

ILLINOIS POLLUTION CONTROL BOARD  
June 21, 2012

DYNEGY MIDWEST GENERATION, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 12-135
	)	(Variance - Air)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by J.A. Burke):

On June 8, 2012, Dynegy Midwest Generation, LLC (Dynegy), filed a petition for a variance (Petition) seeking relief until April 1, 2015, from certain provisions of the Illinois Multi-Pollutant Standard (MPS), 35 Ill. Adm. Code § 225.233, “applicable to vintage 2013 and 2014 sulfur dioxide (SO<sub>2</sub>) allowances allocated by the U.S. Environmental Protection Agency (USEPA) or the Illinois Environmental Protection Agency (Agency) under the Cross-State Air Pollution Rule (CSAPR).” Pet. at 1.

Dynegy requests this variance for its MPS group consisting of electricity generating units (EGUs) at five separate facilities. Pet. at 1. The Dynegy MPS group includes the following five coal-fired electric generating plants: Baldwin Energy Complex (Randolph County), Havana Power Station (Mason County), Hennepin Power Station (Putnam County), Wood River Power Station (Madison County), and Vermilion Power Station (Vermilion County). *Id.*, FN 1. Dynegy includes the Vermilion Power Station in this request because of any possible ambiguity regarding its continued membership in Dynegy’s MPS group, even though the facility was permanently retired in November, 2011. *Id.*

Specifically, Dynegy seeks a variance

from the MPS requirement in Section 225.233(f)(2) that prohibits owners or operators of [EGUs] in an MPS Group[] from selling or trading to or otherwise exchanging with any person SO<sub>2</sub> allowances allocated to EGUs starting with vintage year 2013 that would otherwise be available for sale or trade as a result of actions taken to comply with the SO<sub>2</sub> emission standards in MPS Section 225.233(e)(2) (requiring, in 2013 and 2014, that EGUs in an MPS Group comply with an overall SO<sub>2</sub> annual emission rate of 0.33 lb/million Btu or a rate equivalent to 44 percent of the Base Rate of SO<sub>2</sub> emissions, whichever is more stringent). Additionally, [Dynegy] requests a variance from the companion requirement in that same section, 225.233(f)(2), that [Dynegy] surrender such excess SO<sub>2</sub> allowances to the Agency. *Id.* at 1-2.

Dynegy seeks the variance for the period from the date of the Board's order granting the petition until April 1, 2015, applied to vintage 2013 and 2014 SO<sub>2</sub> allowances. *Id.* at 1.

Dynegy requests this variance

because surrendering, during the first two years of implementation of the CSAPR, a large quantity of SO<sub>2</sub> allowances with significant economic value generated by [Dynegy's] significant capital investments in SO<sub>2</sub> pollution control equipment deprives [Dynegy] of that significant economic value, causing [Dynegy] unreasonable hardship. Pet. at 17.

The Board acknowledges receipt of Dynegy's petition for variance but makes no determination on the informational sufficiency or merits of the petition. *See* 35 Ill. Adm. Code 104.204, 104.208. The Board, through orders of its own or its hearing officer, may direct Dynegy to provide additional information concerning the petition.

The Environmental Protection Act requires the Agency to provide public notice of a variance petition, including notice by publication in a newspaper of general circulation in the county where the facility is located within 14 days after the petition is filed. 415 ILCS 5/37(a) (2010); 35 Ill. Adm. Code 104.214. The Agency is also required to file its recommendation on the variance with the Board within 45 days after the filing of the petition, or at least 30 days prior to a scheduled hearing, whichever is earlier. 35 Ill. Adm. Code 104.216. Dynegy's petition was filed on June 8, 2012. Therefore, newspaper notice is required by Friday, June 22, 2012. The Agency recommendation is currently due Monday, July 23, 2012. Within 14 days after service of the Agency's recommendation, Dynegy may file a response to the Agency recommendation or an amended petition. 35 Ill. Adm. Code 104.220.

Dynegy does not request a hearing because the "[p]etition, including its exhibits, sufficiently informs the Board of the issues involved without the need for a hearing" and "because the variance is not subject to any federal Clean Air Act requirements." Pet. at 28. The Board will hold a hearing on the variance petition (1) if the petitioner requests a hearing, (2) if the Agency or any other person files a written objection to the variance within 21 days after the newspaper notice publication, together with a written request for hearing, or (3) if the Board, in its discretion, concludes that a hearing would be advisable. 415 ILCS 5/37(a) (2010); 35 Ill. Adm. Code 104.224, 104.234.

To avoid undue delay, the Board will assign a hearing officer to manage this case in advance of any Board decision to hold hearing in this matter. The assigned hearing officer is responsible for guiding the parties toward prompt resolution of this matter through whatever status calls and hearing officer orders she determines are necessary and appropriate. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/38(a)), which only Dynegy may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Dynegy may deem the requested variance granted for a period not to exceed one year. *See* 415 ILCS 5/38(a) (2010). Currently, the decision deadline is October 6, 2012. *See* 35 Ill. Adm. Code 104.232. The Board meeting immediately before the decision deadline is scheduled for October 4, 2012.

IT IS SO ORDERED.

CHAIRMAN HOLBROOK ABSTAINED

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 21, 2012, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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John Therriault, Assistant Clerk  
Illinois Pollution Control Board