

DAY 2

CONTINUED HEARING ON PROPOSED AMENDMENTS

35 Ill. Adm. Code 201, 202, & 212

Cause No. R23-18

February 16, 2023

Carla P. Letellier, CSR, RPR

CSR No. 084-003315

1 The aforementioned proceedings were
2 held on February 16, 2023, at 160 North LaSalle
3 Street, Room 505, in the City of Chicago, State
4 of Illinois, before Carla P. Letellier, a
5 Certified Shorthand Reporter and Registered
6 Professional Reporter.

7 PRESENT:

8 Illinois EPA:
9 Charles Matoesian
10 Dana Vetterhoffer

11 Illinois Environmental Regulatory Group:
12 Melissa S. Brown
13 Kelly Thompson
14 David Wall

15 HeplerBroom, LLC, by
16 Mr. Robert "Alec" A. Messina
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18 Springfield, IL 62711
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21 Illinois Pollution Control Board:
22 Anand Rao (Chief Scientist)
23 Chloe Salk (Hearing Officer)
24 Timothy Fox (Hearing Officer)
Jennifer Van Wie (Board Member)

Chemical Industrial Council of Illinois:
Lisa Frede

Illinois Attorney General:
Molly Kordas
Ann Marie Hanohano

American Petroleum Institute:
John Derek Reese

1 PRESENT: Cont'd

2 Midwest Generation:
3 Sharene Shealey

4 Dynegy Entities:
5 Cynthia Vodopivec

6 ArentFox, by
7 Mr. Joshua R. More
8 Mr. Andrew N. Sawula
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NO EXHIBITS MARKED

1 MR. FOX: I want to wish everyone a
2 good morning, and to welcome you to this
3 Illinois Pollution Control Board hearing.

4 My name is Tim Fox, and with
5 Chloe Salk to my left, we are the Hearing
6 Officers for this rulemaking procedure entitled
7 Amendments to 35 Illinois Administrative Code
8 201, 202, and 212, which IEPA filed under the
9 fast-track rulemaking provisions of Section 28.5
10 of the Environmental Protection Act. The Board
11 Docket Number for this rulemaking is R23-18.

12 To get started today, I want to
13 go quickly through three preliminary items,
14 introductions, and the Board's procedure to
15 date, and then housekeeping, including the order
16 in which we plan to proceed.

17 First, the introductions, at my
18 immediate left is Board Member Michelle Gibson,
19 who is the lead board member assigned to this
20 rulemaking docket, and at may far right is Board
21 Member Jennifer Van Wie. In addition to Chloe
22 Salk, who I already mentioned, present here
23 today from the Board staff are Anand Rao at my
24 right, the Board's technical director, and our

1 general counsel, Marie Tipsord, has joined us
2 and is in the audience with us today.

3 A quick summary, second of the
4 Board's procedure to date. As I mentioned, the
5 IEPA filed this under the fast-track rulemaking
6 provisions of Section 28.5. The Board accepted
7 the proposal for hearing and without substantive
8 comment on it, submitted the proposal to first
9 notice of publication in the Illinois Register
10 where it appeared on December 30, '22.

11 On December 16 of '22, a hearing
12 officer ordered scheduled hearings, and we are
13 today, of course, holding the second of those
14 under Section 28.5F2, the second hearing "Shall
15 be devoted to presentation of testimony,
16 documents and comments by affected entitles and
17 all other interested parties."

18 In the order scheduling hearings,
19 the Hearing Officers directed pre-filing of
20 testimony for this hearing no later than Monday,
21 February 6 of '23. On that date, the Board
22 timely received pre-filed testimony from
23 Ms. Lisa Frede for the Chemical Industry Council
24 of Illinois; Ms. Kelly Thompson, and Mr. David

1 Wall on behalf of the Illinois Environmental
2 Regulatory Group, commonly known as IERG; from
3 Cynthia Vodopivec on behalf of Dynegy; Mr. John
4 Derek Reese of the American Petroleum Institute;
5 and Ms. Sharene Shealey on behalf of Midwest
6 Generation.

7 In a Hearing Officer Order on
8 February 14, the Board submitted 32 questions,
9 each of which is directed to one of the
10 witnesses. And on February 15, yesterday, the
11 Office of the Attorney General also submitted
12 questions, each of which is also submitted
13 directly to one of the witnesses.

14 The Board has posted these
15 documents to its Clerk's Office Online or COOL
16 C-O-O-L. And they are all under this Docket
17 Number R23-18, of course.

18 Finally, the housekeeping for our
19 hearing, this is governed by the Board's
20 procedural rules under Section 102.426 of those
21 rules; all information that is relevant and is
22 not repetitious or privileged will be admitted
23 by the hearing officer into the record. Please
24 bear in mind that any questions posed today

1 either by the Board members or by the Board
2 staff are intended solely to create a complete
3 and clear record for Board's ultimate decision,
4 and those questions do not reflect any
5 determination or judgment on the proposal, the
6 testimony, or the questions.

7 The witnesses' pre-filed
8 testimony under Section 28.5 of the Act is
9 entered into, as if read, that the witness
10 swears to testimony and is available for
11 questions. My inclination is to proceed right
12 to the questions, both those that had been
13 pre-filed and those that may arise in the course
14 of hearing, and to dispense even with a quick
15 summary or introduction, so that we can take
16 care of this hearing as expeditiously as
17 possible.

18 We'll then turn to questions,
19 witness by witness, my intention is to begin
20 with those pre-filed by the Office of the
21 Attorney General, we can turn to any other
22 questions that might arise from any of the other
23 participants, including follow-up questions, and
24 then the Board will wrap up with each of the

1 witnesses with the questions that it has filed.

2 If you would like to ask a
3 follow-up question, the first time, especially,
4 please when you raise your hand, identify
5 yourself by name for the court reporter for a
6 record that's clear as possible, and it would be
7 helpful if you also identified any organization
8 or entity that you represent.

9 Finally, as noted in the original
10 Hearing Officer Order, the Board at 11:00 a.m.
11 today will hold one of its regularly scheduled
12 open board meetings by video conference with
13 this room as one of the locations. We will
14 recess shortly before then and at that time,
15 determine the time to reconvene here in this
16 same room. It is an open and public meeting.
17 If you wish to stay for any reason, you are more
18 than welcome to do that, but there are spaces in
19 the building where you can meet with one another
20 or take a break, if you wish.

21 Any questions about our order of
22 proceeding? If not, we were going to begin.
23 First of all, with the testimony entered as I've
24 read, from Ms. Vodopivec on behalf of Dynegy,

1 proceed with questions of her that may arise;
2 second, proceed with Ms. Thompson, Mr. Ward
3 [sic], and Mr. Reese, and the questions that are
4 in the record that may arise at hearing for
5 them, then proceed to Ms. Frede on behalf of the
6 Chemical Industry Council, and conclude with
7 Ms. Shealey on behalf of Midwest Generation,
8 again, taking those questions in the order that
9 I described.

10 Any questions about our
11 proceedings before we get underway?

12 That sounds great. I think
13 Mr. More, we're prepared to have Ms. Vodopivec
14 sworn in and prepared to answer questions, if
15 she is ready for that.

16 MR. MORE: We are ready.

17 MR. FOX: Very good. If the court
18 reporter would swear in Ms. Vodopivec, please.

19 [Ms. Vodopivec sworn.]

20 MR. FOX: Ms. Vodopivec, if you would
21 identify yourself, specifically, for the record,
22 please, I would appreciate it.

23 MS. VODOPIVEC: Sure. It's Cynthia
24 Vodopivec, spelled V, as in Victor, O-D, as in

1 David, O-P, as in Peter, I, and V-E-C, and I'm
2 the senior vice president, environmental health
3 and safety, for Dynegy.

4 MR. FOX: Thank you, Ms. Vodopivec.
5 The Attorney General's attorneys I had spoken
6 with before hearing, they are going to come up
7 so that they are more audible and certainly more
8 visible than they are, if you will give them
9 just a moment.

10 MR. MORE: We can go off the record
11 for a moment?

12 (Discussion off the record.)

13 MR. FOX: And we can go back on the
14 record.

15 Ms. Kordas, on behalf of the
16 Attorney General's office, if you can please
17 identify yourself for the record, for the court
18 reporter.

19 MS. KORDAS: My name is Molly Kordas,
20 K-o-r-d-a-s, Office of the Illinois Attorney
21 General.

22 MR. FOX: And Ms. Kordas, although the
23 testimony is entered into the record as if read
24 under the Act, the questions, although

1 pre-filed, are not explicitly, so I'm going to
2 ask you to proceed with reading your first
3 question, we can proceed with the answers to
4 those.

5 MS. KORDAS: Sure.

6 EXAMINATION

7 BY MS. KORDAS:

8 Q. So our first question, in the
9 pre-filed testimony Dynegy states that its
10 proposal would satisfy U.S. EPA's 2015
11 guidance on page 19.

