

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED NEW CAIR SO₂, CAIR NO_x)	
ANNUAL TRADING PROGRAMS,)	R06-26
35 ILL.ADM.CODE 225,)	(Rulemaking – Air)
CONTROL OF EMISSIONS FROM LARGE)	
COMBUSTION SOURCES,)	
SUBPARTS A, C, D, AND E)	

NOTICE OF FILING

To:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

Persons included on the
ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that we have today filed with the Office of the Clerk of the Pollution Control Board the APPEARANCES OF KATHLEEN C. BASSI, STEPHEN J. BONEBRAKE, and SHELDON A. ZABEL on behalf of DYNEGY MIDWEST GENERATION, INC., and MIDWEST GENERATION, LLC; MOTION FOR LEAVE TO FILE RESPONSES TO THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S MOTION FOR EXPEDITED HEARINGS AND MOTION TO HOLD REQUIRED HEARINGS IN SPRINGFIELD AND COLLINSVILLE, INSTANTER; RESPONSE TO THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S MOTION FOR EXPEDITED HEARINGS; and RESPONSE TO THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S MOTION TO HOLD REQUIRED HEARINGS IN SPRINGFIELD AND COLLINSVILLE, copies of which are herewith served upon you.

/s/ Kathleen C. Bassi

Kathleen C. Bassi

Dated: June 30, 2006

Sheldon A. Zabel
Kathleen C. Bassi
Stephen J. Bonebrake
SCHIFF HARDIN, LLP
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
312-258-5500

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 30th day of June, 2006, I have served electronically the attached APPEARANCES OF KATHLEEN C. BASSI, STEPHEN J. BONEBRAKE, and SHELDON A. ZABEL on behalf of DYNEGY MIDWEST GENERATION, INC., and MIDWEST GENERATION, LLC; MOTION FOR LEAVE TO FILE RESPONSES TO THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S MOTION FOR EXPEDITED HEARINGS AND MOTION TO HOLD REQUIRED HEARINGS IN SPRINGFIELD AND COLLINSVILLE, INSTANTER; RESPONSE TO THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S MOTION FOR EXPEDITED HEARINGS; and RESPONSE TO THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S MOTION TO HOLD REQUIRED HEARINGS IN SPRINGFIELD AND COLLINSVILLE, upon the following persons:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

and electronically and by first-class mail with postage thereon fully prepaid and affixed to the persons listed on the **ATTACHED SERVICE LIST**.

/s/ Kathleen C. Bassi

Kathleen C. Bassi

Sheldon A. Zabel
Kathleen C. Bassi
Stephen J. Bonebrake
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APPEARANCE

I, KATHLEEN C. BASSI, hereby file my appearance in this matter on behalf of
DYNEGY MIDWEST GENERATION, INC., and MIDWEST GENERATION, LLC.

Respectfully submitted,

/s/ **Kathleen C. Bassi**

Kathleen C. Bassi

Dated: June 30, 2006

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Stephen J. Bonebrake
Joshua R. More
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APPEARANCE

I, STEPHEN J. BONEBRAKE, hereby file my appearance in this matter on behalf of
DYNEGY MIDWEST GENERATION, INC., and MIDWEST GENERATION, LLC.

Respectfully submitted,

/s/ **Stephen J. Bonebrake**
Stephen J. Bonebrake

Dated: June 30, 2006

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APPEARANCE

I, SHELDON A. ZABEL, hereby file my appearance in this matter on behalf of
DYNEGY MIDWEST GENERATION, INC., and MIDWEST GENERATION, LLC.

