ILLINOIS POLLUTION CONTROL BOARD
June 6, 2013

AMEREN ENERGY RESOURCES,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 12-126
	)	(Variance - Air)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by J.A. Burke):

On May 2, 2013, Ameren Energy Resources (AER) and Illinois Power Holdings, LLC (IPH) (collectively, "movants") filed a motion to reopen this docket and substitute parties (Motion). The movants request that "the Board substitute IPH for AER as grantee of the variance relief with the ongoing conditions set forth in the Board's September 20, 2012 Order." Mot. at 1. The Agency filed its response on May 20, 2013. The Agency, as well as a number of commenters, requests that the Board not grant the motion without first holding a hearing. Movants replied that the Board should grant their motion as posed.

For the reasons below, the Board denies the movants' motion. IPH is free to file a new petition for variance seeking the same or similar relief granted to AER.

PROCEDURAL BACKGROUND

On May 3, 2012, AER filed a petition (Pet.) for a variance from the overall sulfur dioxide (SO_2) annual emission rate in the multi-pollutant standard (MPS) applicable to the seven coal-fired electric generating stations in the AER MPS Group. Pet. 4-5, *see also* 35 Ill. Adm. Code 225.233(e)(3)(C)(iii) and (iv). AER stated that, as of January 2012, it generated electricity at five of these seven stations, having ceased operations at the Meredosia and Hutsonville stations in December 2011. Pet. at 5, Pet. Exh. 6 at 4. AER sought relief from Section 225.233(e)(3)(C)(iii) for five years beginning January 1, 2015 and ending December 31, 2019, and relief from Section 225.233(e)(3)(C)(iv) for approximately three years, beginning January 1, 2017 and ending January 15, 2020. Pet. at 1; AER First Resp. at 1. A public hearing was held on August 1, 2012 in Springfield.

On September 20, 2012, the Board granted AER combined dual variances for the period December 31, 2015 to December 31, 2019 from the requirements of 35 Ill. Adm. Code 225.233(e)(3)(C)(iii) and for the period January 1, 2017 to December 31, 2019 from the requirements of 35 Ill. Adm. Code 225.233(e)(3)(C)(iv), subject to certain conditions outlined in the order.

The movants filed the current motion on May 2, 2013. On May 20, 2013, the Agency timely filed its response (Agency Resp.). On May 16, 2013, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed its response to the motion (PC 3013). On that same day, the Board received the comments of Environmental Law & Policy Center, Natural Resources Defense Council, Respiratory Health Association, and Sierra Club (collectively, the "Citizens Groups") (PC 3008). To date, the Board has received twenty-one additional public comments opposing the motion (PC 3015 through PC 3029 consist of 2,071 form letters filed between June 5 and the Board's meeting on June 6, 2013). The movants filed their reply on June 3, 2013.

AER AND IPH MOTION

The movants request that the Board substitute IPH for AER as grantee of the variance relief with the ongoing conditions set forth in the Board's September 20, 2012 order. Mot. at 1.

Parties

AER is the petitioner in this case and the current holder of the variance granted in the Board's September 20, 2012 order. Mot. at 1. Ameren Corporation (Ameren) is the parent company of AER. *Id.* IPH is the party seeking to be substituted for AER as the variance grantee. *Id.* IPH is a subsidiary of Dynegy, Inc. (Dynegy). *Id.*

Transfer of Facilities

The movants state that, while the Board's previous grant of AER's variance request has placed AER in better financial health, AER still faces financial challenges associated with "depressed market prices and a heavy debt burden." Mot. at 6. On December 20, 2012, Ameren announced its intent to exit the merchant generation business in Illinois within five years. *Id.* Dynegy contacted Ameren regarding the potential acquisition of the AER merchant generating business segment shortly following this announcement. *Id.* at 7. On March 14, 2013, Ameren entered into a transaction agreement with IPH. *Id.* IPH is "an indirect wholly-owned subsidiary" of Dynegy "created for the special purpose of acquiring Ameren's merchant utility business." *Id.* at 8.

