

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS POWER HOLDINGS, LLC and)	
AMERENENERGY MEDINA VALLEY)	
COGEN, LLC,)	
)	
Petitioners,)	
)	
AMEREN ENERGY RESOURCES, LLC,)	
)	PCB 14-10
Co-Petitioner,)	(Variance - Air)
)	
v.)	
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	


NOTICE

TO: John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
Chicago, IL 60601

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board the RECOMMENDATION of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

DATED: September 5, 2013

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**THIS FILING IS SUBMITTED
ON RECYCLED PAPER**

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RECOMMENDATION

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”) by its attorney, Gina Roccaforte, in response to the Petition for Variance of ILLINOIS POWER HOLDINGS, LLC (“IPH”) and AMERENENERGY MEDINA VALLEY COGEN, LLC (“Medina Valley”) (collectively, “Petitioners”) and, along with AMEREN ENERGY RESOURCES, LLC (“AER”), (“Co-Petitioner”), from both the 2015 and 2017 sulfur dioxide (“SO₂”) emission rate provisions of the Illinois Multi-Pollutant Standard (“MPS”), 35 Ill. Adm. Code 225.233; specifically, the SO₂ emission standards set forth in Section 225.233(e)(3)(C)(iii) and (iv). Petitioners seek relief from Section 225.233(e)(3)(C)(iii) for five years beginning January 1, 2015, and ending December 31, 2019, and relief from Section 225.233(e)(3)(C)(iv) for three years, beginning January 1, 2017, and ending December 31, 2019. Pursuant to Section 37(a) of the Illinois Environmental Protection Act (“Act”) [415 ILCS 5/37(a) (2012)] and 35 Ill. Adm. Code 104.216, the Illinois EPA neither supports nor objects to the Illinois Pollution Control Board (“Board”) granting the Petition subject to the terms and conditions contained

herein. This position takes into consideration the net environmental benefit that the Petitioners and Co-Petitioner have described in their Petition and is consistent with the Illinois EPA's previously-stated position when presented with the same set of environmental circumstances. In support of its recommendation, the Illinois EPA states as follows:

I. INTRODUCTION

1. On July 22, 2013, Petitioners and Co-Petitioner filed a Petition for Variance requesting that the Board grant a variance from both the 2015 and 2017 sulfur dioxide emission rate provisions of the Illinois MPS, specifically the SO₂ standards set forth in Section 225.233(e)(3)(C)(iii) and (iv). Petitioners seek relief from Section 225.233(e)(3)(C)(iii) for five years beginning January 1, 2015, and ending December 31, 2019, and relief from Section 225.233(e)(3)(C)(iv) for three years, beginning January 1, 2017, and ending December 31, 2019.

2. Petitioners specifically seek a variance from the requirement that the seven affected facilities under the MPS ("MPS Group") comply with Section 225.233(e)(3)(C)(iii), which is a system-wide SO₂ annual emission rate of 0.25 pound per million British thermal units ("lb/mmBtu") for calendar years 2015 and 2016, and Section 225.233(e)(3)(C)(iv), which is a system-wide SO₂ annual emission rate of 0.23 lb/mmBtu for calendar year 2017 and each calendar year thereafter.

3. Petitioners and Co-Petitioner have filed this Petition in order to allow for what they characterize as a "seamless regulatory transition" in concert with a planned change in ownership of the MPS Group from the current owner, Co-Petitioner AER, to the new owners, Petitioners IPH and Medina Valley. As will be discussed in further detail *infra*, Petitioners seek to secure the same relief previously granted by the Board to Co-Petitioner.

4. Pursuant to Section 104.214 of the Board's procedural rules, the Illinois EPA

must provide public notice of any petition for variance within 14 days after filing of the petition. *See*, 35 Ill. Adm. Code 104.214. Section 104.214(a) provides that “the Agency must publish a single notice of such petition in a newspaper of general circulation in the county where the facility or pollution source is located.” *See also*, 415 ILCS 5/37(a) (2012). Section 104.214(b) requires the Illinois EPA to serve written notice of a petition on the County State’s Attorney, the Chairman of the County Board, each member of the General Assembly from the legislative district affected, and any person in the county who has in writing requested notice of variance petitions. The Illinois EPA published the required notice in the *Metropolis Planet* on July 24, 2013, and the *Newton Press-Mentor*, the *Canton Daily Ledger*, the *Jacksonville Journal-Courier*, the *Robinson Daily News*, the *Peoria Journal Star*, and the *Hillsboro Journal-News* on July 25, 2013. Also, consistent with Section 104.214(b), the Illinois EPA mailed notices of the Petition for Variance on July 23, 2013.

5. To date, the Illinois EPA has received one written comment, but no requests for hearing. *See*, Exhibit 1, attached.

6. Pursuant to the Board’s procedural rules, “[w]ithin 21 days after the publication of notice, the Agency must file with the Board a certification of publication that states the date on which the notice was published and must attach a copy of the published notice.” *See*, 35 Ill. Adm. Code 104.214(f). The Illinois EPA has filed a certification of publication within this time frame.

7. The Illinois EPA is required to make a recommendation to the Board on the disposition of a petition for variance within forty-five (45) days of filing of the petition or any amendment thereto or thirty (30) days before a scheduled hearing, unless otherwise ordered by the hearing officer or the Board, pursuant to 35 Ill. Adm. Code 104.216.

II. BACKGROUND

8. On May 3, 2012, Co-Petitioner AER filed a Petition for Variance, and on September 20, 2012, the Board granted AER relief for the electrical generating units in AER's MPS Group from Section 225.233(e)(3)(C)(iii) for five years beginning January 1, 2015, and ending December 31, 2019, and from Section 225.233(e)(3)(C)(iv) for three years, beginning January 1, 2017, and ending December 31, 2019. *Ameren Energy Resources v. Illinois Environmental Protection Agency*, PCB 12-126 (September 20, 2012) ("PCB 12-126" or "Variance Opinion").

9. The MPS Group includes the Coffeen Energy Center located in Montgomery County, the Duck Creek Energy Center located in Fulton County, the E.D. Edwards Energy Center located in Peoria County, the Joppa Energy Center located in Massac County, the Hutsonville Energy Center located in Crawford County, the Meredosia Energy Center located in Morgan County, and the Newton Energy Center located in Jasper County. (Pet. at 2) The Illinois EPA agrees with this statement and notes that the composition of the MPS Group will not change if the variance request is granted. As of the filing of this Petition, electricity continues to be generated at five of these facilities, since AER committed in PCB 12-126 to cease operation of the electric generating units at Meredosia and Hutsonville during the term of the granted variance. (Pet. at 17) Currently, all of these counties are designated attainment for all pollutants.¹

10. The PCB 12-126 variance involved alternative emission rates for SO₂ from those promulgated in Sections 225.233(e)(3)(C)(iii) and (iv) of the Board's rules. (Pet. at 2) Without

¹ As to the 2010 primary SO₂ National Ambient Air Quality Standard, the United States Environmental Protection Agency ("USEPA") established the air quality designations for the State, effective October 4, 2013. 78 Fed. Reg. 47191 (August 5, 2013). The USEPA designated as nonattainment the Lemont, IL designated area, which includes Cook County (partial—Lemont Township) and Will County (partial—DuPage Township and Lockport Township), and the Pekin, IL designated area, which includes Tazewell County (partial—Cincinnati Township and Pekin Township) and Peoria County (partial—Hollis Township). 78 Fed. Reg. 47199 (August 5, 2013).

such relief, the plants were required to achieve a system wide (all seven plants) annual SO₂ emission limit of 0.25 lb/mmBtu beginning in 2015 and 0.23 lb/mmBtu beginning in 2017. (Pet. at 3) In accordance with Section 35(a) of the Act, the Board found that immediate compliance with the 2015 and 2017 SO₂ annual emission rates would have posed an arbitrary or unreasonable hardship. (Pet. at 3)

