

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Hearing held on the 6th day of March of 2018,  
scheduled to begin at 10:00 a.m. at Madison County  
Government Center, 157 North Main Street,  
Edwardsville, Illinois, pursuant to notice.

BEFORE:

MS. MARIA TIPSORD, Hearing Officer  
MS. KATIE PAPADIMITRIU, Chairman  
MS. BRENDA CARTER, Board Member  
MR. MARK POWELL, Senior Attorney  
MR. ANAND RAO, Senior Environmental Scientist  
MS. ALISA LIU, environmental Scientist  
MS. CARRIE ZALEWSKI, Board Member

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(Exhibits were retained by Board.)

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24

1 HEARING OFFICER TIPSORD: Good morning,  
2 everyone. My name is Marie Tipsord. Some of you  
3 may remember. Some of you are new to us today.  
4 I've been appointed by the Board to serve as hearing  
5 officer titled in the proceeding entitled Amendment  
6 35 Ill. Adm. Code 225.233 Multi-Pollutants  
7 Standards, the MPS.

8 With me today to my immediate left is  
9 Chairman, Katie Papadimitriu. She is a presiding  
10 board member. To my immediate right is Carrie  
11 Zalewski and to the far right is Brenda Carter, also  
12 board members with the board and between them is  
13 Mark Powell, our senior attorney. To my left next  
14 to Katie is Anand Rao, our technical unit and Alisa  
15 Liu from our technical unit and in the audience  
16 today we have with us Tanya Rabizch, who is Chairman  
17 Papadimitriu's attorney advisor. We have Martin  
18 Klein, who is Carrie Zalewski's attorney advisor,  
19 Jason James who is attorney advisor to Jerry Keenan  
20 who is helping us out in this ruling, although Mr.  
21 Keenan is not participating. And finally, we have  
22 our new member, Natalie Winqvist, who is Brenda  
23 Carter's attorney advisor.

24 Before I start, I want to remind

1 everyone that we have set additional hearings in  
2 this proceeding for April. The first is an evening  
3 hearing and it is dedicated only to and solely for  
4 oral public comments. The second will allow  
5 testimony, if necessary, and we will also allow  
6 public comment on the second day. It is a daytime  
7 hearing. If you have any questions about the April  
8 hearing, you can see me at break and we will also  
9 discuss it and make some final determinations on  
10 procedures, et cetera, later on before we close  
11 these hearings.

12 One of the purposes of today's  
13 hearing is to hear testimony from witnesses as we  
14 did not complete the testimony filed for the  
15 January 30 hearing in Peoria we will first conclude  
16 that testimony. Therefore, we will begin this  
17 morning with the witnesses from Dynegey. I will note  
18 that Dynegey's pre-filed testimony was admitted as  
19 Exhibit 14 for Mr. Diericx and Exhibit 15 for  
20 Mr. Ellis. Pre-filed answers to IEPA's questions  
21 were admitted as Exhibit 17 and pre-filed answers to  
22 people's questions were admitted as Exhibit 18.

23 I believe we left off with pre-filed  
24 questions for Mr. Diericx from the environmental

1 groups, so we will complete those and then we will  
2 go to all newly-filed questions beginning with the  
3 environmental group's questions.

4 After we finish with those questions,  
5 we will go then back to the IEPA and we will do  
6 first the Attorney General's Office questions there  
7 and conclude with the board's questions. I believe  
8 Dynegy had some as well, so the Attorney General,  
9 Dynegy and then the Board with the Agency.

10 We did not receive any additional  
11 questions for the Attorney General's office. We  
12 did, however, receive an additional filing, so we  
13 will take care of that and put that in the record  
14 and then we will conclude with the pre-filed  
15 testimony on behalf of the environmental groups and  
16 I apologize in advance. Brian Urbachesky  
17 (phonetic). I will work on that, I promise. We  
18 will take the testimony as if the testimony is an  
19 exhibit and then we will move to questions for the  
20 witness. We received pre-filed questions from the  
21 Agency and Dynegy. We will admit the questions as  
22 an exhibit and we will begin the questions with the  
23 pre-filed questions from the Agency.

24 In addition, the second purpose of

1 today's hearing is to satisfy the requirements of  
2 Section 27B of the Environmental Protection Act.  
3 Section 27B of the Act requires the Board to request  
4 the Department of Commerce an equal opportunity to  
5 conduct an economic impact study on certain proposed  
6 rules prior to the adoption of those rules.

7 If DCEO chooses to conduct the  
8 economic impact study, DCEO has 30 to 45 days after  
9 such request to produce the study of economic impact  
10 of the proposed rules. The Board must then make the  
11 economic impact study or DCEO the explanation for  
12 not conducting the study available to the public at  
13 least 20 days before public hearing on the economic  
14 impact of the proposed rules.

15 In accordance with Section 27B of the  
16 Act, the Board requested by letter dated October 19,  
17 2017 that DCEO conduct an economic impact study.  
18 The Board has received no response from DCEO.  
19 Before we close the hearing, we will accept comment  
20 on DCEO's decision.

21 One more thing. And just for a  
22 matter of record, the environmental group's  
23 pre-filed questions for Mr. Ellis are Exhibit 21 and  
24 so we will begin with those questions and then move

1 forward from there.

2 Are you comfortable up there Ms.  
3 Bugel?

4 MS. BUGEL: Yes. Just for a point of  
5 procedure, I do believe we had finished our  
6 questions for Mr. Ellis.

7 HEARING OFFICER TIPSORD: I thought we just  
8 did Mr. Diericx or the other way around?

9 MS. BUGEL: Other way around.

10 HEARING OFFICER TIPSORD: In that case,  
11 thank you, and I even looked that up before I came.  
12 In that case, that's Exhibit 20.

13 With that, I want to remind all the  
14 witnesses that were sworn in Peoria that we consider  
15 you still sworn in and that includes Mr. Diericx,  
16 Mr. Ellis, Mr. Bloomberg, Mr. Davis, Mr. Gignac and  
17 Mr. Armstrong. I believe that was all that were  
18 sworn in then and so we will continue from that  
19 point.

20 MS. BUGEL: May I make another procedural  
21 request on the record before we begin?

22 HEARING OFFICER TIPSORD: Absolutely.

23 MS. BUGEL: I do want to note that we have  
24 some members of the public with us today who are

1 interested in providing public comment. A number of  
2 them are from the immediate vicinity, this area,  
3 Edwardsville, Alton, Wood River and other cities  
4 around, so I did want to make a request on the  
5 record that at the end of the day today, if there be  
6 time allotted for public comment, even if it's a  
7 short time a couple minutes per person.

8 HEARING OFFICER TIPSORD: I will remind you,  
9 Ms. Bugel, that the hearing officers ruled on this  
10 before, and I apologize if you feel that there is  
11 some discrimination to you, there is not. The fact  
12 of the matter is, we give the same weight to oral  
13 public comment that we give to written public  
14 comment. We did make the exception in Peoria to  
15 allow for public comment. We put aside testimony to  
16 hearing that oral public comment. We did not  
17 complete the hearings in Peoria, so I want to insure  
18 that we get the testimony which is evidence on the  
19 record, in the record. That's evidence that can't  
20 be put in my writing. So I want to get the sworn  
21 testimony in.

22 If we have time when we've completed  
23 sworn testimony, whether it be today or tomorrow, I  
24 will allow it. The Board will be here until 5:00

1 tomorrow. So if we have time, we will allow public  
2 comment at that point.

3           However, I feel it's more important  
4 to get the sworn testimony in on the record and I  
5 will offer public comment in Peoria -- I apologize  
6 in Springfield, and as I said in the hearing,  
7 Springfield was chosen because of its proximity to  
8 several of the facilities at issue here, as well as  
9 the fact that those are days that the legislature is  
10 in session.

11           In addition to I believe it was  
12 Representative Long that came to Peoria, we've  
13 received comments from eight other state  
14 representatives. So we wanted to give the  
15 opportunity for legislators to be centrally located  
16 and also appear on behalf. So I appreciate it. We  
17 will do our best to get you the opportunity.

18           Like I said, I have a sign-up sheet.  
19 Hopefully, we will get to you. If not, I assure you  
20 that any written comment you give us is given the  
21 exact same weight as anything you would say to us  
22 here today on the record.

23           MR. MORE: In that vein, to expedite the  
24 potential for completing everything today, I would

1 ask that Ms. Bugel when she goes through her  
2 questions, may we just refer to the question number  
3 as opposed to reading the questions into the record  
4 that comprises in each one.

5 HEARING OFFICER TIPSORD: Is that okay with  
6 you, Faith?

7 MS. BUGEL: That is satisfactory.

8 [EXAMINATION]

9 **Q For the record, we are referring to Exhibit**  
10 **20, the Environmental Group's pre-filed questions**  
11 **for Rick Diericx filed January 2nd, 2018, and I**  
12 **apologize, I think I may have mispronounced your**  
13 **last name.**

14 **Beginning with question one.**

15 A (Diericx) Grouping all our units together  
16 would result in all units owned by the same parent  
17 company to be in a single MPS group as provided. A  
18 single re-base limit that is the average of the DMG  
19 and IPA test of two rates would not provide Dynegy  
20 with the flexibility it desires because it would  
21 still require us at times to combust fuel, generate  
22 electricity and release emissions from the stations  
23 that would not otherwise be selected to operate by  
24 the energy market. And as a result of the hearing,

1 retaining rate-base limits will perpetuate confusion  
2 for how to convert the rates to tons in order to  
3 evaluate the environmental benefits.

4           Dynergy supports the group-wide annual  
5 mass cap approach because it would allow us to  
6 operate units to meet energy market demand, bid the  
7 units into the energy markets efforts, marginal cost  
8 of operation and report mass emissions consistent  
9 with the asset rain program and cross state air  
10 pollution rule.

11           And if selected to operate, they  
12 would comply with the numerous applicable hourly,  
13 three-hour daily and 30-day, non-MPS emission rate  
14 limits that currently apply to these units and that  
15 would not change as a result of the proposed MPS  
16 revisions.

17           HEARING OFFICER TIPSORD: Just before you  
18 continue, Ms. Bugel, as a reminder, the court  
19 reporter doesn't know who we are, even though we  
20 know each other, so please identify yourselves for  
21 the court reporter, witnesses and questioners and  
22 anyone who has follow-up.

23

24

1 [EXAMINATION]

2 QUESTIONS BY MR. SYLVESTER:

3 **Q Steven Sylvester with the Illinois Attorney**  
4 **General's office.**

5 I'm just looking for some  
6 clarification. You said that there would be  
7 confusion about information regarding rate base, the  
8 standard. Could you explain that, what the  
9 confusion would be?

10 A I said that retaining the rate-base limits  
11 will perpetuate the confusion over how to convert  
12 from rates to tons.

13 **Q What's the confusion?**

14 A I think at the Peoria hearing we saw that  
15 several groups that went through calculations and  
16 came up with different answers in that conversion  
17 process so that seemed to be confusing to me.

18 **Q What parties are you referring to?**

19 A The old AG's office.

20 **Q So just to be clear, Dynegy has been**  
21 **reporting emission-based limits for approximately 12**  
22 **years, is that correct?**

23 A No, that's not correct.

24 **Q Let me ask it this way: How long has Dynegy**

1 **been reporting its rate-based emission limits to**  
2 **Illinois EPA?**

3 A It's been reporting rate-based numbers since  
4 2012 for NOx and 2013 for SO2.

5 **Q And has Dynegy had any confusion in**  
6 **reporting those numbers?**

7 A The rates?

8 **Q Yes.**

9 A No, we have not.

10 **Q And to the best of your knowledge, has**  
11 **Illinois EPA expressed any concern with your**  
12 **reporting of those numbers?**

13 A They have not expressed that concern to us.  
14 The confusion is not in the rate numbers. It's when  
15 people try to convert rates to tons is where I saw  
16 the confusion.

17 **Q So the only way there would be any confusion**  
18 **is if you had a standard where there was bulk rate**  
19 **and mass-based emissions, is that what you're**  
20 **saying, for the Attorney's General Office's**  
21 **apparently?**

22 A No. I'm suggesting that, if you have a  
23 rate-based MPS limit and you try to compare that to  
24 other environmental programs that are based in tons,

1 that's when some confusion can develop.

2 MR. ARMSTRONG: Can you expand on the --

3 HEARING OFFICER TIPSORD: Could you identify  
4 yourself, please?

5 [EXAMINATION]

6 **Q This is Andrew Armstrong with the Attorney  
7 General's Office.**

8 **Can you expand upon that notion and  
9 that confusion? What is confusing exactly about the  
10 emission rates?**

11 A I don't think there's any confusion, but  
12 apparently there was different answers that came out  
13 at the last hearing.

14 **Q The answers to what questions?**

15 A I think my testimony presented a different  
16 methodology for the calculation than was used by  
17 Illinois EPA, for example, or the Attorney General's  
18 office, I'm sorry.

19 **Q And the Illinois EPA in its most recent  
20 proposal proposed a cap that appears to reflect the  
21 attorney's general's methodology, is that correct?**

22 A I do not know that.

23 HEARING OFFICER TIPSORD: Ms. Bugel.

24

1 [EXAMINATION]

2 **Q Question 2A.**

3 A Dynegy has been subject to the MPS NOx rate  
4 limits since 2012 and the MPS SO2 rate limits since  
5 2013. The IPH group has been subject to limits  
6 since 2010 while Dynegy has been in compliance with  
7 those rate-base limits since they became effective.  
8 We do not agree the MPS has been in place for over  
9 ten years.

10 **Q 2B.**

11 A As to the first part of that question,  
12 please see my answer to question 2A and Dynegy has  
13 been using data from the continuous emission  
14 monitoring systems including the pollutant parts per  
15 million concentration, the hourly staff for flow  
16 rate and percent of CO2 and flue gas in a 12-step  
17 process to calculate the fleet-wide emission rates  
18 that were included in our compliance demonstrations  
19 that were submitted to Illinois EPA.

20 **Q 2C.**

21 A To the best of our knowledge, Illinois EPA  
22 has been verifying our compliance with the MPS rate  
23 limits since the MPS rule became effective.

24 As stated in my prior response, we do

1 not agree the MPS limits have been in place for over  
2 ten years, however, this question is best asked of  
3 the Illinois EPA.

4 **Q 2B.**

5 A Yes. Having the entire Illinois MPS fleet  
6 demonstrate compliance with a single rate based-rate  
7 limit would still require Dynegy to combust fuel and  
8 release emissions from stations that would otherwise  
9 not need to operate. Also, each time a unit  
10 retires, there is an inherent loss of flexibility.

11 **Q 2D1.**

12 A No. The need to operate some plants at  
13 times solely for the purpose of the MPS would still  
14 exist.

15 **Q 2D2.**

16 A Again, a fleet-wide rate limit would not  
17 alleviate the need to combust fuel and release the  
18 emission from stations that would not otherwise be  
19 selected to operate by the energy market.

20 **Q 2E.**

21 A There are no other permanent related or  
22 environmental regulatory instances that require us  
23 to calculate the SO2 rate for the entire fleet on an  
24 annual basis.

1           **Q    3A.**

2           A    Yes.

3           **Q    3B.**

4           A    No.   The Ameren/IPH fleet had 21 operating  
5 units when the MPS rule went into effect.  Today  
6 there are just 12 operating units.  With just 12  
7 operating units, the IPH fleet has fewer  
8 combinations of operating compliance scenarios to  
9 accommodate unclaimed breakdowns and planned outage  
10 schedules.

11                           By adding the six EMG units with the  
12 IPH units, the fleet would have more operating  
13 options.  But again, combining the groups and  
14 subjecting them to a rate-base limit is  
15 insufficient.

16           **Q    4A.**

17           A    Each train of coal delivered to our plant  
18 has a different sulfur content.  Generally it is a  
19 function of seeing from which the coal is mined and  
20 how the coals are blended when the trains are  
21 loaded.

22                           As a result, we experience differing  
23 sulfur content with each train load.  In 2017, all  
24 of the coal delivered to Dynegy's MPS units came

1 from mines in the Powder River Basin coal region  
2 located near Gillette, Wyoming.

3 In 2017, while the average sulfur  
4 content was 0.21 percent, the sulfur content of the  
5 train shipments received at the plants varied from  
6 0.16 percent sulfur to 0.37 percent sulfur which is  
7 much greater than the 0.05 percent used as an  
8 example. That is equivalent to a range of  
9 0.32-pounds of SO<sub>2</sub> per million BTU to 0.73 pounds of  
10 SO<sub>2</sub> per millions BTU for an increase of 228 percent.

11 **Q 4B.**

12 A I'm not sure I understand this question and  
13 how it's relevant to the IEP's proposal, however, if  
14 we change coal suppliers, the cost of coal and the  
15 cost for transporting the coal to the station would  
16 change.

17 There would also be a number of  
18 operational changes. For example, if the heat  
19 content of the coal was lower, more fuel would need  
20 to be delivered and combusted. If the ash and  
21 sodium content of the coal changed, the units could  
22 experience sliding or other issues. And if the ash  
23 characteristics change, we may become unable to  
24 beneficially re-use the coal combustion byproducts.

1                   Furthermore, the SO2 content may  
2 change. Currently we are burning some of the lowest  
3 sulfur coal in the country.

4           **Q    4C.**

5           A    Again, I'm not sure I understand this  
6 question or how it relates to the IEP's proposal.  
7 However, in addition to the example cited  
8 previously, coal from any other region in the  
9 country may result in higher SO2 rates and greater  
10 tons of SO2 emitted, but the exact impact cannot be  
11 estimated without more information on the particular  
12 coal and region.

13           **Q    4D.**

14           A    Again, I'm not sure I understand this  
15 question or its relevance, but if a wet scrubber was  
16 already operating at its maximum design SO2 loading,  
17 it could not accommodate a 20 percent increase in  
18 sulfur content. If this wet scrubber was operating  
19 with an SO2 loading below its maximum design value,  
20 whether it could prevent an SO2 rate increase due to  
21 a 20 percent increase in the coal sulfur content  
22 would depend on several items such as how much  
23 additional SO2 loading it can accommodate and the  
24 other properties of the coal.

1 For an unscrubbed unit, adding a  
2 scrubber to prevent an increase in its SO2 rate  
3 would result in substantial additional cost even  
4 though there are no justifiable need to do so to  
5 protect the National Ambient Air Quality Standards  
6 and would further stress economic viability of those  
7 units.

8 **Q 5A.**

9 A First I'd like to ask which scrub plants  
10 does this question refer to?

11 **Q Coffeen.**

12 A And what current rate-based limit does this  
13 question refer to?

14 **Q The current rate-based limit in the MPS, not**  
15 **the proposal, but the existing MPS.**

16 A Which pollutant are we talking about here?

17 **Q SO2.**

18 A Are you referring to the IPH MPS group SO2  
19 rate limit?

20 **Q Yes.**

21 A First, you cannot change the capacity of  
22 plants without making a physical change which would  
23 require a great deal of time to obtain the necessary  
24 permits and to design, order, procure and install

1 the new equipment, all of which can't be done within  
2 an MPS calendar year.

3 So I would say you can't increase the  
4 capacity at scrub plants and decrease capacity at  
5 unscrubbed plants to meet the current IPH SO2 rate  
6 limit.

7 But I do agree the current MPS rule  
8 could force you to make bad business decisions like  
9 running the units that are losing money more and  
10 running profitable units less to lower the annual  
11 emission rate.

12 **Q Would the question make more sense if it**  
13 **related to capacity factor instead of capacity?**

14 A Yes, it would.

15 **Q Can you answer the question then about**  
16 **assuming this is asking for increasing the capacity**  
17 **factor at scrub plants and decreasing the capacity**  
18 **factor at unscrubbed plants enable the fleet to meet**  
19 **compliance under the current rate-based limits with**  
20 **all the assumptions that you and I just established.**

21 A Whether or not such changes of the annual  
22 capacity factors would be enough to meet the current  
23 IPH annual SO2 rate limit would depend on how many  
24 megawatt hours the scrub and unscrubbed units have

1 already operated during the year, at what emission  
2 rate and if they were physically capable of  
3 operating enough hours at a high enough capacity and  
4 had enough fuel for the rest of the year to achieve  
5 the limit. Without that information, I don't know  
6 if they could meet the current rate-based limits.

7 HEARING OFFICER TIPSORD: Mr. Armstrong has  
8 a follow-up.

9 [EXAMINATION]

10 QUESTIONS BY MR. ARMSTRONG:

11 **Q Yes. I wanted to go back to the statement**  
12 **you made about the MPS potentially requiring what**  
13 **you said I believe is bad business decisions and you**  
14 **reference that the MPS could require an operator to**  
15 **-- and I don't want to put words in your mouth if**  
16 **I'm misstating them, but I believe you said it could**  
17 **require an operator to run unprofitable plants and**  
18 **operate more profitable plants less, is that**  
19 **accurate?**

20 A That's close, but not exactly what I said.

21 **Q Okay. Well, if you could repeat it, that**  
22 **would be great.**

23 A I believe what I said was the current MPS  
24 rule could force you to make bad business decisions

1 like running the units that are losing money more  
2 and running profitable units less to lower the  
3 annual emission rate.

4 **Q So just to clarify what you are referring to**  
5 **there, plants that are losing money you are**  
6 **referring to units that are scrubbed for SO2?**

7 A Not necessarily, no.

8 **Q Well in that context, how would the MPS**  
9 **require you to run an unscrubbed unit more?**

10 A I guess I don't understand the question.

11 **Q Well, you said that the MPS could require**  
12 **you to run units that are losing money.**

13 **Why would the MPS require you to run**  
14 **those units?**

15 A The MPS rule, as you stated, would have a  
16 tendency to force units with SO2 emission rates  
17 emissions less than the IPH MPS SO2 rate limit for  
18 them.

19 **Q And those necessarily would be controlled**  
20 **units because the MPS rates are lower than any rate**  
21 **that you could achieve without controls at a plant,**  
22 **correct?**

23 A Yes. It couldn't force you to operate  
24 either units with post-combustion SO2 controls or

1 boilers such as our Hennepin Power Station that are  
2 capable of burning natural gas.

3 **Q So when you refer to losing money, do you**  
4 **have any specific units in mind?**

5 A (Ellis) Dean E-L-L-I-S, Dynegy. Just to  
6 clarify, when Mr. Diericx says units losing money,  
7 he is referring to offering units at or below  
8 production cost so he is referring to having to  
9 operate units at an operational loss, not  
10 necessarily losing money on an annual basis. It is  
11 consistent to what we testified to at the first  
12 hearing.

13 **Q Fair enough, but my question still remains.**  
14 **When you refer to units losing money,**  
15 **do you have any particular units in mind?**

16 A (Ellis) It speaks from what we said  
17 previously, the units that we testified previously.  
18 That is Coffeen and Duck Creek.

19 **Q So on the flip side of things when you are**  
20 **talking about units profitable going back to your**  
21 **original statement that the MPS could require you to**  
22 **run units that are profitable less, you are**  
23 **referring to units that do not have controls for**  
24 **sulfur dioxide, is that correct?**

1           A     (Ellis)   Again, Dean Ellis.   Just to  
2     clarify, when we refer to operating profitable units  
3     or versus units that are losing money, we go back to  
4     offer units that are below their marginal cost of  
5     production.

