

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 16th day of December 2022, I have electronically served a true and correct copy of the attached AMENDED PETITION OF AMEREN ENERGY MEDINA VALLEY COGEN, LLC FOR ADJUSTED STANDARDS FROM 35 ILL. ADMIN. CODE, PART 845 by electronically filing with the Clerk of the Illinois Pollution Control Board and by e-mail upon the following persons:

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I further certify that my e-mail address is cmanning@bhslaw.com, the number of pages in the e-mail transmission is 32, and that the e-mail transmission took place before 7:00 p.m.

Dated: December 16, 2022

Respectfully submitted,
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PETITION OF AMEREN ENERGY MEDINA) AS 21-007
VALLEY COGEN, LLC (HUTSONVILLE D)) (Adjusted Standard - Land)
FOR ADJUSTED STANDARDS)
FROM 35 ILL. ADMIN. CODE PART 845)

AMENDED PETITION FOR ADJUSTED STANDARDS FROM PART 845

NOW COMES, Ameren Energy Medina Valley Cogen, LLC ("Ameren" or "the Company"), by and through its attorneys, Claire A Manning, Anthony D. Schuering, and Lucas Hall of Brown, Hay + Stephens, LLP, and pursuant to Section 28.1 of the Environmental Protection Act, 415 ILSC 5/28.1 (the "Act") and 35 Ill. Admin. Code § 104.400 *et seq.*, requests that the Illinois Pollution Control Board (the "Board") adopt the adjusted standard sought in this Amended Petition for Adjusted Standard.

I. INTRODUCTION

This Amended Adjusted Standard Petition ("Petition")¹ seeks to clarify the regulatory status of Hutsonville Pond D ("Hutsonville D"), a former Ameren ash pond that operated at Ameren's inactive Hutsonville Power Station, located in Crawford County. The Petition is necessary since the Illinois Environmental Protection Agency ("IEPA") considers the closed former ash pond subject to two separate and conflicting regulations, each covering the same subject: closure and post-closure care of Hutsonville D.²

¹ Ameren's amendment to the Adjusted Standard Petition filed on May 11, 2021 is presented for purposes of clarity and further information, and is based upon discussions between counsel for IEPA and Ameren, wherein Ameren agreed to include further provisions of Part 845, such as financial assurance, as part of its obligations pursuant to the proposed Adjusted Standard. Since the amendment does not seek further relief, the Petition is not subject to re-notice under Section 104.408. *See* 35 Ill. Adm. Code 104.418.

² In addition to Hutsonville D, the Hutsonville Power Station also included other now closed former ash ponds: Hutsonville A, B, C and Bottom Ash, which are not relevant here as they are not subject to two conflicting sets of Board regulations.

Ameren completed closure of Hutsonville D in January of 2013 pursuant to Board regulations specifically governing its closure and post-closure care; those regulations are found at 35 Ill. Adm. Code Part 840 (“Part 840”) a site-specific regulation adopted by the Board in R09-21, *In the Matter of Ameren Ash Pond Closure Rules (Hutsonville Power Station proposed 35 Ill. Adm. Code Part 840.101 through 840.152)* Final Opinion and Order, January 20, 2011, effective date February 4, 2021. Part 840 was promulgated (and Hutsonville D was closed), prior to the adoption of the federal Coal Combustion Residual (“CCR”) rule, 40 CFR Part 257, promulgated on April 17, 2015, with an effective date of October 19, 2015.

Part 840 was also promulgated (and Hutsonville D was also closed) prior to Illinois’ adoption of its own CCR law and resulting rules. The Illinois legislature adopted the Illinois Coal Ash Pollution Prevention Act (“Illinois CCR Act”) on July 30, 2019, 415 ILCS 5/22.59, and the Board adopted associated regulations on April 15, 2021, with an effective date of April 21, 2021. See R 2020-019, *In the Matter of Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed new 35 Ill. Adm. Code 845*. In that proceeding, Ameren objected to the inclusion of Hutsonville D within the reach of the Part 845 rulemaking (a “rule of general applicability”) given the site-specific determinations the Board already made, and Ameren already implemented, relevant to the Part 840 closure and post-closure care of Hutsonville D. Rather than deal with that incongruity in the context of its Part 845 rulemaking however, the Board suggested Ameren file an Adjusted Standard. See Order, R20-19, at 13 (Feb. 4, 2021) (“If Ameren believes Part 845 rules duplicate or contradict Part 840 rules, Ameren may demonstrate that before the Board by filing a site-specific rulemaking proposal to repeal portions of Part 840. Similarly, Ameren may file a petition for an Adjusted Standard from Part 845.”) This Petition follows the latter path set forth by the Board.

II. PROCEDURAL AND FACTUAL BACKGROUND

A. History of Regulatory Application of Part 840 to Hutsonville D.

As Hutsonville D has already been the subject of an extensive site-specific Board rulemaking proceeding, Ameren here requests that the Board incorporate into this record the Board's record in R09-21, including the extensive Board findings made in its 113-page First Notice Opinion and Order, on October 7, 2010, as reiterated in its Second Notice Opinion and Order on December 16, 2010, and as reflected in its Final Opinion and Order, and Adopted Rule, on January 20, 2011.

Based on that R09-21 record, and those Board findings, Hutsonville D closed and manages its post-closure care obligations consistent with Part 840.

B. Regulatory Implementation Under Part 840 for Hutsonville D's Closure and Post-Closure Care Obligations.

Following the Board's promulgation of 35 Ill. Admin. Code Part 840, Ameren closed Hutsonville D in accordance with Part 840 and the Closure and Post-Closure Plans approved by the IEPA which Ameren submitted pursuant to Sections 840.128 and 840.138, respectively, dated July 26, 2011 and revisions thereto dated February 15, 2012 and March 30, 2012. The Hutsonville D Closure Plan Documents are attached as **Exhibit 1**.

