

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
AMENDMENTS TO ) R18-20  
35 ILL. ADM. CODE 225.233 ) (Rulemaking – Air)  
MULTI-POLLUTANT STANDARDS )  
(MPS) )

**NOTICE OF FILING**

PLEASE TAKE NOTICE that I have filed with the Illinois Pollution Control Board the Pre-Filed Questions of the Illinois Attorney General's Office for Illinois EPA's Witnesses, a copy of which is hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

BY: LISA MADIGAN,  
Attorney General of the State of Illinois

BY: /s/ Stephen J. Sylvester  
STEPHEN J. SYLVESTER  
Senior Assistant Attorney General  
Illinois Attorney General's Office  
69 W. Washington St., 18th Floor  
Chicago, IL 60602  
(312) 814-2087  
ssylvester@atg.state.il.us

Dated: January 2, 2018

**SERVICE LIST**

Don Brown, Assistant Clerk  
Mark Powell, Hearing Officer  
Marie Tipsord, Hearing Officer  
Illinois Pollution Control Board  
100 W. Randolph Street, Suite 11-500  
Chicago, IL 60601  
[don.brown@illinois.gov](mailto:don.brown@illinois.gov)  
[Mark.Powell@Illinois.Gov](mailto:Mark.Powell@Illinois.Gov)  
[Marie.Tipsord@Illinois.Gov](mailto:Marie.Tipsord@Illinois.Gov)

Amy C. Antonioli  
Joshua R. More  
Ryan Granholm  
Schiff Hardin LLP  
233 S. Wacker Drive, Suite 6600  
Chicago, IL 60606  
312-258-5769  
[aantonioli@schiffhardin.com](mailto:aantonioli@schiffhardin.com)  
[jmore@schiffhardin.com](mailto:jmore@schiffhardin.com)  
[rgranholm@schiffhardin.com](mailto:rgranholm@schiffhardin.com)

Greg Wannier  
Sierra Club Environmental Law Program  
2101 Webster Street, Suite 1300  
Oakland, CA 94612  
[greg.wannier@sierraclub.org](mailto:greg.wannier@sierraclub.org)

Gina Roccaforte  
Dana Vetterhoffer  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
[gina.roccaforte@illinois.gov](mailto:gina.roccaforte@illinois.gov)  
[dana.vetterhoffer@illinois.gov](mailto:dana.vetterhoffer@illinois.gov)

Eric Lohrenz  
Office of General Counsel  
Illinois Department of Natural Resources  
One Natural Resources Way  
Springfield, IL 62702-1271  
217-782-1809  
[Eric.lohrenz@illinois.gov](mailto:Eric.lohrenz@illinois.gov)

Lindsay Dubin  
Environmental Law and Policy Center  
35 E. Wacker Drive, Suite 1600  
Chicago, IL 60601  
[ldubin@elp.org](mailto:ldubin@elp.org)

Faith E. Bugel  
1004 Mohawk  
Wilmette, IL  
[fbugel@gmail.com](mailto:fbugel@gmail.com)

Katy Khayyat  
Dept. of Commerce and Economic Opportunity  
Small Business Office  
500 East Monroe Street  
Springfield, IL 62701  
[Katy.Khayyat@illinois.gov](mailto:Katy.Khayyat@illinois.gov)

**CERTIFICATE OF SERVICE**

I, STEPHEN J. SYLVESTER, an attorney, do certify that on January 2, 2018, I caused the Pre-Filed Questions of the Illinois Attorney General's Office for Illinois EPA's Witnesses, and the Notice of Filing to be served upon the persons listed in the attached Service List by email for those who have consented to email service and by U.S. Mail for all others.

/s/ Stephen J. Sylvester  
STEPHEN J. SYLVESTER

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 )  
AMENDMENTS TO 35 ILL. ADM. ) R18-20  
 ) (Rulemaking-Air)  
CODE 225.233, MULTI-POLLUTANT )  
STANDARDS )

**PRE-FILED QUESTIONS OF THE ILLINOIS ATTORNEY  
GENERAL'S OFFICE FOR ILLINOIS EPA'S WITNESSES**

The Illinois Attorney General's Office, on behalf of the People of the State of Illinois ("People"), hereby files its pre-filed questions for the Illinois Environmental Protection Agency's ("Illinois EPA") witnesses in this matter, as provided by the Hearing Officer Order issued on November 8, 2017. The People submit the following questions:

1. At pages 2 and 4 of Rory Davis's testimony, he states that Illinois EPA's proposed amendments will reduce the overall allowable emissions from the MPS Groups. Does Illinois EPA agree that the MPS should be amended only if amendments offer a substantial environmental benefit relative to the MPS as currently drafted?