6                         So under the current MPS, as we  
7     testified, we are forced to offer units, and  
8     specifically, scrubbed units at below their marginal  
9     cost.   So under a different regime, we would make  
10    economically rationale decision, that doesn't  
11    necessarily mean that we would or wouldn't have to  
12    continue to operate units a certain way within  
13    marginal cost, but we would be able to offer them  
14    more economically rational.

15           **Q     Well, I don't think that answers my**  
16    **question, but to repeat my question, the earlier**  
17    **complaint with MPS is that it would require**  
18    **profitable units to run less.   I was trying to**  
19    **understand what is meant by profitable units that**  
20    **are not controlled by sulphur dioxide, is that**  
21    **correct?**

22           A     (Ellis)   Mr. Armstrong, I think we are just  
23    talking past each other on the terminology.   Could  
24    you repeat your question one more time?

1           **Q**    I'm really just asking about a statement  
2           that Mr. Diericx made that the MPS could require  
3           Dynegy to operate profitable plants less, and I'm  
4           just trying to establish he is, in fact, referring  
5           to plants that are not controlled by sulphur  
6           dioxide, is that correct?

7           A    (Ellis) Well, as I clarified, when we say  
8           profitability, we mean to offer plants in below  
9           marginal costs, so when we talk about profitability,  
10          it is talking about below the marginal cost.

11          HEARING OFFICER TIPSORD: Mr. Ellis, when  
12          you turn away, we can't hear you.

13          A    Okay. Thank you. So there are times when  
14          each of the plants are profitable and then even when  
15          we might have to offer them below marginal cost, so  
16          what Mr. Diericx is saying is that under the current  
17          MPS we have to offer the plants in below marginal  
18          cost.

19          **Q**    Mr. Diericx testified that there is some  
20          class of plants, he referred to them as profitable,  
21          that under the current rule would be offered in less  
22          under the MPS. I'm just trying to understand what  
23          plants he has in mind.

24          A    Names? Sure. I mentioned Coffeen.

1 C-O-F-F-E-E-N, and Duck Creek would be offered in  
2 more economically rational under a revision in the  
3 MPS.

4 **Q Under the current MPS, which plants are**  
5 **offered less? That's my question.**

6 A (Ellis) And not offered in less. If you're  
7 -- by less you are saying can we just offer them in?  
8 We would offer them in. Under the current rule, we  
9 have to offer them in below their marginal cost to  
10 balance out the MPS.

11 **Q I honestly don't feel like you've answered**  
12 **the question. I don't want to keep going back and**  
13 **forth on this, but I believe Mr. Diericx' original**  
14 **statement would be that the MPS, as it is currently**  
15 **written, requires some units that are losing money**  
16 **to be run more and some units that are profitable to**  
17 **be run less. I'm just trying to understand what the**  
18 **profitable units are. What does that refer to?**

19 I know that the ones that are losing  
20 money are Coffeen and Duck Creek. What is the other  
21 class?

22 A (Ellis) I guess, first in my testimony I  
23 didn't characterize them as a class of units. I  
24 just said there are some units that would run less.

1 I didn't say a category of plants. But I think you  
2 are looking for an example when that situation would  
3 occur, is that correct?

4 **Q I don't know how many more times I can ask**  
5 **my question. I think I've asked it the same way**  
6 **five times.**

7 A (Ellis) I am aware of units at the Joppa  
8 Power Station which have run less because of the MPS  
9 rule and they are unscrubbed.

10 **Q Correct. So when you are talking about --**  
11 **referring back to your earlier testimony, units that**  
12 **are losing money that are run more are scrubbed**  
13 **units, units that are running less under the MPS and**  
14 **emission control requirements are unscrubbed units.**

15 A (Ellis) No.

16 **Q In terms of the example you gave about the**  
17 **Joppa units, are there any other plants that you can**  
18 **refer to where units have not run as a result of**  
19 **MPS?**

20 A (Ellis) No. I'm not aware of any other  
21 units that have -- of any units that have not run,  
22 but some units have run less such as Joppa.

23 **Q And along the lines of Joppa example, any**  
24 **other plants that you can think of?**

1 A Not that I'm aware of, no.

2 Q Thank you.

3 [EXAMINATION]

4 QUESTIONS BY MS. BUGEL:

5 Q I had a follow-up for Mr. Ellis. Mr. Ellis,  
6 I believe you stated that offering the units in  
7 below their marginal cost does not mean that they  
8 are necessarily losing money on an annual basis.

9 Is that a correct characterization of  
10 your testimony?

11 A That's correct.

12 Q Is Duck Creek -- looking back let's take  
13 2017 as an example.

14 Did Duck Creek lose money on an  
15 annual basis in 2017?

16 A I don't have plant financials in front of me  
17 so we have to confer. I don't have those numbers in  
18 front of me.

19 Q And would the same be true if I asked that  
20 question about Coffeen?

21 A Yes.

22 Q Is that something that it would be possible  
23 to get a follow-up answer in writing?

24 A It is possible. Again, as we testified in

1 the first proceeding, we generally don't generate  
2 plant-level financial statements and we definitely  
3 don't disclose those publicly for a number of  
4 reasons. One of the reasons is to prevent the  
5 market from having a competitively sensitive subject  
6 to consider.

7 **Q I believe we left off at question 5B.**

8 A (Diericx) You are on question 5B you said,  
9 correct?

10 **Q Yes.**

11 A For Coffeen, the 2016 annual average SO2  
12 emission rate was 0.00137 pounds per million BTU.  
13 Duck Creek 0.0084 pounds SO2 per million BTU.  
14 Havana, 0.07573 pounds per million BTU.

15 MR. MORE: Mr. Diericx, did you say for Duck  
16 Creek after the decimal point only two zeros or  
17 three zeros?

18 A If I misspoke for that, I apologize.  
19 0.00084 pounds per million BTU.

20 QUESTIONS BY MS. BUGEL:

21 **Q Question 5B1.**

22 A Even though Coffeen does not have an MPS  
23 rate limit of 0.1 pounds SO2 mm-Btu, the FGDs at  
24 Coffeen could achieve a SO2 rate of less than 0.1

1 pounds SO2 mm-Btu even if the sulfur content of the  
2 coal being delivered to the Coffeen station  
3 increased by 20 percent.

4           However, if the annual average sulfur  
5 content of Coffeen's coal increased 20 percent, it  
6 would be fair to assume that the annual average  
7 sulfur content of the other IPH units would also  
8 increase 20 percent, and even at an emission rate of  
9 0.01-pound mm-BTU, the Coffeen units could not lower  
10 the IPH fleet-wide average enough to comply with the  
11 IPH MPS annual SO2 rate limit.

12           **Q    What is the basis for your assumption that,**  
13 **if Coffeen had a 20 percent increase in SO2**  
14 **emissions, that all of the other IPH plants would**  
15 **have a 20 percent increase in SO2 emissions as a**  
16 **result of the SO2 contents of the coal?**

17           A    In my response of an earlier question, I  
18 think I mentioned that all of our coal comes from  
19 the Powder River Basin in the area of Gillette,  
20 Wyoming including Coffeen.

21           So if Coffeen is seeing an increase  
22 in coal sulfur content, that same sort of change in  
23 sulfur content would appear at the other stations  
24 that receive and combust the same fuel.

1           **Q**    Earlier you indicated that the sulfur  
2 content of the coal can vary by train shipment, is  
3 that correct?

4           A    Yes, I did.

5           **Q**    And does one train shipment deliver to all  
6 of the IPH plants at the same time?

7           A    No. A train arrives at a specific station  
8 and all the coal contents of that train are  
9 delivered to that single station.

10          **Q**    So the different stations get different  
11 train shipments of coal, is that correct?

12          A    Yes, that's correct.

13          **Q**    So if the sulfur content of the coal varied  
14 by train shipment, you would not necessarily see the  
15 same exact variation from station to station, is  
16 that correct?

17          A    I think I indicated in my previous response  
18 that, on a train-to-train basis, there was a wide  
19 degree of variability in the coal sulfur content.

20          **Q**    I think we are on question 5B2.

21          A    My answer regarding Duck Creek is the same I  
22 provided for Coffeen.

23          **Q**    And 5B3.

24          A    My answer regarding Havana is the same I

1 provided to Coffeen and Duck Creek with the  
2 exception that Havana is in the DMG MPS group and  
3 not the IPH MPS group.

4 **Q And question 6A.**

5 A This question cannot be answered as it calls  
6 for a prediction that also depends on numerous other  
7 variables. For example, the bid prices of units  
8 owned by other companies, transmission-like  
9 congestion, the availability of renewable energy,  
10 the weather, condenser cooling water temperatures,  
11 planned and unplanned unit outages and coal sulfur  
12 variability.

13 As discussed on pages 11 and 12 of my  
14 testimony, the proposal is protective of the  
15 environment. It will significantly reduce the  
16 amount of emission Dynegy is allowed to emit and it  
17 poses new and additional requirements on the Dynegy  
18 fleet including mandatory operation of existing  
19 selective catalytic reduction equipment year round,  
20 a lower NOx emission rate for the Baldwin, Edwards,  
21 Duck Creek, Havana and Coffeen facilities during the  
22 ozone season and a specific annual SO2 tonnage cap  
23 for the Joppa Power Station.

24 **Q Question 6B.**

1           A     Since the hourly capacity of a plant depends  
2     on the design and the condition of equipment and not  
3     demand in prices, this question cannot be answered.

4           **Q     Question 6C.**

5           A     Even if the prices we bid our units into the  
6     energy market and the demand remain the same, other  
7     changes such as the bid prices of units owned by  
8     other companies, transmission-like congestion, the  
9     availability of renewable energy, the weather, the  
10    sulfur content of the coal, condenser cooling water  
11    temperature and planned and unplanned outages make  
12    it impossible to predict the fleet-wide SO2 rate as  
13    a result of this change of the MPS rule.

14          **Q     And as I think you just answered 6C, I think**  
15    **we are on 6D.**

16          A     And like the prior three questions, the  
17    future annual capacity factor at any plant will  
18    depend on more than just demand in our prices.

19          **Q     Question 7A.**

20          A     When I stated the proposed revision to the  
21    MPS would significantly reduce the amount of  
22    emissions Dynegy is allowed to emit, my reference  
23    was to allowable emissions as discussed on page 8 in  
24    the Illinois EPA's Technical Support Document.

1           **Q   And just to confirm, it's not referenced in**  
2 **actual emissions?**

3           A   That is correct.  It refers to allowable  
4 emissions.

5           **Q   Question 7B.**

6           A   This question asks for a comparison of  
7 actual emissions.  Which actual emissions are you  
8 asking to be compared?

9           **Q   The combined fleet of DMG and IPH units**  
10 **prior to an adoption of the MPS rewrite compared to**  
11 **any expectation after if Dynegy's proposed rewrite**  
12 **was adopted?**

13          A   First, I think it's the Illinois EPA's  
14 proposal and not Dynegy's proposal that we are  
15 referring to here, is that correct?

16          **Q   I will rephrase the question assuming you**  
17 **are referring to IEPA's proposal.**

18          A   And you said prior to the MPS rule revision,  
19 which year?  What time period are you referring to?

20          **Q   2017.**

21          A   I don't recall what the 2017 actual SO2  
22 emissions were, but I guess you're not just asking  
23 for SO2.

24          **Q   I'm sorry?**

1 A I wasn't sure what pollutant.

2 **Q SO2.**

3 A I don't have those in front of me, but those  
4 could be obtained easily. But predicting actual  
5 emissions, one year several years from now is as  
6 difficult as predicting the weather one or several  
7 years from now because an accurate long-range  
8 weather forecast would be one of the key elements in  
9 making an emissions forecast.

10 Assumptions is what also need to be  
11 made for other elements such as changes in customer  
12 demand, the construction or retirement of other  
13 generating source in the region, the construction  
14 and availability of transmission lines and future  
15 environmental regulations.

16 I have not attempted to make an  
17 emissions forecast for revised MPS rule and that's  
18 why -- since there are so many variables involved,  
19 we agree with the Illinois EPA that it would be  
20 appropriate in regards to would be to allowable  
21 emissions.

22 [EXAMINATION]

23 QUESTIONS BY MR. SYLVESTER:

24 **Q Steven Sylvester, Attorney General's Office.**

1                   **Just to clarify a point, does Dynegy**  
2 **do forward-looking, I guess, forecasts regarding,**  
3 **you know, how they are going to allocate their power**  
4 **in the future as opposed to emissions?**

5           A     (Ellis) Mr. Sylvester, could you clarify  
6 what you mean by allocation of power?

7           **Q     Well, how they are going to bid into the**  
8 **grid. I mean, do you come up with a plan going**  
9 **forward for, you know, a business plan I guess is**  
10 **the right word?**

11          A     (Ellis) We don't necessarily come up with a  
12 business plan, per se, but we do have all of the  
13 inputs that go into our costs, so we do develop our  
14 bids and are aware of our bids are based on those  
15 costs in the future.

16          **Q     How far out do you forecast that typically?**

17          A     Generally five years.

18          **Q     So would it be possible to also get**  
19 **potential emissions based on those numbers?**

20          A     I don't know if we generate what potential  
21 emissions are or would be in that forecast.

22          **Q     I guess the question is, how difficult would**  
23 **it be to have emissions numbers right alongside of**  
24 **your forecast for how you are going to bid for five**

1 **years?**

2 A Mr. Sylvester, I don't know if we do it  
3 currently. I don't know how easy it is to do mainly  
4 for the reasons that Mr. Diericx suggested that  
5 there are a number of inputs and variables that go  
6 into it.

7 Again, we can do a prediction of our  
8 own costs going forward, but there are a number of  
9 factors beyond our control such as the weather that  
10 affects our production.

11 **Q I understand the shortcomings in the area of**  
12 **any forecasting situation.**

13 **So based on those shortcomings that**  
14 **you do for your financial planning, could you also**  
15 **do the same for the emissions?**

16 A (Diericx) We would have to make some  
17 additional assumptions especially on the future  
18 emission rates, and I think the term used for  
19 potential so we could use allowable emissions,  
20 allowable hourly emissions for the units to  
21 calculate those potential emissions.

22 **Q So just as a further question, obviously,**  
23 **we're operating under the current MPS so you said**  
24 **you had five-year forecasts.**

1                   **Does that take into place the**  
2 **rate-base emission standards on how you bid with**  
3 **your five-year forecasts?**

4           A     (Ellis)   Our model takes into account all  
5 the current environmental regulations and all the  
6 regulations that we're under.

7           **Q     Do you have any modeling for the proposed**  
8 **mass-based standards?**

9           A     I'm not aware of any.

10          **Q     Thank you.**

11                                   **[EXAMINATION]**

12           QUESTIONS BY MS. BUGEL:

13          **Q     We left off at question 8A.**

14           A     (Diericx)   My recollection was that we had  
15 just answered -- I'm sorry, we answered 7B so we are  
16 on 8A, you're correct.

17                   Independent of the MPS rule, actual  
18 emissions from the Illinois fleet may fluctuate due  
19 to factors such as the economy, weather, natural gas  
20 prices, planned and unplanned unit outages.   The MPS  
21 revision is expected to constrain actual emissions  
22 as compared to the current rate-based limits because  
23 the proposed SO2 cap is significantly below the  
24 annual emissions allowed under the current MPS rule.

1           The MPS revision also imposes  
2 additional requirements mandating year-round  
3 operation of selective catalytic reduction  
4 equipment, mandating the lower NOx emission rate for  
5 the Baldwin, Edwards, Duck Creek, Havana and Coffeen  
6 facilities during the ozone season and mandating a  
7 specific annual SO2 cap for Joppa.

8           **Q    Do you expect that the annual cap for SO2**  
9 **will constrain actual emissions?**

10          A    Yes. It has the potential to constrain  
11 future operations if demand increases to that which  
12 we experienced in prior years.

13          **Q    And what prior years are you referring to?**

14          A    We've not done that analysis to identify the  
15 specific year, but the highest demand years in the  
16 past ten years were 2007 through 2010.

17          **Q    And I am not sure if the agency just asked**  
18 **this question, so forgive me if I'm repeating, but**  
19 **you do demand forecasts, is that correct?**

20          A    (Mr. Ellis) Ms. Bugel, of course we do  
21 electricity-demand forecast or we have forecasts  
22 that are provided for that, yes.

23          **Q    And based on those electricity-demand**  
24 **forecasts, do you have any expectation that demand**

1 **will for the combined DMG IPH group, do you have any**  
2 **demand forecast that predicts demand increasing to**  
3 **the levels seen in 2007 to 2010?**

4 A (Ellis) I don't know if we have anything  
5 specific to those years. Of course, our forecast  
6 does include a base case in various scenarios so  
7 it's possible that a demand could return to those  
8 levels, but I don't have anything in front of me  
9 specific to those years.

10 **Q And I believe we've covered 8B, so I will**  
11 **skip that and we can go to 8C.**

12 HEARING OFFICER TIPSORD: Mr. Armstrong.

13 [EXAMINATION]

14 MR. ARMSTRONG: Yes. I have one more  
15 follow-up about demand returning to what it was in  
16 previous years.

17 HEARING OFFICER TIPSORD: Mr. Armstrong, can  
18 you pull the mic closer to you.

19 **Q Yes. Forgive me, I believe you were talking**  
20 **about 2007 to 2010.**

21 **Is that the years that you were**  
22 **talking about when you were talking about previous**  
23 **years?**

24 A (Diericx) Yes, those were example years,

1 correct.

2 **Q And when there was a higher capacity factor**  
3 **than there is now and I was wondering if you could**  
4 **opine on what conditions would be necessary for a**  
5 **scenario in which capacity factors in the future**  
6 **return to what they were in 2007 through 2010?**

7 A (Ellis) Mr. Armstrong, there are numerous  
8 examples of how situations that could drive to that  
9 level or at least increase usage from Dynegy's  
10 facilities such as if, for example, there was a  
11 major event at the nuclear power station in Clinton  
12 in Southern Illinois, Southern Central Illinois that  
13 took it off line for an extended period of time.

14 A nuclear plant is a large  
15 base-loaded electric plant that provides a  
16 significant number of megawatt hours into the plant.  
17 So if that plant were to go off line for any number  
18 of reasons for an extended period of time, then that  
19 could drive, not necessarily electricity demand  
20 percent higher, but it would drive production at  
21 Dynegy's plants higher.

22 **Q For 2007 to 2010 levels?**

23 A We haven't done that exact analysis, but it  
24 is very possible. As you can imagine. A large

1 nuclear plant going off line for a significant  
2 period of time to drive increased demand from  
3 near-by power plants.

4 **Q Any other examples of conditions?**

5 A Sure. Increased natural gas prices that  
6 could be driven by the exportation of natural gas  
7 outside of the United States. It could be driven by  
8 natural gas constraints, it could be driven by  
9 weather events, so there's a number of different  
10 things. New industrial customers. In particular  
11 industrial, customers have of course large electric  
12 usage.

13 **Q Has Dynegy done any analysis on the**  
14 **sensitivity of its capacity factors to the natural**  
15 **gas price?**

16 A Not what I'm aware of.

17 **Q So you have not done any analysis, for**  
18 **example, of what increases in natural gas prices**  
19 **correspond to what increases in capacity would**  
20 **factor in Dynegy's plants?**

21 A I do know we find that, as more nation wide  
22 as a company, we've done sensitivity around the  
23 price of natural gas and the effect, not just off  
24 the top of my head right now I don't know if we've

1 done it yet at the plant level in Southern Illinois.

2 **Q So you couldn't say then, for example, what**  
3 **level of increase in the price of natural gas would**  
4 **be necessary to raise Dynegy's capacity factors in**  
5 **Illinois back to 2007, 2010 levels?**

6 A That factor alone by itself, no. I can't  
7 say sitting here. I don't have that.

8 [EXAMINATION]

9 QUESTIONS BY MS. BUGEL:

10 **Q And I believe we are on question 8C.**

11 A Neither the current MPS nor MPS revision set  
12 a limit on the capacity or capacity factor of any  
13 unit.

14 **Q Question 8D.**

15 A No. The MPS is not constrained past either  
16 MPS group.

17 **Q Question 8E.**

18 A This question asks for a comparison of  
19 capacity factors. Which capacity factors are you  
20 asking to be compared?

21 **Q Capacity factor from 2017 to after -- to a**  
22 **year after the MPS rate-based limit is proposed to**  
23 **be adopted?**

24 A Dynegy does not intend to change how the

1 plants are operated other than to dispatch them  
2 based on economic principles while maintaining  
3 compliance with the revised MPS rule and the  
4 numerous hourly, three hour, daily and 30-day  
5 non-MPS rate limits that already apply and would not  
6 be changed by this MPS emission.

7 **Q And question 9A.**

8 A That figure includes all the units that were  
9 operating at that point in time.

10 **Q And just to confirm, it then would include**  
11 **units that have either since been retired or**  
12 **mothballed, correct?**

13 A Yes.

14 **Q Question 9B.**

15 A Edwards Unit 1, Wood River Units 4 and 5 and  
16 Unit 2 were retired. Baldwin Unit 3 is currently  
17 mothballed.

18 **Q And question 9C?**

19 A Yes. Excluding the 2014 SO2 emissions of  
20 those retired and mothballed units, the 2014  
21 emission total is 44,382 tons, but if those units  
22 had been mothballed or retired in 2014, the 2014  
23 emissions of the remaining units may have changed  
24 due to shifts in load demand and I would expect the

1 emissions from the remaining units would have been  
2 higher.

3 Because of this expectation, it is  
4 inappropriate to form a simple subtraction to  
5 predict what 2014 emissions might have been.

6 **Q Question 9C1.**

7 A Yes.

8 **Q Question 10A.**

9 A As Mr. Dean Ellis testified to earlier, that  
10 phrase refers to the ability of the fleet to operate  
11 as intended under a fleet-wide regulatory approach  
12 that does not require units to be offered and  
13 dispatched in an economically inefficient manner  
14 below their cost of operation.

15 **Q Question 10B.**

16 A In what period of time does this question  
17 refer to?

18 **Q Let's start with 2017.**

19 A And which scrub units am I supposed to  
20 consider here?

21 **Q The question would be looking at the**  
22 **combined IPH -- well, let's start with the IPH**  
23 **group.**

24 A Megawatts of capacity have been taken off

1 line in December 2016 and December 2017 to meet the  
2 IPH annual SO2 rate limit, but I don't have the  
3 exact data for those time periods.

4 **Q And does that mean you would be unable to**  
5 **answer 10B1? Because I think you just identified**  
6 **when it's happened.**

7 **Would you be able to answer the**  
8 **question about what units were involved?**

9 A Yes. It was Joppa's generating capacity  
10 that was constrained in December of 2016 and  
11 December of 2017 to meet the IPH annual SO2 rate  
12 limit.

