BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	R18-20
AMENDMENTS TO	)	(Rulemaking – Air)
35 ILL. ADM. CODE 225.233,	)	
MULTI-POLLUTANT STANDARDS (MPS)	)	

NOTICE

TO: Don Brown
Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
Chicago, IL 60601-3218

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE TO COMMENTS, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Antonette R. Palumbo
Antonette R. Palumbo
Assistant Counsel
Division of Legal Counsel

DATED: June 15, 2018

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

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE TO COMMENTS

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by its attorneys, and respectfully submits to the Illinois Pollution Control Board ("Board") its response to comments filed by the Illinois Attorney General's Office ("Illinois AGO") and the Environmental Groups on June 1, 2018.

I. The Illinois AGO and Environmental Groups Misrepresent the Standard for Promulgating a Board Regulation.

As a threshold matter, independent of arguments for or against the Agency's proposed amendments in this particular rulemaking, the Agency is incredibly disturbed by the incorrect statements provided to the Board by the Illinois AGO and the Environmental Groups regarding the applicable standards for promulgating a Board regulation. While the Illinois AGO and Environmental Groups can disagree with the Agency's proposal in this rulemaking, these participants are not entitled to rewrite the basic, fundamental tenets of rulemaking in Illinois.

First, the Board is not required to find a net environmental benefit in order to adopt a rule, and it is certainly not required to find a net environmental benefit based on actual emissions reductions. The Illinois AGO states that "the Board should not adopt any amendments to the MPS unless they offer an environmental benefit in the form of actual emissions reductions." Post-Hearing Comments of the Illinois Attorney General's Office, June 1, 2018 at 7 (hereafter "Illinois AGO Comments"). The Environmental Groups go a step further and assert that "[t]he

Board *must* reject a proposed rule if it fails to provide an actual, net environmental benefit." Comments of the Environmental Groups, June 1, 2018 at 6 (hereafter "Environmental Groups' Comments") (emphasis added). The Environmental Groups further claim that "the environmental benefit *cannot* be measured 'on paper' alone but *must* be an actual, real-world benefit." *Id. at 7* (emphasis added). They allege that the Board has "consistently required the environmental benefit to be an actual emission reduction." *Id.* at 8. These claims have absolutely no basis in fact or in Illinois law.[1]

The Board is not required to find an environmental benefit or actual emissions reductions in order to adopt a proposed rule. Neither the Environmental Protection Act ("Act") nor the Board's regulations require a finding of environmental benefit, nor do they define "environmental benefit" as a reduction in actual emissions. This is a fictional standard that the Illinois AGO and Environmental Groups are advocating simply to further their position in this rulemaking. If adopted by the Board, such a standard would have broad negative ramifications for the rulemaking process in general. It would call into question numerous prior Board rulemakings in which amendments adopted by the Board yielded no "actual environmental benefit" as defined by the AGO and Environmental Groups, including:

> R15-21, in which the Agency explained that its proposed source-specific SO_2 limitations in Subpart AA of Part 214 may yield reductions in allowable emissions only "[i]n instances where the source's actual emissions are already less than the proposed limits, the source may not need to institute any additional control measures at all." R15-21, *In the Matter of: Amendments to 35 Ill. Adm. Code Part 214, Sulfur Limitations, Part 217, Nitrogen Oxides Emissions, and Part 225, Control of Emissions from Large Combustion Sources, Technical Support Document* at 9;

[1] Environmental Groups cite the Board's decision in PCB 12-126, a regulatory relief proceeding, as support for the concept that the Board requires a finding of environmental benefit measured in actual emissions. Nothing in that docket, however, supports such a contention; the Board examined environmental impact and found environmental benefit, but it did *not* establish environmental benefit or a reduction in actual emissions as prerequisites for promulgation of a rule or for granting regulatory relief.

