

THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
AMENDMENTS TO)
35 ILL. ADM. CODE 225.233,)R2018-20
MULTI-POLLUTANT STANDARDS (MPS)) (Rulemaking-Air)

TRANSCRIPT FROM THE PROCEEDINGS

taken before HEARING OFFICER MARIE TIPSORD
by LORI ANN ASAUSKAS, CSR, RPR, a notary public
within and for the County of Cook and State of
Illinois, at the Illinois Environmental
Protection Agency, 1021 North Grand Avenue E,
North Entrance, Springfield, Illinois, on the
17th day of April, 2018, A.D., at 11:00 o'clock
a.m.

1 A P P E A R A N C E S:

2 ILLINOIS POLLUTION CONTROL BOARD,
3 100 West Randolph Street
4 Suite 11-500
5 Chicago, Illinois 60601
6 (312) 814-6983
7 BY: MS. MARIE TIPSORD, HEARING OFFICER,

8 ILLINOIS POLLUTION CONTROL BOARD MEMBERS

9 PRESENT:

10 Ms. Katie Papadimitriu, Chairman
11 Ms. Cynthia Santos, Board Member
12 Ms. Brenda Carter, Board Member
13 Ms. Carrie Zalewski, Board Member
14 Mr. Mark Powell, Board Attorney
15 Mr. Anad Rao, Technical
16 Ms. Alisa Liu, Technical

17 ALSO APPEARING:

18 Ms. Tanya Rabczak,
19 Attorney Advisor to Chairman Papadimitriu
20 Ms. Natalie Winquist,
21 Attorney Advisor to Board Member Carter
22
23
24

1 A P P E A R A N C E S: (Continued)

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15 BY: MR. STEPHEN J. SYLVESTER and
16 MR. ANDREW ARMSTRONG.

17 Appeared on behalf of the People
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24 BY: MR. JOSHUA R. MORE and
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Appeared on behalf of Dynegy/Vistra;

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BY: MS. FAITH E. BUGEL,

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1 A P P E A R A N C E S: (Continued)

2

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5 BY: MS. TAMARA DZUBAY,
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12 BY: MS. TAMARA DZUBAY,

13 Appeared on behalf of the
Environmental Defense Fund;

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1 HEARING OFFICER TIPSORD: Good
2 morning. My name is Marie Tipsord. I've been
3 appointed by the Board to serve as hearing
4 officer in this proceeding entitled Amendments
5 to 35 Ill. Adm. Code 225.233, Multi-Pollutant
6 Standards (MPS).

7 With me today to my immediate
8 left is Chairman Katie Papadimitriu, presiding
9 board member. Also, starting at the far right
10 is Board Member Cynthia Santos. Next to Board
11 Member Santos is Board Member Carter and --
12 sorry -- Natalie snuck in. Natalie is at the
13 very far end. Board Member Cynthia Santos,
14 Brenda Carter and Board Member Carrie Zalewski.
15 In between Carrie and Brenda is senior attorney
16 Mark Powell. To the very far right is Natalie
17 Winqvist, who is attorney advisor to Brenda
18 Carter. To my far left is Natalie Rabczak, who
19 is attorney advisor to Katie Papadimitriu.

20 MR. POWELL: It's Tanya, not
21 Natalie.

22 HEARING OFFICER TIPSORD: Oh, I'm
23 sorry. Tanya. I don't know why I do that.

24 MR. POWELL: Tanya Rabczak.

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1 HEARING OFFICER TIPSORD: Tanya
2 Rabczak. I did get the Rabczak though. So,
3 you know, I got the last name. And then Anand
4 Rao and Alisa Liu from our technical unit.

5 The purpose of today's hearing
6 is to hear testimony from the witnesses who
7 have pre-filed their testimony. We will
8 begin with the Attorney General's Office. We
9 will take the questions filed by the Illinois
10 Environmental Protection Agency and then the
11 questions from Dynegy and conclude with the
12 questions from the Board.

13 After we have finished with
14 the Attorney General, we will proceed with
15 testimony from the Environmental Law & Policy
16 Center and Sierra Club. We will take questions
17 from Dynegy and conclude with questions from
18 the Board.

19 After that, I will ask if
20 the Agency wishes to address the questions
21 that were filed by Dynegy today or if they
22 would rather wait and do that at another
23 time.

24 At the conclusion of the

1 testimony, if there is anyone who has signed
2 up to offer public comment, we will allow
3 that comment. There was one state
4 representative from last night that may
5 be coming today and I have been informed
6 that there are some representatives from
7 Vistra today that would like to offer some
8 comment.

9 Anyone may ask a question
10 today in follow-up to the prefiled questions.
11 However, I ask you to raise your hand and
12 wait for me to acknowledge you. After I
13 have acknowledged you, please state your
14 name and who you represent before you begin
15 your questions.

16 Please speak one of a time.
17 If you're speaking over each other, the court
18 reporter will not be able to get your questions
19 on the record.

20 Also, if you have prefiled
21 questions, which seem appropriate to ask as
22 a follow-up, please do so. Just be sure to
23 mark those off the questions list. Thank
24 you for that.

1 And as a reminder, any
2 questions asked by a Board member or staff
3 are intended to help build a complete record
4 for the Board's decision and to express any
5 preconceived notion or bias.

6 Also, before we start, I
7 just want to remind everyone that we are at
8 the point where we need to start thinking
9 about when we will have public comment
10 deadline. So be thinking about that today
11 and we will set that at the close of the
12 hearing.

13 With that, Mr. Sylvester.

14 MR. SYLVESTER: One point I -- I do
15 want to raise is --

16 HEARING OFFICER TIPSORD: Identify
17 yourself for the record.

18 MR. SYLVESTER: Stephen Sylvester
19 for the Attorney General's Office.

20 In the prefiling the testimony
21 for the Illinois EPA, while you said if the
22 Illinois EPA was willing to proceed, you know,
23 testify as to those questions, I'd just like
24 to point out I think that that's somewhat

1 prejudicial to the other parties here. We
2 didn't know that we were going to have the
3 opportunity to submit other questions to
4 other parties.

5 The Hearing Officer Order
6 specifically said that anybody who wishes
7 to testify must file their prefiled testimony
8 in advance. That wasn't done with the Illinois
9 EPA. So the follow-up questioning -- I mean,
10 we would have liked to ask questions of Dynegy
11 and the Illinois EPA as well, but that seems
12 to be foreclosed at this point.

13 So we'd ask that, you know,
14 that these questions -- if they do want to
15 get answered, that they do it in post-hearing
16 comment.

17 HEARING OFFICER TIPSORD: I think
18 we'll leave that up to the Agency. This is --
19 again, it's a -- I don't know that there was
20 anything that precluded you. Obviously, the
21 Agency didn't prefile testimony so they had
22 not intended to testify, which is why I'm
23 giving that option, but obviously any questions
24 that people still have for witnesses should be

1 put on the record so there's an opportunity
2 because we do want to build a complete record.

3 So I would say if the AG
4 still has questions that they think they want
5 answers from either the Agency or Dynegy, that
6 they consider putting those on the record before
7 we close today, for the opportunity to do that
8 in final comments.

9 MR. SYLVESTER: We can ask follow-up
10 questions of the Agency questions as well,
11 right --

12 HEARING OFFICER TIPSORD: Yes.

13 MR. SYLVESTER: -- just as a
14 clarification?

15 HEARING OFFICER TIPSORD: Yes.

16 MR. SYLVESTER: Okay. Thank you.

17 HEARING OFFICER TIPSORD: Sure.

18 With that, we're going to
19 start with Mr. Armstrong and could we have
20 you sworn in, please?

21 THE COURT REPORTER: Please raise
22 your right hand.

23 Do you swear that the testimony
24 you're about to give will be the truth, the

1 whole truth, and nothing but the truth, so help
2 you God?

3 MR. ARMSTRONG: I do.

4 (Witness sworn.)

5 HEARING OFFICER TIPSORD: All
6 right. If there's no objections, we will
7 enter the prefiled testimony filed on April
8 3, 2018, as Exhibit 37. That will include
9 the emailed corrections that were sent by
10 Mr. Armstrong by separate email.

11 Seeing no objection, that
12 is Exhibit 37.

13 (Exhibit No. 37 was
14 admitted into evidence.)

15 HEARING OFFICER TIPSORD: Okay.
16 And as we have done in the past, we will
17 admit the prefiled questions from the
18 Illinois Environmental Protection Agency
19 as -- to Mr. Armstrong as Exhibit No. 38 if
20 there's no objection.

21 Seeing none, the prefiled
22 questions are Exhibit 38.

23 (Exhibit No. 38 was
24 admitted into evidence.)

1 HEARING OFFICER TIPSORD: With
2 that, I will have the IEPA begin the questions.

3 MS. ROCCAFORTE: Good morning.
4 I'm Gina Roccaforte on behalf of the Illinois
5 Environmental Protection Agency.

6 With me this morning is
7 Dana Vetterhoffer, Deputy General Counsel,
8 Antonette Palumbo, Assistant Counsel, David
9 Bloomberg, Manager of the Air Quality Planning
10 Section in the Bureau of Air and Rory Davis,
11 Environmental Protection Specialist in the
12 Air Quality Planning Section in the Bureau
13 of Air.

14 Good morning, Mr. Armstrong.

15 MR. ARMSTRONG: Good morning.

16 MS. ROCCAFORTE: Question 1, have
17 you ever performed a Clean Air Act Section
18 110(1) analysis to demonstrate noninterference
19 when receiving a State Implementation Plan?

20 MR. ARMSTRONG: No.

21 HEARING OFFICER TIPSORD: Before
22 we proceed, I would note that the Agency has
23 provided a projection of the questions on the
24 wall up here if anyone wants to follow along.

1 Thank you.

2 MS. ROCCAFORTE: Okay. Question 2,
3 have you communicated, either verbally or in
4 writing, with any staff of the US EPA Region 5
5 about this rulemaking?

6 MR. ARMSTRONG: No.

7 MS. ROCCAFORTE: Question No. 3,
8 have you communicated, either verbally or
9 in writing, with any staff at US EPA Region
10 5 about what is required to demonstrate
11 noninterference under a Section 110(1)
12 analysis?

13 MR. ARMSTRONG: Not that I recall.

14 MS. ROCCAFORTE: Thank you.

15 HEARING OFFICER TIPSORD: Are
16 there any follow-up questions to that?

17 Okay. Then we will move
18 right along to the prefiled questions from
19 Dynegy. If there's no objection, we will
20 admit those as Exhibit 39.

21 Seeing none, they are Exhibit
22 39.

23 (Exhibit No. 39 was
24 admitted into evidence.)

1 MR. MORE: I'm Josh More on behalf
2 of the Illinois Power Company, Dynegy Midwest
3 Generation, Illinois Power Resources Generating,
4 LLC and Electric Energy, Inc.

5 The first question is has
6 the Illinois Attorney General's Office ever
7 participated in a Clean Air Act Section 110(1)
8 determination?

9 MR. ARMSTRONG: I am not aware
10 of any instance in which the office has
11 participated in a Section 110(1) determination.

12 MR. MORE: Question 2, has the
13 AGO, the Illinois Attorney General's Office,
14 ever discussed a Clean Air Act Section 110(1)
15 determination with the United States
16 Environmental Protection Agency?

17 MR. ARMSTRONG: I am not aware of
18 any instance in which the office has discussed
19 a Section 110(1) determination with the US EPA.

20 MR. MORE: Question 3, according
21 to Footnote 16 of the AGO's December 11, 2017,
22 prefiled testimony or its Exhibit 9, an annual
23 NOx cap of 25,000 tons corresponds to a
24 hypothetical year in which all MPS units ran

1 at a 76.1 percent capacity factor, correct?

2 MR. ARMSTRONG: That is not what
3 Footnote 16 of our December 11, 2017, prefiled
4 testimony says.

5 What the footnote says is that
6 Illinois EPA's proposed cap of 25,000 tons of
7 NOx emissions, "corresponds to the MPS current
8 'equivalent' mass-based emission limit for the
9 Dynegy MPS fleet operating at a 76.1 percent
10 capacity factor."

11 What that footnote refers
12 to is a concept that Dynegy actually first
13 introduced to the Board in PCB 12-135, which
14 is that for any given year, the current MPS
15 standards impose an "equivalent" -- oh, I
16 apologize.

17 (Phone interruption.)

18 MR. ARMSTRONG: Let's go off the
19 record.

20 HEARING OFFICER TIPSORD: Yes.
21 Let's go off the record.

22 (Whereupon, a discussion
23 was had off the record.)

24 HEARING OFFICER TIPSORD: Okay.

1 We are back on the record.

2 MR. MORE: Can I ask you to start
3 over, if you don't mind?

4 MR. ARMSTRONG: Sure.

5 That is not what Footnote 16
6 of our December 11, 2017, prefiled testimony
7 says.

8 What the footnote says is
9 that Illinois EPA's proposed cap of 25,000
10 tons of NOx emissions, "corresponds to the
11 MPS current 'equivalent' mass-based emission
12 limit for the Dynegy MPS fleet operating
13 at a 76.1 percent capacity factor."

14 What that footnote refers
15 to is a concept that Dynegy actually first
16 introduced to the Board in PCB 12-135, which
17 is that for any given year, the current MPS
18 standards impose an "equivalent" mass-based
19 limit on each MPS group.

20 This "equivalent" mass-based
21 limit is calculated by multiplying the
22 overall annual heat input for the group by
23 the applicable emission rate limit for the
24 group.

1 So to be precise, an annual
2 NOx cap of 25,000 tons corresponds to a
3 hypothetical year in which both MPS groups
4 ran at a 76.1 percent capacity factor at
5 exactly their current MPS emission rate
6 limits."

7 MR. MORE: Question 4, an SO2
8 emissions cap of 49,000 tons annually is
9 73.8 percent of Illinois EPA's calculated
10 "allowable emissions" of 66,354 tons,
11 correct?

12 MR. ARMSTRONG: Yes. 49,000
13 is 73.8 percent of 66,354.

14 MR. MORE: Question 4(a), so
15 utilizing the methodology set forth on Pages
16 15 and 16, including Footnote 16 of Exhibit 9,
17 an annual SO2 cap of 49,000 tons corresponds
18 to a hypothetical year in which all MPS units
19 ran at a 73.8 percent capacity factor, correct?

20 MR. ARMSTRONG: Similar to what I
21 stated above, an annual SO2 cap of 49,000 tons
22 corresponds to a hypothetical year in which
23 both current MPS groups ran at a 73.8 capacity
24 factor at exactly their current MPS emission

1 rate limits.

2 MR. MORE: Question 5, an S02
3 emissions cap of 34,094 tons annually is
4 51.3 percent of Illinois EPA's calculated
5 allowable emissions of 66,354 tons, correct?

6 MR. ARMSTRONG: So to be a total
7 stickler about this, I calculate 34,094 as
8 being 51.38 percent of 66,354.

9 So I would say that an S02
10 emissions cap of 34,094 tons is 51.4 percent
11 of Illinois EPA's calculated allowable emissions
12 of 66,354 tons.

13 MR. MORE: Thank you.

14 Question 5(a), so utilizing
15 the methodology set forth on Pages 15 and 16,
16 including Footnote 16 of Exhibit 9, an annual
17 S02 cap of 34,094 tons corresponds to a
18 hypothetical year in which all MPS units
19 ran at a 51.4 percent capacity factor,
20 correct?

21 MR. ARMSTRONG: An annual S02 cap
22 of 34,094 tons corresponds to a hypothetical
23 year in which both current MPS groups ran at
24 a 51.4 percent capacity factor at exactly

1 their MPS emission rate limits.

2 MR. MORE: Question 6, an N-O-x
3 or NOx emissions cap of 18,920 tons annually
4 is 57.6 percent of Illinois EPA's calculated
5 allowable emissions of 32,841 tons, correct?

6 MR. ARMSTRONG: Yes. 18,920 is
7 57.6 percent of 32,841.

8 MR. MORE: Question 6(a), so
9 utilizing the methodology set forth on Pages
10 15 and 16, including Footnote 16 of Exhibit 9,
11 an annual NOx cap of 18,920 tons corresponds
12 to a hypothetical year in which all MPS units
13 ran at a 57.6 percent capacity factor,
14 correct?

15 MR. ARMSTRONG: An annual NOx cap
16 of 18,920 tons corresponds to a hypothetical
17 year in which both MPS groups ran at a 57.6
18 percent capacity factor at exactly their current
19 MPS emission rate limits.

20 MR. MORE: I'd like to turn to Page
21 15 of Exhibit 9.

22 MR. ARMSTRONG: And is this in the
23 Attorney General's December prefiled testimony?

24 MR. MORE: Yes, Mr. Armstrong.

1 In response to this series of
2 questions, I want to make sure I heard it
3 correctly. You were suggesting that the
4 proposed cap, so that the total annual
5 tonnages that we were discussing corresponds
6 to a hypothetical year in which both MPS
7 groups ran at a capacity factor at exactly
8 the current emission rate, is that what you
9 said?

10 MR. ARMSTRONG: Yes.

11 MR. MORE: When describing how
12 you calculated the corresponding capacity
13 factor for the original proposed cap of
14 55,000 tons nowhere do you describe it as
15 being tied to the current emission rate,
16 correct?

17 MR. ARMSTRONG: Could you direct
18 me to what you are referring to in the testimony
19 here?

20 MR. MORE: Yes. So let's look at
21 the only full paragraph, which begins with "for
22 example."

23 MR. ARMSTRONG: Okay.

24 MR. MORE: There is a sentence that

1 reads, "Therefore, Illinois EPA is proposing a
2 cap that corresponds to the MPS's 'equivalent'
3 mass-based emission limits for a hypothetical
4 year in which all MPS units ran at an 82.9
5 percent capacity factor."

6 Do you see that sentence?

7 MR. ARMSTRONG: Yes.

8 MR. MORE: Okay. How did you
9 calculate 82.9 percent?

10 MR. ARMSTRONG: So in terms of
11 emission rates, that is, I'll call it baked
12 into the concept of the equivalent mass-based
13 emission rate and as Dynegy explained this
14 concept to the Board in 12-135, the MPS --
15 when you look at the MPS emission rates limits,
16 you can take the heat input for any given year,
17 multiply the heat input for each group by the
18 emission rate limit and that gives you this
19 equivalent mass-based emission limit for that
20 year.

21 MR. MORE: Okay.

22 MR. ARMSTRONG: As I said before,
23 with respect to the 89 percent --

24 MR. MORE: The 82.9, do you mean?

1 MR. ARMSTRONG: 82.9 percent. What
2 that corresponds to is a hypothetical year
3 in which all MPS units operated at an 82.9
4 percent capacity factor at exactly your MPS
5 emission rate limits.

6 HEARING OFFICER TIPSORD: Excuse
7 me. Just one point of clarification 12-135
8 is PCB 12-135?

9 MR. ARMSTRONG: Dynegy Midwest
10 Generation, LLC v. IEPA, PCB 12-135.

11 HEARING OFFICER TIPSORD: Thank
12 you.

13 MR. MORE: Let's look at the
14 sentence before the one you just read into
15 the record. Actually, I'm going to read
16 two sentences above it. I'm going to start
17 there.

18 "IEPA Technical Support
19 Document at 9, in other words, Illinois EPA
20 has calculated the MPS's equivalent mass-based
21 emission limit. See Dynegy Midwest Generation,
22 Inc. versus IEPA, PCB 12-135, July 23, 2015,
23 at 8 for a hypothetical year in which all
24 MPS units ran at 100 percent capacity factor.

1 Illinois EPA's proposed mass
2 cap -- mass-based cap of 55,000 tons is
3 82.9 percent of 66,354 tons.

4 Did I read that correctly?

5 MR. ARMSTRONG: You did.

6 MR. MORE: And then because 55,000
7 tons is 82.9 percent of the calculated allowable
8 emissions the equivalent capacity factor for
9 a hypothetical year is 82.9 percent, correct?

10 MR. ARMSTRONG: What do you mean
11 by "hypothetical year"?

12 MR. MORE: That's the term you used;
13 is that right?

14 MR. ARMSTRONG: It is -- as I stated
15 in here, it's a cap that -- a cap of 55,000 tons
16 corresponds to the MPS's equivalent mass-based
17 emission limit for a hypothetical year in which
18 all MPS units were emitting 82.9 percent -- 82.9
19 percent capacity factor.

20 MR. MORE: Let's go to Questions 7
21 of Exhibit 39, please, of the prefiled questions
22 for today.

23 On Page 17 of Exhibit 9,
24 the AGO states, "Thus, a more realistic

1 framework for analysis than Illinois EPA's
2 'allowable emissions' is to identify the actual
3 potential to emit, which takes into account the
4 real rate of pollution for each unit."

5 Question 7(a), please turn
6 to Attachment 6 of your April 3, 2018, prefiled
7 testimony, which was admitted today as Exhibit
8 37.

9 Does cell P50 contain the S02
10 "actual potential to emit" as that phrase
11 appears in the quote above on Page 17 in
12 Exhibit 9 for the MPS fleet using unit level
13 emission rates for S02 from 2017?

14 MR. ARMSTRONG: Yes.

15 MR. MORE: Question 7(b), the S02
16 "actual potential to emit" for the MPS fleet
17 using unit level emission rates for S02 from
18 2017 is 53,083 tons, correct?

19 MR. ARMSTRONG: Yes.

20 MR. MORE: Question 7(c), please
21 turn to Attachment 6 of your April 3, 2018,
22 prefiled testimony, which was admitted today
23 as Exhibit 37.

24 Does the addition of cells

1 H30 and H31 represent the NOx "actual potential
2 to emit" as that phrase appears on Page 17 of
3 Exhibit 9 for the MPS fleet using unit level
4 emission rates for NOx from 2017?

5 MR. ARMSTRONG: Yes.

6 MR. MORE: The NOx "actual potential
7 to emit" for the MPS fleet using unit level
8 emission rates for NOx from 2017 is 32,172 tons,
9 correct?

10 MR. ARMSTRONG: Yes.

11 MR. MORE: Question 8, was any
12 of the operating and emission information
13 presented in your April 3, 2018, prefiled
14 testimony, including the information contained
15 in attachments available to you as of December
16 11, 2017?

17 MR. ARMSTRONG: Yes. Some of the
18 information was available. Specifically, actual
19 historical heat inputs and mass emissions of
20 SO2 and NOx for the MPS units were available
21 through the 2016 calendar year through US EPA's
22 website. However, that information was not yet
23 available for calendar year 2017.

24 As stated in my April 2,

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1 2018, prefiled testimony at Pages 14 to 15,
2 we presented additional analysis using
3 historical data in response to concerns
4 raised by Illinois EPA and Dynegy in previous
5 hearings. Illinois EPA and Dynegy expressed
6 concern that our December 2017 testimony,
7 which focused on 2016 unit level heat inputs
8 and emission rates, drew on too small a sample
9 size to accurately reflect Dynegy's operations.
10 Therefore, we increased the sample size.

11 And the analysis confirms,
12 among other things, what Ameren and Dynegy
13 themselves have told this Board over the past
14 decade. The old Ameren group cannot operate
15 at full capacity, or even actual 2002 heat
16 inputs, and comply with the current MPS SO₂
17 emission rate limit. The reason for that
18 is because those units lack adequate controls
19 for SO₂.

20 And the reason they lack
21 adequate controls is that Dynegy did not
22 invest in its Illinois plants. Specifically,
23 Dynegy abandoned the Newton flue gas
24 desulfurization project it committed to the

1 Board it would complete in variance proceeding
2 PCB 14-10.

3 Aside from the 2017 emissions
4 data that was unavailable at the time of our
5 December 11, 2017, prefiled testimony, our
6 office also did not know of the existence of
7 the Newton sorbent injection system reflected
8 in the construction permits as attached to my
9 prefiled testimony as Attachments 8 and 9 for
10 control of sulfur dioxide.

11 I only discovered these
12 construction permits in March 2018 after
13 calculating Newton's unit-level SO2 emission
14 rate for 2017. That led me to research
15 construction permits issued for Newton, as
16 posted on the "Document Explorer" section
17 of Illinois EPA's website.

18 MR. MORE: Was all of the operating
19 and emission information presented in your
20 April 3, 2018, prefiled testimony including
21 the information contained in attachments
22 available to you as of February 6, 2018?

23 MR. ARMSTRONG: I do not know whether
24 information in the attachments to my April 2,

1 2018, prefiled testimony was available to us
2 as of February 16, 2018. I do know by that
3 time 2017 unit-level heat inputs and emissions
4 of SO2 and NOx were available from US EPA's
5 website.

6 I do not know, though,
7 whether Illinois EPA had by that time posted
8 the Newton construction permits attached as
9 Attachments 8 and 9 to my testimony in the
10 "Documents Explorer" section of its website.

11 MR. MORE: One second, please.

12 (Brief pause.)

13 MR. MORE: No other questions.

14 HEARING OFFICER TIPSORD: Thank you.

15 Let's turn to the questions
16 by the Board and as has been our practice, you
17 will also give them an exhibit number for ease
18 of writing this later.

19 If there's no objection, the
20 Board's prefiled questions to Andrew Armstrong
21 will be admitted as Exhibit 40.

22 Seeing none, they are Exhibit
23 40.

24

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1 (Exhibit No. 40 was
2 admitted into evidence.)

3 BOARD MEMBER CARTER: Good morning,
4 Mr. Armstrong.

5 MR. ARMSTRONG: Good morning.

6 BOARD MEMBER CARTER: On Page 2 of
7 your testimony, you identified four MPS plants
8 that are "relatively well-controlled for SO2."
9 Does anything in the current MPS standard
10 prevent Dynegy or Vistra from shuttering any or
11 all of these plants?

12 MR. ARMSTRONG: This is another
13 stickler answer especially because I'm an
14 attorney and an English major.

15 So here's my answer. The
16 current MPS standards do not prohibit Dynegy
17 from retiring any specific MPS unit nor do
18 the current MPS standards absolutely require
19 Dynegy to operate any specific MPS unit.

20 BOARD MEMBER CARTER: Question
21 No. 2, beginning --

22 MR. ARMSTRONG: Oh, I'm sorry. I
23 did want to add one caveat to fully answer your
24 question.

1 However, the current MPS
2 standards do prevent Dynegy from closing units
3 that are controlled for SO2 in that if Dynegy
4 plans to operate uncontrolled capacity, it
5 must also operate controlled capacity. This
6 is a consequence of the current standards'
7 requirement of averaging unit-level emission
8 rates to meet a fleet-wide SO2 emission rate
9 limit that is lower than the emission rate
10 that can be achieved by any uncontrolled plant.

11 In fact, this point was
12 supported by an interview Vistra CEO Curt Morgan
13 gave to E&E news last week. We have a copy of
14 the article we would like to have admitted as
15 an exhibit here. Mr. Sylvester will be passing
16 out copies.

