

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
 )  
 ) R23-18(A)  
AMENDMENTS TO 35 ILL. ) (Rulemaking-Air)  
ADMIN. CODE PARTS 201, 202, ) Third Hearing  
AND 212. )

REPORT OF PROCEEDINGS OF THE HEARING in the  
above-captioned case before HEARING OFFICER CHLOE  
SALK, Illinois Pollution Control Board, at 160  
North LaSalle Street, Room N505, Chicago, Illinois,  
taken before Janet L. Brown, CSR, on April 15,  
2024, at 10:00 AM.

PRESENT:

MICHELLE GIBSON, Lead Board Member  
JENNIFER VAN WIE, Board Member  
ANAND RAO, Board Staff

ALSO PRESENT:

TIM FOX, Board Member  
DANA VETTERHOFFER, IEPA  
KYLE SOTTORIVA, IEPA  
DAVID LORING, Rain Carbon  
BYRON TAYLOR, East Dubuque Nitrogen Fertilizer  
ANDREW SAWULA, Midwest Generation & Dynergy  
MELISSA BROWN, Environmental Regulatory Group  
ALEC MESSINA, American Petroleum Institute  
JASON E. JAMES, Illinois Attorney General's Office  
MOLLY KORDAS, Illinois Attorney General's Office  
JUSTIN BERTSCHE, Illinois Attorney General's Office

## I N D E X

WITNESS RORY DAVIS

EXAMINATION BY:

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WITNESS STEPHEN NORFLEET

EXAMINATION BY:

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WITNESS BRYAN HIGGINS

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(Exhibits retained by Hearing Officer.)

1                   HEARING OFFICER: Good morning everyone and  
2 welcome to the Illinois Pollution Control Board  
3 hearing.

4                   My name is Chloe Salk, and I am the  
5 hearing officer for this rulemaking proceeding  
6 entitled Amendments to 35 Illinois Administrative  
7 Code 201, 202, and 212. The Board docket number  
8 for this rulemaking is R23-18(A).

9                   To get started, I want to quickly  
10 go through three preliminary items: Introductions,  
11 the procedure to date, and then housekeeping,  
12 including the order in which we'll plan to proceed.

13                  First, introductions. Present  
14 today from the Board are Board Member Michelle  
15 Gibson, the lead board member assigned to this  
16 docket, and Board Member Jennifer VanWie. And then  
17 present from the Board staff are Anand Rao of the  
18 Board's technical staff, and Tim Fox, who is in the  
19 audience today.

20                  Second, the Board's procedure to  
21 date. The Board held the first meeting in this  
22 matter on September 27th, 2023, and the second  
23 hearing on November 1st, 2023.

24                  On October 26th, 2023, the Illinois

1 Attorney General's Office filed a motion requesting  
2 a third hearing in this sub docket. On November  
3 16th, 2023, the Board granted the Attorney  
4 General's Office motion requesting a third hearing.

5 Today we are holding the third  
6 hearing in this matter.

7 In the order scheduling this  
8 hearing, the hearing officer directed participants  
9 to file responses to the Illinois Environmental  
10 Protection Agency, or IEPA's request for  
11 information and any pre-filed testimony no later  
12 than March 15th.

13 On March 15th, the Board received  
14 responses to IEPA's request for information from  
15 Dynegy and Midwest Generation, American Petroleum  
16 Institute, or API, and Citgo Petroleum, Rain  
17 Carbon, and East Dubuque Nitrogen Fertilizer, or  
18 EDNF.

19 Also on March 15th, Dynegy and  
20 Midwest Generation filed the testimony of Stephen  
21 Norfleet, and Rain Carbon filed the testimony of  
22 Bryan Higgins.

23 On March 22nd, Dynegy and Midwest  
24 Generation filed a final comment in response to

1 IEPA's request for information and filed the  
2 supplemental testimony of Stephen Norfleet.

3 On April 2nd, IEPA filed the  
4 testimony of Rory Davis.

5 The hearing officer also directed  
6 participants to pre-file questions based on  
7 responses to IEPA's request and pre-filed testimony  
8 by April 8th.

9 On that date, the Board received  
10 pre-filed questions from the Attorney General's  
11 Office, the Illinois Environmental Regulatory  
12 Group, or IERG, and API and Citgo. In a hearing  
13 office order on that date, the Board also submitted  
14 a question.