11. In its compliance plan in PCB 12-126, AER voluntarily committed to make earlier SO₂ emission reductions than otherwise required during the years 2012 through 2014. (Pet. at 3) Subsequent to discussions with the Illinois EPA, AER committed to, and the Board's Order imposed, mitigation SO₂ annual emission rates to be met during the variance term. (Pet. at 3) The Board-ordered compliance plan also required AER not to operate the generating units at two of the plants [Meredosia and Hutsonville] from 2012 through 2020, and set certain milestones and reporting dates related to the construction of the flue gas desulfurization ("FGD") project at the Newton Energy Center ("Newton FGD project"). (Pet. at 3)

12. The Board found that AER had demonstrated that requiring compliance with the MPS overall SO₂ annual emission rates by 2015 and 2017 would impose an unreasonable hardship on AER and granted the requested relief. (Pet. at 3) In granting the relief, the Board also determined that the earlier, more stringent SO₂ annual emission rates provided for in the compliance plan would result in a net benefit to Illinois air quality. (Pet. at 3)

13. Petitioners state that subsequent to the Variance Opinion and due to the continued volatility of the merchant generating business, historically low power prices and a bleak financial outlook, Ameren Corporation ("Ameren"), AER's parent company, made a fundamental business decision to exit the merchant generating business. (Pet. at 4) Thereafter, Ameren entered into a Transaction Agreement ("Agreement") with IPH, an indirect subsidiary of Dynegy

Inc. (“Dynegy”), dated March 14, 2013. (Pet. at 4) Petitioners indicate that the Agreement was negotiated and carefully crafted to change ownership of the MPS Group and secure the variance relief and concomitant compliance obligations deemed appropriate by the Board in PCB 12-126. (Pet. at 4) Petitioners state that in connection with the closing of the transaction, Ameren will initiate a reorganization of AER, which creates “New AER” for the acceptance of the active generating facilities of the MPS Group (Coffeen, Duck Creek, E.D. Edwards, Joppa, Newton) which will then be acquired by IPH. (Pet. at 4) IPH will then acquire New AER [including subsidiaries Ameren Energy Generating Company (“GENCO”), AmerenEnergy Resources Generating Company (“AERG”), Ameren Energy Marketing Company (“Ameren Marketing”), Electric Energy, Inc., and Midwest Electric Power, Inc.] and the five active generating plants. (Pet. at 4 and 35, fn. 21) The facilities required to remain shuttered under PCB 12-126 (Meredosia and Hutsonville) will be acquired by Petitioner Medina Valley, an indirect subsidiary of Ameren. (Pet. at 4)

14. On May 2, 2013, in order to effectuate the transaction, IPH and AER filed a joint Motion to Reopen the Docket and Substitute Parties in PCB 12-126 (“Motion”). (Pet. at 4) On June 6, 2013, the Board issued an Order denying the Motion which nonetheless stated:

IPH may file a variance petition consistent with Section 104.202(a) of the Board’s regulations, or may make any other appropriate filing concerning the facilities consistent with this order.

(Pet. at 4)

15. Accordingly, Petitioners and Co-Petitioner have filed this Petition.² Petitioners state that in considering any request for relief, the Board must include in its analysis all seven

² On August 15, 2013, the Environmental Law & Policy Center, Natural Resources Defense Council, Respiratory Health Association, and Sierra Club filed an Objection to the Petition for Variance with the Board challenging the legal sufficiency of the Petition. This Recommendation is focused on what disposition should be made of the Petition. As to whether or not Petitioners may properly seek the variance relief requested given the pendency of the

facilities that comprise the MPS Group, as a whole, as it did in PCB 12-126, regardless of who owns the facilities. (Pet. at 10) Furthermore, Petitioners state that the variance granted in PCB 12-126 applies to the same MPS Group facilities that are the subject of this Petition and concerns the same specific regulatory framework relevant to that MPS Group. (Pet. at 13) Petitioners assert that such relief is an essential term of the transaction and is as relevant to IPH as it is to AER and the same arbitrary and unreasonable hardship results to IPH if the relief is not granted. (Pet. at 13-14)

16. Petitioners request additional time to comply with the 2015 and 2017 SO₂ emission rates due to the fact that regulatory uncertainty still exists at the Federal level, Illinois power generators operate at an economic disadvantage compared to competitors in surrounding states, and power market prices cannot support the necessary capital expenditures to complete the Newton FGD project in time to meet those rates. (Pet. at 25-30) Petitioners state that unless the requested variance relief is granted, plant closures are inevitable. (Pet. at 30)

17. The operating Energy Centers employ approximately 604 persons. (Pet. at 18) The Energy Centers are of significant economic benefit to the State of Illinois and its workforce, and according to Petitioners, accounting for an estimated total economic impact on Illinois of approximately \$1.5 billion annually and approximately 6,200 total direct and indirect jobs. (Pet. at 18)

18. Principal emissions at the MPS power plants consist of SO₂, nitrogen oxides (“NO_x”), and particulate matter (“PM”). (Pet. at 17) The MPS Group power plants generally control SO₂ emissions with pollution control equipment at several facilities as well as through the use of low sulfur coal, including blending low sulfur coal with Illinois coal containing higher

related transaction that would transfer ownership of the Energy Centers in question, the Illinois EPA posits that any ruling by the Board be specifically limited to the unique facts of the situation presented.

levels of sulfur. (Pet. at 17) In particular, three scrubbers (a.k.a. "FGD units") are in service at the Duck Creek and Coffeen Energy Centers. (Pet. at 17) NO_x emissions are generally controlled by selective catalytic reduction systems ("SCRs"), low NO_x burners ("LNB"), over-fired air ("OFA"), and burning various combinations of low sulfur coal. (Pet. at 17) PM is generally controlled through the use of flue gas conditioning and electrostatic precipitators ("ESPs"). (Pet. at 17-18) Mercury emissions are controlled through the use of scrubbers and sorbent injection technologies. (Pet. at 18)

19. In May 2005, the United States Environmental Protection Agency ("USEPA") promulgated the Clean Air Mercury Rule ("CAMR") that established a cap on mercury emissions from coal-fired EGUs serving generators with nameplate capacity greater than 25 megawatts ("MW"). 70 Fed. Reg. 28606 (May 18, 2005). In February 2008, the United States Court of Appeals for the District of Columbia vacated the CAMR. *State of New Jersey v. Environmental Protection Agency*, 517 F.3d 574 (D.C. Cir. 2008). On May 3, 2011, in response to the vacatur of the CAMR, the USEPA proposed and finalized mercury and air toxics standards ("MATS") for coal and oil-fired electric generating units that set emission limits for mercury, PM, hydrogen chloride, and trace metals, in addition to establishing alternative numeric emissions limits. 77 Fed. Reg. 9304 (February 16, 2012). While such standards are in effect for all sources, certain aspects of those standards are currently under reconsideration by USEPA. 77 Fed. Reg. 71323 (November 30, 2012) and 78 Fed. Reg. 38001 (June 25, 2013).

20. In May 2005, the USEPA also promulgated the Clean Air Interstate Rule ("CAIR") requiring reductions of emissions of SO₂ and NO_x to address interstate ozone and fine particulate ("PM_{2.5}") pollution. 70 Fed. Reg. 25162 (May 12, 2005). However, in July 2008, the United States Court of Appeals for the District of Columbia vacated the CAIR. *North Carolina*

v. EPA, 531 F.3d 896 (D.C. Cir. 2008). Subsequently, the court remanded the CAIR in its entirety without vacatur, ordering that the CAIR remain effective until the USEPA replaced it with a new rule. *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008).