17 HEARING OFFICER TIPSORD: Okay. I
18 have been handed "Markets, Weak MISO Prices
19 Compound Illinois Coal Plants Woes," Friday,
20 April 13, 2018, Pages 1 of -- there's three
21 pages. It's the transformation of the energy
22 sector.

23 If there's no objection, we
24 will mark this as Exhibit No. 41.

1 Seeing none, it's Exhibit

2 No. 41.

3 (Exhibit No. 41 was
4 admitted into evidence.)

5 MR. ARMSTRONG: So my co-counsel,
6 Mr. Sylvester, suggested that I provide the
7 URL for this article as well, which is
8 probably a good idea. It is
9 [https://www.eenews.net/energywire/stories/](https://www.eenews.net/energywire/stories/1060078985)
10 1060078985.

11 And to quote from portions
12 of this article, starting at the bottom of
13 Page 1, "Vistra is in the midst of an
14 operational review of power plants to identify
15 potential efficiencies. But, Morgan noted,
16 the Illinois fleet is 'challenged'."

17 Turning to the next page,
18 "'We're likely going to have to retire some
19 facilities there,' he said, adding that such
20 a decision could come as early as this year."

21 Skipping down to the third
22 paragraph from the bottom, "Vistra's Morgan
23 called the proposal to amend the state's
24 Multi-Pollutant Standard to the 'highest

1 priority' for the company in Illinois noting
2 that some of its plants with advanced pollution
3 controls are 'hugely out of the money' and
4 are burning cash."

5 BOARD MEMBER CARTER: Question
6 No. 2, beginning on Page 5, you assert that
7 the Board should evaluate the proposed MPS
8 amendments using the actual rather than maximum
9 allowable emissions.

10 Question 2(a), if the Board
11 adopts mass-based emission caps at some level,
12 should the Board be concerned about actual
13 emissions as long as they remain less than
14 or equal to the MPS caps? Why or why not?

15 MR. ARMSTRONG: I was not 100
16 percent sure what this question was aimed
17 at so I'm going to answer it in two parts.

18 First, if there is a final
19 regulation setting forth new mass-based
20 emission limits for the MPS units, then
21 those will be the MPS limits. Any level of
22 annual emissions below those limits would
23 comply with the MPS. So purely from the
24 standpoint of MPS compliance, the Board

1 would not need to be concerned with the
2 level of actual emissions so long as they
3 remain at or below the adopted limits.

4 And that point is related
5 to another one the parties have discussed
6 in this proceeding; "actual" emissions will
7 always be less than "allowable" emissions
8 assuming the regulated pollution source is
9 complying with its limits. Actual emissions
10 are what a source actually emits given the
11 reality that it will never operate at 100
12 percent capacity. Allowable emissions are
13 what a source would emit in the unrealistic
14 scenario where it is operating at 100 percent
15 capacity in compliance with its limits.

16 And that second point leads
17 into the second part of my answer. From the
18 broader standpoint of environmental impact,
19 yes, the Board should remain concerned with
20 actual emissions from the MPS units,
21 particularly if IEPA's proposed levels were
22 to be adopted.

23 The People's concern throughout
24 this proceeding has been whether new mass

1 emission limits would be as protective as the
2 current MPS standards. Illinois EPA's proposed
3 limits are not.

4 Illinois EPA proposes using
5 only "allowable" emissions as a baseline for
6 assessing the environmental impact of new
7 limits. That approach is unreasonable and
8 it differs radically from the earlier analysis
9 of MPS amendments in the Board proceeding
10 R09-10.

11 The approach is unreasonable
12 because using only "allowable" emissions as a
13 baseline presents a distorted picture of what
14 the current MPS standards require. Essentially,
15 IEPA asks this Board to accept the premises
16 that the current MPS standards require nothing
17 more than the current MPS units emit less than
18 66,354 tons of SO₂ and 32,841 tons of NO_x
19 annually.

20 That premise is wrong. As
21 discussed in Section IV of my April 2, 2018,
22 prefiled testimony, if you consider actual
23 historical heat inputs going back ten years,
24 IEPA's proposed mass-based emission limits

1 exceed the level of SO₂ and NO_x pollution
2 of the current MPS emission rate limits that
3 would have been permitted in each of those
4 years.

5 And as discussed in Section
6 VI, if you consider actual historical heat
7 inputs and emission rates, it is clear under
8 the current MPS Dynegey simply cannot operate
9 its higher polluting uncontrolled units as
10 intensively as it once did relative to
11 controlled units.

12 The reason being Dynegey
13 did not invest in its Illinois plants and
14 more specifically, in the Newton flue gas
15 desulfurization project, it committed to
16 complete in variance proceeding PCB 14-10.
17 The MPS's actual emissions reflect the
18 stringency of the current MPS standards.

19 As discussed in Section
20 III of my April 2, 2018, prefiled testimony,
21 IEPA's proposed limits exceed actual
22 emissions of SO₂ and NO_x from the current
23 MPS units over each of the past five years.

24 So to reiterate, IEPA's

1 proposed limits are not as protective as
2 the current MPS standards. So if they're
3 adopted, then, yes, the Board should remain
4 concerned with the plant's actual emissions.

5 HEARING OFFICER TIPSORD: Brenda,
6 we have a follow-up.

7 CHAIRMAN PAPADIMITRIU: I'm Katie
8 Papadimitriu, Chair.

9 Mr. Armstrong, I have a
10 question -- a follow-up question for you
11 and it sort of leads into (b). So I apologize,
12 Member Carter.

13 You keep saying actual
14 emissions. The actual emissions are -- in
15 the MPS still remain under the allowable cap;
16 is that correct?

17 MR. ARMSTRONG: So to answer your
18 question, I'm not aware of any instance where
19 Dynegy has violated MPS limits as they have
20 been in place.

21 CHAIRMAN PAPADIMITRIU: So your
22 concern on the actual emissions is perhaps
23 misplaced because it's not causing any
24 violations because the actual, as you stated

1 earlier, falls under or is equal to the
2 cap?

3 MR. ARMSTRONG: I'm not sure I --
4 I would not agree with that statement --

5 CHAIRMAN PAPADIMITRIU: Okay.

6 MR. ARMSTRONG: -- for the reason
7 what we're talking about here is not whether
8 Dynegy is complying with the MPS. Dynegy has
9 told the Board it can't comply with the MPS.

10 What we're talking about
11 is converting the MPS as an emission rate
12 limit to a totally different type of standard,
13 a mass-based emission limit, and the question
14 before the Board is what is the environmental
15 impact of that -- of that proposed change.

16 And it's -- and I can actually
17 talk about it in a second in response to 2(b).
18 When the Board faced a similar question when
19 it earlier amended the MPS, it did consider
20 projected actual emissions using actual
21 historical heating units.

22 CHAIRMAN PAPADIMITRIU: So thank
23 you for reminding me of the substance of our
24 proceeding today. Thank you for that.

1 My question still pertains
2 to actual versus allowable. If -- if, as
3 you have stated, the actual emissions are
4 under the allowable, no adverse impact has
5 occurred?

6 MR. ARMSTRONG: So --

7 CHAIRMAN PAPADIMITRIU: Because
8 there's not been a violation, correct? It's
9 a syllogism, right?

10 Someone's phone is ringing.

11 MR. ARMSTRONG: So I think that we
12 need to be careful, of course, when we talk
13 about what allowable emissions are and what
14 actual emissions are.

15 The Illinois EPA has stated
16 that the allowable emissions under the MPS
17 are, for example, for S02, 66,354 tons per
18 year. So in any given year, if Dynegy, for
19 example, had emitted 66,354 tons from the
20 fleet last year, it would have violated the
21 MPS emission limits.

22 So if Dynegy had actual
23 emissions in that amount, for example, in
24 2017, it would not have been in compliance

1 with the MPS.

2 CHAIRMAN PAPADIMITRIU: Correct,
3 but we're talking -- but they were in 2017?

4 MR. ARMSTRONG: Dynegy was in
5 compliance because it complied with the emission
6 rate limits.

7 CHAIRMAN PAPADIMITRIU: So I still
8 have quite a few questions, but I'm going to --
9 for a time, I'll defer back to you, Member
10 Carter, and perhaps you'll answer more fully
11 in (b). Thank you.

12 BOARD MEMBER CARTER: 2(b), has
13 the Board ever gotten adopted regulations
14 predicated upon actual annual emissions? If
15 not, why should the Board begin to do so now?

16 MR. ARMSTRONG: Yes. The Board
17 has adopted regulations predicated upon
18 actual annual emissions. In fact, it's done
19 so in relation to the MPS.

20 In R09-10, the Board accepted
21 Ameren's proposal to modify the MPS emission
22 rate limits applicable to it, including Ameren's
23 proposal to add the current S02 emission rate
24 limit of 0.23 pounds per million Btu that took

1 affect in 2017.

2 Ameren had stated that it
3 needed more time to finance the pollution
4 controls necessary for it to comply with
5 the MPS SO2 emission rate limit.

6 The quote from the Board's
7 April 16, 2009, order: "Ameren states that
8 it worked with the Agency to evaluate
9 'protected mass emissions under the MPS
10 and the Ameren proposal over an 11-year
11 period'."

12 In R09-10, Ameren and
13 the Agency did not project emissions using
14 allowable emissions. They did not project
15 emissions assuming that the MPS units
16 would operate at maximum capacity.

17 Instead, Ameren and the Agency
18 projected emissions using actual historical
19 heat inputs just as People argue is necessary
20 in this rulemaking. In other words, Ameren
21 and Agency's analysis in R09-10 was based on
22 projected actual emissions.

23 The Board relied on that
24 analysis in finding that the proposed amendments

1 offered a "net environmental benefit." So
2 again, yes, the Board has adopted regulations
3 predicated upon actual annual emissions and,
4 in fact, did so in the only previous proceeding
5 to amend the MPS.

6 BOARD MEMBER CARTER: No. 3,
7 aside from attachments to your testimony
8 that outside parties prepared, example,
9 the Newton construction permit, who prepared
10 each attachment?

11 Did you review all of the
12 attachments to your testimony in their entirety?

13 MR. ARMSTRONG: I will go through
14 the attachments, just to be clear.

15 Attachment 1 was prepared by
16 James Gignac and was included with his February
17 16, 2018, prefiled testimony.

18 As described in greater detail
19 on Page 11 of my April 2, 2018, prefiled
20 testimony -- I correct myself -- my April 3,
21 2018, prefiled testimony, Attachment 2 is an
22 expanded version of Attachment 1.

23 With respect to the new
24 material in Attachment 1, I prepared it

1 myself adding the new material to a copy of
2 Attachment 1.

3 I also prepared Attachments
4 3, 4, 5, 6 and 10 myself. In each case, I
5 used as my starting point a spreadsheet that
6 was filed as Exhibit 1 to our December 2017
7 prefiled testimony.

8 Attachments 7, 8 and 9 are
9 Illinois EPA documents.

10 HEARING OFFICER TIPSORD: Mr. More
11 has follow-up.

12 MR. MORE: Thank you. You used
13 a term in response to some prior questions
14 "projected actual emissions."

15 Do you recall that?

16 MR. ARMSTRONG: Yes.

17 MR. MORE: Okay. I would like to
18 look at -- turn to Attachment 2 of your April --
19 of Exhibit 37, your most recent prefiled
20 testimony.

21 At the bottom of the table,
22 it's got combined total MPS SO2 tons, MPS NOx
23 tons.

24 Do you see those rows?

1 MR. ARMSTRONG: I do.

2 MR. MORE: Are these -- are
3 the numbers there representative of the
4 projected actual emissions with these
5 time periods?

6 MR. ARMSTRONG: No.

7 MR. MORE: Why not?

8 MR. ARMSTRONG: Well, for one
9 thing, the current MPS rates that are now
10 in effect were not in effect back in, for
11 example, 2008. So that's -- that's one
12 clarification right there.

13 What this analysis represents
14 right here -- and I'll just -- I'll just
15 explain exactly what this is. So we've taken
16 the historical heat input -- the actual
17 historical heat input for every single unit
18 that IEPA has identified as being in the
19 current MPS group from 2008 to 2017.

20 We've added up the actual
21 historical heat inputs then for each of the
22 two current MPS groups, the Dynegy group and
23 the old Ameren group. Then we multiply for
24 each year the total heat input for a given

1 group by the current MPS emission rate that's
2 applicable to it.

3 MR. MORE: Right. You applied
4 2017 emission limits to the historical key
5 inputs, correct?

6 MR. ARMSTRONG: I -- yes.

7 MR. MORE: Okay. And that's --
8 how was that different than what you described
9 as your projected actual emissions based on
10 actual heat input utilizing a projected
11 future emission rate that would be applicable?

12 MR. ARMSTRONG: So I think when
13 you're using the term -- you said I used the
14 term "projected actual emissions." That was
15 in response to -- that wasn't describing the
16 Board's analysis in R09-10. I think that
17 we're agreement on that?

18 MR. MORE: I -- no. This is a
19 term that you used. My question to you is
20 you've characterized your analysis as being
21 consistent with a term the Board used in
22 R09-10.

23 I want to know -- I'm asking
24 you isn't that analysis, what is depicted

1 here on Attachment 2, does it consist of
2 historic heat input with a projected emission
3 rate for 2017, isn't this the protected actual
4 emissions as you have used that term for these
5 different time periods?

6 MR. ARMSTRONG: No. And I think
7 that to understand the distinction, you have
8 to take a look at what was going on in our
9 R09-10.

10 In R09-10, the issue that
11 the Board was faced with was Dynegy -- rather,
12 Dynegy's predecessor, Ameren, came before
13 the Board in asking for a relaxation of the
14 then applicable 202 limits in the MPS and
15 then asking basically for more time in order
16 to be able to comply installing pollution
17 controls to comply with the S02 limits in
18 the MPS.

19 So there was never any
20 question of what the limits were going to
21 be actual, actual or allowable, in that
22 proceeding. Ameren told the Board we
23 cannot meet these limits. We need lower
24 ones that we can meet.

1 So in that case, in R09-10,
2 the emission rates used were both actual and
3 allowable emission rates because those were
4 raised.

5 In this case, we actually
6 have, based on the AG's work, five years of
7 historical data that's shown what the actual
8 emission rates are for each of the MPS units
9 and that is the basis for the analysis of
10 the Attachment 10 to my prefiled testimony,
11 which looks at both actual historical heat
12 inputs and actual emission rates from the
13 MPS.

14 MR. MORE: So Attachment 10, what
15 you're suggesting, is then consistent with your
16 characterization of the Board's analysis
17 from R09-10?

18 To be quite frank, I'm
19 confused. What is it that you allege in
20 your testimony presented in this rulemaking
21 is consistent with the Board's or Ameren's
22 analysis from 09-10?

23 MR. ARMSTRONG: In my view,
24 Attachment 10 to our prefiled testimony is

1 the analysis in this rulemaking that is
2 consistent with the Board's analysis in
3 R09-10.

4 Unlike any other participants
5 in this room, our office has offered an analysis
6 of actual historical heat inputs, something
7 that has not been offered by the IEPA or
8 Dynegy though actual historical heat inputs
9 were clearly used by the Board and the Agency
10 and Ameren in R09-10.

11 And also in my view, in R09-10,
12 what was being evaluated were actual emissions
13 based on what the actually emission rates were
14 expected to be because, as I said before, these
15 were the rates that Ameren has given to me.
16 These were going to the actuals and the
17 allowables.

18 So as I began by saying, the
19 analysis in Attachment 10 is of all the analyses
20 put forth in this proceeding so far the one
21 that is most consistent with the analysis used
22 by the Agency, Ameren and the Board in R09-10.

23 MR. MORE: What is the difference
24 in the analysis contained on Attachment 10 and

1 Attachment 2?

2 MR. ARMSTRONG: Well, to state the
3 obvious, Attachment 10 is an analysis of --

4 MR. More: 2002, why don't
5 I start with that? It contains historic 2002
6 heat input, right?

7 MR. ARMSTRONG: Correct.

8 MR. MORE: Attachment 2 contains
9 historic two heat input for years 2008 through
10 2017; is that correct?

11 MR. ARMSTRONG: Yes.

12 MR. MORE: What information --
13 you calculated then it the emissions that --
14 for example, let's look at 2014 for Attachment
15 2. You calculated the level of emissions that
16 Dynegy at that time for these eight plants
17 could have emitted had it been subject to the
18 2017 emission rates and operated at the heat
19 inputs that it, in fact, did operate at,
20 correct?

21 MR. ARMSTRONG: So I'll just read
22 again from my prefiled testimony.

23 Attachment 2 calculates --
24 this is from Page 11 of my prefiled testimony.

1 Based on those historical heat inputs,
2 Attachment 2 then calculates what levels
3 of annual SO₂ NO_x emissions would have been
4 permissible under the overall group emission
5 rate limits currently applicable to the
6 Dynegy and old Ameren groups disregarding
7 the groups' actual limit level emission
8 rates.

9 And, furthermore, skipping
10 a few sentences, to be clear, as discussed
11 further below, when the current MPS's
12 requirement to average together unit-level
13 emission rates is taken into account, the
14 current MPS units could not in any event return
15 to peak historical capacity factors and still
16 comply with the now effective MPS emission rate
17 limits.

18 So the answer to the question
19 before me about the difference between
20 Attachment 2 and Attachment 10, Attachment 2
21 does not take into account unit-level emission
22 rates. Attachment 10 does.

23 It would be very unreasonable
24 for the Board to disregard unit-level emission

1 rates given that's the exact reason Ameren,
2 Dynegy and now Vistra have been before this
3 Board four times in the past decade seeking
4 some type of modification or relaxation of
5 the Multi-Pollutant Standards.

6 MR. MORE: And according to
7 Attachment 2, it would, quote, be permissible --
8 it would have been permissible for Dynegy to
9 have emitted eight out of those ten years SO2
10 emissions greater than the proposed 34,000-ton
11 limit you're recommending to the Board, correct?

12 MR. ARMSTRONG: Yes, if one
13 disregards unit-level emission rates.

14 MR. MORE: And the same holds true
15 for NOx. Attachment 2 demonstrates that eight
16 out of the last ten years, it would have been
17 permissible for Dynegy to operate under the
18 current MPS above the NOx cap that you are
19 proposing?

20 MR. ARMSTRONG: I will take a look
21 at what that number is.

22 MR. MORE: It's 18,000 and change.
23 I'm sorry. It's seven out of the last ten
24 years.

1 MR. ARMSTRONG: Yes, again
2 disregarding unit-level emission rates.

3 MR. MORE: Disregarding actual
4 emission rates, you're saying, correct?

5 MR. ARMSTRONG: Disregarding
6 actual or any that could be reasonably
7 anticipated from the MPS fleet.

8 MR. MORE: Thank you.

9 BOARD MEMBER CARTER: No. 4, on
10 Page 19 of your testimony, you state that
11 failing to reduce mass-based emission
12 limitations when an MPS plant is retired or
13 mothballed, while doing so when a plant is
14 sold, would encourage greater pollution and
15 moreover, incentivize retirement over sale.

16 Please clarify how, in your
17 view, this approach would encourage greater
18 pollution and from what baseline emissions
19 could arise to greater levels. Also, explain
20 why the incentive you have identified is
21 inappropriate or otherwise to be avoided.

22 MR. ARMSTRONG: So letting Dynegy
23 keep caps upon retirement or mothballing of
24 a plant, but not upon sale, would encourage

1 greater pollution than would be expected
2 under both the current MPS standards and in
3 comparison to MPS amendments that did not
4 allow Dynegy to keep caps.

5 First, as I stated in
6 response to Question 2(a), Illinois EPA's
7 proposed emission limits are not as protective
8 as current MPS standards. Allowing Dynegy
9 to "keep" full emission disparity between
10 retirement or mothballing of a unit would
11 only serve to further increase the disparity
12 between the current MPS standards and Illinois
13 EPA's proposed standards.

14 Under the current MPS
15 standards, if Dynegy reduces operation of
16 one or more MPS units, the amount of pollution
17 their MPS group, as a whole, can emit, in
18 compliance with the MPS, is reduced. That
19 is because the current MPS standards are
20 emission rate limits that take into account
21 group-wide heat input.

22 If group-wide heat input is
23 reduced, then so are the emissions permitted
24 by the current MPS standards. By contrast,

1 under Illinois EPA's proposed standards, Dynegy
2 could drastically reduce heat input, but still
3 would be allowed to emit the same amount of
4 pollution.

5 Second, letting Dynegy
6 keep caps upon retirement or mothballing of
7 a plant also would encourage greater pollution
8 than under a rule that did not.

9 First recent statements
10 by Vistra's CEO have made clear that the
11 proposed MPS amendments are about shutting
12 down plants, specifically controlled plants.

13 The likely scenario that
14 Illinois EPA'S proposal is adopted is that
15 Dynegy shuts down multiple controlled units,
16 and increases utilization of uncontrolled
17 units. That scenario would not be allowed
18 under the current MPS, but it would be
19 allowed under Illinois EPA's proposed
20 amendments.

21 Letting Dynegy keep caps
22 from retired units would allow Dynegy to
23 increase utilization of those uncontrolled
24 plants even more than if the caps were

1 retired.

2 I'm sorry. Did you ask the
3 second part of your question about
4 incentivizing -- I'm sorry.

5 With respect to my statement
6 that Illinois EPA's proposed rule would
7 "incentive retirement over sale," let me
8 be clear the People agree that the Board's
9 review of Illinois EPA's proposed rule should
10 be focused on environmental impacts.

11 However, Dynegey has tried
12 to sell this rule to the Board as being about
13 savings its plants. For example, Dean Ellis
14 stated on Page 2 of his December 11, 2017,
15 prefiled testimony that Illinois EPA's
16 proposal "will help to ensure the viability
17 of the entire Illinois fleet given the uncertain
18 economic and regulatory landscape that plants
19 currently face."

20 It does not seem to me that a
21 rule that incents Dynegey to retire some of its
22 plants helps ensure the viability of Dynegey's
23 entire Illinois fleet.

24 Illinois EPA has made similar

1 contentions. It has stated that the proposal
2 is "consistent with the economic needs of the
3 state." When asked about that statement
4 during the January 17, 2018, hearing about
5 that statement, Illinois EPA testified,
6 and I quote, Dynegy -- the Dynegy plants
7 are Illinois plants. They provide economic
8 support to the area through jobs and they
9 provide power, perhaps more importantly,
10 to a large portion of the state.

11 Therefore, of course, with
12 any rulemaking, the economy of the situation
13 is also considered as well.

14 So in light of these claims
15 by Dynegy and Illinois EPA that Illinois EPA's
16 proposal supports further operation of the
17 Dynegy plants, I believe it is reasonable to
18 ask whether Illinois EPA's proposal, in fact,
19 is designed to do that.

20 As I stated at the beginning
21 of my answer, though, we agree the Board's
22 focus should be on environmental impacts.

23 HEARING OFFICER TIPSORD: Is there
24 anything further?

1 Okay. Thank you very much.
2 I think that ends the prefiled questions we
3 had for the Attorney General. We will move
4 on to the testimony for Tama Dzubay.

5 MS. DZUBAY: Dzubay.

6 HEARING OFFICER TIPSORD: Dzubay.

7 and let's -- you know what,
8 let's go ahead and take five minutes while
9 we rearrange and everybody can get up and
10 move around and go to the restroom and get
11 something else to drink.

12 (Whereupon, after a short
13 break was had, the following
14 proceedings were held
15 accordingly.)

16 HEARING OFFICER TIPSORD: Okay.
17 If we could have the witness sworn in, please?

18 THE COURT REPORTER: Please state
19 your name.

20 MS. DZUBAY: Tamara Dzubay.

21 THE COURT REPORTER: Please raise
22 your right hand.

23 Do you swear that the testimony
24 you're about to give will be the truth, the

1 whole truth, and nothing but the truth, so help
2 you God?

3 MS. DZUBAY: I do.

4 (Witness sworn.)

5 HEARING OFFICER TIPSORD: If
6 there's no objection, we will enter the
7 prefiled testimony of Tamara Dzubay as Exhibit
8 No. 42.

9 Seeing none, it's Exhibit 42.

10 (Exhibit No. 42 was
11 admitted into evidence.)

12 MR. VICKERS: Justin Vickers,
13 Environmental Law & Policy Center.

14 We filed two small corrections
15 as well in the document. I just want to make
16 sure those get reflected. They were filed the
17 day after.

18 HEARING OFFICER TIPSORD: Yes, yes.
19 And because they were filed a different day,
20 we will do the corrections as Exhibit No. 43.

21 MR. VICKERS: Okay.

22 HEARING OFFICER TIPSORD: If there's
23 no objection to the corrections being Exhibit
24 43, seeing none, they will be Exhibit 43.

1 (Exhibit No. 43 was
2 admitted into evidence.)

3 HEARING OFFICER TIPSORD: Okay.
4 Ms. Dzubay, do you want to give a summary
5 or do you want to go right to questions?

6 MS. DZUBAY: Whichever you prefer.

7 HEARING OFFICER TIPSORD: Okay.
8 We'll go ahead and go right to questions and
9 we'll start with Dynegy this time.

10 The Agency did not file any;
11 is that correct?

12 MS. DZUBAY: Correct.

13 HEARING OFFICER TIPSORD: And we
14 will enter the prefiled questions from Dynegy
15 as Exhibit 44 if there's no objection.

16 Seeing none, that is Exhibit
17 44.

18 (Exhibit No. 44 was
19 admitted into evidence.)

20 MR. More: Have you ever been found
21 to be an expert by any court of law?

22 MS. DZUBAY: No.

23 MR. MORE: Have you ever given
24 testimony before a legislative body?

1 MS. DZUBAY: No.

2 MR. MORE: Question 3, do you
3 disagree with the company's assertions that
4 the MPS can at times cause them to operate
5 certain units below their marginal operating
6 costs?

7 MS. DZUBAY: To the extent that
8 the question is asking whether it is possible
9 that operating certain units on a must drawn
10 basis can at times result in a negative gross
11 margin, I believe that this is possible.

12 However, the company has
13 not provided sufficient information in this
14 case to determine whether or not this is
15 actually happening. Gross margin, as defined
16 in Dynegy's SEC filings, is operating revenues
17 minus operating costs.

18 While the company provided
19 a chart and table showing that the Duck Creek
20 and Coffeen units were bid into MISO as
21 must-run dispatch, the chart only states that
22 the units operated at a loss on those days.
23 The chart is missing important information,
24 including the total dollar loss in each

1 presented, if one indeed exits, and a
2 demonstration that the loss is material in
3 each year presented.

4 The company has not provided
5 that additional information in this case
6 although it's been requested. Therefore,
7 the only way to determine whether the loss
8 is material in each of the years presented
9 is to look at the segments' gross margin.

10 Until year-end 2017, the
11 company reported the IPH and the MISO
12 segments separately. The Duck Creek and
13 Coffeen plants were part of what was previously
14 the IPH segment.