The Hutsonville D Closure Plan Documents included the following:

- Closure Plan Submittal;
- Closure Plan;
- Construction Quality Assurance Plan;
- Hydrogeologic Site Investigation Report;
- Groundwater Monitoring Plan;
- Plans and Specifications; and
- Post-Closure Care Plan.

IEPA approved Ameren's closure plan for Hutsonville D on April 18, 2012, pursuant to Part 840. The IEPA reviewed the required elements of the Closure Plan and Post-Closure Care

Plan pursuant to the requirements of Sections 840.130 and 840.140, respectively. The IEPA found that the Plans included all the required elements and approved all elements of the Plans pursuant to Section 840.148. The IEPA Approval Letter of Closure Plan for Hutsonville D is attached as **Exhibit 2**.

Major closure activities included the placement of the final cover system, establishment of vegetative cover and surface water control features on the surface of Hutsonville D, and installation of a groundwater collection trench and recovery system. Closure activities were conducted in accordance with the Construction Quality Assurance (CQA) Plan prepared for this project meeting the requirements of Part 840 as documented by a Professional Engineer licensed in Illinois.

As required by Section 840.120(a), Ameren designed, installed, and, consistent with the applicable NPDES wastewater discharge permit, operates a groundwater collection trench along the south property boundary of the Hutsonville Power Station. This collection trench prevents the migration of groundwater impacted by Hutsonville D south of the property boundary. Although not required by Section 840.120(a), Ameren extended the collection trench west to Hutsonville Pond A where it operates such that it can capture any migration of impacted groundwater from Hutsonville A, as well as Hutsonville D.³

Final cover components included approximately 992,000 ft² of low permeability geosynthetic membrane cover and 106,500 yd³ of final protective soil material. The low permeability layer consists of a textured high-density polyethylene (HDPE) geomembrane with a 40-mil minimum nominal thickness. Geomembrane seams were welded to form one continuous membrane covering the entire area of exposed ash. The perimeter edges of the HDPE

³ Pursuant to questions posed by the IEPA subsequent to Ameren's filing of its initial Adjusted Standard Petition, Ameren explained to the IEPA that it intends to operate the collection trench during the post-closure care period for Hutsonville A. Accordingly, it included a reference to such in the language proposed in this Amended Adjusted Standard petition.

geomembrane were finished in an anchor trench excavated in soil materials to keep the membrane anchored in place and prevent any lateral migration of surface water into the cap.

The low permeability geomembrane was covered with a minimum of three feet of soil materials, as required by Part 840. These soils were compacted only to the extent required for equipment traffic and construction of overlying drainage structures. Soils used for the final protective cover were fertilized, seeded, and mulched to facilitate and support a permanent self-sustaining vegetative cover. Installation of the low permeability geomembrane and the overlying soils were conducted in accordance with the approved CQA program.

Operation of the groundwater Collection Trench began in April 2015 under Hutsonville's renewed National Pollutant Discharge Elimination System (NPDES) permit (IL0004120) with an effective date of March 1, 2015. As described previously, this trench was designed and installed in accordance with Section 840.120.

Ameren completed capping of the Hutsonville D in January 2013 and sent a letter to the IEPA on January 30, 2013, documenting completion of closure for Hutsonville D consistent with the IEPA's approved closure plan. Ameren's Closure Completion Letter to the IEPA is attached as **Exhibit 3**. The approved Closure Plan included provisions for post-closure care of Hutsonville D. In accordance with Part 840 and the approved post-closure plan, Ameren reports annually to IEPA with regards to post-closure care of Hutsonville D. Hutsonville D has been in post-closure care since 2013. Ameren submitted its first Annual Post-Closure Care Report in January 2014. Ameren has submitted an Annual Post-Closure Care Report each year since January 2014. The Hutsonville D Post-Closure Report for 2021 is attached as **Exhibit 4**. Ameren has not received any comments from IEPA with regards to any of the Annual Post-Closure Care Reports it has submitted for Hutsonville D.

III. REGULATIONS FROM WHICH ADJUSTED STANDARDS ARE SOUGHT (35 Ill. Admin. Code 104.406(a))

As stated above, during the Board's R20-19 regulatory proceeding, Ameren objected to the State's purported inclusion of Hutsonville D in the ambit of regulatory coverage of proposed Part 845 – given its existing regulatory coverage pursuant to Part 840, governing the same subjects. Without waiving these objections, Ameren's Petition attempts to reconcile its existing obligations under Part 840 with newer Part 845 provisions that do not conflict with existing Part 840 obligations.

Since Hutsonville D completed closure under an IEPA-approved closure plan prior to October 19, 2015, Section 845.120 would designate Hutsonville D as an "inactive closed CCR surface impoundment." As promulgated, an Inactive Closed CCR Surface Impoundment, is subject to Section 845.170. Therefore, under Section 845.170(a) Hutsonville D would be required to meet the following requirements:

- a) Among the provisions of this Part, only the following apply to inactive closed CCR surface impoundments:
 - 1) All of Subpart A: General Provisions;
 - 2) The following Sections of Subpart B (Permitting):
 - A) Section 845.200;
 - B) Section 845.210;
 - C) Section 845.220(a), (c), and (f)(1);
 - D) Section 845.230(c) and (d)(4);
 - E) Section 845.250;
 - F) Section 845.270;
 - G) Section 845.280;

- H) Section 845.290;
- 3) The following Section of Subpart G (Closure and Post-Closure Care):
Section 845.780(b), (d), and (e); and
- 4) All of Subpart I (Financial Assurance).

Ameren, in this Petition is seeking an adjusted standard from the requirements in Subpart B (Permitting) as listed in Section 845.170(a)(2) and the requirements of Subpart G (Closure and Post-Closure) as listed in Section 845.170(a)(3). Ameren seeks this adjustment because of the current applicability of Part 840 as a site-specific rule applicable only to Hutsonville D.