21. On July 6, 2011, the USEPA promulgated the Cross-State Air Pollution Rule (“CSAPR”) as a replacement to the CAIR. 76 Fed. Reg. 48208 (August 8, 2011). Several parties challenged the CSAPR, and the United States Court of Appeals for the District of Columbia also vacated this rule on August 21, 2012, concluding that the appropriate course is for USEPA to continue to administer the CAIR pending its development of a valid replacement. *EME Homer City Generation, L.P. v. E.P.A.*, 696 F.3d 7 (D.C. Cir. 2012). However, on June 24, 2013, the United States Supreme Court granted certiorari. *E.P.A. v. EME Homer City Generation, L.P.*, 133 S.Ct. 2857, *cert. granted* (June 24, 2013).

22. On June 25, 2013, President Obama announced his Climate Action Plan that directs USEPA to issue final carbon pollution reduction standards for existing power plants no later than June 1, 2015. *See*, 78 Fed. Reg. 39535 (July 1, 2013).

23. To date, Petitioners state that Co-Petitioner AER has spent over \$1 billion in capital expenditures to comply with its MPS Group environmental obligations. (Pet. at 24) That includes installation of SO₂ scrubbers on three units at a cost of over \$813 million, installation of SCR systems to reduce NO_x emissions at three plants at a cost of over \$177 million, and installation of activated carbon injection (“ACI”) technology on 12 units at a cost of over \$20 million. (Pet. at 24) In addition, Petitioners further state that AER has spent over \$7 million annually in operating costs for the SCRs and a total of about \$17 million for operation of the ACI systems. (Pet. at 24)

24. Petitioners indicate that total costs of construction for the two FGD units at the

Newton Energy Center are estimated to be approximately \$500 million. (Pet. at 24) Petitioners state that approximately one half of the total costs have been spent to date. (Pet. at 25) In accordance with the construction milestones in the proposed variance order, IPH has budgeted \$18 million in annual expenditures through 2017 with the remainder of total estimated spending scheduled for 2018 and 2019 to complete construction of the Newton FGDs and achieve compliance at the end of the variance period. (Pet. at 25) In addition, for the five Energy Centers, IPH estimates several million dollars in average annual Operations and Maintenance (“O&M”) expenditures through 2019 to comply with the MPS NO_x and mercury emission limits. (Pet. at 25)

25. IPH’s parent company, Dynege, through its subsidiaries, Dynege Midwest Generation, LLC (“DMG”) and Dynege Kendall Energy, LLC (“Dynege Kendall”), owns and operates five coal and natural gas-fired power generation facilities in Illinois, with the capacity of producing approximately 4,200 MW of reliable, low cost energy for wholesale consumers. (Pet. at 56) DMG’s generating assets include four operating coal-fired electric generating stations located in Southern Illinois: the Baldwin Energy Complex (Randolph County), the Havana Power Station (Mason County), the Hennepin Power Station (Putnam County), and the Wood River Power Station (Madison County). (Pet. at 56) In November 2011, DMG permanently retired a fifth coal-fired power plant, the Vermilion Power Station (Vermilion County). (Pet. at 56)

26. Through its subsidiaries, Dynege employs approximately 600 full-time employees in Illinois, employing approximately 550 persons at its Illinois power stations and approximately 50 persons at its corporate office located in O’Fallon, Illinois. (Pet. at 56) Petitioners indicate that the economic impact of Dynege’s operations in Illinois and in the affected local Illinois

communities is significant. (Pet. at 56) Petitioners state that in 2012 Dynegey's direct investments in Illinois (*i.e.*, maintenance, capital, and taxes) totaled approximately \$261 million. (Pet. at 56-57)

27. After further discussions subsequent to the filing of the Petition for Variance, Petitioner IPH, DMG, Dynegey Kendall, and the Illinois EPA entered into a Memorandum of Agreement ("MOA") whereby Petitioner IPH, DMG, and Dynegey Kendall commit to additional steps and actions that will result in further improvement of air quality in the State. *See*, Exhibit 2, attached. The specifics of the MOA are set forth in detail *infra*.

28. There are no pending State enforcement actions against the Petitioners or Co-Petitioner.

III. RELIEF REQUESTED

29. The MPS establishes control requirements and standards for emissions of NO_x, SO₂, and mercury as an alternative to compliance with the emission standards under Section 225.230(a). 35 Ill. Adm. Code 225.233(a)(1). Specifically, regarding SO₂ emissions standards, Section 225.233(e)(3)(C) provides, in part, as follows:

Section 217.233 Multi-Pollutant Standards (MPS)

* * *

e) Emission Standards for NO_x and SO₂.

* * *

3) Ameren MPS Group Multi-Pollutant Standard

* * *

C) SO₂ Emission Standards

i) Beginning in calendar year 2010 and continuing in each calendar year through 2013, for the EGUs in the Ameren MPS Group, the owner and operator of

the EGUs must comply with an overall SO₂ annual emission rate of 0.50 lb/million Btu.

- ii) In calendar year 2014, for the EGUs in the Ameren MPS Group, the owner and operator of the EGUs must comply with an overall SO₂ annual emission rate of 0.43 lb/million Btu.
- iii) Beginning in calendar year 2015 and continuing in calendar year 2016, for the EGUs in the Ameren MPS Group, the owner and operator of the EGUs must comply with an overall SO₂ annual emission rate of 0.25 lb/million Btu.
- iv) Beginning in calendar year 2017 and continuing in each calendar year thereafter, for the EGUs in the Ameren MPS Group, the owner and operator of the EGUs must comply with an overall SO₂ annual emission rate of 0.23 lb /million Btu.

* * *

35 Ill. Adm. Code 225.233(e)(3)(C)(i-iv).

30. Petitioners request a variance from the SO₂ emission standards set forth in 35 Ill. Adm. Code 225.233(e)(3)(C)(iii) and (iv). Petitioners specifically request a variance from the requirement that the seven affected MPS Group facilities comply with a system-wide SO₂ annual emission rate of 0.25 lb/mmBtu for the period from January 1, 2015, through December 31, 2019, and a system-wide SO₂ annual emission rate of 0.23 lb/mmBtu for the period from January 1, 2017, through December 31, 2019.

31. The Petitioners' bases for requesting additional time to comply with the 2015 and 2017 SO₂ emission rates under the MPS is due to the fact that regulatory uncertainty still exists at the Federal level, Illinois power generators operate at an economic disadvantage compared to competitors in surrounding states, and power market prices cannot support the necessary capital expenditures to complete the Newton FGD project in time to meet those rates. (Pet. at 25-30)

Petitioners state that unless the requested variance relief is granted, plant closures are inevitable. (Pet. at 30)

32. Petitioners state that consistent with Section 35(a) of the Act, the Board, in PCB 12-126, found adequate proof that compliance with the MPS would impose an arbitrary or unreasonable hardship. (Pet. at 15) Petitioners further state that utilizing the framework the Board established in PCB 12-126, relative to the very same MPS Group relevant here, as well as the same relevant regulation, Petitioners seek the identical relief. (Pet. at 15) Petitioners indicate that the Petition does take into account current economic, market, and regulatory conditions, even though those conditions are materially the same as existed at the time of the filing of PCB 12-126 on May 3, 2012. (Pet. at 15)

33. In support of its request for relief, and as an integral part of the variance compliance plan, Petitioners propose that the MPS Group will meet an overall SO₂ annual mitigation emission rate of 0.35 lb/mmBtu through 2019, as opposed to the MPS requirement of 0.25 lb/mmBtu for calendar years 2015 and 2016 and 0.23 lb/mmBtu for calendar year 2017 and each calendar year thereafter. (Pet. at 20) The proposed rate will effectively commit Petitioner IPH to (a) maximize FGD performance at the Duck Creek and Coffeen Energy Centers, (b) continue to burn low sulfur coal (0.55 lbs sulfur/mmBtu) from the Powder River Basin at the E.D. Edwards, Joppa and Newton Energy Centers, and (c) manage generation as necessary to maintain compliance. (Pet. at 21) Further, Petitioner Medina Valley also will commit to the continued cessation of operations of the electrical generating units at the Hutsonville and Meredosia Energy Centers through December 31, 2020, with the exception of the FutureGen project at the Meredosia Energy Center. (Pet. at 21) Petitioner IPH will maintain a continuous program of construction at the Newton Energy Center, on the existing schedule set forth in the

Variance Opinion, so as to be in a position to have the Newton FGD project completed and operational to meet compliance obligations. (Pet. at 21) Proceeding in this manner will position the Petitioners for compliance with the MPS' final overall SO₂ annual emission rate (0.23 lb/mmBtu) beginning in 2020, with the installation and operation of the Newton FGDs. (Pet. at 21)

IV. FACTS PRESENTED IN THE PETITION

34. As required by Section 104.216(a), the Illinois EPA has investigated the facts alleged in Petitioner's Petition for Variance. 35 Ill. Adm. Code 104.216(a). To date, the Illinois EPA has received one written comment regarding the Petition. *See*, Exhibit 1, attached.

