BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:	)	
AMENDMENTS TO 35 ILL. ADM. CODE PARTS 201, 202, AND 212	)	R2023-018(A) (Rulemaking – Air)

NOTICE OF FILING

To: Attached Service List

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the **JOINT POST-HEARING COMMENT** on behalf Dynegy Midwest Generation, LLC; Illinois Midwest Generation, LLC; Power Generating Company; and Kincaid Generation, LLC (collectively, "Dynegy") and Midwest Generation, LLC; and a **CERTIFICATE OF SERVICE**, which are attached and copies of which are herewith served upon you.

Dated: May 22, 2024

Respectfully submitted,

Dynegy Midwest Generation, LLC; Illinois Power Generating Company; and Kincaid Generation, LLC

Midwest Generation, LLC

/s/ Samuel A. Rasche
One of their Attorneys

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:	)	
AMENDMENTS TO 35 ILL. ADM. CODE PARTS 201, 202, AND 212	)	R2023-018(A) (Rulemaking – Air)

JOINT POST-HEARING COMMENT OF DYNEGY AND MIDWEST GENERATION

Dynegy Midwest Generation, LLC; Illinois Power Generating Company; and Kincaid Generation, LLC (collectively, "Dynegy") and Midwest Generation, LLC ("MWG") (collectively, the "Companies"), by their attorneys, ArentFox Schiff LLP, and pursuant to 35 Ill. Adm. Code § 102.208 and the Hearing Officer's April 22, 2024 Order, hereby submit their Joint Post-Hearing Comment.

The Companies have proposed a narrowly tailored amendment to 35 Ill. Adm. Code Part 212 to establish alternative emission limitations ("AELs") for their remaining coal-fired boilers (the "Affected Units") at their Illinois power stations (the "Stations") during periods of startup, malfunction and breakdown, as submitted in the Companies' Statement of Reasons filed in this docket on August 7, 2023 (the "Joint SOR") and modified in the Companies' March 15, 2024 Second Comment in Response to Illinois Environmental Protection Agency's Comments (the "March 15, 2024 Comment") (the proposal, as modified, is hereinafter referred to as the "Joint Proposal"). The AELs are necessary to align Illinois's opacity regulations, following the recently promulgated amendments in R23-18, with the realities of operating the Affected Units during periods of startup, malfunction and breakdown.

The Companies urge the Board to promulgate their Joint Proposal for the reasons expressed in their Joint SOR, prior comments to and testimony before the Board, technical support

documents ("TSDs"), and this post-hearing comment. Notably, Illinois Environmental Protection Agency ("IEPA") concurs with the Companies' technical analysis and does not object to promulgating the Joint Proposal. The Companies appreciate the Board's consideration of their proposal.

I. PROCEDURAL STANDARD

The Board combined the Joint Proposal with AEL proposals by other proponents into a single rulemaking under 35 Ill. Adm. Code § 102.202 and Section 27(a) of the Illinois Environmental Protection Act (the "Act"). R23-18(A), Opinion and Order at 4-5 (Aug. 17, 2023). In considering a proposed rule for promulgation under the Act, the Board must consider the existing physical conditions and character of the area involved as well as "the technical feasibility and economic reasonableness of . . . reducing" the pollution at issue. 415 ILCS § 5/27(a).

II. BACKGROUND, NECESSITY, AND ECONOMIC JUSTIFICATION

A. The SSM SIP Call and IEPA's SSM Repeal.

On December 7, 2022, IEPA filed a proposed rule amending Parts 201, 202, and 212 of Title 35 (Environmental Protection) of Illinois's Administrative Code, which were subsequently adopted by the Board. *In the Matter of: Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212*, R2023-018 (hereinafter "SSM Repeal" or "R23-18"). IEPA initiated the SSM Repeal in response to the United States Environmental Protection Agency's ("U.S. EPA") January 12, 2022, Findings of Failure to Submit SIP Revisions. *Findings of Failure to Submit State Implementation Plan Revisions in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction*, 87 Fed. Reg. 1680 (Jan. 12, 2022) (the "Findings of Failure"). In the Findings of Failure, U.S. EPA determined that 12 states, including Illinois, had failed to timely address a June

