

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
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)	
)	
STANDARDS FOR THE DISPOSAL OF)	R 2020-019(A)
COAL COMBUSTION RESIDUALS)	(Rulemaking – Land)
IN SURFACE IMPOUNDMENTS:)	
PROPOSED NEW 35 ILL. ADMIN.)	
CODE 845)	

NOTICE OF FILING

To: Attached Service List

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Illinois Pollution Control Board **DYNEGY AND SIPC’S JOINT RESPONSE TO THE MOTION FOR LEAVE FOR ALL PARTICIPANTS TO FILE RESPONSE COMMENTS** and a **CERTIFICATE OF SERVICE**, which are attached and copies of which are herewith served upon you.

Dated: April 19, 2022

Respectfully submitted,

Southern Illinois Power Cooperative

Dynegy Midwest Generation, LLC, Electric Energy, Inc., Illinois Power Generating Company, Illinois Power Resources Generating, LLC, Kincaid Generation, LLC

/s/ Sarah L. Lode
One of its Attorneys

/s/ Sarah L. Lode
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DYNEGY AND SIPC’S JOINT RESPONSE TO THE MOTION FOR LEAVE FOR ALL PARTICIPANTS TO FILE RESPONSE COMMENTS

Dynegy Midwest Generation, LLC, Electric Energy, Inc., Illinois Power Generating Company, Illinois Power Resources Generating, LLC, and Kincaid Generation, LLC, (collectively, “Dynegy”), and Southern Illinois Power Cooperative (“SIPC”), by and through their attorneys and pursuant to 35 Ill. Admin. Code § 101.500(d), file this response to the Environmental Law & Policy Center, Little Village Environmental Justice Organization, Prairie Rivers Network, and Sierra Club’s (collectively, “Movants”) Motion for Leave for all Participants to File Response Comments (“Motion”) and respectfully request that the Illinois Pollution Control Board (the “Board”) deny the Motion. In support of this Response, Dynegy and SIPC state as follows:

I. PROCEDURAL BACKGROUND

1. On April 15, 2021, the Board issued its Final Opinion and Order in R 2020-019, adopting 25 Ill. Admin. Code Part 845, which regulates coal combustion residuals stored in surface impoundments in Illinois (“Part 845”). *In the Matter of: Standards for the Disposal of Coal Combustion Residuals in Surface Impoundment: Proposed New 35 ll. Admin. Code 845, R 2020-019, Final Opinion and Order of the Board (April 15, 2021).*

2. Prior to issuing its Final Opinion and Order and on February 4, 2021, the Board issued its Second Notice Opinion and Order and opened this subdocket “to explore four subjects in greater detail: (1) historic, unconsolidated coal ash fill in the State; (2) the use of temporary storage piles of

coal ash, including time and volume limits; (3) fugitive dust monitoring plans for areas neighboring CCR surface impoundments; and (4) the use of additional environmental justice screening tools.” *In the Matter of: Standards for the Disposal of Coal Combustion Residuals in Surface Impoundment: Proposed New 35 ll. Admin. Code 845, R 2020-019*, Second Notice Opinion and Order at 2 (Feb. 4, 2021). On May 6, 2021, the Hearing Officer issued an order opening a public comment period “[t]o facilitate the discussion regarding [the] four issues.” *In the Matter of: Standards for the Disposal of Coal Combustion Residuals in Surface Impoundment: Proposed New 35 ll. Admin. Code 845, R 2020-019(A)*, Hearing Officer Order (May 6, 2021).

3. On August 6, 2021, Movants filed with the Board their comments and proposed rules in response to the Hearing Officer’s order. *In the Matter of: Standards for the Disposal of Coal Combustion Residuals in Surface Impoundment: Proposed New 35 ll. Admin. Code 845, R 2020-019(A)*, Initial Comments and Recommended Rules of Environmental Law & Policy Center, Little Village Environmental Justice Organization, Prairie Rivers Network, and Sierra Club, P.C. #10 (Aug. 6, 2021) (hereinafter, “Public Comment #10”).

