BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DYNEGY MIDWEST GENERATION, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	**PCB 12-____**
	)	**Variance – Air**
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
	)	
Respondent.	)	

NOTICE OF FILING

To:

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

Julie Armitage, Acting General Counsel
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276

PLEASE TAKE NOTICE that we have today filed with the Office of the Clerk of the Pollution Control Board the **PETITION FOR VARIANCE OF DYNEGY MIDWEST GENERATION, LLC, and the APPEARANCES of KATHLEEN C. BASSI and STEPHEN J. BONEBRAKE**, copies of which are herewith served upon you.

Kathleen C. Bassi

Dated: June 8, 2012

SCHIFF HARDIN LLP
Attorneys for Dynegy Midwest Generation, LLC
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CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 8th day of June, 2012, I have served electronically the attached **PETITION FOR VARIANCE OF DYNEGY MIDWEST GENERATION, LLC, and the APPEARANCES of KATHLEEN C. BASSI and STEPHEN J. BONEBRAKE**, upon the following person:

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

and by first class mail, postage affixed, upon the following person:

Julie Armitage, Acting General Counsel
Illinois Environmental Protection Agency
Division of Legal Counsel
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Kathleen C. Bassi

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Respondent.	)	

APPEARANCE

I hereby file my appearance in this proceeding, on behalf of Dynegy Midwest Generation, LLC.

Kathleen C. Bassi

Dated: June 8, 2012

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APPEARANCE

I hereby file my appearance in this proceeding, on behalf of Dynegy Midwest Generation, LLC.

Stephen J. Bonebrake

Dated: June 8, 2012

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PETITION FOR VARIANCE

NOW COMES Petitioner, DYNEGY MIDWEST GENERATION, LLC ("Petitioner" or "DMG"), by and through its attorneys, SCHIFF HARDIN, LLP, and, pursuant to Sections 35 and 37 of the Environmental Protection Act ("Act"), 415 ILCS 5/35, 37, and 35 Ill.Adm.Code Part 104, Subpart B, respectfully requests that the Board grant the Petitioner a variance from certain provisions of the Illinois Multi-Pollutant Standard ("MPS"), 35 Ill.Adm.Code § 225.233, for the limited period from the date of the Board's order granting the petition until April 1, 2015, applicable to vintage 2013 and 2014 sulfur dioxide ("SO_2") allowances allocated by the U.S. Environmental Protection Agency ("USEPA") or the Illinois Environmental Protection Agency ("Agency") under the Cross-State Air Pollution Rule ("CSAPR"). Specifically, DMG seeks a variance from the MPS requirement in Section 225.233(f)(2) that prohibits owners or operators of electricity generating units ("EGUs") in an MPS Group[1] from selling or trading to or

[1] DMG requests this variance for its MPS Group, consisting of the coal-fired EGUs at the Baldwin Energy Complex, the Havana Power Station, the Hennepin Power Station, the Wood River Power Station, and the Vermilion Power Station. (With the permanent retirement of the Vermilion Power Station Units 1 and 2 in November 2011, DMG believes that its MPS Group now consists of its eight

otherwise exchanging with any person SO_2 allowances allocated to EGUs starting with vintage year 2013 that would otherwise be available for sale or trade as a result of actions taken to comply with the SO_2 emission standards in MPS Section 225.233(e)(2) (requiring, in 2013 and 2014, that EGUs in an MPS Group comply with an overall SO_2 annual emission rate of 0.33 lb/million Btu or a rate equivalent to 44 percent of the Base Rate of SO_2 emissions, whichever is more stringent). Additionally, DMG requests a variance from the companion requirement in that same section, 225.233(f)(2), that DMG surrender such excess SO_2 allowances to the Agency . DMG notes that granting this requested variance does not affect the requirement for DMG to comply with applicable SO_2 emission rates, nor would it directly result in an air quality impact in Illinois. DMG will suffer arbitrary or unreasonable hardship if the Board does not grant this requested variance. In support of its Petition, DMG states as follows:

A. DMG GENERATES ELECTRICITY IN ILLINOIS AT FOUR COAL-FIRED POWER STATIONS.

1. Until recently, DMG owned and operated five coal-fired electricity generating power plants located in downstate Illinois. DMG currently owns and operates four coal-fired power plants in Illinois: the Baldwin Energy Complex ("Baldwin") in Randolph County, the Havana Power Station ("Havana") in Mason County, the Hennepin Power Station ("Hennepin") in Putnam County, and the Wood River Power Station ("Wood River") in Madison County. In November 2011, DMG permanently retired a fifth coal-fired power plant, the Vermilion Power

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remaining coal-fired units but includes Vermilion within the scope of this request for variance because of any possible ambiguity regarding Vermilion's continued membership in the DMG MPS Group.) Most often, a petitioner seeks a variance for a single plant or operation at a plant. In this case, however, the provision from which DMG seeks relief applies to the MPS Group as a whole rather than to an individual plant.

Station ("Vermilion"), located in Vermilion County, Illinois.[2] A map depicting the location of each of DMG's coal-fired power plants is provided in Exhibit 2.[3] The addresses of the five power stations, their identification numbers assigned by the Agency, age, permit application numbers, and other pertinent information regarding their output, pollution control equipment, SO_2 emissions (as well as nitrogen oxides ("NOx"), particulate matter ("PM"), and mercury emissions), and number of employees are provided in Exhibit 3. DMG employs approximately 430 persons at its Illinois coal-fired power stations, with approximately an additional 148 support personnel employed at DMG's offices located in O'Fallon, Decatur, and Springfield, Illinois. The permanent retirement of Vermilion eliminated 39 jobs.

2. The air monitoring stations maintained by the Agency that are nearest to Baldwin, Havana, Hennepin, and Wood River (and Vermilion) are identified in Exhibit 4.[4] Mason and Putnam Counties, the respective locations of Havana and Hennepin, (and Vermilion County, the location of the now retired Vermilion Power Station) are designated attainment or unclassifiable for all criteria pollutants. Baldwin Township in Randolph County, the location of Baldwin, is designated nonattainment for $PM_{2.5}$ (1997 annual standard) and attainment or unclassifiable for all other criteria pollutants. Madison County, the location of Wood River, is part of the bi-state

[2] See Exhibit 1 (DMG's notice to the Agency of the permanent retirement of Vermilion effective November 17, 2011, and request that all of Vermilion's air permits and associated pending applications be withdrawn and terminated).

[3] Exhibit 2 identifies the locations of all five of DMG's coal-fired power plants on a copy of the map from the Agency's *Illinois Annual Air Quality Report 2006* (at App. A, p. 34), which also identifies the locations of the Agency's air quality monitoring stations at that time.

[4] The street addresses of the air quality monitoring stations located nearest to DMG's five power plants, as identified in the Agency's *Illinois Annual Air Quality Report 2010* (at App. A, pgs. 35-42), are provided in Exhibit 4.

