

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

AMENDMENTS TO 35 ILL. ADM.)
 CODE 225: CONTROL OF)
 EMISSIONS FROM LARGE) R09-10
 COMBUSTION SOURCES) (Rulemaking-Air)
 (MERCURY MONITORING))

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STATE OF ILLINOIS
Pollution Control Board

REPORT OF THE PROCEEDINGS held in
 the above entitled cause before Hearing Officer
 Timothy Fox, called by the Illinois Pollution
 Control Board, taken by Steven Brickey, CSR, for
 the State of Illinois, 100 West Randolph, Chicago,
 Illinois, on the 10th day of February, 2009,
 commencing at the hour of 9:00 a.m.

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3 MS. ANDREA MOORE, Board Member
MR. THOMAS JOHNSON, Board Member
4 MR. ANAND RAO, Environmental Scientist
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1 MR. FOX: Good morning, every one.
2 My name is Tim Fox. I want to welcome you to this
3 Illinois Pollution Control Board hearing. I am
4 the hearing officer for this proceeding, which is
5 entitled Amendment to 35 Illinois Administrative
6 Code 225 Control of Emissions From Large
7 Combustion Sources Mercury Monitoring. The docket
8 number of the Board as assigned to this
9 rule-making is R09-10.

10 The Illinois Environmental
11 Protection Agency filed the original rulemaking
12 proposal on October 3rd of 2008 and the Board
13 accepted it for hearing in an order dated November
14 5th, 2008. Today we, of course, are holding the
15 second hearing in this rulemaking. The first took
16 place on December 17th, 2008, in Springfield. I
17 want to note that also present from the Board here
18 today at my immediate left Board Member Andrea S.
19 Moore, who is the lead Board Member assigned to
20 this rulemaking and to her left is one of our new
21 Board Members, Gary Blankenship.

22 At my far right at the head
23 table is Board Member Thomas V. Johnson and to my
24 immediate right is Anand Rao of the Boards'

1 technical staff. This proceeding is, of course,
2 governed by the Boards' procedural rules and all
3 information that is relevant and is not privileged
4 or repetitious will be admitted into the record.

5 Please note that any of the
6 questions today that are posed either by the Board
7 or its staff are intended solely to help develop a
8 clear and complete record and do not reflect any
9 prejudice or conclusions regarding substance of
10 the proposal or the testimony here today.

11 I want to do a brief recap of
12 what has occurred since the first hearing in
13 December. Specifically, the Board has received
14 the following filings. On January 14th of 2009,
15 the Board received the Agency's post hearing
16 comments which addressed information that had been
17 requested and questions that had been raised at
18 the first hearing and on that same date of January
19 14th, the Agency also filed a second errata sheet.

20 Then on January 30th of 2009,
21 the Board received pre-filed testimony on behalf
22 of Midwest Generation by Mr. Scott Miller and on
23 the same day, a request to replace specific
24 language that had, according to that request, not

1 been printed properly.

2 On February 2nd of '09, the
3 Board received pre-file testimony on behalf of
4 Kincaid Generation by Mr. David Nuckols on the
5 same date, pre-filed testimony on behalf of Dynegy
6 Midwest Generation by Mr. Aric Diericx. Also, on
7 February 2nd, pre-filed testimony on behalf of
8 Ameren by Mr. Michael Menne and finally on
9 February 5th and accompanied by a motion to file
10 instanter pre-filed testimony also on behalf of
11 Ameren by Mr. Gary Rygh.

12 I'd like, first, just to address
13 a couple of preliminary issues related to these
14 pre-filings. First, Ms. Bassi, I referred to your
15 request that occurred on January 30th of 2009, to
16 replace specified language in Mr. Miller's
17 pre-filed testimony. I believe to the extent of a
18 single paragraph and that request referred to not
19 printing properly. Is there any participant that
20 wishes to be heard on that request to replace that
21 paragraph in the pre-filed testimony? Neither
22 seeing nor hearing any, Ms. Bassi, that request is
23 granted and that change will be reflected in the
24 Board's consideration.

1 Second, Ms. Bassi, I note there
2 was the motion to file Mr. Rygh's testimony
3 instanter. I'll simply open that up to see if any
4 participant wishes to be heard on that motion. I
5 find on the record today that while the Board's
6 procedural rules allow a 14-day period to respond
7 to a motion, that undue delay would result from
8 allowing that 14-day period to expire. Having
9 done so, I grant the motion to file instanter and
10 that will be accepted as filed. If there is any
11 other participant present here today in addition
12 to those that I mentioned as having pre-filed
13 testimony, we do have a sign-up sheet that I
14 believe is right in front of Ms. Bassi right in
15 front of the door to the room. If you would
16 indicate your willingness to testify and any
17 organization or entity that you might represent
18 and on whose behalf you might want to testify that
19 would be great. Like all witnesses, I must note
20 who have not pre-filed, you would be sworn in and
21 subject to questions about your testimony.

22 Now, we have briefly discussed
23 the procedural matter of the sequence of the
24 testimony of the participants who have pre-filed

1 their testimony. We'll intend to begin this
2 morning with testimony by Mr. Bloomberg and
3 Mr. Ross. Apparently, they have a statement on
4 behalf of the Illinois Environmental Protection
5 Agency as the proponent in this proceeding and
6 that will, of course, be followed by questions
7 that the other participants may have for the two
8 of them.

9 We will then continue with the
10 pre-filed testimony in this order: Mr. Nuckols
11 first and Mr. Miller. It was indicated in his
12 pre-filed testimony that Mr. Miller will be joined
13 by Ms. Crapisi and Mr. Nagel who will also be
14 available to answer any questions as necessary.
15 Following that panel, in effect, we will hear from
16 Mr. Diericx and then conclude the pre-filed
17 testimony with Mr. Menne and Mr. Rygh.

18 Does that differ from the order
19 or sequence that anyone was expecting this
20 morning? I don't see any indication that it does
21 differ. Of course, in each case of those
22 witnesses, their testimony will be followed by any
23 questions that the participants may have for them
24 and finally after those questions based on the

1 pre-filed testimony and as time permits, any other
2 participants who have signed up or otherwise
3 indicated they would like to do so may do that.
4 Finally, I understand that -- sorry to run through
5 some lengthy procedural issues. We have as many
6 as three persons wishing to offer a brief public
7 comment. Their names, as I recall, are
8 Ms. Hampton, Mr. Denison and Mr. Lewis. I'm not
9 certain that they are here. The ordinary course
10 of hearing would have them offer comments at the
11 conclusion of the testimony and questions. If the
12 hearing unfolds and some adjustment to that
13 sequence appears to make sense, we can certainly
14 examine those slight adjustments as the time goes
15 on. Finally, for the court reporter's benefit
16 today, please speak as clearly as you can and
17 avoid talking at the same time as any other
18 participant. Having reached that point, are there
19 any other questions about the procedures or the
20 sequence of testimony? Seeing none,
21 Mr. Matoesian, I think we're in order for the
22 Agency and the presentation that it wishes to
23 make.

24 MR. MATOESIAN: Thank you. Just a

1 brief opening. Good day, everyone. My name is
2 Charles Matoesian. I'm representing the Illinois
3 Environmental Protection Agency. Here with me
4 today is my co-counsel, Dana Vetterhoffer as well
5 as David Bloomberg, manager of the compliance
6 unit. Jim Ross, manager of the division of air
7 pollution control. Kevin Mattison, environmental
8 protection specialist and Rory Davis,
9 environmental protection engineer. We're here
10 today on the matter of R09-10, Part 225 Control of
11 Emissions for Large Combustion Sources (Mercury
12 Monitoring).

13 As you mentioned in your
14 opening, sir, there were more -- several filings
15 by the Agency including a second errata sheet,
16 post-hearing comments, a draft data form and a
17 third errata sheet -- of copies of which I have
18 available if anyone would like to see one. We
19 will now proceed to the testimony of Jim Ross and
20 David Bloomberg who will be giving limited
21 testimony to explain some of the issues contained
22 in the various filings and to answer a few
23 questions about these.

24 Brief statements should allow

1 the hearing to proceed much more smoothly and,
2 therefore, I will begin with the testimony of Jim
3 Ross.

4 MR. FOX: Mr. Matoesian, first, I
5 should thank you. The Board did receive -- I
6 neglected to mention the third errata sheet that
7 was filed with the Board on Friday, February 6th.
8 That is certainly in the Boards records. It
9 sounds like you're ready. We can have the court
10 reporter swear in-- why don't we swear in both
11 Mr. Bloomberg and Mr. Ross just to take care of
12 the Agency's witnesses at the same time.

13 (Witness duly sworn.)

14 DAVID BLOOMBERG AND JIM ROSS,
15 called as witnesses herein, having been first duly
16 sworn, were examined and testified as follows:

17 MR. ROSS: I have a brief statement
18 on optimum manner. Sources subject to the MPS and
19 CPS are not required to meet any specific mercury
20 control efficiency, such as 80 percent or 70
21 percent or 60 percent. Instead, sources in the
22 MPS or CPS are allowed additional mercury
23 flexibility in exchange for reductions in NOx and
24 SO2. The mercury flexibility allowed is primarily

1 in the form of meeting mercury control system
2 design and operation requirements found
3 specifically in sections 225.233(c)(2) and
4 225.294(g). To summarize the requirements of
5 these sections, they require that sorbent be
6 injected in an optimum manner. Optimum manner is
7 then defined as.

8 A) The use of an injection
9 system designed for effective absorption of
10 mercury, considering the configuration of the EGU
11 and its ductwork.

12 B) The injection of an approved
13 sorbent; and

14 C) The injection of sorbent at
15 minimum rates.

16 The Illinois EPA has not
17 proposed any change to these provisions other than
18 to add additional flexibility by including two
19 additional approved sorbents. These provisions
20 were designed to ensure that installed mercury
21 control systems inject sorbent in an optimum
22 manner and achieve mercury reductions consistent
23 with the characteristics of the EGU's being
24 controlled. Clearly, the rule does not establish

1 a percent mercury control efficiency requirement
2 for MPS and CPS units in these provisions.

3 Therefore, the Agency would like
4 to clarify for the record that compliance with
5 this provision will not be determined based on the
6 level of mercury control efficiency being
7 achieved. That is, MPS and CPS units are not
8 required to meet a numeric reduction emission
9 standard or any level of mercury control
10 efficiency. Instead, the Agency intent on
11 reviewing the mercury control efficiencies of the
12 mercury control system is to evaluate if further
13 review of a control system is needed.

14 Such review would consist of
15 ensuring that the source is operating an injection
16 system designed for effective absorption of
17 mercury, that an approved sorbent is being used,
18 and ensuring the sorbent is being injected at the
19 specified minimum rates. The Agency's mercury
20 control expert has testified that a mercury
21 control system that injects sorbent in an optimum
22 manner, should, in general, be able to reduce
23 mercury emissions by a value approaching around 90
24 percent. However, as I stated in the first

1 hearing regarding sources in the MPS an CPS, "They
2 are not required to achieve 90 percent." Indeed,
3 Mr. Bonebrake asked me at the first hearing "So if
4 60 percent could be supported, then that would be
5 satisfactory?" And I answered "Yes, if it could
6 be supported, it would be satisfactory. We're not
7 excluding any level."

8 I repeat here that if a mercury
9 control efficiency of any percent can be supported
10 by a demonstration that the control system is
11 injecting sorbent in an optimum manner, then the
12 source is in compliance. All we have been saying
13 is that a low level of mercury control efficiency
14 may be an indicator or flag that a mercury control
15 system is perhaps not functioning properly or as
16 designed a low mercury control efficiency may be a
17 sign that an approved sorbent is not being used.
18 Therefore, a low mercury control efficiency may
19 warrant further review by the company and Illinois
20 EPA to ensure compliance. However, a low mercury
21 control efficiency in and of itself is not a
22 violation of the requirements.

23 In fact, no level of mercury
24 control efficiency would by itself constitute a

1 violation. If there is a low level of mercury
2 control efficiency being reported, it is the
3 Agency's intent to work with the company to, as
4 Mr. Bloomberg said at the first hearing "Go back
5 to them and say, we need to look at this, let's
6 look at this together, let's cooperate and look at
7 this together."

8 MR. MATOESIAN: Thank you, Mr. Ross.
9 And now we'll proceed to a short statement by
10 Mr. Bloomberg.

11 MR. FOX: Actually, Mr. Matoesian,
12 if I may interrupt you. I noticed you handed what
13 appeared to be a printed copy of the statement to
14 the court reporter. Was that something that you
15 wish to introduce as a hearing exhibit?

16 MR. MATOESIAN: Did you --

17 MR. ROSS: It was verbatim of what I
18 said to assist him.

19 MR. MATOESIAN: We can enter that
20 exhibit.

21 MR. FOX: Why don't we wait until we
22 have copies so we can distribute it to the other
23 participants. If you need access to a copier, the
24 Agency and the Board both have one.

1 MR. MATOESIAN: Okay.

2 MR. FOX: I'm sorry for the
3 interruption.

4 MR. BLOOMBERG: Section 225.260(b)
5 describes the data availability requirements for
6 CEMS and excepted monitoring systems. The
7 Agency's proposal requires 75 percent availability
8 on a calendar quarter basis.

9 However, pre-filed testimony
10 from both Scott Miller and David Nuckols requested
11 a change in that calculation methodology. Their
12 proposed change would entail calculation of the
13 data availability on a rolling 12-month basis
14 instead. After discussions with both of these
15 parties, the Agency believes that an agreement has
16 been reached on a resolution to this issue. Under
17 this resolution, the data availability would be
18 calculated on a calendar quarter basis for the
19 first three years of the program when the stack
20 testing alternative is available, i.e., July 1st,
21 2009, through June 30th, 2012. This quarterly
22 calculation methodology works in concert with the
23 requirement that stack testing or compliance with
24 emission limits be done on a quarterly basis.