12, 2015 SIP Call to Amend Provisions Applying to Excess Emissions During Startup, Shutdown and Malfunction, 80 Fed. Reg. 33840 (the "SSM SIP Call").[1] *Id.* The Findings of Failure took effect on February 11, 2022, and subjected Illinois to a threat of mandatory sanctions if it did not submit a revised SIP. *Id.*

In response, IEPA filed a rulemaking with the Board under Illinois's fast-track rulemaking process for "rules proposed by IEPA and required to be adopted by the State under the Clean Air Act." 415 Ill. Comp. Stat. 5/28.5. With the SSM Repeal, IEPA proposed to remove certain provisions from Parts 201 and 212 that, in some circumstances, allowed sources to exceed emissions standards in Illinois during SSM events. *See* R23-18, Statement of Reasons ("IEPA SOR") at 1 (Dec. 7, 2022); *see, e.g.*, 35 Ill. Admin. Code §§ 201.261, 201.262, 201.263, 201.264, 201.265, 212.124(a). In adopting the SSM Repeal, the Board relied upon IEPA statements that its proposal corrected SIP deficiencies identified in the SSM SIP Call and brought the Illinois air pollution rules in line with federal SSM policies and the Clean Air Act ("CAA"), and therefore must be adopted. R23-18, Opinion and Order of the Board: Proposed Rule; Second Notice ("Second Notice Opinion") at 4, 15, 16 (Apr. 6, 2023). The Board adopted IEPA's SSM Repeal but opened this subdocket to consider AELs proposed by the Companies and other regulated entities. *Id.*

B. Summary of the AELs.

The Joint Proposal would apply to only the Affected Units—*i.e.*, the Companies' remaining coal-fired boilers—and would create a new subsection (d) in 35 Ill. Adm. Code § 212.124 that would allow the Affected Units to demonstrate compliance with the applicable 20% or 30%

[1] When the term SSM is used in this Comment in relation to the Illinois regulations and Illinois SIP, it refers to periods of startup, malfunction and breakdown.

opacity standards in Sections 212.122(a) or 212.123(a) during SSM using either a one-hour (for Baldwin Affected Units) or three-hour (for other Affected Units) averaging period. The Joint Proposal would not require any change to any of the regulatory language adopted through the SSM Repeal. The final text of the proposed regulatory language is provided in Exhibit B to the Companies' March 15, 2024 Comment.

The original proposal outlined in the Joint SOR utilized a retrospective three-hour averaging period. In response to input from the Board and IEPA, the Companies revised the proposed regulatory language, including to replace the retrospective three-hour averaging period with a prospective one-hour averaging period (for Baldwin) and a prospective three-hour averaging period (for the other Stations). March 15, 2024 Comment at 4. The change from retrospective to prospective averaging was suggested by IEPA. *Id.* As IEPA explains, this change "avoids the scenario in which the first three hours of any given SSM scenario are unable to be averaged under the AEL, and further prevents the AEL from allowing the sources to 'excuse' one or several six-minute operating periods in excess of the opacity standard by using the preceding timeframe (up to 2.9 hours) of opacity values." R23-18(A), IEPA, Testimony of Rory Davis ("Davis Testimony") at 23, (April 2, 2024).

C. The AELs are Necessary to Align the Applicable Opacity Regulations with the Unavoidable Realities of Operating the Affected Units During SSM and to Avoid Severe Economic Impacts.

The Affected Units cannot comply with the applicable opacity standards 100% of the time. No pollution controls can ensure compliance with the opacity standards 100% of the time. Joint SOR at 22-24. And, even if adding baghouses to the Affected Units that don't currently have baghouses could allow the Companies to assure compliance 100% of the time (which they would not), the Board's final action on the SSM Repeal provided no time to design, procure and install baghouses through a phase-in period. *Id.*

The Companies estimate that they would require approximately three years to add baghouses to those Affected Units not currently equipped with them, and that each baghouse would cost tens of millions of dollars. *Id.* That investment would need to be weighed against the fact that Dynegy has announced it plans to retire the Kincaid and Newton Affected Units by July 17, 2027, and MWG currently plans to retire its Affected Units on or before December 31, 2028. *Id.* In short, if the Companies determined this summer to install baghouses, those baghouses would not be operational until the summer of 2027, at the earliest; they may not be operational before the planned retirement of the Kincaid and Newton Affected Units, and would operate for roughly one year at Powerton, for a cost of tens of millions of dollars; and they would not guarantee 100% compliance during SSM after installation.

