

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
AMENDMENTS TO ) R18-20  
35 ILL. ADM. CODE 225.233 ) (Rulemaking-Air)  
MULTI-POLLUTANT STANDARDS )  
(MPS) )

Hearing held on the 18th day of January 2018,  
scheduled to begin at 9:00 a.m. at Peoria Public  
Library, 107 Northeast Monroe Street, Peoria,  
Illinois, pursuant to notice.

BEFORE:

MS. MARIA TIPSORD, Hearing Officer  
MS. KATIE PAPADIMITRIU, Chairman  
MS. CYNTHIA SANTOS, Board Member  
MS. BRENDA CARTER, Board Member  
MR. MARK POWELL, Senior Attorney  
MR. ANAND RAO, Senior Environmental Scientist  
MS. ALISA LIU, Environmental Scientist

Also Appearing:

MS. TANYA RABCZAK,  
Attorney Advisor to Chairman Papadimitriu  
MR. JASON JAMES,  
Attorney Advisor to Board Member Gerald Keenan  
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1 PROCEEDINGS

2 HEARING OFFICER TIPSORD: Let's go ahead and  
3 get started this morning. We have got a lot to try  
4 to get done. I will remind everyone that we have a  
5 second set of hearings March 6 and 7 in Edwardsville.  
6 I think that might be particularly significant,  
7 depending on how today goes for Dynegy's witnesses.  
8 There may be a possibility that we bump them over.  
9 Just keep that in mind for your convenience.

10 MR. MORE: Well, I was just going to say I  
11 have two housekeeping matters I wanted to raise. One  
12 gets to that point you just raised.

13 HEARING OFFICER TIPSORD: Okay.

14 MR. MORE: One of our witnesses, Mr. Ellis,  
15 has a 7:30 flight out of O'Hare tonight, so I was  
16 hoping we could cut this off by 3:30 so he can get in  
17 in time.

18 HEARING OFFICER TIPSORD: Yeah, that would --  
19 and, like I say, worst case scenario, we can bump  
20 your witnesses to March if we have to.

21 MR. MORE: That's fine. The second  
22 housekeeping matter would be during my examination of  
23 Mr. Bloomberg I presented a copy of an e-mail dated  
24 August 22, 2017, from Douglas Aburano, A-B-U-R-A-N-O,

1 to Mr. David Bloomberg regarding responding to  
2 Mr. Bloomberg's request as to whether or not the  
3 proposal was compliant with the Regional Haze  
4 program. At that time I only had one copy. I'd like  
5 to admit it as an exhibit and pass out copies and  
6 then --

7 HEARING OFFICER TIPSORD: Great. Does  
8 anybody object to the admission of the e-mail as  
9 Exhibit Number 13?

10 MS. BUGEL: Hearing Officer, I don't actually  
11 object. I want to go back to the last housekeeping  
12 matter as we were just talking about scheduling and  
13 scheduling Dynegy witnesses. My one passion would be  
14 that if Dynegy witnesses are getting bumped to March,  
15 would there be -- would Dynegy witnesses be providing  
16 pre-filed written answers to the Environmental  
17 Group's pre-filed questions.

18 HEARING OFFICER TIPSORD: In other words, if  
19 we don't get their answers today, to their questions  
20 today, would you pre-file the answers before the  
21 hearing.

22 MR. MORE: We can probably accommodate that.

23 HEARING OFFICER TIPSORD: And we can talk  
24 more about that if we need to.

1 MS. DUBIN: Sorry, just one question. So  
2 after the Attorney General's office, it is Dynegy  
3 that's up next?

4 HEARING OFFICER TIPSORD: Yes.

5 MS. DUBIN: And so will the order of  
6 questioning be deferred for just, if you --

7 HEARING OFFICER TIPSORD: Yeah, we will go  
8 with -- you pre-filed answers to --

9 MR. MORE: To the Board's questions. We  
10 submitted answers to the AG's questions yesterday, as  
11 you recall, at the end of the hearing so that they  
12 would have time to review them and prepare for  
13 follow-up questioning. So our goal was to help  
14 streamline today.

15 HEARING OFFICER TIPSORD: Okay. So the first  
16 thing we will do then is IEPA has questions, we will  
17 do IEPA, then the People and then the Environment  
18 Groups and finish with the Board. And I want to try  
19 to get the IEPA's in first, as it's the best way to  
20 go, I think. And, plus, I don't think the IEPA had  
21 that many questions. I don't remember.

22 MR. MORE: They may. Okay.

23 HEARING OFFICER TIPSORD: All right. Yeah,  
24 seeing no objection, the e-mail is admitted as

1 Exhibit 13.

2 (Whereupon Exhibit 13 was  
3 admitted into evidence.)

4 HEARING OFFICER TIPSORD: Okay. With that,  
5 wow, we jumped right into it. Good morning. Just to  
6 refresh, my name's Marie Tipsord. I am the hearing  
7 officer in this matter, amendments to 35 Ill. Adm.  
8 Code 2225.223 Multi-Pollutant Standards MPS.

9 With me today is to my far right Board  
10 Member Cynthia Santos, to her immediate left Board  
11 Member Brenda Carter, to my far left Board Member  
12 Carrie Zalewski, and Chairman Papadimitriu who is the  
13 presiding Board member has been unavoidably detained  
14 this morning, but she will be joining us shortly.

15 In addition, to my immediate right is  
16 senior attorney Mark Powell. To my left is Anand Rao  
17 from our technical unit, and Alisa Liu also from our  
18 technical unit. Also joining us later today will be  
19 Chairman Papadimitriu's assistant Tanya Rabczak,  
20 Jason James, attorney advisor to Jerry Keenan, who is  
21 also assisting Chairman Papadimitriu in this  
22 proceeding, and Martin Klein who is Carrie Zalewski's  
23 attorney advisor.

24 And with that I think we are ready to

1 continue with questioning of People's witnesses.

2 MR. MORE: For the record, Josh More on  
3 behalf of Dynegey.

4 HEARING OFFICER TIPSORD: Oh, I'm sorry.

5 MR. MORE: Do you need to swear them in again  
6 or are we going --

7 HEARING OFFICER TIPSORD: Since this is a new  
8 court reporter, let's do that. Let's go ahead and  
9 have them sworn in again.

10 (Whereupon the witnesses were  
11 duly sworn by the Reporter.)

12 MR. GIGNAC: James Gignac and, yes, I do.

13 MR. ARMSTRONG: Andrew Armstrong. Yes, I do.

14 MR. MORE: For the court reporter, since it's  
15 new, if you don't mind, would each of you spell and  
16 recite your last name again?

17 MR. GIGNAC: Gignac, G-I-G-N-A-C.

18 MR. ARMSTRONG: Armstrong, A-R-M-S-T-R-O-N-G.

19 MR. MORE: With a common name, More, it's  
20 only one "O" so I often have to spell, but.

21

22

23

24



1 MR. GIGNAC: Certainly.

2 HEARING OFFICER TIPSORD: Thank you.

3 A. (Gignac) And as to the legislature's  
4 intent, I would like to note that, because we don't  
5 have pre-filed questions from Dynegy, we may need to  
6 confer internally on some of your questions to  
7 formulate an answer, especially questions that may  
8 call for a legal conclusion or for legal research  
9 such as legislative history.

10 Q. And this proceeding allows for you to do  
11 just that.

12 A. (Gignac) We are happy to attempt to  
13 answer questions today certainly to the extent that  
14 we are able to do so.

15 And as to the legislature's intent, I  
16 think the text of the Act is clear that the intent is  
17 to reduce air pollution. Earlier in the Act at 415  
18 ILCS 5/8, the Legislature -- the legislation states,  
19 "Pollution of the air of this state constitutes a  
20 menace to public health and welfare, creates public  
21 nuisances, adds to cleaning costs, accelerates the  
22 deterioration of materials, adversely affects  
23 agriculture, business, industry, recreation, climate  
24 and visibility, depresses property values and offends

1 the senses. Accordingly, the purpose of Title II of  
2 the Act is to restore, maintain and enhance the  
3 purity of the air of this state."

4 Q. So is it the AG's position that the First  
5 Notice Proposal fails to restore the purity of the  
6 air of the state?

7 A. (Gignac) Among other problems with the  
8 First Notice Proposal, yes.

9 Q. And fails to restore the air quality to  
10 what level?

11 A. (Gignac) The Act does not specify  
12 concentrations of pollution that should be reached,  
13 that I'm aware of sitting here today. Rather, the  
14 Act -- the purposes of the Act are to restore the  
15 purity of the air. And our position is that the  
16 Board, in reviewing previous rulemaking proposals,  
17 has looked for an environmental benefit in order to  
18 approve, for instance, modifications to the MPS.

19 Q. Okay. So as I understand your answer to  
20 be, you don't have a baseline in which you are asking  
21 the Board to restore the air quality to, is that  
22 correct?

23 A. (Gignac) Ideally, the air pollution  
24 should be reduced as much as possible. I think that

1 is the goal of Section 8 of the Act, and the intent  
2 of the legislature is that air pollution causes a  
3 number of negative impacts and it's the policy of the  
4 state to reduce that to restore the purity of the  
5 air.

6 Q. But I just want to be clear. Restore --  
7 you have not identified a level on which you are  
8 asking the Board to restore the air quality to, isn't  
9 that right? You are asking just for a reduction.

10 A. (Gignac) There is no -- yeah, there is  
11 no standard specified in the Act.

12 Q. Okay. You mentioned you believe the goal  
13 is to reduce air pollution as much as possible, is  
14 what you have said. The next term, another term of  
15 the Act, is to maintain air quality. Do you  
16 understand maintenance to include reduction?

17 A. (Gignac) It could.

18 Q. So what level of air quality is the  
19 Attorney General asking the Board to maintain?

20 A. (Gignac) We are looking at the  
21 rulemaking proposal in the context of emissions of  
22 pollution, air emissions. And our analysis is that  
23 the First Notice Proposal would enable Dynegey to emit  
24 greater levels of air pollution, and that that result

1 fails to maintain the purity of the air as safe.

2 Q. Maintain it as compared -- your testimony  
3 talks about 2016 issues. Are you asking then that  
4 that should be the baseline upon which we should be  
5 maintaining pollution levels at?

6 A. (Gignac) Our position is not that Dynegy  
7 should be capped at 2016 emission levels. That's not  
8 what we're asking for. We're asking for initially  
9 that the MPS be allowed to continue existing as it  
10 is. We believe Dynegy is complying with it. Dynegy  
11 has responded that they are complying with it. And  
12 so we don't believe that the Board needs to make any  
13 changes to the MPS.

14 If there is a modification to it, we  
15 suggest looking at an incremental modification that  
16 would help the state stay as close to the stringency  
17 of the original MPS as it exists today.

18 Q. How would you measure the stringency of  
19 the MPS as it exists today?

20 A. (Gignac) A rate-based standard.

21 Q. So would that then be a rate base that is  
22 the same as what the MPS already consists of?

23 A. (Gignac) We have suggested that if the  
24 Board would like to consider modifications to the MPS

1 involving a rate-based standard such as for a  
2 combined MPS group, we suggest that the Board request  
3 stakeholder feedback on what the new rate-based  
4 standard would be for such a combined group.

5 Q. And so I understand and the Board  
6 understands your testimony, are you proposing any  
7 specific recommendations of what the rate-based  
8 standard should be, providing any guidance to the  
9 Board?

10 A. (Gignac) In our pre-filed testimony we  
11 have outlined one potential scenario where a new  
12 rate-based standard could be set for a combined  
13 group, assuming the Board believes that any changes  
14 need to be made to the MPS.

15 Q. And what is that standard that you are  
16 suggesting it could be set at? What is the rate base  
17 you are suggesting it be set at?

18 A. (Armstrong) If I could just jump in real  
19 quickly, I think the Office's testimony on page 21 is  
20 pretty clear, our position here, and I'll just read  
21 from it. "Instead of attempting to switch to a  
22 mass-based standard, a new combined MPS group could  
23 receive a new rate-based standard. Since this issue  
24 has not been considered yet, the Board should provide

1 for comments from stakeholders on what that standard  
2 should be and the bases for it. For example, here is  
3 one scenario: For SO<sub>2</sub>, the combined group standard  
4 could be set at 0.21 lbs/mmBtu, which would be the  
5 midpoint between the current standard for the Dynegy  
6 Group and the Old Ameren Group," so.

7 Q. So the Agency is asking the Board to  
8 consider that as a potential standard?

9 A. The Attorney General's Office has asked  
10 the Board to -- has suggested that the Board could  
11 ask for comments from stakeholders. That is one  
12 scenario that could be considered.

13 Q. Has the Attorney General done any  
14 evaluation as to whether or not that proposed  
15 standard would provide the operational flexibilities  
16 of 2016?

17 A. (Gignac) So in our pre-filed testimony we  
18 proceed to use 2016 data and calculate what the  
19 emission rates would have been for a combined MPS  
20 group in that year, and the results are displayed  
21 Table 13 through Table 16.

22 Q. And those results demonstrate what?

23 A. That a combined MPS group, using 2016  
24 data, would operate below .21 pounds per mmBtu and

1 for nitrogen oxide a combined group would operate  
2 below 0.105 pounds per mmBtu.

3 Q. And has the Attorney General done any  
4 evaluation as to whether or not 2016 operations are  
5 expected to be representative of 2018, 2019, 2020?

6 A. (Gignac) We have asked Dynegy information  
7 about what they expect, what it expects future  
8 operation to be. Our analysis in our pre-filed  
9 testimony is based on 2016 data, and we submitted it  
10 for other parties to respond to or explain how a  
11 different standard, a different rate-based standard,  
12 should be used. And, again, that's why our initial  
13 suggestion is, if the Board wishes to consider this  
14 option, then it should request all parties to provide  
15 input on what a rate-based standard should be for a  
16 combined group.

17 Q. Because your analysis is limited to just  
18 demonstrating that in one year the combined group  
19 would have complied with the average rate as you  
20 calculated it, which is 0.21, for example, for SO<sub>2</sub>,  
21 correct?

22 A. (Gignac) You said because.

23 Q. Well, you have only demonstrated that  
24 Dynegy in 2016, had the units -- had the groups been

1 combined and you had taken the average of the two  
2 numbers, put them with each group, the fleet as a  
3 whole would have been able to comply with the MPS in  
4 2016 with the versions you have articulated in your  
5 testimony. You have not demonstrated that it would  
6 have been able to comply in 2015 had this combined  
7 group, subject to an average rate, been applicable.  
8 Nor have you demonstrated that the combined group  
9 would have been able to comply in 2017 or any other  
10 year had this hypothetical proposal been in effect,  
11 correct?

12 A. (Gignac) Our testimony, pre-filed  
13 testimony, uses 2016 data. We did not run the  
14 analysis for other years of emission data. It could  
15 be done. And, again, that is why we suggest that it  
16 is just one scenario that the Board could consider,  
17 assuming that the Board believes the MPS does need to  
18 be changed, if it's interested in pursuing an option  
19 where a combined group would have a new rate-based  
20 standard.

21 Q. But are you asking the Board to consider  
22 it in the context of evaluating what the decision  
23 could do into the future based on 2016 only?

24 A. (Gignac) I'm not sure I understand your

1 question.

2 Q. Okay. Well, I understand your testimony  
3 today and in following years to be asking the Board  
4 to evaluate 2016 data in the context of what Dynegy's  
5 fleet could comply with in 2018, 2019, going forward.  
6 That's what this proposal's all about, what changes  
7 need to be made today to insure compliance tomorrow.  
8 You're talking about yesterday. And I want to  
9 understand, are you asking that we should be  
10 evaluating yesterday with the expectation that  
11 yesterday is representative of tomorrow?

12 A. (Gignac) We used one year of data to  
13 demonstrate as an example of how the new rate-based  
14 standard could provide flexibility for Dynegy through  
15 a combined group, and we suggested that the Board  
16 could seek feedback on such a concept, and that would  
17 be an opportunity for Dynegy to make a case that the  
18 standard should be something else based on its  
19 projections of future operation. Other stakeholders  
20 could provide input that the standard should be lower  
21 based on other expectations of future operations. So  
22 that would be part of the Board's exploration of  
23 setting a new rate-based standard for a combined  
24 group.

1 Q. And your calculation of the 0.21 is just  
2 the average between .19 and .23 for us, isn't that  
3 right?

4 A. (Gignac) yes.

5 Q. You didn't do like a weighted average and  
6 take into account that the Old Ameren MPS group has a  
7 total higher input and, therefore, maybe the weighted  
8 average would be something greater than 0.21; you  
9 didn't do that calculation?

10 A. (Gignac) We did not, and I did see a  
11 response along those lines from Dynegy to a pre-filed  
12 question, and I think that further supports the need  
13 for the Board, if they are interested in setting a  
14 rate-based standard for a combined group, a further  
15 indication that stakeholders, including Dynegy,  
16 should be able to weigh in on how that standard  
17 should be set.

18 Q. Okay. I want to go back to Exhibit 12,  
19 your pre-filed written responses to the pre-filed  
20 questions issued by Illinois IEPA. Question 2, in  
21 your answer you note the Board generally has  
22 statutory authority to adopt rules concerning air  
23 pollution, but the rules it adopts must not be  
24 arbitrary, capricious and unreasonable. Are you

1 suggesting that the proposal by Illinois EPA is  
2 either arbitrary, capricious or unreasonable or a  
3 combination?

4 A. (Gignac) As stated previously, our  
5 Office's view is that rules enacted by the board  
6 should offer an environmental benefit. We believe  
7 that's the appropriate standard by which proposed  
8 amendments to the MPS should be evaluated. And our  
9 view, as expressed, is that the First Notice Proposal  
10 would not offer an environmental benefit.

11 Q. And how would you have the Board evaluate  
12 whether a revised proposal provides an environmental  
13 value?

14 A. (Gignac) One way for the Board to  
15 evaluate proposed amendments to the MPS is whether  
16 they are likely to lead to increased emissions. And  
17 our pre-filed testimony illustrates how that could be  
18 enabled by the First Notice Proposal. Another way to  
19 evaluate proposed amendments is how much they deviate  
20 from the existing MPS. And that is why our  
21 suggestion is that, if the Board decides that the  
22 record justifies modifying the MPS, then it consider  
23 the limited step of allowing Dynegy to combine MPS  
24 groups and operating under a single rate-based

1 standard.

2 Q. Would the Attorney General object to a  
3 rate-based standard that was greater than the average  
4 of the two, even if it were a weighted average of  
5 0.22?

6 A. (Gignac) I don't know. We would need to  
7 discuss and consider that internally after reviewing  
8 the details of such a proposal.

9 Q. If the rate that was afforded a combined  
10 group were .5 for SO<sub>2</sub>, you would agree that that  
11 emission rate is greater than what the groups are  
12 currently allowed to emit, isn't that right?

13 A. (Gignac) 0.5 pounds per mmBtu?

14 Q. Yes.

15 A. (Gignac) That number is greater than  
16 0.21 and 0.23.

17 Q. Yep. And as a result, it would afford  
18 Dynegy the opportunity to emit more, correct?

19 A. (Gignac) That sort of change would be an  
20 extreme deviation from the MPS.

21 Q. Help me understand then what wouldn't be,  
22 so to the extent my client decides they want to  
23 discuss a proposal, I want to fend off any more  
24 comments from the AG. I understood your testimony to

1 be we want -- there has to be a reduction in the  
2 requirements for the proposal to have, quote, an  
3 environmental benefit. That to me -- I understand  
4 that to mean the Attorney General is suggesting that  
5 the combined emission rate, should that be the  
6 framework in which this proposal turns 180 degrees,  
7 that it has to then be less than the average.  
8 Otherwise, it is not resulting in a reduction of  
9 emissions. Is that your -- is that the Attorney  
10 General's position?

11 A. (Gignac) First, our office would be  
12 happy to speak with Dynegy, dialogue with Dynegy,  
13 about alternative proposed modifications to the MPS.

14 I also am not sure that you accurately  
15 described our testimony. What we said is that the  
16 Board should look for an environmental benefit in a  
17 proposed modification to the MPS, and that can be  
18 shown by a reduction in emissions or it could be  
19 shown by maintaining or reducing an emission rate.

20 And in the hypothetical you outlined of  
21 switching to or increasing the MPS limit to 0.5  
22 pounds per mmBtu for SO<sub>2</sub>, that would essentially  
23 render the MPS meaningless as a pollution limit and  
24 would be far in excess of anything the Board should

1 consider approving.

2 Q. Let's go back to where it started. Does  
3 the Attorney General contend that the proposal  
4 presented by Illinois EPA is arbitrary?

5 A. (Gignac) That -- proposals are not  
6 arbitrary. That standard is applied to a final  
7 administrative action such as a final rule by the  
8 Board in reviewing the entire record as it's  
9 established. Our position, as expressed in our  
10 testimony, is that we do not believe the First Notice  
11 Proposal offers an environmental benefit.

12 Q. Can you point to anywhere in the  
13 Environmental Protection Act that it requires the  
14 Board to make a determination that there is an  
15 environmental benefit when evaluating a rule?

16 A. (Gignac) We believe that's how the Board  
17 has previously interpreted the Environmental  
18 Protection Act in evaluating amendments to the MPS  
19 specifically in previous dockets.

20 Q. And you would agree there is different  
21 ways to quantify environmental benefit, right?

22 A. (Gignac) Correct.

23 Q. And it's in the Board's discretion what  
24 they believe will result in environmental benefit and

1 the methodology in which they come to that conclusion  
2 is in their discretion, right?

3 A. (Gignac) It has to be justified and  
4 supported by the record.

5 Q. And so you are suggesting that the record  
6 that's been presented to date does not support the  
7 proposal, is that right?

8 A. (Gignac) Did you say the record to date?

9 Q. Yes, to date.

10 A. (Gignac) Of course, we would like to  
11 review and consider the testimony that has been  
12 offered yesterday and today and the exhibits as the  
13 record is in the process of being developed. Our  
14 review of the First Notice Proposal is that it would  
15 not offer an environmental benefit.

16 Q. Let's turn now to the MPS as it exists  
17 today. How would the Attorney General go about  
18 calculating the maximum emissions allowed under the  
19 existing MPS?

20 A. (Gignac) I don't know, because we have  
21 not attempted to undertake that analysis. What we've  
22 done in our pre-filed testimony is to calculate the  
23 rate of emission for the units and apply that to  
24 their maximum heat input, which produces a tonnage

1 number of SO2 and NOx that reflects the unit's  
2 maximum emissions under those conditions.

3 Q. And those conditions you are referring to  
4 are 2016 conditions, correct?

5 A. (Armstrong) 2016 unit level emission  
6 rates.

7 Q. And you would agree that that is not the  
8 maximum emissions allowed under the MPS. That's what  
9 I understand you to be saying, right? What you have  
10 calculated is not that, what I just said.

11 A. (Gignac) If the units were to -- the  
12 maximum allowed under the MPS would involve Dynegy  
13 operating its cleanest units as much as possible and,  
14 therefore, allowing uncontrolled units to operate  
15 until the fleet reaches its rate of emissions allowed  
16 under the MPS.

17 Q. That's -- strike that.

18 Does the Attorney General agree that the  
19 current MPS regulates SO2 and NOx emissions at the  
20 system level? It is a system program?

21 A. (Gignac) By systems you mean -- are you  
22 meaning fleet?

23 Q. I am. I appreciate the clarification.

24 A. (Gignac) Common?

1 Q. Yes, fleet wide.

2 A. (Gignac) The emission rates in the MPS  
3 apply to groups of plants that are also called  
4 fleets.

5 Q. The MPS does not regulate emissions at  
6 the unit level, correct?

7 A. (Gignac) Well, if there was only one  
8 unit in a group, the MPS would regulate at the unit  
9 level.

10 Q. I agree with that. If there were more  
11 than one, which thankfully for Dynegy there are, it  
12 does not set specific limits on each of the units,  
13 isn't that right?

14 A. (Gignac) The units are allowed to  
15 average their emission rates. So you can have one  
16 unit or more that are operating above the emission  
17 rate and you can have units that are operating below,  
18 but together their combined operations need to meet  
19 the MPS standard.

20 Q. Okay. And the current is SO2 emission  
21 rates -- let's just stick with SO2 for purposes of  
22 these questions -- for the DMG group is 0.19 mmBtu  
23 and the Ameren group is required to meet an SO2  
24 emission rate of 0.23, okay. Would you agree that

1 those rates are not scheduled under the current MPS  
2 to change? Those are the rates that are going to be  
3 under the current MPS applicable to the future?

