

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**In the Matter of:** )  
 )  
**AMENDMENTS TO** ) **R18-20**  
**35 ILL. ADM. CODE 225.233,** ) **(Rulemaking – Air)**  
**MULTI-POLLUTANT STANDARDS (MPS)** )

**NOTICE OF FILING**

To: ALL PARTIES ON THE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the attached **RESPONSE IN SUPPORT OF MOTION TO EXPEDITE RULEMAKING AND APPEARANCES OF JOSHUA MORE, AMY ANTONIOLLI, AND RYAN GRANHOLM**, copies of which are herewith served upon you.

\_\_\_\_\_  
/s/ Amy Antonioli

Amy Antonioli

Dated: October 16, 2017

Amy Antonioli  
SCHIFF HARDIN LLP  
233 South Wacker Drive  
Suite 7100  
Chicago, Illinois 60606  
312-258-5500

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**In the Matter of:** )  
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**AMENDMENTS TO** ) **R18-20**  
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**MULTI-POLLUTANT STANDARDS (MPS)** )

**RESPONSE IN SUPPORT OF THE MOTION FOR EXPEDITED REVIEW**

Now comes Dynegey Midwest Generation, LLC, Illinois Power Generating Company, Illinois Power Resources Generating, LLC and Electric Energy, Inc. (collectively, “Dynegey”), by and through its attorneys, SCHIFF HARDIN, LLP, and pursuant to 35 Ill. Adm. Code 101.500(d), and respectfully submits this response in support of the Illinois Environmental Protection Agency’s Motion for Expedited Review (“Motion”). Expediting the Agency’s rulemaking proposal is critical for the following reasons:

1. The Illinois Environmental Protection Agency (“IEPA” or “Agency”) filed a motion seeking expedited review of a proposed amendment to 35 Ill. Adm. Code 225.233, Control of Emissions from Large Combustion Sources, Multi-Pollutant Standard (“MPS”). The proposal affects eight of Dynegey’s coal-fired generating facilities in downstate Illinois and would, among other things, combine the two existing MPS groups and replace two sets of annual emission rate limits with a single set of specific annual tonnage limits.

2. If the MPS is not revised soon, the numerous benefits of a revised rule will be delayed and Dynegey will unnecessarily continue to incur the constraints and expenses of operating its eight plants as two separate MPS groups. An expedited rulemaking accelerates the multiple benefits of a revised rule, which include environmental benefits, simplified compliance determinations for the Agency and allowing Dynegey to coordinate plant operations across its fleet.

Furthermore, if the rule is not revised before May 1, 2018, the environmental and public protection benefits of additional ozone season NO<sub>x</sub> control requirements may not be realized and the two MPS groups would unnecessarily incur the constraints and expenses of operating separately throughout the entire 2018 ozone season.

3. Expedited rulemaking also achieves regulatory consistency, certainty and clarity as soon as possible, a key result for both the Agency and Dynege. Consistency increases as a result of changing the MPS limits to a format more in line with existing federal and state regulations on NO<sub>x</sub> and SO<sub>2</sub>, such as the federal Cross State Air Pollution Rule (“CSAPR”), Acid Rain Program and air pollution control permit limits all of which contain limits in the form of annual tons. Consistency also increases as the revised rule is realigned with the original intent of the MPS in terms of all units owned by the same company being in a single MPS group. Certainty increases as a result of the proposed limits being more readily understood and compliance being checked and demonstrated from the direct measurement of emissions from continuous emissions monitoring systems (“CEMS”). Importantly for the Board, Agency and company alike, regulatory certainty increases as the revised rule is far less likely to require future actions in regards to variances, an adjusted standard, and/or rule revisions before the Board. This is because, with the benefit of experience, the proposed rule is designed to be more lasting. Clarity increases as a single limit will cover all MPS units and only a single compliance report to the Illinois EPA will need to be compiled, submitted and reviewed. Moreover, compliance demonstrations and reviews are more straightforward as they simply involve reporting the combined annual and seasonal emissions of NO<sub>x</sub> and annual emissions of SO<sub>2</sub> as measured by the CEMS instead of two separate demonstrations for separate groups with each requiring complex calculations and averaging.