Absent the proposed AELs, the Companies may be forced to immediately shut down Affected Units in response to opacity exceedances during SSM that cannot be immediately resolved through other means, forcing them to cycle back on through a new startup. *Id.* at 36. And they would face the risk of enforcement actions alleging violations of the law for unavoidable opacity exceedances. *Id.* These realities could factor into the Companies' decisions concerning the economic viability of the Affected Units between now and their currently anticipated retirement dates. *Id.*

Critically, the Board has never considered the economic impact of enforcing opacity standards *without* exceptions for SSM conditions. In repealing the SSM provisions, the Board relied on IEPA's assertion that "the Board would have addressed the economic reasonableness of the underlying standards when it adopted them." R23-18, Final Opinion and Order at 6 (July 20, 2023). However, the majority of the "underlying standards" were adopted in April 1972 with the explicit understanding that exemptions for SMB conditions were necessary for the reasonable

enforcement of the standards. *See In the Matter of: Emission Standards*, R1971-023, Opinion and Order of the Board (Apr. 13, 1972), (adopting Sections 201.261–201.265 (then Rules 105(b)–(f)) and Section 212.124 (then Rule 202(c)).

The Board recognized that sources may be unable to comply with applicable emission limitations or standards during startup because "startup conditions may result in less than optimum emission control." *Id*. The Board further recognized that unavoidable malfunctions and breakdowns do occur and that, in certain circumstances, continued operation is required even though emissions may be in excess of the generally applicable standard. *Id*. As a result, the Board promulgated the SSM provisions, giving IEPA the power to "grant permission" for such excess emissions or opacity. *Id.* To date, as explained in the Joint SOR, the Board has not meaningfully reconsidered these findings. Joint SOR at 37.

III. ENVIRONMENTAL AND TECHNICAL JUSTIFICATION

The Joint Proposal provides narrower relief than the Illinois SIP SSM provisions. Based on a recent federal court decision vacating critical elements of the SSM SIP Call, the Companies believe that the Illinois SIP SSM provisions comply with the CAA and should not have been subject to a SIP Call. It follows that, if the Illinois SIP SSM provisions comply with the CAA, then the more limited relief in the Joint Proposal also complies with the CAA.

To the extent that the recommendations for AELs in the SSM SIP Call survive the court decision, the Joint Proposal fully satisfies the recommendations. And the Companies performed additional technical analyses to IEPA's satisfaction, including air dispersion modeling, to further prove that the Joint Proposal will not result in any negative environmental impact.

A. The Illinois SIP SSM Provisions Comply with Federal Law.

As an initial matter, the SSM provisions in the Illinois SIP (repealed from the Illinois Regulations in R23-18) comply with federal law, in light of a recent decision by the federal Court

of Appeals for the D.C. Circuit, invalidating portions of U.S. EPA's SSM SIP Call. *See Environmental Committee of the Florida Electric Power Coordinating Group, Inc. v. E.P.A., et al.*, No. 15-1239 (D.C. Cir. Mar. 1, 2024) (the "D.C. Circuit Decision"). The D.C. Circuit vacated U.S. EPA's SSM SIP Call to the extent it applied to SSM provisions that constituted automatic exemptions, "director's discretion" provisions, or complete affirmative defenses (*i.e.*, those that provide a complete affirmative defense to an action for non-compliance, as opposed to those that preclude only certain remedies). The Court explained that such affirmative defenses "create an exemption from the normal emission rule." *Id.*

Although the D.C. Circuit did not directly consider the Illinois SSM provisions, the same rationale can be applied to the Illinois SIP SSM provisions because they are analogous to provisions of the Alabama and Arkansas SIPs—"director's discretion" and "complete affirmative defense" provisions, respectively—that the D.C. Circuit found to be facially sufficient under the CAA. The Alabama SIP upheld by the D.C. Circuit includes provisions providing that state regulators may "exempt on a case by case basis any exceedances of emission limits which cannot reasonably be avoided, such as during periods of start-up, shut-down or load change." Ala. Admin. Code R. 335-3-14-.03(1)(h)(1). Similarly, the Illinois SIP allows regulators to grant "permission to continue to operate during a malfunction or breakdown" and "permission to violate" certain standards and limitations during startup. 35 Ill. Adm. Code §§ 201.261-.262 (repealed 2023). Both the Alabama and Illinois provisions allow state officials to independently determine whether to permit a source to exceed emission limits during SSM periods.

