

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	AS24-04
PETITION OF DYNEGY	)	(Adjusted Standard – Air)
FOR AN ADJUSTED STANDARD	)	
35 Ill. Adm. Code PARTS 201 and 212	)	

**NOTICE**

TO:

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See attached service list.

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S STATUS REPORT AND MOTION TO EXTEND STAY OF PROCEEDINGS, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Charles E. Matoesian  
 Charles E. Matoesian  
 Assistant Counsel  
 Division of Legal Counsel

DATED: December 18, 2023

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S STATUS REPORT AND MOTION TO EXTEND STAY OF PROCEEDINGS

The Illinois Environmental Protection Agency (“Illinois EPA or Agency”), by one of its attorneys, and pursuant to 35 Ill. Adm. Code 101.502 and 101.514, provides this Status Report and Motion (“Motion”) to Extend Stay of Proceedings of Dynegy Midwest Generation, LLC, Illinois Power Generating Company, and Kincaid Generation, LLC (collectively “Dynegy” or “Petitioner”) regarding its adjusted standard petition. The Illinois EPA requests that the Illinois Pollution Control Board (“Board”) stay this proceeding for 120 days while the Board considers the substantively similar rulemaking proposal filed in R23-18(A). In support of its Motion, Illinois EPA states as follows:

Status Report

On September 5, 2023, the Agency filed a *Motion for Stay of Proceedings, or in the Alternative, Motion for Extension of Time to File Recommendation* while the Board considers Dynegy’s substantially similar rulemaking proposal in R23-18(A). On September 21, 2023, the Board granted the Agency’s motion to stay the proceedings for 90 days, until December 21, 2023. *See, Order of the Board, AS24-04 at 2.*

The R23-18(A) rulemaking is currently moving forward. A public hearing was held on September 27, 2023. On October 23, 2023, the Agency filed comments requesting that the Board solicit additional information and data from the rule proponents to enable the Board, Agency, and others to assess air quality implications or impact. *See generally, Illinois*

*Environmental Protection Agency Comments*, October 23, 2023. On October 26, 2023, the Illinois Attorney General's Office ("AGO") filed a motion with the Board requesting an additional hearing, stating that without an analysis of the Agency's requested data, the AGO would not be able to determine the effects of the proposed alternative emission limit, especially in environmental justice communities. *AGO Motion at 1-3*.

A second hearing in R23-18(A) was held on November 1, 2023. During the hearing, the Hearing Officer gave rule proponents until December 1 to provide the Agency with their initial reply regarding efforts to provide the requested information. *Transcript of November 1, 2023, Hearing* in R23-18(A), p. 16 lines 20-21. On November 16, the Board granted the AGO's motion for a third hearing. *Order of the Board* in R23-18(A), November 16, 2023. On that same day, the Hearing Officer entered an order setting a Pre-Hearing Conference for December 6, 2023. *Hearing Officer Order*, November 16, 2023.

On December 1, 2023, Dynegy filed an initial response to the Agency's comments, stating that it is working to complete its response to the Illinois EPA's comments and that it anticipates submitting final responses by the end of January 2024. *First Comment in Response to Illinois Environmental Protection Agency's Comments*, p. 4, December 1, 2023. In light of this and other rule proponents' similar time estimates, in a December 5, 2023, order, the Hearing Officer cancelled the planned Pre-Hearing Conference and rescheduled it for February 7, 2024, noting that many of the participants said they could not provide the requested information before the end of January, 2024. *Hearing Officer Order*, December 5, 2023.

#### Request to Extend Stay

The Agency files this request to extend the stay in this proceeding while the Board continues to consider Dynegy's rulemaking proposal and the additional information it may

provide. Until then, the necessity of the AS will not be known. As explained in the Agency's first motion for a stay, Dynegey's proposed amendments substantively mirror its requested adjusted standard; both regard changes to/relief from the same Board regulations. Dynegey itself explained that if the Board adopts its proposed amendments, an adjusted standard is unnecessary and that its petition was primarily intended to preserve its arguments regarding a stay under Section 28.1(f) of the Act. *Petition for an Adjusted Standard*, ps. 4, 5.

Simultaneously participating in both an expedited rulemaking and Dynegey's adjusted standard proceeding will force the Agency, Board, Dynegey, and potentially other participants to expend significant resources in proceedings that seek similar relief. Conversely, issuing a stay here will conserve resources and allow participants to focus on Dynegey's rulemaking proposal first, and this proceeding second (and only if still necessary).

Again, the Illinois EPA is not opining as to whether Dynegey is entitled to a stay under Section 28.1(f) of the Act, but acknowledges Dynegey's stated position in this regard and clarifies that this request to extend the stay is not intended to have any impact on the legal posture of such position. The Illinois EPA is simply seeking to "hold" this proceeding while the rulemaking moves forward, to be resumed at a later date if necessary.

WHEREFORE, for the reasons set forth above, the Illinois EPA requests that the Board grant this Motion to Extend Stay of Proceedings for 120 days up to and including April 19, 2024, (or a later date if deemed more appropriate by the Board).

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Charles E. Matoesian  
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DATED: December 18, 2023

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**CERTIFICATE OF SERVICE**

I, Charles E. Matoesian, Assistant Counsel, caused to be served on this 18th day of December, 2023, a true and correct copy of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S STATUS REPORT AND MOTION TO EXTEND STAY OF PROCEEDINGS, upon the persons listed on the Service List via electronic mail or electronic filing, as indicated.

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The number of pages in the e-mail transmission is 6

The e-mail transmission took place before 4:30 p.m.

/s/ Charles E. Matoesian

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