Ameren closed Hutsonville D almost a decade ago and has been performing post-closure care since completion of closure. Since Ameren's post-closure care obligations for Hutsonville D are required by regulation, they are legal requirements that obligate Ameren to perform all of the activities the Board prescribed in Part 840. These obligations are enforceable; failure to follow any of the activities required under Part 840 constitutes a violation of the Act.

Ameren has followed the regulatory framework of Part 840 as it relates to closure – and continues to do so as to post-closure care. Essentially this Adjusted Standard seeks to allow Ameren to continue to follow the regulatory path set out for it by the Board in Part 840 – but to allow for any “new” requirements in Part 845 that the Board did not have the authority to adopt under Part 840 – specifically, the financial assurance provisions as prescribed in Part 845, Subpart I. As further described below, Ameren requests adjustments to all sections of 35 Ill. Admin. Code Part 845, except for the provisions of Part 845, Subpart H: Recordkeeping, Section 810, Publicly Accessible Internet Site Requirements, and Subpart I: Financial Assurance.

IV. PART 845 IS A REGULATION OF GENERAL APPLICABILITY DESIGNED TO IMPLEMENT PART OF THE STATE RCRA PROGRAM (35 Ill. Admin. Code 104.406(b))

35 Ill. Admin. Code Part 845 was promulgated to implement part of the State's programs related to the Resources Conservation and Recovery Act ("RCRA"). *See* 415 ILCS 5/28.1 (2006). The Federal Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments, codified at 40 CFR Part 257, Subpart D, as currently in effect, do not apply to Hutsonville D. Subpart D explicitly states that "[t]his subpart does not apply to electric utilities or independent power producers that have ceased producing electricity prior to October 19, 2015." 40 CFR § 257.50. The Hutsonville Station was an inactive facility as of December 2011 and was ultimately closed pursuant to Part 840 in January of 2013, years before the October 19, 2015 effective date of 40 CFR Part 257, Subpart D. 35 Ill. Admin. Code Section 840.152 addresses the potential for the adoption of federal regulations that could impact Part 840. *See* also discussion in Section XI, *infra*.

V. THE LEVEL OF JUSTIFICATION REQUIRED FOR THIS ADJUSTED STANDARD (35 Ill. Admin. Code 104.406(c))

The regulations from which Ameren seeks this adjusted standard do not specify a level of justification. Therefore, the level of justification specified by Section 28.1(c) of the Act applies:

- (1) factors relating to the petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to the petitioner;
- (2) the existence of those factors justifies an adjusted standard;
- (3) the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and

(4) The adjusted standard is consistent with any applicable federal law.

415 ILCS 5/28.1(c). Ameren must also justify all the requested adjustment consistent with Section 27(a) of the Act. 415 ILCS 5/28.1(a) (2006). Section 27(a) of the Act requires the Board to consider the following factors in promulgating regulations:

[T]he Board shall take into account the existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, the nature of the existing air quality, or receiving body of water, as the case may be, and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution. 415 ILCS 5/27(a).

VI. DESCRIPTION OF THE NATURE OF PETITIONER'S ACTIVITIES (35 Ill. Admin. Code 104.406(d))

For more than sixty years, Ameren or its corporate predecessor generated electricity at a power plant known as the Hutsonville Power Station ("the facility" or "the Station"). The Station is in Crawford County, near Hutsonville, Illinois, on approximately 205 acres (the "Site"). The Wabash River forms its eastern border while farmland comprises the southern and western borders. The northern border is undeveloped, wooded land. The closest residence is approximately one-half mile from the Station. (*See* Hutsonville Site Map, attached hereto as **Figure 1-1 of Exhibit 4**). When operational, up to fifty-eight employees worked at the Station, which was staffed twenty-four hours per day, seven days per week. The Station has been inactive in terms of generating electricity since December 2011. It is now entirely decommissioned, with all its infrastructure removed, with the exception of Hutsonville D and Hutsonville A.⁴

Principal equipment at the Station included coal-fired boilers for steam production and

⁴ As Hutsonville A was not closed pursuant to Part 840, it is not subject to this petition.

steam driven turbine generators. The facility drew water from the Wabash River through a circulating water system that was used in the boiler and turbine equipment systems. Ash, a by-product of coal combustion, was removed from the boilers and sluiced to an ash impoundment system via pipelines. The impoundment system comprised a series of Ponds (Ponds A-D) and the bottom ash pond in which solids settled and sluicewater decanted from pond to pond before discharging to the Wabash River via an NPDES permitted outfall. The ash ponds accepted only coal combustion waste (fly ash and bottom ash) and low-volume waste from the Hutsonville facility. A diagram depicting the various site features is appended hereto as **Figure 1-2** of **Exhibit 4**.

The subject of this petition, Hutsonville D, is located in the center of the South 1/2 of Section 17, Township 8 North, Range 11 West, all in Crawford County, Illinois, and located on the west bank of the Wabash River. Covering an area of approximately twenty-two (22) acres, Hutsonville D was constructed from indigenous earthen materials in 1968 and operated as the Station's wastewater treatment unit (receiving bottom and fly ash transport water and miscellaneous low-volume wastes) until the construction of a synthetically-lined pond (“Pond A”) in 1986—which remains in existence as a closed and inactive CCRSI. In 2000, Ameren excavated all coal ash from the former laydown area and constructed two lined ponds (“Ponds B and C”) to supplement the ash management capabilities and to improve surface water management at the property. Upon completion of Ponds B and C, Hutsonville D was removed from service and allowed to dewater. Later, Ponds B, C and the Bottom Ash Pond were also removed from service and closed by removal of all CCR, which included dewatering and removal of the liner systems. The closures of the ash ponds at Hutsonville occurred pursuant to the authority and approval of the IEPA.