13 **Q Going back to question 10B for the DMG**  
14 **group.**

15 A There is none for the DMG MPS group.

16 **Q And we are on question 10C.**

17 HEARING OFFICER TIPSORD: Excuse me,  
18 Mr. Sylvester has a follow-up.

19 [EXAMINATION]

20 **Q Steven Sylvester. I just --**

21 HEARING OFFICER TIPSORD: Microphone.

22 **Q Sure. I wanted to get a clarification on**  
23 **question number ten. It referred to balance the**  
24 **hours of the scrub unit.**

1                   **Does that mean that the scrub unit**  
2 **was taken out of service when you referenced the**  
3 **December of 2016 and 2017 dates, or does that mean**  
4 **they couldn't run MPS standards?**

5           A     The operations had to be curtailed because  
6 of unforeseen outages during the year at unscrubbed  
7 units -- that's scrub units, I'm sorry, which then  
8 result in the need to run the unscrubbed units at  
9 lower capacity.

10           **Q     Just to clarify, and I apologize, but is**  
11 **December the end of the year for MPS compliance?**

12           A     Yes, it is on a calendar year basis. I'm  
13 sorry, the annual limits are on a calendar year  
14 basis.

15   [EXAMINATION]

16           QUESTIONS BY MS. BUGEL:

17           **Q     We are on question 10C.**

18           A     Grid stability and grid liability are issues  
19 that are better answered by Mr. Ellis, I believe.

20                   HEARING OFFICER TIPSORD: Mr. Armstrong's  
21 hand is in the air, I just want to be sure. Mr.  
22 Ellis, do you want to answer?

23           A     Dean Ellis with Dynegy. Ms. Bugel, I  
24 believe your question refers to grid stability and

1 what is meant by grid stability.

2 **Q Yes.**

3 A So stability is a term that's analogous to  
4 grid reliability and could be compromised when units  
5 come off line for any number of reasons.

6 MS. BUGEL: So just to confirm, in Mr.  
7 Diericx's testimony, grid stability and grid  
8 reliability are being used interchangeably?

9 A Yes.

10 **Q And I believe then we can move to question**  
11 **10E?**

12 HEARING OFFICER TIPSORD: Mr. Armstrong has  
13 a follow-up first.

14 [EXAMINATION]

15 QUESTIONS BY MR. ARMSTRONG:

16 **Q I'm sorry, I wanted to go back on**  
17 **Mr. Sylvester's line of questioning about taking**  
18 **Joppa off line due to unexpected forced outages.**

19 **So this took place in December of**  
20 **2016 and December of 2017, is that correct, when**  
21 **Joppa was taken off line?**

22 A (Diericx) Again, I think my statement was  
23 that megawatt capacity were made unavailable, not  
24 necessarily the entire unit, maybe the operation

1 unit was curtailed or the operation of several units  
2 may have been curtailed.

3 **Q Fair enough. And then I believe you**  
4 **testified that that had to have occurred because of**  
5 **unexpected outages at other units earlier during**  
6 **2016 and 2017, is that correct?**

7 A Yes, it is.

8 **Q So if I understand, it sounds like Dynegy**  
9 **for 2016 and 2017 had a plan of how it was going to**  
10 **bid that year for MPS compliance purposes, is that**  
11 **correct?**

12 A As each calendar year begins, we do have a  
13 plan. I don't know if we have a bidding strategy,  
14 but we have an operating plan to operate the scrub  
15 units as much as we think they can throughout the  
16 year in order to achieve the annual MPS rate limits.

17 And then, if those scrub units do not  
18 perform at the capacity factor we plan and expect  
19 them to, then we have to compensate with other  
20 reductions incapacity at unscrubbed units.

21 **Q Thank you.**

22 HEARING OFFICER TIPSORD: Excuse me, was  
23 there someone in the audience that had a question?  
24 I thought I saw a hand up in the back. I guess not.

1 [EXAMINATION]

2 QUESTIONS BY MS. BUGEL:

3 **Q We are on question 10E.**

4 A (Ellis) We're not aware of any specific  
5 grid stability or grid reliability issues that have  
6 occurred due to the MPS rule.

7 COURT REPORTER: Could you please repeat  
8 that answer? I didn't hear you.

9 (ANSWER REPEATED)

10 **Q So a follow-up question for that would then**  
11 **be the basis for Mr. Diericx's statement that having**  
12 **to bring a fully functional unit off line preclude**  
13 **Dynegy from economically dispatching units and can**  
14 **create some of the grid stability and reliability**  
15 **issues.**

16 **And my follow-up question is really**  
17 **the basis for the statement about grid stability and**  
18 **reliability issues.**

19 A (Ellis) Right. I believe Mr. Diericx  
20 testified that it could create grid stability  
21 issues.

22 **Q I'm asking for the basis of that statement.**

23 A Just based on our experience and knowledge  
24 of the power grid that, if a unit did have an

1 environmental limit or operational limit and had to  
2 come off line, yet at the same time that unit was  
3 needed for reliability purposes, obviously that  
4 could create reliability issues.

5 **Q And just to confirm, the MPS -- compliance**  
6 **with the MPS has never caused this to happen,**  
7 **however?**

8 A We're not aware of any time that that has  
9 happened, but it's possible that the ISO had a  
10 reliability issue. They don't necessarily disclose  
11 all the likely issues or constraints that they run  
12 into and our statement was that this could happen.

13 **Q And I believe that takes us all the way**  
14 **through E and we can turn to 10F.**

15 A (Diericx) Switching to the proposed  
16 emission caps eliminates the risks I described on  
17 page ten of my testimony. Grid stability and  
18 reliability are only two such risks and are not the  
19 only challenges our proposal helps address.

20 We can't comment on the impacts of  
21 other hypothetical proposals such as this without  
22 more information.

23 **Q Question 11?**

24 HEARING OFFICER TIPSORD: Ms. Bugel, before

1 we get there, it's about 11:24. Let's take a  
2 ten-minute break and then we will go until about  
3 1:00 and go to lunch and that will hopefully get us  
4 out of lunch crowds and in and out so let's take ten  
5 minutes and come back.

6 (Recess taken.)

7 HEARING OFFICER TIPSORD: We are back on the  
8 record. Let's go back on the record. I believe we  
9 left off with question number 11.

10 MS. BUGEL: Question number 11.

11 A Rick Diericx for Dynegy. As I testified  
12 previously, Dynegy does not expect the adoption of  
13 the MPS revision to result in the operation of the  
14 Coffeen or Duck Creek scrubbers without having their  
15 wet scrubber in service. The glass lining in the  
16 absorber vessels were designed for a specific stack  
17 temperature. In order to keep that stack  
18 temperature from increasing by 170 to 200 degrees  
19 Fahrenheit, the scrubber must be in service.

20 Temperature control is also needed to  
21 protect the fiberglass-reinforced piping in the  
22 absorber. And limestone or some other caustic is  
23 needed in the absorber tank to prevent corrosion.

24 The spray dryer absorbers at Baldwin

1 and Havana need the remaining surface in order for  
2 those units to meet their consent degree of those  
3 units.

4 HEARING OFFICER TIPSORD: Questions?

5 [EXAMINATION]

6 QUESTIONS BY MR. SYLVESTER:

7 **Q Does Dynegy still plan to mothball Baldwin**  
8 **Unit Number 1 this year?**

9 A (Ellis) At this point, Dynegy has no plans  
10 to mothball that unit this year.

11 **Q Did they previously have plans to do**  
12 **mothball Baldwin Number 1 in '18?**

13 A It was under consideration, but at this  
14 point, we haven't given it any additional  
15 consideration.

16 **Q And I guess my follow-up question would be,**  
17 **what changed to change this Dynegy strategy**  
18 **regarding Baldwin 1?**

19 A We were able to defer some capital  
20 expenditures and operational expenditures which  
21 helped the near term financial operational outlook  
22 of the unit.

23 **Q How often does Dynegy look to evaluate**  
24 **whether or not to mothball any of its units?**

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**Is that an annual determination?**

A I would say that evaluation is generally ongoing or continuous, but there are a number of data points that drive the evaluation, one of which is the outcome of the annual MISO capacity auction and that greatly determines the viability of each plant and each unit at each plant on an annual basis.

**Q What were the plant's capital expenditures that were able to be deferred?**

A I don't know have that information off the top of my head.

**Q Is it something that you could provide?**

A It's possible depending on the nature of the information, but it could be related to compliance with the guidelines, rules or other regulations, but I don't have that information.

And I'll add that it simply could have been deferred -- the capital expenditure could have been deferred from one year to the next, but not eliminated or avoided all together.

MS. PAPADIMITRIU: Can I ask a clarifying question, Mr. Sylvester? Did you say false alarm in your question to Mr. Ellis?

1 MR. SYLVESTER: I did not. Maybe the court  
2 reporter can see. I asked several questions.

3 What were the basis of the capital  
4 expenditures or what were the basis of the capital  
5 expenditures?

6 MS. PAPADIMITRIU: I think we were talking  
7 about the difference between their decisions to  
8 mothball plants and you were asking about the  
9 differences between the two plants.

10 MR. SYLVESTER: No.

11 MS. PAPADIMITRIU: Okay. I might have  
12 misheard.

13 HEARING OFFICER TIPSORD: Mr. Ellis, do you  
14 have something to add?

15 MR. ELLIS: I just would like to go back and  
16 provide clarification on the question of profitable  
17 so it helps to reiterate that, when we talked about  
18 profitability in Mr. Diericx's testimony, it wasn't  
19 necessarily the annual profitability of the plants,  
20 we were referring to offering units below their  
21 marginal costs and we're not drawing any conclusions  
22 about the profitability of scrub class of plants.

23

24

1 [EXAMINATION]

2 **Q I believe we were on question 12A.**

3 A (Diericx) The answer to that question is  
4 myself and Jim Ross.

5 **Q And 12B.**

6 A The air quality modeling mentioned in the  
7 email was performed by the Illinois EPA first to the  
8 SO2 National Ambient Air Quality Standards.

9 **Q And I think you answered part of the policy**  
10 **so let's just with 12C.**

11 A Yes. We did discuss the IEPA modeling  
12 results including Joppa's contribution to the  
13 one-hour SO2 concentrations, the substantial  
14 culpability of out-of-state sources on air quality  
15 in Illinois, and the Illinois EPA's desire for an  
16 SO2 annual cap for the Joppa Plant consistent with  
17 the guidelines in USEPA's data requirement rule.

18 **Q 12D.**

19 A Yes. The modeling data resulted in IEPA  
20 recommending an annual SO2 tonnage cap of Joppa  
21 Plant that was consistent with USEPA data  
22 requirements rule and Dynegy agreed to the proposed  
23 cap.

24 **Q Question 13.**

1 HEARING OFFICER TIPSORD: Excuse me, I think  
2 Mr. Sylvester has a follow-up first.

3 [EXAMINATION]

4 QUESTIONS BY MR. SYLVESTER:

5 **Q Steven Sylvester, Attorney General's office.**

6 **I guess the question I have is how**  
7 **did that impact Dynegy's operational flexibility to**  
8 **have caps on? That should be a hypothetical**  
9 **question going forward.**

10 A (Diericx) If you could rephrase it one more  
11 time, that would be helpful.

12 **Q So the question was about the caps that are**  
13 **on proposed caps for Joppa Plant, and my question is**  
14 **how that impacted Dynegy's operational flexibility**  
15 **having tonnage caps on both of those units?**

16 A The annual tonnage cap that is proposed for  
17 Joppa is 15 percent above the 2012 to 2014 annual  
18 emission average for that station. So Joppa is  
19 constrained that it cannot increase its annual  
20 emissions more than 50 percent above that three-year  
21 average.

22 **Q So would it be fair to say that it has**  
23 **actually increased Dynegy's operational flexibility**  
24 **at Joppa? Let me finish the question I guess. Over**

1 **the period you specified?**

2 A No. The Joppa units could have operated  
3 more in 2012 to 2014 even without this revision.

4 **Q So I guess you said that there was a**  
5 **15 percent increase. Did I mishear you? I'm sorry.**

6 A That is the formula in the USEPA data  
7 requirement rule, whereas, if that percentage is  
8 exceeded, EPA would need to do additional EPA air  
9 modeling to assess potential impacts on air quality  
10 standard.

11 QUESTIONS BY MS. BUGEL:

12 **Q I believe we left off at question 13.**

13 A Dynegy did not determine the proposed SO2  
14 cap in the proposal.

15 **Q And, I apologize, I was turning my page when**  
16 **you said that and I missed your answer.**

17 A Dynegy did not determine the SO2 cap in the  
18 rule proposal.

19 **Q Did Dynegy propose an SO2 cap to Illinois**  
20 **EPA?**

21 A Yes.

22 **Q And did Dynegy propose a NOx cap to Illinois**  
23 **EPA?**

24 A Yes.

1           **Q    And referring to those two caps, we can skip**  
2 **13A and move to 13B.**

3           MR. MORE:   Just for clarification, are you  
4 now characterizing 13B asking for what determination  
5 or calculation did Dynegy perform in connection with  
6 its proposed caps?

7           MS. BUGEL:   Yes, I am.

8           A    (Diericx)   We reviewed past actual emissions  
9 in coming up with our suggested for Illinois EPA.

10          **Q    (By Ms. Bugel) And what time period did you**  
11 **review past actual emissions for?**

12          A    It is approximately a ten-year period  
13 beginning in 2007.

14          **Q    So, approximately, 2007 through 2017?**

15          A    No.   It would have been through part of  
16 2016.

17          **Q    Were there any calculations that went with**  
18 **that review of past actual emissions?**

19          A    The calculations of all the summation of the  
20 unit emissions to get the group and fleet totals.

21          **Q    And was there any additional analysis beyond**  
22 **that?**

23          A    No, not that I recall.

24          **Q    Are those calculations something that Dynegy**

1 **would be able to provide?**

2 A I think it's already publicly available  
3 because it is the annual unit emissions report for  
4 state and Federal environmental regulations  
5 currently.

6 **Q Question 14. 14A, please.**

7 A The email states that the proposed  
8 allocations were provided as requested. Since each  
9 plant has common coal receiving and handling water  
10 intake and water discharge systems, it would not be  
11 possible for a sold or transfer unit to operate  
12 individually, therefore, the transfer amounts were  
13 determined on a plant basis as opposed to individual  
14 units.

15 And the goal in determining the  
16 amount of tons that transfer when a plant is sold  
17 was to establish amounts that would allow the new  
18 owner to operate the plants in a manner consistent  
19 with historic operating levels and require the new  
20 owner to operate in accordance with good emission  
21 control practices, emission control levels and  
22 provide Dynegy with a level of flexibility across  
23 the remaining MPS units.

24 **Q 14B.**

1           A     The transfer amounts were based on a review  
2 of the following factors. The review of the  
3 capacity factors for the last five years, pollution  
4 control equipment, SO2 or NOx controls, enforceable  
5 rate limits established by state and Federal  
6 regulations, consent decrees or memorandums of  
7 understanding and actual emission rates, a  
8 comparison of the annual emissions to actual to  
9 insure accuracy, the rounding of the value then to  
10 the nearest hundred tons.

11                         Then, on the ozone season basis, the  
12 annual NOx emissions where the ozone emissions were  
13 determined by applying a ratio of 45 percent to the  
14 annual NOx emissions, for the duration of the ozone  
15 season is approximately 45 percent of the annual  
16 period.

17           **Q     Question 15A.**

18           A     From IEPA, Director Messina, Julie Armitage,  
19 David Bloomberg, Lori Davis and IEPA counsel were  
20 involved. For Dynegy, it was myself, Jim Ross, Jeff  
21 Ferry, Bruce Wilcoxon and legal counsel were  
22 involved.

23           **Q     Question 15B.**

24           A     We were not aware of any others that were

1 involved in negotiating these terms.

2 **Q Question 15C.**

3 A I do not recall any earlier drafts of these  
4 negotiated terms being exchanged with the IEPA.

5 **Q And question 15D.**

6 A Based on our review of the documents, IEPA  
7 provided in response to various Freedom of  
8 Information Act requests including our own FOIA  
9 seeking documents, IEPA produced in response to  
10 other requests, all communications with IEPA  
11 referring to the MPS revisions were produced.

12 **Q And question 16.**

13 A Let me clarify my supplement. Illinois EGUs  
14 did not see the mercury rule proposal until it was  
15 distributed generally at the stakeholder meetings.  
16 My point was to clarify that some, but not all  
17 stakeholders, were involved in drafting mercury rule  
18 proposal before it was released to the public and  
19 this is not uncommon in the rule-making process.

20 MS. BUGEL: Those are all the questions that  
21 we have pre-filed.

22 HEARING OFFICER TIPSORD: Before we proceed  
23 then and, Ms. Bugel, we will let you continue with  
24 your questions, but before that on February 16, 2018

1 Dynegy filed a written response to some additional  
2 questions. As required by Hearing Officer Order and  
3 response to the questions at the hearing in Peoria,  
4 at this time, if there is no objection, we will mark  
5 that as Exhibit 24.

6 (Exhibit 24 was marked for  
7 identification by the court  
8 reporter.)

9 MS. BUGEL: We do have one objection and it  
10 is not necessarily to the content of the exhibit,  
11 but a potential procedural issue, and just to cut to  
12 the chase, Dynegy has proposed making Lucy Frasier  
13 available for questioning. If that is going to  
14 treat Dr. Frasier's report as pre-filed testimony  
15 and then cross examination, we do have a concern  
16 with that procedure simply because the report was  
17 filed ten days after the pre-filed testimony  
18 deadline, and we are concerned about just the way  
19 that procedure would go and elevating what has been  
20 provided as an exhibit to testimony and cross  
21 examination.

22 HEARING OFFICER TIPSORD: Your response.

23 MR. MORE: We submitted it as part of the  
24 written response to the board's question regarding

1 health effects. She's available. We wanted to make  
2 her available to avoid any need for a third or  
3 fourth hearing in the event someone had a question  
4 relating to the proceeding. She is here today and  
5 she will be here tomorrow for half the day. I would  
6 like to set some time aside to make her available.  
7 Whether the Board treats it as a written comment or  
8 written testimony, I would presume, if she answered  
9 questions, those answered questions that are on the  
10 record will go in as evidence to the extent the  
11 other material would go in just as if the remainder  
12 of our pre-filed written response to the questions  
13 goes into the record. It would be treated the same  
14 way is what I ask.

15 HEARING OFFICER TIPSORD: Does the AG have  
16 any comment?

17 MS. BUGEL: May I respond?

18 HEARING OFFICER TIPSORD: Go ahead.

19 MS. BUGEL: Since there have been additional  
20 hearings scheduled, my one option to resolving this  
21 would be setting a pre-file testimony deadline for  
22 those hearings. I realize that it extends this  
23 process, but then we would just like to have  
24 adequate time with the report to prepare cross

1 examination and that is a concern that we have, and  
2 if Dr. Frasier could be available at the next set of  
3 hearings, that would resolve her of the concern.

4 MR. MORE: We brought her in. It has been  
5 over two weeks that everyone has had access to her  
6 report. It's not very lengthy. We would object to  
7 having to make her available at the third hearing.  
8 If there is time today, we are up now, everyone is  
9 here, we would have the people to ask the questions.  
10 We made this at the beginning when we filed this.  
11 It should thought be a surprise to everyone.

12 Everyone knew. We recognize we did not file it as  
13 pre-filed testimony and be treated accordingly,  
14 that's fine. I would ask that we not force her to  
15 attend the April hearing. I see no reason to do so.

16 MS. PALUMBO: Antoinette Palumbo with  
17 Illinois EPA. The agency would like to note that  
18 there is no requirement in the Board Rules to  
19 pre-file testimony and this has been available since  
20 the February 16 document so it's been three weeks so  
21 that seems to be adequate time for review.

22 HEARING OFFICER TIPSORD: Mr. Sylvester.

23 MR. SYLVESTER: I would just point out that  
24 the Hearing Officer ordered that pre-filed testimony

1 be filed when it was supposed to be filed. As to  
2 Mr. More's suggestion, we don't have a problem with  
3 that. I mean, if it's treated as just as something  
4 that is filed as opposed to actual testimony and  
5 then whatever comes out of any examination today  
6 would be treated as testimony.

7 HEARING OFFICER TIPSORD: I think that  
8 perhaps the best way to address your concern, Ms.  
9 Bugel, I did not personally take this to be  
10 testimony. I took it to be a report attached to  
11 responses to questions. Obviously, if anybody wants  
12 to ask Dr. Frasier a question today and do so, that  
13 would, in fact, be testimony.

14 But, no, I don't believe that any of  
15 us saw that as pre-filed testimony or would take it  
16 as testimony, but mainly a report that had been  
17 referred in previous dockets to us so we ask some  
18 specific questions about that and we will put this  
19 out a little bit early so we could give everybody a  
20 heads up, but no, I don't consider Dr. Frasier's  
21 report to be testimony. It is not testimony, but it  
22 is an attachment to responses to questions and will  
23 be given the same as any other report that is  
24 attached to testimony.

1 MS. BUGEL: Very good.

2 HEARING OFFICER TIPSORD: With that, we will  
3 admit Dynegy's responses to questions as Exhibit 24  
4 and those having been filed on February 16, 2018,  
5 and then we will go the Environmental Group's  
6 questions that were filed on March 2nd and we will  
7 admit those again for ease of our writing as Exhibit  
8 25 if there is no objection. Then those are Exhibit  
9 25.

10 (Exhibit 25 was marked for  
11 identification by the court  
12 reporter.)

13 MS. BUGEL: I am passing the mic to Justin  
14 Vickers, ILPC.

15 [EXAMINATION]

16 QUESTIONS BY MR. VICKERS:

17 **Q I'm Justin Vickers with Environmental Law &**  
18 **Policy Center, and I think the same way Ms. Bugel**  
19 **did, we will just refer to questions, Dynegy can**  
20 **provide answers.**

21 HEARING OFFICER TIPSORD: Does that work for  
22 you, Mr. More, to have question numbers or --

23 MR. MORE: I would prefer that they not be  
24 read into the record.

1           **Q        (By Mr. Vickers) I will begin with question**  
2 **one.**

3           A        Dean Ellis with Dynegy. Mr. Vickers, just  
4 for clarification, could you just read the first  
5 part of the question to make sure I'm on the same  
6 question.

7           **Q        So attached to the questions were four**  
8 **attachments A through D, the first one attachment A**  
9 **is --**

10                   HEARING OFFICER TIPSORD: You have got to  
11 speak up and slow down. Please re-read that.

12           **Q        So we've got four attachments to the**  
13 **Environmental Group's pre-filed questions pulling**  
14 **attachment A as Dynegy 10K SEC filing for 2017 pages**  
15 **two to three of that document which are numbered. I**  
16 **believe there might be some ramble pages that don't**  
17 **have numbers based on the filing.**

18           A        So in answer to question number one, yes.

19           **Q        Question 2?**

20           A        The answer to 2A is no. The answer to 2B is  
21 similarly no. The answer to 2C is no, we don't make  
22 that data publicly available. And similarly, the  
23 answer to 2D is the same, no, we don't make that  
24 data publicly available.

1           **Q    So for A and B those are no because you**  
2 **don't make it publicly available or is it no for**  
3 **another reason?**

4           A    I don't recall ever seeing operating cash  
5 flow and adjusted cash flow down to the segment or  
6 plant level, so it's a combination of I don't know  
7 if we generate those figures to that level of  
8 detail, and if we do, it would be for some other  
9 reason what I cited for C and D, that we wouldn't  
10 make those publicly available.

