

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DYNEGY MIDWEST GENERATION, LLC. )  
(HAVANA POWER STATION), )  
 )  
Petitioner, )  
 )  
v. )  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTON AGENCY, )  
 )  
Respondent. )

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PCB 06-71  
(CAAPP Permit Appeal—Air)

DYNEGY MIDWEST GENERATION, LLC. )  
(HENNEPIN POWER STATION), )  
 )  
Petitioner, )  
 )  
v. )  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTON AGENCY, )  
 )  
Respondent. )

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PCB 06-72  
(CAAPP Permit Appeal—Air)

DYNEGY MIDWEST GENERATION, LLC. )  
(WOOD RIVER POWER STATION), )  
 )  
Petitioner, )  
 )  
v. )  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTON AGENCY, )  
 )  
Respondent. )

PCB 06-74  
(CAAPP Permit Appeal—Air)

**NOTICE OF ELECTRONIC FILING**

To: See attached Service List

PLEASE TAKE NOTICE that on the 5<sup>th</sup> day of February, 2016, the Joint Response to Board Questions was filed electronically with the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and is hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

By:



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DATE: February 5, 2016

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PCB 06-74  
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**JOINT RESPONSE TO BOARD QUESTIONS**

Pursuant to the Hearing Officer Orders dated January 6, 2016, Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by Lisa Madigan, Attorney General of the

State of Illinois, and Petitioner, DYNEGY MIDWEST GENERATION, LLC, by and through its attorneys, hereby submit the following joint response to the Illinois Pollution Control Board's ("Board") questions in the above-referenced cases.

## INTRODUCTION

The Hearing Officer Orders directed the parties to respond to a set of six questions from the Board relating to the status of settlement discussions and appeal resolution. Below, the parties first provide brief background on the dockets, followed by the parties' joint responses to the questions posed by the Board.

### **I. Background on PCB 06-71, PCB 06-72, and PCB 06-74**

PCB 06-71 is the appeal of the 2005 CAAPP permit for the Havana Power Station. PCB 06-72 is the appeal of the 2005 CAAPP permit for the Hennepin Power Station. PCB 06-74 is the appeal of the 2005 CAAPP permit for the Wood River Power Station. As described in more detail below, the Illinois EPA has implemented a process to resolve the 2005 CAAPP permit appeals for coal-fired power plants that includes each of these dockets.

### **II. The Parties' Answers to Board Questions 1-6**

Board Question 1: Which permit conditions that were originally challenged have been resolved in settlement negotiations and which ones have not?

Answer: The Illinois EPA has jointly negotiated with permittees of Illinois coal-fired power plants to address common issues in their respective permit appeals. As a result, the parties have reached consensus regarding many of the contested conditions in the Havana, Hennepin and Wood River CAAPP permits (the "Subject CAAPP Permits"). However, as discussed below, there is a set of conditions and permitting edits unique to each facility that must be addressed by Illinois EPA permitting staff and the respective permittee before the permitting documents can

be released for public comment and review by the U.S. Environmental Protection Agency (“USEPA”).

Board Question 2: How are the unresolved permit conditions different from those facilities where the appeal has been resolved, for example, Newton (PCB 06-68)?

Answer: Each facility has unique aspects about its configuration, emission units, operations, and/or applicable requirements that necessitate individual attention in the permitting documents. While the Subject CAAPP Permits share many common conditions and appeal points with Newton and the other facilities, the Subject CAAPP Permits require plant-specific edits and changes that will need to be made before public notice and USEPA review.

Board Question 3: Has the facility been subject to new operational requirements since this appeal began, for example, state mercury requirements?

Answer: Yes. Such requirements that are derived from the Clean Air Act will be incorporated into each of the Subject CAAPP Permits through the CAAPP’s formal reopening process. The incorporation of these additional rules or regulations into a CAAPP permit is a procedural requirement of Title V permitting. However, the absence of such requirements in a CAAPP permit does not affect the ongoing responsibility of a source to comply with rules or regulations upon their dates of effectiveness.

Board Question 4: Do any of those new requirements concern the permit conditions challenged in this appeal? If so, are the new requirements more stringent than the challenged permit conditions?

Answer: Based on the Illinois EPA’s recent experience in working on permit reopenings, some of the additional requirements relate to, or overlap with, contested permit conditions. It is possible that some may appropriately be considered more stringent. However, as previously

noted, any such requirements will have applied independently to a given source from the date of effectiveness of the affected rule or regulation. The reopening process will ensure that each of the Subject CAAPP Permits contains all applicable requirements.

Board Question 5: When did the parties to th[ese] appeal[s] last meet to discuss settlement?

Answer: The Illinois EPA and representatives of Dynegy Operating Company (an affiliate of each Petitioner) last met in person on January 14, 2016 and by conference call on January 20, 2016, to discuss issues related to CAAPP permit appeals for power stations owned by other affiliates of Petitioners. They have previously met numerous times, in-person and by phone, as part of the joint negotiation process, resulting in a resolution, in principle, of common issues. At this stage in the process, the parties are working through individual CAAPP permits with conference calls or in-person meetings, as needed.

Board Question 6: Which party made the last settlement proposal and who is reviewing that proposal? Does the proposal resolve the entire appeal or only one part of the appeal?

Answer: The parties are engaged in a systematic discussion on permit conditions for each of the outstanding appeals. The process will ultimately generate a set of permit changes that are acceptable to the parties and that must then be prepared for public notice and comment and USEPA review.

**CONCLUSION**

The parties continue to work diligently to resolve these complex permit appeals and to achieve the common goal of effective, up-to-date operating permits for these plants, and will continue to participate in periodic status conferences with the Board Hearing Officer.

Respectfully submitted,

DYNEGY MIDWEST GENERATION, LLC

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Dated: February 5, 2016

**CERTIFICATE OF SERVICE**

I, RYAN G. RUDICH, an Assistant Attorney General, do certify that I caused to be served this 5<sup>th</sup> day of February, 2016, the attached Notice of Electronic Filing and Joint Response to Board Questions on the parties named on the attached service list by placing a true and correct copy in first class postage prepaid envelopes and depositing same with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.

  
RYAN G. RUDICH