2. At page 2 of Rory Davis's testimony, he states that one of the purposes of this rulemaking is to provide Dynegy with "operational flexibility."

- a. What is Illinois EPA's understanding of the term "operational flexibility"?
- b. In what way(s) would Dynegy receive greater "flexibility" as a result of Illinois EPA's proposed amendments?
- c. In what way would Illinois EPA's proposed amendments allow Dynegy to change its current operations?
- d. Why is Dynegy's "operational flexibility" a concern for the Illinois EPA?

3. At page 4 of Rory Davis's testimony, he states that Illinois EPA's amendments "have been proposed to provide operational flexibility that Dynegy has stated is necessary . . . ."

- a. When and where has Dynegy stated that "operational flexibility . . . is necessary"?
- b. Did Dynegy provide Illinois EPA with any documents or communications explaining Dynegy's meaning of the term "operational flexibility" and its necessity? If so, the People request that Illinois EPA supplement the

record with any such documents or communications, so that all of the participants in the rulemaking can evaluate Dynegy's claims.

4. The Technical Support Document states at page 5 that:

“Dynegy informed the Agency that in recent years the structure of the current MPS has led to the company operating some units at a financial loss in order to operate other units in their MPS Groups.”

- a. Did Dynegy identify for Illinois EPA which of its units had been operated at a financial loss, to facilitate the operation of which of its other units?
- b. What steps did Illinois EPA take to verify the information provided by Dynegy?
- c. Did Dynegy provide Illinois EPA with any documents or communications to substantiate the information it provided? If so, the People request that Illinois EPA supplement the record with any such documents or communications, so that all of the participants in the rulemaking can evaluate Dynegy's claims.

5. The Technical Support Document (TSD) states at page 6 that:

“While the EGUs affected by this rulemaking are currently meeting their fleet-wide average emission rates, the combination of these MPS Groups under the proposed mass emission limits will allow greater operational flexibility as well as regulatory certainty moving forward as scenarios involving the individual sources may arise.”

- a. What is Illinois EPA's understanding of the term “regulatory certainty” generally and as it applies to Dynegy's MPS units? Please explain the bases for your answer.
- b. Did the concept of switching to a mass-based emission limit originate from Dynegy or Illinois EPA? If it was Dynegy's idea, why did Illinois EPA agree to propose the change? Please explain the bases for your answer.
- c. How does moving to a mass-based emission limit provide additional “regulatory certainty” when Dynegy already has “regulatory certainty” through the current rate-based limits under the MPS?
- d. What “scenarios” in the TSD statement quoted above is Illinois EPA referring to?
- e. Why does Illinois EPA believe there is a need to switch the MPS units to a mass-based emission standard, when all of the pollution reductions under

the MPS to date have occurred under the current rate-based standards?  
Please explain the bases for your answer.

6. On page 1 of Rory Davis's testimony, he states that one of the purposes of the amendments is also to "simplify compliance with fleet-wide emission limits now that all units in both current MPS Groups are owned by the same company."

- a. Did Illinois EPA consider simply combining the current MPS Groups into one group, under fleet-wide emission rates? Please explain the rationale for Illinois EPA's position to move to an exclusively mass-based standard.
- b. Would Illinois EPA consider employing both emission rates and mass-based caps for the MPS units? Please explain the bases for your answer.

7. On page 3 of Rory Davis's testimony, he states that the units affected by this rulemaking are subject to the Cross-State Air Pollution Rule (CSAPR).

- a. Has Illinois EPA considered how its proposed amendments would affect the number of allowances that Dynegy would be permitted to sell or trade under Section 225.233(f)?
- b. If so, what effect would Illinois EPA's proposed amendments have on the number of allowances that Dynegy would be permitted to sell or trade under Section 225.233(f)?

8. Regarding proposed requirements related to NOx emissions, including a proposed maximum emission rate for some units, applicable only during ozone season, Rory Davis states at page 4 of his testimony:

"These requirements were included to ensure that these units [with selective catalytic reduction ("SCR") control devices] would continue to operate existing controls and continue to operate with emission rates that are considered well controlled during the ozone season."

- a. Does Illinois EPA not believe it would be important for **all** of Dynegy's units to be operated at emission rates that are "considered well controlled" for both NOx and SO2, year-round—not just **some** units, for NOx, during part of the year? Please explain the rationale for your answer.
- b. Does Illinois EPA have any bases to conclude that Dynegy's plants are not currently continuously operating all installed SCR control devices? If so, please explain any such bases.

9. The Technical Support Document states at page 5 that permits to operate the Meredosia, Hutsonville, Vermillion, and Wood River facilities have been withdrawn. Does this mean that electricity generation through coal combustion has permanently ceased at these facilities? Please explain the rationale for your answer.