11           **Q    For question 3A.**

12           A    Yes.

13           **Q    Question 3B?**

14           A    Yes. And 3C, yes, however, I believe Vistra  
15 footnote clarifies that that number would be subject  
16 to further revision.

17           **Q    3D.**

18           A    Yes, according to Vistra.

19           **Q    And does Dynegy agree?**

20           A    I'm not aware that Dynegy has done an  
21 evaluation, so I can't state that we agree or  
22 disagree.

23           **Q    And 3E?**

24           A    Unknown at this time.

1           **Q   Moving on to question 4A.**

2           A   As previously testified, we provide  
3 operating income as somewhat of a proxy for cash  
4 flow, but as Rick testified, operating income  
5 provide both cash and non-cash items so it's  
6 imperfect as a cash-flow indicator but we do use the  
7 term I would say not necessarily as a synonym as you  
8 suggest there, but we use one as a proxy for the  
9 other.

10           **Q   So if -- let's work on the assumption that**  
11 **they are a proxy. How are they calculated then? If**  
12 **they are calculated in any way differently, you can**  
13 **make that distinction.**

14           A   Sure. When comparing say operating income  
15 to cash flow, operating income excludes capital  
16 expenditures and capital expenditures, of course,  
17 require cash to be effectuated.

18                       So when talking about cash flow, you  
19 would have to include or add or subtract, depending  
20 on whether it is positive or negative, of course,  
21 those two operating income.

22                       MS. DZUBAY: Hi. Tamara Dzubay with the  
23 Environmental Health Center.

24

1 HEARING OFFICER TIPSORD: Say your name and  
2 spell it.

3 MS. DZUBAY: D-Z-U-B-A-Y.

4 [EXAMINATION]

5 **Q Just following up on 4A, in terms of your**  
6 **proxy for cash flow, do you typically use the EBITDA**  
7 **and adjusted EBITDA metrics?**

8 A We typically use those metrics when  
9 discussing the earnings before interest taxes and  
10 depreciation company wide.

11 **Q Are you aware that your filing included**  
12 **those metrics for the segment level?**

13 A I would have to refer back to the filings,  
14 but I do believe we include EBITDA at the saving  
15 level.

16 **Q Thank you.**

17 [EXAMINATION]

18 QUESTIONS BY MR. VICKERS:

19 **Q So I think that covers 4A. 4B.**

20 A 4B. With regard to any information that  
21 documents the negative cash flow for the MISO  
22 segment, one could refer to a combination of the  
23 operating income and the cap X to determine the cash  
24 flow position of the segment.

1                   And then 4B Roman I. The question  
2 says, if not, can Dynegy provide to the parties in  
3 this room make any other document that establishes  
4 that the Illinois fleet is cash flow negative. And  
5 one clarification I would like to make is that  
6 Dynegy owns a number of power plants in Illinois  
7 that are both subject and also not subject to the  
8 MPS rule and those plants are also both in the MISO  
9 market and also in the PJM market, so the Illinois  
10 fleet is more broad than the plants that we're  
11 discussing here subject to the MPS revision.

12           **Q    And so with that clarification, is it**  
13 **possible to answer B1 just for the plants that are**  
14 **part of the MPS?**

15           A    I'm not aware of any other  
16 publicly-available info.

17   [EXAMINATION]

18           **Q    I just have one more follow-up to your**  
19 **calculation of cash flow from operating income and**  
20 **capital expenditures.**

21   **So typically, do you include non-cash**  
22 **expenditures when calculating cash flow?**

23           A    We would typically take out non-cash items.  
24 To clarify or to state that I'm not an accountant by

1 trade, but I would offer that we do try to back out  
2 non-cash items like depreciation.

3 [EXAMINATION]

4 **Q 4C.**

5 A Not beyond what we've already testified to.

6 **Q 5.**

7 A With regard to providing gross margin for  
8 each of the units as we testified previously, that's  
9 highly sensitive business confidential information  
10 and protects the sanctity of the market, so at this  
11 point we wouldn't provide the gross margin for each  
12 of the the units.

13 **Q So the gross margin on the annual basis for**  
14 **each of the units.**

15 **So looking at Exhibit B of your**  
16 **responses filed on 2/16. I'm looking at the second**  
17 **page of that that lists each number of days must run**  
18 **dispatch and operation at a loss.**

19 **Is it possible for the company to**  
20 **provide at least the total dollar loss per each year**  
21 **per each plant if it is not the plant's total gross**  
22 **margin? In other words, this document appears to**  
23 **show that there was operations at a loss but it**  
24 **doesn't give any indication of what the losses are?**

1 HEARING OFFICER TIPSORD: Just for the  
2 record, you are talking about Exhibit B what is now  
3 Exhibit 24. We are using the exhibit a lot and  
4 Board exhibits are numbers and there are exhibits to  
5 the exhibits but to clarify it is Exhibit B to  
6 Exhibit 24.

7 MR. VICKERS: Correct.

8 A We will evaluate that confidential nature of  
9 the dollars associated with that exhibit and provide  
10 it if it's not considered business or confidential  
11 information.

12 QUESTIONS BY MR. VICKERS:

13 **Q Question 6A.**

14 A What other metrics Dynegy uses when  
15 reporting a fleet's operating performance to the  
16 SEC. We provide both GAAP and non-GAAP measures  
17 such as EBITDA, adjusted free cash flow and, of  
18 course, in our SEC filing consistent with GAAP  
19 measures, we provide a whole litany of financial  
20 indicators that you can find in the financial  
21 statements; whether revenues, depreciation,  
22 impairments, effectively every final metric that you  
23 see in our financial statements.

24 **Q And 6B.**

1           A     Similarly, we provide those same measures or  
2 metrics.

3           **Q     And with regard to the shareholders, are the**  
4 **performance metrics weighted any way?**

5                         **In other words, do you value some**  
6 **metrics than others when presenting them to the**  
7 **shareholders?**

8           A     I don't believe Dynegy weighs or values any  
9 one metric more than another. Of course, there are  
10 certain metrics that shareholders are more  
11 interested than others, so we may try to break those  
12 out or highlight them, but I wouldn't say we value  
13 those over others.

14           **Q     Are any of them used more than others for**  
15 **purposes of economic conversation?**

16           A     Yes. I'd have to verify, but --

17                         MR. MORE: Executive compensation is and  
18 metrics compensation have not been addressed to any  
19 testimony we have submitted, and I believe it is  
20 completely outside the scope of whether or not the  
21 proposal by Illinois EPA is as protective and meets  
22 the Act's requirements for approval, so I would  
23 object to this line of questioning.

24                         MR. VICKERS: I believe it is relevant here

1 because the company has put forward evidence about  
2 the performance of the segments that are at issue in  
3 the MPS rule making. So because there are so many  
4 metrics to gauge performance, I think it's helpful  
5 to understand what the company values in terms of  
6 its own metrics.

7 We've heard a lot of different  
8 numbers and ways of evaluating the performance of  
9 the fleet and the plants at issue here today, so I  
10 think it would be relevant to know what the  
11 executive compensation is based on. I think that is  
12 a highly relevant way that Dynegy would be making  
13 decisions for how it is operating its plant.

14 HEARING OFFICER TIPSORD: Mr. Ellis was  
15 indicating he was going to answer.

16 A I would point you to the company's annual  
17 proxy statement that is filed with the Securities  
18 and Exchange Commission. It is available on our  
19 website. It does talk about the different metrics  
20 that are considered when evaluating executive  
21 compensation.

22 **Q So I think we are on question 7A.**

23 A Marginal cost of production is the cost, the  
24 variable cost to operate a plant or a unit. It

1 primarily is driven by the cost of fuel and the  
2 unit's efficiency, but it includes other variable  
3 costs also.

4 **Q So what are those other variable costs?**

5 A It could be labor, for example.

6 **Q 7B.**

7 A One second, please.

8 **Q If it's helpful, I know that's a large**  
9 **attachment. I do have a copy of the individual page**  
10 **if that would be helpful.**

11 MR. MORE: Yes, that would be helpful.

12 A The subject of verification I would say the  
13 two are substantially the same, but there could be  
14 some minor differences between them, but I would  
15 have to review the financial statement in detail.

16 **Q And 7C.**

17 A Again, the gross margin for each plant in  
18 the Illinois fleet including the plants that are  
19 subject to the MPS rule is considered highly  
20 sensitive information and we don't make that  
21 publicly available.

22 **Q Question 8A.**

23 A Not necessarily. Dynegey's Illinois fleet as  
24 I mentioned previously includes both PJM and MISO

1 plants, not just the plants that are subject to the  
2 MPS revision or those plants in MISO.

3 **Q 8B.**

4 A Dynegy itself has not evaluated Curt  
5 Morgan's statement. I can tell you personally that  
6 I can't draw any definitive conclusion from this  
7 statement.

8 **Q 8C.**

9 A Again, Dynegy as a company has not evaluated  
10 this statement, but I can mention that personally my  
11 view of that statement is that Mr. Morgan needs to  
12 close on the merger of the two companies, get  
13 experience with operating the plant, understand the  
14 financial condition of the plants and conduct a  
15 similar exercise that he has conducted elsewhere at  
16 other plants and we are currently conducting and  
17 that's what we call an earnings and cost initiative  
18 to insure that we are operating plants as cost  
19 effectively as possible and making investments to  
20 the plant where possible that may have a possible  
21 return.

22 **Q Do you know what they did in Texas?**

23 A Not specifically. I don't know what he's  
24 referring exactly to there.

1           **Q   Skip D and go to 8E.**

2           A   My understanding of a new asset closure  
3 statement is to take plants that have been retired  
4 and put them in that business segment and that way  
5 the financial performance of each of those sites  
6 could be better tracked.

7                         For example, some of those sites are  
8 re-purposed for other reasons. Some of the sites  
9 can be sold, some of the sites might be remediated.  
10 So my understanding of the asset closure segment  
11 would be simply to better track the finances around  
12 closed sites or locations.

13           **Q   And F.**

14           A   Could you clarify for me exactly what you  
15 are referring to when you say the additional data  
16 that Dynegy provided on February 5. It is  
17 referenced on page eight. I don't think you said on  
18 page eight of what exhibit.

19           **Q   That is on page eight of attachment Dynegy.**

20                         MR. MORE: Do you have a copy of that?

21                         MR. VICKERS: Yeah. Actually, I do not have  
22 a copy of that one. Let me see if I can get one.

23                         HEARING OFFICER TIPSORD: Mr. Vickers, would  
24 you like to look for that at lunch and come back to

1 that?

2 Mr. Armstrong, do you have a  
3 question?

4 MR. ARMSTRONG: Yes, I have one follow-up  
5 question.

6 [EXAMINATION]

7 QUESTIONS BY MR. ARMSTRONG:

8 Q Mr. Ellis, I will read back your testimony  
9 from January 18, page 119 of that transcript. So  
10 the question started on page 119 line eight was "So  
11 any of the conclusions that you drew in your  
12 testimony, would those reflect the opinion of Vistra  
13 as well? For example, and I guess we can get to it  
14 later, but you have mentioned that 3,000 megawatts  
15 of power might shut down the MPS as it provides. Is  
16 that Vistra's position as well".

17 Your answer was, "We definitely can't  
18 speak for Vistra and we haven't coordinated any of  
19 these or discussed any of these policy type issues."

20 I would like to return to the  
21 earnings from Curtis Morgan, Vistra's President and  
22 CEO, also on pages -- this is on page 24.

23 Mr. Morgan states starting at the end of the first  
24 paragraph of one of his answers, "MISO I think is,

1 that's got multi-levels of work to do. We've got a  
2 good retail business there, but we have some  
3 challenges around that asset base; they are both in  
4 terms of performance but also just economics. And I  
5 know that Dynegy and Bob are working on that. I'm  
6 going to assume that he's referring to Robert  
7 Flexon, Dynegy's CEO. I mean, they're working on  
8 the multi-pollutant standard to basically create  
9 flexibility to make decisions about what assets were  
10 in, what assets were out."

11 So I guess my question to you is, do  
12 you have any other understanding of how Mr. Morgan  
13 would have gained any knowledge as to what the  
14 purpose of this multi-pollutant rule making is?

15 A Sure. I'd say Mr. Morgan very clearly drew  
16 his conclusions based on the publicly-available  
17 information that we testified to.

18 For example, we said that one of the  
19 main purposes of the MPS rule revision is to afford  
20 us flexibility around how we offer the units in, so  
21 when he says which units are in and which units are  
22 out, he could mean simply the energy market  
23 day-to-day which means what would have to be forced  
24 to run in the energy market simply to meet

1 compliance with the MPS.

2 Q Well that's an interesting interpretation.  
3 I would like to skip ahead a little bit further to  
4 the bottom of page 24. Further quote, "And so at  
5 some point when you don't get the reform and you are  
6 successful at doing what you need to do around the  
7 multi-pollutant standard and freeing up the assets,  
8 we've got to forego the authorization exercise to be  
9 no different than what we did in Texas and I think  
10 that may result in maybe shrinking our size of our  
11 generation, whether that means we're trying to sell  
12 assets or what, I don't know yet."

13 So your testimony is you understand  
14 him to be talking about the only purpose of the MPS  
15 rule making is whether plants need to be bid in or  
16 bid out on a day-to-day basis?

17 MR. MORE: Will you repeat the question?

18 Q So your testimony is that you understand of  
19 what Mr. Morgan is saying here is that the only  
20 purpose of the MPS is to afford operational  
21 flexibility as Dynegy has defined it meaning whether  
22 Dynegy needs to bid in on economical plans for  
23 Dynegy compliance. You don't think that has  
24 anything to do with retiring plants?

1           A    I don't know specifically what Mr. Morgan  
2 meant by that statement. You asked me what it could  
3 mean or interpret it or what I thought and I gave  
4 you that interpretation, but it could potentially  
5 mean something else.

6           **Q    And you have no understanding of how**  
7 **Mr. Morgan would have any opinions about the purpose**  
8 **of this rule making other than what he's read in**  
9 **publicly-filed papers?**

10          A    That is correct. I will add that,  
11 subsequent to the first hearing because there were  
12 questions around coordination with Dynegy and  
13 Vistra, that I happened to be at Vistra's offices  
14 subsequent to the first hearing and I met Mr. Morgan  
15 briefly and I said that there have been questions  
16 around Vistra's plans going forward in light of the  
17 MPS rule, and Mr. Morgan said to me personally that  
18 Vistra's plans would be the same exact that Dynegy  
19 has had. That is, again undergoing earnings and  
20 cost exercise to insure that we are taking the  
21 plants as financial as possible, that we will  
22 continue to advocate for other reforms such as the  
23 capacity reforms and that will condition the MPS  
24 rule revision.



1 [EXAMINATION]

2 QUESTIONS BY MR. SYLVESTER:

3 Q Steve Sylvester from the Attorney General's  
4 office. I have a followup.

5 You said you had conversation with  
6 Mr. Morgan. When we were in Peoria during the  
7 hearing between both of the Dynegy's witnesses, one  
8 of the answers was we couldn't talk to Vistra  
9 because of antitrust concerns, and I was wondering  
10 when those were lifted or you believe your  
11 confrontation with Mr. Morgan didn't impact  
12 antitrust laws.

13 A I think you're conflating two issues. The  
14 questions in the hearing in Peoria were around  
15 coordinating strategy and positions with regard to  
16 the statement, with regard to the assets, and when I  
17 mentioned to Mr. Morgan just a brief download from  
18 some of the questions we were hearing in the hearing  
19 in Peoria, he and I did not coordinate positions or  
20 strategy or tactics necessarily around the plant and  
21 I was really just simply trying to relay to him some  
22 of the questions that we were receiving publicly in  
23 Peoria which he would have been aware of and he just  
24 gave me a response that said I could give back

1 publicly to the folks but I didn't view that as  
2 coordinating strategy or tactics or violation of any  
3 antitrust regulation.

4 **Q Well, I just thought one of the things you**  
5 **said about what he said seemed to be about strategy**  
6 **going forward about what the plants were going to do**  
7 **going forward so I just wondered whether those**  
8 **restrictions were lifted or not?**

9 MR. MORE: Well, what's the question? We  
10 said the conversation occurred. He relaid the  
11 conversation. Whether the conversation was in  
12 compliance or out of compliance is irrelevant to  
13 this proceeding and I'm not going to let him answer  
14 that question actually to put himself or the company  
15 at risk related relating to that issue.

16 MR. SYLVESTER: I think he put it at issue  
17 already by stating that that is the basis for not  
18 answering questions during the Peoria hearing and  
19 now you are sort of changing positions. I just want  
20 to know if anything materially changed with your  
21 previous answers like I realize that the sales have  
22 been approved by the shareholders.

23 Does that have any impact on your  
24 ability to speak with Vistra or not?

1           A     Nothing has changed. We are still subject  
2 to the same rules and regulations. My conversation  
3 with Mr. Morgan was against that background and so  
4 we still are under the same rulings and regulations.

5                     The only thing that changed at that  
6 point is there were questions that came up at the  
7 hearing at Peoria and I simply related that to  
8 Mr. Morgan.

9                     HEARING OFFICER TIPSORD: Mr. Vickers.

10                    MR. VICKERS: Actually, just to tie up a bit  
11 there a reference was made and I just wanted to  
12 confirm that Dynegy and Vistra shareholders had  
13 voted last week to approve the merger, is that  
14 correct?

15           A     That's correct.

16                    HEARING OFFICER TIPSORD: Then let's go  
17 ahead and try to get some of the Attorney General's  
18 pre-filed questions in before lunch. If there is no  
19 objections, we will admit pre-filed questions by the  
20 Illinois Attorney General's office filed on  
21 March 2nd, 2018 to Dynegy as Exhibit 26. Seeing  
22 none there, Exhibit 26.

23                                     (Exhibit 26 was marked for  
24                                     identification by the court

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reporter.)

Mr. Gignac or Mr. Sylvester?

MR. SYLVESTER: We are trying to figure out which set of questions we are following up on here, the currently-filed questions or the ones filed previous to the hearing.

HEARING OFFICER TIPSORD: You had received pre-filed answers to your earlier questions. I would assume that you built in any other additional questions that you filed on March 2nd.

Was that not the case?

MR. GIGNAC: We may have additional follow-up questions outside of the March 2nd pre-filed questions, so one way we could proceed is to get Dynegy's responses to the March 2nd pre-filed questions into the record and then allow our office or any other party to ask follow-ups to those or any previous questions that have been asked today.

HEARING OFFICER TIPSORD: Let's do the March 2nd questions and then, if you have additional questions that you wish to ask, we will go from there, but let's start with the March 2nd questions that have been pre-filed and admitted as exhibit 26.

1 [EXAMINATION]

2 QUESTIONS BY MR. GIGNAC:

3 **Q For the record my name is James Gignac,**  
4 **G-I-G-N-A-C, with the Illinois Attorney General's**  
5 **office. Shall we proceed by simply identifying the**  
6 **question number. Question one.**

7 A Could you read the first part of the  
8 question?

9 **Q With respect to coal ash referred to by**  
10 **Dynegy as quote coal combustion residuals.**

11 A (Ellis) I got it. Yes, Dynegy receives  
12 payments for the beneficial reuse for coal  
13 combustion residuals.

14 HEARING OFFICER TIPSORD: Could you repeat  
15 that?

16 A Yes. Dynegy does receive payments that use  
17 coal ash from Dynegy's plants. Yes.

18 (Diericx) And with regard to the second part  
19 of the question, Dynegy does incur costs for storing  
20 or disposing ash if it is not sold or reused in some  
21 way.

22 **Q Question 2.**

23 A (Diericx) Yes. Dynegy or one of its  
24 affiliates owns the property that we refer to in

1 Exhibit A.

2 HEARING OFFICER TIPSORD: For the record,  
3 that is Exhibit A to Exhibit 24.

4 **Q Question 3.**

5 A (Ellis) Those units were not being bid  
6 because the ISO had designated operation of them as  
7 being necessary to maintain reliability.

8 **Q So the answer to the question is no?**

9 A Correct.

10 **Q Question 4?**

11 A The answer is no.

12 **Q Is your answer to question four correct or**  
13 **incorrect if you were to answer it in that fashion?**

14 A One second. Let me re-read the question to  
15 make sure we are answering it correctly.

16 So you're asking if that statement is  
17 correct and the answer is yes, but I'll clarify that  
18 it is for MPS compliance purposes.

19 **Q Question 5.**

20 A The answer is yes.

21 **Q As a follow up to question five, is Dynegy**  
22 **able to provide in this proceeding the number of**  
23 **hours that Dynegy operated below its marginal cost**  
24 **of operation?**

1           A     Just repeat that to me one more time.

2           **Q     Is Dynegy able to provide in this proceeding**  
3 **information on the amount of hours that its units**  
4 **operated below their marginal cost of operation?**

5           MR. MORE:   For MPS compliance purposes?   For  
6 example, the table attached to our written responses  
7 sets forth the number of days which the units  
8 operated, Coffeen, Duck Creek operated below the  
9 marginal cost.

10          **Q     Could that be provided in hours?**

11          A     We can look into that.   I believe we provide  
12 it in days because the original question at the  
13 first hearing was around number of days, but I don't  
14 think there is any reason to provide it in days and  
15 hours.

16          **Q     So related to the issue of days and hours in**  
17 **the information that was provided, can you provide**  
18 **your answer to question six.**

19          A     There are a number of reasons why the data  
20 was provided in hours in one chart and days in a  
21 separate table.   One reason, again, was specific  
22 question that the table asking was in terms of days  
23 so we provided the answer in terms of days.

24                         Additionally, the data comes from two

1 separate systems. One is related to how we offered  
2 the plants into the energy market and that same  
3 input into the ISO and the other is related to the  
4 profitability of plants which is a financial setting  
5 which is typically done more on a daily basis so  
6 just quite simply grabbing the data or retrieving  
7 the data I believe came from two separate systems  
8 and we have to look into whether we put the data on  
9 the same metric.

10 **Q Question 7.**

11 A No. If a day was lost, then it was  
12 included.

13 **Q So the calculation was the total hours of**  
14 **operation and then adding up the revenue and the**  
15 **costs to determine if the unit made a profit per**  
16 **day?**

17 A It was on a daily basis, and with regard to  
18 profit, it was -- its gross margin was positive.

19 **Q With respect to the table though, is that**  
20 **indicating that leaving the entire day the unit was**  
21 **bid below cost for MPS compliance purposes?**

22 A Typically, the cost for the unit is on a  
23 daily, not an hourly basis. So it was daily.

24 HEARING OFFICER TIPSORD: Mr. Vickers has a

1 follow-up.

2 [EXAMINATION]

3 **Q Is it possible for the company to provide**  
4 **the number of days the units operated for each year?**  
5 **So right now it is just the number of days it**  
6 **operates as a loss.**

7 **Do we assume that they operated 365**  
8 **days that year or is it possible to get the actual**  
9 **days of operation?**

10 A The number of operating days are publicly  
11 available but not the specific days, so we wouldn't  
12 be able to provide the exact days that the units  
13 operated.

