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STATE OF ILLINOIS  
Pollution Control Board

PCB 13-024  
(Variance-Air)

All Parties on the attached service list

By:

Joseph L. Lakshmanan  
Managing Director  
Dynegy Operating Company  
133 South 4<sup>th</sup> Street, Suite 306  
Springfield, IL 62701-1232  
217-492-6601

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<sup>2</sup> Petition at p. 2.

commitments and investments. Additionally, Midwest Gen previously agreed to the CPS requirements that it now seeks to avoid as part of the State's negotiated emission standards with the three major coal-fired power generating entities in Illinois. Midwest Gen has already benefitted and will continue to benefit from the CPS it negotiated and agreed to. The Board should not now reopen Midwest Gen's negotiated agreement and confer additional material financial benefit on Midwest Gen; rather, the Board should hold Midwest Gen to its end of the bargain and avoid regulatory intervention that would, in effect, pick winners and losers in the competitive electricity generating market. Lastly, while Midwest Gen proposes not to operate one of its facilities to achieve, in part, a net overall reduction in emissions under the requested variance, the proposed emissions reductions associated with this currently non-operational facility are nothing more than the result of poor market conditions that already have, and inevitably would have, curtailed operations at this uneconomic power generating facility regardless of other forces.

Dynegy has a direct and material interest in this Petition. Dynegy's footprint in Illinois includes seven power generation facilities,<sup>3</sup> with nearly 500 full-time employees, annual investments of more than \$200 million into the local economies<sup>4</sup> and the capacity of producing approximately 4,300 megawatts of low cost, reliable energy for consumers. Dynegy directly competes with Midwest Gen in the power generation markets. Unlike traditional utility-owned generation, Dynegy is purely a merchant generator owner, with its market and investment risks assumed solely by private investors, and without captive rate-paying customers onto whom it can pass costs. Thus, Dynegy strongly supports fair, competitive power markets predicated on a level playing field in which all players are held to the same standards. That is not to say that

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<sup>3</sup> Dynegy intends to retire its Oglesby and Stallings peaking facilities (152 MW combined) in the near future.

<sup>4</sup> Based on payroll, capital expense and maintenance expense in 2011.

Dynegy is opposed to all variances. Indeed, Dynegy has sought variances from the Board in the past and, as circumstances warrant, may again do so in the future. However, Dynegy opposes variances, like the one requested in this Petition, that would do little more than create an unlevel competitive playing field by giving one of its direct competitors a material competitive advantage, just as Midwest Gen argues in support of the Petition.

Dynegy reserves the right to file comments later in this proceeding to further address our objections or raise other concerns about the Petition.

### **I. Granting the Variance Would Create an Unlevel Competitive Playing Field In Illinois**

Midwest Gen states repeatedly in its Petition the exceptionally difficult economic circumstances and financial hardships it currently faces and the significant expenditures it has made to date to comply with environmental rules, both in up-front capital expense and ongoing operating expense.<sup>5</sup> As one of the key arguments in support of its Petition, Midwest Gen asserts that its adverse financial circumstances are exacerbated by the uneven competitive playing field created by having to comply with Illinois-specific environmental rules,<sup>6</sup> and that its competitive disadvantage is even more pronounced given the delay in implementation of the U.S. EPA's Mercury and Air Toxics Standards ("MATS") and Cross State Air Pollution Rule ("CSAPR"), which also benefits its competitors.<sup>7</sup>

Granting Midwest Gen this variance will, however, cause the harm Midwest Gen asserts is at issue -- an unlevel competitive playing field. That is, while Midwest Gen argues the CPS places it at a competitive disadvantage relative to out-of-state competitors, Midwest Gen ignores the fact that its Petition, if approved, would, in effect, impose a material competitive

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<sup>5</sup> E.g., Petition at p. 3 and p. 4.

<sup>6</sup> E.g., Petition at p. 4 and section VI.A.

<sup>7</sup> Petition at p. 5 and section VI.A.

disadvantage on its in-state competitors, like Dynegy, that have not been granted similar relief from emission reduction technology investment obligations. More specifically, the variance would create an unlevel playing field between power generators in Illinois, such as Dynegy, that have committed to and made the significant financial investments needed to comply with Illinois environmental regulations and Midwest Gen that now seeks to avoid, in material part, those commitments and associated financial investments. Dynegy has invested approximately \$1 billion in pollution control equipment at its Illinois generating plants, which will allow Dynegy to meet its environmental obligations to the State and citizens of Illinois.<sup>8</sup> By allowing Dynegy's competitors to avoid meeting their obligations, the Board would place Dynegy at a competitive disadvantage, putting Dynegy's environmentally-compliant facilities in Illinois at risk.

Additionally, the Board's intervention to grant regulatory relief in this context would potentially chill the business environment in Illinois by sending mixed and unequal signals to businesses considering similar investments. The power sector, like other capital-intensive industries, thrives and creates jobs in situations of certainty. Only with a stable regulatory environment will significant capital-intensive business investments continue in Illinois.

Midwest Gen further asserts that denial of the Petition will adversely impact Midwest Gen, its employees and others.<sup>9</sup> However, granting this variance will result in an arbitrary and unreasonable hardship on Midwest Gen's competitors in Illinois, such as Dynegy, that have worked in good faith with State authorities and made the agreed upon significant financial investment in pollution controls. Dynegy has no other means to recover its significant and sizeable investment other than through a fair marketplace predicated on a level playing field in

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<sup>8</sup> Dynegy's investment in state-of-the-art air pollution controls includes those controls needed to comply with the Illinois Multi-Pollutant Standard ("MPS"), which, similar to the CPS, limits emissions of mercury, SO<sub>2</sub> and nitrogen oxides ("NOx").

