

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)

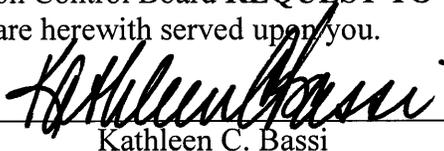
NOTICE OF FILING

To:

John T. Therriault, Assistant 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 **REQUEST TO CLARIFY SECOND NOTICE OPINION**, copies of which are herewith served upon you.


Kathleen C. Bassi

Dated: August 21, 2007

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

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REQUEST TO CLARIFY SECOND NOTICE OPINION

NOW COMES Participant, DYNEGY MIDWEST GENERATION, INC. (“Dynergy”), by and through its attorneys, SCHIFF HARDIN LLP, and pursuant to 35 Ill. Adm. Code §§ 102.110 and 102.108, for the reasons set forth below, requests the Board to waive non-statutory requirements and to accept the attached letter, clarifying a point in the Second Notice Opinion (July 26, 2007). Dynergy does not seek a substantive change to the rule adopted at Second Notice but rather merely to clarify a point made clear in the attached letter.

Respectfully submitted,

DYNEGY MIDWEST GENERATION, INC.,
MIDWEST GENERATION, LLC, and
SOUTHERN ILLINOIS POWER COOPERATIVE

by:



One of Their Attorneys

Electronic Filing, Received, Clerk's Office, August 21, 2007

Dated: August 21, 2007

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August 21, 2007

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

The Honorable Thomas E. Johnson
Illinois Pollution Control Board
August 21, 2007
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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

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 21st day of August, 2007, I have served electronically the attached **REQUEST TO CLARIFY SECOND NOTICE OPINION** upon the following persons:

John T. Therriault, Assistant 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**.


Kathleen C. Bassi

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Electronic Filing, Received, Clerk's Office, August 21, 2007

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(R06-26)

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(R06-26)

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