4. The proposal provides compliance flexibility for Dynegy's fleet, supplying some needed help to power plant operations challenged by a number of factors, including the well-documented problems with the broken capacity market. The sooner the two MPS groups are combined and the emissions standards are expressed as tonnage limits, the sooner the compliance flexibility envisioned by the MPS can be realized.

5. Expedited rulemaking will accelerate the realization of the environmental benefits of, among other things, lowering the SO<sub>2</sub> and NO<sub>x</sub> emissions Dynegy is allowed to emit. Also, the Agency has a SO<sub>2</sub> State Implementation Plan ("SIP") submittal due to the United States Environmental Protection Agency ("USEPA") in the first quarter of 2018 that could benefit from expedited finalization of the proposal since the Agency could elect to utilize the proposed rule's SO<sub>2</sub> requirements in its submittal.

6. In 2007 and in compliance with the Illinois Mercury Rule (35 Ill. Adm. Code 225.233(b)), Dynegy Midwest Generation ("DMG") and Ameren Energy Resources<sup>1</sup> ("Ameren") filed notices electing to demonstrate compliance with the Illinois Mercury Rule through compliance with the MPS (35 Ill. Adm. Code 225.233(a)). The structure of the MPS contemplated that all plants owned by a single company would reside in the same MPS group and be subject to fleet-wide SO<sub>2</sub> and NO<sub>x</sub> emission rates in exchange for limited flexibility in complying with the mercury standards. As such, the units DMG owned became the DMG MPS Group and the units Ameren owned became the Ameren MPS Group.

7. The multi-pollutant approach contained in the MPS took into consideration then existing regulatory and permitting requirements at the federal and state level, and forecasting of

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<sup>1</sup> As authorized agent for Ameren Energy Generating Company, Ameren Energy Resources Generating Company, and Electric Energy, Inc.

future requirements that were expected to be imposed. The MPS imposed different emissions rate limits and deadlines to achieve those rate limits specific to each MPS group. The MPS does not prescribe the use of any air pollution control equipment. Rather, the MPS allows owners and operators to choose how best to meet their limits and allows owners and operators to change the selected method of compliance.

8. In December 2013, Dynegy Inc.,<sup>2</sup> through a subsidiary, acquired most of Ameren's electric generating assets in Illinois. As a result, Dynegy now owns all of the operating units in the DMG MPS Group and Ameren MPS Group, which constitute all of the units subject to the MPS. However, because the two MPS groups were owned by different companies in 2007 when they opted into the MPS, the units are forced to remain in two separate MPS groups that are subject to different emissions rate limits. This separation precludes Dynegy from taking full advantage of the fuel, control and geographic diversity of its current fleet to comply with the MPS.

9. In 2007, a total of thirty one units were subject to the MPS. Ameren owned twenty one units and DMG owned ten units. Both Ameren and DMG were able to utilize the fleet-wide flexibility provided in the MPS by emissions averaging across all of their respective covered units. In addition to the unanticipated change in ownership of the covered MPS units, since 2007 the number of units covered by the MPS has shrunk dramatically, with thirteen units having retired, *i.e.*, 42 percent of the original units covered by the MPS have retired. Currently, Dynegy owns all eighteen remaining MPS units split into two separate MPS groups of six DMG units and twelve formerly Ameren units, respectively. The proposed revision would result in a single MPS group of eighteen units and provide compliance flexibility similar to that originally intended by the rule

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<sup>2</sup> Dynegy Inc. is the ultimate parent company of DMG, Illinois Power Generating Company, Illinois Power Resources Generating, LLC and Electric Energy, Inc.

for owners who opted into the MPS. The sooner the MPS is amended, the sooner Dynegy will be able to operate all of its units as a single fleet-wide MPS group as originally intended.