The Arkansas SIP includes provisions stating that "[a]n emergency constitutes a complete affirmative defense to an action brought for non-compliance with such technology-based limitations if the [specified] conditions are met." Ark. Reg. 19.602. Similarly, the Illinois SIP

provides that permission to operate during SSM periods "shall be a prima facie defense to an enforcement action alleging violations . . .." 35 Ill. Adm. Code § 201.265 (repealed 2023). Both the Arkansas and Illinois provisions contain affirmative defenses against all liability for excess emissions that occur during SSM periods.

This conclusion is consistent with the Companies' historic understanding that the Illinois SSM provisions are *exemptions* to the applicable opacity standards, that also provide affirmative defenses to any claim of violation. As explained at length in the Joint SOR, the Stations' CAAPP permits expressly *authorize* the Companies to exceed the applicable regulatory opacity standards during SSM; the plain language of the regulations unambiguously identifies the authorization as "Exceptions"; U.S. EPA classified Illinois's SSM provisions as exemptions in its rulemakings; Sierra Club classified the Illinois SSM provisions as exemptions in its petition challenging certain SIPs, which gave rise to the SSM SIP Call; and the Companies and other regulated entities have understood and implemented the Illinois SSM provisions as exemptions. Joint SOR at 13-19.

Given that federal courts have rejected the legal rational underpinning the SSM SIP Call as it applied to Illinois, even the Illinois SIP's SSM provisions (which provide broader relief than the more narrowly tailored AELs in the Joint Proposal) comply with federal law.

B. The AELs Comply with Federal Law and Guidance, and Will Not Result in Any Negative Environmental Impact.

The Joint Proposal complies with federal law and guidance. Further, it requires no revisions to the regulatory text promulgated in R23-18 and subsequently proposed to U.S. EPA for incorporation into the Illinois SIP; as such, it would not jeopardize the SIP approvability of the SSM Repeal.

The Joint Proposal provides narrower relief than the Illinois SIP SSM provisions and the current SSM authorizations in the Stations' CAAPP permits, which authorize operation in excess

of the Illinois SIP opacity limits during SSM, with no numeric opacity limit during such events. Joint SOR at 13. As discussed above, the Illinois SIP SSM provisions comply with federal law; it follows that the narrower relief in the Joint Proposal likewise complies with federal law.

The Joint Proposal also satisfies U.S. EPA's guidance in the SSM SIP Call concerning recommendations for development of AELs—to the extent that U.S. EPA continues to support that guidance following the D.C. Circuit Decision. The Joint SOR explains in detail how the Joint Proposal satisfies each of the recommendations. Joint SOR at 20-29.

Following submission of the Joint SOR, the Joint Committee on Administrative Rules ("JCAR") raised questions concerning the work practices in the Joint Proposal, which the Companies included in order to satisfy recommendation six. In addition, IEPA's comment raised questions concerning the Companies' environmental and technical justification, and it requested that the Companies perform worst-case emissions modeling. The Companies' responses to JCAR's and IEPA's comments are addressed below.

1. The Joint Proposal's Work Practice Requirements Comply with Federal Law and Guidance.

The Joint Proposal includes work practice requirements to operate the Affected Units and related pollution controls "in a manner consistent with good engineering practices for minimizing opacity during … startup, malfunction or breakdown." The work practice requirements also require the Companies to use "good engineering practices and best efforts to minimize the frequency and duration of operation in startup, malfunction and breakdown."

JCAR submitted public comments on September 7, 2023, including a comment to "incorporate by reference the standard to be enforced" in relation to "good engineering practices."