4 A. (Gignac) That is my understanding, yes.

5 Q. While those rates are scheduled to remain  
6 constant, the emissions from each of the units can  
7 change into the future, isn't that right?

8 A. (Gignac) Yes, within certain bounds.

9 Q. Okay. Let me ask a more precise  
10 question. The total amount of SO2 and NOx emissions  
11 is allowed to fluctuate each and every year going  
12 forward under the current MPS so long as the system  
13 average rate is met, is that correct?

14 A. (Gignac) Yes.

15 Q. And given your experience working on air  
16 issues associated with coal-fired generation, would  
17 you expect the total amount of SO2 and NOx emissions  
18 to in fact fluctuate under the current MPS from year  
19 to year so long as the rate is met?

20 A. (Armstrong) I would expect that the  
21 input into the unit would fluctuate. I would not  
22 expect the unit level emission rates to fluctuate  
23 significantly because those are based on the  
24 pollution controls that are installed, as well as the

1 typical burn, and the -- for example, when we look at  
2 Table 10 of the Attorney General's testimony on page  
3 18, we have Duck Creek, Coffeen 2, Coffeen 1, all  
4 emitting well below the MPS emission rate limit. The  
5 remaining units in the Old Ameren group operate  
6 significantly above the MPS emissions. We do not  
7 expect those specs to fluctuate.

8 Q. You don't expect the emission rate to  
9 fluctuate based on your experience?

10 A. (Armstrong) Unless there is installation  
11 of pollution controls or unless Dynegy turns off  
12 pollution controls, the emission -- the unit level  
13 emission rates should be consistent.

14 Q. But the total emissions is a function of  
15 the heat input and the emission rate, right?

16 A. (Armstrong) But, yes, also, with the MPS  
17 that is currently in place, limited by the overall  
18 group rates.

19 Q. That's fine. But you testified that you  
20 agree that the heat input you would expect from year  
21 to year into the future under the current MPS to  
22 fluctuate?

23 A. (Armstrong) Within certain ranges.

24 Q. Right, okay. And then in turn you would

1 expect unit level emissions to fluctuate into the  
2 future, correct?

3 A. (Gignac) Emissions are different year by  
4 year.

5 Q. Total emissions, right?

6 A. (Gignac) Yes.

7 Q. So we could see, could we not, an  
8 increase from 2017 in emissions from Hennepin as  
9 compared to 2018, and under the current MPS, and  
10 Dynegy could still be in compliance with the system  
11 rate average, right?

12 A. (Gignac) Emissions from Hennepin?

13 Q. Yes.

14 A. (Gignac) It would depend how much the  
15 emissions increase.

16 Q. And I'm not -- but it could increase,  
17 correct? What I'm trying to get at is, under the  
18 current MPS, we can have actual increases year over  
19 year; it's allowed under the current MPS?

20 A. (Gignac) Yes, and the MPS was designed  
21 to allow for that. Its approach to environmental  
22 regulation is to use a rate-based standard as opposed  
23 to a mass-based standard. The MPS did not set caps  
24 on pollution tons that may be emitted.

1 Q. So the concern with respect to hot spots  
2 that may occur, increases in emissions at one unit  
3 from a prior year, could in fact happen under the  
4 current MPS as it exists today, isn't that right?

5 A. (Gignac) Which concern about hot spots?

6 Q. I'll use a different term. Concern over  
7 increases in emissions from, let's say, uncontrolled  
8 unit Joppa. Under the existing MPS, as you have  
9 testified, Dynegy can increase the heat input at  
10 Joppa as compared to a prior year resulting in an  
11 increase in emissions, therefore, from Joppa so long  
12 as the system rate average is met. That can happen,  
13 and the fleet can be in compliance, correct?

14 A. (Gignac) Correct, as long as the  
15 fleet-wide average is being met. So increases at  
16 uncontrolled plants are limited within that boundary.

17 BOARD MEMBER ZALEWSKI: Can I ask a question?

18 HEARING OFFICER TIPSORD: Yes.

19 BOARD MEMBER ZALEWSKI: Thanks for clarifying  
20 today. Has the AG ever looked at, if we went with a  
21 higher rate, say .5, layering over a mass emission  
22 limit that's proposed by Dynegy? So I'm proposing  
23 both together.

24 MR. GIGNAC: We have not considered in depth

1 that type of framework. It is an interesting  
2 approach that can provide environmental protection.  
3 And if the Board wished to consider it, we would be  
4 happy to weigh in on such an arrangement.

5 BOARD MEMBER ZALEWSKI: I believe  
6 post-hearing that's something to consider. I  
7 actually am interested to see what but I know you  
8 guys have --

9 MR. GIGNAC: Yes, sorry to interrupt. I was  
10 reminded by my colleague that I believe our office  
11 asked Illinois EPA if they considered layering a  
12 rate-based and mass-based standard together as an  
13 alternative MPS modification. Would you like me to  
14 read their answer?

15 HEARING OFFICER TIPSORD: Well, that or we do  
16 have the agents here. Would you like to comment on  
17 that? We can have you sworn in again today. Let's  
18 go ahead and swear in Rory and Dave.

19 (Whereupon the witnesses were  
20 duly sworn by the Reporter.)

21 MR. DAVIS: Rory Davis, I do.

22 MR. BLOOMBERG: David Bloomberg, I do.

23 That was one of the questions. We're  
24 double checking now, but.

1 HEARING OFFICER TIPSORD: I just happened to  
2 turn to page 30. Is that where we are at? Is that  
3 the right question?

4 MR. BLOOMBERG: We see it on page 17.

5 HEARING OFFICER TIPSORD: Yeah, the page 30  
6 is in response to the Environmental Groups, is where  
7 I saw it.

8 MR. BLOOMBERG: Okay. So just to restate  
9 what we said there, the Agency does not believe it is  
10 necessary to employ fleet-wide annual standards in  
11 terms of both mass and emission rates because one of  
12 the main reasons for the proposal, which is  
13 operational flexibility, would not be achieved by  
14 layering an emission rate on top of the proposed mass  
15 emission limits. In addition to that, it's not clear  
16 to me how having two standards in operation at the  
17 same time would work.

18 BOARD MEMBER RAO: Kind of like how we  
19 proposed for Joppa. You have a SO specific limit and  
20 then you have mass limits. Would you propose mass  
21 limits for other plants where they don't, you know,  
22 like shut down all the units at once from one such  
23 unit to a greater extent to give some comfort level,  
24 some limiting?

1 MR. BLOOMBERG: Just to clarify, that's  
2 different from what Board Member Zalewski was talking  
3 about.

4 BOARD MEMBER RAO: I know.

5 MR. BLOOMBERG: So having -- so you're  
6 talking about having an overall cap and then  
7 individual caps within the overall cap.

8 BOARD MEMBER RAO: Which accounts for any  
9 growth and increase in generation.

10 MR. BLOOMBERG: It's not clear to me,  
11 immediately clear...

12 BOARD MEMBER RAO: If you would think about  
13 it a little more.

14 MR. BLOOMBERG: ..how that would work exactly  
15 because I'm not sure what an overall cap -- it seems  
16 somewhat redundant to me. The Joppa limit was done  
17 specifically, you know, for the reasons that we have  
18 discussed. I mean, that also really completely  
19 changes the structure of the MPS. It goes from being  
20 a fleet-wide rule to a source-specific rule at that  
21 point, facility-specific, source-specific.

22 BOARD MEMBER ZALEWSKI: So there is no way to  
23 set just one mass for all? I know they all have  
24 unique characteristics. And just to play with the

1 numbers, I mean, I think there is a variety of  
2 different approaches, different numbers we can play  
3 with. There is no way to set one mass for -- one  
4 number for all units, even if that number is higher  
5 or lower?

6 MR. BLOOMBERG: So you're saying at every  
7 unit, a specific -- one number -- I'm trying to  
8 rephrase your question to make sure I understand it.  
9 So if the number were 20, so it would be 20 at every  
10 unit; it wouldn't be different.

11 As you said, the emissions at each source  
12 are so much different that what you would basically  
13 be doing is at a well-controlled plant you would have  
14 a number that is far higher than they need in order  
15 to make that same number apply at a unit that does  
16 not have that level of control. So I'm not --

17 BOARD MEMBER ZALEWSKI: And that would be  
18 fine because it still has the rate-based level. So  
19 there would be those two competing, allowing some  
20 possibility. I don't know. If you guys want to  
21 think about it, and I am actually interested to hear  
22 what Dynegy has to say about that as well.

23 MR. BLOOMBERG: Yeah, we can definitely think  
24 about it. Yeah, we'll have to think about that some

1 more.

2 MR. GIGNAC: One way that it could work is,  
3 if there is a rate-based fleet-wide standard, there  
4 could also be a mass emissions cap. Because as we've  
5 been discussing with Mr. More, under a rate-based  
6 standard the emissions can go up and down depending  
7 on the operations of the unit. But if there is also  
8 a mass-based cap, then the Board and the public is  
9 assured that the emissions will not go above a  
10 certain tonnage amount.

11 MR. ARMSTRONG: If you are interrelating --  
12 I'm sorry.

13 MR. BLOOMBERG: I was just going to say, just  
14 to point out, what you just said is what this  
15 proposal does. It has a mass-based cap that assures  
16 the public that the emissions will not go above that  
17 level.

18 MR. ARMSTRONG: Well, to finish my point, the  
19 two concepts are interrelated. And in practice, the  
20 thrust of our analysis on pages 17 to 18 of the  
21 Office testimony was to show that the MPS rate as is  
22 currently in place does in fact constrain the maximum  
23 heat input and then, therefore, the maximum SO2 that  
24 can be emitted by the Old Ameren group, also called

1 the IPH group, because of the relative amounts of  
2 scrubbed and unscrubbed capacity in that group.

3 And, accordingly, based on that analysis,  
4 just to reiterate what we have in our testimony here,  
5 when you look at the current MPS using 2016 unit  
6 level emission rates, the MPS in fact will not allow  
7 more than 49,305 tons of SO25 emissions.

8 HEARING OFFICER TIPSORD: Oh, I'm sorry, Ms.  
9 Bugel.

10 MS. BUGEL: I was just wondering if  
11 Mr. Armstrong could repeat that last number or the  
12 last sentence he said.

13 HEARING OFFICER TIPSORD: I'm sorry. For the  
14 record, that's Faith Bugel.

15 MR. ARMSTRONG: And just to quote from page  
16 18 of the People's pre-filed testimony, the total  
17 maximum allowable SO2 emissions under the current MPS  
18 should be considered no more than 49,305 tons using  
19 the 2016 unit level emission rates.

20 HEARING OFFICER TIPSORD: Mr. More, I think  
21 we are back to you.

22 BY MR. MORE: Okay, thank you.

23 Q. Let's turn to page 9 of your testimony,  
24 please. The second to the last sentence under

1 Section 4, "All of that may be true, but left unsaid  
2 is the fact that the proposal will also remove an  
3 operational constraint from the Old Ameren group,  
4 facilitating increased utilization of the group's  
5 less controlled units." So you're alleging that the  
6 proposal will remove that constraint and thus result  
7 in an increase in the operation of the less  
8 controlled plants, is that right?

9 A. (Gignac) It would allow for that  
10 increased operation.

11 Q. And do you agree -- it would allow for  
12 that increased operation, right. Let's go to page 14  
13 of your testimony. In your testimony you allege that  
14 -- earlier today you also commented that the  
15 controlled plants can be used to offset the  
16 uncontrolled plants, correct?

17 A. (Gignac) The operations of controlled  
18 and uncontrolled plants together must average out to  
19 meet MPS standards.

20 Q. So the operation of the uncontrolled  
21 plants could increase compared to 2016 so long as  
22 there was sufficient operation of a controlled plant  
23 to insure compliance with the existing weight limit,  
24 correct?

1           A. (Gignac) In 2016 I believe that there  
2 was a compliance margin in that Dynegy could have  
3 operated some uncontrolled units to some additional  
4 amount. But if the units together are operating at  
5 the MPS rate, if Dynegy chooses to run uncontrolled  
6 units to a greater amount, they need to then increase  
7 the heat input of the controlled units so that the  
8 equation will produce compliance with the MPS.

9           Q. Okay. Your analysis is all predicated  
10 upon 2016 data. I want to explore with you the  
11 possibility that, as compared, the operations of the  
12 uncontrolled plants in 2016 could increase in -- the  
13 2018 operation of those uncontrolled plants could be  
14 higher than 2016 under the current MPS so long as the  
15 system-wide average is met. And one way to do that  
16 is to operate the controlled plants more?

17           A. (Armstrong) I may be misunderstanding  
18 your question here. But when you look at Table 10 of  
19 our testimony, for example, related to the Old Ameren  
20 group, the IPH group, this table does not in any way  
21 rely on 2016 heat inputs. It relates only to 2016  
22 unit level emission rates.

23                       So the constraint on the Old Ameren group  
24 is not simply about the way the plants are being

1        deployed.  It's an imbalance between the amount of  
2        scrubbed capacity and the amount of unscrubbed  
3        capacity that creates a constraint in the way that  
4        Dynegy can operate these plants in compliance with  
5        the MPS.

6            Q.  But your conclusion that this constraint  
7        exists, that the imbalance exists, is solely  
8        predicated on your review of 2016 data, right?

9            A.  (Armstrong)  We have analyzed emission  
10        rates for 2016.  We have not undertaken to analyze  
11        emission rates for other years.

12            Q.  Let's go to page 12.  That's where I  
13        wanted to go for the last question.  Right above  
14        Section D of page 12, that last sentence, "It,  
15        therefore, follows that Dynegy/IPH could improve the  
16        Old Ameren group's compliance margin with the  
17        existing 2017 and onward MPS standard of 0.23 pounds  
18        per million Btu by utilizing some of the excess  
19        capacity at Coffeen and Duck Creek, while reducing  
20        operations at one or more other units that have such  
21        higher SO2 rates," right?  That's your conclusion,  
22        that in fact today we can balance the compliance by  
23        turning one unit off and turning another unit down,  
24        isn't that right?

1           A. (Gignac) What we're talking about here  
2           is mathematical compliance with the MPS and the  
3           under-utilization of two well-controlled plants,  
4           Coffeen and Duck Creek, and that, if those plants  
5           were to operate to a greater extent and other units  
6           with much higher levels of pollution operated less,  
7           the result of the mathematics is that the emission  
8           rate would be lower and with additional room for  
9           Dynegy to comply with the MPS standards.

10           A. (Armstrong) And this is a pretty  
11           axiomatic thing about complying with emission rates.  
12           If you operate units that emit below the rate, you  
13           are going to bring down the average. If you operate  
14           units that have emission rates higher than the  
15           emission rate limit, you're going to bring up the  
16           average.

17           Q. Right. So the existing MPS provided me  
18           with a mechanism to relieve the constraint you have  
19           identified. It allows me to operate Duck Creek and  
20           Coffeen more today as compared to 2016 and thus  
21           decrease the operation of my uncontrolled plants  
22           today more than they operated in 2016 and still  
23           comply with the rating.

24           A. (Armstrong) Exactly. And Table 10

1 shows you exactly what happens if you operate Duck  
2 Creek and Coffeen at 100 percent capacity factor.  
3 There is not enough unscrubbed -- there is not  
4 enough, rather, scrubbed capacity in the Old Ameren  
5 group to operate all of the scrubbers.

6 Q. At their full capacity.

7 A. At their full capacity consistent with  
8 the MPS.

9 Q. But I certainly can increase their  
10 operations compared to 2016.

11 A. (Armstrong) We have never taken a  
12 position that 2016 is the ultimate cap in terms of  
13 overall emissions.

14 A. (Gignac) Can I also add something on  
15 this line of questioning? And that's we should not  
16 forget that Dynegy could also improve its compliance  
17 margin with the Old Ameren group by installing  
18 pollution controls at additional units. And that  
19 would provide the ability to have them dispatched  
20 purely on economics instead of only -- instead of  
21 having to, as they allege, seek to run units solely  
22 for purposes of complying with the MPS.

23 Q. Okay. And if Dynegy were to install  
24 additional pollution controls on additional units, do

1       you have any reason to believe that -- strike that.

2                        Would the installation of pollution  
3       controls, new installation of pollution controls on  
4       units, affect the variable marginal costs of that  
5       unit?

6                        A.   (Gignac)  I don't know how Dynegy  
7       develops its bids or what goes into its costs, but  
8       pollution controls are an investment.  So I would  
9       expect that, yeah, it would be accounted for  
10      somewhere.

11                      Q.   Right.  And you've heard -- you've read  
12      testimony that will be admitted into the record by  
13      Mr. Ellis discussing how the cost structure, the  
14      existing control units, given today's energy market,  
15      is such that those units are being bid in at a loss.  
16      So the proposed solution you provide, you are  
17      recommending, wouldn't that then put those units in  
18      an economic -- you know, degrade their economic  
19      position?

20                      A.   (Gignac)  All our testimony is meant to  
21      point out is that, if there were additional pollution  
22      controls on units in the Old Ameren group, there  
23      would be more operational flexibility to comply with  
24      the MPS.

1 Q. Okay. You haven't assessed whether or  
2 not, if there were more controls on those units,  
3 whether or not those units would be faced with the  
4 same economic conditions that Coffeen and Duck Creek  
5 are in? You haven't done that assessment, is that  
6 right?

7 A. (Gignac) We don't have information  
8 sufficient to review the economics of the individual  
9 plants. We have asked Dynegy for information about  
10 the profitability of different business units, which  
11 we received an answer to last night, and we'll review  
12 that information and then consider whether we should  
13 ask additional questions about economic and financial  
14 information.

15 Q. Okay. Let's turn to page 14 of your  
16 testimony. The first sentence under Section 5, it  
17 begins "Illinois EPA does not acknowledge." Do you  
18 see that?

19 A. (Gignac) Yes.

20 Q. I'd ask that you just read the sentence,  
21 to yourself is fine. I'm not going to make the court  
22 reporter work. You mention that there will be -- the  
23 proposal will facilitate an increase in operation of  
24 the less-controlled plants. Increase as compared to

1       what?  What are you referring to there?

2               A.  (Gignac)  That refers to our previous  
3       analysis in the testimony showing the Old Ameren  
4       group's operational constraint with their SO2 limit  
5       and to a lesser extent NOx compliance.

6               Q.  And that table is referring to 2016.  So  
7       are you referring to an increase in operation as  
8       compared 2016?

9               A.  (Gignac)  What we're talking about is  
10       what's currently allowed under the MPS.  So as we've  
11       talked about earlier this morning, the heat input of  
12       a unit can vary, and 2016 was the year of data that  
13       we used to -- for analysis in our testimony.  And the  
14       ratio of operations of controlled and uncontrolled  
15       units needs to be maintained to comply with what's  
16       required by the MPS.

17               So the First Notice Proposal would remove  
18       that ratio as a constraint on the Old Ameren group,  
19       and that's why we say it has the effect of  
20       facilitating increased operation of less-controlled  
21       plants.

22               Q.  Yet you acknowledge that under the  
23       existing MPS the heat input at even the uncontrolled  
24       plants can vary from year to year and go up?

1           A. (Gignac) Within certain bounds in  
2 compliance with the fleet-wide average.

3           Q. Okay. You haven't calculated any of  
4 those bounds, isn't that right?

5           A. (Gignac) It could be done.

6           Q. Okay. But you haven't done it. You've  
7 given me one example from 2016. This increase you  
8 are talking about could be nominal. Without knowing  
9 the upper bound, you haven't calculated what the  
10 maximum emissions could be from the uncontrolled  
11 plants based on the maximum operation of the  
12 controlled plants. You haven't calculated that, to  
13 say that this facilitates a meaningful increase.

14          A. (Armstrong) I have to disagree. I think  
15 we did so in Table 10 using 2016 unit level emission  
16 rates. We looked at what happens if you -- in the  
17 Old Ameren group if you run the scrubbed plants as  
18 much as possible at 100 percent capacity factor, how  
19 much then could you run the unscrubbed plants,  
20 proceeding from the lower emitting plants to the  
21 higher emitting plants. This is the bound. This is  
22 the bound that would be permissible under the MPS,  
23 using 2016 unit level emission rates.

24                 Yes, you're correct; we used unit level

1 emission rates for one year, the most recent year,  
2 2016. This analysis could be, you know, run for unit  
3 level emission rates going back to previous years to  
4 confirm that those unit level emission rates are  
5 steady. But this does show the boundary of SO2 that  
6 can be emitted by the Old Ameren group, specifically  
7 with the MPS as is currently on the books.

8 Q. So -- all right. So as I understand it  
9 then, Table 10, let's look at Joppa, Joppa 1. That's  
10 an uncontrolled plant, correct, uncontrolled unit?

11 A. (Armstrong) Meaning it does not have SDA  
12 or FDU.

13 Q. Yes. So your analysis is that the  
14 maximum SO2 tons allowed under -- or that are, to use  
15 your term, the actual potential emissions of the  
16 Joppa Unit 1 SO2 emissions are 4,121 tons, correct?  
17 Under the current MPS.

18 A. (Gignac) No, no. Because you could pull  
19 that unit out or bring in a different unit, and it  
20 could emit different amounts, but it has to then --  
21 the group that you assembled has to still meet the  
22 MPS fleet-wide rate. So this Table 10 is showing  
23 the -- it's taking the highest controlled units and  
24 assuming that they operated at maximum heat input and

1 running those down and adding in additional units  
2 until the group rate is reached, and it demonstrates  
3 that's the maximum heat input from the entire group  
4 that could be generated under the current MPS.

5 A. (Armstrong) And so just as a follow-up  
6 point on that, there was a question yesterday about,  
7 well, why didn't you include other units from the Old  
8 Ameren group. Those units for 2016 had unit level  
9 emission rates that exceeded the unit rates listed on  
10 this table. Therefore, if you included any heat  
11 input from those other units, you would run up the  
12 running group rate faster than if you had used  
13 relatively better controlled units. So this -- this  
14 table is an analysis of the absolute highest heat  
15 input that can be put into the Old Ameren group,  
16 again using 2016 unit level emission rates, and still  
17 be in compliance or quasi-compliance with the MPS,  
18 given that the group rate here is .2357.

19 You know, when you have the maximum input  
20 for a given rate, that also translates into the  
21 maximum emissions under that rate.

22 Q. Okay. So what you're demonstrating here  
23 is this is a scenario where you could have the  
24 maximum emissions, as you define that, the actual

1 potential under the existing MPS for the Old Ameren  
2 group. The SO2 tons for Joppa 1 you have calculated  
3 under the current MPS could be lawfully as high as,  
4 under this scenario, 4,121 tons, correct?

5 A. (Gignac) If the plants were operated  
6 exactly as set forth in this table, the result would  
7 be 4,121, although that may need to be slightly lower  
8 because of the -- to insure that 0.23 is not  
9 exceeded.

10 Q. That's fine.

11 A. (Gignac) In response to questions from  
12 IEPA about our testimony, Dynegy responded that it's  
13 unrealistic for units to operate at max heat input,  
14 so this number is not a realistic emission from the  
15 Joppa unit.

16 Q. That's not what we're doing. We're  
17 trying to explore what the bounds are under which the  
18 current MPS would allow for an increase in emissions.  
19 What's the highest? Because you allege that under  
20 the proposal there will be an opportunity for greater  
21 increase in emissions to occur from the uncontrolled  
22 plants.

23 So I want to focus in on these numbers  
24 because you've said they represent the upper bound.

1 That's what Mr. Armstrong articulated, that the  
2 49,305 is this upper bound, and that is a count with  
3 the addition of this SO2 column. So whether they be  
4 4100, 4,000, let's just call it 4,000 to be  
5 reasonable, okay, that's what we're talking about  
6 here. Is you believe, the Attorney General believes,  
7 that there is an operating scenario available to  
8 Dynegy on which Joppa 1 could he emit 4,000 tons of  
9 SO2.

10 A. (Armstrong) And, again, to clarify  
11 because it seems to be misunderstood by both Dynegy  
12 and IEPA, the Attorney General's Office is not  
13 recommending that Dynegy operate its plants in this  
14 fashion or that it even could operate its plants in  
15 this fashion.

16 Again, the purpose of this analysis is to  
17 determine the absolute highest amount of sulphur  
18 dioxide fleet-wide that could be emitted by the Old  
19 Ameren group, consistent with the MPS, using 2016  
20 unit level emission rates.

