

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3 IN THE MATTER OF:)
)
4 AMENDMENTS TO 35 ILL. ADM.)
 CODE 225: CONTROL OF) R09-10
5 EMISSIONS FROM LARGE) (Rulemaking - Air)
 COMBUSTION SOURCES)
6 (MERCURY MONITORING))
)

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9 Proceedings held on December 17, 2008, at 9:05 a.m., at
10 the Illinois Pollution Control Board, 1021 North Grand
11 Avenue East, Springfield, Illinois, before Timothy J.
12 Fox, Hearing Officer.

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APPEARANCES

Board Members present:

Chairman G. Tanner Girard
Board Member Thomas E. Johnson
Board Member Shundar Lin
Board Member Andrea S. Moore

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PROCEEDINGS

(December 17, 2008; 9:05 a.m.)

HEARING OFFICER FOX: Good morning, everyone, and thanks for your cooperation in getting started on a timely basis this morning. The court reporter indicates that she's ready. My name is Tim Fox, and I'm the hearing officer for this rulemaking proceeding entitled "In the Matter of: Amendments to 35 Illinois Administrative Code Part 225, Control of Emissions from Large Combustion Sources (Mercury Monitoring)." Also present from the Board today on my immediate left is Board Member Andrea Moore, who is the lead board member for this rulemaking; to my immediate right, the Board's acting chairman, Dr. G. Tanner Girard; at my left, Board Member Thomas E. Johnson; and at my far right, the Board's new member, Dr. Shundar Lin, who we make an extra point of welcoming this morning.

The board docket number for this rulemaking is No. R09-10. The Illinois Environmental Protection Agency filed this rulemaking on October 3, 2008, and in an order dated November 5 of 2008, the Board accepted the proposal -- Agency's proposal for hearing, granted the Agency's request for a waiver of specified copy and filing requirements and also granted the Agency's motion

1 for expedited review of its proposal. In that same
2 order, the Board directed its clerk to cause publication
3 of the Agency's proposal for first notice without
4 commenting on the substantive merits of that proposal,
5 and the first notice appeared in the Illinois Register at
6 32 -- Volume 32, pages 18507 to 18826, on December 5 of
7 2008.

8 Today we are of course holding the first hearing
9 in this rulemaking, and the second is now scheduled to
10 take place on Tuesday, January 13, in Chicago. The
11 proceeding is governed of course by the Board's
12 procedural rules, and all information that is relevant
13 and that is neither repetitious nor privileged will be
14 admitted into the record. Please note that any questions
15 that are posed today either by the board members or by
16 the Board's staff are intended solely to assist in
17 developing a clear and complete record for the Board's
18 decision and do not reflect any prejudgment of the
19 proposal.

20 For this first hearing, the Board on December 2
21 of 2008 received prefiled testimony from the Illinois
22 Environmental Protection Agency by Kevin Mattison, David
23 Bloomberg, Rory Davis and Jim Ross. On December 10 of
24 2008 the Board also received amended testimony by

1 Mr. Bloomberg and Mr. Ross on this -- in this proceeding.
2 No other participant has prefiled testimony for this
3 first hearing. We will begin, of course, logically, with
4 the Agency's prefiled testimony, and we'll hear first
5 from those four witnesses for the IEPA and then we'll
6 proceed to questions on the part of the other
7 participants, including the Board and Board's staff.
8 After those questions, we can turn to any witness who did
9 not prefile testimony but who would like to testify
10 today, and just inside the door on the table with the pen
11 is a sheet at which anyone who, again, did not prefile
12 testimony but who would like to testify today can
13 indicate that intention.

14 For the court reporter transcribing today's
15 proceeding, of course please speak as clearly as you can
16 and avoid speaking at the same time as any other
17 participant so that she can have the easiest time
18 possible in developing a clear transcript for us. Do you
19 have any questions about procedures at all before we
20 begin? Seeing none, speaking briefly about -- with
21 Mr. Matoesian about the procedural issue of proceeding
22 with his witnesses, he had indicated that he may wish to
23 start with a brief introduction or summary and have his
24 four witnesses sworn in as a panel to take questions on

1 that basis. Mr. Matoesian, did I repeat that correctly?

2 MR. MATOESIAN: Yes. That's fine.

3 HEARING OFFICER FOX: Excellent. Any
4 objection at all to proceeding on that basis? Neither
5 seeing or hearing any, that sounds like a good roadmap
6 for us. Mr. Matoesian, I'll turn it over to you.

7 MR. MATOESIAN: Thank you, Mr. Hearing
8 Officer. My name's Charles Matoesian, M-A-T-O-E-S-I-A-N.
9 With me here today is Dana Vetterhoffer and John Kim,
10 representing the Illinois Environmental Protection
11 Agency. We're here on the matter of Proposed Amendments
12 to 35 Illinois Administrative Code Part 225: Control of
13 Emissions from Large Combustion Sources. This rulemaking
14 results primarily from the vacatur of the federal CAMR
15 rule and it involves changes to the Illinois rule to make
16 it more workable and compliant with the absence of Part
17 75 of the Federal -- Code of Federal Regulations.

18 Today testifying will be Kevin Mattison, David
19 Bloomberg, Rory Davis and Jim Ross, who I can -- who
20 would like to be empaneled as together, all four sworn
21 in, and I will be submitting as exhibits Exhibit 1, the
22 testimony of Kevin Mattison, David Bloomberg, Rory Davis
23 and Jim Ross, along with the Agency's first errata sheet,
24 which was filed on December 3, 2008, and the second

1 exhibit will be the amended testimony of David Bloomberg
2 and Jim Ross filed on December 10, 2008, which we'll --
3 we can bring up at submittal, and that's all I have to
4 say, so at this point we can proceed with the --

5 MS. BASSI: Mr. Fox?

6 HEARING OFFICER FOX: Yes, Ms. Bassi,
7 please.

8 MS. BASSI: Will those each be separate
9 exhibits? Sorry.

10 HEARING OFFICER FOX: No, you are -- you
11 read my mind very clearly and effectively.
12 Mr. Matoesian, Ms. Bassi made a very good suggestion that
13 I would echo. Is it possible, are those -- the
14 testimony, the prefiled testimony of the four witnesses,
15 separate documents that can be introduced with separate
16 exhibit numbers?

17 MR. MATOESIAN: Okay.

18 HEARING OFFICER FOX: That will make
19 citations to the record, I think, ultimately a little
20 clearer and simpler.

21 MR. MATOESIAN: I suppose we can do
22 testimony of Kevin Mattison as Exhibit 1; testimony of
23 David Bloomberg, Exhibit 2; testimony of Rory Davis,
24 Exhibit 3; testimony of Jim Ross, Exhibit 4; the errata

1 sheet can be Exhibit 5; and then I suppose the amended
2 testimony of David Bloomberg be Exhibit 6; and the
3 amended testimony of Jim Ross can be Exhibit 7, if that's
4 acceptable. We're separating them right now.

5 HEARING OFFICER FOX: Excellent. It looks
6 like you've got copies to supply to the --

7 MR. MATOESIAN: Yes, yes.

8 HEARING OFFICER FOX: We can hold just a
9 moment while those get sorted and distributed.

10 (Off the record.)

11 HEARING OFFICER FOX: Mr. Matoesian on
12 behalf of the Agency has offered the following
13 exhibits -- the following documents as exhibits in this
14 proceeding: As Exhibit No. 1, the prefiled testimony of
15 Mr. Kevin Mattison; as Exhibit No. 2, the prefiled
16 testimony of David Bloomberg; as Exhibit No. 3, the
17 prefiled testimony of Rory Davis; as Exhibit No. 4, the
18 prefiled testimony of Jim Ross; as Exhibit No. 5, the
19 Agency's first errata sheet that was filed recently with
20 the Board; and as Exhibit No. 6, the amended testimony of
21 David Bloomberg; and as Exhibit No. 7, the amended
22 testimony of Jim Ross, those amended testimonies being
23 filed on December 10 of this year. The Agency I know has
24 supplied copies of I believe proposed Exhibits No. 1, 3,

1 6 and 7, and they're now obtaining copies of Nos. 2, 4
2 and 5. Having heard Mr. Matoesian move the admission of
3 those seven documents as those seven respective exhibits
4 in this proceeding, is there any objection to the motion
5 and to granting -- to granting that motion and to
6 admitting those into the record?

7 MR. BONEBRAKE: Mr. Fox, if I may first ask
8 a question in that regard of the Agency?

9 HEARING OFFICER FOX: Yes, Mr. Bonebrake.

10 MR. BONEBRAKE: With respect to the amended
11 testimony, could IEPA explain why it was necessary to
12 submit amended testimony after the initial submission of
13 the testimony of Mr. Ross and Bloomberg?

14 MR. MATOESIAN: Would you like to --

15 MR. ROSS: I can. Do I need sworn in?

16 HEARING OFFICER FOX: Why don't we at this
17 point go ahead and swear all four of the witnesses in, as
18 we'll have to do that ultimately anyway.

19 (Witnesses sworn.)

20 MR. ROSS: Good morning. In regards to your
21 question, I spoke with Rey Forte of USEPA on Wednesday,
22 December 10, 2008, so a week earlier from today, and Rey
23 Forte's name is spelled R-E-Y, F-O-R-T-E. Rey Forte is
24 the chief of the emissions monitoring branch of the Clean

1 Air Markets Division at USEPA headquarters. Rey stated
2 that he was recently informed by their office of general
3 counsel that there would be legal constraints regarding
4 USEPA accepting mercury monitoring data from sources and
5 then performing the necessary quality assurance and
6 quality control on the data. He stated that they would
7 not be able to provide this support to the states as they
8 had originally hoped and informed us that they would be
9 able to.

10 Rey further stated that this was the only area
11 that they would not be able to offer support. He stated
12 that regarding the providing of the NIST-traceable
13 standards that USEPA was about a month or so behind
14 schedule and hoped that they would be able to provide
15 these standards in February 2009. He further stated that
16 USEPA could provide assistance and support on all other
17 aspects of the rule that they had planned under CAMR,
18 including review of monitoring plans, review of
19 alternative monitoring approaches, review of
20 certifications, review of requests for extensions and
21 other monitoring issues. This is being done in order to
22 have a level of national consistency in the mercury
23 monitoring requirements.

24 And as a result of my conversation with Rey

1 Forte, David Bloomberg and I subsequently revised our
2 testimony on that same day, and we now envision that
3 instead of submitting the raw monitoring data to USEPA,
4 companies will submit to Illinois EPA a summary sheet of
5 mercury monitoring data along with a certification of
6 truth and accuracy of that data, and we will work with
7 companies over the coming days on what these submittals
8 need to contain, and in essence we'll call this the
9 simplified approach, and we believe that some level of
10 revision to the rule may be necessary, although our
11 mercury rule currently allows for an alternative approach
12 as specified by the Illinois EPA. That's what the rule
13 currently reads.

14 MR. BONEBRAKE: Thank you, Mr. Ross, for
15 that clarification, and I would anticipate we'll have a
16 number of follow-up questions with respect to the
17 statement Mr. Ross just made, but with that explanation,
18 we have no explanation -- excuse me -- no objection to
19 the admission of the exhibits.

20 HEARING OFFICER FOX: Very good. Thank you,
21 Mr. Bonebrake. Anyone else with any objection to the
22 admission of those seven exhibits? Hearing none, they
23 will be admitted into the record as Exhibits No. 1
24 through 7 according to the numbering that I had placed

1 into the record a short time ago. And with that,
2 Mr. Matoesian, your witnesses are sworn in. We can
3 certainly return to you at this point.

4 MR. MATOESIAN: Okay. At this point we're
5 ready to begin any questioning that anyone would have for
6 witnesses.

7 HEARING OFFICER FOX: Very good. If anyone
8 has any questions, the first time you ask to be
9 recognized, please indicate your name and any
10 organization or company you may be affiliated with for
11 the benefit of the court reporter, but the witnesses are
12 sworn in and will intend to take questions as a panel,
13 and we're ready to go to them at any time.

14 MR. BONEBRAKE: My name is Steve Bonebrake.
15 I'm with the law firm of Schiff Hardin in Chicago. I
16 represent Midwest Generation and Dynegy Midwest
17 Generation, and with me is Ms. Kathleen Bassi with Schiff
18 Hardin as well. Both Midwest Generation and -- Midwest
19 Generation has opted in to the MPS and Dynegy -- excuse
20 me. Midwest Generation has opted in to the CPS and
21 Dynegy Midwest Generation has opted in to the MPS. We
22 have a number of questions for the Agency today with
23 respect to the proposed rule, then questions with respect
24 to both the language of the rule, the testimony and the

1 TSD. We also have a number of concerns with respect to
2 the proposed rule as written. The extent of those
3 concerns will depend at least in part on the information
4 obtained from the IEPA during the course of this hearing.

5 As I mentioned, we have a number of questions
6 with respect to rule language and testimony and the TSD,
7 and I thought what would make most sense probably is just
8 to start with the earlier sections of the rule and then
9 move forward, if that's satisfactory to everyone in terms
10 of our questions, and we'll try to weave in questions
11 pertaining to the TSD and testimony as they might arise
12 in connection with those various divisions. But as an
13 initial matter, I just had a couple of kind of threshold
14 questions, and I guess I would direct them to Mr. Ross.

15 Mr. Ross, I think your testimony touches on the
16 purpose and the reason for the proposed revisions that
17 are in question at this hearing today. Could you provide
18 just a brief summary, Mr. Ross, of the reason why the
19 rule as previously adopted is proposed for revision
20 today?

21 MR. ROSS: Sure. The federal Clean Air
22 Mercury Rule, commonly referred to as CAMR, was vacated
23 in February of this year, and as a result of that
24 vacatur, the mercury monitoring requirements that were

1 associated with CAMR were also vacated. Our previous
2 version of the Illinois mercury rule incorporated these
3 mercury monitoring requirements, primarily by reference,
4 so as a result of the vacatur, we found' ourself in a
5 position where due to the fact that we had incorporated
6 these monitoring requirements, there was some uncertainty
7 as to their ability to be used in our rule, and hence, to
8 remove this uncertainty and to ensure sources that we had
9 a valid approach to determining compliance with the
10 Illinois mercury rule, we made a decision that it was
11 appropriate to revise our rule.

12 MR. BONEBRAKE: Do you know, Mr. Ross, is --
13 the decision of the D.C. Circuit Court of Appeals that
14 vacated CAMR, is there a petition for review of that
15 decision pending before the United States Supreme Court?

16 MR. ROSS: There is.

17 MR. BONEBRAKE: What are the Agency's plans
18 with respect to this rule if the Supreme Court were to
19 accept that petition for review and reverse the decision
20 of the D.C. Circuit Court of Appeals?

21 MR. ROSS: I believe we would maintain our
22 rule as it's currently being revised. We may need to
23 make some further changes in order to have a plan that
24 the USEPA would find acceptable, because we'd find

1 ourself once again in a position where we have to submit
2 a -- an acceptable mercury monitoring plan to USEPA,
3 something that was eliminated with the vacatur of CAMR,
4 so I believe we'd evaluate at that time if -- any
5 additional revisions that would be needed to the rule.

6 MR. BONEBRAKE: Setting aside the question
7 of a potential reversal by the United States Supreme
8 Court, does IEPA envision future mercury emission
9 regulations by USEPA?

10 MR. ROSS: We do.

11 MR. BONEBRAKE: And does IEPA envision that
12 there will be monitoring requirements associated with
13 such mercury regulations?

14 MR. ROSS: We do.

15 MR. BONEBRAKE: And does IEPA anticipate
16 that there could be potential conflicts between the
17 proposed monitoring rules here and what the USEPA might
18 adopt in connection with such future mercury regulations?

19 MR. ROSS: There will be differences between
20 our rule as we're proposing it now potentially and what
21 the USEPA will promulgate, but our rule currently allows
22 for companies to submit an alternative mercury monitoring
23 plan, something that would be potentially consistent with
24 what USEPA will come out in the future, and our intent

1 would be to allow that, to allow the acceptance of any
2 plan that mimics a future USEPA regulation, so we
3 anticipated that and our rule addresses that prospect.

4 MR. BONEBRAKE: You mentioned that the rule
5 allows an alternative submission. You may not have used
6 those exact words, but that was my understanding of what
7 you had to say, and I saw some similar references in the
8 testimony. Could you point us to the rule provision that
9 so allows, Mr. Ross? I was looking for that and I wasn't
10 sure what was being referred to.

11 MR. ROSS: If you'd give me a moment.

12 MR. BONEBRAKE: Sure.

13 MR. ROSS: If it takes longer than a minute,
14 I would suggest we --

15 MR. BONEBRAKE: That's fine.

16 MR. ROSS: -- get back to you.

17 MR. BONEBRAKE: We can get back to that if
18 some time is needed to find that statute. Just a related
19 question for you, Mr. Ross. Is it also correct that the
20 D.C. Circuit's decision with respect to CAIR has had some
21 implications for the proposed rule revisions?

22 MR. ROSS: Yes, that's correct.

23 MR. BONEBRAKE: Could you explain that
24 implication to us, please?

1 MR. ROSS: Well, in regards to the MPS, some
2 degree to CPS, there are trading restrictions on SO2 and
3 NOx allowances and requirements for retirement or
4 surrender of such allowances, and the rule currently
5 references the -- these allowances as related to CAIR,
6 and since CAIR is also vacated, much like CAMR, we found
7 it necessary to make revisions to the rule in that regard
8 to remove specific references to CAIR and instead to
9 reference general trading programs or any trading
10 programs related to NOx and SO2 allowances.

11 MR. BONEBRAKE: And are you referring to the
12 specific revisions of both the CPS and the MPS?

13 MR. ROSS: Yes.

14 MR. BONEBRAKE: And was it the intent of
15 those revisions to essentially replace the references to
16 CAIR allowances, Mr. Ross?

17 MR. ROSS: It was the intent of those
18 revisions to maintain the original intent of the MPS and
19 CPS that any SO2 and NOx allowances as agreed to by the
20 parties would be surrendered or retired in accordance
21 with the agreements we reached with the individual
22 companies, not to go beyond any of the agreements that
23 were reached but to simply maintain the level of
24 retirements and surrenders of NOx and SO2 allowances that

1 were agreed to, so certainly not to go beyond what was
2 agreed to.

3 MR. BONEBRAKE: And maybe we can make the
4 questions here a little more concrete, if we could turn
5 to Section 233. Give me just a minute here to find the
6 subsection. 233(f)(4).

7 MR. ROSS: Okay.

8 MR. BONEBRAKE: And that subsection
9 addresses NOx and SO2 allowances; is that correct,
10 Mr. Ross?

11 MR. ROSS: That's correct.

12 MR. BONEBRAKE: And as originally adopted,
13 that provision had specific reference to CAIR SO2 and NOx
14 allowances; is that right?

15 MR. ROSS: It did.

16 MR. BONEBRAKE: And one of the additions to
17 the rule as proposed is to delete the references to CAIR
18 SO2 and NOx allowances and to replace that reference with
19 the phrase "Any future federal NOx or SO2 emissions
20 trading programs that include Illinois sources"; is that
21 correct?

22 MR. ROSS: That's correct.

23 MR. BONEBRAKE: The reference to any future
24 federal NOx or SO2 emissions trading, Mr. Ross, if I

1 understood your testimony correctly, was it the intent to
2 limit that to a CAIR replacement SO2 and NOx program?

3 MR. ROSS: I would say either CAIR if it's
4 not vacated or a CAIR replacement type rule.

5 MR. BONEBRAKE: Is there -- There have been
6 some concerns that the phrase "any future" could
7 potentially cover trading programs that no one here today
8 might even envision and couldn't have been envisioned by
9 the parties. Wouldn't you agree, Mr. Ross?

10 MR. ROSS: I would agree.

11 MR. BONEBRAKE: So if -- So the language in
12 substitution for the -- any future federal along the
13 lines of CAIR or replacement CAIR, would that be
14 satisfactory at least conceptually to the Agency,
15 Mr. Ross?

16 MR. ROSS: My initial take would be yes, we
17 could go back and review that and propose some
18 alternative language.

19 MR. BONEBRAKE: And would the Agency be
20 willing to work with Dynegy Midwest Generation in
21 connection with such language?

22 MR. ROSS: Yes.

23 MR. BONEBRAKE: And with Midwest Generation
24 in connection with a similar provision in the CPS?

1 MR. ROSS: Yes.

2 MR. BONEBRAKE: With respect to CAIR, is it
3 correct that the mandate has not yet issued from the D.C.
4 Circuit Court of Appeals?

5 MR. ROSS: That's correct.

6 MR. BONEBRAKE: And is there a petition for
7 rehearing that is pending with that court?

8 MR. ROSS: Yes.

9 MR. BONEBRAKE: Does that mean, Mr. Ross,
10 that it's possible that the -- a mandate would not issue
11 by that court that would invalidate CAIR?

12 MR. ROSS: That is possible.

13 MR. BONEBRAKE: And if the court were to
14 decline to issue the mandate based upon its current
15 decision, based upon the petitions for rehearing, does
16 IEPA envision that there would be further revisions
17 necessary to the proposed rule?

18 MR. ROSS: No, I don't believe so.

19 MR. BONEBRAKE: Well, for instance, if the
20 D.C. Circuit Court of Appeals were to determine that its
21 original decision was in error and that CAIR therefore
22 need not be vacated, then I assume that there would be no
23 need to strike the references to CAIR allowances in the
24 provisions that we just were speaking about? Would that

1 be correct, Mr. Ross?

2 MR. ROSS: That would be correct, but if we
3 can come up with some alternative language that
4 encompasses what we just discussed, then I think we could
5 word it to take care of both cases, if CAIR is vacated or
6 if CAIR is reimplemented.

7 MR. BONEBRAKE: I'd like to turn now to some
8 of the specific proposed language, and I thought I would
9 take these kind of section by section, so I'm not sure
10 who would be best suited to respond to my various
11 questions on the panel. I'll leave that to the witnesses
12 as we move forward. My first questions pertain to
13 Section 225.210; that would be subsection (b)(1). To
14 Section (b)(1), the IEPA is proposing to add references
15 to Section -- new Section 2252.39; is that correct?

16 MR. BLOOMBERG: 225.239, yes.

17 MR. BONEBRAKE: And 225.239 is a new
18 provision? Is that correct as well?

19 MR. BLOOMBERG: That's correct.

20 MR. BONEBRAKE: And what is the scope of
21 Section 225.239? In other words, what does that
22 provision -- new provision provide for or allow for?

23 MR. BLOOMBERG: Periodic testing alternative
24 requirements.

1 MR. BONEBRAKE: And given the language in
2 proposed (b)(1), is it correct that under the proposed
3 revision, electric generating units may comply with
4 either Sections 240 through 290 or a periodic testing
5 approach under Section 239?

6 MR. BLOOMBERG: Yes.

7 MR. BONEBRAKE: And that would include CPS
8 and MPS units? Is that correct as well?

9 MR. BLOOMBERG: There are slightly different
10 requirements both -- I mean, for the periodic testing if
11 you're a CPS and MPS compared to if you're complying
12 specifically with the limits. I also want to note that
13 there is a sunset clause for 239, so when I answered yes,
14 you could comply with either/or, it's up to the point of
15 that sunset clause.

16 MR. BONEBRAKE: But CPS and MPS units
17 subject to what's in the CPS and MPS sections can opt in
18 to Section 239 in lieu of complying with 240 through 290?
19 Is that correct, Mr. Bloomberg?

20 MR. BLOOMBERG: Yes.

21 MR. BONEBRAKE: Section 220, subsection (b),
22 subpart (3) of subsection (b) now includes a reference to
23 Section 225.239, and is it correct that the IEPA intends
24 in (b)(3) to require that -- EGUs in their CAAPP

1 applications to make an election between compliance with
2 225.239 on the one hand or Sections 240 through 290 on
3 the other?

4 MR. BLOOMBERG: Yes.

5 MR. BONEBRAKE: And that CAAPP permit
6 application is due December 31, 2008? Is that correct as
7 well?

8 MR. BLOOMBERG: Yes, I believe that's
9 correct.

10 MR. BONEBRAKE: This rule will not be
11 completed by December 31, 2008? Can we all agree to
12 that?

13 MR. ROSS: We can.

14 MR. BLOOMBERG: Yes.

15 MR. BONEBRAKE: Would IEPA be willing to
16 defer the date for the required election under (b)(3) in
17 light of the fact that the proposed rulemaking would not
18 be completed by December 31, 2008, and therefore as of
19 the date the EGUs would not have a Section 239 in the
20 rule to opt in to?

21 MR. ROSS: I believe we could defer that,
22 but I'd also think that it wouldn't be unreasonable for
23 sources to at least identify that they are considering
24 this option. That is a flexibility mechanism, so without

1 this option, sources are bound to demonstrate compliance
2 using the continuous emission monitors. So this option
3 is being put in there as a means to provide flexibility
4 to sources, so I think in the interest of working with
5 each other, I think we could defer that they specifically
6 specify that they want to use the alternative testing
7 approach, but I think it would also be to their benefit
8 and would help us considerably if they would at least
9 identify that they're considering using it.

10 MS. BASSI: Mr. Ross, Mr. Bloomberg, I have
11 a follow-up to this answer that you just gave. I'm
12 Kathleen Bassi, and Mr. Bonebrake introduced me a minute
13 ago. Isn't -- Does this section mean, 210 -- no. This
14 is 210(b)(3)?

15 MR. BONEBRAKE: It's 220 --

16 MS. BASSI: 220(b)(3)? Sorry. Does this
17 section mean that the flexibility is you must choose and
18 then you keep that, whatever choice you make, at the time
19 that the permit application is submitted, or is it truly
20 flexible and a source can opt in to the 239 at a later
21 date?

22 MR. BLOOMBERG: It is flexible, and all this
23 section talks about is the permit application, and it
24 talks about the intended approach. Within the sections

1 both 239 and the monitoring sections, there is
2 flexibility spelled out as to how you can switch from one
3 to the other.

4 MS. BASSI: So that the option or the
5 election that's made in the permit application is not
6 binding forever to the sunset of 239 as to what the
7 source may do; is that correct?

8 MR. BLOOMBERG: That's correct.

9 MR. BONEBRAKE: Are there any limitations on
10 the flexibility to move between 240 through 290 on the
11 one hand and 239 on the other?

12 MR. BLOOMBERG: There are some limitations
13 that are spelled out in the rule.

14 MR. BONEBRAKE: For clarity, Mr. Bloomberg,
15 could you refer us to those so we all have an
16 understanding of what these limitations are?

17 MR. BLOOMBERG: Probably not off the top of
18 my head, but we can get back to you and answer that.

19 MS. BASSI: So then your advice to EGUs who
20 may choose to do 239, assuming it's adopted in this form
21 by the Board, is that they should indicate in this
22 December 31 permit application that if 239 is adopted,
23 they may wish to use it; is that correct?

24 MR. ROSS: That's correct.

1 MR. BONEBRAKE: But that statement of
2 intention would not be a binding determination that they
3 would be subject to 239; is that also correct?

4 MR. ROSS: That's correct.

5 MS. BASSI: Thank you.

6 MR. BONEBRAKE: Let's turn next to Section
7 225.230. 225.230. In Section -- subsection (a)(1),
8 there are references to additional sections of the rule,
9 including Section 225.239; is that correct?

10 MR. BLOOMBERG: Yes.

11 MR. BONEBRAKE: And is the intent of the
12 reference to 239 to permit an EGU to elect to subject
13 itself to the emission standards of Section 239 in lieu
14 of the emission standards in Section 230?

15 MR. BLOOMBERG: Yes, although the emission
16 standards themselves, the levels are the same. It's just
17 how those levels are measured.

