

Dynegy Midwest Generation, Inc.
1000 Louisiana Street, Suite 5800
Houston, Texas 77002
Phone 713.507.6400
www.dynegy.com

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STATE OF ILLINOIS
Pollution Control Board

The Honorable Thomas E. Johnson
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

Dear Mr. Johnson:

Dynegy offers this letter to clarify a misunderstanding surrounding language in the July 26, 2007 Opinion and Order of the Illinois Pollution Control Board in R06-26, Proposed New Clean Air Interstate Rules (CAIR), SO₂, NO_x Annual and NO_x Ozone Season Trading Programs, 35 ILL. ADM. CODE 225, Subparts A, C, D, E, and F. In the Joint Motion to Amend the Proposed Rulemaking filed on March 13, 2007 Dynegy and IEPA agreed that Dynegy's pending Motion to Dismiss would be withdrawn if the Board included the offered amended language in the Board's First Notice.

On page 6 of the IPCB, Opinion and Order of the Board, in the paragraph labeled "Motion to Dismiss and Amend" the Board correctly states that "on March 13, 2007, IEPA and Dynegy filed a joint motion to amend Section 225.465(b) (4) (B) of the proposed rule to address Dynegy's concerns regarding the manner in which the Clean Air Set Aside (CASA) provisions penalized sources with consent decrees relative to their baghouse projects." The Board also correctly states that Dynegy requested that the Board stay action on the motion to dismiss and that Dynegy and the IEPA agreed that if the Board included the offered amendatory language of the Joint Motion in the Board's First Notice of the Illinois Clean Air Interstate Rule, Dynegy would withdraw its Motion to Dismiss.

However, the Board incorrectly states that its April 19, 2007 First-Notice Opinion and Order incorporated the amendatory language offered by Dynegy/IEPA in the Joint Motion and that Dynegy had failed to file the promised withdrawal of the Motion to Dismiss. In fact a comparison of the amendatory language offered by Dynegy/IEPA in the Joint Motion, the First-Notice Opinion and Order, and the Second-Notice Opinion and Order clearly illustrates that at First-Notice rule at Section 225.465 (b) (4) (B) in the very last line it uses the term "heat ratio" instead of the term "heat rate", the term used in offered amendatory language and upon Second-Notice. This First-Notice error, while appearing to be a typographical error, significantly

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changed the meaning of the provision. It was one of many changes that were corrected or requested between First and Second Notice.

Since the language used by the Board in its First Notice differed in a significant manner from the offered amendatory language of the Joint Motion, Dynegy was not in a position to withdraw the Motion to Dismiss, nor was it required to do so under its agreement with IEPA. Upon Second-Notice, when the actual language change was made, the Board, upon its own motion, struck Dynegy's Motion to Dismiss making it impossible for Dynegy to withdraw the Motion to Dismiss. Had the change been made at First-Notice or were the Motion to Dismiss still alive following Second Notice, Dynegy would have promptly filed the promised withdraw of the Motion to Dismiss.

Hopefully, this letter provides some clarity as to the actions of Dynegy in this regard. We have arranged for a copy of this letter to be placed in the rulemaking docket for PCB Docket No. R06-26. Please advise should you have any comments or concerns.

Sincerely,



James W. Ingram
Vice President

cc: Vicki Thomas, JCAR, Executive Director
Members of JCAR
Honorable Doug Scott, Director, IEPA
Mr. Steve Frenkel, Sr. Policy Development,
Office of the Governor