St. Louis MO-IL area that is designated nonattainment for $PM_{2.5}$ (1997 annual standard) and ozone (1997 8-hour standard); however, USEPA has proposed to approve Illinois' request to redesignate the Illinois portion of the St. Louis MO-IL ozone nonattainment area, including Madison County, to attainment and also has proposed to determine that the bi-state St. Louis area, including Baldwin Township, has attained the 1997 annual $PM_{2.5}$ standard.[5] Madison County has been designated nonattainment for the 2008 ozone standard. 77 Fed. Reg. 30,088, 30,116 (May 21, 2012), effective July 20, 2012. For all other criteria pollutants, Madison County is currently designated attainment or unclassifiable, *see* 40 CFR § 81.314; USEPA's Green Book (list of national attainment and nonattainment designations) at < www.epa.gov/oar/oaqps/greenbk/ >, but the Agency has recommended that the portion of Madison County where Wood River is located be designated nonattainment for the new 1-hour SO_2 national ambient air quality standard ("NAAQS").[6]

3. As directly relevant to this Petition, the principal emissions at DMG's coal-fired power plants are SO_2. DMG generally controls SO_2 emissions at its coal-fired plants through the use of low sulfur coal, *i.e.*, Powder River Basin ("PRB") coal with a sulfur content less than 0.3 percent. DMG does not expect to use any different type of coal during the proposed variance period, nor will the variance change the hourly rate of PRB coal use at any of DMG's units or

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[5] 76 Fed. Reg. 79,579 (Dec. 22, 2011) (proposing redesignation of the Illinois portion of the St. Louis area to attainment with the ozone standard); 76 Fed. Reg. 78,869 (Dec. 20, 2011) (proposing to determine that the bi-state St. Louis area has attained the $PM_{2.5}$ annual standard). *See also* 76 Fed. Reg. 33,647 (June 9, 2011) (USEPA final determination that the bi-state St. Louis area attained the 1997 8-hour ozone standard).

[6] IEPA letter to USEPA, June 2, 2011, included herewith as Exhibit 12. Based on recent communications with the Agency, DMG understands that due to improved air quality in Madison County in 2011, the Agency expects that the USEPA will designate Madison County as unclassifiable for the 1-hour SO_2 NAAQS rather than nonattainment.

affect the amount of PRB coal estimated to be used in the proposed variance period. In addition, to control SO_2 emissions further, DMG has installed and is operating spray dryer absorbers (*i.e.*, dry scrubbers) with fabric filter (*i.e.*, baghouse) systems on two Baldwin units. DMG also has a construction permit for and is constructing a dry scrubber and fabric filter system on the third Baldwin unit (*i.e.*, Unit 2), which will be operational by December 31, 2012, and has installed a dry scrubber on Havana Unit 6, which also will be operational by December 31, 2012. DMG did not defer its plans to install dry scrubbers in light of the remand of the federal Clean Air Interstate Rule ("CAIR") in *North Carolina v. EPA*.[7] These dry scrubbers have significantly reduced DMG's system-wide[8] SO_2 emission rate. For example, SO_2 average emissions over the period of 2007-2010 were 46,776 tons per year; after installation and operation of dry scrubbers on only Baldwin Unit 3 and Baldwin Unit 1 (the latter of which operated for only a little over two months in 2011), SO_2 emissions in 2011 were 41,537 tons, an 11 percent reduction. DMG has determined that once the Baldwin Unit 2 and Havana Unit 6 dry scrubbers become operational in late 2012, these SO_2 control measures will be sufficient for DMG to meet the SO_2 limitations of the MPS rule.

4. Coal-fired power plants also emit NOx, PM, and mercury. DMG controls NOx emissions at its coal-fired plants by various combinations of low sulfur coal, low NOx burners, over-fire air, and selective catalytic reduction systems ("SCRs"). These installed NOx controls

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[7] In 2008, the United States Court of Appeals for the District of Columbia Circuit vacated the CAIR and then subsequently remanded the rule to the USEPA without vacatur. *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), modified on rehearing, *North Carolina v. EPA*, 531 F.3d 1176 (D.C. Cir. 2008).

[8] "System-wide" refers only to DMG's coal-fired EGUs subject to the Illinois mercury rule, 35 Ill.Adm.Code Part 225, Subpart B.

already allow DMG to meet the annual and seasonal NOx limits of the MPS rule; in fact, DMG has met or over-complied with the NOx limitations since 2007. PM is generally controlled through the use of flue gas conditioning, electrostatic precipitators ("ESPs"), and fabric filter systems. More specifically, DMG has installed and is operating a fabric filter system on Baldwin Units 1 and 3 (the Baldwin Unit 2 fabric filter system is currently being constructed and will be operational by December 31, 2012), Havana Unit 6, and Hennepin Units 1 and 2. Prior to the station's retirement, DMG also had installed and operated a fabric filter system, as well as an activated carbon injection system to control mercury emissions, at Vermilion Units 1 and 2. In accordance with the MPS provisions established in the Illinois mercury rule, DMG currently controls mercury emissions at its coal-fired plants (except Wood River Unit 4, which has an initial MPS compliance date of January 1, 2013) by using activated carbon injection or mercury oxidation systems in conjunction with SCRs, dry scrubbers, ESPs, and fabric filters. DMG will be able to meet the MPS mercury requirement at Wood River Unit 4. Moreover, DMG currently complies with the mercury emission limitation set forth in 35 Ill.Adm.Code § 225.233(d), as opposed to the control technology requirements of 35 Ill.Adm.Code § 255.233(c), at Hennepin Units 1 and 2, Wood River Unit 5, Havana Unit 6, and Baldwin Units 1, 2, and 3 and has done so since at least January 2012, almost three years prior to the January 1, 2015, compliance date.[9]

5. Additionally, at several of its coal-fired power plants, DMG operates a number of gas- and oil-fired EGUs that are subject to the CAIR and the federal CSAPR but are not subject

[9] DMG early-elected these units to the mercury emission limitation set forth in 35 Ill.Adm.Code § 225.233(d)(1) at different times, beginning on December 31, 2009, with Havana Unit 6, Hennepin Units 1 and 2, and Vermilion Units 1 and 2 and most recently in January 2012 with Baldwin Unit 2.

to the MPS. DMG also operates a number of smaller non-EGU boilers at its coal-fired power plants, as well as combustion turbines at other locations, that are fired by oil and/or natural gas.

6. DMG previously sought and obtained a variance from the Board concerning the MPS *(i.e.*, PCB 09-048, granting a temporary nine-month deferral in implementation of mercury emission controls at Baldwin Unit 3, while beginning mercury controls six months early on Havana Unit 6 and Hennepin Unit 2, which resulted in an overall net reduction of 41.7 pounds of mercury emissions). Although the variance granted for Baldwin Unit 3 was from an MPS requirement, the relief sought then was not at all related to the relief requested in this Petition for Variance. DMG also previously obtained from the Board provisional variances for its Baldwin facility on an unrelated matter not concerning similar relief *(i.e.*, PCB 2003-027 and PCB 2003-234, granting 45-day provisional variances from conditions and effluent discharge limits in the Baldwin NPDES permit and 35 Ill.Adm.Code Part 304 in September 2002 and June 2003, respectively, to allow dredging of a cell in the plant's ash pond system). To the best of DMG's knowledge, the prior owner of DMG's MPS Group power plants also previously obtained Board variances on unrelated matters not concerning similar relief.

