

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)
)
AMENDMENTS TO) **R18-20**
35 ILL. ADM. CODE 225.233,) **(Rulemaking – Air)**
MULTI-POLLUTANT STANDARDS (MPS))

NOTICE OF FILING

To: ALL PARTIES ON THE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the attached **Motion for Expedited Consideration**, copies of which are herewith served upon you.

/s/ Ryan Granholm
Ryan Granholm

Dated: October 12, 2018

Ryan Granholm
SCHIFF HARDIN LLP
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| MULTI-POLLUTANT STANDARDS (MPS) |) | |

Motion For Expedited Consideration

NOW COMES *Vistra Energy Corp.*¹ (“*Vistra*”) by its attorneys, *Schiff Hardin LLP*, pursuant to 35 Ill. Admin. Code § 101.512, and requests expedited review of the Illinois Pollution Control Board’s (“*Board*”) second first notice proposal regarding amendments to the Multi-Pollutant Standards (“*MPS*”). In support of this motion, *Vistra* states as follows:

1. 35 Ill. Admin. Code § 101.512(b) directs the Board to consider the “material prejudice” that may result from granting or denying a motion for expedited review. The Board has determined that economic harms—including lost profits and lost cost savings—may justify expedited review. For example, the Board has granted expedited review where a favorable ruling would preserve or create new business opportunities for the petitioner. AS06-04, *In the Matter of: Petition of Big River Zinc Corporation for an Adjusted Standard Under 35 Ill. Admin. Code 720.131(c)*, Order of the Board at 1-2 (Aug. 4, 2006) (noting that the rule could “allow [petitioner] to restart [its] refinery and return the . . . facility operations to profitability”); AS08-09, *In the Matter of: Petition of Big River Zinc Corporation for an Adjusted Standard Under 35 Ill. Admin.*

¹ The entities appearing before the Board in this matter are *Dynegy Midwest Generation, LLC*; *Illinois Power Generating Company*; *Illinois Power Resources Generating, LLC*; and *Electric Energy, Inc* (collectively, the “*Companies*”). The *Companies*, collectively, hold the permits for and operate all of the units subject to the *MPS*. At the outset of this rulemaking, *Dynegy Inc.* (“*Dynegy*”) was the ultimate corporate parent of the *Companies*. *Dynegy* merged with *Vistra* on April 9, 2018 and *Vistra* is now the ultimate corporate parent of the *Companies*.

Code 720.131(c), Order of the Board at 2-3 (Aug. 7, 2008) (granting a motion for expedited review where delay could have caused petitioner to lose a contract with a supplier). Similarly, the Board has granted expedited review where the proposal could create cost savings for the petitioner. R15-23, *In the Matter of: Amendments to Primary Drinking Water Standards 35 Ill. Admin. Code 611*, Opinion and Order of the Board at 3, 5 (Jun. 4, 2015) (noting cost savings to community water supplies associated with adjusted standards); AS08-10, *In the Matter of: RCRA Delisting Adjusted Standard Petition of Peoria Disposal Company*, Order of the Board at 2 (Jun. 5, 2008) (granting a motion to expedite based on cost savings associated with the proposed adjusted standard).

2. Here, Dynegy and Vistra have testified repeatedly regarding the unnecessary operational and economic burdens associated with the existing MPS. *See* R18-20, Vistra's Post Hearing Comments at 9-10 (Jun. 1, 2018) (summarizing testimony in the record on the economic harms associated with the current MPS); R18-20, Vistra's Response to Post-Hearing Comments at 22-24 (Jun. 15, 2018) (same). The record reflects that the MPS fleet faces substantial market pressures, and that complying with the current rate-based MPS restricts Vistra's ability to respond to these market pressures. R18-20, Vistra's Response to Post-Hearing Comments at 22-24 (Jun. 15, 2018). As the record establishes, any additional delay would prevent market-driven operation of units subject to the MPS, entail additional losses associated with "must run bidding," potentially require curtailment of certain units, and threaten the viability of the entire MPS fleet. Further, the Board noted in its recent Opinion and Order of the Board that the must-run bidding required to comply with the MPS may "distort[] the wholesale power market." R18-20, Opinion and Order of the Board at 65 (Oct. 4, 2018).

3. The Board's October 4, 2018 proposal (the "Board's Proposal") could reduce or eliminate these unintended effects of the MPS and provide Vistra the regulatory certainty

necessary to make investment decisions with regard to the MPS fleet. Expedited consideration is therefore appropriate to limit the material prejudice to Vistra, its employees, local communities, and the state and regional electricity market that would be associated with further delay.