21 A. (Gignac) So to add on to Mr. Armstrong's  
22 answer, this analysis is not an operating scenario.  
23 It's a theoretical calculation of what the maximum  
24 allowable emissions are under the existing MPS.

1           A.   (Armstrong)  And I imagine that Dynegy  
2           will say, well, this is unrealistic.  You have to  
3           adjust the scenario to actually account how we  
4           operate our plants as they exist, which is totally  
5           fair.  Our point is that any adjustment of this  
6           analysis would result in less heat input fleet-wide  
7           and less SO2 emissions allowed.

8           Q.   But under this analysis you projected --  
9           under your hypothetical, conceptually there could be  
10          4,000 tons of SO2 from Joppa 1.  Let's turn now to --

11          HEARING OFFICER TIPSORD:  Before you go,  
12          first, Ms. Rabczak.

13          MS. RABCZAK:  Yes, I'm clarifying.

14          HEARING OFFICER TIPSORD:  You need to speak  
15          up a lot.

16          MS. RABCZAK:  Sorry.  To clarify, you are  
17          saying that this is unrealistic scenario where you  
18          are using maximum heat input.  In the realistic  
19          scenario the number will be much lower, is that what  
20          you are saying?  Because they can't run the maximum  
21          heat input; the realistic scenario will be that they  
22          will have to run it at the lower heat input which  
23          means the numbers would be lower than what you said.

24          MR. ARMSTRONG:  I would agree with that.  And

1 on page 14 of our testimony we pointed out Dynegy  
2 does not operate its units at their maximum input.  
3 No coal plant operator does. That's just not  
4 achievable in the real world.

5 So I agree that a realistic scenario  
6 would not involve any plants operating at 100 percent  
7 capacity factor, which necessarily would reduce the  
8 amount of SO2 from this analysis.

9 MS. RABCZAK: How would you go to the  
10 realistic scenario? How would you calculate what the  
11 realistic scenario would be?

12 MR. GIGNAC: One way could be what we did  
13 previously in our testimony, which is we take actual  
14 emissions data.

15 MS. RABCZAK: For how many years?

16 MR. GIGNAC: You could do as many years as  
17 you desire to spend hours making the calculations.  
18 You could go back many years. For our purposes of  
19 our testimony, we did one year.

20 MR. ARMSTRONG: But there is data available  
21 through IEPA to go back and do multiple years.

22 HEARING OFFICER TIPSORD: Go ahead.

23 BY MR. MORE:

24 Q. So under this hypothetical Dynegy

1 lawfully -- Joppa 1 lawfully could emit approximately  
2 4,000 tons of SO2. Let's look at exhibit -- the  
3 exhibit to your testimony. Let me finish the  
4 question. I really want to be able to finish the  
5 line of questioning and make a point.

6 Your exhibit, exhibit to your testimony.

7 A. (Gignac) Exhibit 1.

8 Q. Exhibit 1.

9 HEARING OFFICER TIPSORD: And entered into  
10 the record is Exhibit 10.

11 (Whereupon Exhibit 10 was  
12 admitted into evidence.)

13 Q. Thank you. This table purports to list  
14 the operating variables and actual data from 2016,  
15 isn't that correct, as you set forth on this page?

16 A. (Gignac) It does list that.

17 Q. Joppa 1, it lists the SO2 tons at 1,576.  
18 That's the actual tons for Joppa 1 for 2016, right?

19 A. (Gignac) Yes.

20 Q. Let's just round that down for ease of  
21 mathematicians to lawyers to 1500. We've already  
22 agreed, under your hypothetical, Joppa 1 could emit  
23 4,000, lawfully, under the current MPS. The  
24 difference there is 2500 tons, correct?

1           A. (Gignac) This is not a hypothetical.  
2           Table 10 is not a hypothetical scenario. It's not an  
3           operating scenario. It's an analytical exercise to  
4           determine the maximum allowable emissions. So the  
5           number 1500 tons emitted by Joppa 1 of SO2 in 2016,  
6           for that to have been higher, Dynegy would have  
7           needed to operate a controlled unit some additional  
8           amount to remain in compliance with the MPS.

9           Q. But the maximum allowable emissions for  
10          Joppa 1, as you've calculated them, is 4,000,  
11          approximately 4,000 tons.

12          A. (Gignac) Not correct.

13          Q. So you have not calculated the maximum  
14          allowable emissions for any of the units then, is  
15          that right?

16          A. (Gignac) It can't be done.

17          Q. Can't be done?

18          A. (Gignac) Because it's dependent on other  
19          units operating. Unless you had a scenario where  
20          there was only one unit in an MPS group, then you  
21          could calculate the maximum.

22          Q. Allowed for each unit, right?

23          A. (Gignac) Only for that one unit.

24          A. (Armstrong) As many people in this room

1 can make clear, the MPS is a fleet-wide standard, not  
2 a unit-specific standard. So the purpose of the  
3 analysis in Table 10 is to determine a fleet-wide  
4 maximum.

5 Q. And given the complexities that we're all  
6 wrestling with this idea of when we break it down in  
7 units, it would suggest it may be inappropriate then  
8 to try and convert this concept of a fleet-wide to a  
9 unit level program.

10 A. (Armstrong) Well, I think that the  
11 Agency has already proposed at least one unit level  
12 restriction.

13 Q. And -- that hasn't answered. If we can  
14 do it, now let's go through this exercise, and I want  
15 to understand what you think is the maximum allowed  
16 under the current MPS for each unit. If it can be  
17 done, you're proposing something here.

18 A. (Gignac) No one is talking about  
19 converting the MPS from a fleet-wide framework to a  
20 unit by unit regulation. That's what the CPS, the  
21 combined fleet standard, did with respect to a  
22 different coal plant operator. That's not what is  
23 being discussed in this ruling, at least no one has  
24 proposed it so far.

1           Q. Let's look to -- let's turn to page 15 of  
2 your testimony, please, and I'm looking at the  
3 paragraph that begins "For example." About halfway  
4 through the paragraph there is a sentence that reads,  
5 "Illinois EPA's proposed mass-based cap of 55,000  
6 tons is 82.9 percent of 66,345 tons. Therefore,  
7 Illinois EPA is proposing a cap that corresponds to  
8 the MPS's, quote, equivalent, close quote, mass-based  
9 emission limit for a hypothetical year in which all  
10 MPS units ran at an 82.9 percent capacity factor."  
11 Is it the AG's position that --

12           HEARING OFFICER TIPSORD: Excuse me, just for  
13 the record, you skipped over some stuff in that  
14 quote.

15           MR. MORE: I did. Yes, I'm sorry.

16           HEARING OFFICER TIPSORD: You skipped over  
17 where the proposal -- "Illinois EPA has calculated  
18 equivalent mass-based emission limit is based on PCB  
19 12-135 for a hypothetical year in which all MPS units  
20 ran at 100 percent capacity factor. Illinois EPA's  
21 proposed mass-based cap of 55,000 tons is 82.9  
22 percent of 66,354 tons."

23           MR. MORE: Thank you.

24           HEARING OFFICER TIPSORD: I think it

1 significantly changes the question. So that's why I  
2 interrupted.

3 BY MR. MORE:

4 Q. Then we go to the next paragraph. "For  
5 each and every year during which Dynegey's MPS units  
6 operated below an 82.9 percent capacity factor,  
7 Illinois EPA's proposed cap of 55,000 tons of SO2  
8 emissions would, in fact, allow more SO2 pollution  
9 than the MPS, as currently drafted in any possible  
10 scenario." Is it correct then that the opposite  
11 would be true if the capacity factor for -- the  
12 actual capacity factor for the fleet was greater than  
13 82.9 percent, the proposal in that scenario would in  
14 fact be more restrictive than the current MPS?

15 A. (Armstrong) No.

16 Q. Why not?

17 A. (Armstrong) We're talking about two  
18 different analyses here. This first analysis is  
19 based on the -- just a comparison of the 55,000 tons  
20 with what would happen if we ran the MPS units at 100  
21 percent capacity factor in compliance with the  
22 current MPS emission rates. So in any scenario, no  
23 matter how much Dynegey's plants' emission rates  
24 change on a unit level basis, that's what is meant by

1 in any possible scenario. No matter how much  
2 individual units' emission limits change, 55,000 tons  
3 is simply 82.9 percent of 66,354 tons.

4 But as the analysis later in our  
5 testimony demonstrates in Tables 9 and 10, it's  
6 actually not feasible for Dynegey to operate the MPS  
7 fleet at 100 percent capacity factor and still comply  
8 with the current MPS rates. So these are two  
9 different analyses that are being conducted here.

10 Q. I want to focus on the sentence "for each  
11 and every year during which Dynegey's MPS units  
12 operated below an 82.9 percent capacity factor,  
13 Illinois EPA's proposed cap would, in fact -- IEPA's  
14 proposed cap of 55,000 tons of SO2 emissions would,  
15 in fact, allow more SO2 pollution than the MPS, as  
16 currently drafted in any possible scenario." So is  
17 it the AG's position that if -- that the proposal  
18 would result in more SO2 emissions if the average  
19 fleet capacity factor were at 80 percent?

20 A. (Armstrong) If the fleet were at an 80  
21 percent capacity factor, then you could determine --  
22 so let's say that -- let's say in 2018 the MPS unit  
23 operates at an 80 percent capacity factor. For the  
24 year 2018 you could calculate a, quote, equivalent

1 mass-based emission limit for that year -- that's  
2 Dynegey's language from PCB 12-135, equivalent  
3 mass-based limit for 2018 -- by multiplying --  
4 basically by multiplying 66,354 by 80 percent, and  
5 you would get a number that is less than 55,000 tons.  
6 So for 2018, if the MPS as currently drafted were in  
7 place, it would allow less than 55,000 tons of SO2  
8 for that year. If these proposed amendments were  
9 adopted, the MPS would allow 55,000 tons for that  
10 year, an increase in the amount of pollution allowed  
11 for that year.

12 Q. Why can't I do the same analysis for 83  
13 percent capacity factor, that you just went through?

14 A. (Armstrong) You could do that analysis.

15 Q. Okay. And at 83 percent capacity factor,  
16 the proposal would result in fewer emissions than the  
17 one I'm currently allowed to emit.

18 A. (Armstrong) But you are not taking into  
19 account the second analysis that we did on Table 10.

20 Q. I am. Your second analysis was that you  
21 can't operate at 100 percent capacity factor. I'm  
22 not suggesting that. I'm suggesting a .1 percent  
23 increase. I just want to -- if you're going to make  
24 an absolute statement, that every time we operate

1 below 80 percent, the proposal is less restrictive,  
2 the converse has to be true. If we operate above  
3 82.9 percent, then the proposal has to be more  
4 restrictive.

5 A. (Armstrong) You are misunderstanding our  
6 testimony. If -- let's say that -- let's say that  
7 the proposal were adopted, and in 2018 Dynegy  
8 operated the MPS fleet at an 83 percent capacity  
9 factor and emitted 55,000 tons of sulphur dioxide and  
10 complied with the standards. Let's just say those  
11 were the numbers. Dynegy would still be emitting  
12 more sulphur dioxide than it can presently when you  
13 factor in unit level emission rates. That's the  
14 analysis on pages 17 to 18 of our testimony.

15 On pages 17 and 18 of our testimony we  
16 demonstrate that, when you factor in unit level  
17 emission rates which reflect the pollution controls  
18 that are installed on the plants, the total maximum  
19 allowable SO2 emissions under the current MPS should  
20 be considered no more than 49,305 tons.

21 Q. David, hold on one second. I'm sorry.  
22 It gets difficult. But on pages 17 and 18 your  
23 tables use the maximum heat input. That means it's  
24 the maximum capacity factor. That would be 100

1       percent. That's my point. Okay. That's to  
2       demonstrate what the emission rate would be had the  
3       units operated at maximum capacity, 100 percent  
4       capacity, and you said that's not feasible. Dynegy's  
5       commented on some of your questions. What I want to  
6       understand is, isn't it true, if we operated at a  
7       capacity factor greater than 82.9 percent for SO<sub>2</sub>,  
8       then the proposal as you've evaluated it would be the  
9       more restrictive.

10           A. (Armstrong) Not if Dynegy was allowed to  
11       emit more than 49,305 tons of sulphur dioxide, which  
12       it would be because Dynegy would be allowed to make  
13       55,000 tons. And that would be the absolute --  
14       again, 49,305 is the absolute maximum of sulphur  
15       dioxide emissions under the current MPS using 2016  
16       unit level emission rates. So, again, there is two  
17       different analyses going on here.

18           MR. BLOOMBERG: So you've stated several  
19       times now that there is no way -- your words, no way  
20       -- Dynegy could go over 49,305 tons of SO<sub>2</sub> per your  
21       calculation.

22           MR. ARMSTRONG: Using 2016 unit level  
23       emission rates.

24           MR. BLOOMBERG: Right. That's a very good

1 point. Using those unit rates. Because if the  
2 emission rate at a Duck Creek or a Coffeen or even  
3 one of the Joppas were lower than in Table 10, and as  
4 we pointed out yesterday, the Joppa ones can  
5 fluctuate because there is no real reason for Joppa  
6 1, 2 or 4 to be different than 3, 5 or 6, if those  
7 numbers were lower, then isn't it true that the  
8 statewide mass emissions could exceed 49,305 tons as  
9 a result?

10 MR. ARMSTRONG: This analysis, again, is  
11 based on 2016 unit level emission rates. I don't  
12 know how much lower of a unit rate you can get on  
13 Duck Creek, Coffeen 1 and Coffeen 2 realistically  
14 speaking. And realistically I don't see how, given  
15 that Dynegy has indicated no intention of installing  
16 any additional pollution controls at the other units,  
17 I don't see how the other unit rates would decline  
18 significantly, either. Again, though, if you re-ran  
19 this analysis using multiple years of unit level  
20 emission rates, you could get a many more  
21 fine-grained analysis for sure.

22 MR. BLOOMBERG: Okay. But I just want to  
23 make it clear, because you have stated repeatedly it  
24 could not go over 49,305 tons. That is not true.



1 table, right?

2 A. (Gignac) Correct. If you added  
3 additional units from the Old Ameren group to Table  
4 10, the group rate would continue to exceed .23.

5 Q. Right. So you think that would be  
6 inappropriate because it would be a violation, in  
7 other words; that's why you didn't include them?

8 A. (Gignac) We didn't include them because  
9 we were attempting to show in Table 10, we do show in  
10 Table 10, the maximum heat input from the Old Ameren  
11 group that could be achieved within or close to  
12 compliance with the MPS.

13 Q. Okay. Now let's go to Table 9. Let's  
14 start with the group rate. Table 9 in 2016, using  
15 your maximum heat input, the emission rate for SO2  
16 average was 0.1275, correct?

17 A. (Gignac) That's what it says in Table 9.

18 Q. Yeah, that's what you calculated. And  
19 that's below the limits applicable of 0.19, correct?

20 A. (Gignac) 0.1275 is less than 0.19.

21 Q. So there is a compliance margin at the  
22 DMG group, correct?

23 A. Yes.

24 Q. And the DMG group in 2016 lawfully could

1 have increased the emission rates of those units,  
2 correct?

3 A. (Armstrong) You talking about the mass  
4 rate or unit level emission rates?

5 Q. The unit emission rate that you utilized  
6 here to calculate what a corresponding mass heat  
7 input total emissions would be.

8 A. (Armstrong) The unit rate for Baldwin 1  
9 through 3 and Havana 9, I believe, would be limited  
10 by the consent decree.

11 A. (Gignac) So if Dynegy violated the  
12 consent degree and turned off pollution controls,  
13 then, yes, their unit rate would be different.

14 A. (Armstrong) And I don't know how much  
15 more Hennepin could increase its unit rate, given  
16 that it's already at nearly .5.

17 A. (Gignac) If they had ordered much higher  
18 sulphur coal and started burning that, perhaps.

19 Q. And they could have. If they blended in  
20 a higher sulphur coal, they could increase the unit  
21 emission rate on Hennepin 1 and 2.

22 A. (Armstrong) We'd have to take a look at  
23 the applicable standards for Hennepin in order to  
24 answer that question.

1 A. (Gignac) Oh, under the consent decree?

2 A. (Armstrong) Well, under the consent  
3 decree, under, you know, all the other standards that  
4 Dynegy and the Agency put forward for Hennepin, we  
5 need to review that. Of course, if we had this as a  
6 pre-filed question, we could have done so. We could  
7 address that in a written response.

8 Q. But it's -- you agree that, under the  
9 current MPS, the total tons of SO2 from the DMG group  
10 could be higher than 15,447 tons because of the  
11 significant compliance margin expressed on this  
12 table?

13 A. (Armstrong) We just testified that the  
14 unit rate is limited by other factors other than the  
15 MPS, though. So I think that in order to understand  
16 how much higher these unit rates could go, we'd have  
17 to take a look at all the applicable requirements for  
18 these plants, including CSAPR, including the consent  
19 decree, etcetera.

20 Q. Since you didn't take a look at any of  
21 those other rates, you cannot represent today to this  
22 Board that this actually represents the actual amount  
23 then.

24 A. (Armstrong) Again, we calculated this

1 using 2016 unit level emission rates.

2 A. (Gignac) And if Dynegy wants to put  
3 testimony in the record that it's willing to violate  
4 the consent decree, violate other applicable  
5 requirements, increase its unit rates, and that the  
6 Board should take that into account or different  
7 numbers should be used in Table 9, Dynegy is free to  
8 do that.

9 Q. I'm sorry, Mr. Gignac, but that's not  
10 what I'm suggesting. What I'm suggesting is that --  
11 no, what I'm demonstrating is you haven't evaluated  
12 whether in fact the emission rates for 2016 represent  
13 the maximum. I want to look at page 19. You  
14 testified, this is written testimony, the total  
15 maximum allowable -- I'm sorry, page 18. The total  
16 maximum allowable, 49,305, that's actually not --

17 A. (Gignac) Using 2016 unit level emission  
18 rates.

19 A. (Armstrong) You have keep leaving that  
20 out. It's pretty important.

21 Q. All right. Well, that's important to  
22 note then that that does not represent the total  
23 maximum allowable. Because, in fact, using 2016  
24 emission rates gives you a number less than what the

1 fleet is actually allowed to emit.

2 A. (Armstrong) As I previously stated, you  
3 could make this a more fine-grain analysis by using  
4 emission rates from different years. You could use  
5 unit emission rates that took into account all the  
6 other applicable requirements. Those kind of  
7 analyses could be done. But this -- the point of  
8 this analysis was, again, to demonstrate what is  
9 allowable using 2016 unit level emission rates.

10 Q. Okay. Let's go back to the discussion  
11 about corresponding capacity factor, the capacity  
12 factor that corresponds to the proposed caps. I'm on  
13 page 16 of your testimony. Just above Section 2 the  
14 sentence reads, "Even if Dynegy were to increase the  
15 MPS fleet's capacity factor to 65 percent, the MPS as  
16 currently drafted would allow only 43,130 tons of SO2  
17 emissions, 11,870 tons less than Illinois EPA's  
18 proposed cap." How did you calculate the amount that  
19 the MPS as currently drafted will allow?

20 A. (Armstrong) For this analysis we  
21 multiplied 66,354 by 65 percent, for purposes of this  
22 analysis.

23 Q. Okay. So let's multiply -- and that was  
24 to demonstrate that, even if we had increased the

1 capacity factor, the 65 percent, the proposal is less  
2 restrictive because it would have allowed us to emit  
3 more than the current regulation, right?

4 A. (Armstrong) Correct.

5 HEARING OFFICER TIPSORD: Proposed to be more  
6 restrictive?

7 MR. MORE: Less restrictive, I think is what  
8 I said. But if I said more, I'm sorry.

9 HEARING OFFICER TIPSORD: 65,000 is more  
10 emissions than 43,000, right?

11 MR. ARMSTRONG: Correct.

12 BY MR. MORE:

13 Q. Just to be clear, I believe your  
14 testimony is that this illustrates that the current  
15 MPS is more restrictive than the proposal?

16 A. (Armstrong) The testimony is that, under  
17 the current MPS, for every year in which the MPS  
18 would operate, the MPS emission rates impose an  
19 equivalent mass-based emission limit. And the  
20 proposed cap of 55,000 tons of sulphur dioxide would  
21 be greater than the equivalent mass-based emission  
22 limit if Dynegy operated the MPS fleet at a capacity  
23 factor of 65 percent.

24 Q. Okay. Let's calculate the equivalent

1 mass-based limit for the current MPS on SO2 had  
2 Dynegy operated at an 89 percent -- use a 90 --

3 A. (Gignac) We can't do mathematical  
4 calculations sitting here today. If you would like  
5 to ask us to do that calculation or other  
6 calculations, we are happy to do that.

7 Q. Well, I think all I am talking about  
8 doing is -- I'm going to hand you a calculator in a  
9 minute. I want to just take 83 percent -- I want to  
10 take 66,354 times a capacity factor of 83 percent,  
11 okay. So here, go ahead, do the math.

12 MR. RAO: Can you also share with us?

13 HEARING OFFICER TIPSORD: Yeah, we would need  
14 to know the numbers.

15 A. (Armstrong) Times .89, is that correct?

16 Q. Let's do -- sure, .89.

17 A. (Armstrong) Okay, I have a number.

18 Q. And what is that?

19 A. 59,055.06.

20 Q. That's the same methodology that you used  
21 to calculate an equivalent mass-based limit at a 65  
22 percent capacity factor, isn't that right?

23 A. (Armstrong) For purposes of this  
24 analysis, yes.

1           Q. For purposes of this analysis on page 16,  
2 your analysis. If the fleet were to operate at an 89  
3 percent capacity factor, the proposal -- the cap is  
4 less than 59,000, isn't it?

5           A. (Armstrong) The cap is less than 59,000.  
6 55 is less than 59.

7           Q. Okay. Now let's look at Footnote 16 on  
8 page 16. Footnote 16 discusses a methodology for  
9 calculating a corresponding capacity factor for the  
10 proposed NOx emission cap, correct?

11          A. (Armstrong) This footnote makes an  
12 observation that 25,000 tons of NOx is 76.1 percent  
13 of IEPA's calculated allowable emissions of 32,841  
14 tons.

15          Q. Do you have any reason to believe that --  
16 let's go back.

17                   Do you know whether the MPS fleet has  
18 ever operated at or above a 76.1 percent capacity  
19 factor over the last ten years?

20          A. (Gignac) No, we have not done that  
21 research.

22          Q. Excuse me. Do you have any reason to  
23 believe the MPS fleet will not be called upon to  
24 operate at or above an average capacity factor of

1 76.1 percent in the future?

2 A. (Gignac) Do I have reason to believe?

3 Q. Yeah.

4 A. (Gignac) I think it would be extremely  
5 unlikely.

6 Q. Tell me why.

7 A. (Gignac) Market fundamentals such as  
8 described by Dynegy.

9 Q. What market fundamental descriptions are  
10 you referring to?

11 A. (Gignac) The testimony by Dynegy is that  
12 changes in the energy markets have reduced their  
13 operations.

14 Q. But you've done no analysis, right, of  
15 what future operations are expected to be?

16 A. (Gignac) Aside from general awareness of  
17 trends in the energy markets and Dynegy's own  
18 testimony, we have not done an independent projection  
19 of coal plant utilization.

20 Q. Okay. Mr. Gignac, I have to push on this  
21 one point. I hate to do it. You said in your  
22 opinion. You earlier testified you are not an  
23 expert. So you are not offering -- when you say your  
24 opinion, your opinion is not founded on any expert

1 experience or expert qualification, correct?

2 A. (Gignac) I'm not offering myself as an  
3 expert witness.

4 Q. Okay. And I'm getting close to being  
5 done. Is the AG asking the Board to set emission  
6 limits based on the combined groups most recent level  
7 of operations?

8 A. (Gignac) Can you be more specific about  
9 most recent?

10 Q. Yes. Is the AG asking the Board to set  
11 emission limits based on 2016 emissions?

12 A. (Gignac) To restate our testimony, what  
13 we're urging the Board is that the MPS does not need  
14 to be modified. If it does need to be modified, the  
15 Board reaches that conclusion, we suggest a more  
16 limited modification that would allow Dynegy to  
17 combine its MPS groups, and that the Board seek  
18 stakeholder feedback on what a single rate-based  
19 standard should be for the group.