7. This request for variance does not involve the Resource Conservation and Recovery Act. Accordingly, 35 Ill.Adm.Code § 104.206 does not apply to the requested variance.

B. DMG SUPPORTED THE MPS IN 2006 TO COORDINATE EMISSION CONTROL REQUIREMENTS FOR NUMEROUS POLLUTANTS.

8. In May 2005, the USEPA promulgated the Clean Air Mercury Rule ("CAMR"), 70 Fed. Reg. 28,606 (May 18, 2005), to reduce mercury emissions from coal-fired EGUs in the lower 48 states. The federal CAMR, which applied to EGUs with nameplate capacities greater

than 25 megawatts, established caps on the mercury emissions for each affected state and allowed states to participate in the USEPA-administered emissions trading programs if their state programs met certain minimum requirements. DMG's coal-fired power plants are EGUs that were subject to the federal CAMR.

9. In December 2006, the Board adopted the Illinois mercury rule at R06-25 to satisfy the federal CAMR requirements in Illinois. The rule adopted by the Board differed significantly from the federal CAMR in a very important way: the Illinois mercury rule adopted a command-and-control approach that requires affected coal-fired power plants to achieve a 90 percent reduction from input mercury or an emission rate of 0.0080 lb mercury/GWh gross electrical output and rejected participation in the federal mercury emissions trading program.[10]

10. In 2006, when the Agency was developing its mercury rule, DMG was also simultaneously faced with developing a compliance strategy to meet future emission reduction requirements under both the Illinois CAIR and the Consent Decree DMG had entered with, among others, the federal government.[11] The CAIR establishes a state-wide cap on SO_2 and NOx emissions from EGUs that must be implemented through emission reductions and/or emissions allowance trading. In general, the Consent Decree requires DMG to reduce SO_2, NOx, and PM emissions at its five coal-fired power plants and mercury at the Vermilion Power Station

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[10] The CAMR was vacated by *State of New Jersey v. Environmental Protection Agency*, 517 F.3d 574 (D.C. Cir. 2008), *cert. denied, Util. Air Regulatory Group v. New Jersey*, 555 U.S. 1169 (2009). The USEPA has since adopted its final rule to control mercury, acid gases and other hazardous air pollutants from power plants, *i.e.*, the Mercury and Air Toxics Standards ("MATS") rule. 77 Fed. Reg. 9,304 (Feb. 16, 2012).

[11] *United States, et al. v. Illinois Power Co., et al.*, No. 99-CV-833-MJR (S.D. Ill.) (Consent Decree entered May 27, 2005) (a copy of the Consent Decree as originally entered is available at < www.epa.gov/compliance/resources/cases/civil/caa/illinipower.html > under the link "Consent Decree").

through a combination of enforceable emission limits, installation of mandatory pollution control and monitoring technology, and SO_2 and NOx allowance restrictions, with full compliance to be achieved by the end of 2012. More specifically, with respect to SO_2, the Consent Decree imposes flue gas desulfurization system-based unit-specific SO_2 emission limits at the three Baldwin units and Havana Unit 6 (the unit-specific SO_2 limits are implemented on a staggered schedule with all units required to be in compliance by December 31, 2012), imposes an SO_2 emissions limit of 1.2 lbs/mmBtu on DMG's other coal-fired units (*i.e.*, Hennepin, Wood River, and Vermilion), and establishes declining caps on annual DMG system-wide SO_2 emissions, including 49,500 tons in 2012 and 29,000 tons in 2013 and each year thereafter. In addition, the Consent Decree requires DMG to annually surrender up to 30,000 SO_2 Acid Rain Program allowances, but not CSAPR SO_2 allowances, in 2011 and thereafter.

11. Faced with multiple air emission reduction requirements, DMG evaluated its environmental compliance strategy in light of the available pollution control technologies, including use of potential co-benefit emission control technologies that reduce not only mercury but also NOx and/or SO_2. DMG determined that the best approach to implementing reasonable and effective air emissions reductions from its coal-fired power plants was for the Agency to adopt a comprehensive approach that would address mercury emissions in coordination with other air emission reduction requirements.

12. DMG determined that compliance with its Consent Decree, the Illinois CAIR, and the Illinois mercury rule could require the installation of various combinations of pollution control equipment. The pollution control equipment necessary for DMG to meet its NOx limits (*i.e.*, SCRs) and SO_2 limits (*i.e.*, dry scrubbers) for the CAIR and Consent Decree, as well as fabric filters for PM control under the Consent Decree, also enhance a source's ability to reduce

mercury emissions. These same combinations of control technologies were necessary for DMG to comply with the Consent Decree, the CAIR, and the Illinois mercury rule; however, all of the pollution control equipment could not be installed by the earliest compliance date, *i.e.*, July 1, 2009, the initial compliance deadline for the Illinois mercury rule. Thus, coordination of these separate regulatory emission reduction requirements was essential.

13. For these reasons, DMG (and other electricity generators in Illinois) worked with the Agency on a proposal to coordinate the intertwined mercury, NOx, and SO_2 emissions control planning. That effort resulted in the MPS, which was adopted by the Board in R06-25 as part of the Illinois mercury rule at Section 225.233. DMG opted in to the MPS on November 26, 2007, *see* Exhibit 5.

14. The MPS requires DMG to install and operate halogenated activated carbon injection systems to control mercury emissions but extends the deadline to demonstrate compliance with the rule's overall 90 percent mercury reduction requirement (or 0.0080 lb mercury/GWh gross electrical output standard) until 2015. Prior to 2015 MPS units generally are subject to the minimum sorbent injection rate requirements for mercury control.[12] The MPS also establishes strict, declining emissions limits for NOx and SO_2 over a period of time, including a system-wide SO_2 limit for DMG of 0.24 lb/mmBtu in 2013, declining to a rate of 0.19 lb/mmBtu in 2015,[13] and precludes trading of any excess allocated NOx and SO_2

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[12] DMG has "early elected" certain of its MPS units (*i.e.*, Hennepin Units 1-2, Wood River Unit 5, Havana Unit 6 and Baldwin Unit 3) to the 0.0080 lb mercury/GWh gross electrical output standard. Prior to the Station's retirement, Vermilion Units 1-2 also had been early elected to the 0.0080 lb/GWh standard. Thus, all of these units met the standard well before the compliance date of 2015.

[13] DMG is subject to a system-wide rate of 0.24 lb/mmBtu SO_2 for its MPS Group in 2013, rather than the 0.33 lb/mmBtu SO_2 rate set forth at Section 225.233(e)(2)(A), and a rate of 0.19 lb/mmBtu in

allowances that may be generated by the pollution control equipment necessary on the MPS Group units to meet the applicable MPS NOx and SO_2 system-wide emissions limitations.