15 On April 12th, EDNF filed written  
16 responses to these questions. These response were  
17 not required, but they are helpful in expediting  
18 the hearing, and the Board appreciates the time and  
19 effort of the participants' staff and counsel.

20 The Board posted all these  
21 documents to its Clerk's Office On-Line, or COOL,  
22 under this docket number R23-18(A) as they were  
23 filed.

24 And on to our housekeeping for the

1 hearing. This hearing is governed by the Board's  
2 procedural rules. Under Section 102.426 of those  
3 rules, all information that is relevant and not  
4 repetitious or privileged will be admitted by the  
5 hearing officer into the record.

6 Please bear in mind that any  
7 questions posed today by the Board and its staff  
8 are intended solely to help develop a clear and  
9 complete record for the Board's decision, and those  
10 questions do not reflect any determination or  
11 judgment on the proposal, testimony, or questions.

12 For the sake of our court reporter,  
13 please speak clearly and avoid speaking at the same  
14 time as another person so that we can help produce  
15 a clear transcript. If you are asking a question,  
16 please state your name and the organization you  
17 represent prior to any questions.

18 Also, if talking about sections of  
19 the rules, please spell out the section letter such  
20 as 620.101(D), as in dog.

21 Ms. Court Reporter, please feel  
22 free to stop me or anyone else at any point if we  
23 are going too fast, talking too softly, or if you  
24 need something repeated.

1                   There is a sign-in sheet over by  
2   the door for anyone who wants to sign up for public  
3   comments. So if there are any members of the  
4   public in person here today, please go ahead and  
5   write your name on the list.

6                   As a reminder, anyone can submit  
7   written public comments on the Board's Clerk's  
8   Office On-Line system. The board weighs oral and  
9   written public comments equally.

10                  As to the order of today's  
11   proceeding, we'll call the following witnesses in  
12   this order. First will be Rory Davis with IEPA,  
13   then Steven Norfleet with Dynegy and Midwest  
14   generation, then Bryan Higgins with Rain Carbon,  
15   and then EDNF's witness.

16                  After being duly sworn in, the  
17   pre-filed testimony will be entered into the record  
18   as if read under Section 102.424(f) of the Board's  
19   procedural rules.

20                  We will then turn to questions for  
21   each witness, with pre-filed questions from the  
22   Attorney General's Office first, then IERG, API and  
23   Citgo's, any questions from any other participants,  
24   and then the Board's questions.

1                   At the end of the hearing, I'll ask  
2   if there are any public comments from members of  
3   the public.

4                   I anticipate breaking for an hour  
5   for lunch, if we're still going by then, from 12:30  
6   to 1:30, and another short afternoon break around  
7   3:00 if we're still going at that point. And if we  
8   haven't finished with questions and public  
9   questions already, we'll end today around 5:00 PM.

10                  Are there any questions about the  
11   order of proceeding? Seeing none, we will turn to  
12   testimony and questions.

13                  All right. We will start with Rory  
14   Davis with IEPA. If you could please come and sit  
15   up in the front row.

16                  Good morning. Okay. Would the  
17   court reporter please swear in the witness.

18                  COURT REPORTER: Would you raise your right  
19   hand, please.

20                               (Witness sworn.)

21                               RORY DAVIS,  
22   having been first duly sworn, was examined and  
23   testified as follows:

24                  HEARING OFFICER: As mentioned earlier, this



1 witness's testimony is entered into the record as  
2 if read and is entered as Hearing Exhibit A.

3 (Hearing Exhibit A identified.)

4 HEARING OFFICER: All right. We will  
5 proceed with questions first from the Attorney  
6 General's Office. If you would like to step up to  
7 the podium.

8 And then please state your name for  
9 the court reporter.

10 MR. JAMES: Good morning. I'm Jason James  
11 from the Illinois Attorney General's office.

12 DIRECT EXAMINATION

13 BY MR. JAMES:

14 MR. JAMES: Good morning, Mr. Davis.

15 MR. DAVIS: Good morning.

16 MR. JAMES: We pre-filed a couple of  
17 questions ahead of time, and hopefully you've had a  
18 chance to take a look at those.

19 MR. DAVIS: Yes.

20 MR. JAMES: Great. So I'll just basically  
21 paraphrase what we have written and then please  
22 provide your answer.

