BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

To:

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

Dana Vetterhoffer, Assistant Counsel
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Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
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Chicago, Illinois 60601

PLEASE TAKE NOTICE that we have today filed with the Office of the Clerk of the Pollution Control Board the attached **MOTION TO AMEND PETITION FOR VARIANCE** and **AMENDED PETITION FOR VARIANCE**, copies of which are herewith served upon you.

/s/ Bina Joshi
Bina Joshi

Dated: April 17, 2015

SCHIFF HARDIN LLP
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CERTIFICATE OF SERVICE AND E-MAIL SERVICE

I, the undersigned, affirm that on this 17th day of April, 2015, I have served electronically the attached **MOTION TO AMEND PETITION FOR VARIANCE** and **AMENDED PETITION FOR VARIANCE**, upon the following person by filing an electronic copy with the Illinois Pollution Control Board:

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
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Chicago, Illinois 60601

And upon the following persons by email at the e-mail addresses indicated below:

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I further affirm that:

My e-mail address is bjoshi@schiffhardin.com.

The number of pages in the e-mail transmission is 175.

That the e-mail transmission took place before 5:00 p.m. on the date of April 17, 2015.

/s/ Bina Joshi
Bina Joshi

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MOTION TO AMEND PETITION FOR VARIANCE

Pursuant to 35 Ill. Adm. Code §§ 104.226, 101.500, and 101.502,[1] Petitioner Dynegy Midwest Generation, LLC ("DMG") hereby requests leave to amend its Petition for Variance, filed with the Board on June 8, 2012, and to file instanter the Amended Petition. In support of this motion, DMG states as follows:

PROCEDURAL BACKGROUND AND CURRENT STATUS OF THE PROCEEDING

1. On June 8, 2012, DMG filed a Petition for Variance from certain provisions of the Multi-Pollutant Standard at Section 225.233 for a period of approximately two years. Specifically, DMG sought relief from the provisions at Section 225.233(f)(2) that prohibit DMG from trading certain sulfur dioxide ("SO_2") allowances under the Cross-State Air Pollution Rule ("CSAPR"), which had been adopted by the U.S. Environmental Protection Agency ("USEPA")

[1] Hereinafter, references to the Board's rules will be by section number only.

at 76 Fed.Reg. 48,208 (August 8, 2011) and then appealed in *EME Homer City Generation, L.P. v. EPA*, 11-1302 (D.C. Cir.).

2. The Board accepted DMG's Petition on June 21, 2012, and on July 23, 2012, the Illinois Environmental Protection Agency ("the Agency") filed its Recommendation neither supporting nor opposing the Petition.

3. On August 21, 2012, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") vacated the CSAPR. *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012). At that point, aware that some parties were intending to seek reconsideration, DMG waived the decision deadline in order to see whether the reconsideration would be granted and then what the outcome would be. DMG also believed it was possible that some parties might petition the U.S. Supreme Court for certification of an appeal of the lower court's ruling. Since then, DMG has periodically participated in status calls with the Hearing Officer and waived the decision deadline in this matter, expecting some termination of the appeals of the CSAPR, which would allow DMG to determine whether it should continue with its variance proceeding if the CSAPR were reinstated or it should withdraw its Petition because the CSAPR was null and void.

4. On April 29, 2014, the U.S. Supreme Court issued its order essentially upholding the CSAPR on the matters appealed to that Court. *See EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). While some CSAPR appeal issues remain pending before the D.C. Circuit, in light of the Supreme Court's decision, USEPA is proceeding with implementation of the CSAPR. Accordingly, DMG would like to proceed with this variance matter.

5. There has been no hearing in this matter and no decision by the Board on the requested variance.

REQUEST FOR LEAVE TO AMEND PETITION

6. The passage of time since DMG first filed its Petition for Variance necessitates certain changes to the Petition in order that it be current. The Petition identified the period of time for which DMG requested the variance; some of that time has passed. USEPA now has determined that Phase I of the CSAPR commenced January 1, 2015, rather than at the earlier date originally adopted. 79 Fed. Reg. 71,663 (Dec. 3, 2014). DMG's requested variance concerns the allowances allocated during the first two years of the CSAPR, which has changed from the years identified in the original variance petition. Therefore, in order for the requested variance to have any meaning, DMG must amend the dates.

7. Additionally, DMG has reviewed other elements of the Petition to ensure that they remain relevant and accurate considering the passage of time and determined that certain other elements require updating.

8. DMG has prepared the Amended Petition and files it instanter with this motion.

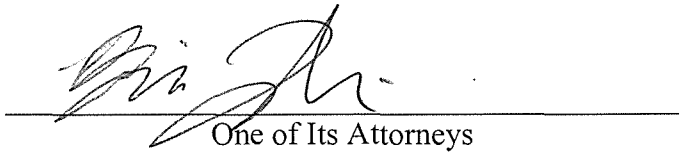
9. DMG understands that the Agency does not object to this Motion to Amend Petition for Variance.

WHEREFORE, for the reasons set forth above, Petitioner Dynegy Midwest Generation, LLC moves for leave to file instanter the Amended Petition in this matter.

Respectfully submitted,

DYNEGY MIDWEST GENERATION, LLC

by:



One of Its Attorneys

Dated: April 17, 2015

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AMENDED PETITION FOR VARIANCE

NOW COMES Petitioner, DYNEGY MIDWEST GENERATION, LLC ("Petitioner" or "DMG"), by and through its attorneys, SCHIFF HARDIN, LLP, and, pursuant to Sections 35 and 37 of the Environmental Protection Act ("Act"), 415 ILCS 5/35, 37, and 35 Ill.Adm.Code Part 104, Subpart B, §§ 104.226, and 101.500,[1] respectfully requests that the Board grant the Petitioner a variance from certain provisions of the Illinois Multi-Pollutant Standard ("MPS"), Section 225.233, for the limited period from the date of the Board's order granting the petition until April 1, 2017, applicable to vintage 2015 and 2016 sulfur dioxide ("SO_2") 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"). Specifically, DMG seeks a variance from the MPS requirement in Section 225.233(f)(2) that prohibits owners or operators of electricity generating units ("EGUs") in an

[1] Hereinafter, references to the Board's rules will be by section number only.

MPS Group[2] from selling or trading to or otherwise exchanging with any person SO_2 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_2 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_2 annual emission rate that is the more stringent of 0.33 lb/million Btu or a rate equivalent to 44 percent of the Base Rate of SO_2 emissions (Section 225.233(c)(2)(A), and for 2015 and thereafter a rate of 0.25 lb/mmBtu or 35 percent of the Base Rate (Section 225.233(c)(2)(B)).[3] Additionally, DMG requests a variance from the companion requirement in that same section, 225.233(f)(2), that DMG surrender such excess SO_2 allowances to the Agency.

DMG first filed its Petition for Variance in this matter on June 8, 2012. Subsequently, as discussed in detail below, the CSAPR was appealed in the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit"). The D.C. Circuit stayed and then vacated the rule. At that point, DMG moved the Board to hold the matter in abeyance, which the Board granted on August 14, 2013. The U.S. Supreme Court has since upheld the CSAPR as to the issues before it, and the USEPA began implementation of the program beginning January 1, 2015. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014), *see* Exhibit 16; United States

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[2] DMG requests this variance for its MPS Group, consisting of the coal-fired EGUs at the Baldwin Energy Complex, the Havana Power Station, the Hennepin Power Station, the Wood River Power Station, and the Vermilion Power Station. Most often, a petitioner seeks a variance for a single plant or operation at a plant. In this case, however, the provision from which DMG seeks relief applies to the MPS Group as a whole rather than to an individual plant. With the permanent retirement of the Vermilion Power Station in November 2011, DMG believes that its MPS Group now consists of its eight remaining coal-fired units but includes Vermilion within the scope of this request for variance because of any possible ambiguity regarding Vermilion's continued membership in the DMG MPS Group. The USEPA has populated CSAPR allowance accounts, including for the Vermilion units.

[3] DMG complies with the percentage of Base Rate requirement of the MPS. Its SO_2 emission rate under this provision in the MPS for 2015 and thereafter is 0.19 lb/mmBtu.

Environmental Protection Agency, Air Markets Program Data, http://ampd.epa.gov/ampd/QueryToolie.html. *See Rulemaking to Amend Dates in Federal Implementation Plans Addressing Interstate Transport of Ozone and Particulate Matter*, 79 Fed. Reg. 71,663 (Dec. 3, 2014) ("Interim Final Rule"). Therefore, the matter is again ripe for the Board to decide. DMG is filing a Motion to Amend concurrent with this Amended Petition. Because of the passage of time, it is necessary for DMG to update the time period to be covered by the variance request as well as certain other portions of its original Petition. For purposes of continuity and ease of reading, DMG submits this complete Amended Petition for Variance and current versions of those exhibits included with the original Petition that require updates. The updated exhibits, which are submitted with this Amended Petition, are identified by the same exhibit number but with an "R" following the exhibit number, to indicate "revised." To avoid unnecessary filings DMG is not resubmitting with this Amended Petition those exhibits that do not require updating but continues to refer to them in this Amended Petition. DMG is including with this Amended Petition several additional exhibits that address events that have occurred since the original Petition was filed.

