

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

In the Matter of: )  
 )  
AMENDMENTS TO ) R2018-20  
 ) (Rulemaking – Air)  
35 ILL. ADM. CODE 225.233, )  
MULTI-POLLUTANT STANDARDS (MPS) )

**NOTICE OF FILING**

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the attached **MOTION FOR LEAVE TO REPLY IN SUPPORT OF ENVIRONMENTAL GROUPS' REQUEST FOR MODIFICATION OF HEARING HOURS ON JANUARY 17, 2018** and **PROPOSED REPLY IN SUPPORT OF ENVIRONMENTAL GROUPS' REQUEST FOR MODIFICATION OF HEARING HOURS ON JANUARY 17, 2018**, copies of which are served on you along with this notice.

Respectfully submitted,



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Dated: November 30, 2017

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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AMENDMENTS TO ) R2018–20  
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MULTI-POLLUTANT STANDARDS (MPS) )

**MOTION FOR LEAVE TO REPLY IN SUPPORT OF ENVIRONMENTAL GROUPS’  
REQUEST FOR MODIFICATION OF HEARING HOURS ON JANUARY 17, 2018**

Pursuant to Section 101.500(e) of the Pollution Control Board General Rules, and as supported by the accompanying proposed reply, Eco-Justice Collaborative, Environmental Defense Fund, Environmental Law & Policy Center, Natural Resources Defense Council, Prairie Rivers Network, Respiratory Health Association, and the Sierra Club (collectively, “Environmental Groups”) move the Illinois Pollution Control Board (“the Board”) for leave to reply to *Response to Request for Modification of Hearing Hours on January 17, 2018* (“*Dynegy Motion*”) submitted by Dynegy Midwest Generation, LLC, Illinois Power Generating Company, Illinois Power Resources Generating, LLC and Electric Energy, Inc. (collectively, “Dynegy”). As grounds for this motion, Environmental Groups state as follows:

1. The Board may allow movants to file a reply where the absence of a reply may result in material prejudice. 35 Ill. ADM. CODE 101.500(e).
2. The Board has granted movants leave to reply to new issues and arguments raised in responses that were not addressed in movants’ original requests. *See, e.g., American Disposal Service of Illinois, Inc. v. County Board of McLean County, Illinois, Henson Disposal, Inc., and TKNTK, LLC*, PCB No. 11-60 at 3-4 (Oct. 16, 2014); *Mather Investment Properties, L.L.C., v. Illinois State Trapshooters Association, Inc.*, PCB No. 05-29 at 26-27 (Jul. 21, 2005).

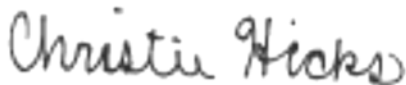
3. Here, as explained in the attached proposed reply, Dynegy raised the issue of how time should be divided during the Peoria hearings. *Dynegy Motion* at 2. In particular, Dynegy proposed the window of time during the Peoria hearings that should be devoted specifically to public comments. *Id.* This presents an issue outside the scope of *Environmental Groups' Request for Modification of Hearing Hours on January 17, 2018* ("*Environmental Groups' Request*"), which was simply focused on extending the time of the overall hearing on that date to 9:00pm CST, not on determining the exact time periods the public should be given to deliver comments on the rulemaking at hand.
4. This new issue raised by Dynegy could materially prejudice Environmental Groups and other members of the public because it would constrain the amount of time that the public may use to voice their opinions in person at the January 17, 2018 Peoria hearing. As Environmental Groups have previously stated, "there is a significant amount of public interest in this rulemaking, including in the Peoria area, and it could have major public health implications statewide." *Environmental Groups' Request* at 2 (citations omitted). Dynegy's suggested time for the start of the public comment period could result in a significant number of concerned members of the public being turned away from providing comments at the hearing.
5. Material prejudice could result regardless of whether the public would still have the opportunity to submit written comments, because opportunities to submit written comments and those to provide comments at a hearing are not interchangeable. First, being able to speak to government officials face to face provides many members of the public with a greater sense of connection to public servants and confidence in their decisions. Furthermore, there is no guarantee that all individuals present at the hearing,

such as regulated entities, would review everyone's written public comments and concerns. Finally, members of the public who may wish to submit comments but do not have easy access to computers may find delivering written comments much more difficult than voicing them orally. Thus, Environmental Groups and other members of the public could be materially prejudiced if they were precluded from replying to Dynegy's new discussion of the specific window or windows used for public comment.

6. Even where "the likelihood of material prejudice resulting from a denial of leave [is] low," leave to reply may be granted to avoid "any possibility of prejudice." *Kyle Nash v. Luis Jimenez*, PCB No. 07-97 at 3 (Aug. 19, 2010).