15. Generally speaking, in emissions trading programs, an allowance represents one ton of pollutant emitted. The CAIR NOx trading program and the CSAPR require sources to surrender to USEPA one allowance for each ton of NOx or SO_2 emitted during the previous control period.[14] Typically, "excess" allowances under the federal regulatory trading programs are those that have been allocated but that are not required to be surrendered to USEPA under these programs to match the number of tons of pollutant emitted during the previous control period. However, under the MPS and as directly relevant to this Petition, beginning in 2013, in addition to the surrender requirements of the CAIR and CSAPR, the MPS prohibits the sale or transfer of any allocated SO_2 allowances in excess of the applicable MPS SO_2 emission standard and requires that such excess allowances be surrendered to the Agency on an annual basis.[15] Because the MPS restricts the SO_2 allowance emissions trading otherwise available and requires DMG to meet specified system-wide emission rates and because the Consent Decree also restricts the trading of certain Title IV (Acid Rain Program) SO_2 emission allowances and requires compliance with certain emission rates and limitations, DMG must install and operate

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2015, rather than the 0.25 lb/mmBtu rate set forth in Section 225.233(e)(2)(B), because the respective 44 percent and 35 percent of Base Rate emissions results in the more stringent rate.

[14] Contrary to the norm in emissions trading programs, under the CAIR SO_2 trading program only, sources must surrender more than one Acid Rain allowance for each ton emitted.

[15] For example, if an MPS unit were allocated 100 SO_2 allowances and the MPS equivalent SO_2 emission limit was 85 tons but the unit actually emitted only 80 tons of SO_2, the "excess" allowances that are the subject of this Petition would be the difference between the 100 tons allocated and the 85 tons that match the MPS SO_2 limit, or 15 tons. The MPS would require the unit to surrender to the Agency the 15-ton difference between what was actually allocated and the MPS equivalent limit. The five tons resulting from the unit's over-compliance are not an issue because they would already be available to the unit for trade under the provisions of the MPS. *See* Section 225.233(f)(3).

pollution control equipment and cannot rely on allowance purchases as a compliance strategy or compliance timing tool.

16. In August 2011, in response to the court-ordered remand of the CAIR, the USEPA adopted a replacement rule known as the Cross-State Air Pollution Rule or CSAPR. 76 Fed. Reg. 48,208 (Aug. 8, 2011). The CSAPR imposes cap-and-trade programs on EGUs within each affected state that cap emissions of SO_2 and NOx at levels to eliminate that state's contribution to nonattainment in, or interference with maintenance of attainment status by, down-wind areas with respect to the NAAQS for $PM_{2.5}$ and ozone. As relevant to this Petition, the CSAPR includes two-phases of SO_2 emissions reductions, with the first phase requiring compliance beginning on January 1, 2012, and a second more stringent phase beginning on January 1, 2014. The CSAPR also establishes two interstate trading programs for SO_2, one for sources in Group 1 states, including Illinois, that need to make larger reductions to eliminate their significant downwind contribution to nonattainment, and a second for sources in Group 2 states that need to make smaller reductions. Importantly, the CSAPR trading program – unlike the CAIR – does not use Acid Rain Program SO_2 allowances, which are in oversupply due to many banked allowances. Instead, the CSAPR uses SO_2 allowances that are specific to the CSAPR program. Thus, the CSAPR, with its limited supply of CSAPR-specific SO_2 allowances and trading restrictions, is effectively more stringent than the CAIR.

17. DMG, through its ultimate parent company, Dynegy Inc., has supported the CSAPR as important to both a stable regulatory environment and public policy objectives, including protection of health and environment and preservation of economic opportunities.[16]

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[16] *See* Exhibit 6, Dynegy Inc. letter from Robert C. Flexon, President and Chief Executive Officer, to Hon. Bobby Rush, Ranking Member, Energy and Power Subcommittee, Committee on Energy

However, implementation of the CSAPR has been stayed by court order until petitions for judicial review of the rule are resolved.[17] The USEPA has reinstated the CAIR pending resolution of the judicial challenges to the CSAPR but continues to move forward with CSAPR rulemaking revisions in order to be ready to implement the CSAPR if the stay is lifted.[18] *See, e.g.*, 77 Fed. Reg. 10,324 (Feb. 21, 2012) (final rule revisions to the CSAPR).

18. In the first phase of the CSAPR SO_2 emission reduction program (*i.e.*, 2012-2013), DMG's coal-fired units would be annually allocated a total of 49,012 SO_2 allowances.[19] The CSAPR allowance allocations are based on historic heat input subject to a maximum allocation limit to any individual unit based on that unit's maximum historic emissions, which, as recognized by the USEPA, does not penalize units that have already invested in state-of-the-art air pollution controls, such as DMG's units.[20] For 2012, the CSAPR allowance allocations are determined by the CSAPR federal implementation plan ("FIP"). While states are, subject to certain conditions, permitted to substitute their own allowance allocation provisions in place of the FIP allocations for control periods after 2012, Illinois did not notify the USEPA of any intent to make substitute allowance allocations for 2013 by the applicable deadline, *i.e.*, October 17,

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and Commerce, U.S. House of Representatives, Re: EPA's Cross-State Air Pollution Rule (Sept. 12, 2011).

[17] *EME Homer City Generation, L.P., v. EPA*, Order, No. 11-1302 (D.C. Cir. Dec. 30, 2011).

[18] Oral argument in the CSAPR appeals was April 13, 2012. *EME Homer City Generation, L.P., v. EPA*, Order, No. 11-1302 (D.C. Cir. Jan. 20, 2012).

[19] USEPA, "Final CSAPR Unit Level Allocations under the FIPs," Docket ID No. EPA-HQ-OAR-2009-0491-4970, available at <www.epa.gov/crossstaterule/techinfo.html> under the heading "Technical Support Documents for the Final Cross-State Air Pollution Rule (CSAPR) and the Supplemental Notice of Proposed Rulemaking (SNPR)."

[20] 76 Fed. Reg. at 48,288.

2011. Under the CSAPR, SO_2 allowances are freely transferable, subject to the limitation that SO_2 allowances may be used by sources only within the same SO_2 Group of states, *i.e.*, sources in Group 1 states can use SO_2 allowances only from sources in other Group 1 states and sources in Group 2 states can use SO_2 allowances only from sources in other Group 2 states.[21] As a practical matter DMG's request for variance would not affect DMG's actual SO_2 emissions because DMG's units remain subject to the MPS Group and Consent Decree unit-specific SO_2 emission rate limits.