DMG notes that granting this requested variance does not affect the requirement for DMG to comply with applicable SO_2 emission rates, nor would it directly result in an impact on Illinois' air quality goals. DMG will suffer arbitrary or unreasonable hardship if the Board does not grant this requested variance. In support of its Amended Petition, DMG states as follows:

A. DMG GENERATES ELECTRICITY IN ILLINOIS AT FOUR COAL-FIRED POWER STATIONS.

1. DMG currently owns and operates four coal-fired power plants in Illinois: the Baldwin Energy Complex ("Baldwin") in Randolph County, the Havana Power Station

("Havana") in Mason County, the Hennepin Power Station ("Hennepin") in Putnam County, and the Wood River Power Station ("Wood River") in Madison County.[4] In November 2011, DMG permanently retired a fifth coal-fired power plant, the Vermilion Power Station ("Vermilion"), located in Vermilion County, Illinois.[5] A map depicting the location of each of DMG's coal-fired power plants is provided in Exhibit 2R.[6] The addresses of the five power stations, their identification numbers assigned by the Agency, age, permit application numbers, and other pertinent information regarding their output, pollution control equipment, SO_2 emissions (as well as nitrogen oxides ("NOx"), particulate matter ("PM"), and mercury emissions), and number of employees are provided in Exhibit 3R. DMG employs approximately 420 persons at its Illinois coal-fired power stations, supported by approximately 70 personnel at offices located in Collinsville and Springfield, Illinois. The permanent retirement of Vermilion eliminated 39 jobs.

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[4] Illinois Power Holdings, LLC ("IPH"), an indirect subsidiary of DMG's ultimate parent, Dynegy Inc., acquired five coal-fired power plants from Ameren on December 2, 2013, namely Coffeen Power Station, Duck Creek Power Station, Newton Power Station, Joppa Steam Electric Station, and E.D. Edwards Power Station. While DMG and IPH share the same ultimate parent company, the DMG plants are owned and operated separately from the IPH plants and comprise a separate MPS Group from the IPH MPS Group. IPH and its subsidiaries maintain corporate separateness from DMG and other Dynegy subsidiaries. The IPH plants have no relationship to this DMG request for variance, nor will the variance impact those IPH plants.

[5] See Exhibit 1 (DMG's notice to the Agency of the permanent retirement of Vermilion effective November 17, 2011, and request that all of Vermilion's air permits and associated pending applications be withdrawn and terminated).

[6] Exhibit 2R identifies the locations of all five of DMG's coal-fired power plants on a copy of the map from the Agency's *Illinois Annual Air Quality Report 2012* (at App. A, p. 34), which also identifies the locations of the Agency's air quality monitoring stations at that time. Please note that 2012 is the most recent version of the *Illinois Annual Air Quality Report* currently available.

2. The air monitoring stations maintained by the Agency that are nearest to Baldwin, Havana, Hennepin, and Wood River (and Vermilion) are identified in Exhibit 4R.[7] Mason and Putnam Counties, the respective locations of Havana and Hennepin, (and Vermilion County, the location of the now retired Vermilion Power Station) are designated attainment or unclassifiable for all criteria pollutants. Baldwin Township in Randolph County, the location of Baldwin, and Madison County, the location of Wood River, are also designated attainment or unclassifiable for all criteria pollutants except for lead and the 2008 ozone National Ambient Air Quality Standard ("NAAQS").[8] Madison County has been designated nonattainment for the 2008 ozone NAAQS, 77 Fed. Reg. 30,088, 30,116 (May 21, 2012), effective July 20, 2012, and a portion of Madison County in or near Granite City, which does not include any DMG power plants, has been designated nonattainment for the lead NAAQS. *See* 40 CFR § 81.314; USEPA's Green Book (list of national attainment and nonattainment designations) at < http://www.epa.gov/airquality/greenbook/index.html >. None of the DMG power plants are located in areas designated nonattainment in the first round of designations for the 1-hour SO_2 NAAQS. 78 Fed. Reg. 47,191, 47,199 (Aug. 5, 2013) (final rule for air quality designations for 2010 SO_2 NAAQS), *see* Exhibit 15. Additionally, none of the DMG power plants are located in areas designated nonattainment for the 2012 fine particulate matter ("PM2.5") NAAQS. 80 Fed. Reg. 2,205, 2,233-35 (Jan. 15, 2015).

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[7] The street addresses of the air quality monitoring stations located nearest to DMG's five power plants, as identified in the Agency's *Illinois Annual Air Quality Report 2012* (at App. A, pp. 35-42), are provided in Exhibit 4R.

[8] The USEPA designated the Illinois portion of the St. Louis MO-IL area to attainment for the 1997 8-hr. ozone standard at 77 Fed. Reg. 34,819 (June 12, 2012) and as attainment for the 1997 PM2.5 NAAQS at 77 Fed. Reg. 38,183 (June 27, 2012).

3. As directly relevant to this Amended Petition, the principal emissions at DMG's coal-fired power plants are SO_2. DMG generally controls SO_2 emissions at its coal-fired plants through the use of low sulfur coal, *i.e.*, Powder River Basin ("PRB") coal with a sulfur content less than 0.3 percent. DMG does not expect to use any different type of coal during the proposed variance period, nor will the variance change the hourly rate of PRB coal use at any of DMG's units or affect the amount of PRB coal estimated to be used in the proposed variance period. In addition, to control SO_2 emissions further, DMG has installed and is operating spray dryer absorbers (*i.e.*, dry scrubbers) with fabric filter (*i.e.*, baghouse) systems on each of the units at Baldwin (Units 1, 2, and 3) and Havana (Unit 6). DMG did not defer its plans to install dry scrubbers in light of the remand of the federal Clean Air Interstate Rule ("CAIR") in *North Carolina v. EPA*[9] or the later temporary vacatur of the CSAPR. These dry scrubbers have significantly reduced DMG's system-wide[10] SO_2 emission rate. For example, system-wide SO_2 average emissions over the period of 2007-2010 were 46,776 tons per year; after installation and operation of dry scrubbers on the three Baldwin units and Havana Unit 6, system-wide SO_2 emissions in 2013 were 17,972 tons, a 60 percent reduction. DMG has met the SO_2 limitations of the MPS in 2013 and 2014 using these SO_2 control measures.

4. Coal-fired power plants also emit NOx, PM, and mercury. DMG controls NOx emissions at its coal-fired plants by various combinations of low sulfur coal, low NOx burners, over-fire air, and selective catalytic reduction systems ("SCRs"). These installed NOx controls

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[9] In 2008, the D.C. Circuit vacated the CAIR and then subsequently remanded the rule to the USEPA without vacatur. *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), modified on rehearing, *North Carolina v. EPA*, 531 F.3d 1176 (D.C. Cir. 2008).

[10] "System-wide" refers only to DMG's coal-fired EGUs subject to the Illinois mercury rule, 35 Ill.Adm.Code Part 225, Subpart B.

allow DMG to meet the annual and seasonal NOx limits of the MPS rule; in fact, DMG has met or over-complied with the MPS NOx limitations since 2007. PM is generally controlled through the use of flue gas conditioning, electrostatic precipitators ("ESPs"), and, for some units, fabric filter systems. More specifically, DMG has installed and is operating a fabric filter system on Baldwin Units 1, 2, and 3 (2010-2012); Havana Unit 6 (2009); and Hennepin Units 1 and 2 (2008). In fact, DMG is over-complying with its PM limits.

5. In accordance with the MPS provisions established in the Illinois mercury rule, DMG currently controls mercury emissions at all of its coal-fired plants by using activated carbon injection or mercury oxidation systems in conjunction with SCRs, dry scrubbers, ESPs, and/or fabric filters.[11] Prior to the Vermilion station's retirement, DMG also had installed and operated a fabric filter system, as well as an activated carbon injection system to control mercury emissions, at Vermilion Units 1 and 2. Beginning December 31, 2009, and phased in through January 1, 2012, almost three years prior to the January 1, 2015, compliance date, Hennepin Units 1 and 2, Wood River Unit 5, Havana Unit 6, and Baldwin Units 1, 2, and 3, complied with the mercury emission rate rather than the control technology requirements of Section 225.233(c). In addition, since January 1, 2013, two years prior to its January 1, 2015, compliance deadline, Wood River Unit 4 has complied with the mercury emissions rate.

6. At several of its coal-fired power plants, DMG operated a number of gas- and oil-fired EGUs that were subject to the CAIR and the federal CSAPR but were not subject to the MPS, as well as combustion turbines at other locations. DMG also operates a number of smaller

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[11] The PRB coal used at each of the DMG MPS Group plants also goes through a refined coal process to further reduce mercury and NOx emissions.

non-EGU boilers at its coal-fired power plants, likewise not subject to the MPS, CAIR, or CSAPR.

7. DMG previously sought and obtained a variance from the Board concerning the MPS (*i.e.*, PCB 09-048, granting a temporary nine-month deferral in implementation of mercury emission controls at Baldwin Unit 3, while beginning mercury controls six months early on Havana Unit 6 and Hennepin Unit 2, which resulted in an overall net reduction of 41.7 pounds of mercury emissions). Although the variance granted for Baldwin Unit 3 was from an MPS requirement, the relief sought then was not at all related to the relief requested in this Petition for Variance. That prior variance has expired, and DMG complied with all requirements related to the variance granted in PCB 09-048.