1 After the three year period in which the stack
2 testing alternative is allowed -- has ended, i.e.,
3 from July 1st, 2012, and thereafter, the Agency
4 agrees that the methodology for calculating data
5 availability can be changed to a rolling 12-month
6 basis. This change will entail a modification to
7 section 225.260(b) and also to related record
8 keeping and reporting requirements.

9 MR. MATOESIAN: I'd like to move the
10 changes he just mentioned be entered as an
11 exhibit.

12 MR. FOX: Is that the forth errata
13 sheet, is that the caption or the title given?

14 MR. MATOESIAN: We didn't caption
15 the errata sheet.

16 MR. FOX: That's fine. We can label
17 it any way that makes sense, but if you don't mind
18 distributing those we can take up the motion in
19 just a moment. Thank you. Mr. Matoesian has
20 obviously distributed copies of a document marked
21 exhibit, which proposed changes both to section
22 225.260(b) as it appears in the third errata and
23 also suggests an amendment to section 1.8 of
24 appendix B. Is there any response anyone wishes

1 to make to the motion to admit that as what will
2 be appearing as Exhibit Number 8? Ms. Bassi?

3 MS. BASSI: It appears there are
4 also changes on the backside.

5 MR. FOX: You are correct. I should
6 note that the paper has two sides that does
7 address section 225.290(b)(3)(C) as well. Thank
8 you for pointing that out, Ms. Bassi. Did you
9 have any other response to the motion at all?

10 MS. BASSI: No.

11 MR. FOX: Neither seeing nor hearing
12 any objections certainly, Mr. Matoesian, that will
13 be admitted into the record as hearing Exhibit
14 Number 8.

15 MR. BLOOMBERG: The Agency would
16 also like to clarify that in appendix B section
17 1.4(b)(3)(g)(v)., the reference to 1.0 milligrams
18 per SCM added in the third errata at item 36
19 refers only to mercury errata and not the CO2 or
20 O2. This section should be modified from the
21 third errata.

22 MR. MATOESIAN: And I would move
23 this be admitted as Exhibit 9.

24 MR. FOX: It would be 9, yes.

1 MR. MATOESIAN: Thank you.

2 MR. FOX: And Mr. Matoesian has
3 obviously distributed copies of an exhibit
4 proposing an amendment to section 1.4(b)(3)(g)(v).
5 Is there any response to the motion to admit that
6 Hearing Exhibit Number 9. Neither seeing nor
7 hearing any, that will be marked and admitted as
8 Exhibit Number 9.

9 MR. MATOESIAN: Thank you. And that
10 is the end of Mr. Bloomberg's statements so
11 Mr. Ross and Mr. Bloomberg can take questions at
12 this time.

13 MR. FOX: Very well. Why don't we
14 go ahead and proceed to questions. If, for the
15 first time, you want to pose any questions, if you
16 would kindly provide your name and any spelling
17 and any association or representation that may
18 bring you here today. That would be helpful for
19 the record. For either Mr. Ross or Mr. Bloomberg
20 is there any question at all to the basis of their
21 statement? Ms. Bassi, please go ahead.

22 MS. BASSI: Good morning. My name
23 is Kathleen Bassi. I'm with Schiff Hardin and I'm
24 here today on behalf of Midwest Generation and

1 Dynegy. Also with me is Mr. Steve Bonebrake down
2 at the end and he may jump in with questions at
3 any time. You never know. Mr. Bloomberg, the
4 provisions of this rule require for certain units
5 that the average monthly mercury concentration of
6 the coal combusted be reported and if multiple
7 required coal samples are tested, that the tests
8 must be averaged. The average mercury content of
9 the coal combusted may be determined by straight
10 averaging of coal samples or weighted averaging of
11 coal samples; and that is, the amount of coal
12 burned weighted by the amount of mercury in that
13 coal. For example, the weighted averaging could
14 reflect ten tons of coal containing 0.02 parts per
15 million on day one and five tons of coal
16 containing 0.05 parts per million on day two and
17 so forth rather than merely totaling the amount of
18 coal used in the average of the mercury. Will
19 sources be allowed to choose either straight or
20 weighted averaging of coal samples under the rule
21 including for reporting purposes?

22 MR. BLOOMBERG: Yes.

23 MS. BASSI: I have another question.

24 Mr. Bloomberg, as noted in Mr. Diericx's pre-filed

1 testimony, the rule uses the term excepted with an
2 "ex" as in sections 225.234(a)(4), 225.238(a)(4)
3 and 225.239(a)(1), (3) and (4) with respect to the
4 use of sorbent traps. We understand that the use
5 of sorbent traps is acceptable to the Agency.
6 Could you explain the origin of that term
7 excepted, ex, and why the word accepted -- my old
8 english teacher background says is not more
9 correct -- or should be more correct?

10 MR. BLOOMBERG: The ex excepted is
11 taken straight from the part 75 that was vacated
12 thus necessitating this rule making. The US EPA
13 used excepted throughout part 75 such as, for
14 example, the title of 75.15 is Special Provisions
15 for Measuring HG Mass Emissions Using the excepted
16 Sorbent trap Monitoring Methodology. They used
17 that way because to US EPA and to us, a sorbent
18 trap methodology is an exception to the way that
19 continuous monitoring methodology would normally
20 be done. So that is the reason that we are using
21 ex to follow along in US EPA's use of that
22 terminology.

23 Q. So excepted monitoring methods are
24 accepted?

1 MR. FOX: Allowed.

2 MR. BLOOMBERG: Under the conditions
3 laid out in the rule, yes.

4 MS. BASSI: Thank you. Finally, and
5 I'm not sure who this would be better posed to,
6 the Agency included a draft of form 450 C-A-A-P-P,
7 an acronym, with its second errata. Is it the
8 Agency's intent that the form be considered a part
9 of the proposed rule?

10 MR. BLOOMBERG: No. It was provided
11 for informational purposes to demonstrate what we
12 would be looking for in those to go along with the
13 rule language that we supplied.

14 MS. BASSI: I have no further
15 questions.

16 MR. FOX: Very good. Thank you,
17 Ms. Bassi. Mr. Rieser, I see your hand up.

18 MR. RIESER: David Rieser here on
19 behalf of Kincaid Generation. A couple of
20 questions. First, with respect to Exhibit 8, the
21 revised language for 260(b). Does the 12-month
22 rolling average -- when does it start? Does it
23 start on July 1st, 2012, or June 30th, 2013?

24 MR. BLOOMBERG: The use of the

1 12-month rolling average begins on July 1, 2012.
2 However, because it is a 12-month period and to
3 avoid overlap with the previous quarterly method
4 of looking at the average, the first full 12-month
5 period will end June 30, 2013. And at that point,
6 the source will evaluate whether they have met 75
7 percent for the proceeding year, which began on
8 July 1, 2012.

9 MR. RIESER: Mr. Nuckols would like
10 to ask a question. Mr. Nuckols is with Kincaid
11 Energy as well.

12 MR. NUCKOLS: So I just want to make
13 sure I understand. You said the first quarter of
14 2012 after this starts, we don't have to meet it
15 on a quarterly basis, but the only 75 percent
16 compliance with the data availability will be
17 checked on July of 2013?

18 MR. BLOOMBERG: When you say the
19 first quarter, I presume you mean the first three
20 months after it starts in July?

21 MR. NUCKOLS: Yes.

22 MR. BLOOMBERG: Okay.

23 MR. NUCKOLS: I guess the real
24 question is for the year of 2012 and the first

1 half of 2013, is there any interim data
2 availability requirement until the last day of
3 July or June 30th of 2013?

4 MR. BLOOMBERG: From July 1, 2012,
5 until you get the entire 12 months at June 30th,
6 2013, there is no interim standard to meet during
7 that point.

8 MR. NUCKOLS: Thank you very much.

9 MR. RAO: Why is there no interim
10 standard -- during the quality period?

11 MR. BLOOMBERG: We will still have
12 information because we will still be required to
13 report information on the form that Ms. Bassi just
14 mentioned. If there is a problem, we will notice
15 it and certainly talk to them and say "What's
16 going on here?" But, for example, their monitor
17 could be down for the entire month of July 2012,
18 and it is up for the -- until June -- once it's
19 back up again until June 2013, they will have met
20 the 12-month rolling 75 percent.

21 MR. RAO: So there won't be any
22 enforceable interim standard during that 12-month
23 period. You can informally talk to them and ask
24 them if something is wrong or why data is not as

1 expected?

2 MR. BLOOMBERG: That's correct. In
3 that way it is identical to the way the mercury
4 rule itself works in that the 90 percent control
5 or the 0.0080 is also on the 12-month rolling
6 standard and the first 12 months that you are to
7 meet that standard, whether because you're
8 starting from it or you're moving it in from the
9 MPS or the CPS, it's the same thing. For that
10 first 11 months and 30 days, there's no standard
11 until it hits the end of that and you look back
12 and see the entire 12 month period.

13 MR. RAO: And can you explain why
14 you need quarterly data initially when you start
15 out? So just going with the 12 month rolling --

16 MR. BLOOMBERG: The quarterly data
17 works together with the quarterly stack testing.
18 For one thing, if we had a 12-month rolling while
19 stack testing was available, it would be more
20 dangerous to the companies that they could find
21 themselves in noncompliance and not be able to use
22 the stack testing option to get themselves out.
23 If, for example, they went through three quarters
24 or almost three quarters and then they were fine

1 and then they suffered some sort of failure and
2 they were not able to meet 75 percent on a
3 12-month basis, they could stack test to meet that
4 final quarter, but the previous three quarters,
5 they can't go back in time and do anything about.

6 They would be out of compliance
7 for those entire three quarters. So it's more
8 advantageous to keep it on a quarterly basis so if
9 there is a problem, they can stack test and take
10 care of that issue and demonstrate compliance.

11 MR. RAO: Thank you.

12 MR. FOX: Mr. Rieser?

13 MR. RIESER: Just a couple more
14 questions and I don't know to whom this ought to
15 be directed, but is the Agency going to produce a
16 final version of their -- what's now their actual
17 proposal that combines all of the various errata
18 that have been presented to the Board and to the
19 parties?

20 MR. BLOOMBERG: Yes. We will work
21 on providing those.

22 MR. RIESER: If there's any
23 possibility that can be presented before our final
24 comments are due so we can see what the full

1 proposal is that would be appreciated.

2 MR. FOX: And we can certainly take
3 up deadlines for post hearing comments and any
4 other filings before we wrap up today. Point well
5 taken.

6 MR. RIESER: And my last questions
7 had to do with Exhibit 9 and it sort of ties back
8 into with an issue that Mr. Nuckols was going to
9 talk about, but one of the issues is that -- as I
10 understand it, the Agency tried to take all of the
11 40 CFR 75 and try to put it into the proposal
12 primarily by using the exhibits, the attachments
13 and the exhibits. And one of the issues Mr.
14 Nuckols talks about is making sure that only
15 relates to the mercury issues and not relates to
16 requirements for other CEMS because of the concern
17 that there might be changes to the federal rules
18 that wouldn't be captured -- with respect to the
19 other CEMS, the non-mercury CEMS. With respect to
20 the -- that there might be changes to the non-CEMS
21 rules that would be captured in the Agency's --
22 the Boards' rules that relate to these non-mercury
23 CEMS and whether the Agency has looked at or made
24 an attempt to pare down these attachments and

1 exhibits so that they only relate to mercury CEMS
2 issues.

3 MR. BLOOMBERG: Sorry. I lost you.

4 MR. RIESER: The last question was,
5 has the Agency made an effort to pare down the
6 attachments and exhibits so that they only go to
7 the mercury CEMS requirements?

8 MR. BLOOMBERG: We have made that
9 effort and I think you'll see it in the various
10 erratum that there were places that we removed
11 requirements that only applied to, for example, to
12 NOx or SO2. There is a need to keep some of the
13 information in for ease of use by the regulated
14 community such as flow monitors or CO2 monitors
15 which relate to the way the mercury CEMS, the
16 entire system works and -- one moment. One other
17 point to note is that when -- you mentioned that
18 any changes that might be made to the federal
19 rules at a later date would not match the Illinois
20 rules and just to note, it's my understanding, not
21 as an attorney, that when the Board references a
22 federal rule it references it as a specific
23 publication. And, as such, any changes to federal
24 rules in the future still wouldn't be represented

1 by our rules. So it wouldn't matter whether they
2 appear here or are referenced. It's the same
3 overall effect. With that said, I don't expect
4 there to be that type of change that you're
5 talking about.

6 MR. RIESER: Well, the purpose of
7 having the language regarding the operation of
8 mercury CEMS is that the federal rules having to
9 do with that issue were vacated by the court,
10 correct?

11 MR. BLOOMBERG: Yes.

12 MR. RIESER: So in that same part,
13 75, aren't there federal requirements for flow
14 meters and CO2 and those types of things that
15 you're talking about?

16 MR. BLOOMBERG: Yes.

17 MR. RIESER: Okay. So those things
18 could be changed by the federal EPA and those
19 changes would not be captured by the Board rules
20 unless the Board went through an identical
21 substance rule making of some sort.

22 MR. BLOOMBERG: That's correct.

23 MR. RIESER: So people would be
24 subject with respect to the operation of those

1 types of meters to two different requirements
2 potentially?

3 MR. BLOOMBERG: Potentially. But,
4 one, we do not foresee changes to the flow meters
5 or CO2 or anything like that. And, two, again, it
6 would still take a rule making to modify the
7 Boards rule to point to the newest version of the
8 federal rule if such a change occurred.