20 If the Board further concludes that the  
21 record justifies converting the MPS to mass-based  
22 caps, we would also request or urge the Board that  
23 stakeholder feedback should be solicited on lower  
24 caps than what Illinois EPA included in the First

1 Notice Proposal.

2 MR. MORE: That's all I have for now.

3 HEARING OFFICER TIPSORD: Are there any  
4 additional questions for the Attorney General's  
5 Office? We'll start with you.

6 MS. ROCCAFORTE: I'm Gina Roccaforte on  
7 behalf of the Illinois EPA.

8 HEARING OFFICER TIPSORD: Louder, speak  
9 louder. We can't hear you even.

10 MS. ROCCAFORTE: I'm Gina Roccaforte on  
11 behalf of the Illinois Environmental Protection  
12 Agency.

13 HEARING OFFICER TIPSORD: Still louder,  
14 project.

15 MS. ROCCAFORTE: Gina Roccaforte on behalf of  
16 the Illinois Environmental Projection Agency.

17 EXAMINATION

18 BY MS. ROCCAFORTE:

19 Q. On page 24 of your testimony you state,  
20 "Accordingly, if the Board decides mass-based  
21 standards are warranted, it should make provision for  
22 stakeholders to provide input on how the caps should  
23 be set and what the numbers should be." Isn't that  
24 the very purpose of this rulemaking proceeding in

1 this hearing?

2 A. (Gignac) The First Notice Proposal  
3 requires the Board to make a number of determinations  
4 before reaching a determination of mass-based caps.  
5 As I just reiterated in response to Mr. More's  
6 questions, the People have urged the Board to not  
7 amend the MPS, to allow it to continue to exist as  
8 written. If the Board determines that the record  
9 justifies making a number of adjustments such that  
10 mass-based caps should be used, then we would ask  
11 that stakeholders be given the opportunity to weigh  
12 in specifically on that question once the initial  
13 determinations have been made that that's the way  
14 that the Board wants to go.

15 Q. And stakeholders are allowed to file  
16 testimony with the Board proposing specific changes  
17 to the Agency's proposal, correct?

18 A. (Gignac) that is permitted.

19 Q. And they can provide comments suggesting  
20 changes or proposed mass emission caps or otherwise  
21 weigh in on the Agency's proposal, correct?

22 A. (Gignac) Yes, and also the Board is  
23 permitted to request its own information from any  
24 participant or the public on specific issues that

1 it's interested in.

2 MS. VETTERHOFFER: This is Dana Vetterhoffer  
3 on behalf of the Illinois EPA.

4 HEARING OFFICER TIPSORD: You have to speak  
5 up.

6 MS. VETTERHOFFER: This is Dana Vetterhoffer  
7 on behalf of the Illinois EPA.

8 EXAMINATION

9 BY MS. VETTERHOFFER:

10 Q. I'm just trying to get a sense of what  
11 you're suggesting, Mr. Gignac. What kind of further  
12 solicitation are you implying that the Board should  
13 be conducting if it decides to change the mass  
14 emission limits proposed by the Agency besides these  
15 hearings, post-hearing comments?

16 A. (Armstrong) So in the Office's pre-filed  
17 testimony we laid out several ways that the Board  
18 could go with this rule. And if the Board found one  
19 or more of these options preferable to the others,  
20 the Board could indicate that to the public and it  
21 could result in a more focused rulemaking. So our  
22 intent would be that, if the Board agreed with any of  
23 our suggestions in our testimony that some of these  
24 paths should be further explored, the Board could

1 indicate that to the parties and then we could have a  
2 more focused discussion about those topics, rather  
3 than just in the absence of guidance throw things  
4 against the wall.

5 Q. Is there any -- and I understand the  
6 concept of more focus, but that's what a rulemaking  
7 proceeding is. Is there anything that prevents you  
8 from providing the Board more information, a more  
9 focused analysis, that might guide the Board in its  
10 decision in adopting a rule in this proceeding?

11 A. (Armstrong) There is nothing that  
12 prevents us from providing additional information.  
13 But I have been involved in rulemakings in the past  
14 where the Board has called for comment on particular  
15 issues. I think it's pretty common for the Board to  
16 do that. So if the Board were to do so in this case,  
17 we are just offering suggestions on what further  
18 issues the Board can invite public comment on.

19 Q. In the few instances where in this case  
20 the Board has asked for additional information from  
21 the AGO, your opinion on different scenarios, for  
22 example, just recently both the AGO, Dynegy and the  
23 Agency were asked about, by Board Member Zalewski,  
24 the idea of layering rates on top of mass emission

1 caps. You can provide those in this proceeding,  
2 correct? You can provide that analysis on behalf of  
3 the Attorney General in this proceeding?

4 A. (Armstrong) Certainly we will provide  
5 opinions on any issues the Board presents to the  
6 public for comment. You know, we filed our testimony  
7 on December 11. And when we filed it, we were just  
8 trying to set out ideas for the Board to consider.  
9 Since people filed testimony, the Board, of course,  
10 has had follow-up questions. The Board may have  
11 additional follow-up questions. We're just offering  
12 options for people to consider.

13 Q. Are you in any way suggesting that the  
14 Board initiate a different proceeding in order to  
15 consider these issues or are your requests more in  
16 the sense of an additional hearing or -- we're trying  
17 to get a sense of what you're saying in terms of why  
18 you need additional solicitations from the Board in  
19 order to provide comments or additional testimony.

20 A. (Armstrong) I don't think we're saying  
21 that we have a need per se. James?

22 A. (Gignac) Well, just on the procedural  
23 question the Board has a number of options. They  
24 could simply ask for written comment and specify the

1 questions they'd like the parties to respond to,  
2 which could be simple, they could be extensive. The  
3 Board could designate a particular hearing day to  
4 discuss a question. The Board could designate a  
5 sub-docket, which they have done with other  
6 rulemakings. So there is a number of procedural  
7 options available.

8 Q. Okay. So when the Board asks questions,  
9 like they did for this hearing, they asked pre-filed  
10 questions, they asked the AGO's opinions on certain  
11 things, the Illinois Environmental Protection  
12 Agency's opinion, Dynegy's opinion, that's what  
13 you're talking about. They can ask us questions to  
14 address at the next hearing if they'd like. They can  
15 solicit opinions. You're foreseeing that within this  
16 proceeding as a way the Board could ask you to  
17 address certain issues or give certain opinions?

18 A. (Gignac) that is one way, yes.

19 MS. VETTERHOFFER: Okay, thank you.

20 HEARING OFFICER TIPSORD: Ms. Bugel.

21 MS. BUGEL: I just have a couple of  
22 questions. I'm Faith Bugel for the Sierra Club.

23 EXAMINATION

24 BY MS. BUGEL:

1 Q. And about the AG's position on this rule,  
2 this proposed rule, did the AG support this proposed  
3 rule at any time?

4 A. (Gignac) There are parts of it that we  
5 have expressed agreement with, such as unit-specific  
6 measures that were included. But when it comes to  
7 the First Notice Proposal as a whole, we have  
8 advocated that the Board reject it and dismiss the  
9 rulemaking.

10 Q. And during the stakeholder process with  
11 IEPA, generally excepting the parts of it that you  
12 mentioned, the overall rule and the switch from a  
13 rate-based to a mass-based cap, did the AG's office  
14 support that at any time, including in the  
15 stakeholder process with IEPA?

16 A. (Gignac) After we received a stakeholder  
17 draft of a proposal, we submitted a letter to  
18 Illinois EPA expressing concerns with the proposal,  
19 asking questions, etcetera, essentially urging the  
20 Agency not to move forward with it as drafted.

21 Q. So did the AG's office, the AG's office's  
22 position, on this rule change after contact with  
23 environmental groups?

24 A. (Gignac) Our position has not changed.

1 We may have been informed on certain aspects of our  
2 analysis based on consultation with environmental  
3 groups.

4 Q. Does the AG's office write regulations  
5 that apply to environmental groups?

6 A. We'd need to consult with other parts of  
7 our office. We do have what's called a Charitable  
8 Trust Bureau that may have some oversight of certain  
9 environmental groups.

10 Q. Did the AG's office -- no, strike that.

11 MS. BUGEL: That's all the questions I have.  
12 Thank you.

13 MS. DUBIN: I have a couple questions. I'm  
14 not going to -- I'll stand up just in case people  
15 can't hear me.

16 HEARING OFFICER TIPSORD: Identify yourself.

17 MS. DUBIN: My name's Lindsay Dubin. I'm an  
18 attorney at the Environmental Law and Policy Center.  
19 I really just have one question.

20 EXAMINATION

21 BY MS. DUBIN:

22 Q. Are environmental groups regulated under  
23 the Multi-Pollutant Standards rule?

24 A. (Gignac) Well, they are not currently.

1 But if they were to acquire coal plants, it's  
2 possible.

3 A. (Armstrong) Strict compliance with the  
4 MPS.

5 Q. Is the Attorney General responsible for  
6 insuring that environmental groups comply with the  
7 Multi-Pollutant Standards rule?

8 A. (Gignac) No, the only entities that we  
9 are aware of that need to comply with the MPS is  
10 Dynegy.

11 MS. DUBIN: Okay, that's it. Thank you.

12 HEARING OFFICER TIPSORD: Just a point of  
13 clarification before we move from there. I believe  
14 the proposal makes clear Dynegy is the only coal  
15 units left in the multi-pollutant MPS. So that is  
16 correct?

17 MR. BLOOMBERG: Yes, that is correct.

18 HEARING OFFICER TIPSORD: Thank you.

19 Okay. Sir, you want -- we'll give you  
20 two minutes and then we're going to -- oh, I'm sorry.  
21 Go ahead.

22 MS. RABCZAK: I just have a few clarifying  
23 questions.

24 HEARING OFFICER TIPSORD: Louder. You know

1 what, come up here so you project to the room.

2 MS. RABCZAK: Tanya Rabczak.

3 HEARING OFFICER TIPSORD: Louder.

4 MS. RABCZAK: Tanya Rabczak, Illinois  
5 Pollution Control Board.

6 EXAMINATION

7 BY MS. RABCZAK:

8 Q. I have a question on calculations in  
9 Table 10. We talked about capacity factor. We  
10 talked about emission rates. Do I understand  
11 correctly that the calculations are based on  
12 understanding how the capacity factor is actually how  
13 the companies actually run their plants, how the  
14 capacity factors actually exist? Do you understand  
15 how the Dynegy plants get to specific capacity rates  
16 they are at or do you use your information based on  
17 past years? For instance, when you provide examples  
18 of what the 2016 year was, what previous years were,  
19 do you understand how each plant get to the capacity  
20 level?

21 A. (Gignac) Well, let me start with Table  
22 10 and the maximum heat input. That's calculated  
23 using the physical nameplate capacity of each unit.  
24 If it was running...

1 Q. A hundred percent?

2 A. ..a hundred percent. So for purposes of  
3 Table 10, that is what we calculated.

4 The unit rate is dependent on how the  
5 unit functions as well as what pollution controls are  
6 installed at that particular unit.

7 Q. So Table 10 has the actual emission rates  
8 for 2016, right?

9 A. (Gignac) That we calculated, correct.

10 Q. Okay. So the two questions I had to  
11 understand your vision of what's the total emission  
12 possibly could be is, do you understand how each unit  
13 gets to whatever capacity factor they actually get  
14 to. That's one question. The second question: Do  
15 you understand how and why the emission rates  
16 fluctuate year to year. For instance, what the  
17 Dynegy representatives were asking, how would 2016  
18 would look compared to 2017 and '18 in gross capacity  
19 factor and emission rates factor. And the third  
20 question I have, and you don't have to answer it now.

21 A. (Gignac) Can we take these one by one?

22 Q. Yes. You can either answer them now or  
23 you can submit them into the record because we won't  
24 have them in the record. Do you understand who

1 controls the capacity factor, who controls the  
2 emission rate and how? Can Dynegy decide which plant  
3 to run? Can Dynegy decide at which capacity factor  
4 they run? Can they decide at which emission rate  
5 they run? What do they have to do to get to those?

6 HEARING OFFICER TIPSORD: Okay. That's  
7 enough. Let them catch up.

8 Q. And you can either answer now or we can  
9 just -- so you can just submit your answers into the  
10 record.

11 A. (Gignac) Since you offer, we'll be happy  
12 to respond in writing, unless any other participants  
13 want to hear our response now. But we can give you a  
14 fuller answer in follow-up comments.

15 Q. We understand that Dynegy is the one who  
16 is expert in that, but we want to understand your  
17 vision of this because you provide some calculations.  
18 We want to see how much you understand the process of  
19 how they operate.

20 HEARING OFFICER TIPSORD: Thank you.

21 MR. SYLVESTER: Because there was a barrage  
22 of questions there, is there going to be written  
23 questions to us or do we have to go through the  
24 record? I mean, I don't know if she articulated all

1 of them, either. I'm not sure what the process is  
2 going to be.

3 HEARING OFFICER TIPSORD: I think she's given  
4 her questions into the record for now. We're going  
5 to set up pre-filing deadlines for the next hearing.  
6 I think we need to plan on all witnesses being  
7 available in Edwardsville. Because I think when we  
8 get back and look at these transcripts, we may find  
9 there are additional questions, not only the Board  
10 but others that want to be proposed to witnesses. So  
11 we will set those pre-filing deadlines up in a  
12 minute.

13 But with that we're going to let this  
14 gentleman do two minutes. Is everyone done with the  
15 AG's office for now? We'll talk about that in a  
16 minute, okay, when we do the pre-filing.

17 MS. RABZCAK: Okay. That's all right.

18 MR. RAND: Thank you for your -- I'm Andrew  
19 Rand, the Chairman of Peoria County. I did not have  
20 a chance to be here yesterday as I had some other  
21 duties to attend to. But I would like to thank you  
22 for the diligence to which you are attempting to  
23 resolve this subject.

24 I don't know anybody from the AG's office

1 or I should say the Attorney General's office. I  
2 don't know anybody from Dynegy. I don't know anybody  
3 from the Illinois EPA. But I do know several of  
4 these people that live in this community. And I have  
5 taken no campaign contributions from anyone here.

6 This process would never have needed to  
7 occur had people been more thoughtful about the  
8 inputs of the processes of production and the  
9 outputs. In this very community for about nine years  
10 I've listened to the Tri-County Regional Planning  
11 Commission be challenged with the question of whether  
12 our air quality was about to be determined as a  
13 containment area, something that we didn't want.

14 We are wrestling with a quarter of a  
15 billion, 350 million dollar, problem because those  
16 who designed our storm sewers connected them to our  
17 wastewater management sewers. And when it rains too  
18 much, it puts a bunch of bad stuff in our river. And  
19 there is an enormous community problem attached to  
20 that.

21 And I also happened to sit on a landfill  
22 siting committee hearing about seven years ago when  
23 we sited a new landfill. And so in cooperation with  
24 the City of Peoria, we have a joint city/county

1 landfill corporation, and I can tell you the stuff  
2 that's going in there, once again, if the process  
3 would have been designed differently, we wouldn't  
4 have the kind of things to worry about in our  
5 landfill.

6 But the people who are here today aren't  
7 really representing all of the interests of central  
8 Illinois and in particular Peoria County. And so I  
9 would ask you this, that you come back again and have  
10 more hearings here and don't just conclude this  
11 process with the evidence that's been presented today  
12 or in your next hearing somewhere else, but you  
13 consider central Illinois. Because the people I do  
14 represent aren't the people in the front of the room;  
15 they are the people in the back.

16 HEARING OFFICER TIPSORD: That's your time.

17 MR. RAND: And if you come to my chamber,  
18 ma'am, I will give you five minutes, my rule, and  
19 never shut an elected person down after two, which  
20 you don't like. Thank you for your patience.

21 HEARING OFFICER TIPSORD: Thank you. Okay.  
22 With that, I think it is a quarter 'til 12:00. Do we  
23 want to start with Dynegy? Do we want to take a  
24 lunch break?



1 AFTERNOON SESSION

2 HEARING OFFICER TIPSORD: On the record.

3 He wasn't here yesterday. He would like  
4 to have two minutes for public comments. We're going  
5 to give him that two minutes. So while the Agency is  
6 filing back in, we will go ahead and give him that  
7 two minutes on the record.

8 MR. KANE: My name is Doug Kane (sp), for the  
9 record. I'd like to thank you for allowing me to  
10 speak. I've been suffering from a respiratory  
11 ailment, and I was not feeling well enough yesterday  
12 to be able to attend.

13 Before I begin, I'd like to ask who am I  
14 speaking to? Could I see a show of hands of those  
15 who are here from the Dynegy Corp? Thank you. You  
16 all look well fed and watered after lunch. You are  
17 well suited up, got lots of papers in front of you.  
18 I imagine it costs a lot of money for the corporation  
19 to send you here for a couple of days.

20 I am here to speak against your special  
21 call for an increase in my rates. I think your  
22 business model is broken for you to come and ask for  
23 special interest for your rate increase when you are  
24 operating what's a very old plant polluting the area.

1 You currently have approximately 80 acres of fly ash  
2 in storage beside the Illinois River. I don't know  
3 if you have any plans on how you're going to clean up  
4 that site. For those of you who may not know, 80  
5 acres is approximately 63 football fields in size, to  
6 give you some idea of how much pollution this company  
7 currently has beside the Illinois River, and that is  
8 lying upstream of the Emiquon marsh.

9 I think before you ask for any special  
10 interest, you should tell us what your plans are for  
11 how you're going to clean up that site.

12 HEARING OFFICER TIPSORD: That's your time.  
13 Sorry. Thank you. And as I've reminded everyone,  
14 you can file written comments if you want to expand  
15 on something you have said today.

16 Okay. With that, I will turn it over to  
17 Dynegy.

18 MR. MORE: Sure. Shall we swear in the  
19 witnesses and then we'll proceed then to --

20 HEARING OFFICER TIPSORD: We can, unless you  
21 wanted to make an opening statement before we  
22 started.

23 MR. MORE: We do. Mr. Ellis would like to  
24 make an opening statement. Would you like him to

1 make it after --

2 HEARING OFFICER TIPSORD: No, we'll swear him  
3 in first. Swear in the witnesses, please.

4 (Whereupon the witnesses were  
5 duly sworn by the Reporter.)

6 MR. ELLIS: Yes, I do.

7 MR. DIERICX: Rick Diericx, I do.

8 HEARING OFFICER TIPSORD: Okay. If there is  
9 no objection, we will admit the testimony of Rick  
10 Diericx as Exhibit 14. See none, that's Exhibit 14.

11 (Whereupon Exhibit 14 was  
12 admitted into evidence.)

13 HEARING OFFICER TIPSORD: And if there is no  
14 objection, we will admit the pre-filed testimony of  
15 Dean Ellis as Exhibit Number 15.

16 (Whereupon Exhibit 15 was  
17 admitted into evidence.)

18 HEARING OFFICER TIPSORD: And we did receive  
19 one set of pre-filed answers from Dynegy, and those  
20 were to the Board's questions and Illinois  
21 Environmental Protection Agency. It says both on the  
22 cover, but I thought you just did the Board's  
23 questions. The cover page says both, but it is just  
24 the Board's questions?

1 MR. MORE: It is just the Board's.

2 HEARING OFFICER TIPSORD: And we will admit  
3 that as Exhibit 16 if there is no objection. Seeing  
4 none, that's Exhibit 16.

5 (Whereupon Exhibit 16 was  
6 admitted into evidence.)

7 HEARING OFFICER TIPSORD: And with that, we  
8 will turn it over to --

9 MR. GIGNAC: I believe Dynegy did respond to  
10 IEPA's questions.

11 MR. MORE: Okay. That was the question that  
12 Ms. Tipsord was just asking.

13 MR. GIGNAC: After the attachments?

14 HEARING OFFICER TIPSORD: Okay, thank you.  
15 We will do that as Exhibit 17, if there is no  
16 objection. Seeing none, that's admitted as Exhibit  
17 17.

18 (Whereupon Exhibit 17 was  
19 admitted into evidence.)

20 MR. MORE: And I would move to admit as  
21 Exhibit 18 written responses to the Illinois Attorney  
22 General's questions pre-filed for Dynegy. They were  
23 handed to the Attorney General yesterday around four  
24 o'clock. I move to have those admitted into the

1 record as well.

2 HEARING OFFICER TIPSORD: Is there any  
3 objection to admitting those with the understanding  
4 that they were not pre-filed, and so no one other  
5 than the AG has had a chance to review them? We'll  
6 admit them as an exhibit.

7 MS. DUBIN: I have a potential objection,  
8 depending on what it means for it to be admitted. So  
9 would it be treated with the same type of force as  
10 pre-filed testimony and timely-filed pre-filed  
11 questions? Because for pre-filed responses or  
12 pre-filed answers, according to Board rule  
13 102.424(f), these responses need to be timely filed  
14 to be treated as if they were read into the record at  
15 the hearing as if they were testimony themselves.  
16 And so especially because we haven't had an  
17 opportunity to cross-examine them on what their  
18 answers are, I think that -- I am just kind of  
19 curious about how they would be treated.

20 HEARING OFFICER TIPSORD: Well, Ms. Dubin, I  
21 mean, the alternative is that, if we get to them  
22 today, they read the question and read the answer. I  
23 mean, that's the alternative.

24 MS. DUBIN: Oh, okay.

1 HEARING OFFICER TIPSORD: I understand your  
2 concerns, but I think that we will admit them as an  
3 exhibit with the understanding that these witnesses  
4 will be available in Edwardsville for any follow-up  
5 that you might have based on these answers that you  
6 have not -- we haven't seen them. The Board hasn't  
7 seen them yet, either.

8 MR. SYLVESTER: Would that extend to us as  
9 well, to ask additional pre-filed questions to these  
10 answers? We will put it that way.

11 HEARING OFFICER TIPSORD: Yes. I think that  
12 that's really about the only fair way to do it.  
13 Because, honestly, even if we read the question and  
14 the answer into the record, I'm going to let people  
15 do questions again probably in Edwardsville, in any  
16 event, because I've already said that about the  
17 Agency and the Attorney General's Office. We will  
18 ask that questions be pre-filed again before we get  
19 to Edwardsville. So that if no one has any  
20 additional questions, you don't necessarily have to  
21 bring your witness back, Mr. More. I can see that  
22 question in your eyes.

23 MR. MORE: So along the same lines, if  
24 someone asks questions today and then they file on

1 the subject matter related to pre-filed testimony and  
2 they want to ask questions along the same subject  
3 matter, are they permitted to ask some questions?

4 HEARING OFFICER TIPSORD: Yes, yes, and I  
5 think I tried to make that clear earlier.

6 MR. MORE: I thought you did.

7 HEARING OFFICER TIPSORD: We are going to be  
8 reading these transcripts. There's been a lot of  
9 technical data discussed today and yesterday, and I  
10 think as a practical matter we're all going to look  
11 at it and go "Wait." And we may have witnesses that  
12 go "I don't think I got my point across."

13 So, yes, we will -- the subject matters  
14 will be open for the Edwardsville hearing, and we'll  
15 set some deadlines before we go today.

16 MR. MORE: That's what I just said. So it  
17 was form over substance. It didn't matter if we  
18 pre-filed it or not; the whole subject matter is open  
19 for re-questioning.

20 HEARING OFFICER TIPSORD: Yes. So with that  
21 caveat, the answers, we will take those as Exhibit  
22 18.

23 (Whereupon Exhibit 18 was  
24 admitted into evidence.)

1 HEARING OFFICER TIPSORD: And just for the  
2 record, these exhibits will be scanned and put on the  
3 website. They are small enough exhibits that I don't  
4 see an issue with that. So we will get those posted  
5 to the website as exhibits to the hearing.

6 MR. MORE: Just so the record is clear, we  
7 did provide -- I believe Faith will concur -- a copy  
8 yesterday.

9 MS. BUGEL: Yes.

10 MR. BLOOMBERG: And the Agency.

11 HEARING OFFICER TIPSORD: I'm sorry?

12 MR. BLOOMBERG: And the Agency.

13 HEARING OFFICER TIPSORD: Okay, thank you.

14 Okay, I think we're good.

15 MR. ELLIS: Board members, if it please the  
16 Board, I will make a brief opening statement. Thank  
17 you.

18 Good afternoon. My name is Dean Ellis,  
19 and I am executive vice president for regulatory  
20 affairs for Dynegy. Dynegy is the largest owner and  
21 operator of generation in downstate Illinois. We are  
22 also the largest retail provider in downstate  
23 Illinois. The power of eleven total Illinois  
24 generating plants produce enough electricity to serve

1 approximately six million homes statewide, and our  
2 retail business statewide serves about 830,000  
3 customers. We employ approximately 1300 people in  
4 the state and in addition to paying tens of millions  
5 of dollars in state and local taxes. Dynegy has had  
6 a total direct and indirect annual economic impact of  
7 over \$2 billion on the Illinois economy.