23 In your written testimony  
24 concerning IERG's proposal --

1 COURT REPORTER: Concerning?

2 MR. JAMES: Sure. IERG, which is an  
3 abbreviation for Illinois Environmental Regulatory  
4 Group, IERG.

5 You testified that their proposal  
6 failed to specify sources or units that have an  
7 actual need for regulatory relief.

8 How does the lack of specificity  
9 prevent you from determining which facilities could  
10 be affected by the proposal and how could they be  
11 affected?

12 MR. DAVIS: The lack of specificity would  
13 not prevent the Agency from determining the  
14 universe of sources that could be potentially  
15 affected by the proposal. IERG's proposal would  
16 affect all fuel combustion emission sources greater  
17 than 10 million BTU.

18 Based on the information available  
19 to the Agency, approximately 3,900 units at  
20 approximately 1,500 sources across Illinois would  
21 potentially be impacted. This statement in the  
22 Agency's testimony concerned our inability to  
23 assess whether relief from currently applicable  
24 emission standards is even necessary, and to the

1 extent it is, for which sources and what the  
2 individual and cumulative impact on air quality  
3 would be.

4 Absent this information, the Agency  
5 cannot ensure or represent to USEPA that there will  
6 be no adverse impact on air quality. The Agency  
7 also pointed out that the proposal is so broad it  
8 does not appear to satisfy USEPA's criteria for  
9 review of AELs, or alternative emission limits,  
10 concerning specific narrowly defined source  
11 categories.

12 MR. JAMES: Thank you. I'll move on to part  
13 (b) of that question.

14 So how did you suggest to IERG how  
15 to more specifically describe the affected  
16 facilities or otherwise change to improve their  
17 proposal, and how did they respond?

18 MR. DAVIS: The Agency communicated the same  
19 concerns to IERG as were conveyed to the Board  
20 about the proposal, and those communications began  
21 prior to the initial filings in this proceeding.

22 Most recently, the Agency  
23 reiterated to IERG that it should narrow the scope  
24 of its rulemaking proposal to those facilities that

1 are actually in need of relief as supporting data  
2 could be ascertained from those facilities and  
3 emissions impact could be assessed.

4 Generally, representatives of IERG  
5 indicated that they would consider the suggestions,  
6 but would likely not be identifying specific  
7 facilities in need of relief or providing  
8 facility-specific information.

9 MR. JAMES: Thank you. Then I'll go to  
10 Number 2. You also testified IERG failed to  
11 provide sufficient technology support justifying  
12 the proposal, including technical support  
13 demonstrating impact of emissions that would be  
14 allowed under the proposal.

15 How would the additional info that  
16 you requested help measure the emissions allowed  
17 under IERG's proposal?

18 MR. DAVIS: The additional information would  
19 presumably include analysis of worst-case emission  
20 scenarios and impact on air quality. These  
21 analyses would be similar to those provided by  
22 other proponents in this rulemaking and include  
23 data indicating what worst-case emissions are  
24 during startup and shutdown of affected units and

1 an analysis of the impacts of those episodes on air  
2 quality.

3 MR. JAMES: Thank you. Then 2(b), Without  
4 this additional support, is it possible to  
5 determine the extent to which IERG's proposal is  
6 effective in reducing emissions?

7 MR. DAVIS: No, it is not possible to  
8 determine emissions impact from the large number of  
9 sources that would be affected by the proposal.

10 MR. JAMES: Thank you. And my last question  
11 is Number 3. In February of this year, the U.S.  
12 Environmental Protection Agency, that's USEPA,  
13 strengthened the National Ambient Air Quality  
14 Standards, that's NAAQS, N-A-A-Q-S, for particulate  
15 matter, also known as PM. So that rule I'll call  
16 the PM NAAQS, spelled P-M N-A-A-Q-S.

17 USEPA's new PM NAAQS lowered the  
18 primary annual particulate matter 2.5 standard down  
19 to 9 ug/m. I'll skip that citation.

20 Will this new more stringent PM  
21 NAAQS affect any determination made by IEPA from  
22 your testimony which you submitted prior to the  
23 finalization of the new PM NAAQS that the proposed  
24 AEL will not interfere with any NAAQS either now or

1 in the future?

2 MR. DAVIS: The Agency did consider the new  
3 2.5 NAAQS, or National Ambient Air Quality  
4 Standards, when evaluating the impacts of the  
5 proposal. The new standard should not impact any  
6 determinations that have been conveyed to the  
7 Board. States' obligations under the new NAAQS are  
8 still in the process of being assist -- assessed.

