

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

DYNEGY MIDWEST GENERATION, LLC, )  
)  
Petitioner, )  
) PCB 12-135  
v. ) (Variance-Air)  
)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

**NOTICE**

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

Kathleen C. Bassi  
Stephen J. Bonebrake  
Bina Joshi  
233 South Wacker Drive, Suite 6600  
Chicago, IL 60606

Bradley Halloran, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601

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

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Dana Vetterhoffer  
Dana Vetterhoffer  
Assistant Counsel

DATED: June 22, 2015  
1021 N. Grand Ave. East  
P.O. Box 19276  
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**AMENDED RECOMMENDATION**

The Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by its attorney, hereby responds to the Amended Petition for Variance (“Amended Petition”) of Dynegy Midwest Generation, LLC (“DMG” or “Petitioner”) from certain provisions of the Illinois Multi-Pollutant Standard (“MPS”) set forth in 35 Ill. Adm. Code 225.233(f)(2) from the date of the Illinois Pollution Control Board’s (“Board”) order until April 1, 2017. Specifically, DMG requests a variance from provisions in the MPS that prohibit owners or operators of electric generating units (“EGUs”) in an MPS Group from selling, trading to, or otherwise exchanging with any person sulfur dioxide (“SO<sub>2</sub>”) allowances that would otherwise be available for sale or trade as a result of actions taken to comply with the SO<sub>2</sub> emission standards in 35 Ill. Adm. Code 225.233(e)(2). DMG also requests a variance from the requirement that DMG surrender such excess SO<sub>2</sub> allowances to the Illinois EPA. DMG requests the variance for vintage year 2015 and 2016 SO<sub>2</sub> allowances allocated to EGUs under the Cross-State Air Pollution Rule (“CSAPR”).

DMG requests the variance for its entire MPS Group, consisting of EGUs at the Baldwin Energy Complex in Randolph County (“Baldwin”), the Havana Power Station in Mason County (“Havana”), the Hennepin Power Station in Putnam County (“Hennepin”), the Wood River

Power Station in Madison County (“Wood River”), and the Vermilion Power Station in Vermilion County (“Vermilion”) (while Vermilion has been permanently retired, DMG states that it includes the station in its Amended Petition “because of any possible ambiguity regarding Vermilion’s continued membership in the DMG MPS Group”).

The Illinois EPA is required to “file or give an amended recommendation in writing or orally at hearing, but in any event not later than 45 days after the filing of an amended petition.” 35 Ill. Adm. Code 104.226(b).

Pursuant to Section 37(a) of the Illinois Environmental Protection Act (“Act”) [415 ILCS 5/37(a) (2010)] and 35 Ill. Adm. Code 104.116 and 104.226, the Illinois EPA neither supports nor objects to the Board granting DMG’s Amended Petition. In support of its recommendation, the Illinois EPA states as follows.

**I. BACKGROUND REGARDING FACILITIES IN DMG’S MPS GROUP**

1. DMG explains that it currently owns and operates four coal-fired power plants in Illinois (excluding the retired Vermilion Power Station) with principal emissions consisting of SO<sub>2</sub>. Amended Petition at 3-4, 6. Generally, coal-fired power plants also emit nitrogen oxides (“NO<sub>x</sub>”), particulate matter (“PM”), and mercury. Amended Petition at 6. The Illinois EPA incorporates by reference DMG’s description of the facilities in Exhibit 3R of the Amended Petition.

2. DMG indicates that it controls SO<sub>2</sub> emissions at its coal-fired power plants through the use of low sulfur, Powder River Basin coal. Amended Petition at 6. DMG also operates spray dryer absorbers (dry scrubbers) with fabric filter systems on each of the units at Baldwin and Havana. Amended Petition at 6. DMG explains that its MPS Group has met the SO<sub>2</sub> limitations in the MPS in 2013 and 2014 using these SO<sub>2</sub> control measures. Amended

Petition at 6; *See* Amended Petition at 6-7 for a more detailed description of DMG's control strategies for NO<sub>x</sub>, PM, and mercury.

