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JUL 27 2012

STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

July 27, 2012

DYNEGY MIDWEST GENERATION, LLC, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 ILLINOIS ENVIRONMENTAL PROTECTON )  
 AGENCY, )  
 )  
 Respondent. )  
 )

PCB 12-135  
(Variance - Air)

ORIGINAL  
RETURN TO CLERK'S OFFICE

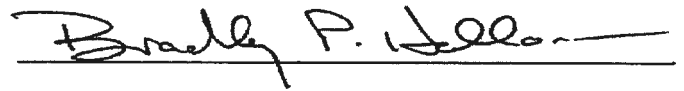
**HEARING OFFICER ORDER**

On July 26, 2012, all parties participated in a telephonic status conference with the hearing officer. It is noted that on June 21, 2012, the Board accepted Dynegy Midwest Generation LLC, (Dynegy) petition for variance, but made no determination on the informational sufficiency or merits of the petition. Dynegy Midwest Generation, LLC, v. Illinois Environmental Protection Agency, PCB 12-135, slip op. 2 (June 21 2012). The Board further stated that “[t]he Board, through orders of its own or its hearing officer, may direct Dynegy to provide additional information concerning the petition.” *Id.*

To that end, the hearing officer directs Dynegy to address the issues set forth in the Attachment to this order. Dynegy must file its response on or before August 9, 2012. The Agency or any other person may file a comment on Dynegy’s response no later than 14 days after the filing of the response.

The parties or their legal representatives are directed to participate in a telephonic pre-hearing conference with the hearing officer on August 9, 2012, 10:00 a.m. The telephonic conference must be initiated by the petitioner, but each party is nonetheless responsible for its own appearance. At the conference, the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.



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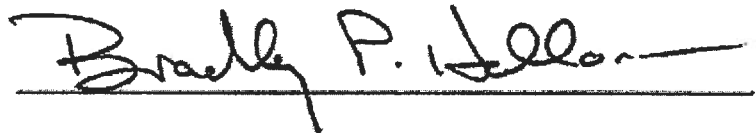
Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
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312.814.8917

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on July 27, 2012, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on July 27, 2012:

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Bradley P. Halloran  
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## ATTACHMENT

### PCB 12-135 DYNEGY MIDWEST GENERATION, LLC

#### QUESTIONS FOR DYNEGY

##### 35 IAC 104.204(b)(1)

1. The Petition at 2 states, “DMG notes that granting this requested variance does not affect the requirement for DMG to comply with applicable SO<sub>2</sub> emission rates, nor would it directly result in an air quality impact in Illinois.” (Pet. at 2.)

The Petition at 12 states, “The CSAPR also establishes two interstate trading programs for SO<sub>2</sub>, one for sources in Group 1 states, including Illinois, that need to make larger reductions to eliminate their significant downwind contribution to nonattainment...”

The Petition at page 14 states, “[T]he allowance trading permitted in the CSAPR is backed by sound science and the CSAPR contains the necessary provisions to ensure that needed emissions reductions occur in each individual state, including in Illinois and those states that affect Illinois’ air quality.”

The Petition at page 14 also references 77 Fed. Reg. at 10,330, which reads as follows:

EPA also conducted additional modeling of projected EGU emissions in 2012 and 2013 under the Transport Rule [CSAPR\*] without applying the assurance provisions to those years.[] This modeling shows that the Transport Rule trading programs will still result in emission reductions that cause total emission reductions in *each state* to be below the level of the applicable state assurance level, even when sources are not subject to the assurance provisions in those years. These very short-term projections are based on inputs that reflect validated, currently installed emission controls resulting in a higher degree of certainty than longer-term emission projections. 77 Fed. Reg. 10,330 (February 21, 2012).

\*The Cross-State Air Pollution Rule (CSAPR) is another name for the Transport Rule.

- (a) Please describe how CSAPR is structured to ensure upwind states are limited in their contribution of emissions in downwind states.
- (b) Please identify the potential areas where DMG’s SO<sub>2</sub> allowances could be sold or traded and the potential downwind receptor areas. Please describe any limit that defines how many allowances can be traded out of state.
- (c) Does the Illinois Environmental Protection Agency intend to propose amendments to the rules if CSAPR is implemented?

**35 IAC 104.204(b)(2)**

2. Petition at 3 states, “Exhibit 2 identifies the locations of all five of DMG’s coal-fired power plants on a copy of the map from the Agency’s Illinois Annual Air Quality Report 2006 (at App. A, p. 34), which also identifies the locations of the Agency’s air quality monitoring stations at that time.” (Pet. at 3.)
- (a) Please provide the most up-to-date map for the Ozone Monitoring Sites available from the latest Illinois Annual Air Quality Report.

