appendices containing relevant material. 35 Ill. Adm. Code 101.302(k).