12 Can you elaborate on your opinion
13 of how it satisfies that 2015 guidance?

14 A. Sure. Dynegy's post-hearing brief
15 will further elaborate on how its proposal
16 satisfies the 2015 guidance. Dynegy is not
17 aware of any other state and established
18 regulatory -- sorry.

19 MR. MORE: First question in multiple
20 parts.

21 BY MS. KORDAS:

22 Q. Okay. And are you aware of any other
23 state that has established regulatory
24 provisions that resemble your proposal; and if

1 **so, have they been approved by the U.S. EPA?**

2 A. Dynegy is not aware of any other state
3 that has established regulatory provisions
4 resembling Dynegy's. But I know that Dynegy's
5 proposal is a site-specific narrow proposal
6 affecting only three of its power plants.

7 **Q. And did Dynegy collaborate with**
8 **Midwest Generation in developing its proposal?**

9 A. Dynegy did coordinate with Midwest
10 Generation.

11 **Q. Okay. And if you could provide a**
12 **post-hearing brief of any related information**
13 **you can provide to the record, would be**
14 **appreciated.**

15 A. Okay.

16 **Q. Our second question was U.S. EPA**
17 **explicitly discusses enforcement discretion as**
18 **a means "consistent with Clean Air Act**
19 **requirements for state implementation plan**
20 **provisions that states can use" to address SSM**
21 **events.**

22 **Is it your opinion that IEPA's**
23 **proposed use of its enforcement discretion**
24 **complies with the 2015 guidance documents**

1 **discussion of enforcement discretion?**

2 A. So whether IEPA's proposed use of
3 enforcement discretion would comply with U.S.
4 EPA's 2015 guidance is a legal question, but I
5 will note that even if IEPA exercises its
6 discretion not to enforce an exceedance of
7 applicable opacity limits caused by SMB, Dynegy
8 would still be exposed to potential enforcement
9 by U.S. EPA or by members of the public.

10 MS. KORDAS: Thank you. And I think
11 that's all we have for Dynegy.

12 MR. FOX: Ms. Kordas, thank you.

13 Is there any follow-up question
14 or any other question for Ms. Vodopivec on
15 behalf of Dynegy at this point?

16 Neither seeing nor hearing any,
17 the Board, of course, had pre-filed some, which
18 Mr. Rao on behalf of the Board will quickly
19 raise.

20 MR. RAO: Good morning.

21 MS. VODOPIVEC: Good morning.

22 MR. RAO: On pages 4 and 6 of your
23 pre-filed testimony, you state that Baldwin and
24 Newton plants, the affected units in those power

1 stations, fire fuel oil during startup and for
2 flame stabilization.

3 Please clarify whether using fuel
4 oil during startup reduces opacity levels at
5 your plant?

6 A. So fuel oil is considered a cleaner
7 burning fuel and generates less particulate
8 matter and opacity levels. However, not all
9 opacity during startup results from combustion
10 of fossil fuels during startup. For example,
11 ash can be dislodged from the ductwork during
12 startups resulting in opacity.

13 MR. RAO: Does Dynegy use fuel oil
14 during startup in affected units?

15 A. Yes, we do. Dynegy uses fuel oil
16 during startup of the coal-fired boilers at
17 Baldwin and Newton.

18 MR. RAO: Are they required by permits
19 to do so, or you just use it as a good practice?

20 A. So fuel oil is used because it has a
21 lower ignition temperature and greater ignition
22 stability than coal. Fuel oil is used to
23 preheat the boiler prior to introduction of
24 coal.

1 In terms of is Dynegy required by
2 its permit to use the fuel oil, Dynegy is
3 required to use clean fuels for ignition during
4 startup per the NAAQS requirements included in
5 the Baldwin and Newton permits. Fuel oil is
6 considered a clean fuel for those purposes.

7 MR. RAO: I have similar questions on
8 Kincaid, whether you use -- fire natural gas
9 during startup and for flame stabilization.

10 So does natural gas also -- or is
11 it similar to fuel oil in terms of raising
12 opacity levels during startup?

13 A. So natural gas is considered a cleaner
14 burning fuel and generates less particulate
15 matter and opacity than coal. However, not all
16 opacity during startup results in combustion of
17 fossil fuels during startup. For example, as I
18 mentioned before with fuel oil, ash can be
19 dislodged in the ductwork during the startup
20 resulting in opacity.

21 MR. RAO: Are you required by permits
22 to use natural gas at Kincaid during startup?

23 A. Dynegy is required to use clean fuels
24 for ignition during startup for the NAAQS

1 requirements including the Kincaid permit.
2 Natural gas is considered a clean fuel for those
3 purposes.

4 MR. RAO: On page 13 of your pre-filed
5 testimony you state that Dynegy's proposal
6 provides an alternative average period for
7 demonstrating compliance during SMB of specific
8 coal-fired boilers at Newton, Baldwin, and
9 Kincaid generating stations.

10 Please comment on whether Dynegy
11 has opacity monitoring data from the affected
12 units that illustrate the difference in opacity
13 levels during normal operation and during
14 startup, malfunction, and breakdown?

15 A. Yes, we do.

16 MR. RAO: If so, would it be possible
17 for you to submit said illustrative opacity
18 monitoring data for the affected boilers?

19 A. Yes, we will provide illustrative
20 opacity monitoring data, we are proposing before
21 next Friday, February 24, we'll be able to get
22 all that information.

23 MR. RAO: Thank you. I appreciate
24 that.

1 Also, can you please clarify
2 whether shutdown of affected units is covered by
3 Dynegy's proposal?

4 A. Dynegy's proposal includes only
5 startups, malfunctions, and breakdowns, the same
6 events addressed by the current Illinois SMB
7 provisions and Dynegy's CAAPP permits for these
8 plants. Dynegy is not seeking to broaden or
9 narrow the meaning of those terms or to add a
10 categorical exclusion for shutdowns. To the
11 extent that certain shutdowns are covered by the
12 current SMB provisions, we intend for those to
13 be covered for our purposes.

14 MR. RAO: When you say for those units
15 that are covered by existing rules for shutdown,
16 could you identify any specific provisions in
17 the board rules that cover that or is it under
18 the general rule that we are --

19 A. So we are not looking to expand if
20 it's covered as an existing startup malfunction
21 or breakdown, that is what we are looking at to
22 be covered.

23 MR. RAO: Is there any particular
24 reason multiple times shutdown is brought up in

1 testimony, you know, when we are talking about
2 this proposal from the agency, you know, the
3 mention of startup and shutdown, and your
4 specific proposal doesn't address shutdown. Is
5 there any particular reason, or is it just
6 because the existing rules don't mention it?

7 A. It's because we are not looking to
8 expand the scope of the existing rule.

9 MR. RAO: Thank you. On page 14 of
10 your pre-filed testimony, you note that under
11 Dynegy's proposal, compliance "would be
12 accomplished for a given six-minute block period
13 when the alternative averaging period is needed
14 by taking the average opacity measurements from
15 the COMS, for those six minutes and the
16 preceding 174 minutes of data."

17 Please explain the rationale for
18 proposing the three-hour averaging period
19 instead of a shorter period to demonstrate
20 compliance with the opacity limitation?

21 A. So Dynegy elected to include a numeric
22 limit in addition to work practices during SMB
23 events in order to maximize the probability that
24 U.S. EPA will approve its proposal if adopted by

1 the Board into the Illinois SIP. In setting
2 that limit, Dynegy decides the existing
3 standards of 20 percent and 30 percent in a
4 three-hour averaging period because the
5 construct is utilized in Baldwin, Kincaid, and
6 Newton, IEPA-approved CAM plans for compliance
7 with the applicable state PM standard,
8 particulate matter standard.

9 Opacity is not a pollutant and so
10 there is no NAAQS for opacity. But opacity can
11 be an indicator for purposes of NAAQS.

12 As I noted in my testimony, the
13 federally enforceable CAM plan for these boilers
14 to ensure continuance compliance with the
15 applicable PM standard utilizes opacity as an
16 indicator, and it sets the indicator level at
17 20 percent for Newton and 30 percent for Baldwin
18 and Kincaid over a rolling three-hour period.
19 Those CAM plan indicators were determined by
20 IEPA in consultation with Dynegy. Those CAM
21 plans are incorporated already into our CAAPP,
22 or CAAPP permits. U.S. EPA reviewed the permits
23 and did not object to them.

24 By using a three-hour average data,

1 the Board and the U.S. EPA can be assured that
2 this limit would ensure that Dynegy's opacity
3 during SMB events does not exceed the applicable
4 state CAM limits, and in turn, consistent with
5 the state implementation plan for PM emissions.
6 Thus, we believe it is unnecessary to consider a
7 shorter average period.