9 MR. RIESER: Okay. Thank you.
10 Those were my questions. Thank you.

11 MR. FOX: Very well. Thank you,
12 Mr. Rieser. Any further questions for Mr.
13 Bloomberg or Mr. Ross on behalf of the Agency?

14 MR. RAO: I had a follow up.
15 Mr. Ross, recently you came to the hearing docket
16 R08-19. The Agency testified that the reason the
17 United States Court of Appeals decision on
18 December 23rd, 2008, remanded the CAIR -- EPA and
19 I think Mr. Kaleel stated that because of that
20 decision, CAIR rules still remain in effect. Can
21 you elaborate a little bit more on indications
22 that the decision may have on the clean air
23 mercury rule?

24 MR. ROSS: Well, it's my

1 understanding that CAIR phase one remains in
2 effect and CAIR phase two was remanded back to the
3 US EPA for correction or fixing by the US EPA.
4 The overall implications to CAMR I think are
5 minimal. We do have some Nox and SO2 reduction
6 requirements for sources electing to enter the MPS
7 and CPS in the mercury rule and, of course, CAIR
8 is in SO2 and NOx's trading program, but I think
9 those kind of are separate and yet they're
10 interrelated and, I guess, the overall take away
11 from it is that there is no major impact to the
12 Illinois mercury rule and the MPS and CPS
13 requirements whether CAIR is in place or not in
14 place. The language we have in there that
15 addresses the Nox and SO2 allowances in the MPS
16 and CPS is such that the requirements for the
17 allowances -- are able to meet those requirements
18 regardless of the status of CAIR.

19 MR. RAO: Thank you.

20 MR. FOX: Any further questions?

21 MR. RAO: No.

22 MR. FOX: It appears we've exhausted
23 the questions for Mr. Bloomberg and Mr. Ross.

24 Thank you for your appearance and your testimony

1 here today. I want the record to reflect very
2 quickly before we turn to Mr. Nuckols in our
3 agreed order of testimony that one of the Boards
4 other new members, Dr. Shundar Lin at my far left
5 has joined us and we wanted to welcome you to the
6 hearing Dr. Lin. That brings us to this point,
7 Mr. Rieser, if you're prepared for Mr. Nuckols, I
8 believe he had a statement with which he wished to
9 begin and was ready after that to proceed to
10 questions.

11 MR. RIESER: We can start with his
12 testimony, which I'd like entered as an exhibit.

13 MR. FOX: Very well.

14 MR. RIESER: So I believe this would
15 be Exhibit Number 10.

16 MR. FOX: Yes, Exhibit 10. Could
17 Mr. Nuckols be sworn, please?

18 WHEREUPON:

19 DAVID NUCKOLS
20 called as a witness herein, having been first duly
21 sworn, deposeth and saith as follows:

22 MR. RIESER: Could you state your
23 name, please?

24 MR. NUCKOLS: David Nuckols.

1 MR. RIESER: And spell it for the
2 court reporter?

3 MR. FOX: Mr. Nuckols, I'm sorry to
4 interrupt. Your voice is a little soft. If you
5 could raise the volume a little bit, it would be
6 much easier for us in the back part of the room to
7 hear you.

8 MR. NUCKOLS: I'll try to do that.

9 MR. FOX: Thank you very much.

10 MR. NUCKOLS: It's N-U-C-K-O-L-S.

11 MR. RIESER: Mr. Nuckols, I'm going
12 to show you a copy of your testimony that's been
13 marked as Exhibit 10 and ask if you can tell me
14 that it's a true and correct copy of your
15 testimony.

16 MR. NUCKOLS: Yes, it is.

17 MR. RIESER: At this point, I'd like
18 the testimony to be admitted as read, please.

19 MR. FOX: Mr. Rieser, as you've
20 heard, has moved for the admission of Mr. Nuckols'
21 pre-filed testimony as an Exhibit Number 10. In
22 this proceeding, I did note that he's distributed
23 copies of that. Is there any response or
24 objection of motion? Neither seeing nor hearing

1 any, Mr. Rieser, it will be admitted as Exhibit
2 Number 10. Thank you.

3 MR. RIESER: Thank you very much.
4 Mr. Nuckols has a brief summary of his testimony
5 for the ease of the participants of the hearing
6 today so that we know what the questions are
7 about. Mr. Nuckols, proceed.

8 MR. NUCKOLS: Good morning. My name
9 is David Nuckols and I'm the manager of the
10 Dominion's Emissions Monitoring Support Group.
11 Dominion owns and operates electric generating
12 facilities in 11 states, including the
13 1250-megawatt coal fired Kincaid Generation LLC
14 power plant located in Kincaid, Illinois and a 50
15 percent interest in the 1400-megawatt natural
16 gas-fired Elwood Energy LLC combustion turbine
17 plant located in Elwood, Illinois.

18 We appreciate this and previous
19 opportunities to comment on the proposed mercury
20 monitoring rules. We believe that the Illinois
21 EPA has been very receptive to Dominions' concerns
22 regarding fundamental differences in monitoring
23 for this compliance limit type program versus the
24 trade emissions program. Our biggest concerns

1 involve the use of missing data substitution and
2 bias adjustment factors which have been addressed.

3 This testimony seeks to respond
4 to the significant details in the proposed
5 regulations in the areas of data availability
6 requirements, system integrity test requirements,
7 the duplication of part 75 QA requirements for
8 SO₂, NO_x, CO₂ and flow in the rule and the
9 requirements for the air emissions testing bodies.
10 Any remaining bias adjustment factor from sorbent
11 trap monitors and extending the option to conduct
12 stack testing in place of monitors. Dominion has
13 more experience in operating mercury CEMS than
14 most utilities, although, our industry experience
15 is very limited.

16 Dominion operated three CEMS and
17 three sorbent trap systems for the state's
18 compliance in 2008 and started up and operated
19 nine other systems during 2008. Our experience
20 indicates that these are much more complex
21 monitoring systems than we have been used to
22 operating for SO₂ and NO_x and downtimes tends to
23 be in days and weeks rather than hours.
24 Therefore, we are concerned about our ability to

1 comply with the data availability of 75 percent
2 per quarter where more than three weeks downtime
3 per quarter puts you in noncompliance.

4 We proposed changing the start
5 date of the availability requirement and making it
6 based on the emissions compliance period of 12
7 months. However, we believe the proposal
8 discussed in a conference call with David
9 Bloomberg of Illinois EPA had the quarterly
10 availability requirements while able to conduct
11 stack test compliance in a 12-month rolling
12 availability after that as a reasonable approach.

13 We also recommended the change
14 in the QA limits set for weekly integrity tests.
15 Our experience is these are difficult limits to
16 meet consistently with today's technology so we
17 recommend that the current limits be used to
18 initiate maintenance and twice the limit be used
19 to invalidate the monitoring. We also ask that
20 there be more flexibility in the time between
21 tests since the current rule would require the
22 tests to be conducted exactly 168 hours or 7 days
23 apart. This requirement is similar to having a 26
24 hour for a daily calibration.

1 The concern about the
2 duplication of part 75 QA requirements for SO2,
3 NOx, CO2 and flow in this rule -- any time the
4 same detailed technical requirements are contained
5 in more than one document, there is a problem
6 making sure that they are the same and then
7 assuming the same when they are not. It is
8 essential that the rule adopted by the Board deal
9 only with mercury monitoring issues and not
10 restate federal requirements for these parameters.

11 We recommend that these
12 requirements be provided by reference. We have
13 requested the requirement for air emissions
14 testing body be removed, be consistent with and
15 for the same reasons it was stayed in the federal
16 rules and there is a bias adjustment factor
17 remaining in the sorbent trap rule which we
18 believe can be removed.

19 Finally, we request the option
20 to conduct a quarterly stack test in lieu of CEMS
21 should be extended beyond 2012 to provide more
22 time for the monitoring technology to mature.
23 Thank you for this opportunity to provide comments
24 and discuss these issues with you today.

1 MR. FOX: Thank you, Mr. Nuckols.
2 And Mr. Rieser, if we can go off the record for
3 just one moment, please.

4 (Whereupon, a discussion was had
5 off the record.)

6 MR. FOX: Mr. Nuckols has completed
7 his testimony and I believe we're set to go to
8 questions that any participants may have for him.
9 Is there anyone who wishes to pose a question to
10 Mr. Nuckols this morning?

11 MR. MATOESIAN: We'd like to ask a
12 few questions if you would give us a moment.

13 MR. FOX: Absolutely, Mr. Matoesian.
14 Not a problem.

15 MR. MATOESIAN: The first question
16 is can you restate about what you said about bias
17 adjustment factors in sorbent trap monitoring? I
18 don't remember seeing that in your initial system.

19 MR. NUCKOLS: There is a bias
20 adjustment factor that is in the rule that's to be
21 applied if you lose one of the paired sorbent
22 tubes in a sorbent trap system. It's a bias
23 adjustment factor of 1.1111 that we feel like is
24 inappropriate for this type of program.

1 MR. RIESER: It's item F in Exhibit
2 10, which you'll find on page 16.

3 MR. MATOESIAN: Thank you. Now, on
4 page 16 through 17 of your testimony, that's
5 section F, you recommended the deletion of a
6 footnote related to a multiplier for sorbent trap
7 monitors. Since filing your testimony, have you
8 had an opportunity to review dates on the third
9 errata sheet?

10 MR. NUCKOLS: No.

11 MR. MATOESIAN: Did you see -- I was
12 just going to say in item 69 that you wouldn't
13 happen to notice that the Agency is proposing to
14 change that section with account to your
15 recommendation.

16 MR. NUCKOLS: So you're already
17 proposing to remove that?

18 MR. MATOESIAN: Yes.

19 MR. FOX: Mr. Matoesian, just for
20 the record, you're referring to language that
21 appears on pages 44 and 45 of the third errata
22 sheet?

23 MR. MATOESIAN: Yes.

24 MR. FOX: Very good. Thank you.

1 MR. NUCKOLS: Thank you.

2 MR. MATOESIAN: Just a few more
3 questions. In your testimony, you stated that you
4 had a number of concerns about the availability of
5 mercury CEMS, but has not the Agency proposed a
6 temporary stack testing option for that very
7 reason? In other words, to provide an alternative
8 to sources who have possible CEMS downtime issues?

9 MR. NUCKOLS: I guess you are
10 referring to the proposal to allow stack testing
11 for the first three years in lieu of CEMS
12 availability at 75 percent?

13 MR. MATOESIAN: Yes.

14 MR. NUCKOLS: Yes. We have
15 discussed that and think that's a viable approach
16 to our concern.

17 MR. MATOESIAN: So if during that
18 initial period through July 1st, 2012, Dominion
19 were to have a problem with their CEMS, they could
20 always use stack testing to demonstrate
21 compliance?

22 MR. NUCKOLS: I believe we can.
23 There may be some situations that it may turn out
24 not to be possible if the units were to go offline

1 prematurely or if there is a problem with the
2 unit, but I believe that in most cases we should
3 be able to use that option to preclude being in
4 noncompliance under most cases.

5 MR. MATOESIAN: Okay. Thank you.
6 Now, on page five of your testimony, the very
7 first line. You noted that Dominion had installed
8 three mercury CEMS for mercury monitoring, is that
9 correct?

10 MR. NUCKOLS: Yes. That's a
11 facility in Massachusetts.

12 MR. MATOESIAN: Okay. And aren't
13 sorbent trap systems, referred to in the
14 regulations as an excepted monitoring system,
15 also an allowable alternative to CEMS and stack
16 testing under the Agency's proposal?

17 MR. NUCKOLS: I believe it is, yes.

18 MR. MATOESIAN: And sorbent trap
19 systems are permanent, correct?

20 MR. NUCKOLS: They can be. The old
21 part 75 had a section called appendix K that
22 allowed you to use sorbent trap monitoring as an
23 excepted monitoring technique in lieu of
24 continuous CEMS.

1 MR. MATOESIAN: Okay. Thank you.
2 And just for clarification, sorbent trap systems
3 don't suffer from the same problems that you
4 listed as mercury CEMS pose?

5 MR. NUCKOLS: They are much less
6 complex than the continuous mercury CEMS. They
7 can have data availability issues because normally
8 you'll run a trap for a period of a week before
9 you change it out and realize that you don't have
10 a valid sample for that week or it can be anywhere
11 from two or three days to seven days or even
12 longer you can run these. So they can be -- you
13 can lose data for weeks and on a quarterly basis
14 if you lose more than three weeks of data, you
15 could possibly be out of the 75 percent
16 compliance.

17 MR. MATOESIAN: But they don't have
18 the same longer term problems of the CEMS that you
19 mentioned earlier about the CEMS, correct, sorbent
20 trap monitoring systems?

21 MR. NUCKOLS: I'm not sure what you
22 mean by longer term problems.

23 MR. MATOESIAN: You stated that some
24 of the problems you have seen with CEMS could

1 result in a longer downtime.

2 MR. NUCKOLS: Right.

3 MR. BLOOMBERG: But compared to what
4 you said sorbent traps, we're talking about a much
5 shorter potential period in the individual
6 problem?

7 MR. NUCKOLS: Well, there's always a
8 chance that things will happen with any of the
9 CEMS systems that could cause weeks of downtime.
10 Sorbent trap systems tend to be less complex and
11 so, therefore, there's probably less probability
12 of downtime and our experience with sorbent traps
13 has indicated that we have had less downtime with
14 those systems than we have had with our mercury
15 CEMS systems. The issue that we're concerned with
16 here in Illinois is that we have already invested
17 and installed continuous mercury CEMS at our
18 Kincaid facility and would plan to try to operate
19 those systems.