19. The CSAPR has its own restrictions for trading allowances to ensure that emission reductions occur both in Illinois and in the other states whose emissions impact air quality in Illinois. The USEPA performed extensive air modeling to support the CSAPR, modeling that was not performed for the MPS.[22] Thus, the allowance trading permitted in the CSAPR is backed by sound science and the CSAPR contains the necessary provisions to ensure that needed emissions reductions occur in each individual state, including in Illinois and those states that affect Illinois' air quality.[23] Moreover, in one of the revisions to allocations under the CSAPR, the USEPA redistributed SO_2 allowances in some states without altering the state caps to reflect anticipated emissions from sources with consent decrees requiring surrender of non-

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[21] The CSAPR also includes assurance penalty provisions but such provisions are not effective until January 1, 2014. However, as indicated in paragraphs 26 and 33, DMG's variance request covers the first two years of the CSAPR program which, considering the current delay in startup of the CSAPR due to appeals, could extend beyond January 1, 2014.

[22] *See, e.g.*, USEPA, "Air Quality Modeling Final Rule Technical Support Document," Docket ID No. EPA-HQ-OAR-2009-0491-4140 (June 2011).

[23] 77 Fed. Reg. at 10,330 ("EPA maintains that for 2012-2013, the [CSAPR] (as revised by the final rule [including deferral of the assurance penalty provisions until 2014]) ensures the elimination of each state's significant contribution to nonattainment and interference with maintenance." [footnote omitted]).

Acid Rain SO_2 allowances so that those allowances would not be retired from the CSAPR program. The USEPA wanted to ensure that all allowances are available for use.[24]

20. When the MPS was negotiated with the Agency and agreed to in 2007, the more stringent CSAPR SO_2 emission reductions and restrictions on allowance trading were neither part of the CAIR nor foreseeable. The CAIR addressed only SO_2 allowances that already existed under Title IV, and it did not create any new SO_2 allowances, as does CSAPR (assuming it survives appeal). Thus, DMG did not agree to the MPS allowance trading restrictions and MPS-required SO_2 allowance surrenders with respect to the then non-existent and not-yet-even envisioned CSAPR SO_2 allowances. In that respect, the CSAPR's SO_2 allowance allocations and trading program represent a fundamental change to DMG's and the Agency's mutual assumptions on which the MPS SO_2 allowance trading restrictions were based. Consequently, the Board may grant the requested variance without undermining the basis for the MPS as agreed to by the parties to the agreement.

21. In order to meet the emission reduction requirements of the MPS and the Consent Decree, DMG must plan in advance for and finance the purchase of the necessary pollution control equipment. The procurement and installation process for SO_2, PM, and mercury pollution control devices – each of which alone involves significant equipment and engineering – is up to five years. Since the MPS and Consent Decree require compliance with specified emissions rates, DMG does not have the flexibility available to other companies to delay this

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[24] *See* USEPA, Technical Support Documentation (TSD) *Assessment of Impact of Consent Decree Annual Tonnage Limits on Transport Rule Allocations*, Docket ID No. EPA-HQ-OAR-2011[sic]-0491 (Oct. 4, 2011). This TSD indicates that the USEPA analyzed the allowance surrender requirements applicable to EGUs with Consent Decrees and determined that no adjustment in DMG's SO_2 allocations was warranted because its Consent Decree addressed only Title IV allowances. *See* Exhibit 7, Table 1.

equipment planning and financing through purchases of allowances to satisfy its compliance obligations until the financial, labor, and equipment markets are more advantageous and the CSAPR appeal is resolved.

22. DMG estimates that its capital costs of compliance with the Illinois mercury rule (including the MPS) and its Consent Decree will be a total of $973 million by 2013. To date DMG has spent approximately $888 million to meet the Consent Decree requirements. These estimates may change depending on additional federal or state requirements, the ultimate outcome of the CAIR/CSAPR, new technology, or variations in costs of material or labor, among other reasons.

23. Additionally, in response to the vacatur of the CAMR, the USEPA adopted the Mercury and Air Toxics Standards ("MATS"). *See* fn 10. The MATS requires certain electric generating emission sources, including DMG's coal-fired units, to reduce emissions of mercury and other hazardous air pollutants. The controls for these pollutants are largely the same as those that DMG has already installed or has plans to install. The compliance date for the MATS is April 16, 2015, with the possibility of an extension.

24. Given the large capital and operations and maintenance ("O&M") projects involved in pollution control decisions at each of its coal-fired power plants, DMG must proceed cautiously to maintain its financial resources and operational flexibility, as well as the integrity of the electricity generation system that supports Illinois' economy. DMG continues to evaluate compliance strategies at each of its coal-fired power plants to identify the optimal locations for investments and expenditures consistent with the goal of maintaining operational flexibility within a competitive energy market.

C. DMG REQUIRES TEMPORARY RELIEF FROM SECTION 225.233(f)(2) TO AVOID UNDUE BURDENS AND UNREASONABLE HARDSHIP IN CONJUNCTION WITH ITS ENVIRONMENTAL OBLIGATIONS.

25. DMG seeks this variance because surrendering, during the first two years of implementation of the CSAPR, a large quantity of SO_2 allowances with significant economic value generated by DMG's significant capital investments in SO_2 pollution control equipment deprives DMG of that significant economic value, causing DMG unreasonable hardship.

26. Specifically, DMG seeks temporary relief from the requirement in Section 225.233(f)(2) that prohibits the sale or transfer of excess allocated SO_2 allowances relative to the applicable MPS SO_2 emission standard and the companion requirement that DMG surrender such excess SO_2 allowances. Section 225.233(f)(2) and related provisions, effective December 21, 2006, provide, in relevant part:

> f) Requirements for NOx and SO_2 Allowances.
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> ****
>
> 2) The owners or operators of EGUs in an MPS Group must not sell or trade to any person or otherwise exchange with or give to any person SO_2 allowances allocated to the EGUs in the MPS Group for vintage years 2013 and beyond that would otherwise be available for sale or trade as a result of actions taken to comply with the standards in subsection (e) of this Section. Such allowances that are not retired for compliance, or otherwise surrendered pursuant to a consent decree to which the State of Illinois is a party, must be surrendered to the Agency on an annual basis, beginning in calendar year 2014. This provision does not apply to the use, sale, exchange, gift, or trade of allowances among the EGUs in an MPS Group.
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> 3) The provisions of this subsection (f) do not restrict or inhibit the sale or trading of allowances that become available from one or more EGUs in a MPS Group as a result of holding allowances that represent over-compliance with the NOx or SO_2 standard in subsection (e) of this Section, once such a standard becomes effective, whether such over-compliance results from control equipment, fuel changes, changes in the method of operation, unit shut downs, or other reasons.

4) For purposes of this subsection (f), NOx and SO_2 allowances mean allowances necessary for compliance with Sections 225.310, 225.410, or 225.510, 40 CFR 72, or Subparts AA and AAAA of 40 CFR 96, or any future federal NOx or SO_2 emissions trading programs that modify or replace these programs. This Section does not prohibit the owner or operator of EGUs in an MPS Group from purchasing or otherwise obtaining allowances from other sources as allowed by law for purposes of complying with federal or state requirements, except as specifically set forth in this Section.

