

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 )  
PETITION OF DYNEGY ) AS24-04  
FOR AN ADJUSTED STANDARD ) (Adjusted Standard – Air)  
35 Ill. Adm. Code PARTS 201 and 212 )

**NOTICE**

TO: See 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 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S STATUS REPORT AND MOTION TO EXTEND STAY OF PROCEEDINGS, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

By: /s/ Dana Vetterhoffer  
Dana Vetterhoffer  
Division of Legal Counsel

Dated: April 16, 2024  
1021 North Grand Avenue East  
PO Box 19276  
Springfield, IL 62794-9276  
217/782-5544  
[dana.vetterhoffer@illinois.gov](mailto:dana.vetterhoffer@illinois.gov)

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 ) AS24-04  
PETITION OF DYNEGY ) (Adjusted Standard – Air)  
FOR AN ADJUSTED STANDARD )  
35 Ill. Adm. Code PARTS 201 and 212 )

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S STATUS REPORT AND  
MOTION TO EXTEND STAY OF PROCEEDINGS

The Illinois Environmental Protection Agency (“Illinois EPA or Agency”), by one of its attorneys, and pursuant to 35 Ill. Adm. Code 101.502 and 101.514, provides this Status Report and Motion to Extend Stay of Proceedings (“Motion”) of Dynegy Midwest Generation, LLC, Illinois Power Generating Company, and Kincaid Generation, LLC (collectively “Dynegy” or “Petitioner”) regarding its adjusted standard petition. The Illinois EPA requests that the Illinois Pollution Control Board (“Board”) stay this proceeding for 150 days while the Board considers the substantively similar rulemaking proposal filed in R23-18(A).

Status Report

On September 5, 2023, the Agency filed a *Motion for Stay of Proceedings, or in the Alternative, Motion for Extension of Time to File Recommendation* while the Board considers Dynegy’s substantially similar rulemaking proposal in R23-18(A). On September 21, 2023, the Board granted the Agency’s motion to stay the proceedings for 90 days, until December 21, 2023. On December 18, 2023, the Illinois EPA filed with the Hearing Officer its Status Report and Motion to Extend Stay of Proceeding (“Motion to Extend Stay”) for an additional 120 days, until April 19, 2024. On December 22, 2023, Dynegy filed a status report indicating it had no objection to the Illinois EPA’s motion. On January 4, 2024, the Hearing Officer granted the Illinois EPA’s Motion to Extend Stay until April 19, 2024.

Since the Agency's previous status report, the R23-18(A) rulemaking has continued to move forward. A prehearing teleconference was held on February 7, 2024, and the rule proponents informed the Hearing Officer of the status of each proponent's submissions in relation to the Agency's information requests. On February 28, 2024, another prehearing teleconference was held to discuss procedural matters including a date for the third hearing. On March 6, 2024, the Hearing Officer issued an Order scheduling the third hearing for April 15, 2024, in Chicago and setting dates prior to the hearing for responses to Illinois EPA's request for information, pre-filed testimony, and pre-filed questions based on such information and testimony. *See, R23-18(A), Hearing Officer Order, March 6, 2024.* On March 15, 2024, Dynegy filed with the Board additional information, including additional testimony and supplemental technical support. *See, R23-18(A), Second Comment in Response to Illinois Environmental Protection Agency's Comments, March 15, 2024.* On March 22, 2024, Dynegy filed with the Board its final comments responding to the Agency's information requests with additional testimony. *See, R23-18(A), Final Comment in Response to Illinois Environmental Protection Agency's Comments, March 22, 2024.* On April 2, 2024, the Illinois EPA filed its Testimony of Rory Davis and stated that it does not object to adoption of the rule proposal as set forth in Dynegy's March 15, 2024, filing with the Board. *See, R23-18(A), Illinois EPA's Testimony of Rory Davis, April 2, 2024.* On April 8, 2024, the Board and other participants pre-filed questions for the Agency and for some of the rule proponents. On April 15, 2024, a third public hearing was held in Chicago.