10. The proposal will *significantly reduce* the amount of emissions Dynegy is allowed to emit. Currently, Dynegy's MPS units are allowed to emit and are capable of emitting approximately 70,000 tons of SO<sub>2</sub> per year and 34,600 tons of NO<sub>x</sub> per year. The proposal would cap the amount of SO<sub>2</sub> and NO<sub>x</sub> emissions Dynegy is allowed to emit annually to 55,000 tons and 25,000 tons, respectively. This represents an approximately 21 percent reduction in allowable SO<sub>2</sub> emissions and 28 percent reduction in allowable NO<sub>x</sub> emissions. Since Dynegy would limit emissions to maintain a compliance safety margin below the new allowable limits, the lower allowable emission limits are also expected to further constrain actual annual emissions. And since the proposal also imposes new and additional requirements on the Dynegy fleet (*e.g.*, mandatory operation of existing SCRs during the ozone season; specific annual SO<sub>2</sub> tonnage cap for the Joppa Power Station), it will achieve an even *greater* reduction in emissions than originally anticipated when the MPS was first promulgated. The revised MPS limits and additional requirements in the proposed rule are designed to assist Illinois in meeting its National Ambient Air Quality Standard ("NAAQS") goals.

11. The proposal also creates other real benefits, which include allowing the Illinois EPA to use the associated reductions in allowable emissions and additional NO<sub>x</sub> and SO<sub>2</sub> requirements in meeting Illinois' Clean Air Act obligations. Such obligations include demonstrating compliance with various Regional Haze and State Implementation Plan ("SIP") requirements. Per Illinois EPA, the Illinois Regional Haze SIP anticipated an aggregate total of 55,953 tons of annual SO<sub>2</sub> emissions from the separate MPS groups and 27,951 tons of annual NO<sub>x</sub> emissions. The proposal will result in additional reductions of, at a minimum, SO<sub>2</sub> emissions

by 953 tons and NO<sub>x</sub> emissions by 2,951 tons from those Illinois used to demonstrate compliance with the Clean Air Act Regional Haze requirements. Consistent with the Clean Air Act's anti-backsliding provisions, which preclude USEPA from approving regulatory programs that are less stringent than programs that are already in effect, Illinois EPA has advised the Board that USEPA is likely to approve the rule revisions. Moreover, once the revised MPS is finalized, Illinois EPA can perform air modeling using both the lower allowable NO<sub>x</sub> and SO<sub>2</sub> emissions and also account for the new annual SO<sub>2</sub> cap on Joppa Power Station and new NO<sub>x</sub> controls requirements to demonstrate further progress in meeting state air quality goals and show lower impacts on downwind states to address emissions transport concerns.

12. Additionally, Illinois EPA is not alone in utilizing air quality modeling to evaluate current and future air quality based on "on-the-books" regulatory requirements to develop air pollution control strategies and determine the need for additional regulatory requirements. To name a few, U. S. EPA, the Lake Michigan Air Directors Consortium and regional planning organizations, and other state environmental agencies are actively modeling the NO<sub>x</sub> and SO<sub>2</sub> emissions from Illinois MPS units in order to determine the impact of Illinois' units on downwind states and if additional control measures are necessary. The sooner the proposed rule is finalized, the sooner this modeling can account for the additional environmental requirements of the rule and, therefore, more accurately reflect the air quality benefits and true potential air quality impacts. Modeling performed without accounting for the new tightened requirements contained in the proposed rule may inaccurately suggest that additional NO<sub>x</sub> and SO<sub>2</sub> control measures in Illinois are necessary. Notably, the proposed tightened requirements for Joppa were imposed by the Illinois EPA as the result of modeling concerns. The Illinois EPA also imposed additional requirements in the proposal to operate SCR's at all times during the ozone season. The SCR

control requirements originate from concerns expressed by downwind states that are pursuing such SCR control requirements in upwind states. For these reasons, it is imperative that these MPS requirements are finalized and utilized in the multiple ongoing modeling efforts as soon as possible.

13. If the rulemaking is not successful, Dynegy will suffer material prejudice. A series of events has severely eroded the viability of Dynegy's plants in the Illinois capacity market over the past year. These events, coupled with the challenges presented by an MPS structure that did not contemplate two power plant fleets owned by the same company straddling two MPS groups, the consequences of multiple unit retirements and the numerous benefits of the proposal, call for expedited action.