V. ENVIRONMENTAL IMPACT

35. Pursuant to Section 104.216(b)(2), the Illinois EPA is required to state the location of the nearest air monitoring station, where applicable. 35 Ill. Adm. Code 104.216(b)(2). Exhibit 3 of the Petition for Variance contains a copy of the map included in the Illinois EPA's Illinois Annual Air Quality Report 2011. The locations of the air quality monitoring stations relative to the facilities are delineated on page 34 of this report and contained in Petitioners' Exhibit 3.

36. Petitioners state that despite delaying the effective date of the 2015 and 2017 MPS SO₂ annual emission rates during the variance period, Petitioners have voluntarily offered to meet an earlier more stringent SO₂ emissions rate in mitigation resulting in total SO₂ mass emissions lower than the projected emissions under the current MPS SO₂ annual emission rates, and thus providing a net environmental benefit to the State. (Pet. at 58) Petitioners further state that the environmental benefit under PCB 12-126 will continue with the extension of the variance to the new owners of the MPS Group, as the Petitioners here propose the same

compliance plan. (Pet. at 58)

37. Petitioners state that they have demonstrated this net environmental benefit by both estimating the tons of SO₂ emissions reduced from 2010 through 2020 and from 2013 through 2020. (Pet. at 58-59) Petitioners' calculations demonstrate that over the relevant period, fewer tons of SO₂ will be emitted into the air by the end of the variance term than would be under the MPS. (Pet. at 59. *See, also*, Petitioners' Exhibit 10.)

38. Petitioners demonstrate a net environmental benefit of 74,303 fewer tons of SO₂ emitted for years 2010 through 2020. (Pet. at 59. *See, also*, Petitioners' Exhibit 10, Table 1.) Petitioners further state that it is critical to view the overall reductions during the time period from 2010 through 2020. (Pet. at 59) Petitioners assert this time period illustrates what would have been allowed under the MPS and compares those emissions with those from the MPS Group factoring in: (1) actual emissions; (2) the mitigation rates from the 2012 variance (same as those in the requested relief); and (3) the shuttering of Hutsonville and Meredosia. (Pet. at 59) Petitioners point out that the actual tons of SO₂ emitted during 2012 were even less than projected in PCB 12-126. (Pet. at 59) Petitioners state that all of these factors have resulted in benefits to human health and the environment not otherwise required under the MPS. (Pet. at 59) Further, Petitioners indicate that the requested relief includes a provision to not operate the electric generating units at Hutsonville and Meredosia through December 31, 2020, thereby providing a benefit through the end of 2020. (Pet. at 59)

39. Petitioners assert that even if the Board were to look only at the years in the requested relief that IPH and Medina Valley are scheduled to take ownership of the MPS Group—the time period from 2013 through 2020—in analyzing the environmental impact of the variance, Petitioners demonstrate that the MPS Group will achieve a net environmental benefit of

7,778 fewer tons of SO₂ if the variance is granted compared to current MPS requirements. (Pet. at 59-60. *See, also*, Petitioners' Exhibit 10, Table 2.) Petitioners state that under either scenario, a net environmental benefit exists. (Pet. at 60) Petitioners point out that that no adverse environmental impact exists to outweigh the hardships associated with plant closures. (Pet. at 60)

40. Petitioners further assert other collateral environmental benefits to its compliance plan. Petitioners expect that the MPS Group will achieve even more SO₂ emissions reductions during the term of the requested variance period than the reductions identified in their calculations. (Pet. at 61-62) First, based on the Midcontinent Independent System Operator ("MISO") information currently available, Petitioner IPH expects that E.D. Edwards Unit 1 will be retired before the end of the requested variance term. (Pet. at 62) Petitioners' calculations do not reflect the expected retirement of E.D. Edwards Unit 1 given that the retirement date for the unit rests with MISO and is beyond IPH's control. (Pet. at 62)

41. Furthermore, Petitioner IPH anticipates that, in order to meet the 0.35 lb/mmBtu overall SO₂ annual mitigation emission rate, it may, at times, use even lower sulfur coal than included in AER's commitment for Newton, E.D. Edwards and Joppa. (Pet. at 62) Petitioners' calculations do not account for IPH's expectation that lower than 0.55 lb/mmBtu sulfur coal may be used to some extent at these three Energy Centers, based on availability, performance risk, price, and MPS Group emission performance. (Pet. at 62) Moreover, such calculations do not reflect the expected reduction in SO₂ emissions that will occur in 2019 due to the extended unit outages at Newton that will be required to complete the installation of the two FGDs and the fact that the FGDs will, in all likelihood, be installed in series (*i.e.*, after FGD installation is completed on one unit, the second FGD would be installed on the second unit), meaning that one

of the FGDs will most likely be operating for a portion of calendar year 2019. (Pet. at 62) Petitioners point out that while these expected emission reductions cannot at this point be reasonably quantified, the Board should be aware that such will likely occur, especially in the later years of the variance. (Pet. at 62)

42. As stated *supra*, Petitioners commit to meet an overall SO₂ annual mitigation emission rate of 0.35 lb/mmBtu from 2013 through 2019 and to the continued cessation of operations at the Hutsonville and Meredosia Energy Centers through December 31, 2020, with the exception of the FutureGen project at the Meredosia Energy Center. (Pet. at 20-22) Beginning January 1, 2020, Petitioners commit to meet an overall SO₂ annual emission rate of 0.23lb/mmBtu, with the installation and operation of the Newton FGDs. (Pet. at 20-22) The Illinois EPA has evaluated the SO₂ emissions calculations and related information submitted by Petitioners and agrees that Petitioners' compliance plan as set forth in the Petition shows a net environmental benefit consistent with previous net environmental benefit determinations. Furthermore, this proposed variance does not allow any increase in SO₂ emissions above what is currently allowed pursuant to the PCB 12-126 variance. Therefore, there can be no environmental harm if this variance is granted since there will be no increase in the allowable emissions. However, the Illinois EPA believes that the imposition of certain conditions consistent with some of the terms in the compliance plan is also warranted. The Illinois EPA believes there would be a continued net environmental benefit if the Board were to grant the Petition for Variance as proposed with those conditions, which are more fully addressed *infra*. Accordingly, there would be no injury to the public if the variance were granted with conditions as proposed.