3. To the best of the Illinois EPA's knowledge, there are no state air pollution enforcement actions against DMG currently pending before the Board.

4. Other pending permits associated with the facilities in DMG's MPS Group are described in Exhibit 3R of the Amended Petition.

**II. RELIEF REQUESTED**

5. DMG requests relief from the requirements in Section 225.233(f)(2) of the MPS, set forth below, for vintage year 2015 and 2016 CSAPR SO<sub>2</sub> allowances:

Section 225.233 Multi-Pollutant Standards (MPS)

.....

f) Requirements for NO<sub>x</sub> and SO<sub>2</sub> Allowances.

.....

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<sub>2</sub> 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.

6. If granted, the variance will allow DMG to bank, sell or trade excess vintage year 2015 and 2016 CSAPR SO<sub>2</sub> allowances, and eliminate the requirement that DMG surrender such allowances to the Illinois EPA.

**III. FACTS PRESENTED IN THE AMENDED PETITION**

7. Pursuant to 35 Ill. Adm. Code 104.216(a), the Illinois EPA conducted an

investigation of the facts alleged in DMG's Amended Petition, which included discussions with representatives of DMG. To the extent of the information currently available to the Illinois EPA, the Illinois EPA does not disagree with the facts set forth in DMG's Amended Petition, except where otherwise noted in its Recommendation.

8. The Illinois EPA has not received any public comments to date regarding the Amended Petition.

#### IV. ENVIRONMENTAL IMPACT

9. Section 104.216(b)(2) of the Board's rules requires that the Illinois EPA state the location of the nearest air monitoring station, where applicable. 35 Ill. Adm. Code 104.216(b)(2). For Baldwin, the nearest air monitoring station is located at Hickory Grove and Fallview in Houston, IL. For Havana, the nearest air monitoring station is located at 272 Derby in Pekin, IL. For Hennepin, the nearest air monitoring station is located at 308 Portland Ave. in Oglesby, IL. For Wood River, the nearest air monitoring station is located at 54 N. Walcott in Wood River, IL. For Vermilion, the nearest air monitoring station is located at North Thomas Street in Thomasboro, IL. All of the above monitoring stations currently monitor SO<sub>2</sub>, except the one identified as nearest to Vermilion; for Vermilion, the nearest SO<sub>2</sub> air monitoring station is located at 500 E. Township Rd. in Bondville, IL. Affidavit of Chris Price, attached as Exhibit A.

10. DMG states in its Amended Petition that the requested relief will not result in an environmental detriment. Amended Petition at 33. DMG explains that the CSAPR is intended to replace the Clean Air Interstate Rule ("CAIR"), the trading program in place at the time the MPS was negotiated and subsequently promulgated. Amended Petition at 9-11, 13. DMG argues that the CSAPR's cap-and-trade program, and its associated constraints and requirements, ensures the elimination of each subject state's significant contribution to nonattainment and interference with

maintenance of air quality standards. Amended Petition at 28-29, 33 (referencing USEPA statements regarding the adequacy of the CSAPR to ensure that such standards will be met). DMG indicates that the CSAPR “imposes cap-and-trade programs on EGUs within each affected state that cap emissions of SO<sub>2</sub> and NO<sub>x</sub> 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 [National Ambient Air Quality Standards] for PM<sub>2.5</sub> and ozone.” Amended Petition at 14. The CSAPR contains its own restrictions (i.e., separate interstate trading programs and variability limits) for allowance trading to ensure that sufficient emission reductions occur both in Illinois as well as in other states whose emissions impact air quality in Illinois. Amended Petition at 16. Such restrictions are based on extensive air modeling performed by USEPA in developing the CSAPR, modeling that was not performed for the MPS. Amended Petition at 16.