8 MR. RAO: Could you please provide
9 examples using actual opacity and monitoring
10 data prior to startup, malfunction, or breakdown
11 that supports Dynegy's contention that the
12 proposed three-hour averaging time will be
13 necessary to meet the 30 percent opacity
14 limitation during startup?

15 A. So we are looking into the data --
16 into the data, and we will endeavor to provide
17 that information prior to next Friday,
18 February 24.

19 MR. RAO: Thank you. On page 3 of
20 your pre-filed testimony, you state that Dynegy
21 proposes "an alternative averaging period to
22 demonstrate compliance with applicable opacity
23 standards for the coal-fired boilers at Baldwin,
24 Newton, and Kincaid."

1 Please clarify whether the
2 affected units are in or near environmental
3 justice areas or environmental justice
4 communities?

5 A. Sure. So based on the IEPA EJ start
6 tool, Baldwin, Newton, and Kincaid are not in or
7 near EJ areas.

8 MR. RAO: I think that answers the
9 next question about potential impacts since you
10 are not in those areas.

11 The last question I have is
12 please comment on whether Dynegy's concern about
13 compliance with other air pollutants emissions
14 limitations at the affected power stations such
15 as carbon monoxide or nitrogen oxide?

16 A. Sure. So Dynegy is seeking its
17 authorization only for opacity, not for any
18 other air pollutants such as CO or NOx.
19 Dynegy's permits currently provide broader SMB
20 authorization for exceedance in the applicable
21 emission standards, including PM, SO2, and CO
22 for Baldwin, PM and CO for Kincaid, and PM, CO
23 and NOx for Newton.

24 While Dynegy would prefer to retain

1 all these authorizations it currently has in its
2 permits, in an effort to keep this proposal as
3 narrow as possible, it is asking for relief only
4 in connection with opacity.

5 MR. RAO: So with those authorizations
6 that Dynegy has currently for PM, CO, and NOx,
7 are those authorized under the Board rules; and
8 if so, which specific regulations?

9 A. So those are authorized currently
10 under the Board's startup, malfunction, and
11 breakdown rules that they are planning to --
12 that are planning to be revised.

13 MR. RAO: Okay. Thank you.

14 MR. FOX: That's the last of the
15 questions that the Board had pre-filed and
16 wishes to ask of Dynegy's witness.

17 Before we move on, I want to make
18 certain no one else -- none of the other
19 participants has a follow-up question or any
20 other question to pose to Ms. Vodopivec.

21 Neither seeing nor hearing any,
22 Ms. Vodopivec, we thank you for your testimony
23 and your response to questions.

24 MS. VODOPIVEC: Can I just make one

1 clarification?

2 MR. FOX: Sure.

3 MS. VODOPIVEC: We will provide that
4 information by next Friday, not prior to.

5 MR. FOX: And that was the opacity
6 data-specific --

7 MS. VODOPIVEC: Opacity data
8 information, correct.

9 MR. FOX: In response to questions
10 Numbers 26 and 29?

11 MR. MORE: Correct.

12 MR. FOX: Mr. More indicates he took
13 accurate notes.

14 Ms. Vodopivec, thank you for your
15 testimony and for your travel. We appreciate
16 it, and we have plainly exhausted the questions
17 that any of the participants had for you today.

18 MS. VODOPIVEC: Thank you.

19 MR. FOX: Thank you.

20 And as we discussed before
21 hearing, we have three witnesses with some
22 significant overlap. Ms. Brown, on behalf of
23 IERG, I think it probably makes the most sense
24 while we have some open chairs --

1 MS. BROWN: We did discuss, so we'll
2 change.

3 MR. FOX: You were a step ahead. We
4 appreciate it. Thank you.

5 Ms. Brown, it appears that -- and
6 Messina, that the witnesses are ready. If we
7 are prepared to have them sworn in, I'll have
8 the court reporter do that.

9 [Mr. Wall, Ms. Thompson, Mr. Messina
10 and John Derek Reese sworn.]

11 MR. FOX: Ms. Brown, if you would
12 begin, please, by having your witnesses identify
13 themselves for the record and the entity or
14 organization they represent, that would be a
15 good start.

16 MS. BROWN: And hello, for the record,
17 I'm Melissa Brown for the Illinois Environmental
18 Regulatory Group, also known as IERG, I-E-R-G.

19 MR. WALL: I'm David Wall with Trinity
20 Consultants. I'm a principal consultant and
21 regional manager, and I'm here on behalf of
22 IERG.

23 MS. THOMPSON: I'm Kelly Thompson,
24 K-e-l-l-y, T-h-o-m-p-s-o-n, I'm the executive

1 director of the Illinois Environmental
2 Regulatory Group.

3 MR. MESSINA: Good morning, my name is
4 Al Messina, M-e-s-s-i-n-a, and I am with
5 HeplerBroom and representing the American
6 Petroleum Institute.

7 MR. REESE: I am John Derek Reese,
8 R-e-e-s-e, with American Petroleum Institute.

9 MR. FOX: Thank you one and all. As
10 we did with our previous witness, we'll begin
11 with questions of the attorney general's office.
12 We will see whether other participants, et al.,
13 have any questions of their own or any follow-up
14 questions, and then we'll wrap up with those
15 that were pre-filed by the Board.

16 Ms. Kordas has come back to the
17 front of the room, and Ms. Kordas, if you would
18 like to begin with your questions for the
19 environmental regulatory group, we are in order
20 for that at this point.

21 MS. KORDAS: Thank you.

22 EXAMINATION

23 BY MS. KORDAS:

24 Q. So IERG states that use of

1 "enforcement discretion is inconsistent with
2 the approach that U.S. EPA has elected to
3 take."

4 How is this accurate considering
5 U.S. EPA statements on use of enforcement
6 discretion in its 2015 guidance?

7 MR. WALL: So on page 33,980 of the
8 2015 SIP Federal Register the U.S. EPA stated
9 "One approach other than exemptions that would
10 be consistent with Clean Air Act requirements
11 for SIP provisions that states can use to
12 address excess emissions during SSM events is to
13 include in the SIP criteria and procedures for
14 the use of enforcement discretion by air agency
15 personnel. SIPs may contain such provisions
16 concerning exercise of discretion by the air
17 agencies own personnel, but such provisions
18 cannot bar enforcement by the EPA or by other
19 parties through to a citizen suit."

20 The U.S. EPA goes on to explain
21 that "All parties with authority to bring an
22 enforcement action to enforce SIP provisions
23 have enforcement discretion that they may
24 exercise," and I do not disagree that this is

1 consistent with the Clean Air Act. However,
2 in terms of rectifying the SSM SIP deficiency,
3 the U.S. EPA stated that states, "can include
4 in the SIP criteria and procedures for the use
5 of enforcement discretion by agency personnel."
6 Therefore, a state relying on enforcement
7 discretion that is not addressed in the SIP
8 appears to be inconsistent with U.S. EPA's
9 approach as to correcting SSM SIP deficiencies.

10 **Q. So your contention is that it needs**
11 **to be addressed in the SIP to be consistent --**

12 MR. WALL: To be consistent if relying
13 solely on enforcement discretion, it would be --
14 it should be addressed in the SIP.

15 **Q. Okay.**

16 MR. WALL: And further, I would say
17 that enforcement discretion, in my opinion, is
18 not the best remedy for cases such as boiler
19 startup or FCC startup, as I've testified to,
20 where there is a known compliance issue
21 beforehand, rather than something unexpected
22 where enforcement discretion can be taken into
23 account after the fact.

24 **Q. Okay. IERG also discusses U.S. EPA's**

1 approaches to SSM events in its 2015 guidance,
2 in particular, your testimony discusses U.S.
3 EPA's criteria for developing alternative
4 emission limitations. In the same guidance
5 document, U.S. EPA also describes how use of
6 agency enforcement discretion is consistent
7 with the Clean Air Act.

8 Is it your opinion that IEPA's
9 approach to use of its enforcement discretion
10 is consistent with the Clean Air Act and able
11 to be approved by the U.S. EPA?

12 MR. WALL: My answer would be the same
13 as to the first question.

14 Q. And finally, has any other state
15 proposed alternative emissions limitations
16 that resemble those proposed by IERG?

17 MR. WALL: To my knowledge, no, no
18 other state has adopted similar alternative
19 emissions limitations as proposed by IERG;
20 however, in my experience and to my knowledge,
21 most states do not have a similar emission
22 limitation as Illinois does for the FCC carbon
23 monoxide standard and the boiler standard with
24 no averaging period.

1 **Q. Okay. And any related information**
2 **you can supplement to the record. It will be**
3 **appreciated.**

4 MR. WALL: Thank you.

5 MS. KORDAS: That's all the questions
6 I have.

7 MR. FOX: Ms. Kordas, I think we're in
8 order for you to turn your questions for the
9 American Petroleum Institute and Mr. Reese, who
10 has been sworn in.