43. Moreover, after further dialogue subsequent to the filing of the Petition for

Variance, Petitioner IPH, DMG, Dynegy Kendall, and the Illinois EPA entered into an MOA whereby (i) Petitioner IPH commits to permanently retire E.D. Edwards Unit 1 as soon as the MISO allows E.D. Edwards Unit 1 to be retired (as early as 2017), (ii) DMG, the owner and operator of the Stallings and Oglesby Combustion Turbine facilities, commits to withdraw the air operating permits for both the Stallings and Oglesby Combustion Turbine facilities by no later than December 31, 2014, and (iii) Dynegy Kendall, the owner and operator of the Kendall Power Station, commits to implement an Advanced Gas Path project on its four combustion turbines (as early as 2015). Such commitments, in conjunction with the pledge above to meet an SO₂ annual mitigation emission rate of 0.35 lb/mmBtu from 2013 through 2019 and to the continued cessation of operations at the Hutsonville and Meredosia Energy Centers through December 31, 2020, with the exception of the FutureGen project at the Meredosia Energy Center, yield an additional net environmental benefit in the form of decreases in the intake of cooling water and service water from the Illinois River, the elimination of National Pollutant Discharge Elimination System permitted discharges (including thermal discharges), and multi-pollutant emission reductions (SO₂, NO_x, carbon monoxide, carbon dioxide and PM) from the permanent retirement of units and implementation of an Advanced Gas Path project.

VI. ARBITRARY AND UNREASONABLE HARDSHIP

44. In considering whether to grant or deny a variance pursuant to Section 35(a) of the Act, the Board is required to determine whether the Petitioner has shown that it would suffer an arbitrary or unreasonable hardship if required to comply with the regulation or permit requirement at issue. 415 ILCS 5/35(a) (2012). The Act provides that “[t]he Board may grant individual variances beyond the limitations prescribed in this Act, whenever it is found, upon presentation of adequate proof, that compliance with any rule or regulation, requirement or order

of the Board would impose an arbitrary or unreasonable hardship.” *Id.*

45. Also, Section 104.216(b)(5) of the Board rules requires the Illinois EPA to estimate the cost that compliance would impose on the Petitioner and on others. 35 Ill. Adm. Code 104.216(b)(5).

46. Petitioners state that the very same hardship factors recognized by the Board in PCB 12-126 are also relevant here. (Pet. at 25) Petitioners state that given the uncertainty and lack of detail surrounding federal regulatory initiatives and structures, including the President’s climate change mandate, planning for the future regulatory compliance is now even more complex for merchant generators, as such regulatory uncertainty complicates decision-making and negatively impacts markets and power prices. (Pet. at 27).

47. Furthermore, Petitioners state that as a result of the deregulation of Illinois’ energy markets in 1977, Illinois generators cannot recover the costs of capital projects, *including those relating to environmental mandates*, through captive consumer rates. (Pet. at 28)(emphasis in original) Rather, merchant power companies’ investment decisions such as the installation of pollution control equipment are based on the ability to recoup such expenditures from expected future market prices for power. (Pet. at 28)

48. However, Petitioners acknowledge that the deregulated market does not alone create the hardship that the MPS Group now faces. (Pet. at 29) Petitioners state that it is well-recognized that in promulgating the MPS rule in 2006, Illinois adopted emission reduction requirements significantly more stringent than other states. (Pet. at 29) Those mandates, however, were adopted in anticipation of federal mandates that have been subsequently vacated, remanded or are currently on appeal. (Pet. at 29) Petitioners further state that meanwhile, Illinois’ MPS regulations are now among the strictest in the nation; quite simply, other

neighboring states have not adopted state air regulations in advance of a federal mandate. (Pet. at 29)

49. Petitioners state that the MPS was premised on the expectation that the power market would continue to support the capital expenditures necessary to meet the proposed emission rates. (Pet. at 29) Petitioners assert that today, however, market prices for power cannot support the necessary capital expenditures to complete the Newton FGD project in time to meet the MPS 2015 and 2017 SO₂ emission rates. (Pet. at 29-30) Petitioners state that market conditions and new technologies and policies that have come about since that time were not self-imposed and simply not foreseeable. (Pet. at 30) Petitioners claim that it is the convergence of these factors that amount to the arbitrary and unreasonable hardship that any owner of the MPS Group now faces. (Pet. at 30)

50. Petitioners state that generators in neighboring states who have not had to make such emission control equipment investments or are able to recover such costs through the consumer rate base are able to offer their power into the marketplace, including the Illinois marketplace, without any such cost considerations. (Pet. at 30) Petitioners further state that also, as Illinois proceeded towards deregulation, regional transmission organizations formed through which power generators were more easily and efficiently able to sell power across state lines. (Pet. at 30) As a result, AER now competes with generators in several nearby states that have neither deregulated their energy markets nor invested significant capital in environmental pollution control projects to address stringent state requirements. (Pet. at 30)

51. Petitioners state that unless they receive the requested variance relief, plant closures are inevitable. (Pet. at 30) Petitioners further state that if the Board does not allow the Petitioners the MPS variance relief it deemed appropriate as to AER, for the very same MPS

Group, and Petitioner IPH nonetheless moves forward with the transaction, Petitioner IPH's only compliance option would be to shut down a combination of Energy Centers by January 1, 2015. (Pet. at 30-31) Furthermore, Petitioners state that given depressed power prices that have existed over the past several years and which will continue for several more years, compliance with the MPS 2015 and 2017 overall SO₂ annual emission rates in Sections 225.233(e)(3)(C)(iii) and (iv) is not achievable without the shutdown of Energy Centers, in this case the E.D. Edwards and Joppa Energy Centers. (Pet. at 31) Assuming the transaction closes, Petitioner IPH and Ameren anticipate closing on the transaction in the fourth quarter of 2013. (Pet. at 31) Petitioner IPH states that it will not have the financial resources required to complete installation of the Newton FGDs at that time; in any event, even if the needed financial resources were available (which they are not), the Newton FGDs could not, absent the variance, now be completed in time to avoid shutting down the E.D. Edwards and Joppa Energy Centers. (Pet. at 31)

52. Petitioners state that should the IPH transaction not close, Ameren would continue to explore exit possibilities, which could include the sale of assets, the restructuring of debt and equity in GENCO, or some combination thereof. (Pet. at 31) Petitioners point out that under a restructuring scenario, control and operation of the merchant business would be dependent on negotiations with the GENCO bondholders and, ultimately, the result of such restructuring proceedings thereby creating uncertainty for employees, suppliers and local communities. (Pet. at 31) Petitioners state that Ameren has no reason to believe that any other potential buyer would be willing to acquire the Energy Centers without the variance, unless such buyer intended to close one or more plants. (Pet. at 31) Petitioners assert that IPH, with a continuation of the variance relief granted to AER, represents the best path forward for the continued operation of

the Energy Centers and in a manner that achieves ultimate compliance with the MPS. (Pet. at 31)

53. Petitioners indicate that the shutdown of the E.D. Edwards and Joppa Energy Centers would, as previously considered by the Board in PCB 12-126, adversely affect 274 direct jobs, 1,374 indirect jobs, over \$121 million per year in the local economies near the two plants, and over \$338 million per year in the State's economy. (Pet. at 32) Petitioners assert that in short, the economic impact of shutting down the E.D. Edwards and Joppa Energy Centers would devastate their local communities and materially undermine the State's struggling economy. (Pet. at 32) Petitioners further assert that the shuttering of these plants will create an arbitrary or unreasonable hardship on IPH, the local economies served by those facilities and, more generally, the State's economy and cite to the numerous public comments made by local and state officials and others at the Board's hearing in PCB 12-126 about the E.D. Edwards, Joppa and Newton Energy Centers. (Pet. at 32-34)

54. Petitioners state that due to AER's limited financial resources caused by depressed power prices and poor economic conditions over the past several years and its inability to obtain external financing, IPH will not be able to fund completion of the Newton FGDs in time to comply with either the 2015 or 2017 MPS SO₂ annual emission rates. (Pet. at 34) Petitioners point out that adequate funding is not available to implement any other feasible MPS compliance alternatives available to IPH. (Pet. at 34) Petitioners further state that these financial considerations lead to an inevitable conclusion that, without the variance, the plant closures will occur—causing a significant hardship to the Petitioners, employees who work at the Energy Centers, the local communities the Energy Centers support, and the State of Illinois. (Pet. at 34) Moreover, Petitioners assert that the same financial considerations the Board

addressed in PCB 12-126 as it relates to hardship continue to be equally relevant here. (Pet. at 34)

