

THE BEFORE ILLINOIS POLLUTION CONTROL BOARD

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

TRANSCRIPT OF PROCEEDINGS, taken before  
HEARING OFFICER MARIE TIPSORD, by Lisa Hahn Peterman,  
CSR, RMR, a notary public within and for the County  
of Macon and State of Illinois, at the Illinois  
Environmental Protection Agency, 1021 North Grand  
Avenue East, Springfield, Illinois, on the 29th day  
of January, 2019, at 10:00 a.m.

\* \* \* \* \*

1 A P P E A R A N C E S:

2 ILLINOIS POLLUTION CONTROL BOARD

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5 BY: MS. MARIE TIPSORD, HEARING OFFICER;

6

7 ILLINOIS POLLUTION CONTROL BOARD MEMBERS

8 PRESENT:

9 Ms. Katie Papadimitriu, Chairman

10 Ms. Brenda Carter, Board Member

11 Ms. Carrie Zalewski, Board Member

12 Mr. J. Mark Powell, Senior Attorney

13 Mr. Anand Rao, Senior Environmental Scientist

14 Ms. Cynthia Santos, Board Member

15 Ms. U-Jung Choe, Board Member

16

17 ALSO APPEARING:

18 MS. TANYA RABCZAK,

Attorney Advisor to Chairman Papadimitriu

19

MR. DANIEL PAULEY

20 Attorney Advisor to Board Member, U-Jung Choe

21

22

23

24

1 A P P E A R A N C E S: (Continued)

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1 A P P E A R A N C E S: (Continued)

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1 (Start time: 10:06.)

2 HEARING OFFICER TIPSORD: All right. I  
3 think we're going to go ahead and begin. As most  
4 of you who attended the pre-hearing conference  
5 know, we're going to open the hearing and then  
6 recess, so good morning.

7 My name is Marie Tipsord and I've been  
8 appointed by the Board to serve as Hearing Officer  
9 in this proceeding entitled Amendments to 35 Ill.  
10 Adm. Code 225.233 Multi-Pollutant Standards (MPS).

11 With me today to my immediate left is  
12 Chairman, Katie Papadimitriou. At the far left is  
13 Board Member, Brenda Carter. To Chairman  
14 Papadimitriou's left is Tanya Rabczak, her Attorney  
15 Advisor. To my immediate right is Senior Attorney  
16 Mark -- J. Mark Powell. To his right, Anand Rao,  
17 from our technical unit; and, at the end, our  
18 newest attorney, Daniel Pauley, who's acting as  
19 Attorney Advisor to U-Jung Choe, as well as being a  
20 staff attorney.

21 We were supposed to hear testimony  
22 today and allow for oral comment. We scheduled the  
23 hearing to begin at 10:00 a.m. to -- just in case,  
24 to be sure to accommodate all testimony, but due to

1 the amount of testimony and questions that were  
2 received before this hearing, we will recess until  
3 noon and we will begin hearing testimony at noon,  
4 so we're recessed.

5 (Hearing recessed at 10:09 a.m. to  
6 commence again at 12:00 noon.)

7 HEARING OFFICER TIPSORD: Good  
8 afternoon, everyone. Thank you for coming back  
9 promptly. Again, my name is Marie Tipsord. I've  
10 been appointed by the Board to serve as Hearing  
11 Officer in this proceeding entitled Amendments to  
12 35 Ill. Adm. 225.233, Multi-Pollutant Standards  
13 (MPS).

14 With me today to my immediate left is  
15 Chairman Katie Papadimitriu, the Presiding Board  
16 Member. To the far left is Board Member, Brenda  
17 Carter. To the far right is U-Jung Choe, a Board  
18 Member, and next to her on her left is Board  
19 Member, Cynthia Santos. Next to Chairman  
20 Papadimitriu is her Attorney Advisor, Tanya  
21 Rabczak. To my immediate right is Senior Board  
22 Attorney, J. Mark Powell. To his immediate right  
23 is Anand Rao from our Technical Unit, and at the  
24 end of the table is Attorney Advisor, Daniel

1 Pauley.

2 Thank you, everyone. The purpose of  
3 today's hearing is to hear testimony from the  
4 witnesses who prefiled testimony and to allow for  
5 oral public comment.

6 The hearing was opened at 10:00 a.m.,  
7 and we recessed due to the amount of testimony and  
8 questions received and we are now proceeding at  
9 12 o'clock noon.

10 We will begin first with testimony from  
11 the Illinois Attorney General's Office. After we  
12 have entered the testimony, we will take questions,  
13 and after that, we will move to testimony from the  
14 Environmental Law and Policy Center and Sierra  
15 Club, and we'll enter that and take questions after  
16 the testimony is entered.

17 Before we conclude the testimony today,  
18 I will ask the Agency to come forward. We will  
19 enter the Agency's December 10, 2018, Responses to  
20 Board Questions as an exhibit, as it did not  
21 receive a public comment number, so for ease of  
22 drafting, we'll give it an exhibit number.

23 I will then also ask if anyone has  
24 questions they wish to direct to the Agency. While

1 the Agency has not provided testimony, they may  
2 either choose to answer or answer those in public  
3 comment at the end.

4 At the conclusion of the testimony  
5 today, if there's anyone who signed up to offer  
6 oral public comment this afternoon, we will allow  
7 that comment. If no one is present at that time,  
8 we will recess and reconvene at 5:30 to hear oral  
9 public comments. At this time, I have eight people  
10 who have signed up for public comment this evening.

11 And, as a reminder, anyone may ask a  
12 question today and follow up with prefiled  
13 questions, which there were none. I do ask that  
14 you raise your hand, wait for me to acknowledge  
15 you. After I've acknowledged you, please state  
16 your name and who you represent before you begin  
17 your questions.

18 Please speak one at a time. If you  
19 speak over each other, the court reporter will not  
20 be able to get your questions on the record.

21 Also, you may ask any follow-ups you'd  
22 like as we go along. Thank you very much. And I'd  
23 note that any questions asked by Board Members or  
24 staff are intended to help build a complete record

1 for the Board's decision and not to express any  
2 preconceived notion for filings.

3 So before we go to the testimony, does  
4 anybody have any opening statements they want to  
5 make this morning -- this afternoon? All right.  
6 Then we'll go to the Illinois Attorney General's  
7 Office.

8 MR. SYLVESTER: With regard to  
9 admitting the exhibits, the testimony, do you want  
10 to wait until after --

11 HEARING OFFICER TIPSORD: After you're  
12 sworn in. If you could swear in Mr. Armstrong.

13 (Witness sworn.)

14 If there's no objection, we will admit  
15 the prefiled testimony from December 10, 2018, on  
16 behalf of the Attorney General by Andrew Armstrong  
17 as Exhibit Number 48. Are there any objections?  
18 Seeing none, it's Exhibit 48.

19  
20 ANDREW ARMSTRONG  
21 called as a witness, being first duly sworn, was  
22 examined and testified as follows:

23  
24

1 HEARING OFFICER TIPSWORD:

2 Mr. Armstrong, would you like to summarize your  
3 testimony, or do you want to go straight to any  
4 questions?

5 MR. ARMSTRONG: We could go straight to  
6 questions.

7 HEARING OFFICER TIPSORD: All right.  
8 Are there any questions for Mr. Armstrong?

9 What's the number on that, Mike?

10 MR. SYLVESTER: Number 1.

11 HEARING OFFICER TIPSORD: Any  
12 questions? Going once. Do we have any questions?

13 EXAMINATION

14 BY MS. RABCZAK:

15 Q. On page 4 of your testimony, you  
16 suggested the Board identify in the Board note the  
17 mothballed unit at the time of the Board's  
18 decision. My question is, the way that the rules  
19 are proposed is that IEPA will be notified about  
20 mothballed units at the end of the compliance  
21 period, so they will learn which units were  
22 mothballed during the entire compliance period.

23 In light of that, will you please  
24 explain, why do you think the Board note is still

1 **important, listing all of the mothballed units at**  
2 **the time of the Board decision?**

3 A. Well, I think that I would provide two  
4 reasons why I think it would be helpful to have  
5 that in the rule.

6 One, we have right now a unit that has  
7 been mothballed for some time, and I think it would  
8 be appropriate to identify to the public, that is,  
9 reviewing the rule, that this unit has been  
10 mothballed, and then accordingly, if it remains  
11 mothballed, then the limits within the caps within  
12 the rule would have to be modified accordingly. So  
13 I think that that's one reason.