14. The rulemaking package presented to the Board is the product of hard work by both the Agency and Dynegy, very similar to the extensive negotiations between the Agency and the two electric generating companies that created the MPS in the first place.<sup>3</sup> Before coming to the Board, both the Agency and Dynegy recognized the need to have a proposal that was sound, workable and approvable by U.S. EPA. Because the rulemaking process before the Board ensures that all interested parties are provided an opportunity to shape the laws of the state, it is not uncommon for interested parties to work with the Agency in the first instance to develop new rules or amend existing rules before a rulemaking or regulatory relief petition is initiated. In fact, that is exactly how the Illinois Mercury Rule was first developed: environmental advocacy groups, including one or more of those that have filed appearances in this action, met exclusively with the Blagojevich administration to develop the Illinois Mercury Rule before it was presented to the

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<sup>3</sup> The MPS provisions were negotiated as amendments to the Agency's proposed Illinois Mercury Rule under former Governor Blagojevich during the rulemaking proceeding. See PCB R06-25.



Board. Furthermore, because the Governor's Executive Order 2016-13 (Oct. 17, 2016) directed the Agency to review all of its rules, Dynegy rightfully felt the timing was both appropriate and necessary to approach the Agency about revisions to the MPS.

15. After developing this proposal and before submitting it to the Board, the Agency sought input from interested stakeholders, including the non-governmental organizations that have filed appearances in this action. Notably, no such pre-filing stakeholder outreach is required by the Illinois EPA under any regulations or statute.

16. Although the proposal addresses the core challenges faced by Dynegy resulting from two sets of emission rate limitations that apply to different plants within Dynegy's fleet, it also subjects Dynegy to several new and additional requirements that will benefit the environment, public health and Illinois' regulatory obligations. Recent press, however, has already characterized the Agency's proposal leaving the public with much uncertainty and misinformation. The public would benefit from knowing the real benefits and facts of the proposal sooner rather than later, and granting the motion to expedite would provide for a more informed public and allow the Board to move more quickly consistent with the public process afforded through the Board's rulemaking procedures.

17. By presenting support for the Motion to Expedite, Dynegy is not asking the Board to truncate the public input process; indeed, we know the Board would not. The environmental groups and public will be afforded ample time to share their views of the proposal. Dynegy believes there will be broad public support for the rule revision. But because of the benefits resulting from this proposal, Dynegy believes the Agency's request to expedite the rulemaking process is reasonable and appropriate.

18. Finally, revising the MPS is consistent with the principles outlined in the Illinois Administrative Procedures Act and the Governor's Executive Order 2016-13, both of which aim to identify and address unnecessary, unduly burdensome, outdated and inconsistent state regulations in a manner that preserves jobs while retaining environmental and public health protection.

WHEREFORE, Dynegy respectfully requests that the Illinois Pollution Control Board, consistent with available resources and decision deadlines, accept the Agency's proposal and grant the Motion to Expedite.

Respectfully submitted,

\_\_\_\_\_/s/ Joshua R. More\_\_\_\_\_

Joshua R. More  
[Joshua.More@schiffhardin.com](mailto:Joshua.More@schiffhardin.com)  
Amy Antonioli  
[Amy.Antonioli@schiffhardin.com](mailto:Amy.Antonioli@schiffhardin.com)  
Ryan Granholm  
[Ryan.Granholm@schiffhardin.com](mailto:Ryan.Granholm@schiffhardin.com)  
Schiff Hardin LLP  
233 South Wacker Drive  
Suite 7100  
Chicago, Illinois 60606  
312-258-5500

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**APPEARANCE**

I, Amy Antonioli, hereby file my appearance in this proceeding on behalf of Dynegy Midwest Generation, LLC, Illinois Power Company, Illinois Power Resources Generating, LLC and Electric Energy, Inc.