R10-8, in which the Agency explained it could not estimate emission reductions for some of its proposed changes and estimated that reductions from other changes were negligible or zero. R10-8, *In the Matter of: Reasonably Available Control Technology for Volatile Organic Material Emissions from Group II Consumer & Commercial Products: Proposed Amendments to 35 Ill. Adm. Code 211, 218, and 219, Technical Support Document* R10-10, *In the Matter of: Reasonably Available Control Technology for Volatile Organic Material Emissions from Group III Consumer & Commercial Products: Proposed Amendments to 35 Ill. Adm. Code 218 and 219, Technical Support Document* at 34;

R10-20, in which the Agency explained that it was unable to estimate emission reductions from the Agency's proposed amendments. R10-20, *In the Matter of: Reasonably Available Control Technology for Volatile Organic Material Emissions from Group IV Consumer & Commercial Products: Proposed Amendments to 35 Ill. Adm. Code 211, 218, and 219, Technical Support Document* at 9. For other proposed amendments for which the Agency did estimate emission reductions, it explained that such reductions "include reductions that have already occurred at sources since the current regulations were implemented, and not necessarily [actual] reductions from current emission levels." *Id.* at 18.

All of the rulemakings listed above were federally required, regardless of whether or not they yielded reductions of actual emissions. Requiring actual emissions reductions would threaten not only the legitimacy of these and other prior rulemakings, but also promulgation of future rules necessary to meet the State's obligations under the Clean Air Act ("CAA"). Additional rulemakings, not federally required, would similarly be impacted. The Board would be unable to adopt "clean-up" amendments, for example, (including the clean-up proposals currently before the Board in R18-21, *In the Matter of: Amendments to 35 Ill. Adm. Code Subtitle B*; R18-23, *In the Matter of: Amendments to 35 Ill. Adm. Code Subtitle C*; R18-24, *In the Matter of: Amendments to 35 Ill. Adm. Code Subtitle D*; R18-25, *In the Matter of: Amendments to 35 Ill. Adm. Code Subtitle E*; R18-26, *In the Matter of: Amendments to 35 Ill. Adm. Code Subtitle F*; R18-27, *In the Matter of: Amendments to 35 Ill. Adm. Code Subtitle G*; R18-28, *In the Matter of: Amendments to 35 Ill. Adm. Code Subtitle I*; R18-29, *In the Matter of: Amendments to 35 Ill. Adm. Code Subtitle M*; R18-30, *In the Matter of: Amendments to 35 Ill. Adm. Code Subtitle O*) or sunsets/repeals of outdated rules (including the sunset rulemaking currently before

the Board in R18-22, *In the Matter of: Amendment to 35 Ill. Adm. Code 205, Emissions Reduction Market System*), or rules extending compliance deadlines. This is not tenable.

Additionally, the Illinois AGO and Environmental Groups incessantly point to R09-10 in support of this net environmental benefit standard for rulemakings. Illinois AGO Comments at 4-5, 8, 10-11, 25, 35-37, 39-42; Environmental Groups' Comments at 3, 6-7, 9, 12. In R09-10, Ameren provided an analysis showing a projected environmental benefit from the proposed change to the MPS. Such an analysis did not create a precedent requiring all future rulemaking proposals to meet such a standard.[2] Indeed, as explained above, numerous rule amendments adopted by the Board have not resulted in a net environmental benefit based on actual emissions. Net environmental benefit is simply not required by the Act or the Board's rules. It may be a component of the Board's consideration of environmental impact and the factors set forth in Section 27(a) of the Act in some rulemakings and regulatory relief matters, but it is not the appropriate standard in many proceedings (for example, the rulemakings listed above) and it is not mandated in any proceeding.

Along these same lines, a net environmental benefit is not required for the Board to grant a variance. The Environmental Groups assert that "[t]his environmental benefit standard is also imposed in order for a regulated entity to obtain a variance. Arguably, the standard should be higher when a regulated entity is seeking relief in the form of a rulemaking." Environmental Groups' Comments at 6. Again, this "standard" has no basis in the Act or Board regulations. The Act and regulations provide only that the Board may grant a variance if it finds that

[2] The Illinois AGO has stressed several times that R09-10 was the only other rulemaking that amended the MPS, implying that when the Board adopts amendments to a regulation, its analysis establishes the standard for all future amendments to that particular regulation. Tr. Apr. 17, 2018 at 77, 114; Illinois AGO's Comments at 9. In other words, since the Board examined projected future emissions reductions in R09-10, it should not adopt another MPS amendment without doing so. This is another fictional concept that has no basis in law or in past Board practice. It could have negative ramifications on future rulemakings if legitimized by the Board in this proceeding, as it could lead to regulation-specific standards for amendments.