8. DMG also previously obtained from the Board provisional variances for its Baldwin facility on an unrelated matter not concerning similar relief (*i.e.*, PCB 2003-027 and PCB 2003-234, granting 45-day provisional variances from conditions and effluent discharge limits in the Baldwin NPDES permit and Part 304 of the Board's rules in September 2002 and June 2003, respectively, to allow dredging of a cell in the plant's ash pond system). To the best of DMG's knowledge, the prior owner of DMG's MPS Group power plants also previously obtained Board variances on unrelated matters not concerning similar relief.

9. This request for variance does not involve the Resource Conservation and Recovery Act. Accordingly, Section 104.206 does not apply to the requested variance.

B. DMG SUPPORTED THE MPS IN 2006 TO COORDINATE EMISSION CONTROL REQUIREMENTS FOR NUMEROUS POLLUTANTS.

10. In May 2005, the USEPA promulgated the Clean Air Mercury Rule ("CAMR"), 70 Fed. Reg. 28,606 (May 18, 2005), to reduce mercury emissions from coal-fired EGUs in the lower 48 states. The federal CAMR, which applied to EGUs with nameplate capacities greater than 25 megawatts, established caps on the mercury emissions for each affected state and allowed states to participate in the USEPA administered emissions trading programs if their state programs met certain minimum requirements. DMG's coal-fired power plants are EGUs that were subject to the federal CAMR.

11. In December 2006, the Board adopted the Illinois mercury rule at R06-25 to satisfy the federal CAMR requirements in Illinois. The rule adopted by the Board differed significantly from the federal CAMR in a very important way: the Illinois mercury rule adopted a command-and-control approach that requires affected coal-fired power plants to achieve a 90 percent reduction from input mercury or an emission rate of 0.0080 lb mercury/GWh gross electrical output and rejected participation in the federal mercury emissions trading program.[12]

12. In 2006, when the Agency was developing its mercury rule, DMG was also simultaneously faced with developing a compliance strategy to meet future emission reduction requirements under both the Illinois CAIR and the Consent Decree DMG had entered with, among others, the federal government.[13] The CAIR established a state-wide cap on SO_2 and

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[12] The CAMR was vacated by *State of New Jersey v. Environmental Protection Agency*, 517 F.3d 574 (D.C. Cir. 2008), *cert. denied, Util. Air Regulatory Group v. New Jersey*, 555 U.S. 1169 (2009). The USEPA has since adopted its final rule to control mercury, acid gases and other hazardous air pollutants from power plants, *i.e.*, the Mercury and Air Toxics Standards ("MATS") rule. 77 Fed. Reg. 9,304 (Feb. 16, 2012).

[13] *United States, et al. v. Illinois Power Co., et al.*, No. 99-CV-833-MJR (S.D. Ill.) (Consent Decree entered May 27, 2005) ("Consent Decree"). A copy of the Consent Decree as originally entered is

NOx emissions from EGUs that must be implemented through emission reductions and/or emissions allowance trading. In general, the Consent Decree requires DMG to reduce SO_2, NOx, and PM emissions at its five coal-fired power plants and mercury at the Vermilion Power Station through a combination of enforceable emission limits, installation of mandatory pollution control and monitoring technology, and SO_2 and NOx allowance restrictions, with full compliance to be achieved by the end of 2012. More specifically, with respect to SO_2, the Consent Decree imposes flue gas desulfurization based unit-specific SO_2 emission limits at the three Baldwin units and Havana Unit 6 (the unit-specific SO_2 limits are implemented on a staggered schedule with all units required to be in compliance by December 31, 2012), imposes an SO_2 emissions limit of 1.2 lbs/mmBtu on DMG's other coal-fired units (*i.e.,* Hennepin, Wood River, and Vermilion), and establishes declining caps on annual DMG system-wide SO_2 emissions, including 49,500 tons in 2012 and 29,000 tons in 2013 and each year thereafter. In addition, the Consent Decree requires DMG to annually surrender up to 30,000 SO_2 Acid Rain Program allowances beginning in 2011 but does not require the surrender of any CSAPR allowances.

13. Faced with multiple air emission reduction requirements, DMG evaluated its environmental compliance strategy in light of the available pollution control technologies, including use of potential co-benefit emission control technologies that reduce not only mercury but also NOx and/or SO_2. DMG determined that the best approach to implementing reasonable and effective air emissions reductions from its coal-fired power plants was for the Agency to adopt a comprehensive approach that would address mercury emissions in coordination with other air emission reduction requirements.

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available at < www.epa.gov/compliance/resources/cases/civil/caa/illinoispower.html > under the link "Consent Decree."

14. DMG determined that compliance with its Consent Decree, the Illinois CAIR, and the Illinois mercury rule could require the installation of various combinations of pollution control equipment. The pollution control equipment necessary for DMG to meet its NOx limits (*i.e.*, SCRs) and SO_2 limits (*i.e.*, dry scrubbers) for the CAIR and Consent Decree, as well as fabric filters for PM control under the Consent Decree, also enhance a source's ability to reduce mercury emissions. These same combinations of control technologies were necessary for DMG to comply with the Consent Decree, the CAIR, and the Illinois mercury rule; however, all of the pollution control equipment could not be installed by the earliest compliance date, *i.e.*, July 1, 2009, the initial compliance deadline for the Illinois mercury rule. Thus, coordination of these separate regulatory emission reduction requirements was essential.

15. For these reasons, DMG (and other electricity generators in Illinois) worked with the Agency on a proposal to coordinate the intertwined mercury, NOx, and SO_2 emissions control planning. That effort resulted in the MPS, which was adopted by the Board in R06-25 as part of the Illinois mercury rule at Section 225.233. DMG opted in to the MPS on November 26, 2007. *See* Exhibit 5.

16. The MPS required DMG to install and operate halogenated activated carbon injection systems to control mercury emissions but extended the deadline to demonstrate compliance with the rule's overall 90 percent mercury reduction requirement (or 0.0080 lb mercury/GWh gross electrical output standard) until 2015. Prior to 2015, the MPS units generally were required to meet the minimum sorbent injection rate requirements for mercury control.[14] The MPS also establishes strict, declining emissions limits for NOx and SO_2 over a

[14] However, DMG "early elected" all of its MPS units (*i.e.*, Hennepin Units 1 and 2, Wood River Units 4 and 5, Havana Unit 6, and Baldwin Units 1, 2, and 3) to the 0.0080 lb mercury/GWh gross

period of time, including a system-wide SO_2 limit for DMG of 0.24 lb/mmBtu in 2013, declining to a rate of 0.19 lb/mmBtu in 2015,[15] and precludes trading of any excess allocated NOx and SO_2 allowances that may be generated by the pollution control equipment necessary for the MPS Group units to meet the applicable MPS NOx and SO_2 system-wide emissions limitations.

17. Generally speaking, in emissions trading programs, an allowance represents one ton of pollutant emitted. The CAIR NOx trading program and the CSAPR require sources to surrender to the USEPA one allowance for each ton of NOx or SO_2 emitted during the previous control period.[16] Typically, "excess" allowances under the federal regulatory trading programs are those that have been allocated but that are not required to be surrendered to the USEPA under these programs to match the number of tons of pollutant emitted during the previous control period. However, under the MPS and as directly relevant to this Amended Petition, beginning in 2013, in addition to the surrender requirements of the CAIR and CSAPR, the MPS prohibits the sale or transfer of any allocated SO_2 allowances in excess of the applicable MPS SO_2 emission standard and requires that such excess allowances be surrendered to the Agency on an annual basis.[17] Because the MPS restricts the SO_2 allowance emissions trading otherwise available and

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electrical output standard. Prior to the Station's retirement, Vermilion Units 1 and 2 also had been early elected to the 0.0080 lb/GWh standard. Thus, all of these units met the standard well before the compliance date of 2015.

[15] DMG was subject to a system-wide rate of 0.24 lb/mmBtu SO_2 for its MPS Group in 2013 and 2014, rather than the 0.33 lb/mmBtu SO_2 rate set forth at Section 225.233(e)(2)(A). In 2015, DMG will be subject to a rate of 0.19 lb/mmBtu, rather than the 0.25 lb/mmBtu rate set forth in Section 225.233(e)(2)(B). These rates applied because the respective 44 percent and 35 percent of Base Rate emissions results in the more stringent rate.

[16] Contrary to the norm in emissions trading programs, under the CAIR SO_2 trading program only, sources were required to surrender more than one Acid Rain Program allowance for each ton emitted.

[17] For example, if an MPS unit were allocated 100 SO_2 allowances and the MPS equivalent SO_2 emission limit was 85 tons but the unit actually emitted only 80 tons of SO_2, the "excess" allowances that

requires DMG to meet specified system-wide emission rates and because the Consent Decree also restricts the trading of certain Acid Rain Program SO_2 emission allowances and requires compliance with certain short-term emission rates and limitations, DMG must install and operate SO_2 pollution control equipment and cannot rely on allowance purchases as a compliance strategy or compliance timing tool.