The transaction between AER and IPH contemplates the conveyance to IPH of the five operating coal-fired energy centers: Newton Energy Center, Coffeen Energy Center, Duck Creek Energy Center, E.D. Edwards Energy Center, and Joppa Energy Center. Mot. at 7. In order to effectuate this transfer, Ameren will reorganize by moving the five operating energy centers into a newly formed subsidiary of AER (New AER). *Id.* At closing, the equity interest in New AER will be transferred to IPH. *Id.* at 8. The movants state that AER's reorganization will not occur unless the Board transfers the variance to IPH. *Id.*

The two shuttered energy centers, Hutsonville and Meredosia, will be transferred from AER into an existing indirect subsidiary of Ameren: AmerenEnergy Medina Valley Cogen, L.L.C. (Medina Valley). Mot. at 7-8. The movants represent that Medina Valley has agreed not

to operate these plants through December 31, 2020, and to provide annual certification to IPH regarding its compliance to satisfy the variance condition associated with these plants. *Id.* at 9.

The movants state that the successful transfer of the Board's order to IPH immediately after closing "is a mandatory condition to closing the transaction." Mot. at 8. The movants state that, because the five operating energy centers currently face the same financial burdens and constraints faced at the time of the original petition, the contemplated acquisition by IPH is only possible if the variance applies to the energy centers "immediately after the closing with terms identical in all material respects as those set forth in the Order (and with no material additional terms or conditions imposed)." *Id.*

The movants state that the operation of the five operating energy centers "will not change as a result of the transaction" and that the energy centers "will continue to meet their environmental obligations." Mot. at 9-10. IPH will continue the Newton FGD Project to construct flue gas desulfurization equipment, and will also comply with the terms of the Board's Order relating to the Newton FGD Project. *Id.* at 10.

Authority of Board to Grant Transfer Request

The movants contend that neither the Illinois Environmental Protection Act (Act) nor the Board's procedural rules "directly address the assignment or transfer of relief following a change of control with respect to a facility or source subject to a Board Order." Mot. at 10, citing *In re* Petition of Commonwealth Edison Co., AS 96-10, slip op. at 4 (Mar. 16, 2000). The movants do, however, cite to three Board adjusted standards where the Board transferred relief following the sale or transfer of assets. Mot. at 10-11. The movants contend that the transfers were granted following a demonstration that "the relevant factors relied on by the Board in rendering the Board's original decision had not changed." *Id.* at 11.

The movants contend that, in this case, the factors relied upon by the Board when granting the original petition have not changed. Mot. at 11. First, the Board assessed whether AER adequately examined the range of compliance options in support of its petition. *Id.* Second, the Board considered the environmental impact of the variance. *Id.* Lastly, the Board considered the hardship to be suffered by AER if compliance with the 2015 and 2017 SO_2 annual emission rates were required. *Id.* at 12. The movants state that, concerning this third factor, AER focused on "three main hardship drivers": regulatory uncertainty, declining power prices, and the inability to obtain capital funding necessary to complete the Newton FGD Project. *Id.* The movants state that the energy centers "must succeed on their own financially" following completion of the transaction, without support for major capital projects coming from other sources such as IPH's parent or affiliated companies. *Id.* at 13. The movants also claim that the same credit pressures that faced Ameren are faced by Dynegy as the ultimate parent of IPH, with negative financing consequences resulting if Dynegy were to provide financial support to IPH. *Id.* The movants state that the energy centers will not be economically viable on their own without the continued Board ordered relief. *Id.* at 14. The movants also state that the only alternative compliance option available would be unit shuttering, and that the same potential hardship to employees and local economies continues to exist. *Id.*

The movants also note that factors that caused the Board to determine that the original variance grant was consistent with federal law remain unchanged. Mot. at 15. However, IPH acknowledges that, even with the variance, additional controls may be necessary at one or more of the generating units if new federal Clean Air Act rules go into effect in the future. *Id.* at 16.

The movants conclude their motion by waiving hearing in this matter. Mot. at 17.

AGENCY RESPONSE

The Agency states that "[i]t appears that the relevant factors in support of the Board's decision to grant AER the variance have not changed and are not affected by the acquisition of AER by IPH." Agency Resp. at 2. The Agency "has no issue with the manner in which" the movants' request is being made, and contends that the Board has granted similar motions in the past. *Id.*, citing *In re* Petition of Cromwell-Phoenix, Inc., AS 03-05 (Nov. 20, 2003).