15 In 2014, a year the chart
16 shows that the must-run situation is not a
17 problem. The IP segments' gross margin was
18 \$201 million.

19 In 2015, the first year
20 where this must-run situation is presented
21 as a problem in the company's table and
22 chart, the IPH segments' gross margin
23 increased to \$203 million.

24 In 2016, as the must-run

1 problem increased again, the IPH segments'
2 gross margin also increased to \$304 million.

3 In 2017, as the must-run
4 problem increased again, the segments were
5 combined and reported a total gross margin
6 of \$429 million. What this means is that
7 while the chart represents that the situation
8 of must-run has exacerbated each year since
9 2014 the profitability metric of gross margin
10 has actually increased. Therefore, I would
11 conclude that the must-run situation presented
12 in the chart and table is immaterial.

13 Additionally, the combined
14 Vistra Dynegy company expects to achieve savings
15 from the realization of economies of sale and
16 cost savings, which can further increase the
17 gross margin profitability metric.

18 MR. MORE: Do I understand your
19 testimony to be that you do not disagree that
20 Dynegy has presented evidence demonstrating
21 that from time to time the must-run situation
22 has resulted in units receiving or being
23 called upon below their marginal operating
24 cost?

1 MS. DZUBAY: I'm saying that the
2 information provided is insufficient.

3 MR. MORE: No. You characterize
4 it as it being not material to loss.

5 My question to you is
6 whether -- I'm not asking you to characterize
7 the loss as material or not. Do you have any
8 basis to disagree with the company's assertion
9 that a loss has occurred?

10 MS. DZUBAY: I have not seen a
11 dollar value.

12 MR. MORE: No further questions.

13 HEARING OFFICER TIPSORD: Okay.
14 With that, we'll move to the prefiled questions
15 from the Pollution Control Board. We will
16 admit those as Exhibit 45 if there's no
17 objection.

18 Seeing none, those are Exhibit
19 45.

20 (Exhibit No. 45 was
21 admitted into evidence.)

22 HEARING OFFICER TIPSORD: Okay.
23 Member Santos?

24 BOARD MEMBER SANTOS: Thank you.

1 Good morning, everyone. My name is Cynthia,
2 C-Y-N-T-H-I-A, Santos, S-A-N-T-O-S.

3 Question No. 1, aside from
4 attachments to your testimony that outside
5 parties prepared, example, parts of Dynegy
6 financial statements, who prepared each
7 attachment?

8 MS. DZUBAY: I prepared each
9 attachment.

10 BOARD MEMBER SANTOS: Okay. Did
11 you review all of the attachments to your
12 testimony in their entirety?

13 MS. DZUBAY: Yes.

14 BOARD MEMBER SANTOS: Question
15 No. 2, on Page 10 of your testimony, you
16 state that, "While the cash flow position of
17 the MISO segment is an important financial
18 indicator," that segment is "not cash flow
19 negative."

20 What relevance should the
21 Board place on whether or not the regulated
22 entity is cash flow negative or positive?

23 Further, please cite the
24 relevant sections of the Act.

1 MS. DZUBAY: I am not an attorney
2 and do not represent myself as such in this
3 rulemaking.

4 However, I believe that the
5 free cash flow position of the regulated
6 entity is highly relevant to this rulemaking,
7 415 ILCS 5/27 states that in deciding on a
8 rule, the Board shall take into account the
9 economic reasonableness of measuring or reducing
10 the particular type of pollution.

11 IEPA has also repeatedly
12 stated that the primary reason for proposing
13 this rulemaking was due to Dynegy's request
14 for additional operational flexibility and
15 economic stability.

16 This need for operational
17 flexibility and economic stability has boiled
18 down to discussions of financial loss in this
19 rulemaking.

20 IEPA did not verify the
21 loss, the extent of the loss and whether it
22 was material to merit a need for additional
23 operational flexibility and economic stability.

24 When Dynegy has been asked

1 to provide an analysis for evidence or
2 calculation validation, Dynegy has repeatedly
3 stated that the Illinois fleet is cash flow
4 negative and pointed to its SEC filings.

5 It is more this reason that
6 the cash flow position of this segment is
7 highly relevant to this rulemaking. My
8 testimony provided an analysis based on
9 information provided in Dynegy's SEC filings
10 that shows that the MISO segment is cash flow
11 positive.

12 Specifically, the segment
13 that represents the plants at issue has
14 sufficient cash on hand of more than
15 \$100 million after investing in necessary
16 expenses needed to run and grow its business
17 operations.

18 The current MPS, as structured,
19 is economy reasonable as demonstrated either
20 positive free cash flow position of the MISO
21 segment, which represents the plants at issue
22 in this rulemaking.

23 The MISO segment, the free
24 cash flow position, is the most important

1 indicator of financial and operational health
2 and, therefore, the best way to determine
3 economic reasonableness. The company itself
4 says this is how it determines the economic
5 health of its operations.

6 BOARD MEMBER SANTOS: Thank you.

7 HEARING OFFICER TIPSORD: Any
8 further questions?

9 Thank you very much.

10 With that, we are to the
11 questions that Dynegy filed for the IEPA. Is
12 the IEPA willing to provide answers to those
13 questions today or do you want to do that as
14 a part of final comment?

15 MS. ROCCAFORTE: Yes. The Agency
16 is prepared to answer questions today.

17 HEARING OFFICER TIPSORD: Okay.
18 Then who do we need to swear in and let's get
19 them sworn in.

20 Okay. It will be Rory Davis
21 and David Bloomberg, correct?

22 MS. ROCCAFORTE: Yes.

23 MR. DAVIS: Yes.

24 MR. BLOOMBERG: Correct.

1 THE COURT REPORTER: Will you both
2 raise your right hands?

3 Do you swear that the testimony
4 you're about to give will be the truth, the
5 whole truth, and nothing but the truth, so help
6 you God?

7 MR. DAVIS: Yes, ma'am.

8 MR. BLOOMBERG: Yes.

9 (Witnesses sworn.)

10 HEARING OFFICER TIPSORD: Then we
11 will enter the prefiled questions for the
12 Illinois Environmental Protection Agency filed
13 by Dynegy as Exhibit No. 46 if there's no
14 objection.

15 Seeing none, this will be
16 Exhibit 46.

17 (Exhibit No. 46 was
18 admitted into evidence.)

19 MR. MORE: Question 1, please
20 describe the Illinois Environmental Protection
21 Agency's experience with Clean Air Act Section
22 110(1) "anti-backsliding" analyses.

23 MR. BLOOMBERG: This is David
24 Bloomberg, D-A-V-I-D, B-L-O-O-M-B-E-R-G.

1 The agency, specifically Air
2 Quality Planning Section of which I am the
3 manager, has to complete Section 110(1)
4 anti-backsliding analyses every time we submit
5 a SIP provision, such as a rule change, a
6 variance, or anything of that nature.

7 As such, we have a lot
8 of experience in completing such analysis
9 discussing them with US EPA, responding to
10 US EPA questions about them, et cetera.

11 MR. MORE: I think you've answered
12 1(a). Let's go to 1(b). What method of
13 analysis has the Agency used when performing
14 the Section 110(1) anti-backsliding analyses
15 you just mentioned?

16 MR. BLOOMBERG: I'm not exactly
17 sure what you mean by asking what method,
18 but I actually describe -- I had planned to
19 describe something in response to 1(a). So
20 maybe it would be helpful if I actually answered
21 1(a).

22 MR. MORE: Okay. Can you provide
23 recent examples of Section 110(1) analysis?

24 MR. BLOOMBERG: Yes. There's a

1 rulemaking we've been working on recently that
2 required perhaps the largest expenditure ever
3 of Agency time and effort on a Section 110(1)
4 analysis.

5 In order to demonstrate to
6 US EPA that this rule can be removed from
7 the SIP, and when I say "this rule," I don't
8 literally mean this rule that we're in now,
9 but I mean the rule I'm talking about, the
10 Agency was not able to rely on simple logic
11 or use of actual emissions even though
12 looking at what is happening in reality
13 in that particular rule would have easily
14 shown that the rule is not accomplishing
15 its original goals and emissions had
16 significantly decreased to the point where
17 the rule is no longer necessary or working
18 to further reduce such emissions.

19 US EPA staff acknowledged
20 that to me in discussions, but said the
21 Agency still needed to provide 110(1) analysis
22 showing the allowable emissions of every unit
23 from every source covered by that rule, which
24 amounts to 2,700 units in that particular rule.

1 Then comparing those allowable
2 emissions to the overall allowable emissions
3 under that rule as it exists now to demonstrate
4 that allowable emissions will at least remain
5 actual even without a rule in question.

6 So without going into even
7 more details than that, it took over two years
8 to complete the 110(1) analysis to the level
9 US EPA required. We were finally able to move
10 forward only after ensuring 110(1) analysis met
11 US EPA's requirements and demonstrated that the
12 allowable emissions would not be negatively
13 impacted regarding that rule.

14 So following up to B, the
15 Agency uses a comparison of allowable emissions
16 prior to a SIP change and allowable emissions
17 after the proposed change. So as I just
18 described, we were mandated to use a comparison
19 of allowables under that particular rule even
20 though a look at actual emissions really told
21 the story of why that rule was no longer
22 necessary.

23 It simply didn't matter to
24 the overall 110(1) demonstration. We had to

1 compare allowable emissions because that is
2 how US EPA determines whether a state has
3 rules that are as protective of a NAAQS as
4 prior rules.

5 MR. MORE: Can we go off the record
6 for a minute?

7 HEARING OFFICER TIPSORD: Yes. And
8 then Mr. Armstrong has a follow-up.

9 MR. MORE: I was actually going to
10 suggest maybe we allow Mr. Armstrong to sit
11 where the mic is since he -- but I defer to --

12 HEARING OFFICER TIPSORD: Well, I
13 was going to say we could actually bring a
14 podium up and move one of these mics here. We
15 can bring a podium back up.

16 Off the record.

17 (Whereupon, a discussion
18 was had off the record.)

19 HEARING OFFICER TIPSORD: All right.
20 Mr. Armstrong?

21 MR. ARMSTRONG: Could you just --
22 Mr. Bloomberg, Andrew Armstrong for the AG's
23 office.

24 Mr. Bloomberg can you state

1 which rulings you're referring to just now?

2 MR. BLOOMBERG: Yes. I'm talking
3 about the Emissions Reduction Market System
4 rule sunset, which is currently before the
5 Board in another proceeding.

6 MR. MORE: Question 2, has the
7 Agency ever used actual emissions in connection
8 with Section 110(1) "anti-backsliding" analyses?

9 MR. BLOOMBERG: In my over 26 years
10 in the Bureau of Air, I cannot recall any such
11 situations in which the Agency has been able
12 to use only the actual emissions for section
13 110(1) analysis.

14 When I asked Mr. Davis,
15 and other staff, I received the same answer
16 because believe me, I've often wished we
17 could just use actual emissions. It would
18 make a lot of these analyses much easier.

19 HEARING OFFICER TIPSORD: Okay.
20 Mr. Armstrong?

21 MR. ARMSTRONG: For Section 110(1)
22 analyses, does IEPA ever employ the US EPA MOVES
23 software -- MOVES software?

24 MR. BLOOMBERG: MOVES software?

1 MR. ARMSTRONG: Yes.

2 MR. BLOOMBERG: We use MOVES. I'm
3 sorry. I don't remember what the acronym stands
4 for. Do you? I was going to just inform the
5 Board.

6 MR. ARMSTRONG: I wish I could say
7 I did.

8 MR. BLOOMBERG: Okay. Well, it's
9 a mobile modeling for modeling the type of
10 emissions that come off of cars, trucks, that
11 sort of thing. We do use it for -- well, for
12 that, which can be an inventory and can be other
13 types of SIPS. For 110(1) purposes, I can't
14 think of anything. It may be involved in the
15 background somehow when you're looking at, you
16 know, projections, but off the top of my head, I
17 really can't say for sure.

18 MR. ARMSTRONG: So what is the
19 MOVES software? What is exactly is it modeling?

20 MR. BLOOMBERG: It models emissions
21 down to, I believe, the individual road segment
22 level per type of vehicle. So it's, like,
23 you know, like, automobiles, pickup trucks,
24 motorcycles, and then you can model it all

1 the way down to see how much emissions are
2 coming out of each county or township or
3 even city.

4 MR. ARMSTRONG: So when you run
5 it for a particular year for a particular
6 area are you trying to model what the actual
7 emissions are?

8 MR. BLOOMBERG: The attempt is
9 to model what the actual emissions are.
10 There are, of course, many ways as to how
11 accurate it is.

12 MR. ARMSTRONG: So it's not a
13 model of projected emissions?

14 MR. BLOOMBERG: Well, it depends
15 on --

16 MR. ARMSTRONG: I'm sorry.
17 Let me correct myself. I'm getting confused.

18 It's not a model of allowable
19 emissions, it's a model of actual emissions?

20 MR. BLOOMBERG: To my knowledge,
21 there are no allowable limits on vehicles in
22 Illinois. So no, it's attempting to model
23 actual or projected when it's looking ahead
24 to future years.

1 MR. ARMSTRONG: Thank you.

2 MR. MORE: Question 3, does the
3 Agency agree with the Illinois Attorney
4 General's reliance on actual instead of
5 allowable emissions for evaluating the
6 environmental impacts of IEPA's proposal
7 and analysis of the proposal under Section
8 110(1), as set forth in the AGO's April 3,
9 2018, prefiled testimony?

10 MR. BLOOMBERG: No.

11 MR. MORE: Why not?

12 MR. BLOOMBERG: It doesn't make
13 any sense to restrict a company in the manner
14 they have suggested simply because recent
15 actual emissions have not been as been as
16 they could have been.

17 It is problematic to set
18 emission limitations based upon historical
19 actual emissions because actual emissions
20 fluctuate year-to-year based on a variety
21 of factors as has been demonstrated throughout
22 this rulemaking, including the AGO's own
23 testimony.

24 Further, as we've discussed

1 many times here now, US EPA requires an
2 allowable-to-allowable comparison from 110(l)
3 demonstrations despite what the AGO has
4 claimed in its testimony.

5 HEARING OFFICER TIPSORD: Okay.
6 Mr. Armstrong?

7 MR. ARMSTRONG: I have a follow-up
8 question that's focused where were you on the
9 first part of this question, which was does
10 the Agency agree with the Illinois Attorney
11 General's reliance on actual instead of
12 allowable emissions for evaluating
13 environmental impacts of IEPA's proposals?

14 Are you familiar with the
15 Agency's analysis of the environmental
16 impacts of the proposed MPS revisions in
17 PCB R09-10?

18 MR. BLOOMBERG: Not off the top
19 of my head.

20 MR. ARMSTRONG: Okay. Is anybody
21 at the next table familiar with the Agency's
22 analysis of environmental impacts of the
23 proposed amendments in R09-10?

24 So is it safe, then, to assume

1 that the Agency did not consider its earlier
2 analysis of environmental impacts in R09-10 in
3 formulating its current proposed amendment?

4 MR. MORE: Mr. Armstrong, do you
5 know if that was a variance proceeding?

6 MR. ARMSTRONG: R09-10, that's a
7 rulemaking. The prefix R denotes rulemaking.
8 Specifically, in its proposal by Ameren to
9 amend the MPS to get more time to come into
10 compliance with S02 emission limits per the
11 old Ameren group.

12 MR. BLOOMBERG: We cannot recall
13 the specifics of what was in R09-10. We did
14 a lot of different analyses. We'll have to
15 go back and look to see which of them may or
16 may not overlap and we will respond to those
17 questions in post-hearing comments.

18 MR. ARMSTRONG: No further questions
19 on that point.

20 MR. MORE: Let's move to Question 4.

21 Has the Agency discussed with
22 the United States Environmental Protection
23 Agency the assertion on Page 5 of the AGO's
24 April 3, 2018, prefiled testimony that Section

1 110(1) "anti-backsliding" analysis "requires
2 consideration of 'actual,' not 'allowable'
3 emissions"?

4 MR. BLOOMBERG: Yes, we did.

5 MR. MORE: And what did the US EPA
6 say?

7 MR. BLOOMBERG: We discussed it
8 with Doug Aburano and Susmita Dubey of the
9 US EPA. Mr. Aburano, whose name has been
10 mentioned previously in these proceedings, is
11 the Section Chief of the Attainment Planning
12 and Maintenance Section within US EPA Region 5
13 Air and Radiation Division in the air programs
14 branch.

15 HEARING OFFICER TIPSORD: Could you
16 spell his name, please

17 MR. BLOOMBERG: Aburano,
18 A-B-U-R-A-N-O.

19 HEARING OFFICER TIPSORD: Thank
20 you.

21 MR. BLOOMBERG: And Ms. Dubey, and
22 that's spelled Susmita Dubey, S-U-S-M-I-T-A,
23 D-U-B-E-Y, is an attorney advisor in the Office
24 of General Counsel within the Air & Radiation

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1 Law Offices and is considered to be the Section
2 110(1) expert at US EPA.

3 I followed up that phone
4 discussion with an email to both Mr. Aburano
5 and Ms. Dubey that contained several questions
6 and the citations the AGO gave to cases he
7 claims support his argument.

8 Ms. Roccaforte has their
9 response, which I believe she's going to offer
10 up now and we move to have it entered as an
11 exhibit.

12 I will also read portions
13 of the questions and answers now.

14 HEARING OFFICER TIPSORD: Okay.
15 All right. What I have been handed is two
16 sheets of paper and it starts with Susmita
17 and Doug and it ends in red ink on a third
18 page -- one, two, three -- third page with
19 the last sentence "will not result in
20 interference with attainment or maintenance
21 of the NAAQS, N-A-A-Q-S, in the future."
22 I'm giving this detail because there are no
23 dates on this. So that's the best way I can
24 identify it for the record.

1 If there's no objection, we
2 will admit this as Exhibit 47.

3 Mr. Sylvester?

4 MR. SYLVESTER: Is this being
5 admitted as substantive evidence? I mean,
6 we don't even know if they existed -- if
7 they were statements that were taken down
8 by the Illinois EPA. I don't know about the
9 veracity of the document. No offense to the
10 Illinois EPA. I mean, I don't know whether
11 it was taken down correctly or whatnot. I
12 mean, you know, this is somebody's handiwork
13 about a conversation that they had somewhere
14 else. I definitely object. I don't mind them
15 testifying about it, but to have -- this, like,
16 sworn testimony or something. We certainly
17 object.

18 MR. BLOOMBERG: Let me clarify.
19 This was sent as a PDF attachment to an
20 email. This is not somebody else writing
21 down anything else. This is the response
22 from US EPA.

23 We can find the actual email
24 that this was attached to and provide that

1 as well. I don't know if we have that with
2 us.

3 HEARING OFFICER TIPSORD: I mean,
4 I -- I understand your objection and the fact
5 that I noted that there was no date on this
6 indicates that --- I mean, I think the Board
7 can take this for what it is. It's an example
8 of what Mr. Bloomberg is going to continue to
9 testify to.

10 If the Agency can show us
11 that this is, in fact, a direct email from
12 US EPA, then perhaps we can look at it,
13 but at this point, it's being admitted for
14 what Mr. Bloomberg and that's -- I think
15 the Board can take that for what it is.

16 BOARD MEMBER SANTOS: If you
17 could include a date.

18 MR. BLOOMBERG: We will print out
19 the email, which has the correspondence -- the
20 response from US EPA and that will have the
21 date on it as well.

22 HEARING OFFICER TIPSORD: Okay.
23 All right. With that, this is admitted as
24 Exhibit 47.

1 (Exhibit No. 47 was
2 admitted into evidence.)

3 MR. BLOOMBERG: Okay. As I
4 mentioned, I will read portions of the questions
5 and answers, a large portion. We ask US EPA
6 if they agree with the statement, "The United
7 States Environmental Protection Agency 'US EPA'
8 has consistently taken the position that an
9 anti-backsliding analysis under Section 110(1)
10 requires consideration of a proposed SIP
11 amendment impact on 'actual,' not allowable
12 emissions." This was a direct quote from
13 the AGO's prefiled testimony. The response
14 was the US EPA does not agree with that
15 statement.

16 We asked if this statement
17 is incorrect, can you explain how it is
18 incorrect. US EPA replied the statement is
19 incorrect in that US EPA typically requires
20 comparison of allowable emissions under the
21 currently approved state implementation plan,
22 or SIP, if the allowable emissions under the
23 SIP provision under consideration for approval.

24 We asked what does US EPA

1 normally require for a 110(1) demonstration
2 in terms of comparison of emissions?

3 US EPA answered, normally
4 for a 110(1) demonstration, a comparison
5 of allowable emissions under the currently
6 approved a/k/a existing SIP to the allowable
7 emissions under the SIP provision being
8 considered is made.

9 If the allowable emissions
10 under the reviewed SIP are no greater than
11 the allowable emissions under the existing
12 SIP, i.e., the SIP is not being made less
13 stringent, 110(1) is satisfied.

14 If the allowable emissions
15 under the revised SIP are higher than the
16 allowable emissions under the existing SIP,
17 i.e., the SIP is being relaxed, an additional
18 demonstration would be needed to show that
19 attainment, maintenance or progress towards
20 meeting air quality standards are not
21 interfered with before the SIP provision
22 could be approved.

23 We asked is this an
24 allowable-to-allowable comparison required

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1 for the Illinois EPA's 110(1) demonstration
2 for the amendments being proposed to the MPS
3 rule?

4 US EPA responded, yes, in
5 general, an allowable-to-allowable comparison
6 is required for every SIP revision and is the
7 basis for demonstrating that 110(1) is satisfied
8 or whether a more in-depth 110(1) demonstration
9 is needed as is the case of relaxation of SIPS.
10 See response to Question 3 above.

11 We asked, in your
12 experience, how often has US EPA required
13 an actuals-to-actuals comparison instead
14 of an allowables-to-allowables comparison?

15 US EPA replied, never.
16 An actuals-to-actuals comparison is impossible
17 because actuals can only be measured after
18 they have happened. You cannot predict what
19 the future actual from a source will be.
20 The best you can do is place an upper limit,
21 i.e., an allowable limit that sources are
22 required to emit below.

23 SIP approved limits are
24 allowable limits that sources, when in

1 compliance, operate up to, but typically
2 operate well below.

3 Additionally, we sent US
4 EPA quotes from the AGO's prefiled testimony
5 containing citation cases the AGO claims
6 supports its position. US EPA looked at
7 those cases and replied.

8 EPA disagrees the citations
9 in the highlighted language demonstrates that
10 EPA has "long taken the position" that a
11 comparison of actual emissions than
12 appropriate or Section 110(1) analysis.
13 The federal register notice quoted in
14 the Kentucky Resources Counsel case was
15 part of an explanation that the use of
16 substitute control measures can demonstrate
17 noninterference under Section 110(1) can
18 be done prior to a complete attainment
19 demonstration provided the status quote air
20 quality is preserved.

21 Thus, reference to actual
22 emissions was not in context of actuals versus
23 allowables, but rather, a reference to the
24 status of the air quality.

1 Further, the 2014 Sierra
2 Club case is not relevant to a Section 110(1)
3 analysis because it addressed a different
4 evaluation. This case involved a challenged
5 EPA's re-designation of certain areas and
6 the Court was addressing EPA's assessment
7 of whether improvement in air quality was
8 due to permanent and enforceable emissions
9 reductions for purposes of re-designation,
10 not as part of a determination under Section
11 110(1) as the SIP provision will not result in
12 interference of the retainment or maintenance
13 of the NAAQS in the future.

14 So in summary, US EPA
15 completely disagreed with the AGO's claims
16 and supported what the Illinois EPA has been
17 saying through this process.

18 HEARING OFFICER TIPSORD: To be
19 clear, Mr. Bloomberg, just so that I'm clear,
20 what you just said is essentially a public
21 comment from the US EPA.

22 MR. BLOOMBERG: Okay. They knew
23 that we were going to be submitting this. They
24 were informed of that.

1 HEARING OFFICER TIPSORD: Okay. So
2 but to be clear, they are not here testifying to
3 that.

4 MR. BLOOMBERG: Correct.

5 HEARING OFFICER TIPSORD: You are
6 merely reading their comment to you that you are
7 now putting into the record as their public
8 comment?

9 MR. BLOOMBERG: And I believe -- yes.
10 Ms. Roccaforte has gone to print out the
11 email and bring it to show in case anyone
12 still doubts that this was, in fact, an
13 email from US EPA responding to us.

14 HEARING OFFICER TIPSORD: It's
15 not a matter of doubting, Mr. Bloomberg.
16 Let's be clear. It's a matter you are sitting
17 here testifying and reading something that is
18 someone else's product offering a legal opinion.
19 You're not a lawyer, if I remember correctly.

20 MR. BLOOMBERG: No.

21 HEARING OFFICER TIPSORD: So you're
22 offering a legal opinion, again, that is someone
23 else's. I just want to be clear that you are
24 not testifying to the veracity. You are merely

1 testifying that this is what they told you.

2 MR. BLOOMBERG: Yes. I -- yes.

3 HEARING OFFICER TIPSORD: Thank you.

4 Mr. Sylvester?

5 MR. SYLVESTER: One clarification I
6 would ask is that rather than say that all the
7 comments are US EPA's --

8 HEARING OFFICER TIPSORD: We can't
9 hear you.

10 MR. SYLVESTER: Sorry. No mics in
11 the peanut gallery.

12 What I would ask is that
13 instead of it saying that it's a public
14 comment from the US EPA, it's a public comment
15 of two employees from the US EPA, to be more
16 specific and accurate.

17 Whether these folks have the
18 authority to speak for the entire nation is
19 questionable at this point.

20 HEARING OFFICER TIPSORD: And I
21 think that's -- I think the point that I'm
22 trying to make is that this is an exhibit
23 that is not, in fact, testimony and that he
24 was merely reading that. That's why I

1 suggested it was merely a public comment.

2 I think that's a valid point. It's the
3 opinion of two US EPA employees. Thank you.

4 MR. BLOOMBERG: Who happen to
5 be -- one of them happens to be the US EPA
6 expert on 110(1).

7 MR. SYLVESTER: So you say.

8 MR. BLOOMBERG: So she said.

9 MS. PALUMBO: We object to the -- we
10 just object to the characterization that
11 Illinois EPA's veracity is at question
12 here. We're just objecting to that.

13 HEARING OFFICER TIPSORD: I
14 don't think that's the question. I think
15 the point being made here is that you have
16 someone testifying who is reading someone
17 else's work. It would be no different than
18 if you were reading an article. It's not
19 his position that he's testifying to. He's
20 reading someone else's position.

21 That's all we're making
22 clear is that Mr. Bloomberg is not offering
23 a legal opinion. He's merely repeating a
24 legal opinion that was given to him by someone

1 at US EPA. We just want to be clear that
2 that's the case, that he's not testifying to
3 that legal opinion because, frankly, he
4 can't do that because he's not a lawyer.