18. In August 2011, in response to the court-ordered remand of the CAIR, the USEPA adopted a replacement rule known as the Cross-State Air Pollution Rule or CSAPR. 76 Fed. Reg. 48,208 (Aug. 8, 2011).[18] The CSAPR was appealed, and the D.C. Circuit stayed and then vacated the CSAPR and reinstated the CAIR during the pendency of the CSAPR appeals. *EME Homer City Generation, L.P., v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), *see* Exhibit 14. On April 29, 2014, the U.S. Supreme Court upheld CSAPR as to the issues it reviewed. *EME Homer City Generation, L.P.*, 134 S. Ct. 1584. Subsequently, the USEPA filed with the D.C. Circuit a Motion to Lift Stay with respect to CSAPR, which motion was granted. Order at 3, *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. Oct. 23, 2014). Now, the USEPA is proceeding with implementation of the CSAPR. 79 Fed. Reg. at 71,663.[19]

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are the subject of this Amended Petition would be the difference between the 100 tons allocated and the 85 tons that match the MPS SO_2 limit, or 15 tons. The MPS would require the unit to surrender to the Agency the 15-ton difference between what was actually allocated and the MPS equivalent limit. The five tons resulting from the unit's over-compliance are not an issue because they would already be available to the unit for trade under the provisions of the MPS. *See* Section 225.233(f)(3).

[18] The USEPA subsequently amended the CSAPR twice, first, among other amendments, to address sources that had consent decrees, including DMG, 77 Fed. Reg. 10,324 (Feb. 21, 2012), and second to correct emissions data and, therefore, emissions caps for several states, not including Illinois, 77 Fed. Reg. 34,830 (June 12, 2012).

[19] The CSAPR remains on appeal at the D.C. Circuit relative to several issues not raised to the U.S. Supreme Court.

19. The CSAPR imposes cap-and-trade programs on EGUs within each affected state that cap emissions of SO_2 and NOx at levels to eliminate that state's contribution to nonattainment in, or interference with maintenance of attainment status by, down-wind areas with respect to the NAAQS for $PM_{2.5}$ and ozone. As relevant to this Petition, the CSAPR includes two phases of SO_2 emissions reductions. Originally, the first phase required compliance beginning on January 1, 2012, and the second more stringent phase was to begin on January 1, 2014. Now, in accordance with the Interim Final Rule, Phase I began January 1, 2015, and Phase II will begin January 1, 2017. 79 Fed. Reg. at 71,663; Respondents' Motion to Lift the Stay at 14, *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. June 26, 2014). The CSAPR also establishes two interstate trading programs for SO_2: one for sources in Group 1 states, including Illinois, that need to make greater reductions to eliminate their significant downwind contribution to nonattainment, and a second for sources in Group 2 states that need to make lesser reductions. Importantly, the CSAPR trading program – unlike the CAIR – does not use Acid Rain Program SO_2 allowances. Instead, the CSAPR uses SO_2 allowances that are specific to the CSAPR program. Thus, the CSAPR, with its limited supply of CSAPR-specific SO_2 allowances and trading restrictions, is effectively more stringent than the CAIR, which used Acid Rain Program SO_2 allowances that are in oversupply due to many banked allowances and improvements in SO_2 emission control since the inception of the Acid Rain Program in 1995.

20. In the first phase of the CSAPR SO_2 emission reduction program (*i.e.*, now 2015-2016), DMG's coal-fired units collectively will be allocated annually 48,995 SO_2 allowances.[20]

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[20] USEPA, *Availability of Data on Allocations of Cross-State Air Pollution Rule Allowances to Existing Electricity Generating Units*, 79 Fed. Reg. 71,674 (Dec. 3, 2014); USEPA, "Unit Level Allocations Under the CSAPR FIPs After Tolling," Docket ID No. EPA-HQ-OAR-2009-0491-4970, available at < www.epa.gov/crossstaterule/actions.html >, *see* pp. 18-21, 24.

The CSAPR allowance allocations are based on historic heat input subject to a maximum allocation limit to any individual unit based on that unit's maximum historic emissions, which, as recognized by the USEPA, does not penalize units that have already invested in state-of-the-art air pollution controls, such as DMG's units. 76 Fed. Reg. at 48,288. For 2015 and 2016, the CSAPR allowance allocations are determined by the CSAPR federal implementation plan ("FIP"). While states, subject to certain conditions, were permitted to substitute their own allowance allocation provisions in place of the FIP allocations for control periods after 2012, Illinois did not notify the USEPA of any intent to make substitute allowance allocations for 2013 (now 2015) by the applicable deadline, *i.e.,* October 17, 2011, and DMG is not aware of any plans in Illinois to adopt and implement a different allocation system, at least in the near future. Therefore, until such time as Illinois may adopt rules to change the CSAPR allowance allocation system in the state, the CSAPR FIP is the only rule applicable to that program in Illinois.

21. Under the CSAPR, SO_2 allowances are freely transferable, subject to the limitation that SO_2 allowances may be used by sources only within the same SO_2 Group of states, *i.e.,* sources in Group 1 states can use SO_2 allowances only from sources in other Group 1 states, and sources in Group 2 states can use SO_2 allowances only from sources in other Group 2 states. Therefore, although theoretically anyone could purchase DMG's CSAPR SO_2 allowances, they could be used by EGUs located only in Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin (*i.e.*, the Group 1 states). 76 Fed. Reg. at 48,440-41. Although DMG does occasionally engage in direct trades of emissions allowances under other programs, most of the allowance trading that DMG undertakes is "blind." Under

"blind" trades, allowances are traded through a broker or an exchange. This is a general practice in allowance trading.

22. The CSAPR includes its own restrictions for trading allowances to ensure that emission reductions occur both in Illinois and in the other states whose emissions impact air quality in Illinois. The USEPA performed extensive air modeling to support the CSAPR, modeling that was not performed for the MPS.[21] Thus, the allowance trading permitted in the CSAPR is backed by sound science, and the CSAPR contains the necessary provisions to ensure that needed emissions reductions occur in each individual state, including in Illinois and those states that affect Illinois' air quality.[22]

23. There are two programmatic elements of the CSAPR that ensure that upwind states are limited in their contributions of emissions to downwind states with respect to SO_2 emissions: (i) the division of the states subject to the CSAPR into two groups, as described above; and (ii) the implementation of variability limits. Additionally, the USEPA set statewide allowance allocations based upon its analysis of each state's contribution to downwind receptors to ensure that the overall emissions from the state are sufficiently reduced.

24. The inclusion of variability limits sets the CSAPR apart from the two other cap and trade programs aimed at ozone and particulate matter implemented by the states and the

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[21] *See, e.g.*, USEPA, "Air Quality Modeling Final Rule Technical Support Document," Docket ID No. EPA-HQ-OAR-2009-0491-4140 (June 2011).

[22] 77 Fed. Reg. at 10,330 ("EPA maintains that for 2012-2013 [now 2015-2016], the [CSAPR] (as revised by the final rule [including deferral of the assurance penalty provisions until 2014, now 2017]) ensures the elimination of each state's significant contribution to nonattainment and interference with maintenance." [footnote omitted]). The USEPA did not alter any of its analysis in the Interim Final Rule. *See* 79 Fed. Reg. 71,663, *et seq.*

USEPA earlier in this century. The basic CSAPR requirements augmented by these variability limits ensure that the granting of this variance, which would merely authorize for two years the allowance trading permitted by CSAPR but currently prohibited by the MPS, will not cause undue environmental impact both within Illinois and in either upwind or downwind areas where the allowances could be traded. Variability limits are an upper bound on total SO_2 emissions that sources subject to the CSAPR in a state may emit during a calendar year. The variability limits are greater than the total number of allowances allocated to the sources in a state. Thus the USEPA anticipated that there could be differences in electricity demand in portions of the CSAPR region that could vary from year to year. 76 Fed. Reg. at 48,265. The USEPA believed that the variability limits, set at specific percentage levels[23] greater than the total number of allowances allocated for a state, provide the necessary flexibility for generators to supply the demands for their electricity. 76 Fed. Reg. at 48,265. Beginning in the third year of the CSAPR (now 2017), if the total amount of SO_2 emissions in a calendar year exceeds the number of allowances allocated for a state plus the state's variability limit, the USEPA would determine which sources in the state contributed to the emissions in excess of the variability limit. In such a case, those sources must surrender additional allowances to cover their respective shares of emissions in excess of the variability limit. *See* 76 Fed. Reg. at 48,294-96. The variability limits would not apply during Phase 1 of CSAPR, the term for which DMG seeks this variance. However, the USEPA has determined that the variability limits are not necessary to protect air

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[23] The variability limit for statewide SO_2 emissions across the CSAPR region is 18%. 76 Fed. Reg. at 48,267. That is, total emissions in a state may exceed the statewide total allowance allocations by 18% in any given control period. However, once total statewide mass emissions exceed 18% above the statewide total allocations (or emissions cap), the variability limit has been exceeded and those sources whose emissions exceeded their proportionate share of the 18% must surrender additional allowances to cover the excess.

quality during the first two years of the program. 77 Fed. Reg. at 10,330. While sources are allowed to bank allowances, and allowances purchased from DMG could be banked for use in future years, use of those banked allowances in future years would be subject to the variability limits.

25. The USEPA did not alter its air quality analysis of the necessity for or impact of the CSAPR when it adopted the Interim Final Rule that changed the dates of the phases of the CSAPR. *See* 79 Fed. Reg. 71,663, *et seq.* "The rulemaking record before the Court establishes that the emission levels set by the rule are necessary for downwind states to attain *and* maintain NAAQS." Respondents' Motion to Lift the Stay at 10, *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. June 26, 2014) (emphasis in original). "[A]llowing EPA to finally replace CAIR with the [CSAPR] best serves the interests of downwind states and their residents. . . ." *Id.* at 12. "Lifting the stay of the Rule now will . . . provide assistance, as Congress required, to downwind states in achieving and maintaining national ambient air quality standards. . . ." *Id.* at 1. "[T]he [CSAPR] is needed to help downwind states attain and maintain ozone and PM2.5 NAAQS . . . ." *Id.* at 2. The Board's granting of this requested variance, which would result in allowance utilization as modeled by the USEPA and would not impair the CSAPR air quality benefits, will not have an effect on air quality or downwind receptors beyond what the USEPA expects and has modeled in the course of the CSAPR rulemaking. The passage of time has not diminished this conclusion.