4. On March 3, 2022, the Board issued an order noting that Movants were the only participants that proposed rules for its review and invited other participants in this subdocket to comment on the proposed rules contained in Public Comment #10 by June 3, 2022. *In the Matter of: Standards for the Disposal of Coal Combustion Residuals in Surface Impoundment: Proposed New 35 ll. Admin. Code 845, R 2020-019(A)*, Order of the Board at 1 (Mar. 3, 2022). The Board stated that it made no comment on the content of Movants’ proposed rules and simply “[found] that the issues raised by the commenters should be further explored.” *Id.* at 4.

5. On April 5, 2022, Movants filed the Motion with the Board in which they asked for leave for all participants in this subdocket to file comments in response to participants’ initial comments on the Movants’ proposed rules. *In the Matter of: Standards for the Disposal of Coal*

Combustion Residuals in Surface Impoundment: Proposed New 35 ll. Admin. Code 845, R 2020-019(A), Motion for Leave for all Participants to File Response Comments (Apr. 5, 2022). In the Motion, Movants request an additional 60-day window, from June 3, 2022 until August 2, 2022, during which participants can review and comment on each other's comments. *Id.*

II. DYNEGY AND SIPC'S JOINT RESPONSE

6. Dynegy and SIPC respectfully request that the Board deny the Motion as untimely, unnecessary, and unduly burdensome.

7. The Board initially requested public comment on the four topics addressed by this subdocket almost a year ago, on May 6, 2021. R 2020-019(A), Hearing Officer Order (May 6, 2021). At that time, the public and participants of this subdocket were given ample time to provide comments. The Board provided the public and participants to this rulemaking another 90 days to comment on the issues raised in Public Comment #10 after determining that Movants' rule proposal required an opportunity for further comment. R 2020-019(A), Order of the Board at 1, 4 (Mar. 3, 2022).

8. Movants now preemptively ask for an additional round of comments. Movants have already had an opportunity to comment on their proposal through Public Comment #10. Any other interested party will have an opportunity to comment on Movants' proposal via the 90-day comment period the Board has already established. Allowing an additional 60-day comment period will increase the burden on the Board and participants in the rulemaking and unnecessarily delay resolution of these issues for the regulated community and public.

9. On April 15, 2021, the Part 845 rulemaking concluded, and on April 21, 2021, Part 845 became effective. R 2020-019, Final Opinion and Order of the Board (April 15, 2021). Regulated entities have been subject to the provisions of Part 845 since then—nearly a year—and have already begun the process of complying with Part 845 and all applicable provisions. At this time, further prolonging the comment period to provide another 60 days for responses to comments would delay regulatory certainty on the issues in this docket for the regulated public and create an additional

financial burden by adding an obligation to support or object to arguments before the Board has even decided whether to proceed with a formal rulemaking. This docket is currently in the informational stage. While Dynegy and SIPC do not believe that Movants' rule proposal is merited, if the Board decides to hold informational hearings or to adopt a proposal for First Notice and proceed to a formal rulemaking, further opportunity for comment will be appropriate at that time.

WHEREFORE, for the reasons stated above, Dynegy and SIPC respectfully request that the Board deny Movants' Motion for Leave for all Participants to File Response Comments. In the event the Board disagrees, Dynegy and SIPC respectfully request that the Board limit any additional comments to addressing newly raised arguments and issues to avoid unnecessary burden or delay.

Dated: April 19, 2022

Respectfully submitted,

Southern Illinois Power Cooperative

Dynegy Midwest Generation, LLC, Electric Energy, Inc., Illinois Power Generating Company, Illinois Power Resources Generating, LLC, Kincaid Generation, LLC

/s/ Joshua R. More
One of its Attorneys

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 19th day of April, 2022:

I have electronically served true and correct copies of Dynegy and SIPC's Joint Response to the Motion for Leave for all Participants to File Response Comments by electronically filing with the Clerk of the Illinois Pollution Control Board and by e-mail upon each person listed in the attached service list.

My e-mail address is Sarah.Lode@afslaw.com.

The number of pages in the e-mail transmission is 11.

The e-mail transmission took place before 5:00 p.m.

 /s/ Sarah L. Lode
Sarah L. Lode

Dated: April 19, 2022

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