10. On September 27, 2017, the *Chicago Tribune* reported that “Alec Messina, director of the Illinois Environmental Protection Agency, said the goal [of Illinois EPA’s proposed amendments] is to keep the financially struggling coal plants open by giving Houston-based Dynegy more flexibility to operate individual generating units, several of which are not equipped with modern pollution controls.”<sup>1</sup> Does Illinois EPA agree that a goal of this rulemaking is to keep plants within the MPS Groups open? Please explain the rationale for your answer.

11. Illinois EPA has stated that the proposed rule will reduce the overall allowable SO<sub>2</sub> emissions from the MPS Groups. In the Technical Support Document (TSD), Illinois EPA sets forth a table for allowable SO<sub>2</sub> emissions. In Table 1, the Illinois EPA states that the total allowable mass-based SO<sub>2</sub> emissions for all of the MPS units are 66,354 tons/year. However, Dynegy has mothballed Baldwin 3 (October 17, 2016) with 5,326 allowable tons/year, and it proposes to mothball Baldwin 1 (mid to late 2018)<sup>2</sup> with 5,359 allowable tons/year.

- a. In determining the SO<sub>2</sub> mass-based emission cap for the combined MPS units, and the purported allowable emission reductions obtained by switching to a mass-based standard, did Illinois EPA account for the mothballing of two of Dynegy’s cleanest plants: 1) Baldwin 3 (October 17, 2016) with 5,326 allowable tons/year, and 2) Baldwin 1 (Dynegy proposes mothballing in mid to late 2018) with 5,359 allowable tons/year? Please explain why or why not.
- b. Isn’t it true that, with Baldwin 1 and 3 mothballed, the total allowable mass-based SO<sub>2</sub> emissions in Table 1 would actually be 66,354 - 5,326 (Baldwin 1) - 5,359 (Baldwin 3) = 55,669 tons/year of SO<sub>2</sub>?
- c. If the allowable mass-based emissions of SO<sub>2</sub> are actually 55,669 tons/year, with a proposed cap of 55,000 tons, aren’t Illinois EPA’s purported reductions of allowable SO<sub>2</sub> emissions overstated? Please explain the bases for your answer.

12. Illinois EPA has stated that the proposed rule will reduce the overall allowable NOx emissions from the MPS Groups. In the TSD, Illinois EPA sets forth a table for allowable NOx emissions. In Table 2, the total allowable mass-based NOx emissions for all of the MPS units are 32,841 tons/year. However, Dynegy has mothballed Baldwin 3 (October 17, 2016) with 2,803 allowable tons/year, and it proposes to mothball Baldwin 1 (mid to late 2018) with 2,820 allowable tons/year.

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<sup>1</sup> See Michael Hawthorne, *Pollution could increase as Rauner EPA moves to rescue coal plants*, CHICAGO TRIBUNE (Sept. 27, 2017), available at <http://www.chicagotribune.com/news/local/breaking/ct-rauner-dynegy-coal-met-20170926-story.html>.

<sup>2</sup> See “Third Quarter 2016 Review” (Nov. 1, 2016) at 4, available at <http://www.dynegy.com/investors/presentations-events>.

- a. In determining the NOx mass-based emission cap for the combined MPS units, and the purported allowable emission reductions obtained by switching to a mass-based standard, did Illinois EPA account for the mothballing of two of Dynegy's cleanest plants: 1) Baldwin 3 (October 17, 2016) with 2,803 allowable tons/year, and 2) Baldwin 1 (Dynegy proposes mothballing in mid to late 2018) with 2,820 allowable tons/year? Please explain why or why not.
- b. Isn't it true that, with Baldwin 1 and 3 mothballed, the total allowable mass-based NOx emissions in Table 2 would actually be 32,841 - 2,803 (Baldwin 1) - 2,820 (Baldwin 3) = 27,218 tons/year of NOx?
- c. If the allowable mass-based emissions of NOx are actually 27,218 tons/year, with a proposed cap of 25,000 tons/year, aren't Illinois EPA's purported reductions of allowable NOx emissions overstated? Please explain the bases for your answer.

Dated: January 2, 2018

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
by LISA MADIGAN,  
Attorney General of the State of Illinois,

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

By: /s/ James P. Gignac  
JAMES P. GIGNAC  
Environmental and Energy Counsel  
Illinois Attorney General's Office  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602  
(312) 814-0660  
jgignac@atg.state.il.us

Of counsel:

ANDREW ARMSTRONG  
Chief, Environmental Bureau/Springfield  
(217) 782-7968  
aarmstrong@atg.state.il.us

STEPHEN J. SYLVESTER  
Senior Assistant Attorney General  
(312) 814-2087  
ssylvester@atg.state.il.us