"compliance with any rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship." 415 ILCS 5/35(a); 35 Ill. Adm. Code 104.238. As part of this analysis, the Board, of course, examines environmental impact. The Board's regulations require a petitioner for a variance to provide "a description of the environmental impact of the petitioner's activity" and also require the Agency to address environmental impact in its recommendation, but the Board is not required to find a benefit as a prerequisite to providing regulatory relief. 35 Ill. Adm. Code 104.204(g), 104.216.

In fact, two air variances were granted by the Board in 2016 and 2017 that involved net environmental *dis*benefit. *Exelon Generation, LLC v. IEPA*, PCB 16-106, Opinion and Order of the Board 14 (Sept. 16, 2016); *Calpine Corp. v. IEPA*, PCB 16-112, Opinion and Order of the Board 9 (Aug. 17, 2017). In both proceedings, the Board found that, while granting the variance would cause a minimal increase in SO_2 emissions, both petitioners had demonstrated arbitrary and unreasonable hardship. *Id.* The Board granted both petitioners' request for relief.

Next, the Environmental Groups state, "[t]o demonstrate that the amendment is necessary, parties must demonstrate that the rule change is required because the current rule is not an economically reasonable way to reduce pollution." Environmental Group's Comments at 8. Likewise, the Illinois AGO claims that the Illinois EPA failed to consider "the technical feasibility and economic reasonableness of Dynegy complying with the existing MPS." Illinois AGO Comments at 20. This is not the correct standard for assessing technical feasibility or economic reasonableness under Section 27(a) of the Act. This provision states, in part:

> In promulgating regulations under this Act, the Board shall take into account. . . the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution.

415 ILCS 5/27(a). The analysis is whether the currently-proposed *amendments* are technically feasible and economically reasonable, not whether the *existing rule* is; whether the existing rule meets that criteria was considered when the original rule was adopted, and it is not an issue in this rulemaking.[3] If the Board should only adopt amendments in instances when the current rule is no longer technically feasible or economically reasonable, as advocated by Environmental Groups and the Illinois AGO, it could be argued that the Board could never tighten an emission, work practice, or control device standard because the existing rules are still feasible and reasonable. Environmental Groups and the Illinois AGO advocate for this interpretation of the Act because it furthers their arguments here, but the Agency and the Board cannot afford to be shortsighted on the broader consequences.

Further, while the Agency's proposed amendments are both technically feasible and economically reasonable, the Board does not have to find an amendment meets these criteria in order to adopt it. The Illinois Supreme Court has held:

> We conclude section 27(a) does not impose specific evidentiary requirements on the Board, thereby limiting its authority to promulgate only regulations that it has determined to be technically feasible and economically reasonable. Rather, section 27(a) requires only that the Board consider or take into account the factors set forth therein. The Board must then use its technical expertise and judgment in balancing any hardship that the regulations may cause to dischargers against its statutorily mandated purpose and function of protecting our environment and public health.

Granite City Div. of Nat. Steel Co. v. Il. Pollution Control Bd., 155 Ill.2d 149, 183 (Apr. 15, 1993).

The standards for adopting a rulemaking put forth by the Illinois AGO and Environmental Groups are incorrect and inconsistent with the language in the Act and the

[3] As explained the Agency's Post-Hearing Comments, the Board has historically employed a cost-benefit analysis, which generally has involved measuring the cost of implementing pollution control technology required by a proposed rulemaking against the benefit to the public in reducing pollution. Illinois EPA Post-Hearing Comments at 24.