14 **Q You could provide the total number of days?**

15 A If it's publicly available, yes, I believe  
16 it is.

17 [EXAMINATION]

18 **Q I think we may have covered this, but could**  
19 **you also provide Dynegy's answer to question eight.**

20 A I'd refer back to my previous answers which  
21 included that I believe one of the questions related  
22 to providing data and days and that is why it was  
23 provided in days. I believe it was data how we were  
24 able to retrieve the data. In one case it was an

1 hour basis and the other it was a daily basis.

2 **Q Question 9.**

3 A Could you clarify that question for me or  
4 rephrase it?

5 **Q When Dynegy is calculating the marginal cost**  
6 **of operation for a unit, does that calculation**  
7 **include a category of profit?**

8 A I don't know if you necessarily rephrased it  
9 so I will take a shot at answering it, and if it  
10 doesn't get to your question, let me know.

11 When we offer a unit into the energy  
12 market, we generally do not include a return or a  
13 profit margin. We simply offer the unit in at its  
14 variable costs.

15 **Q So if a unit was selected and the clearing**  
16 **price was marginal cost of operation, Dynegy would**  
17 **not make any money on that hour of operation,**  
18 **correct?**

19 A That's correct, and that's one of the  
20 definitions of margin, yes.

21 **Q And question 10.**

22 A (Diericx) Dynegy did send the letter which  
23 is attachment one to Exhibit 26 to the Illinois AG's  
24 office. Our letter explains the various

1 circumstances that occurred from October 25, 2017  
2 through November 17, 2017 regarding Baldwin Unit 1,  
3 but Dynegy does not agree with your characterization  
4 of the event at Baldwin and suggest you review our  
5 letter which goes to great lengths to lay out the  
6 events and timeline of those exact details.

7 HEARING OFFICER TIPSORD: And for the  
8 record, it is actually December 24. Thank you.

9 QUESTIONS BY MR. GIGNAC:

10 **Q So going to a few follow-up issues now --**

11 HEARING OFFICER TIPSORD: You know what,  
12 it's 1:00. Before we go into follow-up issues, why  
13 don't we take an hour for lunch and come back and  
14 start there.

15 (Recess taken.)

16  
17 HEARING OFFICER TIPSORD: Let's go ahead and  
18 go back on the record. Thank you everybody for your  
19 prompt return from lunch. It is greatly  
20 appreciated, even though some of you had to bring  
21 your lunch back with you.

22 So we left off with Mr. Gignac. You  
23 have some additional questions for Dynegy.

24 MR. GIGNAC: So we conferred over lunch and

1 we just had two more questions.

2 [EXAMINATION]

3 **Q Mr. Gignac, G-I-G-N-A-C, from the Illinois**  
4 **Attorney General's office. I wanted to start by**  
5 **revisiting the exchange from this morning with**  
6 **Mr. Armstrong about the bidding of certain units.**  
7 **So I would like to ask, does Dynegy ever reduce or**  
8 **restrict the bidding of all or part of certain units**  
9 **into the MISO market due to the MPS?**

10 **In other words, withholding all or**  
11 **part of those units for MPS compliance reasons.**

12 A (Ellis) Mr. Gignac, could you clarify a  
13 couple of words? You said withhold and I wasn't  
14 sure what context you meant withhold whether it was  
15 simply not offering to energy market that energy.

16 **Q Choosing not to offer?**

17 A Well, first and foremost, if we sold  
18 capacity into the MISO market, you don't withhold  
19 any of that energy. If we haven't sold it, then  
20 there is no obligation to offer it. So it's  
21 possible that compliance strategy with the MPS would  
22 not run the plant. But off the top of my head, I  
23 don't think we discussed that. At least, I haven't  
24 discussed that with anyone.

1           **Q    And has Dynegy chosen not to offer units**  
2 **into the MISO market in order to comply with the**  
3 **MPS?**

4           A    (Ellis) Off the top of my head, I'm not  
5 aware of any time that we didn't offer. We might  
6 change the offer as we talked about. That is,  
7 either offer to insure that it runs, but we haven't  
8 withheld any energy that I'm aware of.

9           **Q    So the situation that was discussed this**  
10 **morning with the Joppa Plant, that's what I'm trying**  
11 **to get at is the reason for what I believe you said**  
12 **is Dynegy withheld all or part of unit of Joppa in**  
13 **order to -- for MPS compliance purposes, is that**  
14 **correct?**

15          A    Again, Dynegy does not withhold energy  
16 particularly energy that we've sold capacity  
17 against, but we can increase the unit's offer to  
18 decrease the likelihood that it may get picked up as  
19 long as we are within offer parameters and not  
20 subject to mitigation by the ISO. We didn't  
21 withhold Joppa from the energy market.

22          **Q    But you testified that in December of 2016**  
23 **and 2017 there was a period of time when Dynegy did**  
24 **not want the Joppa Plant to operate for purposes of**

1 **MPS compliance?**

2 COURT REPORTER: Could you repeat that?

3 HEARING OFFICER TIPSORD: Please speak  
4 louder. We have the addition of a fan blowing back  
5 here so please talk really into the microphone.

6 A I can't speak to the exact nature of how we  
7 control or try to control whether or not the unit  
8 was running the energy market, but we are allowed to  
9 put certain adders into our energy bid, and if we  
10 need to do that to insure compliance with  
11 environmental regulations, we are permitted to do  
12 that so I can't stand here today and tell you I  
13 don't have the data on how that was managed, but  
14 that very well could have been.

15 **Q I think what I'm trying to get at is, is in**  
16 **the situation you testified to earlier where a**  
17 **scrubbed unit had an unexpected outage and,**  
18 **therefore, later in the year Dynegy needed an**  
19 **unscrubbed unit to run less, MISO, if it needed that**  
20 **unscrubbed unit for grid reliability, could dispatch**  
21 **or could have dispatched that unit?**

22 A Said differently, if the unit was inspected  
23 based on pure economics, but there was a liability  
24 concern that the ISO needed to resolve, then the ISO

1 could have put out of market to run it.

2 [EXAMINATION]

3 QUESTIONS BY MR. ARMSTRONG:

4 **Q Andrew Armstrong. My question relates to**  
5 **page six of Dynegy's responses to questions from**  
6 **February 16. In response to -- well in question**  
7 **seven the answer is that Dynegy closely monitors**  
8 **each MPS average emission rate. On a number of**  
9 **occasions in order to meet fleet-wide average**  
10 **emission rate set by the MPS, Dynegy has bid lower**  
11 **rate units into MISO as quote "must run" end quote**  
12 **units at a price that does not cover costs.**

13 **I was just wondering, are there any**  
14 **other commercial reasons or contractual reasons that**  
15 **Dynegy might bid a unit to MISO as must run?**

16 **A Yes. There are other reasons. The primary**  
17 **reason is to manage compliance with the MPS, but we**  
18 **could must run a unit because for whatever reason we**  
19 **may have to keep the unit online for an extended**  
20 **period of time. We have forecasted that so**  
21 **primarily the units are must run for compliance with**  
22 **the MPS, but there are other times that we may have**  
23 **a must run unit.**

24 **Q Can you give examples of those other reasons**

1 **why a unit would have to be must run?**

2 A (Diericx) There would be operational  
3 reasons to do that. I understand that, to avoid  
4 shutting down a unit and restarting a unit a short  
5 time later, we may run a unit for a short period of  
6 time to avoid that shut down because of the stress  
7 and wear and tear it puts on a unit.

8 **Q Are there any contractual reasons by which**  
9 **Dynegy would have to as a result of contract with**  
10 **another party to offer a unit as a must run?**

11 A (Ellis) I'm not aware of any.

12 MR. GIGNAC: For our last question I would  
13 like to have the Attorney General's responses from  
14 February 16 admitted as an exhibit.

15 HEARING OFFICER TIPSORD: You're jumping  
16 ahead of me. I was going to the agency and come  
17 back.

18 MR. GIGNAC: Well, I would like to ask  
19 Dynegy a question about that and since it hadn't  
20 been admitted yet.

21 HEARING OFFICER TIPSORD: Hang on just a  
22 second. I will get to that in my book. If there's  
23 no objection, we will admit Attorney General's  
24 responses to January hearing questions filed on

1 February 16, 2018 as Exhibit 27. Is there any  
2 objection? Seeing none, it is Exhibit 27. Go  
3 ahead.

4 (Exhibit 27 was marked for  
5 identification by the court  
6 reporter.)

7 MR. GIGNAC: There is also an exhibit to the  
8 exhibit. Is that included in the admission?

9 HEARING OFFICER TIPSORD: Yes. Exhibit 1 to  
10 Exhibit 27.

11 MR. ARMSTRONG: So we were going to ask a  
12 question about Exhibit 1 to the same exhibit which  
13 is a chart of historic gross loads and capacity  
14 factors for specific units.

15 HEARING OFFICER TIPSORD: You are trailing  
16 off. We now have a fan unit and you need to speak  
17 up.

18 BY MR. ARMSTRONG:

19 **Q Sorry. So we were going to ask a question**  
20 **about the chart that's Exhibit 1 which includes**  
21 **historic gross loads and capacity factors for**  
22 **specified units in Dynegy's fleet.**

23 **My first question was would you have**  
24 **had an opportunity to review the chart before today?**

1 A (Ellis) Yes.

2 Q Have you formed an opinion on whether the  
3 Attorney General's calculation of historic capacity  
4 factors for these specified units are accurate?

5 A No, we have not.

6 Q I've just been wondering if you might, for  
7 the record, consider whether you agree that these  
8 capacity factors are accurate, and if not, provide  
9 what you believe are accurate capacity factors?

10 A It's something we'll consider.

11 Q Thank you.

12 MR. GIGNAC: No further questions.

13 HEARING OFFICER TIPSORD: With that, the  
14 Board does have a few questions for Dynegy and,  
15 again, for ease of our ability to write this, we  
16 will admit that there is no objection.

17 The Board's pre-filed questions to  
18 Dynegy's witness which was part of the March 2nd,  
19 2018 hearing officer order as Exhibit 28. Those are  
20 only the Dynegy questions which appear on page  
21 seven. Is there any objection? Seeing none, it is  
22 Exhibit 28.

23 (Exhibit 28 was marked for  
24 identification by the court

1 reporter.)

2 [EXAMINATION]

3 MS. PAPADIMITRIU: Mr. Ellis, can you hear  
4 me okay?

5 A Yes, I can.

6 **Q We will follow the same procedure that we**  
7 **followed before. I won't read the questions. Do**  
8 **you need me to read part of the first question or**  
9 **are we on the same page literally?**

10 A We are on the same page.

11 **Q So question number one both parts.**

12 A The units that are pseudo tied into PJM,  
13 Coffeen Unit 2 at 151 megawatts; Duck Creek, 329  
14 megawatts; Edwards Unit 3 at 150 megawatts, Newton  
15 at 307 megawatts; Hennepin at 260 megawatts.

16 MR. RAO: Mr. Ellis, for the record, can you  
17 explain more what pseudo tied means.

18 A Sure. Illinois is bifurcated between two  
19 power markets, two wholesale power markets; the PJM  
20 market to the north and MISO to the central and  
21 south of Illinois and we can sell as other suppliers  
22 can we can sell capacity and buy capacity across the  
23 two markets. If we sell capacity from the MISO  
24 market to the PJM market, we have to seize

1 operational control of the amount of megawatts for  
2 the portion of the plant that we sell to the  
3 controlling market.

4 So if we've sold, for example,  
5 capacity from a MISO plant to a PJM plant, PJM takes  
6 operational control for that amount of capacity.

7 How they do that is through  
8 information technology. They have a communication  
9 circuit back to the plant and the plant's computer  
10 that gives the operational control to the operator,  
11 to the grid operator. That process is called pseudo  
12 tie.

13 BY MS. PAPADIMITRIU:

14 **Q The second part, Mr. Ellis.**

15 A PJM doesn't specifically account for the MPS  
16 regulations like most ISOs. They allow the supplier  
17 to reflect in their offers compliance with  
18 environmental regulations so we are allowed to  
19 change our offers and modify our offers to reflect  
20 the compliance, but PJM doesn't specifically account  
21 for the MPS regulation, but it doesn't disregard it  
22 either.

23 **Q Does that affect what you offer in? In**  
24 **other words, does the MPS limit your offer?**

1 A It can, yes.

2 **Q Number 2.**

3 A There are a couple of scenarios under which  
4 the grid operator, be it MISO or PJM, may designate a  
5 generating facility as SSR or RMR unit that  
6 typically arises when the owner files to retire or  
7 mothball that unit and the grid operator identifies  
8 a potential liability concern from the retirement  
9 that would arise from the reliability retirement, so  
10 the ISOs in that case have a provision in their  
11 tariff to issue the retiring unit a contract to  
12 stay online until the reliability concern is  
13 resolved.

14 **Q Number 3. If I may, this question arose**  
15 **from, I believe, your testimony in, it all bleeds**  
16 **together, perhaps in January or December where you**  
17 **seemed to indicate that Dynegy didn't really have**  
18 **control over the units that MISO might select, and**  
19 **so the Board is simply seeking clarification on**  
20 **whether Dynegy first identifies, in other words,**  
21 **offers the capacity or the energy or MISO or PJM**  
22 **says that you must make it available.**

23 A Dynegy doesn't identify which units could be  
24 designated as reliability units. We offer or we

1 determine, I'm sorry, which units we may want to  
2 retire or mothball and the ISO as the grid operator  
3 and conducts analysis and designates the unit from  
4 that point forward. Dynegy doesn't have enough  
5 information to determine whether a unit could be  
6 designated as a reliability unit.

7 **Q And if Dynegy had bid in energy or capacity**  
8 **of a unit, you are unable to quote unquote double**  
9 **count it as a designee, is that correct?**

10 A That's correct. Taking a crack at answering  
11 it, let me know if this doesn't get to your point.

12 In MISO there is a true-up mechanism.  
13 So if we are receiving energy and capacity revenues,  
14 that's trued up against the cost of the reliability  
15 contract and then against it.

16 **Q Next question, number 4.**

17 A Dynegy's MPS rates don't specifically affect  
18 our offer of units as SSRs or RMRs. I'm not sure I  
19 understand exactly what the question is asking.  
20 Perhaps you could help clarify before I take a crack  
21 at answering it.

22 **Q Yes. So I would suggest number four and**  
23 **number six could be read together.**

24 **So the question that we have is, is**

1     **there anything that an entity larger than a state,**  
2     **so an ISO or RTO, can require a generating unit to**  
3     **operate beyond a state environmental regulation?**

4             **In other words, is there anything**  
5     **that an RTO or ISO could do to cause you to run your**  
6     **units more than perhaps a consent decree or some**  
7     **regulation has limited it?**

8             A     Well, inside the context of an RMR and SSR  
9     designation or even outside of that context, the  
10    ISOs can't require an operator to exceed its  
11    environmental limits.

12            **Q     Can or cannot?**

13            A     Cannot require an operator to exceed its  
14    environmental limits.

15            **Q     So if we set a cap, a mass-based cap, it**  
16     **would be a true cap? There would not be a way for**  
17     **the RTO or the ISO to require the generating unit to**  
18     **go beyond that?**

19            A     No. We would be subject to the cap and we  
20    run into that exact situation with a number of  
21    different environmental regulations which then  
22    drives how we offer the units to manage that  
23    compliance.

24            **Q     Then number 5. Just one more crack at the**

1 **same question asked slightly differently.**

2 A No. Again the grid operator, be it MISO or  
3 PJM, cannot require an MPS unit to run passed its  
4 environmental limits.

5 **Q Thank you.**

6 HEARING OFFICER TIPSORD: Any other  
7 additional follow-ups for Dynegy?

8 [EXAMINATION]

9 QUESTIONS BY MR. VICKERS:

10 **Q Justin Vickers. I just have one more**  
11 **question following up before with regard to I**  
12 **believe it was a conversation with Mr. Armstrong**  
13 **about how Vistra thinks about the value of Dynegy's**  
14 **fleet. I wanted to point you to Attachment C of**  
15 **Exhibit 25 which was the Environmental Group's**  
16 **pre-filed questions. On page 78 and recognizing**  
17 **that that is a large exhibit, I'll just hand you a**  
18 **copy of that. We're looking here at the paragraph**  
19 **that is to the value creation. For purposes of the**  
20 **record and for everyone in the room I'll just read**  
21 **the relevant bit there.**

22 **"The Vistra Energy Board considered**  
23 **that the merger is projected to achieve**  
24 **approximately \$350 million dollars in annual run**

1 rate EBITDA value enhancement by streamlining  
2 general and administrative costs in limiting  
3 fleet-wide emission operating practices driving  
4 procurement efficiencies and eliminating  
5 under-duplicative costs."

6 My question is whether any of those  
7 EBITDA value enhancements would flow into the plants  
8 affected by the MPS rule making? So, in other  
9 words, would sort of the operational efficiencies  
10 that generate this value be, in part, reflected in  
11 the plants affected?

12 A It's possible. I don't know if they  
13 identify those savings down to that level with any  
14 regularity. So, again, it is possible.

15 As I mentioned, Vistra has an ongoing  
16 earnings and cost initiative and I would presume  
17 that they're going to apply that to the plants that  
18 they acquire from Dynegy. And it's possible that as  
19 part of that initiative, they identify some of these  
20 deficiencies.

21 MR. VICKERS: Thank you. I have no more  
22 questions.

23 HEARING OFFICER TIPSORD: Mr. More.

24 MR. MORE: We would ask that if anyone has

1 questions for Lucy Frasier, we will take those  
2 questions now. If no one does, she's going to leave  
3 this afternoon and head back and will not be  
4 available.

5 MS. BUGEL: Yes. I have questions for Ms.  
6 Frasier.

7 DR. LUCY FRASIER

8 (WHEREUPON WITNESS WAS SWORN IN)

9 [EXAMINATION]

10 QUESTIONS BY MS. BUGEL:

11 **Q Thank you. Dr. Frasier, I am looking at**  
12 **page five of your report. The very bottom last**  
13 **paragraph on the page, the first sentence in that**  
14 **paragraph reads quote, "In part, concentrations and**  
15 **criteria pollutants that are below the NAAQS are not**  
16 **expected to cause adverse health impacts."**

17 **Do you see where it states that?**

18 **A Yes, I do.**

19 **Q And, are you aware of USEPA's AirNow system?**

20 **A I am familiar with that, yes.**

21 **Q And does it provide health information to**  
22 **the public through a color-coded framework?**

23 **A Could you be a little more specific?**

24 **Q Does it use different colored categories and**

1 **have certain messages that go with the category?**

2 A I'm sorry, again I guess I'm not sure what  
3 you're asking me. Can you be more specific about  
4 what you're referring to?

5 **Q Well, my question is, are you familiar with**  
6 **how the system works and conveys messages to the**  
7 **public with a different message that goes with**  
8 **different color-coded categories that indicate**  
9 **different levels of air quality?**

10 A I'm sorry, I guess I would have to see what  
11 you are referring to to respond to that.

12 **Q But you did say you're familiar with USEPA's**  
13 **AirNow system?**

14 A I have heard of the AirNow system, yes.

15 **Q Are you aware of whether it has an orange**  
16 **category?**

17 A Again, I think I would need to see what  
18 you're referring to.

19 **Q Are you aware of a mechanism by which the**  
20 **system indicates that air quality is unhealthy for**  
21 **sensitive groups?**

22 A Yeah, I guess I would need to see  
23 specifically what you are referring to to answer  
24 that question.

1           **Q    We'll move on.  You also -- I believe, this**  
2           **also appears on page five of your testimony.**

3                   HEARING OFFICER TIPSORD:  Excuse me, Ms.  
4           Bugel, for the record, it's a report attached to  
5           responses.  It is not testimony and it's attached to  
6           Exhibit 24.

7                   MS. BUGEL:  Thank you for straightening me  
8           out, Hearing Officer.

9           **Q    Referring to page five of your report, you**  
10          **have a flow chart that indicates the way setting the**  
11          **NAAQS works, correct?**

12                  A    That's correct.

13          **Q    And in this flow chart you have a box that**  
14          **indicates the clean air scientific advisory**  
15          **committee review.**

16                  A    Yes.  There is a box, and just to clarify,  
17          this is EPA's flow chart, not my flow chart.

18          **Q    And the clean air scientific advisory**  
19          **committee is also known as CASAC, C-A-S-A-C?**

20                  A    That's correct.

21                   HEARING OFFICER TIPSORD:  Excuse me, Ms.  
22          Bugel, when you say EPA, you mean USEPA, correct?

23                  MS. BUGEL:  Yes.

24          **Q    (By Ms. Bugel) Are you familiar with the**

1 **role of CASAC in that process?**

2 A Yes, I'm generally familiar with that.

3 **Q Can you describe it?**

4 A My understanding is that CASAC reviews the  
5 scientific documents and the policy documents that  
6 are produced by USEPA during the course of  
7 evaluating a NAAQS and provides advice to the EPA  
8 administrator.

9 **Q And does CASAC advise, does their advice**  
10 **include an opinion as to what the level of the NAAQS**  
11 **should be?**

12 A Yes, it does, amongst many other things.

13 **Q Do you know if the EPA administrator always**  
14 **follows the advice of CASAC when they provide a**  
15 **recommended NAAQS?**

16 A I mean, I would think it would be different  
17 in different circumstances. They are there to  
18 provide advice.

19 **Q Do you know if the EPA administrator always**  
20 **sets the NAAQS at the level recommended by CASAC?**

21 A No. I guess I don't have specific  
22 information to answer that. They provided advice to  
23 the EPA.

24 **Q Are you aware of a letter from CASAC to**

1 **Administrator Johnson in 2008 that protested the**  
2 **NAAQS that Administrator Thompson set for ozone**  
3 **outside the recommended range provided by CASAC?**

4 A No. I'd be happy to look at something, but  
5 off the top of my head, I don't have a recollection  
6 of seeing that.

7 **Q Thank you. That's all the questions that I**  
8 **have.**

9 HEARING OFFICER TIPSORD: Mr. Armstrong.

10 [EXAMINATION]

11 QUESTIONS BY MR. ARMSTRONG:

12 **Q So our only question, if you take a look at**  
13 **page three of your report, that is the Section 1.12**  
14 **and it is entitled IEPA's Evaluation Demonstrates**  
15 **that the Proposed MPS Limits will not Threaten NAAQS**  
16 **Attainment.**

17 I just want to clarify, with respect  
18 to this session and literally with respect to your  
19 testimony as a whole, the NAAQS that you are  
20 referring to is for sulfur dioxide and nitrogen  
21 oxides, is that correct?

22 A That's correct.

23 **Q Thank you.**

24 HEARING OFFICER TIPSORD: Anything else for

1 Dr. Frasier? Anything else for Dynegy?

2 QUESTIONS BY MR. ARMSTRONG:

3 **Q Mr. Sylvester put in a good point. He asked**  
4 **about Dr. Frasier's testimony as a whole but we are**  
5 **talking about the report. We just wanted to clarify**  
6 **that.**

7 **So your report as a whole focuses on**  
8 **the NAAQS for sulfur dioxide and nitrogen oxide?**

9 A That's correct.

10 **Q (By Mr. Armstrong) Thank you.**

11 HEARING OFFICER TIPSORD: Anything else for  
12 Dr. Frasier?

13 A So as a point of clarification, I do in my  
14 report respond to some of the public testimony, so  
15 the testimony was not necessarily just to sulfur  
16 dioxide and nitrogen oxide, but my report speaks for  
17 itself on those items.