18 MR. BONEBRAKE: And so I had a similar
19 observation, so one of the follow-up questions I had was
20 what was then the intent of permitting an election into
21 an identical emission standard?

22 MR. BLOOMBERG: The standard as exists in
23 the current rule is measured over a course of 12 months
24 of CEMS data, CEMS, continuous emissions monitoring

1 systems. The new 239, proposed 239, that same standard
2 would be measured by periodic emissions testing, or more
3 commonly known as stack testing.

4 MR. BONEBRAKE: So under 239 -- excuse me --
5 under Section 230, a 12-month rolling period of CEMS data
6 can be utilized in connection with the compliance
7 determination? Is that correct, Mr. Bloomberg?

8 MR. BLOOMBERG: Yes.

9 MR. BONEBRAKE: And the corresponding
10 information under 239 would be periodic stack testing?
11 Is that also correct?

12 MR. BLOOMBERG: Yes.

13 MR. BONEBRAKE: We talked before about the
14 ability to elect in to 239 and then the possibility of
15 electing back out of 239 in to 240 through 290. Can you
16 explain to us how if a source -- how if an EGU may elect
17 in and out of Section 239 -- I mean, therefore it may
18 have a combination of both CEMS data and stack test
19 data -- how the Agency will determine compliance when
20 there's that mix of that data?

21 MR. BLOOMBERG: I know that in the
22 monitoring section -- and I -- I'm sorry, off the top of
23 my head I can't point to the exact section -- but it
24 talks about how to switch if you've been doing CEMS and

1 you would like to switch to stack testing. It discusses
2 that and vice versa. The intent is to allow flexibility
3 in cases where there may be a problem with the CEMS that
4 comes up unexpectedly, but on the other hand, to not have
5 an EGU -- not that I'm suggesting any would do this, but
6 just to make sure -- look at 11 months of data and say,
7 oops, we're going to violate, let's not use that, let's
8 switch to stack testing and ignore that. That 11 months
9 of data would still be used -- 11 months being an
10 example -- up to that point to cover the previous time
11 period so that they wouldn't be able to, for lack of a
12 better term, pull a fast one.

13 MR. BONEBRAKE: Let's turn to Section 239,
14 because I think this is an issue.

15 MR. BLOOMBERG: Okay.

16 MR. BONEBRAKE: And I guess I would direct
17 your attention to subsection (a)(4) of Section 239 and
18 ask Mr. Bloomberg if that's the provision you had in
19 mind.

20 MR. BLOOMBERG: Yes.

21 MR. BONEBRAKE: And perhaps we can take a
22 kind of a hypothetical so you can explain to us how this
23 might work. Let's say in a given calendar year there was
24 seven months of CEMS data --

1 MR. BLOOMBERG: Okay.

2 MR. BONEBRAKE: -- and then an EGU opted in
3 to Section 239. How would the compliance determination
4 be made in that scenario?

5 MR. BLOOMBERG: That seven months would be
6 used instead of twelve months, and that's what the --
7 that's what 239(a)(4) means when it says the twelve in
8 the equations will be replaced by a variable equal to the
9 number of full and partial months, so the seven would be
10 that variable in that case.

11 MR. BONEBRAKE: So the CEMS data would be
12 relevant for compliance only during that seven-month
13 period of time?

14 MR. BLOOMBERG: Yes.

15 MR. BONEBRAKE: And the stack testing would
16 be relevant for compliance for the remaining five months?

17 MR. BLOOMBERG: The stack testing provisions
18 are broken down into quarters, so we would look at it
19 based on, you know, one test -- the five months, that
20 would -- you know, there'd have to be two tests covering
21 two quarters there.

22 MR. BONEBRAKE: Let me ask a follow-up
23 question about that. CPS and MPS units can opt in to
24 Section 239 as well; is that correct?

1 MR. BLOOMBERG: Parts of it, yes.

2 MR. BONEBRAKE: And the stack testing
3 required of such units is semiannual; that is, two times
4 per year as opposed to quarterly? Is that also correct?

5 MR. BLOOMBERG: Yes.

6 MR. BONEBRAKE: So in that circumstance
7 where you had seven months of CEMS data in a -- let's say
8 a CPS unit and then an opt in to stack testing, can you
9 explain, then, how that would work for the remaining five
10 months?

11 MR. BLOOMBERG: One moment, please. They
12 would need to stack test at least once covering that
13 five-month period since it's semiannual, potentially
14 twice depending on exactly how it falls and how the
15 calendar falls and everything, depending on how that -- I
16 guess you did say seven calendar months, so presuming
17 they were the last five months of the year, it would be
18 one test.

19 MR. BONEBRAKE: Okay. And then you were
20 saying potentially -- what would be the potential where
21 you'd have to test more than once with -- in a five-month
22 period when there's a semiannual testing requirement?

23 MR. BLOOMBERG: If it's potentially -- and
24 I'll have to -- I'd have to double-check exactly the

1 language we have here, but potentially what I'm thinking
2 of is if it's split between calendar years so that, say,
3 the first two months falls in one calendar year and the
4 next three months falls in the next calendar year. I
5 don't recall exactly how we worded the semiannual in the
6 regulation.

7 MR. BONEBRAKE: Let me put a -- what I think
8 is maybe a further wrinkle on this question. If we go to
9 Section 294(1), this might be helpful. At least on my
10 version of the proposed regulations, it's page 80.

11 MR. BLOOMBERG: Yes.

12 MR. BONEBRAKE: And subsection (1) is the
13 provision in the CPS that permits CPS units to opt in to
14 the Section 239 stack testing provision; is that correct,
15 Mr. Bloomberg?

16 MR. BLOOMBERG: (1) covers, yes, the
17 record-keeping, reporting and testing.

18 MR. BONEBRAKE: And the -- if the CPS unit
19 were to opt in to Section 239 under Section 294(1), the
20 only subsections of 239 that would be -- could be
21 applicable under Section 239 to that EGU will be
22 specified in (1); is that correct? That is, (c), (d),
23 (e), (f)(1) and (2), (h)(2), (i)(3) and (4) and (j)(1)?

24 MR. BLOOMBERG: Yes.

1 MR. BONEBRAKE: There is no reference there
2 to 239(a), Mr. Bloomberg, and we were just referring to
3 239(a)(4) in terms of the treatment of monitoring data
4 when it was a combination of a CEMS and stack testing, so
5 my question to you would be, is there a provision in the
6 proposed rule that would address the combination of CEMS
7 data and stack test data for a CPS unit that opts in to
8 Section 239, stack testing requirements?

9 MR. BLOOMBERG: I'll have to look into that.
10 The intent of (a)(4) is really a -- as it says in the
11 first line, for demonstrating compliance, and CPS units
12 do not actually use their CEMS or stack tests to fully
13 demonstrate compliance, but rather it's the other
14 portions of the CPS, so (a)(4) is meant specifically for
15 those that are not CPS and MPS.

16 MR. BONEBRAKE: Let me ask, then, a further
17 follow-up question. 294(e)(1) -- and it's page 77 --
18 permits a CPS EGU to opt early in to the emission
19 standards set forth in 294(c); that is, before 2015. Is
20 that correct?

21 MR. BLOOMBERG: Yes.

22 MR. BONEBRAKE: And so conceptually, a CPS
23 unit could opt in to the 90 percent reduction requirement
24 for mercury at the time when the stack testing provision

1 would be available; is that correct?

2 MR. BLOOMBERG: Yes.

3 MR. BONEBRAKE: And so therefore, there is a
4 potential scenario, Mr. Bloomberg, isn't there, where a
5 CPS unit might be subject to a 90 percent requirement if
6 it were to opt in to that 90 percent requirement and it
7 also may elect to use 239 in lieu of 240 through 290? Is
8 that correct?

9 MR. BLOOMBERG: Yes.

10 MR. BONEBRAKE: So in that scenario, is
11 there a provision in the rule that addresses how the
12 combination of CEMS data and stack test data would be
13 reviewed for compliance?

14 MR. BLOOMBERG: Off the top of my head, I
15 don't believe so. We will review that.

16 MR. BONEBRAKE: And I would ask a similar
17 question for the MPS, and would you provide a similar
18 answer, Mr. Bloomberg?

19 MR. BLOOMBERG: Since they're practically
20 identical in those regards, I would agree on that also.

21 MS. BASSI: Mr. Bloomberg, I would like to
22 go back to the response you were giving about how you
23 would view compliance or how you would determine
24 compliance when you have a combination of stack testing

1 under 239 and CEMS data or other monitoring data, and you
2 said -- you were using the example of seven months of
3 CEMS data and five months of stack testing data, so
4 there's going to be at least some quarter or some
5 half-year period where you are looking at the combination
6 of the two; is that correct?

7 MR. BLOOMBERG: I -- So this is a non-CPS or
8 MPS unit, correct?

9 MS. BASSI: It could be either. I mean, it
10 could be any unit. It's a more generic question than
11 that.

12 MR. BLOOMBERG: I guess the way you used the
13 word combination has me a little -- we wouldn't combine
14 them in terms of averaging them or anything like that.
15 We would look at both the CEMS and the stack test.

16 MS. BASSI: Why would you not average them?

17 MR. BLOOMBERG: Because you can't average
18 CEMS data with the stack test.

19 MS. BASSI: Why not?

20 MR. BLOOMBERG: Because the CEMS data would
21 be taken on a continuous basis for a seven-month period
22 and stack testing is more of a snapshot of what is going
23 on during that stack test. There's -- There is really
24 just no methodology by which you could average those two

1 different types of numbers.

2 MS. BASSI: Mr. Bloomberg, I'm certainly not
3 a mathematician, as you all know. However, I suspect
4 there would be some formula that could be devised where
5 the -- where stack test data could be considered in the
6 same vein as CEMS data. Would that not be the case?

7 MR. ROSS: Well, CEMS data is generally more
8 reliable, and certainly for this rule it's our preferred
9 method of compliance. We're offering up the stack
10 testing as an alternative to provide flexibility to
11 sources due to the degree of uncertainty for the CEMS, so
12 our preferred method is CEMS, and as David mentioned,
13 that provides data on a continuous basis, so certainly
14 it's preferred. It gives you a greater degree of
15 certainty that the source is in compliance as opposed to
16 stack testing, which, as he also mentioned, is a snapshot
17 in time of how a control device is operating at that
18 specific time.

19 MS. BASSI: Is -- Let me state what my
20 concern is here. My concern is that when you have a
21 denominator less than twelve for the CEMS data on the
22 rolling twelve-month basis that it's -- that if there is
23 a violation during those seven months, that that
24 violation then -- or exceedance -- pardon me -- that

1 exceedance carries over for a longer period of time,
2 whereas with the stack testing data, the Agency is
3 willing to accept the stack test for a period of three
4 months, and so it is a question of what happens to the
5 rollingness, I guess, of the original CEMS data. You
6 have seven months, and then does it become six, five,
7 four, three, two, one as you proceed because your
8 twelve-month rolling period is getting less?

9 MR. ROSS: Well, I think our desire is to
10 use all the available CEMS data that the company has and
11 then to allow stack testing to fit into that equation, so
12 if the CEMS data goes down during the eighth month and
13 they have seven months of data, we want to use that seven
14 months of data, and then until they get the CEMS back up,
15 they can use stack testing, so however we can work that
16 out in here, that was our intent, so we can work with
17 companies to adjust the rule so that that in fact plays
18 out in the rule.

19 MS. BASSI: So --

20 MR. BLOOMBERG: Just to add to what Jim
21 said, it's not our intent to send out, you know, seven
22 violation notices saying seven months and then send one
23 the next month saying six months and one the next month
24 saying five months. That's one compliance period, that

1 seven months, just like normally twelve months is a
2 compliance period, although if you continue to use CEMS,
3 that twelve months continues to roll. To use your word,
4 the rollingness, it would stop at that seven months.

5 MS. BASSI: Okay.

6 MR. ROSS: And absent the ability to use the
7 stack testing alternative, if the CEMS monitoring went
8 down, the company would be in violation from that period
9 forward until they got the CEMS monitor back up, so we've
10 provided a means where the company can continue to
11 demonstrate compliance with us if their monitor goes
12 down, so it's a benefit to the company to have this in
13 here. That's what we're discussing. We're just
14 discussing -- I just want to make this clear to the
15 Board -- how we can make this work, and we're willing to
16 work with companies to do that.

17 MS. BASSI: And we appreciate that. The
18 companies appreciate that, I'm sure. We just want to
19 understand how it works and what potentials we are facing
20 out there. Is it possible that in a given order a source
21 could be in violation of both the CEMS data and emissions
22 testing?

23 MR. ROSS: It's not our intent.

24 MS. BASSI: Okay.

1 MR. ROSS: But it's possible. I mean, if
2 the CEMS data shows that they're exceeding the
3 requirement and then they do a subsequent stack test and
4 it also shows that during that quarter they exceeded
5 their requirement, then potentially you have two sets of
6 data showing noncompliance.

7 MS. BASSI: And just to clarify, if I
8 understood what you said correctly, Mr. Bloomberg, you
9 said -- or maybe it was Mr. Ross -- that if a CEMS goes
10 down in the seventh -- in the eighth month, in August,
11 then the rolling -- then the first seven months of the
12 year are viewed as a single time block, is that correct,
13 and until a CEMS comes back up?

14 MR. BLOOMBERG: Well, that's presuming that
15 the CEMS started in January.

16 MS. BASSI: Right. Well, assume it did.

17 MR. BLOOMBERG: Okay. Then, yes, that's our
18 intent.

19 MS. BASSI: So then from January through
20 July, the source would be demonstrating compliance on the
21 rolling 12-month basis, and beginning in August it would
22 be a block of January through July and then stack
23 testing, say, for the rest of the year; is that correct?

24 MR. BLOOMBERG: They'd have to stack test

1 for that third quarter and then for the fourth quarter.

2 MS. BASSI: Oh, that makes sense. Thank
3 you.

4 MR. BONEBRAKE: I wanted to move on with
5 some questions on 225.233, which is the multi-pollutant
6 standards. And by the way, I've been using the term --
7 acronym MPS on the record today, which I'm using as an
8 abbreviation for multi-pollutant standard. I've also
9 been using the acronym CPS, which is the acronym for
10 combined pollutant standard. With respect to 225.233,
11 the multi-pollutant standard, is there an initial
12 compliance certification requirement in 233?

13 MR. ROSS: Could you define initial
14 compliance certification?

15 MR. BONEBRAKE: Well, the first -- a
16 first -- is there a compliance certification requirement?

17 MR. ROSS: They do have to submit compliance
18 certifications.

19 MR. BONEBRAKE: When is that first
20 compliance certification due, Mr. Ross?

21 MR. ROSS: Off the top of my head, I do not
22 know. I'm almost certain it's stated in the rule. Do
23 you know?

24 MR. BONEBRAKE: I believe it's May 1, 2010,

1 but I'm not providing testimony. Does that sound right
2 to you?

3 MR. ROSS: That sounds accurate. I mean, at
4 the end of the period, at the end of the annual period,
5 they have to submit a compliance demonstration for the
6 previous period. I do know that, so that May 1 deadline
7 would make sense.

8 MR. BONEBRAKE: And I should add --

9 MR. ROSS: Oh, here it is. It's in --

10 MR. BONEBRAKE: Where did you find it,
11 Mr. Ross?

12 MR. ROSS: It's in (f)(5). So I think it
13 says before March 1, 2010, and continuing each year
14 thereafter, etc., etc., that they have to submit a report
15 that demonstrates compliance..

16 MR. BONEBRAKE: Okay. So it's March 1 as
17 opposed to May 1, 2010.

18 MR. ROSS: March 1, 2010, that's correct.

19 MR. BONEBRAKE: Is it correct that MPS units
20 that are installing fabric filters or SO2 scrubbers defer
21 the date for sorbent injection under the MPS to
22 December 31, 2009?

23 MR. ROSS: That's correct.

24 MR. BONEBRAKE: Would it also therefore,

1 Mr. Ross, make sense for such units to defer the initial
2 compliance certification till March 1 of 2011 in light of
3 the fact that there would be sorbent injection for only
4 one day in 2009?

5 MR. ROSS: Well, I think -- we discussed
6 this with some sources, and I think what we're looking
7 for there is just a statement that the requirements for
8 those units that you mentioned, installing a baghouse by
9 such date, that the requirements for mercury control are
10 deferred, that they would simply state in this initial
11 compliance report that for this first period they weren't
12 required to be in compliance with the specific
13 requirements to reduce mercury control, so we wouldn't be
14 expecting a full compliance demonstration from those
15 units.

16 MR. BONEBRAKE: I'd like to turn the
17 attention of the IEPA witnesses to subsection (c)(6) of
18 the MPS. It's on page 35. The page number may be a
19 little bit different, so I will -- I'll omit page number
20 references in the future, but it would be subsection
21 (c)(6) of 225.233. We earlier were looking at the
22 provision of the CPS that permitted CPS units to opt in
23 to Section 239, and is this the provision of the MPS that
24 would permit MPS units to opt in to elements of

1 Section -- new Section 239 of the rule?

2 MR. BLOOMBERG: Yes. It's the equivalent
3 provision.

4 MR. BONEBRAKE: And if an MPS unit opts in
5 to Section 239 under the subsection (c)(6), then it would
6 not be subject to Sections 240 through 290, but it would
7 be subject to the subsections of 239 specified in this
8 (c)(6); is that correct?

9 MR. BLOOMBERG: Yes.

10 MR. BONEBRAKE: And there is no time limit
11 specified in (c)(6)? Is that also correct,
12 Mr. Bloomberg?

13 MR. BLOOMBERG: I'm sorry. There's no --

14 MR. BONEBRAKE: No time limit specified in
15 the subsection (c)(6)?

16 MR. BLOOMBERG: Time limit for --

17 MR. BONEBRAKE: To opt in to Section 239.

18 MR. BLOOMBERG: Not -- It's not in here, but
19 the sunset provision, if that's what you're referring to,
20 is in 239.

21 MR. BONEBRAKE: And that sunset date is
22 what, Mr. Bloomberg?

23 MR. ROSS: I think it's June 30, 2012.

24 MR. BLOOMBERG: Yes, June 30, 2012.

1 MR. ROSS: So my take would be if you're
2 suggesting that the link is not there to that date, then
3 I guess we would thank you for pointing that out and we
4 would revise the rule so that the link is there.

5 MR. BONEBRAKE: It was unclear to me in
6 reading the rule whether you intended to sunset the stack
7 testing provision for all units or only some.

8 MR. BLOOMBERG: All.

9 MR. BONEBRAKE: Thank you. Thank you for
10 the clarification. I'd like to turn next to subsection
11 (d)(1) of the MPS, and I'm just going to use the
12 introductory language in (d)(1) to raise some questions
13 pertaining to Mr. Bloomberg's testimony. Subsection
14 (d)(1) permits an MPS unit to opt in to the emission
15 standard set forth in (d)(1)(A) and (B) prior to
16 January 1, 2015; is that correct?

17 MR. BLOOMBERG: Yes.

18 MR. BONEBRAKE: And prior to such opt-in,
19 the MPS EGUs would not be subject to those emission
20 standards; is that also correct?

21 MR. BLOOMBERG: Yes.

22 MR. BONEBRAKE: Instead they would be
23 subject to sorbent injection rate requirements; is that
24 correct?

1 MR. BLOOMBERG: Yes.

2 MR. BONEBRAKE: Mr. Bloomberg, I have a
3 couple questions for you pertaining to your amended
4 testimony, which is Exhibit 6, and if I could refer your
5 attention to page 3 of your amended testimony. And let
6 me first thank you for putting page numbers on your
7 testimony. This is very helpful in developing my
8 questions.

9 MR. BLOOMBERG: Anything to help you out.

10 MR. BONEBRAKE: Appreciate it.

11 MR. ROSS: I guess I should apologize.

12 MR. BONEBRAKE: Mr. Bloomberg, there's a
13 sentence at the top of page 3 that starts with the word
14 "however," and that sentence partway through refers to a
15 need for a method by which the source and the Illinois
16 EPA can ensure that mercury controls are being operating
17 in an optimum manner as required by the rule and
18 consistent with the expected control levels. Do you see
19 that, Mr. Bloomberg?

20 MR. BLOOMBERG: Not off the top of my head.
21 Hold on a second.

22 MS. BASSI: It's the second full sentence, I
23 believe.

24 MR. BLOOMBERG: In the --

1 MS. BASSI: At the top of page 3.

2 MR. BONEBRAKE: Starts with, "However, it
3 should be noted."

4 MR. ROSS: What's the paragraph start with?

5 MR. BONEBRAKE: The paragraph starts with,
6 "One such addition is that."

7 MS. BASSI: I'm sorry. We're looking at the
8 electronic filing version.

9 MR. BONEBRAKE: So it may be a little bit
10 off.

11 MS. BASSI: Despite your page numbers.

12 MR. ROSS: I found it.

13 MR. BLOOMBERG: Okay. Sorry about that.

14 MR. BONEBRAKE: Okay. Have you found that
15 sentence?

16 MR. BLOOMBERG: Found that sentence.

17 MR. BONEBRAKE: Okay. In that sentence,
18 you -- as I mentioned, you refer to a method by which the
19 source and the Illinois EPA can ensure that mercury
20 controls are being operating in an optimum manner. What
21 is the method, Mr. Bloomberg, that you have in mind?

22 MR. BLOOMBERG: I'm going to defer to Jim
23 Ross to answer that question.

24 MR. ROSS: And that's a good question. I've

1 been discussing the issue of optimum manner with
2 companies over the last few weeks and internally, and
3 there's some key points I want to hit on; that first,
4 sources complying with the mercury flexibility provisions
5 provided in the MPS are required by the MPS to inject
6 halogenated activated carbon in an optimum manner, and
7 our consultant and mercury control expert, Jim Staudt,
8 testified at length in the first rulemaking process in
9 the hearing, in his testimony and the technical support
10 document and during the hearings that Illinois units
11 should be able to achieve around 90 percent control
12 efficiency, and his determinations were based on his
13 review of each individual boiler in Illinois and their
14 systems, and he also used performance charts that plot
15 mercury control efficiency versus sorbent injection
16 rates, and these charts also show that sources should be
17 able to get around 90 percent control efficiency when
18 injecting at the default sorbent injection rates for
19 units firing subbituminous coal, which is five pounds per
20 ACF, and the key, we believe, the key terms, key words,
21 are around 90 percent, and that's been the subject of
22 discussions with companies and internally.

23 So what is around 90 percent? Well, 88 percent
24 is definitely around 90 percent. 85 percent is more

1 around 90 percent than 80 percent is, but that doesn't
2 exclude 80 percent from being around 90 percent.
3 Anything under 80 percent could raise some concerns, and
4 again, it's based on our expert saying that units should
5 be able to achieve 90 percent, but it could be they are
6 injecting in an optimum manner if they are only able to
7 achieve 80 percent. So what's the takeaway there? That
8 it's case by case and a determination needs to be made.

9 And so what will the Agency consider and what
10 should companies submit in order to allow us to make this
11 determination, and the main answer there is we will
12 consider all information submitted by the companies to
13 make their case, and this can include but is not limited
14 to use of an appropriate sorbent, and the approved
15 sorbent manufacturers and sorbents that we've reviewed
16 are listed in the mercury rule. It also could include
17 appropriate location and positioning of the injection
18 lances. It could include optimizing sorbent injection
19 spray profiles to promote better mixing of the sorbent
20 and the carbon so that they're better able to capture the
21 mercury; use of multiple injection points; use of a
22 computational fluid dynamics modeling to identify ways to
23 improve mixing; and use of mixing devices to improve
24 sorbent contact gas. What are some other considerations?

1 We would include exorbitant cost associated with
2 injecting in a certain manner, damage to equipment that
3 could occur as a result of companies injecting in a
4 certain manner and safety concerns that the company may
5 have.

6 So again, it's a case-by-case determination, and
7 these are just some guidelines that we want to get on the
8 record that we would consider in making our determination
9 of what constitutes optimum manner.

10 MR. BONEBRAKE: Mr. Ross, I have no
11 intention of going back into the record from the prior
12 mercury rulemaking hearing. Mr. Staudt said whatever
13 Mr. Staudt said, and I would assume you've characterized
14 it accurately, but that record speaks for itself. With
15 respect to your statements about optimum manner, I did
16 have some specific follow-up questions for you. Optimum
17 manner is referred to in the MPS in subsection (c)(2); is
18 that correct?

19 MR. ROSS: That's correct.

20 MR. BONEBRAKE: And on (c)(2), the pertinent
21 part reads, "The owner or operator of the EGU must inject
22 halogenated activated carbon in an optimum manner, which,
23 except as provided in subsection (c)(4) of this section,
24 is defined as all of the following." Do you see that,

1 Mr. Ross?

2 MR. ROSS: I do.

3 MR. BONEBRAKE: So the rule in fact defines
4 optimum manner, does it not?

5 MR. ROSS: It does. It's defined as all of
6 the following.

7 MR. BONEBRAKE: And there is no indication
8 in any of those following subsections of a requirement to
9 achieve 90 percent, 80 percent or any other specified
10 level of emission reduction; is that also correct,
11 Mr. Ross?

12 MR. ROSS: That's correct. However, I would
13 note that it is specified the use of an injection system
14 designed for effective absorption of mercury, so that
15 leads you to what constitutes effective absorption of
16 mercury, and that leads us back to the testimony and the
17 information provided by our mercury control expert that
18 systems and units in Illinois should be able to achieve
19 around 90 percent, so that's the link, so to say, to the
20 around 90 percent.

21 MR. BONEBRAKE: The effective absorption of
22 mercury and a mercury removal efficiency could be two
23 very different methods, can they not, Mr. Ross?

24 MR. ROSS: I don't believe so in the context

1 of our discussion for Illinois units. Our mercury
2 control expert has in essence looked at each and every
3 boiler or unit in Illinois, and he's made a determination
4 that they should be able to achieve around 90 percent, so
5 for Illinois units, the effective absorption of mercury
6 would be around 90 percent.

7 MR. BONEBRAKE: Is it correct that the MPS
8 EGUs by virtue of the election into the MPS elected out
9 of a 90 percent removal requirement into a sorbent
10 injection rate requirement?

11 MR. ROSS: Yes.

12 MR. BONEBRAKE: So getting back to my
13 initial question, there is no requirement in the MPS
14 prior to 2015 that MPS EGUs meet specific removal --
15 mercury removal efficiency requirements; is that correct?

16 MR. ROSS: They are not required to achieve
17 90 percent, that's correct.

18 MR. BONEBRAKE: Does IEPA, Mr. Ross, have a
19 specific percentage in mind that it intends to read into
20 the rule with respect to what it views to be an effective
21 absorption rate such that a specific removal efficiency
22 number has to be achieved?

23 MR. ROSS: No. I believe we'll look at this
24 on a case-by-case basis.

1 MR. BONEBRAKE: Well, let me ask you, then,
2 a related question, Mr. Ross. Let's say an MPS unit
3 injects two pounds of sorbent and by so doing can achieve
4 around 90 percent mercury emission reduction. So that's
5 the hypothetical. In that scenario, Mr. Ross, could the
6 MPS EGU then inject just two pounds of sorbent because
7 it's achieving around 90 percent?

8 MR. ROSS: No. That's currently not allowed
9 in the rule. If they're -- If they meet 90 percent, they
10 can inject at whatever rate they want. They can inject
11 at one pound and meet the 90 percent requirement. If
12 they elect into the 90 percent reduction requirement,
13 there is absolutely no constraints on the amount of
14 sorbent they inject. However, if they choose the mercury
15 flexibility provisions provided in the MPS, there are
16 default sorbent injection rates, as we've already
17 identified, and for subbituminous coal-fired units, that
18 default sorbent injection rate is five pounds per million
19 ACF.

