

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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DEC 21 2009

STATE OF ILLINOIS
Pollution Control Board

DYNEGY MIDWEST GENERATION, INC.)
(TILTON ENERGY CENTER),)
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB 09-92
(Permit Appeal – Air)

NOTICE

To:

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Ctr., Ste 11-500
100 West Randolph
Chicago, Illinois 60601

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Ctr., Ste 11-500
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Illinois Environmental Protection Agency
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SCHIFF HARDIN LLP
6600 Sears Tower
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Chicago, Illinois 60606

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board an original and ten (10) copies of a **MOTION FOR LEAVE TO FILE AN AMENDED APPEAL**, a copy of which is herewith served upon the assigned Hearing Officer and the attorneys for the Respondent, Illinois Environmental Protection Agency.

Dated: December 21, 2009

McDERMOTT WILL & EMERY LLP

By: 

MARK A. BILUT
227 West Monroe Street, Suite 4400
Chicago, Illinois 60606
Phone: (312) 372-2000
Fax: (312) 984-7700

Attorney for Petitioner

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PROTECTION AGENCY,)

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MOTION FOR LEAVE TO FILE AMENDED APPEAL

Tilton Energy LLC (“Tilton”), by its undersigned attorneys, respectfully requests leave to file its Amended Appeal. In support, Tilton states as follows:

1. On March 19, 2009, the Illinois Environmental Protection Agency Division of Air Pollution Control (“Agency”) issued a Clear Air Act Permit Program (“CAAPP”) renewal permit (“Permit”) to Dynegy Midwest Generation, Inc. (“DMG”).

2. On April 22, 2009, DMG filed an appeal with the Illinois Pollution Control Board to contest certain conditions contained in the Permit.

3. On November 2, 2009, Tilton and DMG signed an agreement transferring environmental permit responsibility, coverage and liability regarding the Tilton Energy Center from DMG to Tilton. On November 2, 2009, DMG submitted a Request for Ownership Change for the Permit to the Agency (IEPA Form 272-CAAPP). The transfer was effective November 6, 2009. Subsequently, on November 30, 2009, Tilton became a subsidiary of Valley Road, LLC. On December 4, 2009, Tilton submitted a Illinois EPA Administrative Permit Amendment

CAAPP Form 273 to the Agency requesting that the name and address for the facility contact be changed.

4. By this motion, Tilton seeks leave to file an Amended Appeal, which is attached to this motion as Exhibit A, to reflect the transferred ownership, change the petitioner from DMG to Tilton, and amend the caption accordingly. A redline version of the amended appeal, showing the proposed changes, is attached as Exhibit B.

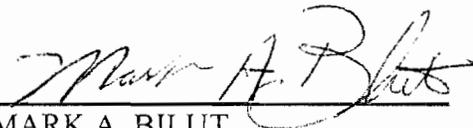
5. None of the parties involved in this action would be unfairly prejudiced by granting Tilton's request, nor will this request delay the progress of this matter.

6. The Agency has no objection to Tilton's request.

WHEREFORE, for the reasons stated herein, Tilton respectfully requests the entry of an order granting it leave to file its Amended Appeal with the Illinois Pollution Control Board.

Dated: December 21, 2009

McDERMOTT WILL & EMERY LLP

By: 

MARK A. BILUT
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Email: mbilut@mwe.com

Attorney for Petitioner

EXHIBIT A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TILTON ENERGY LLC)	
(TILTON ENERGY CENTER),)	
)	
Petitioner,)	
)	
v.)	PCB 09-92
)	(Permit Appeal – Air)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

AMENDED APPEAL OF CAAPP PERMIT

NOW COMES Petitioner, TILTON ENERGY LLC (TILTON ENERGY CENTER) (“Petitioner” or “Tilton”), pursuant to Section 40.2 of the Illinois Environmental Protection Act (“Act”) (415 ILCS 5/40.2) and 35 Ill.Adm.Code § 105.300 *et seq.*, and requests a hearing before the Board to contest certain conditions contained in the Clean Air Act Permit Program (“CAAPP”) renewal permit¹ (the “permit”) issued to Petitioner on March 19, 2009, pursuant to Section 39.5 of the Act (415 ILCS 5/39.5) and attached hereto as Exhibit 1. 35 Ill.Adm.Code §§ 105.210(a) and (b). *See* Exhibit 1.² Pursuant to Section 40.2(a) of the Act and 35 Ill.Adm.Code § 105.302(e), this Petition is timely filed with the Board.

In support of its Petition to appeal the Table of Contents and Conditions 3.1.3, 6.2.3, 7.1.3(d)(ii), 7.1.7(b)(ii)(A), 7.1.8(b), 7.1.8(e)(ii), 7.1.9(b), 7.1.9(b)(ii), 7.1.9(b)(iv), 7.1.9(d),

¹ Application No. 0050017.