18 **Q Very good. Thank you.**

19 HEARING OFFICER TIPSORD: Anything else for  
20 Dynegy? All right. Let's go to the IEPA then. We  
21 will start by Mr. Bloomberg and Mr. Davis. From  
22 February 16, 2018 which is responses and information  
23 requested from the January hearings. We would admit  
24 that as Exhibit 29 if no one objects. Seeing no --

1 Mr. More.

2 (Exhibit 29 was marked for  
3 identification by the court  
4 reporter.)

5 MR. MORE: Mr. More, but I don't think we  
6 entered into the record Dynegy's written responses  
7 to questions presented.

8 HEARING OFFICER TIPSORD: Sure did, Exhibit  
9 24. So Exhibit 29 will be the IEPA's responses and  
10 information requested from the January hearing dated  
11 February 16, 2018, and in response to that, we have  
12 questions from Dynegy, the Attorney General and the  
13 Board. So we will start with the Attorney General's  
14 Office, and again for ease of writing, if there is  
15 no objection, we will mark the Attorney General's  
16 questions for IEPA filed on March 2nd, 2018 as  
17 Exhibit 30.

18 (Exhibit 30 was marked for  
19 identification by the court  
20 reporter.)

21 Is there any objection? Seeing none,  
22 it is Exhibit 30 and that we will turn it over to  
23 you.

24 MS. ROCCAFORTE: Gina Roccaforte on behalf

1 of the Illinois Protection Agency. Before  
2 proceeding, it occurred to the Agency that while  
3 Mr. Davis' background and experience has been  
4 explained in his pre-filed testimony,  
5 Mr. Bloomberg's had not because he did not file  
6 pre-filed testimony. The Agency would like to  
7 correct that omission especially since a number of  
8 previous and new questions and answers were taken as  
9 duties.

10 MR. BLOOMBERG: David Bloomberg, Illinois  
11 EPA. I am the manager of the Air Quality Planning  
12 Section within the Bureau of Air at Illinois EPA. I  
13 have been in this position since November 2012.  
14 Starting in 2014 the former air monitoring section  
15 was also placed under my supervision.

16 Prior to my current position, I was  
17 the manager of the Compliance Unit in the Bureau of  
18 Air for almost eight and a half years and before  
19 that I worked as an environmental protection  
20 engineer in the regulatory unit within the Air  
21 Quality Planning Section for approximately 12 and a  
22 half years.

23 In all of my job titles I have  
24 coauthored rules and technical support documents.

1 In my current position I oversee all the air  
2 technical staff that is tasked with air regulations,  
3 modeling, inventory, state implementation plan or  
4 SIP work, air monitoring, monitoring quality  
5 assurance and related tasks.

6 Also, before we begin answering  
7 questions, Illinois EPA wants to make the board  
8 aware of a recent change related to some of our  
9 previous environmental justice answers.

10 On or about February 1, 2018,  
11 Illinois EPA Internet Technology Staff updated the  
12 dataset feeding EJSTART geographic information  
13 system mapping tool. The current dataset is the  
14 American Community Survey five-year average from  
15 2012 to 2016.

16 Utilizing the new data, Illinois EPA  
17 determined that Dynegy's Havana facility is located  
18 within one mile of a census block group meeting the  
19 low income screening criteria. When the original  
20 screening was completed utilizing the 2011 to 2015  
21 data as part of this rule making, Havana did not  
22 meet the demographic screening criteria of a  
23 potential environmental justice community.

24 HEARING OFFICER TIPSORD: Go ahead, Mr.

1 Armstrong.

2 DAVID BLOOMBERG AND RORY DAVIS

3  
4 [EXAMINATION]

5 QUESTIONS BY MR. ARMSTRONG:

6 **Q Andrew Armstrong. I will go ahead and say**  
7 **the question number rather than read it into the**  
8 **record. So question 1A?**

9 A (Bloomberg) The Illinois EPA consulted with  
10 Dynegy to insure the 49,000 ton limit would not be  
11 impossible to meet. The Agency did not consult with  
12 USEPA.

13 **Q (By Mr. Armstrong) Question 1B.**

14 A Dynegy is the owner of the sources impacted  
15 by this rule. As such, it is standard practice to  
16 discuss a change to the rule that would impact its  
17 operations and insure the agency would not be  
18 putting forth a limit that cannot be met. This is  
19 the same sort of consultation we would do in any  
20 similar case in which I have done in many previous  
21 rule makings throughout my over 26 years in the  
22 agency.

23 There is no need to contact USEPA, as  
24 the proposed 49,000 ton limitation is more stringent

1 than the 55,000 limitation that USEPA already said  
2 they found acceptable.

3 **Q Question 1C.**

4 A Dynegy's feedback was not in written form.  
5 Dynegy indicated that the company does not believe  
6 the reduction to 49,000 is necessary, but that it  
7 would not be impossible for them to meet.

8 **Q Question 2.**

9 A Section 110L of the Clean Air Act. Also  
10 note that Doug Aburano of the USEPA discussed the  
11 necessities of an allowable to allowable comparison  
12 in the email referenced during the first hearing,  
13 Exhibit 13.

14 **Q Could we turn to Exhibit 13?**

15 A I don't have it handy, but I mean I remember  
16 what it said mostly.

17 **Q I think it would be good to look at it. All**  
18 **right, I have it.**

19 **What language do you read as**  
20 **requiring an allowable to allowable comparison?**

21 A He said in this email it's a pretty  
22 straightforward reduction in emissions. This is  
23 pretty easy and not a lot of info is needed. The  
24 allowable to allowable comparison I was thinking of

1 was the phone conversation that he and I had which I  
2 testified to just before Exhibit 13 was presented,  
3 so I apologize for that conflating of the two.

4 **Q Well it is always difficult to rely on an**  
5 **out-of-hearing phone call, but it is you testifying**  
6 **that Mr. Aburano told you in that conversation that**  
7 **allowable to allowable comparison is required under**  
8 **Section 110L?**

9 A Whether or not he said it specifically that,  
10 at that point, that is what a 110L demonstration  
11 requires. I can tell you that through many, many  
12 110L demonstrations that we have had to submit to  
13 USEPA.

14 **Q And I guess my question through here says,**  
15 **are you aware of any guidance, regulations or other**  
16 **legal authority that requires specifically an**  
17 **allowable to allowable comparison?**

18 A Section 110L of the Clean Air Act as  
19 enforced by USEPA.

20 **Q Thank you. Question 3A.**

21 A Yes. In any analysis certain presumptions  
22 need to be made. There is absolutely no indication  
23 that any of the listed sources would increase  
24 emission rates enough to no longer be similar.

1 Especially since the analyzes showed such a large  
2 margin of difference between actual emissions and  
3 the amount of emissions that would be necessary to  
4 cause non-attainment.

5 **Q Question 3B.**

6 A The agency directs the AGO to its response  
7 to question 3A. There is no reason to believe they  
8 will change, and if they increase, the increase will  
9 be noted in a mandatory annual review performed by  
10 the Agency under the data requirements rule as has  
11 been described and explained at length already in  
12 these proceedings.

13 **Q Question 3C.**

14 A As noted in the Agency's responses and  
15 information requested from January hearings filed on  
16 February 16, the Agency finds another layer of  
17 regulation on top of the proposed mass emissions cap  
18 to be unnecessary to meet the Regional Haze SIP and  
19 to protect the NAAQS.

20 I would also like to note that the  
21 agency was the only participant to respond to Board  
22 Member Zalewski's question regarding the necessity  
23 of lowering the rate, despite the fact that she  
24 asked it broadly to all participants in this room

1 including the Attorney General's office.

2 **Q Thank you for that note and I believe she**  
3 **asked that it could be done in post-hearing comments**  
4 **and our Attorney General's office doesn't have to**  
5 **reply.**

6 **Question 4.**

7 A Yes. This occurred because of a problem at  
8 the Cook County filter weighing lab several years  
9 ago. Issues with documenting the weighing  
10 temperatures and humidity found in a USEPA audit of  
11 that lab caused USEPA to determine that the data for  
12 three years could not be used for purposes of  
13 attaining determinations.

14 However, those lab issues have since  
15 been resolved in satisfaction of both Illinois EPA  
16 and USEPA and 2017 was the third full year of  
17 obtaining valid data all of which shows attainment  
18 throughout the entire State of Illinois.

19 As such, the Agency is currently  
20 working with USEPA to change the designations from  
21 unclassifiable to attainment for all areas of the  
22 state under the 2012 PM 2.55 NAAQS.

23 **Q Question 5.**

24 A Yes. However, those recommendations were

1 made with the data available at the time which was  
2 2010 to 2012 data. By the time USEPA was going to  
3 make designations in 2014, USEPA was going to  
4 consider 2013 data as well.

5 Using 2011 to 2013 data, the only  
6 monitor that Illinois EPA would have recommended as  
7 non-attainment would have been one in Madison  
8 County. However, as discussed a moment ago, instead  
9 USEPA designated the entire state as unclassified.

10 **Q Question 6.**

11 A USEPA did not quote reject Illinois EPA's  
12 recommendation. As I have explained, USEPA  
13 determined that the data could not be used for  
14 designation purposes, and since that time, PM 2.5  
15 values statewide have continued to improve. As I  
16 noted earlier, I expect all of Illinois to soon be  
17 designated as attainment.

18 **Q Question 7.**

19 A The Agency agrees with the testimony of the  
20 former director regarding the benefits for reducing  
21 emissions of SO<sub>2</sub> and NO<sub>x</sub>. These statements should  
22 not be read without the context of the time at which  
23 Director Scott was testifying.

24 In the nine years since that

1 testimony, emissions of SO<sub>2</sub> from the MPS EGUs have  
2 decreased by 75 percent and emissions of NO<sub>x</sub> have  
3 decreased 41 percent.

4 The Agency has also provided the  
5 Board with additional information illustrating the  
6 the significant reductions of pollutant emissions  
7 and concentrations in recent years.

8 Finally, there has been a good deal  
9 of discussion in this room regarding the SO<sub>2</sub> NAAQS  
10 and how maintaining that standard protects people  
11 from many of the health risks that Mr. Scott was  
12 speaking of. This standard issued in 2010 is more  
13 stringent than when Mr. Scott was speaking and the  
14 Agency continues to believe that by obtaining the  
15 NAAQS protects the health of Illinois citizens with  
16 an adequate margin of safety.

17 **Q But wasn't Director Scott discussing**  
18 **particulate matter in ozone and not specifically**  
19 **sulphur dioxide? I'll refer you to the statement**  
20 **that particulate matter related to annual benefits**  
21 **include fewer premature fatalities, fewer cases of**  
22 **chronic bronchitis, fewer non-fatal heart attacks,**  
23 **fewer hospital admissions for respiratory and**  
24 **cardiovascular and should result in fewer days of**

1 **restricted activity during repressed respiratory**  
2 **illness and fewer lost days.**

3 **Then in the next paragraph,**  
4 **ozone-related health benefits are expected to occur**  
5 **during the summer ozone season.**

6 **So isn't that testimony about**  
7 **particulate matter and ozone and not?**

8 A Well, sulphur dioxide is a precursor of PM  
9 2.5 and I think that's the point you're making  
10 probably. As I just testified, PM 2.5 has steadily  
11 improved to the point that the entire state will  
12 soon be designated attainment for PM 2.5. So  
13 certainly, things have continued to improve since  
14 Mr. Scott made his statements.

15 **Q And what about ozone?**

16 A SO2 is not a precursor to ozone although NOx  
17 is and, as noted, NOx has continued to decrease by  
18 41 percent and ozone values have decreased though  
19 not at the same level perhaps as PM 2.5. Although,  
20 ozone is more weather dependent than PM 2.5 tends to  
21 be.

22 **Q And do you expect that there will be**  
23 **designations of non-attainment to the 2015 ozone**  
24 **standard in Illinois?**

1           A     Yes, for the reduced 70 PPB ozone standards  
2 we will have designations of non-attainment in what  
3 I would call the usual areas of the Chicago  
4 non-attainment area and the Metro East  
5 non-attainment area.

6           **Q     And with respect to the reclassification of**  
7 **the State of Illinois for PM 2.5, that is a process**  
8 **that must go through all appropriate regulatory**  
9 **approvals by the United States Environmental**  
10 **Protection Agencies, is that correct?**

11           A     I'm not sure exactly of how they are doing  
12 it. It is not technically a redesignation. They  
13 are doing this with multiple states who face similar  
14 issues with labs at the same time that Illinois did.  
15 They have told me it is not a redesignation, it is a  
16 change in designation.

17                         So we are not entirely sure what  
18 needs to be done other than I do not believe that we  
19 will need to make leaving -- the Illinois EPA will  
20 need to make a SIP submittal. I believe most of the  
21 action will take place within USEPA, but I'm not  
22 100 percent sure of that because they have not fully  
23 figured it out themselves.

24           **Q     Fair enough. Question 8.**

1           A    As indicated in the Agency's response to the  
2 environmental organization's motion to stay, the  
3 Agency has not made Dynegey's overall financial  
4 situation a primary justification for this rule  
5 making. Nowhere in the Agency's rule making  
6 proposal, testimony responses to questions or other  
7 filings has the Agency cited to Dynegey's financial  
8 situation as a basis for those proposed rules.

9                         In fact, in the Agency's responses to  
10 pre-filed questions, it clarified repeatedly that  
11 the quote financial losses end quote it assessed  
12 were unit-level losses and that the Agency is making  
13 no representations regarding Dynegey's overall  
14 finances.

15                         The proposed amendments are intended  
16 to provide Dynegey with the flexibility to offer bid  
17 and dispatch the MPS units in an economically  
18 efficient manner while maintaining air quality. So,  
19 no, Dynegey's testimony did not change the Illinois  
20 EPA's views.

21           **Q    Question 9A.**

22                         MS. PALUMBO: Hearing Officer, the Agency  
23 objects to this line of questions presented in  
24 question nine as inappropriate based on the Board's

1 Order in response to the motion to stay.

2           Vistra is not a participant to this  
3 rule making as has been found by the Board and it's  
4 really inappropriate for the Agency to be  
5 speculating about statements made by Vistra and its  
6 shareholder goals.

7           MR. ARMSTRONG: If I could respond?

8           HEARING OFFICER TIPSORD: Yes. Go ahead.

9           MR. ARMSTRONG: This is an SEC filing by  
10 Vistra which is intended to provide public  
11 information about Vistra's plans about how it is  
12 going to operate its plants should the transaction  
13 close with Dynegy. I think it is entirely  
14 appropriate to look at the statements that Vistra  
15 has provided to the public and see if the Agency has  
16 any understanding regarding them.

17           HEARING OFFICER TIPSORD: I think we will  
18 let you answer the questions. Obviously, if you  
19 don't know the answer, you don't know the answer.  
20 We don't expect that you've been in conversations  
21 with Vistra, but certainly I think some of these  
22 questions can go to some additional issues and that  
23 is what happens if an EGU shuts down, what's the  
24 impact. So let's go ahead.

1           **Q           (By Mr. Armstrong) Question 9A.**

2           A       Question 9A requires the Agency to speculate  
3 as to what Vistra Energy means by quote freeing up  
4 assets. The Agency is unwilling to speculate on  
5 this issue.

6           **Q       Question 9E.**

7           A       The Agency is unaware of Vistra Energy's  
8 intent regarding retirement of any MPS plants. As  
9 Dynegy's witness, Dean Ellis, stated during the  
10 January 18, 2018 hearing, quote, "There are a number  
11 of factors that will determine what plants could  
12 potentially or maybe potentially be mothballed or  
13 retired. Energy market pricing is one. For  
14 example, capacity market design issues which are  
15 actively underway before the Illinois Commerce  
16 Commission are another. Operational and other  
17 expenditures, other costs such as field contracts,  
18 transportation contracts, those all feed into the  
19 decisions that are made around the plants."

20                       This discussion is set forth in the  
21 January 18, 2018 hearing transcript on page 116.

22           **Q       Would you agree that the rule as currently**  
23 **proposed by IEPA would allow the operator of the MPS**  
24 **plants to retire certain MPS plants that are**

1     **controlled for sulfur dioxide and increase the**  
2     **utilization of plants without controls for sulphur**  
3     **dioxide?**

4           A     To answer that in two parts, the rules  
5     certainly have nothing to say about whether they  
6     can, Dynegy can or cannot shut down a unit. That is  
7     not up to the Illinois EPA. The second part can you  
8     repeat, please.

9           Q     **Let me ask it again. Currently, the MPS**  
10    **says a fleet-wide emission rate standard that as**  
11    **we've earlier discussed requires some clean plants**  
12    **to operate in conjunction with some unscrubbed**  
13    **plant. If you're going to operate an unscrubbed**  
14    **plant under the current MPS, there also needs to be**  
15    **operation of a scrubbed plant or a plant that has**  
16    **SO2.**

17                           **Would you agree with that statement?**

18           A     Yes.

19           Q     **If the IEPA's proposed amendments are**  
20    **adopted, would the new rule allow for the operator**  
21    **of the MPS plants to retire certain scrubbed for**  
22    **controlled plant for SO2 and increase utilization of**  
23    **uncontrolled plants?**

24           A     I believe we've actually discussed this

1 previously in the first hearing and there is no  
2 certainty that shutting down a scrub plant would  
3 mean that an unscrubbed plant operates more. There  
4 are many sources of megawatts within MISO and we  
5 can't sit here and say, if you shut down this one,  
6 it will definitely come from this other one. It  
7 could come from a variety of different sources, and  
8 I believe the Board even asked a question about that  
9 that we'll get to.

10 **Q Let's take a look at my question because**  
11 **right above 9A Illinois EPA states, if an EGU shuts**  
12 **down and the power that had been generated by that**  
13 **EGU will likely be generated from elsewhere, meaning**  
14 **the emissions will be coming from another EGU.**

15 **Do you agree with that statement?**

16 A Yes, but it's another EGU's any  
17 electrical-generating unit. We didn't say an MPS  
18 EGU. It could be an MPS EGU which is why we need to  
19 keep that possibility, but it could be wind power,  
20 it could be solar power, it could be a nuclear  
21 plant, it could be an Ameren plant in Missouri.

22 **Q Question 9C.**

23 A Question 9C requires the Agency to speculate  
24 as to what Vistra Energy means by quote "freeing up

1 the assets." The Agency is unwilling to speculate  
2 on these issues.

3 **Q Let's just go to the last sentence. Is**  
4 **there anything in the proposed MPS amendments that**  
5 **would stop Vistra from increasing the MPS rates**  
6 **sulfur dioxide emissions to the maximum 49,000 tons**  
7 **per year should the amendments be adopted?**

8 A Not to be rude, but reality. They're not in  
9 the business of putting out SO2. They are in the  
10 business of generating electricity. If they are not  
11 called upon, they are not just going to increase the  
12 49,000. If they are called upon, then they need to  
13 balance out everything that we have been discussing  
14 here in terms of, you know, their individual units  
15 that we have discussed.

16 So if everything happened to go in  
17 that direction, if natural gas prices suddenly shot  
18 up, if it was a bad summer or winter and they were  
19 called upon to operate all of their plants  
20 extensively, then, yes, they could go up to 49,000  
21 tons per year. But in that situation, they would  
22 also likely be doing that or at least potentially be  
23 doing that or more under the existing MPS which does  
24 not have a hard emissions cap.

1           Q    I want to ask a follow-up question more  
2 pointedly on this line and 9B specifically.  Let's  
3 just talk specifically about the DMG fleet, for  
4 example.

5                           Do you understand what I mean when I  
6 talk about the DMG fleet?

7           A    The fleet that -- the plants were owned  
8 originally by Dynegy.

9           Q    And I believe what we are talking about are  
10 Baldwin, Havana, Hennepin.  Do you understand that  
11 as well?

12          A    Yes.

13          Q    I believe that's what we're talking about,  
14 is that correct?

15          A    Yes.

16          Q    And Baldwin and Havana are controlled with  
17 spray dry absorbers, is that correct?

18          A    Yes.

19          Q    Hennepin, by contrast, does not have sulfur  
20 dioxide, is that correct?

21          A    Correct.

22          Q    Under the current MPS, in order to continue  
23 to operate Hennepin, Dynegy or Vistra whoever the  
24 operator is also would need to operate at least some

1 capacity for Baldwin and Havana in order to make the  
2 DMG emission rate come in, is that correct?

3 A Yes.

4 Q If the rule were amended though, Dynegy  
5 could -- Dynegy or Vistra could close Baldwin and  
6 Havana and just continue to operate Hennepin, is  
7 that correct?

8 A I don't know. That is up to Dynegy or  
9 Vistra and MISO.

10 Q I'm talking about what the rule allows.

11 Under the proposed amendments by the  
12 Illinois EPA, if the MPS is amended, the MPS would  
13 allow the operator of the plant, the DMG Group, to  
14 retire Baldwin and Havana and continue to operate  
15 Hennepin by itself, is that correct?

16 A Yes.

17 Q Thank you.

18 BY MR. MORE:

19 Q Does the MPS require the operation of any  
20 unit?

21 A No.

22 Q Does the MPS preclude any unit for being  
23 retired?

24 A No.

1 MR. ARMSTRONG: I have no further questions.

2 HEARING OFFICER TIPSORD: Let's move to the  
3 questions from Dynegy pre-filed for the IEPA. If  
4 there is no objection, we will mark the pre-filed  
5 questions for IEPA from Dynegy as Exhibit 31. They  
6 were filed on March 2nd. Seeing none, they are  
7 Exhibit 31.

8 (Exhibit 31 was marked for  
9 identification by the court  
10 reporter.)

11 [EXAMINATION]

12 QUESTIONS BY MR. MORE:

13 **Q Question 1.**

14 A Illinois EPA defines quote "Potential  
15 Environmental Justice Community" in its Justice  
16 Public Participation Policy. Quote, "Potential  
17 Environmental Justice Community" end quote means  
18 that a census block group or an area within a  
19 one-mile radius of a census block group meets  
20 Illinois EPA's demographic screening criteria which  
21 is twice the state-wide average for low income  
22 and/or minority populations.

23 Illinois EPA does not have the  
24 definition of quote "Environmental Justice

1 Community" end quote, nor does it designate  
2 communities as quote "Environmental Justice  
3 Communities" end quote.

4 **Q With that understanding, the following**  
5 **questions relate to that potential Environmental**  
6 **Justice Communities. Do you understand that?**

7 A Yes.

8 **Q 1A, please.**

9 A No.

10 **Q 1B?**

11 A No.

12 **Q Question 2.**

13 A Yes. Hennepin Power Station is located in a  
14 potential Environmental Justice Community because it  
15 is located within one mile of a census block group  
16 meeting Illinois EPA's low-income demographic  
17 screening criteria.