4. In contrast, expedited consideration will cause no material prejudice. The Board, the rulemaking participants, and the public spent the last year developing the record—which includes six days of hearing testimony, volumes of written filings by participants, and nearly 3,000 written public comments. The Board’s Proposal builds on the structure and substance of IEPA’s original proposed revisions to the MPS (“IEPA’s Proposal”) and was based on the record established to date. The Board’s Proposal adopts the main elements of IEPA’s Proposal: merging the two MPS compliance groups into one and replacing annual rate-based emissions standards with annual mass emissions limits. *See generally* R18-20, Opinion and Order of the Board at 2 (Oct. 4, 2018). The primary changes suggested by the Board—reducing the proposed emissions limits and requiring adjustments of the emissions limits when units are permanently or temporarily shut down—are based on testimony already presented in this rulemaking. *Id.* at 52-55 (noting that the mass emissions limits in the Board’s Proposal were based on a proposal from the AGO); *id.* at 58-59 (explaining that the adjustments for unit shutdowns required by the Board’s Proposal were suggested by the AGO). Reviewing this record, the Board held that it “could have proceeded directly to second notice with these substantive changes to the IEPA’s original proposal.” *Id.* at 2. Therefore, expediting second first notice review of the Board’s Proposal will not materially prejudice any rulemaking participant or the general public.

5. Nonetheless, the Hearing Officer issued an Order informing the participants that the Board anticipates holding one additional hearing in this matter and directing the participants to a list of questions intended to develop testimony relating to the limited changes the Board made

to IEPA's Proposal. R18-20, Hearing Officer Order at 1, 3-4 (Oct. 4, 2018). One hearing, on an expedited basis, will be sufficient to address the Board's questions and any additional questions and testimony that the participants and the public wish to present regarding the Board's Proposal.

6. Where a motion for expedited review is granted, the Board may "direct[] the hearing officer to avoid unnecessary delay in scheduling hearings." R15-23, Opinion and Order of the Board at 5; *see* R04-11, *In the Matter of: Proposed Site Specific Regulation Applicable to Ameren Generating Company, Elgin, Amending 35 Ill. Admin. Code Part 901*, Opinion and Order of the Board at 2 (Nov. 6, 2003) (directing the hearing officer to "expeditiously schedule a hearing").

7. The Board may also set a specific timeline by which it will (or will attempt to) take final action on a proposal. R05-11, *In the Matter of Amendments to 35 Ill. Admin. Code 205, Emissions Reduction Market System, and 35 Ill. Admin. Code 211*, Opinion and Order of the Board at 2 (Dec. 2, 2004) (granting a motion for expedited consideration and committing to reach a final decision before the current rule lapsed); AS08-09, Order of the Board at 2-3 (Aug. 7, 2008) (acknowledging petitioner's "economic urgency" and ruling that the Board would "endeavor to issue a final decision at its scheduled Aug. 21, 2008 meeting or as soon thereafter as is reasonably practicable").

8. Therefore, Vistra respectfully requests that the Board and the Hearing Officer act expeditiously to schedule a hearing in this matter and proceed to second notice on the Board's Proposal by February 1, 2019, or as soon thereafter as the Board's meeting schedule permits. To allow the Hearing Officer to comply with the required 21-day notice period (35 Ill. Admin. Code § 101.602), Vistra requests that a public hearing be scheduled for the week of November 26th, 2018. Following the hearing, Vistra suggests an approximately 30-day post-hearing comment

period, ending on December 31, 2018. Vistra's proposed schedule would exceed the statutorily-required 45-day public comment period (5 ILCS 100/5-40(b)) and would afford the Board approximately 30 days to review any new evidence or testimony before the first regularly-scheduled Board meeting in February 2019.

9. As required by 35 Ill. Admin. Code § 101.512, this Motion is accompanied by an Affirmation attesting that the facts cited herein are true.

Respectfully submitted,

/s/ Josh More

Attorney for Vistra

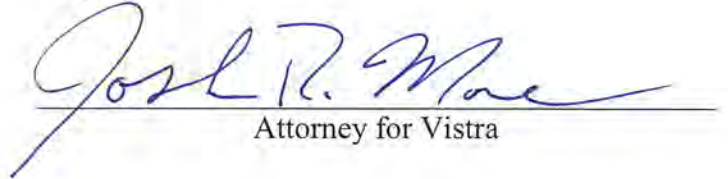
Dated: October 12, 2018

SCHIFF HARDIN LLP
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AFFIRMATION

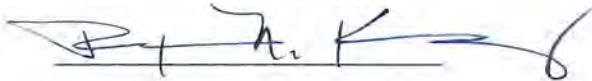
I, the undersigned, under oath, hereby state and affirm that I am a Partner at the firm Schiff Hardin LLP and the facts cited in the foregoing Motion for Expedited Consideration are true and correct to the best of my information and belief.

Signed,


Attorney for Vistra

SUBSCRIBED AND SWORN
BEFORE ME

This 12th day of October, 2018



Notary Public



CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 12 day of October, 2018, I have electronically served the attached **Motion for Expedited Consideration**, upon all parties on the attached service list.

My e-mail address is rgranholm@schiffhardin.com;

The number of pages in the e-mail transmission is 9.

The e-mail transmission took place before 5:00 p.m.

/s/ Ryan Granholm

Ryan Granholm

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