² Although the renewal CAAPP permit for Tilton in Exhibit 1 does not contain the Agency’s Permit Manager’s signature, it is a true copy of the issued permit. It was downloaded from the U.S. Environmental Protection Agency’s website: www.epa.gov/region5/air/permits/ilonline → Title V Permit Records → Dynegy Midwest Generation, Inc. → Title V Renewal – Tilton (9th column).

7.1.9(f), 7.1.9(j), 7.1.9(j)(ii), 7.1.9(m)(i)(B), 7.1.10(c)(i), 7.1.10(d)(i), 7.2.5(c), and 7.2.12(c)(ii) and its request to stay Conditions 6.2.3, 7.1.8(e)(ii), 7.1.9(d), 7.1.9(f), 7.1.9(j)(ii), 7.1.10(c)(i), 7.1.10(d)(i), and 7.2.12(c)(ii), Petitioner states as follows:

I. BACKGROUND
(35 Ill. Adm. Code § 105.304(a))

1. The Tilton Energy Center (“Tilton”), Illinois Environmental Protection Agency (“Agency”) I.D. No. 183090AAE, is an electric generating station owned and operated by Tilton Energy LLC. Tilton operates as a peaking station, generating electric power when sufficient electric power is not available from other sources. The Tilton electrical generating units (“EGUs”) are four natural gas-fired turbines, each with a nominal rating of 44 MW, and an emergency diesel generator. All five units went online in 1999. The Tilton Energy Center is located at 80 West First Street, Tilton, Vermilion County, Illinois. Vermilion County is attainment for all National Ambient Air Quality Standards.

2. Tilton is a major source subject to the CAAPP (415 ILCS 5/39.5). The Agency issued a renewal CAAPP permit for Tilton on March 19, 2009.

II. REQUEST FOR PARTIAL STAY OF THE PERMIT

3. Historically, the Board has granted partial stays in permit appeals where a petitioner has so requested. *See, e.g., Midwest Generation, LLC, Will County Generating Station v. Illinois Environmental Protection Agency*, PCB 06-156 (July 20, 2006) (granted stay of the effectiveness of contested conditions of a construction permit); *Dynegy Midwest Generation, Inc. (Vermilion Power Station) v. Illinois Environmental Protection Agency*, PCB 06-194 (October 19, 2006) (granted stay “of the portions of the permit Dynegy contests”); *Dynegy Midwest Generation, Inc. (Havana Power Station) v. Illinois Environmental Protection Agency*, PCB 07-115 (October 4, 2007) (same); *Hartford Working Group v. Illinois Environmental Protection*

Agency, PCB 05-74 (November 18, 2004) (granted stay of the effectiveness of Special Condition 2.0 of an air construction permit); *Community Landfill Company and City of Morris v. Illinois Environmental Protection Agency*, PCB 01-48 and 01-49 (Consolidated) (October 19, 2000) (granted stay of effectiveness of challenged conditions for two permits of two parcels of the landfill); *Allied Tube & Conduit Corp. v. Illinois Environmental Protection Agency*, PCB 96-108 (December 7, 1995) (granted stay of the effectiveness of Conditions 4(a), 5(a), and 7(a) of an air permit).

4. Tilton requests in this instance that the Board exercise its inherent discretionary authority to grant a partial stay of the CAAPP permit, staying only those conditions or portions of conditions indicated in Exhibit 2,³ *i.e.*, Conditions 6.2.3, 7.1.8(e)(ii), 7.1.9(d), 7.1.9(f), 7.1.9(j)(ii), 7.1.10(c)(i), 7.1.10(d)(i), and 7.2.12(c)(ii).

III. ISSUES ON APPEAL (35 Ill. Adm. Code §§ 105.304(a)(2)-(4))

5. Following are the issues that Tilton appeals, presented sequentially but with related conditions included in a discussion, as appropriate.

6. Table of Contents: For Condition 8.2, the title should read as follows (additional language underlined): “Applicability of Title IV Requirements (Acid Deposition Control).” Tilton requests that the Board order the Agency to correct the title as indicated.

7. Condition 3.1.3: Condition 3.1.3 contains a list of insignificant activities that should be separately delineated as subparagraphs of the condition, beginning with the second paragraph. The condition should read as follows:

Activities that are insignificant activities based on their type or character, pursuant to 35 IAC 201.210(a)(4) through (18), as follows:

³ Exhibit 2 is a redlined version of the permit through Section 7 only, since Tilton is not appealing any conditions in Section 9 or 10.

- a. _____ Storage tanks of any size containing virgin or re-refined distillate oil. . . .
- b. _____ Gas turbines and stationary reciprocating internal combustion engines. . . .
- c. _____ Storage tanks of any size containing exclusively soaps. . . .
- d. _____ Loading and unloading systems for railcars. . . .