55. Petitioners maintain that the construction of the Newton FGD in time to meet the existing MPS is an impossibility both in terms of construction timeframe and required financial resources. (Pet. at 34) Because IPH will not acquire ownership of the Acquired Plants until late 2013 and because construction activities needed to install the Newton FGDs are expected to take up to 24 months, IPH could not complete construction of the Newton FGDs in time to comply with the MPS 2015 overall SO₂ annual emission rate, even if IPH were financially able to ramp up construction immediately upon acquiring ownership, which it is not. (Pet. at 34-35)

56. Petitioners claim that IPH expects that, at closing, it will have sufficient liquidity to meet anticipated operating obligations, including sufficient funds to (a) continue construction of the Newton FGDs in accordance with the requested Compliance Plan; (b) maximize the existing FGD systems at Duck Creek and Coffeen; and (c) utilize low sulfur coal at Newton, Edwards and Joppa. (Pet. at 39-40) Petitioners state that it is not feasible over the next several years to simultaneously have adequate liquidity necessary to continue operating the Energy Centers and also spend hundreds of millions on capital investments to accelerate installation of the Newton FGD project, install alternative air pollution controls or otherwise comply with the MPS without the requested variance relief. (Pet. at 40)

57. Petitioners point out that importantly, IPH does expect that the gradual recovery of power prices (anticipated to begin after April 2015) will provide IPH with sufficient cash flow and liquidity to ramp up and complete construction of the Newton FGDs by year end 2019. (Pet. at 40) Petitioners maintain that, as publicly stated, Dynegy expects IPH will not generate free cash flow until 2015. (Pet. at 41)

58. Petitioners point out that as Dynegy has publicly communicated to its investors, IPH and the Energy Centers must succeed on their own financially, without support for major capital projects coming from the ultimate parent or affiliated companies. (Pet. at 43) Petitioners assert that this is no different than the situation presented to the Board by AER (and Ameren) in PCB 12-126. (Pet. at 43)

59. Petitioners state that as solely a merchant generation company without any regulated rate-based subsidiaries, Dynegy has had to face several years of economic challenges caused by depressed power pricing and a weakened national economy. (Pet. at 43-44) In fact, Dynegy filed for Chapter 11 bankruptcy protection in July 2012. (Pet. at 44) Petitioners state that while successfully emerging from bankruptcy in October 2012, Dynegy continues to face near-term economic challenges posed by depressed power prices. (Pet. at 44)

60. Petitioners point out that, more importantly, Dynegy cannot integrate IPH into the Dynegy capital structure without severe adverse consequences that would imperil its financial future. (Pet. at 44) Petitioners state that as part of its due diligence process prior to entering the Agreement, Dynegy contacted the credit rating agencies (Moody's and S&P) to understand the credit rating implications, if any, of the transaction on Dynegy. (Pet. at 44)

61. Petitioners provide cost factors, but did not include itemized calculations or supporting data as to those cost factors. Therefore, the Illinois EPA is not able to estimate the costs that compliance would impose on the Petitioners.

62. As stated *supra*, Petitioners request additional time to comply with the 2015 and 2017 SO₂ emission rates due to the fact that regulatory uncertainty still exists at the Federal level, Illinois power generators operate at an economic disadvantage compared to competitors in surrounding states, and power market prices cannot support the necessary capital expenditures to

complete the Newton FGD project in time to meet those rates, while still providing a net environmental benefit.

VII. CONSISTENCY WITH FEDERAL LAW

63. Pursuant to Section 35 of the Act [415 ILCS 5/35 (2012)] and 35 Ill. Adm. Code 104.208(a), all petitions for variances must be consistent with federal law. Petitioners state that the requested variance is consistent with current federal law. (Pet. at 64)

64. Petitioners state that USEPA approved relevant sections of the MPS and Illinois Combined Pollutant Standards, and two permits, and incorporated them into the SIP [State Implementation Plan] as satisfying BART [Best Available Retrofit Technology] requirements for the affected Illinois power plants and refineries. (Pet. at 64) Moreover, Petitioners point out that USEPA noted in response to public comments that Illinois' plan would achieve greater reasonable progress (*i.e.*, meaning greater emissions reductions) and greater visibility protection by the BART compliance deadline (in 2017) than the application of BART on BART subject units. (Pet. at 64)

65. Petitioners assert that when compared to emissions reductions pursuant to the MPS, this variance will impart even greater emissions reductions by the BART compliance deadline in 2017. (Pet. at 64) Accordingly, Petitioners claim that a SIP amendment incorporating this variance would only serve to enhance Illinois' ability to comply with the Clean Air Act's regional haze rules. (Pet. at 64)

66. Petitioners state that while the CSAPR is not yet, and may never be, effective, it is not as onerous as the MPS, because while the MPS imposes stringent emission rates, CSAPR is based on mass emissions. (Pet. at 65) Petitioners also point out that the CSAPR is a cap-and-trade program that would allow compliance to be achieved through the purchase of emission

allowances while the MPS does not. (Pet. at 65) Petitioners further state that the anticipated cost of buying allowances pursuant to the CSAPR is not expected to be as financially challenging to Petitioners as installing the pollution control technology in the current time frame required to meet current MPS emission rates. (Pet. at 65)

67. Furthermore, Petitioner IPH states that it will comply with the MATS at each of the five operating Energy Centers through the use of a combination of existing FGD systems, sorbent injection technologies and ESPs. (Pet. at 65)

68. On August 5, 2013, the USEPA established the air quality designations for the State for the 2010 primary SO₂ National Ambient Air Quality Standard (“NAAQS”), effective October 4, 2013. 78 Fed. Reg. 47191 (August 5, 2013). The USEPA designated as nonattainment the Lemont, IL designated area, which includes Cook County (partial—Lemont Township) and Will County (partial—DuPage Township and Lockport Township), and the Pekin, IL designated area, which includes Tazewell County (partial—Cincinnati Township and Pekin Township) and Peoria County (partial—Hollis Township). 78 Fed. Reg. 47199 (August 5, 2013). Petitioner IPH recognizes that the requested variance relief would not exempt E.D. Edwards from compliance with any federal Clean Air Act requirements adopted in the future, including Illinois regulations, if any, needed to implement SIP obligations concerning the one-hour SO₂ NAAQS. (Pet. at 67)

69. Illinois is required to develop plans to attain and maintain the NAAQS. More importantly, Illinois must address its impact on downwind states pursuant to Section 110(a)(2)(D) of the Clean Air Act. 42 U.S.C § 7410(a)(2)(D).

70. The USEPA approved the revisions to the Illinois SIP addressing regional haze. 77 Fed. Reg. 39943 (July 6, 2012). On May 16, 2013, the Illinois EPA submitted the PCB 12-

126 variance to the USEPA for approval as a SIP revision. Accordingly, the Illinois EPA will submit this variance, if granted by the Board, for approval as a SIP revision.

VIII. COMPLIANCE PLAN

71. Pursuant to Section 104.204(f), the Petitioners are required to present a detailed compliance plan in the Petition for Variance. *See*, 35 Ill. Adm. Code 104.204(f). The Petitioners provided the following compliance plan in the Petition for Variance.