11 MS. KORDAS: Actually, my colleague is
12 going to join me to handle those questions.

13 MR. FOX: Ms. Hanohano, can you
14 identify yourself for the record for our court
15 reporter.

16 MS. HANOHANO: My name is Ann Marie
17 Hanohano, H-a-n-o-h-a-n-o.

18 EXAMINATION

19 BY MS. HANOHANO:

20 **Q. Hello. I am going to read our**
21 **pre-filed questions in their entirety,**
22 **starting with Question 1:**

23 **API states that rule-specific SMB**
24 **provisions would easily satisfy U.S. EPA's**

1 **guidance. Has any other state established**
2 **such provisions; and if so, have they been**
3 **approved by U.S. EPA? Please supplement this**
4 **rulemaking record with any related**
5 **information.**

6 MR. REESE: To API's knowledge, no
7 other state has adopted similar alternative
8 emissions limitations as proposed by IERG.

9 As alluded to in Mr. Wall's prior
10 response, Illinois is unique in its approach by
11 prescribing a specific CO emission of 200 parts
12 per million when compared to other states. Most
13 states simply require use of combustion of CO if
14 for catalytic cracks during normal operations
15 without the addition of a numeric concentration
16 limit. South Coast Air Quality District has a
17 500 parts per million limitation but allows a
18 specific startup duration, numbers allowed --
19 sorry, numbers of hours allowed, to be precise,
20 and limits the number of annual startups for cat
21 crackers.

22 Similar in the Bay Area Air
23 Quality Management District, they have a 350
24 part per million standard, but they have a

1 startup exemption. So generally, states will
2 incorporate by reference Part 60 and Part 63
3 NSPS and NESHAP standards. In some cases, they
4 have state standards that are exempted when a
5 unit is subject to a federal NSPS or a NESHAP
6 standard, like Indiana. Illinois' limitation of
7 200 is a unique problem with respect to FCCU
8 startup and shutdown events when compared to
9 other states.

10 **Q. Thank you. Question 2, U.S. EPA**
11 **explicitly discusses enforcement discretion as**
12 **a means consistent with Clean Air Act**
13 **requirements for SIP provisions that states**
14 **can use to address SSM events. Is it your**
15 **opinion that IEPA's proposed use of its**
16 **enforcement discretion complies with the 2015**
17 **guidance document's discussion of enforcement**
18 **discretion?**

19 MR. REESE: I echo IERG's response to
20 Questions 1 and 2 directed to them just
21 previously, and I don't have anything to add --
22 additional to add.

23 **Q. Sure. Thanks. If you have anything**
24 **to supplement after this, that would be great,**

1 related to Question Number 2.

2 MR. REESE: Yes.

3 Q. Question 3, API states that
4 "companies typically have a policy of not
5 allowing operation in non-compliance with
6 applicable regulations," and there is a
7 concern that this rulemaking might result in
8 extended outages or shutdowns. Can you please
9 elaborate on this concern in light of the
10 purpose of Title II of the Act, which is to
11 restore, maintain, and enhance purity of the
12 air of this state in order to protect health,
13 welfare, property, and the quality of life and
14 to assure that no air contaminants are
15 discharged into the atmosphere without being
16 given the degree of treatment or control
17 necessary to prevent pollution.

18 In your experience, have there
19 been extended outages due to concerns of
20 non-compliance from SSM events under the
21 existing regulations?

22 MR. REESE: To answer your second
23 question first, to my knowledge, there has not
24 been extended outages due to concerns of

1 non-compliance from SMB events under the
2 existing regulations.

3 Under the existing regulations,
4 the SMB regulatory provisions and the permit
5 conditions provide refineries adequate assurance
6 that an enforcement proceeding will not be
7 initiated an exceedance of the 200 part per
8 million CO standard due to SMB events.

9 As to your first question, the
10 concern that Illinois EPA's proposal may result
11 in extended outages or shutdowns appears to not
12 conflict with the purposes of Title II of the
13 Act on its surface. However, as explained in my
14 testimony, the pre-filed testimony, every day of
15 non-production could negatively impact the
16 supply of fuel products to the Midwest and the
17 greater Chicagoland markets, which is a concern
18 of API.

19 Finally, it's important to
20 remember that the refinery alternatives that we
21 propose or mention in the testimony, were
22 established as part of a risk and technology
23 review process that the EPA follows when they
24 set Maximum Achievable Technology Standards.

1 Section 112 directs the EPA to conduct risk
2 assessments for each source category subject to
3 MACT standards to determine if additional
4 standards are needed to reduce residual risk.
5 Section 112(d) requires them to revise and
6 review these MACT standards, as necessary, taken
7 into account developments in practices,
8 processes, and control technologies. This was
9 followed and completed in 2016 for the refinery
10 sector. So with respect to your question on
11 Title II, I would say the process used to
12 establish the alternatives was aligned and
13 consistent with that directive.

14 **Q. Thank you. API states that IEPA's**
15 **proposed amendments will unfairly and**
16 **unlawfully render numerous state emissions**
17 **limitations and standards infeasible or**
18 **impossible to meet.**

19 **Is it your contention that this**
20 **rulemaking is either unfair or unlawful? If**
21 **not, then what is the basis for this**
22 **testimony? Are you aware of any other state**
23 **that has submitted a SIP with provisions that**
24 **resemble IEPA's proposal? If so, have they**

1 **been reviewed by any court or regulatory**
2 **authority that determined that the revised air**
3 **regulations unfairly and unlawfully rendered**
4 **numerous state emissions limitations and**
5 **standards infeasible or impossible to meet?**

6 MR. REESE: As to your second set of
7 questions, as identified by Illinois EPA
8 previously in this rulemaking, there are a
9 number of states that have had SIP submissions
10 similar to IEPA's proposed provisions striking
11 all SSM provisions. Such SIP submissions have
12 been approved by the U.S. EPA as a SIP provision
13 and, to API's knowledge, have not been subject
14 to a legal challenge.

15 As to unfairly rendering the
16 state emissions limitations infeasible or
17 impossible to meet, it is unfair for the state
18 to establish emissions limitations that are
19 technically infeasible to meet during certain
20 modes of operation.

21 And I would point out, again, as
22 in our pre-filed testimony, the priority of
23 process safety risks that the alternative is
24 aligned to address following the 200 part per

1 million at all times, especially during startups
2 of an FCCU, is an unsafe practice.

3 Q. Thank you. I might have missed your
4 answer to the first question --

5 MR. REESE: Sure.

6 Q. Is it your contention that this rule
7 making is either unfair or unlawful?

8 MR. REESE: Sorry, I addressed the
9 unfair in my response just a second ago.

10 Q. Okay.

11 MR. REESE: With respect to unlawful,
12 that's a legal conclusion and opinion, and we
13 will be filing that as part of the follow-up.

14 Q. Okay. Great. Thank you.

15 Question 5, API details its
16 concerns with adverse impacts, which API
17 claims will result from IEPA's proposed
18 amendments. Have you considered what possible
19 adverse impacts will result from API's
20 proposal? Do you have an opinion on whether
21 these adverse impacts affect air quality in
22 environmental justice communities?

23 MR. REESE: To clarify, it is IERG's
24 proposal to amend Section 216 and API is

1 testifying support of their proposal. As to
2 both of your questions, IERG's proposal will not
3 have any adverse air quality impacts relative to
4 the existing impacts under current regulations.
5 Further, remember that the one percent O2
6 alternative is a condition to ensure the
7 combustion of hydrocarbon and i.e., hazardous
8 air pollutants during startup, so you can see
9 the EPA's logic in their preamble as part of our
10 pre-filed testimony, the alternative maximizes
11 destruction of hydrocarbons and HAPs maximizes
12 process safety and assures compliance at all
13 times.

14 MS. HANOHANO: Thank you. That's all
15 I have.

16 MR. RAO: May I ask a follow-up?

17 You just mentioned that regarding
18 the adverse effects, there will be a difference
19 between the existing regulations and what IERG
20 has proposed, will there be any adverse effects
21 compared to what IEPA has proposed now and what
22 IERG is proposing?

23 MR. REESE: That the adverse effect is
24 telling us you have to comply with the standard

1 that we know we cannot do safely. So that's the
2 adverse effect.

3 Following the alternatives, the
4 adverse effects in air quality are not changed.
5 Am I addressing your question?

6 MR. RAO: When you compare it with the
7 agency's proposal?

8 MR. REESE: The agency's proposal
9 removes the SMB provisions so we don't have a
10 startup alternative, and then the 200 we can
11 comply with during normal operations.