R23-18(A), JCAR, Public Comment at 3.[2] As Cynthia Vodopivec explained, and Sharene Shealey affirmed, these work practice requirements were modeled on recommendation six for AELs from the 2015 SIP Call, which calls for operating "'in a manner consistent with good practice for minimizing emissions.'" R23-18(A), Corrected Transcript of September 27, 2023 Hearing at 100-101 (December 18, 2023). Ms. Vodopivec further explained that federal regulations and the CAAPP permits for the Affected Units already include other requirements to operate consistent with "good engineering practices" and "good air pollution control practices." *Id.* Good engineering practices generally refer to practices commonly observed in the United States and performed by competent, qualified operators performing management, operation, maintenance, repair or replacement services; they are not specific standards. As such, the analyses in the TSDs, used to demonstrate that the AELs will have no negative environmental impact, did not rely on the use of any specific work practice. *See generally* R23-18(A), Dynegy and Midwest Generation, LLC, Public Comment, Exhibit 1 (March 22, 2024) (the "Second Supplemental TSD").

[2] At the September 27, 2023 hearing, the Illinois Attorney General's Office ("IL AG") asked the Companies' witnesses, "what do you mean by, quote, good engineering practices?" R23-18(A), Corrected Transcript of September 27, 2023 Hearing at 99 (December 18, 2023). The Companies' witnesses responded. *Id.* at 100-101. The IL AG did not question the sufficiency of the response. *Id.* The IL AG then asked a "follow-up question" that had not been included in the prefiled question; the IL AG noted JCAR's comment to "incorporate by reference the standard to be enforced" and then asked, "Do Dynegy or Midwest Generation have any suggestions about how that comment could be responded to?" *Id.* at 101. Counsel for the Companies stated, "we will take that question under advisement and can respond to it in our joint comment at the end of the proceeding." *Id.* Neither the IL AG, nor any other party, objected to this response. *Id.* At the April 15, 2024 hearing, the Companies' sole witness was Stephen Norfleet of Agora Environmental Consulting, who had drafted the TSDs and had not offered any testimony concerning the term "good engineering practices." The IL AG asked Mr. Norfleet, "can you explain what is meant by, quote, good engineering practices"? R23-18(A), Transcript of April 15, 2024 Hearing at 25 (April 21, 2024). Counsel replied that this question had been asked and answered at the prior hearing, and that Mr. Norfleet had not offered any opinion on the topic. *Id.* The IL AG asked "Just one follow-up on that," noting JCAR's comment and asking, "Can you elaborate on that at all?" *Id.* Counsel replied that the Companies would address JCAR's comment in post-hearing comments. *Id.* The IL AG did not object. *Id.*

Given that "good engineering practices" (and the similar term, "good air pollution control practices") is used in federal regulations and the Station's CAAPP permits, and the TSDs did not rely on the use of good engineering practices as part of the environmental analysis (including the air dispersion modeling), there is neither a legal nor practical need to include any further specificity or "standard" concerning "good engineering practices" in this rule. No such additional specificity is suggested by the SIP Call. And IEPA has confirmed that it "does not object to adoption of the rule proposal as set forth in Dynegy/MWG's March 15, 2024, filing with the Board." Davis Testimony at 24.

Accordingly, the work practices comply with federal law and guidance, and a reference to a specific standard is not necessary.

2. The Joint Proposal Will Not Result in Any Negative Environmental Impact.

The Joint Proposal relates to only opacity. Opacity is not a pollutant, but it can be an indicator for particulate matter ("PM"). The Joint Proposal will not grant permission for the Companies to exceed any limitations or standards for PM or any other pollutant, and it will not affect the State's attainment or reasonable further progress in connection with any NAAQS, or the State's compliance with any other federal CAA requirements.

a) The Initial TSD demonstrates that the Joint Proposal will not result in any negative environmental impact.

The Joint SOR includes a Technical Support Document (Exhibit 7 to the Joint SOR, the "Initial TSD") demonstrating that the AELs would "not impact the emissions of any criteria pollutants in a manner that might 'interfere with any applicable requirement concerning attainment and reasonable further progress' or other [CAA] requirements that would need to be addressed under CAA § 110(l)." Initial TSD at 3. The Initial TSD notes that "removal of the [SSM] provisions without an AEL could trigger operators to terminate startups or malfunctions abruptly

and then begin startup all over again, which could have the unintended consequence of increasing emission rates of other pollutants." *Id*.