Tilton requests that the Board order the Agency to amend Condition 3.1.3 to include enumerated subparagraphs as indicated above.

8. Condition 6.2.3: Pursuant to Sections 39.5(7)(b) and 39.5(17)(m) of the Act, the Agency has required Tilton to submit Acid Rain data to the Agency concurrently with the submittals to the U.S. Environmental Protection Agency (“USEPA”). Tilton submits its data to USEPA in an electronic format specified by USEPA. Tilton understands that the Agency does not have this particular software and so Tilton is unable to comply with the requirements of the condition and of Section 39.5(17)(m) of the Act. Tilton requests that the Board order the Agency to obtain the necessary software and computers necessary for Tilton to comply. Tilton further requests that the Board delete the condition and that it stay the condition, as set forth in Exhibit 2, during the pendency of this appeal.

9. Condition 7.1.3(d)(ii): Condition 7.1.3(d)(ii) contains subparagraphs that should be separately delineated to ensure clarity, as follows:

Pursuant to 40 CFR 60.333, on and after the date on which the performance test . . . shall comply with one or the other of the following conditions:

- A. No owner or operator subject to the provisions of this subpart . . . pursuant to 40 CFR 609.333(a); or
- B. No owner or operator subject to the provisions of this subpart . . . pursuant to 40 CFR 60.333(b).

Tilton requests that the Board order the Agency to amend Condition 7.1.3(d)(ii) to include enumerated subparagraphs as indicated above and to add “or” to clarify that subparagraphs (A) and (B) are disjunctive.

10. Condition 7.1.7(b)(ii)(A): The Agency has included language from 40 CFR § 60.335(b) in Condition 7.1.7(b)(ii)(A) without breaking the condition into subparagraphs. As a result, the condition is very difficult to navigate. For this reason, Tilton requests that the Board order the Agency to break Condition 7.1.7(b)(ii)(A) into subparagraphs as follows:

- ii. A. Pursuant to 40 CFR 60.335(b), the owner or operator shall determine. . . T_a = ambient temperature, °K
 - I. For each run of the performance test. . . .
 - II. The 3-run performance test required by 40 CFR 60.8 must be performed. . . . (as defined in 40 CFR 60.331), pursuant to 40 CFR 60.335(b)(2).
 - III. If water or steam injection is used to control NO_x to comply with the applicable 40 CFR 60.332 NO_x emission limit, pursuant to 40 CFR 60.335(b)(4).
 - IV. If the owner or operator elects to install a CEMS . . . the initial performance test of the affected unit, pursuant to 40 CFR 60.335(b)(6).
 - V. Pursuant to 40 CFR 60.335(b)(7) . . . may be done in the following manner:
 - Perform a minimum of 9 reference method runs . . . pursuant to 40 CFR 60.335(b)(7)(i).^[4]
 - Use the test data both to demonstrate compliance . . . for the RATA of the CEMS

⁴ If the Board determines that there is a further outlining subset that is appropriate to use for this level of subparagraphing, Tilton requests that the Board order the Agency to adopt that outlining subset for these lowest level subparagraphs.

described under 40 CFR 60.334(b), pursuant to 60.335(b)(7)(ii).

_____ The requirement to test at three additional load levels is waived, pursuant to 40 CFR 60.335(b)(7)(iii).

VI. If the owner or operator elects under 40 CFR 60.334(f) . . . for purposes of the parameter monitoring plan for the affected unit, as specified in 40 CFR 60.334(g), pursuant to 40 CFR 60.335(b)(8).

VII. Pursuant to 40 CFR 60.335(b)(10), if the owner or operator. . . Analyze the samples for the total sulfur content of the fuel using:

_____ For gaseous fuels, ASTM D1072-80, 90. . . . subject to the prior approval of the Administrator, pursuant to 40 CFR 60.335(b)(10)(ii).^[4]

_____ The fuel analyses required under 40 CFR 60.335(b)(9) and (b)(10) . . . or any other qualified agency, pursuant to 40 CFR 60.335(b)(11).

11. Condition 7.1.8(b): As with Condition 7.1.7(b)(ii)(A), the Agency has included language from 40 CFR § 60.334(h) in Condition 7.1.8(b) without breaking the condition into subparagraphs. As a result, the condition is very difficult to navigate. For this reason, Tilton requests that the Board order the Agency to break Condition 7.1.8(b) into subparagraphs as follows:

b. The affected turbine. . . .