8 In written testimony I submitted to the  
9 Board, as well as my colleague Rick Diericx's  
10 testimony, we explain the merits of the Agency's  
11 proposal. Overall, the proposal would grant Dynegy  
12 the ability to make economically rational decisions  
13 regarding the operation of its Illinois fleet while,  
14 importantly, continuing to maintain the strict  
15 emissions limitations that are protective of the  
16 environment and the people of the state of Illinois.

17 As proven by the \$2 billion in emissions  
18 controls and environmental upgrades that Dynegy has  
19 invested in its Illinois plants, the company remains  
20 committed to continually reducing its emissions. The  
21 company also takes pride in its environmental  
22 stewardship, and one example is the Duck Creek power  
23 station which was recently recognized as the global  
24 clean coal leader for virtually eliminating sulphur

1       dioxide emissions.

2                   But significant, unanticipated market and  
3       regulatory changes have occurred since the MPS was  
4       first promulgated, including consolidation of all the  
5       MPS plants' ownership under Dynegy and a rapidly and  
6       continually declining energy market. The revisions  
7       the IEPA are proposing today are necessary to respond  
8       to the changes.

9                   Many groups and opponents that you have  
10       heard from are only interested in seeing the plants  
11       shut down. We are here in support of the IEPA's  
12       commonsense proposal for several reasons. It will  
13       provide Dynegy with operational flexibility to  
14       strengthen the viability of our Illinois fleet and  
15       streamline the compliance process. The proposal will  
16       also continue to provide jobs and reliable,  
17       affordable electricity to the state, and all of this  
18       will be accomplished while providing an environmental  
19       benefit.

20                   Specifically, the proposal decreases the  
21       total allowable emissions, requires year-round  
22       operation of existing selected catalytic reduction,  
23       also know as SCR equipment, creates lower NOx  
24       emission limits for certain plants, and sets an

1 independent sulphur dioxide emissions cap for the  
2 Joppa plant.

3 With that, we're happy to begin  
4 responding to questions. Thank you.

5 HEARING OFFICER TIPSORD: All right. I  
6 believe the only ones who have not had their  
7 questions at least partially pre-answered are the  
8 environmental groups, so we will begin with the  
9 environmental groups.

10 MS. DUBIN: These questions are all for  
11 Mr. Ellis. My name is Lindsay Dubin, and I am an  
12 attorney at the Environmental Law and Policy Center.  
13 Thank you so much for being here today. So we'll  
14 just kind of go through the questions that we  
15 pre-filed for you.

16 DEAN ELLIS and RICK DIERICK  
17 called as witnesses on behalf of Dynegy, having been  
18 first duly sworn, were examined and testified as  
19 follows:

20 EXAMINATION

21 BY MS. DUBIN:

22 Q. Now, on pages 1 through 2 of your  
23 testimony you state that, "Overall, my testimony  
24 demonstrates that the proposal allows Dynegy to make

1 economically rational decisions on how to run its  
2 plants while complying with the MPS which will help  
3 to insure the viability of the entire Illinois fleet,  
4 given the uncertain economic and regulatory landscape  
5 the plants currently face." So my question first  
6 question is, is it fair to say that Dynegey's primary  
7 purpose for seeking this provision is economics?

8 MR. MORE: Before you answer that, Hearing  
9 Officer, may I propose a way to possibly streamline  
10 this. Since the pre-filed questions are an exhibit,  
11 maybe we just identify the question number and we can  
12 respond. I leave it up to you as how you want -- it  
13 would be a lot easier for the court reporter.

14 HEARING OFFICER TIPSORD: Well, actually, we  
15 can't because I forgot to enter that as an exhibit.  
16 I just realized that as you started that. So we're  
17 going to start -- excuse me just a second, Ms. Dubin.

18 MS. DUBIN: Sure.

19 HEARING OFFICER TIPSORD: We are going to  
20 start with the Agency's pre-filed questions will  
21 become Exhibit 19, if there is no objection. Seeing  
22 none, that's Exhibit 19.

23 (Whereupon Exhibit 19 was  
24 admitted into evidence.)

1 HEARING OFFICER TIPSORD: And with that, we  
2 move on to the Environmental Groups and make yours  
3 Exhibit 20, if there is no objection.

4 MS. PALUMBO: There is not two sets from the  
5 Environmental Groups, just a printout.

6 HEARING OFFICER TIPSORD: Okay. Diericx's is  
7 Exhibit 20.

8 (Whereupon Exhibit 20 was  
9 admitted into evidence.)

10 HEARING OFFICER TIPSORD: And then the ones  
11 for Mr. Ellis will be Exhibit 21, if there is no  
12 objection. Seeing none, it's Exhibit 21.

13 (Whereupon Exhibit 21 was  
14 admitted into evidence.)

15 HEARING OFFICER TIPSORD: The People's will  
16 be Exhibit 22, if there is no objection. Seeing  
17 none, it's Exhibit 22.

18 (Whereupon Exhibit 22 was  
19 admitted into evidence.)

20 HEARING OFFICER TIPSORD: And the Board's  
21 will be Exhibit 23, if there is no objection. Seeing  
22 none, it's Exhibit 23.

23 (Whereupon Exhibit 23 was  
24 admitted into evidence.)

1 HEARING OFFICER TIPSORD: Thank you. So this  
2 way you can just refer to Exhibit 22 -- 21? 21 and  
3 the question number, and then we can all follow  
4 along.

5 BY MS. DUBIN: Sure. This makes it much  
6 faster.

7 Q. So Exhibit 21, Question 1(a), do you want  
8 to just go for it?

9 A. (Ellis) Ms. Dubin, Dynegy supports the  
10 IEPA's revision for the reasons set forth in my  
11 testimony and the testimony submitted by my colleague  
12 Rick Diericx.

13 Q. And are those reasons primarily economic  
14 based?

15 A. (Ellis) I'd say some of the -- there is  
16 multiple reasons, and one of the reasons is  
17 economics.

18 Q. And I guess is that a driving factor,  
19 would you say?

20 A. (Ellis) It's one of the primary factors.

21 Q. And what do you mean by viability of the  
22 entire Illinois fleet in the portion of your  
23 testimony that we referenced in our question?

24 A. (Ellis) I'm talking about the ability of

1 the fleet to operate independent and within the  
2 regulatory framework that doesn't require units to be  
3 offered, or otherwise known as bid, and dispatched in  
4 an economically inefficient manner below their cost  
5 of operation.

6 Q. So by viability of the entire fleet, do  
7 you mean for the entire fleet to be overall -- have  
8 an overall profitable operating performance for the  
9 whole fleet?

10 A. (Ellis) Yes.

11 Q. And is that not the case right now?

12 A. (Ellis) I'll add that not only is the  
13 intent to make the overall fleet profitable but  
14 individual plants profitable.

15 Q. And so with respect to the second  
16 question, viability of the entire Illinois fleet,  
17 right now when you look at the entire Illinois fleet,  
18 is the fleet overall looking at all the plants  
19 performing profitably?

20 A. (Ellis) And, I'm sorry, could you just  
21 repeat your question? Are you saying that in answer  
22 to Question Number 2? I was reading your --

23 Q. Oh, no, 1(b), sorry, so is the entire  
24 Illinois fleet overall operating profitably. So I

1 know you mentioned that some units, according to your  
2 testimony, aren't operating profitably. But what  
3 about looking at the fleet as a whole?

4 A. (Ellis) As we demonstrated in several  
5 responses to questions, overall the fleet is  
6 operating at a net -- operating income loss or a net  
7 loss.

8 Q. And how do you determine that it's  
9 operating at a net loss?

10 A. (Ellis) Following generally accepted  
11 accounting principles, GAAP measures, we have  
12 determined the operating revenues, less -- generally  
13 speaking, operating revenues, less expenses and other  
14 factors, and we determine whether or not the plant is  
15 operating at a -- the fleet is operating at a net  
16 income or a loss.

17 HEARING OFFICER TIPSORD: Mr. Ellis, you need  
18 to pull the microphone closer when you are speaking.

19 MR. ELLIS: Thank you.

20 BY MS. DUBIN:

21 Q. When you say other factors, do you mean  
22 ones such as impairments?

23 A. (Ellis) Sure. There is none -- I'll  
24 call it non-cash items that are included in it. Of

1 course, operating income and loss.

2 It's either an all or nothing. Excuse me  
3 just a second, I'll try a different microphone.

4 So, Ms. Dubin, could you repeat your  
5 question?

6 Q. Sure. My question was, when you say that  
7 overall the fleet is operating at a net loss, does  
8 impairment factor into that?

9 A. (Ellis) Yes, and so there is a number of  
10 items.

11 This one actually shut off as I was  
12 speaking, so. It shut off again.

13 HEARING OFFICER TIPSORD: Do you want to try  
14 this one? This one seems to work a little bit  
15 better.

16 MR. ELLIS: I'll just hold this one really  
17 close.

18 HEARING OFFICER TIPSORD: I think this one  
19 might work a little bit better for you.

20 A. (Ellis) Thank you. So there are a  
21 number of items that are included in operating  
22 income, such as impairments, and operating income  
23 also does not include certain items such as capital  
24 expenditures.

1 Q. And so impairment, those are one-time  
2 costs, correct?

3 A. (Ellis) Generally they are, yes.

4 Q. And you said -- how would you describe  
5 impairments? You said that those aren't cash-based?

6 A. (Ellis) Typically non-cash, that is  
7 correct.

8 Q. Non-cash. And so if you were to look at  
9 profitability by removing -- right now you said the  
10 fleet's operating at a net loss. If you remove all  
11 the items that are non-cash expenditures that you're  
12 adding on to there, would it then be operating at a  
13 net loss?

14 A. (Ellis) There is a number of different  
15 measures of profitability, operating income and  
16 losses. One of them, I would say, if we were going  
17 to take out impairments, then we would have to  
18 consider capital expenditures because capital  
19 expenditures have to be paid for somewhere. So there  
20 is definitely a number of metrics that could be used,  
21 accounting metrics that could be used, and operating  
22 income is one.

23 Q. And so how does Dynegy represent overall  
24 operating performance when it reports to the SEC?

1           A. (Ellis) So we include -- if you look at  
2           our financial statements, we do include everything  
3           from revenues, expenditures, operating expenditures,  
4           capital expenditures, operating income and loss,  
5           impairments, all the typical GAAP items.

6           Q. But I guess is there one specific metric  
7           you want the SEC to look at or shareholders to look  
8           at to determine overall operating performance?

9           A. (Ellis) There is not any one metric,  
10          accounting metric, that we necessarily point to. We  
11          do report both GAAP and non-GAAP measures. But when  
12          we report to the SEC, we would typically report the  
13          GAAP measures.

14          Q. Are you familiar with a phrase called  
15          adjusted EBITDA?

16          A. (Ellis) Yes.

17          Q. What does that stand for?

18          A. (Ellis) Adjusted EBITDA is Earnings  
19          Before Interest, Taxes and Depreciation.

20          Q. Are you aware that -- of Dynegy ever  
21          representing to shareholders or the SEC that adjusted  
22          EBITDA is used as a measure of operating performance  
23          for the company's fleet?

24          A. (Ellis) Ms. Dubin, could you just repeat

1 the question?

2 Q. Sure. Are you aware of the fact that --  
3 well, I guess I'll ask you. Does Dynegy use adjusted  
4 EBITDA as its measure when representing to the SEC  
5 and its shareholders of whether the fleet is -- a  
6 measure of the success of the fleet's operating  
7 performance?

8 A. (Ellis) We report our adjusted EBITDA as  
9 one metric, but it's not the only metric.

10 Q. And are you aware of what the fleet's,  
11 Illinois fleet's, adjusted EBITDA has been over the  
12 same time period that you're saying there's been a  
13 net loss?

14 A. (Ellis) I would have to refresh my  
15 memory. I don't recall if we have reported out the  
16 Illinois fleet EBITDA only, and I don't recall from  
17 the top of my head on our financial statements if we  
18 reported out EBITDA. I'm not an accountant. I don't  
19 believe EBITDA is a GAAP -- accepted GAAP measure, so  
20 I don't know if EBITDA is reported on our financial  
21 statements. I'd have to refresh my memory.

22 Q. Thank you. So we'll move on to Question  
23 2(a), please.

24 A. (Ellis) Yes, some of the plants or units

1 at these plants have been closed or mothballed,  
2 although the pollution control expenditures were made  
3 in advance of the shutdown or mothballing, and they  
4 may have enabled the plants to operate for additional  
5 periods of time prior to the decision to shut down or  
6 mothball them.

7           However, the expenditures for the  
8 emissions controls and the environmental upgrades at  
9 these plants or units is relevant to the subject  
10 matter on pages 5 and 6 of my testimony, which showed  
11 that Dynegy is committed to ensuring the public  
12 health and environment and that the environment are  
13 protected while providing reliable electricity to  
14 customers in Illinois, and that Dynegy has a history  
15 of working cooperatively with the Illinois EPA.

16           Q. Were any of these expenditures made  
17 without having to comply with the law, like has  
18 Dynegy ever said voluntarily, oh, I'd like to, you  
19 know, add in this control system? Or has it always  
20 done so in order to comply with a specific law or  
21 regulation?

22           A. (Ellis) Ms. Dubin, can you repeat the  
23 question?

24           Q. Absolutely. So you mentioned all these

1 are capital expenditures and you said that these are  
2 sort of representative of your commitment to  
3 environmental wellbeing. And I was just wondering  
4 were any of those -- were all of these capital  
5 expenditures driven by needing to comply with some  
6 law or regulation or were any of the expenditures  
7 that you mentioned that you made done voluntarily  
8 without necessarily needing to comply with a specific  
9 law?

10 A. (Diericx) Yes. The law did not mandate  
11 what types of controls were required to be installed  
12 on the units. But the controls that were selected  
13 were installed to bring the units in compliance with  
14 the permit limits or other regulatory requirements.

15 Q. Now, Question 2, the --

16 BOARD MEMBER LIU: Yesterday, as well as  
17 today, we commented, or people commented, as well as  
18 you -- yesterday as well as today you testified about  
19 the support that Dynegy provides to its host  
20 communities through jobs and through a strong tax  
21 base. Does Dynegy voluntarily sponsor any  
22 environmental projects in its host communities?

23 MR. ELLIS: Yes. Dean Ellis. We do sponsor  
24 a number of initiatives that are related to the

1 environment. We will be glad to provide a detailed  
2 list. We will have to go through plant by plant.  
3 But one example of an environmental project that we  
4 undertook was, at the time we planted one of the  
5 largest reforestation projects in the world for the  
6 sole purpose of carbon offset. It's across  
7 approximately 13 states in the lower Mississippi  
8 River Valley, and that was done voluntarily by the  
9 company in advance of, again, offsetting carbon.

10 HEARING OFFICER TIPSORD: Mr. Gignac.

11 MR. GIGNAC: James Gignac with the AG's  
12 office. Mr. Ellis, is that --

13 HEARING OFFICER TIPSORD: Hand him a  
14 microphone.

15 MR. GIGNAC: Is that a different  
16 reforestation or tree planting project than what was  
17 required under the federal consent decree?

18 MR. DIERICX: I'm not aware of any  
19 reforestation requirement that was in the consent  
20 decree.

21 MR. ELLIS: And I will add, to the best of my  
22 information, the reforestation project was undertaken  
23 prior to the consent decree.

24 MR. MORE: I'll just make that as a

1 follow-up. Which consent decree, Mr. Gignac, are you  
2 referring to?

3 MR. GIGNAC: The federal consent decree  
4 between Dynegey, United States and State of Illinois.

5 MR. MORE: Okay.

6 BY MS. DUBIN:

7 Q. Question 2(b), please?

8 A. (Ellis) Dynegey does not expect the  
9 adoption of the MPS revision to result in operating  
10 plants on which scrubbers are currently installed  
11 without running the scrubbers.

12 Q. And Dynegey -- are you guys willing to  
13 commit to some type of revision of the rule to  
14 solidify that commitment?

15 A. (Ellis) Dynegey is willing to consider any  
16 revision that the Board might propose or further  
17 consider.

18 Q. I guess would you support -- or would you  
19 support or at least not object to a revision of the  
20 proposed rule that would require Dynegey to operate  
21 its scrubbers at its scrubbed plants?

22 A. (Diericx) It would, of course, depend on  
23 the details of that requirement and if the equipment  
24 was able to operate at that performance level.

1 Q. What do you mean by -- sorry. Just to  
2 kind of so we understand, what do you mean by operate  
3 at that performance level?

4 A. (Diericx) Well, if this hypothetical  
5 requirement that you are mentioning is that the  
6 scrubber at Coffeen, for example, removes 99.999  
7 percent SO2, we would object to that because we don't  
8 think the equipment could control to that great --  
9 that low of a removal efficiency.

10 Q. Thank you. Question 2(c), please?

11 BOARD MEMBER LIU: I have a question. The  
12 Board's pre-filed hearing questions, Number 18(a) for  
13 the IEPA asked them about including a performance  
14 requirement in the proposed rule for both the FGDs  
15 and the SCRs, similar to the one granted in the  
16 variance to Illinois Power holders in PCB 14-10.  
17 IEPA responded that they were neutral on this point.  
18 Would you please comment on Dynegy's position on this  
19 and perhaps propose language, if possible?

20 MR. DIERICX: We're already proposing to  
21 agree to the lower allowable emissions from the  
22 fleet, but we would be willing to consider a  
23 requirement as you suggested regarding the future  
24 removal efficiency of the scrubbers.

1 BY MS. DUBIN:

2 Q. Question 2(c), please?

3 A. (Ellis) Sure. In your question you use  
4 the term, quote unquote, lower capacity. I don't  
5 understand the use of the term "lower capacity" and  
6 the question doesn't specify a time period. However,  
7 Dynegy doesn't expect that adoption of the MPS  
8 revision will result in a reduction in the rated  
9 generating capacity of any of the plants in the  
10 Illinois fleet.

11 If the question is intended to ask about  
12 the capacity factor, that is the total megawatt hours  
13 generated in a period divided by the rated capacity  
14 times the number of hours in a period, the actual  
15 capacity factor at which any unit operates in a given  
16 period is the result of a number of factors,  
17 including without limitations, of course, fuel costs,  
18 variable operating costs, system load, market  
19 conditions, scheduled outages, forced outages, D  
20 ratings, and, of course, a number of other factors.

21 Q. And I wanted to make sure, the very first  
22 part of your statement you said that Dynegy doesn't  
23 expect to run its plants -- I'm sorry, what was the  
24 first part of your statement, just so I'm clear?

1           A. (Ellis) I will repeat. Dynegy does not  
2 expect that adoption of the MPS revision will result  
3 in a reduction in the rated generating capacity of  
4 any of the plants in the Illinois fleet.

5           Q. Got it. Thank you. And Question 2(d),  
6 please?

7           A. (Ellis) The question uses the term  
8 "scrubbers." We should clarify, just so we're  
9 talking about the same equipment, what you mean by  
10 scrubbers when you use the term "scrubbers." I'll  
11 add that Dynegy doesn't expect that adoption of the  
12 MPS revision alone will result in any plants with  
13 scrubbers being retired or mothballed.

14          A. (Diericx) And that when we refer to  
15 scrubbers, we are referring to the wet scrubber  
16 systems installed at the Coffeen and Duck Creek power  
17 stations. And just to clarify further, the SO2  
18 removal equipment at the Baldwin and Havana power  
19 stations are spray dryer absorbers, and they have  
20 different SO2 removal capability than wet scrubber  
21 systems.

22          Q. Got it. Thank you. So, sorry, it's hard  
23 to try to kind of take notes and listen at the same  
24 time. So what was the first part of your answer?

1 I'm so sorry, it's just hard not having kind of an  
2 answer in front of me. If you don't mind repeating  
3 that, please?

4 A. (Ellis) Dynegey does not expect that  
5 adoption of the MPS revision alone will result in any  
6 plants with scrubbers being retired or mothballed.

7 Q. And why is that your expectation?

8 A. (Ellis) There are a number of factors  
9 that will determine what plants could potentially or  
10 may be potentially mothballed or retired. Energy  
11 market pricing is one, for example. Capacity market  
12 design issues which are actively under way before the  
13 Illinois Commerce Commission are another.  
14 Operational and other expenditures, other costs, such  
15 as field contracts, transportation contracts, those  
16 all feed into the decisions that are made around the  
17 plants.

18 Q. Moving on to Question 3(a), please?

19 A. (Ellis) To answer your first question,  
20 one unit at Edwards and one unit at Newton have been  
21 retired. To answer your second question, none of the  
22 controls were included in the estimate.

23 Q. Okay. Thank you. And for 3(b), please?

24 A. (Ellis) Dynegey doesn't expect adoption

1 of the MPS revision to result in operating plants in  
2 which scrubbers are currently installed without  
3 cleaning the scrubbers.

4 Q. And how did you arrive at that  
5 conclusion, by the way?

6 A. (Ellis) There are a number of reasons to  
7 continue to operate -- to continue operating the  
8 scrubbers. Some are permit reasons that we have  
9 toughed out over the last day and a half, and others  
10 have discussed over the last day and a half. So  
11 there are permit obligations to continue operating  
12 the scrubbers. And then there is other just  
13 operational, physical reasons why we need to continue  
14 operating the scrubbers. The scrubbers are not  
15 something that we can easily just turn on or off or  
16 dial up or dial down.

17 Q. Whatever -- would you mind going into a  
18 little bit more detail on those physical obstacles?

19 A. (Diericx) Yeah, not operating the wet  
20 scrubber systems can cause other operational issues  
21 at the facility. One thing, when you operate a wet  
22 scrubber system, it greatly reduces the flue gas  
23 temperature of the exhaust gases. And if you turn  
24 the scrubber systems off, those exit flue gas

1 temperatures would be over 200 degrees higher than  
2 what they are with the scrubber systems, and that may  
3 cause problems on the equipment exposed to that  
4 higher temperature for long periods of time if they  
5 are not designed to accommodate those type of  
6 temperatures.

7 Q. And is it also Vistra's opinion that the  
8 scrubbers won't be operated any less, likely?

9 A. (Ellis) We have not discussed with  
10 Vistra continued operation of the facilities for the  
11 reasons that we gave, both the permit obligations and  
12 then the physical limitations. I would expect that,  
13 irrespective of the future owner, the scrubbers would  
14 need and be required to operate as they are today.

15 Q. Did you, by the way, develop any of your  
16 testimony in conjunction with Vistra?

17 A. (Ellis) No. We have currently entered  
18 into an agreement to merge with Vistra Energy. And  
19 at this point, per antitrust guidelines, we are not  
20 to coordinate policy or other commercial activities  
21 with Vistra until the transaction closes. The  
22 transaction is expected to close at some point in the  
23 second quarter of 2018.

24 But just to confirm, no, we have not

1 conferred with Vistra in any regard, either specific  
2 to our testimony or even the proceeding in general.

3 Q. Do you know with any certainty if any of  
4 your conclusions in your testimony reflect the  
5 conclusions of Vistra? I guess it's a question for  
6 both of you.

7 A. (Ellis) Sure. Could you repeat it?

8 Q. Yeah, sure. So any of the conclusions  
9 that you drew in your testimony, do those reflect the  
10 opinion of Vistra as well? For example, and I guess  
11 we can get to it later, but you have mentioned that,  
12 I think, 3,000 megawatts worth of power might need to  
13 shut down if the MPS isn't revised. Is that Vistra's  
14 position as well?

15 A. (Ellis) We definitely can't speak for  
16 Vistra, and we haven't coordinated any of these or  
17 discussed any of these policy-type issues.

18 MR. MORE: Let me just say, and we cannot, as  
19 Mr. Ellis pointed out, for antitrust purposes. None  
20 of this testimony should be viewed as binding upon  
21 Vistra or speaking on behalf of Vistra. That is a  
22 pending transaction that does not drive how the  
23 current entity operates. They are operating as two  
24 separate business until the merger is complete.