20 MR. FOX: Mr. Mattison, do you have
21 a question?

22 MR. MATTISON: Yes. In regards to
23 your sorbent trap, I just want to make a point of
24 indicating that the sorbent traps have two traps

1 in them, is that correct?

2 MR. NUCKOLS: That's correct.

3 MR. MATTISON: And with the
4 revisions that we're proposing in the third
5 errata, if one of those traps breaks, fails, the
6 other one can be used without penalty with a bias
7 adjustment factor?

8 MR. NUCKOLS: As long as it's only a
9 problem with that particular trap, the other pair.
10 It's possible that you could have a problem with
11 both systems.

12 MR. MATTISON: But in essence, you
13 have a built-in redundancy system in sorbent
14 traps, whereas with a continuous monitoring
15 system, you don't necessarily have that built into
16 this system?

17 MR. NUCKOLS: That's true.

18 MR. MATTISON: Thank you.

19 MR. MATOESIAN: Now, moving on. In
20 the proposed rule language, if it modified per
21 Mr. Bloomberg's statement earlier in the hearing,
22 such CEMS measured on a quarterly basis until
23 stack testing is no longer available and as an
24 alternative and then after June 30th, 2012, and

1 after the date the CEMS changes to the rolling 12
2 month average that you have suggested, would you
3 agree to such a change moving to a rolling an
4 annual average after June 30th, 2012?

5 MR. NUCKOLS: Yes. We would be in
6 favor of that.

7 MR. MATOESIAN: Now, on page nine of
8 your testimony, you suggest completely eliminating
9 the CEMS uptime requirement for the first year and
10 then phasing in a lesser requirement after that,
11 but hasn't the Illinois EPA already agreed to push
12 back the monitoring deadlines from the original
13 mercury regulation?

14 MR. NUCKOLS: What do you mean by
15 the original mercury regulation? Are you talking
16 about Mr. Bloomberg's proposal to go to a
17 quarterly for the first three years or are we
18 talking the way it was originally proposed?

19 MR. MATOESIAN: The original
20 proposal in 2006, the original.

21 MR. NUCKOLS: Well, the reason I was
22 concerned about the first year availability is
23 that when you start a monitor up and run it for,
24 say, the first three months, you only have three

1 months data and operating time to calculate a data
2 availability number. So the reason I requested
3 that the first year there be no requirement is
4 that because you would not have built a 12-month
5 database of operating time and uptime and
6 operating time to be able to run that calculation.

7 So what I didn't want to have is
8 the first quarter of 2009 or, I guess, it would be
9 the third quarter of 2009, have to calculate a
10 data availability of 75 percent. I wanted to
11 be -- and be out of compliance. I wanted to wait
12 until the end of that first year before we had to
13 make that calculation and start an availability
14 basically on July 1st, which would be using the
15 data from the previous 12 months.

16 MR. BLOOMBERG: But now the new
17 change has addressed that?

18 MR. NUCKOLS: Yes.

19 MR. BLOOMBERG: Okay.

20 MR. MATOESIAN: And going on on page
21 twelve of your testimony, section C. You discuss
22 weekly system integrity tests. Isn't the purpose
23 of the integrity test to insure that CEMS
24 accurately counts for oxidized mercury?

1 MR. NUCKOLS: Yes.

2 MR. MATOESIAN: And were system
3 integrity tests part of the original rule as
4 proposed by the federal government.

5 MR. NUCKOLS: Yes, it was.

6 MR. MATOESIAN: Has the Agency
7 modified the integrity of the findings of part 75
8 when incorporating those requirements into this
9 proposed rulemaking?

10 MR. NUCKOLS: I don't know what the
11 Agency has done as far as reviewing their
12 requirements that were on the books in part 75.
13 Nobody in the industry has much experience on how
14 these systems actually operate. I don't know the
15 basis for their -- the numbers that they cited
16 were necessary for QA check. I don't know where
17 ten percent came from. I don't know that they had
18 any basis of experience to come up with that
19 number.

20 It's been our experience that
21 ten percent is difficult to meet on a weekly
22 basis. It's a cause for considerable data
23 downtime and invalid data. So we're proposing
24 that that limit is unreasonable and it should be

1 expanded some.

2 MR. BLOOMBERG: When you said they a
3 couple times, were you talking about US EPA?

4 MR. NUCKOLS: Yes.

5 MR. BLOOMBERG: And to follow up on
6 Mr. Matoesian's question, are you aware of any
7 differences in the Illinois EPA proposal as
8 opposed to what was in the part 75 rule?

9 MR. NUCKOLS: No.

10 MR. RIESER: I'm sorry. With
11 respect to this particular issue?

12 MR. BLOOMBERG: Yes. Sorry.

13 MR. NUCKOLS: That doesn't mean we
14 agreed with what EPA had proposed nor do we -- did
15 we have a reason when this was proposed to think
16 different because we had not had any experience or
17 had enough experience to say that that's a limit
18 that's not necessarily achievable on a continuous
19 basis.

20 MR. MATOESIAN: Okay. Now, if a
21 CEMS failed the integrity test, isn't it true that
22 the CEMS would be underreporting total mercury
23 emissions since it is not accounting for all the
24 oxidized mercury emissions?

1 MR. NUCKOLS: Well, assuming that it
2 fails on the low side, that's true. And I don't
3 really have enough information to know that it
4 always fails low, but I don't know whether that's
5 a reasonable assumption or not.

6 MR. MATOESIAN: And what is the
7 basis for your proposed increase in the allowable
8 measurement error, that is, from where did you
9 obtain this value?

10 MR. NUCKOLS: I can't say I have
11 done extensive research to say that twice is the
12 right number. I base that number on some other
13 sections in part 75 such as the daily calibration
14 for SO2 and NOx. The standard for daily
15 calibration is twice the value that you have to
16 be, say, on a 7-day drift or in the initial
17 certification.

18 So I pitched twice as what I
19 considered to be a reasonable value that we could
20 probably meet and the data that I have reviewed
21 indicated that 85, you know, we can meet 85
22 percent most of the time and what we're proposing
23 is if you're below 90 percent, then it's a point
24 of taking action similar to what we do for daily

1 calculations. Half of the out of control is what
2 we call a maintenance limit and it's a time to
3 take action, but it's not invalidated data.

4 MR. MATOESIAN: Okay. Thank you.

5 MR. NUCKOLS: I believe there are
6 some justifications for not making the oxidized
7 mercury calibration as stringent as the elemental
8 mercury calibration, but I haven't gone through
9 that exercise to try to prove that.

10 MR. MATOESIAN: Okay. Thank you.

11 And as far as your proposal, have you gathered any
12 supporting data for that proposal showing how it
13 will effect CEMS measurements?

14 MR. NUCKOLS: I have not. I'd be
15 willing to do that if you need me to, but I have
16 not done that.

17 MR. MATOESIAN: Okay. Moving on
18 then. On page 14 of your testimony, section E,
19 you discuss the air emission testing body
20 accreditation requirements and suggest that the
21 associated regulations should be removed from this
22 rule. Are you aware that US EPA did not actually
23 remove the requirements as you state, but instead
24 have simply stayed the effectiveness of the

1 requirements?

2 MR. NUCKOLS: Yes, I am.

3 MR. RAO: May I ask a follow up on
4 this question? Mr. Nuckols, can you explain a
5 little bit more about why you need the provision
6 to be removed, is it just because it's being
7 removed in the federal rules or is that some other
8 downside for retaining it in the Agency's
9 proposal?

10 MR. NUCKOLS: Well, Dominion's
11 opinion is that the air emissions testing body
12 requirements is a good thing for the industry in
13 general. However, the UARG, which is the utility
14 air emissions regulatory group, has some legal
15 issues with the way it was put in there and so,
16 therefore, we feel like there's probably going to
17 be some legal issues with having it in here. Our
18 normal practice is to require our test people to
19 be meeting the requirements of the AETB, but we
20 don't feel it should be in the rule.

21 MR. RAO: And as far as Dominion is
22 concerned, you are accredited at the AETB?

23 MR. NUCKOLS: The group that I
24 manage is accredited through the stack testers

1 accreditation counsel as an air emissions testing
2 body. My group may not be the ones doing the
3 errata and audits at the Kincaid facility.

4 MR. RAO: But if the provision is
5 retained, you have to train these people to
6 monitor data facilities?

7 MR. NUCKOLS: We will have to ensure
8 that anybody who does testing on -- for this
9 program is accredited and --

10 MR. RAO: Is there any cost
11 implications for this provision?

12 MR. NUCKOLS: I could not tell you
13 that.

14 MR. RAO: Thank you.

15 MR. BLOOMBERG: A follow up question
16 and this is sort of repetitious of what
17 Mr. Matoesian just asked you, but to clarify
18 because of what Mr. Rao just repeated "removed".
19 Again, isn't it true that it has been stayed, not
20 removed, from the federal regulations?

21 MR. NUCKOLS: I'm not a lawyer so
22 I'm not quite sure what that all means, but I
23 understand it is stayed which means it will come
24 back and I believe it will come back, but I

1 believe until they rectify the concerns of other
2 people, there's a reason for it not to be there.

3 MR. BLOOMBERG: And also following
4 up what Mr. Rao just asked on whether you would
5 have to certify and the cost. If it stayed, will
6 you have to certify or put any costs in while it
7 is stayed?

8 MR. NUCKOLS: Are you asking for the
9 period between, say, now and until the requirement
10 is put back in the federal rules or stayed or
11 whatever the term might be?

12 MR. BLOOMBERG: Yes.

13 MR. NUCKOLS: Is there additional
14 costs for us to be able to comply with that? I
15 don't know. There are costs to the testing
16 companies. There are costs to us in order to
17 implement these programs. Whether they'll be
18 passed on and we'll be able to see a significant
19 increase from a company that has accreditation
20 versus someone who doesn't have accreditation, I
21 don't know that I have that information.

22 MR. BLOOMBERG: To clarify my
23 question. During the time it has stayed and let
24 me put it this way. During the time it stayed,

1 isn't it true that you will not need accredited
2 stack testing people?

3 MR. NUCKOLS: The way I have read
4 this rule is we would have to use accredited stack
5 testing people to do these tests while it's --
6 from day one.

7 MR. BLOOMBERG: Okay. I think to
8 help clarify, we have the federal register, the
9 federal register that discusses the stay.

10 MS. BASSI: May I ask a question?

11 MR. FOX: Yes.

12 MS. BASSI: Is provision one that
13 was in there by reference or is it in there
14 printed in your rule?

15 MR. BLOOMBERG: The first errata
16 changed it from being printed in the rule to by
17 reference.

18 MS. BASSI: So is it the Agency's
19 position then if it's in there by reference, if
20 it's stayed on a federal level, there's nothing to
21 comply with until it comes back on a federal
22 level?

23 MR. BLOOMBERG: That is the Agency's
24 position.

1 MR. BONEBRAKE: My name is Stephen
2 Bonebrake. I'm with Schiff Hardin. I represent
3 Midwest Generation and Dynegy. Just to further
4 clarify, Mr. Bloomberg, assuming that the federal
5 accreditation requirements are still stayed as of
6 July '09, that will remain there will be no
7 requirements under the Illinois rule for
8 accreditation, is that correct?

9 MR. BLOOMBERG: Correct.

10 MR. FOX: Mr. Bonebrake, any further
11 questions?

12 MR. BONEBRAKE: No.

13 MR. RIESER: May I follow up just to
14 keep this thought going? If the section that
15 we're talking about in the federal rules is
16 incorporated by reference, that incorporates a
17 specific CFR and a specific day, correct?

18 MR. BLOOMBERG: That's my
19 understanding. Well, specific CFR, yes.

20 MR. RIESER: So if that CFR is
21 subsequently stayed not by a court, but by a
22 subsequent federal register notice admitted by the
23 EPA, US EPA, isn't the incorporation by reference
24 still effective in terms of them having a

1 requirement?

2 MR. BLOOMBERG: I'm going to repeat
3 what Mr. Nuckols said a little while ago. I'm not
4 a lawyer, but I have been advised by attorneys
5 that because it is a stay and not a change in the
6 language, not removed, it is still in there, but
7 the effectiveness has been stayed, the enforcement
8 has been stayed. It is the Agency's belief that
9 once US EPA removes the stay, the reference will
10 stay valid.

11 MR. RIESER: Thank you.

12 MR. BLOOMBERG: But until such time
13 it's stayed, they don't need to comply.

14 MR. FOX: Mr. Matoesian, you had a
15 document that you had referred to.

16 MR. MATOESIAN: Yes. I was
17 wondering whether I could submit the federal
18 register in question as an exhibit?

19 MR. FOX: If you have copies and you
20 don't mind distributing those, we can proceed.
21 Mr. Matoesian has distributed copies of the
22 federal register, volume 73 at page 65554
23 regarding the, quote, stay of the effectiveness of
24 requirements for air emission testing bodies,

1 unquote. I recall that he has moved that that be
2 admitted into the record at this proceeding as
3 what will be Exhibit Number 11. Any response or
4 comments on that motion to admit? Neither seeing
5 nor hearing any, it will be admitted, Mr.
6 Matoesian, as Exhibit Number 11.

7 MR. MATOESIAN: Thank you. We have
8 no more questions at this point for Mr. Nuckols.

9 MR. FOX: Very well. Was there any
10 other participants that had a question to pose to
11 Mr. Nuckols? Mr. Rao does have one. Go ahead.