20 MS. BASSI: Mr. Ross, would around 90
21 percent at a less than five pounds injection rate --
22 could that not be considered an alternative technique
23 that satisfies the MPS?

24 MR. ROSS: No. The rule does not currently

1 allow for that.

2 MS. BASSI: And why is that not an
3 alternative technique? Is alternative technique defined
4 in the rule?

5 MR. ROSS: Well, that wasn't our intent.
6 I'd have to go back and review that specific provision,
7 but the alternative techniques that -- our mercury
8 control expert, Jim Staudt, identified some alternatives.
9 There was Mercor [phonetic], which is a different
10 sorbent, and there were two or three other alternative
11 control techniques, and we also put that in there in the
12 event that some new technology came about which allowed
13 companies to achieve around 90 percent, and therefore we
14 didn't want to preclude companies from going with any new
15 technology.

16 MS. BASSI: But alternative -- or other
17 technique is not defined by the rule; is that correct?

18 MR. ROSS: I can't say that without
19 reviewing that provision in the rule thoroughly.

20 MS. BASSI: Which --

21 MR. ROSS: But I can definitively state that
22 that was not the intent of that provision.

23 MS. BASSI: Intent is not written into the
24 rule, is it?

1 MR. ROSS: That's a legal question.

2 MR. BONEBRAKE: Mr. Ross, one of the things
3 that's concerning me about the testimony I'm hearing from
4 you is the question of notice to MPS units of what this
5 around percentage is supposed to be. How is it that an
6 MPS unit is to know from this ruling what IEPA's
7 expectation is for this removal efficiency that is
8 nowhere written in the rule?

9 MR. ROSS: Well, seeking at this time to try
10 and give some guidance to companies on what around 90
11 percent would be. I've also spoken with many of the
12 companies prior to this hearing, and I would offer to
13 speak with them subsequent to this hearing also, but I
14 believe we're open to look at all the information
15 companies are able to provide if they're getting a level
16 that would raise concerns with this; that is, a level
17 that there may be some question as to is it around 90
18 percent. This -- These would be case-by-case
19 determinations. I've provided some factors that could be
20 taken into consideration. The rule requires what it
21 requires. It requires injection system designed for
22 effective absorption of mercury, and we believe that
23 we'll be reasonable and willing to work with companies on
24 determining just how compliance with that provision of

1 the rule is met.

2 MR. BONEBRAKE: Would you agree, then,
3 Mr. Ross, that for any particular unit, if the technical
4 demonstration were presented at five-pound rates,
5 appropriate injection points, best efforts for
6 reasonable -- I should say reasonable efforts to mix to
7 the extent necessary, that if 30 percent removal
8 efficiency is achieved, then that would be optimum?

9 MR. ROSS: That would be surprising. I
10 would find that contrary to the testimony provided by our
11 mercury control expert and by our own internal knowledge
12 and experience with mercury control systems, so I would
13 find that level to raise a red flag.

14 MR. BONEBRAKE: What about 60 percent?

15 MR. ROSS: I would say that's not consistent
16 either with what our mercury control expert provided.

17 MR. BONEBRAKE: But you also said you do
18 not -- this would be a case-by-case analysis?

19 MR. ROSS: Correct.

20 MR. BONEBRAKE: So if 60 percent could be
21 supported, then that would be satisfactory?

22 MR. ROSS: Yes, if it could be supported, it
23 would be satisfactory. I'm not -- We're not excluding
24 any level.

1 MR. BONEBRAKE: Let's take an example of the
2 kinds of factors that you mentioned, and I think one of
3 those factors actually was in Mr. Bloomberg's testimony.
4 Mr. Bloomberg, you referred, did you not, in your
5 testimony to the location of the injection point for ACI
6 as an example of the -- a factor that the IEPA might
7 impose to result in what you're referring to as optimum
8 injection; is that correct?

9 MR. BLOOMBERG: Yes.

10 MR. BONEBRAKE: And can you just briefly
11 describe for us, Mr. Bloomberg, what your theory was in
12 terms of potential injection upstream of the preheater?

13 MR. BLOOMBERG: Well, as stated in the
14 testimony, if a company looked at injecting upstream or
15 downstream of the preheater and if injection upstream
16 showed a higher percentage control than injection
17 downstream, then clearly a higher percentage is more
18 optimum than a lower percentage.

19 MR. BONEBRAKE: In your hypothetical, does
20 preheater mean air heater?

21 MR. BLOOMBERG: Air preheater I think is the
22 full term.

23 MR. BONEBRAKE: Is the gas stream
24 temperature hotter upstream of the air heater than

1 downstream of the air heater?

2 MR. ROSS: Yes. Purpose of an air heater is
3 to -- for thermal efficiency, to recycle some of the air
4 back into the boiler.

5 MR. BONEBRAKE: Mr. Bloomberg, it's your
6 testimony. Do you share that view?

7 MR. BLOOMBERG: I will defer to Mr. Ross'
8 knowledge.

9 MR. BONEBRAKE: Is it correct that
10 everything else being equal, at a lower gas stream
11 temperature there is better ACI absorption than at higher
12 temperature?

13 MR. ROSS: I believe that's correct.

14 MR. BONEBRAKE: So in fact, if there's
15 better absorption downstream of the preheater than
16 upstream of the preheater because of the temperature gas
17 flow, does that not suggest that the optimum injection
18 would be downstream of the air heater?

19 MR. BLOOMBERG: I think that the optimum is
20 determined by the amount of mercury controlled, not by
21 the other factors that you, you know, are hypothetically
22 bringing up.

23 MR. ROSS: For example, if there was test
24 data that showed that mercury was better removed at one

1 location than the other and absent any other data that a
2 company would submit, we would be forced to assume that
3 the optimum location was what the test data showed, and
4 the test data in this case showing that there was better
5 mercury removal at point A versus point B, so obviously
6 point A would be the location for the injection lances to
7 achieve reduction of mercury in an optimum manner, or the
8 correct injection point.

9 MR. BONEBRAKE: Well, I think you just
10 agreed with me that there's better absorption at lower
11 gas temperature and that lower gas temperature is present
12 downstream of the air heater as compared to upstream of
13 the air heater, correct?

14 MR. ROSS: I may have agreed with you, but
15 it was based on test data rather than temperature.

16 MR. DAVIS: I would say that temperature is
17 not the only factor in absorption also. There's a number
18 of factors.

19 MR. BONEBRAKE: I said everything else being
20 equal, so if you make that assumption with me, Mr. Ross,
21 would you agree that the injection point downstream would
22 be optimal?

23 MR. ROSS: I would rely on the test data to
24 show that.

1 MR. BONEBRAKE: Are you talking about unit
2 specific tests, then?

3 MR. ROSS: Yes.

4 MR. BONEBRAKE: So are you --

5 MR. ROSS: If they were available in the
6 case you're describing, if there were test data
7 available, I would in general assume that I would rely on
8 the test data rather than just a temperature difference.

9 MR. BONEBRAKE: Are you suggesting that
10 every time an EGU does -- develops an injection system
11 that it needs to go out and collect data to make this
12 optimum demonstration to you?

13 MR. ROSS: No, I'm not suggesting that.

14 MR. BONEBRAKE: So if the test data is
15 available, you consider it; otherwise, you would consider
16 what, Mr. Ross?

17 MR. ROSS: We'd consider the factors I
18 described, and most importantly we would consider the
19 level of mercury reduction. There is requirements in the
20 rule which we've discussed where we will be getting data,
21 either CEMS data or stack testing data, which will be
22 able to determine the level of mercury reduction, so we
23 will have that data. Companies are required to obtain it
24 and report it to us, so using that data, we'll be able to

1 determine is the level of mercury reduction consistent
2 with injection in an optimum manner, so once again, we're
3 back to around 90 percent.

4 MR. BONEBRAKE: Just one follow-up and then
5 I'll move on. We were talking about the subsection (2),
6 definition of optimum manner, and (2)(A) specifically
7 refers as part of that definition to effective absorption
8 of mercury; is that correct?

9 MR. ROSS: That's correct.

10 MR. BONEBRAKE: Just going back to my
11 hypothetical where we were assuming, everything else
12 being equal, that you have better absorption downstream
13 of the air heater, wouldn't that suggest to you,
14 Mr. Ross, that that would be the appropriate injection
15 point?

16 MR. ROSS: Well, I would say that would be
17 secondary to and perhaps even further down the line than
18 secondary to actual mercury reduction being achieved or
19 test data or CEMS data that we would have in hand. That
20 would be one factor.

21 MR. DAVIS: I -- Also, I don't think that
22 all things can be equal upstream and downstream. I think
23 if you're going to ask the question all things being
24 equal, I don't think that's a possibility. Residence

1 time and the -- for absorption and temperature and the
2 gas flow rate, I don't think that all things can be equal
3 other than temperature.

4 MR. BONEBRAKE: Is it correct that if there
5 is more than a 100-degree differential from the --
6 Fahrenheit -- injection point to your stack that the gas
7 flow rate at the injection point has to be used as
8 opposed to the flow rate at the stack?

9 MR. ROSS: I'm aware of that provision in
10 the rule. I believe that correctly states the provision.

11 MR. BONEBRAKE: And the five-pound injection
12 rate is in fact expressed as a rate, which considers the
13 volume of gas flow; is that correct?

14 MR. ROSS: That's correct.

15 MR. BONEBRAKE: And do you know if there's a
16 100-degree temperature differential between the gas
17 upstream of the air heater and stacks in EGUs that are
18 enrolled in the MPS program?

19 MR. ROSS: No, I don't.

20 MR. BONEBRAKE: Let's assume that that's a
21 fact, that in fact there's a -- more than a 100-degree
22 temperature differential. Therefore, one would have to
23 use the gas flow rate at the upstream injection point
24 that is upstream of the air heater, is that correct, in

1 determining the appropriate five-pound injection rate?

2 MR. ROSS: I believe so.

3 MR. BONEBRAKE: And would that also mean if
4 the gas flow rate's higher upstream of the air heater
5 than downstream of the air heater that the EGU might be
6 required to inject more sorbent?

7 MR. DAVIS: I believe the temperature
8 difference takes into account the volume. You know, the
9 volume and temperature are related, so it would be -- I
10 would assume it would be the same amount per million ACF
11 at a certain temperature, so there may be more sorbent
12 than at a lower temperature at one point, but at the
13 point where you're measuring the temperature, it would be
14 the same volume of sorbent per million ACF.

15 MR. BONEBRAKE: So the same rate, but if the
16 gas flow is higher upstream than downstream, then the
17 effect of the mass you have to input at the same rate is
18 higher, is it not?

19 MR. ROSS: Well, I know we worked on that
20 provision with companies who -- where we tried to take
21 into consideration their concerns and adjustments, but
22 how this specific equation plays out, we'd have to go
23 back and actually crunch the numbers, I think.

24 MR. BONEBRAKE: Well, then let's take it as

1 a hypothetical. Let's assume the fact that my
2 hypothetical is correct and that if you were to inject
3 upstream because the gas flow is higher, you'd actually
4 have to inject more ACI than if you injected downstream.
5 That's the assumption.

6 MR. ROSS: Okay.

7 MR. BONEBRAKE: Would the cost -- additional
8 cost of the ACI -- the reason you have additional cost is
9 you'd be injecting more ACI -- relevant to your optimum
10 manner determination?

11 MR. ROSS: Yes, I believe so.

12 MR. BONEBRAKE: Has there -- In going back
13 to this same hypothetical, in your testimony,
14 Mr. Bloomberg, where you were commenting on upstream
15 injection being clearly more optimum, has there been any
16 study by IEPA of whether injecting ACI upstream of an air
17 heater would clog the air heater?

18 MR. BLOOMBERG: There has not been any
19 specific investigation, as my testimony stated, absent
20 other data to justify downstream injection.

21 MR. BONEBRAKE: If there was a reason to
22 believe that injection upstream of the air heater would
23 in fact clog the air heater, would that be relevant to
24 the IEPA's determination of what's optimum?

1 MR. BLOOMBERG: We would consider it.

2 MR. BONEBRAKE: Or if there's a safety
3 hazard such as a fire hazard in the air heater as a
4 result of upstream injection, would that also be a
5 relevant consideration?

6 MR. BLOOMBERG: We would consider that as
7 well.

8 MR. BONEBRAKE: Going back to my question
9 before, in this bag of considerations, is there a way for
10 sources to predict what the outcome is going to be before
11 they hear from IEPA?

12 MR. ROSS: Well, if they're achieving a high
13 level of mercury control -- that is, close to 90
14 percent -- I believe they're reasonably certain of the
15 outcome, that that is in fact an optimum manner, as our
16 previous testimony, technical support document and all
17 the information we provided to the Board in the original
18 mercury rulemaking would support, I believe, around 90
19 percent. The closer you get to 90 percent, the
20 likelihood of that being optimum manner increases
21 significantly.

22 MS. BASSI: I would like to understand that
23 a little bit more, and maybe I got lost somewhere in all
24 of this, but are you saying that the Agency may require

1 in a given circumstance that the injection lances be
2 placed upstream of an air heater even though the company
3 may allege in its application that this would increase
4 the cost because it would require more sorbent, would
5 clog the air heater and could lead to an explosion in the
6 air heater, because the absorption rate of mercury would
7 be greater, would be closer to 90 percent, than if it
8 injected downstream of the air heater and didn't have
9 those other problems?

10 MR. ROSS: Well, I think we would take
11 everything into consideration, but we would never specify
12 where a company needs to inject. They just need to
13 comply with the rule. The rule requires that they inject
14 in an optimum manner, and we provided some considerations
15 that we would take into account, so how the company
16 complies with the rule is up to them, and we will work
17 with the companies to -- if there's a question on whether
18 it's -- they're injecting in an optimum manner, on what
19 factors, what considerations they should provide to us
20 and what constitutes optimum manner.

21 MS. BASSI: Was that a yes or a no?

22 MR. ROSS: It was a perhaps. You know, we
23 feel we're going to be reasonable. I mean, if -- we're
24 not going to be able to provide a specific reduction

1 efficiency that constitutes optimum manner. That's --
2 The rule was purposefully worded this way, and it's been
3 this way since the beginning.

4 MS. BASSI: Yes, it has.

5 MR. ROSS: So these questions that you're
6 asking now were I guess agreed to in the context of the
7 negotiations where we arrived at what's in the MPS and
8 CPS, so this wording was provided to the companies during
9 the negotiation process when we arrived at the MPS and
10 CPS. This wording was agreed to.

11 MS. BASSI: Would you agree this wording --

12 MR. ROSS: So now we're moving -- pardon?

13 MS. BASSI: Would you agree that this
14 wording is somewhat ambiguous?

15 MR. ROSS: Yes.

16 MS. BASSI: And therefore, this wording was
17 agreed to prior to implementation of the rule?

18 MR. ROSS: Yes.

19 MS. BASSI: And that the devil is in the
20 details of the implementation?

21 MR. ROSS: That's a characterization, but I
22 believe we'll be reasonable in working with companies on
23 arriving at whether they're complying with this
24 provision.

1 MR. BONEBRAKE: And just so it's clear, did
2 I understand you correctly, Mr. Ross, that IEPA will not
3 specify to a company's point of injection?

4 MR. ROSS: Right. It's not specified in the
5 rule, so we can't go beyond the rule. We don't think
6 it's appropriate.

7 CHAIRMAN GIRARD: Could I ask a general
8 question before we get off this line?

9 MR. BONEBRAKE: Sure.

10 CHAIRMAN GIRARD: So it sounds to me,
11 Mr. Ross, like what you're asking each individual EGU to
12 do is experiment with all the different variables you've
13 outlined to determine whether or not they can meet the 90
14 percent removal rate requirement of -- you know, for
15 example, if they aren't at or near 90 percent, they could
16 look at -- they could experiment with, you know,
17 placement or size or configuration of the injection
18 lances for the sorbent, for example, and you would expect
19 them to run through all these different variables and see
20 if eventually they get to 90 percent; is that correct?

21 MR. ROSS: Well, the goal of the rule is in
22 fact 90 percent. I think at a minimum we would expect
23 them to study and evaluate using all the optimization
24 techniques to see if they are able to achieve 90 percent,

1 which is the ultimate goal of the rule. Provided that
2 they run through this evaluation and they determine that
3 they cannot achieve 90 percent, that instead they want to
4 utilize the mercury flexibility provisions provided in
5 the MPS, then they need to take all necessary actions to
6 ensure that they're injecting in an optimum manner. What
7 I have tried to do is provide some guidance on what we
8 believe they should be looking at as far as where they --
9 or how they inject sorbent, what our mercury control
10 expert has testified to, what our I think essentially
11 common sense approach is to getting a reasonable level of
12 mercury control, which where you place the lances,
13 looking at mixing techniques, that you don't just want to
14 throw the lance -- the injection lance anywhere. There's
15 points where you can make a reasonable determination, if
16 I put the injection lance at point A, that's better than
17 point B as far as mercury control, all things being
18 equal.

19 So companies should do an analysis, and there's
20 certain factors that should be included in this analysis,
21 and if they do that and they come in to us and say, we've
22 looked at A, B, C, D and E and we've decided to place the
23 injection lance here and there, you know, we have
24 multiple injection points and we're achieving a mercury

1 reduction level of 83 percent, we're not hitting 90
2 percent, we have 83 percent, and we would look at --
3 they've gone through all the reasonable steps, they've
4 made all the reasonable analysis that we would expect of
5 them, then I would say that we would be inclined to
6 accept that as injecting in an optimum manner.

7 CHAIRMAN GIRARD: But in terms of reasonable
8 analysis, you aren't just talking about engineering
9 studies or computer modeling. You're talking about
10 actual field testing. Is that part of your reasonable
11 analysis?

12 MR. ROSS: I wouldn't say it's required. I
13 think it's preferred that they would do actual field
14 testing. I think that's real high-quality data when you
15 actually go in there and experiment and do the test and
16 get hard results. That's preferred over a simple
17 engineering analysis, but it's not required, but we are
18 aware -- just for the record, we are aware that
19 numerous -- I would say a relatively large percentage of
20 the sources in Illinois have done field tests with
21 mercury control systems, and we've -- they've shared some
22 of those test results with us, so --

23 CHAIRMAN GIRARD: Well, now, in terms of
24 field testing, though, certainly field testing takes more

1 time than engineering studies or computer modeling. How
2 much time do you expect them to take to come to this at
3 or near 90 percent compliance level? Are we talking five
4 years or ten years?

5 MR. ROSS: No, I think it's required
6 immediately upon the effective date of the rule that they
7 be injecting in an optimum manner, and companies have --
8 I mean, the rule's been effective since December 2007,
9 so -- and this provision -- we haven't changed anything
10 in this provision, for the record, so this is being
11 brought up at this time and there's been no changes.
12 But, yeah, they need to be in compliance by the -- I
13 think it's July 1. We've actually pushed back the
14 compliance date for the rule from January 1, 2009, for
15 most units, to July 1, 2009, so for most units, by July
16 1, 2009, if they elect the mercury flexibility provisions
17 of the MPS, they must be injecting in an optimum manner,
18 and so they've had a year and a half to do -- even before
19 that, many of them we were aware were doing field tests,
20 but they've had considerable time to do field tests, and
21 I -- I'm not aware of any company out there -- as a
22 matter of fact, it's almost -- except for maybe SIPCO --
23 but all the large companies, Midwest Gen, Ameren, Dynegy,
24 City Water, Light & Power and Dominion Kincaid, so all

1 the systems except SIPCO have done field testing at some
2 of their units in Illinois.

3 CHAIRMAN GIRARD: This concept of optimum
4 manner, though, you're saying it's going to be frozen in
5 time on July 1, 2009, or as you get more data over the
6 years, is that optimum manner concept going to change?

7 MR. ROSS: I think if they're -- if they've
8 demonstrated that where they put the lances and the
9 measures they're taking at all the steps we've identified
10 here, that should remain constant. Provided that remains
11 constant, I would say that they continue to inject in an
12 optimum manner. If the facts change, then we would have
13 to reevaluate. For example, if they were injecting at
14 point A and they previously worked with us to reach a
15 conclusion that when you inject at point A, that's an
16 optimum manner, then for the duration up till the period
17 where they actually have to meet 90 percent, which is in
18 2015, I would say if they continue to inject in that
19 manner, that's optimum, but if the facts changed, if they
20 no longer inject there or there's an equipment failure or
21 something happens or I would say if their level of
22 mercury control in their most recent report dropped from
23 85 percent to 75 percent, then we would have reason to
24 question -- you know, the facts have changed, so we would

1 question are they still injecting in an optimum manner.
2 Something's changed, so we would have to reevaluate.

3 CHAIRMAN GIRARD: What happens if another
4 EGU continues to refine its methods and finds a different
5 way of doing things that, you know, gets better numbers?
6 Would then your concept of optimum manner change for all
7 the other EGUs?

8 MR. ROSS: Yeah, I think we would stick with
9 our case-by-case determinations, so I think our analysis
10 for that specific unit would change, but not necessarily
11 for other units, so case-by-case, site-specific
12 determinations of optimum manner. What one unit does may
13 not readily be doable at another unit. We wouldn't make
14 the assumption that it was, and we wouldn't necessarily
15 apply that just because one unit was able to change
16 something and reach higher numbers, that all the other
17 units needed to do that.

18 CHAIRMAN GIRARD: But it sounds like you
19 might ask them questions, the other units. Is that
20 correct?

21 MR. ROSS: We might. If it was something
22 that -- Alternatively, if it was something that was
23 readily doable, say with no damage to equipment, no
24 safety concerns, no large cost involved, we may ask the

1 question, why aren't you doing this to other units. I
2 don't think we would immediately -- I'm certain a
3 reasonable regulating authority, agency, would not
4 immediately say because unit A did this that units B
5 through F need to do it. We would not do that. I think
6 that would be unreasonable. So that I think your point
7 is absolutely valid that we may ask why aren't other
8 units doing that if it's readily doable, but I would
9 think -- the other question we would ask is are they able
10 to achieve 90 percent, because this whole discussion goes
11 away. And I'd like to emphasize this again and again,
12 that if they hit 90 percent, they can inject at whatever
13 rate they want and the question of are they injecting in
14 an optimum manner goes away. We don't particularly care
15 where they inject or how they inject or what they're
16 injecting as long as they reduce mercury by 90 percent,
17 so again, it all falls back, the ultimate goal is to get
18 these companies not to necessarily remain under the
19 flexibility provisions, although it's their right and
20 we'll be reasonable in how we approach this, but to get
21 them to strive to achieve 90 percent.

22 CHAIRMAN GIRARD: So it sounds like you have
23 a series of marks to meet. If they make 90 percent or
24 more, then no more discussion as long as the stack

1 testing or, you know, CEMS comes in; everything's fine.

2 MR. ROSS: Right.

3 CHAIRMAN GIRARD: If it's 80 to 89.9
4 percent, they may or may not be able to make the
5 demonstration. If it's 79 percent or below, then you're
6 going to be working with them on a more regular basis.
7 Is -- I mean, is that what I'm hearing, that it's --

8 MR. ROSS: Potentially. What I've tried to
9 express is around 90 percent is hard to define,
10 difficult. If they're getting 80 percent, you know, I
11 would say we're less likely to pay attention to that
12 source or work with them as opposed to if they're getting
13 75 percent, a source that's getting 75 percent. A source
14 that's getting 88 percent is certainly obviously to us
15 getting around 90 percent and consistent with what our
16 mercury control expert says they should be getting, and
17 he's looked at every single unit specifically in Illinois
18 and he's told us that they are capable of getting around
19 90 percent, and we've discussed this with him, what
20 constitutes an optimum manner, and he's provided some of
21 the parameters I've given here as guidance on what
22 sources can do to inject in an optimum manner.

23 So it's -- it is ambiguous. It's subject to
24 interpretation, so I think our hope is to provide good,

1 solid guidance that companies can use when they submit
2 these -- well, and they may -- they don't have to submit
3 a demonstration to us of optimum manner. The question
4 only arises, I believe, if we approach them, so when they
5 start submitting their mercury data, their CEMS data or
6 their stack testing data, and we start getting the
7 numbers on the level of control efficiencies they're
8 getting, if we see levels below 80 percent, we're more
9 inclined to be contacting companies. Levels of 85
10 percent, we're less inclined. But certainly they don't
11 need to make a demonstration to us that they're injecting
12 in an optimum manner initially. It's only, I believe, if
13 we would have questions.

14 So this could be a lot discussion on something
15 that may or may not become a large issue. Our hope and
16 our belief is it won't become a big issue; that we
17 believe the vast majority of the units in Illinois when
18 we start getting the data and compiling it and evaluating
19 it will be getting around 90 percent and that there won't
20 be this back and forth with us. However, I understand
21 companies' concerns that there is no hard and fast number
22 here of what constitutes optimum manner.

23 CHAIRMAN GIRARD: Well, let me just take it
24 to the -- what I think is probably one of the bigger

1 concerns, but I don't want to put words in your mouth,
2 but that is enforcement.

3 MR. ROSS: Right.

4 CHAIRMAN GIRARD: Obviously if somebody has
5 90 percent, no enforcement problems, but, you know, you
6 may sit here and testify 88 percent is fine, 85 percent
7 is fine, but in a few years there's new administration
8 and a new agency director. How do the owners of these
9 EGUs know whether or not 85 percent removal rate or 88
10 percent or 80 percent is going to be okay at that point
11 in time?

12 MR. ROSS: Well, that's an excellent
13 question, and I believe that they would probably pull
14 this record out in front of them.

15 CHAIRMAN GIRARD: Well, I know they --
16 they'll see the appeal.

17 MR. ROSS: Yeah, but that's one reason
18 why -- we anticipated they would ask this and we wanted
19 to get some guidelines put into the record in the event
20 that something -- the exact scenario you're describing
21 happened, that perhaps less reasonable people would be at
22 the Illinois EPA that they'd be dealing with and they
23 could hold their feet to the fire, so to say. But I
24 believe under the intent of the rule and the spirit of

1 the negotiations with the companies when we arrived at
2 this language, we did not envision that they would --
3 obviously they're going to be using the mercury
4 flexibility provisions so they're going to be getting
5 something less than 90 percent. That's a fact, or most
6 likely a fact, or they'd be electing to meet the 90
7 percent provision where they can inject at whatever rates
8 they want. So they're getting something less than 90
9 percent so they can inject in an optimum manner -- and
10 this will be on the record -- they can obviously inject
11 in an optimum manner and not hit 90 percent, so all this
12 discussion, then, is that, well, if they're not going to
13 hit 90 percent, then what constitutes injecting in an
14 optimum manner, and there's just not a specific mercury
15 reduction efficiency that we can establish for that.

16 What we can do is provide some guidelines, and
17 this was discussed to some degree, not anywhere near this
18 level of detail, but during the negotiations, which I was
19 involved in, with the companies. It was discussed, how
20 are we going to word this provision that sources don't
21 need to hit 90 percent utilizing these mercury
22 flexibilities, what do they need to comply with, and we
23 came up with the exact wording in this provision, well,
24 they need to inject at an optimum manner, and then we

1 discussed it a little bit at that time but we didn't go
2 into details, and so that brings us to this point.

3 CHAIRMAN GIRARD: Thank you. I'll
4 relinquish the floor.

5 HEARING OFFICER FOX: Why don't we take a
6 quick question, Ms. Bassi -- we've been underway for
7 about two hours -- and then we can take a break. Not to
8 rush you, however. Please go ahead.