18 **Q Question 2A.**

19 A No.

20 **Q Is the Havana Power Station located in a**  
21 **potential Environmental Justice Community?**

22 A Yes. As I explained at the beginning of my  
23 testimony today.

24 **Q Is the Havana Power Station subject to any**

1 **emission standards solely because it is located in a**  
2 **potential Environmental Justice Community?**

3 A No.

4 **Q Question 3.**

5 A Yes.

6 **Q Question 4.**

7 A Yes.

8 **Q 4A.**

9 A Correct.

10 **Q 4B.**

11 A Correct.

12 **Q 4C?**

13 A Presuming you're asking about the current  
14 MPS SO2 emission rates, yes.

15 **Q Question 5.**

16 A No.

17 **Q 6.**

18 A No.

19 **Q 7.**

20 A No.

21 **Q 8.**

22 A No.

23 **Q 9.**

24 A Yes.

1           **Q    9A.**

2           A    Yes.

3           **Q    10.**

4           A    Yes.

5           **Q    10A.**

6           A    It was not a single model run, but rather  
7           that number comes from an accumulation of different  
8           modeling runs. Some at actual emissions and some at  
9           allowable emissions, but yes, that was the total.

10          **Q    10B.**

11          A    If the 91,000 tons of SO2 came from the  
12          specifically-modeled units in the  
13          specifically-modeled situations, yes. As stated in  
14          the information provided to the Board that reference  
15          this figure, the NAAQS could be maintained in all  
16          the affected areas even at those higher annual  
17          emission levels. The intention in including that  
18          figure was to further highlight that it does not  
19          make sense to compare an annual limit covering the  
20          entire fleet to a one hour SO2 max.

21          **Q    Question 11.**

22          A    The proposed new annual emissions caps  
23          restrict the total annual allowable emissions.

24          **Q    12.**

1           A    Yes.  To the extent that the current MPS  
2   annual limits are protective of air quality in any  
3   given area of the state or a given timeframe of less  
4   than a year, the mass emission limit is at least as  
5   protected.

6           **Q    12A.**

7           A    No.  But as stated in the Agency's  
8   February 16th responses, while the Agency's initial  
9   proposal of 55,000 tons per year of SO2 is  
10   appropriate, the Agency supports a limit of 49,000  
11   tons per year in response to the information  
12   solicited and presented at the first hearing, and in  
13   order to assuage the concerns raised by other  
14   participants.

15          **Q    12B.**

16          A    No.  But again, as stated in the Agency's  
17   February 16th responses, while the Agency's initial  
18   proposal of 55,000 tons per year of SO2 is  
19   appropriate, the Agency supports a limit of 49,000  
20   tons per year in response to the information  
21   solicited and presented at the first hearing and in  
22   order to assuage the concerns raised by all the  
23   participants.

24          **Q    Is the Agency now proposing that the SO2 cap**

1 **be set at 49,000, or is it proposing that an**  
2 **alternative be considered should the Board decide to**  
3 **lower the cap?**

4 A We are supporting it.

5 **Q Question 13.**

6 A No.

7 **Q 13A.**

8 A The 25,000 ton annual NOx limit provide for  
9 the necessary cap on emissions for regional haze  
10 purposes. In the case of the NOx limit, testimony  
11 from the Attorney General's office showed, even by  
12 its methodologies, that allowable emissions on the  
13 currents MPS could be much higher than a proposed  
14 limit of 25,000 tons per year.

15 Additionally, the proposed amendments  
16 includes language for NOx-controlled units to  
17 continue to operate the control equipment year  
18 around and at all times.

19 **Q I have no other questions.**

20 HEARING OFFICER TIPSORD: Any follow-up on  
21 this? Okay. Then we will move on to the Board's  
22 pre-filed questions for IEPA.

23 If there is no objection, we will  
24 admit the Board's pre-filed questions on March 2nd,

1 2018 as Exhibit 33. Seeing none, it's Exhibit 33.

2 I'm sorry, Exhibit 32.

3 (Exhibit 32 was marked for  
4 identification by the court  
5 reporter.)

6 [EXAMINATION]

7 QUESTIONS BY MR. RAO:

8 **Q Are you guys ready? Before we start, we**  
9 **will follow the same format and go through the**  
10 **question numbers. Before we start, I would like to**  
11 **thank you guys for giving those responses that you**  
12 **did, very helpful.**

13 A (Davis) Question one is Rory Davis,  
14 Illinois EPA. A nominal capacity, name plate  
15 capacity and rated capacity can be used  
16 interchangeably and refer to the full load sustained  
17 output from a unit or plant usually given in  
18 megawatts. This capacity can be translated into a  
19 heat input capacity by using assumptions about the  
20 heat content of the fuel used to generate that  
21 number of megawatts. Heat input capacities would be  
22 given in millions of British thermal units or MM  
23 BTU.

24 So, for example, the Duck Creek

1 source has one unit. It has a nominal capacity or  
2 name plate capacity of 484 megawatts. Meaning that,  
3 at full capacity, it is capable of producing  
4 484-megawatt hours of electricity per hour. That  
5 translates to a max heat input or maximum potential  
6 heat input of 5,025 mmBtu per hour because on  
7 average it would require that much heat input for  
8 that unit to produce 484-megawatt hours of  
9 electricity in an hour.

10 The maximum heat input and maximum  
11 potential heat input discussed by the AG, Dynegy and  
12 Agency in its technical support document and in  
13 hearings has also been given in terms of an annual  
14 maximum heat input which would just be that 5,025  
15 mmBTU per hour multiplied by 8,760 hours and that is  
16 just 24 hours a day for 365 days.

17 **Q 2.**

18 A Question 2. The Agency agrees with Dynegy's  
19 description of the terms. Mr. Diericx's answer on  
20 the same page cited by the Board points out the  
21 major distinction between the terms. Mothballed  
22 units can resume operation at the decision of the  
23 owner. For purposes relevant to this rule making,  
24 the Agency considers a unit shut down when the

1 permits are withdrawn and the owner of the unit  
2 cannot operate the unit without obtaining a new  
3 operating permit generally as a new source.

4 As these terms do not appear in the  
5 Agency's proposed amendments and are not needed for  
6 the proposed amendments, the Agency recommends that  
7 definition not be included in this rule.

8 **Q Question 3A.**

9 A The Agency's original Regional Haze SIP or  
10 State Implementation Plan, SIP, submittal does not  
11 reflect the retirement of the MPS units because the  
12 retirements happened after the document was  
13 submitted. The five-year progress report reflects  
14 the retirement of the 13 MPS units in comparing  
15 current actual emissions to those anticipated in the  
16 original Regional Haze SIP submittal. These  
17 reductions were calculated from a 2002 base year  
18 which was also the base year for visibility impacts  
19 from which the rule measures improvements.

20 The Agency's projections were  
21 determined to be sufficient for Regional Haze  
22 purposes. Any shutdowns that occurred subsequent to  
23 the Agency's projections, need not be reflected in  
24 subsequent projections as long as Illinois meets the

1 projections over all.

2 **Q So in effect, the 55,950-tons that you had**  
3 **attributed to the reduction from MPS need not change**  
4 **with the retirement of the unit in the MPS groups?**

5 A Correct. And to change those projections,  
6 we would have to submit another SIP revision which  
7 we wouldn't generally do.

8 **Q Okay. And, of course, our question is for**  
9 **some information related to that. Go ahead.**

10 A Right. The Agency has no plans to modify  
11 these projected emissions in any SIP revision.

12 **Q Did the Agency initially think that you had**  
13 **to modify that number based on that correspondence**  
14 **from Dynegy? We are doing question four.**

15 A No. Are we into another question or was  
16 that a follow up?

17 **Q That is what we were asking because --**

18 MR. BLOOMBERG: Why don't we wait until we  
19 get to question four.

20 **Q Okay. I thought we were on question four.**

21 MR. BLOOMBERG: No, we have a couple of B  
22 and C for you.

23 A (Davis) So question 3B. The Agency has no  
24 plans to modify these projected emissions in any SIP

1 revision. That would be unnecessary because  
2 Illinois is already meeting its requirements.

3 Additionally, there will be another  
4 SIP submittal for Regional Haze due in 2021 in which  
5 the Agency will assess what measures are necessary  
6 to meet the goals for that planning period at that  
7 time.

8 Question 3C. The Agency has a copy  
9 for submission to the Board today of the five-year  
10 progress report, the Regional Haze SIP for Illinois,  
11 the original Haze SIP for Illinois, the technical  
12 support document for best available retrofit  
13 technology under the Regional Haze Rule and a  
14 proposed approval and final approval by USEPA of the  
15 Illinois SIP revision addressing Regional Haze for  
16 the first implementation period.

17 HEARING OFFICER TIPSORD: I have been handed  
18 the five-year progress report for Illinois Regional  
19 Haze Implementation Plan February 1st, 2017 to  
20 Robert Kaplan from the Illinois Environmental  
21 Protection Agency. I will assume you want to submit  
22 it as an exhibit.

23 MS. ROCCAFORTE: Yes. There is also in that  
24 packet is the Regional Haze SIP for Illinois, the

1 technical support document for best available  
2 retrofit technology under the Regional Haze Rule and  
3 the proposed and final approval by USEPA of the  
4 Illinois SIP revision addressing Regional Haze for  
5 implementation.

6 HEARING OFFICER TIPSORD: Let's start then  
7 with the letter to Mr. Kaplan dated February 1st,  
8 2017. Do you want this all as one exhibit or do you  
9 want it as multiple exhibits?

10 MS. ROCCAFORTE: It's probably easier as  
11 one.

12 HEARING OFFICER TIPSORD: All right. We  
13 will leave this all as one exhibit then.

14 So February 1st, 2017 Regional Haze  
15 Stated Implementation Plan AQPSTR 10-08 dated  
16 May 10, 2011. Technical support document for best  
17 available retrofit technology under the Regional  
18 Haze, AQPSTR 09-06, April 29, 2011. Federal  
19 Register from January 26, 2012 pages 3966 and  
20 Federal register from Friday July 6, 2012 page 39943  
21 and others. All of these will be admitted as  
22 Exhibit 33 if there is no objection. Seeing none  
23 they are Exhibit 33.

24 (Exhibit 33 was marked for

1 identification by the court  
2 reporter.)

3 HEARING OFFICER TIPSORD: Let's take five  
4 minutes and break.

5 (Recess taken.)

6 HEARING OFFICER TIPSORD: Let's go back on  
7 the record. Anand, are you ready?

8 MR. RAO: Yes.

9 Q (By Mr. Rao) We were on question four and I  
10 was told by the Hearing Officer that we need to read  
11 the questions so question four.

12 Dynegy's follow-up information  
13 included in IEPA's response to question states, "At  
14 the recent meeting, Illinois EPA indicated that any  
15 revision to the Regional Haze SIP would not be  
16 approved unless the revision shows that annual SO2  
17 and NOx emissions are limited to 44,920 tons and  
18 22,469 tons respectively." This is reference to  
19 IEPA January 12, 2018 response attachment nine at  
20 page 3.

21 Please comment on whether the  
22 possibility of USEPA requiring SIP revision to be  
23 based on the projected emissions from currently  
24 operating MPS units have been put to rest by recent

1 **assurances given to the Agency by USEPA. See Davis**  
2 **prefiled testimony at pages one and two.**

3 A (Bloomberg) First, the quote in question is  
4 from a document prepared by Dynegy. If Illinois  
5 EPA, in fact, indicated any required emission levels  
6 at that stage of communications with the company, it  
7 was based on the Agency's understanding at that  
8 time.

9 In answer to the question, USEPA has  
10 already indicated that the reduction in allowable  
11 emissions in the proposed amendments is acceptable  
12 as a SIP revision and the Agency would again point  
13 more to Exhibit 13 in the rule making record, the  
14 email correspondence from Douglas Aburano of USEPA  
15 Region Five and the phone conversation with him that  
16 I also previously mentioned.

17 **Q So basically, USEPA is fine with the**  
18 **reductions that are going to be achieved with all**  
19 **MPS units would include both the retired and**  
20 **currently operating MPS units?**

21 A Yes.

22 **Q Is there some scenario you can see where**  
23 **USEPA require the state to consider only those**  
24 **operating units and not the ones that were already**

1 **retired?**

2 A Nothing that I could think of. Regional  
3 Haze is it looks at statewide emissions and so the  
4 target that we were talking about, projected target,  
5 was for that group, but it doesn't go down to that  
6 level, and even if there's a shutdown then -- I  
7 mean, there's been shutdowns, it just overall shows,  
8 you know, there are shutdowns, there are reductions.  
9 It's all part of the overall projection.

10 [EXAMINATION]

11 QUESTIONS BY MS. ZALEWSKI:

12 **Q Carrie Zalewski. Just why would the SIP**  
13 **require to include retired units in its application?**  
14 **What's the purpose, if I'm understanding correctly?**

15 A (Davis) The SIP wouldn't require to include  
16 retired units. The SIP, as I explained some at the  
17 last hearing, was necessary. The reductions in the  
18 SIP were necessary to reach a level of emission  
19 reductions that would improve visibility impairment  
20 in class one areas, Federal class one areas which  
21 are national parks and other areas, and so the level  
22 of reductions is really a statewide reduction.

23 The MPS was not the only group in the  
24 Regional Haze SIP. There is also the CPS units,

1 CWLP in Springfield and SIPCO in Southern Illinois  
2 and Kincaid units. Also there were several oil  
3 refineries that were part of that.

4 So the total level of the overall  
5 reductions that Illinois said were coming before  
6 2018 were then fed into -- well, again, those levels  
7 of reductions were greater than what would have  
8 occurred under best available retrofit technology  
9 that was the recommendation by USEPA to meet  
10 Regional Haze goals for that period.

11 So when we submitted our SIP, we said  
12 this level of reductions is better than what you've  
13 said should be done, and those levels of reductions  
14 had been modeled regionally to assure that the  
15 visibility impairment was improved at those class  
16 one areas to the level that USEPA had set for that  
17 long-term planning strategy period.

18 MR. BLOOMBERG: Maybe to put it another way,  
19 all of the units were included originally, and then  
20 you still count all of their emissions at the end.  
21 It's just that some of their emissions at this point  
22 are zero and that's typically the way an inventory  
23 projections and even SIP reductions are different  
24 than the Regional Haze. That's the way this sort of

1 thing is done for USEPA.

2 If we had projected emissions over a  
3 certain timeframe at a source that was contributing  
4 emissions has shut down then, they are still  
5 included, they are just a zero.

6 **Q How long are they included? So the next SIP**  
7 **would not be retired units?**

8 A (Bloomberg) Probably the next time there's  
9 a base year. So base year in SIP planning, base  
10 years come along fairly frequently, but in the  
11 Regional Haze is there going to be another base year  
12 or do we not know that yet? From the look on Rory's  
13 face, we don't know that yet.

14 (Davis) We kind of do. With one  
15 clarification is that the units themselves are not  
16 as much included as their emissions. So we  
17 projected emissions from statewide sources that were  
18 subject to the Regional Haze rules. So it wouldn't  
19 have mattered which units had controls or some had  
20 shut down and others continued to operate, the  
21 overall emissions would have to be below what we had  
22 projected.

23 Now, had they not been, perhaps at our  
24 progress report we would have had to come up with

1 additional measures, but when we did submit our  
2 progress report, we were ahead of where we thought  
3 we would be when the progress report was submitted.  
4 So that's why I said the shutdowns were included in  
5 the progress report as compared to our projections  
6 of total emissions in the original SIP submittal.

7 HEARING OFFICER TIPSORD: Mr. Armstrong, do  
8 you have a followup?

9 [EXAMINATION]

10 QUESTIONS BY MR. ARMSTRONG:

11 **Q Yes, I just wanted to ask about your**  
12 **projection emissions for purposes of Regional Haze.**

13 **How does the Illinois EPA project**  
14 **emissions for purposes of the Regional Haze Rule?**  
15 **What base do you use, what assumptions did it use?**

16 A (Davis) The projections were based on heat  
17 input from the 2002 base year and the MPS and CPS  
18 rates and also the rates that were at the refineries  
19 and CWLP and Kincaid were then estimated using the  
20 heat input from 2002 and on the books measures such  
21 as the MPS and CPS.

22 **Q So Illinois EPA looked at a specific year**  
23 **and specific heat inputs for the plant during that**  
24 **year to develop a base line, is that correct?**



1 from the affected sources such as carbon monoxide,  
2 ammonia, particulate matter and volatile organic  
3 compounds.

4 Does IEPA's anti-backsliding  
5 demonstration address all pollutants subject to the  
6 Regional Haze Rule whose allowable emissions and/or  
7 ambient concentrations may change because of the SIP  
8 revision?

9 A Yes. In the referenced portion of the TSD,  
10 specifically Section 6.2 titled other requirements  
11 related to clean air act section 100L.

12 Q The TSD states quote, "The amended limits  
13 are equivalent or more stringent than the previous  
14 standards and are quantifiable, permanent, surplus,  
15 enforceable and contemporaneous."

16 Question CI. Please clarify what  
17 IEPA's anti-backsliding demonstration is required to  
18 show for USEPA approval. For example, would it be  
19 based on showing that substitution of one measure  
20 such as rate-based fleet-wide average limits by  
21 another measure such as the annual mass emissions  
22 limits results in equivalent or greater emissions  
23 reductions?

24 A As noted, the TSD contains all the

1 information needed by USEPA. A draft of the TSD has  
2 already been reviewed by USEPA Region 5 prior to the  
3 filing of this rule. It shows that the allowable  
4 emissions for the post changes are lower than the  
5 allowable emissions under the current rule.

6 **Q Question 5I. Please explain whether the**  
7 **annual mass emission limits in the proposed rule**  
8 **become federally enforceable under the SIP revision.**

9 **And if so, how would this be done in**  
10 **permits?**

11 A Yes. If adopted by the Board, the Illinois  
12 EPA will submit the adopted rule to USEPA for review  
13 and approval as revision to the Illinois Regional  
14 Haze SIP.

15 Once approved by USEPA, all emission  
16 limits under the approved rule become federally  
17 enforceable. These emission limits become  
18 enforceable for state level upon adoption by this  
19 board. Such limits are then incorporated into the  
20 sources CAAPP permit.

21 **Q Triple I. Please clarify whether the**  
22 **environmental impact of the proposed rule is**  
23 **equivalent to the current rule for the purposes of**  
24 **compliance with the NAAQS and Regional Haze?**

1           A    As discussed previously, the environmental  
2           impact of the proposal is not just equivalent to,  
3           but superior to the current rule for purposes of  
4           Regional Haze.

5                        The current rule is not intended to  
6           control emissions for the purposes of NAAQS  
7           compliance because it is an annual average, while  
8           the SO2 NAAQS is an hourly standard. With that  
9           said, yes, the proposed changes are equivalent for  
10          the purposes of NAAQS compliance.

11                       HEARING OFFICER TIPSORD: Mr. More?

12                       MR. MORE: Does that answer apply to both  
13          the 55,000 original proposed SO2 cap and the now  
14          revised 49,000 SO2 cap?

15                       MR. BLOOMBERG: Yes.

16                                       [EXAMINATION]

17                       QUESTIONS BY MR. RAO:

18                       **Q    Moving on to question six. IEPA provided**  
19                       **updated Table 6 to the TSD that includes annual**  
20                       **potential to emit PTE, for SO2 emissions for all the**  
21                       **EGUs in the proposed MPS Group.**

22                                       **Please clarify whether the PTE tons**  
23                       **per year represents the greatest mass of emissions**  
24                       **any given unit would be allowed to emit as an**

1 individual unit based on the restrictions such as  
2 Part 214 NSPS and consent decree limitations without  
3 the rate averaging requirement of the current MPS or  
4 the annual cap of the proposed rule.

5 A (Davis) Yes. This is a correct summary of  
6 the way the Agency calculated PTE. These figures do  
7 not include the rate-averaging requirements for the  
8 mass emission limits of the proposed rule amendment.

9 Q Could the PTE values essentially serve as a  
10 mass emission cap on an individual MPS units? If  
11 so, under a 49,000 tons SO2 annual emissions cap for  
12 the MPS group, would it be plausible for Newton to  
13 emit 39,152 tons of SO2 with the balance of 9,848  
14 tons being emitted by Joppa and no other MPS units  
15 running?

16 A Certainly, the PTE values serve as a mass  
17 emission cap, and that emissions from those units  
18 cannot legally emit more, cannot exceed the list of  
19 PTE in any circumstance.

20 However, the scenario presented,  
21 while it works mathematically, in the context of the  
22 proposed amendments is extremely unlikely and  
23 therefore the Agency does not consider it to be  
24 plausible.

1           As presented in the modeling summary,  
2 emissions modeled from unit 1 in the years between  
3 2012 and 2014 were in the range between 7,270 tons  
4 per year and 10,538 tons per year. An emissions  
5 increase of this magnitude described in this  
6 question would certainly cause Illinois EPA and  
7 USEPA to determine if new modeling is necessary  
8 under the annual data and requirements rule review  
9 and likely modeled to insure there is no NAAQS  
10 violation or institute new measures if a NAAQS were  
11 to be modeled.

12           Also, those emission levels that I  
13 mentioned are from both Newton 1 and Newton 2, so  
14 for emissions to increase from those two, the number  
15 you submitted would be unlikely for just the one.

16           **Q    So what would trigger the Agency to further**  
17 **evaluate increases of emissions from say Newton**  
18 **unit?**

19           MR. BLOOMBERG: Can you repeat that?

20           **Q    What would trigger EPA to further evaluate**  
21 **these emissions like you earlier additional**  
22 **modeling, is that something that triggers IEPA to**  
23 **say, okay, there's something that needs to be done?**

24           A    (Bloomberg) Yes, that's the annual data

1 requirements rule review that Rory mentioned there  
2 that we mentioned last hearing and that was also  
3 described in our response document. We talked about  
4 increases of 15 percent and then we have to look at  
5 it and potentially do modeling to determine whether  
6 or not there could be a NAAQS violation.

7 **Q But this level of 39,000 is a lot. They**  
8 **will be in compliance with all applicable**  
9 **requirements.**

10 **Won't they be in compliance at this**  
11 **level?**

12 A (Bloomberg) You mean permanent  
13 requirements?

14 **Q Yes.**

15 A Potentially for about a year or less or more  
16 likely until we see it and slap new restrictions on  
17 them but, I mean, I don't see it as at all plausible  
18 or likely that they would ever get to that level.

19 **Q 6C.**

20 MS. BUGEL: I do just have a follow-up  
21 question on that line of questions.

22 HEARING OFFICER TIPSORD: Microphone.

23

24

1 [EXAMINATION]

2 QUESTIONS BY MS. BUGEL:

3 **Q Earlier today I believe that Mr. Diericx**  
4 **stated that the proposed MPS has the potential to**  
5 **constrain actual emissions if demand increases to**  
6 **the level it was at in the years in the range of**  
7 **years from 2007 to 2010.**

8 **Did IEPA do any modeling of what the**  
9 **emissions would look like from the fleet if demand**  
10 **did, in fact, increase to that level?**

11 A (Bloomberg) Some of the modeling as was  
12 described in our submittal to the Board was using  
13 allowable emissions, so certainly that would be  
14 higher than anything even in the highest demand.

15 The rest, no, it was actual as we  
16 described, and as we described in some detail at  
17 each of those plants what it would take for the  
18 emissions to go up to that level, and in most cases,  
19 it would have to, like, triple the emissions or more  
20 from what it was in the recent years that were  
21 modeled.

