

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

DYNEGY MIDWEST GENERATION, )  
LLC (BALDWIN ENERGY COMPLEX) )

Petitioner, )

v. )

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )

Respondent. )

PCB 06-63  
(CAAPP Permit Appeal—Air)

AMEREN ENERGY GENERATING )  
COMPANY, DUCK CREEK POWER )  
STATION )

Petitioner, )

v. )

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )

Respondent. )

PCB 06-66  
(CAAPP Permit Appeal—Air)

AMEREN ENERGY GENERATING )  
COMPANY, EDWARDS POWER )  
STATION )

Petitioner, )

v. )

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )

Respondent. )

PCB 06-67  
(CAAPP Permit Appeal—Air)

AMEREN ENERGY GENERATING )  
COMPANY, EDWARDS POWER )  
STATION )

Petitioner, )

v. )

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )

Respondent. )

PCB 06-126  
(CAAPP Permit Appeal—Air)

**NOTICE OF ELECTRONIC FILING**

To: See attached Service List


PLEASE TAKE NOTICE that on the 16<sup>th</sup> day of December, 2015, the Joint Response to Board Questions was filed electronically with the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and is hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

By:

  
\_\_\_\_\_  
RYAN G. RUDICH  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington, 18<sup>th</sup> Floor  
Chicago, Illinois 60602  
(312) 814-1511

DATE: December 16, 2015

**SERVICE LIST**

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

John T. Therriault  
Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph Street, Suite 11-500  
Chicago, Illinois 60601

SCHIFF HARDIN LLP  
Andrew N. Sawula  
Kathleen C. Bassi  
Stephen J. Bonebrake  
Bina Joshi  
233 South Wacker Drive, Suite 6600  
Chicago, Illinois 60606

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DYNEGY MIDWEST GENERATION, )  
LLC (BALDWIN ENERGY COMPLEX) )

Petitioner, )

v. )

PCB 06-63  
(CAAPP Permit Appeal—Air)

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )

Respondent. )

AMEREN ENERGY GENERATING )  
COMPANY, DUCK CREEK POWER )  
STATION )

Petitioner, )

v. )

PCB 06-66  
(CAAPP Permit Appeal—Air)

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )

Respondent. )

AMEREN ENERGY GENERATING )  
COMPANY, EDWARDS POWER )  
STATION )

Petitioner, )

v. )

PCB 06-67  
(CAAPP Permit Appeal—Air)

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )

Respondent. )

AMEREN ENERGY GENERATING )  
COMPANY, EDWARDS POWER )  
STATION )  
 )  
Petitioner, )  
 )  
v. ) PCB 06-126  
 ) (CAAPP Permit Appeal—Air)  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

**JOINT RESPONSE TO BOARD QUESTIONS**

Pursuant to the Hearing Officer Orders dated November 23, 2015, Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, and Petitioners, DYNEGY MIDWEST GENERATION, LLC and ILLINOIS POWER RESOURCES GENERATING, LLC (as successor to AmerenEnergy Resources Generating Company), by and through their attorneys, hereby submit the following joint response to the Illinois Pollution Control Board’s (“Board”) questions in the above-referenced cases.

**INTRODUCTION**

The Hearing Officer Orders directed the parties to respond to a set of six questions from the Board relating to the status of settlement discussions and appeal resolution. Below, the parties first provide brief background on the dockets, followed by the parties’ joint responses to the questions posed by the Board.

**I. Background on PCB 06-63, PCB 06-66, PCB 06-67, and PCB 06-126**

PCB 06-63 is the appeal of the 2005 CAAPP permit for the Baldwin Energy Center. PCB 06-66 is the appeal of the 2005 CAAPP permit for the Duck Creek Power Station. PCB 06-

67 is the appeal of the 2005 CAAPP permit for the E.D. Edwards Power Station. As described in more detail below, the Illinois EPA has implemented a process to resolve the 2005 CAAPP permit appeals for coal-fired power plants that includes each of these dockets.

PCB 06-126 is an appeal of the Petitioner's request to burn an additional type of coal, an appeal that is contingent on the CAAPP permit and will be resolved when the CAAPP permit becomes effective.

In 2013, Dynegy Midwest Generation, LLC and Illinois Power Resources Generating, LLC became affiliated companies, sharing a common ultimate parent company.

## **II. The Parties' Answers to Board Questions 1-6**

Board Question 1: Which permit conditions that were originally challenged have been resolved in settlement negotiations and which ones have not?