14 The other reason, two, is that in my  
15 testimony, I also had suggested a slightly  
16 different approach to mothballing, which was that,  
17 you know, for a unit that's mothballed, a unit  
18 that's mothballed for less than the entire  
19 compliance period also should be treated as a  
20 mothballed unit for purposes of reduction of the  
21 overall cap.

22 So if the Board were to accept that  
23 proposal from our office, then I think the note of  
24 what units are currently mothballed would be even

1 more helpful to somebody who's trying to figure out  
2 what the rule means and requires.

3 **Q. So the second proposal was units to be**  
4 **treated as mothballed units, if they worked for**  
5 **some parts of the compliance period. That's the**  
6 **prorated, right, approach? That's prorating?**

7 A. Well, I think that actually does not  
8 require proration. We did suggest proration would  
9 be appropriate, but as I discussed on page 10 to 11  
10 of my testimony, for example, you could have a  
11 scenario where, if a unit is mothballed on July 1st  
12 of a particular calendar year, it still could be  
13 separated from the MPS group and compliance  
14 evaluated for that mothballed unit separately from  
15 the rest of the MPS group. The rest of the MPS  
16 group would then be evaluated, based on a reduced  
17 emissions cap, just taking out the mothballed unit.

18 So just as we suggest for retired units  
19 or permanently shutdown units or temporarily  
20 shutdown units, it's possible to kind of sever  
21 those units away from the MPS group as a whole and  
22 evaluate compliance of each separately.

23 Proration would occur if you wanted  
24 to -- proration would occur -- if you followed that

1 idea, proration would occur when you're looking at  
2 the shut-down unit, and you would say, Okay. Well,  
3 this unit was shut down for six months. It should  
4 only really get six months of credit of its cap in  
5 order to evaluate compliance.

6 So I think that proration is not  
7 technically necessary, though, as I argued in my  
8 testimony, it would be the most environmentally  
9 protected way to do it.

10 MS. PAPADIMITRIU: Can I ask a  
11 follow-up to that?

12 EXAMINATION

13 BY MS. PAPADIMITRIU:

14 **Q. Mr. Armstrong, good morning. Katie**  
15 **Papadimitriu, Chairman of the Board.**

16 **So thank you for that clarification. I**  
17 **wonder if -- so from the environmental side, that**  
18 **makes sense, but from an energy perspective, since**  
19 **no planned shutdown can occur during the cooling**  
20 **months, is your question as relevant as perhaps you**  
21 **think it is?**

22 **A. I'm sorry. If no plant can shut down**  
23 **during the --**

24 **Q. The cooling period, so between May and**

1 **September.**

2 A. Oh, okay. Okay. So I think it --

3 **Q. Does that change your opinion? I'm**  
4 **sorry to interrupt.**

5 A. I think that in that question you said  
6 with respect to the proration specifically?

7 **Q. Uh-huh.**

8 A. I think that -- I think the proposal of  
9 proration is still relevant in the sense that the  
10 amount of time that a unit could operate during any  
11 particular year is subject to certain limits, but  
12 at the same time, it's clear that a unit could  
13 operate for three months or nine months, or, you  
14 know, any variation of time within that year.

15 So I think it's appropriate to  
16 recognize that if a unit is, for example, closed  
17 down at the very beginning of the year, that one  
18 would expect to see far less than a full year's  
19 worth of pollution from that unit.

20 MS. PAPADIMITRIU: Okay. Thank you.

21 HEARING OFFICER TIPSORD: Go ahead.

22 Josh.

23 MR. MORE: Mr. Armstrong --

24 HEARING OFFICER TIPSWORD: Identify

1 yourself for the record.

2 MR. MORE: I'm sorry. Josh More,  
3 Schiff Hardin, on behalf of Vistra.

4 EXAMINATION

5 BY MR. MORE:

6 Q. I understand the concept. Let's use  
7 the hypothetical where you need to shut down for  
8 six months, you'd mentioned, and it should only be  
9 awarded 50 percent of the emissions that are set  
10 forth in the proposal. Is that the proration  
11 concept that you're proposing?

12 A. Yes. So the proration -- and just so  
13 I'm a hundred percent clear, the proration would be  
14 applied to a unit that has been either temporarily  
15 or permanently shut down.

16 Q. Thank you. In your experience, is  
17 generation constant throughout the year?

18 A. No.

19 Q. And, therefore, is it correct, then,  
20 that there are periods of time during the year  
21 where generation is greater than other periods of  
22 time?

23 A. Yes.

24 Q. And, in turn, during those periods

1 where generation is higher, emissions are also  
2 higher, correct?

3 A. Yes. I think that would typically be  
4 the case.

5 Q. Okay. And is it fair to say that the  
6 generation pattern is -- generally speaking,  
7 generation is higher during the winter months and  
8 summer months, as opposed to during the spring and  
9 fall?

10 A. Yes, the shoulder months.

11 Q. Thank you. So the shoulder months or  
12 the shoulder seasons, generation and, in turn,  
13 emissions, are typically lower, correct?

14 A. I believe that's the case.

15 Q. So if a unit were to operate during  
16 winter and summer months for a total of six months,  
17 the generation that would occur during that  
18 six-month period would be expected to be higher  
19 than the six-month period where it was temporarily  
20 shut down, correct?

21 A. Sorry. Could you repeat that?

22 Q. Okay. So in light of this idea that  
23 there are periods where emissions are higher during  
24 winter and summer versus the shoulder months,

1     **proration, a straight proration, doesn't it run the**  
2     **risk of penalizing a unit that runs during the**  
3     **winter and summer, waiting a total of six months,**  
4     **and then the shutdown for the spring or mothballed**  
5     **for the spring and fall because its generation --**  
6     **the ratio isn't one for one?**

7             A. Well, I think that hypothetical  
8     would -- it depends upon the idea of a unit that  
9     would not just operate in that fashion but would be  
10    shut down during the seasons when it's not running  
11    and then reopen with the regional transmission  
12    organization, and I'm not sure that that's a very  
13    realistic scenario. But, to answer your question,  
14    I do agree that there are different levels of  
15    generation, and accordingly, different levels of  
16    emissions throughout the course of the year, and I  
17    would be open to anybody's thoughts about what they  
18    think a more fair way to do proration would be, but  
19    I don't think that any technical difficulties  
20    presented by that concern would support just  
21    abandoning the concept of proration and, instead,  
22    saying if the plant operates for one day out of the  
23    year, compliance should be assessed by its annual  
24    emissions.

1 I think that if anybody has concerns  
2 about the way proration works as I propose it, they  
3 should present a refinement, because the  
4 alternative is, instead, not protective of the  
5 environment and would allow -- and not consistent  
6 with the MPS.

7 EXAMINATION

8 BY MS. RABCZAK:

9 Q. Page 8, 7-8 of your testimony, talks  
10 about permanent shutdown. I just wanted to  
11 clarify, in your testimony you suggested that the  
12 owner of shut-down units does not report on it, and  
13 IEPA filed a supplementary answer, Additional  
14 Suggested Amendments, addressing that. Does that  
15 change the way your testimony is written in terms  
16 of clarification?

17 HEARING OFFICER TIPSORD: And, for the  
18 record, that's Public Comment 2931.

19 A. IEPA's proposal, I think, would be  
20 protective in the sense that it makes clear that a  
21 permanently shut-down unit has to be accounted for.

22 In effect, I think it's actually -- the  
23 way it would be work would be more stringent than  
24 what I proposed in my testimony, so I don't have

1 any objection to it. My only remaining ask would  
2 be that permanently shut-down units should be  
3 treated the same way as temporary shut-down units.

4 **Q. So speaking about the mothballed or**  
5 **temporarily shut-down units, you mention on page 12**  
6 **of your testimony that the generating -- the owner**  
7 **of the generating unit sends the plants notice.**

8 A. Yes.

9 **Q. And that the units might not be**  
10 **mothballed for more than 36 months at a time. On**  
11 **the other hand, IEPA mentioned that units might not**  
12 **know for how long they will be mothballed. Would**  
13 **you be able to comment on that a little bit more?**

14 A. So I don't in any way hold myself out  
15 as subject matter expert on MISO or their tariff.  
16 My observation was just that if you look at the  
17 MISO tariff, they have built into that a 36-month  
18 limit on the -- I believe the cessation -- and I  
19 think at that point the unit either -- and I don't  
20 want to speak out of turn, but I think at that  
21 point the unit, if it's going to remain shut down  
22 for longer, would be considered retired.