9 It is always possible that rule  
10 revisions may be needed in the future to meet this  
11 or subsequent NAAQS, but it should not have any  
12 impact on the current proceeding.

13 MR. JAMES: Thank you. That's all my  
14 questions.

15 HEARING OFFICER: All right. We will have  
16 IERG come up next for questions.

17 DIRECT EXAMINATION

18 BY MS. BROWN:

19 MS. BROWN: Good morning. Melissa Brown of  
20 the Illinois Environmental Regulatory Group, also  
21 known as IERG, I-E-R-G.

22 Thank you for being here,  
23 Mr. Davis. Good morning.

24 So going to the first question. Is

1 the Agency aware of the U.S. Court of Appeals for  
2 the District of Columbia's decision issued on  
3 March 1st, 2024, which involved petitions for  
4 review of USEPA's startup, shutdown, and  
5 malfunction, abbreviated as SSM, State  
6 Implementation Plan, abbreviated as S-I-P or SIP,  
7 SIP call?

8 MR. DAVIS: Yes. Yes, we are.

9 MS. BROWN: Has the Agency had any  
10 discussions with USEPA about the March 1st, 2024,  
11 decision?

12 MR. DAVIS: We have had brief discussions,  
13 yes.

14 MS. BROWN: And what do those discussions  
15 entail?

16 MR. DAVIS: That is a follow-up to what was  
17 in here. In general, those discussions have been  
18 regarding what USEPA thinks the impact is on  
19 Illinois. The ruling has a number of categories.  
20 We have asked what category they believe we may  
21 have fallen into, although we're not -- Illinois  
22 was not party to the suit, and so we're in  
23 discussions with USEPA as to how the decision  
24 impacts us now and possibly in the future, if at

1 all.

2 MS. BROWN: And so just to follow up, at  
3 this time have -- so those discussions are ongoing,  
4 or have they come to a conclusion as to how  
5 proceedings might be impacted?

6 MR. DAVIS: They are ongoing.

7 MS. BROWN: And just another follow-up.  
8 Have -- are those discussions still ongoing as to  
9 which category Illinois' provisions might fall in,  
10 or is that still ongoing?

11 MR. DAVIS: Yeah. They are general  
12 discussions. I don't know that exactly which  
13 category we might fall into is relevant at this  
14 time because we weren't a party to the suit. We --  
15 and I don't know how much I should speak to legal  
16 conclusions.

17 She says I shouldn't.

18 But, yeah, general discussions as  
19 to, you know, how the decision may impact how they  
20 view things in the future about what we may be  
21 doing in the SSM realm, I guess.

22 MS. BROWN: 3, Is the Agency aware of what  
23 USEPA may do as a result of the March 1st, 2024,  
24 decision? For example, petition for rehearing,



1 appeal the decision, or reissue the SSM SIP, S-I-P,  
2 call.

3 MR. DAVIS: No, we are not.

4 MS. BROWN: 4, Do you agree that the 2015  
5 SSM SIP call and the 2022 finding of failure were  
6 the basis of the Agency's proposal and the Board's  
7 decision to adopt the Agency's proposal in  
8 PCB R23-18?

9 MR. DAVIS: Yes.

10 MS. BROWN: Number 5, Did the Agency submit  
11 the amendments adopted in PCB R23-18 to USEPA for  
12 approval as a SIP revision? And if so, what is the  
13 status of that submittal and USEPA's approval of  
14 the submittal?

15 MR. DAVIS: Yes, we did submit them.  
16 Region 5 is working toward a proposed approval of  
17 the SIP submittal.

18 MS. BROWN: Number 6, Will the D.C. Circuit  
19 Court's March 1st, 2024, opinion impact USEPA's  
20 approval of the Illinois SIP revision?

21 MR. DAVIS: The Agency is not in a position  
22 to opine on what, if any, impact the decision may  
23 have on USEPA's approval of Illinois' R23-18 SIP  
24 submittal, but we would note that to the Agency's

1 knowledge, Illinois' SIP call is still in effect.

2 MS. BROWN: And as a follow-up to that, is  
3 any potential impact to USEPA's approval of  
4 Illinois' SIP revision part of the discussions  
5 between Illinois EPA and USEPA?