9 MS. BASSI: Mr. Ross, this -- and
10 Mr. Girard, this raises another question in my mind, and
11 that has to do with the fact of the Agency's asking
12 questions of companies after they have installed their
13 sorbent injection systems. According to their permits,
14 they get construction permits according to the rule to
15 construct and operate their sorbent injection systems,
16 and are you saying that after monitoring data starts
17 coming in to the Agency in reports or however you
18 ultimately get this data for MPS and CPS companies and
19 after they've installed their sorbent injection systems,
20 are you saying that you may go back to those companies
21 and say that what was permitted needs to be changed?

22 MR. ROSS: It's possible. I mean, I would
23 say the permit would specify that they need to inject in
24 an optimum manner. The permit will specify the

1 requirements of the rule.

2 MS. BASSI: But the permit -- is it not the
3 case also that the permit says this is where the
4 injection points are?

5 MR. ROSS: I would think no, the permit will
6 not specify that. The permit will -- And I will say the
7 company should object if the permit specifies that.
8 That's how I would advise them.

9 MS. BASSI: Well, then would a permit that
10 was issued -- a construction permit issued after -- you
11 have a construction permit to install a sorbent injection
12 system; subsequently you get a construction permit to
13 install additional equipment under the MPS or the CPS
14 that would entail moving the injection points. Would the
15 moving of those injection points require a reflection in
16 the new construction permit or a separate construction
17 permit?

18 MR. ROSS: Possibly.

19 MS. BASSI: And why would that be --

20 MR. ROSS: Again, the permit should not
21 specify the injection point. However, if they're going
22 to modify the control system, it may require a revision
23 to their construction permit. I -- We'd have to go back
24 and look at that. I would think -- I would hope that

1 it -- if it did, I think we would simply issue the -- a
2 revised construction permit based on the modification to
3 the control system with no increase in emissions. In
4 fact, the modification would be designed to further
5 reduce mercury emissions, so it would be kind of an
6 administrative type of amendment, if anything.

7 MS. BASSI: Why would that be the case if
8 the injection points are not specified in the initial
9 permit?

10 MR. ROSS: Well, that's why I go back to it
11 may not even require a construction permit revision. We
12 would have to sit down and discuss that at some length,
13 so it may or may not.

14 MS. BASSI: What would be the mechanism for
15 the Agency to use to require a company to change its
16 injection points?

17 MR. ROSS: Well, I would say ideally a
18 company would say -- would have the mercury control
19 system identified in the application, and perhaps
20 identify multiple injection points or scenarios where the
21 company could inject mercury.

22 MS. BASSI: But if you were --

23 MR. ROSS: So we permit all the time control
24 systems with alternative operating scenarios, operating

1 parameters, so if a company was concerned about that,
2 they could address it in their construction permit
3 application and we could build a mechanism in there that
4 would allow them to inject at different points.

5 MS. BASSI: Okay. I --

6 MR. ROSS: Without a modification.

7 MS. BASSI: I think I was not clear. If the
8 monitoring data you are receiving is something that
9 raises questions in your mind because it's, quote, not
10 around 90 percent, unquote, and you are then going to
11 talk to the company about improving this optimum manner,
12 what would be the mechanism for you to require that
13 improvement once the permit had been issued?

14 MR. ROSS: Well, under our compliance and
15 enforcement.

16 MS. BASSI: So then it does become the
17 enforcement issue that Dr. Girard was talking about.

18 MR. ROSS: Yes, I believe so. I think he
19 was right on with that, that this would be a question of
20 compliance with the rule, a question of compliance with
21 is the company in fact injecting in an optimum manner.

22 MS. BASSI: After the thing was already
23 permitted in a certain manner and they're complying with
24 their permit; is that right?

1 MR. ROSS: Yes.

2 MS. BASSI: Thank you.

3 MR. BLOOMBERG: Just to point out, what is
4 said in the permit and what happens in real life doesn't
5 always go hand-in-hand. We see people permit control
6 devices that say they are going to get 90 percent and
7 then test them and Mr. Mattison's at the test and sees
8 they're getting 70 percent.

9 MS. BASSI: Well --

10 MR. BLOOMBERG: So under a similar
11 situation, we wouldn't just throw up our hands and say,
12 well, they're permitted for 90 percent so we can't do
13 anything. If they're -- So in this situation, if, you
14 know, they come to us with a construction permit and they
15 believe it will reduce mercury in an optimum manner and
16 then it turns out they're only getting 30 percent, then
17 certainly we would turn around and go back to them and
18 say, we need to look at this, let's look at this
19 together, let's cooperate and look at this together.

20 MS. BASSI: Where in the rule does it say
21 that an optimum manner is around 90 percent?

22 MR. ROSS: It doesn't.

23 MS. BASSI: Okay. That's it. I'm done.

24 HEARING OFFICER FOX: Ms. Bassi, we can

1 return to you when we reconvene, but why don't we take --
2 now that we have, with your patience, been underway for
3 about two hours, and come back after a break at 11:15.
4 Thank you.

5 (Brief recess taken.)

6 HEARING OFFICER FOX: Ms. Bassi, you had
7 indicated informally that you had wrapped up the question
8 that you had posed to the Agency just before we broke for
9 a break. If either you or Mr. Bonebrake want to continue
10 with any of the issues that you wanted to address, please
11 do so.

12 MR. BONEBRAKE: I have some additional
13 questions.

14 HEARING OFFICER FOX: Very good. Please go
15 ahead, Mr. Bonebrake.

16 MR. BONEBRAKE: Mr. Ross, Dr. Girard was
17 asking you some questions about field studies. I just
18 wanted to make sure that we're understanding of the
19 implications of field studies and their costs. When we
20 talk about field studies, for instance, the study of
21 multiple location points or variable location points in
22 an EGU, in order to do that, you need to have an outage
23 of an EGU, do you not?

24 MR. ROSS: I don't know.

1 MR. BONEBRAKE: Let's assume that in order
2 to put in a new injection point, you do have to have an
3 outage of an EGU. Do outages of electric generating
4 units cost money?

5 MR. ROSS: Yes, I would assume they do.

6 MR. BONEBRAKE: And for a large generating
7 unit, let's say a 600-megawatt unit that has to be down
8 for two or three days, say, during the summer, would that
9 be hundreds of thousands of dollars, if not millions of
10 dollars?

11 MR. ROSS: It could be. They schedule
12 regular outages, so I am aware that some companies when
13 they do these field tests, they are doing the necessary
14 installation of injection lances and controls during
15 scheduled outages, but if it was unscheduled, then, yes,
16 I believe your premise holds true.

17 MR. BONEBRAKE: And if you are doing field
18 studies where you place a new injection point during a
19 scheduled outage, in order to change that, you might need
20 to wait for another scheduled outage to change the
21 injection point; is that correct?

22 MR. ROSS: That's likely true.

23 MR. BONEBRAKE: And just for clarity too,
24 you had articulated for the record, Mr. Ross, some

1 parameters that would be relevant to this optimum
2 consideration.

3 MR. ROSS: Right.

4 MR. BONEBRAKE: None of those parameters are
5 specified in any rule; is that correct?

6 MR. ROSS: No, they're not. They were
7 provided as a means to give guidance on what we would
8 look at, but they're not limited to those parameters. We
9 can look at whatever companies would submit.

10 MR. BONEBRAKE: We also talked briefly about
11 the notion of I'll call it an opt-in to the emission
12 standards under the MPS, and I wanted to discuss that a
13 little bit. Subsection (d)(1) in the MPS, and the
14 parenthetical in (d)(1) suggests that an MPS unit by
15 notice to the IEPA can opt in to either the 90 percent
16 reduction requirements in (B) or the emission standard
17 requirement of (A); is that correct?

18 MR. ROSS: Could you repeat that?

19 MR. BONEBRAKE: Sure. (d)(1) provides that
20 by notice to the IEPA, an MPS unit prior to 2015 can opt
21 in to the 90 percent reduction requirement in (d)(1)(B)
22 or the rate requirement in (d)(1)(A); is that correct?

23 MR. ROSS: That's correct.

24 MR. BONEBRAKE: Can the opt-in of an MPS

1 unit -- is that a unit-by-unit opt-in, Mr. Ross?

2 MR. ROSS: Yes, it is.

3 MR. BONEBRAKE: So it could be one unit at a
4 source with three units, for instance?

5 MR. ROSS: Correct.

6 MR. BONEBRAKE: And there's a similar
7 provision in the CPS, is there not, Mr. Ross?

8 MR. ROSS: Yes.

9 MR. BONEBRAKE: And again, the CPS, a
10 comparable provision with the opt-in to the 90 percent or
11 emission rate standard, that would be on a unit-by-unit
12 basis as well?

13 MR. ROSS: Correct.

14 MR. BONEBRAKE: Is there a limit on the
15 ability to opt in to Section (d)(1) prior to 2015 based
16 upon the size of the MPS unit?

17 MR. ROSS: No, there is not.

18 MR. BONEBRAKE: If a -- Let me give you a
19 hypothetical. We have let's say an MPS source with three
20 different units, and two of those units elect to opt in
21 to let's say the 90 percent removal efficiency
22 requirement under (d)(1)(B). Is there averaging
23 permitted between those units with respect to compliance?

24 MR. ROSS: I don't believe so. I believe as

1 stated in (d)(1), each EGU has to comply with either
2 (d)(1)(A) or (d)(1)(B).

3 MR. BONEBRAKE: Now, Section 230 of the rule
4 provides for some averaging between units, does it not,
5 for compliance with the 90 percent requirement in 230?

6 MR. ROSS: For units other than those opting
7 in to the MPS and CPS, correct.

8 MR. BONEBRAKE: So there's averaging that's
9 available for units that are not subject to the MPS that
10 is not available to units that are subject to the MPS?

11 MR. ROSS: Yes.

12 MR. BONEBRAKE: Would IEPA be willing to
13 entertain -- Mr. Ross, if you look to Section (d)(3) of
14 the MPS, it refers to -- states, "Compliance with the
15 mercury emission standard or reduction requirement of
16 subsection (d) must be calculated in accordance with
17 Section 225.230(a) or (d)." Do you see that, Mr. Ross?

18 MR. ROSS: Yes, I see it.

19 MR. BONEBRAKE: And does 230(d) provide for
20 averaging?

21 MR. ROSS: Yes, it does.

22 MR. BONEBRAKE: Does that suggest to you in
23 fact that averaging is available for MPS units that are
24 subject to the 90 percent requirement?

1 MR. ROSS: That suggests to me that
2 (d)(1)(A) and (d)(1) -- or (d)(1) and (d)(1)(3) -- or
3 (d)(3) -- (d)(1) and (d)(3) somewhat conflict, with one
4 saying that each EGU must hit 90 percent, whereas the
5 other, (d)(3), apparently allowing averaging, so we'll
6 need to look at that. I believe -- And where you were
7 going with your next question, I believe, would the
8 Agency entertain the ability of units opting to meet the
9 90 percent control, would they be able to average, and I
10 think the answer is yes, we would entertain that, and
11 given this ambiguity in this section, we'll go back and
12 look at that and seek to clarify whether averaging is
13 allowed or averaging is not allowed. My initial take --
14 and I haven't looked at this in some time -- was that it
15 was not our intent to not allow averaging. We wanted to
16 provide full flexibility for sources electing to meet 90
17 percent, so I don't think it was our intention to exclude
18 the ability of those sources to average, so we need to
19 clarify this, so I appreciate you pointing that out.

20 MS. BASSI: Mr. Ross, just to clarify or
21 confirm, is Section 225.230(d), as in dog, actually an
22 averaging provision?

23 MR. ROSS: Yes.

24 MS. BASSI: Thank you.

1 MR. BONEBRAKE: And I guess I would suggest,
2 Mr. Ross, as well that 230(a), would you agree, suggests
3 coverage for -- on a unit on an EGU-by-EGU basis whereas
4 other subparts of 230 can provide exceptions to that on
5 an averaging basis, so that same kind of conflict would
6 apply to MPS units? Correct?

7 MR. ROSS: Agreed.

8 MR. BONEBRAKE: And similarly for CPS units?

9 MR. ROSS: Yes.

10 MR. BONEBRAKE: If prior to 2015 an MPS unit
11 opts in to let's say the 90 percent removal requirement,
12 does that MPS unit remain in the MPS group for purposes
13 of meeting the NOx and SO2 system rate requirements?

14 MR. ROSS: Yes. Yes, it does.

15 MR. BONEBRAKE: And may a unit that opts in
16 early, prior to 2015, an MPS unit, in to the 90 percent
17 removal requirement or the rate requirement also opt in
18 to the 239 stack testing requirement?

19 MR. ROSS: Yes, it may. We covered that.

20 MR. BONEBRAKE: And that would be true as
21 well for CPS units?

22 MR. ROSS: Yes.

23 MR. BONEBRAKE: If I could turn your
24 attention to subsection (d)(4) of the MPS, which again is

1 225.233. Now, we earlier looked at subsection (c)(6) of
2 the MPS, which addressed the utilization of stack
3 testing, monitoring record-keeping and reporting
4 provisions of 239. I read (d)(4) as well, and its
5 meaning is unclear to me. Could you describe the intent
6 behind 239(d)(4), please, Mr. Ross?

7 MR. ROSS: I'll defer to Mr. Bloomberg.

8 MR. BLOOMBERG: That is -- The intent is to
9 specify that they can use the stack testing alternative,
10 and in fact it answers an earlier question you had posed
11 about the date. Note that the sunset date is included in
12 (d)(4).

13 MR. BONEBRAKE: Is there something -- Well,
14 does (c)(6) accomplish the same person -- same purpose,
15 Mr. Bloomberg?

16 MR. BLOOMBERG: Not entirely sure. We'll
17 have to go back and take a look at that. I mean, it
18 does -- (c)(6) does include mention of record-keeping and
19 reporting, which whereas (d)(4) specifies demonstration
20 of compliance with the emission standards, but otherwise,
21 they both reference the same subsections within 239.

22 MR. BONEBRAKE: I'm sorry. It was unclear
23 to me what the -- you know, what the intended purpose was
24 to the extent it was different from (c)(6), so --

1 MR. BLOOMBERG: I think it's -- trying to
2 remember back when we were adding this. I can't remember
3 specifically why we added it in both places. It may have
4 been for clarity purposes since this is the emission
5 standard section and (c) is the section covering control
6 technology requirements, so it may have been just to
7 ensure clarity no matter which section you're looking at.

8 MR. BONEBRAKE: If you could turn with me to
9 subsection (f) of the MPS. Subsection (5) of (f) refers
10 to bias reporting by March 1, 2010. Do you see that?

11 MR. BLOOMBERG: Yes.

12 MR. BONEBRAKE: (f)(1) and (f)(2), however,
13 the requirements therein do not start until 2012 and
14 2013; is that correct?

15 MR. ROSS: That's correct.

16 MR. BONEBRAKE: Should the compliance date
17 reference in (5), then, be deferred to a date that would
18 be consistent with (f)(1) and (f)(2)?

19 MR. ROSS: Yeah, we'll need to look into
20 that. I believe there was a reason, but again, this is
21 not something we revised this time, so we'll have to go
22 back and look at the original rationale for selecting
23 that date.

24 MR. BONEBRAKE: And by the way, there have

1 been a number of items as to which IEPA has indicated
2 today or IEPA personnel indicated that they were going to
3 look at?

4 MR. ROSS: We are keeping track of that.

5 MR. BONEBRAKE: And perhaps we can discuss
6 off record and then come back in the afternoon and talk
7 about what the process will be for revisiting those
8 issues.

9 MR. ROSS: Certainly.

10 HEARING OFFICER FOX: Maybe we can take that
11 up before we adjourn, and certainly we'll have the
12 transcript that reflects those issues within about eight
13 business days, I believe, so --

14 MR. BONEBRAKE: My next set of questions
15 would relate to Section 239, which is the new periodic
16 emissions testing alternative requirements. Subsection
17 (a)(3) of 239 provides a cutoff date of June 30, 2012,
18 for applicability of 239. Is that a correct
19 understanding on my part?

20 MR. ROSS: Yes.

21 MR. BONEBRAKE: What was the basis for the
22 selection of that date?

23 MR. ROSS: Well, the ability to use the
24 stack test alternative is of course a means of providing

1 flexibility to companies during this period of
2 uncertainty that is occurring as a result of the vacatur
3 of CAMR and the uncertainty surrounding the mercury
4 monitoring requirements.

5 I stated previously that our preferred means of
6 demonstrating compliance is the use of continuous
7 emission monitors, but the focus of the uncertainty is in
8 fact the continuous emission monitors, and so the stack
9 test alternative is provided on an interim basis with the
10 belief that mercury monitoring uncertainty will be
11 removed going forward and there will be more experience
12 on sources; they'll be more comfortable using their
13 mercury monitoring systems; they'll be more reliable, and
14 the bugs, we'll be able to work out some of the concerns
15 we hear from sources; we'll be able to overcome some of
16 these obstacles; they'll be, as I've stated, more
17 reliable by this date; and also, there's an understanding
18 that USEPA in between now and this date hopes to
19 promulgate their own provisions addressing mercury
20 control and the company mercury monitoring, and there are
21 some efforts underway in which the Part 75 portions of
22 the clean air mercury monitoring would be separated out
23 from CAMR and would in themselves be effective alone and
24 apart from CAMR and they would be available for use, so

1 there would be less of a need for stack testing for an
2 alternative to be used by this date.

3 MR. BONEBRAKE: What are the reliability
4 concerns, Mr. Ross, that you are aware of with respect to
5 CEMS?

6 MR. ROSS: Companies have expressed a number
7 of reliability concerns. Some of these -- You know,
8 mercury monitoring, it's relatively new in this context.
9 I believe there's an NSPS out there that requires mercury
10 monitoring, but data availability, mercury monitoring
11 uptime, calibration of the monitors, and we've addressed
12 some of this as we've worked with companies on this rule.
13 In our monitoring provisions we've addressed two of the
14 primary concerns on the reliability of the data that
15 would be given to us, and that is that we've removed the
16 missing data substitution requirements and we've
17 eliminated the use of the bias adjustment factor, which
18 were two of the key concerns expressed by industry, so we
19 feel we've worked with industry and listened to them and
20 responded in kind.

21 MR. BONEBRAKE: Would you agree that the
22 development of the CEMS technology may have -- for
23 mercury may have slowed down some in light of the CAMR
24 ruling and the status of the federal mercury rule?

1 MR. ROSS: I'll defer to Kevin Mattison.
2 He's the expert in this area.

3 MR. MATTISON: The slowdown, as you refer
4 to, I believe is with the vendors of the data acquisition
5 systems not knowing where the USEPA was going to go, but
6 the technology of the CEMS systems has already been
7 developed and out there and most companies have already
8 purchased their systems. Some are waiting to install
9 them. Some have already installed them. But I don't
10 believe the technology has slowed down at all.

11 MS. BASSI: When you say most companies have
12 purchased their CEMS, most companies in Illinois, most
13 companies across the country or --

14 MR. MATTISON: Most companies within
15 Illinois that we're aware of that were going to be
16 purchasing CEMS have already done so, whether it be the
17 continuous emission monitoring systems or the sorbent
18 trap system.

19 MS. BASSI: So you consider a sorbent trap
20 system as a form of CEMS?

21 MR. MATTISON: Yes.

22 MS. BASSI: I have a series of questions
23 that are related to this, but they popped into my head as
24 I was reading the TSD, and so some of them might go a

1 little bit astray. Okay. Who at USEPA did the Agency
2 consult with regarding EPA's support of an electronic
3 monitoring system?

4 MR. ROSS: That was Rey Forte. He's the
5 chief of the emissions monitoring branch at USEPA
6 headquarters.

7 MS. BASSI: Okay. So it's the same man you
8 talked about earlier.

9 MR. ROSS: Correct.

10 MS. BASSI: Man?

11 MR. ROSS: Man.

12 MS. BASSI: And who at the Agency has done
13 this consulting with USEPA?

14 MR. ROSS: Myself. I've spoken with him
15 since the February vacatur of CAMR I would estimate
16 around seven, eight times, so approximately once per
17 month, to get an update. In addition, he was online on
18 several mercury status calls that NACAA had, National
19 Clean Air Agencies, which is an organization that
20 represents state and locals. There -- At the beginning
21 of all these calls on the status of the CAMR vacatur and
22 the status of the mercury monitoring provisions, USEPA,
23 in particular Rey Forte, would give an update to the
24 states, and then there was back and forth between USEPA

1 and the states, including Illinois, where we asked a
2 number of questions of him in that forum.

3 MS. BASSI: At the time of the promulgation
4 of the CAMR, was USEPA conducting or sponsoring testing
5 or development of CEMS?

6 MR. ROSS: I believe so.

7 MS. BASSI: Was that testing or development
8 still underway at the time that the Illinois mercury rule
9 was adopted?

10 MR. BLOOMBERG: I believe so. I believe
11 that was discussed at some length with Gerald McRainey
12 [phonetic], who was testifying for you.

13 MS. BASSI: Is that development of mercury
14 CEMS still ongoing?

15 MR. ROSS: Well, I know in my discussions
16 with Rey Forte, he had said there was an initial slowdown
17 in their efforts after the original vacatur of CAMR, but
18 then they picked back up right where they left off, he
19 stated, and they still have all the staff there, so they
20 haven't made any personnel changes. They haven't
21 received any directive from their management to stop
22 their efforts on any level regarding mercury monitoring.
23 The only thing they were held up on was a recent
24 development with their office of general counsel, which

1 raised concerns about whether they should be receiving
2 the mercury monitoring data and quality assuring and
3 quality controlling it, so that was the only aspect, and
4 they had originally hoped that -- well, they had
5 originally stated they would be able to provide that
6 level of support. It wasn't till a week ago yesterday
7 that he stated that their office of general counsel
8 informed them in a definitive manner that they could no
9 longer offer that support to states.

10 MS. BASSI: I believe Mr. Bonebrake asked if
11 the Agency was aware of any issues with the actual
12 operation of CEMS in Illinois, and you said you have been
13 hearing that there are some problems; is that correct?

14 MR. ROSS: That's correct. We met with
15 companies early on after the CAMR vacatur, and when we
16 had informed them, we had sent a letter out informing
17 companies that as a result of the vacatur we would be
18 revising the rules, and the companies requested a
19 meeting, and we sat down in a meeting and they informed
20 us of some issues they were having with CEMS.

21 MS. BASSI: Okay. If CEMS are not able to
22 maintain the 75 percent monitor availability required by
23 the rule, does this render CEMS technically infeasible at
24 this time at least?

1 MR. ROSS: Well, I mean, they would of
2 course have the option of stack testing in lieu of CEMS
3 data, but if they have elected to use CEMS and they can't
4 meet the data availability requirement of 75 percent,
5 then their options would be to be in violation or use the
6 stack test alternative.

7 MS. BASSI: Should the operation of a
8 mercury CEMS in your opinion require the employment of
9 separate personnel to keep the CEMS operating?

10 MR. ROSS: I'm aware -- I'm unaware of the
11 need for separate personnel to keep it operating,
12 although it may be the case.

13 MS. BASSI: If -- Would that -- The cost of
14 hiring someone full time for each station, was that cost
15 calculated into your economic analysis of the -- of this
16 rule?

17 MR. ROSS: I mean, it's causing me to try
18 and remember way back during the original rulemaking
19 process, the development of the technical support
20 document.

21 MS. BASSI: This rule.

22 MR. ROSS: This rule, no. There was no
23 need, I don't believe. We actually consider what we're
24 doing here more friendly to sources, a simplified

1 approach, so to say, to CEMS monitoring where we've
2 listened to companies and have in essence responded to
3 their concerns and made the revised use of CEMS simpler
4 and perhaps more friendly to companies.

5 MS. BASSI: And again, we acknowledge that
6 and appreciate that. Have the companies -- Then in this
7 vein, have the companies expressed any concerns about the
8 requirement for 75 percent monitor availability?

9 MR. ROSS: Well, I think I heard an
10 initial -- we originally had it higher, had it at 80
11 percent, and I heard concerns about that level. Since
12 we've reduced it to 75 percent, I cannot recall any
13 concerns being expressed, but I would state for the
14 record that 75 percent data uptime requirement is
15 consistent with the mercury NSPS, where the USEPA has
16 made a determination that it's reasonable to expect that
17 mercury monitors be maintained and able to achieve data
18 75 percent of the time.

19 MS. BASSI: Do the CEMS vendors say anything
20 about how well their products operate?

21 MR. ROSS: I'll defer to Kevin.

22 MR. MATTISON: The CEMS vendors through all
23 the communications that we've had along with USEPA have
24 indicated that their systems are very reliable and their

1 uptimes are well above 75 percent of the time.

2 MS. BASSI: Are the vendors fully employed?
3 Bad. Strike that. Sorry. Who are the vendors? Who are
4 these vendors?

5 MR. MATTISON: Tekran was one. Thermo
6 Electron was another one. Fisher, to name a few.

7 MS. BASSI: Are there more?

8 MR. MATTISON: There could be.

9 MS. BASSI: There could be? These are the
10 ones that you're familiar with?

11 MR. MATTISON: Right.

12 MS. BASSI: Are you, Mr. Mattison, a person
13 from the Agency who is generally the representative to
14 the vendors? Do you talk to the vendors?

15 MR. MATTISON: I've spoken to a few vendors
16 very early on in the initial rulemaking, but I haven't
17 talked to vendors in the recent past.

18 MS. BASSI: Would anyone else at the Agency
19 have conversations with vendors?

20 MR. ROSS: Yeah. Our Bureau Chief, Laurel
21 Kroack, attended a conference sponsored by the vendors.
22 I think it was Thermo, or it may have been Tekran.

23 MR. MATTISON: Tekran.

24 MR. ROSS: Yes, it was Tekran. She attended

1 I think it was a two- or three-day seminar with full
2 presentations from the vendors on -- I think the
3 highlight or the focus of the seminars was monitoring,
4 mercury monitoring, of course.

5 MS. BASSI: Can we turn to page 8, please,
6 of the TSD? I was having a little problem with the first
7 sentence of the second paragraph on that page that begins
8 with, "As previously stated, on February 8, 2008." Do
9 you all see that?

10 MR. BLOOMBERG: Yes.

11 MS. BASSI: Okay. What are you saying here?

12 MR. BLOOMBERG: I think it's just -- yeah, I
13 think it's -- may just be missing a word, "is," before
14 "inconsistent" there, but I think it's just saying that
15 the court ruled that CAMR is inconsistent with the
16 provisions of the Clean Air Act.

17 MS. BASSI: Okay. Thank you. I'm sorry. I
18 read that a bunch of times and I had a little problem. I
19 couldn't figure it out. On page 10, the TSD says that
20 the proposed rule requires that CEMS electronic data will
21 be submitted to USEPA or IEPA and be subject to QA/QC and
22 then submitted to IEPA. Do you see that, somebody?

23 MR. ROSS: Yes.

24 MS. BASSI: Is it IEPA or USEPA that gets

1 the raw data?

2 MR. ROSS: Well, it was originally intended
3 that USEPA gets the data, quality control it and quality
4 assure it, but that was their support that they had
5 previously ensured us that they would be able to supply.
6 However, as we've noted, at this time we need to proceed
7 forward with an alternative approach, and the rule allows
8 for that. However, we believe also that there may be
9 some revisions to the rule necessary, and what we
10 envision is that companies will provide us with not the
11 raw data but with the summary sheet that entails the
12 monitoring results and that these results be -- will be
13 required to be certified for truth and accuracy, and
14 we'll work with companies on what needs to be contained
15 in this summary sheet.

16 MS. BASSI: Are there monitoring rules --
17 Are there monitoring requirements that the companies are
18 subject to that are not spelled out in a rule? Can you
19 think of any monitoring requirements that the companies
20 have that are not spelled out in either a state or a
21 federal rule?

