

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)
) R 2020-019
STANDARDS FOR THE DISPOSAL OF COAL)
COMBUSTION RESIDUALS IN SURFACE) (Rulemaking – Land)
IMPOUNDMENTS: PROPOSED NEW 35 ILL.)
CODE 845)

NOTICE OF FILING

To: Service List

PLEASE TAKE NOTICE that I have today electronically filed, with the Office of the Clerk of the Pollution Control Board, **AMEREN RESPONSE TO SUPPLEMENTAL POST-HEARING COMMENTS FILED BY ENVIRONMENTAL COMMENTERS**, copies of which are herewith served upon you.

Dated: December 15, 2020

Respectfully submitted,
**AmerenEnergy Medina Valley Cogen,
LLC and Union Electric Company, d/b/a
Ameren Missouri.**

By /s/Claire A. Manning
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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing documents were electronically filed on December 15, 2020, with the following:

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Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
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and that copies were sent via email on the same date to the parties on the service list.

Respectfully submitted,
**AmerenEnergy Medina Valley Cogen,
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**AMEREN RESPONSE TO SUPPLEMENTAL POST-HEARING COMMENTS
FILED BY ENVIRONMENTAL COMMENTERS**

NOW COMES AmerenEnergy Medina Valley Cogen, LLC and Union Electric Company, d/b/a Ameren Missouri (“Ameren”) and responds to supplemental post-hearing comments filed on November 24, 2020 as follows:

On November 24, 2020, a post-record pleading was filed with the Illinois Pollution Control Board (“Board”) by the Environmental Law and Policy Center (“ELPC”), Prairie Rivers Network (“PRN”), Sierra Club, and the Little Village Environmental Justice Organization (“LVEJO”) (collectively, “Environmental Commenters”).

Styled as “Supplemental Post-hearing Comments”, the Board’s Hearing Officer accepted the pleading in an Order she issued on December 8, 2020. The Hearing Officer Order denied the Joint Motion to Strike filed by participants Dynegy Midwest Generation, LLC; Electric Energy Inc.; Illinois Power Generating Company; Illinois Power Resources Generating, LLC; Kinkaid Generation, LLC and Midwest Generation, LLC on November 30, 2020 and allowed the Supplemental Post-Hearing Filing in an effort to “prevent material prejudice”.

The Hearing Officer Order also allowed other participants to respond to the late filed comment, with any such comments being due by December 15, 2020. In this responsive comment, Ameren will only address the news article submitted by the Environmental Commenters as Attachment 1 (a November 17, 2020 newspaper article from the *Billings Gazette* concerning an

interim decision of the State of Montana to require certain coal ash ponds, designated Colstrip Units 1 and 2, to close by removal rather than close in place.).

As the Post Hearing Comment did not present any “evidence” for the Board’s consideration, new or otherwise, Ameren trusts that the Board will recognize that the proffered newspaper article does not serve to either supplement or contradict the substantial evidence in this proceeding, in the nature of expert testimony presented. Indeed, several problems would be inherent in the Board doing so.

First, a newspaper article cannot reasonably be considered by the Board to be anything but public comment; it certainly is not evidence. For good reason, the Board has a fifty year history of elevating technical and scientific testimony in a regulatory proceeding above public comment. Indeed, evaluating such testimony is one of the very reasons for the Board’s creation – to perform the responsibilities that the legislature itself cannot reasonably perform: evaluating the technical feasibility and economic reasonableness of environmental decisions, through science and economic-based testimony in a public forum. *See* David P. Currie, *Rulemaking under the Illinois Pollution Law*, 42 U. Chi. L. Rev. 457, 458 (1975) (The “basic plan of the statute” is to “leave the formulation of substantive standards to the Board, not to enshrine them in the statute itself.” The reason for this choice was the “expectation that specialized administrators working full time on pollution problems would be in a better position than legislators burdened by innumerable other concerns to make reasonable judgements based upon masses of relevant information”).

Second, as a practical matter, no conclusions can reasonably be drawn from the article presented – which, on its face appears simply to report on an interim (not yet final) decision of another state (Montana) to require closure by removal at discreet ash ponds that are asserted to have been polluting groundwater for years. Absent is any information related to the extent of