12 MR. RAO: Mr. Nuckols, on page 11 of
13 your pre-filed testimony, you state that the final
14 percent data availability should be phased into 75
15 percent. You recommend 65 percent data
16 availability requirement during the first year and
17 rising to 75 percent in the second year. Could
18 you please clarify whether the proposed first year
19 requirement of 65 percent is based on monitoring
20 data from Dominion's plan?

21 MR. NUCKOLS: It's not based on our
22 actual data availability from our current plan.
23 It's based on our concerns and our realizations
24 that there are a lot of things that could happen

1 to these systems. These are very complex systems.
2 The system that we operate, Tekran, has over 200
3 points that we have to monitor or can monitor to
4 indicate the health of the system. So they're
5 very complex systems. In our experience, it takes
6 weeks, days to weeks to get these systems up and
7 operating again once we have a problem or a
8 concern that if we should have an umbilical
9 failure while these systems are in operation that
10 that could take, you know, months even in order to
11 have those systems returned to service and so we
12 are concerned of our ability to comply.

13 So we're trying to make it such
14 that we feel like we have a reasonable probability
15 of being able to be in compliance. Our goal is to
16 be in compliance and have rules that we feel like
17 we can comply with given the complexity of the
18 systems and the information we have about them at
19 this point.

20 MR. RAO: With the changes proposed
21 by the Agency in the further errata sheet and some
22 of the changes that were discussed today and the
23 flexibility in the rules, do you still believe
24 that you require like a -- in the data reliability

1 requirement?

2 MR. NUCKOLS: The way we understand
3 it, the changes should have about three years of
4 operation with the ability to do a stack test if
5 we do get into trouble. Of course, we would like
6 to have more flexibility in the future, but at
7 this time, we're not asking for it.

8 MR. RAO: Thank you.

9 MR. FOX: Anything else Mr. Rao?

10 MR. LIN: On page four of your
11 pre-filed testimony, at the bottom, you say --
12 from your experience, can you tell us how
13 expensive it is?

14 MR. NUCKOLS: I'm sorry. I still
15 don't understand the question. How expensive what
16 is?

17 MR. LIN: How much expense.

18 MR. NUCKOLS: A standard size
19 calibration gas cylinder has been priced at \$3,000
20 to \$3,500 per cylinder and they don't last very
21 long at all. I think most everyone in the
22 industry has agreed that the calibration gases are
23 not suitable for daily calibration.

24 MR. LIN: My second question -- how

1 long, one year two years?

2 MR. NUCKOLS: We're talking weeks.

3 MR. LIN: Weeks?

4 MR. NUCKOLS: Yes. If you use them
5 for daily calibration, these cylinders would be
6 expired or spent in weeks and they're not stable
7 much more than -- they're not certified for more
8 than six months, if that. These cylinders, the
9 technology for calibration gas cylinders is not
10 where we need it to be and most of us who operate
11 this -- these systems, are not considering them at
12 this time.

13 MR. LIN: So most tests are tests
14 you conduct in your laboratory, outside
15 laboratory?

16 MR. NUCKOLS: There was a study that
17 was conducted by RMB Consultants in conjunction
18 with EPRI and EPA and looked at these calibration
19 cylinders with the idea of doing, say, quarterly
20 checks on your calibrator and I don't know that we
21 even have a cylinder that we could use to do that
22 with. There's problems with the regulators.
23 There's problems with the cylinders. There's
24 problems with the storage. And they're not, you

1 know -- this is -- just having a hard time being
2 able to certify them. So, right now, calibration
3 gases are something that we're looking at for the
4 future, but they're not available for normal use
5 at this point. Really, we're just studying it.

6 MR. LIN: Okay. Thank you.

7 MR. FOX: Any further questions for
8 Mr. Nuckols at this point? Seeing none,
9 Mr. Nuckols, thank you very much for your time and
10 your testimony today. Before we turn in the order
11 that we had discussed to Midwest Generation, we've
12 been at it for nearly an hour and a half. Why
13 don't we take a break and resume at 25 to 11:00?

14 (Whereupon, a break was taken
15 after which the following
16 proceedings were had.)

17 MR. FOX: I think everyone is back
18 from our break and if the court reporter is ready,
19 we can go right back on the record. Thank you all
20 for returning promptly. When we broke for the
21 break approximately 20 minutes ago, we concluded
22 the testimony of Mr. Nuckols and the questions
23 based upon it and we indicated to Ms. Bassi and
24 Mr. Bonebrake that we were ready to proceed to

1 Mr. Miller and his pre-filed testimony which
2 referred, as I mentioned before, to Ms. Crapisi
3 and Mr. Nagel. I think at this point we are ready
4 for any -- to swear the three of them in and any
5 summaries or brief introductions that they might
6 like to make. Are we ready to swear them in or
7 was there any preliminary issues you wish to
8 address?

9 MR. BONEBRAKE: At this point, the
10 pre-filed testimony of Scott Miller is of record
11 and we would move to have that testimony admitted
12 as if read.

13 MR. FOX: And Ms. Bassi is supplying
14 copies.

15 MS. BASSI: I just have one.

16 MR. FOX: I have a copy and it has,
17 of course, as Mr. Bonebrake mentioned been filed
18 and accessible on the Boards web page for some
19 time. I will construe that, Mr. Bonebrake and,
20 Ms. Bassi, as a motion to admit Mr. Miller's
21 pre-filed testimony as Hearing Exhibit Number 12.
22 I believe there's a second document that Ms. Bassi
23 wants to offer as well.

24 MS. BASSI: We would also move to

1 admit as an exhibit request to replace proposed
2 regulatory language contained in the testimony of
3 Scott Miller as Exhibit 13.

4 MR. FOX: And that motion to replace
5 does identify the course of specific language that
6 you seek to replace in his pre-filed testimony.
7 Those have been marked again. The pre-filed
8 testimony itself is Exhibit Number 12 and the
9 motion to replace is Exhibit Number 13. Any
10 response or objection to the admission of those
11 exhibits as numbered? Neither seeing nor hearing
12 any, they will be admitted, Ms. Bassi and
13 Mr. Bonebrake, as those exhibit numbers.

14 MR. BONEBRAKE: Mr. Scott Miller and
15 Ms. Andrea Crapisi and Mr. Chris Nagel to my right
16 and, Mr. Fox, would the appropriate thing to do is
17 swear the witnesses in?

18 MR. FOX: Very well. Why don't we
19 swear all three of them in at the same time?

20 (Witness duly sworn.)

21 SCOTT MILLER, CHRIS NAGEL AND ANDREA CRAPISI,
22 called as witnesses herein, having been first duly
23 sworn, were examined and testified as follows:

24 MR. BONEBRAKE: Thank you, Mr. Fox.

1 Mr. Miller has a short opening statement prior to
2 turning the witnesses over to questions that
3 others may have.

4 MR. FOX: Very good. Mr. Miller, I
5 think we're in order for you to proceed.

6 MR. MILLER: My name is Scott
7 Miller. I am the environmental program manager of
8 air quality at Midwest Generation. In my
9 pre-filed written testimony, I raised several
10 issues or concerns that Midwest Generation has
11 regarding this proposed rule.

12 Since the last hearing in
13 December and continuing after my pre-filed
14 testimony had to be submitted, we have discussed
15 those issues and more with IEPA and have reached
16 resolution on all of them. While we do not agree
17 a hundred percent with every position the IEPA has
18 taken, we believe the rule is generally acceptable
19 and we encourage the Board to adopt it as the
20 proposal has been revised through the three
21 erratas and Mr. Bloomberg's additions this
22 morning. Specifically regarding optimum manner,
23 Mr. Ross's statement this morning about the
24 optimum manner provisions of the rule have

1 resolved the concern set forth at pages one and
2 three to twelve of my written testimony addressing
3 IEPA's position regarding optimum manner.

4 Accordingly, Midwest Generation requests no
5 further clarification of optimum manner nor any
6 other determination by the Board concerning
7 optimum manner.

8 We appreciate Mr. Bloomberg's
9 clarification regarding weight averaging of the
10 mercury content in the coal. We also appreciate
11 the IEPA's willingness to further amend the rule
12 to allow for a 75 percent monitoring availability
13 to be determined on an annual rolling basis.

14 Mr. Bloomberg presented language
15 this morning that had the -- satisfactorily
16 addresses this issue and we encourage the Board to
17 incorporate that language into the rule. We agree
18 that Mr. Bloomberg's proposed language for
19 appendix B, section 1.4(b)(3)(G)(v) clarifies the
20 question regarding mercury RATA and encourages the
21 Board to adopt that change.

22 IEPA resolved our concerns
23 regarding temperature correction in the third
24 errata is acceptable -- the language proposed is

1 acceptable to Midwest Generation. We note that
2 the Agency addressed the issue of retrospective
3 noncompliance determinations in section
4 225.239(g)(2) of the third errata. The IEPA's
5 proposed new language is a great improvement over
6 the original language. We do not object in the
7 language to the original errata. Thank you.

8 MR. BONEBRAKE: That will conclude
9 the opening statement.

10 MR. FOX: Very well. Are the
11 witnesses ready to take questions at this point?

12 MR. BONEBRAKE: Ms. Crapisi and
13 Mr. Nagel have opening statements as well.

14 MR. FOX: You can proceed with
15 whichever order that you prefer.

16 MS. CRAPISI: My name is Andrea
17 Crapisi, that's C-R-A-P-I-S-I. I'm an
18 environmental engineer employed by Midwest
19 Generation. I assist Midwest Generations six
20 generating stations in compliance with their air
21 permits, the Clean Air Interstate Rule, New Source
22 Performance Standards, mercury requirements and
23 any other air compliance matters that arise.

24 In the course of these duties, I

1 help the stations obtain air permits and manage
2 the air permitting efforts for new projects at the
3 stations. I've worked with Midwest Generation
4 since the summer of 2005. Prior to that, I was an
5 air quality consultant at Trinity Consultants for
6 two and a half years. I have a Bachelor's of
7 Science degree in chemical engineering from Iowa
8 State University. As part of my air permitting
9 duties at Midwest Generation, I assisted in the
10 permitting of the activated carbon injection
11 system for the generating stations and I'm
12 currently tracking compliance with the applicable
13 regulations regarding carbon injection.

14 I also participated in
15 discussions regarding amending the temperature
16 correction provision in section 225.294(g)(4).
17 I'm familiar with requirements of the Illinois
18 mercury rule, particularly the combined pollutant
19 standard that is applicable to Midwest Generation
20 and can answer questions on that topic.

21 MR. FOX: Thank you, Ms. Crapisi and
22 Mr. Nagel, it's your turn now to speak.

23 MR. NAGEL: My name is Chris Nagel,
24 N-A-G-E-L. I'm a project manager at Midwest

1 Generation. I'm responsible for all aspects of
2 large capital projects from development of the
3 scope, schedule, budget through execution. Large
4 capital projects include monitoring and control
5 projects and specifically mercury monitoring and
6 activated carbon injection systems that Midwest
7 Generation has installed. I've been employed by
8 Midwest Generation for over nine years and been in
9 that capacity the entire time.

10 Previously, I worked at
11 Commonwealth Edison for over 17 years in a variety
12 of positions, including quality assurance,
13 procurement, engineering, construction management
14 and projects management. I have a Bachelor of
15 Science in mechanical engineering from Michigan
16 Tech University. I have a Master of Engineering
17 Management from Northwestern University.

18 I've been responsible for the
19 procurement, installation and start up of the
20 continuous mercury monitoring systems at Midwest
21 Generation's power plants. I've dealt with the
22 problems associated with construction, start up
23 and commissioning of these systems on a daily
24 basis and can answer any questions regarding the

1 issues that Midwest Generation has experienced.
2 At this point in time, I do not believe that it is
3 possible for Midwest Generation to maintain 75
4 percent monitoring availability with the mercury
5 monitoring systems.

6 MR. BONEBRAKE: I believe that
7 concludes our opening statements.

8 MR. FOX: Very good, Mr. Bonebrake.
9 If the three of them are ready, we can proceed to
10 questions. Is there anyone who wishes to pose a
11 question to any of the three witnesses on behalf
12 of Midwest Generation?

13 MS. VETTERHOFFER: The Agency does
14 if we can just have one moment?

15 MR. FOX: Absolutely,
16 Ms. Vetterhoffer.

17 MS. VETTERHOFFER: We're ready.

18 MR. FOX: Ms. Vetterhoffer, please
19 go ahead.

20 MS. VETTERHOFFER: Mr. Nagel and Mr.
21 Miller would be better --

22 MR. FOX: Ms. Vetterhoffer, we do
23 need some volume for the court reporter.

24 MS. VETTERHOFFER: I'm just asking

1 for a point of clarification from Mr. Miller's
2 opening statement. It sounded like as if the
3 negotiations that Midwest Generation has been
4 involved with, that the Agency had resolved most
5 of the issues -- actually all of the issues in
6 your pre-filed testimony, is that correct?

7 MR. MILLER: Yes.

8 MS. VETTERHOFFER: But then in
9 Mr. Nagel's opening statement it sounded like
10 Midwest Generation is still having problems with
11 the 75 percent uptime requirement and I'm just
12 asking for clarification between those two
13 statements.

14 MR. MILLER: To support the
15 flexibility and the ruling to --

16 THE COURT REPORTER: Your name
17 again?

18 MR. MILLER: The regulation allows
19 continuous monitoring or stack testing options,
20 the first two and a half years of the program and
21 then post July 1st, 2012, the availability is
22 calculated on a rolling basis. I think Chris
23 meant as of today, I don't have any monitors at 75
24 percent availability. We have attempted to

1 install 11 monitors for all our units in the state
2 and when done with the project, we should be
3 meeting the 75 percent availability monthly
4 rolling no matter what the average. We would like
5 the two year period to learn -- to get all our
6 ducks in a row to get to that point. I can't say
7 for sure at the end of the two years or two and a
8 half years, we'll reach that on every unit, the 75
9 percent rolling.