26. Moreover and directly applicable to this requested variance, in one of the revisions to allocations under the CSAPR, the USEPA redistributed SO_2 allowances in some states without altering the state caps to reflect anticipated emissions from sources with consent decrees requiring surrender of non-Acid Rain Program SO_2 allowances so that those allowances

would not be retired from the CSAPR program. The USEPA wanted to ensure that all allowances are available for use.[24] The USEPA analyzed the allowance surrender requirements applicable to EGUs with consent decrees and determined that no adjustment in DMG's SO_2 allocations was warranted because its Consent Decree addressed only Clean Air Act Title IV Acid Rain Program allowances. *See* Exhibit 7, Table 1 of the *Assessment of Impact TSD*. The USEPA proposed no change to this analysis in its recent request for the Court to lift the stay and allow implementation of the CSAPR to move forward.

27. Finally, the Agency performed no air quality analysis when the MPS was proposed and adopted. The Agency later used the emission rates in the MPS to support its BART[25] State Implementation Plan ("SIP"), but there was no air quality analysis to determine the impact of the MPS emission rates on particulate matter or ozone concentrations. In contrast, the USEPA performed extensive air quality analyses to determine the level of emissions from upwind states that would no longer deleteriously impact downwind receptors. The USEPA determined that the prescribed allowance allocations are protective of downwind receptors. 76 Fed. Reg. at 48,237. As described in great detail in the preambles to the proposed and final rules, the USEPA identified which receptors were either nonattainment for the PM2.5 NAAQS or in jeopardy of becoming nonattainment (*i.e.*, attainment or maintenance areas) because of upwind contributions of PM2.5 or its precursors. *See* 76 Fed. Reg. at 48,227-71. Where a state

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[24] *See* USEPA, Technical Support Documentation *Assessment of Impact of Consent Decree Annual Tonnage Limits on Transport Rule Allocations*, Docket ID No. EPA-HQ-OAR-2011[sic]-0491 (Oct. 4, 2011), finalized at 77 Fed. Reg. 10,324 (Feb. 21, 2012) ("*Assessment of Impact TSD*").

[25] Best available retrofit technology required by Section 169A of the Clean Air Act to address regional haze. 42 U.S.C. § 7491. We note that the MPS restriction on emission allowance trading was not part of the BART SIP. *See* 77 Fed. Reg. 39,943 (July 6, 2012) (approval of Illinois SIP for regional haze).

contributed "significantly" to a downwind receptor, either one already in nonattainment or one where attainment or maintenance was threatened, the state became subject to the CSAPR for SO_2. The USEPA examined each EGU in subject states to determine its historic emissions, applied reductions that would result from "on-the-books" state and federal rules, and then set each EGU's allowance allocation based on those factors, but in no event greater than the EGU's maximum emissions. Finally, the USEPA determined that emissions from states at those levels plus the variability limits described above would not significantly impact the downwind receptors linked to each state. 76 Fed. Reg. at 48,237. The USEPA explained that in the CSAPR, state emission budgets were based on each state's contributions to downwind receptors, as compared to the CAIR, where state budgets were based on a regional level of required emission reductions. 77 Fed. Reg. at 10,331. Moreover, since state budgets were built from the allowances that the USEPA would allocate to each EGU, the Board can be assured that DMG's allowances directly reflect DMG's emissions, including the possibility or even likelihood of trading allowances.

28. The USEPA's analyses support the relief that DMG requests in its Amended Petition for Variance. Illinois EPA agrees that granting this requested variance does not interfere with federal and state air quality goals, as demonstrated by the USEPA's air quality analyses during the development of the CSAPR, Agency Rec., p. 10 (July 23, 2012), and subsequent air quality modeling. 77 Fed. Reg. at 10,329-32.

29. When the MPS was negotiated with the Agency and agreed to in 2007, the more stringent CSAPR SO_2 emission reductions and restrictions on allowance trading, *i.e.*, the variability limits, were neither part of the CAIR nor foreseeable. The CAIR addressed only SO_2 allowances that already existed under the Acid Rain Program, and it did not create any new SO_2

allowances, as does CSAPR, also not foreseeable. Thus, DMG did not agree to the MPS allowance trading restrictions and MPS-required SO_2 allowance surrenders with respect to the then non-existent and not-yet-even envisioned CSAPR SO_2 allowances. In that respect, the CSAPR's SO_2 allowance allocations and trading program represent a fundamental change to DMG's and the Agency's mutual assumptions on which the MPS SO_2 allowance trading restrictions were based. Consequently, the Board may grant the requested variance without undermining the basis for the MPS as agreed.

30. The MPS was adopted in the rulemaking where the Agency and Board were responding to the requirement to address the federal CAMR, PCB R06-25. The MPS was partially the result of both the Agency's and DMG's recognition that the companion federal CAIR and attainment of the PM2.5 NAAQS would, practically speaking, require reductions of emissions of NOx and SO_2, though no air quality analyses of the amounts of reductions necessary were conducted for that rulemaking. The MPS represented a compromise to achieve at least some of those reductions. Additionally, DMG was engaged in business planning to comply with the provisions of the Consent Decree entered in *United States, et al., v. Illinois Power Co., et al.*, supra note 13, which included requirements addressing the same pollutants as the MPS. Therefore, it was important to DMG to ensure that the MPS conformed with the Consent Decree to the extent possible and to avoid potentially inconsistent or even competing compliance requirements. Reflecting the CAIR, Part 225 has required the surrender of a number of Clean Air Act Title IV Acid Rain Program SO_2 allowances in addition to those required to be surrendered under the Acid Rain Program itself. *See* Section 225.310(a); 40 CFR 96, Subparts AAA, BBB, FFF, GGG, and HHH. Likewise, the Consent Decree required the surrender of Title IV Acid Rain Program SO_2 allowances. Therefore, at the time that Section 225.233(f) was

adopted, it applied to Title IV Acid Rain Program allowances and reflected DMG's (and the Agency's) understanding that Title IV Acid Rain Program allowances were the only SO_2 allowances to which it applied.

31. The court in *North Carolina v. EPA* held that the USEPA improperly relied on Acid Rain Program SO_2 allowances in the CAIR. The court remanded the entirety of the CAIR. The USEPA then developed the CSAPR, including the Clean Air Act Title I SO_2 trading program wholly separate from and in addition to the Acid Rain Program. This is a fundamentally different program based on an entirely new trading currency (*i.e.*, Title I CSAPR SO_2 allowances as opposed to Title IV Acid Rain Program allowances). Thus, the USEPA has recognized that consent decrees, such as the DMG Consent Decree, that require the surrender of only Title IV Acid Rain Program SO_2 allowances do not require the surrender of CSAPR Title I SO_2 allowances. *Assessment of Impact TSD* (*see* Table 10; the USEPA specifically concludes there is no potential impact from the surplus allocation to Illinois Power, now DMG). That is, while DMG is required to surrender Title IV Acid Rain Program SO_2 allowances under the terms of the Consent Decree, it is not required to surrender CSAPR Title I SO_2 allowances under its Consent Decree, and the USEPA did not adjust DMG's allowances allocations to reflect such a surrender.

32. Meanwhile, in R09-10, the Board amended Section 225.233(f)(4) by changing the definition of NOx and SO_2 allowances. This 2009 amendment of the definition of SO_2 allowances subject to the allowance trading restrictions of Section 225.233(f) fundamentally changed the rule from the understanding between DMG and the Agency when the MPS was proposed and initially adopted. The Board added the language "or any future federal NOx or SO_2 emissions trading program that modify or replace these programs." *See* Exhibit 17, p. 42 of

the Board's Opinion and Order Final Notice, R09-10 (June 18, 2009). With the development of the CSAPR, which does not rely on Acid Rain Program SO_2 allowances, but rather includes allocation of SO_2 allowances created solely and uniquely for the CSAPR, the scope of the restriction in the MPS was effectively changed. It was expanded to include an unanticipated and unforeseen program with economic consequences that could not have been predicted at the time that DMG agreed to the language of the MPS and opted-in to that program. Likewise, neither the Agency nor any affected persons could have envisioned the structure of this subsequent program and its more stringent restrictions on downwind impacts while still providing the efficiencies of a cap and trade program. Further, DMG understands and believes that the Agency has not relied upon the surrender of excess CSAPR allowances that would occur pursuant to the MPS for any air quality or planning purposes.

33. The amendment to Section 225.233(f)(4) fundamentally changed the scope of the MPS. Now the MPS does not track DMG's Consent Decree, a basic premise in DMG's agreement to the MPS when it was developed and adopted. DMG believes this requested variance is within the scope of what the Board may grant, in part because of the fundamental difference between what DMG agreed to in the MPS in 2007 and what resulted with the 2009 amendment to the rule and the later promulgation of the unexpected CSAPR program that arose when CAIR was vacated and then remanded to the USEPA. Clearly, with the new federal program that differs so dramatically from the CAIR and that arose because of legal challenges to CAIR, it was foreseeable that DMG would require some relief, particularly when the USEPA did not reflect the limitations in Illinois' MPS rule in the CSAPR.