#### Request to Extend Stay

The Agency files this request to extend the stay in this proceeding while the Board continues to consider Dynegy's rulemaking proposal. Until then, the necessity of an adjusted

standard will not be known. As explained in the Agency's first motion for a stay, Dynegy's proposed amendments substantively mirror its requested adjusted standard; both regard changes to/relief from the same Board regulations. Dynegy itself explained that if the Board adopts its proposed amendments, an adjusted standard is unnecessary and that its petition was primarily intended to preserve its arguments regarding a stay under Section 28.1(f) of the Act. *Petition for an Adjusted Standard*, ps. 4, 5.

Simultaneously participating in both an expedited rulemaking and Dynegy's adjusted standard proceeding will force the Agency, Board, Dynegy, and potentially other participants to expend significant resources in proceedings that seek similar relief. Conversely, issuing a stay here will conserve resources and allow participants to focus on Dynegy's rulemaking proposal first, and this proceeding second (and only if still necessary).

Again, the Illinois EPA is not opining as to whether Dynegy is entitled to a stay under Section 28.1(f) of the Act, but acknowledges Dynegy's stated position in this regard and clarifies that this request to extend the stay is not intended to have any impact on the legal posture of such position. The Illinois EPA is simply seeking to "hold" this proceeding while the rulemaking moves forward, to be resumed at a later date if necessary.

Under the Illinois Administrative Procedure Act, no rule or modification or repeal of any rule may be adopted, or filed with the Secretary of State, more than one year after the date the first notice period for the rulemaking commenced. 5 ILCS 100/5-40(e). To the extent the Board intends to adopt a rule in R23-18(A) prior to September 1, 2024 (one year since first notice began), the parties will know by that date whether this adjusted standard proceeding is still necessary. Extending the stay 150 days should provide Petitioner time after that date but before the end of the stay to withdraw its Petition if desired or otherwise communicate to the Board how

it would like to proceed.

WHEREFORE, for the reasons set forth above, the Illinois EPA requests that the Board grant this Motion to Extend Stay of Proceedings for 150 days up to and including September 16, 2024, (or a later date if deemed more appropriate by the Board).

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

By: /s/ Dana Vetterhoffer  
Dana Vetterhoffer  
Division of Legal Counsel

Dated: April 16, 2024  
1021 North Grand Avenue East  
PO Box 19276  
Springfield, IL 62794-9276  
217/782-5544  
[dana.vetterhoffer@illinois.gov](mailto:dana.vetterhoffer@illinois.gov)

**CERTIFICATE OF SERVICE**

I, the undersigned, an attorney, state that I have electronically served the attached ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S STATUS REPORT AND MOTION TO EXTEND STAY OF PROCEEDINGS, upon the following persons:

**Don Brown**

Illinois Pollution Control Board  
60 E. Van Buren St., Suite 630  
Chicago, IL 60605  
[Don.Brown@illinois.gov](mailto:Don.Brown@illinois.gov)

**Carol Webb**

Illinois Pollution Control Board  
60 E. Van Buren St., Suite 630  
Chicago, IL 60605  
[Carol.Webb@illinois.gov](mailto:Carol.Webb@illinois.gov)

**Joshua R. More**

**Amy Antonioli**  
**Samuel A. Rasche**  
ARENTFOX SCHIFF LLP  
233 South Wacker Drive, Suite 7100  
Chicago, IL 60606  
(312) 258-5500  
[Joshua.More@afslaw.com](mailto:Joshua.More@afslaw.com)  
[Amy.Antonioli@afslaw.com](mailto:Amy.Antonioli@afslaw.com)  
[Sam.Rasche@afslaw.com](mailto:Sam.Rasche@afslaw.com)

**Andrew N. Sawula**

ARENTFOX SCHIFF LLP  
One Westminster Place, Suite 200  
Lake Forest, IL 60045  
(847) 295-4336  
[Andrew.Sawula@afslaw.com](mailto:Andrew.Sawula@afslaw.com)

My e-mail address is [dana.vetterhoffer@illinois.gov](mailto:dana.vetterhoffer@illinois.gov)

The number of pages in the e-mail transmission is 6.

The e-mail transmission took place before 4:30 p.m.

/s/ Dana Vetterhoffer  
Dana Vetterhoffer  
Division of Legal Counsel

Dated: April 16, 2024  
1021 N. Grand Ave. East, P.O. Box 19276  
Springfield, IL 62794-9276  
(217)782-5544