23 So in terms of a unit not knowing the  
24 exact duration of a shutdown or cessation, that may

1 be the case, but I believe that when a notice is  
2 sent to MISO, there is to be some indication of the  
3 length.

4 **Q. Do you know the rules that require the**  
5 **direct advanced notice to MISO? Do you know what**  
6 **they're required to do? Do you have any details on**  
7 **that that you can provide?**

8 A. So...

9 **Q. I guess the questions I have and**  
10 **somebody else has, would the unit operator know in**  
11 **advance or would they know at the end of the period**  
12 **for how long it's going to be shut down?**

13 I mean, if you don't have an answer to  
14 that right now, if you would like to comment on it  
15 afterwards, you'll be welcome.

16 A. Certainly, I think I can provide some  
17 additional thoughts on it in post-hearing comments,  
18 and I'm looking now at page 9, and, you know, to be  
19 honest, I'll have to get another look at it to  
20 determine whether, in fact, an operator has to  
21 specify an anticipated length of cessation, but the  
22 MISO tariff itself refers to suspension as  
23 cessation of operation for more than two months  
24 commencing on a specified date. So I think by the

1 time that somebody sends a suspension, they are  
2 planning to be out for more than two months, and,  
3 you know, given that that's the case that you know  
4 that's going to be at least two months out of a  
5 12-month period, it seems like it would not be  
6 difficult then to segregate that unit from the rest  
7 of the units.

8 And, again, what I'm trying to avoid,  
9 as I tried to make the case in my testimony, what  
10 I'm trying to avoid here is a situation here where,  
11 if you have a permanent shutdown on the first day  
12 of the year that the other remaining units don't  
13 get to use the emissions that are allocated to that  
14 unit to increase their operations.

15 **Q. But wouldn't that happen during the**  
16 **compliance period? So under the rules as proposed,**  
17 **it will be adjusted for that compliance period?**

18 A. That's right. Under IEPA's  
19 clarification, the limit would be adjusted for --  
20 the limit would be adjusted downward, based upon  
21 the permanent retirement.

22 What I would try to avoid, though, is  
23 with a temporary shutdown, if a unit under the  
24 current rule were shut down, say, on January 15th,

1 the cap would not be adjusted in the remaining  
2 units, and the remaining units would basically get  
3 the full annual allocation for that temporarily  
4 shut-down unit. So even -- so if you had a  
5 permanently shut-down unit on January 15th or a  
6 temporarily shut-down unit on January 15th, the  
7 remaining units would have a different cap to  
8 comply with, and that result, to me, doesn't seem  
9 like a good one.

10 See, I feel that they should be treated  
11 similarly for environmental reasons, but also just,  
12 you know, as a matter of rational policy.

13 **Q. In your testimony you suggest that the**  
14 **operators should send the notice they send out to**  
15 **IEPA as well. Would that be helpful in any case if**  
16 **IEPA will learn about duration of the shutdown at**  
17 **the end of the compliance period? How would they**  
18 **know this would help them if, for example, the**  
19 **notice indicated it was going to be shut down for**  
20 **two months and then IEPA then -- each compliance**  
21 **period gets information about that two-month**  
22 **shutdown anyway? How would the notice to RTO help**  
23 **them?**

24 A. I just want to make sure I see my

1 testimony on this.

2 Q. I think it's page 12 and 13. So on  
3 page 12 you mentioned at the very end, We,  
4 therefore, propose that subsection (f) (3) -- and  
5 that is Section 225.223(f) (3) be amended to also  
6 require the MPS owner to include a copy of the  
7 notice sent to the RTO to evidence the start date  
8 of the temporary shutdown.

9 A. So, first, I think I should correct  
10 what appears to be in error when I say subsection  
11 (f) (3). That should probably be referring to  
12 subsection (h) (3) because subsection (h) refers  
13 to -- that subsection (h) is about temporary  
14 shutdown of EGUs, as opposed to sale or permanent  
15 shutdown. So (h) (3) is currently proposed by the  
16 Board. It states that if one or more EGUs in an  
17 MPS group are temporarily shut down over an entire  
18 compliance period, the owner or operator must  
19 notify the Agency's Bureau of Error and Compliance  
20 Section in writing within seven days after the  
21 start date of the shutdown.

22 So it seemed to me that the Board was  
23 saying that it was looking for contemporaneous --  
24 notice of the shutdown contemporaneously with the

1 start date of the shutdown. So my thinking with  
2 requiring the notice to the RTO would be that if  
3 the operator is going to be required to provide  
4 official notice to the RTO of an official date, I  
5 mean, that's very important for their continued  
6 operation within the organization.

7 That would be good -- that would be  
8 good information to also share with IEPA because  
9 that's a real official statement and real clear  
10 indication of what the beginning of the -- of what  
11 the start date of a shutdown is.

12 **Q. Okay. And --**

13 MR. MORE: If you don't mind.

14 HEARING OFFICER TIPSWORD: Oh, sorry.

15 Go ahead, Mr. More.

16 EXAMINATION

17 BY MR. MORE:

18 **Q. Mr. Armstrong, does that notification**  
19 **provide any value to the Agency from a compliance**  
20 **perspective if the cap is only reduced, as**  
21 **currently proposed by the Board, when the shutdown**  
22 **occurs for the entire compliance period?**

23 A. Well, it very well could in the sense  
24 that -- it very well could in the sense that it's

1 very possible that there will be a number of  
2 temporary and permanent shutdowns with the MPS  
3 group going forward. The Agency needs to track all  
4 of this and figure out how the rules apply. I  
5 think it would -- and I don't want to speak for the  
6 Agency, but I think that would be beneficial for  
7 the Agency to know of any type of shutdown when it  
8 happens so that it can appropriately track  
9 compliance with the rule and figure out what the  
10 caps are going to be.

11 **Q. But am I correct in my read of the**  
12 **current Board proposal, which is, that the cap is**  
13 **only reduced in the instance of a temporary or**  
14 **permanent shutdown if that shutdown occurs for the**  
15 **duration or the entirety of the compliance period?**

16 A. No. I think you're wrong.

17 **Q. Okay. Help me.**

18 A. I think what's being proposed for  
19 permanent shutdowns is that if there's a permanent  
20 shutdown during the compliance period, let's say,  
21 the 2020 annual compliance period, I believe that  
22 what's being proposed is if there is a permanent  
23 shutdown of a unit during the 2020 compliance  
24 period, the overall caps, the annual caps for the

1 MPS group are reduced to reflect the permanent  
2 shutdown for the 2020 compliance period, and,  
3 accordingly, the permanently shut-down unit could  
4 be shut down for a day, six months, or a full year,  
5 and the cap would be reduced. Temporarily  
6 shut-down units as proposed are treated  
7 differently.

8 **Q. And the permanent shutdown occurs when?**

9 A. As proposed.

10 HEARING OFFICER TIPSORD: It's on page  
11 17 of the Appendix. It's, like, page 17 of the  
12 Appendix. Do you have that?

13 THE WITNESS: So I want to just make  
14 sure I get the words right here. I've got it right  
15 here.

16 I believe under the current proposal  
17 it's defined as the date on which the MPS owner or  
18 operator submits a written request to modify or  
19 draw the relevant operating permit to reflect the  
20 shutdown.

21 **Q. And a temporary shutdown for purposes**  
22 **of reducing the cap occurs when?**

23 A. A temporary shutdown as proposed, the  
24 cap would be reduced only if the temporary shutdown

1 has continued for the entire compliance period.  
2 Insofar as if a unit is temporarily shut down on  
3 January 2nd, 2020, there would be no impact to the  
4 annual compliance cap until the 2021 calendar year.  
5 That is my understanding of the rule.