12 MR. RAO: I was asking about during
13 SMB.

14 MR. REESE: During SMB the adverse --
15 there are no adverse air quality if you
16 continue -- if you have to follow the federal
17 alternatives, then our emissions are unchanged
18 from what we had before. The contention is that
19 you say there is no SMB, I know the process
20 safety risk, the primary focus during a cat
21 cracker, and there's lots of instance where this
22 has been raised, that you must combust the
23 hydrocarbons. You cannot allow the accumulation
24 of uncombusted hydrocarbon to be in the reactor

1 train and find its way down to the CO border,
2 which would be a source for emission, right? So
3 we have to follow. The priority is not CO. The
4 priority is the destruction of hydrocarbon.
5 That's how we do the one percent O2, and that's
6 what EPA said.

7 So back to my point, emissions,
8 following what we do today, which is consistent
9 with the federal MACT standard alternatives,
10 would not be changed. If you remove the SMB
11 provisions and don't have a numerical
12 alternative that we propose, then we are stuck,
13 right? How do I start up my cat cracker knowing
14 that I can't meet a limit? That's a problem.

15 MR. RAO: So how are refineries and
16 other approved states where SMB provisions for
17 remote under the 2015 SIP call handling this, is
18 it just because they don't have a 200 part per
19 million standard?

20 MR. REESE: That's a good question.
21 So the answer is, yes and yes, right, so yes for
22 some states that do not have a state numerical
23 standard and they just refer to the federal
24 standard, then we follow the federal standard,

1 so it doesn't become a problem, right, because
2 you have the alternative available to you.

3 Take a state like California,
4 which has a numerical limit, but in their state
5 rules they have exemptions, like I talked about
6 just a minute ago where they have the number of
7 hours for cat cracker startups allowed, you get
8 two startups a year, so they have their
9 numerical limit, but they also say, here is the
10 exemption or relief from that limit during
11 periods of startup and shutdown.

12 So states that have a number,
13 they have provisions similar, not unlike what we
14 are asking for, or they don't have a limit and
15 then you are able to follow the federal. Does
16 that make sense?

17 MR. RAO: Thank you.

18 MR. REESE: That's a good question. I
19 hope I answered it. We can provide that.

20 MR. RAO: If you can add anything more
21 in your comments, please do.

22 MR. FOX: Ms. Hanohano, I think that
23 exhausted the questions you had for API, am I
24 correct about that?

1 MS. HANOHANO: Yes.

2 MR. FOX: Very good. Thanks very
3 much.

4 What we can do is open this up at
5 this point to any of the participants that are
6 present to see whether they have questions for
7 IERG or the API's witnesses at this point. Is
8 there anyone who has a follow-up or a question
9 they wish to ask this morning?

10 I am neither seeing nor hearing
11 any indication that there is, we can turn to
12 Mr. Rao for the questions that were pre-filed
13 for Ms. Thompson and Mr. Wall on behalf of the
14 Board.

15 Mr. Rao, please go ahead.

16 MR. RAO: I will start with
17 Ms. Thompson. Good morning.

18 MS. THOMPSON: Good morning.

19 MR. RAO: On page 2 of your pre-filed
20 testimony, you that state that, "because IERG's
21 members include facilities that have startup,
22 shutdown, and malfunction, SMB, provisions in
23 their permits, Illinois EPA's proposal will
24 directly impact your members. Could you please

1 provide a list of affected permitted sources and
2 their locations other than the four petroleum
3 refineries identified in Mr. Reese's testimony
4 on behalf of API.

5 MS. THOMPSON: So IERG has not
6 compiled a list of members that have SMB
7 provisions in their permits. As to IERG's
8 proposal, IERG's proposed revision to Section
9 216.361 would impact the four petroleum
10 refineries. As to Section 216.121, IERG's
11 proposed revision would impact facilities with
12 boilers or process heaters with actual heat
13 input greater than 2.9 megawatts or 10 MMBtu
14 per hour where such units cannot comply with the
15 200 ppm CO standard in Section 216.121 during
16 periods of SMB.

17 MR. RAO: At the first hearing, IEPA's
18 Mr. Davis testified that the U.S. EPA is now
19 requiring SIP submittals to include impacts on
20 environmental justice areas and environmental
21 justice communities. There's a cite to the
22 transcript, pages 175 and 176 January 19th
23 hearing.

24 Could you please comment on

1 whether the sources covered under IERG's
2 alternative proposal are in or near EJ areas or
3 EJ communities?

4 MS. THOMPSON: The answer to that
5 question would depend on how EJ areas or EJ
6 communities are defined. It is likely,
7 depending on which EJ map is used, that at least
8 one IERG member facility that would be covered
9 under ERG's alternative proposal is located in
10 or near an EJ community.

11 MR. RAO: When you say EJ map, what
12 map are you specifically referring to?

13 MS. THOMPSON: So there's a variety of
14 maps. There is U.S. EPA's map or Illinois EPA's
15 EJ start, so there's a variety of them and we
16 think that depending on which one of those is
17 used, at least one member will be considered in
18 that area.

19 MR. RAO: Would there be one member
20 based on IEPA's EJ start map?

21 MS. THOMPSON: We're not sure at this
22 time, but we can follow up and post our
23 comments. -

24 MR. RAO: If so, can you please

1 comment on any potential impacts of IERG's
2 alternate proposal on this specific source that
3 you are referring to?

4 MS. THOMPSON: So IERG's proposed
5 provisions will not result in any adverse
6 impacts on EJ areas or EJ communities. IERG's
7 proposal does not change the status quo as to
8 how these affected facilities are operating
9 during SMB events currently, or how they have
10 been operating during SMB events in the past.

11 MR. RAO: That's all I have for
12 Ms. Thompson, so we will go to Mr. Wall.

13 On page 30 of your pre-filed
14 testimony, you note that the U.S. EPA
15 recognizes, "that it may be appropriate to
16 establish alternative emission limitations for
17 modes of source operation other than startup and
18 shutdown, but the same seven criteria should be
19 utilized."

20 Please explain whether
21 malfunction and breakdown could be considered as
22 other modes of source operation for which
23 alternative emission limitations may be
24 established?

1 MR. WALL: Yes, malfunction and
2 breakdown could be considered as other modes of
3 source operation in terms of establishing
4 alternative emission limitations. Alternative
5 emission limitations are established for modes
6 of operation other than normal steady state
7 operation. IERG's Section 216.121 proposal, as
8 currently drafted, applies to startups and
9 shutdowns. As explained in my pre-filed
10 testimony, it is not technically feasible for
11 boilers to meet the 200 ppm standard in
12 Section 216.121 during boiler startups.

13 As to shutdowns, excess CO
14 emissions are generally not as much of a concern
15 during boiler shutdowns. A boiler shutdown is
16 typically just a matter of ceasing fuel flow
17 feed to the boiler and can be conducted rapidly.
18 Similarly, a boiler malfunction or breakdown in
19 many cases may just lead to a boiler shutdown in
20 order to address the cause of the malfunction or
21 breakdown. In some instances, if there's a
22 rapid change in process operating conditions due
23 to an upset or malfunction, this could cause a
24 rapid change in boiler demand which could result

1 in temperature differentials within the boiler
2 firebox that could result in excess CO
3 emissions; however, this is not typically the
4 case.

5 In terms of SMB events, startups
6 are the main concern for excess CO emissions
7 from boilers. IERG included both startup and
8 shutdown in its Section 2126.121 proposal in
9 order to be consistent with NESHAP Subpart 5D,
10 which addresses both startup and shutdown.
11 NESHAP Subpart 5D does not address malfunctions
12 or breakdowns. Because IERG is proposing to
13 incorporate by reference provisions of NESHAP
14 Subpart 5D, IERG does not believe malfunctions
15 or breakdowns should be included in the proposed
16 revisions to Section 216.121.

17 Further, IERG is willing to
18 consider further issues related to shutdowns as
19 part of its proposal and may address this in
20 post-hearing comments.

21 MR. RAO: Thank you. I think you
22 answered the second part of the question there,
23 so I'll move on.

24 On page 32 of your pre-filed

1 testimony, you stated that the various startup
2 activities "can result in startup durations
3 varying between several minutes to more than a
4 day."

5 Please clarify whether typical
6 startup duration for boilers covered under
7 IERG's proposal lasts more than a day? If so,
8 could you explain "more than a day" means, two
9 days, three days, or a week?

10 MR. WALL: There is no typical startup
11 duration given that startup conditions vary
12 based on the reason for the startup. The length
13 of a startup can vary, depending on the shutdown
14 that necessitated the startup. As noted in my
15 pre-filed testimony, the basic types of startups
16 are (1) a startup following repairs for an
17 instrument malfunction that trips the boiler
18 off; (2) a startup following a required boiler
19 inspection; and (3) startup following
20 significant maintenance activities such as
21 refractory installation or repairs. As
22 referenced in the Board's question, the various
23 activities can result in startup durations
24 varying between several minutes to more than a

1 day. In my experience, more than a day is
2 typically less than two days and on the order of
3 24 to 28 hours; however, this again, my vary
4 based on the circumstances.