The Agency states that a public hearing should be held "solely as to the financial statements and representations made in the Motion and supporting documentation." Agency Resp. at 2. The Agency believes that such a hearing would benefit all parties and better provide the Agency with the ability to respond to the motion. *Id.*

PUBLIC COMMENTS

Attorney General's Comment

The People acknowledge that the Board has, in previous cases,

> approved the transfer of special relief to different entities when, in the words of the petitioner in a thermal discharge case, "the factors justifying the adjusted standard involved not the identity of the discharger" but rather "the nature of the discharge itself." PC 3013 at 2-3, citing Commonwealth Edison, AS 96-10, slip op. at 4 (emphasis in original).

The People state that this case is in contrast to that position. The People contend that, here, the identity of the parties

> is of crucial importance given the key factors in this case of undue hardship to the petitioner of complying with the MPS and whether or not financing can be secured by the petitioner for pollution control measures and at what cost. PC 3013 at 3 (emphasis in original).

The People state that contradictory comments made by Dynegy, IPH, and AER demonstrate that the Board should seek additional information beyond that provided by the movants in the motion and supporting documents. PC 3013 at 3. The People request that, should the Board decide to grant the motion and reopen the docket, the Board should reopen the comment period and hold a hearing "to fully evaluate whether IPH should receive variance relief from the MPS and can therefore be properly substituted for AER." *Id.*

Citizens Groups' Comment

As previously stated, PC 3008 was filed by the Environmental Law & Policy Center, Natural Resources Defense Council, Respiratory Health Association, and Sierra Club, referenced here as the Citizens Groups. The Citizens Groups request that the Board deny the motion "as procedurally improper and substantively unsupported" for two reasons. PC 3008 at 1.

The Variance Request is Premature

First, the Citizens Groups argue that the variance request is premature because an entity cannot receive a variance before it legally owns the facilities. PC 3008 at 3. The Citizens Groups cite as precedent The Ensign-Bickford Co. v. IEPA, PCB 02-159 (Apr. 3, 2003), in which, according to the Citizens Groups,

> the Board denied a motion to transfer a variance from an entity that owned a facility to an entity that was purchasing a facility, and made clear that the purchasing entity should not seek a variance prior to closing on the facility. PC 3008 at 3.

Further, the Citizens Groups state that the case law cited by the movants "is not on point." PC 3008 at 4. The Citizens Groups state that in two of those cases, the transfer of an adjusted standard between two unrelated corporate entities took place following the closing of the sale of assets. *Id.* at 4. In the third case, the party that was granted a transfer of an adjusted standard "was going through a corporate reorganization" and the decision "was a minor correction to the name of the corporation." *Id.* at 5. The Citizens Groups state that the Board's reasoning for granting a transfer of regulatory relief requires that the purchaser of the subject property assume all rights and obligations associated with the operation of the facility. *Id.*, citing Commonwealth Edison, AS 96-10, slip op. at 2.

The Citizens Groups also comment on eligibility for a variance, citing 35 Ill. Adm. Code 104.202(a), which states

> [a]ny person seeking a variance from any rule or regulation, requirement or order of the Board that would otherwise be applicable to that person may file a variance petition. PC 3008 at 5.

The Citizens Groups interpret this provision as stating that "only those entities that are subject to a Board regulation can seek a variance from that regulation." *Id.* Further, the Citizens Groups contend that the movants' request is premature because, were the Board to grant the motion, Dynegy "would be unable to execute a timely certificate of acceptance of the variance." *Id.* at 6, citing 35 Ill. Adm. Code 104.240.

Hardship and Environmental Impact

The second reason for the Citizens Groups' request for denial is that Dynegy is unable to demonstrate the same relevant factors of hardship and environmental impact that the Board found supported AER's variance relief. PC 3008 at 7. The Citizens Groups state that it was a financial hardship that qualified AER for its variance relief and that financial hardship "is an individual determination." *Id.* at 7-8.

The Citizens Groups contend that the financial hardships Dynegy will face in 2014 differ to those faced by AER in 2012. PC 3008 at 9.