Respectfully submitted,

\_\_\_\_\_  
/s/ Amy Antonioli

Amy Antonioli  
Schiff Hardin LLP  
233 South Wacker Drive  
Suite 7100  
Chicago, Illinois 60606  
312-258-5500  
[aantonioli@schiffhardin.com](mailto:aantonioli@schiffhardin.com)

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**APPEARANCE**

I, Joshua More, hereby file my appearance in this proceeding on behalf of Dynegy Midwest Generation, LLC, Illinois Power Company, Illinois Power Resources Generating, LLC and Electric Energy, Inc.

Respectfully submitted,

\_\_\_\_\_  
/s/ Joshua More

Joshua More  
Schiff Hardin LLP  
233 South Wacker Drive  
Suite 7100  
Chicago, Illinois 60606  
312-258-5500  
[jmore@schiffhardin.com](mailto:jmore@schiffhardin.com)

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**APPEARANCE**

I, Ryan Granholm, hereby file my appearance in this proceeding on behalf of Dynegy Midwest Generation, LLC, Illinois Power Company, Illinois Power Resources Generating, LLC and Electric Energy, Inc.

Respectfully submitted,

\_\_\_\_\_  
/s/ Ryan Granholm

Ryan Granholm  
Schiff Hardin LLP  
233 South Wacker Drive  
Suite 7100  
Chicago, Illinois 60606  
312-258-5500  
[rgranholm@schiffhardin.com](mailto:rgranholm@schiffhardin.com)

Dated: October 16, 2017

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on this 16<sup>th</sup> day of October, 2017, I have electronically served the attached **RESPONSE IN SUPPORT OF MOTION TO EXPEDITE RULEMAKING AND APPEARANCES OF JOSHUA MORE, AMY ANTONIOLLI, AND RYAN GRANHOLM**, upon all parties on the attached service list.

My e-mail address is [aantoniolli@schiffhardin.com](mailto:aantoniolli@schiffhardin.com).

The number of pages in the e-mail transmission is 15.

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

*/s/ Amy Antonioli*

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Amy Antonioli

Amy Antonioli  
SCHIFF HARDIN LLP  
233 South Wacker Drive  
Suite 6600  
Chicago, Illinois 60606  
312-258-5500

**SERVICE LIST**

<p>Don Brown, Assistant Clerk <a href="mailto:Don.brown@illinois.gov">Don.brown@illinois.gov</a> Mark Powell, Hearing Officer <a href="mailto:Mark.powell@illinois.gov">Mark.powell@illinois.gov</a> Marie Tipsord, Hearing Officer <a href="mailto:Marie.tipsord@illinois.gov">Marie.tipsord@illinois.gov</a> Illinois Pollution Control Board James R. Thompson Center Suite 11-500 100 West Randolph Chicago, Illinois 60601</p>	<p>Dana Vetterhoffer <a href="mailto:Dana.vetterhoffer@illinois.gov">Dana.vetterhoffer@illinois.gov</a> Gina Roccaforte <a href="mailto:Gina.roccaforte@illinois.gov">Gina.roccaforte@illinois.gov</a> Division of Legal Counsel Illinois Environmental Protection Agency 1021 North Grand Avenue, East P.O. Box 19276 Springfield, Illinois 62794-9276</p>
<p>Eric Lohrenz <a href="mailto:Eric.lohrenz@illinois.gov">Eric.lohrenz@illinois.gov</a> Office of General Counsel Illinois Department of Natural Resources One Natural Resources Way Springfield IL 62702-1271</p>	<p>Andrew Armstrong <a href="mailto:aarmstrong@atg.state.il.us">aarmstrong@atg.state.il.us</a> Office of the Attorney General 500 South Second Street Springfield, IL 62706</p>
<p>Lindsay Dubin <a href="mailto:ldubin@elpc.org">ldubin@elpc.org</a> 35 East Wacker Drive, Suite 1600 Chicago, IL 60601</p>	<p>Greg Wannier, Staff Attorney <a href="mailto:Greg.wannier@sierraclub.org">Greg.wannier@sierraclub.org</a> Sierra Club Environmental Law Program 2101 Webster Street, Suite 3100 Oakland, CA 94612</p>
<p>Faith Bugel <a href="mailto:fbugel@gmail.com">fbugel@gmail.com</a> Interested Party 1004 Mohawk Wilmette, IL 60091</p>	