1 BY MS. DUBIN:

2 Q. Do you know what your position would be  
3 after the merger?

4 A. (Ellis) Just to clarify, my professional  
5 position, my role with the new company?

6 Q. Yes, not stance. Yeah, your professional  
7 position.

8 A. (Ellis) I won't be -- at this point I  
9 won't be going on with Vistra Energy, so I won't be  
10 employed by Vistra Energy.

11 MR. RAO: Can I ask a follow-up on that, a  
12 clarification?

13 HEARING OFFICER TIPSORD: Just speak directly  
14 into it.

15 MR. RAO: All right. There are a few terms  
16 that have turned around in the back and forth things.  
17 We used the terms unit being closed, mothballed or  
18 retired. Do these terms mean one and the same?

19 MR. ELLIS: Generally speaking, they do, but  
20 there are definite subtle differences between the  
21 terms. So, for example, mothballing a unit generally  
22 means that the unit is temporarily or in the interim  
23 shut down or not operated, whereas retired means a  
24 unit is permanently shut down and not brought back,

1 and there are permit implications and other  
2 implications around interconnection agreements and  
3 the like.

4 So there are differences between those  
5 two, being mothballed and retired. A shutdown  
6 generally can apply to either term, though.

7 A. (Diericx) Yes. From an environmental  
8 permitting perspective, retired units we withdraw our  
9 air operating permits. For mothballed units we  
10 retain the ability to operate those units in our air  
11 operating permits. So we could resume operations in  
12 accordance with our permits of mothballed units.

13 MR. RAO: For retired units, if you want to  
14 bring it back on line, you have to go through the  
15 permit process again and those unit performance  
16 standards?

17 MR. DIERICX: Yes, they will be subject to  
18 new source permitting.

19 MR. ELLIS: And I will add, in addition,  
20 retired units generally are treated as new units for  
21 ease of connection purposes. They lose their spot on  
22 the grid, so to speak.

23 MR. RAO: Okay, thank you.

24 BY MS. DUBIN:

1 Q. I will -- I think we are at Question  
2 3(c).

3 A. (Ellis) You use two terms in Question  
4 3(c), quote unquote, capacity and also scrubbers. So  
5 subject to clarification of those two, I would refer  
6 you back to my answer to Question 2(c).

7 Q. Thank you. And now Question 3(d),  
8 please?

9 A. (Ellis) Dynegey does not expect that  
10 adoption of the MPS revision alone will result in any  
11 plants with scrubbers being retired or mothballed.

12 Q. Okay. And did you kind of -- for that  
13 conclusion did you conduct any type of numeric  
14 analysis or written analysis to arrive at that  
15 conclusion?

16 A. (Ellis) Could you repeat your question,  
17 particularly the first part of it? I'm not sure I  
18 understood you.

19 Q. Yeah, sure. So you mentioned -- our  
20 question was have any of the capital expenditures for  
21 pollution controls you referenced been for scrubbers  
22 at plants that will be retired or mothballed if the  
23 MPS revision is adopted, and then you mention that  
24 you don't expect any of them to be retired or

1 mothballed, correct?

2 A. (Ellis) I said that -- just to clarify  
3 my answer or repeat my answer, we don't expect that  
4 adoption of the MPS revision alone will result in any  
5 of the plants with scrubbers being retired or  
6 mothballed.

7 HEARING OFFICER TIPSORD: We have a --

8 MR. ARMSTRONG: Does Dynegey anticipate that  
9 the Board's denial of the proposed MPS amendments  
10 alone would lead to retirement or mothballing of any  
11 MPS plants?

12 HEARING OFFICER TIPSORD: I was going to say  
13 I think that one's still on, so if you want to hand  
14 him the other one. Because this one the battery is  
15 dead, so.

16 MR. ELLIS: Denial of the MPS, the proposed  
17 MPS revision, alone wouldn't necessarily put one  
18 more -- one plant at risk, but it will put greater  
19 pressure or continue to exert pressure on the fleet  
20 as a whole.

21 BY DUBIN:

22 Q. What do you mean exactly by exert  
23 pressure?

24 A. (Ellis) Continue to cause the fleet to

1 have financial losses.

2 HEARING OFFICER TIPSORD: Go ahead,  
3 Mr. Sylvester.

4 MR. SYLVESTER: I had a follow-up.

5 HEARING OFFICER TIPSORD: Yeah, I think the  
6 batteries are running out on them.

7 MR. SYLVESTER: Do you want me to stand up  
8 and ask him questions?

9 HEARING OFFICER TIPSORD: Yes.

10 MR. SYLVESTER: For Question Number 3 --  
11 hello. For question number -- I give. For Question  
12 Number 3 it says on page 5 of your testimony you  
13 indicate over \$1 billion was spent on environmental  
14 improvements at the Coffeen, Duck Creek, Edwards and  
15 Newton energy centers. I was just wondering for  
16 clarification, it is stated, and I was wondering if  
17 those were expenditures by Dynegy or were those  
18 Ameren or if you could explain that.

19 MR. ELLIS: Sure. The expenditures we  
20 reference in that question were spent by the  
21 predecessor company or the predecessor owner, Ameren.

22 MR. SYLVESTER: And a follow-up, I guess.  
23 Did Dynegy retain any debt from those capital  
24 expenditures?

1 MR. ELLIS: Dynegy assumed approximately \$825  
2 million in debt when it acquired the Ameren assets.

3 CHAIRMAN PAPADIMITRIU: Can I ask a question?

4 HEARING OFFICER TIPSORD: Of course.

5 CHAIRMAN PAPADIMITRIU: Mr. Ellis, can you  
6 explain some terms that it seems like we are using  
7 interchangeably? What's the difference between -- or  
8 can you define capacity factor, nameplate capacity  
9 and capacity as used in energy markets, please?

10 MR. ELLIS: Sure. I'll take a crack at it,  
11 and please stop me, obviously. So I'll start with  
12 nameplate first. Nameplate capacity is generally the  
13 absolute maximum that a plant could operate at under  
14 ideal conditions. It's usually the absolute maximum  
15 output that comes stamped on the side of the power  
16 plant when it's delivered and usually on an hourly  
17 basis. There is a number of factors, though, that  
18 actually affect how much a plant could actually  
19 produce. Ambient air temperature, for example, is  
20 one. Our typical maximum output is different in the  
21 winter than it is in the summer, and neither can be  
22 close to nameplate capacity. So, again, nameplate is  
23 what's stamped on the side as an absolute maximum.

24 Capacity factor is the actual output of

1 the plant over the course generally of a year. It  
2 could be measured in a smaller increment, but  
3 generally the amount of production the plant produces  
4 relative to its absolute maximum capability. So we  
5 would -- to calculate that we would look at the  
6 number of megawatt hours that a plant produces over  
7 the course of a year and simply divide it by what  
8 could the plant have produced, and usually that's  
9 based on the winter rating in the plant, the summer  
10 rating in the plant, taking into account any forced  
11 outages or planned outages that may have taken the  
12 plant off line.

13 MR. DIERICX: And I'd just like to add that  
14 capacity factor could be expressed also as a ratio of  
15 the actual annual heat input to the maximum potential  
16 heat input of a unit, in addition to the electrical  
17 generation capacity factor that Mr. Ellis described.

18 MR. ELLIS: And then the third point you  
19 raised was with regard to capacity and energy.  
20 Generally, when we think about the power markets, we  
21 bifurcate energy from capacity. Energy is the power  
22 that's actually produced on a day-by-day,  
23 hour-by-hour, basis by a power plant, whereas  
24 capacity is the total output of the plant that is

1       procured in advance, usually one to three years in  
2       advance, to ensure that the generating plant is  
3       there, ready to produce electricity in the future  
4       when called on, to meet future anticipated demands.  
5       So energy and capacity are generally two different  
6       things when we talk about the power markets.

7               CHAIRMAN PAPADIMITRIU: Thank you, sir.

8               BY MS. DUBIN:

9               Q. If you don't mind moving to Question  
10       4(a), please?

11              A. (Ellis) Yes. In the context of the  
12       reference portion of my testimony, the cost of a unit  
13       refers to the cost that is used to determine the  
14       price to bid or offer that into the energy market.  
15       These costs are -- those costs are variable and  
16       related to the cost of producing an additional  
17       megawatt hour of output, and they include things like  
18       fuel costs and other variable and operating  
19       maintenance costs such as the variable costs of  
20       operating emission controls in connection with  
21       producing additional output.

22              Q. And do you know where we can find all of  
23       the Dynegy's -- the various expenses that contribute  
24       to the cost of a unit?

1           A.   (Ellis)   Dynergy, like most power  
2   producers, does not disclose the cost of each unit,  
3   and that's done for a variety of reasons.  Number  
4   one, it's done to protect consumers in the power  
5   markets.  If one supplier of any product, could be  
6   electricity or it could be any product, was to  
7   disclose its underlying costs, then its competitors  
8   could use that information to somehow manipulate or  
9   change its offer and how it participates in the  
10  market.

11                 So usually the grid operators, the ISOs  
12  that run the markets across the country, they won't  
13  even disclose a supplier's or generator's bid costs  
14  for that reason.  It's again to protect the same  
15  entry in the markets which ultimately exist to  
16  benefit consumers.  The ISOs do eventually release  
17  bid data, but it's masked and not down to the level  
18  of a plant or an owner.

19           Q.   So I guess my concern in all of this is  
20  that a lot of this is economics-based and a lot of it  
21  is about how units are operating at a loss, but I  
22  fail to actually see any analysis or evidence or  
23  calculations of the fact that that's happening.  It's  
24  very difficult to really understand, you know, if

1 it's happening, to what extent it's happening. And  
2 so I'm just trying to get a sense from you guys any  
3 way possible to figure out, you know, how -- if this  
4 rulemaking is actually necessary, and I'm looking for  
5 some, you know, true validation of your claims.

6 So do you have any type of information,  
7 documentation, calculation, you can provide that  
8 would kind of shed light on how expensive it is to  
9 run these plants?

10 A. (Ellis) Related to my previous answer, I  
11 can't disclose necessarily operating costs, for the  
12 reasons I mentioned. With regard to the cost of each  
13 plant or unit, we don't generally -- we don't produce  
14 audited financial statement down to the plant level.  
15 We do produce profit and loss information related  
16 down to the plant level, but that's all internal to  
17 Dynegy. And, again, we wouldn't necessarily disclose  
18 that information for the same reason that I  
19 mentioned. Profit and loss of each individual plant  
20 could, similar to the cost profile, be used by a  
21 competitor to their advantage and somehow manipulate  
22 the outcomes in the market.

23 I would fall back on the information we  
24 provide in our SEC filings that shows that the fleet

1 as a whole is losing money on an income basis and  
2 that doesn't include capital expenditures, as I  
3 mentioned before.

4 CHAIRMAN PAPADIMITRIU: May I ask a question?

5 MS. DUBIN: Yeah, absolutely.

6 CHAIRMAN PAPADIMITRIU: Mr. Ellis, would it  
7 be accurate to say that the cost -- the profit and  
8 loss of the entity, of the unit, is one thing, but is  
9 it fair to say that the wholesale market is not  
10 providing adequate reimbursement for your costs?

11 MR. ELLIS: Dynegy is not recovering its  
12 costs from the wholesale market in a number of cases.

13 CHAIRMAN PAPADIMITRIU: Okay. Thank you.

14 BY MS. DUBIN:

15 Q. In which cases?

16 A. (Ellis) I can give you an example to the  
17 point that we are -- one of the fundamental points  
18 that we are discussing here in the rulemaking. For  
19 four days in December when we were approaching the  
20 annual SO2 limit at the IPH fleet, or the former  
21 Ameren units, we ran the Coffeen Units 1 and 2 at a  
22 loss for four days to keep or maintain us within the  
23 SO2 limit, the annual SO2 limit. That resulted in a  
24 loss over those four days of \$160,000 that we

1 otherwise wouldn't have occurred had we not had to  
2 run those units.

3 Q. And I guess which other units? And I  
4 know that again we are sort of at an impasse here.  
5 But what other units have you operated at a loss or  
6 what other plants?

7 A. (Ellis) Generally, we operate the Duck  
8 Creek and Coffeen units at a loss to maintain  
9 compliance with the MPS.

10 Q. Any other plants?

11 A. (Ellis) Those are the two units that we  
12 primarily operate at a loss for purposes of complying  
13 with the existing MPS.

14 MS. ROCCAFORTE: Could you provide in general  
15 terms how often Dynegy bids in at a loss in order to  
16 comply with the MPS?

17 MR. ELLIS: Sure. We do several times  
18 throughout the year. There is a number of things  
19 throughout the year that could trigger how frequently  
20 we do. For example, if we had an unplanned outage or  
21 even a planned outage at a unit that's highly  
22 scrubbed, that would then require us to, quote  
23 unquote, catch up and operate those scrubbed units  
24 more often than we may normally plan to or

1 economically can dispatch to throughout the year.

2 And then I gave you the example of where  
3 late in the year, as we are progressing through the  
4 year and trying to adjust and insure that we are in  
5 compliance with the MPS rule, we would run a scrubbed  
6 unit more.

7 HEARING OFFICER TIPSORD: Ms. Bugel.

8 MS. BUGEL: I just wanted to follow up on the  
9 MPS rule about Duck Creek and Coffeen and ask the  
10 same question about Baldwin and Havana and running  
11 those two units at a loss.

12 MR. ELLIS: Generally, we don't run those  
13 two, those two plants, the units at those two plants,  
14 at a loss solely for MPS compliance, but.

15 MR. DIERICX: As demonstrated in our MPS  
16 compliance submittals to the Illinois EPA, the DMG  
17 fleet has a compliance margin. So, therefore, does  
18 not need to operate units at a loss for the sake of  
19 compliance with the MPS rate rule.

20 HEARING OFFICER TIPSORD: Mr. Gignac.

21 MR. GIGNAC: So is the answer no, Baldwin and  
22 Havana are not operated solely for purposes of MPS  
23 compliance?

24 MR. ELLIS: The question was whether those

1 units and plants are run at a loss solely for MPS  
2 compliance?

3 MR. GIGNAC: Correct.

4 MR. ELLIS: And the answer was no, those  
5 units are not operated at a loss solely for MPS  
6 compliance.

7 MR. GIGNAC: Thank you. And would Dynegy be  
8 willing to produce a report of the number of  
9 instances and the dates and times that the Coffeen  
10 and Duck Creek units were operated at a loss for  
11 purposes of MPS compliance over a three-year period?

12 MR. ELLIS: We would have to consider the  
13 competitive nature, as I discussed before, of that  
14 data and that type of information. As you could  
15 imagine, if a competitor was able to back-cast three  
16 years of information that showed when we operated  
17 plants at a loss, that they could use that to their  
18 competitive advantage. But having said that, I  
19 realize the sensitivity of the question and what  
20 you're looking for, so it's something that we could  
21 take back.

22 MR. GIGNAC: Thank you.

23 BY MS. DUBIN:

24 Q. Now, I know you guys aren't allowed to --

1 HEARING OFFICER TIPSORD: Excuse me. Tanya.

2 MS. RABCZAK: Can you help us understand what  
3 you mean by operating at a loss for MPS compliance?  
4 Does that mean that you supply the energy but you are  
5 compensated at the less amount than it cost you to  
6 produce or is it energy generated and, I don't know,  
7 wasted because you just have to run them?

8 MR. ELLIS: Thank you. Whether we say that  
9 we are operating units at a loss in the energy  
10 market, we are saying that we have to bid or offer  
11 the units at below their marginal cost of operation  
12 and they are paid less than their marginal cost of  
13 operation. And I'll add that we have to lower the  
14 offer or the bid to a level that insures that the  
15 unit actually runs. It's not simply lowering the  
16 price by a small amount or some arbitrary amount. We  
17 have to actually significantly lower the bid price,  
18 the offer price, to a level that insures that the  
19 plant does run.

20 HEARING OFFICER TIPSORD: Mr. Sylvester.

21 MR. SYLVESTER: I have a follow-up question.  
22 Regarding -- you have mentioned that last year there  
23 was an operating loss for the whole fleet. I was  
24 wondering what part of that operating loss was

1 directly due to the MPS regulations.

2 MR. ELLIS: I don't have that in front of me.

3 MR. SYLVESTER: Is it something that you can  
4 get?

5 MR. ELLIS: It's something that we could  
6 consider but, again, we would have to be careful  
7 about disclosing any commercially sensitive  
8 information.

9 HEARING OFFICER TIPSORD: Mr. Gignac.

10 MR. GIGNAC: Mr. Ellis, when you bid the  
11 plants in for purposes of operating at a loss for MPS  
12 compliance to insure that they are dispatched, do you  
13 offer them at zero?

14 MR. ELLIS: We offer them in at a variety of  
15 price levels. Zero dollars is one. Zero dollars --  
16 offering a plant in at zero dollars generally ensures  
17 that it will most certainly run. That's called a  
18 "must-run" situation. So virtually all plants that  
19 are offered in at zero dollars, nuclear plants, power  
20 plants if they are offered at zero dollars, ensures  
21 that they do run. But it's not a guarantee either,  
22 in and of itself. There could be a reliability issue  
23 on the grid that the ISO could cite to not run a  
24 unit, even if offered at zero dollars.

1 MR. GIGNAC: And when you're --

2 MR. MORE: Hold on a second.

3 MR. ELLIS: And, Mr. Gignac, I will just add  
4 that, of course, how far below our operating costs we  
5 offer the plants again is somewhat commercially  
6 sensitive information. I think you are asking  
7 specifically around zero dollars, and I can say that,  
8 yes, in the range of offers we do offer the plants in  
9 at zero.

10 MR. GIGNAC: And when you offer in at zero or  
11 another reduced price, is that what you are paid for  
12 that unit of electricity if the plant is selected?

13 MR. ELLIS: The energy market is settled  
14 using what's called the uniform clearing price. So  
15 there is a locational clearing price that pays based  
16 on the last megawatts selected. So if a unit offered  
17 in at zero was selected, it could potentially be  
18 zero, if -- zero to zero dollars if the last unit  
19 selected also offered in at zero dollars. If the  
20 last unit selected offered five dollars, then the  
21 locational price would be -- the uniform clearing  
22 price would be five dollars, and all units selected  
23 would be paid that price.

24 MR. GIGNAC: So even when Dynegy is offering

1 units in at a loss for purposes of MPS compliance, if  
2 the units clear, the units are paid the market  
3 clearing price?

4 MR. ELLIS: Yes, we would be paid the  
5 clearing price, and there is no guarantee that that  
6 clearing price is above our marginal cost of  
7 operation.

8 And, for example, as I mentioned, in  
9 December we operated at a loss. So we offered the  
10 units in, we were paid whatever the uniform clearing  
11 price was, and that was below our marginal cost of  
12 production, resulting in a loss.

13 MR. MORE: And if you had bid those units in  
14 at their variable cost, would they have been called  
15 upon by the MISO?

16 MR. ELLIS: It's possible if those units were  
17 needed. But in order to ensure compliance with the  
18 MPS rule, we couldn't take the chance. We had to  
19 ensure that the units ran.

20 HEARING OFFICER TIPSORD: Could you give her  
21 the MISO -- oh, you got it. Okay.

22 CHAIRMAN PAPADIMITRIU: Mr. Ellis, would it  
23 be reasonable for your company to ever bid in at  
24 negative prices?

1 MR. ELLIS: Yes. In addition to bidding zero  
2 or offering zero, it is possible to offer in at below  
3 zero, which further insures that a plant runs.

4 CHAIRMAN PAPADIMITRIU: And -- go ahead.

5 MR. ELLIS: And I was just going to add, and  
6 maybe this is where you were going, it is possible  
7 then to also be paid less than zero, which is  
8 effectively paying to produce power.

9 CHAIRMAN PAPADIMITRIU: Right. That was my  
10 next question. Thank you, sir.

11 HEARING OFFICER TIPSORD: Mr. Gignac.

12 MR. GIGNAC: Does Dynegy ever bid at negative  
13 prices?

14 MR. ELLIS: Off the top of my head, I can't  
15 recall discussing offering it below zero, but that  
16 doesn't necessarily mean we haven't, and that's  
17 something that I could look in to and provide.

18 MR. GIGNAC: Is it typically nuclear plants  
19 and wind units that would do that?

20 MR. ELLIS: Definitely units that receive  
21 subsidies, whether they are state level subsidies or  
22 federal subsidies, because they are being paid to  
23 produce electricity regardless of market outcome.  
24 So, for example, if the wind generators are receiving

1 a \$23 an hour federal subsidy, federal tax subsidy to  
2 produce, it's effectively cost -- its cash flow is  
3 effectively positive down to negative \$23.

4 MR. GIGNAC: But coal plants typically do not  
5 bid at negative prices, correct?

6 MR. ELLIS: I can't speak for all coal  
7 plants. There is definitely coal plants across the  
8 midwest that could be offering in or bidding at  
9 negative prices, particularly those coal plants that  
10 are owned by vertically integrated utilities and  
11 receive their cost of operations through captive  
12 ratepayers where the cost of operations is simply a  
13 pass-through in those captive rates.

14 We don't have captive customers or  
15 captive rates to which we can just pass those costs  
16 on to, so we have to offer them competitively.

17 MS. PALUMBO: And you mean by "we," meaning  
18 who?

19 MR. ELLIS: Dynegey.

20 MS. PALUMBO: And in what state?

21 MR. ELLIS: In Illinois and all competitive  
22 providers.

23 HEARING OFFICER TIPSORD: Ms. Rabczak.

24 MS. RABCZAK: So you're running the units at

1 a loss for compliance with MPS. If you didn't have  
2 to comply with MPS, what would you do different?  
3 Would you not run the units that you are running at  
4 the loss, which is Coffeen and Duck Creek? Would you  
5 also run other units at the higher capacity as well?

6 MR. ELLIS: So in that particular case we  
7 wouldn't necessarily determine which units run. We  
8 would primarily offer the units in at their marginal  
9 cost of production. And then if they were selected  
10 by the ISO, that is the grid operator, to run, then,  
11 of course, they would run. But at that point we  
12 necessarily wouldn't dictate which units run or  
13 didn't run. We would just dictate what our offers or  
14 bids in the energy market are. Nor would we -- I'll  
15 add, nor would we change the offers of the  
16 uncontrolled or unscrubbed plants.

17 HEARING OFFICER TIPSORD: Okay. Ms. Dubin.

18 CHAIRMAN PAPADIMITRIU: Thank you for being  
19 patient.

20 BY MS. DUBIN:

21 Q. Of course. I actually just wanted to get  
22 back a little bit to the issue of costs. I know you  
23 are not allowed to coordinate with them directly, but  
24 do you know if Vistra has taken a look to see if

1 costs could be brought down in a way that would allow  
2 the units to operate at a price that's actually below  
3 -- or, sorry, allow them to what you consider  
4 economically operate?

5 A. (Ellis) I don't believe Vistra has looked  
6 at Dynegey's plants. Vistra has its own cost  
7 initiative to look at its own plants, but I'm not  
8 aware, nor would I believe, that Vistra has taken a  
9 look at Dynegey's plants. Dynegey itself does have a  
10 number of initiatives underway to continually reduce  
11 costs. We have a program with our employees called  
12 Pride that's producing results through innovation by  
13 Dynegey employees where we encourage employees to  
14 continuously look at earnings and costs, and we also  
15 have other initiatives.

16 Q. But, so Vistra hasn't sort of looked in  
17 to the economics of Coffeen, has it?

18 A. (Ellis) Again, not to my knowledge. And  
19 if they did, we wouldn't share that information.

20 Q. I'm sorry, what was that last part?

21 A. (Ellis) We wouldn't have shared that  
22 information.

23 Q. With Vistra?

24 A. (Ellis) Not to my knowledge.

1 Q. Gotcha. And the same question for Duck  
2 Creek with Vistra. You are not aware of Vistra ever  
3 looking into the economics of the units at Duck  
4 Creek, correct?

5 A. (Ellis) I am not aware of that, no.

6 Q. So I guess we already got to this a  
7 little bit. Could you start with Question 4(b) and  
8 then 4(b)(i), I guess?

9 A. (Ellis) Sure. The answer to 4(b), no.  
10 Impairments is used in the referenced location in our  
11 Form 10-Q report with respect to Baldwin, Hennepin  
12 and Urbana and, in accordance with generally accepted  
13 accounting principles, refers to a reduction in the  
14 asset value of the property, plant or equipment due  
15 to the asset's revenues being less than its basic  
16 operating costs.