22 MR. ROSS: Anything -- The only thing that
23 would come to mind, if the monitoring requirements were
24 spelled out in a permit or in a consent decree or in an

1 agreement reached outside of the context of a rule with
2 the company.

3 MS. BASSI: For monitoring requirements that
4 might be spelled out in a permit, would those have been
5 included under the gap billing provisions of the Title V
6 program?

7 MR. ROSS: Possibly.

8 MS. BASSI: Would they have been included
9 under any other program?

10 MR. ROSS: Under new source review
11 potentially.

12 MS. BASSI: Okay. Which would ultimately be
13 a Title V permit?

14 MR. ROSS: Eventually, if they underwent the
15 required -- if it wasn't new source review avoidance but
16 were actually a new major source or major modification,
17 then they would require a Title V permit.

18 MS. BASSI: Is it safe to say that virtually
19 all of the monitoring requirements that companies are
20 subject to, with these few exceptions that you have just
21 described, are contained in a notice and common
22 rulemaking process?

23 MR. ROSS: I believe that's an accurate
24 statement.

1 MS. BASSI: So it's very seldom, then, in
2 Illinois rulemaking parlance for there to be a, quote,
3 other monitoring provision included in a rule; is that
4 correct?

5 MR. MATOESIAN: Could you rephrase that?

6 MR. BLOOMBERG: Yeah. What is a monitoring
7 provision as you're referring to it here?

8 MS. BASSI: To restate, you are suggesting
9 or stating that this proposal -- this rulemaking proposal
10 today includes a provision for the Agency to come up with
11 some other means of collecting and analyzing and the
12 companies for submitting mercury emissions data; is that
13 correct?

14 MR. BLOOMBERG: Yes.

15 MR. ROSS: I believe that's correct, but I
16 think what we're saying now is we're focusing on the
17 reporting, the submitting of the data.

18 MS. BASSI: Okay.

19 MR. ROSS: So we're getting away from the
20 requirement for companies to submit the raw data and for
21 an entity other than the companies to QA/QC it, and as a
22 result of the USEPA's ability to no longer support those
23 efforts, we're moving towards the companies just
24 providing us a summary sheet of that information.

1 MS. BASSI: Are you willing to put that in
2 this rule?

3 MR. ROSS: Well, I think that's what we've
4 stated we need to review. I think that's a definite
5 possibility, that it will be in a revised version of the
6 rule prior to the next hearing in January. That's a
7 definite possibility.

8 MR. BONEBRAKE: I'm sorry. Mr. Ross, did
9 you just say you anticipated possibly issuing a revised
10 version of the proposed rule prior to the next hearing?
11 Did I understand that correctly?

12 MR. BLOOMBERG: An errata sheet that would
13 incorporate the issues that you're bringing up now.

14 MR. BONEBRAKE: And the errata sheet would
15 include this new format for submission of data to IEPA?

16 MR. ROSS: Possibly. Like I said, we
17 envision -- and hopefully we're reaching out to companies
18 here, but -- and you can pass the word on to those not in
19 attendance if they're not here that we want to work on
20 this issue with them, and we're open for ideas and
21 suggestions. If you're suggesting here, as I think you
22 may be, that this needs to be contained in the rule, then
23 we're open to that. We can provide a version -- a newer
24 version of the rule, being an errata sheet, where it

1 would contain a clarified requirement on what we're
2 expecting to see in regards to mercury monitoring
3 reporting.

4 MR. BONEBRAKE: And I think I'd asked
5 earlier about what provision of the rule was providing
6 this authority to -- for the alternative format, and I
7 don't know if you guys have had a chance to find that
8 yet. Is this something that you guys are still looking
9 for? Maybe we can revisit that after lunch. It would be
10 helpful, though, to -- I think for everybody to have an
11 understanding of the scope of this particular issue. The
12 rule as originally proposed provided that data would be
13 electronically submitted by the companies to USEPA; is
14 that correct?

15 MR. ROSS: That's correct.

16 MR. BONEBRAKE: And USEPA has told you that
17 that is no longer going to be permitted; is that correct?

18 MR. ROSS: That's correct.

19 MR. BONEBRAKE: Now, QA/QC was to be
20 performed on that data, electronic data, as well; is that
21 right?

22 MR. ROSS: That's correct.

23 MR. BONEBRAKE: Is QA/QC now going to be
24 required, and if so, by whom?

1 MR. MATTISON: Well, prior to any data being
2 submitted initially, it would have already gone through
3 the company's QA/QC procedures in order to make sure that
4 they're submitting quality data to USEPA at that time.
5 USEPA would then perform their own QA/QC based upon the
6 data submitted to ensure that they concur with that
7 data's valid.

8 MR. BONEBRAKE: Does IEPA anticipate that in
9 the proposed approach that IEPA would be substituting for
10 USEPA in terms of QA/QC review?

11 MR. ROSS: That's not what we envisioned.
12 We envisioned just a summary sheet of data, so we would
13 not have the raw data submitted to us, and therefore we
14 wouldn't have the opportunity to necessarily QA/QC it.

15 MR. BONEBRAKE: Now, the proposed rule has
16 provisions in it, including, I believe, Section 1.18(f)
17 of Appendix B, that specifically requires electronic
18 submissions to IEPA with various information. Do you
19 recall that?

20 MR. ROSS: No, I don't recall it. I will
21 have to look for it.

22 MR. BONEBRAKE: Maybe we can just take a
23 look. I think if we look at that provision, it might
24 expedite our questions.

1 MR. ROSS: Well, I think I can maybe address
2 that without looking at the specific provision, that if
3 that is in there, we are willing to consider removing
4 that requirement so that companies would not necessarily
5 be required to submit the raw data to us. We may -- We
6 would likely change it -- and I think we've discussed
7 this -- that upon request they would submit the data to
8 us.

9 MR. BONEBRAKE: And would you agree that any
10 rule provision that specifies submission of mercury
11 emissions data to USEPA must come out of this rule in
12 light of your communication with USEPA?

13 MR. ROSS: Yes.

14 MR. BONEBRAKE: Ms. Bassi also asked you a
15 question about electronic data collection. I think
16 perhaps you were distinguishing the data collection from
17 the data submission, if I understood what you were saying
18 correctly? Are there other provisions of the proposed
19 Illinois rule that deal with data collection in
20 electronic form from CEMS or sorbent traps?

21 MR. ROSS: There may be.

22 MR. BONEBRAKE: Does IEPA envision altering
23 any of those provisions in light of the absence of
24 support that USEPA has specified to you?

1 MR. ROSS: To the extent they're related,
2 yes. To the extent that if you're talking about the
3 acquiring of raw data, compiling of it for eventual --
4 what would have previously been required, submittal to
5 USEPA or IEPA, then I would assume those are
6 interconnected and we would likewise remove those
7 requirements.

8 MR. BONEBRAKE: The summary format that you
9 have in mind, are you envisioning an electronic
10 submission of that summary of data?

11 MR. ROSS: We were envisioning hard copy
12 submittal.

13 MR. BONEBRAKE: So in terms of this
14 alternative approach, were you anticipating that the
15 companies would be required to retain software vendors
16 who have computer programs to address monitoring and data
17 submission issues?

18 MR. ROSS: I believe how it works is -- and
19 we'll work with companies on this, again, but they have
20 their data acquisition and handling vendors that they
21 work with that perform those tasks already, so I don't
22 think it would be an additional burden or requirement of
23 them to --

24 MS. BASSI: So basically, whatever program

1 they might have with the mercury CEMS that they have
2 purchased would be acceptable from the Agency's point of
3 view in terms of collecting the raw data. All you're
4 interested in is seeing this summary sheet; is that
5 correct?

6 MR. ROSS: I think that's a fair
7 characterization. We're not expecting them to go out and
8 purchase new software, new equipment to provide us with
9 this data. We believe they already have the capability.
10 They were gearing up for it for CAMR. They do something
11 very similar for NOx and SO2 data handling and reporting,
12 and I would assume unless they tell us otherwise that it
13 wouldn't be a large additional burden to do something
14 similar for mercury, and if there is, we can work with
15 them, but again, what we are just envisioning is a hard
16 copy summary sheet of the mercury monitoring data, so I
17 think it's a fair characterization of it -- a description
18 of it to say it's a simplified approach as compared to
19 the version that's currently in the rule, so it should be
20 considerably less burdensome to companies to do this.

21 MR. BLOOMBERG: In answer to your previous
22 question about where it specified it, you actually hit on
23 it with -- I believe it's Section 1.18 of the Appendix B.
24 In particular, 1.18(f) talks about quarterly reports,

1 electronic submittal in a format specified by the Agency.
2 Is that what you were looking for?

3 MR. BONEBRAKE: So that's the language that
4 you all had in mind when you were referring to a
5 provision that gave you the ability to specify an
6 alternative format.

7 MR. BLOOMBERG: Yes.

8 MR. BONEBRAKE: And of course that still
9 deals with the submission of data electronically, which,
10 as I understand it, is inconsistent with the alternative
11 approach that you're talking about now, which would be a
12 hard copy submission of the data summary.

13 MR. BLOOMBERG: Yeah. If -- Presuming we go
14 down the path that Mr. Ross has mentioned, then we would
15 certainly need to revise the entire electronic submission
16 portion of the appendix.

17 MR. BONEBRAKE: And I appreciate the
18 willingness of the IEPA to work with the companies on
19 this, and I think -- the time frame here I think poses
20 some potential concerns. I think, Mr. Ross, you were
21 identifying the potential revision of the rule that would
22 include communications with the company about what the
23 data summary might look like and then submission of an
24 errata sheet before January 13? Was that the time frame

1 that you had in mind?

2 MR. ROSS: Yes, and just to follow up on
3 that, I think we could have something that companies
4 could view perhaps a week from today, a proposed
5 approach.

6 MR. BONEBRAKE: Would that proposed approach
7 include the revisions to the rule that would be specified
8 by IEPA to implement the alternative --

9 MR. ROSS: I think it would include a
10 commitment to revise the rule accordingly, and then we
11 would have the actual errata sheet submitted in a timely
12 manner prior to January 13.

13 MS. BASSI: How much prior? Like,
14 January 6?

15 MR. ROSS: As quick as possible. You guys
16 have raised a number of issues and identified a number of
17 areas. We'll need to go back and make some tweaks, so
18 we'll get right on it.

19 MS. BASSI: Okay. So if this provision for
20 the other format that Illinois IEPA could develop is in
21 Section 1.18(f) of Appendix B, do you intend to keep a
22 same type of provision in these future amendments to this
23 proposal where you would have the ability to change the
24 format or change the requirement outside of a rulemaking?

1 MR. ROSS: I don't think we'd necessarily
2 need it.

3 MR. BLOOMBERG: I think we should point out
4 that the reason for this more open format was because the
5 situation with USEPA was not entirely clear and we didn't
6 want companies to be locked into a format that was
7 meaningless. The whole point behind it was not to spring
8 a "gotcha" on companies but to give flexibility to work
9 with the companies.

10 MS. BASSI: We appreciate that, but we are
11 concerned about the "gotcha" element. And a -- the
12 possibility of changing reporting requirements, reporting
13 formats outside of a rulemaking is -- can be expensive?
14 Would you agree with that?

15 MR. BLOOMBERG: I don't know.

16 MR. ROSS: Possibly, and I would say if we
17 come up with an agreeable approach with companies, there
18 would likely no longer be a need for an alternative
19 approach.

20 MS. BASSI: Okay. Thank you. On page 13 of
21 the TSD there is a reference 4. Could you provide
22 reference 4 to us at some point? I don't think it made
23 your end note list, or I missed it.

24 HEARING OFFICER FOX: Ms. Bassi, if I can

1 intervene, it's in that first -- that single paragraph,
2 3.1.2. The reference 4 is the Method 30B, and the
3 Section 8.0 references does not include a fourth
4 reference.

5 MS. BASSI: So, yeah, just whatever that is,
6 if you could provide that, please. Who are the source
7 emission companies who provided the Agency with a cost of
8 \$50,000 per emissions test? Or is this an average?
9 Where did that number come from?

10 MR. MATTISON: I contacted I think six or
11 seven testing companies I do work with in Illinois, and
12 we had a wide range of generic cost proposals and 50,000
13 was within that generic range.

14 MS. BASSI: Is it the average, the mean, the
15 mode?

16 MR. MATTISON: We had anywhere -- somebody
17 quoting 15,000 up to 80,000, so --

18 MS. BASSI: Somewhere in the middle.

19 MR. MATTISON: And again, those were very
20 generic quotes. You know, one company said for 15,000, I
21 believe. You know, I don't -- well, of course the TSD,
22 as Dave pointed out, does say an average, but we did have
23 a wide variety of cost estimations, and again, those were
24 from really just me calling them up and saying, what is

1 your generic proposal to do a mercury test.

2 MS. BASSI: So then the cost of Section 239
3 with the quarterly testing would be \$200,000 a year per
4 unit, correct?

5 MR. ROSS: That's a very, very rough
6 estimate.

7 MS. BASSI: Okay. A rough estimate. How
8 does this relate to the cost of a CEMS, installing,
9 operating, maintaining a CEMS?

10 MR. ROSS: We did not do that evaluation.
11 We didn't do a comparison.

12 MR. BLOOMBERG: We -- Because the stack
13 testing is additional flexibility, we leave it to the
14 company to determine which is more economical for them.
15 It was already determined that CEMS -- it was determined
16 by the Board in the previous rulemaking that CEMS are
17 economically reasonable. Therefore, if a company
18 determines that stack testing is even more economically
19 reasonable for them, then they can do that. Maybe they
20 can get the \$15,000 deal, you know. It really depends on
21 what kind of contract they can work out with the testing
22 company and the like.

23 MS. BASSI: Are you suggesting that because
24 this is an alternative to provide flexibility that you

1 don't have to do the cost analysis?

2 MR. ROSS: I think we're suggesting because
3 it's an alternative, there's no additional cost
4 necessarily associated with it, that's correct.

5 MS. BASSI: At the bottom of page 13, I
6 believe it says the cost may prove to be comparable -- it
7 may prove to be comparable in cost or lower in cost to
8 proposed Part 225 Appendix B monitoring requirements;
9 thus my questions about the comparison to CEMS in terms
10 of cost.

11 MR. ROSS: Right, and my answer is we did
12 not do the comparisons. It may prove -- It's up for the
13 company to do that analysis, and I would assume the
14 company would go to the least costly approach, so there's
15 flexibility.

16 MS. BASSI: Mr. Davis, are you the author of
17 the TSD?

18 MR. DAVIS: Yeah. It was a group effort,
19 but --

20 MS. BASSI: Are you the compiler of the TSD?

21 MR. DAVIS: Sure.

22 MS. BASSI: So did people not on the panel
23 contribute to the TSD?

24 MR. DAVIS: Yes, they did.

1 MS. BASSI: Who not on the panel contributed
2 to the TSD?

3 MR. DAVIS: Oh, who not on the panel.

4 MS. BASSI: Yeah.

5 MR. DAVIS: Mr. Golden, Eric Golden
6 [phonetic].

7 MR. BLOOMBERG: Contributed information,
8 which was put into the TSD.

9 MS. BASSI: Okay. On page 14 of the TSD in
10 the compliance demonstration portion, I believe it says
11 that the data that's being reported is for the purpose of
12 demonstrating compliance with the emission limits; is
13 that correct?

14 MR. BLOOMBERG: That's what it says.

15 MS. BASSI: So in the case of MPS and CPS
16 units or sources, do they need to monitor them prior to
17 2015 since they don't have to demonstrate compliance with
18 emission limits?

19 MR. BLOOMBERG: The rule says they do.

20 MS. BASSI: Why are they monitoring?

21 MR. BLOOMBERG: Well, that's already in the
22 rule before this modification.

23 MS. BASSI: What's the purpose of the
24 monitoring?

1 MR. ROSS: Well, they need to determine
2 compliance with what we discussed at length here today,
3 that they are injecting in an optimum manner.

4 MS. BASSI: But --

5 MR. ROSS: And they want the data from these
6 sources and they --

7 MS. BASSI: But optimum manner was five
8 pounds?

9 MR. ROSS: No, absolutely not. We went
10 over --

11 MS. BASSI: We won't revisit that.

12 MR. ROSS: -- in detail what constitutes
13 optimum manner, and by just injecting five pounds alone
14 does not constitute injecting in an optimum manner.

15 MR. BONEBRAKE: Mr. Bloomberg, just a
16 follow-up question on one comment that you made. Is it
17 correct that if a CEMS has an uptime less than 75 percent
18 that the source can be required to utilize stack testing?

19 MR. BLOOMBERG: No, they wouldn't be
20 required to. They would simply -- If -- They would have
21 a choice. I mean, they could be in violation of the
22 regulation or they could try to avoid that violation by
23 doing a stack test.

24 MS. BASSI: What would be avoidance of a

1 violation?

2 MR. BLOOMBERG: Well, avoid having to deal
3 with the CEMS uptime requirement by doing a stack test
4 instead. It would be choosing an alternate method of
5 demonstrating compliance.

6 MS. BASSI: Will that choice be available
7 after June 30, 2012?

8 MR. BLOOMBERG: No.

9 MS. BASSI: So what do they do then?

10 MR. BLOOMBERG: They're in violation.

11 MS. BASSI: They just pay up?

12 MR. BLOOMBERG: Well, as you know, the
13 Illinois EPA does not have the ability to fine anybody
14 for an air violation, so they would proceed through the
15 normal Section 31 preenforcement process.

16 MR. BONEBRAKE: Is the 75 percent
17 requirement on an annual basis?

18 MR. BLOOMBERG: I need to double-check. I
19 don't remember off the top of my head.

20 MR. ROSS: It should be consistent with the
21 compliance requirement, which is 12-month rolling.

22 MR. BLOOMBERG: Off the top of my head, I
23 just don't know.

24 MR. BONEBRAKE: Can we put that on the list

1 of follow-up?

2 MR. BLOOMBERG: Yes.

3 MR. BONEBRAKE: Back to 239. 239 subsection
4 (c) refers to initial performance tests for new units,
5 those that commence operation after June 30, '09, and I
6 have looked unsuccessfully for a provision that specified
7 when performance -- when an initial performance test was
8 to occur for existing units. Is there such a requirement
9 for existing units?

10 MR. BLOOMBERG: Existing units have to
11 perform -- if they're choosing to go the stack test route
12 have to perform a stack test once per quarter.

13 MR. BONEBRAKE: So whenever the first
14 quarter is that you're relying upon stack testing, you
15 need to test once within that quarter.

16 MR. BLOOMBERG: Yes.

17 MR. BONEBRAKE: And for CPS and MPS units
18 that opt in, it would be --

19 MR. BLOOMBERG: Semiannual.

20 MR. BONEBRAKE: -- semiannual, so once
21 within a six-month period.

22 MR. BLOOMBERG: Yes.

23 MR. BONEBRAKE: A question regarding -- Some
24 questions for you regarding subsection (e) of 239.

1 Subsection (e) of 239 I believe is referenced in Section
2 (c)(6) of 233, which we looked at earlier. It's the
3 section in the MPS that identifies the subsections of 239
4 that are applicable upon opt-in, and in Section 294(1),
5 which is a comparable provision in the CPS. If you want
6 to take a moment to confirm that, that would be fine.

7 MR. ROSS: I believe that's correct.

8 MR. BLOOMBERG: Yeah.

9 MR. BONEBRAKE: Subsection (e)(3), though,
10 applies to units that are complying with the control
11 efficiency standard of subsection (b)(1)(B) or (b)(2)(B),
12 and an MPS or CPS unit that opts in to Section 239, as we
13 earlier saw, opts in to the subsections of 239 other than
14 (A) and (B), and then only some of them, and so the
15 question that that created in my mind was does (e)(3) --
16 was it intended to apply to CPS and MPS units?

17 MR. BLOOMBERG: Yes.

18 MR. BONEBRAKE: And then the question is,
19 how is that so, Mr. Bloomberg, given that by its terms
20 it's limited to units that are subject to (b)(1)(B) or
21 (b)(2)(B) of Section 239?

22 MR. BLOOMBERG: Probably because we missed
23 it, and we should probably revise it accordingly.

24 MR. BONEBRAKE: Let me understand this,

1 then. For CPS and MPS units that opt in to Section 239,
2 is IEPA intending to propose a coal sampling requirement?

3 MR. BLOOMBERG: Yes.

4 MR. BONEBRAKE: And that is regardless of
5 whether they are complying with a five-pound injection
6 rate optimum manner obligation or whether they have opted
7 in to an emission standard.

8 MR. BLOOMBERG: Yes.

9 MR. BONEBRAKE: Why is it that IEPA would
10 require coal sampling for CPS and MPS units that are
11 relying upon the optimum manner provision and not the
12 removal efficiency requirement?

13 MR. ROSS: Well, we start with the
14 understanding that the mercury content of coal can vary
15 greatly, so as that mercury content can vary, so can the
16 emissions, and absent the IEPA having the coal mercury
17 content, there would be a likewise absence of the ability
18 to determine mercury reduction efficiency. Without
19 mercury reduction efficiency, we don't have a ready means
20 for determining if they're injecting in an optimum
21 manner, so there's a chain that links it together that
22 without the coal mercury content, we can't make a
23 determination of the mercury reduction efficiency, which
24 we've previously linked to injecting in an optimum

1 manner, so we won't be able to determine compliance with
2 the rule and that provision of the rule.

3 MS. BASSI: Are you suggesting, then, that
4 the requirement to sample coal is inherent in the MPS and
5 the CPS under the optimum manner language that's there?

6 MR. ROSS: Well, I'm suggesting that's part
7 of it. I'm also, I guess, putting forth on the record
8 that during the original negotiations of the MPS and CPS,
9 this was also discussed back then, that they would be
10 required to sample coal and provide us with data that
11 would allow us to evaluate their mercury reduction
12 efficiency and their mercury emissions, so -- and for us
13 not to have mercury coal content, we're missing a key
14 variable in the equation needed to determine and/or
15 verify mercury control efficiency and mercury emissions.

16 MS. BASSI: Was coal sampling a Part 75
17 requirement?

18 MR. ROSS: No. Our rule -- Part 75 was
19 based on CAMR. Our rule is different than CAMR, which is
20 a cap and trade program. As you know, our rule is more
21 command and control, a 90 percent reduction or a mass
22 emission rate.

23 MS. BASSI: And I believe you said
24 previously that the Agency prefers that companies use

1 CEMS because you believe that tells you better what level
2 of mercury is being emitted; is that correct?

3 MR. ROSS: Absolutely.

4 MS. BASSI: Okay. And was -- the CEMS were
5 derived from Part 75; is that correct? Let me put it a
6 different way. Part -- Did Part 75 require CEMS or
7 sorbent traps or a similar method for measuring mercury?

8 MR. MATTISON: Yes.

9 MR. ROSS: Yes.

10 MS. BASSI: Okay. And -- But Part 75 you
11 said did not require coal sampling.

12 MR. BLOOMBERG: Parts of --

13 MS. BASSI: Ah, ah [phonetic].

14 MR. BLOOMBERG: "Ah, ah," I don't know what
15 that means.

16 MS. BASSI: It means I want a yes or a no.

17 MR. BLOOMBERG: No, but --

18 MS. BASSI: I don't want a but. I just --

19 MR. BLOOMBERG: Well, I'd like to continue
20 with a but.

21 MS. BASSI: All right.

22 MR. ROSS: But we need coal sampling. As I
23 explained, our Part 75 is geared toward CAMR. Our rule
24 has different requirements than CAMR, so --

1 MS. BASSI: If a source decides not to opt
2 in to Part 239 and instead provides you with CEMS data,
3 do you still require coal sampling?

4 MR. ROSS: Absolutely.

5 MR. BLOOMBERG: You cannot get a control
6 efficiency without knowing what is going in. You can
7 only know what -- If you only know what's going out,
8 that's not a control efficiency. Coal sampling gives you
9 what's going in.

10 MS. BASSI: Could you not get a rate that's
11 going out with the CEMS?

12 MR. BLOOMBERG: You'd get a rate, but a rate
13 does not give you a percent control.

14 MS. BASSI: But a percent control is not
15 necessarily absolutely required, is it?

16 MR. BLOOMBERG: I believe we went into that
17 in great detail when -- with Mr. Ross in particular when
18 discussing the whole optimum manner issue.

19 MS. BASSI: Doesn't -- Isn't the rate that
20 this rule establishes is 0.0080, whatever the unit is?

21 MR. BLOOMBERG: That is one of the
22 possibilities.

23 MS. BASSI: And that would be determined
24 with a CEMS?

1 MR. BLOOMBERG: It could be.

2 MS. BASSI: Is there not an around 90
3 percent that's equivalent to an around 0.0080 that would
4 be also acceptable under optimum operation?

5 MR. ROSS: I don't think we've looked at
6 that. They were derived in two separate manners, the
7 percent reduction efficiency and the mass emission limit
8 you're referring to, 0.0080 pounds per gigawatt hour.
9 The mass emission rate was derived to give credit for
10 coal washing for sources in Illinois that predominantly
11 utilize Illinois bituminous coal, and those sources
12 requested and hence we gave an alternative means of
13 compliance. I don't believe it will -- We haven't looked
14 at it and I don't anticipate receiving data from those
15 particular sources where they're looking to demonstrate
16 they're injecting in an optimum manner, but perhaps we
17 will and perhaps we'll have to look at that at that time,
18 but by far and large, the vast majority will be seeking
19 to reduce mercury emissions by a percent reduction.

20 MS. BASSI: But you're locking them into
21 that; is that correct?

22 MR. ROSS: I don't believe we're locking
23 them into that, no.

24 MS. BASSI: But you're saying that there is

1 not an around 0.0080 --

2 MR. ROSS: Oh, I'm saying there very well
3 may be. We just haven't looked into that in any great
4 detail, but if put in a position where we need to, we
5 will.

6 MR. BONEBRAKE: I have some follow-ups, and
7 maybe the best way to address the follow-ups is to look
8 at 225.265, which deals with coal analysis for input
9 mercury levels. Now, this provision, as in the original
10 as -- the original rule as adopted by the Board, did not
11 refer to the MPS or the CPS; is that correct?

12 MR. BLOOMBERG: Did it refer to the MPS or
13 CPS?

14 MR. BONEBRAKE: In regard to that
15 question --

16 MR. BLOOMBERG: Probably not, because the
17 MPS and CPS were added after this was already in the
18 rule.

19 MR. BONEBRAKE: Wasn't the MPS part of the
20 mercury rule as adopted by the Board?

21 MR. BLOOMBERG: At the end of the process,
22 yes.

23 MR. BONEBRAKE: Well, wasn't it -- it was
24 part of the rule, though, was it not, Mr. Bloomberg?

1 MR. BLOOMBERG: Yes.

2 MR. BONEBRAKE: But as part of the adoption
3 of the mercury rule in Illinois that included the MPS,
4 the MPS was not included in the 265 set of EGUs that
5 required to do coal sampling, right?

6 MR. BLOOMBERG: That was overlooked in the
7 addition of the MPS during the rulemaking process, I
8 believe, although Mr. Ross may correct me.

9 MR. ROSS: We're not certain about that.
10 We'll have to look at that. It certainly wasn't the
11 intent, because we need a means -- as we've established
12 here, we need a mechanism to determine if they're
13 operating in an optimum manner, so I don't believe --
14 well, we'll have to look at this, but I'm not certain
15 that that's true.