34. Finally, the requested variance will not affect DMG's actual SO_2 emissions because DMG's units remain subject to the MPS Group and Consent Decree unit-specific SO_2

emission rate limits. Therefore, separate and apart from the air quality analyses that the USEPA performed supporting the CSAPR, DMG's emissions will not increase as a result of trading or selling its allowances.

35. In order to meet the emission reduction requirements of the MPS and the Consent Decree, DMG had to plan in advance for and finance the purchase of the necessary pollution control equipment. The procurement and installation process for SO_2, PM, and mercury pollution control devices – each of which alone involved significant equipment and engineering – was up to five years. Since the MPS and Consent Decree require compliance with specified emissions rates, DMG did not have the flexibility available to other companies to delay this equipment planning and financing through purchases of allowances to satisfy its compliance obligations until the financial, labor, and equipment markets were more advantageous and the CSAPR appeal was resolved.

36. DMG estimates that its costs of compliance with the Illinois mercury rule (including the MPS) and its Consent Decree have totaled approximately $1 billion, of which $11 million were for mercury controls. Additionally, DMG continues to incur significant on-going operational costs related to the installed controls.

37. Additionally, in response to the vacatur of the CAMR, the USEPA adopted the MATS.[26] *See supra*, note 12. The MATS requires certain electric generating emission sources, including DMG's coal-fired units, to reduce emissions of mercury and other hazardous air

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[26] The Supreme Court consolidated three appeals of the MATS and granted certiorari. *White Stallion Energy Center, LLC v. EPA*, 748 F.3d 1222 (D.C. Cir. 2014), *cert. granted sub nom. Michigan v. EPA,* 83 U.S.L.W. 3089 (U.S. Nov. 25, 2014) (No. 14-46), *Utility Air Regulatory Group v. EPA,* 83 U.S.L.W. 3089 (U.S. Nov. 25, 2014) (No. 14-47), and *National Mining Assoc. v. EPA.* 83 U.S.L.W. 3089 (U.S. Nov. 25, 2014) (No. 14-49) (cases consolidated).

pollutants. The controls for these pollutants are largely the same as those that DMG has already installed. The compliance date for the MATS is April 16, 2015.[27]

38. Given the large capital and operations and maintenance ("O&M") projects involved in pollution control decisions at each of its coal-fired power plants, DMG must proceed cautiously to maintain its financial resources and operational flexibility, as well as the integrity of the electricity generation system that supports Illinois' economy. DMG continues to evaluate compliance strategies at each of its coal-fired power plants to identify the optimal locations for investments and expenditures consistent with the goal of maintaining operational flexibility within a competitive energy market.

C. DMG REQUIRES TEMPORARY RELIEF FROM SECTION 225.233(f)(2) TO AVOID UNDUE BURDENS AND UNREASONABLE HARDSHIP IN CONJUNCTION WITH ITS ENVIRONMENTAL OBLIGATIONS.

39. DMG seeks this variance because surrendering, during the first two years of implementation of the CSAPR, a large quantity of CSAPR SO_2 allowances with significant economic value generated by DMG's significant capital investments in SO_2 pollution control equipment deprives DMG of that significant economic value, causing DMG unreasonable hardship.

40. Specifically, DMG seeks temporary relief from the requirement in Section 225.233(f)(2) that prohibits the sale or transfer of excess allocated SO_2 allowances relative to the

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[27] DMG has not sought an extension of the applicable MATS compliance deadline with respect to the MATS emission limits. DMG has sought an extension of certain MATS startup and shutdown work practice requirements, as adopted by the USEPA in November 2014 (79 Fed. Reg. 68,777 (Nov. 19, 2014)), but a subsequent rule proposed by the USEPA (80 Fed. Reg. 8442 (Feb. 17, 2015)) to correct errors in the November 2014 MATS startup and shutdown work practice rule would, if adopted as proposed, eliminate the need for the requested extension of the MATS startup and shutdown work practice provisions.

applicable MPS SO_2 emission standard and the companion requirement that DMG surrender such excess SO_2 allowances. Section 225.233(f)(2) and related provisions, effective December 21, 2006, provide, in relevant part:

f) Requirements for NOx and SO_2 Allowances.

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2) The owners or operators of EGUs in an MPS Group must not sell or trade to any person or otherwise exchange with or give to any person SO_2 allowances allocated to the EGUs in the MPS Group for vintage years 2013 and beyond that would otherwise be available for sale or trade as a result of actions taken to comply with the standards in subsection (e) of this Section. Such allowances that are not retired for compliance, or otherwise surrendered pursuant to a consent decree to which the State of Illinois is a party, must be surrendered to the Agency on an annual basis, beginning in calendar year 2014. This provision does not apply to the use, sale, exchange, gift, or trade of allowances among the EGUs in an MPS Group.

3) The provisions of this subsection (f) do not restrict or inhibit the sale or trading of allowances that become available from one or more EGUs in a MPS Group as a result of holding allowances that represent over-compliance with the NOx or SO_2 standard in subsection (e) of this Section, once such a standard becomes effective, whether such over-compliance results from control equipment, fuel changes, changes in the method of operation, unit shut downs, or other reasons.

4) For purposes of this subsection (f), NOx and SO_2 allowances mean allowances necessary for compliance with Sections 225.310, 225.410, or 225.510, 40 CFR 72, or Subparts AA and AAAA of 40 CFR 96, or any future federal NOx or SO_2 emissions trading programs that modify or replace these programs. This Section does not prohibit the owner or operator of EGUs in an MPS Group from purchasing or otherwise obtaining allowances from other sources as allowed by law for purposes of complying with federal or state requirements, except as specifically set forth in this Section.

5) By March 1, 2010, and continuing each year thereafter, the owner or operator of EGUs in an MPS Group must submit a report to the Agency that demonstrates compliance with the requirements of this subsection (f) for the previous calendar year, and which includes identification of any allowances that have been surrendered to USEPA or to the Agency and any allowances that were sold, gifted, used, exchanged, or traded because they became

> available due to over-compliance. All allowances that are required to be surrendered must be surrendered by August 31, unless USEPA has not yet deducted the allowances from the previous year. A final report must be submitted to the Agency by August 31 of each year, verifying that the actions described in the initial report have taken place or, if such actions have not taken place, an explanation of all changes that have occurred and the reasons for such changes. If USEPA has not deducted the allowances from the previous year by August 31, the final report will be due, and all allowances required to be surrendered must be surrendered, within 30 days after such deduction occurs.

41. In accordance with Section 225.233(f)(2), DMG could not sell or transfer CSAPR SO_2 allowances with vintage years of 2015 or later that are allocated in excess of the MPS SO_2 standard. Because DMG has already installed and is operating dry scrubbers at Baldwin Units 1, 2, and 3 and Havana Unit 6, based on projected utilization, DMG estimates it will have approximately 29,900 excess allocated vintage year 2015 CSAPR SO_2 allowances. Under the MPS, DMG would be able to sell, bank, or trade only approximately 575 of those allowances due to over-compliance with the MPS; the MPS requires DMG to surrender the remaining approximately 29,325 CSAPR vintage 2015 SO_2 allowances. Likewise, based upon projected utilization, DMG estimates it will have approximately 31,700 excess allocated vintage year 2016 CSAPR SO_2 allowances. Under the MPS, DMG would be able to sell, bank, or trade only approximately 850 of those allowances due to over-compliance with the MPS; the MPS requires DMG to surrender the remaining approximately 30,850 CSAPR vintage 2016 SO_2 allowances. In other words, the MPS precludes DMG from selling or trading thousands of CSAPR allowances. The inability to trade or sell such excess allowances due to the prohibition in Section 225.233(f)(2) represents a significant lost opportunity for DMG.

42. DMG estimates the monetary value of such excess CSAPR Group 1 SO_2 allowances in the first two-year phase of CSAPR to be approximately $3 million, based upon a

value of $50 per allowance.[28] This amount is significant, even though it is based upon an assumed allowance value that is substantially less than the value assumed in USEPA's original calculations.[29]

43. In order to optimize its CSAPR SO_2 allowance trading opportunities, it is important that DMG be allowed to trade allowances as soon as possible. Therefore, DMG seeks this variance now in order for it to fully realize, as soon as possible, the purpose of the variance, *i.e.*, fully participating in the CSAPR SO_2 allowance market as contemplated by the CSAPR.

44. The inability to trade or sell those excess SO_2 allowances also interferes with a robust SO_2 allowance trading market consistent with air quality goals of the CSAPR that would protect jobs and encourage investment in the Illinois electric generation industry. By undermining the trading program envisioned by the CSAPR and smooth program implementation, the MPS prohibition on trading or selling excess allowances damages the ability of DMG (and, more generally, Illinois industry) to stay competitive with EGUs (and industry) in other states. Importantly, the USEPA has determined that, for Phase I, the CSAPR cap-and-trade program, with fully transferable SO_2 allowances, ensures the elimination of each state's

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[28] DMG is aware of only several trades of CSAPR Phase 1 Group 1 SO_2 allowances since the Supreme Court's ruling on the CSAPR appeal in August 2014 to date. Based on that information, DMG has conservatively estimated the value of a CSAPR vintage 2015 Group 1 SO_2 allowance at $50 per allowance and applied that amount to the approximate number of excess allocated allowances, not including allowances available for sale or trade generated from over-compliance with the MPS, in 2015 and 2016 to arrive at an amount of approximately $3 million.

