

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
)	
STANDARDS FOR THE DISPOSAL OF)	R20-19
COAL COMBUSTION RESIDUALS)	(Rulemaking – Land)
IN SURFACE IMPOUNDMENTS:)	
PROPOSED NEW 35 ILL. ADM. CODE 845)	

NOTICE OF FILING

To: ALL PARTIES ON THE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the **Joint Motion to Strike**, copies of which are herewith served upon you.

Respectfully submitted,

/s/ Ryan C. Granholm

Ryan C. Granholm

Dated: November 30, 2020

SCHIFF HARDIN LLP
 Joshua R. More
 Stephen J. Bonebrake
 Ryan C. Granholm
 233 South Wacker Drive,
 Suite 7100
 Chicago, Illinois 60606
 (312) 258-5633
 rgranholm@schiffhardin.com

GIBSON, DUNN & CRUTCHER LLP
 Michael L. Raiff
 2001 Ross Avenue, Suite 2100
 Dallas, TX 75201-6912
 (214) 698-3350
 mraiff@gibsondunn.com

Attorneys for Dynegy

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Joint Motion to Strike

NOW COMES Dynegy Midwest Generation, LLC; Electric Energy Inc.; Illinois Power Generating Company; Illinois Power Resources Generating, LLC; and Kincaid Generation, LLC (collectively, “Dynegy”) by their attorneys, Schiff Hardin LLP, and Midwest Generation, LLC (“Midwest Generation”), by their attorneys, Nijman Franzetti LLP, pursuant to 35 Ill. Adm. Code 101.500 & 101.502 and move that the Hearing Officer strike the Supplemental Post-Hearing Comments submitted by the Environmental Law & Policy Center, Sierra Club, Prairie Rivers Network, and Little Village Environmental Justice Organization (collectively, the “Environmental Groups”). In support of their Joint Motion, Dynegy and Midwest Generation state as follows:

1. The deadline for written public comment in this rulemaking was October 30, 2020 and the deadline for responsive comments was November 6, 2020. Hearing Officer Order (Oct. 20, 2020).
2. Where the Board’s rules or a Hearing Officer’s orders do not specifically allow for a filing, a party must submit a motion for leave to submit the proposed filing. AS97-5, *In Matter of: Petition of the Louis Berkman Company*, 1997 WL 235276, at *1 (IPCB May 1, 1997) (“Because the applicable . . . procedural rules . . . do not provide petitioners a right to file a reply

to Agency responses on adjusted standard petitions, Swenson should have filed a motion for leave to file its general response. It did not do so. Accordingly, the Board grants the Agency's motion to strike Swenson's general response.”).

3. On November 24—more than three weeks after the deadline for non-responsive public comments—the Environmental Groups filed a “request” that new information be added to the record. Supplemental Post-Hearing Comments at 1, 3 (Nov. 24, 2020). This filing was not styled as a motion under the Board’s rules.¹

4. The only provision of the Board’s rules cited in support of the Environmental Groups’ “request” was 35 Ill. Adm. Code 102.108(d). Supplemental Post-Hearing Comments at 2. That provision states: “Comments that are not timely filed or properly served *will not be considered*, except as allowed by the hearing officer or the Board to prevent *material prejudice*.” 35 Ill. Adm. Code 102.108(d) (emphasis added). The Environmental Groups, however, have not even attempted to demonstrate what “material prejudice” would occur if the Hearing Officer does not allow their late-filed comments to be added to the record.

5. Because the Environmental Groups have neither followed the proper procedural mechanisms for filing untimely public comments (*In Matter of: Petition of the Louis Berkman Company*, 1997 WL 235276, at *1), nor provided any evidence that material prejudice will occur if their comment is not considered (35 Ill. Adm. Code 102.108(d)), their late-filed comment should be rejected.

For the reasons stated above, Dynegy and Midwest Generation respectfully request that the Hearing Officer grant this Motion to Strike and reject the Environmental Groups’ late-filed Supplemental Post-Hearing Comments. Counsel for the City of Springfield, Office of Public

¹ Had their “request” been properly filed as a motion, other rulemaking participants would have the right to respond, pursuant to 35 Ill. Adm. Code 101.500(d).

Utilities d/b/a City Water, Light and Power have informed counsel for Dynegy and Midwest Generation that they do not oppose this motion.

Dated: November 30, 2020

Respectfully submitted,

/s/ Joshua R. More

SCHIFF HARDIN LLP
Joshua R. More
Stephen J. Bonebrake
Ryan C. Granholm
233 South Wacker Drive,
Suite 7100
Chicago, Illinois 60606
(312) 258-5500
jmore@schiffhardin.com

GIBSON, DUNN & CRUTCHER LLP
Michael L. Raiff
2001 Ross Avenue, Suite 2100
Dallas, TX 75201-6912
(214) 698-3350
mraiff@gibsondunn.com

Attorneys for Dynegy

/s/ Kristen L. Gale

NIJMAN FRANZETTI LLP
Susan M. Franzetti
Kristen L. Gale
10 South LaSalle Street
Suite 3600
Chicago, IL 60603
(312)251-5590
kg@nijmanfranzetti.com

Attorneys for Midwest Generation

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 30th day of November, 2020, I have served electronically the attached **Joint Motion to Strike**, upon the individuals on the attached service list. I further certify that my email address is rgranholm@schiffhardin.com; the number of pages in the email transmission is 7; and the email transmission took place today before 5:00 p.m.