6 MS. RABCZAK: That's a permanent  
7 shutdown you're talking about.

8 THE WITNESS: Temporary.

9 HEARING OFFICER TIPSORD: Excuse me.  
10 Just for the record, we're speaking here about  
11 subsections (g) and subsections (h) of the rule,  
12 which are on pages 17 through, like, 21 of the  
13 Addendum, for people who want to follow along.

14 THE WITNESS: Just to explain my  
15 reasoning on that, if there's a temporary shutdown  
16 on January 2, 2020, it -- that unit would not have  
17 been mothballed for the entire 2020 annual  
18 compliance period and, accordingly, the annual caps  
19 would not be adjusted for 2020. No annual caps  
20 would be adjusted until 2021 if that annual -- if  
21 that mothballed unit remained mothballed.

22 And, I mean, you know, you look at --  
23 you look at the history of mothballing in Illinois,  
24 the one example we can point to here, of course,

1 with the Vistra fleet is Baldwin 3, which has been  
2 mothballed since October of 2016.

3 We don't have examples here of  
4 mothballed plants that kind of flit in and out of  
5 operation, as Mr. More suggested. What we see are  
6 units getting mothballed and not reopening, and I  
7 can provide additional examples of that in my  
8 post-hearing comments, but the idea that somehow,  
9 well, it might be mothballed with the RTO for six  
10 months and then come back into operation, that does  
11 not seem realistic to me based on my observations.

12 **Q. Do you agree that the MISO tariff**  
13 **allows for that to happen? In fact, it**  
14 **contemplates that a unit may only be mothballed for**  
15 **two months, isn't that correct?**

16 A. I think that plants can be mothballed  
17 for different durations of time. I think that what  
18 happens versus what is allowed, though, may be a  
19 different story.

20 **Q. And am I correct that if Unit 3,**  
21 **Baldwin Unit 3, remains mothballed for the entirety**  
22 **of 2019 as the MPS has currently amended or is**  
23 **being proposed by the Board, then the cap -- the**  
24 **NOx and SO2 cap would be reduced, correct?**

1           A. Yes. And that's exactly why we think a  
2 Board note would be appropriate.

3           **Q. But that only occurs if Baldwin 3**  
4 **remains mothballed, correct?**

5           A. Correct, of which there's probably a  
6 99.9 chance of that occurring, if not higher.

7           **Q. You're not proposing to reduce the cap**  
8 **today, are you, with the expectation that Unit 3**  
9 **remains mothballed?**

10          A. Am I proposing to reduce the cap for  
11 annual caps for the MPS group based on Baldwin 3  
12 being mothballed today?

13          **Q. Yes.**

14          A. Under my proposal, or my office's  
15 proposal, rather, Baldwin 3 would basically just be  
16 severed from the rest of the MPS group. Baldwin 3  
17 would be assessed based on its allocated emissions,  
18 and the rest of the MPS group would be assessed by  
19 its allocated emissions.

20                 So if we're talking about the cap for  
21 the rest of the MPS group, other than Baldwin 3,  
22 yes, we believe that cap should be adjusted because  
23 that's the way it works for permanently shut-down  
24 units, and there's really, when you come down to

1 it, not that much difference between temporarily  
2 and permanently shut-down units when it comes to  
3 their emissions.

4 MS. PAPADIMITRIU: Can I just clarify,  
5 Mr. More and Mr. Armstrong? Definitions matter.  
6 By mothballing, you're referring to a temporary  
7 shutdown, is that correct?

8 MR. ARMSTRONG: I've been using them  
9 somewhat interchangeably.

10 MS. PAPADIMITRIU: Okay. And,  
11 Mr. More, is your answer the same?

12 MR. MORE: Yes, in my questions and  
13 answers.

14 MS. PAPADIMITRIU: Thank you.

15 MS. SANTOS: May I ask a question?

16 EXAMINATION

17 BY MS. SANTOS:

18 **Q. So are you then proposing that there be**  
19 **a defined period of mothballing?**

20 A. Yes.

21 **Q. Well, I mean, is it a change that you'd**  
22 **like to see happen where a unit could only be**  
23 **temporarily mothballed for a set amount of time, or**  
24 **are you proposing to change that? Because if**

1     **you're referring to Baldwin 3 and you're saying**  
2     **it's been mothballed since 2016, is that what**  
3     **you're saying? So are you saying that that's too**  
4     **long to be a temporarily mothballed unit?**

5           A. No. I don't have an issue with a  
6 temporarily mothballed unit. I should try and be  
7 clear about exactly what I think is at stake here.  
8 I think that in the case of Baldwin Unit 3, which  
9 has been mothballed since October 2016 as Mr. More  
10 and I have had a back and forth about, if Baldwin 3  
11 does remain mothballed or temporarily shut down for  
12 the rest of 2019, then the cap would be adjusted.  
13 It would not be allocating any emissions, and I  
14 think that result is correct. What I'm most  
15 worried about is really what happens in the first  
16 year of shutdown, where if you've got, as I was  
17 using with my example before, if you've got a plant  
18 that is a unit that is permanently shut down on  
19 January 15th, the cap is adjusted to reflect the  
20 shutdown of that unit, the permanent shutdown of  
21 that unit, if that unit were temporarily shut down  
22 on January 15th, under the current proposal, the  
23 cap would not be adjusted. So you've got really a  
24 disparity between the treatment of the permanent

1 and temporary shutdowns in the year of the  
2 shutdown.

3 Now, if you go on to the second year,  
4 if you look at the second year, if the temporary  
5 shutdown continues into the second year, the rules  
6 as proposed at this point do recognize the  
7 temporary shutdown and do adjust the cap  
8 accordingly, but I just think it would be more  
9 appropriate for the temporary shutdown to be  
10 reflected in the year of the temporary shutdown.

11 EXAMINATION

12 BY MR. PAULEY:

13 **Q. Just to clarify, when you -- you're**  
14 **saying that the cap doesn't get adjusted if it does**  
15 **temporarily shut down on January 15th for the**  
16 **entire year, but you're not meeting the ozone**  
17 **season for NOx, correct? If it's shut down on**  
18 **January 15th and it remains temporarily shut down**  
19 **through the compliance period and it was**  
20 **temporarily shut down through the ozone seasons,**  
21 **when you say that --**

22 A. Right, right. I see where you're  
23 going, and I should have clarified that I was  
24 talking about the annual compliance period. In

1 that case, if it was shut down on January 15th, it  
2 would be shut down for the entire ozone season, and  
3 accordingly, the cap for the ozone season would be  
4 adjusted. That is correct.

5 MR. RAO: Only for NOx.

6 THE WITNESS: Only for NOx. Only for  
7 NOx.

8 MR. VICKERS: Justin Vickers from the  
9 Environmental Law & Policy Center.

10 EXAMINATION

11 BY MR. VICKERS:

12 Q. Mr. Armstrong, I just want to ask a  
13 clarifying question about the temporary suspension  
14 or the suspension versus the shutdown. You said  
15 there was 36 months under the RTO that it can be  
16 temporarily suspended. Do you know if the plant  
17 owner has to inform MISO in advance when they make  
18 their attachment by request whether or not they  
19 intend to shut down or temporarily suspend? Is  
20 there a distinction made in their request to the  
21 RTO that would -- I just want to see if we had a  
22 clarification. I'm happy to point the Board to the  
23 attachment in our post-hearing comments, but I  
24 figured if you wouldn't mind giving clarification,

1 **you could answer.**

2 A. Unfortunately not, but hopefully that  
3 will be addressed in post-hearing comments.

4 MR. MORE: I have a question for the  
5 Agency in this concept. From a regulatory  
6 compliance perspective in programs other the MPS,  
7 how do you manage or account for emissions from a  
8 unit that is identified as an operating unit under  
9 its Title 5 operating permit but operations have  
10 ceased for a period of time, whether it be a month  
11 or three months or six months?

12 HEARING OFFICER TIPSORD: Does the  
13 Agency wish to answer that? And, if so, let's have  
14 you sworn in.

15 MR. BLOOMBERG: I'll try.

16 (Agency witnesses sworn.)