Respectfully submitted,

/s/ Sheldon A. Zabel

Sheldon A. Zabel

Dated: June 30, 2006

Sheldon A. Zabel
Kathleen C. Bassi
Stephen J. Bonebrake
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**DYNEGY AND MIDWEST GENERATION’S MOTION FOR LEAVE
TO FILE RESPONSES TO THE
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S
MOTION FOR EXPEDITED HEARINGS AND
MOTION TO HOLD REQUIRED HEARINGS IN SPRINGFIELD AND
COLLINSVILLE INSTANTER**

NOW COME Dynegy Midwest Generation, Inc., and Midwest Generation, LLC., (“Petitioners”) by and through their attorneys, Schiff Hardin LLP, and move for leave to file instanter the attached Responses to the Illinois Environmental Protection Agency’s Motion for Expedited Hearings and Motion to Hold Required Hearings in Springfield and Collinsville. In support of their Motion, Petitioners state as follows:

1. The Illinois Environmental Protection Agency (“Agency”) submitted the captioned proposed rulemaking to the Pollution Control Board (“Board”) on May 30, 2006. The Board did not accept the proposed rulemaking for hearing until its meeting on June 15, 2006. Included in the initial submittal were a Motion for Expedited Hearings and a Motion to Hold Required Hearings in Springfield and Collinsville. The Board held in reserve its decisions on these motions to reserve time for participants to file responses. Order, p. 2 (June 15, 2006).
2. As the Board notes on page 2 of its June 15th Order, pursuant to 35 Ill.Adm.Code § 101.500(d), responses to motions must be filed with the Board within 14 days of service on the

parties to a matter. However, whether these motions required response was not even clear until such time as the Board had accepted the filing for hearing.

3. The Agency is not prejudiced by the delay in receiving Petitioners' Responses to its Motions, and Petitioners would be unduly prejudiced and irreparably harmed if the Board does not grant this Motion for Leave to File Instantly and subsequently consider Petitioners' Responses.

WHEREFORE, for the reasons set forth above, Petitioners DYNEGY MIDWEST GENERATION, INC., and MIDWEST GENERATION, LLC, request that the Hearing Officer grant its Motion for Leave to File Responses to the Illinois Environmental Protection Agency's Motion for Expedited Hearings and Motion to Hold Required Hearings in Springfield and Collinsville, Instantly.

Respectfully submitted,

DYNEGY MIDWEST GENERATION, INC. and
MIDWEST GENERATION, LLC,

by:

/s/ **Kathleen C. Bassi**

One of Their Attorneys

Dated: June 30, 2006

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RESPONSE OF DYNEGY AND MIDWEST GENERATION TO THE AGENCY'S MOTION FOR EXPEDITED REVIEW

NOW COME Participants, DYNEGY MIDWEST GENERATION, INC., and MIDWEST GENERATION, LLC (collectively "Respondents"), by and through their attorneys, SCHIFF HARDIN LLP, and, pursuant to 35 Ill.Adm.Code § 101.500(d), respond to the Illinois Environmental Protection Agency's ("Agency") Motion for Expedited Review ("Motion"). Respondents object to the Agency's Motion because the deadline for submittal of a State Implementation Plan ("SIP") in this matter does not justify expedited review. Additionally, Respondents object to the Agency's request that the Board proceed to First Notice prior to considering the merits of the proposal. In support of their Response, Respondents state as follows:

1. The Agency submitted the above-captioned regulatory proposal to the Board on May 30, 2006, pursuant to Sections 10, 27, and 28 of the Environmental Protection Act ("Act") (415 ILCS 5/10, 27, and 28). Included in the submittal was the Motion.

2. As the Agency states in ¶ 8 of its separate Motion for Required Hearings in Springfield and Collinsville,¹ it held six outreach meetings to discuss this proposed rule. These meetings occurred weekly from January 24 through February 28, 2006. These outreach meetings also addressed the pending mercury proposal, R06-25 (“the Mercury Proposal”).

3. The Agency states that the U.S. Environmental Protection Agency (“USEPA”) has already proposed Federal Implementation Plans (“FIPs”) for those states that fail to submit SIPs providing for compliance with the emissions budgets set forth in the Clean Air Interstate Rule (70 Fed.Reg. 25161 (May 12, 2005)) (“CAIR”) by September 11, 2006 (71 Fed.Reg. 25328 (April 28, 2006)). Motion, ¶6, citing CAIR. Even had the Agency submitted this proposal pursuant to Section 28.5 of the Environmental Protection Act (415 ILCS 5/28.5) (“Act”) on May 30, 2006, the Board could not possibly have adopted any rule in time for the Agency to submit a SIP by September 11, 2006. Therefore, given the eight-month delay between promulgation of the federal CAIR and the Agency’s commencement of outreach and then the three-month delay between the time the Agency ceased holding outreach meetings in this matter, *i.e.*, February 28, 2006, and the time the Agency submitted the proposal, *i.e.*, May 30, 2006, and given that the Agency has suggested April 2007 to complete this rulemaking, Respondents conclude that the Agency is accepting a FIP until such time as it submits a rule adopted by the Board as a replacement for the FIP.