16 MR. BLOOMBERG: Okay.

17 MR. BONEBRAKE: You need a means --

18 MR. ROSS: We discussed this with the
19 companies, and at that time, I think it was generally
20 understood that they would be submitting data to us that
21 would allow compliance verification. There wasn't some
22 general understanding that we -- they can inject in any
23 manner they see fit and meet compliance with the rule.
24 There needs to be a check on compliance, and the only way

1 to have that check is if we have the data.

2 MR. BONEBRAKE: But the data could simply be
3 the emissions -- mass emissions and emission rate coming
4 out of a stack would tell you what kind of emission
5 performance the unit is getting, isn't that right,
6 Mr. Ross, regardless of whether you've got the input
7 data?

8 MR. ROSS: Only if they're complying with
9 the 0.0080, but absolutely not if they're complying with
10 the mercury reduction efficiency, and I believe 98
11 percent of the sources -- so we're talking about a small
12 percentage, but 98 percent of the sources will be
13 complying via mercury reduction efficiency.

14 MR. BONEBRAKE: And so it was -- in
15 225.265(a), as originally proposed, only the 90 percent
16 removal efficiency requirement of 225.230(a) was picked
17 up and not the rate for that very reason, right,
18 Mr. Ross?

19 MR. ROSS: Please restate that.

20 MR. BONEBRAKE: 225.265 as originally
21 adopted imposed a coal sampling requirement only upon
22 those EGUs that were subject to 230 and that were
23 complying by means of the 90 percent reduction as opposed
24 to the rate requirement; is that correct?

1 MR. ROSS: Yes, I believe that's correct.

2 MR. BONEBRAKE: And that was because if
3 you're going to have a removal efficiency requirement,
4 you need the input. If you don't have a removal
5 efficiency requirement, you don't need the input.

6 MR. ROSS: You don't need the input to
7 determine a reduction efficiency, correct, or to -- well,
8 you do need input to determine reduction efficiency. You
9 don't need input to determine compliance with the mass
10 emission rate, correct.

11 MR. BONEBRAKE: And you also don't need an
12 input information from the coal to determine whether or
13 not a company is injecting sorbent at five pounds; is
14 that correct, Mr. Ross?

15 MR. ROSS: That's correct.

16 MR. BLOOMBERG: But we do need it to help
17 determine if they're injecting it in an optimum manner.

18 MR. BONEBRAKE: As we've heard you describe
19 today and as we talked about, it's not in the rule. The
20 reference to 233 in 225.265(a), is that to the MPS?

21 MR. BLOOMBERG: Yes.

22 MR. ROSS: Yes.

23 MR. BONEBRAKE: Now, the MPS also provides
24 as of I believe it's 2015 that MPS units can opt in --

1 excuse me -- would become subject to either 90 percent or
2 the rate requirement; is that correct?

3 MR. ROSS: That's correct.

4 MR. BONEBRAKE: So shouldn't the reference
5 to 233 exclude MPS units that use the rate requirement as
6 an alternative to the removal efficiency requirement?

7 MR. DAVIS: I believe if you're using the
8 rate requirement, then you wouldn't need the MPS
9 provisions, if you were complying with the 0.008.

10 MR. BONEBRAKE: The MPS provisions specify
11 that as of 2015, I believe is the date, that the rate or
12 90 percent removal efficiencies become applicable. That
13 provision is in the MPS.

14 MR. ROSS: Right, and I see where you're
15 going and I understand the point being made, that
16 compliance with that wouldn't -- compliance with the rate
17 requirement, the mass emission rate requirement, wouldn't
18 necessarily lead to a requirement for coal sampling or at
19 least a reduced frequency of coal sampling would be
20 needed, if at all. Give you that. So we'll go back and
21 look at that, and it may in fact lead to us clarifying
22 that for the mass emission rate, coal sampling is not
23 needed.

24 MS. BASSI: Could you explain to me again

1 why if you're getting monitored mercury emissions from a
2 CEMS that's going to tell you an emission rate?

3 MR. ROSS: Right.

4 MS. BASSI: Is that not what it tells you?

5 MR. BLOOMBERG: It tells you the emission
6 rate.

7 MR. ROSS: Yeah, it tells you the emission
8 rate, but it doesn't give you a mercury reduction
9 efficiency.

10 MS. BASSI: If it tells you an emission rate
11 and the emission rate is around 0.0080, why coal sampling
12 is required? Why do you just assume coal sampling is
13 required?

14 MR. BLOOMBERG: I think that's a
15 hypothetical question. We don't know that anybody will
16 come in and say it's around 0.0080. As Mr. Ross has
17 explained, we feel that only a very, very small
18 percentage of affected EGUs will even be looking at that.

19 MS. BASSI: Where does it say in the rule
20 that they had to tell you when they were opting in to the
21 MPS or the CPS how they were going to -- what they
22 were -- whether they were doing 90 percent or a rate?

23 MR. BLOOMBERG: They don't until they opt in
24 and make that choice as to which specific limit they're

1 complying with.

2 MS. BASSI: Or even in terms of determining
3 what the optimum manner of operating is.

4 MR. BLOOMBERG: I don't know what the
5 question is.

6 MS. BASSI: The question is, why does the
7 Agency assume that coal sampling is necessary to
8 determine an optimum manner of operating?

9 MR. ROSS: Because without coal sampling,
10 you can't determine the percent mercury reduction.

11 MS. BASSI: But you will have a rate coming
12 in from a CEMS; is that not true?

13 MR. BLOOMBERG: But there's no reason to
14 assume alternatively that that rate will give us the
15 information that we need.

16 MR. ROSS: Right. All -- Our mercury expert
17 and all the data and information that has come forth
18 since the original rulemaking process has been geared
19 toward 90 percent reduction efficiency. That was the
20 original target. We arrived at what we were calling an
21 equivalent -- under specific circumstances an equivalent
22 to 90 percent reduction, we arrived at a mass emission
23 rate, and as I stated, that mass emission rate was
24 arrived at in order to provide flexibility for a small

1 universe of units in Illinois that fire Illinois
2 bituminous coal, so that was the intent of that, to
3 provide sources flexibility, so now it's almost that
4 we're arriving -- and I don't even know if it's
5 necessary, because their rate was arrived at using
6 bituminous coal, so it may not necessarily carry over to
7 subbituminous coal-fired units, which are by and large
8 the vast majority of units in Illinois.

9 MS. BASSI: So are you now saying that the
10 0.0080 rate applies only to units firing bituminous coal?

11 MR. ROSS: No. I'm saying -- I'm giving the
12 background on this that that was how that was arrived at,
13 so the Agency can look at is there also an equivalent
14 rate that we would consider as identifying sources are
15 injecting in an optimum manner. I don't think such a
16 rate is readily obtainable given the background I've just
17 given, that that was how that rate was derived and the
18 intent of that rate to provide flexibility for a very
19 small universe of units, so to turn that or use it to
20 then say that the units that don't inject bituminous coal
21 or don't coal wash, wash their coal, which is how that
22 was derived at, and then to apply it to those units and
23 say they're injecting in an optimum manner when they're
24 firing subbituminous coal and don't coal wash on the

1 surface appears inappropriate; that instead we are in
2 fact using the right parameter, which is mercury control
3 reduction. So there's kind of a -- an obvious conflict
4 to me in using the mass emission rate for purposes of
5 evaluating whether sources are injecting in an optimum
6 manner. That being said, we'll go back and look at it,
7 but given what I've just said, I don't think it readily
8 carries over for that use.

9 CHAIRMAN GIRARD: Well, could I ask a
10 question? I'm getting a little confused too. If an EGU
11 submits to the Agency data from their CEMS that shows
12 that they're meeting the mass emission rate of 0.0080, do
13 they need to submit any other information?

14 MR. ROSS: No.

15 MR. BLOOMBERG: If they're subject to that
16 limit. If we're talking someone outside of the MPS and
17 CPS.

18 MR. ROSS: No, that's a goal of the rule,
19 would be that they meet 90 percent or they meet this mass
20 emission rate, so if they meet the mass emission rate,
21 the idea of injecting in an optimum manner, much like if
22 they meet 90 percent, goes away. They simply meet the
23 rate and can inject in whatever manner they want.

24 CHAIRMAN GIRARD: And so they do not need to

1 test their coal when it comes in, and those other
2 requirements they don't need to do. They just have to
3 show they've complied with the mass emission rate.

4 MR. ROSS: I believe that's correct.

5 MR. BLOOMBERG: And that's why in
6 225.265(a), again not dealing with the MPS and CPS, it
7 only says if you're complying by means of
8 225.230(a)(1)(B), which is the 90 percent requirement, as
9 opposed to I guess it was (a)(1)(A), which was the
10 0.0080.

11 CHAIRMAN GIRARD: So basically, you think
12 the rules are clear on that, and I'm -- but I'm not sure
13 that some of the questions we're getting from Ms. Bassi
14 show that they think it's clear. Is that --

15 MR. BLOOMBERG: Well, I think they want
16 to --

17 MS. BASSI: I don't think it's clear under
18 the MPS and CPS prior to the -- prior to 2015, the
19 optimum manner part.

20 MR. ROSS: Well, here's my take. I'll
21 attempt to summarize this, is the question being
22 presented is coal sampling and our need for that data,
23 and we do need the data from sources in the MPS and CPS
24 so that we can verify and evaluate and determine the

1 mercury reduction efficiency, because as we've discussed
2 previously, without the mercury reduction efficiency, we
3 have no means of evaluating whether units are injecting
4 in an optimum manner, so we need that data and we're
5 confident of that. Now, what we've worked with industry
6 on is how frequent coal sampling needs to be done, and
7 the original version of the rule, I believe we required
8 daily coal sampling. We worked with sources over the
9 last several months and we've reduced that frequency of
10 coal sampling from daily to monthly, so we've reduced it
11 considerably already, and now what's being raised in the
12 hearing is do they even need to do it, so we've discussed
13 it with them, the need to do it previously. We had a
14 stakeholder meeting prior to this hearing where we had
15 much similar discussions like we're having now before the
16 Board, and we stuck to our guns and kept the monthly coal
17 sampling in there because we are certain that we need it,
18 and I believe they're raising the issue, do you really
19 need it, again, and the answer is still yes, we really
20 need it.

21 CHAIRMAN GIRARD: But hypothetically, if
22 every EGU in the state decided to comply with the mass
23 emission limit, they would not need to sample coal; is
24 that correct?

1 MR. ROSS: That's correct.

2 CHAIRMAN GIRARD: And therefore, if you
3 needed the information on mercury levels in the coal, you
4 would have to find some other way to collect that
5 information; is that correct?

6 MR. ROSS: Yes.

7 CHAIRMAN GIRARD: So the --

8 MR. ROSS: But, yeah, we wouldn't need it.
9 We only want data that we need and is useful to us.
10 We -- If we didn't feel we needed it, we would readily
11 say, we don't want it. We get enough paperwork already.
12 So, yeah, we only want it because we need it.

13 CHAIRMAN GIRARD: Thank you.

14 MR. BONEBRAKE: A couple of follow-ups.
15 Mr. Bloomberg, you made a comment regarding the CPS and
16 the MPS, and I think it's important the record be clear
17 on this. The MPS and the CPS both provide that as of I
18 believe 2015, the units in those respective programs can
19 comply by either 90 percent reduction or the mass
20 emission rate; is that correct?

21 MR. BLOOMBERG: Yes.

22 MR. BONEBRAKE: So the same proposition
23 should apply to MPS and CPS units, should it not, and
24 that is that if an MPS or CPS unit achieves the 0.008

1 rate, there would be no reason for them to submit coal
2 sampling data and there would be no requirement for them
3 to do so, correct?

4 MR. ROSS: Agreed. If what you're saying is
5 they meet the mass emission rate, which Dr. Girard just
6 said, if they meet the mass emission rate, they do not
7 need and we don't necessarily want them to supply us with
8 coal sampling data.

9 MR. BONEBRAKE: And as we talked before,
10 even prior to 2015, MPS and CPS units have the ability to
11 opt in to on a unit-by-unit basis either the 90 percent
12 or the mass emission rate, so even before 2015, an MPS or
13 CPS unit would not be required to do a coal sampling if
14 it opted in to compliance via the mass emission rate
15 requirement of the MPS or CPS, correct?

16 MR. BLOOMBERG: Yes, and we can clarify that
17 in the rule, which right now just refers to 233 in
18 general. We can certainly exclude the opt-ins for the
19 mass emission rate.

20 MR. BONEBRAKE: A related point of
21 clarification. 225.265 as revised also has a general
22 reference to 239. Do you see that in the lead-in
23 language and then again in (a)(1)?

24 MR. BLOOMBERG: Yes.

1 MR. BONEBRAKE: Shouldn't that also be only
2 to those sources that are subject to the 239 subsection
3 (b) 90 percent removal requirement for the same reasons
4 we've talked about?

5 MR. BLOOMBERG: Not necessarily, because it
6 refers -- the schedule for coal testing refers to
7 239(e)(3), which talks about units complying with the
8 control efficiency standard, so you have to follow it one
9 jump, but the exclusion is still there.

10 MR. BONEBRAKE: I would suggest that even
11 that reference leaves ambiguity in the section.

12 MR. BLOOMBERG: Okay.

13 MR. BONEBRAKE: Has IEPA estimated the cost
14 of monthly coal sampling?

15 MR. ROSS: This was discussed in detail in
16 the original mercury rule, so --

17 MR. BONEBRAKE: Can you recall approximately
18 what that figure was, Mr. Ross?

19 MR. ROSS: No, I don't recall. I remember
20 discussions distinctly because we had people testifying
21 regarding what was expected in regards to obtaining the
22 sample, and we said you could go out there with a bucket
23 and a shovel and just get a sample. So it was discussed.

24 MR. BLOOMBERG: And obviously it's less than

1 what was discussed at the time because we're only looking
2 at monthly instead of daily.

3 MR. BONEBRAKE: Depending upon the
4 identification of units that would be subject to that
5 coal sampling requirement in the first place, which I
6 think has been subject to some discussion here today.

7 HEARING OFFICER FOX: Mr. Bonebrake,
8 Ms. Bassi, if I could interrupt for a moment, we have
9 probably come to a point at which a break for lunch is a
10 good idea. It's unfair to ask you to predict, but do you
11 have any projection on how much additional time questions
12 might require at this moment? Not to hold you to that,
13 but if you would have any instinct about that, we would
14 appreciate it.

15 MR. BONEBRAKE: I am very hopeful we'll be
16 done today and hopefully mid-afternoon, but I -- until I
17 go back and kind of figure out what we've talked about --
18 we've been jumping around a little bit, so I just need to
19 get a sense of that, but I would anticipate we're going
20 to get done today and hopefully by mid-afternoon.

21 HEARING OFFICER FOX: That probably makes a
22 lunch break a profitable -- Is this a profitable time to
23 take a lunch break?

24 MR. BONEBRAKE: I would think so. We're at

1 a good point.

2 HEARING OFFICER FOX: Why don't we break
3 at -- break now and resume at 1:45 after one hour. Thank
4 you.

5 (One-hour lunch recess taken.)

6 HEARING OFFICER FOX: When we broke for
7 lunch at 12:45, Mr. Bonebrake and Ms. Bassi, you were
8 posing some questions. I don't think we left one
9 unanswered, but I want to give you a chance to review
10 your notes and restate any question that we did cut in on
11 when we broke for lunch.

12 MS. BASSI: No, I don't think there are
13 any --

14 MR. MATOESIAN: Actually, Mr. Bloomberg does
15 have an answer to one of the questions.

16 MS. BASSI: Okay.

17 MR. BLOOMBERG: Mr. Bonebrake, you had asked
18 about the 75 percent monitor data availability, and that
19 can be found in Section -- or proposed Section
20 225.260(b), monitor data availability must be determined
21 on a calendar quarter basis.

22 MR. BONEBRAKE: Thank you.

23 HEARING OFFICER FOX: Very good.

24 MR. DAVIS: I actually have another

1 clarification.

2 HEARING OFFICER FOX: Ms. Bassi, it looks
3 like Mr. Davis has a clarification or answer as well.

4 MR. DAVIS: There was a question about a
5 reference on reference 4 in the TSD. It actually should
6 be (a)(3). That was a typo in our numbering.

7 MS. BASSI: Oh, okay. I have a couple kind
8 of non-secular questions that are -- we kind of touched
9 on but -- you don't care. Mr. Ross, you mentioned that
10 you talked to USEPA or you testified that you talked to
11 USEPA, who informed you that there was a legal constraint
12 in them -- in their accepting the data --

13 MR. ROSS: Correct.

14 MS. BASSI: -- as you had originally thought
15 would not be a problem. Did they explain to you what
16 this legal constraint was?

17 MR. ROSS: They stated that their office of
18 general counsel had raised legal concerns on their
19 ability to accept the monitoring data and QA and QC it;
20 as a result of CAMR vacatur, that there was not a tie
21 between them accepting this data and reviewing it and a
22 regulatory requirement.

23 MS. BASSI: That was the constraint?

24 MR. ROSS: That's how it was explained to me

1 by Rey Forte.

2 MS. BASSI: Okay. And another question that
3 I had, for fabric -- for units that have fabric filters
4 that are -- for MPS units that have fabric filters that
5 are due to be installed and operating by December 31,
6 2009, in order for them to use Section 239, must they
7 test for that one day of the year?

8 MR. ROSS: No. That's not our intention.
9 They would need to demonstrate compliance with the
10 following quarter, so that would be the --

11 MS. BASSI: Following half year?

12 MR. ROSS: Yeah, that's absolutely right.
13 Thank you. The following half year, so January to --
14 January 1 to June 30 of the following year.

15 MS. BASSI: Okay. Thank you.

16 MR. BONEBRAKE: My next question pertains to
17 Section (h) of Section 225.239, and we're still on the
18 periodic testing section. Subpart (2) on subsection (h)
19 refers to a significant change in the first line and then
20 goes on to impose some requirements with respect to
21 significant changes. Was it IEPA's intent that with
22 respect to significant changes that EGUs would be
23 required to both submit emission test protocol and
24 conduct the tests within seven days? Am I reading that

1 correctly?

2 MR. BLOOMBERG: That is what the language
3 says now. We're going to have to review our notes to see
4 if that's what we meant it to say.

5 MR. BONEBRAKE: Does the Agency recognize
6 that imposing both the protocol submission and a test
7 requirement within seven days of a change could impose
8 some very difficult practical compliance problems?

9 MR. BLOOMBERG: We recognize that it is a
10 short time period after the change, but these types of
11 changes would normally be something that they had planned
12 for.

13 MR. BONEBRAKE: Let's talk a little bit
14 about what changes, then, the IEPA has in mind. The term
15 significant change is not defined in the rules, is it?

16 MR. BLOOMBERG: Other than to say such as
17 changing from bituminous to subbituminous coal, no.

18 MR. BONEBRAKE: Okay. Let's talk about
19 changes from bituminous to subbituminous coal. Are some
20 of the EGUs in Illinois both permitted to and physically
21 capable of burning both bituminous and subbituminous
22 coal?

23 MR. BLOOMBERG: I do not have specific
24 knowledge of it, but it wouldn't surprise me.

1 MR. BONEBRAKE: And that would -- simply
2 changing from bituminous to subbituminous coal then could
3 be -- even though they've already got that existing
4 capacity could trigger this seven-day obligation?

5 MR. BLOOMBERG: Depending on how they test
6 it. The idea of the testing is the testing is supposed
7 to be representative of their operations during that
8 quarter, so if they operate using two such different
9 fuels in that quarter, then they would need to test using
10 those two different fuels in that quarter.

11 MR. BONEBRAKE: When you say that quarter,
12 you mean the quarter after the change?

13 MR. BLOOMBERG: No, the quarter of the
14 change.

15 MR. BONEBRAKE: I see. So if for instance
16 in the second quarter of 2010 you burn bituminous for one
17 month and subbituminous two months, you're talking about
18 them having to do two different tests.

19 MR. BLOOMBERG: Yes.

20 MR. BONEBRAKE: And within -- submitting the
21 protocol and doing the test within seven days of that
22 change.

23 MR. BLOOMBERG: Well, again, that's what we
24 need to look at, the -- whether it was meant to say

1 submit the protocol within seven days or do the test, we
2 will have to go back and take a look at that.

3 MR. BONEBRAKE: Is it your thinking that the
4 additional testing requirement may be something that IEPA
5 may be willing to provide some more time for?

6 MR. BLOOMBERG: We can consider it.

7 MR. BONEBRAKE: What about with respect to
8 the protocol?

9 MR. BLOOMBERG: I don't think that there
10 should be a need for a longer time period for a protocol
11 for something like a change of this type, because the
12 testing -- the great majority of the testing is going to
13 be the same if there's just a difference in fuel, if
14 that's the change in question here.

15 MR. BONEBRAKE: Well, and I guess that gets
16 me back to the question of other than the change from
17 bituminous to subbituminous or vice versa, what are the
18 changes that are captured by this provision? Because
19 without an understanding of what those changes are, it's
20 hard to identify, you know, where particular practical
21 compliance problems would arise, but certainly I think --
22 and I would think IEPA would agree -- that practical
23 implementation problems could arise, so is there any
24 further thought from IEPA on the types of changes that

1 would be captured by this provision?

2 MR. BLOOMBERG: What we were looking for was
3 a change that -- much like changing the fuel from
4 subbituminous to bituminous -- would impact and -- would
5 impact the source in such a way that the previously done
6 test would no longer be representative of the operation
7 of the EGU at that point.

8 MR. BONEBRAKE: Well, would -- the addition
9 of a pollution control, then, for instance, would that be
10 a significant change?

11 MR. BLOOMBERG: Yes.

12 MR. BONEBRAKE: Changing the point of
13 injection for ACL?

14 MR. ROSS: Not necessarily, and we'll go
15 back -- in reading this over, we'll go back and seek to
16 clarify that and likely provide some additional time.

17 MR. BONEBRAKE: The second sentence of
18 subsection (2) refers to EGUs that are complying with
19 emission standards of subsection (b) of 239. Do you see
20 that?

21 MR. BLOOMBERG: Yes.

22 MR. BONEBRAKE: Now, 239, page 2, is one of
23 the provisions that's identified in the sections of the
24 CPS and MPS that refer to Section 239 opt-in.

1 MR. BLOOMBERG: Okay.

2 MR. BONEBRAKE: And (h)(2) was one of the
3 sections that's identified as applicable.

4 MR. BLOOMBERG: Okay.

5 MR. BONEBRAKE: But the second sentence of
6 (h)(2) seems by its terms not to be applicable because it
7 is subject -- it is applicable only to those units that
8 are subject to the emission standards of Part 239, so
9 does IEPA agree that the second sentence of (e)(2) does
10 not apply to CPS and MPS units that opt in to 239?

11 MR. BLOOMBERG: I think it was probably an
12 oversight, like some of the others you brought up.

13 MR. BONEBRAKE: Excuse me. (h)(2).

14 MR. BLOOMBERG: Yes.

15 MR. BONEBRAKE: (h)(2).

16 MR. BLOOMBERG: Because we would want a
17 continuous parameter monitoring plan for those as well.

18 MR. BONEBRAKE: I'm sorry. Could you say
19 that again, please, Mr. Bloomberg?

20 MR. BLOOMBERG: I think it was an oversight,
21 like some of the others, that CPS and MPS were not
22 mentioned here, because we would want -- there are other
23 portions of the 239, I believe, that do ask for a
24 continuous parameter monitoring plan of CPS and MPS

1 sources, so certainly we would want an update of such a
2 plan in this situation.

3 MR. BONEBRAKE: So this provision, (h)(2),
4 then appears to require not just the test and the test
5 protocol but also the continuous parameter monitoring
6 plan change all within seven days of a significant
7 change?

8 MR. BLOOMBERG: That's what it says now,
9 yes.

10 MR. BONEBRAKE: So I would suggest and would
11 ask the IEPA to further consider the timing of the
12 revision to the continuous parameter monitoring plan for
13 these types of changes. Now, Mr. Bloomberg, you
14 indicated that the continuous parameter monitoring plan,
15 the intent was for that requirement to apply to CPS and
16 MPS units as well?

17 MR. BLOOMBERG: I believe so.

18 MR. BONEBRAKE: Well, if you look at -- if
19 you turn to 294(1) of the CPS, and this is the provision
20 of the CPS that permits the opt-in of CPS units into 239
21 stack testing in lieu of compliance with 240 through 290;
22 is that correct?

23 MR. BLOOMBERG: Yes.

24 MR. BONEBRAKE: And the subsections that are

1 specified in (l) are the subsections of 239 that are
2 applicable in that instance; is that right,
3 Mr. Bloomberg?

4 MR. BLOOMBERG: Yes, and to go ahead to your
5 next question, (i)(2) is not listed there.

6 MR. BONEBRAKE: And also I would suggest and
7 note that (f)(4) is not indicated there either, which
8 also deals with continuous parameter monitoring plans?

9 MR. BLOOMBERG: We will -- One moment. It
10 appears my recollection was incorrect, and as it is
11 written right now, we do not require CPS and MPS sources
12 to submit the continuous parameter monitoring plan. If
13 we should reevaluate, we will let you know certainly
14 before the next hearing, but --

15 MR. BONEBRAKE: Right. Then I would suggest
16 in the Sections 294(1) of the CPS and the corresponding
17 section in the MPS, which I believe was 233(c)(6), that
18 the broad reference to (h)(2) should exclude the second
19 sentence, which we just addressed and specifically refers
20 to such plans for units that are complying with
21 subsection (b) of 239.

22 MR. BLOOMBERG: Okay. Though my reading of
23 it at this point does not require that, because it does
24 say in (h)(2), "In addition, the owner or operator of an

1 EGU that has elected to demonstrate compliance by use of
2 the emission standards of subsection (b)," so as you
3 pointed out before, if you're a CPS and MPS source, you
4 are not -- you have not elected to demonstrate compliance
5 by the use of the emission standards of subsection (b),
6 and therefore, as it's written now, it wouldn't apply to
7 a CPS or MPS source anyway.

8 MS. BASSI: So then (h)(2) should be deleted
9 from the list of applicable 239 --

10 MR. BLOOMBERG: No, because the first part
11 of (h)(2) applies.

12 MR. BONEBRAKE: And then let me just ask
13 a -- we have a number of questions regarding the
14 cross-referencing, but I think we can maybe cut those
15 short by just asking you a question to confirm what I
16 think you already said on behalf of the Agency, and that
17 is, with respect to 294(1) of the CPS and 233(c)(6) of
18 the MPS, which address the opt-in in Section 239, the
19 only subsections of 239 that would be applicable upon
20 such an opt-in are those subsections that are
21 specifically identified in 233(c)(6) and 294(1); is that
22 correct?

23 MR. BLOOMBERG: That is the intent, yes.

24 MS. BASSI: I have a question about

1 Section 239(i)(3). In 239(i)(3), I believe that (i)(3)
2 is one of the subsections that are cross-referenced for
3 MPS and CPS applicability, such as in 294(1). Yes. It
4 appears that this subsection reflects the monitoring
5 requirements of Section 233(c)(5)(A) and (c)(5)(C). Does
6 this mean, then, that 233(c)(5)(B) does not apply to MPS
7 units that are relying on Section 239? Sorry for that
8 being so complicated.

9 MR. BLOOMBERG: Yeah, I lost you there.

10 MS. BASSI: All right. In -- It refers in
11 Section (i)(3) someplace -- sorry. I got lost.

12 MR. BONEBRAKE: Want to come back?

13 MS. BASSI: It's really bad when I get lost.
14 Yeah.

15 MR. BONEBRAKE: I have a question related to
16 (i)(4) --

17 MS. BASSI: Sorry.

18 MR. BONEBRAKE: -- which imposes a
19 record-keeping obligation upon sources, and the question
20 is, is that record-keeping requirement limited to five
21 years, which would be consistent with the general
22 five-year record-keeping provision in Section 225.210(d)?