5) By March 1, 2010, and continuing each year thereafter, the owner or operator of EGUs in an MPS Group must submit a report to the Agency that demonstrates compliance with the requirements of this subsection (f) for the previous calendar year, and which includes identification of any allowances that have been surrendered to the USEPA or to the Agency and any allowances that were sold, gifted, used, exchanged, or traded because they became available due to over-compliance. All allowances that are required to be surrendered must be surrendered by August 31, unless USEPA has not yet deducted the allowances from the previous year. A final report must be submitted to the Agency by August 31 of each year, verifying that the actions described in the initial report have taken place or, if such actions have not taken place, an explanation of all changes that have occurred and the reasons for such changes. If USEPA has not deducted the allowances from the previous year by August 31, the final report will be due, and all allowances required to be surrendered must be surrendered, within 30 days after such deduction occurs.

27. In accordance with Section 225.233(f)(2), DMG could not sell or transfer CSAPR SO_2 allowances with vintage years of 2013 or later that are allocated in excess of the MPS SO_2 standard.[25] Because DMG has already installed and is operating dry scrubbers at two of its coal-fired units and will commence operation of dry scrubbers at two other units by December 31, 2012, DMG estimates it will have approximately 23,000 excess allocated vintage year 2013

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[25] Under the MPS, no SO_2 allowance trading restrictions apply in 2012, the first year of the CSAPR if it had been implemented as adopted, *i.e.*, not stayed during the appeals. Thus, DMG requests in this petition relief from the MPS restriction on trading vintage 2013 and 2014 allowances. In the event the second phase of the CSAPR SO_2 program begins on January 1, 2014, as originally intended, the requested relief will, in effect, be limited to vintage year 2013 SO_2 allowances because DMG's SO_2 allowance allocation in the second phase of CSAPR does not provide excess SO_2 allowances relative to the MPS.

CSAPR SO_2 allowances.[26] The inability to trade or sell those excess allowances due to the prohibition in Section 225.233(f)(2) represents a significant lost opportunity for DMG.

28. The monetary value of these excess CSAPR SO_2 allowances in the first two-year phase of CSAPR cannot be estimated with reasonable certainty at this time because the CSAPR is stayed and there currently is no active market for CSAPR SO_2 allowances. However, the value of CSAPR Group 1 SO_2 allowances in the first phase of CSAPR is potentially significant. The USEPA projected the price of CSAPR SO_2 Group 1 allowances in 2012 at $1,000 per allowance.[27] Before the CSAPR was stayed, vintage 2012 CSAPR SO_2 Group 1 allowances traded between approximately $2,500 and $400 per ton, albeit in limited quantities in the incipient market.[28] Trading vintage 2012 CSAPR allowances could occur now, as USEPA has left the allocated allowances in source accounts. Currently there is no market for the CSAPR allowances. However, as soon as the appeals of the CSAPR are completed, there is a possibility, if not a probability, that the CSAPR allowance market will revive. Certainly, the CSAPR allowance trading market will be revitalized when the program is reinstated. In order to optimize its SO_2 allowance trading opportunities, it is important that DMG be allowed to trade allowances as soon as the market returns. Therefore, DMG seeks this variance now in order for it to fully

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[26] Assuming USEPA would not alter its allocations when the CSAPR is finally implemented and that the first phase of CSAPR covers 2013-2014, DMG anticipates the same number of excess SO_2 allowances during the first two years of the program.

[27] USEPA, "Regulatory Impact Analysis for the Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States," Docket ID No. EPA-HQ-OAR-2009-0491, at p. 260 (June 2011).

[28] Using this range of values when CSAPR allowances did trade, the value of the approximately 23,000 excess allowances is $9.2 million to $57.5 million; using USEPA's estimate, the value would be $23 million. Of course, no one can predict with any accuracy what might happen in the trading market: therefore, DMG can provide no better estimate of the hardship posed by its inability to trade these excess allowances.

realize, immediately upon reinstatement, the purpose of the variance, *i.e.*, participating in the CSAPR SO_2 allowance market.

29. The inability to trade or sell those excess SO_2 allowances also interferes with a robust SO_2 allowance trading market consistent with air quality goals of the CSAPR that would protect jobs and encourage investment in the Illinois electric generation industry. By undermining the trading program envisioned by the CSAPR and smooth program implementation, the MPS prohibition on trading or selling excess allowances damages the ability of DMG (and, more generally, Illinois industry) to stay competitive with EGUs (and industry) in other states. Importantly, the USEPA has determined that, for 2012-2013, the CSAPR cap-and-trade program, with fully transferable SO_2 allowances, ensures the elimination of each state's significant contribution to nonattainment and interference with maintenance.[29] Thus, DMG's ability to trade or sell those excess allowances will not defeat the State's effort to achieve and maintain compliance with the ozone and $PM_{2.5}$ NAAQS in Illinois, nor will it defeat the efforts of other states.

30. By interfering with the CSAPR, the MPS' restrictions on trading of SO_2 allowances only serve to complicate regulatory requirements and place an unnecessary burden on Illinois EGUs relative to EGUs in neighboring states and, more specifically, on DMG. States neighboring Illinois do not restrict CSAPR allowance trading beyond the restrictions imposed by the CSAPR. Thus, the MPS' restrictions on allowance trading place DMG at a competitive disadvantage relative to other electricity generators in the regional electricity generation market.

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[29] 77 Fed. Reg. at 10,330.

31. Importantly, DMG is an independent power producer and, as such, does not have a rate base and competes directly against other electricity generators in the regional electricity generation market. Since the summer of 2008, power prices have declined significantly. One of the primary causes of the decline is lower natural gas prices as a result of the proliferation of shale gas in the U.S. In addition to considerable margin decline due to lower power pricing, operation of the dry scrubbers consumes energy and results in less generation for sale, which also reduces revenues but increases the number of SO_2 allowances available for sale. EGUs, particularly coal-fired EGUs, also face the likelihood of incurring substantial additional costs in the next several years to comply with new rules addressing coal ash disposal, cooling water intake structures, greenhouse gas emission standards, and more stringent NAAQS for criteria air pollutants.[30] Despite the sizeable change in the economics of its units, DMG continued to make the investment in pollution control equipment, as opposed to pursuing major changes to the MPS or the Consent Decree. In light of the expenditures DMG committed to and the lost margin due to market economics, the requested variance would allow DMG the ability to offset some of the margin loss through the sales of our excess SO_2 allowances that have resulted from our almost $1 billion investment in pollution control equipment.

32. Rather than prohibiting the trade or sale of the excess allocated SO_2 allowances in 2013 or the first two years that the CSAPR is implemented, DMG proposes an alternative that will allow DMG to sell or trade those excess SO_2 allowances without detriment to the

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[30] *See, e.g.*, 75 Fed. Reg. 35,128 (June 21, 2010) (USEPA proposed rule under RCRA for disposal of coal combustion residuals); 76 Fed. Reg. 22,174 (April 20, 2011) (USEPA proposed rule for cooling water intake structures under Clean Water Act Section 316(b)); Settlement Agreement in *State of New York, et al. v. EPA* (D.C. Cir. No. 06-1322) (Dec. 21, 2010) (USEPA agreement with petitioners to issue Clean Air Act Section 111(d) emission guidelines for greenhouse gas emissions from existing EGUs); 75 Fed. Reg. 35,520 (June 22, 2010) (USEPA final rule establishing the new 1-hour SO_2 NAAQS).

environment. In fact, as indicated above in paragraph 29, the USEPA has determined that, based on comprehensive air modeling, the CSAPR cap-and-trade program, with fully transferable SO_2 allowances, ensures the elimination of each state's significant contribution to nonattainment and interference with maintenance.