5 But just -- I don't think
6 anyone is questioning the veracity. We
7 just want to be sure that we have all of our
8 facts correct.

9 MR. MORE: I would question the
10 characterization of the statements in here
11 are legal opinions. They are a regulator
12 interpreting -- explaining the regulator's
13 application of a law in its everyday course.
14 So I -- I don't think it's a legal
15 interpretation.

16 I have a question for
17 Mr. Bloomberg. Based on your 28 years with
18 the Illinois EPA, are the statements in red
19 consistent with how you have applied the
20 Clean Air Act, Section 110(1)?

21 MR. BLOOMBERG: Quick correction,
22 over 26 years.

23 MR. MORE: Sorry.

24 MR. BLOOMBERG: Yes, yes, it is.

1 I think I answered that earlier talking about
2 allowables-to-allowables. So nothing in what
3 US EPA said to us came as a surprise at all.

4 It came to what we knew,
5 what we operate under every day and, yes,
6 so it was not a surprise at all.

7 MR. MORE: And when performing
8 Section 110(1) analyses, have you worked with
9 these two individuals from US EPA in the past?

10 MR. BLOOMBERG: I have worked
11 with Mr. Aburano. I never worked with
12 Ms. Dubey directly before although as the
13 110(1) expert, it was my understanding that
14 the regional people, such as those who worked
15 with Mr. Aburano, will frequently run things
16 by her or one of her colleagues to ensure
17 that it meets the requirements.

18 There is a path that any
19 approval has to follow and certainly the
20 office of general counsel at US EPA is one
21 important step within that path.

22 HEARING OFFICER TIPSORD: Okay.
23 Mr. Armstrong?

24 MR. ARMSTRONG: I have a follow-up

1 question. I don't know if you have it handy,
2 but in the April prefiled testimony, Page 5.

3 MR. BLOOMBERG: Yours?

4 MR. ARMSTRONG: Yes.

5 MR. BLOOMBERG: I have it now.

6 MR. ARMSTRONG: On Page 5, the
7 second full paragraph, do you agree with my
8 statement that the Board's decision of whether
9 to move forward with Illinois EPA's proposed
10 amendments is not in any case constrained to an
11 analysis under Section 110(1)?

12 MR. BLOOMBERG: The Board's decision
13 is not constrained to it, but if we expect US
14 EPA to approve this as a SIP provision, which
15 at least the Agency expects to happen, then
16 any rulemaking must conform to the requirements
17 that the US EPA has including a 110(1) analysis.
18 Do you --

19 HEARING OFFICER TIPSORD: Actually --
20 go ahead. I'm sorry. Go ahead, Mr. Armstrong.

21 MR. ARMSTRONG: Do you agree that
22 when the Multi-Pollutant Standards were
23 originally adopted, they were not part of
24 any Illinois SIP?

1 MR. BLOOMBERG: Well, they can't
2 be part of a SIP until after they're adopted.

3 MR. ARMSTRONG: When was the first
4 time the MPS standards were added to any
5 Illinois SIP?

6 MR. BLOOMBERG: I don't have the
7 date handy, but they were submitted as part
8 of our regional SIP.

9 MR. ARMSTRONG: Thank you.

10 HEARING OFFICER TIPSORD: Okay.
11 Before we go any further and get too far away
12 from this, Ms. Roccaforte, you brought in
13 copies of the email?

14 MS. ROCCAFORTE: Yes.

15 HEARING OFFICER TIPSORD: All right.
16 Ms. Roccaforte has just handed me an email from
17 Douglas Aburano to David Bloomberg cc'ing Dana
18 Vetterhoffer and the date is Thursday, April 12,
19 2018. This will be added as Exhibit 47, if
20 there's no objection.

21 Okay. Seeing none, it's added
22 as Exhibit 47.

23 (Exhibit No. 47 was
24 admitted into evidence.)

1 HEARING OFFICER TIPSORD: Okay.

2 Mr. Sylvester?

3 MR. SYLVESTER: I have just one
4 question. I just want to confirm this is the
5 entirety of the email exchange.

6 MR. BLOOMBERG: Yes.

7 MR. SYLVESTER: Thank you. No
8 objection.

9 HEARING OFFICER TIPSORD: Okay.

10 MR. MORE: I have a follow-up
11 question.

12 Just to clarify for the record,
13 the email -- the first document provided is
14 an attachment to the email that was provided
15 today. They should be viewed as one document,
16 correct? Is that Illinois EPA's position?

17 MR. BLOOMBERG: Yes.

18 MR. MORE: Can a Section 110(1)
19 analysis assist in evaluating whether or not
20 a proposal has a net environmental benefit?

21 MR. BLOOMBERG: Can you repeat
22 that, please? I'm sorry.

23 MR. MORE: Can a Section 110(1)
24 anti-backsliding analysis assist in evaluating

1 whether a proposal has a net environmental
2 benefit?

3 MR. BLOOMBERG: That's kind of a
4 weirdly worded question. I'm just trying to
5 parse it in my mind here.

6 I would say that the point of
7 doing a Section 110(1) analysis is to determine
8 that there is at least a net environmental
9 equivalency and potentially a net environmental
10 benefit.

11 MR. MORE: So it can assist in
12 evaluating whether or not a proposal is as
13 protective as the original?

14 MR. BLOOMBERG: Yes.

15 MR. MORE: And if the original
16 was deemed approvable by the Board, then it
17 would hold true then that the proposal
18 should be approvable as well, in your opinion?

19 MR. BLOOMBERG: In my opinion,
20 yes.

21 MR. MORE: Okay. Let's go to
22 Question 5.

23 Has the Attorney General
24 presented any evidence demonstrating to the

1 IEPA that the proposed annual emission caps
2 of 49,000 tons for SO2 and 25,000 tons NOx
3 are not approvable by US EPA?

4 MR. BLOOMBERG: No, because there
5 is no evidence they could present as US EPA
6 has indicated to me those proposed caps are
7 approvable because the proposals are at least
8 as protective as the current MPS.

9 MR. MORE: Question 6 --

10 HEARING OFFICER TIPSORD: Oh,
11 excuse me. There is a follow-up. Katie?

12 CHAIRMAN PAPADIMITRIU: Thank you.

13 Mr. Bloomberg, I have some
14 follow-up questions, if that's okay.

15 MR. BLOOMBERG: Sure. I have
16 some questions if that's okay.

17 MR. BLOOMBERG: Okay.

18 CHAIRMAN PAPADIMITRIU: So in
19 this hearing, we've had a lot of numbers put
20 out for a possible cap. So we began with
21 55,000. We're at 49,000. The Attorney
22 General's Office has proposed a 34,094 ton
23 cap on SO2.

24 In the Agency's responses

1 to prefiled questions for the Peoria hearing,
2 which is Exhibit 6, in Table 8, Attachment 7
3 to that exhibit, we talked about -- you talked
4 about -- well, the table protects total S02
5 emissions from the MPS plants under the existing
6 MPS as 44,900 tons per year; is that correct?

7 MR. BLOOMBERG: We're looking at
8 it.

9 Can you repeat that again,
10 please? I'm sorry.

11 CHAIRMAN PAPADIMITRIU: So my
12 question is regarding Exhibit 6, right? The
13 table projects S02 emissions from the MPS
14 plants under the existing MPS 44,902 tons
15 per year.

16 MR. BLOOMBERG: I'm sorry. We are
17 still weeding through this.

18 CHAIRMAN PAPADIMITRIU: No worries.

19 MR. BLOOMBERG: Which attachment?
20 I'm sorry.

21 CHAIRMAN PAPADIMITRIU: Attachment 7
22 and it's table 8.

23 MR. BLOOMBERG: Okay. All right.
24 Now that we're there, I apologize.

1 CHAIRMAN PAPADIMITRIU: No worries.

2 MR. BLOOMBERG: Can you reask the
3 question again?

4 CHAIRMAN PAPADIMITRIU: So the
5 first question is validating the number. So
6 the table projects total S02 emissions from
7 the MPS plants under the existing MPS as
8 44,900 tons per year?

9 MR. BLOOMBERG: 44,920, yes.

10 CHAIRMAN PAPADIMITRIU: That's
11 correct?

12 MR. BLOOMBERG: That is the number --
13 the projected emissions under the current
14 MPS rate for the currently operated plants.

15 CHAIRMAN PAPADIMITRIU: Okay.
16 And the original -- so that's the corrected
17 or updated Table 8 number; is that correct?

18 MR. BLOOMBERG: Yes.

19 CHAIRMAN PAPADIMITRIU: The original
20 Table 8 projected S02 emissions from the MPS
21 plant is 55,953 tons annually, correct?

22 MR. BLOOMBERG: Yes.

23 CHAIRMAN PAPADIMITRIU: Can you
24 clarify why the updated projection is lower?

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1 MR. DAVIS: The updated projection
2 was in response to a request from Mr. Rao to
3 remove the units that were previously in the
4 regional haze SIP, which was part of our
5 Technical Support Document.

6 As I stated before, the
7 Technical Support Document showed the estimated
8 emission reductions from 2002 base year because
9 that's where the regional haze plan or the
10 regional haze rule -- the guidance said to
11 use those numbers and I have more in response
12 to, I believe, Question 7, but those numbers
13 are -- the numbers in the TSD are from the
14 entire heat input from 2002 and the update in
15 Table 8 was just removing units that weren't
16 in operation anymore.

17 For the purposes of the
18 regional haze, as I think I got to in
19 Edwardsville, the regional haze rule seeks
20 to reduce visibility impacts in Class 1 areas.
21 Illinois has no Class 1 areas. So all of
22 these areas would be outside of Illinois.

23 So the emissions from the
24 plants -- it doesn't really matter which

1 plant because they are a certain distance
2 away. It doesn't really matter which plant
3 the emissions come from. So in the TSD,
4 the emissions that we used, we saw it as a
5 commitment to get that level of emission
6 reductions from the entire fleet. So
7 Mr. Rao asked us to remove certain units
8 and we did.

9 CHAIRMAN PAPADIMITRIU: What's
10 the Agency's position on using updated
11 regionally haze projection of 44,900 tons
12 as mass emissions cap for the MPS plants?

13 MR. BLOOMBERG: We do not see
14 a reason to further reduce the cap from
15 the 49,000 that we indicated we support
16 at the last hearing.

17 CHAIRMAN PAPADIMITRIU: Can you
18 amplify that?

19 MR. BLOOMBERG: I'm not sure what
20 you mean.

21 CHAIRMAN PAPADIMITRIU: So you
22 said that you don't see any reason, correct?

23 MR. BLOOMBERG: Yes.

24 CHAIRMAN PAPADIMITRIU: Could you

1 explain whys and how comes you don't see any
2 reason?

3 MR. BLOOMBERG: For one thing --
4 well, the main thing is it is not necessary
5 to further reduce it for purposes of the
6 regional haze SIP. The -- in -- I'd say
7 that's the main reason is it's not necessary
8 to further do it. There is -- we have not
9 seen any information that shows it is
10 necessary for any other reason.

11 I know you mentioned the most
12 recent number from the Attorney General's
13 Office and Mr. Davis will be addressing
14 that number in Question 7, as he mentioned,
15 but as far as this number, the Agency, like I
16 said, doesn't see any reason to go any lower
17 and again, this particular number, this
18 44,920 is based just on 2002 heat inputs as
19 opposed to looking at, you know, long range
20 heat inputs.

21 CHAIRMAN PAPADIMITRIU: Mr. Santos?

22 BOARD MEMBER SANTOS: Okay. I
23 just want to be a little clearer on your answer
24 to Member Papadimitriu's questions.

1 So when you say you don't see
2 a reason to lower it, are you saying that
3 there's no environmental benefit in lowering
4 it?

5 MR. BLOOMBERG: There is no -- I
6 mean...

7 BOARD MEMBER SANTOS: I mean,
8 because in my mind, and it's just in my mind,
9 if you lower the level of emissions ceiling,
10 there's -- to me, it would seem like there
11 would be some environmental benefit from
12 doing that because you're emitting less into
13 the environment. Those are very simple words
14 and I know --

15 MR. BLOOMBERG: Yeah. I could
16 say that any reduction, you know, depending
17 on what levels you get down to, could be
18 and would be considered by some people be an
19 environmental benefit.

20 I don't want to get into
21 the arguments of the toxicologists and
22 everything and at what level it matters
23 and at what level it doesn't.

24 What I can tell you is that

1 more NAAQS purposes, we -- you know, which --
2 and the NAAQS is what US EPA has determined
3 is the -- you know, the health level with a
4 buffer and a several fairly conservative --
5 that we are not worried that there will be
6 NAAQS impacts at 49,000.

7 We do not expect any area
8 to violate the NAAQS and, you know, despite
9 what some of the commenters were saying
10 yesterday, in certain areas, they are already
11 limits. So, for example, a number of the
12 commenters once again said that under this
13 rule they believe the Edwards plants could
14 just pollute away and that simply isn't true
15 because the Board already passed regulations
16 a few years ago that the Agency proposed
17 specifically limiting the Edwards S02 emissions
18 and nothing we do here that can take away
19 those limits that are already there.

20 Then you have also gone
21 over provided information showing why each
22 of the different plants the Agency does not
23 believe there will be any problems with the
24 NAAQS. That's what we base our decisions

1 on when we look at the health impacts. That
2 is the primary thing that we base it on.

3 So going from 49,000 to
4 45,000, essentially, at 49,000 we do not see
5 a problem with the NAAQS. And, in general,
6 the Agency attempts to strike a balance
7 between reductions and the impact it has
8 on the industry it is regulating.

9 I can't answer whether or
10 not Dynegy can meet a limit of 44,920. So
11 I can tell you that, you know, they were --
12 I think they made it pretty clear they weren't
13 exactly thrilled with the 49,000 we agreed on.
14 So I can imagine that they would be less
15 thrilled with 44,920, but I do not claim to
16 speak for them. I can just say we have not
17 just that.

18 BOARD MEMBER SANTOS: Thank you.

19 CHAIRMAN PAPADIMITRIU: Two more
20 questions and then I have some specific unit
21 questions since you have raised that too.

22 My two follow-up questions
23 are one, if the 49,000 number is acceptable
24 or you believe it's acceptable by the US EPA,

1 it would stand to reason then, but I don't
2 want to assume, that the 44-, 45,000 number
3 would also be acceptable because it's lower;
4 is that reasonable?

5 MR. BLOOMBERG: Yes, that is
6 correct.

7 CHAIRMAN PAPADIMITRIU: Okay. So
8 then my next question is 55,000 is the regional
9 haze number, correct, the total amount?

10 MR. DAVIS: 55,953.

11 CHAIRMAN PAPADIMITRIU: Thank you.

12 And 55,953, the IEPA saw
13 no -- sees no adverse environmental aspects
14 for any of the communities surrounding the
15 coal plants.

16 Am I characterizing that
17 correctly?

18 MR. BLOOMBERG: Yes, I think so.

19 CHAIRMAN PAPADIMITRIU: So why
20 did the IEPA come down from 55,000 to 49,000
21 if 55 was acceptable and you didn't have any
22 concerns?

23 MR. BLOOMBERG: Basically, it
24 was based on information that was presented

1 in the first hearing and so it was to, you
2 know, potentially assuage some concerns that
3 had been brought up.

4 We did not agree with the
5 methodology of the Attorney General's Office
6 when they calculated a number slightly higher
7 than 49,000, but we felt if the Board had any
8 concerns about that, bringing it down below
9 that number would, you know, perhaps be a
10 reasonable thing too.

11 CHAIRMAN PAPADIMITRIU: So just want
12 to follow-up, if I may, because I -- I don't
13 want to assume anything, so going from 55,000
14 to the 48,953 number that Rory corrected for
15 me, was reasonable, but going from the 49,000
16 to 44 is not reasonable in the Agency's mind?

17 MR. BLOOMBERG: The 49,000, by
18 reviewing our information and as we would always
19 do, discussing with the affected industry, we
20 determined that although Dynegy might not be
21 thrilled, as I said, with going down to 49,000,
22 we believed that the company could meet that
23 and, therefore, bring it down to that number.
24 I don't know the answer 44,920.

1 CHAIRMAN PAPADIMITRIU: And I guess
2 I'm not -- thank you for that clarification.
3 I'm not asking you what Dynegy, the regulated
4 entity, believes is possible. They've got
5 lawyers here who can answer that question.

6 I'm asking from the Agency's
7 perspective a movement from 55,000 to 49,000
8 or so was deemed reasonable, but from 49,000
9 to the 44,000 number in Table 8 is not
10 reasonable and certainly going from 49,000
11 to the AG's number, which I know we'll get
12 to in No. 7 was entirely unreasonably, from
13 just the Agency's prospective.

14 MR. BLOOMBERG: Yes. From our
15 prospective going down to that 34,000 number.

16 CHAIRMAN PAPADIMITRIU: As well
17 as the 44?

18 MR. BLOOMBERG: Yes.

19 CHAIRMAN PAPADIMITRIU: Okay. Thank
20 you.

21 HEARING OFFICER TIPSORD: And
22 Mr. Armstrong and then Mr. More.

23 MR. ARMSTRONG: With respect to
24 Dynegy's ability to meet a cap of 44,920 tons

1 of SOP annually, could you please turn to
2 Table 10 of my prefiled testimony?

3 HEARING OFFICER TIPSORD: Exhibit
4 37, the testimony from April?

5 MR. ARMSTRONG: Yes. Thank you.

6 HEARING OFFICER TIPSORD: Since
7 you prefiled more than one testimony.

8 MR. BLOOMBERG: Which testimony, is
9 it the first or the second?

10 HEARING OFFICER TIPSORD: Exhibit
11 37, today's.

12 MR. ARMSTRONG: April 3, 2018.

13 MR. BLOOMBERG: If I could make
14 a suggestion, and I know you're the one
15 asking the questions right now, but if I
16 could make a question, I mentioned that
17 Mr. Davis has an answer to a question
18 prefiled from Dynegy that goes into quite
19 a bit of detail discussing some of what
20 the AGO's calculations are including, I
21 believe, that Table 10.

22 It may make more sense
23 for him to answer that question first and
24 then get to the questions. Because otherwise,

1 I think we're going to get a little turned
2 and it might -- it might make less sense for
3 the Board if we try answering that before
4 getting to his detailed book.

5 Does that make sense?

6 MR. ARMSTRONG: I have a single
7 question.

8 You were just talking about
9 this 44,920 tons. So I just wanted to ask
10 one question about that.

11 MR. BLOOMBERG: Okay.

12 MR. ARMSTRONG: If you would just
13 take a look at Table 1 at the top of Page 10
14 of my April 2018 prefiled testimony. Have you
15 reviewed this table before?

16 MR. BLOOMBERG: You said Table 10
17 or Page 10?

18 MR. ARMSTRONG: Page 10, Table 1.

19 MR. BLOOMBERG: Ah, okay. I got
20 my tables and pages mixed up.

21 MR. ARMSTRONG: Have you reviewed
22 this table before, Mr. Bloomberg?

23 MR. BLOOMBERG: Yes, I read it when
24 it was submitted.

1 MR. ARMSTRONG: Have you evaluated
2 whether the Agency agrees it's accurate from
3 the sense are these the actual emissions of
4 the current MPS units going back five years?

5 MR. BLOOMBERG: Yes, they are.

6 MR. ARMSTRONG: Would you agree that
7 for each of the five years the current MPS units
8 emitted less than 44,920 tons of sulfur dioxide
9 annually.

10 MR. BLOOMBERG: I will say that they
11 have been for the last five years, but that
12 tells me very little about what might happen
13 in the next five years depending on all the
14 manufacturers that we have discussed over the
15 course of this hearing.

16 MR. ARMSTRONG: Well, I have to
17 ask a follow-up question to that, Mr. Bloomberg.

18 Would you please take a look
19 at Table 2 of my -- I'm sorry -- Attachment 2
20 to my prefiled testimony?

21 MR. BLOOMBERG: Okay.

22 MR. ARMSTRONG: So can you take a
23 look at the uppermost chart on this spreadsheet
24 over to the right where we've got capacity

1 factors listed?

2 MR. BLOOMBERG: Yes.

3 MR. ARMSTRONG: And at the bottom
4 of that, there's a row for total. So on the
5 table we just looked at of actual SO2 emissions
6 and current MPS units, among those years was
7 2014 around 2013; is that correct?

8 MR. BLOOMBERG: Okay.

9 MR. ARMSTRONG: Would you agree
10 that the capacity factors for 2013 around 2014
11 respectively were 73 percent and 72 percent
12 overall?

13 MR. BLOOMBERG: That's what the table
14 says, yes.

15 MR. ARMSTRONG: What is your basis
16 for concluding that the capacity factor for the
17 MPS fleet will increase above 73 percent within
18 the next decade?

19 MR. BLOOMBERG: I mean, two years
20 prior, it was 78 percent and 78 percent and a
21 little before that, it was 77 percent. So your
22 own table tells me it's possible.

23 MR. ARMSTRONG: What is your basis
24 for concluding that the MPS units will return

1 to those levels from the 2015 to 2017 capacity
2 factors of respectively 2015, 59 percent; 2016,
3 55 percent; 2017, 57 percent?

4 MR. BLOOMBERG: I'm sorry. Can
5 you repeat that question, please? I caught
6 the first part but not the second part.

7 MR. ARMSTRONG: What is your basis
8 for concluding that the MPS units -- the current
9 MPS units will at some point in the next ten
10 years reattain a capacity factor of 73 percent
11 from the current capacity factors of
12 respectively 2015, 59 percent; 2016, 55 percent;
13 2017, 57 percent?

14 MR. BLOOMBERG: Perhaps you
15 misunderstood me. I didn't conclude any such
16 thing. I said it was possible. I did not
17 conclude that it would happen. However, when
18 we are setting allowable emissions, which is
19 what a cap is, we need to take into account
20 the possibilities such as returning to a
21 higher capacity factor.

22 MR. ARMSTRONG: I believe you
23 testified you don't know how the Agency
24 analyzed the proposed amendments in R09-10;

1 is that correct?

2 MR. BLOOMBERG: I testified that
3 I don't remember off the top of my head since
4 I didn't know that was going to be a topic of
5 discussion today.

6 MR. ARMSTRONG: Okay. Thank you.

7 HEARING OFFICER TIPSORD: Mr. More?

8 MR. MORE: Mr. Bloomberg, the Table 8
9 SO2 emissions 44,900 -- and what was it?

10 MR. BLOOMBERG: 920.

11 MR. MORE: Thank you. That
12 represents what the Agency projected emissions
13 would be utilizing 2002 heat inputs, correct?

14 MR. BLOOMBERG: For the currently
15 operating plants, yes.

16 MR. MORE: Right. And if we stay
17 on Attachment 2 of Mr. Armstrong's exhibit,
18 at the bottom, it demonstrates that, for
19 example, in 2011, the units could have emitted
20 47,385 tons of SO2 utilizing the 2011 heat
21 input; isn't that right?

22 MR. BLOOMBERG: Yes, yes. Based
23 on that chart, that seems to be what it says.

24 MR. MORE: And for 2010, 47,110

1 tons, correct?

2 MR. BLOOMBERG: Yes.

3 MR. MORE: And for 2008, 46,936

4 tons, correct?

5 MR. BLOOMBERG: Yes.

6 MR. MORE: So in each of those
7 instances, according to the Attorney General,
8 Dynegy was lawfully permitted to emit more
9 than 44,920 tons, correct?

10 MR. BLOOMBERG: Yes.

11 MR. MORE: Is there any regulatory
12 basis for reducing the proposed cap from 49,000
13 tons to 44,920 tons?

14 MR. BLOOMBERG: Can you repeat that
15 again? Is there any...

16 MR. MORE: Is there any regulatory
17 basis, regulatory requirements?

18 MR. BLOOMBERG: There is no
19 regulatory requirement.

20 CHAIRMAN PAPADIMITRIU: I have a
21 follow-up to Mr. More's questions.

22 So there is no regulatory
23 requirements to go from the 49,000 to the
24 44,000 is that what you were answering yes

1 to?

2 MR. BLOOMBERG: That's correct.

3 CHAIRMAN PAPADIMITRIU: Was there
4 a regulatory requirement to go from 55 to 49?

5 MR. BLOOMBERG: No.

6 CHAIRMAN PAPADIMITRIU: Okay.

7 Thank you.

8 BOARD MEMBER CARTER: I have a
9 follow-up as well.

10 Mr. Bloomberg, can you just
11 help me understand that if there was the half
12 of 49,000 adopted in this rulemaking, how
13 would that be addressed in permits for
14 these units?

15 Would you see an increase
16 in S02 from current permitted limits?

17 MR. BLOOMBERG: So, as I've said
18 before, just to clarify, permits is one area
19 I've not worked in. So, you know, it is my
20 understanding, however, it would be addressed
21 by saying in each of these sources, cap permits,
22 that this rule applies and I'd likely quote the
23 rule and say that as a whole, the group cannot
24 emit more than 49,000 tons.

1 It would not change, to my
2 knowledge, any other limits, any other, you
3 know, S02 limits that are in the permit.

4 Now, I do believe that at
5 one point previously, because the Board had
6 asked us for what other limits applied, I
7 think there's one source that actually has
8 an S02 limit, if you want to call it that,
9 that is higher than 47,000 or 49,000 overall.

10 So, you know, I guess that
11 particular source would be limited because
12 it has that limit in there that really doesn't
13 mean anything right now. But other than that,
14 other limits would stay the same if they're
15 not changed in any other rulemaking.

16 So that's why I was saying
17 earlier that despite the misunderstanding
18 by some people, you know, the Edwards plant,
19 for example, it has a specific unit-level
20 emission rate that will not be altered by
21 this rulemaking.

22 BOARD MEMBER CARTER: Thank you.

23 MR. RAO: Mr. Bloomberg, I have
24 just a follow-up.

1 If the proposal is adopted
2 as proposed by the Agency, will this -- a
3 mass cap that the Board adopts, would that
4 be included in the permit in all of these
5 affected Btus?

6 MR. BLOOMBERG: That's my
7 understanding. I believe that they would
8 put the regulation into the cap permit. Now,
9 when it could happen, I mean, some of these
10 cap permits have been recently issued and
11 they are on, I think a five-year cycle of
12 renewal. So I don't know that the cap would
13 be updated just to put this rule in there
14 since the rule already exists. You know, it
15 doesn't add anything to put it in the permit.
16 But once -- you know, when the cycle comes
17 through, it's my understanding it would at
18 least be referenced.

19 HEARING OFFICER TIPSORD: Okay.
20 Mr. Sylvester?

21 MR. SYLVESTER: Mr. Bloomberg,
22 you were asked a question and I just wanted
23 to put a cap on it about whether there were
24 any regulatory requirements prohibiting the

1 switch.

2 HEARING OFFICER TIPSORD: Either
3 speak up really loudly so they can hear you
4 back there or grab a mic.

5 MR. SYLVESTER: You were asked
6 a couple questions about whether there was
7 anything -- any regulatory requirements that
8 prohibited switching from a 55 to a 49,000
9 cap, did I -- is that the right question?