The Initial TSD provides unit-specific correlations of particulate matter ("PM") and opacity data collected during prior emissions testing. *Id.* at 8-9. Specifically, the Initial TSD provides two separate correlations for each Affected Unit: one using data from Reference Method 5 performance testing, and the other using data from the modified version of Method 5 prescribed by the Mercury and Air Toxics Standards ("MATS") Rule ("MATS Method 5 Testing"). *Id.* Conservatively utilizing whichever correlation has a higher slope (that is, the correlation with a higher PM emission rate at a given opacity level), the Initial TSD demonstrates that the "AELs will provide a large margin of compliance with applicable SIP PM standards." Initial TSD at 14.

The Initial TSD further explains that the Joint Proposal would not result in an increase in PM emissions or the emissions of any other criteria pollutant. *Id.* at 12-13. And "there is no concern that the AELs would negatively affect any NAAQS or any other Clean Air Act requirement." *Id.* at 13.

b) The Supplemental TSD and Second Supplemental TSD satisfied questions and concerns IEPA previously expressed regarding the Companies' environmental impact analysis; IEPA does not object to adoption of the Joint Proposal.

In addition to suggesting changes to the text of the Joint Proposal, which the Companies' adopted in Exhibit B to their March 15, 2024 Comment, IEPA requested that the Companies provide additional data and perform additional technical analyses. Specifically, as summarized in IEPA testimony, IEPA requested data and analysis to quantitatively confirm that:

> 1) individual six-minute opacity exceedances will not lead to disproportionate short-term increases in PM emissions compared to six-minute operating periods in compliance with the 20% or 30% opacity standard and 2) operation under the AEL will not lead to non-compliance with any applicable PM emission standard or PM NAAQS, taking into consideration all possible three-hour AEL operating scenarios

> and quantifying the worst-case PM emissions that could occur for any given three-hour operating period that complies with the AEL.

R23-18A, Davis Testimony at 18-19 (Apr. 4, 2024). In addition, IEPA requested that the Companies perform PM dispersion modeling under worst-case emissions scenarios. *Id.* at 22. The Companies responded in their March 15, 2024 Comment, which attached a Supplemental TSD, and in comments filed March 22, 2024, (the "March 22, 2024 Comment"), which attached a Second Supplemental TSD. As Mr. Davis testified, the Companies "have completely and effectively responded to the Agency's 10/23/23 Comments and requests for further information, data, and modeling." *Id.* at 18. As a result, IEPA "does not object to adoption of the rule proposal as set forth in Dynegy/MWG's March 15, 2024, filing with the Board." *Id.* at 24.

Mr. Davis's testimony provides a clear summary of the reasons why the Companies' Supplemental and Second Supplemental TSDs allayed any concerns or questions IEPA expressed in its prior comments. Davis Testimony at 18-24. For example, IEPA "concurs that the 'roughly linear' relationship between the opacity and PM CEMS measurements" in the Companies' additional correlation analysis "provides strong evidence that the PM emissions from short-term six-minute operating periods in excess of the 30% opacity standard do not increase in a non-linear (e.g. exponential) manner." *Id.* at 20-21. This linear relationship

> is evidence that no three-hour operating scenario that complies with the proposed AEL limitation will result in excess PM emissions beyond the relevant standard. This is because regardless of the increased PM emissions that can occur during short-term periods of opacity in excess of 30%, the fact that the three-hour average opacity value must be below the opacity standard confirms that the total PM emissions from the three-hour period will not exceed the PM emissions that would have occurred if the opacity (and associated PM emission rate) had remained steadily at 30% through those three hours of operation.

Id. at 21. Mr. Davis concluded that the correlations for Kincaid and Powerton "demonstrate a low probability" of exceeding the applicable 35 IAC Part 212 PM standards. *Id.* In addition, Mr. Davis

agreed that these correlations "can be used as evidence for Baldwin's and Newton's likelihoods of exceeding their" Part 212 standards. *Id.*

In addition to this analysis, IEPA requested that the Companies perform air dispersion modeling. The Companies do not believe that such modeling was not, in fact, necessary to satisfy the requirements of CAA Section 110(l) or the SSM SIP Call.[3] Nonetheless, the Companies performed dispersion modeling that IEPA agrees "demonstrates a lack of PM_{10} and $PM_{2.5}$ NAAQS exceedances under the worst-case emissions scenario for each of the sources." *Id.* That modeling is presented in a modeling report attached to the Second Supplemental TSD.