23 MR. BLOOMBERG: So you're asking if the
24 retention requirement is limited to five years. Is

1 that --

2 MR. BONEBRAKE: Pursuant to the general
3 record-keeping provision.

4 MR. BLOOMBERG: I think that's reasonable.
5 I suspect that we just accidentally left that out. I
6 don't think it was our intent to make them keep the
7 records forever.

8 MR. BONEBRAKE: My next questions relate to
9 225 -- Section 225.240, subsection (b), and in subsection
10 (b)(1), IEPA has deferred the general monitoring
11 requirement for existing units from July 1 -- excuse
12 me -- from January 1 to July 1, 2009; is that correct?

13 MR. BLOOMBERG: Yes.

14 MR. BONEBRAKE: Can IEPA explain how
15 subsection (b)(3) works with subsection (b)(1); that is,
16 for units that are installing controls? What is the
17 impact on the monitoring date under (b)(1) which would
18 otherwise be applicable under -- excuse me -- under
19 (b)(3) which would otherwise be applicable under (b)(1)?

20 MR. ROSS: Well, maybe you could state a
21 concern. The way I'm reading (b)(3), it's stating that
22 if a unit is adding an add-on control device after the
23 applicable date of (b)(1) or (b)(2), that they have 90
24 unit operating days or 180 calendar days, whichever comes

1 first, to begin the monitoring, right?

2 MR. BONEBRAKE: That's -- I mean, that was
3 my reading of the provision as well, and let me give you
4 an example.

5 MR. ROSS: So --

6 MR. BONEBRAKE: And maybe we can make this
7 concrete. The MPS, for instance, provides that the
8 sorbent injection dates is deferred from July 1 to in
9 December for units that are installing fabric filters or
10 FGDs?

11 MR. ROSS: Correct.

12 MR. BONEBRAKE: And so for those units,
13 then, under (b)(3), would the monitoring compliance date
14 be deferred until 90 days after the control has come
15 online?

16 MR. ROSS: Is the difference here is one a
17 compliance date and the other date's when you need to
18 begin to submit monitoring? I believe that's the case,
19 so we're saying we don't expect to see monitoring data
20 for 90 days or 180 calendar days, but the compliance date
21 may be sooner. Is that the concern?

22 MR. BONEBRAKE: I'm just trying to
23 understand, yeah, when the monitoring requirement kicks
24 in, because (b)(1) is telling us July 1, 2009, as I read

1 that provision. Is that correct?

2 MR. ROSS: Correct.

3 MR. BONEBRAKE: And I'm trying to understand
4 what (b) -- how (b)(3) alters the resulting (b)(1).

5 MR. ROSS: Well, if after that date -- I
6 mean, they're installing something new, and so given that
7 it's a new unit, I think (b)(3) would logically supersede
8 the requirements of (b)(1).

9 MS. BASSI: All right. So we have an
10 existing unit to which this add-on control is being added
11 on. Does it need to monitor between July 1, 2009, and
12 the date that the new stuff is -- the new control
13 equipment is put on?

14 MR. ROSS: Yes.

15 MS. BASSI: It does.

16 MR. ROSS: Yeah, we need to go back and look
17 at the interaction between these two.

18 MS. BASSI: Okay.

19 MR. BLOOMBERG: Yeah, not something we
20 looked at since there wasn't actually a change made to
21 that -- to (b)(3), so --

22 MR. BONEBRAKE: Well, and I would ask the
23 IEPA to consider as you're thinking about the issue that
24 under the MPS -- and I believe this is correct with

1 respect to the CPS too -- the compliance date for units
2 that are installing scrubbers or fabric filters is kicked
3 from July to December 31, 2009, for injection, so if
4 we're talking about a monitoring date for those units, if
5 they're not required to inject sorbent until 12-31, 2009,
6 it would seem to make sense that the monitoring
7 requirement with respect to those units also be deferred
8 until that same date.

9 MR. ROSS: Agreed.

10 MR. BONEBRAKE: On Section 225.260 is my
11 next question, gentlemen.

12 MR. ROSS: Can you state that again?

13 MR. BONEBRAKE: Excuse me? 225.260.

14 MR. ROSS: Okay.

15 MR. BONEBRAKE: Section (b), the second
16 sentence refers to the 75 percent of uptime requirement,
17 is that correct, for CEMS?

18 MR. BLOOMBERG: Yes.

19 MR. BONEBRAKE: And is it correct, then,
20 that that 75 percent uptime requirement only applies to
21 units that are subject to 225.230 or 225.237?

22 MR. ROSS: Yeah, I believe the intent is
23 that all sources utilizing CEMS for their compliance
24 methodology would be required to have those CEMS up 75

1 percent of the time, so it appears that we've excluded a
2 reference to 225.233.

3 MR. BONEBRAKE: Is IEPA then going to
4 include this among the proposal to revise the rule?

5 MR. BLOOMBERG: Yes.

6 MR. ROSS: Right. And it fits into the
7 context of our earlier discussions that we need that data
8 to evaluate compliance with the rule. We would also
9 likewise add a reference to the CPS, so the MPS and the
10 CPS.

11 MS. BASSI: We're ready to move to Section
12 225.290, 2-9-0. In subsection (a)(1) you refer to a
13 designated representative. Does this still have any
14 meaning in light of the CAIR vacatur?

15 MR. BLOOMBERG: Well, the definition still
16 remains in our rule and CAIR has not been quite vacated
17 yet, I guess, so it maintains the same meaning that it
18 had before.

19 MS. BASSI: So if this is not intended -- if
20 the CAIR is vacated, if there's no -- and during the
21 period before there's a replacement, does this term have
22 any limitation in terms of who is -- who has to comply
23 with this provision? Is it limiting to the companies as
24 to who this is applying to?

1 MR. BLOOMBERG: Well, the definition in the
2 definition section says designated representative means
3 for the purposes of subpart B of this part the same
4 natural person as the person who was the designated
5 representative for the CAIR trading and acid rain
6 programs, so even if CAIR was gone, you'd still have acid
7 rain.

8 MS. BASSI: Is acid -- Is the acid rain
9 program -- Are the companies that are subject to the acid
10 rain program that are not in the MPS or CPS somehow
11 impacted by this rule, the designated representative of
12 an acid rain program? I am sorry. I put that very, very
13 badly. For a company that's not in the MPS or the CPS,
14 does the -- does its acid rain designated representative
15 have a role to play under this rule?

16 MR. BLOOMBERG: If they're not in the MPS or
17 the CPS, do they have a role. Apparently the role is
18 that they have to comply with the applicable
19 record-keeping and reporting requirements per 290(a).

20 MR. MATOESIAN: Could we take a five-minute
21 break just for a second?

22 HEARING OFFICER FOX: Sure. Yes. Why don't
23 we go ahead and go off the record for five minutes.

24 (Brief recess taken.)

1 HEARING OFFICER FOX: Why don't we go back
2 on the record. Thanks. Mr. Bloomberg, I think we were
3 in your court, so to speak.

4 MR. BLOOMBERG: It comes down to this was in
5 the original rule, and we did not really go back and
6 study up on it, to be honest. You know, originally,
7 CAMR, CAIR, all of that was linked together. Not so much
8 anymore, so we can go back and take a look and see if
9 it's still appropriate to keep that reference to the
10 designated representative.

11 MS. BASSI: Okay. Including the definition?

12 MR. BLOOMBERG: We'll evaluate all of it.

13 MS. BASSI: Okay. Thank you.

14 MR. BONEBRAKE: My next question is with
15 respect to 225.290(a)(3). It's correct generally, is it
16 not, that 290 would not be applicable to an EGU that is
17 opted in to 239? Is that correct?

18 MR. BLOOMBERG: No, not necessarily. I
19 mean, a -- somebody in 239 could still determine their
20 monthly emissions by using the stack test and other
21 factors to determine what their monthly emissions are,
22 and in fact every source is going to have to do that
23 anyway for their annual emissions report.

24 MR. BONEBRAKE: But didn't 225.210 that we

1 looked at earlier this morning indicate that sources can
2 either opt in to 239 or, in lieu thereof, 240 through
3 290?

4 MR. BLOOMBERG: Oh, yeah. I thought you
5 were asking if this language in particular excluded them.
6 If there's something else earlier that's one or the
7 other, then certainly it would be one or the other.

8 MR. BONEBRAKE: So if you're subject to 239,
9 you're not subject to 290, including (a)(3) of 290.

10 MR. BLOOMBERG: I believe that's correct.

11 MR. BONEBRAKE: For sources -- For units
12 that are not -- that have not opted in to 239, so
13 therefore they're generally subject to 240 through 290,
14 does (a)(3)(A) apply to sources that are not subject to
15 225.230? And the reason I ask that is because (3)(B) has
16 a specific carve-out specifically made applicable to EGUs
17 subject to certain subparts of 230(b) and (d), and the
18 question that I had was whether (3)(A) was also intended
19 to be limited to certain units that are under certain
20 requirements of 230.

21 MR. BLOOMBERG: There's no specific
22 carve-out for (3)(A), no. It's all -- Everybody's
23 subject.

24 MR. BONEBRAKE: You mentioned earlier, I

1 think, both Mr. Ross and Mr. Bloomberg, that part of the
2 revisions that have been proposed address bias adjustment
3 factors and data substitution; is that correct?

4 MR. BLOOMBERG: Yes.

5 MR. BONEBRAKE: And can one or the other of
6 you generally describe to me what was intended to be
7 stricken from the 40 CFR Part 75 requirements with
8 respect to first the bias adjustment factor, and then
9 second, data substitution?

10 MR. BLOOMBERG: What was intended to be
11 stricken for bias adjustment factor was a requirement
12 that sources adjust their reported emissions based on
13 an -- based on a bias test, and what's -- for missing
14 data substitution, pretty much the entire concept of
15 missing data substitution was intended to be stricken
16 because we are not -- we're not trying to get at the same
17 point that CAMR was trying to get at, so it's been
18 replaced instead with a -- that 75 percent uptime
19 requirement.

20 MR. BONEBRAKE: Let's take each of those in
21 turn, and I have some specific questions for you. With
22 respect to the data substitution issue, is it true that
23 USEPA's Part 75 has a missing data algorithm, which
24 includes inputs such as add-on controls and maximum

1 expected concentrations?

2 MR. MATTISON: Yes.

3 MR. BONEBRAKE: I'm sorry?

4 MR. MATTISON: Yes.

5 MR. BONEBRAKE: So would it be correct that
6 IEPA intended to delete references to missing data
7 algorithm, including the inputs that would feed into
8 those algorithms in 40 CFR Part 75?

9 MR. ROSS: I would say that if the sole
10 requirement that we needed those inputs was for the
11 missing data substitution algorithms, then that's
12 correct, since we no longer are utilizing the missing
13 data substitution provision.

14 MR. BONEBRAKE: Is there a way to identify
15 from the 40 -- version of 40 CFR Part 75 that's attached
16 as an appendix to the proposed revisions where IEPA was
17 looking at those inputs as merely a part of the algorithm
18 and when it was looking for something more than that?
19 And the reason I ask that is as a practical matter, we're
20 seeing references to some of the inputs to the missing
21 data algorithm from 40 CFR Part 75 and we're uncertain as
22 to whether there was an intention to strike the rules,
23 which seemed logical to us, or not.

24 MR. BLOOMBERG: I'd say off the top of our

1 heads, we can't -- it's hard to judge that. If you have
2 specific -- As you're going through it, if you have
3 specific instances, then, you know, certainly bring them
4 to our attention, whether here or, probably even better,
5 after this hearing so that we don't need to go through
6 them one by one and kind of shrug our shoulders off the
7 top of our heads. Then we can -- we could look at that
8 and make sure that in fact we do -- either do still need
9 it or it was accidentally left in.

10 MR. BONEBRAKE: And let me ask you -- we'll
11 take one example, and then it sounds like we can talk a
12 little bit about that approach. 290(c)(2) has some
13 requirements pertaining to add-on emission controls, and
14 this -- and it also had references to missing data, so
15 this would be an example of the scenario I described
16 where we were uncertain whether IEPA would have intended
17 to delete this kind of provision as part of its efforts
18 to excise missing data requirements out of the rule or
19 not.

20 MR. BLOOMBERG: No, in that case we do want
21 to ensure that even though the data was missing that the
22 add-on control was still operating properly.

23 MR. BONEBRAKE: Let me ask some related
24 questions regarding the bias adjustment factor that you

1 were mentioning, Mr. Bloomberg. Bias factors are
2 applicable to a variety of monitors that would be
3 relevant to determining mercury emissions from an EGU,
4 including the mercury monitors themselves, flow monitors
5 and moisture monitors; is that correct?

6 MR. MATTISON: That's correct.

7 MR. BONEBRAKE: Was it the intent of IEPA to
8 delete bias adjustments and bias test requirements
9 associated with all of the monitors that would be
10 relevant in the determination of mercury emissions from
11 an EGU?

12 MR. BLOOMBERG: You kind of asked a
13 multiple-part question there, so I want to answer one
14 part of it first and then we'll go back.

15 MR. BONEBRAKE: Sure.

16 MR. BLOOMBERG: You asked if we intended to
17 eliminate the bias test. We did not intend to eliminate
18 the bias test, and I don't think we have, because the
19 monitors still do need to be tested for bias and they
20 need to be corrected if they are giving biased
21 information, so there was no intent to delete the test.
22 What was intended was to delete the adjustment that would
23 then be made to the mercury emissions based on that test.
24 Now, the second part of your question I think was asking

1 whether -- well, why don't I leave it to you to ask the
2 second part of your question.

3 MR. BONEBRAKE: The second part of the
4 question was there are a number of monitors that are
5 relevant in determining mercury emissions from an EGU,
6 and those would include not just the mercury monitor
7 itself but also flow monitors, moisture monitors. Do we
8 have an agreement on that?

9 MR. MATTISON: Yes.

10 MR. BONEBRAKE: So the question becomes when
11 we talk about bias adjustment factor deletions, are we
12 talking about bias adjustment factor deletions with
13 respect to all of those monitors?

14 MR. MATTISON: Well, the intent of using
15 these diluent monitors, CO2 and O2 flow, which is being
16 used by the acid rain program which has a requirement for
17 bias in there, the intent of our rule was not to require
18 companies to develop a whole other scheme of data
19 acquisition systems and calculations to have numbers that
20 are biased and non-biased, so the intent of the original
21 rule was to have the bias numbers available and being
22 used so you don't have to report two different data
23 points for the same parameter; CO2, per se. However,
24 since mercury in this context is a stand-alone

1 instrumentation for this rule, we are not requiring a
2 bias adjustment factor of the mercury monitor itself, but
3 it would appear to again make it easy for the facilities
4 not to have to report a CO2 value on the same monitor,
5 one biased and one unbiased, to be using that biased
6 number unless we hear otherwise.

7 MR. BONEBRAKE: So I'm not -- was it -- I'm
8 not sure what that means. Is that -- Can you explain the
9 ramifications of that answer to what you were intending
10 to delete from Appendix B?

11 MR. MATTISON: Well, the ramification
12 basically is is that in trying to minimize the cost and
13 confusions for our facilities to report two values to two
14 different agencies with the same monitor, you'd have a
15 CO2 value that's bias corrected for the acid rain program
16 and then you'd have to turn around, have a different set
17 of values being submitted for the mercury monitoring
18 program, and the intent was -- is not to have a facility
19 be confused and report two different data points, so the
20 intent of your original question was removing the bias
21 adjustment factor, was it solely for the mercury monitor
22 or all of the monitors, and it's my understanding it was
23 just meant for the mercury monitor itself.

24 MR. BONEBRAKE: From the Agency's

1 perspective -- and we have to have some conversations
2 with compliance about this, but from the Agency's
3 perspective, if companies were interested in deletion of
4 the bias adjustment with respect to other monitors as
5 well, would this rule -- would that be a problem for the
6 Agency? Would that be something the Agency could
7 endorse?

8 MR. ROSS: It may or may not be a problem.
9 We'd have to evaluate that. I think the first step that
10 pops into my mind is we look at the mercury NSPS and
11 what's being done with that, does that have a bias
12 adjustment factor for the other monitors. It certainly
13 does not have a bias adjustment factor for the mercury
14 monitor, but what it requires of the other monitors, I'm
15 not certain. Then we'd have to look at the context. As
16 Kevin said, you have apparently bias adjustments going on
17 for the monitors reporting SO2 and NOx data, so it would
18 seem that would be in the company's interest not to
19 report two different values to two different agencies, if
20 for nothing else consistency. We would want to keep the
21 bias adjustment factor in this rule if it's required in
22 the acid rain program or the NOx SIP call. So I guess
23 I'm thinking out loud here, but we would consider it, but
24 that would be some of the considerations we would give

1 it.

2 MR. BONEBRAKE: Well, then just a related
3 question. We were talking earlier in the day about a
4 result summary in lieu of electronic data submission?

5 MR. ROSS: Right.

6 MR. BONEBRAKE: Would the result summary
7 that you have in mind include any bias adjustment
8 factors?

9 MR. ROSS: No. I think we're just looking
10 there for reported data, final data, not necessarily how
11 that data was arrived at, so -- and a summary sheet is
12 just that, a summary sheet, and if we decided that we
13 needed additional information, we would request it, but I
14 believe Kevin's accurate, and I was only aware that we
15 were removing the bias adjustment factor for the mercury
16 monitors themselves and not the associated monitors.

17 MR. BONEBRAKE: Well, even as to the latter,
18 I think you've identified some circumstances where there
19 are some references to the mercury monitor bias
20 adjustments in Appendix B, and I think we've got some
21 other circumstances we've identified where they at least
22 implicate this question of missing data and whether there
23 should have been some additional deletions, so I think
24 what I would suggest, if it's agreeable to the Agency, is

1 that we tender to the Agency a list of references in
2 Appendix B that includes matters that related to either
3 bias or missing data that we think may be appropriate to
4 strike, if the Agency then would entertain that list and
5 make appropriate deletions. Does that sound like a
6 process that would be agreeable to the Agency?

7 MR. BLOOMBERG: Yes.

8 MR. BONEBRAKE: My next question actually
9 pertains to Appendix B, Section 1.3. I believe it's on
10 page 3 of Appendix B. The lead-in sentence for
11 Section 1.3 refers to a sorbent trap monitoring system as
12 defined in 225.130. I looked at the definitions and did
13 not find the definition of sorbent trap monitoring
14 system, so unless I missed it and you see something that
15 was there that I did not, is it the Agency's intent to
16 define that term?

17 MR. BLOOMBERG: It certainly would have been
18 our intent, but, no, I don't see it there either.

19 MR. BONEBRAKE: Does IEPA then intend to
20 provide a definition of that term?

21 MR. BLOOMBERG: Yes.

22 MR. BONEBRAKE: By the way, Mr. Mattison,
23 when -- in response to a question that was asked earlier,
24 I believe you indicated that you included sorbent trap

1 within your understanding of the term CEMS?

2 MR. MATTISON: Yes.

3 MR. BONEBRAKE: Am I understanding correct
4 on that?

5 MR. MATTISON: That's correct.

6 MR. BONEBRAKE: So when Appendix B refers to
7 continuous emission monitoring systems for mercury, it's
8 your thinking that that would include sorbent traps as
9 well as the monitors themselves, continuous monitors
10 themselves?

11 MR. MATTISON: Yeah. Yes.

12 MR. BLOOMBERG: I think we need a more
13 specific -- when you're saying within Appendix B, I mean,
14 there could be many things within Appendix B, some of
15 which apply to other CEMS and some of which apply
16 specifically to sorbent trap. I think what Kevin is
17 suggesting is that a sorbent trap monitoring system is a
18 type of CEMS, though, I mean, many people separate the
19 two.

20 MR. BONEBRAKE: So when the -- when Appendix
21 B is using the term CEM, capital C, capital E, capital M,
22 does that include sorbent trap or is that limited to the
23 actual monitoring device that collects continuous data?

24 MR. MATTISON: That is my understanding,

1 yes.

2 MR. BONEBRAKE: Just to confirm, your
3 understanding is -- there was a long delay between my
4 question and your answer, so I want to make sure we're on
5 the same page.

6 MR. MATTISON: A CEMS would include not only
7 the actual mercury monitor but also a sorbent trap
8 monitoring system.

9 MR. BONEBRAKE: And then if you could turn
10 with me to Section 1.10.

11 MR. MATOESIAN: Is this 1.10?

12 MR. BONEBRAKE: And in 1.10, first of all,
13 if you could turn with me to (d)(1)(E).

14 MR. BLOOMBERG: (d)(1) what?

15 MR. BONEBRAKE: (d)(1)(E), which is on
16 page 31. This is one of the references that was raising
17 a question in my mind about what would be included in the
18 term CEMS. The lead-in language refers to monitored with
19 CEMS. Are the subparts of (E) then applicable to sorbent
20 traps or intended to be applicable to sorbent traps or
21 not? Some of those didn't seem to make sense, at least
22 as applied to sorbent traps, and thus the reason for my
23 question.

24 MR. MATTISON: In the specific question of

1 1.10(d), capital (E), CEMS does refer to multiple units,
2 as we discussed, not only the actual analyzer itself but
3 also sorbent traps, and in this particular reference, you
4 know, the span value and full-scale measurement range
5 refers basically to the instrumentation, not a sorbent
6 trap per se, but, I mean, we use the term continuous
7 emission monitoring system, and there's multiple ways to
8 do that, with a continuous analyzer or with a
9 time-weighted average on a sorbent trap collecting over a
10 period of time, and in this situation, (E) and some
11 specifics in (E) reference the instrumentation and not
12 the actual sorbent trap.

13 MR. BONEBRAKE: So there are elements of (E)
14 that would not apply to a sorbent trap?

15 MR. MATTISON: Correct.

16 MR. BONEBRAKE: And so is it -- how is it,
17 then, that IEPA expects EGUs to respond to a provision
18 like (E) that if they're using a sorbent trap and
19 therefore imposing requirements that at least in part are
20 not applicable?

21 MR. MATTISON: As you just stated, it -- you
22 would reference it as being not applicable.

23 MR. BONEBRAKE: Back to subsection (d) in
24 Section 1.10, which is page 28, and the second sentence

1 refers to a monitoring plan containing information in
2 paragraph (d)(1) of this section in electronic format.
3 Has that electronic format been specified by either USEPA
4 or IEPA?

5 MR. MATTISON: I believe it refers to
6 Section 1.18(e), which we -- you addressed earlier today
7 that that may not be applicable with USEPA's comments
8 back to us as of last week.

9 MR. BONEBRAKE: So I guess this reaches us
10 back to the question we talked a little bit earlier this
11 morning, although we focused in on the question of
12 submission of electronic information to IEPA. What is
13 IEPA's current thinking on the collection, including in
14 this monitoring plan provision, of electronic information
15 for compliance with Appendix B?

16 MR. BLOOMBERG: I think as Mr. Ross said
17 earlier, we're not really looking for electronic data at
18 this point with the new information from USEPA, so we
19 would likely change this as part of our already-discussed
20 changes to only deal with a hard copy submission.

21 MR. BONEBRAKE: So would it be, then, the
22 expectation -- a proper expectation on my part that
23 Section 1.10(d) would be deleted from Appendix B?

24 MR. BLOOMBERG: No, because it also talks

1 about hard copy format in (d).

2 MR. BONEBRAKE: So what's referred to as
3 hard copy would remain but electronic would be deleted?

4 MR. BLOOMBERG: Yeah, that's what we have to
5 decide. We'll need to take a closer look at this and
6 decide.

7 MS. BASSI: Will the Agency be looking at
8 these requirements generally to edit them, to edit out
9 the electronic requirements, or is this something that we
10 need to go back to?

11 MR. BLOOMBERG: I believe we'll be looking
12 at it generally to get -- to look at editing out the
13 electronic data submission and other submission.

14 MR. BONEBRAKE: On Section 1.11(b)(3) of
15 Appendix B, and specifically subparts (3) and (4)
16 thereof, I understand that 40 CFR Part 75 required only
17 megawatt load data or steam load data, and this appears
18 to require both. Was it IEPA's intent to require both?

19 MR. BLOOMBERG: Off the top of my head, I
20 just can't answer that question.

21 MR. BONEBRAKE: Will that be another issue
22 that IEPA will visit in connection with its review of
23 Appendix B?

24 MR. BLOOMBERG: We will take a look at it.

1 MR. BONEBRAKE: Section 1.11(f), Table 4a,
2 which is at the end of that section on page 40, there's a
3 reference on the right following number 32 code on the
4 left with Appendix K, Section 8, which I don't believe
5 are -- were included in the proposed rule revision. Does
6 the IEPA personnel know what that is a reference to?

7 MR. BLOOMBERG: Probably a case of the
8 reference not being changed to the new reference in our
9 own rule.

10 MR. BONEBRAKE: I'm sorry. What is then the
11 proper reference?

12 MR. DAVIS: We believe it's D, Appendix D.

13 MR. BONEBRAKE: Appendix D? Same section?

14 MR. DAVIS: Exhibit D.

15 MR. BONEBRAKE: Exhibit D, the same section?

16 MR. DAVIS: Yes. We'd have to check that,
17 but probably.

18 MR. BONEBRAKE: My next question is on
19 Exhibit A to Appendix B, Section 6.1.2, the requirements
20 for air emission testing bodies, and I believe this
21 provision was the subject -- was one of the subjects of
22 the errata that was submitted by IEPA. The errata sheet
23 is Exhibit 5, and in paragraph 8 of Exhibit 5 there's a
24 reference to 6.1.2, and then the addition of the language

1 pursuant to 40 CFR Part 75, Appendix A, Section 6.1.2.
2 Is IEPA aware of whether USEPA stayed the effectiveness
3 of the federal counterpart of this requirement for air
4 emission testing bodies?

5 MR. MATTISON: Yes, we are aware of that;
6 henceforth, why we modified -- proposed modification to
7 our rule language to copy Part 75 by reference;
8 therefore, when it stayed in Part 75, it would be stayed
9 in our rule.

10 MR. BONEBRAKE: So is that the intent of the
11 reference, to cause the Illinois provision to be stayed
12 while the corresponding federal provision is stayed?

13 MR. MATTISON: Correct.

14 MR. BONEBRAKE: 5.1.9, which is on the
15 preceding page of Appendix A -- excuse me -- Exhibit A,
16 the last sentence reads, "However, on and after January
17 1, 2010, only NIST-traceable calibration standards must
18 be used for these tests." Who is responsible for
19 establishing NIST calibration standards?

20 MR. ROSS: USEPA is responsible for
21 providing the traceable standards.

22 MR. BONEBRAKE: Has USEPA at this point
23 established a NIST-traceable calibration standard
24 relevant for 5.1.9?

1 MR. ROSS: I believe we referred to that
2 earlier, that what they stated in my conversation with
3 them a week ago was that they had originally hoped to
4 have those standards available in January of 2009 and
5 they were running about a month behind, so they hope to
6 have the NIST-traceable standards available in February
7 of next year.

8 MR. BONEBRAKE: So the anticipation is that
9 the standard would be available as of February 2009?

10 MR. ROSS: That's correct.

11 MR. BONEBRAKE: What is the IEPA's plan if
12 USEPA does not establish that standard?

13 MR. ROSS: Yeah, we'd have to reevaluate the
14 requirement for sources to meet that standard or to
15 utilize the traceable standards, but as of last week,
16 USEPA had put in considerable time and effort and expense
17 to arriving at those standards, and they stated they were
18 fully on track, just a month behind.

19 MR. BONEBRAKE: And that was in the
20 discussion that you had with the gentleman you identified
21 in your testimony earlier today at USEPA?