Respectfully submitted,

/s/ Ryan C. Granholm

Ryan C. Granholm

SCHIFF HARDIN LLP
Joshua R. More
Stephen J. Bonebrake
Ryan C. Granholm
233 South Wacker Drive,
Suite 7100
Chicago, Illinois 60606
(312) 258-5633
rgranholm@schiffhardin.com

Michael L. Raiff
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, TX 75201-6912
(214) 698-3350
mraiff@gibsondunn.com

Attorneys for Dynegy

SERVICE LIST

<p>Vanessa Horton, Hearing Officer Vanessa.Horton@illinois.gov Don Brown, Assistant Clerk Don.brown@illinois.gov Illinois Pollution Control Board James R. Thompson Center Suite 11-500 100 West Randolph Chicago, Illinois 60601</p>	<p>Stephanie N. Diers Stefanie.Diers@illinois.gov Christine M. Zeivel Christine.Zeivel@illinois.gov Clayton J. Ankney Clayton.Ankney@illinois.gov Illinois Environmental Protection Agency 1021 N. Grand Ave., East, P.O. Box 19276 Springfield, Illinois 62794-9276</p>
<p>Virginia I. Yang - Deputy Counsel virginia.yang@illinois.gov Nick San Diego - Staff Attorney nick.sandiego@illinois.gov Robert G. Mool bob.mool@illinois.gov Paul Mauer - Senior Dam Safety Eng. Paul.Mauer@illinois.gov Renee Snow - General Counsel renee.snow@illinois.gov Illinois Department of Natural Resources One Natural Resources Way Springfield, IL 62702-1271</p>	<p>Matthew J. Dunn mdunn@atg.state.il.us Stephen Sylvester ssylvester@atg.state.il.us Andrew Armstrong aarmstrong@atg.state.il.us Kathryn A. Pamerter KPamerter@atg.state.il.us 69 West Washington Street, Suite 1800 Chicago, IL 60602</p>
<p>Deborah Williams Deborah.Williams@cwlp.com City of Springfield Office of Utilities 800 E. Monroe, 4th Floor Municipal Building East Springfield, IL 62757-0001</p>	<p>Kim Knowles Kknowles@prairierivers.org Andrew Rehn Arehn@prairierivers.org 1902 Fox Dr., Ste. 6 Champaign, IL 61820</p>
<p>Jennifer Cassel jcassel@earthjustice.org Thomas Cmar tcmar@earthjustice.org Mychal Ozaeta mozaeta@earthjustice.org Melissa Legge mlegge@earthjustice.org Earthjustice 311 South Wacker Drive, Suite 1400 Chicago, IL 60606</p>	<p>Jeffrey Hammons JHammons@elpc.org Kiana Courtney KCourtney@elpc.org Environmental Law & Policy Center 35 E. Wacker Dr., Suite 1600 Chicago, Illinois 60601</p>
<p>Faith Bugel fbugel@gmail.com 1004 Mohawk Wilmette, IL 60091</p>	<p>Michael Smallwood Msmallwood@ameren.com 1901 Choteau Ave. St. Louis, MO 63103</p>

<p>Mark A. Bilut Mbilut@mwe.com McDermott, Will & Emery 227 W. Monroe Street Chicago, IL 60606-5096</p>	<p>Abel Russ aruss@environmentalintegrity.org Environmental Integrity Project 1000 Vermont, Ave NW, Ste. 1100 Washington, DC 20005</p>
<p>Susan M. Franzetti Sf@nijmanfranzetti.com Kristen Laughridge Gale kg@nijmanfranzetti.com Vincent R. Angermeier va@nijmanfranzetti.com Nijman Franzetti LLP 10 S. Lasalle St., Ste. 3600 Chicago, IL 60603</p>	<p>Alec M Davis adavis@ierg.org Kelly Thompson kthompson@ierg.org Illinois Environmental Regulatory Group 215 E. Adams St. Springfield, IL 62701</p>
<p>Jennifer M. Martin Jennifer.martin@heplerbroom.com Melissa Brown Melissa.brown@heplerbroom.com Heplerbroom, LLC 4340 Acer Grove Drive Springfield, Illinois 62711</p>	<p>Cynthia Skrukud Cynthia.Skrukud@sierraclub.org Jack Darin Jack.Darin@sierraclub.org Christine Nannicelli christine.nannicelli@sierraclub.org Sierra Club 70 E. Lake Street, Ste. 1500 Chicago, IL 60601-7447</p>
<p>Amy Antonioli aantonioli@schiffhardin.com Schiff Hardin, LLP 233 S. Wacker Dr., Ste. 7100 Chicago, IL 60606-6473</p>	<p>Walter Stone Water.stone@nrgenergy.com 8301 Professional Place, Suite 230 Landover, MD 20785</p>
<p>Alisha Anker aanker@ppi.coop Prairie Power Inc. 3130 Pleasant Runn Springfield, IL 62711</p>	<p>Chris Newman newman.christopherm@epa.gov U.S. EPA, Region 5 77 West Jackson Blvd. Chicago, IL 60604-3590</p>
<p>Keith Harley kharley@kentlaw.iit.edu Daryl Grable dgrable@clclaw.org Chicago Legal Clinic, Inc. 211 W. Wacker Dr. Ste. 750 Chicago, IL 60606</p>	<p>Claire Manning cmanning@bhslaw.com Anthony Shuering aschuering@bhslaw.com Brown, Hay & Stephens, LLP 205 S. Fifth Street, Suite 1000 P.O. Box 2459 Springfield, IL 62705-2459</p>