17 DAVID BLOOMBERG

18 called as a witness, being first duly sworn, was  
19 examined and testified as follows:

20 EXAMINATION

21 BY MR. MORE:

22 **Q. So, David, the scenario is you have a**  
23 **unit that has an operating permit, and the unit has**  
24 **ceased operations for a period of time, two months,**

1 let's say, in a year. How does the Agency account  
2 for the potential emissions from that unit in  
3 connection with compliance for other air  
4 requirements for modeling, for example, your air  
5 modeling? Do you account for that unit being --

6 A. The answer would be very case-specific  
7 because most rules are not like this rule, or this  
8 proposed rule or this proposed change, in that they  
9 don't have overall emission counts. So if a unit  
10 was temporarily shut down, presumably they'd be  
11 abiding by all environmental regulations at that  
12 point, other than, of course, they would have to do  
13 whatever normal reporting would be done.

14 For modeling purposes, that gets --  
15 most modeling, if not all of the type that I think  
16 you're alluding to, would be done on the basis of  
17 allowables, so if there's nothing prohibiting the  
18 source from reopening in any modeling that we were  
19 doing of that type, the source would be included in  
20 that modeling.

21 **Q. Even though it had been temporarily**  
22 **shut down for a period of time?**

23 A. Yes, as long as they are allowed to  
24 reopen.

EXAMINATION

1  
2 BY MS. RABCZAK:

3           **Q. In your IEPA's answers on page 6, it's**  
4 **the answer to the question number 6, you mentioned**  
5 **that USEPA policy considers the source that was**  
6 **shut down for two years to be permanently shut**  
7 **down, which is a rebuttable presumption. Could you**  
8 **please comment on how the Illinois EPA presumed to**  
9 **be shut down for two years?**

10           **So we can take the example of Baldwin**  
11 **3. Again, Baldwin 3 is permanently shut down**  
12 **unless the presumption is rebutted, and what does**  
13 **that mean in term of Illinois EPA and the permits**  
14 **you have to deal with under the MPS rules?**

15           **A. We will need to address that in**  
16 **post-hearing comments. We do not have the permits**  
17 **personnel here to answer that.**

18           **Q. And going back to the MPS, we still**  
19 **have a separate definition of mothballing, right?**

20           **A. I don't believe there's any definition**  
21 **of the term mothballing, and I know it's been used**  
22 **interchangeably, but there actually is a term for**  
23 **mothballing that is different from the way the**  
24 **Agency has suggested as the definition for**

1 temporary shutdown.

2 Q. But I will correct myself. So we have  
3 a definition for temporary shutdown in the rule,  
4 which considers a unit to be temporarily shut down  
5 if it's been shut down for the entire compliance  
6 period. So, in terms of Baldwin 3, would that mean  
7 that during this entire three years, if the MPS was  
8 adopted a long time ago, it would be considered  
9 permanently or temporarily shut down and the cap  
10 would be adjusted at that time?

11 A. Yes.

12 EXAMINATION

13 BY MR. MORE:

14 Q. David, a question for you in connection  
15 with your answer to number 6. This idea of  
16 permanent shutdown would not preclude the company  
17 from restarting that unit and complying with new  
18 source review permitting requirements, isn't that  
19 right?

20 A. Again, I'll answer that in -- we will  
21 answer that in post-hearing comments to make sure  
22 that we have the appropriate permits personnel  
23 involved.

24 HEARING OFFICER TIPSORD: Since we've

1 been referring to the document which was filed on  
2 December 10th, the Illinois Environmental  
3 Protection Agency's Responses to Board Questions  
4 Set Forth in Hearing Officer Order dated October 4,  
5 2018, if there's no objection, I'm going to admit  
6 that as Exhibit 49 for ease of writing and  
7 reference. Seeing none, it's Exhibit 49.

8 MR. RAO: David, I have a question  
9 following up on what you were asked.

10 EXAMINATION

11 BY MR. RAO:

12 **Q. If a unit shuts down permanently and**  
13 **then a utility decides to restart it, will it still**  
14 **be part of the MPS group?**

15 A. I'm not sure off the top of my head.  
16 We will take a look at that.

17 Now, whatever happens, if they have to  
18 reopen under NSR, they will have a number of  
19 stringent requirements on them anyway, but I don't  
20 know that they would be added back to the MPS  
21 group.

22 **Q. If you could confirm it.**

23 A. In the proposed changes, there is --  
24 let me go back here -- 225.233(g)(1)(a).



1 with.

2 **Q. So the owner and operator may decide to**  
3 **shut down, and then three months, six months, nine**  
4 **months later change their mind, and for the**  
5 **combined period, it would not matter?**

6 A. Well, I mean, the way the Agency's  
7 proposal is, under that time period, depending on  
8 how long it was and where it fell, if it spanned an  
9 entire compliance period, then whether or not they  
10 reported it as a temporary shutdown, it would be  
11 treated as a temporary shutdown, so they wouldn't  
12 have to report anything to MISO or to the Agency.  
13 If they're not operating for whatever reason  
14 through an entire compliance period, they don't get  
15 the allocation for that unit.

16 **Q. So another more broad hypothetical is**  
17 **that the unit can be doing that for three years,**  
18 **five years, it will be considered mothballed under**  
19 **that rule but it will never be considered**  
20 **permanently shut down until they actually receive**  
21 **the request.**

22 A. When you say "doing that," do you mean  
23 going up and down?

24 **Q. No. I mean, for the business purposes,**

1 they might shut down, but since they've never  
2 submitted the request to the IEPA to withdraw the  
3 permit, that under the MPS rules it would be  
4 considered mothballed because it would not be  
5 operating during the compliance period for year  
6 one, year two, year three, but since they've never  
7 submitted the request to withdraw the permit or  
8 modify the permit, you could not consider them  
9 permanently shut down under the MPS rules, is that  
10 correct?

11 A. Under the Agency's proposal, yes, they  
12 would be considered temporarily shut down, and for  
13 whatever compliance period that spans, they would  
14 get no allocation for it.

15 Q. Again, it's probably a question that  
16 you'll be answering anyway in your comments, but  
17 when does the Agency consider a unit to be  
18 permanently shut down outside of MPS?

19 A. Yeah. That will be something we'll  
20 answer in post-hearing comment.

21 Q. And just one quick follow-up from that.  
22 I just want to understand why the date the Agency  
23 receives a request to modify a permanent withdrawal  
24 permit is an important date. Does that mean that

1     **the Agency considered that unit no longer**  
2     **operational as of that date, not as of the date the**  
3     **Agency makes the decision that they withdraw the**  
4     **permit or they modify the permit?**

5             A. That date is the cleanest way to look  
6     at it. There is no interpretation required, and  
7     that is also only for the purpose of this rule. It  
8     has -- you know, we're not going to use that for  
9     any other reason, so, you know, permitting, new  
10    source review, that has their own requirements, but  
11    for the purpose of this rule, that is the cleanest  
12    way to ensure that's when the shutdown occurred.

13            **Q. Can there be any manipulation if, for**  
14    **instance, the unit sent it to you December 31st and**  
15    **you received it January 5th -- these are two**  
16    **different compliance years -- is there any room for**  
17    **issues from the date the Agency received it rather**  
18    **than any other date?**

19            A. We generally use postmark date, and, I  
20    believe, is it received or -- it's the date they  
21    submit it. So if they submitted it on December  
22    31st, they would lose their allocation for that  
23    entire year, so it would be kind of the opposite.

24

1 QUESTIONS FOR MR. ARMSTRONG

2 BY MS. PAPADIMITRIU:

3 Q. Mr. Armstrong, I hope it's an easy  
4 question because you've been asked a lot of  
5 questions. I'd like to go back to the initial  
6 discussion you had with Mr. More, and to refresh  
7 everyone's memories, because that feels like a long  
8 time ago, you talked about -- the two of you talked  
9 about seasonality and generation output and  
10 corresponding emissions output, and that -- I  
11 believe that the two of you agreed and that  
12 Mr. More stated, and of which you've agreed, but  
13 I'm going to ask Mr. More that I said it correctly  
14 and I'm going to ask you if I recall you agreeing  
15 with it correctly, that Mr. More suggested that,  
16 given that generation output varies, and let's just  
17 say seasonally, that emissions would be higher in  
18 certain months and lower in other months.

19 Mr. More, did I get that correct?

20 MR. MORE: That is correct.

21 BY MS. PAPADIMITRIU:

22 Q. Okay. Mr. Armstrong, is that your  
23 recollection of what Mr. More said, and if it is,  
24 do you still agree with it?