10 MR. BLOOMBERG: I think actually
11 it was reversed. They required us to.

12 MR. SYLVESTER: Okay. Required.
13 And then the same for 49
14 to 44 and change. So I was wondering if
15 there was anything along a similar basis
16 that requires a switch from emission base
17 rates to mass based rates?

18 MR. BLOOMBERG: No.

19 MR. SYLVESTER: Thank you.

20 HEARING OFFICER TIPSORD: Let's
21 take a five-minute break and come back.

22 (Whereupon, after a short
23 break was had, the following
24 proceedings were held

1 accordingly.)

2 HEARING OFFICER TIPSORD: I think
3 we are ready to go with Mr. More asking more
4 questions.

5 Ms. Bugel, did you have a
6 follow-up?

7 MS. BUGEL: Yes. I do have one
8 follow-up. I'm Faith Bugel representing
9 the Sierra Club and this is a question for
10 Mr. Bloomberg.

11 Mr. Bloomberg, you referenced
12 that Edwards plant earlier and the fact that
13 the Edwards plant has an S02 emission limit,
14 correct?

15 MR. BLOOMBERG: Yes.

16 MS. BUGEL: And were you referencing
17 the S02 one-hour rulemaking when you referenced
18 that limit?

19 MR. BLOOMBERG: Yes.

20 MS. BUGEL: And despite participating
21 in that rulemaking, I don't remember how that
22 limit is expressed.

23 Is it expressed in pounds per
24 hour?

1 MR. BLOOMBERG: Yes.

2 MS. BUGEL: And of the plants at
3 issue in this rulemaking, is Edwards the only
4 plant that has an SO2 limit expressed in
5 pounds per hour?

6 MR. BLOOMBERG: I believe so
7 because that's the area -- I'm sorry -- that's
8 the plant that was in an SO2 or contributed to
9 an SO2 non-attainment area. So it was the only
10 one that was deemed necessary to have an hourly
11 emission limitation.

12 MS. BUGEL: Thank you.

13 HEARING OFFICER TIPSORD: Mr. More?

14 MR. MORE: Can I -- I would like to
15 ask Mr. Diericx a follow-up question in light of
16 Ms. Bugel's question, if that's all right.

17 HEARING OFFICER TIPSORD: Could we
18 have Mr. Diericx sworn in?

19 THE COURT REPORTER: Raise your
20 right hand, please?

21 Do you swear that the testimony
22 you're about to give will be the truth, the
23 whole truth, and nothing but the truth, so help
24 you God?

1 MR. DIERICX: I do.

2 (Witness sworn.)

3 MR. MORE: Ms. Bugel inquired
4 whether plants -- plants other than Edwards
5 had a pounds-per-hour limit. Do other plants,
6 other than Edwards -- are other plants subject
7 to a pounds-per-hour limit?

8 MR. DIERICX: Yes, there are some.

9 MR. MORE: What plants?

10 MR. DIERICX: It's the -- my
11 recollection is there are plants that were
12 subject to the Illinois Stack Height Rule,
13 which would be Hennepin, Coffeen, Joppa.
14 those are the ones that I recall.

15 MR. MORE: Thank you, Mr. Diericx.
16 If we may turn back to --

17 HEARING OFFICER TIPSORD: Could
18 Mr. Diericx state his full name and spell
19 it for the court reporter though?

20 MR. MORE: Yes.

21 MR. DIERICX: Rick Diericx, last
22 name spelled D-I-E-R-I-C-X.

23 MR. RAO: I have a follow-up for
24 Mr. Diericx.

1 Earlier in response to Board
2 questions, you have submitted a table, which
3 included all the limits for the affected Btus
4 and I don't recall seeing pounds-per-hour rates
5 for some of the other units you mentioned.

6 Would it be possible for you
7 to give us the exact number of what the rates
8 are later in your final comments?

9 MR. DIERICX: Yes.

10 MR. RAO: Okay. Thank you.

11 MR. MORE: Turning back to Exhibit
12 46, Question 6 for the Illinois Environmental
13 Protection Agency, has the AGO presented any
14 evidence demonstrating to the IEPA that the
15 proposed annual emissions cap of 49,000 tons
16 for SO₂ and 25,000 tons for NO_x will cause
17 or threaten non-attainment of any National
18 Ambient Air Quality Standard, otherwise known
19 as a NAAQS?

20 MR. BLOOMBERG: No.

21 HEARING OFFICER TIPSORD: Okay.

22 Mr. Armstrong has follow-up.

23 MR. ARMSTRONG: Mr. Bloomberg, you
24 had previously testified that portions of the

1 state would be in non-attainment of the latest
2 ozone NAAQS; is that correct?

3 MR. BLOOMBERG: Yes.

4 MR. ARMSTRONG: Is it your testimony
5 that emissions from the current MPS fleet has no
6 impact on those non-attainment areas?

7 MR. BLOOMBERG: The transport of
8 NOx emissions is complicated -- extremely
9 complicated. Presumably may have an impact,
10 but how much of an impact is unclear. Sometimes
11 it can be a positive impact and sometimes it
12 could be a negative impact when you're
13 talking about NOx from EGU stacks.

14 MR. ARMSTRONG: I have just one
15 follow-up question.

16 When the Agency proposed
17 this rule to the Board last decade, one of
18 the reasons it gave for the rule was that
19 it would help to save attain ozone IMP 2.5
20 NAAQS; was it not?

21 MR. BLOOMBERG: Without reviewing
22 the documents, I remember that ozone was
23 mentioned. I don't know if it was a reason
24 or if it was listed as a benefit. I -- I

1 simply don't remember. I remember the phrase
2 being in there. I don't remember if it was
3 in a memorandum of understanding, if it was
4 a statement of reasons, if it was in anything
5 like that.

6 MR. ARMSTRONG: But that's your
7 testimony to this Board?

8 MR. BLOOMBERG: Potentially.

9 MR. ARMSTRONG: Thank you.

10 HEARING OFFICER TIPSORD: And
11 Ms. Papadimitriu, anything?

12 CHAIRMAN PAPADIMITRIU: So,
13 Mr. Armstrong, if -- I'm sorry. I'll start
14 over.

15 Mr. Bloomberg, if I can
16 follow-up on your comment that there may be
17 positive or negative impacts, did you say
18 that, sir?

19 MR. BLOOMBERG: Positive or negative
20 impacts to the ozone concentrations.

21 CHAIRMAN PAPADIMITRIU: Okay. Thank
22 you.

23 So let's talk about each
24 individual plant. Of the eight power plants

1 that are covered in this proposed MPS, which
2 plants are located in environmental justice
3 communities?

4 MR. BLOOMBERG: I believe that we
5 determined that two of them are in potential
6 environmental justice communities.

7 CHAIRMAN PAPADIMITRIU: And which
8 ones are those?

9 MR. BLOOMBERG: Hennepin and Havana.

10 CHAIRMAN PAPADIMITRIU: Thank you.

11 HEARING OFFICER TIPSORD: I'm sorry.
12 Can you say that again?

13 MR. BLOOMBERG: Hennepin and Havana.

14 CHAIRMAN PAPADIMITRIU: If the
15 Board adopts the Agency's proposal and let's
16 stay with the 49,000 mass ton for now, can any
17 mass-based MPS result in increased submissions
18 of SO₂ at any of these power plants compared
19 to each power plant's current actual emissions?
20 So not on a fleet-wide basis, but on an
21 individual plant basis.

22 MR. BLOOMBERG: Any of those plants
23 could increase their emissions currently. They
24 would just also have to increase at a controlled

1 plant, but there's nothing preventing any of
2 those individual plants from increasing
3 currently.

4 So the MPS -- the proposal
5 that we have, I do not believe would change
6 that. Does that answer the question? I'm
7 not sure it does.

8 CHAIRMAN PAPADIMITRIU: All right.
9 So let's set aside that current MPS and let's
10 just focus on the proposed one and let's say
11 that the mass cap is 49,000, which is what
12 the Agency proposed maybe in January.

13 Can SO2 limits at individual
14 plants increase even if the fleet-wide cap is
15 maintained?

16 MR. BLOOMBERG: Increase -- try
17 that again. I'm sorry.

18 Currently, the allowables
19 for the -- for those individual plants are
20 higher than the 49,000. So this is a reduction
21 in allowables. Again, I feel like I'm not
22 answering your question and I apologize for
23 that.

24 CHAIRMAN PAPADIMITRIU: What is the

1 absolute mass-based limit for each plant based
2 on the limits applicable to the plant under
3 Part 214 of the Board's rules and other limits
4 that you've noted today and in other hearings of
5 this proceeding?

6 MR. BLOOMBERG: What are each of
7 their limits?

8 CHAIRMAN PAPADIMITRIU: Yes.

9 MR. BLOOMBERG: I don't...

10 CHAIRMAN PAPADIMITRIU: For the
11 proposed MPS.

12 MR. BLOOMBERG: Their individual
13 limits under the proposed MPS would not change.

14 CHAIRMAN PAPADIMITRIU: Okay.

15 MR. BLOOMBERG: Is that -- is
16 that -- it would only -- the overall cap would
17 be instituted.

18 CHAIRMAN PAPADIMITRIU: Would the
19 absolute mass-based limit be included in the
20 plant's cap permit?

21 MR. BLOOMBERG: I -- I believe it
22 would, correct.

23 CHAIRMAN PAPADIMITRIU: If the
24 emissions at each of the plants reaches

1 those limits, would they create hot spots --
2 so-called hot spots or increase adverse
3 health risks?

4 MR. BLOOMBERG: I'm sorry. I didn't
5 catch the ending.

6 CHAIRMAN PAPADIMITRIU: Or create
7 adverse health risks.

8 MR. BLOOMBERG: Hot spots is a
9 term that the Agency -- well, at least I don't
10 use --

11 CHAIRMAN PAPADIMITRIU: Okay.

12 MR. BLOOMBERG: -- as
13 Mr. Urbaszewski said, it was king of his
14 own terminology. So from our standpoint,
15 no, it would not create hot spots because
16 we're not really sure what those are.

17 As for adverse health
18 impacts, as I mentioned earlier, we look
19 at it in terms of the NAAQS and our -- the
20 work we have done to look at each of these
21 tell us the NAAQS are not at risk and will
22 continue to be protected.

23 CHAIRMAN PAPADIMITRIU: And
24 that's at the 49,000 proposed --

1 MR. BLOOMBERG: Yes.

2 CHAIRMAN PAPADIMITRIU: -- mass cap
3 proposal?

4 MR. BLOOMBERG: Yes.

5 CHAIRMAN PAPADIMITRIU: And so I
6 strike the words hot spots and just -- and
7 refer to adverse health -- potential adverse
8 health impacts.

9 Are there potential adverse
10 environmental impacts associated at individual
11 plants if each plant goes up to the limits as
12 you described?

13 MR. BLOOMBERG: I'm not entirely
14 sure about the difference that you're talking
15 about between health impacts and environmental
16 impacts in terms of -- yeah. I'm just -- I
17 guess what. Yeah, I'm not entirely sure what
18 you mean the difference between health impacts
19 and the environmental impacts because the way
20 we look at it, you know, the environmental
21 impacts is how it would affect mostly people.
22 So I feel like I haven't answered your question
23 again. I'm sorry.

24 CHAIRMAN PAPADIMITRIU: So, in other

1 words, you -- your answer to the adverse health
2 impact potential question was answered. It's
3 the same for the environmental question that I
4 just asked you?

5 MR. BLOOMBERG: Yes. Again, I just
6 wanted to bring up something that, you know, we
7 mentioned before, but I'll bring it up again.
8 An annual standard, which is what MPS is and
9 what the proposal is, can't really be looked
10 at to protect its short-term limit, which is
11 the NAAQS. So we're talking about the S02 NAAQS
12 earlier with an hourly limit.

13 And the reason that the
14 Edwards plant has an hourly limit on it is
15 because that's what's necessary to protect
16 the one-hour NAAQS. So we can't look at an
17 annual cap and say, you know, whether or
18 not it will. We rely on the other limits
19 that we have, the other information that's
20 available.

21 CHAIRMAN PAPADIMITRIU: And again,
22 your modeling is based on the 2010 one-hour
23 S02 limit?

24 MR. BLOOMBERG: Yes.

1 CHAIRMAN PAPADIMITRIU: Okay. So
2 would it follow that if there are no adverse
3 health impacts at 49,000, that there would be
4 none at the 44,000 and the AGO's 34,000
5 proposal?

6 MR. BLOOMBERG: Presumably.

7 CHAIRMAN PAPADIMITRIU: Okay. Thank
8 you.

9 HEARING OFFICER TIPSORD: Okay.
10 Mr. Armstrong, did you have any questions?

11 MR. ARMSTRONG: I just wanted to
12 clarify or confirm that we were talking about
13 the 2010 one-hour S02 max, but it sounds like
14 everybody is in agreement on that. So I have
15 nothing further.

16 HEARING OFFICER TIPSORD: Mr. More?

17 MR. MORE: Question 7 of Exhibit
18 46, has the Attorney General's Office presented
19 any evidence demonstrating to the Illinois
20 Environmental Protection Agency that an S02
21 emissions cap lower than 49,000 tons is
22 necessary for the proposed MPS revisions to
23 be as protective of human health in the
24 environment as the current MPS?

1 MR. DAVIS: No.

2 MR. MORE: Question 7(a), has the
3 AGO presented any evidence demonstrating to
4 the IEPA that an S02 emission cap lower than
5 34,094 tons is necessary for the proposed MPS
6 revisions to be as protective as the current
7 MPS?

8 MR. DAVIS: No. The AGO has not
9 presented evidence demonstrating an S02
10 emissions cap lower than 34,094 tons per year
11 is necessary to be as protective or equivalent
12 to the current MPS rules.

13 While the Agency disagreed
14 with the methodology for the AGO's previous
15 testimony suggesting that any annual mass-based
16 limit should be more than -- no more than
17 49,305 tons per year, the Agency supported
18 the Board amending the Agency's originally
19 proposed S02 limit to 49,000 tons per year,
20 a limit lower than the AGO's calculated figure.

21 And I should say today in
22 questions for the AGO that -- well, I should
23 say that EPA disagreed with their methodology
24 because they were using one year of emissions

1 data and they updated their tables and that
2 was 2016 data. Today, using 2017 data, they
3 came up with the same number, it would be
4 51,038 tons. So that's using their
5 methodologies.

6 And so the AGO's most recent
7 testimony uses a much more problematic
8 methodology to produce a new alternative
9 suggested limit of 34,094 tons. The AGO's
10 calculation method can be seen in Attachment 10
11 to their most recent testimony submittal.

12 There are a number of problems
13 with the methodology used by AGO. The first
14 problem is applying unit level heat input
15 from 2002 data to unit-level emission rates
16 from 2017 data. First, the proportion of
17 heat input from each unit in relation to
18 the entirety of the heat input for the MPS
19 groups in 2002 is obviously different than
20 in 2017. This is due to a number of factors.

21 For example, none of the
22 affected units were controlled for S02 in
23 2002 and there also were 26 more coal-fired Btus
24 operated in Illinois in 2002. This means that

1 the overall electric load for the areas
2 distributed over a different group of Btus
3 and if you look only at units that are still
4 in operation as the AGO did, the proportions
5 of heat input for each unit among that group
6 are also distributed differently than they
7 were in 2002.

8 As it happens, applying
9 emission rates from 2017 to heat input in
10 2002 in the way that the AGO has leads to
11 an underestimation for future possible emissions
12 under the current MPS rules for both current
13 MPS groups affected by this rulemaking.

14 Further, based on the Agency's
15 understanding of the information in the AGO's
16 testimony, in calculating a suggested
17 alternative limit, the AGO applies an
18 inconsistent methodology to the emission
19 estimates that are used for each MPS group,
20 which results in lower figures than would be
21 expected using any number of other estimation
22 methods.

23 In calculating an SO₂ limit
24 of 34,902 tons per year, the AGO uses a figure

1 11,645 tons per year for the Dynegy MPS group
2 and a figure of 22,629 tons per year for the
3 Ameren MPS group.

4 In the case of the Dynegy MPS
5 group, the AGO uses 2017 emission rates applied
6 to 2002 heat input data to reach a suggested
7 allowable mass emission limit of 11,645 tons
8 per year. However, it can be seen in a table
9 from Attachment 10 that if Dynegy units have
10 operated at those unit level heat inputs and
11 emission rates, the fleet-wide emission rate for
12 this hypothetical mixed data year would
13 be 0.129 pounds per million Btu.

14 Using this figure of 11,645
15 tons per year ignores the fact that the emission
16 rate limit for 2017 was 0.19 pounds for one
17 million Btu for that MPS group. So in this
18 case, the AGO assumes that Dynegy MPS group will
19 always be over-compliant with current MPS rules
20 by this March and in all future years, which is
21 not required by any rule nor is it necessarily
22 reasonable to expect.

23 Thus, the AGO has tried to
24 institute a permanent 32 percent reduction from

1 allowable emissions from the Dynegy group in
2 what it would suggest as a new allowable limit
3 and then moves on to calculate an allowable for
4 the Ameren group in a different manner.

5 When looking at Ameren MPS
6 group, the AGO again applies 2017 emission
7 rates to 2002 heat input data, which has the
8 same problems as I just described above.

9 However, in this case, the result indicates
10 that this MPS group emission rate for the
11 hypothetical mixed data year would be 0.286
12 pounds per million Btu. Presumably, because
13 this fleet-wide emission rate would violate
14 their current MPS rate of 0.23 pounds per
15 million Btus, the AGO instead calculates a
16 suggested new allowable emissions limit based
17 upon a methodology similar to what was used
18 in their first hearing testimony's Table 10
19 only this time with 2002 heat inputs.

20 This Table 10 method from
21 their initial testimony is the method wherein
22 the AGO assumes that cleaner plants would run
23 at capacity and then the AGO would have
24 calculated how much other units could possibly

1 run and still meet the current MPS limits.

2 There are at least two
3 problems with this methodology. This
4 hypothetical noncompliance with the MPS rate
5 based upon 2002 heat inputs and 2017 emission
6 rates only shows that the units in the group
7 are being utilized in different proportions in
8 2017 than they were in 2002. The Ameren MPS
9 group was in compliance with the required MPS
10 rate in 2017.

11 The second problem is there
12 is no basis for using 2002 heat inputs in
13 the same manner that was previously used
14 in prior testimony using full capacity
15 figures.

16 While the Agency disagreed
17 and still disagrees with the use of similar
18 methodology in the AGO's initial testimony
19 using this methodology with unit-level heat
20 inputs from a single year that isn't comparable
21 to what may happen in the future is even more
22 inappropriate.

23 Further, using those unit
24 level heat inputs in the manner the AGO has

1 to calculating what it believes to be a
2 reasonable allowable emission limit essentially
3 applies unit specific heat input limits based
4 on actual data from 16 years ago and applies
5 those limits to actual emission rates that are
6 also applied as a sort of limit. Combining and
7 compounding these two de facto limits renders
8 the results of these calculations meaningless as
9 a means for setting an allowable mass emission
10 limit going forward.

11 Basically, as a less technical
12 summary, the AGO's methodology attempts to
13 use a best approach in order to arrive at
14 a lower number for each MPS group because
15 when it did the calculation for the Dynegy
16 group, it kept the value showing overcompliance
17 compared to the current standard rather than
18 increasing it to the standard itself.

19 But for the Ameren group,
20 it reduced the value downwards to meet the
21 current standard and restricted utilization
22 of units using 2002 heat input data. Note
23 this is just one aspect why the AGO's
24 calculation method is inappropriate.

1 As stated earlier, the
2 hypothetical noncompliance of the Ameren group
3 in this mixed year methodology only demonstrates
4 the unit-level heat inputs from 2002 are not
5 comparable to recent years in terms of their
6 proportional use by unit.

7 As stated in the rulemaking
8 TSD and in previous hearings, the Agency used
9 2002 heat inputs and emission rates in its
10 regional haze SIP as a base year for emission
11 reductions for the program because that is what
12 was called for by the guidance for that rule.

13 This produced the emission
14 estimates that were expected from MPS and CPS
15 fleets, but were not intended to be used as a
16 limits on emissions or a limit on heat input
17 at any specific units.

18 In drafting the proposed
19 amendments, the Agency considered these
20 aggregate emission reductions from the MPS
21 as commitments moving forward in the regional
22 haze SIP. So the limits in this rulemaking
23 were proposed in order to ensure that at least
24 this level of emission reductions occurs for

1 certain from these MPS groups going forward.

2 It should also be noted that
3 the Illinois EPA calculated these anticipated
4 reductions by using a single emission rate for
5 each group, not a specific rate for each unit,
6 but the allowable MPS average emission rates for
7 those groups. And so those rates, in effect,
8 are also applied to aggregate of the heat input
9 for those whole MPS groups for that year.

10 To clarify, if the emission
11 rate of 0.19 pounds per million Btu is applied
12 to each of the Dynegy group units, then the
13 individual heat inputs at each unit and their
14 proportion of the whole do not matter, only
15 the total heat input for the year does.

16 Additionally, the Agency's
17 estimates did not assume unit specific emission
18 rates in any given future year. This is much
19 different than what the AGO has done in its
20 calculation method.

21 HEARING OFFICER TIPSORD: Go ahead.
22 You can finish, Mr. Davis.

23 MR. BLOOMBERG: Finally, the use
24 of actual historical heat inputs and emission

1 rates to set allowable limits in the proposed
2 rulemaking is problematic in general and not
3 the way the Agency has set emission limits in
4 any case in the memory of the Agency's staff.

5 Additionally, on Page 11 of
6 the AGO's most recent prefiled testimony, the
7 AGO state's that by its own methods, an SO₂
8 emission limit could be set at 47,385 tons
9 per year by using heat input data from 2011.
10 This limit is not very much lower than the
11 proposed limit of 49,000 tons per year currently
12 before the Board and the 2011 level of heat
13 input was not at all near full capacity of
14 the affected units.

15 However, the proposed cap
16 of 49,000 tons per unit was attempted to
17 restrict emissions, not to limit the capacity
18 or utilization of the affected units. That
19 is the reason that the Agency proposed limits
20 using a consistent and understandable
21 methodology for determining allowable limits
22 for the proposed combined group.

23 Further, the Agency's method
24 for calculating allowable emissions is indeed

1 consistent with US EPA's interpretation of how
2 to calculate allowable emissions in regard to
3 Section 110(l) demonstrations for specific
4 amendments despite the AGO's claims to the
5 contrary.

6 While dozens or hundreds of
7 different methods could be used to calculate
8 a theoretical allowable emission limit based
9 on different utilizations and emission rates
10 if one were to consider rates and utilizations
11 from different years in the historical data, the
12 methodology that the Agency has used is
13 correctly upon current allowable emission
14 rates, capacities that do not change and
15 is approvable by the US EPA.

16 HEARING OFFICER TIPSORD: Mr. More?

17 MR. MORE: Just one question,
18 Mr. Davis.

19 You mentioned a 2002 base
20 year and that a rule required the use of a
21 2002 base year. What rule were you referring
22 to that required the use of a 2002 base year?

23 MR. DAVIS: That was the regional
24 haze rule.

1 HEARING OFFICER TIPSORD: Okay. And
2 Mr. Armstrong?

3 MR. ARMSTRONG: So let's start off
4 by talking about the Dynegy fleet as opposed
5 to the old Ameren fleet. You testified that
6 there are no regulatory requirements that would
7 require the Dynegy fleet to emit less than .19
8 pounds per million Btu S02 per year; is that
9 correct?

10 MR. DAVIS: I don't believe that's
11 exactly what I said, but yes the S02 rate -- MPS
12 read 0.19 pounds per million Btu.

13 MR. ARMSTRONG: Well, do you --
14 are you aware of any other regulatory
15 requirements on the Dynegy group that would
16 limit that group to an emission rate less
17 than .19 pounds per million Btu?

18 MR. DAVIS: As a group, I don't
19 believe so.

20 MR. ARMSTRONG: Well, looking at
21 the individual units in the group, are you
22 familiar with the Federal State Consent Decree
23 that's applicable to the Dynegy group?

24 MR. DAVIS: Yes.

1 MR. ARMSTRONG: Do you know, for
2 example, whether the Dynegy group could operate
3 at maximum heat input and emit .19 pounds per
4 million Btu on an annual basis and comply with
5 the consent decree?

6 MR. BLOOMBERG: What do you mean by
7 maximum heat input?

8 MR. ARMSTRONG: What did you use to
9 calculate allowable emissions?

10 MR. DAVIS: Allowable emissions were
11 calculating the TSD using the MPS group decrees.

12 MR. ARMSTRONG: Times maximum heat
13 input perhaps?

14 MR. DAVIS: The maximum heat input
15 was in the TSD and that would be the 66,000 --
16 the number that was slightly greater than
17 66,000. The 55,953 figure was from the 2002
18 heat input.

19 MR. ARMSTRONG: My question is
20 this: You testified that the Attorney General's
21 analysis in Attachment 10, the prefiled
22 testimony, understates the amount of sulfur
23 dioxide pollution that would be expected from
24 the Dynegy plants. You suggest that those

1 plants could emit pollution on a rate of up
2 to .19 pounds per million Btu annually;
3 am I correct in that?

4 MR. DAVIS: System-wide, yes, they
5 would be allowed by rule to do that.

6 MR. ARMSTRONG: Would the
7 plants be allowed to do that and still be in
8 compliance with the Federal State Consent
9 Decree?

10 MR. BLOOMBERG: The plants are doing
11 that now and in compliance with the Federal
12 State Consent Decree.

13 MR. ARMSTRONG: The plants are not
14 at this moment .19 pounds per million Btu,
15 agreed?

16 My question is could the
17 Dynegy plants, consistent with the current and
18 applicable federal and state consent decree
19 be made sulfur dioxide at a rate of .19 pounds
20 per million Btu per year?

21 MR. BLOOMBERG: You're going to have
22 to -- if you could, repeat that question again.

23 Did you say the plants or the
24 group and if you said the plants, then which

1 plants?

2 MR. ARMSTRONG: Okay. Looking at
3 the Dynegy group of Baldwin, Havana and
4 Hennepin, could those plants operate at maximum
5 heat input with a group-wide emission rate of
6 .19 pounds per million Btu for the year and
7 be in compliance with the Federal State Consent
8 Decree?

9 MR. BLOOMBERG: We would have to do
10 the math on that one.

11 MR. ARMSTRONG: I've got a few more
12 questions.

13 MR. MORE: I think Mr. Diericx can
14 answer these questions for you actually.

15 MR. ARMSTRONG: Okay.

16 MR. MORE: So maybe if we could just
17 go right there.

18 Mr. Diericx, does the consent
19 decree apply system-wide? The DMG system, is it
20 applicable to the entire DMG system?