[29] The USEPA originally projected the price of CSAPR SO_2 Group 1 allowances at $1,000 per allowance. USEPA, "Regulatory Impact Analysis for the Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States; Correction of SIP Approvals for 22 States," Docket ID No. EPA-HQ-OAR-2009-0491, at p. 260 (June 2011). Before the CSAPR was stayed, vintage 2012 CSAPR SO_2 Group 1 allowances traded between approximately $2,500 and $4,000 per allowance, albeit in limited quantities in the incipient market. Of course, no one can predict with accuracy what might happen in the trading market; therefore, DMG has chosen to be conservative with a valuation of $50 per allowance and can provide no better estimate of the hardship posed by its inability to trade these excess allowances.

significant contribution to nonattainment and interference with maintenance of the NAAQS. 77 Fed. Reg. at 10,330. Thus, DMG's ability to trade or sell those excess allowances will not defeat the State's effort to achieve and maintain compliance with the ozone and $PM_{2.5}$ NAAQS in Illinois, nor will it defeat the efforts of other states.

45. By interfering with the CSAPR, the MPS' restrictions on trading of SO_2 allowances only serve to complicate regulatory requirements and place an unnecessary burden on Illinois EGUs relative to EGUs in neighboring states and, more specifically, on DMG. States neighboring Illinois do not restrict CSAPR allowance trading beyond the restrictions imposed by the CSAPR. Thus, the MPS' restrictions on allowance trading place DMG at a competitive disadvantage relative to other electricity generators in the regional electricity generation market.

46. Importantly, DMG is an independent power producer and, as such, does not have a rate base and competes directly against other electricity generators in the regional electricity generation market. Since the summer of 2008, power prices have declined significantly. One of the primary causes of the decline is lower natural gas prices as a result of the proliferation of shale gas in the U.S. In addition to considerable margin decline due to lower power pricing, operation of the dry scrubbers consumes energy and results in less generation for sale, which also reduces revenues but increases the number of SO_2 allowances available for sale. EGUs, particularly coal-fired EGUs, also face the likelihood of incurring substantial additional costs in the next several years to comply with new rules addressing coal ash disposal, effluent discharges, cooling water intake structures, greenhouse gas emission standards, and more stringent NAAQS for criteria air pollutants.[30]

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[30] *See, e.g.,* 80 Fed. Reg. 21,302 (Apr.17, 2015) (USEPA final rule under RCRA for disposal of coal combustion residuals); 79 Fed. Reg. 48,300 (Aug. 15, 2014) (USEPA final rule for cooling water

47. Despite the sizeable change in the economics of its units, DMG continued to make the investment in pollution control equipment, as opposed to pursuing major changes to the MPS or the Consent Decree. In light of the expenditures DMG committed to and the lost margin due to market economics, the requested variance would allow DMG the ability to offset some of the margin loss through the sales of excess SO_2 allowances that have resulted from its approximately $1 billion investment in pollution control equipment.

48. As an independent power producer, DMG cannot predict with any certainty the impact of not being able to sell or trade allowances on ratepayers and the people of the State of Illinois. However, generally speaking, if DMG is not able to trade these allowances, its net production costs would be higher compared to production costs minus the proceeds from the CSAPR SO_2 allowance sales. Higher net production costs would, in general, result in a higher market price for DMG's energy sales. Because DMG is not a utility and cannot recover costs through Illinois Commerce Commission-approved rates, DMG would be able to recover any such increased production costs only to the extent that wholesale energy market prices allowed for such recovery. However, because energy pricing is affected by many complex factors, because the proceeds from potential allowance sales are uncertain, and because DMG does not know exactly how the energy prices of its wholesale competitors will be affected by the CSAPR or how other companies will reflect the cost of CSAPR compliance in the rates they set for their

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intake structures under Clean Water Act Section 316(b)); 75 Fed. Reg. 35,520 (June 22, 2010) (USEPA final rule establishing the new 1-hour SO_2 NAAQS); 78 Fed. Reg. 34,431 (June 7, 2013) (USEPA proposed rule regarding effluent limitations for steam electric units); 79 Fed. Reg. 27,466 (May 13, 2014) (USEPA proposed rule regarding data requirements for future rounds of designations for 1-hr SO_2 NAAQS); 79 Fed. Reg. 34,830 (June 18, 2014) (USEPA proposed rule for carbon pollution emission guidelines for existing stationary sources); 79 Fed. Reg. 75,234 (Dec. 17, 2014) (USEPA proposed rule regarding revised ozone NAAQS).

customers, DMG is unable to predict with any certainty the impact of not being able to sell or trade these allowances on ratepayers.

49. If DMG is not allowed to sell its excess CSAPR SO_2 allowances, that will have an adverse economic impact on DMG. In a general sense, such an adverse economic impact, in combination with other adverse economic impacts, if sufficiently material, potentially could adversely affect the number of Illinois citizens employed by DMG. A reduction in DMG's Illinois workforce potentially could result in less consumer spending in Illinois, resulting in less sales tax collected by the State and could mean lower income tax revenues for the State. As stated above, DMG employs approximately 420 persons at its coal-fired power plants in Illinois, many of which are well-paying union jobs, and relies on approximately an additional 70 support personnel at its offices in Illinois. In many of the Illinois communities and counties where DMG's plants are located, DMG is one of the largest employers and economic engines for the local economies, contributing millions in economic impacts and property and sales tax revenues. A combination of negative economic factors, including the inability to sell or trade the excess CSAPR SO_2 allowances, could impact the economic viability of certain DMG assets in Illinois, which would then negatively impact DMG employees, the affected local communities, and ultimately the State.

50. Rather than prohibiting the trade or sale of the excess allocated SO_2 allowances in the first two years that the CSAPR is implemented, DMG proposes an alternative that will allow DMG to sell or trade those excess SO_2 allowances without detriment to the environment. In fact, as indicated above in paragraph 27, the USEPA has determined that, based on comprehensive air modeling, the CSAPR cap-and-trade program, with fully transferable SO_2 allowances, ensures

the elimination of each state's significant contribution to nonattainment and interference with maintenance.

51. Importantly, DMG does not seek changes to any other requirements of the MPS. DMG remains committed to the previously agreed-to SO_2, NOx, and mercury reductions reflected in the MPS rule and does not seek a change to the requirement that it install and operate SO_2, NOx, or mercury controls on its coal-fired EGUs by any of the deadlines established in the MPS. DMG's requested variance does not reach the Acid Rain Program SO_2 allowances and has no effect on that program. Moreover, the Consent Decree requires DMG to surrender up to 30,000 SO_2 Acid Rain Program allowances in 2013 and each year thereafter, a requirement also not affected by this requested variance. The only relief that DMG seeks with this Amended Petition is from the prohibition in the MPS on the sale or transfer of and associated requirement to surrender excess vintage year 2015 and 2016 CSAPR SO_2 allowances. For subsequent CSAPR SO_2 vintage allocation years, DMG will abide with the MPS SO_2 allowance trading restrictions.

52. DMG's only possible compliance alternatives would be to surrender the excess CSAPR SO_2 allowances during the first two years of implementation of the program or to seek a rule change or legislation to eliminate the requirement for allowance surrenders. Surrendering the allowances in the first two years of the CSAPR would cause an arbitrary and unreasonable economic burden on DMG that is not required by the CSAPR and is inconsistent with the USEPA's goal of a robust emission trading program under CSAPR. A rule change or legislation potentially would be a viable route but may not be timely. Therefore, the variance that DMG seeks here seems the best alternative.

D. ANY POTENTIAL ENVIRONMENTAL DETRIMENT IS MITIGATED BY DMG's PRIOR AND ONGOING SO_2 EMISSION REDUCTION INITIATIVES.

53. The requested relief will not result in an environmental detriment, as the USEPA determined in its development of the CSAPR that use of the full amount of allowances under CSAPR would not adversely impact air quality or interfere with attainment or maintenance of the NAAQS. 77 Fed. Reg. at 10,330. Additionally, several initiatives that DMG has undertaken have resulted in a significant reduction in or avoidance of SO_2 emissions.

54. As discussed above, according to the USEPA's analysis of its allocation scheme under the CSAPR, the CSAPR cap-and-trade program, with fully transferable SO_2 allowances, ensures the elimination of each subject state's significant contribution to nonattainment and interference with maintenance. The USEPA concluded that the constraints on trading included in the CSAPR, particularly compared to the CAIR, provide sufficient assurances that air quality goals will be met.[31] Moreover, the Agency has not relied on the allowance surrenders required by the MPS for any air quality purposes. Since the CSAPR anticipates and accommodates emissions trading of all CSAPR SO_2 allowances allocated for Phase 1, based on the USEPA's extensive air quality analysis of that program, and because Illinois has not relied on those allowance surrenders for any air quality purposes, DMG reasonably posits that there is no undue environmental impact related to the Board's granting this variance to allow DMG to trade or sell its excess CSAPR SO_2 allowances.