17 With respect to the Newton FGD, quote  
18 unquote, impairment as used at the referenced  
19 location in the Form 10-Q report refers to the  
20 termination of the construction of the FGD system,  
21 resulting in expenditures that have been made on the  
22 FGD having little or no value.

23 Q. For 4(b)(ii)?

24 A. (Ellis) And I believe you skipped Roman

1 one.

2 Q. Yeah, the 4(b)(i).

3 A. (Ellis) Sure. As stated at the  
4 referenced location in the Form 10-Q report,  
5 impairments were recorded in either the nine months  
6 ending September 30, 2016, or the nine months ending  
7 September 30, 2017, for the asset values of Baldwin,  
8 Hennepin, Havana and Newton FGD.

9 With regard to Roman numeral two, the  
10 Form 10-Q report lists the amounts of the impairments  
11 recorded for Baldwin, Hennepin, Havana and Newton FGD  
12 during the periods identified.

13 Q. And so for 4(b)(iii)?

14 A. (Ellis) The 10-Q includes notes that  
15 explain each impairment.

16 Q. So 4(c), please?

17 A. (Ellis) With regard to your use of the  
18 term, quote unquote, annual cost, I would like you to  
19 define annual cost. But having said that, the annual  
20 cost of each unit is not relevant to the proposal or  
21 my testimony. My testimony is discussing the cost  
22 incurred to produce energy to be delivered into the  
23 regional market on a realtime or near realtime basis.  
24 That is variable or hourly on a day-ahead basis.

1 Quote unquote, annual cost is not calculated or used  
2 for these purposes.

3 Q. But, I mean, if you are looking at  
4 overall economics and you are looking at expenses and  
5 you report like on an annual basis, doesn't it make  
6 sense to look at annual costs?

7 A. (Ellis) In this particular case we're  
8 focused on the variable costs of the unit. We're --  
9 of the units and the plants. In these cases that we  
10 are talking about, we're being forced to comply with  
11 the MPS by running the units at a variable loss, not  
12 an annual or total loss.

13 Q. What do you mean by variable loss?

14 A. (Ellis) Variable would go back to the  
15 marginal cost of production.

16 Q. And then 4(d), please?

17 A. (Ellis) For the nine months ending  
18 September 30, 2017, the MISO segment of Dynegy had an  
19 operating loss of \$90 million. That segment is  
20 composed of the Baldwin, Havana and Hennepin plants.  
21 For the nine months ending September 30, 2017, the  
22 IPH segment operating income was \$40 million. That  
23 segment is composed of the Coffeen, Duck Creek, E.D.  
24 Edwards and Newton plants. Both figures cited in

1 response to this question exclude, of course, as I  
2 mentioned, capital expenditures and other variables.

3 Q. And I think we covered this for the most  
4 part. But just to be sure, answer 4(e).

5 A. (Ellis) As explained on page 11 of my  
6 testimony, Dynegy has bid lower emitting but higher  
7 costs using the Coffeen and Duck Creek energy centers  
8 at prices less than their costs in order to maintain  
9 the former Ameren MPS group SO2 rate of .23  
10 lbs/mmBtu. When these bids have been accepted by the  
11 regional transmission organization, RTO or otherwise  
12 known as the ISO, any units that have been  
13 dispatched, they have been operated at a loss.

14 Q. And then the following question, please?

15 A. (Ellis) And that's (iv)?

16 Q. Yeah, Roman numeral four.

17 A. (Ellis) If the MPS revision is adopted,  
18 Dynegy will run all of the units in the fleet in a  
19 manner intended to comply with the MPS revision.  
20 Dynegy expects that adoption of the MPS revision will  
21 eliminate or reduce the need described in my  
22 testimony to offer the Coffeen and Duck Creek units  
23 into the market at prices below their cost in order  
24 to ensure compliance with the current MPS.

1           Q. Can we unpack that a little bit,  
2 actually? So you said that -- for one thing, would  
3 you mind just repeating that? I want to make sure I  
4 don't misstate what you said.

5           A. (Ellis) If the MPS revision is adopted,  
6 Dynegy will run all of the units in the fleet in a  
7 manner intended to comply with the MPS revision.  
8 Dynegy expects that adoption of the MPS revision will  
9 eliminate or reduce the need described in my  
10 testimony to offer Coffeen and Duck Creek into the  
11 market at prices below their cost.

12          Q. So could you explain that a little bit to  
13 me? Does that mean that you are not going to offer  
14 them into the market, period, or that you're going to  
15 offer them into the market less? What does that  
16 mean?

17          A. (Ellis) With regard to offering into the  
18 market, if the units are selected in the capacity  
19 market -- and earlier we described the difference  
20 between the capacity and the energy market whereby  
21 the capacity market is intended to ensure that units  
22 are available in the future to provide energy -- if  
23 the units are selected into the capacity market,  
24 which is run before, prior to, the energy market,

1       then the units have a must-offer obligation to  
2       participate in the energy market. They cannot  
3       receive a capacity obligation or a capacity payment  
4       and not offer into the energy market.

5               Q. And so do you intend -- do you then  
6       expect that they will be run less? That's our  
7       question.

8               A. (Ellis) Could you just either repeat or  
9       clarify? I think the first part -- you initially  
10      asked me about offering the units, and then secondly  
11      you asked about running the units.

12              Q. Yeah. So I guess our initial question  
13      was about running the units, and then my follow-up  
14      was about offering them into the market, just to see  
15      if that sort of shed light on the overall response.  
16      But I feel like we are still not quite getting an  
17      answer to do you intend to run the units less.

18              A. (Ellis) First and foremost, we intend to  
19      offer the units consistent with the variable  
20      operating costs, the marginal costs of production.  
21      The ISO then selects the units based on reliability  
22      and costs. So we don't, under that scenario,  
23      necessarily determine whether we operate the units  
24      more or less. We intend to offer the units in

1 consistent with their variable cost of production.

2 Q. I guess then do you -- what's your  
3 expectation? Have you kind of crunched the numbers  
4 and said, okay, if the MPS regulations are revised,  
5 this is probably what's going to happen? Have you  
6 looked at maybe four different variables? Just kind  
7 of looking into the future have you gotten a sense of  
8 whether or not it might be the case that you are  
9 running these units less?

10 A. (Ellis) There are a number of potential  
11 outcomes that could determine whether or not the  
12 units are run more or less. Of course, one of the  
13 determining factors is the price of natural gas that  
14 drives the price of power. So if there were a change  
15 in the price of natural gas, we would expect units  
16 generally to run more or less commensurate or  
17 consistent with that change in power pricing.

18 Q. Have you done any written analysis to  
19 kind of figure out whether or not -- you know, what  
20 the different options are for the future?

21 A. (Ellis) No, we haven't done any written  
22 analysis.

23 HEARING OFFICER TIPSORD: Ms. Bugel.

24 MS. BUGEL: I just had one follow-up.

1 Looking back at 2016, and specifically referring to  
2 Duck Creek and Coffeen still, were Duck Creek and  
3 Coffeen offered into that energy market as a profit?  
4 I realize -- if I'm not phrasing that correctly, tell  
5 me. But the question is were they offered in -- were  
6 there times when, I guess, the market prices were  
7 such that they could be offered in at their variable  
8 costs and not be run at a loss?

9 MR. ELLIS: I'll mention -- and if this  
10 doesn't get to your question, of course, please  
11 rephrase or ask it a different way or ask me again.  
12 But I think what you're asking me is were there times  
13 when in 2016 when we offered Coffeen and Duck Creek  
14 in at their variable costs or commensurate with their  
15 variable costs, and they were not selected in the  
16 energy market. Is that --

17 Q. Or were they selected?

18 A. (Ellis) Oh, almost certainly.

19 HEARING OFFICER TIPSORD: Mr. Gignac.

20 MR. GIGNAC: Mr. Ellis, would you describe  
21 that scenario occurring most of the time?

22 MR. ELLIS: Mr. Gignac, could you repeat the  
23 question?

24 MR. GIGNAC: Would you describe the scenario



1 writing before the next hearing?

2 MR. ELLIS: It's something we could  
3 definitely take back.

4

5 MS. DUBIN: Do you know when we might get an  
6 answer about if it's something you would get in  
7 writing?

8 HEARING OFFICER TIPSORD: I think we just  
9 have already discussed that we are going to have  
10 pre-filing deadlines for the next hearing. And if  
11 things aren't filed before the next hearing, then we  
12 will deal with it then.

13 BY MS. DUBIN:

14 Q. Roman numeral five.

15 A. (Ellis) Dynegy does not anticipate that  
16 the adoption of the MPS revision alone will result in  
17 any additional units being retired or mothballed.  
18 Any decisions to retire or mothball additional units  
19 will be based on consideration of a number of factors  
20 that I discussed before, along with a number of  
21 operating scenarios.

22 Q. And how did you arrive at the conclusion  
23 that you don't think the MPS alone will cause Dynegy  
24 to retire any of those units?

1           A. (Ellis) Because there are a number of  
2 initiatives currently underway, including a potential  
3 fix to the downstate capacity market. There are  
4 currently hearings ongoing before the Illinois  
5 Commerce Commission with regard to resource adequacy  
6 and the related capacity market downstate. Dynegy  
7 has also undertaken a variety of initiatives  
8 internally to improve the cost profile of those  
9 plants.

10           Q. And what are those initiatives?

11           A. (Ellis) We've negotiated or renegotiated  
12 contracts with our fuel suppliers. We've also been  
13 able to renegotiate contracts with transportation  
14 providers, and we've also retained McKinsey and  
15 Company to perform an earnings and cost profile  
16 initiative company-wide.

17           Q. And is there any way you can provide some  
18 sort of documented or written analysis just sort of  
19 supporting your claim that these units wouldn't be  
20 retired or mothballed?

21           A. (Ellis) To clarify, simply because of  
22 the MPS?

23           Q. Uh-huh.

24           A. (Ellis) Holding all of those other

1 variables potentially static?

2 Q. I mean, you are saying that it's not  
3 likely, and obviously one of the major concerns you  
4 have seen expressed, you know, over the last eight or  
5 so months is that the MPS could cause the clean air  
6 plants to shut down and then bump up the amount of  
7 pollution coming from the cheaper, dirtier plants.  
8 So we're looking for some kind of reassurance that  
9 that's not going to happen.

10 A. (Ellis) I don't know if there is any  
11 analysis that we could provide to prove that it will  
12 or will not happen, mainly due to the number of  
13 variables that are currently in play.

14 Q. All right. Question number 5?

15 HEARING OFFICER TIPSORD: You know what, if  
16 you are ready to go to Question 5, let's take a  
17 ten-minute break.

18 (Whereupon the hearing was in a  
19 short recess.)

20 HEARING OFFICER TIPSORD: We'll go back on  
21 the record.

22 BY MS. DUBIN: Thank you.

23 Q. Mr. Ellis, Question 5(a), please?

24 A. (Ellis) As stated in my testimony,

1 during the past several years the Coffeen and Duck  
2 Creek units have been offered into the energy market  
3 and bid at prices less than their operating costs.  
4 And when those bids are accepted, the units are  
5 dispatched at a loss. They are dispatched at a loss  
6 when Dynegy, again, bids into the energy market at a  
7 price less than the units' cost and the bid is  
8 accepted by the regional transition organization or  
9 ISO.

10 Q. And we covered (b). We'll skip to 5(c),  
11 please.

12 A. (Ellis) Typically, these two plants have  
13 the lowest lbs/mmBtu emissions rate of SO2 and are  
14 among the lowest for NOx.

15 Q. 5(d), please?

16 A. (Ellis) As referenced in my previous  
17 answers, there are many factors that may influence  
18 the level of future operations of individual units.  
19 Dynegy anticipates that, if the MPS revision is  
20 adopted, the need to offer Coffeen and Duck Creek  
21 into the energy market at prices less than their  
22 costs will be reduced or eliminated. However, Dynegy  
23 can't predict whether this will also result in  
24 increased operation of other units in the fleet.

1 Q. 5(e), please?

2 A. (Ellis) We're aware that generally  
3 scrubbed units are more expensive to operate than  
4 other plants.

5 Q. 6(a), please?

6 A. (Ellis) And I'll add to your previous  
7 question, if I may.

8 Q. Sure.

9 A. (Ellis) Further, there are relative  
10 variable operating costs that -- measures we can take  
11 in the fleet today may be different than the costs at  
12 the time the plants were acquired, for example, fuel  
13 supply contracts.

14 With regard to 6(a), to clarify, the  
15 quote you referenced appears on page 13 of my  
16 testimony, not page 15.

17 Q. And the quote is -- just for  
18 clarification, so the question is on page 13 of your  
19 testimony. You state that, "Another 3,000 megawatts  
20 in MPS is at risk of shutdown for the economic  
21 reasons I have described. If the energy and capacity  
22 market conditions continue in their present states  
23 and the MPS remains an emissions rate-based program,  
24 Dynegy will likely have to retire more plants." And

1 so Question (a)?

2 A. (Ellis) The basis is the fact that a  
3 significant portion of the Illinois fleet is  
4 receiving energy and capacity revenues that don't  
5 recover the variable and fixed costs of ownership and  
6 operations and, therefore, aren't realistic. And the  
7 energy and capacity market improvements aren't  
8 realistically expected to improve under the current  
9 regulatory, economic and market conditions. Dynegy  
10 cannot continue to operate significant amounts of  
11 generating capacity in Illinois that's not receiving  
12 the revenues sufficient to cover the costs. The  
13 underlying economic and market conditions are  
14 described in my testimony at pages 6 to 12.

15 Q. And how do you calculate that it would be  
16 another 3,000 megawatts?

17 A. (Ellis) Could you repeat the question?

18 Q. Sure. So thank you for describing part  
19 of the basis of your testimony, but I'm curious kind  
20 of how you arrived at that specific conclusion that  
21 the 3,000 megawatts.

22 A. (Ellis) The 3,000 megawatts is driven by  
23 my general knowledge of the profit and loss of each  
24 of the individual plants. So just by simply looking

1 at the profit and loss projections over the next five  
2 years of the fleet on a unit by unit basis, that  
3 totals approximately 3,000 megawatts of plants that  
4 are cash flow neutral to negative, and effectively at  
5 risk.

6 Q. Do you have any kind of an analysis that  
7 you'd be able to put in writing, if you don't  
8 already, to share with us?

9 A. (Ellis) Similar to questions that we  
10 answered related before, it's something we could take  
11 back. We would just simply have to think about that  
12 in the context of competitively sensitive  
13 information.

14 HEARING OFFICER TIPSORD: Mr. Armstrong.

15 MR. ARMSTRONG: How does Dynegy prepare  
16 profit and loss projections for its use?

17 MR. ELLIS: We do it a number of different  
18 ways. We have an internal five-year forecast for  
19 each plant and unit. So we do -- just as part of our  
20 normal five-year budgeting forecast, we look at our  
21 expected operational and capital expenditures and, of  
22 course, compare and contrast that against projected  
23 revenues. And we have internal software that we use  
24 to project the revenues of the plants going out.

1 MR. ARMSTRONG: Do those five-year forecasts  
2 include projected capacity factors for each unit?

3 MR. ELLIS: I don't recall if they exactly  
4 include capacity factors, but it's possible that they  
5 do.

6 MR. ARMSTRONG: Well, do they include some  
7 kind of metric of how often things run or are entered  
8 to the market?

9 MR. ELLIS: Yes, because they do take into  
10 account projected forward energy prices and, of  
11 course, their cost profile going forward and then any  
12 other limits or constraints like the MPS.

13 MR. ARMSTRONG: So would Dynegy be willing to  
14 take back -- would you be willing to take back the  
15 issue of whether there are capacity factor forecasts  
16 for the MPS units and whether that information can be  
17 shared in this proceeding?

18 MR. ELLIS: The short answer is yes, it's  
19 something that we would be able to take back. But  
20 for similar reasons as we stated, as you can imagine,  
21 if we were to disclose our projected capacity factors  
22 going forward, that could give a competitor a  
23 significant amount of information about how we view  
24 the operations of the plant.

1 BY MS. DUBIN:

2 Q. It's just a little difficult because,  
3 again, the justification for this rulemaking, we kind  
4 of just have to take a leap of faith on it. You're  
5 saying that 3,000, you know, megawatts are subject to  
6 shutdown and you're saying that, you know, things are  
7 operating at a loss. But we have failed to see any  
8 demonstration in writing that this is the case.

9 And so if we're going to revise  
10 regulations that, you know, could be less protective  
11 of public health, I think we need to see some kind of  
12 a demonstration from Dynegy about how you guys  
13 arrived at your conclusions and why you think that  
14 this rulemaking is necessary.

15 A. (Ellis) Is there a question?

16 Q. Yeah. So I guess back to -- I'm sorry to  
17 go back to this, but for the 3,000 megawatts issue,  
18 I'd like -- I think we deserve to see some kind of  
19 analysis on that.

20 A. (Ellis) So we have provided the SEC  
21 financial statements that do show that as a whole the  
22 fleet is operating at an income -- operating income  
23 loss.

24 Q. Yes. But where did you get 3,000

1 megawatts?

2 A. (Ellis) In addition, I would add that  
3 Dynegy has shut down plants and units in the very  
4 near term, in the last 24 months. So I would point  
5 to that also as an example of the financial pressure  
6 that the fleet is under.

7 Q. When -- you guys had a shareholder call  
8 previously, and someone kind of questioned the  
9 strategy of your CEO, and your CEO mentioned that  
10 this is -- the whole part of the strategy is that the  
11 Ameren plants were bought for next to nothing and you  
12 guys knew, and I think your CFO said, quote, It  
13 wasn't a surprise that not all of them were  
14 economically viable.

15 HEARING OFFICER TIPSORD: Is there a question  
16 there, Ms. Dubin? If not, you're going to have to be  
17 sworn in. You're stating facts.

18 BY MS. DUBIN: Oh, that's totally fair.

19 Q. So I guess my question is do you really  
20 -- are these shutdowns kind of a part of -- why is  
21 this kind of now becoming a part of your strategy and  
22 why is it now necessary when just, you know, earlier  
23 last year and when you purchased the plants, you  
24 already knew that a lot of them were uneconomical?

1           A. (Ellis) I'll say that we're not  
2 necessarily saying that 3,000 megawatts are going to  
3 shut down. We're saying that 3,000 megawatts are at  
4 risk of shutdown for economic reasons. I will also  
5 add that the energy market has just continued to  
6 decline and deteriorate based on forward gas prices.  
7 So there is just a number of outcomes that have just  
8 continued to transpire over time, have continued to  
9 put additional pressure on the fleet.

10           Q. And do you know which plants are at  
11 greatest risk of shutdown?

12           A. (Ellis) There is a combination of  
13 different plants that are at risk under various  
14 scenarios and outcomes. Outcome of the MPS could be  
15 one of them, forward gas prices could be another, the  
16 earnings and cost initiative could be another. So  
17 there is a variety of scenarios.

18           Q. What makes one plant more likely than  
19 another to shut down?

20           A. (Ellis) Simply if it's cash flow  
21 negative.

22           Q. And so if the MPS were to remain in force  
23 as it's structured right now, which plants are more  
24 likely to shut down?

1           A. We haven't necessarily made a final or  
2 formal decision.

3           Q. Okay. And, again, I just want to  
4 reiterate that we're just trying to get some answers  
5 out of you just the reason you are saying you guys  
6 need this rule.

7           A. (Ellis) And I'm sorry, did you have a  
8 question?

9                   Just following up on your statement or  
10 question, the intent of why we're here and why we  
11 support the rule isn't necessarily to prevent  
12 shutdowns. It's to be able to offer units at their  
13 short-run marginal costs. We could under the current  
14 rule shut units down and under the proposed rule we  
15 could shut units down. The purpose of the rule  
16 change is to ensure that we can offer the units in at  
17 their short-run marginal costs.

18           Q. Sorry, let me make sure that I understand  
19 that. So you're here not to prevent units from  
20 shutting down or that's not your primary concern, is  
21 units shutting down if the MPS isn't revised?

22           A. (Ellis) As I mentioned before, there is  
23 a number of factors that would go in to that  
24 decision, and the MPS is one and the MPS wouldn't be

1 the sole decision.

2 Q. Question 7(a), please?

3 A. (Ellis) Yes. No, it is true if any unit  
4 retires. When units are retiring, there is no  
5 corresponding change in electricity demand, and the  
6 remaining units, therefore, may be called upon to  
7 replace the lost generation. No calculations are  
8 required.

9 Q. And Part (b) of that?

10 A. (Ellis) Units would be shut down based  
11 on an evaluation of a number of factors, as we  
12 discussed before, including whether a unit is  
13 receiving revenues to recover the costs of owning and  
14 operating it and/or would do so in the future.

15 Further, other than through specific  
16 contractual obligations, Dynegy is not a retail  
17 utility with a legal obligation to serve a specific  
18 customer load.

19 Q. Question 8, please?

20 A. (Ellis) The, quote, demand for any  
21 particular unit's energy or capacity is defined by  
22 its bid or offer prices into the capacity and energy  
23 markets, relative to other bids and the overall  
24 demand for energy and capacity in the region. As I

1 state on pages 10 and 11 of my testimony, Dynegy has  
2 operated the Coffeen and Duck Creek energy centers  
3 over the past several years at accepted bid prices  
4 that did not cover the cost of operating those  
5 plants. As my testimony describes, this was done in  
6 order to ensure that the MPS emission rates are met.

7 Q. And Question 9, please?

8 A. (Ellis) I view that question as a  
9 physical impossibility as a matter of physics. A  
10 generation unit cannot be operated to produce  
11 electricity unless there is a load using that  
12 electricity.

13 Q. And Question 10, please?

14 A. (Ellis) I'd refer you back to my  
15 Question 9, my answer to Question 9. Dynegy does not  
16 operate units in excess of demand. But as described  
17 in my testimony, Dynegy has operated scrubbed units  
18 at accepted bid prices that were less than the cost  
19 of short-run marginal costs.

20 Q. Question 11, please?

21 A. (Ellis) I don't know what you mean in the  
22 question by, quote, all other conditions were the  
23 same, end quote. As a general matter, it would cost  
24 less to run a unit without its scrubber operating

1 than with its scrubber operating because, one, the  
2 operation of a scrubber consumes electricity and,  
3 two, there are incremental costs, for example,  
4 chemicals and feedstocks, to operating the scrubbers.

5 In any event, Dynegy does not expect that  
6 adoption of the MPS revision would result in  
7 operating the plants in which scrubbers are currently  
8 installed without running the scrubbers.

9 Q. And I'm not sure if we covered this  
10 ground yet, so I apologize. But, very quickly, is  
11 the reason that Duck Creek is more expensive to  
12 operate than most of the plants that it is scrubbed  
13 and it is running -- there is a scrubber running  
14 there?

15 A. (Ellis) Ms. Dubin, could you just repeat  
16 the question for me?

17 Q. Sure. What is it that makes Duck Creek  
18 more expensive to operate?

19 A. (Ellis) As far as the expense or the  
20 cost of the unit, there is a number of variables that  
21 go into it. Operation of the scrubber environmental  
22 controls is one of them. The cost of the fuel  
23 contract could be one, the cost of the transportation  
24 contract. So there is a number of things that go

1 into the variable costs leading in.

2 Q. And then same the question for Coffeen.

3 A. (Ellis) Same answer. A number of  
4 different costs go into the variable -- or a number  
5 of inputs go into the variable costs.

6 Q. Do you think that a scrubber and  
7 environmental controls are one of the largest factors  
8 in why they might be more expensive to run?

9 A. (Ellis) I don't think the cost of the  
10 scrubbers is -- your term was major? Was it major or  
11 significant? Would you repeat that?

12 Q. I guess why is it that Duck Creek and  
13 Coffeen are so much -- you know, are more expensive  
14 to run than other plants?

15 A. (Ellis) As far as on the expense side,  
16 it's generally the cost of emissions controls, but it  
17 could also be other things like their fuel costs  
18 really to, yeah, fuel and transportation relative to  
19 the other plants.

20 Q. Thank you. And then Question 12(a),  
21 please?

22 A. (Ellis) 12(a), as stated on page 8 of  
23 Rick Diericx's testimony, regulatory certainty will  
24 increase under the MPS revision because there is less

1 likely to be a need for future revisions to the MPS  
2 program. Further, the MPS revision would increase  
3 regulatory certainty by providing for the first time  
4 a procedure to facilitate future ownership transfers  
5 of the plants covered by the MPS. This is explained  
6 on pages 15 and 16 of Mr. Diericx's testimony.