The Citizens Groups contend that any hardship faced by Dynegy

> would be self-imposed because Dynegy is voluntarily entering into an agreement to purchase [AER's] plants knowing of the requirements of the MPS and of the financial hardship that would result from this business decision. PC 3008 at 12 (citations omitted).

The Citizens Groups state that Dynegy has knowledge of the MPS and has described itself as "very familiar and experienced with the Illinois MPS requirements." *Id.* at 12, citing Mot., Thompson Aff. at 3. The Citizens Groups argue that outcomes from business decisions are self-imposed hardships that do not qualify for a variance. *Id.* at 13, citing Ekco Glaco v. IEPA, PCB 87-41, slip op. at 6 (Dec. 17, 1987) ("any hardship in complying with the . . . regulations is largely self-imposed, in that it results from prior business decisions.").

The Citizens Groups request that the Board deny the motion and keep the docket closed. PC 3008 at 17. Alternatively, if the Board does not deny the motion, the Citizens Groups request additional time to respond to the motion, that the Board schedule a public hearing, and that the Board allow a public comment period of at least forty-five days. *Id.* at 18.

Additional Public Comments

The Board received twenty-one additional public comments opposing the motion. The commenters generally raised concerns regarding the environmental impact of the variance, while some opposed the movants' request to transfer the variance without a public hearing.

The Board also received a public comment on May 24, 2013, on behalf of the approximately 900 members of Heart of Illinois Group Sierra Club (Heart of Illinois), urging the Board to deny the movants' motion. Heart of Illinois challenges whether the variance "can legally be transferred," contending that IPH should be required to apply for its own variance. Heart of Illinois also notes the lack of hearing on the motion and requests that the Board further analyze IPH's request, citing "significant changes in local circumstances" since the Board granted the original variance.

On May 29, 2013, the Board received a public comment (PC 3014) on behalf of the 3,360 members of CREDO Action, requesting that the Board deny the motion. PC 3014 at 1. CREDO Action is concerned that the variance "would let several coal plants violate state air pollution limits for nearly five years." *Id.*

MOVANTS' REPLY

On June 3, 2013, the movants filed a reply (Reply) to the Agency's response as well as the public comments filed by the People and the Citizens Groups.

In response to the People, the movants contend that the People's request to hold a public comment period and hearing to evaluate the appropriateness of the motion may be "nothing more than an attempt to relitigate a final decision the Board has already made." Reply at 3. The movants further contend that the cases cited in support of the People's position are unsupportive. *Id.* at 4-5.

In response to the Citizens Groups, the movants state that the Board previously reopened a variance proceeding to modify the variance after the final order was issued. Reply at 6 (citations omitted). The movants also note that the Board granted similar requests to that made here in adjusted standard cases. *Id.* at 7 (citations omitted). The movants contend that, in each of those adjusted standard cases, the Board "did not reevaluate the merits of the adjusted standard petition . . . as the Citizens Groups would have the Board do in this case." *Id.* The movants believe that here, as in those cases, the Board should grant the movants' motion without reevaluating the relevant factors in the case "because neither party seeks to make any substantive changes to the variance." *Id.* at 7-8.

The movants state that the Citizens Groups' attempts to distinguish variance and adjusted standard proceedings "is unavailing" because of the similarities between the two proceedings and that, like a variance petition, "the adjusted standard inquiry is based on petitioner-specific information." Reply at 8. The movants also note two cases in which the Board transferred adjusted standard relief "even where the original orders were individually tailored to the petitioner." *Id.*, citing *In re* Petition of Shell Wood River, AS 97-3; *In re* Petition of Commonwealth Edison Co., AS 96-9.

The movants state that the motion is not premature because aspects of the Board Order impose immediate compliance obligations, noting that the Board previously transferred relief to a new company before the assets had been transferred to that company. Reply at 9, citing *In re* Petition of Cromwell-Phoenix, AS 03-5 (Nov. 20, 2003).

The movants argue that the Ensign-Bickford decision does not require the Board to find that a variance cannot be transferred or that a motion to substitute parties prior to changing ownership is untimely. Reply at 10, citing Ensign-Bickford, PCB 02-159 (Apr. 3, 2003). The movants distinguish Ensign-Bickford in that here, the purchasing entity is a party to the motion and the Board has received assurance from that third-party that it will assume all obligations and liabilities of operating the facility. *Id.* at 10-11.