10 We're going to strive to get
11 those monitors working. We want to operate these
12 monitors. We're doing everything we can to get
13 them operating. At this point in time, we're not
14 close to 75 percent availability. We've had some
15 installed since September of 2007.

16 MS. VETTERHOFFER: I think you did
17 clarify this, but just so we're clear. So the
18 rule as written and modified in the Agency's
19 second and third errata is acceptable to Midwest
20 Generation?

21 MR. MILLER: Yes.

22 MS. VETTERHOFFER: Thank you.

23 That's all the questions I have.

24 MR. FOX: Thank you, Ms.

1 Vetterhoffer. Were there any further questions?

2 MS. BASSI: I'm sorry. I need to
3 further clarify also. The second and third
4 errata, I believe, you said in the testimony plus
5 what Mr. Bloomberg provided today, which I think
6 is what provides for the rolling 12 month average?

7 MR. FOX: And those -- I'm certain
8 I'm understanding you correctly is that it was
9 Exhibits 8 and 9 were offered to you by
10 Mr. Bloomberg and Mr. Ross on the basis of their
11 statements earlier today.

12 MS. BASSI: Yes.

13 MR. BONEBRAKE: Just referring to
14 the statement of Mr. Ross regarding optimum
15 manner. So that is also represented in Mr.
16 Miller's testimony regarding the view of Midwest
17 Generation concerning where we are today.

18 MR. FOX: And that statement was
19 certainly part of the record. Just for additional
20 clarification, were there any further questions
21 for Mr. Miller, Ms. Crapisi or Mr. Nagel at this
22 point?

23 MR. RAO: I have a follow up.

24 MR. FOX: Mr. Rao has a follow up.

1 MR. RAO: Mr. Miller, when you
2 mentioned you're not achieving 75 percent monitor
3 availability, what levels are you seeing based on
4 the data that you have?

5 MR. MILLER: I always look at the
6 start point to start measuring monitor
7 availability the way the rules are written and
8 QA/QC, quality assurance and quality control
9 requirements, who have used my monitors under
10 their rule. I need to have passed all of my
11 quality assurance, quality control tests and that
12 includes seven-day drifts, the integrity test that
13 Dominion talked about earlier. We're having
14 trouble passing that test, RATA and calibration
15 error tests.

16 I need to pass all those tests
17 and then that's day one of when my monitoring
18 availability starts. We've had numerous failures
19 as you've read in my testimony in the umbilical,
20 the lack of support from the vendor, numerous part
21 failures. So it's taken me all this time since
22 September of '07 to get to that point where I can
23 perform all these QA/QC tests.

24 So as of today, I don't have any

1 records of monitoring availability. In fact, it's
2 zero percent because I need to pass all the QA
3 tests to start my clock. And hopefully I'll be at
4 that point later towards 2009, but as of today, we
5 have zero percent availability.

6 Now, I am reading mercury
7 emissions, but in the rule that would not be
8 acceptable because I have to pass all that QA
9 testing for the data to be quality assured and
10 that's the way the rule is, that's how it is for
11 the SO2 and the NOx program. Mercury is much more
12 difficult to measure and the systems are much more
13 difficult to operate and the testing is even more
14 difficult to pass those tests. So I'm zero
15 percent today.

16 MR. RAO: Thank you.

17 MR. JOHNSON: Tom Johnson. One more
18 level of clarification. The way those statements
19 that you made are reconciled, that being that
20 you're unable to make the 75 percent, but you're
21 satisfied with the rule as amended, in that, at
22 least at this juncture, you intend to use the
23 alternative monitoring provided for in the rule?

24 MR. MILLER: If I had to make a

1 decision today, I would probably use the stack
2 test option and run parallel my monitors as
3 diagnostics, but that's Midwest Generation's data,
4 the official data would be the stack testing for
5 the compliance.

6 MR. JOHNSON: Thanks.

7 MR. FOX: Mr. Johnson, anything
8 further?

9 MR. JOHNSON: No.

10 MR. FOX: Any further questions of
11 Midwest Generation and its witnesses? Neither
12 seeing nor hearing any, Mr. Miller, Ms. Crapisi,
13 Mr. Nagel, thank you very much for your time and
14 your testimony today and your availability for
15 questions. That would lead us to Mr. Diericx's on
16 behalf of Dynegy according to our schedule that we
17 had discussed at the top of the day. And as a
18 public matter, I believe Ms. Bassi has a copy of
19 the testimony of Mr. Diericx, pre-filed, and we
20 will move to admit that pre-filed testimony into
21 the record as read and I believe we're up to
22 Exhibit 14?

23 MR. BONEBRAKE: That's correct.

24 MR. FOX: That motion, again, is, of

1 course, to admit the pre-filed testimony from
2 Monday, February 2nd, and is there any participant
3 who wishes to be heard in response or objection to
4 that motion for admission? Neither seeing nor
5 hearing any, that motion, Mr. Bonebrake, will be
6 granted and that pre-filed testimony of
7 Mr. Diericx will be marked and admitted as Exhibit
8 Number 14.

9 MR. BONEBRAKE: I believe that
10 Mr. Diericx has a short opening statement and will
11 be available for questions. So I believe,
12 Mr. Fox, would it be appropriate to have the court
13 reporter swear in Mr. Diericx at this time?

14 MR. FOX: Yes, that sounds great.
15 If the court reporter could do so, please.

16 (Witness duly sworn.)

17 ARIC DIERICX,
18 called as a witness herein, having been first duly
19 sworn, was examined and testified as follows:

20 MR. BONEBRAKE: We are now ready for
21 the opening statements.

22 MR. DIERICX: Good morning. My name
23 is Aric Diericx. I am the senior director of
24 operations environmental compliance for Dynegy

1 Midwest Generation, encompassing generating
2 stations in four states, including Illinois.
3 Additionally, my group provides environmental
4 compliance for a new coal fired plant under
5 construction in Arkansas. Dynegy had a number of
6 concerns with proposed amendments to the Illinois
7 mercury rule that I've identified in my pre-filed
8 written testimony. As a result of discussions
9 with the Agency following the December hearing,
10 those concerns have been addressed and Dynegy will
11 not pursue further discussions on the last of our
12 top topics of my testimony, alternative mercury
13 emission reduction calculations. Specifically,
14 Dynegy agrees with and supports the amendments
15 offered by the Agency this morning regarding
16 determining monitor availability on a rolling
17 annual basis commencing after the period for stack
18 testing has ended July 1, 2012. Mr. Ross's
19 statement this morning about the optimum manner
20 provisions of the rule have resolved our concerns
21 set forth at pages one, three to four and eight of
22 my written testimony where I address optimum
23 manner.

24 Accordingly, Dynegy requests no

1 further clarification of optimum manner and no
2 determination by the Board concerning optimum
3 manner. I had requested an explanation and
4 clarification of the use of the word excepted in
5 my testimony. Mr. Bloomberg satisfactorily
6 explained that this morning. Dynegy supports the
7 amendments to section 225.233(c)(2) regarding the
8 temperature correction as the Agency proposed in
9 the third errata. We encourage the Board to adopt
10 this language. The agency has proposed language
11 in the third errata to amend the retrospective
12 noncompliance element of section 225.239(g)(2), an
13 issue also raised in my written testimony.

14 The Agency's proposal is
15 acceptable to Dynegy and resolves this issue in
16 this rulemaking. In the third errata, the Agency
17 proposed that the commencing of monitoring
18 requirements should match the control installation
19 date in the multi-pollutant standard. This was
20 one of Dynegy's issues and we appreciate the
21 alignment of the dates in sections
22 225.233(c)(1)(A) and 225.240(b). As I said, all
23 of Dynegy's issues raised in my written testimony
24 have been resolved. Dynegy encourages the Board

1 to adopt the proposed rules as amended by the
2 three erratas and by Mr. Bloomberg's statement
3 this morning regarding monitor availability
4 determined on an annual basis beginning July 1,
5 2012. I can answer questions at this time.

6 MR. FOX: Very good, Mr. Diericx.
7 Thank you for your testimony. Is there any
8 participant who wishes to pose a question to him
9 based on his testimony here this morning? I
10 literally am seeing no hands or indications that
11 there is a question. Mr. Diericx, please accept
12 our thanks for your time and testimony this
13 morning.

14 MR. DIERICX: Thank you.

15 MR. FOX: That brings us, Ms. Bassi
16 and Mr. Bonebrake, to the point in your testimony
17 of Mr. Menne and Mr. Rygh. Would it be helpful to
18 take a quick break while we have a little
19 realignment so to speak? If could go off the
20 record for just a moment.

21 (Whereupon, a break was taken
22 after which the following
23 proceedings were had.)

24 MR. FOX: We took a brief break so

1 that we could bring into the room some witnesses,
2 including Mr. Menne who has pre-filed testimony.
3 Ms. Cipriano and Mr. More, if you don't mind my
4 proposing this, it might make sense for the
5 benefit of those of us who are here overlooking
6 the folks who want to offer comments and we will
7 certainly turn to you at an appropriate time if
8 you would like to introduce the folks who are now
9 at the head table on behalf of Ameren just for the
10 benefit of making those names clear.

11 MS. CIPRIANO: Certainly. I think
12 it would be appropriate for them to individually
13 state their name and their position and that would
14 be clearer.

15 MR. FOX: Perfect. We can start at
16 whatever.

17 MS. CIPRIANO: I'll begin. Renee
18 Cipriano with the law firm Schiff Hardin on behalf
19 of Ameren.

20 MR. MORE: Josh More with Schiff
21 Hardin on behalf of Ameren.

22 MR. MENNE: Mike Menne, head of the
23 environmental department of Ameren Corporation.

24 MR. WHITWORTH: Steve Whitworth,

1 manager of environmental services with Ameren.

2 MR. LORING: David Loring, attorney
3 at Schiff Hardin on behalf of Ameren.

4 MR. HUGHES: Darryl Hughes and I'm
5 supervisor of evaluations at Ameren Finance.

6 MR. RYGH: Gary Rygh. I'm a
7 managing director of Barclay's Capital.

8 MR. ARTMAN: Tony Artman. I'm a
9 managing supervisor in strategic initiatives of
10 Ameren.

11 Ms. MORE: We would like to have
12 Mr. Menne read a short summary of his testimony to
13 add context to any questions that might be asked
14 of the panel and we'd like at this time to move to
15 have Mr. Menne's testimony admitted as if read
16 along with Mr. Rygh's testimony as if read. We
17 have copies of those.

18 MR. FOX: You have copies of those?

19 Ms. MORE: We do. 15 and 16?

20 MR. FOX: Actually, 14 and 15. I
21 was mistaken. Number 14 was Mr. Diericx's
22 pre-filed testimony and it was my error and I
23 appreciate you pointing that out. These will be,
24 Mr. More has indicated, Exhibits 15 and 16. We

1 will make Mr. Menne 's testimony Exhibit Number 15
2 and the testimony of Mr. Rygh that was admitted
3 instanter earlier today as Exhibit Number 16.
4 We've heard a motion to admit those two documents
5 under those numbers. Is there any participants
6 who wishes to be heard in response or objection?
7 Neither seeing nor hearing any, Mr. More, those
8 will be admitted as Exhibits 15 and 16.

9 MS. MORE: With that, why don't you
10 go ahead.

11 MR. FOX: Why -- Mr. More, I'm sorry
12 to interrupt. You had referred to the panel with
13 the exception of Mr. Loring and Ms. Cipriano,
14 would all of the gentlemen seated at the head
15 table -- why don't we have the court reporter
16 swear in each of those fine gentlemen so we can
17 avoid doing that midstream.

18 MR. MORE: That's consistent with
19 Mr. Menne's testimony that he's conferred with
20 each of these individuals in developing his
21 testimony. Therefore, they're here to answer any
22 questions that you might have.

23 WHEREUPON:

24 MICHAEL MENNE, STEVEN WHITWORTH, DARRYL HUGHES,

1 GARY RYGH AND ANTHONY ARTMAN

2 called as witnesses herein, having been first duly
3 sworn, deposed and saith as follows:

4 MR. FOX: Very good. And I think I
5 interrupted you in referring to an introductory
6 statement or summary that Mr. Menne wished to. It
7 sounds like we're right in order to do that.

8 MR. MENNE: Thank you very much. As
9 I've mentioned, my name is Michael Menne. I'm the
10 vice president of the environmental services
11 department for Ameren Corporation and I'm here
12 today representing Ameren Energy Generating
13 Company, Ameren Energy Resources Generating
14 Company and Electric Energy, Inc., all of which
15 are subsidiaries of Ameren Corporation and which I
16 will collectively refer to today as Ameren.

17 I am responsible for developing
18 policies and procedures related to environmental
19 compliance for Ameren Corporation and its
20 operating subsidiaries. In the past, I have been
21 responsible for representing Ameren before
22 regulatory or administrative bodies with respect
23 to state and federal permitting conditions and
24 regulatory requirements.

1 As indicated, I did submit
2 pre-filed testimony so I'm not going to read my
3 statement here today, but just provide a very
4 brief summary of what that statement is. Ameren
5 is seeking an amendment to section 225.233, the
6 multi-pollutant standard which we refer to as the
7 MPS. In particular, Ameren is seeking to amend
8 the SO2 emission limit of 0.33 pounds of SO2 per
9 million BTU in calendar years and 2013 and 2014
10 in that statute, in that regulation.