6 MR. DAVIS: We did discuss that generally.  
7 I don't think we have specific knowledge. I would  
8 expect that it would not have much impact as we  
9 submitted a -- submitted revisions that had  
10 adequately addressed the original SIP call.

11 MS. BROWN: Number 7, Has the Agency  
12 considered potentially withdrawing the SIP  
13 submittal concerning the amendments adopted in  
14 PCB R23-18 as a result of the D.C. Circuit Court's  
15 March 1st, 20 -- that should be 2024 decision?

16 If yes, has the Agency considered  
17 potentially submitting a proposal to the Board to  
18 reinstate the startup, malfunction, and breakdown  
19 provisions that were removed and revised in  
20 PCB R23-18?

21 MR. DAVIS: The Agency does not intend to  
22 withdraw its SIP submittal or to propose  
23 regulations to the Board seeking repromulgation of  
24 the previous SSM provisions. To the Agency's

1 knowledge, Illinois' SIP call is still in effect.

2                   Regardless, though, the Board  
3 repealed SSM provisions in 23-18 in compliance with  
4 all applicable regulatory requirements. The rules  
5 are final and effective and will remain so unless  
6 and until amendments are adopted in a future  
7 rulemaking proceeding. SIP approval of the rules  
8 will ensure consistency at the state and federal  
9 levels.

10           MS. BROWN: Number 8, Has the Agency  
11 considered whether the D.C. Circuit Court's  
12 decision will have any impact on the seven criteria  
13 for AELs outlined by USEPA in the 2015 SIP call,  
14 and 2013 proposed rule, which references a 1999  
15 USEPA guidance document?

16           MR. DAVIS: The Agency is not in a position  
17 to opine on what, if any, impact the decision may  
18 have on USEPA's AEL criteria. As noted in the  
19 question, however, the bulk of the AEL criteria  
20 USEPA set forth as part of its SSM policy,  
21 including the criteria regarding narrowly defined  
22 source categories and worst-case emissions  
23 analysis, has been in existence for decades. The  
24 SSM policy was simply updated in USEPA's 2015 SIP

1 call action.

2                   The SSM policy is considered  
3 nonbinding guidance. It's possible that the USEPA  
4 will amend its SSM policy in response to the D.C.  
5 Court's decision or will implement its SSM policy  
6 in such a way that takes into consideration  
7 relevant aspects of the decision, but the Agency's  
8 current understanding is that USEPA will be  
9 utilizing the same or similar criteria previously  
10 identified in assessing alternative emission  
11 limits.

12               MS. BROWN: Thank you very much.

13               HEARING OFFICER: Next we'll have API and  
14 Citgo.

15                               DIRECT EXAMINATION

16 BY MR. MESSINA:

17               MR. MESSINA: Good morning. My name is Alec  
18 Messina, A-L-E-C M-E-S-S-I-N-A, on behalf of both  
19 API and Citgo. And I will thank my law partner,  
20 Melissa Brown, for covering most of the D.C.  
21 Circuit questions. So I'll just focus on the first  
22 three questions that were included in the pre-filed  
23 questions.

24                               Mr. Davis, on page 15 of your

1 pre-filed testimony, it indicated that based on the  
2 additional technical support and justification that  
3 had been provided, the Agency does not object to  
4 the adoption of the rule proposal as set forth in  
5 API's March 15, 2024, filing with the Board.

6 As our March 15, 2024, proposal, or  
7 filing, included the most up-to-date proposed  
8 alternate emission limitation language in  
9 216.361(d), as in David, but did not set forth  
10 API's proposed revisions to Sections 216.103 and  
11 216.104.

12 Does the Agency also not object to  
13 API's proposal in relation to those sections?

14 MR. DAVIS: That's correct.

15 MR. MESSINA: Thank you. The second  
16 question, API requests that the Agency elaborate on  
17 its statement that it does not object to the  
18 adoption of the rule proposal. So I will refer to  
19 (a), (b), and (c) included in the pre-filed  
20 questions.

21 Does this statement imply that the  
22 Agency believes that USEPA's criteria for AEL are  
23 met as to the proposal?

24 MR. DAVIS: The Agency does not object if

1 the Board decides to adopt the proposed language,  
2 the current proposal, along with the additional  
3 support provided as the Agency has not identified  
4 problematic emissions impacts from the proposal and  
5 is not aware of any potential issues with USEPA  
6 approval.