72. As an integral part of the variance compliance plan and in mitigation of the relief requested, the Petitioners propose that the MPS Group will meet an overall SO₂ annual mitigation emission rate of 0.35 lb/mmBtu through 2019. (Pet. at 20) The proposed rate will effectively commit Petitioner IPH to (a) maximize FGD performance at the Duck Creek and Coffeen Energy Centers, (b) continue to burn low sulfur coal (0.55 lbs sulfur/mmBtu) from the Powder River Basin at the E.D. Edwards, Joppa and Newton Energy Centers, and (c) manage generation as necessary to maintain compliance. (Pet. at 21) Further, Petitioner Medina Valley also will commit to the continued cessation of operations of the electrical generating units at the Hutsonville and Meredosia Energy Centers through December 31, 2020, with the exception of the FutureGen project at the Meredosia Energy Center. (Pet. at 21) Petitioner IPH will maintain a continuous program of construction at the Newton Energy Center, on the existing schedule set forth in the Variance Opinion, so as to be in a position to have the Newton FGD project completed and operational to meet compliance obligations. (Pet. at 21) Petitioners indicate that proceeding in this manner will position the Petitioners for compliance with the MPS' final overall SO₂ annual emission rate (0.23 lb/mmBtu) beginning in 2020, with the installation and operation of the Newton FGDs. (Pet. at 21)

73. Furthermore, in order to meet the requested variance's 0.35 lb/mmBtu SO₂ annual mitigation rate, Petitioner IPH anticipates the potential to purchase even lower sulfur coal than included in AER's commitment for Newton, E.D. Edwards and Joppa. (Pet. at 23) Based on DMG's coal purchasing experience, Petitioner IPH understands that 0.50 lb/mmBtu sulfur Powder River Basin coal is available from one supplier. (Pet. at 23) While Petitioner IPH is committed to the 0.55 lb/mmBtu low sulfur coal contracts entered by AER for 2013–2017 as well as to using 0.55 lb/mmBtu low sulfur coal at Newton, E.D. Edwards and Joppa during the term of the variance, Petitioner IPH anticipates potentially purchasing certain quantities of even lower sulfur coal, consistent with availability, performance risk, price, and the MPS Group's emission performance. (Pet. at 23)

74. Petitioner IPH also will operate the existing FGD systems at the Duck Creek and Coffeen Energy Centers at a 98-99 percent SO₂ removal rate. (Pet. at 23) While achieving and maintaining 98-99 percent SO₂ removal is challenging, Petitioner IPH is confident that it can operate the Duck Creek and Coffeen Energy Centers at those removal efficiencies. (Pet. at 23-24)

75. Petitioner IPH has analyzed all of the commitments made by Co-Petitioner AER in PCB 12-126 and has agreed to assume each and every commitment. (Pet. at 22)

76. Furthermore, discussions after the filing of the Petition for Variance resulted in the execution of the MOA between Petitioner IPH, DMG, Dynegy Kendall, and the Illinois EPA that (i) commits Petitioner IPH to permanently retire E.D. Edwards Unit 1 as soon as the MISO allows E.D. Edwards Unit 1 to be retired (as early as 2017), (ii) commits DMG to withdraw the air operating permits for both the Stallings and Oglesby Combustion Turbine facilities by no later than December 31, 2014, and (iii) commits Dynegy Kendall to implement an Advanced Gas

Path project on its four combustion turbines (as early as 2015). The Illinois EPA requests that the commitment to permanently retire E.D. Edwards Unit 1 as described above should be considered by the Board to be included as a part of the compliance plan as to Petitioner IPH.

IX. RECOMMENDATION AND CONCLUSION

77. Under Section 37(a) of the Act and Section 104.216(b)(11) of the Board rules, the Illinois EPA is required to make a recommendation to the Board as to the disposition of the petition. *See*, 415 ILCS 5/37(a) (2012) and 35 Ill. Adm. Code 104.216(b)(11). The burden of proof in a variance proceeding is on the Petitioner to demonstrate that compliance with the rule or regulation would impose an arbitrary or unreasonable hardship. *See*, 415 ILCS 5/35(a) (2012) and 35 Ill. Adm. Code 104.238.

78. Petitioners propose to commit to a system-wide annual average SO₂ emission rate of 0.35 lb/mmBtu, as set forth in the Petition, from January 1, 2013, through December 31, 2019, and the continued cessation of operations at the Meredosia and Hutsonville Energy Centers through December 31, 2020, with the exception of the FutureGen project at the Meredosia Energy Center. The Illinois EPA's position is that this emission rate, in conjunction with the continued cessation of operations at the Meredosia and Hutsonville Energy Centers, would result in a net environmental benefit through 2020.

79. The Illinois EPA agrees with Petitioners that there will be a continued net environmental benefit if the Board were to grant the requested relief subject to the terms and conditions contained in the Petition. The Illinois EPA also does not believe that any environmental harm would result there from. To ensure and enhance this net environmental benefit, the Illinois EPA requests that in addition to the proposed variance order and conditions set forth in the Petition, the following conditions be in effect during the term of the variance

requested:

- i. Petitioner IPH must operate the existing FGD systems at the Duck Creek and Coffeen Energy Centers at an SO₂ removal rate of at least 98 percent;
- ii. Petitioner IPH must continue to burn low sulfur coal (no more than 0.55 lb sulfur/mmBtu) from the Powder River Basin at the E.D. Edwards, Joppa and Newton Energy Centers; and
- iii. Petitioner IPH must permanently retire E.D. Edwards Unit 1 as soon as the MISO allows E.D. Edwards Unit 1 to be retired (as early as 2017).


80. The Illinois EPA also recognizes that the economic viability of the Energy Centers is essential to the citizens of the local communities, school districts, and units of local government and acknowledges the adverse impact that plant closures would have upon the local communities, the local economies, and the State's economy.

81. Therefore, as presented, the Illinois EPA neither supports nor objects to the Board granting the Petition subject to the terms and conditions contained herein.

WHEREFORE, for the reasons set forth above, the Illinois EPA neither supports nor objects to the Board granting the Petition subject to the terms and conditions contained herein.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

DATED: September 5, 2013
1021 North Grand Avenue East
P. O. Box 19276
Springfield, IL 62794-9276
217/782-5544

August 6, 2013

Our Home is located on top of Tucacora Road Hill within a mile of Edwards Station, Cileo Lane, Bartonville and had no idea Edwards Station would be a hindrance for the 40 years we have lived there. It was a Country setting of farm ground + few homes at the time which we thought was perfect for raising our family. We can't see Edwards Station from our home because of contour of land so it was a huge surprise to find out such a facility was near us belching out smoke called "whatever" day and night. The loud belching noise we adapted to even though it woke kids in the middle of the night (as well as Mom + Dad yet)

The real issue is the smoke it expels. Our Morton Building roof should be white and the paint should be lifetime, but within 2 years it is grayish and we pay again to get it white. Butters too on house and Morton Building - never white and crisp - always drab and gray as the smoke and residue we see ~~it~~ like slow clouds pass daily over our home.

What's in that residue? It settles on our garden, comes in our open windows,

And we certainly breath it daily especially outdoors. Is it detrimental to our health?

We don't know if it is why our oldest son's health was compromised at a young age with breathing problems and why he has endured melanoma, Cancer, Brain Cancer, a shut down of glands and lives on medications to keep them working. Years ago people didn't think about health issues from pollution. Now we certainly do as my husband and I both cough and clear our throats over & over daily. Were we destined for these problems or is it where we live and what we breath?

We do know we have paperwork at our home wherein Cilco twice agreed to repaint our Morton Building because they knew their smog is why we don't have a white roof. We had to sign off not to talk to anyone or submit another claim for a given amt of years - something of that sort. I have to dig it out of our archives.

The taxes Cilco paid in our small township were welcome for our school, fire department and road district, but do our health issues etc, make it a good trade off?

Look at the red & white stacks at Edwards Station. Years ago they painted

them after. They would be brilliant red and white - for a little while. Then as the stuff belches out, the red is dirty and the white is gray and black. That same thing turning them gray filters right over my house and my neighbors.

Thank you for at least the opportunity to share our side of this environmental issue. Do not allow a variance to allow the emissions to be worse.