Board's regulations. These fabricated standards and the "definitions" and interpretations that the Illinois AGO and Environmental Groups then apply to those standards, have broad ramifications for regulatory proceedings in general. Therefore, regardless of what amendments the Board ultimately adopts in this rulemaking, the Board should *not* legitimize the above misstatements of Illinois law.

II. The Illinois EPA's Proposal Is Not Arbitrary and Capricious Because It Is Well-Reasoned, Consistent, and Supported by the Record.

The Illinois AGO asserts over and over again that the Agency's proposal is arbitrary and that "the record before the Board does not support adoption of Illinois EPA's proposal." Illinois AGO's Comments at 2, 4, 7, 12, 40, 43, 46. Contrary to these repeated assertions, the Illinois EPA's proposed mass-based limitations and methodology are reasonable and supported by the record, as outlined in detail in the Agency's Post-Hearing Comments. Ironically, the Illinois AGO's own methodologies, data points, and proposals to the Board are arbitrary and unsupported. To date, it has provided the Board different analyses based on specific pieces of historical data hand-picked by the Illinois AGO.

The Agency set forth in comments the logical steps it followed in developing its proposal. *See* Illinois EPA Post-Hearing Comments at 2-6. The Agency initially proposed an annual SO_2 limit of 55,000 tons and an annual NOx limit of 25,000 tons in order to maintain commitments made in its Regional Haze State Implementation Plan ("SIP"). *Illinois EPA's Technical Support Document* at 9. The Regional Haze SIP anticipates a total of 55,953 tons of annual SO_2 emissions and 27,951 tons of annual NOx emissions from the units in both current MPS Groups. *Id.* at 19. The Agency's proposal constitutes a reduction in allowable emissions for the proposed combined MPS Group from full capacity estimates of 66,354 tons of SO_2 and 32,841 tons of NOx annually. *Id.* at 9, 11. The Agency demonstrated that this proposal will not

interfere with any federal air quality standard or CAA requirement, satisfying the anti-backsliding requirements set forth in Section 110(l) of the CAA. Following the first hearing, the Agency sought to compromise with other rulemaking participants by supporting a mass-based SO_2 limitation of 49,000 tons per year. Illinois Environmental Protection Agency's Responses and Information Requested from January Hearings 2 (Feb. 16, 2018). The Agency has consistently utilized the same methodology of calculating allowable emissions as the Agency uses in many other contexts and rulemakings, a methodology sanctioned by USEPA.

In contrast to the Agency's objective, well-reasoned approach, the Illinois AGO has advocated that the Board utilize AGO-selected historical data in setting emissions limitations, despite acknowledging that using different historical data would yield different limitations. Initially, in prefiled testimony for the first hearing, the Illinois AGO presented the Board with a method of calculating allowable emissions crafted by the Illinois AGO, different from the Agency's historical approach. Using this method, it claimed that the MPS Groups' maximum allowable emissions should be considered to be no more than 49,305 tons for SO_2 and 29,140 tons for NOx based on the units' maximum heat input under the current MPS standard. Prefiled Testimony of James Gignac 18-19 (Dec. 11, 2017); Tr. Jan. 17, 2017 at 179. This methodology was referred to as a "theoretical exercise" and something to be "used only as an analytical tool." Tr. Jan. 17, 2018 at 175; Illinois AGO's Comments at 17. The Illinois AGO calculated those emission levels by multiplying the maximum heat input of well-controlled units in the MPS Groups by their actual emission rates in 2016 to determine how much other units in those groups could operate under the MPS, and the resulting emissions in that scenario. Tr. Jan. 17, 2018 at 175.

Subsequently, in prefiled testimony for the third hearing, the Illinois AGO presented a different exercise in which it calculated different numbers that now form the basis of its suggestions to the Board. Prefiled Testimony of Andrew Armstrong 17-19 (Apr. 3, 2018). The Illinois AGO suggests 34,094 tons for SO_2 and 18,920 tons for NOx by multiplying 2002 unit-level heat inputs by 2017 unit-level emission rates. *Id*; Illinois AGO's Comments at 17. The Environmental Groups likewise support these numbers. Environmental Groups' Comments at 24-25. These suggested limits, however, are also arbitrary; the Illinois AGO itself admitted that if data from different years were utilized, the calculations could result in different numbers. Illinois AGO's Comments at 44. As the Agency explained in detail at the third hearing and in post-hearing comments, the Illinois AGO's methodology is flawed and its chosen data points are problematic. Tr. Apr. 17, 2018 at 133-43.