**35 IAC 104.204(e)**

3. DMG estimated the value of the 23,000 excess CSAPR allowances allocated vintage year 2013 at \$9.2 million to \$57.5 million, based on market prices of \$400 to \$2,500 per ton before CSAPR was stayed. Based on USEPA’s estimate of \$1,000 per allowance, DMG estimated the value would be \$23 million for 2013. (Pet. at 19.) DMG noted, “Of course no one can predict with any accuracy what might happen in the trading market, therefore, DMG can provide no better estimate of the hardship posed by its inability to trade these excess allowances.” (Pet. at 19.)

PC1 states, “[R]esearch conducted by the National Research Council (‘NRC’) for a 2010 report[] makes clear that each additional ton of SO<sub>2</sub> emitted by EGUs creates health impacts to the tune of thousands of dollars in damages.[]” PC1 at 3. Assuming 46,000 allowances, Citizens Groups quantify “the average damages per ton of SO<sub>2</sub> emissions from five Dynegy plants...total \$6,130 in 2007 dollars...”, based on the NRC study. PC1 at 3.

- (a) Please estimate a range for the value of excess SO<sub>2</sub> CSAPR allowances allocated for 2014.
- (b) Please estimate a range for the total economic value of the allowances for both 2013 and 2014.
- (c) Please comment on the economic impact of not being able to sell or trade the allowances on rate payers and the people of the State of Illinois.
4. The Petition on page 15 states, “DMG did not agree to the MPS allowance trading restrictions and MPS-required SO<sub>2</sub> allowance surrenders with the then non-existent and not-yet-even envisioned CSAPR SO<sub>2</sub> allowances. In that respect, the CSAPR’s SO<sub>2</sub> allowance allocations and trading program represent a fundamental change to DMG’s and the Agency mutual assumptions on which the MPS SO<sub>2</sub> allowance trading restrictions were based.” Pet. at 15.

Section 225.233(f)(4) states in pertinent part,  
For purposes of this subsection (f), NO<sub>x</sub> and SO<sub>2</sub> allowances mean allowances necessary for compliance with Sections 225.310, 225.410, or 225.510, 40 CFR 72, or Subparts AA and AAAA of 40 CFR 96, or any

future federal NO<sub>x</sub> or SO<sub>2</sub> emissions trading programs that modify or replace these programs.

Would you please further elaborate on how CSAPR represents a “fundamental change” as mentioned above?

5. Will Dynegey be able to realize allowances per section 225.233(f)(3) as well as those sought in the petition?

**35 IAC 104.204(f)**

6. Assuming an April 1, 2015 compliance deadline, please include more detail in the compliance plan proposed on page 27 of the petition. Please include the estimated time schedule for the Baldwin Unit 2 dry scrubber / fabric filter system and Havana Unit 6 dry scrubber to become operational, the estimated costs for remaining work to be done at Baldwin Unit 2 and Havana Unit 6, the amount of SO<sub>2</sub> CSAPR allocations to be sold or traded, the estimated time schedule for allowances to be sold or traded, and the time schedule when sale or trade of excess SO<sub>2</sub> CSAPR allowances will cease.

**35 IAC 104.204(g)**

7. (a) DMG states, “In the first phase of the CSAPR SO<sub>2</sub> emission reduction program (i.e. 2012-2013), DMG’s coal-fired units would be annually allocated a total of 49,012 SO<sub>2</sub> allowances.” Pet. at 13., referring to “Final CSAPR Unit Level Allocations under the FIPs” (Docket ID No. EPA-HQ-OAR-2009-0491-4970

Given that the first phase of CSAPR has been stayed, please clarify how many CSAPR SO<sub>2</sub> allowances would be allocated to DMG for 2013 and 2014, respectively.

- (b) DMG estimated 2013 and 2014 emissions would be 25,848 tons SO<sub>2</sub> / year. (Pet. Exh. 9.) DMG estimated excess CSAPR SO<sub>2</sub> allowances of 23,000 for 2013 and the same number of excess allowances for 2014 on page 18-19 of the petition. On page 26 of the petition, DMG estimates approximately 20,000 SO<sub>2</sub> allowances for 2013 and 2014. (Pet. at 18-19, 26.)

Please clarify how many of the 2013 and 2014 SO<sub>2</sub> CSAPR allowances DMG projects will be excess.

- (c) Please state the amount of SO<sub>2</sub> emissions that would be allowed from any facility if the requested variance is granted, compared to that which would result if immediate compliance is required. In particular, please provide a specific estimate of the net difference between SO<sub>2</sub> emissions under the MPS requirement of 225.233(f)(2) (considering allowances surrendered to IEPA) and under the variance for 2013 and 2014 (considering allowances to be sold or traded).

**35 IAC 104.204(j)**

8. Dynegey proposed wording for the variance on pages 26-27 of the petition, but the wording does not appear to be contingent upon CSAPR being reinstated. Would you please propose such wording?