4. The Agency states that it believes that this rulemaking must be promulgated by April 2007 in order to avoid “administrative confusion for both the affected units and Illinois EPA.” Motion, ¶ 8. The Agency, however, does not explain why April 2007 is a “magic” date. The Agency does not explain why promulgating a rule later than April 2007 will create

¹ Respondents are filing a separate response to the Agency’s Motion for Required Hearings in Springfield and Collinsville concurrently with this Response.

“administrative confusion.” The Agency has not explained why expedited review is necessary, particularly considering that the Agency points out that USEPA will not allocate allowances until July 1, 2007, and then will not record them into electric generating units’ (“EGUs”) allowance accounts until September 1, 2007. Apparently, there was more than enough time for the Agency to delay commencing outreach and then filing, and there is more than enough time for the Board to promulgate a rule without expedited review. The Agency has not supported its Motion. Moreover, the Agency’s unexplained delays in moving forward with its submittal should not translate into a need for undue haste on the part of the Board.

5. The Agency also requests that the Board proceed to First Notice without reaching a decision on the merits. Motion, ¶ 11. Respondents believe that, because this rulemaking is proceeding under Section 28 of the Act rather than Section 28.5, it is appropriate for the Board to follow its usual practice and to consider the merits of the proposal prior to proceeding to First Notice. The Board will gain neither time nor efficiency by proceeding to First Notice prior to considering the merits of the proposal. Moreover, the Board is not required to proceed to First Notice prior to considering the merits of the proposal under Section 28, in contrast to the requirements of Section 28.5 of the Act. Because the Agency proposed this matter under Section 28, the Agency should not expect that the Board will proceed as if this proposal were submitted pursuant to Section 28.5. Moreover, Respondents note that the Statement of Reasons contains some information that is incorrect. As a minor example, Randolph Township, if there is one at all, is not part of the 8-hour ozone nonattainment area. Motion, Fn. 2; *see* 40 CFR § 81.314. Therefore, the Statement of Reasons does not provide all of the information necessary for the Board to proceed to First Notice, or, in the alternative, the information provided in the Statement

of Reasons is not sufficiently accurate to support proceeding to First Notice where doing so is not required by the statute.

6. The Agency argued that it suffers staffing constraints as support for the Motion for Required Hearings in Springfield and Collinsville, filed concurrently with its Motion for Expedited Review as part of the initial submittal in this matter, noting that many of the same Agency staff are necessary for both this matter and the Mercury Proposal. In their response to the Motion for Required Hearings in Springfield and Collinsville, Respondents noted that they, too, have staffing constraints and requested that the Board not schedule hearings in this matter concurrently with or back-to-back to the hearings scheduled in R06-25. Respondents reiterate that request here. Although the concept of "expedited review" is not defined by the Agency, Respondents object to expediting the schedule of hearings in this matter where they would occur concurrently with or back-to-back to the hearings currently scheduled in R06-25 or that may be scheduled for the future. Respondents have limited environmental staff, only a few of whom are available for assignment to these regulatory matters as well as the other matters currently under development at the Agency that also affect EGUs. It is not possible for Respondents to properly consider the Agency's proposal and prepare for cross-examination of the Agency's witnesses and presentation of their own witnesses if these hearings conflict with the hearings in R06-25 as described above. This would create undue hardship for Respondents. Therefore, Respondents object to "expedited review," particularly to the extent that it involves hearings that may conflict with the hearings in R06-25.

WHEREFORE, for the reasons set forth above, Respondents DYNEGY MIDWEST GENERATION, INC., and MIDWEST GENERATION, LLC, object to the Agency's Motion for Expedited Review.