7 So to part (a), yes, based on our  
8 current understanding of those criteria, yes, that  
9 statement does imply.

10 MR. MESSINA: Thank you very much.

11 Does this statement imply that the  
12 Agency's statement on page 12 of its October 23rd,  
13 2023, comment that the proposal by API has  
14 significant issues, would you now say that that  
15 concern has been resolved based upon those  
16 responses and further review by the Agency?

17 MR. DAVIS: Yes.

18 MR. MESSINA: Is the Agency's statement  
19 based in part on any conversations that they have  
20 had with USEPA?

21 MR. DAVIS: Yes. The Agency has not had  
22 detailed discussions with USEPA regarding the  
23 individual proposals. However, the Agency did  
24 request any comments USEPA Region 5 staff could

1 provide on the most recent proposals and support  
2 that have been shared with the Agency and submitted  
3 to the Board.

4 To date there has been no response,  
5 but Region 5 staff are aware that the Agency  
6 believes that certain proposals and support satisfy  
7 USEPA's AEL criteria.

8 MR. MESSINA: Thank you very much.

9 And then finally my last question.  
10 If the Board chooses to adopt ATI's and Citgo's  
11 proposal, does the Agency intend to submit API's  
12 AEL language to USEPA for approval as a State  
13 implementation plan revision?

14 MR. DAVIS: Yes. However, Region 5 has not  
15 yet identified whether the proposed AEL is likely  
16 approvable. If the Agency learns that the AEL is  
17 likely not approvable, the Agency may reassess  
18 submitting it to the USEPA as a SIP revision.

19 MR. MESSINA: Okay. Thank you.

20 HEARING OFFICER: Thank you. All right.

21 Before we go to the Board's question, I just want  
22 to check if there are any other questions from any  
23 other participants for this witness.

24 Okay. Seeing none, we'll go to the

1 Board's question.

2 MR. RAO: I think the Board's question has  
3 been answered in response to Ms. Brown's series of  
4 questions. So I don't think there's any need to  
5 repeat it.

6 HEARING OFFICER: All right. Then we'll  
7 just move on. Thank you guys so much.

8 So the next witness is Stephen  
9 Norfleet with Dynegy and Midwest Generation. If  
10 you could please come up to the front first row.

11 Would the court reporter please  
12 swear in the witness.

13 COURT REPORTER: Would you raise your right  
14 hand, please.

15 (Witness sworn.)

16 HEARING OFFICER: Okay. As mentioned  
17 earlier, the witness's testimony is entered into  
18 the record as if read and is entered as Hearing  
19 Exhibit B.

20 (Hearing Exhibit B identified.)

21 HEARING OFFICER: All right. We'll proceed  
22 with questions first from the Attorney General's  
23 Office.

24



1                   STEPHEN NORFLEET,  
2   called as a witness herein, having been first duly  
3   sworn, was examined and testified as follows:

4                   DIRECT EXAMINATION

5   BY MS. KORDAS:

6                   MS. KORDAS:   Good morning.   I'm Molly  
7   Kordas, M-O-L-L-Y   K-O-R-D-A-S, with the Illinois  
8   Attorney General's Office.

9                   We have just one question, and this  
10   is a follow-up from a previous hearing and  
11   comments.

12                   The joint proposal in part relies  
13   upon compliance with work practices as a condition  
14   to using an alternative averaging period.  
15   Specifically can you explain what is meant by,  
16   quote, good engineering practices, end quote?

17                   MR. SAWULA:   This is Andrew Sawula,  
18   S-A-W-U-L-A, from Arentfox Schiff, A-R-E-N-T-F-O-X,  
19   second word is S-C-H-I-F-F, on behalf of Dynegy and  
20   Midwest Generation.

21                   That question was asked in  
22   identical wording at the first hearing and answered  
23   at that time.   And it's also a question, a topic  
24   that our expert -- that our technical consultant

1 did not opine on or was answered by both of the  
2 companies at that time.

3 MS. KORDAS: Okay. Just one follow-up on  
4 that. JCAR did specifically request in their email  
5 filed on September 7th, 2023, specifically  
6 requested of the Board, please incorporate by  
7 reference the standard to be enforced.

8 Can you elaborate on that at all?

9 MR. SAWULA. Yes. As I indicated at this  
10 first hearing, we would address that comment and  
11 respond in our post-hearing comments.