11 What we are seeking for is to
12 eliminate that 0.33 interim level in the MPS. As
13 a result of the unforeseen and extreme financial
14 conditions of the US and global economy and the
15 risk associated with the regulatory uncertainty
16 surrounding the new greenhouse gas regulations,
17 compliance with the 2013 and the 2014 SO2 emission
18 rate of 0.33 will cause Ameren to suffer
19 unreasonable economic hardship.

20 In consideration of the
21 amendment we are asking today, the elimination of
22 this interim 2013 and 2014, Ameren after extensive
23 discussions with the Illinois Environmental
24 Protection Agency has agreed to earlier and

1 additional emission rates, limitations for both
2 NOx and SO2 emissions and starting in 2017, an
3 even more stringent rate for SO2.

4 These earlier and additional NOx
5 and So2 emission rate limitations will result in a
6 net environment benefit to the state of Illinois.

7 Despite the extreme economic
8 circumstances facing Ameren, the proposed
9 amendment is economically reasonable and
10 technically feasible and thus appropriate for the
11 Board to consider. The technology associated
12 with the SO2 and NOx emission reductions have been
13 found economically reasonable and technically
14 feasible by the Board, including in the original
15 rule making which is the subject of the hearing
16 today.

17 The amendment we're seeking
18 today will provide Ameren with the time necessary
19 to make more informed decisions regarding the
20 commitment of substantial sums of money, capital
21 dollars, leading up to its compliance with the SO2
22 emission limitations in 2015 and 2017. It also
23 allows us -- I would just mention that we are in
24 the process of -- the SO2 amendment we are asking

1 for really requires us to begin the installation
2 of new SO2 scrubbers starting in the very near
3 future and happening to be starting this year. I
4 want to make it clear that we are in the process
5 right now of installing three scrubbers on our
6 system at three of our large generating plants and
7 will be installing another one in the interim
8 period and we will continue to meet the emission
9 limitation in 2015 so that will require that we
10 put the scrubbers on. We're basically just asking
11 for a two year delay for a couple of the
12 scrubbers. Just in anticipation of the question
13 we may get, should the amendment not be granted
14 what would the company do? First of all, the 0.33
15 pound limit would continue to be in the regulation
16 and Ameren will comply with that rule.

17 However, we would have to take a
18 look at what options we might have for compliance
19 with that rule. Because of the inability for us
20 to -- and the extreme difficulty for us to finance
21 capital projects at this time, what we would have
22 to do is look at other options that we could
23 consider for complying with the rule and we would
24 look at things like reduce -- drastically reduce

1 the generation from some of our facilities so that
2 we get the generation low enough so we can comply
3 with the emission limitations of the rule. We
4 also would be looking at the potential for
5 mothballing some of these facilities and taking
6 them offline for a few years until the financial
7 conditions get better, until we have better
8 certainty on the regulatory requirements that are
9 facing us.

10 And the third options we could
11 take a serious look at is close down some
12 facilities just so that our financial condition
13 would improve so we would have the ability to put
14 pollution control equipment on our larger units.
15 As mentioned earlier, with me today is Steve
16 Whitworth, Darryl Hughes, Tony Artman and Gary
17 Rygh. I conferred with each of these individuals
18 in developing the testimony I have prepared and at
19 this time we are prepared to answer any questions
20 that you might have.

21 MR. FOX: Thank you, Mr. Menne.
22 Ms. Cipriano, Mr. More, would Mr. Rygh wish to
23 offer any brief introduction or summary before we
24 proceed to questions?

1 MS. CIPRIANO: I don't think that's
2 necessary. Thank you, though. But he is
3 available for answering questions.

4 MR. FOX: Very good. Why don't we
5 proceed with those questions if you're all set.
6 Is there anyone who wishes to pose a question to
7 Mr. Menne or any of the other members of the panel
8 here on behalf of Ameren?

9 MR. RAO: I have a couple questions.

10 MR. FOX: Mr. Rao has a couple of
11 questions.

12 MR. RAO: Mr. Menne, in Ameren's
13 proposed rule language, it limits only in terms of
14 pounds per million BTU for NOx and SO2, the
15 existing rule language provided limits in terms of
16 both pounds per million BTU and a percent of the
17 base seasonal rate and requires compliance with
18 whichever is more stringent. Will you please
19 explain the rationale for not including percent
20 limitations in your proposed change?

21 MR. MENNE: If it would be clearer,
22 we could actually do that, but, in fact, the
23 limitations, the numerical limitations that are in
24 there are much more stringent than the percent

1 reductions which is the alternative in the
2 existing rule language. So we are -- we didn't
3 put that in there because what we're proposing is
4 the more stringent of the two.

5 MR. RAO: With the limitations that
6 were proposed based on pounds per million BTU,
7 would it be possible for you to estimate what
8 percent reductions you'd get?

9 MR. MENNE: I assume you want to
10 compare it to the baseline of the language that is
11 in there.

12 MR. RAO: If you don't have a
13 number, you can provide it in your comments.

14 MR. MENNE: I think we'll probably
15 follow up. I don't know that we've made that
16 calculation, but we'd be happy to provide that.

17 MR. WHITWORTH: We were required
18 under the regulation, the existing regulation, to
19 file a notice of intent to comply by means of the
20 MPS by the end of 2007. Part of that
21 demonstration included the analysis that
22 determined whether or not the base emission rates
23 or the percent removal were more stringent. So
24 for those rates and the case for NOx with the case

1 0.11, that would be the rate that is more
2 stringent than the percent removal that was in the
3 original rule as well as with the SO2 rates going
4 with the phase one and phase two rates. The 0.25,
5 was the more stringent rate ultimately.

6 MR. RAO: Okay. Thank you. Also,
7 on page 16 of your pre-filed testimony you stated
8 that the total projected SO2 and NOx emission for
9 the period of 2010 through 2020 under the proposed
10 language was calculated at 867,287 tons, to the
11 extent you're able to break this number down into
12 tons per SO2 and the tons on production from NOx
13 and, if possible, do it on an annual basis from
14 each of your power stations and, again, you don't
15 have to provide this information if you don't have
16 it right now. It can be provided at another time.

17 MR. MENNE: Very roughly, the SO2
18 ton part of that is around 648,000 and the NOx on
19 this is around 220,000. Roughly, that's the
20 breakdown of those tons. So it's -- 650 to 220 is
21 the ratio. I'm sorry. You asked for that
22 annually?

23 MR. RAO: Yes.

24 MR. MENNE: Would it be easier for

1 us to provide you with the information --
2 annually, well, it doesn't vary because of the
3 timing when you put the different pollution
4 controls on. We can provide you with the annual
5 numbers on the system for SO2 and NOx for each of
6 the years between 2010 and 2020 to give you that
7 calculation.

8 MR. RAO: Okay. That would be fine.
9 The last question I had was on page three of your
10 pre-filed testimony. You stated Ameren's proposed
11 amendment would allow Ameren Illinois Generating
12 Company to defer approximately \$500 million of
13 capital from 2009 through 2012 timeframe to 2013
14 to 2015 timeframe. Would it be possible for
15 Ameren to identify what portion of that \$500
16 million would be attributable to SO2, NOx and
17 mercury compliance?

18 MR. MENNE: The deferral of the \$500
19 million is the cost associated with the
20 construction of two large scrubbers on our system.
21 So those scrubbers would be the compliance
22 mechanism primarily for the SO2. They do not deal
23 with NOx. The scrubbers also would end up being
24 in compliance for mercury. However, we are

1 required under the mercury provisions to have
2 mercury controls installed at the plants beginning
3 in this year. So it will take the place of
4 assuming activated carbon injection on those units
5 where these scrubbers would be deferred. So while
6 the scrubbers -- we're talking about the SO2, but
7 that also would become a mercury compliance. So
8 we'll have mercury controls at the same facilities
9 up until we get those scrubbers installed.

10 MR. RAO: I have one last final
11 question.

12 MR. FOX: And I had a question that
13 may be directed more specifically to you,
14 Ms. Cipriano or you, Mr. More. Ameren had in
15 PCB 9-21, of course, recently filed a petition for
16 a variance that had information pertaining both to
17 emissions and their controls. Would Ameren have
18 any objection of the Board on its own motion,
19 incorporate that petition into the record at this
20 proceeding?

21 MR. MORE: Some things have been
22 updated since that filing. Let us take another
23 look at it. What I'm suspecting will happen is
24 we'll file some additional information that

1 Mr. Rao has asked for which was included in the
2 petition.

3 MR. FOX: And if it's helpful to
4 identify what has been revised, updated, corrected
5 or otherwise amended in that petition, that would
6 be helpful to the Board in having that data or
7 information.

8 MR. RAO: To be more specific, there
9 was a table one in the petition which indicated
10 information regarding the affected power stations,
11 the boilerplate emission rates and that was what
12 we were looking for.

13 MR. MORE: What we'll do is we'll
14 submit that with our comments, that whole
15 petition, and then identify those things that have
16 changed since then and this additional information
17 Mr. Rao has asked for.

18 MR. FOX: Very well. And certainly
19 we'll be talking about the deadlines for
20 pre-filing those comments very soon. So that
21 would work. Thank you very much.

22 MR. RAO: You've been very helpful.
23 Thank you very much.

24 MR. FOX: Were there any further

1 questions for Ameren and its panel? I'm seeing no
2 indication that there are any questions. Anything
3 further Ms. Cipriano or Mr. More?

4 MS. CIPRIANO: No, I think we --
5 again, we're available to answer any questions if
6 there's no further questions. We'll certainly
7 follow up with the information requested in
8 comments.

9 MR. FOX: Very good. We appear to
10 have exhausted the questions and although I'll
11 certainly give any one else an opportunity to
12 indicate that they have one. You had mentioned
13 that you had persons that -- the lady and
14 gentlemen seated behind you that they wish to
15 offer a public comment and we have come to the
16 point in the conclusion of the pre-filed testimony
17 and the questions based upon it where it would be
18 in order to take those up. I don't think there's
19 any particular order that the Board would expect.

20 MS. CIPRIANO: Just because of
21 timing constraints --

22 MR. FOX: Just for the court
23 reporter, if you can identify yourself by full
24 name and include any affiliation or membership

1 that might bring you here today for your comment.

2 MS. HAMPTON-KNODLE: Okay. The last
3 name is kind of tricky. Hello. My name is
4 Heather Hampton-Knodle and I'm the executive
5 director of the Montgomery County Economic
6 Development Corporation. My mailing address is
7 P.O. Box 213, Hillsboro, Illinois 62049. It may
8 sound like I'm from Tennessee, but I'm not. As
9 home to Ameren's Energy Generating Coffeen Plant
10 since 1965, Montgomery County, specifically, the
11 economic development corporation, would like to
12 add our voice of support of Ameren's request in
13 this proceeding to modify certain requirements
14 contained in regulations pending before the
15 Illinois Pollution Control Board. It's our
16 understanding that the relief that Ameren is
17 requesting doesn't seek to undo any broad-based
18 environmental commitments, but it does seek to
19 allow the company more time to make informed and
20 prudent decisions in the time of economic and
21 regulatory uncertainty.

22 It's also our understanding that
23 the decision before this pollution control Board
24 could also lead to significant economic impacts

1 for our county and that's what brings us here
2 today. While some of our residents, actually,
3 many of them remain anxious about any potential
4 short-term stimulus from additional and continuous
5 construction at the Coffeen Power Plant, we're
6 more concerned about the long-term economic
7 viability and the environmental integrity of the
8 plant's operations. Just to highlight some of the
9 facts and figures of why this is so critical to
10 our county.

11 The Coffeen facility and its 199
12 employees play a significant role in the vitality
13 of our Montgomery County economy. For example,
14 our county has 30,000 people, which could fit in
15 this building, but we're spread over 702 square
16 miles, try to let that sink in. 702 square miles,
17 703.6, 30,000 people. So the \$3 million that
18 Ameren paid in the 2007 tax year payable in 2008
19 are very critical for our infrastructure.

20 A reassessment that was
21 conducted in 2007 that will continue through 2017,
22 which Ameren agreed to pay property taxes that
23 will accumulate to approximately \$36.795 million
24 over the course of these ten years. Again, it's

1 very critical for our roads and bridges in
2 particular, our emergency services and our
3 schools. Also, when we talk about those 199
4 employees. They are also very well paid. I
5 believe Ameren's average employment salary for
6 them is \$71,000, which compared to our county
7 average per capita income is almost three times
8 higher than the county average. So that may give
9 you a sense of the contrast of the types of jobs
10 that are provided by the plant, but in November of
11 2008, Montgomery County had the distinction of
12 leading the state of Illinois in unemployment with
13 a rate of 11.2 percent. So I'm fortunate to have
14 a job standing here before you.

15 By December, unemployment was at
16 10.9 percent placing us third in the state behind
17 Boone and Winnebago County. This brings the
18 importance of the steady, well paid jobs into
19 sharp relief. Of the plants annual operating
20 budget, which is more than \$45 million, \$14
21 million of that goes directly into wages and
22 according to Bob Lewis who will speak later about
23 some of the multiplier effects with his business
24 development and strategy, some of the multiplier

1 effects of these dollars and wages turn into 122
2 more jobs in our county and additional household
3 earnings of \$5.9 million and an additional direct
4 economic impact of \$46.2 million. And that's not
5 chicken feed in Montgomery County.

6 In our effort to identify the
7 economic impacts that the plant has, we observed
8 the human impact that this facility and the people
9 who work at Ameren Generating have on communities.
10 Another Montgomery trivia fact for you, besides
11 Matt Hughes, the ultimate fighting champion coming
12 from our town is that we have 214 volunteer
13 organizations and it takes people to make that
14 happen as well as most of our local government,
15 require volunteer leadership. So these Coffeen
16 plant employees are very important to community
17 development as well as economic development.