22 MR. ROSS: That's correct.

23 MR. BONEBRAKE: My next question pertains to
24 Exhibit D to Appendix B, Section 10.3 thereof.

1 MR. BLOOMBERG: Do you have an approximate
2 page number?

3 MR. BONEBRAKE: Just a moment. Should be
4 around 95. Section 10.3 deals with spike recovery
5 studies. I understand that there may be some labs that
6 have capacity to spike and not necessarily analyze or
7 vice versa. Is IEPA aware of such labs?

8 MR. MATTISON: That has not been brought to
9 our attention at this time.

10 MR. BONEBRAKE: May EGUs under this rule use
11 separate labs, one for spiking and a separate for
12 analyses?

13 MR. BLOOMBERG: Can you restate that
14 question?

15 MR. BONEBRAKE: Yeah. I was asking the
16 question whether a source may use one lab for spike --
17 for the spike work and a separate lab for the analysis.

18 MR. BLOOMBERG: When you say the spike work,
19 do you mean the spike recovery study that's referenced in
20 the first paragraph, 10.3?

21 MR. MATTISON: Or are you referencing the
22 fact that they -- the company wants to buy a sorbent trap
23 that's already been spiked from company A and then they
24 have that sample analyzed by company C?

1 MR. BONEBRAKE: Exactly. That's the
2 scenario I had in mind.

3 MR. MATTISON: I don't believe in our rule
4 or my understanding that that has to be done by the same
5 company. There are companies that are out there that
6 just provide sorbent traps, and then there are testing
7 companies that are out there and also laboratories that
8 analyze those traps.

9 MR. BONEBRAKE: So two different labs can be
10 used for those different purposes.

11 MR. MATTISON: Correct.

12 MS. BASSI: I have a few questions on --
13 that are specifically related to the various testimonies,
14 and, Mr. Bloomberg, you're up first because you're
15 alphabetically a B.

16 MR. BONEBRAKE: I know how it feels.

17 MS. BASSI: On page 3 of your testimony, you
18 say in the top -- I think it's partial paragraph at the
19 top, page 3 of your testimony, you say, "A test showing a
20 low level of mercury control could reveal inadvertent
21 changes at a source that would not otherwise be
22 identified." Can you give us some examples of what that
23 might be?

24 MR. BLOOMBERG: One moment. You mean what

1 type of an inadvertent change? For example, if a source
2 continued -- they were buying sorbent from a company and
3 they believed they were buying the same sorbent -- the
4 same quality sorbent all along but unbeknownst to them
5 the sorbent manufacturer, through on purpose or not on
6 purpose, had lowered the quality of the sorbent such
7 that, you know, they used to be getting a large amount of
8 reduction but the sorbent quality had decreased for any
9 of a number of reasons, that would be one issue. Another
10 could be that there is a clogging somewhere in the system
11 so the sorbent isn't being sprayed properly, even though
12 the company has no way of knowing it unless they get in
13 there and look.

14 MS. BASSI: Okay. Thank you. At the end of
15 that same paragraph, you -- another example or type of
16 thing that you have here is showing that the quality of
17 the sorbent being used has decreased, so is that what you
18 were referring to as -- just a minute ago in your answer?

19 MR. BLOOMBERG: That's one of the ways the
20 quality could decrease unbeknownst to a company. It
21 could also happen that the company has made a conscious
22 decision to buy a lower quality sorbent, which, you know,
23 that would be indicated as well.

24 MS. BASSI: Does sorbent deteriorate as it's

1 being stored? That's not the type of decrease in quality
2 you're talking about?

3 MR. BLOOMBERG: Well, I'm pretty sure
4 that -- from my -- from the information that I've had
5 with the couple of EGUs that I know have run some sorbent
6 tests, there's not a whole lot of storing for long-term
7 going on. They're going through it pretty quickly from
8 my understanding, so --

9 MS. BASSI: Yes, I think they are. On the
10 next page of your testimony, under the missing data
11 procedures, you make reference to the fact that -- or the
12 judgment that these -- that Illinois EPA is proposing
13 this rule change because the rules that USEPA -- with
14 respect to missing data procedures and BAF because this
15 is not -- these are not appropriate for a command and
16 control rule. Was that also true at the time that this
17 rule was adopted initially?

18 MR. BLOOMBERG: No, because we had to meet
19 the requirements of CAMR.

20 MS. BASSI: Could you distinguish, please?

21 MR. BLOOMBERG: CAMR was a trading rule, and
22 therefore it was mandated by USEPA that we did things
23 like bias adjustment factor and missing data substitution
24 in order to come to a total mass emissions of mercury.

1 That's no longer necessary.

2 MS. BASSI: Okay. In the last paragraph on
3 that page you refer to a level of monitor availability
4 comparable to 40 CFR 60.49Da, etc. What do you mean
5 by -- Was this particular section vacated with the CAIR?

6 MR. BLOOMBERG: Not to my knowledge.

7 MS. BASSI: Okay. What level of monitor
8 availability is required by Part 60; do you know? Is it
9 75 percent?

10 MR. BLOOMBERG: Yeah. That's my
11 understanding, yes.

12 MS. BASSI: Unlike Mr. Bonebrake, I did not
13 even look at your first testimony. Mr. Davis, on page 2
14 of your testimony, in the last -- in the next to the last
15 sentence above the bold -- the first bold statement
16 there, economic impact, is the sentence that says,
17 "Economic impact of these revisions should be minimal in
18 most cases." Do you see that?

19 MR. DAVIS: Yes.

20 MS. BASSI: Might the amendments not be
21 minimal in some cases?

22 MR. DAVIS: Which amendments are we talking
23 about?

24 MS. BASSI: We're talking about the ones

1 that are proposed. My concern is you're saying they
2 should be minimal. I want to know, do you know that
3 they're minimal or are you guessing?

4 MR. DAVIS: Well, it wouldn't be a guess in
5 the respect that the amendments we proposed basically
6 kept the monitoring provisions in place from Part 75, so
7 that should be the -- it should have a minimal impact.
8 If you were to continue with your plans to do your Part
9 75 monitoring and if you were to use some of the
10 flexibility that we have put in, it could have a positive
11 economic impact for the source.

12 MS. BASSI: I asked you my other questions.
13 Mr. Mattison -- oh, I'm sorry. Did your economic impact
14 analysis, Mr. Davis, include the additional coal sampling
15 costs and analyses cost?

16 MR. DAVIS: No. That would also be included
17 in the original impact.

18 MS. BASSI: Okay. Are you maintaining,
19 then, there are no additional coal sampling requirements
20 associated with these amendments?

21 MR. DAVIS: I believe the monthly coal
22 sampling should have some economic impact.

23 MS. BASSI: Mr. Mattison --

24 MR. MATTISON: Yes.

1 MS. BASSI: -- on --

2 MR. BLOOMBERG: Hold on.

3 MS. BASSI: Oops. Sorry.

4 MR. BLOOMBERG: The monthly coal testing
5 would only have a better economic impact because it used
6 to be daily in the current rule. Once again, if you are
7 suggesting that there is a new sampling requirement for
8 MPS or CPS sources, as you hinted at earlier, we would
9 once again state for the record it was always our intent,
10 and if it was not spelled out specifically, that was an
11 oversight, just as elsewhere in that same section we
12 referred to (a)(2) instead of (a)(1)(B). No one would
13 suggest that we truly meant it to apply to (a)(2) instead
14 of (a)(1)(B). It was an oversight similarly the addition
15 of the MPS and the CPS at a later date than when the
16 original coal sampling language was put in there. The
17 backwards cross-referencing, that was an oversight as
18 well. It was always intended that that would apply.

19 MS. BASSI: Oh, I don't think I was hinting.
20 I think I have to say that that was news to me that coal
21 sampling was --

22 MR. ROSS: Given that it always applied, in
23 fact reduced cost to the companies since we've reduced
24 the frequency of the coal sampling from daily to monthly.

1 MS. BASSI: Mr. Mattison, on the first page
2 of your testimony in the third paragraph, you say you
3 review and evaluate engineering documents. What kind of
4 engineering documents are these?

5 MR. MATTISON: Anything that comes through
6 the Agency with regards to emission testing and
7 monitoring, continuous monitoring plans, stack locations
8 for monitoring systems.

9 MS. BASSI: Is this in the -- in just the
10 testing/monitoring context, testing and monitoring
11 context, as opposed to, say, the permitting context?

12 MR. MATTISON: What was the second
13 statement?

14 MS. BASSI: Is this only in the testing and
15 monitoring context as opposed to in a permitting context,
16 or do you review permit applications as well?

17 MR. MATTISON: I do not review permit
18 applications.

19 MS. BASSI: Okay. In the -- At the top of
20 the next page of your testimony, you say that you
21 determine compatibility with applicable requirements.
22 The compatibility of what?

23 MR. MATTISON: The compatibility of testing
24 methodologies and procedures with regards to the

1 applicable source that they're being subjected to.

2 MS. BASSI: Okay. Like in a test protocol
3 or something?

4 MR. MATTISON: Correct.

5 MS. BASSI: Okay. Mr. Ross, you didn't
6 number your pages.

7 MR. ROSS: I apologized for that already.

8 MS. BASSI: On the fourth page of your
9 testimony --

10 MR. ROSS: On what page? I'm sorry.

11 MS. BASSI: Fourth page.

12 MR. ROSS: Fourth page.

13 MS. BASSI: This is the one that has kind of
14 in the middle of the page an underlined stack testing
15 alternative, just so that we're all on the same page.

16 MR. ROSS: Right.

17 MR. MATOESIAN: This is amended, correct,
18 the amended testimony, page 4?

19 MS. BASSI: Yes, yes.

20 MR. MATOESIAN: All right. Thank you.

21 MS. BASSI: It says December 10 at the top
22 of the version that I have.

23 MR. MATOESIAN: Okay.

24 MS. BASSI: Oh, we already beat these to

1 death. Sorry. I'm done.

2 MR. BONEBRAKE: I have one other question
3 and then I'll yield the floor to the gentleman to my left
4 who's been waiting so patiently. We earlier touched on
5 the MPS compliance reporting, and it's in 233(f)(5), and
6 the 233(f)(5) date for compliance reporting obligation
7 under (f) is March 1 of 2010 and thereafter. The general
8 compliance reporting provision is in Section 290(d)(1),
9 and it is May 1 of each year, so we have two different
10 months that are imposing compliance certification
11 requirements. Would the IEPA be willing to move the date
12 in (f) -- 233(f)(5) to May 1 to match up the compliance
13 certification reporting dates?

14 MR. ROSS: My first inclination is no.
15 These were the dates agreed to through negotiations with
16 different companies. The first date you referred to,
17 March 1, 2010, was agreed to with our negotiations with
18 Ameren and Dynegy, and the second date, the May 1, was
19 agreed to via our negotiations with Midwest Generation,
20 so given that we're not attempting to revise these dates
21 and they were in the original agreements and we're not
22 seeking to revise those agreements in any significant
23 context, I would think we'd need justification to revise
24 them and perhaps another round of negotiations if

1 revising those dates meant something concrete, so to say,
2 but -- so I would not be inclined to revise these.

3 MR. BONEBRAKE: I think it's merely a
4 convenience issue and a way to keep track of records that
5 would be due on the same date as opposed to two different
6 dates with potential complications.

7 MR. ROSS: Well, perhaps that's the case,
8 but these dates were agreed to over a year ago.

9 MS. BASSI: Aren't annual compliance
10 certifications just generally due May 1?

11 MR. BLOOMBERG: Title V annual compliance
12 certifications for companies that have Title V permits --

13 MS. BASSI: Right.

14 MR. BLOOMBERG: -- are due then. However,
15 the March 1, it should be noted, is for, you know,
16 allowances. It focuses on the allowances. That
17 information is very specific and does not pertain to any
18 of the other topics.

19 MS. BASSI: So it's not the same type of
20 information that would be included in an annual
21 compliance certification.

22 MR. ROSS: Correct.

23 MS. BASSI: Because otherwise they would
24 have to be saying the same thing twice.

1 MR. BLOOMBERG: Right.

2 MR. BONEBRAKE: I'm done for now. I reserve
3 the opportunity to make a statement at the end of the
4 proceeding regarding any further proceedings, but I'm
5 finished now.

6 HEARING OFFICER FOX: Very good. Ms. Bassi,
7 are you concluded as well?

8 MS. BASSI: I'm with him.

9 HEARING OFFICER FOX: When we broke for
10 lunch, I took a look at the sheet on which anyone could
11 indicate that they wished to testify today in spite of
12 not having prefiled testimony. It was blank at that
13 time. Am I correct that there -- none of the other
14 gentlemen who are here wish to provide testimony? I'm
15 not seeing any indication that they did. Do any of the
16 other persons here wish to ask any questions of the
17 Agency on the basis of their testimony?

18 MR. MURRAY: Yes, sir.

19 HEARING OFFICER FOX: Sir, if you would
20 identify yourself for the court reporter, please,
21 including any organization or entity you might represent.

22 MR. MURRAY: Yes. My name is William
23 Murray, and I'm here on behalf of the Office of Public
24 Utilities for the City of Springfield, and I have a few

1 questions that are kind of continuations of some of the
2 discussions this morning. Mr. Ross, you had testified
3 this morning about field tests that had been conducted by
4 various sources in Illinois?

5 MR. ROSS: That's correct.

6 MR. MURRAY: And I believe you mentioned
7 City Water, Light & Power as one of those sources?

8 MR. ROSS: I don't think I mentioned any
9 specific sources, but --

10 MR. MURRAY: Could you tell me what type --

11 MR. ROSS: I said I was aware that --

12 MR. MURRAY: Could you tell me what type of
13 field tests you were referring to?

14 MR. ROSS: Oh, except SIPCO. They've done
15 field tests on mercury injection systems and the level of
16 controls that they achieved during those field tests.

17 MR. MURRAY: So you were not including the
18 City as one of those tests?

19 MR. ROSS: Well, we've seen some -- or we've
20 been informed of some results from the City.

21 MR. MURRAY: Do you recall what those tests
22 entailed and what those results were?

23 MR. ROSS: Those tests, I believe, my
24 recollection, best of my recollection, did show that the

1 City, City Water, Light & Power, their units under
2 certain scenarios were having difficulty meeting the 90
3 percent reduction or -- and the 0.0080 pounds per
4 gigawatt hour requirements.

5 MR. MURRAY: Okay. The discussion this
6 morning that I would characterize as talked about an
7 approximate 90 percent --

8 MR. ROSS: Right.

9 MR. MURRAY: -- that safe harbor, if you
10 will, safe harbor would not apply to the City of
11 Springfield?

12 MR. ROSS: No. Those are only for sources
13 that have elected -- opted in to the MPS or CPS.

14 MR. MURRAY: Okay. Now, for those sources
15 that do opt in to the MPS or CPS, do they also have to
16 commit to further reductions of SO2 and NOx emissions?

17 MR. ROSS: They do. They have, I should
18 say.

19 MR. MURRAY: They have. Now, could you
20 recall what the current control technology of the City is
21 for those units that were tested?

22 MR. ROSS: I believe they were using
23 Illinois bituminous coal. They have an SCR, an ESP and a
24 scrubber, commonly referred to as an FGD.

1 MR. MURRAY: Now a hypothetical. If there's
2 a source that is under the MPS or the CPS and is using an
3 injection method that does not achieve a 90 percent
4 removal efficiency, if that source also in its attempt to
5 comply with other elements of the MPS or CPS would
6 install an FGD and an SCR as part of their technology to
7 control those additional pollutants and if that source
8 still could not achieve the 90 percent, would it still be
9 able to avail itself of the approximately 90 percent safe
10 harbor?

11 MR. ROSS: Yes, until 2015.

12 MR. MURRAY: So that would distinguish it
13 from sources that were using bituminous coal.

14 MR. ROSS: Yes, but they'd still be required
15 to inject at the default sorbent injection rate required
16 under the MPS and CPS, so, yeah, there are two separate
17 requirements for units that opt in to multi-pollutant
18 standards and those that don't.

19 MR. MURRAY: Now, this morning, Ms. Bassi
20 asked a question from the technical support document that
21 I believe at the time was answered by Mr. Mattison, and
22 I'm not sure if he's the person to continue that
23 answering on this subject, and this had to do with two
24 locations in the technical support document, there was a

1 statement that the great majority of sources formerly
2 affected by CAMR have already purchased monitoring
3 equipment, and I believe the question this morning was
4 trying to pinpoint what type of sources these were, and I
5 believe the response was that these were Illinois
6 sources.

7 MR. MATTISON: That's what we deal with, is
8 Illinois sources, that's correct.

9 MR. MURRAY: We also had testimony this
10 morning regarding the court decision that overturned the
11 CAMR rule. It's not clear to me from this morning's
12 testimony as to when the District Court of Appeals for --
13 or the Court of Appeals for the District of Columbia
14 actually issued the mandate in this decision. I -- We've
15 had references to the fact that there's still a
16 possibility that CAMR might be resurrected, so does --
17 can anybody provide the date where the mandate was
18 actually issued?

19 MR. MATOESIAN: To vacate CAMR?

20 MR. MURRAY: Right, and not just the MACT
21 portion. The rest of the rule that actually relates to
22 Part 75.

23 MR. MATOESIAN: Well, the case was -- it's
24 on appeal currently. I believe it was March -- I'd have

1 to check that date, but --

2 MR. BLOOMBERG: Off the top of our head, we
3 don't know.

4 MR. ROSS: We don't know the -- I mean, it
5 was originally vacated in February 2008.

6 MR. MURRAY: The initial court decision, but
7 at that time, I believe the clerk was ordered not to
8 issue a mandate.

9 MR. MATOESIAN: It's -- Well, I mean, it's
10 currently on appeal in the Supreme Court.

11 MR. MURRAY: Right.

12 HEARING OFFICER FOX: Could we ask that the
13 subsequent procedural history be addressed in the answers
14 that you are prepared to file?

15 MR. ROSS: Yeah, we'll get a date. I think
16 what Charles is referring to and we discussed earlier,
17 that that currently sits in front of the U.S. Supreme
18 Court on appeal.

19 MS. BASSI: And if I could interject here,
20 when you're checking that record, could you also check to
21 be sure that all of the mandate issued -- the mandate I
22 believe is bifurcated, and it could be that what's on
23 appeal to the Supreme Court is just a portion of the rule
24 instead of the entire rule. Is that what you're getting

1 at?

2 MR. MURRAY: No, actually, I was trying to
3 get at the fact that the mandate affecting the monitoring
4 provisions I don't think was issued until after the
5 petition for rehearing, which I think would have been
6 later in the spring.

7 HEARING OFFICER FOX: And I'm certain,
8 Mr. Murray, I heard the Agency commit to addressing that
9 subsequent procedural history in post-hearing
10 submissions.

11 MR. MURRAY: The reason I was asking that is
12 that the statement regarding the utilities purchasing
13 monitoring systems is deemed to be indicative that
14 utilities believed monitoring -- or monitors are
15 reasonable in cost, and that was on page 10 of the
16 technical support document.

17 MR. BLOOMBERG: Is that a question or a --

18 MR. MURRAY: No. The question I actually
19 have, wouldn't it be fair to say that the reason that
20 utilities were purchasing monitoring systems is because
21 there was uncertainty whether or not there was going to
22 be a rule for them to be in place on January 1 of 2009?
23 Is that a fair observation?

24 MR. BLOOMBERG: I'd say so.

1 MR. ROSS: Yes, that's fair.

2 MR. MURRAY: That'd be all I have.

3 HEARING OFFICER FOX: Mr. Murray, thank you.
4 Mr. Mattison, I had -- while the Agency has addressed a
5 number of the questions that I had brought, there were
6 three that I think are best directed to Mr. Mattison on
7 the basis of his prefiled testimony, and I assure you
8 that they're pretty quick. Mr. Mattison, on page 3 of
9 your prefiled testimony you had noted that affected
10 sources may determine which method of emissions
11 determination best addressed their own situation. I
12 believe that is --

13 MR. MATTISON: The third paragraph?

14 HEARING OFFICER FOX: Yes, that's exactly
15 right. Have you on the basis of any outreach or
16 discussion gained any sense or developed any estimate of
17 the number of sources that may actually take advantage of
18 the proposed alternative testing to Part 239?

19 MR. MATTISON: No, I have not heard any.

20 HEARING OFFICER FOX: And at the bottom of
21 page 3 of your testimony, there's the final sentence that
22 begins, "Emission tests are to be conducted." That
23 wasn't as clear as I had hoped it might be. Is this --
24 Is there a missing word or is there a rephrasing you

1 might offer that would make that a bit clearer?

2 MR. MATTISON: The intent of that statement
3 was to basically indicate that during testing they should
4 be operating their boiler and control systems in a manner
5 at which they would be operating it the rest of the
6 quarter, so -- and again, not to operate it one way for
7 testing and then operate it the rest of the quarter a
8 different way.

9 HEARING OFFICER FOX: Okay. Very good. And
10 my final question related to page 4. You had noted that
11 the Ontario Hydro Method is considered to be accurate but
12 complex, and I believe that's the fourth line up from the
13 bottom of the page.

14 MR. MATTISON: Yes.

15 HEARING OFFICER FOX: Can you offer a
16 comment on how the other methods proposed by the Agency
17 compare with the Ontario Hydro Method in terms of their
18 accuracy?

19 MR. MATTISON: With regards to the -- their
20 accuracy, the USEPA has determined them all to be
21 accurate in determining mercury emissions. 30A and 30B
22 were most recently developed while the Part 75 CAMR rule
23 was being developed, and prior to that, the Ontario Hydro
24 Method and Method 29 were the only two methods that were

1 available to determine mercury emissions, and those two
2 methods are a wet chemistry methodology, so it becomes a
3 very timed and very skillful technique that the
4 technicians have to do on site in making sure that they
5 analyze those and collect that data properly, where 30A
6 and 30B are a lot simpler to use. The difference is 30A
7 is an instrumental method where 30B is a sorbent trap
8 methodology.

9 HEARING OFFICER FOX: All right. And that
10 concludes my questions, Mr. Mattison. Thank you. Did
11 either Mr. Bonebrake or Ms. Bassi have any additional
12 questions?

13 MR. BONEBRAKE: No.

14 HEARING OFFICER FOX: And, Mr. Murray, did
15 you have any additional questions at this point?

16 MR. MURRAY: No, sir.

17 HEARING OFFICER FOX: Excellent. We've seen
18 that there was no other person wishing to offer testimony
19 and no one else present who wished to ask any questions.
20 Mr. Bonebrake, you had mentioned that you had wanted to
21 make, I believe, a brief statement, and I think we've
22 come to an appropriate time for that.

23 MR. BONEBRAKE: Questions and answers today
24 have raised a substantial number of issues, and a number

1 of those issues IEPA indicated on the record it would
2 either address likely through an errata on the proposed
3 rule or would at least consider for a provision to the
4 proposed rule. We have currently a hearing that we
5 scheduled for January 13, and it's unclear to me the
6 timing for the errata that IEPA indicated it would
7 prepare to address the outstanding issues that were
8 identified in the course of today's hearing, some of
9 which seemed quite substantial, including the methodology
10 that would be used to submit information to IEPA for
11 compliance purposes, so we have to reserve for Midwest
12 Generation -- Dynegy Midwest Generation the opportunity
13 to ask questions of IEPA concerning the errata or other
14 document that IEPA might tender to further revise the
15 rule, and also we have to reserve the opportunity to
16 request a third hearing should that be necessary.

17 HEARING OFFICER FOX: Anything further on
18 behalf of your clients?

19 MR. BONEBRAKE: That's it. Kathleen?

20 HEARING OFFICER FOX: Very good. Why don't
21 we take a moment to go off the record and address some of
22 the procedural issues, including some that you had
23 raised, Mr. Bonebrake. If we could close the record for
24 a moment.

1 (Discussion held off the record.)

2 HEARING OFFICER FOX: In going off the
3 record and discussing procedural details with the
4 participants and the witnesses who are present today, we
5 had extensive discussion of the scheduling of the second
6 hearing in this matter and the deadlines that would apply
7 to prefiled testimony and other filings for it, and it
8 was agreed by all those present that we would conduct a
9 second hearing in Chicago on Tuesday, the 10th of
10 February, at 9 a.m.; that the prefiled testimony by any
11 participant who wished to offer it would be due on
12 Monday, the 2nd of February; that the errata sheet and
13 the responses to any questions or requests for
14 information that were raised at the hearing would be
15 filed by the Agency by Wednesday, the 14th of January;
16 and that there would be scheduled a status call, a
17 pre-hearing conference call with the hearing officer at
18 10 a.m. on Monday, the 12th of January; and I'll be
19 issuing a hearing officer order that reflects all of
20 these so that we can have something in writing to look
21 at.

22 I want to note in addition that anyone may file
23 written public comments in this rulemaking with the Clerk
24 of the Board. Those may be made electronically through

1 the Board's Clerk's Office Online, or COOL, and that any
2 questions about filing comments generally or
3 electronically specifically should be directed to the
4 Board's Clerk's Office. Those filings with the Board
5 must also be served on the hearing officer and those
6 persons on the serving -- service list, and Ms. Bassi had
7 raised with me before we began the hearing a question
8 about the service list in this matter. In the initial
9 notice of hearing and hearing officer order, it was
10 indicated that the board order accepting the proposal for
11 hearing and the notice of hearings would be sent to any
12 entity who appeared on either the service list or the
13 notice list of board docket R06-25, which is of course
14 the docket in which the underlying mercury rule was
15 adopted by the Board in December of 2007.

16 Because we expect the orders and opinions in this
17 case to be lengthy, we specifically directed any party
18 who wished to remain on the notice or service list to
19 respond in writing either by fax or otherwise to the
20 Board to indicate that they did wish to remain on either
21 of those lists. Less than the full number of those
22 entities did issue such a response, but I want to assure
23 those of you here that if you have filed an appearance,
24 you will appear on the service list and will not be

1 removed. If you wish to be added to it, you may
2 certainly indicate that to the Board's clerk or to me,
3 but since a large number of people did not affirmatively
4 state that they wished to remain on either the service or
5 notice list, we will -- I will have the clerk go through
6 and remove those names that did not provide that
7 affirmative indication, so in providing service of
8 documents, there should be a much smaller list for you to
9 provide service upon now that we have determined the
10 parties who specifically want to continue to receive the
11 Board's opinions and orders.

12 As indicated, the copies of the transcript should
13 be available within about eight business days, by
14 approximately December 26, a Friday, and as usual, very
15 soon after the Board office receives that, it will be
16 placed online where it can of course be viewed, copied
17 and printed out on a 24/7 basis free of charge.

18 We've reviewed the schedule for the second
19 hearing. If anyone has questions, please let me know.
20 Anything before we adjourn? My contact information is on
21 the Board's Web site, but since we appear to be ready to
22 adjourn, I'll briefly say thank you on behalf of of
23 course the board members and the board staff for your
24 patience, time and effort, and we will look forward to

1 seeing you on Tuesday, the 10th of February, in the board
2 offices.

3 (Hearing adjourned.)

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF BOND)

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4 I, KAREN WAUGH, a Notary Public and Certified
5 Shorthand Reporter in and for the County of Bond, State
6 of Illinois, DO HEREBY CERTIFY that I was present at
7 Illinois Pollution Control Board, Springfield, Illinois,
8 on December 17, 2008, and did record the aforesaid
9 Hearing; that same was taken down in shorthand by me and
10 afterwards transcribed, and that the above and foregoing
11 is a true and correct transcript of said Hearing.

12 IN WITNESS WHEREOF I have hereunto set my hand
13 and affixed my Notarial Seal this 26th day of December,
14 2008.

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Notary Public--CSR

#084-003688