In post-hearing comments, the Illinois AGO provided the Board with yet another new concept. As an alternative to its suggested caps, the Illinois AGO suggests that the Board adopt "annual caps totaling 44,920 tons of SO_2 and 22,469 tons of NOx for the two current MPS Groups, but declin[e] to combine the Groups." Illinois AGO's Comments at 41. The Illinois AGO then suggests these caps be divided up with 16,972 tons of SO_2 and 9,000 tons of NOx for the Dynegy Group, and 27,948 tons of SO_2 and 13,469 tons of NOx for the Old Ameren Group. *Id.* The Illinois AGO states its alternative proposal is based on actual heat inputs and unit-level emission rates. *Id.* at 46-47. The Illinois AGO provides insufficient support for this proposal, and it is unclear to the Agency at this time what the ramifications would be if the Board adopts the above limitations.

The Illinois AGO admitted "there are different ways in which this data could be used to predict future emissions." *Id.* at 44. Indeed, there are a multitude of methodologies that can be

used to project future emissions based on current rules and historical data. Tr. Apr. 17, 2018 at 143. However, the Illinois EPA's method is objective and consistent with USEPA's recognized method of calculating allowable emissions pursuant to Section 110(l) of the CAA. The Illinois AGO and the Environmental Groups do not possess the expertise to develop emission limitations or Section 110(l) demonstrations, and therefore, are often inaccurate in their conclusions and assertions.[4]

It is the Illinois AGO's suggested caps that are arbitrary and capricious as its suggested limits cannot be supported with any rational methodology that could be used in any other circumstance, and it ignores the economics of the power market, the changes in ownership of the MPS Groups, and the retirements of many MPS units, which are factors that led to the proposed amendments. If for some reason, the Board chooses to adopt mass caps of 34,094 tons for SO_2 and 18,920 tons for NOx, the Agency strongly recommends that the Board refrain from endorsing the methodology used by the Illinois AGO to arrive at these numbers.

III. The Illinois EPA Did Not Intentionally Withhold Information About the Pollution Control Equipment at the Newton Power Station.

The Illinois AGO repeatedly and incorrectly implies that the Illinois EPA attempted to conceal a pollution control device at the Dynegy Newton Unit 1, going so far as to call it "'mystery' sorbent injection equipment" in a parenthetical not even related to the topic of the sentence. Illinois AGO's Comments at 7, 19, 22, 24, 30, 33. The Agency did not conceal this device, which is a pilot evaluation of sorbent control, and the Agency denies the suggestion that it knowingly hid this information from the Board.

[4] The Agency has already refuted the testimony of Brian Urbaszewski, the Environmental Groups' only witness regarding health impacts, in its Post-Hearing Comments.

In response to the Board's Prefiled Questions for the first hearing, the Agency provided a table listing each facility and unit along with the permanently-installed pollution control equipment. Illinois EPA's Responses to Prefiled Questions 7 (Jan. 12, 2018). This sorbent injection system was not included in this chart because the control system is not required, is not permanent, and there is no requirement for it to be operated in order to comply with a specific SO_2 emission rate for. Tr. Apr. 17, 2018 at 156-59. The revised construction permit for the sorbent injection equipment was issued "to conduct pilot evaluations of sorbent injection on one or both of the coal-fired boiler(s)" at the Newton Power Station. Illinois Power Generating Company Construction Permit – Revised 9 (June 9, 2017).

