

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,)	
)	
Respondents)	

NOTICE OF FILING

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

Attached Service List

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board *Citizen Groups' Motion for Leave to Reply in Support of Citizen Groups' Motion for Partial Summary Judgment* copies of which are herewith served upon you.



Jennifer L. Cassel
Staff Attorney
Environmental Law & Policy Center
35 E. Wacker Dr., Ste. 1600
Chicago, IL 60601
(312) 795-3726
jcassel@elpc.org

Dated: July 22, 2016

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
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SIERRA CLUB, ENVIRONMENTAL)	
LAW AND POLICY CENTER,)	
PRAIRIE RIVERS NETWORK, and)	
CITIZENS AGAINST RUINING THE)	
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Complainants,)	
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)	(Enforcement – Water)
MIDWEST GENERATION, LLC,)	
)	
Respondents)	

CITIZEN GROUPS’ MOTION FOR LEAVE TO REPLY IN SUPPORT OF CITIZEN GROUPS’ MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Section 101.500(e) of the Pollution Control Board General Rules, Complainants Sierra Club, Inc., Environmental Law and Policy Center, Prairies Rivers Network and Citizens Against Ruining the Environment (collectively, “Citizen Groups”) move the Illinois Pollution Control Board (“Board”) for leave to reply to Midwest Generation, LLC’s (“MWG’s”) Response to Complainants’ Motion for Partial Summary Judgment. In support of this motion, Citizen Groups state as follows.

1. On June 1, 2016, Citizen Groups filed a Motion for Partial Summary Judgment (“Motion”).
2. On June 21, 2016, Hearing Officer Halloran granted Respondents a four-week extension to respond to Citizen Groups’ Motion. Hearing Officer Order, PCB 13-15 (June 21, 2016).

3. On July 19, 2016, Respondents' filed a 101-page Response to Citizen Groups' Motion for Partial Summary Judgment ("Response").

4. Although Section 101.500(e) states that parties do not have a reply by right, the Board or Hearing Officer may grant a party leave to file a reply to prevent material prejudice. 35 Ill. Admin. Code § 101.500(e). *See, e.g., Elmhurst Memorial Healthcare v. Chevron U.S.A.*, PCB No. 09-066, 2009 WL 6506666, (Aug. 6, 2009). "Because petitioners allege that denying the reply would result in material prejudice, the Board grants the motion." *Id.* at *2; *see also Sierra Club v. Ameren Energy Medina Valley Cogen, LLC, et al.*, 2014 Ill. ENV LEXIS 489 at *8 (allowing a reply where necessary to respond to "substantial arguments" raised in opposition).

5. The Board may also allow parties to file replies when those replies would aid the Board in its consideration of the relevant factual and legal issues. *American Disposal Service of Illinois, Inc v. Mclean County, et al.*, 2014 Ill. Env Lexis 404 at *4 (allowing a reply "[i]n the interest of administrative efficiency and to aid in the consideration of the issues presented").

6. In their 101-page Response Brief, Respondents mischaracterize the facts and misconstrue the law in a manner that would materially prejudice Citizen Groups if Citizen Groups are not provided an opportunity to reply. Respondents: (a) mischaracterize Citizen Groups' Motion to suggest that Citizen Groups' delineation of historic ash areas is unclear; (b) misrepresent the opinion of their expert; (c) conflate coal ash indicators with coal ash contamination; (d) misinterpret the case law on the circumstances in which summary judgment is appropriate; and (e) incorrectly apply case law concerning multiple potential sources of pollution. Permitting Citizen Groups to file a Reply is appropriate for two reasons: the need to untangle the web of mischaracterizations that Respondents have created, and the need to clarify

the relevant jurisprudence. Both of these undertakings would also aid the Board in its consideration of the issues presented.

7. Citizen Groups propose a filing deadline for their Reply Brief of August 23, 2016. Citizen Groups propose this five-week period for a reply based on the fact that Respondents were given six weeks, including the four-week extension, to respond to Citizen Groups' Motion. In providing the extension, Hearing Officer Halloran stated that "the scope and complexity necessitates an extension of time to respond in an appropriate manner." Hearing Officer Order, PCB 13-15, at 1 (June 21, 2016). Similarly, the scope and complexity of Respondent's Brief necessitates five weeks for Citizen Groups to reply because it has gone far beyond what Citizen Groups initially filed. Respondent's brief—at 101 pages, over 50 pages beyond what is allowed by Board rules—is more than double the length of Complainants' initial 46-page brief. The Response also creates confusion by repeatedly mischaracterizing Citizen Groups' Motion. Untangling Respondents' mischaracterizations necessitates five weeks for Citizen Groups to reply in a useful, appropriate manner.

8. Finally, all of Citizen Groups' counsel have long-standing vacations planned over the next five weeks. An August 23, 2016 reply date (or later) would give Citizen Groups adequate time to prepare a reply without conflicting with these long-standing plans.

WHEREFORE, , Citizen Groups' respectfully request that the Board grant Citizen Groups' Motion for Leave to Reply in Support of Citizen Groups' Motion for Partial Summary Judgment.

Respectfully submitted,



Jennifer L. Cassel

Lindsay Dubin
Environmental Law & Policy Center
35 E. Wacker Dr., Suite 1600
Chicago, IL 60601
jcasel@elpc.org
ldubin@elpc.org
(312) 795-3726

*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)

Attorneys 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)

Attorney for CARE

Dated: July 22, 2016

CERTIFICATE OF SERVICE

The undersigned certifies that on July 22, 2016 a true copy of the foregoing *Notice of Filing* and Board *Citizen Groups' Motion for Leave to Reply in Support of Citizen Groups' Motion for Partial Summary Judgment* with the Clerk of the Illinois Pollution Control Board:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
100 West Randolph St
Suite 11-500
Chicago, IL 60601

And that a true copy of the *Notice of Filing* and Board *Citizen Groups' Motion for Leave to Reply in Support of Citizen Groups' Motion for Partial Summary Judgment* were served via electronic mail on July 22, 2016 on the parties listed on the following Service List.



Jennifer L. Cassel
Staff Attorney
Environmental Law & Policy Center
35 E. Wacker Dr., Ste. 1600
Chicago, IL 60601
(312) 795-3726
jcassel@elpc.org

Dated: July 22, 2016

PCB 2013-015 SERVICE LIST:

Jennifer T. Nijman
Kristen L. Gale
NIJMAN FRANZETTI LLP
10 South LaSalle Street, Suite 3600
Chicago, IL 60603
jn@nijmanfranzetti.com
kg@nijmanfranzetti.com

Brian Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601
Brad.Halloran@Illinois.Gov