VII. DESCRIPTION OF THE IMPACT OF PETITIONER'S ACTIVITIES ON THE ENVIRONMENT (35 Ill. Admin. Code 104.406(g))

The following discussion summarizes relevant technical details concerning site geology and groundwater quality and the environmental impacts of Hutsonville D. More comprehensive descriptions of geology and groundwater conditions are provided in the Hydrogeologic Site Investigation Report submitted to the IEPA as part of the Hutsonville D Closure Plan, approved by the IEPA on April 18, 2012. This Report is included as part of **Exhibit 1**.

A. Site Geology

Site geology consists of four hydrostratigraphic units: (1) unlithified sand overlying lithified Pennsylvanian-age sandstone, present in upland areas, with a combined thickness that is typically between 15 and 35 feet; (2) unlithified fine-grained alluvial sediments within the Wabash River bedrock valley that are approximately 20 feet thick; (3) coarse-grained alluvial sediments within the Wabash River bedrock valley that are as much as 70 or more feet thick; and (4) Pennsylvanian-age shale that underlies the sandstone in the upland areas and the coarse-grained alluvium in the bedrock valley. The western portion of Hutsonville D overlies the upland sand. The eastern portion of Hutsonville D overlies the fine-grained alluvium in the Wabash River Valley. The upland sand and underlying sandstone beneath the western portion of Hutsonville D and thin sand lenses within the fine-grained alluvium that lies under the eastern portion of Hutsonville D are collectively referred to as the "upper migration zone." The coarse-grained alluvial deposits at depth in the Wabash River bedrock valley are referred to as the "deep alluvial aquifer."

The fine-grained alluvial deposits overlying the deep alluvial aquifer occur over an elevation range that overlaps the upland shale, combining to form a confining layer that

restricts vertical migration of groundwater between the upper migration zone and deep alluvial aquifer. As a result, the uppermost aquifer at the Site is the upper migration zone. The efficacy of the confining layer is supported by the concentration data because, as explained below, the only ash leachate impacts observed in the deep alluvial aquifer are highly localized, and at concentrations lower than Class I standards and much lower than in the upper migration zone, despite the fact that Hutsonville D was first placed in service more than 50 years ago. Groundwater flow direction in both the upper migration zone and the deep alluvial aquifer is eastward, toward the Wabash River.

The upper migration zone is not used for water supply at or downgradient of the Site, because this zone is not sufficient for power plant operational uses, agricultural irrigation purposes or domestic uses. Only the deep alluvial aquifer at depth in the Wabash River bedrock valley has sufficient thickness and hydraulic conductivity to yield adequate groundwater supplies for power plant and agricultural irrigation purposes.

B. Groundwater Quality

1. Groundwater Monitoring Network

Ameren has monitored groundwater quality at the Site, via a monitoring well network, since 1984 to define groundwater flow direction, monitor groundwater quality, and to characterize hydrogeologic conditions.

The groundwater monitoring program design basis included the geology and hydrogeology information presented in the Hydrogeologic Site Investigation. This monitoring plan outlined groundwater monitoring and sampling procedures; the parameters to be evaluated and analytical methods; and assessment of groundwater quality data. The monitoring program now follows 35 Ill. Admin. Code Section 840.112 by satisfying the following standards for the monitoring system:

- The monitoring wells are sufficiently located to represent the quality of groundwater at the compliance point(s).
- The monitoring wells are located within the stratigraphic unit(s) that may serve as potential contaminant migration pathways.
- The groundwater monitoring wells are secure.
- The monitoring wells are installed to evaluate on-site and off-site groundwater quality.

Figure 1-2 of **Exhibit 4** depicts the locations of the current monitoring wells at the Site. **Table 1** lists the monitoring wells, identification numbers, and locations of the wells associated with Hutsonville D.

The groundwater monitoring system for Hutsonville D, as defined by the IEPA approved Groundwater Monitoring Plan, originally consisted of two background monitoring wells, MW-10 and MW 10D, and nine downgradient compliance monitoring wells MW-6, MW-7, MW-7D, MW-8, MW-11R, MW-14, MW-115S, MW-115D, and MW-121 (**Exhibit 4, Figure 1-2**). Background wells MW-10 and MW-10D were destroyed due to construction unrelated to Ameren operations after the first quarter, 2016 monitoring period. No trace of the former background wells was found using a metal detector, probes, or digging. As a result, these wells were replaced with new background monitoring wells, MW-23S and MW-23D, in November 2017. In addition, several other monitoring wells and piezometers located at Hutsonville are measured for groundwater level so that groundwater elevation contour maps can be created for the entire site.

The IEPA approved Groundwater Monitoring Plan, in accordance with 35 Ill. Admin. Code Sections 840.114 and 840.116, outlines groundwater monitoring and sampling procedures, establishes the parameters and methods to be used for analyzing the groundwater samples, and

describes evaluation methods to assess post-closure groundwater quality and trends to demonstrate compliance with the applicable groundwater standards. The Groundwater Monitoring Program Schedule is provided in **Exhibit 4, Table 1-1**.

As allowed under 35 Ill. Admin Code Parts 620 and 840, Ameren has reported constituent impacts in groundwater based on dissolved concentrations. The IEPA has requested as part of discussions in this proceeding that Ameren begin reporting constituent concentrations based on a totals analysis. Ameren is willing to provide results based on totals analysis beginning in 2023.

Monitoring well locations, installation dates, construction information, and the groundwater zone they monitor are provided in **Exhibit 4, Table 1-2**. Field and laboratory parameters for evaluating groundwater quality are shown in **Exhibit 4, Table 1-3**.