The movants state that a separate finding as to financial hardship on the part of IPH is neither required nor appropriate. Reply at 11. The movants contend that "the key consideration" is whether "the relevant factors that justified the original relief have changed and whether the new company will operate the facility in substantially the same manner." *Id.* The movants note that the environmental benefit previously found by the Board will not go away if IPH assumes

responsibility for the operating plants. *Id.* The movants also state that the factors relevant to the AER's arbitrary or unreasonable hardship will be "equally relevant to any entity that assumes control" of the facilities. *Id.*

The movants state that the arbitrary or unreasonable hardship will remain with the owner of the plants during the term of the variance "regardless of the ultimate parent company." Reply at 12. The movants also dispute the Citizens Groups' position that the circumstances relating to AER's arbitrary or unreasonable hardship have "changed radically." *Id.* at 13, citing PC 3008 at 9. The movants state that Dynegy's public statements regarding anticipated future market conditions do not contradict the arguments in the motion relating to market prices today. Reply at 13, 14. This "market optimism . . . does not mean that sufficient funds will be available in 2015 to fund completion of the Newton FGD Project" in time to meet MPS emission rates. *Id.* at 15.

The movants argue that "the appropriate inquiry for the Board in a self-imposed hardship scenario is whether a company is seeking relief when in a quagmire of their own making, due to lack of diligence." Reply at 16. Here, the movants seek a transfer "because such relief . . . makes the transaction viable." *Id.* at 17. IPH acknowledges the hardship and is "putting the horse before the cart" by making its request at this time, because it will not acquire the plants unless the Board grants the motion. *Id.* The movants also state that the Citizens Groups' argument that the hardship is self-imposed because IPH is voluntarily acquiring the five operating energy centers must be rejected because

> it would mean that no Board-ordered regulatory relief could ever be transferred to a new owner since the new owner would always be voluntarily making the purchase and thus, under the Citizen Groups' reasoning, would be assuming any hardship voluntarily. *Id.* at 18.

The movants also contend that financial hardship "is but one component of AER's showing of an arbitrary or unreasonable hardship." Reply at 18. Other components include regulatory uncertainty, declining power market prices, increased compliance costs cannot be recovered through rate charges, and historically low natural gas prices. *Id.* The movants argue that none of these factors are specific to any particular entity and each factor will remain the same for any new owner of the energy centers. *Id.*

The movants state that any hardship "must be balanced against environmental impact." Reply at 19. The movants do not believe that a new environmental impact analysis is necessary because they have not requested any substantive modifications to the variance and there is no injury that requires revisiting. *Id.* at 20. As a result, the exact same overall reduction of SO_2 emissions will be achieved during the variance period. *Id.* The movants also note that the Board has previously granted motions to substitute in adjusted standard cases without undertaking new analysis of the environmental impact. *Id.*

Lastly, the movants contend that the Citizens Groups' suggestion that IPH file a new petition for variance following closing is misplaced "as the transaction will not occur without the regulatory certainty of the requested substitution." Reply at 21.

The movants do not believe that any additional public comment period or hearing is necessary because the Board "has already provided substantial and meaningful public input through both a public hearing and written comment period." Reply at 22. However, if the Board does deem further input necessary, the movants request that the public comment period be a short written public comment period of thirty days and that the public comment period be limited to the request at hand. *Id.* If the Board deems a public hearing necessary, the movants agree with the hearing limitation suggested by the Agency.[1] *Id.* at 23.

BOARD DISCUSSION

Under Illinois law, a variance is

> a temporary exemption from any specified regulation, requirement or order of the Board granted to a petitioner by the Board pursuant to Title IX of the Act *upon presentation of adequate proof that compliance with the rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship* [415 ILCS 5/35(a)]. 35 Ill. Adm. Code 101.202 (emphasis in original).

The Board may issue a variance from any regulation with or without conditions, and for a period of time not exceeding five years. *See* 415 ILCS 5/36(a) and (b).

The parties and commenters have cited numerous Board adjusted standard decisions in support of their respective positions. An adjusted standard is

> an alternative standard granted by the Board in an adjudicatory proceeding pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 104.Subpart D. The adjusted standard applies instead of the rule or regulation of general applicability. 35 Ill. Adm. Code 101.202.

