

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

DYNEGY MIDWEST GENERATION,	)	
LLC	)	
	)	
Petitioner,	)	
	)	PCB 06-71, 06-72, 07-115, 07-123, 08-66,
v.	)	09-09
	)	(Permit Appeals – Air)
ILLINOIS ENVIROMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

PLEASE TAKE NOTICE that I have filed with the Illinois Pollution Control Board the Joint Response to Board Questions, a copy of which is hereby served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY,

by LISA MADIGAN, Attorney  
General of the State of Illinois

BY: /s/ James P. Gignac  
JAMES P. GIGNAC  
Environmental and Energy Counsel  
Illinois Attorney General's Office  
69 W. Washington St., 18th Floor  
Chicago, IL 60602  
(312) 814-0660  
jgignac@atg.state.il.us

Dated: August 18, 2017

**SERVICE LIST**

Don Brown, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center Suite 11-500  
100 West Randolph St.  
Chicago, IL 60601  
don.brown@illinois.gov

Bradley P. Halloran, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph St., Suite 11-500  
Chicago, IL 60601  
brad.halloran@illinois.gov

Andrew N. Sawula  
Schiff Hardin LLP  
One Westminster Place, Suite 200  
Lake Forest, IL 60045  
asawula@schiffhardin.com

Stephen J. Bonebrake  
Ryan C. Granholm  
Schiff Hardin LLP  
233 South Wacker Drive, Suite 6600  
Chicago, IL 60606  
sbonebrake@schiffhardin.com  
rgranholm@schiffhardin.com

**CERTIFICATE OF SERVICE**

I, JAMES GIGNAC, an attorney, do certify that I caused the JOINT RESPONSES TO BOARD QUESTIONS in this matter to be served upon the persons listed in the attached Service List by email for those who have consented to email service and by U.S. Mail for all others.

/s/ James P. Gignac

---

JAMES P. GIGNAC

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

DYNEGY MIDWEST GENERATION, LLC,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 06-71, 06-72, 07-115, 07-123,
	)	08-66, 09-09
	)	(Permit Appeals—Air)
ILLINOIS ENVIRONMENTAL PROTECTON AGENCY,	)	
	)	
	)	
Respondent.	)	

**JOINT RESPONSE TO BOARD QUESTIONS**

Pursuant to the Hearing Officer Orders dated July 25, 2017, Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by Lisa Madigan, Attorney General of the State of Illinois, and Petitioner, DYNEGY MIDWEST GENERATION, LLC, by and through its 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’s Orders directed the parties to elaborate on the progress that is being made to resolve the above-referenced appeals by responding to a set of three questions 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 06-71, PCB 06-72, PCB 07-115, PCB 07-123, PCB 08-66, and PCB 09-09**

PCB 06-71 is the appeal of the 2005 CAAPP permit for the Havana Power Station. PCB 06-72 is the appeal of the 2005 CAAPP permit for the Hennepin Power Station. As described in

more detail below, 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 07-115 and PCB 07-123 are the appeals of construction permits for pollution controls at the Havana and Hennepin Power Stations, respectively. The appeals are interrelated with the CAAPP permits, and the parties' current intention is that the Illinois EPA will issue a revised construction permit prior to the CAAPP permit being released for public notice. PCB 08-66 and PCB 09-09 are the appeals of construction permits for pollution controls at the Baldwin Energy Complex. The appeals are interrelated with the pending appeal of the 2005 CAAPP permit for Baldwin (PCB 06-63, also part of the appeal resolution process), and the parties' current intention is that the Illinois EPA will issue a revised construction permit prior to the CAAPP permit being released for public notice.

## **II. The Parties Answers to Board Questions 1-3**

Board Question 1: Have discussions specific to the permit at issue in this appeal taken place outside of Hearing Officer status calls? Are the parties actively working to resolve this particular appeal at the same time as they are actively working on other similar appeals, or is progress being made in a sequential manner, *i.e.*, resolving appeals one at a time before moving on to others? If sequential, where does this case fall in the sequence and when do the parties expect to focus in earnest on resolving it?

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, Havana, and Hennepin permits. However, before the permitting documents can be released for public comment and review by the U.S. Environmental Protection Agency ("USEPA"), 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. Also, beginning in 2016, Illinois EPA is preparing additional edits for each CAAPP permit—to be released for review simultaneously with appeal resolution edits—that bring the permits fully up-to-date with all applicable requirements.

Illinois EPA and the permittees are generally working in a sequential manner. Where appropriate, edits or changes from one CAAPP permit are carried forward to another to create efficiencies on the next one. Again, however, each facility has unique aspects about its configuration, emission units, operations, and/or applicable requirements that necessitate individual attention in the permitting documents. Currently, the Illinois EPA and the permittee are negotiating CAAPP permit changes for the Hennepin Power Station, and Illinois EPA expects to release that permit for public comment and review in the coming months (followed sometime thereafter by a motion to the Board to remand the permit, the issuance of appeal resolution modifications, and a motion for voluntary dismissal). The parties next intend to finish negotiating changes to the Baldwin CAAPP permit, and Illinois EPA expects that permit to be ready for public comment and review in late 2017. The Havana permit is expected to follow sometime thereafter.

Board Question 2: Have any settlement proposals been made since the parties last responded to specific Board questions that would completely resolve this appeal? If so, who made that proposal and when did they make it? What is the status of negotiations over any such proposals?

Answer: The parties are engaged in a systematic discussion on permit conditions for each of the outstanding appeals. For example, the Illinois EPA and representatives of Dynegy Operating Company (an affiliate of Petitioner) last met in person on July 26, 2017, to discuss

issues related to the CAAPP permit reopening for one power station and the CAAPP permit appeal resolution for another. 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.

Board Question 3: Is there any anticipated time frame when the parties expect to resolve this appeal?

Answer: The parties anticipate the Illinois EPA releasing for public notice negotiated permit modifications for the Baldwin, Havana, and Hennepin appeals in 2017, followed sometime thereafter by a motion to the Board to remand the permits and the issuance of appeal resolution modifications. Petitioner anticipates that, shortly after issuance of the permit modifications and expiration of any permit challenge periods, it will move to dismiss the appeals.

#### **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 Hearing Officer.

Respectfully submitted,

DYNEGY MIDWEST  
GENERATION, LLC

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

BY: /s/ James P. Gignac  
JAMES P. GIGNAC  
ANGAD S. NAGRA  
Assistant Attorneys General  
Illinois Attorney General's Office  
Chicago, Illinois 60602  
(312) 814-0660  
jgignac@atg.state.il.us  
anagra@atg.state.il.us

Dated: August 18, 2017