33. Importantly, DMG does not seek changes to any other requirements of the MPS. DMG remains committed to the previously agreed-to SO_2, NOx, and mercury reductions reflected in the MPS rule and does not seek a change to the requirement that it install and operate SO_2, NOx, or mercury controls on its coal-fired EGUs by any of the deadlines established in the MPS. DMG's requested variance does not reach the Acid Rain Program SO_2 allowances and has no effect on that program. Moreover, the Consent Decree requires DMG to surrender up to 30,000 SO_2 Acid Rain Program allowances in 2013 and each year thereafter, a requirement also not affected by this requested variance. The only relief that DMG seeks with this Petition is from the prohibition on the sale or transfer of and associated requirement to surrender excess vintage year 2013 and 2014 CSAPR SO_2 allowances (assuming the first two years are 2013-2014). For subsequent CSAPR SO_2 vintage allocation years, DMG will abide with the MPS SO_2 allowance trading restrictions.

34. DMG's only possible compliance alternatives would be to surrender the excess CSAPR SO_2 allowances during the first two years of implementation of the program (assuming the first two years are 2013-2014) or to seek a rule change or legislation to eliminate the requirement for allowance surrenders. Surrendering the allowances in the first two years of the CSAPR when implemented would cause an arbitrary and unreasonable economic burden on DMG that is not required by the CSAPR and is inconsistent with the USEPA's goal of a robust emission trading program under CSAPR. A rule change or legislation is a viable route but may

be over-inclusive and may not be timely. Therefore, the variance that DMG seeks here seems the least intrusive and best alternative.

D. ANY POTENTIAL ENVIRONMENTAL DETRIMENT IS MITIGATED BY DMG's PRIOR AND ONGOING SO_2 EMISSION REDUCTION INITIATIVES.

35. The requested relief will not result in an environmental detriment, as USEPA determined in its development of the CSAPR.[31] Additionally, several initiatives that DMG has undertaken have resulted in fewer SO_2 emissions.

36. As discussed above, according to the USEPA's analysis of its allocation scheme under the CSAPR, the CSAPR cap-and-trade program, with fully transferable SO_2 allowances, ensures the elimination of each subject state's significant contribution to nonattainment and interference with maintenance. USEPA believes that the constraints on trading included in the CSAPR, particularly compared to the CAIR, provide sufficient assurances that air quality goals will be met.[32] Since the CSAPR anticipates and accommodates emissions trading, based on USEPA's extensive air quality analysis of that program, DMG reasonably posits that there is no environmental harm related to the Board's granting this variance.

37. In addition, during the requested variance period, DMG will operate its dry scrubbers and meet its system-wide SO_2 emissions tonnage cap and unit-specific SO_2 emission limits established by the Consent Decree, as well as the MPS Group system-wide SO_2 emission

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[31] 77 Fed. Reg. at 10,330.

[32] 76 Fed. Reg. at 48,218 ("EPA fully addresses, for the states covered by this rule, the requirements of CAA section 110(a)(2)(D)(i)(I) for the annual $PM_{2.5}$ standard of 15 $\mu g/m^3$ and the 24-hour standard of 35 $\mu g/m^3$."); 76 Fed. Reg. at 48,237 (". . . the controls required under this rule are projected to eliminate nonattainment and maintenance problems with air quality standards at most downwind state receptors."); 76 Fed. Reg. at 48,238 ("The approach for eliminating significant contribution is based on the implementation of enforceable emissions budgets and not on a measurement of ambient air quality."); 76 Fed. Reg. at 48,247.

limit, so that DMG will not increase its actual SO_2 emission rate or its aggregate annual SO_2 emissions.

38. Moreover, four recent initiatives by DMG will help to mitigate the number of SO_2 allowances freed for trading by this requested variance with SO_2 emission reductions, with the result that the difference in the downwind impact, if any, may not even be measurable, though any downwind impact should be lessened because of the greater aggregate SO_2 emission reductions. *See* Exhibit 8; *see also* Exhibit 9 (estimated emissions 2012-2014).

39. First, from 2007 through 2012, many of DMG's units have been taken out of service for significant periods of time in order to install state-of-the-art pollution control equipment. These outages lasted considerably longer than the typical annual outages that occur at power plants, thus DMG's inclusion of the reductions from those outages here. During those outages the units did not emit any SO_2 (or other pollutants). As set forth in Exhibit 8, through these extended outages at Baldwin Units 1 and 3, Havana Unit 6, Hennepin Units 1 and 2, and Vermilion Units 1 and 2, DMG reduced actual SO_2 emissions by 6,471 tons. Likewise, the outage scheduled for fall 2012 to install the spray dry absorber at Baldwin Unit 2, which must be installed and operational by December 31, 2012, is projected to reduce actual SO_2 emissions by 1,428 tons. *See* Exhibit 8. Although these outages largely occurred before the time period for which DMG seeks relief, likewise, use of the allowances that DMG wishes to trade could occur at any time in the future. Therefore, pure contemporaneity is impossible and irrelevant.

40. Second, because DMG operated its spray dry absorbers at Baldwin Units 1 and 3 before the applicable compliance deadlines, it achieved 3,162 tons in early SO_2 emission reductions. *See* Exhibit 8. Likewise, because DMG is scheduled to operate its spray dry absorber at Baldwin Unit 2 before the applicable deadline of December 31, 2012, DMG projects

an additional reduction of 325 tons of actual SO_2 emissions in 2012. *See* Exhibit 8. Allowing DMG the use of the allowances associated with these early reductions is consistent with the precepts of the MPS, which does not restrict trading allowances generated through over-compliance.

41. Third, DMG's recent retirement of Vermilion Units 1 and 2 resulted in an estimated reduction of 1,685 tons of SO_2 in 2011 and represents an ongoing estimated annual reduction of over 2,200 tons of SO_2. *See* Exhibit 8. Fourth, DMG is in the process of permanently retiring eight oil-fired boilers (combined net generating capacity of 228 MW[33]) at its Havana Power Station and three oil/natural gas-fired boilers (Units 1-3 with combined net generating capacity of 119 MW) at its Wood River Power Station. *See* Exhibit 10. The retirement of these eleven boilers represents an annual reduction of over 10,000 tons of SO_2 per year from permitted emission levels, *see* Exhibit 8, as well as a significant reduction in other air pollutants.

42. Furthermore, relative to the Agency's air quality modeling to determine compliance with the new 1-hour SO_2 NAAQS, DMG has reduced SO_2 emissions at Wood River Units 4 and 5 by 13,008 tons per year by meeting its Consent Decree SO_2 emission limit of 1.20 lb/mmBtu instead of the state permitted SO_2 emission limit of 1.80 lb/mmBtu that is used by the Agency for those units in its air quality modeling. *See* Exhibit 8.