5 MR. RAO: Thank you. The next
6 question, you may have touched on this in a
7 previous answer from API.

8 Please explain why IERG is
9 focusing only on CO emissions when it comes to
10 SMB. Comment on whether there would be higher
11 emissions of other regulated air pollutants such
12 as NOx and PM from IERG members' sources?

13 MR. WALL: IERG's proposal focuses on
14 CO emissions because IERG's members expressed a
15 desire to propose alternatives specifically for
16 that standard and were most concerned with
17 meeting either of the CO standards in Sections
18 216.121 or 216.361.

19 As to higher pollutants of other
20 regulated air pollutants, IERG members have not
21 expressed a concern with complying with any
22 particular standard such as NOx or PM during SMB
23 events to the extent where they desire to pursue
24 alternative fast-track rulemaking.

1 MR. RAO: Thank you, that's all I
2 have.

3 MR. FOX: Ms. Thompson, Mr. Wall,
4 thank you. Let's make sure that there is not a
5 final follow-up question or any other question
6 from the participants who are present here.

7 I am very clearly seeing that
8 there is not any further questioning for you.
9 Thank you for your testimony, for your responses
10 today. We can move on at this point, Ms. Brown,
11 Mr. Messina, to Ms. Frede on behalf of the
12 chemical industry.

13 Ms. Frede, good morning. Thank
14 you for your presence today. As I said, the
15 testimony is entered into our record as if it
16 had been read aloud. We can proceed right to
17 the questions beginning with those submitted by
18 the attorney general, turn to the other
19 participants, wrapping up with the Board; and if
20 you are ready to begin, I would ask you to be
21 sworn in by the court reporter and then identify
22 yourself and your -- the agency -- entity that
23 you represent for our record.

24 [Lisa Frede sworn.]

1 MS. FREDE: Lisa Frede, F-r-e-d-e.
2 I'm the director of regulatory affairs at the
3 Chemical Industry Council of Illinois.

4 MR. FOX: Ms. Frede, thank you, again.
5 I think we're ready to turn to the questions
6 that were filed by the office of the attorney
7 general, and Ms. Kordas appears to be ready to
8 start.

9 Ms. Kordas, please go ahead.

10 MS. KORDAS: Thank you.

11 EXAMINATION

12 BY MS. KORDAS:

13 Q. So I'll just jump right in, CICI
14 states that a member has -- a member company
15 has a consent decree with the U.S. EPA, which
16 provides that NOx emission limits do not apply
17 during startup, shutdown, and malfunction.

18 When was this consent decree
19 agreed to; and if you could supplement this
20 rulemaking record with any related
21 information.

22 A. Sure. Due to the late timing of me
23 receiving the questions yesterday, I have not
24 had time to confer with my members, so I cannot

1 answer your questions today. I'm happy to
2 supplement something in writing to you.

3 Q. Okay. Your testimony also states
4 that Ohio is working to "tailor a workable
5 solution for their state specific needs" with
6 respect to their startup shutdown and
7 malfunction rules.

8 Has Ohio submitted an updated SIP
9 to U.S. EPA for approval? If so, has U.S. EPA
10 approved it?

11 A. Again, the same as Question No. 1 for
12 my answer.

13 Q. Okay. CICI also states that other
14 states have taken similar actions, do you know
15 which other states have done so?

16 A. Again, I need to get back to you on
17 that.

18 Q. And finally, I'll just read the
19 question in its entirety.

20 You state that "without this
21 exception or affirmative defense, each startup
22 and shutdown will result in deviations of NOx
23 emission limits and opacity limits or all
24 permits in Illinois would have to be updated

1 to address higher NOx emissions or opacity
2 exceedances.

3 Is it your belief that deviations
4 in higher emissions during SSM events will
5 necessarily result in exceedances; and if that
6 is the case, have your member companies
7 explored any potential improvements to
8 pollution control equipment to prevent these
9 exceedances of the emission and opacity
10 limits?

11 A. Again, I'll be happy to get back to
12 you in writing once I consult with my members.

13 MS. KORDAS: Thank you.

14 MS. FREDE: Thank you.

15 MR. FOX: Ms. Kordas, it appears that
16 that exhausts your questions -- pre-filed
17 questions for the Chemical Industry Council.

18 Does any one of the other
19 participants have a follow-up question or a
20 question they wish to pose to the Chemical
21 Industry Council?

22 Very clearly seeing that no
23 one does, Mr. Rao, we have a couple of Board
24 questions, I believe, for Ms. Frede.

1 MR. RAO: Yes, I have one question.

2 Good morning, Ms. Frede.

3 MS. FREDE: Good morning.

4 MR. RAO: On page 2 of your pre-filed
5 testimony regarding CICI Member Company A, you
6 note that control of NOx emissions by selective
7 catalytic reduction, SCR, systems are affected
8 during startup and shutdown because the
9 temperatures will be lower than the minimum
10 operating temperature.

11 Could you please clarify whether
12 IERG's proposal or alternate proposal that
13 provides exceptions for only carbon monoxide
14 emissions adequately addresses compliance
15 concerns of CICI member companies during startup
16 and shutdown?

17 A. In relation to Company A, IERG's
18 proposal will not assist them. CO is not their
19 issue.

20 MR. RAO: So they don't have any
21 issues with NOx?

22 A. Yes, they have issues with other
23 emissions. CO is just not one.

24 MR. RAO: All right. Thank you.

1 That's all I have.

2 MR. FOX: One last opportunity, are
3 there any follow-up questions or questions from
4 any of the participants for Ms. Frede on behalf
5 of the Chemical Industry Council?

6 Ms. Frede, I am clearly seeing --
7 neither seeing nor hearing that there is any
8 follow-up. We appreciate your willingness to
9 submit some written response, and before we
10 adjourn, we can talk about deadlines for that.
11 If you have one in mind, we can entertain that
12 as part of the discussion and decision on that
13 point.

14 MS. FREDE: Thank you.

15 MR. FOX: Ms. Frede, thanks very much.
16 I appreciate it.

17 And Mr. More, I believe we are
18 ready for Ms. Shealey to be sworn in and to
19 field questions.

20 Ms. Shealey, good morning. Thank
21 you for your testimony and your availability for
22 questions. I think the court reporter is ready
23 to swear you in and have you identify yourself
24 on the record, please.

1 [Sharene Shealey sworn.]

2 MR. FOX: If you would specifically
3 identify yourself, that would be great. Thank
4 you.

5 MS. SHEALEY: My name is Sharene
6 Shealey, S-h-a-r-e-n-e, S-h-e-a-l-e-y, and I'm
7 here representing Midwest Generation, LLC.

8 MR. FOX: Ms. Shealey, thanks begin.
9 As you've heard me say, no doubt, the pre-filed
10 testimony is entered into the record as if read.
11 And we can proceed right to questions. I see
12 Ms. Hanohano is in place to begin with her first
13 question for Dynegy, and we in order will turn
14 you to Ms. Hanohano.

15 MR. MORE: Midwest Gen.

16 MR. FOX: Midwest Gen. My apologies.
17 That was my mistake entirely. I'm sorry.

18 EXAMINATION

19 BY MS. HANOHANO:

20 **Q. And again, I'm just going to read our**
21 **pre-filed questions in their entirety starting**
22 **with Question 1:**

23 **Midwest Generation offers what it**
24 **called an alternative averaging period arguing**

1 that it satisfied the requirements set out
2 in U.S. EPA's 2015 guidance. Please elaborate
3 on why this proposal would satisfy the 2015
4 guidance. Has any other state submitted a
5 similar proposal to U.S. EPA; and if so, did
6 U.S. EPA approve it? If yes, what was the
7 outcome in other states? Did the
8 implementation of an alternative averaging
9 period result in additional opacity or
10 emissions? Please supplement this rulemaking
11 record with any related information.

12 A. Midwest Generation's post-hearing
13 brief will further elaborate on how its proposal
14 satisfies the 2015 guidance. I am not aware of
15 any other state that has established regulatory
16 provisions regarding Midwest Generation's
17 proposal. It's important to keep in mind,
18 though, that Midwest Generations's proposal is a
19 site-specific narrow proposal. Midwest
20 Generation's proposal is site-specific.

21 Q. Thank you. The second question, how
22 did MWG conclude that an alternative average
23 period was the best option? Does MWG rely on
24 any evidence or analysis that demonstrates an

1 alternative average period as an effective
2 means of satisfying the requirement set out in
3 U.S. EPA's 2015 guidance? What evidence
4 suggests a three-hour averaging period is
5 best? And again, if you supplement the
6 rulemaking record with information, also
7 include the evidence that was considered,
8 please.