Respectfully submitted,

DYNEGY MIDWEST GENERATION, INC.,
and MIDWEST GENERATION, LLC

by

/s/ Kathleen C. Bassi

One of Their Attorneys

Dated: June 30, 2006

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**RESPONSE OF DYNEGY AND MIDWEST GENERATION TO THE AGENCY’S
MOTION TO HOLD REQUIRED HEARINGS
IN SPRINGFIELD AND COLLINSVILLE**

NOW COME Participants, DYNEGY MIDWEST GENERATION, INC., and MIDWEST GENERATION, LLC (collectively “Respondents”), by and through their attorneys, SCHIFF HARDIN LLP, and, pursuant to 35 Ill.Adm.Code § 101.500(d), respond to the Illinois Environmental Protection Agency’s (“Agency”) Motion to Hold Required Hearings in Springfield and Collinsville (“Motion”). Respondents do not object to the Agency’s Motion but request that the Board also consider the staffing impacts to Respondents of multiple rulemakings affecting Respondents as the Agency requests for itself. Additionally, Respondents request that at least one hearing be held in Chicago. In support of their Response, Respondents state as follows:

1. The Agency submitted the above-captioned regulatory proposal to the Board on May 30, 2006, pursuant to Sections 10, 27, and 28 of the Environmental Protection Act (“Act”) (415 ILCS 5/10, 27, and 28). Included in the submittal was the Motion.

2. In its Motion, the Agency states that “many of the Illinois EPA staff that will be involved in the hearings for this rulemaking proposal will also be involved in the Illinois EPA’s

recently filed rulemaking proposal concerning mercury emissions.” Motion, ¶ 5. The Agency continues:

The potential for even some of those personnel to be forced to choose between participating in one hearing at the expense of missing another would impose a severe hardship upon the Illinois EPA in presenting and defending the merits of its proposals.

Motion, ¶ 5.

3. The staffing hardship that the Agency describes in its Motion applies as well and likely to an even greater extent to Respondents, as development and implementation of environmental regulations is not Respondents’ business. Respondents have a limited number of staff persons who work in the environmental area and an even smaller number in their corporate offices who are available for assignment to environmental issues and to these rulemakings. The demands of two pending rulemakings in addition to the matters under development at the Agency that will affect Respondents are quite taxing. Therefore, we also request that the Board consider staffing constraints on Respondents as it schedules hearings in this matter.

4. Concurrent with the filing of this Response, Respondents are filing a Response to the Agency’s Motion for Expedited Hearings. Respondents note that the adoption deadlines identified in the Motion for Expedited Hearings allow sufficient time for the Board to schedule hearings in this matter that do not conflict with or occur back-to-back with hearings in the proposed mercury rulemaking, R06-25, thereby reducing concerns with staffing and preparation issues in both proceedings.

5. While Respondents do not object to a hearing in Collinsville for the reasons set forth in the Agency’s Motion, Respondents would prefer that the hearing more or less devoted to presentation of any witnesses on behalf of Respondents occur in Chicago. Respondents’ counsel, as well as the counsel of other sources affected by this rulemaking and of environmental

groups that may participate in this rulemaking, are located in Chicago. Further, Chicago offers greater ease of access to Respondents' witnesses. Therefore, Respondents request that the Board consider their preference for the hearing devoted to presentation of opponents' case, assuming such an organization of the hearings, to be held in Chicago.

WHEREFORE, for the reasons set forth above, Respondents DYNEGY MIDWEST GENERATION, INC., and MIDWEST GENERATION, LLC, do not object to the Agency's Motion that the Board schedule hearings in Springfield and Collinsville but request that the Board consider Respondents' staffing and access issues as well as those of the Agency and (1) not schedule the hearings in this matter concurrently with or back-to-back to the hearings in R06-25 and (2) schedule a hearing in Chicago during which the Board anticipates that Respondents would present witnesses.

Respectfully submitted,

DYNEGY MIDWEST GENERATION, INC.,
and MIDWEST GENERATION, LLC

by

/s/ **Kathleen C. Bassi**

One of Their Attorneys

Dated: June 30, 2006

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