James and Dee Krause
Hollis Township
4910 W. Tuscarora Rd.
Bartonville, IL 61607

**Memorandum of Agreement
Between the
Illinois Environmental Protection Agency
and**

Illinois Power Holdings, LLC, Dynegy Midwest Generation, LLC, and Dynegy Kendall Energy, LLC

This Memorandum of Agreement ("MOA" or "Agreement") is entered into by and between the Illinois Environmental Protection Agency ("Illinois EPA") and Illinois Power Holdings, LLC, Dynegy Midwest Generation, LLC and Dynegy Kendall Energy, LLC (collectively, "Dynegy") and is dated and effective as of the last date of signature in the signature block. Illinois EPA and Dynegy are each referred to herein as a "Party" and collectively as the "Parties."

This Agreement reflects Dynegy's ongoing commitment to help improve air quality in the State of Illinois. The Parties have entered into this Agreement in order to document Dynegy's commitments so that the Illinois EPA is aware of and can appropriately factor these initiatives into its air quality plans for the State of Illinois.

A. Permanent Retirement of E.D. Edwards Power Station Unit 1

E.D. Edwards Power Station is located in Hollis Township in Peoria County. E.D. Edwards Unit 1, which was placed into service in 1960, has a maximum generation capability of 143 megawatts and currently fires low sulfur coal and utilizes an electrostatic precipitator to control particulate matter (PM) emissions. The U.S. Environmental Protection Agency (USEPA) recently designated Hollis Township in Peoria County as nonattainment for the 1-hour sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS). As the result of this designation, the Illinois EPA is required by the Clean Air Act to develop a State Implementation Plan that provides for attainment of the 1-hour SO₂ NAAQS as expeditiously as possible, including steps to show reasonable further progress toward attaining the standard. The permanent retirement of E.D. Edwards Unit 1 would reduce SO₂ emissions and also provide reductions of nitrogen oxides (NO_x), carbon monoxide (CO), carbon dioxide (CO₂), PM, mercury, and other hazardous air pollutant (HAP) emissions. E.D. Edwards Unit 1's annual emissions and most recent four-year average annual emissions are identified below as determined by continuous emission monitoring system (CEMS) data reported to the USEPA Clean Air Markets Division and Annual Emissions reports submitted to the Illinois EPA.

E.D. Edwards Unit 1 Representative Emissions (tons)

	SO ₂	NO _x	CO	CO ₂	PM
2009	2,070	1,060	608	943,696	865
2010	2,115	991	606	920,997	862
2011	2,148	928	686	963,770	958
2012	1,974	806	653	781,082	887
Average	2,061	946	638	902,386	893

In addition to air quality benefits, the retirement of E.D. Edwards Unit 1 would decrease the E.D. Edwards Power Station's intake of cooling water and service water from the Illinois River and eliminate National Pollutant Discharge Elimination System (NPDES)-permitted discharges to the Illinois River associated with Unit 1, including thermal discharges.

Illinois Power Holdings, LLC (IPH) is currently a petitioner in a variance petition proceeding before the Illinois Pollution Control Board (Board), *Illinois Power Holdings, LLC, et al. v. IEPA*, PCB 14-10. IPH commits to propose to the Board in PCB 14-10 as a condition of its requested variance relief a requirement that IPH permanently retire E.D. Edwards Unit 1 as soon as the Midcontinent Independent System Operator, Inc. (MISO) allows E.D. Edwards Unit 1 to be retired. IPH understands that the MISO currently expects that E.D. Edwards Unit 1 will be needed to continue to operate as a System Support Resource unit for reliability purposes until required transmission system reinforcements are completed in December 2016.

B. Implementation of Advanced Gas Path Technology at Kendall Power Station

Kendall Power Station is located in Kendall County and consists of four natural gas-fired combined cycle gas turbines. Dynegy Kendall Energy, LLC, the owner and operator of the Kendall Power Station, commits to implement an Advanced Gas Path (AGP) project on its four combustion turbines. The AGP project will reduce unit heat rate (i.e., Btu's of heat input required per unit power output) approximately 2.7% by improving overall efficiency of the combustion turbines through installation of hardware and use of control algorithms. As such, the AGP project is consistent with the intent of Illinois law to develop energy efficiency projects, 20 ILCS 3501/825-65 and 20 ILCS 3855/1-10 (as amended by Public Act 98-0090, effective July 15, 2013). Because Kendall Power Station is a load-following intermediate generating facility (i.e., its units do not continuously operate at maximum power output), this improvement in unit heat rate is expected to yield corresponding reductions in combustion-related emissions of air pollutants. Dynegy Kendall Energy, LLC anticipates completing implementation of the AGP project on all four units at the Kendall Power Station by April 30, 2015, subject to timely receipt of any needed permit or regulatory approvals and no project interruptions.

C. Permanent Retirement of the Stallings and Oglesby Combustion Turbine Facilities

The Stallings Combustion Turbine facility consists of four natural gas-fired simple cycle combustion turbines located in Madison County. The Oglesby Combustion Turbine facility consists of four natural gas-fired simple cycle combustion turbines located in Putnam County. Dynegy Midwest Generation, LLC, the owner and operator of the Stallings and Oglesby Combustion Turbine facilities, commits to withdraw the air operating permits for both the Stallings and Oglesby Combustion Turbine facilities by no later than December 31, 2014. The withdrawal of the air operating permits for these facilities will result in annual emission reductions identified below as determined by representative fuel consumption data and appropriate emission factors.

Stallings Units 1-4 Representative Emissions (tons)

	SO ₂	NO _x	CO	CO ₂	PM
2005	<1	11	3	3,896	<1
2006	<1	10	3	3,770	<1
2007	<1	3	1	1,145	<1
Average	<1	8	2	2,937	<1

Oglesby Units 1-4 Representative Emissions (tons)

	SO ₂	NO _x	CO	CO ₂	PM
2005	<1	10	2	3,515	<1
2006	<1	10	3	3,774	<1
2007	<1	19	5	6,822	<1
Average	<1	13	3	4,704	<1

D. Miscellaneous

1. The commitments and obligations under this MOA do not constitute a fine or penalty.
2. The terms of this MOA may be amended or modified in writing by mutual agreement of the Parties.
3. The commitments and obligations under this MOA by Dynegy Kendall Energy, LLC are subject to and conditioned upon receipt of any needed permit or regulatory approvals for implementation of the AGP project at Kendall Power Station.
4. The commitments and obligations under this MOA by Dynegy Midwest Generation, LLC are subject to and conditioned upon closing of the Transaction Agreement dated March 14, 2013 by and between Ameren Corporation and IPH.

5. Nothing in this MOA shall be interpreted to prohibit or restrict the ability of Dynegy to sell trade or transfer any emission allowances of any vintage owned by or allocated to E.D. Edwards Station Unit 1, the Kendall Power Station, the Stallings Combustion Turbine facility, and the Oglesby Stallings Combustion Turbine facility.
6. This MOA is for the sole benefit of the Parties and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, claim, benefit or remedy of any nature whatsoever under or by reason of this MOA against any Party, the State of Illinois, or any officers, agents or employees of any of the Parties.

AGREED:

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY:

BY: Lisa Bonnett DATE: 9/4/13
Lisa Bonnett by ~~HE~~
Director, Illinois EPA

FOR ILLINOIS POWER HOLDINGS, LLC, DYNEGY MIDWEST GENERATION, LLC, AND DYNEGY KENDALL ENERGY, LLC:

BY: Robert C. Flexon DATE: 9-4-13
Robert C. Flexon
President and Chief Executive Officer

STATE OF ILLINOIS

COUNTY OF SANGAMON

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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served electronically the attached

RECOMMENDATION upon the following person:

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

and electronically and by mailing it by first-class mail from Springfield, Illinois, with sufficient postage affixed to the following persons:

SEE ATTACHED SERVICE LIST

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,



Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

DATED: September 5, 2013

1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
217.782.5544
217.782.9143 (TDD)

SERVICE LIST

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