9 A. Midwest Generation elected to include
10 a numeric limit in addition to work practices
11 during SMB events in order to maximize the
12 probability that U.S. EPA would approve its
13 proposal if adopted by the Board into the
14 Illinois SIP. When setting that limit, Midwest
15 Generation decided to utilize the existing
16 standards at 30 percent and a three-hour
17 averaging period because this construct is
18 utilized in the Powerton station's CAM plan,
19 compliance assurance monitoring plan, for
20 compliance with the applicable state PM
21 standard. Opacity is not a pollutant and so
22 there is no NAAQS, National Ambient Air Quality
23 Standard for opacity. But opacity can be an
24 indicator of particulate matter.

1 As I noted in my testimony, the
2 federally enforceable CAM plan for these boilers
3 to assure continuance compliance with the
4 applicable PM standard utilizes opacity as an
5 indicator and sets the indicator level at
6 30 percent over a three-hour rolling period.

7 The CAM plan is part of a CAAPP
8 permit, Clean Air Act permitting program permit,
9 and explains opacity less than 30 percent
10 averaged over a rolling three-hour period is an
11 indicator of proper ESP operation and provides
12 reasonable assurance of meeting the 0.1 pound
13 per million btu PM standard, which is the
14 applicable state limit.

15 The CAM plan indicator was
16 determined by Illinois EPA in consultation with
17 Midwest Generation. IEPA approved the CAM plan
18 and incorporated it into the Powerton CAAPP
19 permit. The U.S. EPA reviewed the permit,
20 including the CAM plan, and did not object to
21 the permit.

22 By using 30 percent based on a
23 three-hour average of data, the Board and the
24 U.S. EPA can be assured that this limit would --

1 assured that this limit would ensure that
2 Midwest Generation's opacity during SMB events
3 does not exceed the applicable state PM limits
4 and in turn is consistent with the state
5 implementation plan for PM emission. Our
6 post-hearing brief will further address how the
7 proposal satisfies U.S. EPA's 2015 guidance.

8 Q. Great. To just to confirm, your
9 post-hearing brief will include any evidence
10 or other information that was considered
11 responsive to questions No. 2?

12 A. Yes.

13 Q. Okay. Thank you.

14 Do you believe that MWG's
15 proposed alternative averaging period is an
16 effective way of addressing startup and
17 shutdown emissions for all types of emission
18 limits? Is MWG's proposal intended to apply
19 only to coal-fired electric generating units
20 or other sources of pollution as well? Did
21 MWG collaborate with Dynegy on creating its
22 proposal?

23 A. Midwest Generation designed the
24 alternative averaging period solely to apply to

1 opacity from the coal-fired boilers at Powerton.
2 It did not intend for its proposal to apply to
3 any other emission units or any other
4 pollutants.

5 I have no opinion on whether
6 elements of Midwest Generation's proposal will
7 be effective for other emission units or
8 emission limits. Midwest Generation did
9 coordinate with Dynegy in developing this
10 proposal.

11 MS. HANOHANO: Thank you. That's all
12 I have.

13 MR. FOX: Ms. Hanohano, thank you very
14 much. We are ready, Mr. Rao, if you would pose
15 the questions the Board had pre-filed for
16 Midwest Generation.

17 MR. RAO: On page 1 of your pre-filed
18 testimony, you state that Midwest Generation's
19 proposal provides an alternative averaging
20 period for demonstrating compliance during times
21 of startup, malfunction, and breakdown of
22 coal-fired boilers at Midwest Generation's power
23 and generation stations.

24 Please comment on whether MWG has

1 opacity monitoring data from the Powerton
2 station that illustrate the difference in
3 opacity levels during normal operation and
4 during SMB.

5 A. Yes, Midwest Generation has opacity
6 monitoring data from Powerton station to
7 illustrate the difference in opacity levels for
8 normal operation and SMB events.

9 MR. RAO: If so, could you please
10 submit this illustrative opacity monitoring data
11 for the affected boilers?

12 A. Yes, we will submit that data on or
13 before next Friday, February 24.

14 MR. RAO: On page 2 of your pre-filed
15 testimony, you state that affected boilers at
16 Powerton station have the capability to fire
17 natural gas as an auxiliary fuel during startup
18 and shutdown, and for flame stabilization.

19 So please clarify whether using
20 natural gas during startup and shutdown reduces
21 opacity levels?

22 A. Opacity is correlated with particulate
23 matter emissions and burning natural gas leads
24 to more particulate matter emissions than

1 burning coal. Therefore, we expect the burning
2 of natural gas to result in lower opacity than
3 burning coal, generally speaking. But that is
4 not always true. For example, some opacity
5 events, including during startups and shutdowns,
6 could result from dislodging ash that was caught
7 in the boiler resulting in a puff of opacity.
8 So replacing natural gas with coal does not
9 always lead to lower opacity.

10 MR. RAO: And please comment on
11 whether MWG uses natural gas during SMB at
12 Powerton station.

13 A. Midwest Generation uses natural gas
14 during startups of the Powerton boilers.
15 Midwest Generation begins a boiler startup using
16 natural gas. Unfortunately, the company does
17 not believe it could materially increase the use
18 of natural gas during startups consistent with
19 good operating practices and still achieve and
20 maintain stable boiler operation. Midwest
21 Generation does not typically utilize natural
22 gas -- does not typically utilize natural gas
23 during malfunction outside of startup periods
24 unless needed for flame stabilization.

1 Events requiring flame stabilization
2 or malfunctions; for example, a cycle or coal
3 conditioner malfunction, the company's first
4 response to opacity is to drop load to reduce
5 the load of the boilers -- or boiler. Firing
6 natural gas, even if possible, would not resolve
7 excess opacity without simultaneously reducing
8 the amount of coal fire which is the response
9 that Midwest Generation takes.

10 MR. RAO: Please comment on whether
11 Powerton's current CAAPP permit requires the use
12 of natural gas during SMB events?

13 A. Midwest Generation is required to use
14 clean fuels such as natural gas during portions
15 of startups. Midwest Generation is not required
16 to use natural gas for malfunction or breakdown
17 events. Midwest Generation is also required to
18 use auxiliary fuel burners, that is natural gas,
19 to heat the boiler prior to initiating burning
20 of coal as a condition to reliance on the
21 startup authorization in CAAPP condition
22 7.1.3(b), bravo.

23 MR. RAO: Thank you. On page 6 of
24 your pre-filed testimony, you state that Midwest

1 Generation seeks "to codify a narrower version
2 of current SMB authorization for the affected
3 boilers because it is infeasible for the company
4 to comply with opacity standards 100 percent of
5 the time during periods of SMB."

6 Please clarify whether shutdown
7 of boilers is covered by MWG's proposal?

8 A. Midwest Generation's proposal only --
9 includes only startups, malfunctions, and
10 breakdowns, the same events addressed in the
11 current Illinois SMB provisions in Powerton's
12 CAAPP permit. Midwest Generation is not seeking
13 to broaden or narrow the meaning of any of those
14 terms or add a categorical exclusion for
15 shutdowns. To the extent that certain shutdowns
16 are covered by the current SMB provisions, we
17 intend for those to be covered by our proposal.

18 MR. RAO: On page 7 of your pre-filed
19 testimony, you note that under MWG's proposal,
20 demonstrating compliance "would be accomplished
21 for a given six-minute block period when the
22 alternative averaging period is needed by taking
23 the average opacity measurements from the COMS,
24 for those six minutes and the preceding

1 174 minutes of data."

2 Please explain the rationale for
3 proposing three-hour averaging instead of a
4 shorter averaging time to demonstrate compliance
5 with opacity limitation?

6 A. Midwest Generation elected to include
7 a numeric limit in addition to work practices
8 during SMB events in order to maximize the
9 probability that U.S. EPA would approve its
10 proposal, if adopted by the Board, into the
11 Illinois SIP. When setting that limit, Midwest
12 Generation decided to utilize the existing
13 30 percent standard and a three-hour averaging
14 period, because this construct is utilized in
15 the Powerton CAM plan for compliance with the
16 applicable state PM standard.

17 Opacity is not a pollutant and
18 therefore there is no NAAQS for opacity, but
19 opacity can be an indicator of particulate
20 matter.

21 As I noted in my testimony, the
22 federally enforceable CAM plan for these boilers
23 to assure continuance compliance with the
24 applicable PM standard utilizes opacity as the

1 indicator, and sets the indicator level at
2 30 percent over a rolling three-hour period.
3 The CAM plan is part of the CAAPP permit and
4 explains "opacity less than 30 percent averaged
5 over a rolling three-hour period is an indicator
6 of proper ESP operation and provides reasonable
7 assurance of meeting the 0.1-pound per million
8 btu PM limit," which is the applicable state
9 limit.

10 IEPA approved its CAM plan when it
11 issued the CAAPP permit after a careful review
12 and analysis of fact testing data for the plan,
13 and after reviewing and addressing comments
14 provided to it by the public. U.S. EPA reviewed
15 the permit, including the CAM plan, and it did
16 not object to the permit.