11. DMG also explains that the CAIR addressed only SO<sub>2</sub> allowances already in existence under the Acid Rain Program; unlike the CSAPR, it did not create any new SO<sub>2</sub> allowances. Amended Petition at 20-21. DMG argues that it therefore “did not agree to the MPS allowance trading restrictions and MPS-required SO<sub>2</sub> allowance surrenders with respect to the then non-existent and not-yet-even envisioned CSAPR SO<sub>2</sub> allowances.” Amended Petition at 21. DMG states that, in that regard, the CSAPR represents a “fundamental change to DMG’s and the Agency’s mutual assumptions on which the MPS SO<sub>2</sub> allowance trading restrictions were based.” Amended Petition at 21. Further, as stated above, unlike the CAIR the CSAPR trading program does not use Acid Rain Program SO<sub>2</sub> allowances; rather, the CSAPR uses SO<sub>2</sub> allowances specific to the CSAPR program. Amended Petition at 14. DMG argues that, with its limited supply of CSAPR-specific SO<sub>2</sub> allowances and trading restrictions, the CSAPR is

“effectively more stringent than the CAIR.” Amended Petition at 14.

12. Additionally, DMG indicates that, during the requested variance period, it will operate its dry scrubbers, meet its system-wide SO<sub>2</sub> emissions tonnage cap and unit-specific SO<sub>2</sub> emission limits set forth in the Consent Decree, and meet its system-wide SO<sub>2</sub> emission limit for its MPS Group. Amended Petition at 34.

13. DMG also notes that the Agency has not relied upon the allowance surrenders required by the MPS for any air quality purposes. Amended Petition at 33.

14. Finally, DMG indicates that it has undertaken several initiatives that have resulted in “a significant reduction in or avoidance of SO<sub>2</sub> emissions.” Amended Petition at 33; *See also* Exhibit 8R of the Amended Petition. DMG operated its spray dry absorbers at the Baldwin units before the applicable compliance deadlines, which reduced SO<sub>2</sub> emissions by approximately 3,600 tons. Amended Petition at 34. DMG avoided approximately 7,800 tons of SO<sub>2</sub> emissions through extended outages needed for the installation of pollution control equipment. Amended Petition at 34. DMG estimates that it avoided more than 60,000 tons of SO<sub>2</sub> since 2011 via the retirement of certain units at Vermilion, Wood River, and Havana, representing “ongoing estimated annual avoidances of nearly 20,000 tons of SO<sub>2</sub> emissions.” Amended Petition at 34.

15. DMG indicates that its current actual SO<sub>2</sub> emission rate at Wood River is approximately 26,000 tons of SO<sub>2</sub> less than its allowable SO<sub>2</sub> emission level. Amended Petition at 34-35.

16. The Agency agrees that there are SO<sub>2</sub> emission trading restrictions and safeguards in CSAPR that did not exist in CAIR that assure air quality protection if the variance is granted. Further, actions taken by DMG have resulted or will result in additional SO<sub>2</sub> emission reductions. The CSAPR’s trading restrictions were developed to accomplish air quality goals consistent with

the Illinois EPA's intended purpose for the trading restrictions in the MPS, and are more appropriate and technically sound, as they are based on modeling performed by the USEPA. Therefore, sufficient trading restrictions will continue to apply through the CSAPR in the event this variance is granted.

17. Actions taken by DMG resulted in significant SO<sub>2</sub> emission reductions beyond those otherwise mandated by existing requirements. The amount of SO<sub>2</sub> emission reductions set forth by DMG above are consistent with the data currently available to, and reviewed by, the Illinois EPA during the course of its investigation of DMG's Amended Petition and these reductions are greater than the additional SO<sub>2</sub> emissions that may occur if the variance is granted.

18. Finally, the Illinois EPA confirms that it has not relied upon the allowance trading restrictions or surrender requirements in Section 225.233(f)(2) of the MPS as part of its air quality attainment planning efforts.

#### **V. ARBITRARY AND UNREASONABLE HARDSHIP**

19. 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). The Board's rules require that Illinois EPA estimate the cost that compliance would impose on the petitioner and on others, as well as the injury that the grant of the variance would impose on the public. 35 Ill. Adm. Code 104.216(b)(5).