1           A. Yes, I agree that output and emissions  
2 definitely can vary over the course of a year,  
3 depending on the demand for electricity as a whole.

4           **Q. And so you spoke about shoulder months.**  
5 **I don't know if I interrupted you.**

6           A. No, no.

7           **Q. So I heard that correctly?**

8           A. Yes, yes.

9           **Q. So going now to your proration**  
10 **proposal.**

11          A. Uh-huh.

12          **Q. Are you suggesting or proposing that**  
13 **the Board prorate based on the month, given some**  
14 **amount of output, given what you and Mr. More**  
15 **agreed to? And I realize I ended on a preposition.**

16          A. So I also would like to tie a thread  
17 about the question that I was asked after that  
18 discussion.

19          **Q. Okay.**

20          A. Because I think it is important that,  
21 first of all, based on the Agency's additional  
22 suggested Amendment to 225.233(g)(1)(c) related to  
23 permit shutdown. So if the Board is going to adopt  
24 that approach where the cap for the MPS group is

1 adjusted during the compliance period of a  
2 permanent shutdown downward, but the calculations  
3 to determine compliance with that adjustment  
4 limitation include emissions from the shutdown  
5 unit, basically, no proration is necessary  
6 whatsoever because the emissions from the shut-down  
7 unit basically have to be accounted for in the  
8 adjusted emissions cap itself.

9           So if the Board proceeds with the  
10 Agency's proposal on this point, we don't think  
11 that any proration should be necessary for any  
12 permanent shutdown, just to be clear on that.

13           If the Board were -- if the Board were  
14 to treat permanent shutdowns that way and then also  
15 treat temporary shutdowns the same way, which we  
16 think should happen that they should be treated on  
17 equal footing, no proration would be necessary for  
18 temporary shutdowns at all either.

19           If the Board were to take our approach  
20 and say, Okay, well, if you've got a temporary  
21 shutdown for the last six months of the year, then  
22 our proposal is that you look at it on a calendar  
23 year/day basis and you basically allocate emissions  
24 just based on days of operation, period.

1           Now, you know, certainly, I recognize  
2           that units operate at different amounts different  
3           times of the year. One thing I would note is that  
4           if you're looking at the unit that was shut down  
5           temporarily in June, for example, or July 1st, for  
6           example -- and I'm just, you know, not talking  
7           about what would happen, I'm talking about the  
8           mechanics of the rule -- I mean, you'd be talking  
9           two equal halves of the year, so the variation in  
10          the amount -- the amount of variation over the  
11          course of the year would be somewhat muffled  
12          because you basically have still got two different  
13          seasons in that six-month period.

14           **Q. So --**

15           A. But to answer your question, if I could  
16          just -- I'll finish up really quickly.

17           **Q. Yeah.**

18           A. Yeah. As we propose it, proration  
19          would involve just looking at it on 365 or 366 days  
20          in a year and then dividing it by the amount of  
21          operation, and I recognize that is not the finest  
22          way that somebody could do it. There could be  
23          other approaches that would be more attuned to the  
24          variation over the course of a year. I haven't

1 proposed one, but, you know, I could certainly  
2 think about that for post-hearing comments.

3 But my bigger point, I guess, is that,  
4 one, so long as we're treating permanently shut  
5 down and temporarily shut down alike, that, I  
6 think, is our biggest concern; and, two, when we're  
7 talking about proration, some sort of proration to  
8 us is better than just ignoring the issue.

9 **Q. So if I understand you correctly, every**  
10 **day would be treated the same.**

11 A. Yes.

12 **Q. Even though you agree with Mr. More's**  
13 **assertion that seasonality occurs, again, in your**  
14 **example of shoulder months.**

15 A. Yes.

16 **Q. Okay. Then I understand it correctly.**

17 HEARING OFFICER TIPSORD: Are there any  
18 other questions for Mr. Armstrong?

19 MS. CARTER: I have a question.

20 BY MS. CARTER:

21 **Q. Mr. Armstrong, thank you for giving us**  
22 **feedback on the Board's questions. I appreciate**  
23 **that. And I just have a clarifying question for**  
24 **our request in regard to how the EPA would enforce**

1     **the proposed revised MPS rule provisions, and would**  
2     **you suggest filing or publicly maintaining on their**  
3     **website some of the compliance reports and notices**  
4     **and reports, and do you have an example that you**  
5     **could point us to where that is a requirement and**  
6     **how that is monitored or -- just monitored?**

7             A. So, really, what I was thinking of when  
8     I thought of that is under the recent federal coal  
9     ash regulations, it is required for companies to  
10    maintain on their websites publicly documents  
11    related to coal ash compliance. There is a lot  
12    more of those documents, I think, than what would  
13    be required under this rule, but the basic concept  
14    is that you have a repository where the public can  
15    go to and see, you know, relevant documents that  
16    are needed to assess compliance with the rule.

17             I did give some thought to making the  
18    Agency do it, but then I thought they might not  
19    like that, so I suggested that it could be the  
20    company. I do not think it would be burdensome, it  
21    would just be a way of having available to the  
22    public these documents that are important for  
23    allowing people to see how the rule is working.

24             MS. CARTER: Thank you.

1 MR. RAO: I have a follow up. This is  
2 to the Agency.

3 QUESTIONS DIRECTED TO THE AGENCY

4 (MR. BLOOMBERG)

5 BY MR. RAO:

6 **Q. Is the Agency aware of any air**  
7 **permitting regulations or requirements that you**  
8 **implement that requires maintenance of websites and**  
9 **provide the types of information that --**

10 A. That the Agency maintain a website or  
11 that the company?

12 **Q. The company that the Agency requires of**  
13 **them.**

14 A. I am unaware of any. We can check into  
15 it. If we find any, we'll --

16 HEARING OFFICER TIPSORD: If you could  
17 also check with other media, not just air.

18 MR. RAO: Thank you.

19 HEARING OFFICER TIPSORD: Anything  
20 else?

21 MS. CARTER: I have a follow-up to  
22 that.

23 BY MS. CARTER:

24 **Q. On the Agency's business portal for**

1 **permitting, the Agency -- do they only put on that**  
2 **website permits, or do they also put on any other**  
3 **kind of required submittals from companies?**

4 A. I can't answer specifically for the  
5 business portal because I'm not really sure what  
6 that is, but we do put other things on our website.  
7 Public notices, in particular, we have been putting  
8 on our website. Sometimes we'll put drafts of  
9 other items on there, but public notices are the  
10 biggest thing.

11 **Q. I think it's a permitting portal or**  
12 **something like that on the Agency's website, but I**  
13 **was just curious. I don't recall what all**  
14 **specifically is required to be posted on that, and**  
15 **I was just curious if it could be a vehicle or**  
16 **something like this, if it were to occur.**

17 MR. ARMSTRONG: Just an additional  
18 observation. IEPA has available on its websites,  
19 for example, discharge monitoring reports under the  
20 NPDES program, so monitoring reports database, so  
21 there are examples of where the Agency makes  
22 available to the public documented and submitted by  
23 the regulated entities so that the public can help  
24 determine compliance.

1 HEARING OFFICER TIPSORD: Anything  
2 else?

3 MR. RAO: And this is again for David,  
4 since we're talking about reporting requirements.  
5 BY MR. RAO:

6 **Q. The Illinois Attorney General Office's**  
7 **proposed changes to Section 233.225(f) (3) requiring**  
8 **additional information to be included in annual**  
9 **reports required under the rules, and I'd like the**  
10 **Agency to comment on whether these -- basically**  
11 **what they want is notices of transfers, permanent**  
12 **shutdowns and temporary shutdowns to be included in**  
13 **the reports, so I'm not sure if the Agency could**  
14 **comment on whether those additional requirements**  
15 **are acceptable to the Agency.**

16 A. There's a number of cross-references  
17 there, so rather than me trying to wrap my head  
18 around this right now, I think it would be better  
19 and less complicated for us to respond in  
20 post-hearing comments.

21 MR. RAO: I would think so. Thank you.

22 MS. RABCZAK: Again, follow-up.

23 BY MS. RABCZAK:

24 **Q. How would the public be able to access**

1 that information, any information submitted by the  
2 owners and operators of EGUs to the Agency,  
3 including shutdowns, permanent and temporary, the  
4 transfers. What would be the process for the  
5 general public to access that information if it's  
6 not publicly available?