Pursuant to 40 CFR 60.334(h), the owner or operator of any stationary gas turbine subject to the provisions of the subpart:

i. Shall monitor the total sulfur content. . . . which measure the major sulfur compounds may be used, pursuant to 40 CFR 60.334(h)(1); and

- ii. _____ Shall monitor the nitrogen content. . . . or an approved alternative, pursuant to 40 CFR 60.334(h)(2).
- iii. _____ Pursuant to 40 CFR 60.334(h)(3), notwithstanding the provisions. . . . The owner or operator shall use one of the following sources of information to make the required demonstration:
 - A. _____ The gas quality characteristics . . . sulfur content of the fuel is 20.0 grains/100 scf or less, pursuant to 40 CFR 60.334(3)(h)(i); or
 - B. _____ Representative fuel sampling data . . . appendix D to part 75 of this chapter is required, pursuant to 40 CFR 60.334(h)(3)(ii).

Tilton requests that the reference in proposed subparagraph (A) above be corrected to include “(h)” as indicated. Further Tilton notes that the Agency has copied the language from the Code of Federal Regulations without adjusting it to cause it to be a sensible, integral part of this permit. For example, the reference to “this chapter” in proposed subparagraph (B) above is inappropriate. Tilton requests that the Board order the Agency to adjust the language from the Code of Federal Regulations so that it is appropriate for inclusion in this operating permit.

12. Conditions 7.1.8(e)(ii), 7.1.9(f), 7.1.9(j)(ii), and 7.1.10(c)(i): On April 22, 2003, USEPA approved a custom fuel monitoring schedule and alternative NOx monitoring to demonstrate compliance with the Standards of Performance for Gas Turbines (40 CFR. Part 60, Subpart GG), specifically waiving the water-to-fuel monitoring requirement of 40 CFR § 60.334(a). *See* Exhibit 3. This waiver was reflected in the initial CAAPP permit issued to Tilton at Condition 7.1.8(a)(i) but has not been reflected in Condition 7.1.8(e)(ii) of the permit issued March 19, 2009. conditions 7.1.9(f), 7.1.9(j)(ii), and 7.1.10(c)(i) are related conditions. Because Tilton was granted a waiver from the water-to-fuel monitoring requirements of 40 CFR §

60.334(a) and because that waiver is still in full force and effect, the provisions of Condition 7.1.8(e)(ii) and the related conditions of 7.1.9(f), 7.1.9(j)(ii), and 7.1.10(c)(i) are arbitrary and capricious and should be deleted from the permit. Further, Tilton requests that the Board stay these particular conditions, as set forth in Exhibit 2, during the pendency of this appeal.

13. Condition 7.1.9(b)(iv): This condition requires Tilton to submit to the Agency copies of opacity determinations made pursuant to Method 9. Tilton suggests that the Board order the Agency to add the word “any” to this condition, so that it reads as follows: “Copies of any opacity determinations taken for the source by qualified observer(s) using USEPA Method 9.”

14. Conditions 7.1.9(b)(ii) and 7.1.9(d): Both Conditions 7.1.9(b)(ii) and 7.1.9(d) require recordkeeping for the sulfur content of the fuel fired in the turbines. Tilton requests that the Board order the Agency to combine these two conditions. With two conditions requiring the same records, Tilton suffers unnecessary and inappropriate double exposure to enforcement proceedings should it, for some reason, fail to keep the required record. Further, Tilton requests that the Board stay Condition 7.1.9(d), as set forth in Exhibit 2, during the pendency of this appeal.

15. Conditions 7.1.9(b) and 7.1.9(j): These two conditions contain lists of data for which Tilton must maintain records. Tilton requests that the Board order the Agency to include these lists either in consecutive subsections or in one condition.

16. Condition 7.1.9(m)(i)(B): The word “days” is missing after “30” in this condition. It should read as follows: “If normal operation is not achieved within 30 days, an explanation why startup could not be achieved within this time.”

17. Condition 7.1.10(d)(i): This condition includes a reference to Condition 7.1.8(c)(iii), which does not exist. Tilton requests that the Board order the Agency to delete the reference or to correct it. Tilton further requests that the Board stay the reference as set forth in Exhibit 2 during the pendency of this appeal.

18. Conditions 7.2.5(c): The period is missing at the end of the sentence. Tilton requests that the Board order the Agency to add the period.

19. Condition 7.2.12(c)(ii): Condition 7.1.12(c)(ii) provides emission factors for engines greater than 600 horsepower. Tilton does not have any engines greater than 600 horsepower at Tilton. Therefore, inclusion of the condition is inappropriate, and Tilton requests that the Board order the Agency to delete this condition from the permit. Further, Tilton requests that the Board stay Condition 7.1.12(c)(ii), as set forth in Exhibit 2, during the pendency of this appeal.