18 Simply put, it's an integral
19 part of the fabric of both our economy and our
20 community. And I think that sums it up. You've
21 probably gathered by now that permitting Ameren to
22 make these changes they will be more effectively
23 managed in this time of economic and regulatory
24 uncertainty and work to preserve much needed

1 employment for our citizens. Thank you.

2 MR. FOX: Ms. Hampton-Knodle, thank
3 you for your comments. The printed copy that you
4 supplied is in the hands of the court reporter
5 and it will be, of course, reflected in the record
6 of these proceedings. So thank you for your time.

7 MS. HAMPTON-KNODLE: Thank you.

8 MR. FOX: Ms. Cipriano, whichever
9 one of the commenters would wish to go next can go
10 when they're set.

11 MR. DENISON: Good morning. My name
12 is Terry Denison. My business address is 221 East
13 State Street in Jacksonville, Illinois. I am
14 employed by the Jacksonville Regional Economic
15 Development Corporation. It's a non-profit
16 community and business development organization
17 dedicated to attracting, retaining and creating
18 job opportunities throughout a two county area of
19 Morgan and Scott County in Illinois. Like other
20 interested community reps who are attending this
21 hearing, I am speaking in support of granting
22 Ameren Energy Generating Company regulatory relief
23 on the timing associated with installing specific
24 control equipment to meet interim emission

1 standards in favor of helping the plant meet its
2 long-term environmental commitment since
3 sustaining power generation operations in our
4 county.

5 Meredosia, in Morgan County, has
6 been close to the Ameren Energy Generating
7 Company's Meredosia power plant since being built
8 in 1948. We recognize that the age of the plant
9 presents key operating challenges for Ameren
10 Energy Generating Company as they work to address
11 impending environmental standards while keeping
12 the facility viable in the energy marketplace.

13 As previously stated during
14 other filed testimony at this meeting, it's our
15 understanding that the relief that Ameren is
16 requesting does not seek to undo its overall
17 environmental commitments, but merely allows the
18 company additional time in the wake of the
19 uncertainty related to court challenges to the
20 federal environmental regulations and to allow
21 Ameren flexibility in response to the current
22 economic and financial crisis facing the United
23 States.

24 The current economic conditions

1 have also had a devastating effect on the
2 Jacksonville area economy. In December of 2008,
3 Morgan County's unemployment rate was 7.3 percent.
4 And since that time the county has experienced
5 additional job losses, including a recently
6 announced closure of ACH Food Company resulting in
7 the anticipated loss of 210 jobs. Rural areas in
8 Illinois, which is where Heather and I come from,
9 face unique challenges when it comes to the
10 attraction of new business investment and we want
11 to do our part to help our existing businesses and
12 employers like Ameren Energy Generating Company
13 plan and implement capital programs in a manner
14 that can help sustain operations in the county for
15 many years to come.

16 The local economic impact of the
17 Meredosia Power Plant in Morgan County and the
18 surrounding counties is much like that of similar
19 facilities in the Ameren fleet. Our Ameren
20 facility employs 113 people at the plant for a
21 combined payroll of almost \$8 million. These jobs
22 in turn multiply throughout our economy creating
23 an additional economic output, household income
24 and new jobs.

1 safety and siren system for the community,
2 emergency training for our local volunteer fire
3 and rescue squads and help in construction of a
4 much needed industrial bypass road around the main
5 part of Meredosia. The Meredosia plant has been a
6 model steward of the community for over the six
7 decades that the plant has been our neighbor.
8 Obviously, we cannot predict what the future
9 holds, but we need to give companies like Ameren
10 the opportunity to make prudent, capital
11 investment decisions in the best interests of
12 realizing long term operating success.

13 Thank you for your consideration
14 of our economic interests in rural Illinois and
15 for your help in giving Ameren the opportunity for
16 sustaining operations in Meredosia. Thank you.

17 MR. FOX: Mr. Denison, thank you for
18 your comments and as was with Ms. Hampton-Knodle,
19 that's been made part of the record. Thank you
20 for your time.

21 MR. MARTIN: Good morning. My name
22 is Alvis Martin. I'm with the Illinois AFL-CIO.
23 My mailing address is 999 McClintock Drive, Burr
24 Ridge, Illinois 60527. I am the field director

1 for the Illinois AFL-CIO. I'm here today
2 representing working people across the state of
3 Illinois and I represent the leadership of the
4 AFL-CIO on behalf of President Michael Carrigan
5 and Timothy E. Drea, secretary of the treasury.

6 We support and we believe in
7 Ameren's request for a change and we believe that
8 it is important that their request be taken
9 seriously and that you make a move on that to help
10 sustain a very important commodity in the state of
11 Illinois, the workers in Illinois. It is vital
12 that members of the Board remember that Ameren
13 companies for more than a century have provided
14 good jobs and stable employment to thousands of
15 Illinoisian's. Ameren's seven coal fired plants are
16 located in central and southern Illinois and
17 provide critical employment in these communities.
18 Taxes paid by these companies are critical to the
19 support of schools, emergency response
20 organizations and city governments of dozens of
21 communities around the state. This fall, Ameren
22 sought to move one time frame for installing new
23 controls for two reasons, regulatory uncertainty
24 and the unanticipated financial crisis gripping

1 our nation. Almost every industry sector has been
2 effected by this, the auto and banking industry
3 being the most public examples.

4 We know the company has great
5 difficulty in accessing capital markets to support
6 its operation and refinance debt and it's our
7 memberships best interest to ensure companies like
8 Ameren are making the best decisions possible in
9 light of the economy and uncertain markets. We
10 support Ameren's request for relief made last fall
11 and we renew our support today.

12 Ameren has stated that it is not
13 reneging on its emissions reduction agreement and,
14 in fact, has agreed to more stringent emission
15 requirements than the original regulation. We are
16 confident that Ameren over the next decade will be
17 continuing with its commitments to reduce
18 emissions and these projects will provide hundreds
19 of permanent and contract jobs to unionize
20 workers. Thank you for allowing me to express the
21 view of union represented workers in this state.
22 Ameren has power plants offering good paying and
23 stable jobs. The Illinois AFL-CIO respectfully
24 requests that the Board accept the rule change as

1 proposed in light of the economy and in light of
2 the uncertainties presented. Thank you.

3 MR. FOX: Thank you, Mr. Martin for
4 your comment.

5 MR. LEWIS: Good late morning to
6 you. My name is Robert Lewis. I'm a principal
7 with Development Strategies Inc., in St Louis.
8 We're an economic, development and urban planning
9 consulting firm as you've heard referenced already
10 two or three times. My mailing address is 10
11 South Broadway, St Louis, Missouri 63102.

12 Ameren has hired our company,
13 Development Strategies, to provide supporting
14 documentation on the economic impact that each of
15 its six coal fired plants have on the local
16 economies of the host counties. The information
17 we've developed helps substantiate Ameren's
18 position that the generating facilities play
19 significant parts in the local economy and without
20 these facilities, communities would experience
21 significant economic consequences. Our
22 methodology to use operational spending
23 information provided by Ameren and by using
24 multipliers obtained from the US Department of

1 Commerce and with that we estimated three economic
2 impacts triggered by each of the six coal plants.
3 These economic impacts are designed, described as
4 the economic output impacts, household earnings
5 impacts and employment impacts. The economic
6 output impacts are essentially a measure of added
7 gross domestic product. It's a crude definition,
8 but that's the way to look at it, how much more
9 GDP is created in these counties because of
10 Ameren's spending. The household earnings impacts
11 measures the benefits of the earnings for the
12 counties labor force as a result of the multiplier
13 effects Ameren is spending and the employment
14 effects are the same thing that counts additional
15 jobs. Some of those numbers you've already heard
16 for some of the counties. To keep things
17 relatively simple, I won't list all of these
18 millions of dollars, but I do want to point out
19 instead the job creation that results from the
20 multiplier effects for the six plants. The
21 Hutsonville Power Plant directly employs 58
22 people. The spending by these employees and the
23 added spending by Ameren for other operations
24 supports another 36 jobs in Crawford County. The

1 Duck Creek Power Plant in Fulton County employes
2 83 people, multiplier effect adds another 75 jobs
3 in the county. The Newton Power Plant in Jasper
4 County employes 190 and supports an additional 88
5 jobs through multiplier effects. The Coffeen
6 Power Plant employes 199 people and supports an
7 additional 122 jobs throughout Montgomery County.
8 The Edwards Plant in Peoria County employs 149
9 people. It supports an additional 102 jobs in
10 Peoria County and the Meredosia plant employs 113
11 people and supports an additional 62 jobs through
12 multiplier effects for the combined counties of
13 Brown, Morgan and Pike. We were given those three
14 counties as the economic influence area by Ameren
15 as opposed to one county. All together, these six
16 plants employes 792 people in Illinois and as they
17 spend their wages and Ameren spends other money to
18 support its operations, another 485 jobs are
19 supported in the eight counties where these plants
20 are located. Thank you for your consideration and
21 recognition of the concerns for these communities
22 throughout Illinois.

23 MR. FOX: Mr. Lewis. Thank you for
24 your comments this morning. That brings us to the

1 conclusion, I believe, Ms. Cipriano and Mr. More,
2 of the comments on behalf of Ameren at this time.
3 And I had prepared a list on which people could
4 indicate that they wished to testify. I should
5 have taken that up before the comments. I
6 believe, Mr. More, if I could rely on you to pass
7 that to me. I think virtually everyone in the
8 room has either been sworn or represents someone
9 who has and, in fact, every name on here has
10 either testified or offered a comment. So we have
11 exhausted the testimony here today.

12 It would be time to move on to
13 the issue of the economic impact study. Since
14 1998, of course, section 27(b) of the
15 Environmental Protection Act has required that the
16 Board request from the department now known as the
17 Department of Commerce and Economic Opportunity an
18 economic impact study of proposed rules before the
19 Board adopts them. The Board then must make
20 either that economic impact study or the
21 department's explanation for not conducting one
22 available to the public at least 20 days before a
23 public hearing.

24 In the letter that was dated

1 November 7th, 2008, and which can be viewed on the
2 Board's website, acting chairman, Dr. Gerard,
3 requested that of the Department of Commerce and
4 Economic Opportunity. On this proposal to date,
5 the Board has received nothing from the department
6 in response to that request. Is there anyone who
7 would like to testify regarding the request from
8 the Board or the response or lack of response from
9 the Department of Commerce and Economic
10 Opportunity? As I suspected, there is not anyone
11 who wishes to do so. Why don't we go off the
12 record, if it's time to do so, to address a couple
13 of procedure issues?

14 (Whereupon, a discussion was had
15 off the record.)

16 MR. FOX: If we could go back on the
17 record briefly please. In going off the record
18 for a short time, the participants discussed
19 procedural issues chiefly if not exclusively, the
20 filing of post hearing comments. As a result of
21 those discussions, the Illinois Environmental
22 Protection Agency has committed to filing a
23 revised proposal to amend part 225 that would
24 incorporate each of its three errata sheets filed

1 with the Board in addition to the proposed
2 amendments filed today at hearing as Exhibit
3 Numbers 8 and 9. That deadline, again, is
4 Thursday, February 19th of 2009.

5 Post hearing comments based on
6 the availability of the transcript of this hearing
7 by Friday, February 20th. Those post hearing
8 comments would be due at the Board on or before
9 March 6th of 2009. What I should have addressed
10 off the record is the issue of the Boards mailbox
11 rule. My intention would be when we have the
12 transcript and when we have the amended proposal
13 to issue a hearing officer order that simply
14 clarifies in black and white what the deadline
15 post hearing comments is and I would expect to
16 provide that the mailbox rule does not apply in
17 part, Mr. Bonebrake, to address your concern about
18 the speed of proceeding to the Board's opinion and
19 order and also based on the fact that it's
20 something that virtually every one of these
21 participants has relied on electronic filing,
22 which is, of course, an option.

23 As indicated copies of the
24 transcript are expected to be available by Friday

1 the 20th and very soon after it is filed with the
2 Board, the Board's clerk will make it available on
3 the Board's website from which, of course, it may
4 be viewed and printed. In addition to the four
5 persons who offered spoken comments today,
6 participants may file written public comments with
7 the clerk of the Board. Those may also be filed
8 electronically and any questions about that filing
9 option can be directed to the Board's clerks
10 office. If anyone has questions about the
11 procedural aspects of this rule, they may reach
12 the Board's clerk or me through the contact
13 information that is listed on the Board's website.

14 Of course, there are now no
15 other hearings scheduled in this matter. This
16 concluding the second hearing on the Agency's
17 original proposal. Are there any other matters
18 that need to be addressed today? Seeing no hands,
19 noting the hour and feeling the temperature, it
20 looks like we are prepared to adjourn. I thank
21 you all for your patience and flexibility through
22 some room arrangements and warm weather. I know
23 the Board and the staff are very grateful for your
24 testimony and your responses to questions. Thank

1 you. We're adjourned.

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1 STATE OF ILLINOIS.)
2) SS.
3 COUNTY OF COOK)
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7 I, STEVEN BRICKEY, being a Certified
8 Shorthand Reporter doing business in the City of
9 Chicago, Illinois, County of Cook, certify that I
10 reported in shorthand the proceedings had at the
11 foregoing hearing of the above-entitled cause.
12 And I certify that the foregoing is a true and
13 correct transcript of all my shorthand notes so
14 taken as aforesaid and contains all the
15 proceedings had at the said meeting of the
16 above-entitled cause.

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Steven Brickey

STEVEN BRICKEY, CSR
CSR NO. 084-004675