20. DMG does not claim an inability to comply with the requirements set forth in the MPS as the basis for its requested relief. Instead, DMG argues that "surrendering, during the first two years of implementation of the CSAPR, a large quantity of CSAPR SO<sub>2</sub> allowances with significant economic value generated by DMG's significant capital investments in SO<sub>2</sub>



pollution control equipment deprives DMG of that [value], causing DMG unreasonable hardship.” Amended Petition at 25. DMG estimates that it will have approximately 29,325 excess vintage year 2015 CSAPR SO<sub>2</sub> allowances and approximately 30,850 excess vintage year 2016 CSAPR SO<sub>2</sub> allowances covered by the MPS trading restrictions, and that an inability to sell or trade such allowances is a significant lost opportunity. Amended Petition at 27. DMG estimates the monetary value of these excess allowances in the first two-year phase of the CSAPR to be approximately \$3 million, based on a value of \$50 per allowance. Amended Petition at 27-28.

21. DMG claims that the inability to sell or trade excess SO<sub>2</sub> allowances interferes with the “robust SO<sub>2</sub> allowance trading market” intended by the CSAPR, and damages the ability of DMG and Illinois industry to stay competitive with industry in other states where trading restrictions like those in the MPS do not exist. Amended Petition at 28-29. DMG states that it is an independent power producer and thus does not have a rate base; it competes directly against other electricity generators in the regional electricity generation market. Amended Petition at 29. DMG further states that power prices have declined significantly since 2008, and that EGUs face the likelihood of incurring substantial additional costs in complying with various other new rules, including greenhouse gas emission standards and more stringent air quality standards. Amended Petition at 30. DMG indicates that selling or trading excess SO<sub>2</sub> allowances would allow DMG to offset some of the costs of compliance with the MPS and Consent Decree and the lost margin due to market economics. Amended Petition at 30. Finally, DMG states that an inability to sell excess CSAPR SO<sub>2</sub> allowances will have an adverse economic impact on DMG that, coupled with other adverse economic impacts, could potentially affect the number of Illinois citizens employed by DMG. Amended Petition at 31.

22. The Illinois EPA has no evidence that the MPS trading restrictions will or will not “interfere” with the robust SO<sub>2</sub> allowance trading market intended by the CSAPR, or that any such restrictions will damage the ability of DMG and Illinois industry to stay competitive with other states. The Illinois EPA does, however, agree that EGUs face the possibility of incurring substantial additional costs in complying with other new rules, while at the same time having to compete with near-historic low natural gas prices.

23. Based on the information currently available to it, the Illinois EPA is unable to estimate the cost of DMG’s compliance with the trading restrictions in the MPS, although the Illinois EPA does not dispute the potential economic value of the CSAPR SO<sub>2</sub> allowances at issue. The Illinois EPA believes that the CSAPR provides air quality protection consistent with Illinois EPA’s goals in developing the MPS, and such protection is further enhanced considering DMG’s actions in avoiding and reducing SO<sub>2</sub> emissions, and as DMG is required to comply with the more stringent CSAPR requirements, including all applicable trading restrictions set forth in the CSAPR.

#### **VI. CONSISTENCY WITH FEDERAL LAW**

24. Pursuant to Section 35 of the Act [415 ILCS 5/35 (2010)] and 35 Ill. Adm. Code 104.208(a), all petitions for variances must be consistent with federal law. DMG states in its Amended Petition that “[t]here is no federal law that prohibits DMG from otherwise selling or trading SO<sub>2</sub> allowances under the CSAPR that are in excess of the MPS SO<sub>2</sub> emission standards.” Amended Petition at 36. DMG states that the portion of the MPS at issue has not been approved by USEPA as part of Illinois’ State Implementation Plan (“SIP”), and that the proposed variance does not implicate the SIP in any way. Amended Petition at 36-37.