Post-closure groundwater monitoring and annual reporting according to the IEPA approved Groundwater Monitoring Plan and the IEPA approved Post-Closure Care Plan began in 2013. The ninth annual report submitted in January 2022, included as **Exhibit 4**, includes the following elements:

- A summary of groundwater monitoring data collected in 2020 and 2021. Data tables are included in Appendix A.
- Quarterly Site Inspection Forms, including observations and descriptions of any maintenance activities performed on the pond cap, embankment, and groundwater collection trench and discharge system (Appendix B).
- Annual trend and statistical analysis results per Section 5.2 of the Groundwater Monitoring Plan, including an assessment of any statistically significant increasing trends (Appendix C).

2. Groundwater Quality Overview – 2013 to 2020

a. Summary of Cover System Maintenance

Inspections of the cover system are performed on a quarterly schedule. Routine maintenance activities are performed at Hutsonville D as needed and as soon as practicable after issues are identified, and include recontouring the ground surface, repairing drainage channels, repairing and replacing lining material, revegetating areas, and removing woody vegetation. Maintenance activities can be found in more detail in the Post-Closure Plan.

b. On-Site Groundwater Compliance

As described in 35 Ill. Admin. Code Section 840.118(a)(1) and Section 5.2.1 of the IEPA-approved Groundwater Monitoring Plan:

- Compliance with on-site groundwater quality standards will be achieved when no statistically significant increasing trend that can be attributed to Hutsonville D is detected in the concentrations of all constituents monitored at the compliance (down-gradient) boundary of the site for four consecutive years after changing to an annual monitoring frequency.

c. Off-Site Groundwater Compliance

As described in 35 Ill. Admin. Code Section 840.118(a)(2) and Section 5.2.1 of the Groundwater Monitoring Plan for off-site groundwater, the following compliance criteria must be met:

- Statistically significant decreasing trends in concentration for all constituents monitored in accordance with 35 Ill. Admin. Code Section 840.114 in the upper zone of the aquifer at the compliance boundary are detected for a period of four consecutive years after changing to annual monitoring.

- No statistically significant increasing trend that can be attributed to Hutsonville D is detected in the concentrations of all constituents monitored in accordance with 35 Ill. Admin. Code Section 840.114 in the lower zone of the aquifer at the compliance boundary for a period of four consecutive years after changing to an annual monitoring frequency.
- All concentrations of constituents monitored in accordance with 35 Ill. Admin. Code Section 840.114 are at or below the applicable groundwater quality standard as provided in 35 Ill. Admin. Code Section 840.116(b) at the down-gradient boundaries of Hutsonville D.

d. Compliance Determination

As described in 35 Ill. Admin. Code Sections 840.118(b) and (c) and Section 5.2.3 of the Groundwater Monitoring Plan:

- Compliance is demonstrated by performing an annual trend analysis for each monitoring well located at the down-gradient boundaries of Hutsonville D for all constituents monitored in accordance with 35 Ill. Admin. Code Section 840.114. The analysis shall use Sen's Estimate of Slope and be performed on a minimum of four consecutive samples.
- If a GMZ is established for off-site groundwater in the future, the demonstration of compliance will be set forth in the GMZ approved by the Closure or Post-Closure Care Plan.
- If the results of sampling and analysis show a positive slope at any compliance monitoring well located at the downgradient boundaries of Hutsonville D, a Mann-Kendall test will be performed at 95 percent confidence to determine

whether or not the increasing slope represents a statistically significant increasing trend. Ameren will investigate the cause of a statistically significant increasing trend as described below. If the statistically significant increasing trend occurs during post-closure care, the investigation will include more frequent inspection of the surface of the cover system and evaluation of background concentrations.

- If the investigation attributes a statistically significant increasing trend to a superseding cause, Ameren will notify IEPA in writing, stating the cause of the increasing trend and providing the rationale used in such a determination.
- If there is no superseding cause for the statistically significant increasing trend and sampling frequency has been reduced pursuant to semi-annual or annual sampling, a quarterly sampling schedule will be reestablished. After four consecutive quarterly samples show no statistically significant increasing trend, the frequency of groundwater monitoring will return to either semi-annual or annual, whichever frequency was utilized prior to the return to quarterly sampling.
- Notifications concerning statistically significant increasing trends and revisions of the sampling frequency will be reported to IEPA in writing within 30 days after making the determinations.
- If a statistically significant increasing trend is observed to continue over a period of two or more consecutive years and there are no superseding causes for the trend, then Ameren will perform the following:
 - A hydrogeologic investigation

- Additional site investigation, if necessary

3. Groundwater Flow

Groundwater flow for 2021 is represented using groundwater elevation contour maps for each quarterly sampling event (**Exhibit 4, Figures 3-1 through 3-4**). Groundwater in the upper (shallow) zone generally flowed from west to east and northeast towards the Wabash River during 2021, which is consistent with past evaluations. The Groundwater Collection Trench began operation in April 2015, and following startup, groundwater elevations have exhibited localized flow toward the trench with groundwater elevations generally lower near the trench (Table 1-2 and Figure 3-5).

4. Groundwater Compliance Summary

Cover system construction and maintenance, as well as stable or decreasing boron and sulfate concentrations in Hutsonville D compliance monitoring wells, are strong indications that the cover system is functioning to improve overall groundwater quality beneath the pond. Although there have been some elevations of constituents above groundwater standards in some wells, as explained in **Exhibit 4** those elevations have been isolated and have not been repeated from the 2019-2020 monitoring period. As such, no further action is required at this time under Section 840.118; Ameren will continue to monitor throughout 2022 and beyond, as required by Part 840.

VIII. DESCRIPTION OF EFFORTS TO COMPLY (35 Ill. Admin. Code 104.406(e))

The Board's Part 840 regulations are, in essence, a predecessor regulatory structure governing the closure and post-closure care of ash ponds, but only as to Ameren's Hutsonville Pond D. Since (and pursuant to) the Board's promulgation of Part 840, Ameren has closed Hutsonville D, and has complied with it as to the regulatory requirements relevant to its post-closure care obligations. The petition is an expression of Ameren's willingness to include

some further regulatory requirements into its existing regulatory program for Part 840 – requirements that were not within the Board’s authority to establish in Part 840, such as financial assurance.