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[31] 76 Fed. Reg. at 48,218 ("EPA fully addresses, for the states covered by this rule, the requirements of CAA section 110(a)(2)(D)(i)(I) for the annual $PM_{2.5}$ standard of 15 $\mu g/m^3$ and the 24-hour standard of 35 $\mu g/m^3$."); 76 Fed. Reg. at 48,237 (". . . the controls required under this rule are projected to eliminate nonattainment and maintenance problems with air quality standards at most downwind state receptors."); 76 Fed. Reg. at 48,238 ("The approach for eliminating significant contribution is based on the implementation of enforceable emissions budgets and not on a measurement of ambient air quality."); 76 Fed. Reg. at 48,247.

55. In addition, during the requested variance period, DMG will continue to operate its dry scrubbers and meet its system-wide SO_2 emissions tonnage cap and unit-specific SO_2 emission limits established by the Consent Decree, as well as the MPS Group system-wide SO_2 emission limit, so that DMG will not increase its actual SO_2 emission rate or exceed its system-wide annual SO_2 emissions tonnage cap. Exhibit 8R illustrates the emission reductions that DMG achieves with its operation of the pollution control equipment installed since 2009. *See also* Exhibit 9R (estimated emissions for 2015 and 2016 based upon average historic heat input).

56. DMG operated its spray dry absorbers at Baldwin Units 1, 2, and 3 before the applicable compliance deadlines, reducing SO_2 emissions by approximately 3,600 tons than would otherwise have been emitted. *See* Exhibit 8R. Allowing DMG the use of the allowances associated with these early reductions is consistent with the precepts of the MPS, which does not restrict trading allowances generated through over-compliance. Additionally, DMG avoided approximately 7,800 tons of SO_2 emissions through extended outages necessary to install pollution control equipment. *See* Exhibit 8R.

57. DMG's retirements of Vermilion Units 1 and 2, Wood River Units 1, 2, and 3, and Havana Units 1 through 5 resulted in an estimated avoidance of greater than 60,000 tons of SO_2 since 2011 and represent ongoing estimated annual avoidances of nearly 20,000 tons of SO_2 emissions. *See* Exhibit 8R.

58. Furthermore, relative to the Agency's air quality modeling to determine compliance with the new 1-hour SO_2 NAAQS, DMG has avoided SO_2 emissions at Wood River Units 4 and 5 by 13,008 tons per year by meeting its Consent Decree SO_2 emission limit of 1.20 lb/mmBtu instead of the state permitted SO_2 emission limit of 1.80 lb/mmBtu that is used by the Agency for those units in its air quality modeling. *See* Exhibit 8R. In fact, the current actual

SO_2 emission rate at Wood River is approximately 0.5 lb/mmBtu, increasing the tons of SO_2 actually avoided per year to approximately 26,000 as compared to the emission levels modeled by the Agency when assessing air quality.

59. Based upon the USEPA's air quality modeling for the CSAPR and the fact that the Agency has not relied upon the surrender of the excess allowances under the MPS for any air quality purposes, DMG posits that this requested variance will not cause an undue environmental impact. In fact, DMG's efforts as described above have resulted in significant reduction or avoidance of SO_2 emissions.

60. Adverse cross-media impacts are not an issue in this matter. The variance that DMG seeks does not impact its SO_2, NOx, or mercury emission reduction obligations under the MPS or any of its emission reduction obligations under the Consent Decree, or otherwise affect its SO_2, NOx, or mercury emissions. Since DMG's emissions will remain the same or decrease during the pendency of the variance, there will be no significant impact on air quality.

E. DMG'S SUGGESTED CONDITIONS FOR THE VARIANCE AND COMPLIANCE PLAN.

61. DMG requests that the term of the variance begin on the date of the Board's order and terminate on April 1, 2017, applicable to vintage 2015 and 2016 CSAPR SO_2 allowances.[32]

62. DMG proposes that the following conditions apply to this variance:

A. DMG shall not be subject to the requirements of Section 225.233(f)(2) relative to vintage 2015 and 2016 CSAPR SO_2 allowances.

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[32] DMG chose April 1 as the termination date because it follows the March 1 date by which sources must true-up their allowance accounts under the CSAPR; that is, they must provide the USEPA with the number of allowances that equals the number of tons of SO_2 emitted during the previous control period. At that time, DMG will know how many excess allocated allowances it will have for sale or trade as a result of this requested variance.

B. During the term of the variance, DMG shall comply with all other applicable MPS requirements, as otherwise required.

C. Upon termination of the variance, DMG shall comply with all applicable MPS requirements, including Section 225.233(f)(2) relative to vintage 2017 and thereafter CSAPR SO_2 allowances.

63. DMG proposes the following compliance plan:

Within 60 days after termination of the variance, DMG shall prepare and submit to the Agency a report identifying the amount of SO_2 emissions from its coal-fired power plants included in the DMG MPS Group during the term of this variance and the tons of SO_2 removed by DMG's spray dry absorbers associated with the EGUs in the DMG MPS Group during the term of the variance.

64. This request for variance would not alter any DMG permits. Therefore, DMG has not attached any permits pursuant to Section 104.204(b)(4).

F. DMG'S REQUESTED VARIANCE IS NOT CONTRARY TO ANY FEDERAL LAW.

65. The Board may grant the requested variance consistent with federal law and, specifically, with the Clean Air Act, 42 U.S.C. §§ 7401 *et seq*. There is no federal law that prohibits DMG from otherwise selling or trading SO_2 allowances under the CSAPR that are in excess of the MPS SO_2 emission standards. The MPS was submitted to the USEPA for approval as part of Illinois' mercury rule, but when the CAMR was vacated, there was no longer any authority for the USEPA to approve or disapprove Illinois' mercury rule. In addition, while the Agency has submitted certain provisions of the MPS to the USEPA for approval as part of Illinois' SIP addressing regional haze, the Agency expressly did not include Section 225.233(f)(2) in its request for SIP approval. *See* Exhibit 11, App. C, at pgs. 1, 9-11 (explicitly requesting approval only of the bolded provisions of Section 225.233 and Section 225.233(f), including 225.233(f)(2), is not bolded); the USEPA approved Section 225.233(a), (b), (e), and (g) as part of the SIP at 77 Fed. Reg. 39,943 (July 6, 2012), *see* Exhibit 13; 40 C.F.R §

52.720(c)(192)(i)(A)(1). DMG is not aware of any other submittal to the USEPA that would raise this portion of the MPS to a federally enforceable regulation. This proposed variance does not implicate the SIP in any manner.

66. Moreover, the Consent Decree does not prohibit DMG from otherwise selling or trading SO_2 allowances allocated to its units under the CSAPR that are in excess of the MPS SO_2 emission standards because the Consent Decree's SO_2 allowance requirements are limited to Clean Air Act Title IV Acid Rain Program allowances. *See* Exhibit 7. To the extent the Consent Decree requires the surrender of Title IV SO_2 allowances, that requirement would not be affected by the requested variance, which addresses only the surrender requirement under the MPS.

67. Moreover, this variance will bring Illinois' rules as applicable to DMG more in alignment with federal law. Consequently, the Board's grant of this variance request would not be inconsistent with federal law.

68. Additionally, DMG is not aware of any foreseeable rulemakings that the Agency might undertake that would depend upon SO_2 allowance surrenders under the MPS as a basis for achieving any air quality goals.

69. For these reasons, the Board may grant the proposed variance consistent with federal law. Likewise, the Board's grant of the proposed variance does not conflict with any federal law. No federal law is implicated by the proposed variance.

G. DMG DOES NOT REQUEST A HEARING

70. DMG does not request that the Board hold a hearing in this matter. DMG believes that this Petition, including its exhibits, sufficiently informs the Board of the issues involved without the need for a hearing. Further, because the variance is not subject to any

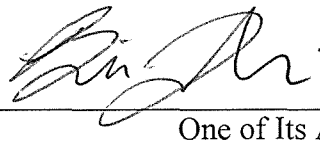
federal Clean Air Act requirements, a hearing is not necessary to satisfy any federal requirements.

WHEREFORE, for the reasons set forth above, Petitioner DYNEGY MIDWEST GENERATION, LLC respectfully requests the Board to grant DMG a variance, as described herein, from the MPS requirement that prohibits the sale or transfer and requires the surrender of excess allocated vintage 2015 and 2016 CSAPR SO_2 allowances.

Respectfully submitted,

DYNEGY MIDWEST GENERATION, LLC

by:



One of Its Attorneys

Dated: April 17, 2015

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STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

AFFIDAVIT OF ARIC D. DIERICX

I, ARIC D. DIERICX, having first been duly sworn, state as follows:

1. I am an employee of DYNEGY OPERATING COMPANY, an affiliate of Dynegy Midwest Generation, LLC (DMG). I am the Managing Director-Environmental Compliance. I have been employed in this and similar positions at Dynegy for the past 15 years. Previously, I was employed by Illinois Power Company since 1979 in its environmental department. Illinois Power and Dynegy merged in 1999/2000. As part of my duties, I oversee permitting and regulatory development and compliance for Air, Water, and Waste issues at DMG's power plants.

2. I have read the preceding Amended Petition for Variance and participated in preparing it.

3. The statements of facts contained therein are true and correct to the best of my knowledge and belief.

FURTHER, AFFIANT SAYETH NOT.

Aric D. Diericx

Subscribed and sworn to before me this 17th day of April, 2015.

Rachel Casey
NOTARY PUBLIC

RACHEL CASEY
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
August 12, 2015