<sup>9</sup> Petition at p. 7.

which all players are held to the same standards. Accordingly, Dynegy strongly supports a competitive marketplace and these fundamental tenets. This Petition runs afoul of those tenets.

Midwest Gen's variance petition is presented to the Board as a Hobson's Choice, whereby it appears there is only one option. In fact, there are two options: either hold Midwest Gen accountable for its commitments or put Dynegy (and other merchant generators), Dynegy's employees in Illinois, and Dynegy's local communities in Illinois at risk.

## **II. Midwest Gen Should Not be Allowed to Renege on its CPS Emission Reduction Commitments**

The Board should deny the Petition because Midwest Gen negotiated and agreed to the CPS emission reduction requirements it now seeks to avoid. Midwest Gen has already benefitted and will continue to benefit from the flexibility it negotiated in the CPS and should not now be allowed to avoid the 2015 and 2016 CPS SO<sub>2</sub> emission rates because current market conditions and the company's financial hardships were not foreseen. Simply put, the Board should hold Midwest Gen to its end of the bargain.

At the time the CPS agreement was reached in 2006, Midwest Gen issued a press release quoting Governor Blagojevich that, "This agreement means cleaner air and cleaner water, and that means fewer health problems for children, for pregnant women, and for people all across Illinois. It took a lot of work to get to this point, but thanks to the environmental community, Midwest Generation and the work of people like our EPA Director Doug Scott, we've achieved something no other state has done. And the result means a cleaner, healthier state."<sup>10</sup> Granting this variance would delay those benefits to the citizens of Illinois.

Furthermore, Midwest Gen stated that, "This agreement provides long-term certainty for both the state and our company, helps the state and city of Chicago achieve their clean air goals,

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<sup>10</sup> <http://www.edison.com/pressroom/pr.asp?bu=&year=2006&id=6532>

and allows us to plan and manage significant capital investments and projects in a reasonable timeframe. We came to Illinois in 1999 committed to environmental leadership, we delivered with immediate emission reductions at all our sites, and now we will build on that record with a steady stream of additional reductions over the next decade."<sup>11</sup> Yet, by requesting this variance, Midwest Gen has not kept its commitment.

### **III. Claimed Reductions for Units Already Shutdown Due to Market Conditions**

In support of its Petition, Midwest Gen proposes not to operate its Crawford coal-fired units in 2013 and 2014.<sup>12</sup>

Midwest Gen's proposal not to operate Crawford Station in 2013 and 2014 offers little, if any, benefit to the State. Midwest Gen already ceased operation of Crawford Station on August 28, 2012.<sup>13</sup> While Midwest Gen could legally operate the Crawford units through the end of 2014, those units are not operating due to the poor market conditions that Midwest Gen cites repeatedly in the Petition. To the extent, if any, the Board credits Midwest Gen for purposes of its Petition with reducing emissions from Crawford Station in 2013 and 2014, those reductions should be tied to the plant's anticipated operating levels and not its permitted emission levels or its historic average heat input.

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<sup>11</sup> <http://www.edison.com/pressroom/pr.asp?bu=&year=2006&id=6532>

<sup>12</sup> Petition at p. 8 and ¶67.

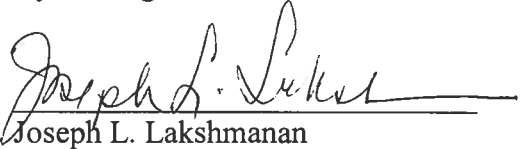
<sup>13</sup> Petition at ¶67.

## Conclusion

The Board should deny Midwest Generation's Petition for Variance for the reasons identified in this Objection, as well as any additional reasons that Dynegy may provide in comments submitted later in this proceeding.

Respectfully submitted,

Dynegy Midwest Generation, LLC  
and  
Dynegy Kendall Energy, LLC,  
By their agent



Joseph L. Lakshmanan  
Dynegy Operating Company  
Managing Director  
133 South 4<sup>th</sup> Street, Suite 306  
Springfield, IL 62701-1232

Dated: December 28, 2012



CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 28<sup>th</sup> day of December 2012, I have served the attached OBJECTION upon the following persons via UPS Next Day Air for delivery on January 31, 2012:

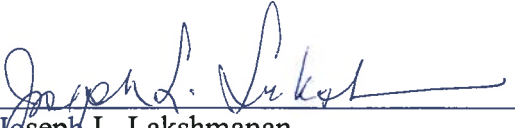
John Therriault, Assistant Clerk of the Board  
James R. Thompson Center  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

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Service List PCB 13-024

Dana Vetterhoffer, Assistant Counsel  
Julie K. Armitage, Acting Chief Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Kathleen C. Bassi  
Stephen J. Bonebrake  
Andrew N. Sawula  
Schiff Hardin LLP  
233 South Wacker Drive  
Suite 6600  
Chicago, Illinois 60606

  
\_\_\_\_\_  
Joseph L. Lakshmanan  
Managing Director  
Dynergy Operating Company  
133 South 4<sup>th</sup> Street, Suite 306  
Springfield, IL 62701-1232  
217-492-6601