In short, Second Supplemental TSD demonstrates that the Joint Proposal will provide a large margin of compliance with applicable 35 IAC Part 212 PM standards and will raise no concerns with respect to "attainment and reasonable further progress" or compliance with other

[3] The SSM SIP Call makes clear that "worst-case modeling" is only one method of showing compliance with Section 110(l) of the CAA and is not always required. In the SSM SIP Call, U.S. EPA clearly states that it "does not agree with [a] comment that suggests 'worst-case modeling' would always be needed to show that a SIP revision establishing alternative emission limitations for startup and shutdown would not interfere with attainment or reasonable further progress. The nature of the technical demonstration needed under section 110(l) to support approval of a SIP revision depends on the facts and circumstances of the SIP revision at issue. … Under certain circumstances, there may be alternative emission limitations that necessitate a modeling of worst-case scenarios, but those will be determined on a case-by-case basis." SSM SIP Call at 33867. Indeed, U.S. EPA interprets Section 110(l) to "allow states to demonstrate that a SIP revision will not 'interfere with attainment'" by identifying "'substitute equivalent emissions reductions to compensate for any change to a SIP approved program, as long as actual emissions in the air are not increased.'" *Indiana v. EPA*, 796 F.3d 803, 806 (7th Cir. 2015) (quoting Approval and Promulgation of Air Quality Implementation Plans; Illinois; Amendments to Vehicle Inspection and Maintenance Program for Illinois, 78 Fed. Reg. 68,378 (Nov. 14, 2013)). The TSDs demonstrate, actual emissions from the Affected Units will not increase. As discussed above, any short-term increases in emissions resulting from the AELs are offset within a 1-hour (for Baldwin) or 3-hour (for the other Stations) period. This means that the actual PM emissions are no greater within that 1-hour or 3-hour period, let alone the 24-hour or annual periods upon which the federal NAAQS are based.

CAA requirements under CAA Section 110(l). Second Supplemental TSD at 18. To the contrary, applying the AELs would prevent various unintended consequences (ranging from higher NO_x and CO_2 emission rates, to loss of reliability and potential damage to boilers) that could result from increasing the frequency of immediately shutting down a boiler in response to an unavoidable opacity exceedance. *Id.* at 16-18. As noted above, IEPA has reviewed the Companies' TSDs and does not object to "does not object to adoption of the rule proposal as set forth in Dynegy/MWG's March 15, 2024, filing with the Board." Davis Testimony at 24.

IV. CONCLUSION

As articulated above, in the Joint SOR, in Davis's Testimony, and in the various testimony and comments filed on behalf of the Companies in this proceeding, the Joint Proposal presents narrowly tailored relief that will allow the Companies to continue compliant operation of the Affected Units in recognition of the inescapable reality that it is not possible to avoid opacity exceedances 100% of the time during SSM periods. The Companies have voluntarily provided significant data and analyses demonstrating that, even under the worst-case emissions scenarios, compliance with the AELs will continue to ensure compliance with other relevant emissions standards and will not negatively impact the environment. IEPA has reviewed these data and analyses, and it has reached the same conclusions. IEPA does not object to the Joint Proposal.

Accordingly, the Companies respectfully request that the Board adopt the Companies' Joint Proposal so that they can continue operating the Affected Units in compliance with state opacity requirements during SSM, as they generate reliable power.

Respectfully submitted,

Dynegy Midwest Generation, LLC; Illinois Power Generating Company; and Kincaid Generation, LLC

and

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/s/ Samuel A. Rasche
One of their Attorneys

Dated: May 22, 2024

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 22nd day of May, 2024:

I have electronically served true and correct copies of Dynegy and Midwest Generation, LLC's Joint Post-Hearing Comment by electronically filing with the Clerk of the Illinois Pollution Control Board and by e-mail upon each person listed in the attached service list.

My e-mail address is sam.rasche@afslaw.com.

The number of pages in the e-mail transmission is 21.

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

/s/ *Samuel A. Rasche*
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Dated: May 22, 2024

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