At the third hearing, the Illinois AGO questioned the Agency about this equipment, pointing to Condition 1.b.i of the revised construction permit allowing ductwork sorbent injection to be conducted on an ongoing basis. Tr. Apr. 17, 2018 at 158. The Illinois AGO incorrectly interpreted "ongoing basis" to mean "permanent operation." Illinois AGO's Comments at 19. The phrase "ongoing basis" in the revised permit simply means that the source is not limited to the 1,000 hours of operation specified in the original construction permit. Illinois Power Generating Company Construction Permit – Revised 9 (June 9, 2017). The revised permit, in saying "ongoing basis" does not *mandate* operation of this equipment at any specific time or for any length of time; rather, it gives Illinois Power Generating Company the discretion to operate the pilot study for as many hours as desired.[5]

[5] Moreover, the language of the revised permit further supports the temporary nature of the sorbent injection equipment: Condition 2-3 states "*If* the Permittee operates the affected system . . ."; Condition 5-3 sets forth emission testing requirements, "*unless* the Permittee has discontinued sorbent injection"; and Condition 12 states that "the Permittee *may* operate the affected sorbent injection equipment" provided that it has submitted a permit modification. Illinois Power Generating Company Construction Permit – Revised 2, 6, 9 (June 9, 2017) (emphasis added).

In sum, the Agency has cleared up this mystery. There was no nefarious intent by the Agency in not including this pilot evaluation equipment in the chart provided to the Board.

IV. Inaccuracies and Mischaracterizations

The Illinois AGO's and Environmental Groups' Comments contain a number of inaccuracies and mischaracterizations. These are minor issues and so are only addressed briefly below.

- The Illinois AGO mischaracterizes Agency testimony, stating, "[a]t hearing, Illinois EPA appeared to be unconcerned with the potential of increased emissions, questioning, for example, whether NOx emissions from the MPS units have any discernible downwind impact on ozone concentrations." Illinois AGO's Comments at 35 (citing Tr. Apr. 17, 2018 at 124). At hearing the Agency's witness stated, "[t]he transport of NOx emissions is complicated -- extremely complicated. Presumably [it] may have an impact, but how much of an impact is unclear. Sometimes it can be a positive impact and sometimes it could be a negative impact when you're talking about NOx from EGU stacks." Tr. Apr. 17, 2018 at 124. This testimony is a brief explanation of the very complex chemical and meteorological reactions that occur in ozone formation, including what is sometimes known as a "NOx disbenefit," in which sometimes a reduction in NOx concentrations can actually lead to increased formation of ozone. Conveying the complicated nature of ozone formation in general terms is not the same as being unconcerned with the impact of NOx emissions on ozone formation. At the hearing, the Agency was simply informing the Board that the impact of NOx on ozone concentrations is a complicated matter.
- The Illinois AGO states "[r]ather, as Dynegy acknowledged over a decade ago, the intent of the MPS was to compel 'the installation and operation of pollution control equipment

required to achieve the [MPS] NOX and SO2 standards.'" Illinois AGO's Comments at 15-16. It cites to R06-25, Corrected Joint Statement (Aug. 23, 2006) at 4. The Corrected Joint Statement never states that the MPS was meant to "compel" installation of controls. *In the Matter of: Proposed New 35 Ill. Adm. Code 225 Control of Emissions from Large Combustion Sources*, R06-25, Corrected Joint Statement of Illinois EPA and Dynegy Midwest Generating, Inc. 4 (Aug 23, 2006).

- In Footnote 8, the Illinois AGO calls R09-10 "a 'company-proposed rulemaking' brought by Ameren." Illinois AGO's Comments at 9, FN 8. It was not. R09-10, First Notice Order and Opinion 1 (Nov. 5, 2008). The Agency proposed this rulemaking, the bulk of which involved mercury monitoring changes in the Illinois Mercury Rule, while Ameren proposed revised language to the MPS during the course of the proceeding. R09-10, Second Notice Order and Opinion 12 (Apr. 16, 2009). Also in this Footnote, the Illinois AGO cited Agency witness David Bloomberg's statement that he "could not recall very many, if any, company proposed rulemakings in my time at the Agency, at least for air" and expressed surprise that Mr. Bloomberg did not recall R09-10 even though he participated in the rulemaking, though as noted above, this was actually not a company-proposed rulemaking. Tr. Jan. 17, 2018 at 128. The R09-10 rulemaking was a larger proceeding that included a great deal more topics than the proposed amendments to the MPS. Mr. Bloomberg was then the Manager of the Bureau of Air's Compliance Section at the time of testifying in R09-10, and he provided testimony regarding mercury monitoring, not Ameren's proposed changes to the MPS.
- The Illinois AGO claims the Agency "shrugs off" pollution control installation because "controls are not cheap." Illinois AGO's Comments at 18 (quoting Tr. Jan. 17, 2018 at