21 MR. DIERICX: Yes, it is.

22 MR. MORE: Okay. And what limits --
23 SO2 limits are applicable to which units or
24 which plants? Walk us through that, please.

1 MR. DIERICX: Yes. The consent
2 decree establishes S02 rate limits of 0.100
3 pounds S02 per million Btu on a 30-day average
4 basis for all the units one, two and three and
5 Havana unit six. It also establishes a 30-day
6 rolling average S02 rate limit of 1.20 pounds of
7 S02 per million Btu on the unit's Hennepin
8 station and it also establishes a mass-based
9 limit applicable to the entire DMG fleet of
10 29,000 tons of S02 per year.

11 MR. MORE: Could the DMG fleet
12 achieve an S02 annual emission rate of 0.12
13 and still comply with the consent decree?

14 MR. DIERICX: As long as it met
15 those rate limits and the mass cap of 29,000
16 tons per year.

17 HEARING OFFICER TIPSORD: Okay.
18 Mr. Armstrong?

19 MR. ARMSTRONG: I have a follow-up
20 question for Mr. Diericx.

21 Can you describe the scenario
22 in which that would occur in that the current
23 Dynegy plants have an annual sulfur dioxide
24 emission rate of .19 pounds per million Btu?

1 MR. DIERICX: I don't have any
2 situation readily available.

3 MR. ARMSTRONG: Has it happened
4 since the Dynegy plants installed all pollution
5 controls required by the Federal State Consent
6 Decree that it has submitted sulfur dioxide at
7 a rate of .19 pounds per million Btu?

8 MR. DIERICX: No. I don't have that
9 data in front of me.

10 MR. ARMSTRONG: Can you describe
11 any possible scenario in which the Dynegy
12 plants would operate in compliance with the
13 Federal State Consent Decree and emit sulfur
14 dioxide at a level of .19 pounds per million
15 Btu annually.

16 MR. DIERICX: It would have to be
17 a scenario which included the Hennepin station
18 operating near its allowable emission rates
19 and the Baldwin and Havana stations operating
20 at very low capacity factor.

21 MR. ARMSTRONG: Could you please
22 describe under what scenario Hennepin could
23 operate near its allowable SO2 emission rate
24 of 1.2 pounds per million Btu, I believe, of

1 Federal State Consent Decree?

2 MR. DIERICX: That would occur if
3 the Hennepin station received coal with a higher
4 sulfur content than it currently receives, but
5 coal below the 1.2 pound per million Btu limit
6 of consent decree.

7 MR. ARMSTRONG: Are you familiar
8 with MPE commercially available blends of
9 coal that meet that criteria?

10 MR. DIERICX: Yes. There are other
11 coals that meet that 1.2 limit and there's also
12 combinations of fuels that can meet that 1.2
13 limit.

14 MR. ARMSTRONG: Well, specifically
15 does Hennepin currently have coal blending
16 facilities?

17 MR. DIERICX: I'm sorry. Could you
18 re- -- coal?

19 MR. ARMSTRONG: Coal blending
20 facilities that would allow it to blend
21 different types of coal?

22 MR. DIERICX: In order to meet
23 the consent decree limits, it is a 30-day
24 rolling average so the Hennepin station is

1 not required to blend to meet an hourly
2 limit.

3 MR. ARMSTRONG: I'm just trying
4 to understand.

5 So under the scenario you're
6 suggesting here, Hennepin would be potentially
7 obtaining a certain type of coal that would
8 allow a single type of coal that would allow
9 it to meet the 1.2 pounds per million Btu
10 emission rate or would be obtaining multiple
11 types of coal that it would be switching off
12 between?

13 MR. DIERICX: Yes. I think the
14 examples I'm alluding to here is that the
15 Hennepin station could receive coal from a
16 single source that is a higher sulfur content
17 that when combusted would still be less than
18 1.2 pound per million Btu or the station could
19 receive multiple sources of coal throughout a
20 30-day period and bring them into the station
21 at different rates such as it still complies
22 with the 1.2 pound 30-day rule on average.

23 MR. ARMSTRONG: And why hasn't
24 Dynege done this today for Hennepin?

1 MR. DIERICX: That sounds like a
2 question of fuel economics and I'm not qualified
3 to answer that.

4 MR. ARMSTRONG: So you can't
5 testify as to that environmental -- whether
6 that environmental compliance strategy you
7 described is in any way economically feasible?

8 MR. DIERICX: I am not familiar
9 with coal prices for the different types of
10 fuel we are considering as hypotheticals at
11 this time.

12 MR. ARMSTRONG: Thank you.

13 So I want to go back to
14 Mr. Davis's testimony very briefly on --
15 as opposed to Dynegy group, the old Ameren
16 group.

17 Would you agree -- under
18 the current MPS standards, would you agree
19 under the current MPS standards that Dynegy's
20 operation of the uncontrolled units in the
21 old Ameren group is constrained because of
22 the current MPS requirements that the unit
23 meets an average emission rate?

24 MR. DAVIS: Could you repeat that?

1 MR. ARMSTRONG: Would you agree
2 under the current MPS, Dynegy's operation
3 of the old Ameren group and specifically
4 the old Ameren group's uncontrolled units
5 is constrained by the current MPS emission
6 rate limit of .23 pounds per million Btu?

7 MR. BLOOMBERG: As we discussed
8 here before, it's not necessarily a constraint
9 so much as Dynegy then has to offer in its
10 other plants, it's more well controlled plants,
11 at a below market value because they have
12 provided power from the other Ameren plants
13 when it's necessary to provide power then they
14 go back and do the calculations, determine how
15 much they have to offset that, and then they,
16 you know, go to the market with their well
17 controlled plants to offset it as a loss.

18 MR. ARMSTRONG: So you just
19 testified that Dynegy is required under the
20 current MPS to operate controlled plants to
21 make up for uncontrolled plants.

22 Isn't another compliance
23 strategy that Dynegy could use, which is
24 simply to curtail operation of uncontrolled

1 plants?

2 MR. BLOOMBERG: I don't know
3 because I don't know what demand -- when MISO
4 is calling on them, they can't just say, nope,
5 sorry, can't run that plant, it doesn't meet
6 the MPS. You know, when MISO calls, they have
7 to answer.

8 MR. ARMSTRONG: So you don't
9 recall the testimony from last March where
10 Dynegy stated that it had not utilized Joppa
11 in order to comply with the MPS?

12 MR. BLOOMBERG: I was thinking more
13 in terms of plants that were available already.
14 The interpretation I had of your question was
15 more like they would just operate it up to a
16 point and then stop. So that's the way that
17 I was looking at the question that you had
18 asked.

19 MR. ARMSTRONG: I guess, to repeat
20 my question then, can Dynegy comply with the
21 current MPS through curtailing its operation
22 of uncontrolled plants instead of running
23 controlled plants more?

24 MR. BLOOMBERG: Even with that

1 clarification, I'm still going to have to
2 say that some of it, you know, does depend
3 on MISO. They can't simply necessarily
4 determine we're not going to run X, Y and Z
5 plant because the network, you know, the
6 electrical network has to be maintained.

7 I can't say what might or
8 might not happen, where they might need
9 power from. I think that, you know, the
10 electrical system is a bit different than
11 others where perhaps the -- you know, a
12 company might have more control.

13 While they do have obviously
14 some control, they do not have full control.
15 So could they operate them less potentially,
16 but I can't say for sure that would solve the
17 problem.

18 MR. ARMSTRONG: Other than those
19 two options, could Dynegy also comply with
20 the MPS by installing pollution controls?

21 MR. BLOOMBERG: I suppose you
22 could say that about anybody, that anybody
23 could just spend several million dollars to
24 put controls on. So yes, they could do that.

1 MR. ARMSTRONG: Well, when did
2 Dynegy install dry sorbent injection in Newton?

3 MR. BLOOMBERG: Well, is this the
4 temporary control device that you are talking
5 about that you mentioned in your prefiled
6 testimony?

7 MR. ARMSTRONG: I don't know. I've
8 never heard any testimony about it so far in
9 this proceeding.

10 MR. BLOOMBERG: Yeah. That's
11 because it's temporary and not permanent.
12 That's why this was not brought up before
13 because information for any responses
14 regarding pollution control equipment at
15 affected sources that the Illinois EPA
16 had provided during this rulemaking process
17 have been drawn from source materials
18 that would not have included that control
19 such as internal summaries of EGUs and
20 their characteristics or the summary that
21 the Agency has sent to the US EPA or
22 LabCorp to inform of their air quality
23 modeling.

24 The reason that these

1 information sources would not have included
2 a sorbent injection system at the Newton 1
3 unit is because a control system is not
4 required. It's not permanent and there is
5 no requirement for it to be operated or for
6 the unit to meet any sort of emission rate
7 for S02 due to the equipment.

8 It's because as can be
9 seen in the construction permits that you
10 included with your testimony, the company
11 was permitted to construct equipment for
12 "a pilot evaluation of sorbent ejection."
13 In fact, there are limits in those construction
14 permits on how much control is allowed to be
15 operated and when additional particulate matter
16 that can result from a pilot evaluation.

17 So, you know, the consideration
18 of particulate matter and efficacy of S02
19 controls would likely be a primary issue of
20 concern to a company evaluating the type of
21 control in question to determine whether it
22 is appropriate for a unit being tested.

23 It is also the Agency's
24 understanding that Dynegy doesn't own the

1 equipment being used for the pilot evaluation,
2 nothing in the construction permits, which
3 according to the rulemaking record, would
4 require the operation of a control or even
5 require the control be constructed or installed.

6 MR. ARMSTRONG: Could you please
7 turn to Attachment 9 to my prefiled testimony,
8 the second construction permit?

9 MR. BLOOMBERG: Okay.

10 MR. ARMSTRONG: Could you please read
11 Paragraph 1(b)(i)?

12 MR. BLOOMBERG: Yes. It says --
13 well, 1(b) says this revised permit, and then
14 it continues, allows ductwork sorbent injection
15 with sodium bicarbonate, Trona or other sorbent
16 to be conducted on an ongoing basis on Boiler 1
17 no longer limiting use of this equipment to
18 evaluation of sorbent injection.

19 Of course 1(a) of the
20 description talks about it being pilot
21 evaluations.

22 MR. ARMSTRONG: But it seems that
23 the affect of this permit is to allow ongoing
24 operations of sorbent injection at Newton; is

1 that correct?

2 MR. BLOOMBERG: There is no end
3 date, but there are also other operational
4 limits such as to the amount of sorbent material
5 injected.

6 MR. ARMSTRONG: You earlier testified
7 something to the affect of pollution control was
8 costing millions of dollars.

9 Do you know how much this
10 sorbent injection equipment costs to install?

11 MR. BLOOMBERG: Not off the top of
12 my head.

13 MR. ARMSTRONG: Do you know
14 whether this equipment was operated during
15 2017?

16 MR. BLOOMBERG: Yes, it was.

17 MR. ARMSTRONG: Do you know how
18 many hours it was operated during 2017?

19 MR. BLOOMBERG: Not off the top
20 of my head.

21 MR. ARMSTRONG: Do you know what
22 control efficiency it's capable of achieving?

23 MR. BLOOMBERG: That would depend on
24 which sorbent they are using since they were

1 doing this study.

2 MR. ARMSTRONG: Do you know whether
3 this equipment could be installed in other
4 uncontrolled plants in the MPS fleets?

5 MR. BLOOMBERG: It depends. A lot
6 of companies do studies to determine if it can
7 be installed in other facilities.

8 MR. ARMSTRONG: Are you aware of
9 any studies by Dynegy to install sorbent
10 injection at any other uncontrolled plants
11 in the MPS fleet?

12 MR. BLOOMBERG: Not off the top of
13 my head.

14 MR. ARMSTRONG: So you do agree
15 then that this equipment was operational
16 at Newton during 2017 controlling the amount
17 of sulfur dioxide emitted into the atmosphere;
18 is that correct?

19 MR. BLOOMBERG: Yeah. It was
20 operational. It was controlling it to a
21 certain degree.

22 MR. ARMSTRONG: But you don't
23 view this as pollution control equipment?

24 MR. BLOOMBERG: It was not listed

1 in our summaries for all the reasons that I
2 just provided a moment ago.

3 MR. ARMSTRONG: No further questions.

4 HEARING OFFICER TIPSORD: Mr. More?

5 MR. MORE: Okay. Let's -- we're
6 going to turn back to, for the record, Exhibit
7 46, 7(b).

8 Has the AGO presented any
9 evidence -- I'll start over.

10 Exhibit 46, Question 7(b),
11 has the AGO presented any evidence demonstrating
12 to the IEPA that the proposed annual S02
13 emissions cap must decrease when MPS units
14 retire in order for the proposed MPS revisions
15 to be as protective as the current MPS?

16 MR. BLOOMBERG: No.

17 HEARING OFFICER TIPSORD: Okay.
18 Mr. Armstrong?

19 MR. ARMSTRONG: Mr. Bloomberg,
20 do you agree that under the current MPS
21 standards the less heat input in an MPS
22 group, the less pollution that is permitted
23 from that group on an annual basis?

24 MR. BLOOMBERG: I think that's

1 a math question. It sounds like -- I believe
2 the answer is simply yes, if you multiply,
3 you know, a lower amount of heat input by a
4 lower allowable, you're going to get a lower
5 emission limit.

6 HEARING OFFICER TIPSORD: Mr. More.

7 MR. MORE: Isn't it dependent upon
8 other variables; emission rate, heat rate and
9 so forth, when you could have a lower heat
10 input but, in fact, a higher total emission
11 from a unit if you had a higher emission rate,
12 for example?

13 MR. BLOOMBERG: I don't think
14 that's what he was asking. I think he was
15 just asking for a math -- for a multiplication.

16 MR. MORE: Well, I think his math --
17 his formula assumed all other variables would
18 help constant heat input; is that correct?

19 MR. ARMSTRONG: May I comment on
20 my question? I'm sorry. I simply asked under
21 the current MPS standards -- under the current
22 MPS standards, the less heat input, the less
23 solution that's permitted by the standards on
24 an annual basis; is that correct?

1 MR. BLOOMBERG: Yes. The heat
2 input is not regulated so if you are simply
3 asking, you have, if you have allowable pounds
4 per million Btu and you multiply by one amount
5 a million Btu, then obviously a lower amount a
6 million Btu would create a lower number after
7 its multiplier.

8 MR. MORE: Question 8, has the
9 AGO presented any evidence demonstrating to
10 the IEPA that a NOx emissions cap lower than
11 25,000 tons is necessary for the proposal to
12 be as protective of human health and the
13 environment as the current MPS?

14 MR. DAVIS: No.

15 MR. MORE: 8(a), has the AGO
16 presented any evidence demonstrating to the
17 IEPA that a NOx emissions cap lower than
18 18,920 tons is necessary for the proposal
19 to be as protective of human health and the
20 environment as the current MPS?

21 MR. DAVIS: No. The AGO's analysis
22 in producing that figure for a NOx emission
23 limit uses the same methodology and suffers
24 from the same problems that apply to figure

1 Region 4 SO2 limit and that was some of the
2 things I addressed in that very long answer.

3 CHAIRMAN PAPADIMITRIU: Do
4 you have a follow-up to your question,
5 Mr. Armstrong, or can I go?

6 MR. ARMSTRONG: Please.

7 CHAIRMAN PAPADIMITRIU: What evidence
8 was provided for the Agency's decision to go
9 from 55 to 49?

10 MR. BLOOMBERG: There was no
11 specific evidence that was provided. As I
12 mentioned earlier, the Attorney General's Office
13 had their calculation, which we disagreed
14 with. However, the Agency felt that it would
15 be -- you know, basically, it was a concession
16 to try to make the Board's job a little easier.
17 So there was no specific evidence presented for
18 that.

19 CHAIRMAN PAPADIMITRIU: And so
20 now that the AG's number is 34, will there be
21 further concessions to make the Board's job
22 easier?

23 MR. BLOOMBERG: I do not believe
24 so. You know, a lot of that goes back to

1 the very long, very detailed explanation
2 that Mr. Davis gave as to why the AG's number
3 should not be used.

4 CHAIRMAN PAPADIMITRIU: But again,
5 and I apologize, Mr. Armstrong, you stated
6 that there's no evidence to move to the AG's
7 new number of the 34,000 and some change cap,
8 but there was no evidence to go from 55 to 49?
9 It was just simply to make our job easier as
10 the Board?

11 MR. BLOOMBERG: Yes, yes.

12 CHAIRMAN PAPADIMITRIU: Okay. Thank
13 you.

14 HEARING OFFICER TIPSORD: And
15 Mr. Armstrong.

16 MR. ARMSTRONG: Just for the
17 record, can you please point to me anywhere
18 in your office's testimony where we specifically
19 requested the cap of 49,000 or said that that
20 cap of 49,000 would be protective as the current
21 MPS?

22 MR. BLOOMBERG: 49,000? Oh, oh,
23 that one. Sorry. No, you didn't. As a matter
24 of fact, you made it clear at the prior hearings

1 that you were not specifying a number and you
2 did not know that you ever would specify a
3 number and then you specified a number.

4 MR. ARMSTRONG: Okay. But I just
5 wanted -- I just don't want people to take away
6 the impression that somehow we had asked for
7 49,000 tons at one point and now we're trying
8 to be more extreme about things.

9 My question was under the --
10 well, let me back up. The current NAAQS
11 standard for PMP 2.5, does IEPA believe it
12 is a threshold below which no health risks
13 are presented?

14 MR. BLOOMBERG: I believe that
15 the Agency has been very clear about this,
16 especially at the second hearing. The NAAQS
17 standard is set by US EPA who does quite a bit
18 of work to determine what is the appropriate
19 health-based standard taking into account at
20 risk populations. You know, that is the
21 standard that Illinois EPA abides by.

22 MR. ARMSTRONG: Is it your
23 understanding that US EPA believes that the
24 current PN 2.5 NAAQS is a threshold below which

1 there are no health risks presented by PN 2.5
2 pollution?

3 MR. BLOOMBERG: I would have to ask
4 who at US EPA and at what time in US EPA's
5 history.

6 MR. ARMSTRONG: No further questions.

7 HEARING OFFICER TIPSORD: Mr. More?

8 MR. MORE: Question 8(b), has the
9 AGO presented any evidence demonstrating to the
10 IEPA that the proposed annual NOx emissions cap
11 must decrease when MPS units retire in order for
12 the proposed MPS revisions to be as protective
13 as the current MPS?

14 MR. BLOOMBERG: No.

15 MR. MORE: Question 9, has the AGO
16 provided a projection what the heat input for
17 MPS unit will be in the future?

18 MR. MORE: No.

19 HEARING OFFICER FOX: Mr. Armstrong?

20 MR. ARMSTRONG: Do you believe that
21 the AGO's provision of ten years of actual
22 historical heat input data on a unit-level basis
23 in Attachments 1 and 2 to our testimony has any
24 value in predicting future heat inputs at the

1 MPS units?

2 MR. BLOOMBERG: It can be valuable,
3 but that does not equate to a projection of the
4 future. As they say when you look at mutual
5 funds, past results do not guarantee future
6 projections.

7 MR. ARMSTRONG: If you were to
8 predict heat inputs for MPS units in future
9 years, what data would you rely on to
10 make that prediction?

11 MR. BLOOMBERG: I would not make
12 that prediction because I'm not personally an
13 expert in natural gas prices or, you know,
14 I do not have a crystal ball to know what the
15 weather will be. You know, I would not have
16 expected snow in mid-April, for example, which
17 is what we have just a couple of two days ago.
18 That's just, you know, trying to project a
19 few days a week let alone what's going to happen
20 over the course of a decade.

21 As we have discussed, the
22 utilization of these plants depends heavily
23 on factors like the weather, natural gas prices
24 and related factors. I simply cannot predict

1 that and I would -- if someone could predict
2 the weather for the next ten years, I would
3 like to meet them.

4 MR. ARMSTRONG: Mr. Bloomberg, in
5 any of your air work at the Illinois EPA, has
6 the Agency ever made the determination of what
7 level of operation is representative of normal
8 source operations for a particular facility?

9 MR. BLOOMBERG; I think sometimes
10 we do, yes.

11 MR. ARMSTRONG: And when are those
12 determinations made?

13 MR. BLOOMBERG: I believe some
14 of those may be made during some resource
15 inventory review or PSD related issue, but
16 as I have mentioned here, permitting is not
17 my forte.

18 MR. ARMSTRONG: So is the Agency
19 able to make any conclusion of what level
20 of heat inputs would be representative of
21 normal source operations for these plants?

22 MR. BLOOMBERG: There are very
23 specific guidelines as to how many source
24 review and PSD would be done. Again, I am

1 not familiar with the ins and outs of them
2 and I don't know that it's necessarily
3 pertinent here. So...

4 MR. ARMSTRONG: Well, it seems
5 like you're saying that it's virtually
6 impossible to say how much any particular
7 source will operate in the future, but the
8 Agency does make judgment calls what level
9 of operations are representative of normal
10 source operations for other facilities,
11 correct?

12 MR. BLOOMBERG: Well, what I'm
13 saying is that's why we typically don't
14 restrict capacity. When we -- when we
15 put limits on someone, we put limits --
16 not on someone, on a facilities -- we put
17 limits on emissions in general.

18 And so that is what we
19 have proposed here as well. We are proposing
20 limiting the emissions. At some point when
21 you reduce the emissions enough, you are
22 basically telling the facility you can't
23 operate the way you want to operate. You
24 can't -- well, or you just can't operate

1 enough.

2 Generally, the Agency, you
3 know, does not attempt to do that. We don't
4 put on limits that are going to -- it's not
5 our goal to shut down plants by putting
6 limits that they simply can't abide by.

7 MR. ARMSTRONG: So you believe
8 that historical actual -- actual historical
9 human inputs should play no role in the
10 Board's analysis of the environmental impact
11 of these regulations -- proposed regulations?

12 MR. BLOOMBERG: No. I think -- I
13 think the Board understands that the heat
14 inputs can fluctuate. I think they understand
15 that there are a lot of numbers that have been
16 thrown around here.

17 And depending on what year
18 you look at, those numbers can change quite
19 a bit. You had earlier suggested that I look
20 at a couple of numbers that were lower than
21 a particular proposal and I pointed out that
22 there were other ones just a few years earlier
23 that were higher.

24 So it shows the variation. It

1 shows there is not just one number that you can
2 -- well, that we can
3 point at to say that is what they are going
4 to be operating at in the future.

5 What we can do is say this
6 is the number that is -- you know, protects
7 the environment, protects the -- you know,
8 does not -- is at least as protective as
9 the MPS is currently, and is achievable by
10 the impacted company.

11 HEARING OFFICER TIPSORD: Mr. More,
12 do you have a follow-up to that?

13 MR. MORE: Yes.

14 And, Mr. Bloomberg, isn't
15 it because of that variability that you just
16 described that you looked to the allowable
17 comparison?

18 MR. BLOOMBERG: Yes.

19 HEARING OFFICER TIPSORD: Okay.

20 Ms. Rabczak, do you have a follow-up?

21 MS. RABCZAK: Mr. Bloomberg, under
22 the haze rule, original haze --

23 HEARING OFFICER TIPSORD: You need
24 to lean into the microphone, please.

1 MS. RABCZAK: Under the original
2 haze SIP, 55. -- 55,953, how did you come to
3 that number?

4 MR. DAVIS: This is Rory Davis.

5 That number is calculated
6 from the MPS group at -- well, it's two groups,
7 Ameren and the Dynegy group. The Dynegy group
8 at 0.19 pounds per million Btu and the Ameren
9 group at 0.23 pounds per million Btus and
10 that's at 2,002 heat input.

11 MS. RABCZAK: So you had to use that
12 limit?

13 MR. DAVIS: We had to use that year
14 as a baseline for reductions from the baseline
15 total of emissions and then we were able to
16 feed that level of reduction into a model
17 that we could, yes, predict or commit to out
18 so far that the would improve visibility in
19 Class 1 areas to the required amount that was,
20 you know, required from our region.

21 MS. RABCZAK: So from the haze
22 rule, you just have a base year and then you
23 have percentage of reductions so you're just
24 supposed to reach, correct?

1 MR. DAVIS: It wasn't a percentage
2 of reductions. It was -- well, in that case,
3 the modeling done was based on -- and it was
4 regional. It was based on units that were
5 subject to best available retrofit technology
6 and that was a subset of units. They were
7 subject to BART. And so if each one of those
8 units were to have installed BART control --
9 BART level control -- then our region, our
10 LabCorp region modeled, yes, over our ten-year
11 long-term strategy period. We would be
12 improving visibility at the Class 1 areas by the
13 required amount.

14 Now, that was a level of
15 reductions that we could calculate to say
16 if we took every one of these BART units in
17 Illinois and we applied BART to them, then
18 we would get this large chunk of reductions.
19 When we did -- when we calculated what --
20 and that included refineries and EGUs that
21 were not part of Ameren or Dynegy, there was
22 also others.

23 So we had this big chunk of
24 emission reductions we need to get. When

1 we calculated what we projected the MPS to
2 achieve, it was greater than that number
3 along with consent decrees at the refineries,
4 which we split up in each case.

5 So Ameren was responsible
6 for their chunk. Dynegy was responsible for
7 their chunk. Refineries were responsible for
8 their chunk. CWLP, Kincaid, a number of other
9 sources, we made certain that the Dynegy units
10 achieved their reductions. The Ameren units
11 achieved their reductions.

12 So those reductions were
13 greater than what would have been achieved
14 by applying BART control technology to BART
15 sources.

16 MS. RABCZAK: And that number became
17 the new regional SIP?

18 MR. DAVIS: That is what we projected
19 for 2018 emissions in 20- -- I think we were
20 projecting that in 2010 and that was based on
21 2002 heat input data.

22 Now, like I said, we weren't --
23 we weren't attempting to set that as a limit.
24 Those were projections we made to show that

1 our SIP would be adequate to meet our regional
2 haze obligations.

3 MS. RABCZAK: But this is where you
4 started with the proposal, correct?

5 MR. DAVIS: That is where we start
6 with the proposal, yes, the Dynegy and Ameren
7 units are those groups. We expected no more
8 than these emissions and that's what's in our
9 SIP. So we considered those as commitments
10 going forward.

11 MS. RABCZAK: So that number becomes
12 now the number you consider protective of the
13 environment, correct?

14 MR. DAVIS: That number becomes the
15 number that we believe is approval as the SIP
16 provision to US EPA.

17 MS. RABCZAK: So when you talk
18 about protective of the environment, are you
19 just talking about SIP and what is approval
20 of US EPA or is there any other requirement
21 or any other methodology used to consider
22 what is protective of the environment?

23 MR. DAVIS: We also did the
24 analysis of, you know, how it could impact

1 the NAAQS. And, like we've said a number
2 of times, this is an annual limit and the
3 NAAQS being a one-hour limit, it is as
4 protected and being an annual limit, as we've
5 said.