12 MS. KORDAS: Thank you. That's all of our  
13 questions.

14 HEARING OFFICER: Thank you. Are there any  
15 other questions from any other participants? No.

16 Then we'll go to the Board's  
17 questions. Or unless you still want to skip it.

18 Okay. Then we're all set for that.  
19 Thank you.

20 Okay. Next we have Bryan Higgins  
21 with Rain Carbon.

22 Good morning. Will the court  
23 reporter please swear in the witness.

24 COURT REPORTER: Would you raise your right

1 hand, please.

2 (Witness sworn.)

3 HEARING OFFICER: As mentioned earlier, the  
4 witness's testimony is entered the into the record  
5 as if read and is entered as Hearing Exhibit C.

6 (Hearing Exhibit C identified.)

7 HEARING OFFICER: We will again proceed with  
8 questions first from the Attorney General's Office.

9 BRYAN HIGGINS,  
10 called as a witness herein, having been first duly  
11 sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BERTSCHE:

14 MR. BERTSCHE: Good morning. My name is  
15 Justin Bertsche, B-E-R-T-S-C-H-E, with the Illinois  
16 Attorney General's Office. Thank you for being  
17 here.

18 I'll begin by reading Question 1.  
19 IEPA's comments filed on October 23rd, 2023, note  
20 that, quote, Rain Carbon did not sufficiently  
21 demonstrate why a three-hour averaging period would  
22 be necessary to comply with the opacity standard,  
23 unquote.

24 In response, Rain Carbon noted the

1 difference between typical startup conditions and  
2 the conditions during the July 2023 engineering  
3 study. Rain Carbon did not otherwise demonstrate  
4 why a three-hour averaging period would be  
5 necessary to comply with the opacity standard.

6 Does Rain Carbon believe further  
7 demonstrations needed to justify its proposed AEL  
8 for opacity? If not, please explain.

9 MR. HIGGINS: Further demonstration is not  
10 needed to support the proposed standard. The July  
11 2023 engineering study was conducted during a  
12 representative startup, but that does not mean that  
13 future startups will be identical to the July 2023  
14 engineering study.

15 As we have previously explained,  
16 startups can begin at temperatures lower than what  
17 occurred during the engineering study. Opacity  
18 levels are higher at these lower temperatures,  
19 between 400 and 600 degrees Fahrenheit, and, as  
20 demonstrated in the supplemental technical support  
21 document, could require multiple hours before  
22 compliance with the opacity standard occurs.  
23 Therefore, the proposed three-hour averaging period  
24 is necessary to accommodate reasonably likely

1 future startup scenarios.

2 MR. BERTSCHE: Question 2, and relating to  
3 this first question: Given that Rain Carbon's July  
4 2023 engineering study differed from typical  
5 operating conditions, (a) can Rain Carbon discuss  
6 why the July 2023 engineering study was conducted  
7 under what I call atypical conditions?

8 MR. HIGGINS: It is incorrect to  
9 characterize the July 2023 engineering test as  
10 atypical. The engineering study was conducted  
11 under a representative startup, as previously  
12 noted, and further testing is not necessary to  
13 support any of the proposed alternative emission  
14 limits.

15 As detailed in a supplemental  
16 technical support document, the data collected  
17 during the engineering test was sufficient to  
18 develop a strong correlation between temperature  
19 and volatile organic matter emissions. That  
20 allowed extrapolation of that data to determine  
21 representative emission rates at 400 degrees  
22 Fahrenheit.

23 Similarly, the collected data was  
24 sufficient to develop a strong correlation between

1 temperature and particulate matter that allowed  
2 interpolation between known emission rates at known  
3 temperatures to determine representative emission  
4 rates between 1370 and 1800 degrees Fahrenheit.

5               These correlations allowed Rain  
6 Carbon to utilize emissions data from one  
7 representative startup to determine emissions that  
8 would occur during all reasonably likely startup  
9 events. This ensured that the NAAQS  
10 noninterference demonstration supporting Rain  
11 Carbon's proposed alternative emission limits was  
12 representative of all foreseeable startup events.

13           MR. BERTSCHE: Part (b), Does Rain Carbon  
14 believe the differences between the July 2023  
15 engineering study and typical operating conditions  
16 justify a new engineering study conducted under  
17 typical operating conditions? If not, please  
18 explain.