7 A. FOIA.

8 Q. FOIA.

9 HEARING OFFICER TIPSWORD: Anything  
10 else?

11 All right, Mr. Armstrong, thank you  
12 very much, and we'll move on to the Environmental  
13 Law & Policy Center and Sierra Club.

14 Let's take a quick five-minute break  
15 and come right back.

16 (A ten-minute recess was taken.)

17 Can you have the record reflect that  
18 Board Member, Carrie Zalewski, joined us a few  
19 minutes after the hearing started?

20 Shall we get back together?

21 Good afternoon again, and we're back on  
22 the record, and, with that, would you guys like to  
23 make an opening statement or just go ahead?

24 MR. GIGNAC: Yeah. We can go ahead and

1 I can get sworn in and we can go ahead and answer  
2 your questions.

3 HEARING OFFICER TIPSWORD: Okay. Let's  
4 do that then.

5 (Witness sworn.)

6 If there's no objection, we will admit  
7 the prefiled testimony of Mr. James Gignac on  
8 behalf of the Environmental Law & Policy Center,  
9 the Environmental Defense Fund, Natural Resources  
10 Defense Council, Respiratory Health Association and  
11 Sierra Club, as Exhibit 50.

12 Seeing none, it's marked as Exhibit 50.  
13 Thank you very much.

14 Are there any questions for Mr. Gignac?  
15 We gave them all to Tanya. She's our official  
16 spokesperson.

17 JAMES GIGNAC  
18 called as a witness, being first duly sworn, was  
19 examined and testified as follows:

20 EXAMINATION

21 BY MS. RABCZAK:

22 **Q. Page 6 on your testimony, you are**  
23 **suggesting a hypothetical in which capacity factors**  
24 **for Baldwin units go to 85 percent; E.D. Edwards**

1 Unit 3, Havana, the Hennepin units, and Newton Unit  
2 1 goes to 80 percent; E.D. Edwards Unit 2 goes to  
3 75 percent, and Joppa.

4 My question is, and you probably  
5 answered it a little bit in your testimony, how  
6 realistic are these scenarios, considering the  
7 market conditions? What has to happen for the  
8 capacity to go that high?

9 A. So for these plants to increase their  
10 operations, they would need to be dispatched by the  
11 system operator on an increased frequency, and so  
12 that depends on the market conditions in the  
13 region, what energy prices are, and as has been  
14 discussed earlier in this proceeding, market prices  
15 are affected by a variety of things, including the  
16 demand for electricity, the price of natural gas,  
17 and the cost of other technologies in the market.

18 So as to whether it's realistic or  
19 likely, as I stated in other parts of my testimony,  
20 we are unable to know how -- exactly how generation  
21 from retired plants would be replaced. So this  
22 scenario is as possible as any of the other  
23 countless permutations of ways that retired  
24 generation could be replaced.

1           **Q. So would you consider this scenario to**  
2 **be realistic or just possible?**

3           A. I consider it to be possible.

4           **Q. Okay. On page 8 -- on page 8, lines**  
5 **9-16, you talk about a 15 percent increase in the**  
6 **emissions that would not cause violations of NAAQS,**  
7 **and we talked about that earlier in previous**  
8 **hearings about what IEPA has to go through if that**  
9 **happens. How would you consider that in terms of**  
10 **IEPA catching that increase on time?**

11           A. So, to start, what I say in my  
12 testimony is that increases in sulfur dioxide  
13 pollution would presumably not cause violations of  
14 the NAAQS, but that wouldn't be determined until  
15 the Agency conducted an addition model, but based  
16 on the numbers that Illinois EPA provided in  
17 Exhibit 29, it appears that the increases would not  
18 trigger a violation of the National Ambient Air  
19 Quality Standards, and the process for conducting  
20 that additional modeling is -- some of it is set  
21 forth in the guidelines in the Data Requirements  
22 Rule, but beyond that, I'm not familiar with the  
23 actual mechanics of how, when the Agency receives  
24 the numbers and then when it makes decisions about

1 whether to conduct the additional modeling.

2 **Q. So would you consider that the Agency**  
3 **would not even be aware of 15 percent happening and**  
4 **they would not catch it until it happens?**

5 A. Again, I'm not familiar with the exact  
6 mechanics and timing of when the emissions data is  
7 reported to the Agency.

8 **Q. But that's your understanding, right,**  
9 **that the 15 percent increase would not trigger any**  
10 **issues?**

11 A. I presume, based on the numbers that  
12 Illinois EPA has provided, that increases of  
13 15 percent or more, at least set forth in the  
14 scenario in my testimony, should not trigger a  
15 violation of the National Ambient Air Quality  
16 Standards.

17 MS. RABCZAK: Okay. Thank you.

18 HEARING OFFICER TIPSORD: Are there any  
19 other questions of Mr. Gignac.

20 Thank you very much. We appreciate you  
21 coming down here on this very cold day.

22 MR. GIGNAC: Thank you.

23 MS. RABCZAK: I have a question for  
24 EPA.

1 HEARING OFFICER TIPSORD: Well, and  
2 actually, I was just going to say, we will now open  
3 it up for any questions for any -- or any  
4 questions -- and these questions do not necessarily  
5 have to be answered on the record today. We can  
6 all certainly take them under advisement. So go  
7 ahead, Mr. Rabczak.

8

9 QUESTIONS DIRECTED TO ILLINOIS EPA  
10 (David Bloomberg)

11 BY MS. RABCAK:

12 **Q. So, again, the same questions. The**  
13 **15 percent increase of emissions, that does not**  
14 **trigger a violation of NAAQS. As we discussed**  
15 **before, could you summarize the process for the**  
16 **Agency to be aware whether it's happening and what**  
17 **do they have to do when it happens?**

18 A. I can summarize it, but I didn't  
19 restudy the timeframes, so, you know, I'm not going  
20 to repeat those because I don't want to contradict  
21 what I previously said because that's what I  
22 studied up on at the time, but basically the  
23 emissions information would come in to us in the  
24 Annual Emissions Reports -- those are due by

1 May 1st of every year -- and then we would -- each  
2 year, we'd look at that to ensure or to determine  
3 whether or not there has been an emissions increase  
4 of the sort that makes it necessary that we would  
5 need to model the area again, and then we would  
6 note that to USEPA, ask for their opinion on the  
7 matter, and then, as necessary, proceed to model  
8 the area again.

9 **Q. And is it the 15 percent that triggers**  
10 **it, or are you going to be aware before it's**  
11 **15 percent?**

12 A. I can't remember. That's one of those  
13 numbers I can't exactly remember, so I'd refer back  
14 to my previous testimony.

15 HEARING OFFICER TIPSORD:

16 Mr. Sylvester?

17 MR. SYLVESTER: Stephen Sylvester,  
18 Attorney General's Office.

19 EXAMINATION

20 BY MR. SYLVESTER:

21 **Q. I had a question regarding Public**  
22 **Comment 3250. I don't know whether you were**  
23 **planning to address that today. I just out of -- I**  
24 **mean, the Agency had said that it was asked to**

1 **re-examine the proposal. I was wondering, you**  
2 **know, if you had any more information since the**  
3 **date that the comment was filed.**

4 A. I'm sorry. I did not catch the  
5 beginning because we were still following up on  
6 that one, so can I actually follow up and finish?

7 HEARING OFFICER TIPSORD: I was going  
8 to say, let's defer that to the end until we're  
9 done with all the other questions because I think  
10 that's going to be an issue that's going to come  
11 up.

12 MR. BLOOMBERG: Okay.

13 A. So to answer part of that, the -- we  
14 will know because when it happens we'll see it in  
15 the Annual Emissions Reports, and the -- you know,  
16 I had previously -- in post-hearing comments, we  
17 had previously noted that DRR, the Data  
18 Requirements Rule, requires that Illinois annually  
19 review areas where SO2 emissions increase by more  
20 than 15 percent to determine if further modeling is  
21 necessary, so that's where that 15 percent number  
22 comes in.

23 MR. RAO: Just a follow-up to that.

24

EXAMINATION

BY MR. RAO:

**Q. If you're required to do the additional modeling and you do the modeling and the modeling shows they're compliant with the NAAQS, then will you place any restrictions on the source?**

A. If it shows compliance, then there is no mandate that we place any additional restrictions on them for this specific reason. That's not to say we can't, it's just that there's no mandate to do so and there's no air quality need to do so.