Answer: The Illinois EPA has jointly negotiated with owners of Illinois coal plants to address common issues in their respective permit appeals. As a result, the parties have reached consensus regarding many of the contested conditions in the Baldwin, Duck Creek and Edwards CAAPP permits (the "Subject CAAPP Permits"). However, as discussed below, there is a set of conditions and permitting edits unique to each facility that must be addressed by Illinois EPA permitting staff and the respective permittee before the permitting documents can be released for public comment and review by the U.S. Environmental Protection Agency ("USEPA").

Board Question 2: How are the unresolved permit conditions different from those facilities where the appeal has been resolved, for example, Newton (PCB 06-68)?

Answer: Each facility has unique aspects about its configuration, emission units, operations, and/or applicable requirements that necessitate individual attention in the permitting documents. While the Subject CAAPP Permits share many common conditions and appeal

points with Newton and the other facilities, the Subject CAAPP Permits require plant-specific edits and changes that will need to be made before public notice and USEPA review.

Board Question 3: Has the facility been subject to new operational requirements since this appeal began, for example, state mercury requirements?

Answer: Yes. Such requirements that are derived from the Clean Air Act will be incorporated into each of the Subject CAAPP Permits through the CAAPP's formal reopening process. The incorporation of these additional rules or regulations into a CAAPP permit is a procedural requirement of Title V permitting. However, the absence of such requirements in a CAAPP permit does not affect the ongoing responsibility of a source to comply with rules or regulations upon their dates of effectiveness.

Board Question 4: Do any of those new requirements concern the permit conditions challenged in this appeal? If so, are the new requirements more stringent than the challenged permit conditions?

Answer: Based on the Illinois EPA's recent experience in working on permit reopenings, some of the additional requirements relate to, or overlap with, contested permit conditions. It is possible that some may appropriately be considered more stringent. However, as previously noted, any such requirements will have applied independently to a given source from the date of effectiveness of the affected rule or regulation. The reopening process will ensure that each of the Subject CAAPP Permits contains all applicable requirements.

Board Question 5: When did the parties to th[ese] appeal[s] last meet to discuss settlement?

Answer: The Illinois EPA and representatives of Dynegy Operating Company (an affiliate of each Petitioner) last met by conference call on December 2, 2015, with a follow-up

call on December 4, to discuss issues related to CAAPP permit reopenings for two power stations owned by other affiliates of Petitioners. They have previously met numerous times, in-person and by phone, as part of the joint negotiation process, resulting in a resolution, in principle, of common issues. At this stage in the process, the parties are working through individual CAAPP permits with conference calls or in-person meetings, as needed.

Board Question 6: Which party made the last settlement proposal and who is reviewing that proposal? Does the proposal resolve the entire appeal or only one part of the appeal?

Answer: The parties are engaged in a systematic discussion on permit conditions for each of the outstanding appeals. The process will ultimately generate a set of permit changes that are acceptable to the parties and that must then be prepared for public notice and comment and USEPA review.

### CONCLUSION

The parties continue to work diligently to resolve these complex permit appeals and to achieve the common goal of effective, up-to-date operating permits for all Illinois coal plants, and will continue to participate in periodic status conferences with the Board Hearing Officer.

Respectfully submitted,

DYNEGY MIDWEST GENERATION, LLC  
and ILLINOIS POWER RESOURCES  
GENERATING, LCC (as successor to  
AmerenEnergy Resources Generating  
Company

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY  
by LISA MADIGAN, Attorney  
General of the State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

BY: /s/ Andrew N. Sawula

BY: /s/ Ryan G. Rudich



ANDREW N. SAWULA  
Schiff Hardin LLP  
Attorney for Petitioners  
One Westminster Place, Suite 200  
Lake Forest, IL 60045  
(847) 295-4336  
asawula@schiffhardin.com

RYAN G. RUDICH  
Assistant Attorney General  
Illinois Attorney General's Office  
69 W. Washington St., 18th Floor  
Chicago, Illinois 60602  
(312) 814-1511  
rrudich@atg.state.il.us

JAMES P. GIGNAC  
Environmental and Energy Counsel  
Illinois Attorney General's Office  
(312) 814-0660  
jgignac@atg.state.il.us

Dated: December 16, 2015

**CERTIFICATE OF SERVICE**

I, RYAN G. RUDICH, an Assistant Attorney General, do certify that I caused to be served this 16<sup>th</sup> day of December, 2015, the attached Notice of Electronic Filing and Joint Response to Board Questions on the parties named on the attached service list by placing a true and correct copy in first class postage prepaid envelopes and depositing same with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.



RYAN G. RUDICH