WHEREFORE, for the reasons set forth above, Tilton appeals the Table of Contents and Conditions 3.1.3, 6.2.3, 7.1.3(d)(ii), 7.1.7(b)(ii)(A), 7.1.8(b), 7.1.8(e)(ii), 7.1.9(b), 7.1.9(b)(ii), 7.1.9(b)(iv), 7.1.9(d), 7.1.9(f), 7.1.9(j), 7.1.9(j)(ii), 7.1.9(m)(i)(B), 7.1.10(c)(i), 7.1.10(d)(i), 7.2.5(c), and 7.2.12(c)(ii) of the CAAPP renewal permit issued March 19, 2009, for the Tilton Energy Center. Additionally, Tilton requests that the Board stay the portions of Conditions 6.2.3, 7.1.8(e)(ii), 7.1.9(d), 7.1.9(f), 7.1.9(j)(ii), 7.1.10(c)(i), 7.1.10(d)(i), and 7.2.12(c)(ii) appealed above as set forth in Exhibit 2. Tilton will extend its current practices under the CAAPP permit replaced by this permit issued March 19, 2009, where the Board stays provisions appealed herein and will, of course, comply with all requirements of the Board's regulations applicable to Tilton during the pendency of this appeal.

Respectfully submitted,

TILTON ENERGY LLC
(TILTON ENERGY CENTER)

by:

One of Its Attorneys

Dated: January __, 2010

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EXHIBIT B

In support of its Petition to appeal the first page, the Table of Contents, and Conditions 4.3, 3.1.3, 6.2.3, 7.1.3(d)(ii), 7.1.7(b)(ii)(A), 7.1.8(b), 7.1.8(e)(ii), 7.1.9(b), 7.1.9(b)(ii), 7.1.9(b)(iv), 7.1.9(d), 7.1.9(f), 7.1.9(j), 7.1.9(j)(ii), 7.1.9(m)(i)(B), 7.1.10(c)(i), 7.1.10(d)(i), 7.2.5(c), and 7.2.12(c)(ii) and its request to stay Conditions 6.2.3, 7.1.8(e)(ii), 7.1.9(d), 7.1.9(f), 7.1.9(j)(ii), 7.1.10(c)(i), 7.1.10(d)(i), and 7.2.12(c)(ii), Petitioner states as follows:

I. BACKGROUND
(35 Ill. Adm. Code § 105.304(a))

1. The Tilton Energy Center (“Tilton”), Illinois Environmental Protection Agency (“Agency”) I.D. No. 183090AAE, is an electric generating station owned and operated by ~~Dynegy Midwest Generation, Inc~~ Tilton Energy LLC. Tilton operates as a peaking station, generating electric power when sufficient electric power is not available from other sources. The Tilton electrical generating units (“EGUs”) are four natural gas-fired turbines, each with a nominal rating of 44 MW, and an emergency diesel generator. All five units went online in 1999. The Tilton Energy Center is located at 80 West First Street, Tilton, Vermilion County, Illinois. Vermilion County is attainment for all National Ambient Air Quality Standards. ~~Dynegy employs approximately seven people at Tilton.~~

2. Tilton is a major source subject to the CAAPP (415 ILCS 5/39.5). The Agency issued a renewal CAAPP permit to ~~Dynegy~~ for Tilton on March 19, 2009.

II. REQUEST FOR PARTIAL STAY OF THE PERMIT

3. ~~Historically, the Board has granted partial stays in permit appeals where a petitioner has so requested. See, e.g., Midwest Generation, LLC, Will County Generating Station v. Illinois Environmental Protection Agency, PCB 06-156 (July 20, 2006) (granted stay of the~~

effectiveness of contested conditions of a construction permit); *Dynegy Midwest Generation, Inc. (Vermilion Power Station) v. Illinois Environmental Protection Agency*, PCB 06-194

3. Historically, the Board has granted partial stays in permit appeals where a petitioner has so requested. See, e.g., *Midwest Generation, LLC, Will County Generating Station v. Illinois Environmental Protection Agency*, PCB 06-156 (July 20, 2006) (granted stay of the effectiveness of contested conditions of a construction permit); *Dynegy Midwest Generation, Inc. (Vermilion Power Station) v. Illinois Environmental Protection Agency*, PCB 06-194 (October 19, 2006) (granted stay “of the portions of the permit Dynegy contests”); *Dynegy Midwest Generation, Inc. (Havana Power Station) v. Illinois Environmental Protection Agency*, PCB 07-115 (October 4, 2007) (same); *Hartford Working Group v. Illinois Environmental Protection Agency*, PCB 05-74 (November 18, 2004) (granted stay of the effectiveness of Special Condition 2.0 of an air construction permit); *Community Landfill Company and City of Morris v. Illinois Environmental Protection Agency*, PCB 01-48 and 01-49 (Consolidated) (October 19, 2000) (granted stay of effectiveness of challenged conditions for two permits of two parcels of the landfill); *Allied Tube & Conduit Corp. v. Illinois Environmental Protection Agency*, PCB 96-108 (December 7, 1995) (granted stay of the effectiveness of Conditions 4(a), 5(a), and 7(a) of an air permit).