7 HEARING OFFICER TIPSORD: Mr. Sylvester.

8 MR. SYLVESTER: How are you able to forecast  
9 that there will be no need for additional changes to  
10 the MPS in the future and how far out did you project  
11 that?

12 MR. ELLIS: We didn't necessarily forecast  
13 this out for a certain number of years or a  
14 definitive time period. We fundamentally looked at  
15 it from the standpoint of offering the units in at  
16 their short-run marginal cost.

17 MR. SYLVESTER: So how does that provide any  
18 kind of guarantee that you wouldn't seek a variance?  
19 I mean, if you look at the history of the MPS, it's  
20 littered with variance proceedings. And I'm sure  
21 that, at the time that it was entered, everybody  
22 thought it was something that they could comply with  
23 at the time of the original MPS ruling, I'm sorry.

24 MR. DIERICX: First, I'd like to state there

1 is no guarantee a variance would not be needed in the  
2 future. I think we are saying it's less likely, much  
3 less likely, that a variance would be needed in the  
4 future with this rule change. And I think the other  
5 reason that we don't think a rule change -- well,  
6 with the provision in there for unit transfers, if  
7 not for that proposed revision, the rule would have  
8 to be revised in the future.

9 BY MS. DUBIN:

10 Q. Question 12(b), please?

11 A. (Diericx) I would refer you back to my  
12 previous answer.

13 Q. Question 13, and I'll just read it.  
14 "Dynergy President and CEO Bob Flexon's presentation  
15 at the J.P. Morgan Energy Equity Investor Conference  
16 states that the remaining fleet in Dynergy's coal  
17 portfolio is, quote, cash neutral to cash positive,  
18 end quote. What does it mean to be cash neutral to  
19 cash positive?"

20 A. (Ellis) Sure. And I'll clarify that on  
21 that slide that you referred to, and I'm sure you  
22 noticed, the coal portfolio was defined as not just  
23 the units in the MPS group or even those units in  
24 Illinois, but coal units that are outside of Illinois

1 and outside of the MISO market. And the units in the  
2 MPS group represent about 45 percent according to  
3 that slide or, as we stated in that slide, of the  
4 total Dynegy coal portfolio.

5 But as a general matter, cash positive  
6 means that cash revenues are projected to exceed cash  
7 expenses. However, the particular unit or division  
8 may still operate at a loss due to non-cash items.

9 Q. So Question 14, "This same presentation  
10 of Mr. Flexon at the J.P. Morgan Energy Equity  
11 Investor Conference states that Dynegy's coal  
12 portfolio, quote, benefits significantly from rising  
13 gas environment, end quote." How does Dynegy's coal  
14 portfolio benefit from the rising gas environment?

15 A. (Ellis) Sure. And I'll just clarify  
16 that the characterization in the slide was not that  
17 there is a rising gas environment. It states that  
18 there could be a rising gas environment, and none of  
19 that scenario could benefit. The slide doesn't  
20 state, again, that there is a rising gas environment.

21 So, again, Dynegy's coal portfolio  
22 represents plants both inside Illinois and outside  
23 Illinois, and within the MPS groups and outside of  
24 the MPS groups. Second, the slide states that the

1 coal portfolio provides a valuable no-cost option to  
2 natural gas price increases. If natural gas prices  
3 do increase, then, as I described earlier, the price  
4 of power can be expected to increase and that means  
5 that prices may rise to levels that would enable coal  
6 plants to recover their operating costs or experience  
7 larger margins over their operating costs.

8 Q. And then so Question 14(b) then, page 9  
9 of your testimony states, quote, with the advent of  
10 substantial gas production from shale deposits, and  
11 the resultant significant increases in availability  
12 and decreases in price of domestic natural gas  
13 supplies, natural gas-fired generation is beginning  
14 to displace coal-fired generation because the  
15 decreasing fuel costs of natural gas-fired generation  
16 enable those plants to be bid into the energy markets  
17 at lower prices. Would you be able to reconcile then  
18 this statement with Mr. Flexon's slide saying that  
19 the coal portfolio benefits significantly from a  
20 rising gas environment?

21 A. (Ellis) Sure. I'll say that the two  
22 statements in Mr. Flexon's slides are completely  
23 consistent. That is, if natural gas prices were to  
24 rise from the current levels, the adverse economic

1 impacts to the Illinois coal plants described in my  
2 testimony could be ameliorated.

3 Q. Last question, 15(a). If IEPA's proposed  
4 MPS revisions are implemented, might Dynegy operate  
5 any of its units that have scrubbers installed  
6 without scrubbers -- no, I think that's been covered  
7 enough. So if you -- so you say it's likely that  
8 you're going to continue to operate scrubbers,  
9 correct, the same, to the same extent that you have  
10 been thus far? Let me make sure I do have that  
11 correct.

12 A. (Ellis) Correct. We don't expect any  
13 changes.

14 Q. And then I guess the Question 15(a)?

15 A. (Ellis) Sure. I would refer you back to  
16 my previous answer. But, further, as a whole the MPS  
17 revision is protective of human health and the  
18 environment because it allows -- because it will  
19 significantly reduce the amount of allowable  
20 emissions that Dynegy emits and impose new and  
21 additional requirements on the Dynegy fleet.

22 Specifically, the MPS revision will  
23 require mandatory operation of existing selective  
24 catalytic reductions, otherwise known as SCR

1 equipment, year round. It will also require a lower  
2 NOx emission rate for Baldwin, Edwards, Duck Creek,  
3 Havana and Coffeen during ozone season. And, lastly,  
4 it will include a specific annual SO2 tonnage cap for  
5 the Joppa station.

6 MS. DUBIN: That's all the questions I have.

7 HEARING OFFICER TIPSORD: Mr. Gignac.

8 MR. GIGNAC: How much --

9 HEARING OFFICER TIPSORD: Oh, wait, wait, he  
10 wasn't --

11 MR. MORE: He wasn't -- we want to add some  
12 more to that.

13 MR. ELLIS: Just I would like to further  
14 respond to your question about future scrubber  
15 removal efficiency.

16 BY MS. DUBIN:

17 Q. Sure.

18 A. (Ellis) And, again, focusing that we are  
19 talking about the Coffeen and Duck Creek wet  
20 scrubbers there, right?

21 Q. Yes.

22 A. (Ellis) The spray dryer absorbers at  
23 Baldwin and Havana operate significantly below their  
24 consent decree emission rate limits and considerably

1 below the existing MPS rate limit, and those SDA  
2 removal efficiencies may change in the future while  
3 still complying with all applicable limits.

4 Q. In what way might they change?

5 A. (Ellis) They could change upward or  
6 downward.

7 Q. And depending on what?

8 A. (Diericx) The sulphur content of coal,  
9 compliance margin, availability of the units,  
10 malfunctions, breakdowns.

11 MS. DUBIN: All right. That's all.

12 MR. RAO: Can I have a follow-up? You've  
13 mentioned sulphur content of coal. Currently is  
14 Dynegy burning low sulphur coal in all its plants?

15 MR. DIERICX: Yeah, I think we addressed that  
16 in our response to the Board's questions. But to  
17 summarize that, we are -- for the MPS group units  
18 we're only burning low sulphur Powder River Basin  
19 coal. We are only purchasing that, too. At those  
20 stations, though, decades ago many of them used high  
21 sulphur coal. Some of that high sulphur coal remains  
22 in the base of those coal piles. And if coal  
23 inventory drops down significantly, some of that high  
24 sulphur coal may be recovered and burned. But that

1 is not -- that's not the rule. That's the exception.  
2 So it's very minor qualities of high sulphur coal.

3 MR. RAO: Other than underneath the stockpile  
4 of high sulphur coal, does Dynegy have any plans to  
5 change the fuel from low sulphur to high sulphur coal  
6 in the future?

7 MR. DIERICX: No, we have no such plans.

8 MR. RAO: Thank you.

9 MS. DUBIN: I actually do have one follow-up  
10 question to that, if that's okay.

11 HEARING OFFICER TIPSORD: Okay.

12 MS. DUBIN: My understanding is that two  
13 months ago Dynegy burned -- accidentally burned high  
14 sulphur coal at its Baldwin plant, correct?

15 MR. DIERICX: At the Baldwin energy complex,  
16 yeah, they were in a situation of low coal inventory,  
17 and they were trying to consolidate the coal, the  
18 remaining coal pile, so they could recover fuel and  
19 keep operating. In that process some high sulphur  
20 coal was put into the bunkers and eventually burned  
21 in Baldwin Units 1 and 2.

22 MS. DUBIN: And what does Dynegy plan to do  
23 to prevent that in the future?

24 MR. DIERICX: Well, as long as -- well, one

1        thing we are going to do, we are going to try to  
2        gradually combust that remaining high sulphur coal in  
3        compliance with the consent decree and MPS rate  
4        limits. We have also collected core samples of the  
5        remaining coal inventory to try to identify where  
6        that high sulphur coal is so it's not accidentally  
7        recovered. We're also looking at temporary use of  
8        supplemental SO2 controls on the Baldwin unit to  
9        prevent potential exceedences, if that coal is burned  
10       in the future.

11                HEARING OFFICER TIPSORD: Go ahead.

12                CHAIRMAN PAPADIMITRIU: Mr. Ellis, what does  
13       short-run marginal cost mean?

14                MR. ELLIS: Short-run marginal cost refers to  
15       the incremental cost to produce the next unit of any  
16       product, so in our case the next unit of electricity.  
17       Short-run marginal cost would be our cost to produce  
18       that next unit of electricity.

19                HEARING OFFICER TIPSORD: Mr. Gignac had his  
20       hand up first.

21                MR. GIGNAC: Does Dynegy currently operate  
22       its existing selective catalytic reduction equipment  
23       on a year round basis?

24                MR. DIERICX: Except for periods of startup,

1 shutdown, malfunction and breakdown, I believe the  
2 SCR systems are run on a year round basis.

3 HEARING OFFICER TIPSORD: Mr. Armstrong was  
4 next.

5 MR. ARMSTRONG: I had a follow-up question on  
6 the incident where Dynegy inadvertently burned high  
7 sulphur coal at the Baldwin plant. Is that -- am I  
8 correctly restating that that was the incident?

9 MR. DIERICX: Yeah, there was a recent  
10 occurrence where that happened at the Baldwin  
11 station.

12 MR. ARMSTRONG: And what effect did that have  
13 on Dynegy's compliance with its consent decree with  
14 the United States and the State of Illinois?

15 MR. MORE: I'm going to object to this  
16 question. It relates to compliance in connection  
17 with another matter and not relevant to whether or  
18 not the proposal is arbitrary and capricious and/or  
19 meets the requirements of Section 8 of Title II.

20 HEARING OFFICER TIPSORD: I also -- go ahead,  
21 Mr. Armstrong.

22 MR. ARMSTRONG: Well, the only response I  
23 make is that there was testimony that Baldwin could  
24 burn higher sulphur coal consistent with the consent

1 decree. So I'm just trying to establish whether that  
2 is accurate. But I do understand that that relates  
3 to a separate docketed proceeding. I can withdraw my  
4 question on that basis.

5 HEARING OFFICER TIPSORD: Thank you. Ms.  
6 Bugel.

7 MS. BUGEL: Yes. I have one follow-up or a  
8 couple of follow-up questions on temporary SO2  
9 controls at Baldwin for the purposes of possibly  
10 burning the remaining high sulphur coal.

11 EXAMINATION

12 BY MS. BUGEL:

13 Q. What SO2 controls are you referring to?

14 A. (Diericx) Okay. Once Baldwin station  
15 realized they had recovered high sulphur coal and the  
16 coal was in the bunkers, there is no way to get the  
17 coal out of the bunkers besides burning through that  
18 fuel. The coal -- the station took some  
19 extraordinary steps to try and prevent exceeding any  
20 consent decree SO2 emission rate limits, including  
21 shutting the unit down until fresh low sulphur coal  
22 was delivered to the station. The station also  
23 leased and installed and operated a temporary dry  
24 absorbent injection system in an attempt to lower the

1 SO2 of the flue gas before it passed through the  
2 spray dryer absorber.

3 Q. And how much did that, the lease of the  
4 dry absorbent injector, cost?

5 A. (Diericx) I don't recall, but it was in  
6 a document we submitted to U.S. EPA documenting the  
7 event.

8 Q. And has Dynegy explored the installation  
9 of dry absorbent injection as an option to meet the  
10 current MPS in a more or less costly way than  
11 operating Duck Creek and Coffeen at a loss?

12 A. (Diericx) No.

13 MS. BUGEL: That's all the questions I have.

14 HEARING OFFICER TIPSORD: Ms. Rabczak.

15 MR. MORE: Is there a reason why Dynegy has  
16 not explored the use of DSI as a compliance  
17 alternative as suggested by Ms. Bugel's question?

18 MR. DIERICX: We have not investigated that  
19 further because we were not provided the operational  
20 flexibility we need to comply with the existing MPS  
21 rate limits.

22 MS. BUGEL: I have a couple.

23 HEARING OFFICER TIPSORD: I'm sorry.

24 Ms. Bugel.

1 MS. BUGEL: I just have one more follow-up  
2 and at the moment it disappeared.

3 HEARING OFFICER TIPSORD: I'm sorry.

4 MS. BUGEL: Oh. Why wouldn't it provide the  
5 operational flexibility that you need?

6 MR. DIERICX: I think we, in our MPS  
7 compliance statements for the IPH fleet, I think  
8 we -- the recent assessment made for calendar year  
9 2017 indicates that the annual average rate of the  
10 IPH fleet was 0.23 lbs/mmBtu. And if a system like  
11 DSI, which has lower SO2 removal efficiency was  
12 employed, that would increase the chance of us not  
13 obtaining the MPS rate limit.

14 MS. RABCZAK: I have a couple of questions  
15 and, again, if you don't have time to answer that  
16 now, you can just file your answers.

17 EXAMINATION

18 BY MS. RABCZAK:

19 Q. So the questions I had to the AG Office  
20 in terms of how do you control your capacity, how do  
21 you decide which plant runs at which time, which  
22 plant runs at what capacity, and how do you control  
23 the emission rates, we would like to hear the answer  
24 to those questions.

1 I'll just ask my questions because I  
2 think you have to run. So if you don't have enough  
3 time, you can also file them.

4 A. (Ellis) I can answer it generally, and  
5 we can follow up in writing.

6 HEARING OFFICER TIPSORD: Okay.

7 MR. ELLIS: We talked about it a little bit  
8 before, so I will be glad to restate it.

9 HEARING OFFICER TIPSORD: I just don't want  
10 you to miss your flight.

11 A. (Ellis) So, generally speaking, the ISO  
12 picks which units are run. We don't necessarily  
13 dictate whether a unit is run or not. Now, we can  
14 drive certain outcomes, as we talked about before, by  
15 bidding behavior, but for the most part the ISO  
16 determines which units run.

17 As far as how we determine to bid the  
18 units, I think that was part of your question, we  
19 develop our variable operations and maintenance costs  
20 and build that into the bid which, of course, then  
21 ties back to the fuel costs and transportation costs  
22 also.

23 Q. And then besides at what capacity you  
24 plan or alternately run?

1           A. (Ellis) So with regard to the capacity,  
2           if we are receiving a capacity payment from the  
3           capacity market, we are obligated to offer the plant  
4           up to that full amount of capacity. Consumers have  
5           paid for the capacity. We are obligated to offer the  
6           energy of the plant up to that full capacity.

7           Q. And by offer, you mean that you have to  
8           stay in operation condition. It doesn't mean you  
9           necessarily will have to operate at that specific  
10          time. It only means if the operator is asking for  
11          you to operate?

12          A. (Ellis) Correct. There are certain  
13          protocols around forced outages and planned outages  
14          and the like. But, generally speaking, we have to be  
15          in an operational ready mode.

16          Q. So the ISO controls the operative  
17          capacity event of the area?

18          A. (Ellis) The capacity factor would be  
19          determined -- be determined by how many megawatt  
20          hours we produce, which is primarily determined by  
21          the ISO.

22          Q. And they decide which plant unit you have  
23          to run?

24          A. (Ellis) Yes. They select offers from

1 all of the available resources, and through an  
2 algorithm determine on a day-ahead and hourly basis  
3 which units run.

4 Q. How do you decide on the emission rate?  
5 How do you get to emission rate with each specific  
6 unit?

7 A. (Ellis) As far as the emission rate, we  
8 know from the technical specifications of all of the  
9 various inputs and outputs what the emission rate is.  
10 As far as the variable costs related to emissions, we  
11 are able to calculate what that cost is and we build  
12 it into our energy offer.

13 Q. So I guess my question is, when you are  
14 close to, I don't know, end of the year or something  
15 where you need to average those, and you already have  
16 information and what have of previous months, do you  
17 have to somehow control what happens at each plant to  
18 reach the average emission rate? How do you do that?

19 A. (Ellis) So the answer is related to how  
20 we describe the incident from December before.  
21 Throughout the course of the year, we continuously  
22 monitor our emissions rate as compared to our  
23 limitations, and forecast, and then, when possible,  
24 we then -- and needed -- we then will offer the units

1 in at a cost that virtually insures, or hopefully  
2 insures, that they get picked up and run, units that  
3 we need to balance then the rate limit.

4 Q. So you control the emission rate units by  
5 which plants you run; that's the average. How do you  
6 control emission rate at each specific unit?

7 A. (Ellis) So we would determine -- do it.

8 A. (Diericx) Okay. So which pollutant are  
9 you talking about first?

10 Q. Any. Pick any.

11 A. (Diericx) SO<sub>2</sub>, for example?

12 Q. Yes.

13 A. (Diericx) Okay. Of course, for units  
14 that don't have scrubbers or spray dryer absorbers,  
15 the sulphur dioxide emission is determined by the  
16 sulphur content of the fuel.

17 Q. So choose between fuels to control your  
18 emissions?

19 A. (Diericx) That is correct. But there is  
20 variability even with that. We have a contract with  
21 a range of acceptable sulphur contents, and it can  
22 vary from train to train what sulphur content arrives  
23 at a station.

24 Q. What about the scrubbed plants? How do

1       you do that at the scrubbed plants?

2               A.   (Diericx)  The scrubbed plants, it's  
3       determined by a combination of those same coal  
4       factors I just identified, in addition to the removal  
5       efficiency of the control device.

6               Q.   So do you operate a control device in a  
7       different way to reach the emission rate or -- I  
8       mean, I understand the fuel part, but what else can  
9       you do?

10              A.   (Diericx)  The wet FGD units, I am not  
11       aware of any controls that they can employ to change  
12       the removal efficiency of those wet scrubbers.

13              Q.   So are you pretty much stuck with the  
14       emission rate based on your technology, and the only  
15       thing you can do is change the fuel or is there  
16       anything else that you can do?

17              A.   (Diericx)  Change the fuel or the control  
18       technology are the only --

19              Q.   So you would have to install --

20              A.   (Diericx)  For SO<sub>2</sub>, that's the only thing  
21       you can do.

22              Q.   So you would have to install new  
23       technology?

24              A.   (Diericx)  That would be correct.  Now,

1 for NOx, there is differences there.

2 Q. And the related question to that is how  
3 do you control costs, for instance, when you run a  
4 unit at a loss, I guess? Is there anything you can  
5 do to control your costs? I understand that maybe  
6 fuel is the one, but is it impossible? That's my  
7 question. And if it is, what can you do?

8 A. (Ellis) The majority of the inputs that  
9 go into the cost makeup are, by that point, pretty  
10 well fixed, whether it's the cost of the fuel, the  
11 cost of the transportation, the cost -- there is  
12 really not a lot of changes we can make at that  
13 point. The changes that we make are more longer term  
14 to the cost profile of the variable operating costs.

15 Q. But there's not a lost of --

16 HEARING OFFICER TIPSORD: Okay. We can't  
17 hear you, Tanya, and this needs to be your last  
18 question. Anything else you can put in writing.

19 Q. I have a last question, and I'm not  
20 expecting answer right now because it might be a long  
21 time question. How does MPS change what and how you  
22 bid into both capacity markets and energy markets,  
23 and how does that affect specifically the units that  
24 are under threat of shutdown?

1           A.   (Ellis)   The MPS mostly affects how we  
2           offer into the energy market because it's really  
3           related to our short-run marginal costs.  It doesn't  
4           necessarily affect the capacity market.  When we  
5           develop our bids for the capacity market, we're  
6           looking more at our fixed costs and capital  
7           expenditures than we are short-run marginal costs  
8           because of the nature of the capacity market.  The  
9           capacity market is intended to ensure that there is  
10          generating plant in the future.  So that's really  
11          related to the fixed costs and the capital  
12          expenditures.

13           Q.   So would that change what happens to the  
14          unit that is under threat of shutdown if the proposal  
15          as proposed is accepted?

16           A.   (Ellis)  I just generally believe that,  
17          if the unit was decided to be shut down, then we  
18          wouldn't offer it into the capacity market.  Or if we  
19          were required to install capital equipment to comply,  
20          then we would increase our offer and pricing to the  
21          capacity market because we would try to recover that  
22          cost.

23           HEARING OFFICER TIPSORD:  Tanya, you have to  
24          put everything else in writing.  I'm sorry.  I want

1 to get you out of here.

2 A couple of housekeeping things. You can  
3 go ahead and go. Ma'am, at the back of the room, I  
4 apologize, I have forgotten your name. Yeah, I just  
5 wanted to put on the record that -- could you give us  
6 your name again?

7 MS. HARCHER: Julia Harcher (sp).

8 HEARING OFFICER TIPSORD: Julia Harcher at  
9 lunch break brought up a couple of pieces of  
10 information that she said she got from --

11 MS. HARCHER: No, I brought them.

12 HEARING OFFICER TIPSORD: For Mr. Bloomberg.

13 MS. HARCHER: For Mr. Bloomberg.

14 HEARING OFFICER TIPSORD: About Tazwell  
15 County air quality?

16 MS. HARCHER: In regards to the fifth  
17 dirtiest city in the United States, and Tazwell  
18 County is in the top tenth percentile in the entire  
19 United States, this county. I'm sorry, I'm not a  
20 public speaker.

21 HEARING OFFICER TIPSORD: That's okay. We  
22 did explain that she couldn't tell us that off the  
23 record. So I wanted to get that on the record, and  
24 asked her to send them to us in writing. So I just

1 wanted to clear that up, make sure everybody knew  
2 that we had that little slight conversation off the  
3 record. Now it's on the record.

4 MS. HARCHER: Thank you very much.

5 HEARING OFFICER TIPSORD: Thank you. And the  
6 additional discussions we had off the record were  
7 that pre-filing of testimony for the March 6 and 7  
8 hearing, pre-filed testimony is due February 6.  
9 That's for any new or additional testimony.  
10 Responses or additional information that is being  
11 sought from this hearing, these two days of hearing,  
12 are due February 16. And prefiled questions for the  
13 March 6 and 7 hearing are due March 2.

14 I will do a formal hearing officer order.  
15 The transcripts are -- it is five business days. So  
16 the first transcript should be ready later next week  
17 from yesterday, so that should be available for all  
18 of you that quickly.

19 And is there anything else anyone has?

20 MR. ARMSTRONG: So for the next hearing then  
21 I guess we will finish off with pre-filed questions  
22 for Dynegey's witnesses?

23 HEARING OFFICER TIPSORD: Yes. Thank you  
24 very much. Yeah, we will start with Dynegey in

1       Edwardsville at 10:00 a.m. on March 6.

2               MR. MORE:   Just to confirm, the Attorney  
3       General will make its witnesses available, as will  
4       the IEPA?

5               MR. ARMSTRONG:   Yes, we will be there.

6               HEARING OFFICER TIPSORD:   All right.  With  
7       that, again, thank you very much for your input, for  
8       all of your patience and your professionalism.  I  
9       will see you in March, if not before.

10              HEARING CONCLUDED AT 3:24 P.M.

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1 STATE OF ILLINOIS )  
 ) SS  
2 COUNTY OF MACOUPIN )

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C E R T I F I C A T E

5

I, Carla J. Boehl, a Certified Shorthand

6

Reporter and Notary Public in and for said County and

7

State, do hereby certify that the foregoing

8

transcript contains a true and accurate translation

9

of my shorthand notes referred to.

10

Given under my hand and seal this 22nd day of

11

January, A.D., 2018.

12

My commission expires April 13, 2019.

13

14

Carla J. Boehl

15

Certified Shorthand Reporter

16

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Notary Public

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