6 The current MPS units could
7 increase their emissions above what they've
8 been in the last few years and then, I believe,
9 we've presented quite a bit of evidence at
10 Edwardsville of what we expected could happen
11 and how it would still be protective of the
12 NAAQS in those areas.

13 HEARING OFFICER TIPSORD: Mr. More,
14 you had follow-up?

15 MR. MORE: I did. Thank you.

16 As the MPS units emitted
17 greater than 55,953 tons of S02 -- let me
18 ask it this way.

19 Would -- strike that.

20 Earlier, you testified under
21 the MPS the units are allowed to emit up to
22 66,000 and change tons of S02 a year, correct?

23 MR. DAVIS: Yes.

24 MR. MORE: Okay. Now, had the

1 units emitted greater than 55,953 tons of SO₂
2 in a year, would that have triggered a violation
3 of the SIP?

4 MR. DAVIS: It actually would not
5 have. As I've stated, we considered those
6 emission reductions from those two groups to
7 be commitments that Illinois made. However,
8 there has been, you know, much greater emission
9 reductions from these so if there was some
10 measure of -- well, it is in compliance, but
11 if the Dynegy and Ameren groups had emitted
12 above that number, it wouldn't have been a
13 violation of our SIP. We may have had to
14 explain in our progress report. However,
15 a progress report was done in 2015 and we
16 wouldn't have known for 2018 whether, you
17 know, each section was meeting those
18 commitments, but no, it would not have been
19 a violation for SIP.

20 HEARING OFFICER TIPSORD: Okay.
21 Mr. Armstrong?

22 MR. ARMSTRONG: Yes. I'm sorry.
23 This goes back a couple of questions. I'm
24 sorry again because I'm terrible with

1 pronouncing names, but Ms. Rabczak, in response
2 to her question, Mr. Davis, you referred to a
3 SIP. You were referring to the 2010 S02 SIP;
4 is that correct?

5 MR. DAVIS: I --

6 MR. ARMSTRONG: I'm sorry. You
7 referred to a NAAQS --

8 MR. DAVIS: Yes.

9 MR. ARMSTRONG: -- the 2010 S02
10 NAAQS; is that right?

11 MR. DAVIS: Yes.

12 MR. ARMSTRONG: Thank you.

13 HEARING OFFICER TIPSORD: Mr. More?

14 MR. MORE: Turning back to Exhibit 46,
15 Question 10, under the current MPS, could the
16 MPS fleet emit more than 34,094 tons of S02
17 in a year and remain in compliance?

18 MR. BLOOMBERG: Yes.

19 HEARING OFFICER TIPSORD: And
20 Mr. Armstrong?

21 MR. ARMSTRONG: What is the basis
22 for your answer?

23 MR. BLOOMBERG: There is currently
24 no emissions cap on the MPS fleet.

1 MR. ARMSTRONG: Well, let me ask
2 another variation of this question then.

3 Under the current MPS, could
4 the MPS fleet given the unit level emission
5 rates that have been constant for the past
6 five years emit more than 34,094 tons of S02
7 in a year and remain in compliance?

8 MR. BLOOMBERG: Could you repeat
9 that again?

10 MR. ARMSTRONG: Under the current
11 MPS, could the MPS fleet given the unit-level
12 emission rates for the past five years, emit
13 more than 34,094 tons of S02 in a year and
14 remain in compliance?

15 MR. BLOOMBERG: We have not done
16 that specific calculation. I believe so,
17 but again we have not done that specific
18 calculation.

19 MR. MORE: Mr. Armstrong, isn't
20 that your calculation that you have performed
21 in, what is it, Tables 9 and 10, where you
22 used the actual emission rates highest heat
23 inputs and you came up with this and said
24 this is the potential highest emissions that

1 could be emitted and still comply with MPS
2 and 49,300 and some odd tons of S02?

3 MR. ARMSTRONG: I don't think I'm
4 testifying right now. I don't think we have
5 any prefiled questions from me.

6 HEARING OFFICER TIPSORD: But there
7 have been far more questions of the Agency than
8 were prefiled.

9 MR. ARMSTRONG: Okay.

10 HEARING OFFICER TIPSORD: If you
11 don't want to answer the question right now, you
12 can answer it in final comment, but I think
13 it's a fair question. You can answer in final
14 comments.

15 MR. ARMSTRONG: I thought Mr. Davis
16 was going to say something.

17 So the tables that you refer
18 to, Mr. More, as we stated many times, are
19 never intended to be a realistic operating
20 scenario and would never happen in the real
21 world.

22 HEARING OFFICER TIPSORD: Mr. Davis?

23 MR. DAVIS: I think that I can
24 clarify the answer.

1 The question was about the
2 34,000 number and I think I said at length
3 what our difficulties with that number are
4 is that for one, it uses the 2002 and not
5 maximum heat input.

6 It also uses 2002 unit
7 level heat puts that kind of locks those
8 units into -- into place in the proportion
9 they were at in 2002. And so if, for
10 example, a more controlled unit was used
11 in more -- in greater proportion than in
12 2002, then yes, that would be possible
13 to exceed the number you are asking about.

14 MR. ARMSTRONG: No further
15 questions.

16 HEARING OFFICER TIPSORD: All
17 right. Mr. More?

18 MR. MORE: Turning back to Exhibit
19 46, Question 11, under the current MPS, could
20 the MPS fleet emit more than 18,920 tons of
21 NOx in a year and remain in compliance?

22 MR. BLOOMBERG: Yes.

23 MR. MORE: Question 12, does
24 Tamara Dzubay's testimony regarding Dynegy's

1 financial situation change the Agency's
2 evaluation of or support for this proposal?

3 MR. BLOOMBERG: No. As the
4 Agency has stated repeatedly, Dynegy's overall
5 financial situation has never been a reason
6 for this proposed rule change. The
7 environmental groups have concluded, whether
8 unintentionally or intentionally, the fact
9 that the current MPS rule causes some units
10 to run at a loss at certain times with the
11 idea Dynegy has run as a loss.

12 HEARING OFFICER TIPSORD: And
13 Mr. Sylvester?

14 MR. SYLVESTER: Just a clarifying
15 question; one of the bases is for the -- for
16 this proposed rulemaking was operational
17 flexibility. So I was wondering if it's
18 the Agency's position that operational
19 flexibility has any relation to finance --
20 Dynegy's finances?

21 MR. BLOOMBERG: The operational
22 flexibility is to not operate units at a
23 loss for the times that they are operating
24 those units. That has nothing to do with

1 the overall financial situation of Dynegy.

2 MR. SYLVESTER: You just testified
3 that it was to prohibit them from operating
4 certain units at a loss or did I mishear
5 that?

6 MR. BLOOMBERG: At a loss during
7 those specific times basically being called
8 on to operate those units at a loss when they
9 would otherwise not need to do so.

10 MR. SYLVESTER: And just to
11 clarify, at a loss of what?

12 MR. BLOOMBERG: Money.

13 MR. SYLVESTER: So you did, in
14 fact, take into account finances when you're
15 talking about operational flexibility, isn't
16 that right?

17 MR. BLOOMBERG: Unit-level at
18 specific times.

19 MR. SYLVESTER: So we're talking
20 about money, right?

21 MR. BLOOMBERG: You are.

22 MR. SYLVESTER: Well, let's recap
23 the testimony then.

24 You said at a loss. At a loss

1 of what?

2 MR. BLOOMBERG: A financial loss.
3 When they have to bid in at below the cost of
4 operating the actual unit at that time.

5 MR. SYLVESTER: So in providing
6 operational flexibility, one component of
7 that is finance; is that correct?

8 MR. BLOOMBERG: In the specific
9 situations that I have mentioned, yes.

10 MR. SYLVESTER: Thank you. No
11 further questions.

12 HEARING OFFICER TIPSORD: Mr. More?

13 MR. MORE: Turning back to Exhibit
14 46, Question 13, does the Agency believe that
15 Vistra's participation in this rulemaking is
16 necessary for the Agency to present sufficient
17 evidence to support its proposal?

18 MR. BLOOMBERG: No.

19 HEARING OFFICER TIPSORD: Are
20 there any other questions? Oh, look at the
21 hands go up.

22 Ms. Bugel, we're going to go
23 with you.

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

1 from not this most recent question, but one
2 before. I just wanted to ask did one of the
3 bases for which Dynegy requested this role,
4 was one of those bases economic stability?
5 This is a question for IEPA.

6 MR. BLOOMBERG: I don't recall
7 economic stability, that term. I don't think
8 that there was ever the suggestion, you know,
9 that this rule was going to economically
10 stabilize the whole company or anything like
11 that.

12 MS. BUGEL: Can you turn to the
13 IEPA's statement of reasons that was filed
14 on October 2, 2017, Page 3?

15 MR. BLOOMBERG: Okay. All right.
16 There it is.

17 MS. BUGEL: All right. And does
18 that also say that the IEPA developed this
19 proposed rule in response to those requests
20 by Dynegy?

21 MR. BLOOMBERG: Yes. The Illinois
22 EPA developed this proposed rule.

23 MS. BUGEL: In response to those
24 requests by Dynegy?

1 MR. BLOOMBERG: Yes.

2 MS. BUGEL: Okay. Thank you.

3 HEARING OFFICER TIPSORD: Okay.

4 Mr. Sylvester, you had a follow-up?

5 MR. SYLVESTER: Yes. I just wanted
6 to turn back to Dynegey's Question No. 13 and
7 your response was no. I just wanted to know
8 what the basis for that was.

9 MR. BLOOMBERG: The basis is the
10 same as it always is. It's a rulemaking. No
11 one is ever required to participate.

12 MR. SYLVESTER: Do you think
13 there would be any value added by Vistra's
14 participation?

15 MR. BLOOMBERG: Considering
16 there is still legal representation for
17 the company that is here right now, I think
18 that they can choose the level to which
19 they would like to participate and I'm not --
20 I don't know of any particular added value
21 that we don't already know the information.

22 MR. SYLVESTER: I have one other
23 question.

24 Do you think Dynegey's

1 presence in this rulemaking is required for
2 the Agency's proposal?

3 MR. BLOOMBERG: It's my understanding
4 that Dynegy does not exist anymore.

5 MR. SYLVESTER: Could you let me
6 know what the basis of that statement is?

7 MR. BLOOMBERG: The merger of Vistra
8 went through -- was it last Monday? Last
9 Monday.

10 MR. SYLVESTER: So is it your
11 understanding that Vistra is now participating
12 in this rulemaking?

13 MR. BLOOMBERG: To the extent
14 that they are sitting here, the people who
15 are here, yes.

16 HEARING OFFICER TIPSORD: Go ahead,
17 Mr. More.

18 MR. MORE: In light of the questions
19 and comments, we're -- we would propose to swear
20 in another testifying individual who can speak
21 on behalf of Vistra and give a statement on the
22 record. We were initially proposing to do it
23 as just a comment, but given what appears to be
24 concerns from the Attorney General, we're happy

1 to participate through written -- through oral
2 testimony today. So if that's acceptable to the
3 Board, we can swear in our witness.

4 HEARING OFFICER TIPSORD: Since
5 Mr. Bloomberg left, let's go ahead and swear
6 in your witness because I guess there's no
7 point in asking him a question right now. So
8 let's go ahead and swear in your witness.

9 MR. MORE: So go ahead and state
10 your name for the record.

11 THE COURT REPORTER: Should I swear
12 her in?

13 MR. MORE: Oh, yes.

14 THE COURT REPORTER: Please raise
15 your right hand.

16 Do you swear that the testimony
17 you're about to give will be the truth, the
18 whole truth, and nothing but the truth, so help
19 you God?

20 MS. VODOPIVEC: I do.

21 (Witness sworn.)

22 THE COURT REPORTER: Can you spell
23 your name for me, please?

24 MS. VODOPIVEC: Sure. It's Cynthia,

1 C-Y-N-T-H-I-A, Vodpivec, V-O-D-O-P-I-V-E-C. I
2 have a statement that I am going to read.

3 Good afternoon. Madame Chair,
4 Board members, Hearing Officer Tipsord and Board
5 staff, my name is Cynthia Vodopivec and I'm the
6 Vice-President of Environmental Health and
7 Safety for Vistra Energy.

8 Thank you for the opportunity
9 to appear before you today. And from the
10 outset, let me just say on behalf of Vistra
11 Energy, how excited we are to finally be here
12 in Illinois. We look forward to a bright
13 future serving the customers and communities
14 of this state with power that's safe, reliable,
15 affordable and environmentally responsible.

16 As you've probably heard by
17 now, Vistra Energy's merger with Dynegy became
18 final a week ago. With our companies now
19 combined, Vistra is the leading integrated
20 power company in the United States.

21 I'd like to spend a few
22 moments telling you some about Vistra. We're
23 a publicly held company, listed on the New
24 York Stock Exchange with our headquarters in

1 Irving, Texas. As an integrated power company,
2 we both own and operate our plants and the
3 retail companies that sell electricity to our
4 customers.

5 We own approximately 40,000
6 megawatts of installed generation capacity
7 across 12 states. More than 60 percent of
8 our generation is fueled by natural gas. But
9 we also operate coal plants, a nuclear plant,
10 we are a big purchaser of wind generation and
11 this summer will start operating our first
12 solar plant.

13 We serve about 2.9 million
14 customers in five top retail states including
15 Illinois, where we have 860,000 customers.

16 Turning to the issue at hand,
17 since last year when the merger with Dynegy
18 was announced, the Vistra management team has
19 become familiar with this proposed revision
20 of the Illinois Multi-Pollutant Standard before
21 the Board and have been following the progress
22 of this rulemaking.

23 And we'd like to share with
24 you some of our thoughts now on these proposed

1 revisions.

2 Vistra supports the Illinois
3 EPA's initial proposal to revise the MPS and
4 encourages the Board to adopt it. Additionally,
5 we support the statements and testimony provided
6 to the Board by Dynegy in this matter to date.

7 Vistra's primary goal, which
8 is consistent with those previously expressed
9 in the written and oral testimony of Dean
10 Ellis and Rick Diericx from Dynegy before
11 this Board, is to obtain operational flexibility
12 for the Vistra Illinois fleet by eliminating
13 the need to run units at a loss for MPS
14 compliance reasons.

15 The adoption of Illinois EPA's
16 initial proposal would help achieve that goal,
17 while preserving the emission reductions
18 achieved by the MPS to date.

19 Again, I'd like to thank
20 the Board for the chance to appear and enter
21 testimony today for Vistra Energy. As we
22 begin providing power for the people of this
23 state, we'll be dedicated to building on our
24 long record of community and environmental

1 stewardship. Thank you.

2 HEARING OFFICER TIPSORD: Thank you.

3 Go ahead. Mr. Sylvester.

4 MR. SYLVESTER: I'll defer.

5 HEARING OFFICER TIPSORD: No, go
6 ahead.

7 MR. SYLVESTER: Does Vistra now have
8 any plans to close any MPS units?

9 MS. VODOPIVEC: We have no
10 preconceived plans to close any plants.

11 MR. SYLVESTER: Is Vistra planning
12 on evaluating whether or not to close them
13 in the near future?

14 MS. VODOPIVEC: We just -- as you
15 know, we just assumed control of these plants.
16 We are reviewing their performance and ways
17 to make them more efficient and more cost
18 effective.

19 MR. SYLVESTER: So earlier, there
20 was an exhibit that was offered that provided
21 two statements from Vistra's CEO, Mr. Morgan.

22 HEARING OFFICER TIPSORD: Exhibit
23 41.

24 MR. SYLVESTER: And just to

1 reiterate, on Page 1 of that, it says that
2 Vistra is in the midst of an operational
3 review of power plants to identify potential
4 efficiencies and Morgan noted that the
5 Illinois fleet is challenged. So just to be
6 clear, is Vistra evaluating the plants as we
7 speak?

8 MS. VODOPIVEC: As we stated, we
9 just closed on these plants last Monday and
10 we are just starting that evaluation.

11 MR. SYLVESTER: Have you had any
12 conversations personally with Mr. Morgan
13 about the future of the MPS units?

14 MS. VODOPIVEC: Yes. We have
15 had discussions with Mr. Morgan and he
16 just basically -- what I just stated is
17 what he said. We are just starting the
18 evaluation and we will go through that
19 evaluation.

20 MR. SYLVESTER: So would you
21 agree with Mr. Morgan's statements that --
22 he said we are likely going to have to
23 retire some facilities there ending with
24 such a decision could come as early as

1 this year?

2 MS. VODOPIVEC: I can't comment
3 on that.

4 MR. SYLVESTER: And why is that?

5 MS. VODOPIVEC: I would have to
6 ask Mr. Morgan.

7 MR. SYLVESTER: So this question
8 never came up with your discussions about the
9 future of the MPS fleets with Mr. Morgan?

10 MR. MORE: I think it would be
11 best if Mr. Sylvester presented his question and
12 we will answer them after the hearing as the
13 merger just happened. The company has made
14 a statement to make it very clear that they
15 support the MPS as it was being proposed and
16 they have reviewed and agreed with the positions
17 that Dynegy took prior to the merger.

18 MR. SYLVESTER: Well, for
19 clarification, are you saying then that
20 somebody, after they -- they would be present
21 for follow-up questions for these issues?

22 HEARING OFFICER TIPSORD: You need
23 to speak into the microphone.

24 MR. SYLVESTER: Will there be any

1 additional follow-up witness -- a hearing where
2 some people could ask follow-up questions just
3 like we have done throughout this process?

4 MR. MORE: No. We are not proposing
5 a third hearing -- a fourth hearing. We put
6 everyone on notice of the merger immediately.
7 Everyone was well-aware of its impending date.
8 In fact, it was brought up at the last hearing.
9 If there were questions, everyone had an
10 opportunity to obviously pre-file them. We
11 then could have been prepared to answer them.

12 I see no reason why we
13 should be treated any differently than any
14 of the other participants given -- with
15 the opportunity to answer questions in
16 the post-hearing comment period.

17 MR. SYLVESTER: Well, I guess the
18 question is who is before the Board right now?
19 Is it Dynegy or Vistra?

20 MR. MORE: It's the current --
21 actually, who is before the Board is the
22 same entities that has always been before
23 the Board, which is the four or five operating
24 entities of the plants. Those have not changed.

1 We have Dynegy representatives, some of them,
2 because those -- the Dynegy entity often has
3 service components that serve those operating
4 entities.

5 MR. SYLVESTER: Well, if you're
6 proposing to us to submit written questions,
7 we certainly welcome that opportunity, but we'd
8 also ask for the ability to ask follow-up
9 questions if it's in writing or in person.

10 HEARING OFFICER TIPSORD: I'm
11 somewhat -- excuse me. I'm just going to jump
12 in here. I appreciate that everyone wants to
13 know what Vistra is going to do. This is the
14 end. I mean, we have already been through this.
15 Everybody asked Dynegy. Dynegy said we don't
16 know. We now have a representative from Vistra.
17 We have an article from Vistra. Vistra is
18 telling us we don't know yet. I don't see --
19 I'm just going to ask you if we have you back
20 here in 30 days, will you have a definitive
21 answer for me.

22 MS. VODOPIVEC: No.

23 HEARING OFFICER TIPSORD: I mean, I
24 don't know that -- I mean, could we wait a year

1 and see what's going to happen? I guess what
2 I'm saying is I understand the questions and
3 everybody wanting to know what Vistra is going
4 to do. I think that we have to accept that that
5 information is not going to be in this record.
6 We will have to make arguments based to that.

7 MR. SYLVESTER: Yes. I mean, the
8 real issue is, you know, one of the things we
9 brought up in our testimony is if plants retire,
10 are they still going to be getting credit for,
11 you know, their emission limits? Without
12 getting answers to that, it doesn't make for
13 a very complete record.

14 HEARING OFFICER TIPSORD: Well,
15 but that's a question to the Agency and, I
16 think, we actually have some additional
17 questions for the Agency on that that might
18 resolve this. Vistra is not the proponent
19 of this rule.

20 MR. SYLVESTER: I understand that.

21 HEARING OFFICER TIPSORD: I mean,
22 it's the IEPA. So if you have questions about
23 retirement and what that impact is going to
24 be, those questions really need to be addressed

1 to the Agency because they are the ones who need
2 to address that. That's my feeling. I think
3 that I do know that we have a couple more
4 questions that we are going to address to the
5 Agency that go to that point.

6 As you know, the Board has
7 asked several questions about retirement of
8 facilities. So I guess that's my point. I
9 totally understand your frustration with where
10 we're at with the company merger and everything,
11 but I don't -- I think we're going to have to
12 proceed with this rulemaking without having
13 direct answers from the company and have to
14 ask the Agency for contingencies. That's my --
15 and present those arguments to the Board based
16 on that.

17 MR. SYLVESTER: Fair enough. I just
18 wanted clarification.

19 HEARING OFFICER TIPSORD: And I get
20 it. I really do.

21 MR. ARMSTRONG: And can I just ask
22 a clarifying question in terms of procedure?
23 When is the appropriate time to ask follow-up
24 questions for Vistra? Is that, like, right

1 now or in writing?

2 MR. MORE: We have given you our
3 answer as to what the plans are. There is an
4 evaluation that will be underway. That's not
5 going to change. As the hearing officer
6 mentioned, that is our answer. These questions
7 about are we retiring, are we not retiring,
8 we have answered that question.

9 HEARING OFFICER TIPSORD: And I
10 would just say that I have envisioned all
11 along that there would be a comment period
12 that would end and then there would be an
13 opportunity for replies to comments. So I
14 would say that if you -- I mean, if you have
15 some specific questions, we can certainly
16 get to them yet today, but if they're questions
17 that Vistra would rather answer in writing,
18 you can always post them as a part of your
19 final comments and see if we get responses.

20 Again, there reaches a point
21 where the Board has to make the decision on
22 the record. It has and arguments can be made
23 on that record. If you see there's a hole and
24 you want to argue that, that's certainly what

1 you can do.

2 Like I say, I would envision
3 that there's going to be comments and then
4 reply so that everybody gets a chance to
5 comment on the comments.

6 MR. ARMSTRONG: Very good. Thank
7 you.

8 BOARD MEMBER ZALEWSKI: Can I ask
9 one clarifying...

10 HEARING OFFICER TIPSORD: Yes.

11 BOARD MEMBER ZALEWSKI: In the
12 merger, and I don't know who is going to
13 be able to answer this, but in the merger,
14 did the EGU permits transfer to Vistra?

15 Who holds the permit
16 right now?

17 MS. VODOPIVEC: The permits are
18 still held by the operating entities.

19 MS. ZALEWSKI: Dynegy even though
20 it...

21 MS. VODOPIVEC: It's not Dynegy.

22 MR. MORE: Rick, maybe you can
23 answer.

24 MR. DIERICX: Yes, that's correct.

1 There is a subsidiary entity that currently
2 holds the permits. They continue to hold the
3 permits in those entity names even though the
4 parent company, Vistra, has changed.

5 MS. ZALEWSKI: Okay.

6 CHAIRMAN PAPADIMITRIU: Can I ask a
7 follow-up question to that?

8 HEARING OFFICER TIPSORD: Sure.

9 CHAIRMAN PAPADIMITRIU: So as a
10 follow-up to that, and again, I'm not sure
11 to who to address this, are there any plans
12 to change the permit entities on each permit?

13 MS. VODOPIVEC: Not at this time.
14 There's no change -- there's no plans to change
15 any of that at this time.

16 CHAIRMAN PAPADIMITRIU: And I know
17 that the Agency has stated that they don't
18 plan on changing the permits to include any
19 mass caps that we put those here in an order.
20 Would Vistra be open to receiving new permits
21 that happen on the caps that are proposed
22 here?

23 MR. DIERICX: Yes. There are
24 Title V permits that have not yet been

1 issued to facilities. They are still under
2 negotiation with the Illinois EPA. Once the
3 rule is finalized, we would not object to
4 the inclusion of any new MPS related limits
5 in those permits and would consider revisions
6 to the issued permits once the rule is
7 finalized.

8 CHAIRMAN PAPADIMITRIU: Okay. Thank
9 you.

10 HEARING OFFICER TIPSORD: Go ahead.

11 CHAIRMAN PAPADIMITRIU: I'm going
12 to keep going. This is to the Agency. The
13 Agency provided -- this is regarding sales
14 within the -- so unit sales within the MPS
15 as proposed. In the Agency's proposal, the
16 Agency proposes that when -- and I'm asking
17 you to validate that I have this correct.

18 The Agency proposes that
19 if and when Vistra sells one of the units --
20 plants -- I'm sorry -- in the MPS, that the
21 mass cap would be reduced by a percentage
22 ratchet. And I believe the Agency proposed
23 ten percent for each plant whether the cap
24 be at the 55,000 limit and the 49,000 limit.

1 Let me stop there. Did I get any of that
2 incorrect?

3 MR. BLOOMBERG: Yes.

4 CHAIRMAN PAPADIMITRIU: Okay. Please
5 correct it.

6 MR. BLOOMBERG: We proposed specific
7 numbers in the original proposal.

8 CHAIRMAN PAPADIMITRIU: The 55,000?

9 MR. BLOOMBERG: The 55,000. And
10 then when we brought up the 49,000 instead of
11 55,000, we proposed changing the numbers, it
12 was a reduction of ten percent from the numbers
13 that we had in our original proposal. So that's
14 where ten percent comes in. So we proposed
15 specific numbers for each source.

16 CHAIRMAN PAPADIMITRIU: Based on
17 the 55,000?

18 MR. BLOOMBERG: And then we
19 changed -- and then we also proposed new
20 specific numbers based on the 49,000.

21 CHAIRMAN PAPADIMITRIU: For 49,000?

22 MR. BLOOMBERG: Yes. That was in
23 our February 16th submittal.

24 CHAIRMAN PAPADIMITRIU: Sure. So

1 if the -- and again, we've heard quite a few
2 numbers today --

3 MR. BLOOMBERG: Yes.

4 CHAIRMAN PAPADIMITRIU: -- regarding
5 a possible mass cap. So if the Board decides
6 to adopt a mass-based limit that differs from
7 that proposed by the IEPA initially and then
8 revised, what methodology should the Board
9 use for allocating that limit among individual
10 units?

11 In other words, would you keep
12 the same formula regardless of the mass cap?

13 MR. BLOOMBERG: So if you're
14 asking, which I think you are, if, for example,
15 you chose to reduce that 49,000 by ten percent
16 more, let's just say, will you then reduce the
17 transfer numbers by another ten percent and
18 the answer is that I'm not sure because just
19 as I had said before, I don't know if Vistra
20 can operate as that -- at this hypothetical
21 ten percent lower number. I don't know that a
22 purchaser of one of these sources could operate
23 at a hypothetical ten percent lower individual
24 number there. Does that makes sense?