4. *Dynegy Tilton* requests in this instance that the Board exercise its inherent discretionary authority to grant a partial stay of the CAAPP permit, staying only those conditions or portions of conditions indicated in Exhibit 2,³ i.e., Conditions 6.2.3, 7.1.8(e)(ii), 7.1.9(d), 7.1.9(f), 7.1.9(j)(ii), 7.1.10(c)(i), 7.1.10(d)(i), and 7.2.12(c)(ii).

³ Exhibit 2 is a redlined version of the permit through Section 7 only, since *Dynegy Tilton* is not appealing any conditions in Section 9 or 10.

III. ISSUES ON APPEAL
(35 Ill. Adm. Code §§ 105.304(a)(2)-(4))

5. Following are the issues that Dynegy Tilton appeals, presented sequentially but with related conditions included in a discussion, as appropriate.

~~6. First Page: The first page of the permit incorrectly lists the address of the permittee. The correct address is 604 Pierce Boulevard, O'Fallon, Illinois 62269. Dynegy requests that the Board order the Agency to correct the address contained on the first page of the permit.~~

~~6. 7. Table of Contents: For Condition 8.2, the title should read as follows (additional language underlined): "Applicability of Title IV Requirements (Acid Deposition Control)." Dynegy Tilton requests that the Board order the Agency to correct the title as indicated.~~

~~8. Condition 1.3: Dynegy requests that the Board order the Agency to change the contact person to Stan Ostrem, with a phone number of 618-206-5937.~~

~~7. 9. Condition 3.1.3: Condition 3.1.3 contains a list of insignificant activities that should be separately delineated as subparagraphs of the condition, beginning with the second paragraph. The condition should read as follows:~~

Activities that are insignificant activities based on their type or character, pursuant to 35 IAC 201.210(a)(4) through (18), as follows:

- a. Storage tanks of any size containing virgin or re-refined distillate oil. . . .
- b. Gas turbines and stationary reciprocating internal combustion engines. . . .
- c. Storage tanks of any size containing exclusively soaps. . . .
- d. Loading and unloading systems for railcars. . . .

DynegyTilton requests that the Board order the Agency to amend Condition 3.1.3 to include enumerated subparagraphs as indicated above.

8. ~~10.~~ Condition 6.2.3: Pursuant to Sections 39.5(7)(b) and 39.5(17)(m) of the Act, the Agency has required DynegyTilton to submit Acid Rain data to the Agency concurrently with the submittals to the U.S. Environmental Protection Agency (“USEPA”). DynegyTilton submits its data to USEPA in an electronic format specified by USEPA. DynegyTilton understands that the Agency does not have this particular software and so DynegyTilton is unable to comply with the requirements of the condition and of Section 39.5(17)(m) of the Act. DynegyTilton requests that the Board order the Agency to obtain the necessary software and computers necessary for DynegyTilton to comply. DynegyTilton further requests that the Board ~~deleted~~delete the condition and that it stay the condition, as set forth in Exhibit 2, during the pendency of this appeal.

9. ~~11.~~ Condition 7.1.3(d)(ii): Condition 7.1.3(d)(ii) contains subparagraphs that should be separately delineated to ensure clarity, as follows:

Pursuant to 40 CFR 60.333, on and after the date on which the performance test . . . shall comply with one or the other of the following conditions:

A. No owner or operator subject to the provisions of this subpart . . . pursuant to 40 CFR 609.333(a); or

B. No owner or operator subject to the provisions of this subpart . . . pursuant to 40 CFR 60.333(b).

DynegyTilton requests that the Board order the Agency to amend Condition 7.1.3(d)(ii) to include enumerated subparagraphs as indicated above and to add “or” to clarify that subparagraphs (A) and (B) are disjunctive.

10. ~~+2.~~ Condition 7.1.7(b)(ii)(A): The Agency has included language from 40 CFR § 60.335(b) in Condition 7.1.7(b)(ii)(A) without breaking the condition into subparagraphs. As a result, the condition is very difficult to navigate. For this reason, Dynegy Tilton requests that the Board order the Agency to break Condition 7.1.7(b)(ii)(A) into subparagraphs as follows:

ii. A. Pursuant to 40 CFR 60.335(b), the owner or operator shall determine. . . . T_a = ambient temperature, °K

I. _____ For each run of the performance test. . . .

II. _____ The 3-run performance test required by 40 CFR 60.8 must be performed. . . . (as defined in 40 CFR 60.331), pursuant to 40 CFR 60.335(b)(2).