WHEREFORE Environmental Groups respectfully request the Board grant leave to file the attached *Proposed Reply in Support of Environmental Groups' Request for Modification of Hearing Hours on January 17, 2018*.

Respectfully submitted,



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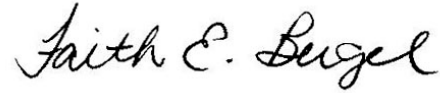


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Dated: November 30, 2017

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**PROPOSED REPLY IN SUPPORT OF ENVIRONMENTAL GROUPS’ REQUEST FOR  
MODIFICATION OF HEARING HOURS ON JANUARY 17, 2018**

Eco-Justice Collaborative, Environmental Defense Fund, Environmental Law & Policy Center, Natural Resources Defense Council, Prairie Rivers Network, Respiratory Health Association, and the Sierra Club (collectively, “Environmental Groups”) submit this *Proposed Reply in Support of Environmental Groups’ Request for Modification of Hearing Hours on January 17, 2018*.

1. On November 8, 2017, the Pollution Control Board (“the Board”) published an Order in this matter scheduling the January 17 and 18, 2017 Peoria hearings to be held at the Peoria Public Library—Main Library. Notice of Hr’g in PCB R2018-20, slip op. \*1 (Nov. 8. 2017). This Order further stated that during the prehearing conference:

representatives of various groups asked the Board to consider an evening hearing. However, after discussion, the representatives were willing to accept that the hearing would carry over into the evening if it was possible to secure a building that would allow the Board to continue later in the evening. The Board secured a building that will allow us to remain until 6 p.m. but we must be out of the building by 6 p.m. Therefore, the Board will extend the hearing on January 17, 2018, until 5:45 p.m. and absolutely no later.

*Id* at 1-2.

2. On November 21, 2017, Environmental Groups filed *Request for Modification of Hearing Hours on January 17, 2018* requesting that the Board modify the hours of the hearing on this date to provide for a 9:00pm CST conclusion. This motion was filed

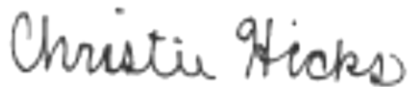
because the facility being used for the hearing on that date is willing to accommodate the event until 9:00pm CST if the Board were to grant Environmental Groups' request.

3. On November 28, 2017, Dynegy Midwest Generation, LLC, Illinois Power Generating Company, Illinois Power Resources Generating, LLC and Electric Energy, Inc. (collectively, "Dynegy") responded to Environmental Groups' request in part with a proposal of "having a public comment period beginning at 5pm that would remain open until at least 5:40pm as set forth in the prehearing notice, and would continue as needed until the end of oral public comment, but would not extend beyond 7pm." *Response to Request for Modification of Hearing Hours on January 17, 2018* at 2 (Nov. 28, 2017).
4. Environmental Groups' original request concerned only the conclusion time of the overall hearing, because we did not want to muddy the waters with the additional issue of what exact times the public may deliver comments during the overall hearing. However, because Dynegy opened this door, Environmental Groups wish to express vehement opposition to delaying the start of the public comment window, regardless of whether the hearing's conclusion time has been extended. Public hearings and the public's ability to deliver public comments at these hearings are integral components of the Board's rulemaking process. Creating a 5:00pm CST start time for public comments may limit the number of members of Environmental Groups and the public that would be able to deliver public comments.
5. Environmental Groups believe that given this issue's significance and complexity, it is appropriate for the Board to facilitate a prehearing conference to more fully deliberate the specific window or windows during which the public may deliver comments and to discuss other logistical matters. Thus environmental organizations have today filed a separate motion to schedule a prehearing conference in order for all interested parties to

discuss the public comment window or windows, along with other logistical matters. *See Environmental Groups' Motion to Schedule a Prehearing Conference* (Nov. 30, 2017).

WHEREFORE Environmental Groups respectfully request the Board grant *Environmental Groups' Request for Modification of Hearing Hours on January 17, 2018* so that the hearing may conclude at 9:00pm CST, and urge that the Board's decision setting the window or windows during which the public may deliver comments be considered as a separate matter from this motion, pursuant to *Environmental Organizations' Motion to Schedule a Prehearing Conference*.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned certifies that a true copy of the foregoing **NOTICE OF FILING, MOTION FOR LEAVE TO REPLY IN SUPPORT OF ENVIRONMENTAL GROUPS' REQUEST FOR MODIFICATION OF HEARING HOURS ON JANUARY 17, 2018, and PROPOSED REPLY IN SUPPORT OF ENVIRONMENTAL GROUPS' REQUEST FOR MODIFICATION OF HEARING HOURS ON JANUARY 17, 2018** on behalf of the Environmental Law & Policy Center in R2018-20 were served upon the attached service list by e-mail on November 30, 2017.

Respectfully submitted,



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