22 **Q Do you know if in the 2007 to 2010 timeframe**  
23 **were the emissions from any of the units, in fact,**  
24 **triple the level that was modeled?**

1           A    Off the top of my head, I do not know that.  
2    Although, if any controls for SO2 were installed  
3    between that timeframe and now, obviously, the  
4    emissions back then would have been significantly  
5    higher at those individual units than they are now.

6   [EXAMINATION]

7    QUESTIONS BY MS. PAPADIMITRIU:

8           **Q    Can I just go back to your comment to**  
9    **Mr. Rao's question regarding the plausibility**  
10   **concerning the 39,452 tons. It's unlikely, you said**  
11   **but not wholly implausible, or was it wholly**  
12   **impossible?**

13           A    It's implausible.

14           **Q    But not fully?**

15           A    It's not impossible I would say. It is  
16    extremely unlikely, and if it were to happen, there  
17    would be an immediate reaction by Illinois EPA and  
18    USEPA to find out if that's causing a NAAQS problem  
19    and immediately address it.

20           **Q    What does immediately mean to you, Mr.**  
21    **Bloomberg?**

22           A    We do the analysis. It comes out as part  
23    of -- let me start over. So the analysis is done at  
24    the beginning of each year of the previous calendar

1 year, so when we get the annual emissions reports  
2 in. So we see the increase there and my modeling  
3 staff would begin looking at that and then, you  
4 know, determine if analysis is done.

5 I believe that any analysis would  
6 have to be done before we put it out to public  
7 notice and at the start this goes as an appendix to  
8 our annual monitoring plan, and those are due  
9 July 1st. We have to put them out for public notice  
10 at least 30 days before then, so we are back to  
11 June 1st at the latest.

12 Now, I believe that we would have to  
13 have the modeling done for them. I'm not  
14 100 percent certain of that because we haven't had  
15 to do modeling yet so far. Everything we've seen  
16 it's only been one year so far, plus we are in the  
17 process of doing it now, but nothing as we have  
18 seen, nothing has required additional modeling, but  
19 I think it would all have to be done even before so  
20 it would be in the May timeframe that we can see  
21 that and say, oh, my gosh, what the heck is going on  
22 here.

23 **Q So if something occurred in March of year**  
24 **one, you would know in May of year two?**



1 **plant or two plants from, and I mean plant, I'm not**  
2 **talking unit, I'm talking two plants from emitting**  
3 **all 55,000 tons or 49, sorry.**

4 A There's nothing in the rule except the  
5 company, whether it is Dynegy or Vistra or whoever  
6 else, would know they would immediately within a  
7 year or so get slapped with new restrictions and  
8 possibly, I mean, there is also, if you cause a  
9 violation, enforcement is a possibility as well.

10 Q So what you're saying is that, even with the  
11 MPS the 49,000 that has fleet wide, if whatever  
12 company, let's call ABC Company in the future  
13 decided to close everything and run one facility and  
14 ran 49,000 in that facility, it still is subject to  
15 other provisions that would impact its ability to do  
16 so, correct?

17 A Yes, and that's exactly what we mean when we  
18 have said this rule is not the way to control  
19 emissions to insure a NAAQS is met. It is an annual  
20 average. It is not meant to control for a one-hour  
21 NAAQS.

22 That's the same, by the way, as what  
23 we have currently, because under the situation we  
24 have currently, you could have two plants that are

1 doing it one of which is emitting a huge amount and  
2 one of which controls to offset.

3 [EXAMINATION]

4 QUESTIONS BY MR. RAO:

5 Q See, our question was based on potential to  
6 emit which is based on a rate limit from part 214,  
7 not this law.

8 A Yes.

9 Q That's why we were thinking whether it is  
10 plausible for a couple of units to meet the cap  
11 under the proposed rule.

12 And one follow-up question I have is  
13 you mentioned that, if this unlikely scenario plays  
14 out and Newton does get to that high level, you  
15 would be taking a look at the emissions and modeling  
16 and see if there is additional restrictions that  
17 need to be placed, do you wait until it gets to like  
18 that high level of emissions or do you look at the  
19 previous years' actual emissions and see how the  
20 next year emissions compare to see if there is any  
21 cause for concern.

22 A Yes. As I think we explained, maybe we  
23 didn't do a good enough job of it in the response  
24 about the requirements rule, each year you look. So

1 if it was a gradual increase, then, yes, we would  
2 see when it kicked over, that first time it kicked  
3 over. That 15 percent increase over the base year  
4 we would immediately see it then and then every year  
5 after that.

6 So maybe the first year they  
7 increased 16 percent and you're still fine and the  
8 next year they increase 10 percent or more and  
9 you're fine, but eventually you get up to this  
10 point.

11 So in a situation like that, yeah, we  
12 would see it coming. I was more responding to the  
13 question of does it all happen at once. All the  
14 others shut down you've got one unit, one source  
15 blowing all the SO2 into the air, then there would  
16 be nothing leading up to it, although quite  
17 honestly, the Agency would be kind of scratching its  
18 head as to why the other plants shut down and what  
19 is going on there.

20 [EXAMINATION]

21 QUESTIONS BY MS. ZALEWSKI:

22 **Q So in this scenario of the 39,000, you said**  
23 **that, if that were the case, then EPA would slap**  
24 **restrictions but they wouldn't need to because there**

1 is already restrictions on it. They would be  
2 violating some other regulation? You said you add  
3 regulations or restrictions, but you wouldn't need  
4 to because they would already be violating, is that  
5 correct?

6 A The restrictions would be, if this sudden  
7 situation occurred, we modeled it, we said you guys  
8 are now modeling non-retainment. In order to  
9 prevent this, we have to either get a construction  
10 permit on that to limit your potential to emit, or  
11 if you're not willing to do that, let's say your  
12 company isn't willing to work with us, then we come  
13 back to you and we say, okay, it's time for a new  
14 rule. This is the level we need to set it at to  
15 insure that there's no non-attainment and it would  
16 be the same situation that we had for the SO2 rule  
17 making of a couple years ago where we did all of  
18 that modeling at allowables and we said these are  
19 the specific units, the specific levels and these  
20 are the new rules to insure this doesn't happen.

21 HEARING OFFICER TIPSORD: Mr. Armstrong.

22 [EXAMINATION]

23 QUESTIONS BY MR. ARMSTRONG:

24 Q So just speaking about the possibility of

1 **making 39,152 tons of sulphur dioxide, just from a**  
2 **physical standpoint, that would be plausible if it**  
3 **switched to a higher sulfur coal, is that right?**

4 A If it switched to a higher sulfur coal, then  
5 it would probably be possible. I don't think that  
6 switching to a higher sulfur coal is plausible.

7 **Q Why is that?**

8 A Because they'd come right back to the data  
9 requirements rule again and they would end up  
10 getting in all likelihood restrictions placed upon  
11 them because they would potentially be causing NAAQS  
12 violations.

13 HEARING OFFICER TIPSORD: Mr. More.

14 [EXAMINATION]

15 QUESTIONS BY MR. MORE:

16 **Q Mr. Bloomberg, isn't that exactly what**  
17 **happened with respect to the Edwards Plant? You**  
18 **evaluated its emissions. It was determined**  
19 **additional requirements needed to be put in place to**  
20 **insure the NAAQS would protect it and then you enter**  
21 **into a memorandum agreement with Dynegy and then you**  
22 **submitted a rule memorializing that to insure this**  
23 **hypothetical scenario did not occur at the Edwards**  
24 **Plant?**

1           A    Yes.  At the Edwards Plant, and all of the  
2 other contributing sources in the two non-attainment  
3 areas.

4 BY MR. ARMSTRONG:

5           **Q    What length of time was it between the**  
6 **utilization of NOx exceedance in that area being**  
7 **judged non-attainment?**

8           A    NOx exceedance?

9           **Q    Sorry, NAAQS.**

10          A    That was a different situation because that  
11 was a monitored violation and the monitor was not  
12 actually triggered by the Edwards Plant.  It was  
13 triggered by a different facility that was directly  
14 upwind of that monitor on particular days when they  
15 caused that.  So the length of time, it's a  
16 completely different situation.

17          **Q    Well, could you please just answer the**  
18 **question?**

19          A    I don't remember it.  It is however long it  
20 took to do the modeling and do the rule making but,  
21 again, completely different situation.

22                   HEARING OFFICER TIPSORD:  Mr. More?

23 QUESTIONS BY MR. MORE:

24          **Q    To put it another way, there is a process in**

1 **place to address this hypothetical scenario that**  
2 **we've been discussing, isn't that correct?**

3 A Yes.

4 (Diericx) To put some numbers and context  
5 with this, the data requirement rule would require  
6 IEPA to Newton emissions. If annual emissions  
7 exceeded 18,800 tons per year, that is the data  
8 requirement rule. That's 12/20/14 average plus  
9 15 percent.

10 And also, if Newton station made it  
11 39,000 tons per year, it would be in violation of 40  
12 CFR 60.4382 which is performance standards programs  
13 unit.

14 [EXAMINATION]

15 QUESTIONS BY MR. RAO:

16 **Q What is the new source performance standard**  
17 **for that unit?**

18 A (Diericx) 1.2 pounds SO2.

19 **Q So if it exceeds 39,152, then they would be**  
20 **in violation?**

21 A Yes, higher than 1.2 to get up to 39,000.

22 (Bloomberg) So it sounds like the answer  
23 reverts to impossible while still following the law.

24 **Q I think we are on 6C.**

1                   **Please comment on whether PTE values**  
2 **for the individual units are included in the plant's**  
3 **CAAPP permit as not to be exceeded annual limits.**  
4 **If not, explain why such limits are not necessary.**

5           A     (Davis)   No.   These specific unit level PTEs  
6 are not explicitly stated in each plant's CAAPP  
7 permit.   The PTE values given for the various units  
8 were calculated using limits that cannot be exceeded  
9 and using a maximum amount of heat input for one  
10 year.

11           **Q     So, for example, for Newton, the 1.2-pound**  
12 **per MM-BTU is in the permit?**

13           A     That is in the unit, but the calculated PTE  
14 is not taken.

15           **Q     6B.   Please plain why an emission rate of**  
16 **1.2 lb/mmBtu was used to calculate PTE for Baldwin**  
17 **Unit 2 instead of the consent decree rate of 0.10**  
18 **lb/mmBtu.**

19           A     The BTU for Baldwin Unit 2 in Table 6 is in  
20 error and should indeed be calculated using a rate  
21 of .10 lb/mmBtu as can be seen in figure 12 F2,  
22 follow the table.   The PTE drops off considerably  
23 between 2012 and 2013 and this is due to the consent  
24 decree requiring that the unit begin operating its

1 FGE equipment in calendar year 2013 FGD, is flue gas  
2 desulfurization.

3 And it was required to begin  
4 operating that equipment in calendar year 2013.  
5 That was in the range that you asked for and so it  
6 started in '12 at 1.2 and went to .1 in that period  
7 and I believe Table 6 came from 2012.

8 **Q 6E. Table 6 lists plant-wide PTE for**  
9 **Coffeen Units 1 and 2 as 660 tons based on the**  
10 **permit fee limit rather than a limit under part 214.**

11 **Please clarify whether the permit**  
12 **fees emission limits represents not to be exceeded**  
13 **cap on a plant-wide basis. If so, explain why the**  
14 **Agency did not use permit fee limits to determine**  
15 **PTE for Baldwin, Hennepin and Newton plants.**

16 A Permit fee limits are not federally  
17 enforceable, but sources should not exceed such  
18 limits. The Agency apologizes for any inconsistency  
19 in its methodology presenting these figures. This  
20 resulted from additional staff beyond those that  
21 have been present in the hearings being required to  
22 complete some of the Board's requests regarding the  
23 permit requirements and PTE calculations in the  
24 given timeframe for response.

1 SO2 emissions from the Coffeen units  
2 are limited now mostly by permit conditions that  
3 require that their wet FGE is operated at all times  
4 when the units are operated. And also by the  
5 fleet-wide MPS average and across state trading  
6 program.

7 The only source specific limit for  
8 the Coffeen Plant beyond these requirements is  
9 Section 214.183 which results in a source-wide limit  
10 of 55,555 pounds per hour. This would result in an  
11 extremely high and unrealistic PTE of 240,900 tons  
12 per year.

13 However, additional source specific  
14 limits have not been necessary for Coffeen in recent  
15 years because of the wet FGE requirements. So  
16 again, that's a case where under the current rules,  
17 no, Coffeen would not be emitting 240,000 tons but  
18 that is its current low source limit.

19 [EXAMINATION]

20 **Q Question 7. The Agency provided a listing**  
21 **of applicable State, Federal, and consent decree**  
22 **requirements for NOx and S02 for the affected units.**  
23 **Dynegy's tables also included one for acid rain and**  
24 **CSAPR and MATS.**

1                   **Question 7A. Would you please**  
2 **comment on whether the NOx and SO2 limits presented**  
3 **by Dynegy are consistent with the Agency's**  
4 **permitting information on various units in the**  
5 **proposed MPS groups?**

6           A     (Bloomberg) The information presented by  
7 Dynegy is consistent with the Agency's permitting  
8 information.

9           **Q     Question B. Please comment on whether the**  
10 **limits listed by Dynegy are incorporated in the**  
11 **CAAPP permits of the affected units and would it be**  
12 **possible to provide a draft permit for one of the**  
13 **MPS plants that shows the various standards**  
14 **currently applicable to the plant EGUs as well as**  
15 **the sample wording that would be used to implement**  
16 **the proposed annual mass emissions cap?**

17           A     (Davis) The Agency is not quite sure what  
18 the Board is requesting in terms of a draft permit.  
19 Such permits are several hundred pages long and can  
20 be found on the Agency's website as part of public  
21 notice.

22                   If the Board has specific questions  
23 about contents of a permit as it relates to this  
24 rule making, the Agency is happy to answer such

1 questions, but we are unclear as to how a current  
2 draft permit relates to this proposed change to a  
3 rule and didn't want to necessarily give you several  
4 hundred more pages that wouldn't be necessary.

5           The rest of the question, sorry.  
6 Limits provided by Dynegey and the Agency are  
7 incorporated in the operating permits for the  
8 various sources. If such permits have been issued,  
9 the Agency cannot speculate at this time exactly how  
10 the permit language will appear at this time.

11       **Q    Question 7C.  If the MATS rate limit applies**  
12 **to certain MPS units as stated by Dynegey, would you**  
13 **please comment on whether the lower MATS rate of**  
14 **0.20lb/mmBtu should be used to calculate the PTE for**  
15 **the Duck Creek Plant rather than the rate of 1.2 in**  
16 **updated Table 6.**

17       A    No, it should not.  The 0.20lb/mmBtu mercury  
18 and air toxic standards for MATS rate was not used  
19 to calculate PTE because the source is compliant  
20 with the MATS rule for acid gases by using SO2  
21 emissions as a surrogate measurement.  A source  
22 operator may choose at a later date to comply with  
23 the MATS rule by means of the actual limits for acid  
24 gasses in rule in which case the 0.20 lb/mmBtu limit

1 would no longer apply at the source. Thus, the  
2 0.20lb/mmBtu limit is not necessarily permanent and  
3 cannot be relied upon for PTE purposes.

4 QUESTIONS BY MR. RAO:

5 **Q Agency's response to hearing questions**  
6 **states that, while Agency disagrees with Illinois**  
7 **Attorney General's methodology, it supports the**  
8 **Board adopting an SO2 mass emission cap of 49,000**  
9 **tons per calendar year for the proposed MPS Group.**

10 **Further, if the Board chooses to**  
11 **lower the proposed SO2 cap, the Agency states that**  
12 **SO2 transfer unit allocations under proposed Section**  
13 **225.233F2 must be reduced 10 percent from the**  
14 **original amount proposed.**

15 **Please comment on whether a**  
16 **corresponding reduction of NOx emissions cap and**  
17 **allocation amounts is necessary.**

18 **A** No such reduction is necessary. Even the  
19 Attorney General's Office indicated that using the  
20 Attorney General's Office methodology for  
21 calculating allowable emissions, the total maximum  
22 allowable NOx emissions under the current MPS is no  
23 more than 29,140 tons using 2016 unit level emission  
24 rates.

1           The Agency's proposed mass emission  
2     limit of 25,000 is well below that figure already.  
3     Additionally, the proposed amendments contain  
4     requirements that NOx control units be operated with  
5     those controls at all times and on year-round basis.  
6     Since no reduction in the proposed mass emission  
7     limit is necessary, no modification of the transfer  
8     allocations amounts for NOx is necessary either.

9           **Q     In response to Board question's 31B, Hearing**  
10    **Officer Order dated January 2nd, 2018 regarding the**  
11    **reduction of mass emission caps when EGUs are**  
12    **retired, the Agency stated quote "If an EGU shuts**  
13    **down, the power that has been generated by the EGU**  
14    **will likely be generated from elsewhere meaning the**  
15    **emissions will be coming from another EGU. As such,**  
16    **shut down of an EGU does not necessarily mean the**  
17    **fleet-wide mass emission limit should be reduced,**  
18    **especially since, as previously noted, such**  
19    **reduction is not necessary to meet Regional Haze**  
20    **requirements of air quality standards."**

21           **9A.   Please clarify whether likely be**  
22    **generated elsewhere may include generation from EGUs**  
23    **not within the proposed MPS group; EGUs powered by**  
24    **nuclear fuel, natural gas or renewable energy or**

1 **EGUs outside Illinois.**

2 A Yes. We would kindly note that the Agency  
3 addressed this during the first hearing. The  
4 testimony is set forth in the transcript for the  
5 January 17, 2018 hearing at pages 81, 82 and 115.

6 The Agency witnesses noted that other  
7 sources could generate power. These could include  
8 other EGUs not in the MPS group, nuclear plants,  
9 natural gas units, renewable energy sources, or EGUs  
10 from outside Illinois. It is also possible though  
11 that the units within the MPS groups could be called  
12 upon to generate those lost megawatts.

13 **Q So if the rationale for not retiring the**  
14 **retired units and using the cap is that a unit**  
15 **within the Dynegy proposed MPS group may have to**  
16 **generate that power that was being generated by the**  
17 **retired facility?**

18 A Yes, that's exactly it. We just don't know  
19 where the power is going to be. It could come from  
20 another MPS unit in which case we don't want to take  
21 away allowable emissions if another unit just has to  
22 operate more. It could come from outside. We just  
23 don't know looking forward.

24 **Q So it is likely that some other EGU picking**

1 **up outside of MPS group?**

2 A I can't say it's the same one. I don't know  
3 what the percentage chances are.

4 **Q Because if a unit or a plant is sold by**  
5 **Dynegy to another entity, they don't get to use that**  
6 **allowance, they don't get to keep that allowance**  
7 **from the unit?**

8 A Right. Because that unit, those units that  
9 source is still operating. So the new owner of the  
10 source gets the amount that is in the rule and that  
11 amount is reduced from the Dynegy allowable  
12 emissions.

13 HEARING OFFICER TIPSORD: Mr. Armstrong, do  
14 you have a follow-up?

15 [EXAMINATION]

16 QUESTIONS BY MR. ARMSTRONG:

17 **Q So along the lines of the difference in**  
18 **treatment of the emissions allotted to a plant that**  
19 **has been retired and a plant that has been sold by**  
20 **Dynegy to another operator, does the Agency think**  
21 **that this feature of the rule may incentivize Dynegy**  
22 **to retire plants as opposed to sell them to other**  
23 **operators?**

24 A (Bloomberg) I have no reason to believe

1 that. I think that, if Dynegy believed that a plant  
2 were economically feasible to continue, it would  
3 seem silly to shut it down just so that they could  
4 -- I'm not sure what, use those allowances elsewhere  
5 and anybody who were to come in and buy an MPS  
6 source would obviously believe that they could run  
7 it at a profit. So I don't see how such an  
8 incentivization would work.

9 BY MS. PAPADIMITRIU:

10 **Q So following up on that, if I may again. If**  
11 **the Agency's proposal was found acceptable by the**  
12 **Board, another hypothetical, the only way that**  
13 **emissions could be retired from that MPS is if**  
14 **another owner bought an EGU.**

15 **So if the plant was retired, not**  
16 **mothballed and the permit given back to the Agency,**  
17 **the emission -- that the allowable emissions would**  
18 **not be reduced?**

19 A Correct.

20 **Q If Dynegy or Vistra or ABC Company owns the**  
21 **permit and sold the plant and therefore the new**  
22 **owner would have to go through a permitting cycle,**  
23 **the allowable emissions would be reduced in the MPS?**

24 A For the MPS group would be reduced by the

1 amount that is given to the new owner.

2 **Q And what's the mechanism for that?**

3 A By this rule, by the proposal.

4 **Q And that would be concurrent with -- what**  
5 **would be the trigger?**

6 A I'd have to look in the rule. I believe we  
7 planned for everything there, I hope we planned for  
8 everything there. That was the intent. The trigger  
9 is, I believe, I think it is the date of sale. So I  
10 guess the question is what do you mean the trigger  
11 because we have language in the proposed rule that  
12 talks about which compliance period it happens. Is  
13 that what you're talking about?

14 **Q How would the Board, how would you inform**  
15 **the Board in terms of the grouping?**

16 A I don't believe the Agency would inform the  
17 Board. It would be incorporated into the next set  
18 of permits.

19 HEARING OFFICER TIPSORD: Mark.

20 [EXAMINATION]

21 QUESTIONS BY MR. MORE:

22 **Q To follow-up on the questions related to**  
23 **reductions in the cap in the event of retirements.**

24 **Are reductions in the cap of the**

1 event of retirements necessary to protect air  
2 quality in Illinois to at least the same extent as  
3 air quality as protected under the current MPS rule?

4 A No.

5 Q Are there any regulatory requirements that  
6 would justify reducing the cap in the event of  
7 retirements?

8 Are you aware of any regulatory  
9 requirements that would necessitate the need for  
10 reduction in the cap in the event of a retirement?

11 A No.

12 BY MR. RAO:

13 Q Under the current rule, if a unit is  
14 retired, how will the averages be done on a  
15 fleet-wide basis in terms of the number of units  
16 that would be used to calculate the average?

17 A The average would be calculated using  
18 whatever units operated in the timeframe for which  
19 the average is applicable. So if a unit operated  
20 for half the year and then contributed to the  
21 average for half the year.

22 Q You don't consider the retired unit as part  
23 of the averaging?

24 A Well, it's based on you average it according

1 to its million BTU so a retired unit would have zero  
2 BTUs, so it would not be included and retired shut  
3 down, mothballed, not operating for whatever reason.

4 HEARING OFFICER TIPSORD: I think it is now  
5 almost 10 to 5 and they want us to be out of here by  
6 5:00 so we will recess for today and start tomorrow  
7 morning. As I said, after we finish the testimony  
8 tomorrow, we will allow time for public comment up  
9 until as long as we have people here to give  
10 comment. 10:00 tomorrow morning.

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C E R T I F I C A T E

I, Linda DeBisschop, a Certified Shorthand Reporter in and for said County and State, do hereby certify that the foregoing transcript contains a true and accurate translation of my shorthand notes referred to.

I further certify that I am not of counsel or attorney for either of the parties to said hearing, not related to nor interested in any of the parties or their attorneys.

Dated this 12th of March, 2018.

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Linda DeBisschop, CSR, CCR,  
Illinois CSR No. 084.004741  
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