III. _____ If water or steam injection is used to control NO_x to comply with the applicable 40 CFR 60.332 NO_x emission limit, pursuant to 40 CFR 60.335(b)(4).

IV. _____ If the owner or operator elects to install a CEMS . . . the initial performance test of the affected unit, pursuant to 40 CFR 60.335(b)(6).

V. _____ Pursuant to 40 CFR 60.335(b)(7) . . . may be done in the following manner:

_____ Perform a minimum of 9 reference method runs . . . pursuant to 40 CFR 60.335(b)(7)(i).^[4]

_____ Use the test data both to demonstrate compliance . . . for the RATA of the CEMS described under 40 CFR 60.334(b), pursuant to 60.335(b)(7)(ii).

_____ The requirement to test at three additional load levels is waived, pursuant to 40 CFR 60.335(b)(7)(iii).

⁴ If the Board determines that there is a further outlining subset that is appropriate to use for this level of subparagraphing, Dynegy Tilton requests that the Board order the Agency to adopt that outlining subset for these lowest level subparagraphs.

VI. If the owner or operator elects under 40 CFR 60.334(f) . . . for purposes of the parameter monitoring plan for the affected unit, as specified in 40 CFR 60.334(g), pursuant to 40 CFR 60.335(b)(8).

VII. Pursuant to 40 CFR 60.335(b)(10), if the owner or operator. . . . Analyze the samples for the total sulfur content of the fuel using:

_____ For gaseous fuels, ASTM D1072-80, 90. . . . subject to the prior approval of the Administrator, pursuant to 40 CFR 60.335(b)(10)(ii).^[4]

_____ The fuel analyses required under 40 CFR 60.335(b)(9) and (b)(10) . . . or any other qualified agency, pursuant to 40 CFR 60.335(b)(11).

11. 43-Condition 7.1.8(b): As with Condition 7.1.7(b)(ii)(A), the Agency has included language from 40 CFR § 60.334(h) in Condition 7.1.8(b) without breaking the condition into subparagraphs. As a result, the condition is very difficult to navigate. For this reason, Dynegy Tilton requests that the Board order the Agency to break Condition 7.1.8(b) into subparagraphs as follows:

b. The affected turbine. . . .

Pursuant to 40 CFR 60.334(h), the owner or operator of any stationary gas turbine subject to the provisions of the subpart:

i. _____ Shall monitor the total sulfur content. . . . which measure the major sulfur compounds may be used, pursuant to 40 CFR 60.334(h)(1); and

ii. _____ Shall monitor the nitrogen content. . . . or an approved alternative, pursuant to 40 CFR 60.334(h)(2).

iii. _____ Pursuant to 40 CFR 60.334(h)(3), notwithstanding the provisions. . . . The owner or operator shall use one of the

following sources of information to make the required demonstration:

- A. The gas quality characteristics . . . sulfur content of the fuel is 20.0 grains/100 scf or less, pursuant to 40 CFR 60.334(3)(h)(i); or
- B. Representative fuel sampling data . . . appendix D to part 75 of this chapter is required, pursuant to 40 CFR 60.334(h)(3)(ii).

Dynegy Tilton requests that the reference in proposed subparagraph (A) above be corrected to include “(h)” as indicated. Further Dynegy Tilton notes that the Agency has copied the language from the Code of Federal Regulations without adjusting it to cause it to be a sensible, integral part of this permit. For example, the reference to “this chapter” in proposed subparagraph (B) above is inappropriate. Dynegy Tilton requests that the Board order the Agency to adjust the language from the Code of Federal Regulations so that it is appropriate for inclusion in this operating permit.

~~12. 14.~~ Conditions 7.1.8(e)(ii), 7.1.9(f), 7.1.9(j)(ii), and 7.1.10(c)(i): On April 22, 2003, USEPA approved a custom fuel monitoring schedule and alternative NOx monitoring to demonstrate compliance with the Standards of Performance for Gas Turbines (40 CFR, Part 60, Subpart GG), specifically waiving the water-to-fuel monitoring requirement of 40 CFR § 60.334(a). *See* Exhibit 3. This waiver was reflected in the initial CAAPP permit issued to Tilton at Condition 7.1.8(a)(i) but has not been reflected in Condition 7.1.8(e)(ii) of the permit issued March 19, 2009. conditions 7.1.9(f), 7.1.9(j)(ii), and 7.1.10(c)(i) are related conditions. Because Dynegy Tilton was granted a waiver from the water-to-fuel monitoring requirements of 40 CFR § 60.334(a) and because that waiver is still in full force and effect, the provisions of Condition 7.1.8(e)(ii) and the related conditions of 7.1.9(f), 7.1.9(j)(ii), and 7.1.10(c)(i) are arbitrary

and capricious and should be deleted from the permit. Further, DynegyTilton requests that the Board stay these particular conditions, as set forth in Exhibit 2, during the pendency of this appeal.