However, Ameren cannot feasibly comply with, or reasonably be expected to comply with, two separate sets of substantive technical regulations as to Hutsonville D for multiple reasons. First, whereas further explained herein, the regulations conflict in certain key aspects related to closure care and post-closure care. For instance, under Section 845.780(c) Ameren would have to conduct post-closure care for a minimum of 30 years. Under Section 840.142 the requirement to conduct post-closure care is performance based, without a time requirement. Under Section 840.142 post-closure care continues until compliance with the groundwater standards in Section 840.116 is achieved. Section 840.142 does not have a minimum time requirement, unlike Section 845.780(c).

Second, whether the regulations conflict or overlap, compliance with two separate sets of regulations as to Hutsonville D subjects Ameren to duplicative and/or disparate enforcement for alleged violations of one regulation or another. As an example, should Ameren fail to provide an annual report to the IEPA as required by Section 840.144, inclusion in the regulatory regime of Part 845 would implicate a duplicative violation pursuant to Section 845.550 – subjecting it to duplicative penalties as set forth in Section 42(h) of the Act. At a minimum, each January 31 Ameren would be required to prepare and submit an annual report under Section 840.144 and an annual consolidated report under Section 845.550. The information required in these reports has similarities and overlap, but the items are not identical.

Third, as a regulated entity, Ameren must have certainty regarding what regulations apply—indeed, such certainty ought to be the hallmark of any regulatory program established by the state or federal government. Ameren has had such certainty since the Board's promulgation of Part 840 in 2011. Now subjecting Hutsonville D to a new, different and additional overlapping regulatory regime would serve no legitimate or beneficial regulatory purpose. Indeed, the substantial cost of mandating compliance with the new permitting requirements of Part 845 alone would conflict with the Act's mandate that the Board consider the economic impact and technical feasibility of each of its regulation.

Ameren expended \$5.3 million to close Hutsonville D in accordance with Part 840, which does not include the significant expense related to achieving the state-authorized regulatory framework that is set forth in Part 840. Meeting Part 845 would require Ameren to duplicate efforts that have already been accomplished under the Part 840 closure and are being accomplished under the Part 840 post-closure requirements. By virtue of this Adjusted Standard petition, Ameren also agrees to follow those portions of Part 845 that represent new requirements that were not within the authority of the Board at the time of adoption of Part 840, such as financial assurance. However, Ameren believes that a wholesale application of Part 845 to Hutsonville D, and associated repeal of Part 840, would implicate an unlawful retroactive application of law. Accordingly, Ameren asks that the Board grant the Adjusted Standard requested.

**IX. NARRATIVE DESCRIPTION OF PROPOSED ADJUSTED STANDARD
(35 Ill. Admin. Code 104.406(f))**

Petitioner requests that the Board grant the following relief:

Pursuant to Section 28.1 of the Environmental Protection Act (Act) (415 ILCS 5/28.1), the Board grants Ameren Energy Medina Valley Cogen, LLC (Ameren) an adjusted standard as follows:

- (1) Ameren shall continue to comply with the provisions of the Board's Site-Specific regulation, as promulgated by the Board in 35 Ill. Admin. Code Part 840.
- (2) Unless otherwise provided below, the provisions set forth in the Board's Section 845.170(a)(2) (Permitting) and Section 845.170(a)(3) (Closure and Post-Closure), shall not be applicable to Hutsonville D.
 - (i) Ameren shall post all groundwater record keeping documents required pursuant to 35 Ill. Admin. Code 840.116 on an Internet Website maintained in accordance with 35 Ill. Admin. Code 845.810.
 - (ii) Ameren shall maintain financial assurance for Hutsonville D, as required under 35 Ill. Admin. Code 845, Subpart I.
 - (iii) Ameren shall continue operation of the groundwater Collection Trench, under Hutsonville Station's National Pollutant Discharge Elimination System (NPDES) permit (IL0004120).
 - (iv) Beginning in 2023 Ameren shall begin reporting constituent concentrations in groundwater based on a totals analysis.

X. STATEMENT OF JUSTIFICATION (35 Ill. Admin. Code 104.406(h))

Consistent with Section 28.1(c) of the Act, Petitioner has demonstrated that it is entitled to adjusted standards from the Board's landfill regulations. 415 ILCS 5/28.1(c).

A. Factors relating to Petitioner are substantially different from factors relied upon by the Board in Part 845, thus justifying an adjusted standard.

Hutsonville D is uniquely situated in terms of the applicable regulatory structure. It is the

only former ash pond in the State that has closed (and is in post-closure care) pursuant to Board rules that were promulgated specifically as to it (i.e., Part 840) – and prior to the Board’s promulgation of the rules of general applicability for CCRSI’s (Part 845). Ameren closed Hutsonville D in accordance with Part 840 and performs post-closure at Hutsonville D in accordance with Part 840. *See* 35 Ill. Admin. Code §§ 840.100 et seq. At Page 15 in its First Notice Opinion and Order (October 7, 2010) the Board noted that Ameren, before initiating the Part 840 site-specific rulemaking, had spent ten years trying to define the appropriate regulatory requirements for closure of Hutsonville D. *See* Ameren Ash Pond Closure Rules (Hutsonville Power Station): Proposed 35 Ill. Admin. Code 840.101 through 840.152, R09-21, slip op. at 70 (Oct. 7, 2010). Part 840 was the culmination of that effort.