**Q. And this modeling will include all under various sources of SO2?**

A. It includes all of the sources nearby that would impact the area.

MR. RAO: Thank you.

HEARING OFFICER TIPSORD: All right. Any other questions?

MS. RABCZAK: I have a small, hopefully, clarifying question.

EXAMINATION

BY MS. RABCZAK:

**Q. In your answers on page 2, question**

1     **3 --**

2                   HEARING OFFICER TIPSORD:   That's  
3     Exhibit 50.

4                   MS. RABCZAK:   No, it's Exhibit 49.

5                   HEARING OFFICER TIPSORD:   49, sorry.

6     BY MS. RABCZAK:

7                   **Q.   It's addressed, the language that the**  
8     **Board proposed for Section 225.233(f) (1) (a) , and**  
9     **that's the section that addressed transfer.  The**  
10    **Board proposed the language that to operate, it has**  
11    **to begin compliance beginning with the year in**  
12    **which the transfer occurs, and the Agency suggested**  
13    **this is a little bit confusing.  Would it be okay**  
14    **for the Agency to use a similar approach that the**  
15    **Agency proposed in its additional suggested**  
16    **amendments?**

17                   HEARING OFFICER TIPSORD:   Public  
18     Comment 2930?

19                   MS. RABCZAK:   Public Comment 2931.

20     BY MS. RABCZAK:

21                   **Q.   So the language you used here is the**  
22    **owner-operator must comply with adjusted**  
23    **limitations, beginning with the compliance period,**  
24    **or periods, through which the transfer occurs.**

1           A. I'm not sure which exhibit or comment  
2 that is. I'm sorry.

3           HEARING OFFICER TIPSORD: That's your  
4 additional language that you just proposed. It's  
5 PC 2931.

6 BY MS. RABCZAK:

7           **Q. So the proposal -- the language that**  
8 **the Board used was compliance years, and so the**  
9 **compliance years, would it be acceptable, for**  
10 **instance, to, say, use the same language that you**  
11 **proposed in the (g) (1) (b), which says compliance**  
12 **period or compliance periods?**

13           A. I think we would be safest if we  
14 answered that in post-hearing comments rather than  
15 including them in an answer on the fly.

16           HEARING OFFICER TIPSORD: Are there any  
17 other questions?

18           I actually have one question that I'm  
19 going to throw out there for everyone. I don't  
20 expect an answer today. But, recently, in one of  
21 our rulemakings, Emissions Reduction Market System,  
22 the Joint Committee on Administrative Rules took  
23 issue with some of the dates that occurred  
24 pre-proposal and seemed to feel a concern that

1 there was a retroactive application of the rule,  
2 and we actually -- the Board received an objection  
3 on that.

4 So, given that, we're just wondering  
5 and would like your comment and input on the  
6 Board's -- the proposed language now that's at  
7 225.233(a)(4) that says: Notwithstanding any  
8 contrary provision in this subsection (a) on or  
9 after January 1, 2019.

10 We've received positive feedback from  
11 most of you on that date, but given that JCAR has  
12 raised it as an issue, we would like to build a  
13 record that it either is or is not a retroactive  
14 application or look at other suggested dates.

15 If you would think about that, I would  
16 appreciate it.

17 Okay. All right. Then, with that,  
18 we'll go to what Mr. Sylvester posed as a question  
19 that I share some questions about, and that is that  
20 on Friday we received a Public Comment, which was  
21 docketed as 3250, that indicated that the IEPA was  
22 going to submit comment which might include -- they  
23 have identified issues that may require further  
24 evaluation, as well as discussion with

1 representatives from Vistra and other rulemaking  
2 participants. It may result in the Agency  
3 proposing additional changes to rule language.

4 As you know in our prehearing  
5 conference, we did discuss the fact that we've  
6 closed this docket fairly quickly, closed the  
7 record within about 14 days, so my question is,  
8 does the Agency still think that we can close this  
9 record in 14 days from the receipt of the  
10 transcript?

11 MS. PALUMBO: No, ma'am. We do not  
12 think so. The Agency is hoping to request 45 days  
13 to complete our review and our discussions.

14 HEARING OFFICER TIPSORD: And would you  
15 anticipate another hearing?

16 MS. PALUMBO: Unfortunately, we don't  
17 know at this point since we haven't had those  
18 discussions with the other participants and we  
19 haven't completed our review of the issues in this  
20 rulemaking. I'm sorry I can't be more specific.

21 HEARING OFFICER TIPSORD: Anyone else  
22 wish to comment on that?

23 MS. BUGEL: Faith Bugel, F-A-I-T-H  
24 B-U-G-E-L.

1 I am here today on behalf of Sierra  
2 Club. In this statement I'm offering -- I'm also  
3 offering it on behalf of Respiratory Health  
4 Association, and we just wanted to indicate that we  
5 are supportive of providing the Agency with the  
6 time that it is seeking.

7 HEARING OFFICER TIPSORD: Anyone else  
8 want to weigh in?

9 MR. SYLVESTER: Yeah. Our office would  
10 support that as well.

11 MR. VICKERS: As would the  
12 Environmental Law & Policy Center.

13 MS. HICKS: And also the Environmental  
14 Defense Fund supports it.

15 HEARING OFFICER TIPSORD: You need to  
16 state your name.

17 MS. HICKS: I'm sorry. Christie Hicks,  
18 C-H-R-I-S-T-I-E, H-I-C-K-S, Environmental Defense  
19 Fund.

20 HEARING OFFICER TIPSWORD: Any other  
21 comment?

22 Does the Agency have any idea of  
23 what -- I mean, what areas are you looking at  
24 that -- I mean, like you say, your statement is

1 that you identified issues that may require further  
2 evaluation, so I guess my question is, after four  
3 hearings, what issues have you identified that  
4 require further evaluation? Can you give us --

5 MS. PALUMBO: Since I'm not sworn in,  
6 I'm going to defer to our witness, just so I'm not  
7 testifying.

8 HEARING OFFICER TIPSORD: Okay.

9 MR. BLOOMBERG: We're looking at the  
10 totality of the rule. We don't have anything  
11 specific to tell you at this point. We only filed  
12 this two days ago, so not much has really changed  
13 in that timeframe. So, unfortunately, at this  
14 point, I can't really give you any more specifics  
15 than that, I'm afraid.

16 HEARING OFFICER TIPSORD: Okay. Is  
17 there any objection to 45 days? Okay. I'm going  
18 to give 45 days from today.

19 MR. SYLVESTER: 45 days for what?

20 HEARING OFFICER TIPSORD: 45 days for  
21 Public Comment.

22 MR. SYLVESTER: Oh, at the close of the  
23 Public Comment period?

24 HEARING OFFICER TIPSORD: Yeah.

1           Okay. I will set it by Hearing Officer  
2 Order after the hearing for 45 days from today,  
3 and, I mean, anything further, we're going to ask  
4 that you give us something in writing explaining  
5 why the Board's ruling is being delayed.

6           Are there any other questions we want  
7 to put on the record for anyone?

8           Okay. As I said, we currently have  
9 eight people signed up to speak tonight starting at  
10 5:30. So stay warm, enjoy your afternoon, and  
11 we'll see you guys all back here at 5:30. Well,  
12 some of you, anyway. Thank you.

13                           (Hearing concluded at 1:37 p.m.)  
14  
15  
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17  
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1 STATE OF ILLINOIS )  
2 COUNTY OF MACON ) SS  
3 )  
4 )

5 I, LISA HAHN PETERMAN, do hereby certify  
6 that I am a Certified Shorthand Reporter and Notary  
7 Public in the State of Illinois and that I reported in  
8 shorthand the foregoing, taken on the 29th day of  
9 January, 2019, and that the foregoing is a true and  
10 correct transcript of my shorthand notes so taken.

11  
12 I further certify that I am not of counsel or  
13 attorney for either of the parties to said hearing, not  
14 related to nor interested in any of the parties or their  
15 attorneys.

16  
17 Dated this 4th day of February, 2019.  
18  
19

20  
21 

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Lisa Hahn Peterman, CSR, RMR  
22 Illinois CSR #084.2149  
23  
24

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