13. 15. Condition 7.1.9(b)(iv): This condition requires DynegyTilton to submit to the Agency copies of opacity determinations made pursuant to Method 9. DynegyTilton suggests that the Board order the Agency to add the word “any” to this condition, so that it reads as follows: “Copies of any opacity determinations taken for the source by qualified observer(s) using USEPA Method 9.”

14. 16. Conditions 7.1.9(b)(ii) and 7.1.9(d): Both Conditions 7.1.9(b)(ii) and 7.1.9(d) require recordkeeping for the sulfur content of the fuel fired in the turbines. DynegyTilton requests that the Board order the Agency to combine these two conditions. With two conditions requiring the same records, DynegyTilton suffers unnecessary and inappropriate double exposure to enforcement proceedings should it, for some reason, fail to keep the required record. Further, DynegyTilton requests that the Board stay Condition 7.1.9(d), as set forth in Exhibit 2, during the pendency of this appeal.

15. 17. Conditions 7.1.9(b) and 7.1.9(j): These two conditions contain lists of data for which DynegyTilton must maintain records. DynegyTilton requests that the Board order the Agency to include these lists either in consecutive subsections or in one condition.

16. 18. Condition 7.1.9(m)(i)(B): The word “days” is missing after “30” in this condition. It should read as follows: “If normal operation is not achieved within 30 days, an explanation why startup could not be achieved within this time.”

~~17. 19.~~ Condition 7.1.10(d)(i): This condition includes a reference to Condition 7.1.8(c)(iii), which does not exist. DynegyTilton requests that the Board order the Agency to delete the reference or to correct it. DynegyTilton further requests that the Board stay the reference as set forth in Exhibit 2 during the pendency of this appeal.

~~18. 20.~~ Conditions 7.2.5(c): The period is missing at the end of the sentence. DynegyTilton requests that the Board order the Agency to add the period.

~~19. 21.~~ Condition 7.2.12(c)(ii): Condition 7.1.12(c)(ii) provides emission factors for engines greater than 600 horsepower. DynegyTilton does not have any engines greater than 600 horsepower at Tilton. Therefore, inclusion of the condition is inappropriate, and DynegyTilton requests that the Board order the Agency to delete this condition from the permit. Further, DynegyTilton requests that the Board stay Condition 7.1.12(c)(ii), as set forth in Exhibit 2, during the pendency of this appeal.

WHEREFORE, for the reasons set forth above, DynegyTilton appeals the first page, the Table of Contents, and Conditions ~~1.3~~, 3.1.3, 6.2.3, 7.1.3(d)(ii), 7.1.7(b)(ii)(A), 7.1.8(b), 7.1.8(e)(ii), 7.1.9(b), 7.1.9(b)(ii), 7.1.9(b)(iv), 7.1.9(d), 7.1.9(f), 7.1.9(j), 7.1.9(j)(ii), 7.1.9(m)(i)(B), 7.1.10(c)(i), 7.1.10(d)(i), 7.2.5(c), and 7.2.12(c)(ii) of the CAAPP renewal permit issued March 19, 2009, for the Tilton Energy Center. Additionally, DynegyTilton requests that the Board stay the portions of Conditions 6.2.3, 7.1.8(e)(ii), 7.1.9(d), 7.1.9(f), 7.1.9(j)(ii), 7.1.10(c)(i), 7.1.10(d)(i), and 7.2.12(c)(ii) appealed above as set forth in Exhibit 2. DynegyTilton will extend its current practices under the CAAPP permit replaced by this permit issued March 19, 2009, where the Board stays provisions appealed herein and will, of course,

comply with all requirements of the Board's regulations applicable to Tilton during the pendency of this appeal.

Respectfully submitted,

DYNEGY MIDWEST GENERATION,
INC. TILTON ENERGY LLC
(TILTON ENERGY CENTER)

by:

One of Its Attorneys

Dated: ~~April 22, 2009~~ January,

2010

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CERTIFICATE OF SERVICE

I, hereby certify that I caused a copy of the foregoing, **MOTION FOR LEAVE TO FILE AN AMENDED APPEAL**, and Notice of Filing thereof to be filed via hand delivery on December 21, 2009:

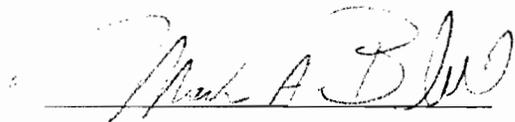
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and a true and correct copy of the same, **MOTION FOR LEAVE TO FILE AN AMENDED APPEAL**, and Notice thereof to be delivered by First Class U.S. Mail on December 21, 2009, to the following:

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