Part 840 only applies to Hutsonville D. No other CCRSI can use Part 840 in lieu of Part 845. The factors related to Hutsonville D are substantially different in that Part 840 was adopted to establish a methodology to manage closure and post-closure at a single CCRSI, whereas Part 845 was designed as a rule of general applicability – designed to generally address Illinois CCRSIs. During the Part 845 proceedings, Ameren requested that Part 845 address site-specific situations, including Hutsonville D. Ameren Questions to The Illinois Environmental Protection Agency, R2020-019, at pg. 5-7. Both the Board and the IEPA stated that it was inappropriate to address site-specific matters in Part 845. Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Admin. Code 845, R20-19, pg. 5 (Feb. 4, 2021). As a result, Ameren can only avoid duplicative regulatory systems relative to Hutsonville D by having the Board approve this Petition for Adjusted Standard.

The IEPA and the Board have recognized that factors relating to Hutsonville D closure are substantially and significantly different from the factors relied on by the Board in adopting the

generally applicable Part 845, as evidenced by the prior promulgation of Part 840; those factors warrant this Adjusted Standard. Further, the IEPA and the Board continually referred to Part 845 as a “rule of general applicability” whereas the Board previously found “a site-specific rule” appropriate to Ameren’s Hutsonville D – a site-specific rule now codified (and complied with by Ameren) in Part 840.

B. The requested standard will not result in substantially and significantly more adverse environmental or health effects.

Attached to this Petition are the Board’s First Notice Opinion and Order (October 7, 2010) in R09-21 (**Exhibit 5**) and the Board’s Second Notice Opinion and Order (January 2011) (**Exhibit 6**).

In its Opinions and Orders the Board carefully, and at length, reviewed the potential for adverse environmental or health effects in the context of the technical feasibility and economic reasonableness of the Board rule. At pages 6-7 of the Second Notice Opinion the Board stated:

As noted in the Board’s first-notice opinion and order, Ameren evaluated several alternatives to meet the closure objectives of preventing off-site migration of contaminated groundwater, minimizing infiltration of precipitation through the ash pond, and protecting human health and the environment. See Ameren Ash Pond Closure Rules (Hutsonville Power Station) Proposed 35 Ill. Admin. Code 840.101 through 840.152, R09-21, slip op. at 16-33 (Oct. 7, 2010). These alternatives addressed the management of impacted groundwater, ash removal and on- or off-site treatment and disposal, and placement of final cover. Regarding groundwater management, Ameren evaluated “no action” with groundwater monitoring, placement of a low permeability vertical barrier, and a groundwater collection trench. *Id.* at 17-22; *see* TSD at 22, 73. Ameren found the installation of groundwater trench to be technically feasible and economically reasonable to address the impacted groundwater. The other alternatives were found to be technically infeasible for achieving the closure objectives. In its first-notice opinion and order, the Board agreed with Ameren’s conclusions, as “no action” and a vertical barrier may not prevent the off-site migration of contaminated groundwater. Ameren Ash Pond Closure Rules (Hutsonville Power Station): Proposed 35 Ill. Admin. Code 840.101 through 840.152, R09-21, slip op. at 69 (Oct. 7, 2010).

With regard to ash removal and disposal, Ameren asserted that removing the entire volume of waste and disposing of the ash off-site or in a newly constructed on-site landfill are not feasible options because of the exorbitant costs associated with those options. Ameren estimated the excavation and off-site disposal cost to be approximately \$34 million. TSD at 73. For on-site disposal, in addition to waste excavation cost, Ameren noted that there would be a very high capital cost of reconstructing the landfill. Ameren contended that the ash removal options are economically unreasonable. *Id.* Also, Ameren stated that the ash removal options also pose technical concerns regarding dewatering and storage of the waste. The Agency also expressed concerns regarding the implications of excavating ash in a steady state condition in terms of geochemistry and equilibrium with the site hydrogeologic conditions. Tr. at 66-76. In light of the issues highlighted by Ameren and the Agency, the Board agreed that excavation and disposal of ash from Ash Pond D, whether on-site or off-site, is not a viable option. Ameren Ash Pond Closure Rules (Hutsonville Power Station): Proposed 35 Ill. Admin. Code 840.101 through 840.152, R09-21, slip op. at 69 (Oct. 7, 2010).

Finally, with regard to the final cover alternatives, the Board found that the proposed final cover consisting of a geomembrane with a 3-foot-thick protective soil layer to be technically feasible and economically reasonable. Ameren Ash Pond Closure Rules (Hutsonville Power Station): Proposed 35 Ill. Admin. Code 840.101 through 840.152, R09-21, slip op. at 69 (Oct. 7, 2010). The Board noted that the proposed final cover is similar to those required for landfills under the Board's landfill regulations at 35 Ill. Admin. Code 811.314. *Id.* As noted by Ameren, the effectiveness of the geomembrane to minimize infiltration and leachate generation is comparable to the other options considered by Ameren, including compacted clay and pozzolonic fly ash. Regarding the cost of the proposed closure alternative, Ameren expected that "capital costs associated with the selected closure scenario could range from \$3 to \$4 million dollars, excluding engineering design." SR at 21, citing TSD at 73-74; *see* TSD at 27, Bollinger Test. at 15. Ameren has also estimated that its "[a]nnual operating and maintenance costs associated with the trench and final cover system are expected to be around \$50,000." SR at 21, citing TSD at 73-74; *see* TSD at 27, Bollinger Test. at 15. In its analysis of economic and budgetary effects submitted with its original proposal, Ameren indicated that its costs as owner of the Station were "undetermined," but it projected capital and operating costs consistent with these figures.