53). This is a mischaracterization of Mr. Bloomberg's testimony in which he was responding to a question about installing pollutions controls to relieve Dynegy's need for operational flexibility. Mr. Bloomberg said Dynegy could install controls, "in the absence of any economic consideration . . . However, real world decisions are not made in the absence of any economic information and controls are not cheap." Tr. Jan. 17, 2018. The Agency was simply acknowledging that economic considerations play an important role in real-world decision-making.

- The Illinois AGO quotes the Illinois EPA testimony from the January 17, 2018, hearing regarding allowable emissions in comparison to actual emissions, stating "[t]o paraphrase Illinois EPA, its proposed limits 'have very little to do with actual emissions.'" Illinois AGO's Comments at 27 (quoting Tr. Jan. 17, 2018 at 47). Mr. Bloomberg's actual testimony was, "[a]s I said in response to the Dynegy questions, yes, allowable emissions often have very little to do with actual emissions throughout all of the Board's rules." Tr. Jan. 17, 2018 at 47. The Illinois AGO incorrectly replaces "allowable emissions" with "proposed limits." These are not interchangeable, especially in this case, because the Agency's proposed mass-based limits do not equal the MPS fleets' allowable emissions. The AGO's "paraphrasing" completely changed the meaning of the Agency's statement.
- The Illinois AGO cites two Illinois National Ambient Air Quality Standards ("NAAQS") Maintenance Plans in its testimony: the *Maintenance Plan for the Metro-East St. Louis Ozone Nonattainment Area for the 2008 8-Hour Ozone Standard* (Oct. 2016) ("2016 Ozone Maintenance Plan") and the *Maintenance Plan for the Chicago Nonattainment Area for the 1997 $PM_{2.5}$ National Ambient Air Quality Standards (Revised)* (Jul. 7, 2011) ("2011 $PM_{2.5}$ Maintenance Plan"). Illinois AGO's Comments at 37. In neither case

would the proposed amendments impact maintenance of the NAAQS. The Illinois AGO quotes from the 2016 Ozone Maintenance Plan seemingly to lend more import to the MPS in that Plan by stating, "[s]pecifically, Illinois EPA has relied upon the MPS as one of the State's 'primary emissions reduction measures for demonstrating attainment' of the [NAAQS] for ozone." *Id.* The MPS is one of more than 30 measures listed as "primary emissions reduction measures" in a section that simply lists every on-the-books regulation that may apply to emission sources in or around the nonattainment area ("NAA"). Importantly, all NOx emissions in the St. Louis NAA inventory were attributable to the Wood River Power Station, which has since shut down. That shutdown reduced actual NOx emissions by 2,180 tons per year in the NAA (per the 2014 inventory that was used for the Maintenance Plan), or about 30% of all point source emissions of NOx. These emission reductions will not be impacted by the proposed MPS amendments.

Similarly, the 2011 $PM_{2.5}$ Maintenance Plan shows significant emission reductions from the MPS since 2008, the year the Chicago NAA attained the 1997 $PM_{2.5}$ NAAQS. The proposed MPS amendments will not interfere with the significant reductions in $PM_{2.5}$ precursors that have occurred since 2008.