25. The Illinois EPA agrees that there is currently no federal authority that precludes

granting the instant variance request, and that the proposed variance does not implicate Illinois' SIP.

#### **VII. COMPLIANCE PLAN**

26. Pursuant to Section 104.204(f) of the Board's rules, the Petitioner is required to present a detailed compliance plan in the Petition for Variance. 35 Ill. Adm. Code 104.204(f).

27. 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 of SO<sub>2</sub> emissions from its coal-fired power plants included in the DMG MPS Group during the term of this variance and the tons of SO<sub>2</sub> removed by DMG's spray dry absorbers associated with the EGUs in the DMG MPS Group during the term of the variance.

28. In addition, the Agency recommends that the compliance plan include the following:

- A. During the term of the variance, DMG shall include in its annual report submitted to the Agency pursuant to 35 Ill. Adm. Code 225.233(f)(5) the number of excess CSAPR SO<sub>2</sub> allowances available as a result of this variance that were banked, the number traded, and the number sold in the previous calendar year.
- B. DMG shall continue to operate its dry scrubbers on Baldwin Units 1, 2, and 3 and Havana Unit 6 during the term of the variance.
- C. DMG shall continue to comply with its Consent Decree 30-day rolling average SO<sub>2</sub> emission limitation of 1.20 lb/mmBtu for Wood River Units 4 and 5 during the term of the variance.

#### **VIII. RECOMMENDATION AND CONCLUSION**

29. Section 37(a) of the Act and Section 104.216(b)(11) of the Board's rules require that Illinois EPA make a recommendation to the Board as to the disposition of the petition. 415 ILCS 5/37(a) (2010) 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) and 35 Ill. Adm. Code

104.238.

30. For the reasons set forth above, the Illinois EPA neither supports nor objects to the Board granting DMG's Amended Petition.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Dana Vetterhoffer  
Dana Vetterhoffer  
Assistant Counsel

DATED: June 22, 2015

1021 North Grand Avenue East  
P. O. Box 19276  
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PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**AFFIDAVIT OF CHRIS PRICE**

I, Chris Price, under oath, depose and state as follows:

1. I am a Public Service Administrator in the Bureau of Air at the Illinois Environmental Protection Agency.
2. For Dynegy's Baldwin Energy Complex, the nearest air monitoring station is located at Hickory Grove and Fallview in Houston, IL.
3. For Dynegy's Havana Power Station, the nearest air monitoring station is located at 272 Derby in Pekin, IL.
4. For Dynegy's Hennepin Power Station, the nearest air monitoring station is located at 308 Portland Ave. in Oglesby, IL.
5. For Dynegy's Wood River Power Station, the nearest air monitoring station is located at 54 N. Walcott in Wood River, IL.
6. For Dynegy's Vermilion Power Station, the nearest air monitoring station is located at North Thomas Street in Thomasboro, IL.
7. All of the above monitoring stations currently monitor sulfur dioxide ("SO<sub>2</sub>"), except the one identified as nearest to the Vermilion Power Station; for such facility, the nearest SO<sub>2</sub> air monitoring station is located at 500 E. Township Rd. in Bondville, IL.



Chris Price

SUBSCRIBED and SWORN to  
before me this 22<sup>nd</sup> day  
of June, 2015.

  
NOTARY PUBLIC

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PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**CERTIFICATE OF SERVICE**

I, the undersigned, an attorney, affirm that I have served the attached Amended Recommendation by e-mail upon the following person(s) at the e-mail address(es) indicated below:

Bradley Halloran, Hearing Officer  
Illinois Pollution Control Board  
[brad.halloran@illinois.gov](mailto:brad.halloran@illinois.gov)

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I also affirm that my e-mail address is [dana.vetterhoffer@illinois.gov](mailto:dana.vetterhoffer@illinois.gov); the number of pages in the e-mail transmission is 15; and the e-mail transmission took place today before 5:00 p.m.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/ Dana Vetterhoffer  
Dana Vetterhoffer  
Assistant Counsel

DATED: June 22, 2015

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