43. The aggregate of DMG's one-time actual and projected actual SO_2 emission reductions (*i.e.*, 13,071 tons) and ongoing SO_2 emission reductions resulting from unit retirements and emissions below the permitted emission rates as used in the Agency's air quality

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[33] The eight oil-fired boilers at Havana serve five electricity generators, which are identified as Havana Units 1-5 in Exhibit 10.

modeling (*i.e.*, up to about 32,722 tons annually) exceeds the number of SO_2 emission allowances that would be affected by the granting of this Petition (*i.e.*, approximately 20,000 SO_2 allowances/tons in 2013 and possibly again in 2014, assuming the first two years of the CSAPR are 2013-2014). Though neither the Act nor the Board's rule require recipients of variances to offset emissions increases during the term of a variance and although DMG does not believe that this variance would result in any harm to air quality, DMG believes that enumerating the reductions achieved from these various projects presents a good faith effort at mitigation of any air quality impacts that might be occasioned by trading the subject CSAPR allowances.

44. Adverse cross-media impacts are not an issue in this matter. The variance that DMG seeks does not impact its SO_2, NOx, or mercury emission reduction obligations under the MPS or any of its emission reduction obligations under the Consent Decree, or otherwise affect its SO_2, NOx, or mercury emissions. Since overall emissions will remain the same or decrease during the pendency of the variance, there will be no significant impact on air quality.

E. DMG'S SUGGESTED CONDITIONS FOR THE VARIANCE AND COMPLIANCE PLAN.

45. DMG requests that the term of the variance begin on the date of the Board's order and terminate on April 1, 2015, applicable to vintage 2013 and 2014 CSAPR SO_2 allowances.[34]

46. DMG proposes that the following conditions apply to this variance:

A. During the term of the variance, DMG shall not be subject to the requirements of Section 225.233(f)(2) relative to vintage 2013 and 2014 CSAPR SO_2 allowances.

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[34] DMG chose April 1 as the termination date because it follows the March 1 date by which sources must true-up their allowance accounts under the CSAPR; that is, they must provide USEPA with the number of allowances that equals the number of tons of SO_2 emitted during the previous control period.

B. During the term of the variance, DMG shall comply with all other applicable MPS requirements, as otherwise required.

C. Upon termination of the variance, DMG shall comply with all applicable MPS requirements, including Section 225.233(f)(2).

47. DMG proposes the following compliance plan:

Within 60 days after termination of the variance, DMG shall prepare and submit to the Agency a report identifying the amount SO_2 emissions from its coal-fired power plants during the term of this variance and the tons of SO_2 removed by DMG's spray dry absorbers during the term of the variance.

48. This request for variance would not alter any DMG permits. Therefore, DMG has not attached any permits pursuant to Section 104.204(b)(4).

F. DMG'S REQUESTED VARIANCE IS NOT CONTRARY TO ANY FEDERAL LAW.

49. The Board may grant the requested variance consistent with federal law and, specifically, with the Clean Air Act, 42 U.S.C. §§ 7401 *et seq*. There is no federal law that prohibits DMG from otherwise selling or trading SO_2 allowances under the CSAPR that are in excess of the MPS SO_2 emission standards. The MPS was submitted to the USEPA for approval as part of Illinois' mercury rule, but with vacatur of the CAMR there is no longer any authority for the USEPA to approve or disapprove Illinois' mercury rule. In addition, while the Agency has submitted certain provisions of the MPS to the USEPA for approval as part of Illinois' state implementation plan ("SIP") addressing regional haze, the Agency expressly did not include Section 225.233(f)(2) in its request for SIP approval. *See* Exhibit 11, App. C, at pgs. 1, 9-11 (explicitly requesting approval only of the bolded provisions of Section 225.233 and Section 225.233(f), including 225.233(f)(2), is not bolded). DMG is not aware of any other submittal to the USEPA that would raise this portion of the MPS to a federally enforceable regulation. This proposed variance does not implicate the SIP in any manner.

50. Moreover, the Consent Decree does not prohibit DMG from otherwise selling or trading SO_2 allowances allocated to its units under the CSAPR that are in excess of the MPS SO_2 emission standards because the Consent Decree's SO_2 allowance requirements are limited to Clean Air Act Title IV Acid Rain Program allowances. *See* Exhibit 7. To the extent the Consent Decree requires the surrender of Title IV SO_2 allowances, that requirement would not be affected by the requested variance, which addresses only the surrender requirement under the MPS. Consequently, the Board's grant of this variance request would not be inconsistent with federal law.

51. Additionally, DMG is not aware of any foreseeable rulemakings that the Agency might undertake that would depend upon SO_2 allowance surrenders under the MPS as a basis for achieving any air quality goals.

52. For these reasons, the Board may grant the proposed variance consistent with federal law. Likewise, the Board's grant of the proposed variance does not conflict with any federal law. No federal law is implicated by the proposed variance.

G. DMG DOES NOT REQUEST A HEARING.

53. DMG does not request that the Board hold a hearing in this matter. DMG believes that this Petition, including its exhibits, sufficiently informs the Board of the issues involved without the need for a hearing. Further, because the variance is not subject to any federal Clean Air Act requirements, a hearing is not necessary to satisfy any federal requirements.

WHEREFORE, for the reasons set forth above, Petitioner DYNEGY MIDWEST GENERATION, LLC respectfully requests that the Board grant DMG a variance from the MPS requirement that prohibits the sale or transfer and requires the surrender of excess allocated vintage 2013 and 2014 CSAPR SO_2 allowances for the period from the date of the Board's order granting the requested variance until April 1, 2015.

Respectfully submitted,

DYNEGY MIDWEST GENERATION, LLC

by:

One of Its Attorneys

Dated: June 8, 2012

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STATE OF ILLINOIS)
) SS
COUNTY OF SAINT CLAIR)

AFFIDAVIT OF ARIC D. DIERICX

I, ARIC D. DIERICX, having first been duly sworn, state as follows:

1. I am an employee of DYNEGY OPERATING COMPANY, an affiliate of Dynegy Midwest Generation, LLC (DMG). I am the Senior Director - Environmental Compliance. I have been employed in this and similar positions at Dynegy for the past 12 years. Previously, I was employed by Illinois Power Company since 1979 in its environmental department. Illinois Power and Dynegy merged in 1999/2000. As part of my duties, I oversee permitting and regulatory development and compliance for Air, Water, and Waste issues at DMG's power plants.

2. I have read the preceding Petition for Variance and participated in preparing it.

3. The statements of facts contained therein are true and correct to the best of my knowledge and belief.

FURTHER, AFFIANT SAYETH NOT.

Aric D. Diericx

Subscribed and sworn to before me this 8th day of June, 2012.

NOTARY PUBLIC

"OFFICIAL SEAL"
LISA A ENGELMAN
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 09-29-2012