- The Environmental Groups state "[t]he MPS rule was originally passed in 2006, partly in response to federal requirements in place at that time." Environmental Groups' Comments at 2-3. The Illinois Mercury Rule, *not* the MPS, was promulgated partly in response to federal requirements. *In the Matter of: Proposed New 35 Ill. Adm. Code 225 Control of Emissions from Large Combustion Sources*, R06-25, Second Notice Opinion and Order 4-5 (Nov. 2, 2006). The MPS, which was negotiated during the Illinois

Mercury Rule proceedings, was not in response to any federal requirement. *In the Matter of: Proposed New 35 Ill. Adm. Code 225 Control of Emissions from Large Combustion Sources*, R06-25, Joint Statement 1 (July 28, 2006); *In the Matter of: Proposed New 35 Ill. Adm. Code 225 Control of Emissions from Large Combustion Sources*, R06-25, Corrected Joint Statement of Illinois EPA and Dynegy Midwest Generating, Inc. 1-2 (Aug 23, 2006).

V. Conclusion

As indicated in its Post-Hearing Comments, the Illinois EPA requests that the Board adopt its amended proposal combining the two MPS groups and setting mass-based emission limits of 49,000 tons per year for SO_2, 25,000 tons per year for annual NO_x emissions, and 11,500 tons per year for NO_x seasonal emissions.

WHEREFORE, as provided herein and throughout this proceeding, the Illinois EPA has offered considerable testimony and technical support demonstrating the adequacy of its proposed amendments in this proceeding to date. Therefore, the Illinois EPA respectfully requests that the Board adopt the rulemaking proposal.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Antonette R. Palumbo
Antonette R. Palumbo
Assistant Counsel
Division of Legal Counsel

/s/ Gina Roccaforte
Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

DATED: June 15, 2018

1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544

STATE OF ILLINOIS)
) **SS**
COUNTY OF SANGAMON)
)

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state the following:

I have electronically served the attached ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE TO COMMENTS upon the persons on the attached Service List.

My e-mail address is antonette.palumbo@illinois.gov.

The number of pages in the e-mail transmission is 20.

The e-mail transmission took place before 5:00 p.m. on June 15, 2018.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

/s/ Antonette R. Palumbo
Antonette R. Palumbo
Assistant Counsel
Division of Legal Counsel

Dated: June 15, 2018

1021 North Grand Avenue East
Springfield, Illinois 62794-9276
(217) 782-5544

SERVICE LIST

Marie Tipsord
Mark Powell
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, IL 60601-3218
marie.tipsord@illinois.gov
mark.powell@illinois.gov

Eric Lohrenz
Office of General Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702-1271
eric.lohrenz@illinois.gov

Faith Bugel
Attorney at Law
1004 Mohawk
Wilmette, IL 60091
fbugel@gmail.com

Stephen Sylvester
Illinois Attorney General's Office
69 West Washington Street, 18th Floor
Chicago, IL 60602
ssylvester@atg.state.il.us

Matthew J. Dunn, Chief
Environmental Enforcement/Asbestos
Litigation Division
Illinois Attorney General's Office
500 S. Second St.
Springfield, IL 62706
mdunn@atg.state.il.us

Katherine D. Hodge
HeplerBroom LLC
4340 Acer Grove Drive
Springfield, IL 62711
katherine.hodge@heplerbroom.com

Andrew Armstrong
Illinois Attorney General's Office
500 S. Second St.
Springfield, IL 62706
aarmstrong@atg.state.il.us

Amy C. Antoniolli
Joshua R. More
Ryan Granholm
Caitlin Ajax
Schiff Hardin LLP
233 S. Wacker Drive, Suite 7100
Chicago, IL 60606
aantoniolli@schiffhardin.com
jmore@schiffhardin.com
rgranholm@schiffhardin.com
cajax@schiffhardin.com

Greg Wannier
Staff Attorney, Sierra Club
2101 Webster St., Suite 1300
Oakland, CA 94612
greg.wannier@sierraclub.org

Katy Khayyat
Department of Commerce and
Economic Opportunity
Small Business Office
500 E. Monroe St.
Springfield, IL 62701
katy.khayyat@illinois.gov

Jean-Luc Kreitner
Justin Vickers
Environmental Law & Policy Center
35 E. Wacker Dr., Suite 1600
Chicago, IL 60601
jkreitner@elpc.org
jvickers@elpc.org