17 By using 30 percent, based on
18 three-hour average of data, the Board and the
19 U.S. EPA can be assured that the limit -- would
20 ensure that Midwest Generation's opacity during
21 SMB events does not exceed the applicable state
22 PM limit, and in turn, is consistent with the
23 state implementation plan for PM emissions.

24 MR. RAO: Could you please provide

1 examples using actual opacity monitoring data
2 prior to startup, malfunction, or breakdown that
3 support Midwest Generation's contention that the
4 proposed three-hour averaging time will be
5 necessary to meet the 30 percent opacity
6 limitation during SMB events?

7 A. I'm not prepared to do that today, but
8 we will do so on or before February 24, if that
9 is acceptable.

10 MR. RAO: Thank you, yes.

11 The next question, on page 1 of
12 your pre-filed testimony, you state that MWG's
13 proposal provides "an alternative averaging
14 period for demonstrating compliance during times
15 of startup, malfunction, and breakdown of the
16 coal-fired boilers at Midwest Generation's
17 Powerton Generating Stations."

18 Please clarify whether the
19 Powerton station is in or near an environmental
20 justice area or an environmental justice
21 community?

22 A. To be clear, I don't know the
23 difference between or the distinction between an
24 environmental justice area and an environmental

1 justice community, but using Illinois EPA's EJ
2 start tool, Powerton is not within what I
3 believe to be either of those. And it is
4 approximately the -- combines the common stack
5 at Powerton is approximately one to two miles
6 away from the nearest EJ community, I believe,
7 which is a low income community.

8 MR. RAO: Considering your response,
9 MWG isn't concerned about any potential impacts
10 on that particular community with this
11 alternative proposal?

12 A. No, there will be no impact on an EJ
13 area or on any other community because our
14 proposal will be more stringent with our SMB
15 authorizations currently contained in the
16 Powerton CAAPP permit.

17 MR. RAO: The next question, please
18 comment on whether Midwest Generation is
19 concerned about compliance with emissions
20 limitations for other air pollutants including
21 carbon monoxide or nitrogen oxide at the
22 Powerton station?

23
24

1 A. No, Midwest Gen is solely focused on
2 opacity in connection with SMB.

3 MR. RAO: Thank you. That's all I
4 have.

5 MR. FOX: If I may take one more
6 chance to see whether any of the participants
7 have a follow-up question or an additional
8 question for Ms. Shealey on behalf of Midwest
9 Generation?

10 I am clearly seeing that no one
11 is so indicating, Ms. Shealey, and we have
12 wrapped up your testimony and questions based
13 upon it. Thank you for those.

14 MS. SHEALEY: Thank you.

15 MR. FOX: Having heard from
16 Ms. Shealey, we have addressed each of the
17 witnesses who pre-filed testimony today.

18 To be clear, is there anyone
19 present who did not pre-file testimony but
20 wishes to testify today?

21 I plainly am neither seeing nor
22 hearing that anyone does. Alternatively, is
23 there anyone present who wishes simply to offer
24 a public comment on the proposal or the

1 testimony at hearing today for the Board's
2 consideration?

3 I am neither seeing nor hearing
4 any.

5 Let me move on quickly to the
6 issue of the required request for an economic
7 impact study. We have nearly reached the point
8 I think at which we can go quickly off the
9 record to take care of some procedural
10 questions.

11 Dealing with that economic impact
12 study, Section 27B of the Environmental
13 Protection Act provides in part that the Board
14 must request that the Department of Commerce and
15 Economic Opportunity, DCEO, conduct an economic
16 impact study of proposed rules before the Board
17 adopts rules. The Board then must make either
18 economic impact study or DCEO's explanation for
19 not conducting one available to the public at
20 least 20 days before a public hearing.

21 In a letter to set date of
22 December 16 of '22, the Board's Chair, Barbara
23 Flynn Curry requested the DCEO conduct this
24 economic impact study, this rulemaking proposal,

1 and the Board specifically requested our
2 response from DCEO no later than December -- I'm
3 sorry, no later than January 27 of 2023.

4 To date, the Board has received
5 no response from DCEO to that request. Is there
6 anyone present today who would like to testify
7 or comment either on the Board's request or on
8 the response from DCEO?

9 Clearly neither seeing nor
10 hearing that anyone does wish to do so, I think
11 we are in order to go off the record briefly to
12 deal with some procedural steps. And if we may
13 close the record for just a moment.

14 (Off the record discussion.)

15 MR. FOX: We are ready to go back on
16 to the record.

17 Having gone off the record for a
18 moment or two to discuss procedural matters with
19 the participants that are present here at
20 hearing, I have a couple of those to address
21 before we do adjourn.

22 The Board has requested the
23 availability of the transcript of this hearing
24 on an expedited basis, with the President's Day

1 holiday coming up on Monday the 20th, we expect
2 that to be in the Board's hands before the close
3 of business on Wednesday, February 22 of this
4 year, 2023.

5 Under Section 28.5(k) of the Act,
6 following hearings, the Board must close the
7 record 14 days after the availability of the
8 transcript.

9 What I probably should do at this
10 point, Mr. Matoesian, is turn to you first of
11 all, under Section 28.5(f)(3), any third hearing
12 as scheduled by the original Hearing Officer
13 Order in this proceeding shall be devoted solely
14 to any agency response to material submitted at
15 the second hearing. However, that section also
16 provides that the third hearing shall be
17 canceled if the agency indicates to the Board
18 that it does not intend to introduce any
19 additional material.

20 Is the agency prepared to address
21 that statutory provision on record here before
22 we adjourn?

23 MR. MATOESIAN: Yes. The Act provides
24 that the third hearing shall be hearing if

1 agency indicates to the Board that it does not
2 intend to introduce any additional material.

3 The agency does not intend to
4 introduce any additional material at the third
5 hearing and request that the hearing be
6 canceled.

7 MR. FOX: Very good. I think that
8 addresses our statutory language, and we will be
9 issuing a Hearing Officer Order addressing at
10 least one other issue resulting in this hearing,
11 and we can clarify the agency's unambiguous
12 request that the third hearing be canceled as
13 provided for under Section 28.5(f)(3) of the
14 Act.

15 Since the Board would not be
16 holding the scheduled third hearing, the comment
17 period must close, the Board's record in this
18 proceeding must close 14 days after the
19 availability of the transcript. Again, that is
20 expected to be available on Wednesday the
21 22nd of February, which would trigger a 14-day
22 comment deadline of Wednesday, March 8 of 2023.
23 That is a firm statutory deadline under
24 Section 28.5(k) of the Act and that issue will

1 be addressed in a post-hearing Hearing Officer
2 Order.

3 The other issue I wanted to take
4 up was that we had a limited number of questions
5 and requests for information that arose from the
6 hearing today. Aside from post-hearing
7 comments, these are responses and various other
8 information that participants agreed to supply
9 to the Board for the record of this proceeding
10 by Friday, February 24 of this year, one week
11 from tomorrow. And for the sake of the record,
12 that was in response to Questions 26 and 29
13 directed to Dynegy relating to opacity data.

14 Also, Board Questions 8 and 14
15 directed to Midwest Generation, also regarding
16 opacity data to the environmental regulatory
17 group Board's Questions 2 and 3 directed to
18 Ms. Thompson regarding issues of environmental
19 justice.

20 And the Attorney General's
21 Questions 1, 2, and 3 directed to Ms. Frede of
22 the Chemical Industry Council on which she was
23 willing to submit some information into the
24 record. We appreciate the participants

1 willingnes to do that and the Board's clerk
2 will accept those filings electronically on or
3 before the deadline of February 24, another
4 procedural issue that the hearing officers will
5 address in the post-hearing order.

6 Are there any other filings or
7 matters we need to address before we adjourn
8 this second and now final hearing based on the
9 agency's representation?

10 I am neither seeing nor hearing
11 any, as I mentioned, I'll issue, with my
12 colleague, Chloe Salk, a post-hearing Hearing
13 Officer Order that ties up the submission
14 deadline, ties up the issue of the third
15 hearing, Mr. Matoesian very plainly indicated
16 that the agency wishes to cancel.

17 With that, thanks to the
18 witnesses very much for your testimony and for
19 your availability for questions and developing a
20 record for the Board.

21 I believe it's in order to
22 adjourn, and we can wrap this up. Thank you and
23 safe travels.

24 (Whereupon, at 10:33 a.m., the

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hearing adjourned.)

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C E R T I F I C A T E

I, Carla P. Letellier, CSR, RPR, a
Certified Shorthand Reporter and Registered
Professional Reporter of the state of Illinois,
CSR No. 084-003315, do hereby certify that I
reported in shorthand the proceedings had in the
aforesaid matter, and that the foregoing is a
true, complete and correct transcript of the
proceedings had as appears from my stenographic
notes so taken to the best of my ability.

CERTIFIED SHORTHAND REPORTER

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