1 CHAIRMAN PAPADIMITRIU: If it does,
2 but again, I'm asking the Agency's perspective.
3 Vistra's got some lawyers here. I'm happy to
4 have Vistra answer that question after this
5 hearing, but getting back to the Agency, could
6 the Agency provide an allocation table so that
7 we have a more complete record for the 44,920
8 as well as the 34,094 number of the AG's? This
9 would be again for transfers.

10 MR. BLOOMBERG: We can certainly
11 provide something. We would be talking to
12 Vistra about it to determine -- because we do
13 not want to make anything that appears to be
14 a recommendation without knowing whether or
15 not it's something that the company could do.
16 So we would need to look at that and if we
17 were to go to Vistra and ask them that and
18 they said no, we absolutely can't meet that,
19 then I'm not sure what we would provide to you
20 because we don't -- the Agency doesn't want to
21 recommend a number that the company says
22 absolutely, this source cannot operate at that
23 number.

24 MR. RAO: I have a follow-up

1 question, Mr. Bloomberg.

2 The device -- the 49,000
3 mass cap you, you know, recommended or proposed
4 in your February submittal, did you discuss
5 that with Dynegy to see whether they would
6 be able to comply with that number and
7 allocation?

8 MR. BLOOMBERG: Yes. We discussed
9 it with them. They agreed that they could
10 comply, as I think I have said before. They
11 were not thrilled with our proposal.

12 MR. RAO: And you also mentioned
13 one of the things it may depend on also is
14 the purchaser of the plan, will they be able
15 to live with that number. How did you determine
16 49,000?

17 MR. BLOOMBERG: Well, in this
18 case, we looked at -- we just -- it was a
19 ten percent drop overall. It was a ten percent
20 drop in each one. We -- Dynegy at the time
21 was the operator of those facilities. So
22 they would know, for example, Havana can be
23 operated with the limited 5,400 tons per year.

24 If they were to have told us,

1 no, you know, 6,000 is the absolute lowest,
2 then these numbers would have needed to be
3 differently determined, but they determined
4 that, yes, that that was a number that could
5 be met by any hypothetical purchaser.

6 HEARING OFFICER TIPSORD: Go ahead,
7 Mr. Armstrong.

8 MR. ARMSTRONG: I have a question
9 about what we're talking about in terms of
10 compliance here because as we all know, in
11 2016, the MPS units as a whole emitted less
12 than 30,000 tons of SO2 for the year. So I
13 think we can all agree that those units are
14 physically capable of complying with a limit
15 of 34 or 44. In what sense are you using the
16 term "comply"?

17 MR. BLOOMBERG: Being able to
18 operate. I mean, I feel like we have kind
19 of gone through this several time here.

20 Yes, they could operate
21 at lower numbers when you have mild weather
22 and low gas prices, as we've gone over ad
23 nauseam here. So yes, we know 2016 was a
24 low year. We've been through that, but

1 that doesn't mean that future years will
2 be the same and it would surprise me if
3 future years were exactly the same.

4 MR. ARMSTRONG: So I guess I'm
5 just trying to understand what do you mean
6 when you say we need to ask Dynegy whether
7 they can comply with that number?

8 What does that mean to you
9 when you say "comply"?

10 MR. BLOOMBERG: I really don't
11 understand the question. I'm sorry.

12 HEARING OFFICER TIPSORD: Let
13 me try.

14 MR. BLOOMBERG: Okay.

15 HEARING OFFICER TIPSORD: So,
16 Mr. Bloomberg, you said we've got to talk to
17 Dynegy, or Vistra now, to see if they can
18 comply with the numbers at 39,000, whatever.
19 If we reduce everything by ten percent, if
20 39,000 is the mass balance, we have to talk
21 to Vistra to see if they can comply. Comply
22 with what?

23 MR. BLOOMBERG: Okay. If they
24 could operate into the future in a financially

1 reasonable way and, you know, meet that limit,
2 not have plants shutting down and telling MISO
3 we can't supply you with electricity because
4 it would violate this rule.

5 MR. ARMSTRONG: So a financial reason
6 was this played into your analysis here?

7 MR. BLOOMBERG: Okay. There seems
8 to be this confusion going on. Whenever we
9 institute a control, whenever we make
10 reductions, economic reasonableness is always
11 a consideration. I believe that previous
12 testifier even, you know, quoted the part of
13 the act. However, that part of the act is
14 not used the way it has been used and perhaps,
15 you know, some of the ways it's been used
16 recently here.

17 When we look at economic
18 reasonableness, we are looking to make sure
19 that we don't put in a rule or actually the
20 Board doesn't put in a rule, we don't suggest
21 a rule, propose a rule, that will shut
22 companies down because that is not the goal.
23 I'm talking about this in general. So I will
24 give you a perfect example. When I was

1 participating in a rulemaking for lithographic
2 printers and we're talking, I don't know, 20
3 years ago or something, we had -- the
4 requirement was supposed to be 95 percent VOM
5 control. We were approached by some printers
6 who already had controls on them that got 90
7 plus percent, if not 95. They would have been
8 forced to tear out that control and put in a
9 whole new control. That did not strike us as
10 economically reasonable. Therefore, we -- in
11 discussions with the industry and in discussions
12 with the US EPA, we changed our proposal. We
13 made it 90 percent knowing full well that most
14 sources that would buy an afterburner would
15 still get more than 95 percent, but it would
16 not cause an economically unreasonable situation
17 to the sources that already had the controls.
18 Okay. That is what is meant by economic
19 reasonableness.

20 MR. ARMSTRONG: So what you are
21 saying is the Agency considered what pollution
22 controls were economically reasonable in that
23 rulemaking?

24 MR. BLOOMBERG: Yes.

1 MR. ARMSTRONG: Thank you.

2 HEARING OFFICER TIPSORD: Mr. More?

3 MR. MORE: Is it the Attorney
4 General's position that that's inappropriate to
5 consider the economic implications of a rule on
6 stakeholder?

7 MR. ARMSTRONG: No. I think that
8 the --

9 MR. MORE: Go ahead.

10 MR. ARMSTRONG: No. I think that
11 the Board certainly should take into account
12 all factors required under the Illinois
13 Environmental Protection Act. Talking about
14 economic reasonableness, I think it would be
15 ideal to talk about what pollution controls
16 are available, for example, dry sorbent
17 injection and what can be employed on the MPS
18 fleet to meet the existing limit or reduce
19 pollution as much as possible if the standard
20 is going to be relaxed.

21 HEARING OFFICER TIPSORD: Do you have
22 another follow-up?

23 CHAIRMAN PAPADIMITRIU: Yes. I have
24 one follow-up, Mr. Bloomberg. I know that it's

1 been a long day and we're all a little hangry.

2 Mr. Bloomberg, you said -- and
3 I'm just asking for clarification -- that you
4 asked Dynegy if the 49,000 revised cap would
5 still attract potential buyers in case they
6 chose to sell plants. Did you say that?

7 MR. BLOOMBERG: I don't think so.
8 If I did, I didn't mean to.

9 CHAIRMAN PAPADIMITRIU: So I guess
10 I'm confused. Again, it could just be because
11 we all haven't eaten lunch, but the 49,000 cap
12 seems to be an okay number for the regulated
13 entities to operate, but also to attract
14 potential suitors for transfers?

15 MR. BLOOMBERG: The topic of
16 potential suitors didn't come up with the
17 49,000. The numbers for the transfers came
18 up afterwards when we said, okay, we're going
19 to settle on proposing this 49,000. We said,
20 okay, now we need to adjust these other
21 numbers because they don't add up. It's not
22 a situation of attempting to attract suitors.
23 It's a situation of assuring should someone
24 come in and buy Baldwin, which just happens

1 to be the first one on the list, that 5,400
2 tons per year is enough to run Baldwin because
3 otherwise, I mean, it's kind of the reverse.
4 It's not so much attracting as it is not
5 telling don't bother to buy it because you're
6 not going to be able to operate it. Does that
7 make sense?

8 CHAIRMAN PAPADIMITRIU: And what
9 market penetration purports or analyses did
10 you use for that opinion?

11 MR. BLOOMBERG: It wasn't a market
12 or an economic review. It was a look at --
13 it was Dynegy's look at historically, you
14 know, what could it be operated at by someone
15 going into the future, like, if it was purchased
16 from them.

17 CHAIRMAN PAPADIMITRIU: And so
18 the Agency is not convinced that a lower
19 number would still be attractive to a potential
20 buyer for the transfer allocations even though
21 you didn't do any analysis at the 49,000 other
22 than talk to Dynegy? I'm not trying to
23 misrepresent anything.

24 MR. BLOOMBERG: Right. Again, it's

1 an issue of ensuring that it's a level playing
2 field for both the seller and buyer. So both
3 going in can look at this rule, whatever it ends
4 up being, whatever the Board decides, and say
5 if you buy this unit, this what -- I'm sorry --
6 this source, this is what you're getting.

7 Okay. We don't have to go
8 through permits to figure it out. We don't
9 have to go through any negotiations. We don't
10 have to worry that we're going to be sharing
11 a cap with Vistra, you know, some other
12 hypothetical company comes in and buys it
13 from Vistra. This lays out exactly what
14 their individual source cap would be and
15 how it will be taken care of. So we were
16 trying to put into rule something that just
17 gives a level of certainty to anyone who
18 might be involved in such a purchase in the
19 future.

20 CHAIRMAN PAPADIMITRIU: And is
21 that a proper consideration for the Board
22 from the Agency's perspective?

23 MR. BLOOMBERG: I think it is
24 because it gives the Board a certainty also

1 and also means that the Board doesn't have
2 to worry that when this comes through later,
3 you know, who has what percentage, who might
4 want to change to the rule.

5 One part of it was trying
6 to prevent any time there might be a sale,
7 everybody's got to go back to the Board and
8 tell them what their numbers are again.

9 And, you know, another thing
10 is, I don't know, if I were buying and there
11 were some -- and there wasn't anything written
12 down, I don't know that I would be interested
13 in going through all that work when you don't
14 know what that number is going to be.

15 This gives again a level of
16 certainty to everyone involved as to what
17 would happen if a sale did take place.

18 CHAIRMAN PAPADIMITRIU: And you
19 provided allocation tables for the 55- and
20 49,000 numbers just for S02; is that correct?

21 MR. BLOOMBERG: It's both, but
22 NOx number didn't change because we only
23 change because we only proposed changing
24 the S02 number.

1 CHAIRMAN PAPADIMITRIU: Thank you.

2 BOARD MEMBER ZALEWSKI: I have a
3 follow-up.

4 Mr. Bloomberg, can you remind
5 me of the algorithm used to figure out the
6 numbers for the transfer?

7 MR. BLOOMBERG: The algorithm was
8 based on some amount of historical capacities
9 in addition to working with Dynegy at the time
10 to determine -- since they were the experts
11 in what, you know, could be used and also they
12 would be involved in any sale. Now, Vistra
13 would be involved in any sale.

14 BOARD MEMBER ZALEWSKI: So is it
15 based on a particular point in time? I keep
16 going back to the 2002 levels. I'm not sure --

17 MR. BLOOMBERG: It certainly would
18 be 2002 because as you may be able to see, like,
19 Coffeen and Duck Creek, which are very well
20 controlled plants have much lower numbers.

21 BOARD MEMBER ZALEWSKI: Just a
22 general conversation with Dynegy?

23 MR. DAVIS: Yes.

24 MR. BLOOMBERG: Yes, yes.

1 BOARD MEMBER SANTOS: Mr. Bloomberg,
2 when the US EPA decides to issue a consent
3 decree or make changes to environmental
4 standards, what do they take into consideration?
5 I don't know they don't take into cost
6 effectiveness because I have some history with
7 working at the Water Reclamation District and
8 when we were imposed with a consent decree,
9 they told us we had to comply and they didn't
10 really worry about whether we had the money to
11 comply. We were told we had to comply.

12 MR. BLOOMBERG: Okay. Consent
13 decrees are a bit of a different animal than
14 regulatory work. Consent decrees, even though
15 I worked in compliance for a while, I didn't --
16 the lawyers -- the enforcement attorneys mostly
17 dealt with the consent decrees too. I don't
18 consider myself and an expert in that regard.

19 But, yes, you're right. They
20 certainly can at times -- I mean, I think a
21 consent decree can be punitive and there have
22 been times when they have, you know, asked for
23 a lot more than companies would believe are
24 economically reasonable.

1 I know that I have worked
2 on cases with the Attorney General's Office
3 where we would propose a fine to the Attorney
4 General's Office and the Attorney General's
5 Office would propose a fine and the company
6 would claim they can't meet that. They would
7 make an argument that they can't meet that.
8 Then there would be an ongoing discussion as
9 to that situation.

10 So US EPA tends to, in my
11 experience, have fewer discussions and more
12 declarations when this comes to that sort of
13 thing.

14 BOARD MEMBER SANTOS: So, I mean,
15 we're talking about in this issue -- we're
16 talking about proposing an MPS for an outlet
17 that we're not quite sure of. I mean, we don't
18 know how much they need to emit. We don't know
19 what's going to happen next year or the year
20 after. Like you said, we don't have a crystal
21 ball. But do we know -- what if the US EPA
22 were to come in and say that the emissions must
23 be at this level?

24 MR. BLOOMBERG: I have --

1 BOARD MEMBER SANTOS: Just because
2 they have never done it doesn't mean they
3 can't, right? I mean, they could come in and
4 say that -- especially emissions around larger
5 cities. Seems like they'd have to comply at a
6 certain level. What would you do then?

7 MR. BLOOMBERG: Well, I think it's
8 safe to say it won't happen within the next
9 couple of years.

10 BOARD MEMBER SANTOS: Right. Well,
11 you never know. I mean, things are changing
12 every ten minutes.

13 HEARING OFFICER TIPSORD: Have you
14 checked in the last five?

15 MR. BLOOMBERG: Certainly, there
16 have been situations when they have done
17 that, but it's usually related to a NAAQS.
18 So, for example, when the S02 NAAQS came out
19 and we had monitors in a couple different
20 areas, they said, okay, this is monitoring
21 non-attainment. Do something. And that's
22 how we ended up with those limits on the
23 Edwards power plant, among other sources in
24 the area.

1 So there's never any way to
2 say for sure that the US EPA won't, but with
3 that said, I don't know of any reason that
4 they would in this overall situation because,
5 you know, it meets the regional haze
6 requirements.

7 Now, certainly, let me back
8 up a second. If it didn't meet the regional
9 haze requirements, then we'd have a different
10 picture here. If our numbers show, no, it
11 didn't meet the regional haze requirements,
12 then they'd be coming to us and saying you
13 better find a way to reduce. But that's
14 not what's going to happen.

15 You know, could we see a
16 situation? Let's just pick a random time,
17 in four years where US EPA says, okay, you've
18 got a new S02 NAAQS and it's even lower and
19 now you're going to have to go back. Yes,
20 it's possible. US EPA does review the NAAQS
21 every five-ish years. It's always possible
22 that could happen.

23 That's why we could go back
24 and tighten regulations at times and that's

1 probably what we would have to do there. We
2 would have to review and say, okay, under
3 this new NAAQS, what do we have to do? SO2
4 certainly isn't the only pollutant, that has
5 happened before. We've had lead non-attainment
6 areas, which we came to the Board with
7 regulations, the monitors have been cleaned
8 and US EPA recently approved our lead
9 redesignation.

10 So Illinois no longer had any
11 lead non-attainment areas and that's just the
12 process that it goes through. If they were to
13 come
14 to us and say, you know, you need to do
15 something about this area, we would be looking
16 at this area. We would be looking at the
17 sources in that area. As necessary, we would
18 come back to the Board at that point.

19 HEARING OFFICER TIPSORD: Did you
20 want to add something?

21 MR. DAVIS: I kind of did. Did
22 you ask whether or did you state that US EPA
23 doesn't usually look at costs?

24 BOARD MEMBER SANTOS: For certain

1 considerations, not always. I'm again
2 generalizing.

3 I just want to add that I
4 really appreciate everybody coming here and
5 hanging in here with us so long. I know we
6 are all a little hungry, but I do think the
7 Attorney General's Office has some right to
8 ask some questions, but maybe not with this
9 purview of a setting, but I would hope that
10 you would answer any questions that they
11 would ask of Vistra because, I mean, their
12 responsibility is for constituency and they
13 are here to protect us, all of us. So I
14 would hope that you would answer their
15 questions.

16 MS. VODOPIVEC: Okay.

17 HEARING OFFICER TIPSORD: Carrie
18 has been waiting patiently. Let me get Carrie's
19 question in.

20 BOARD MEMBER ZALEWSKI: I know we're
21 running out of time here.

22 HEARING OFFICER TIPSORD: And I try
23 to keep people hungry because it tends to move
24 things along. You guys just proved that.

1 BOARD MEMBER ZALEWSKI: You want to
2 open another can of worms.

3 So we've been talking about
4 transfers, but if the Board were to require
5 that upon retirement of a unit that the cap
6 must be reduced, can you speak to if the amount
7 of reduction for each unit corresponding with
8 the reduction should be the same as the ones
9 provided for the transfer?

10 And I was -- you know, this is
11 not a prefiled question. I'm sure there's --
12 you may not be able to speak to it today, but
13 I'm looking for an answer to talk about all
14 these four numbers we talked about today, 55,
15 49, 44, 34. My question to -- as Member Santos
16 was saying, I would love to comments from all
17 parties.

18 MR. BLOOMBERG: I don't want to,
19 you know, try anything off the top of my head
20 because there's already been plenty of numbers
21 flying around here. But certainly if the
22 Board -- you know, if you were telling us
23 you want us to submit to you suggested numbers
24 for -- potential numbers for a shutdown, then

1 we would submit those to you. They would not,
2 you know, be suggested. That's why I corrected
3 myself there.

4 BOARD MEMBER ZALEWSKI: Got it.

5 MR. BLOOMBERG: They would be, you
6 know, the numbers that you're interested in if
7 you go that path -- if the Board goes that path.

8 BOARD MEMBER ZALEWSKI: Yes. I'd
9 like to see the numbers and rationale.

10 MR. BLOOMBERG: Okay.

11 BOARD MEMBER ZALEWSKI: Anything that
12 you could provide is helpful. Hopefully,
13 like I said, there's comment from everybody.

14 MR. BLOOMBERG: Okay.

15 HEARING OFFICER TIPSORD: And,
16 Ms. Bugel, you had something?

17 MS. BUGEL: I just wanted to say
18 thank you to Member Santos for your statement
19 because I wanted to make sure the environmental
20 groups are on record in a request to have an
21 opportunity to ask questions of Vistra.

22 I am very concerned about
23 what Kurt Morgan is saying in the press and
24 how that is not -- that we are not able to

1 ask questions about those statements, especially
2 the suggestion that the revision in this
3 proposal could actually enable shutdowns of
4 plants with scrubbers.

5 I just want to make sure that
6 it is on record that we have that concern, we
7 believe that Vistra should answer to that
8 statement because if that's what we're enabling
9 these companies to do, I'm not sure that's
10 consistent with anyone's intention here. I
11 think that should get aired before we put
12 this proceeding to bed.

13 HEARING OFFICER TIPSORD: Okay.

14 MS. BUGEL: Thank you.

15 HEARING OFFICER TIPSORD: And

16 Ms. Rabczak.

17 MS. RABCZAK: I just have a quick
18 follow-up to Member Zalewski's question and
19 in the previous testimony, you mentioned that
20 rationale to NOx, using the same location for
21 shutting down because they will be picked up,
22 my question is have you looked into whether
23 this can be picked up and a new plant can be
24 opened by any other industry and where are

1 you going to get the gap for other industry
2 or for new coal plants, theoretically opening,
3 in this case, if you just keep those numbers
4 for the units -- for the other units, if the
5 units shut down? And you don't have to answer
6 right now.

7 MR. BLOOMBERG: Well, I think I
8 understood at least the first part of your
9 question. I may have lost you at the end
10 there, I must admit.

11 But with the first part,
12 where if -- if a plant shuts down, where would
13 the other generation come from come? As we
14 discussed, it could come from other Vistra
15 power plants. It could come from Ameren plants
16 across the river in Missouri or other power
17 plants in MISO. It could come from new wind
18 farms. It could come from new gas plants.
19 It could come from existing that are bumping
20 up their, you know, their ability to generate.
21 It would depend on the power generation market
22 that I think Mr. Diericx had described in a
23 previous hearing.

24 You know, it could happen

1 differently every time, you know, theoretical
2 plant that has now closed would have normally
3 been called on to power. So it could come from
4 a variety of places, we just don't know.

5 MS. RABCZAK: And that is
6 not my question.

7 MR. BLOOMBERG: Oh, sorry.

8 MS. RABCZAK: You already answered
9 that question. The question I have is if a new
10 power plant opens and in the proposal we don't
11 take away that amount of emissions that the
12 closed plant had, where are you going to get
13 S02 emissions for the new plants? Where are
14 you going to get an amount of emissions that
15 the old plant closed had to give it to a
16 new plant or let's say a new industry comes
17 to Illinois and they are emitting S02 as well,
18 but the plant -- the Dynegy or Vistra kept
19 their S02 emissions after they closed the unit,
20 where are you going to get that gap because as
21 far as I understand from regional haze and for
22 all other federal compliance purposes, you are
23 looking into Illinois in general as emissions
24 of all of the industries, not just coal plants.

1 So if you keep the allocations
2 for one of the units to shut down, how are you
3 going to -- have you looked into how the IEPA
4 will look into any potential new plants or any
5 other industry coming to Illinois and what are
6 you going to do with S02 emissions and federal
7 compliance?

8 MR. BLOOMBERG: We have not
9 specifically looked into that. You know, if --
10 for something that, it would -- let me say first
11 of all, we thought -- the potential for coal
12 plant, I think, in Illinois at this point is
13 pretty slim, theoretically. But even
14 theoretically, new plants do have to comply
15 with PSD and NSR and a lot depending on the
16 exact situation.

17 HEARING OFFICER TIPSORD: Excuse me.
18 NSR is new source review?

19 MR. BLOOMBERG: New source review.

20 HEARING OFFICER TIPSORD: And PSD
21 is?

22 MR. BLOOMBERG: Prevention of
23 significant deterioration. I know I've used
24 NSR before, but I just threw out the letter

1 for PDS. Sorry. Where was I?

2 So in that analysis, and
3 again, this comes into an area -- I am not
4 a permit expert, in that analysis, I know
5 that they used frequently offsets and
6 depending on the type, they may have to
7 come up with, okay, where am I going to
8 get these emissions in order to be able
9 to set up a major or source.

10 So that type of situation
11 already is addressed you don't just have
12 major new sources popping up all over the
13 place and, you know, wrecking all of our
14 best laid plans.

15 MS. RABCZAK: And that would be
16 because the new plant would have to talk to
17 Vistra and Dynegy together?

18 MR. BLOOMBERG: Well, they could
19 talk to any other places too. I mean, that's
20 if there is something else that is shut down.
21 You know, there's some areas, for example, in
22 one of the nonattainment areas that had a lot of
23 SO2 and so if they were locating in that area,
24 they could find the parent company

1 theoretically.

2 HEARING OFFICER TIPSORD: All right.

3 Any other questions?

4 Okay. I did not see the one
5 person that I expected that might come today.
6 I just got an email. That's why I've been
7 checking my emails. She will not be here to
8 offer a public comment. I didn't see anyone
9 else sign up. So I'm assuming no one wants to
10 offer an oral public comment. No one is raising
11 their hand.

12 Okay. I have a couple of
13 things. First of all, I appreciate the concerns
14 of the AG and the environmental groups. I
15 think we can address your concerns through
16 comment. We will talk about that off the
17 record in just a second.

18 Before we go off the record,
19 though, I do want to say that, Mr. Bloomberg,
20 you have oftentimes today said I'm not a permit
21 expert, but I think or I believe. When the
22 Agency files its comments, I would suggest
23 that you check your permit experts and answer
24 some of these questions based on what your

1 permit section tells you. Some of my 28 years
2 of experience tells me that sometimes regulatory
3 speaks without checking with permit and vice
4 versa and that can create issues. So let's
5 be sure that you guys are all on the same page
6 with those issues if you don't mind.

7 MR. BLOOMBERG: Yes, absolutely.

8 HEARING OFFICER TIPSORD: All right.
9 Let's go off the record and we will talk about
10 the schedule. We'll then go back on and finish
11 the hearing up.

12 (Whereupon, a discussion
13 was had off the record.)

14 HEARING OFFICER TIPSORD: There
15 are a couple of things to -- I know I've said
16 this after the other hearing, but I want to
17 reiterate it. I am constantly impressed with
18 the leveled of professionalism and even when
19 things can get heated, you always stay
20 professional here. It's greatly, greatly
21 appreciated. I know this has been a very
22 contested rulemaking. It is still a very
23 contested rulemaking.

24 We've had a lot of public

1 comment. We've had a lot of oral public
2 comment. As I said earlier, if you weren't
3 last night, you missed a lot of really strong
4 good people who took their time to come and
5 tell us what they thought about this rulemaking.
6 That was the same in Peoria and Edwardsville and
7 it's been greatly appreciated, appreciated by
8 the Board and my me personally.

9 With that, we are going to
10 allow for any additional questions from any
11 participants to be filed by May 1st, answers
12 to those questions will be a part of the first
13 set of public comments due by June 1st. I
14 would anticipate most of the substantive
15 public comments will come in on June 1st.
16 On June 15th, replies to those comments.

17 Mr. Sylvester?

18 MR. SYLVESTER: Are public
19 comments different than post-hearing
20 comments?

21 HEARING OFFICER TIPSORD: Not
22 in a rulemaking.

23 MR. SYLVESTER: I heard both terms.

24 HEARING OFFICER TIPSORD: No.

1 It's -- post-hearing comments tend to be more
2 substantive and by that, I mean delve into the
3 nitty-gritty public comments. As I discussed
4 last night, a lot of the public comments don't
5 go into 39,000, 49,000, 55,000, but they go
6 into more esoteric stuff.

7 So they're interchangeable
8 in my mind. So we will allow public comments
9 until June 15th, but the substantive
10 post-hearing comments, if you will, public
11 comments, should come in June 1st with replies
12 to those due June 15th.

13 If anybody has any questions
14 between now and then, give me a call. I
15 will do a hearing officer order to that affect.

16 Does anybody on the Board
17 have anything else they want to say or add?
18 Thank you very much. Have a wonderful evening
19 and go get some lunch.

20 (Whereupon, no further
21 proceedings were had
22 in the above-entitled
23 cause.)

24

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF C O O K)
4
5

6 I, LORI ANN ASAUSKAS, CSR, RPR,
7 do hereby state that I am a court reporter doing
8 business in the City of Chicago, County of Cook,
9 and State of Illinois; that I reported by means
10 of machine shorthand the proceedings held in the
11 foregoing cause, and that the foregoing is a
12 true and correct transcript of my shorthand
13 notes so taken as aforesaid.

14
15 
16



17 Lori Ann Asauskas, CSR, RPR.

18 Notary Public, Cook County, Illinois
19
20
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