Regarding PRN's position that treatment of contaminated groundwater collected from the groundwater trench should be considered in this rulemaking, the Board noted the proposed rules require Ameren to discharge groundwater collected in the groundwater trench in accordance with its NPDES permit or an option approved by the Agency. Ameren Ash

Pond Closure Rules (Hutsonville Power Station): Proposed 35 Ill. Admin. Code 840.101 through 840.152, R09-21, slip op. at 70 (Oct. 7, 2010); see Joint Prop. at 17 (proposed Section 840.122). The Board expected any treatment issues concerning groundwater from the collection trench to be fully addressed during the Agency's permitting process. *Id.*

In adopting its first-notice opinion and order, the Board concluded on the basis of the record before it that Ameren has undertaken an appropriate review of closure alternatives. Ameren Ash Pond Closure Rules (Hutsonville Power Station): Proposed 35 Ill. Admin. Code 840.101 through 840.152, R09-21, slip op. at 70 (Oct. 7, 2010). The Board also concluded that the record supported the conclusion that the joint proposal is economically reasonable and technically feasible. *Id.* Accordingly, the Board proceeded to adopt the joint proposal without significant substantive amendment for first-notice publication in the *Illinois Register*. *Id.*

Since adoption of the first-notice opinion and order, the record in this proceeding has grown only to the extent of two first-notice comments. Both comments support the Board's action in proceeding to first notice and request that the Board proceed to Second Notice with its proposal as expeditiously as possible. PC 8 at 5, PC 9 at 5. Neither comment cast doubt on the Board's findings and conclusions regarding the technical feasibility or economic reasonableness of the first-notice proposal, and the Board proceeded to second notice without significantly amending it. In the absence of any contrary arguments, the Board concludes that its adopted regulations are technically feasible and economically reasonable and below directs the Clerk to file them with the Secretary of State for publication in the *Illinois Register*.

The Board has previously found that a site-specific rule, in the form of Part 840, will not result in substantially and significantly more adverse environmental or health effects. For the same reasons as previously reviewed by the Board, an adjusted standard in the form of Part 840 is appropriate in this matter. Further, Ameren notified the IEPA on January 30, 2013, that closure had been completed in accordance with Part 840. Ever since, Ameren has been monitoring and maintaining Hutsonville D in accordance with the post-closure plan mandated by the Board in its rulemaking. During this post-closure period there have been no substantial or significantly more adverse environmental or health effects related to Hutsonville D.

XI. CONSISTENCY WITH FEDERAL LAW (35 Ill. Admin. Code 104.406(i))

Ameren's proposed standards are consistent with federal law. The standards which Ameren seeks to adjust do not implicate federal or federally delegated regulatory programs as applied to the Site. 35 Ill. Admin. Code Section 840.152 reads:

Section 840.152 Resource Conservation and Recovery Act

Nothing in this Subpart shall be construed to be less stringent than or inconsistent with the provisions of the federal Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, or regulations adopted under that Act. To the extent that any rules adopted in this Subpart are less stringent than or inconsistent with any portion of RCRA applicable to the closure of Ash Pond D, RCRA will prevail.

35 Ill. Admin. Code § 840.152.

Closure of Hutsonville D is complete, and it was completed pursuant to State-adopted Part 840 prior to the adoption of the federal CCR rules. To date, USEPA has not adopted rules applicable to sites that have closed under state regulatory authority prior to the effective date of the federal rules. When USEPA promulgated 40 CFR § 257 effective October 19, 2015, that rule did not include requirements for legacy ponds at inactive facilities. While that point was remanded to the USEPA for consideration of coverage of legacy ponds at inactive facilities, USEPA is currently evaluating potential regulatory requirements but has indicated that promulgation of those rules could be years away. *See* [Advanced Notice of Proposed Rulemaking for Disposal of Coal Combustion Residuals from Electric Utilities; Legacy CCR Surface Impoundments](https://www.epa.gov/coalash/advanced-notice-proposed-rulemaking-disposal-coal-combustion-residuals-electric-utilities), United States Environmental Protection Agency (last updated July 9, 2022, last visited Dec. 14, 2022) (<https://www.epa.gov/coalash/advanced-notice-proposed-rulemaking-disposal-coal-combustion-residuals-electric-utilities>). Moreover, to Ameren's knowledge, USEPA has never indicated that it will (or can) fail to honor responsible closures that occurred pursuant to state regulatory authority during this period of uncertain federal regulatory coverage.

XII. WAIVER OF RIGHT TO A HEARING (35 Ill. Admin. Code 104.406(j))

Hutsonville D has already been the subject of many Board hearings and state-decision making proceedings related to the site-specific closure and post-closure care relevant to Hutsonville D. Ameren believes that this petition is straightforward and, as such, waives its right to a hearing. Ameren would be happy to answer any questions that the Board has in writing, and will respond to whatever comments or questions the IEPA may have in order to facilitate its statutorily required recommendation to the Board as to this petition. Since its original filing, Ameren has addressed items suggested by the IEPA – and those items are reflected in the changes from the original petition to this amended petition. In addition to maintaining the obligations to comply with Part 840, and 35 Ill. Admin Code 845 Subpart I, Ameren has accepted the obligations to continue operation of the groundwater Collection Trench during the period of post-closure care for both Hutsonville A and Hutsonville D, to report constituent concentrations in groundwater based on a totals analysis, and to post all groundwater record keeping documents required pursuant to 35 Ill. Admin. Code 840.116 on an Internet Website maintained in accordance with 35 Ill. Admin. Code 845.810.

XIII. DOCUMENTS RELIED UPON (35 Ill. Admin. Code 104.406(k))

Ameren has either provided web addresses for or attached as exhibits relevant portions of the sources relied upon in this petition. Additionally, Ameren has requested that the entire record in R09-21 (the Board's regulatory proceeding that led to Part 840) be incorporated into the record of this proceeding, given Hutsonville D's unique regulatory development history.

XIV. CONCLUSION

WHEREFORE, for all the foregoing reasons Ameren Energy Medina Valley Cogen, LLC respectfully requests that its Amended Petition for Adjusted Standard be granted.

Dated: December 16, 2022

Respectfully submitted,
**Ameren Energy Medina Valley Cogen, LLC,
Petitioner.**

By: /s/ Claire A. Manning
One of Its Attorneys

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