19           MR. HIGGINS: No, and I believe I've already  
20 explained.

21           MR. BERTSCHE: Question 3, In calculating  
22 its AEL for PM, Rain Carbon includes the variable,  
23 quote, malfunction --

24           COURT REPORTER: I'm sorry. Can you speak

1 up?

2 MR. BERTSCHE: Yes. Rain Carbon includes  
3 the variable malfunction remainder hours, which  
4 Rain Carbon defines as, quote, the difference  
5 between 24 hours and the actual duration of each  
6 malfunction/breakdown event, unquote.

7 Previously Rain Carbon noted that,  
8 quote, kiln malfunctions and breakdowns occur  
9 periodically at the facility generally taking the  
10 pyroscrubber between 1800 degrees Fahrenheit for  
11 shorter periods of time; e.g., four to five hours.

12 Please explain why malfunction  
13 remainder hours should be defined as the difference  
14 between 24 hours and the actual duration of each  
15 malfunction or breakdown event rather than the  
16 difference between four to five hours and the  
17 actual duration of each malfunction or breakdown  
18 event.

19 MR. HIGGINS: The approach used by Rain  
20 Carbon is correct to ensure that the proposed limit  
21 accommodates potential future malfunction and  
22 breakdown events. It is possible that malfunction  
23 or breakdown events last up to 24 hours.

24 By permit, Rain Carbon can operate

1 up to 24 hours while the pyroscrubber inlet  
2 temperature is below 1800 degrees Fahrenheit on a  
3 three-hour rolling average. Thus, to account for  
4 potential future operating scenarios and the  
5 proposed alternative emission limit, it was  
6 appropriate to extrapolate historic malfunction  
7 breakdown hours up to the potential 24-hour length  
8 of those events.

9 MR. BERTSCHE: One follow-up to that  
10 response. In Rain Carbon's April 8th, 2024,  
11 filing, which is titled Rain Carbon's second  
12 supplemental response to Illinois EPA's comments,  
13 there's a table on page -- I forgot the number. I  
14 guess it would be of the PDF page 1, 2, 3, 4 -- 5  
15 of the PDF.

16 The table includes five malfunction  
17 and breakdown events, historical malfunction and  
18 breakdown events at the facility, none of which are  
19 24 hours. They last I think -- the longest  
20 duration was 8.75 hours.

21 Does Rain Carbon believe that a  
22 24-hour breakdown event is possible, or is Rain  
23 Carbon aware of any 24-hour breakdown or  
24 malfunction event?



1 MR. HIGGINS: Yeah, that's possible.

2 MR. BERTSCHE: Okay. Thank you. That's all  
3 my questions.

4 HEARING OFFICER: Thank you. All right.  
5 Are there any other questions from any other  
6 participants?

7 Okay. And we're going to skip the  
8 Board's question again. So thank you guys so much.

9 And before calling up EDNF, I just  
10 wanted to check since they did file written  
11 responses if there are any follow-up questions  
12 anyone has.

13 No? All right. Then we will skip  
14 that and go to public comments.

15 Is there anyone here who would like  
16 to provide a public comment? If so, please raise  
17 your hand or say something.

18 Okay. I'm not seeing any. Okay.

19 All right. Then I would like to go  
20 off the record for just a minute just to address a  
21 few procedural issues before we adjourn.

22 (Discussion off the record.)

23 HEARING OFFICER: All right. We're back on  
24 the record after a brief discussion of procedural

1 matters.

2 Copies of the transcript are  
3 expected to be available at the Board by Monday,  
4 April 22nd. Once it's filed with the Board, the  
5 transcript will be posted promptly to the Board's  
6 website under this docket number R23-18(A).

7 Before it takes action on the  
8 proposals, the Board will hold open a post-hearing  
9 comment period. Post-hearing comments will be due  
10 30 days after the Board receives this transcript.

11 When the Board receives the  
12 transcript, we will issue a hearing officer order  
13 confirming this deadline for post-hearing comments.

14 Filings with the Board, whether  
15 paper or electronic, must also be served on the  
16 hearing officer and those persons on the service  
17 list. Before filing please check on COOL or with  
18 the Board's Clerk to ensure that you have the most  
19 recent version of the service list.

20 Are there any other matters that  
21 need to be addressed at this time?

22 Okay. Seeing none, thank you  
23 everyone for participating. The third hearing is  
24 adjourned.



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