In both proceedings, the burden of proof is on the petitioner. 35 Ill. Adm. Code 104.238; 35 Ill. Adm. Code 104.426. However, the Act requires the petitioner to make different showings to justify each form of relief. The Board may grant individual variances when an arbitrary or unreasonable hardship has been found. 415 ILCS 5/35(a); 35 Ill. Adm. Code 104.200. Unless the rule of general applicability contains specific levels of justification for consideration (see 415 ILCS 5/28(b) (2010)), the Board may grant individual adjusted standards when the Board determines, upon adequate proof by the petitioner, that

1) factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;

2) the existence of those factors justifies an adjusted standard;

[1] The Agency recommended that a public hearing be held "solely as to the financial statements and representations made in the Motion and supporting documentation." Agency Resp. at 2.

3) the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and

4) the adjusted standard is consistent with any applicable federal law. [415 ILCS 5/28.1(c)]. 35 Ill. Adm. Code 104.426.

Given the differences in the statutory prerequisites for the two forms of relief, the Board finds that the adjusted standard cases cited as examples where the Board has allowed substitution of parties do not apply to this motion. The Board's decision to grant a variance to AER was based on the Board's finding that AER met the statutory standard that AER's compliance with the rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship on AER. Such a finding is not required in granting an adjusted standard and therefore the adjusted standard cases are of little use in analyzing the movants' request.

Neither the Act nor the Board's procedural rules address the specific type of relief the movants seek. The filing requirements for a variance are set forth at 35 Ill. Adm. Code 104.202. Section 104.202(a) of the Board's regulations states:

> Any person seeking a variance from any rule or regulation, requirement or order of the Board that would otherwise be applicable to that person may file a variance petition. 35 Ill. Adm. Code 104.202(a).

AER filed such a petition and the Board found AER's compliance with a rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship. The Board's finding was based on specific evidence presented by AER in its petition, other filings, and testimony at hearing. The Board's arbitrary or unreasonable hardship finding is specific to AER based on the evidence AER presented. The Board is not persuaded that, as movants request, IPH can be substituted for AER in AER's variance proceeding. For IPH to obtain a variance, IPH must file a petition and demonstrate that IPH's compliance with a rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship on IPH.

The Board previously considered a case where a holder of a variance requested a transfer of that variance to a third party. *See* Ensign-Bickford, PCB 02-159. In that case, the Board granted Ensign-Bickford Company (EBCo) a variance from 35 Ill. Adm. Code 237.103 to open burn explosive waste and explosive-contaminated waste at its facility in Union County. Prior to expiration of the variance, EBCo requested that the Board transfer the variance to Dyno Nobel Inc., a third party that sought to become the new operator of the Union County facility. EBCo specifically requested that the transfer of the variance be effective on the date of the closing between the two parties. After acknowledging the Board's prior ruling in Commonwealth Edison, the Board in Ensign-Bickford held

> [t]he Board's procedural rules do not provide for a third party to seek a variance or have a variance transferred on Dyno Nobel's behalf. If in fact the . . . closing

occurs, consistent with Section 104.202(a), Dyno Nobel may file a variance petition or other appropriate filing concerning this facility. Ensign-Bickford, PCB 02-159, slip op. at 2.

AER and IPH request that the Board substitute IPH for AER as the grantee of the Board's September 20, 2012 variance following the transfer of AER's facilities to IPH. The scenario here is more similar to the scenario faced by the Board in Ensign-Bickford than that in any of the other cases cited by the movants. Accordingly, the Board will not grant the movants' motion.

The Board further notes that the variance currently granted to AER relates to seven facilities. Under the movants' substitution request, IPH would only take control of five of these facilities, with another third party assuming control of the other two facilities. The Board considered all seven facilities in the AER MPS Group in its analysis of AER's variance request, and any new variance request that omits these two facilities could not be subject to the same analysis. The Board would therefore be required to undertake a new analysis specifically related to the five facilities in the requested variance. *See* 415 ILCS 5/35(a).

CONCLUSION

For the reasons outlined above, the movants' request to reopen this docket and substitute IPH for AER as grantee of the variance relief is denied. IPH may file a variance petition consistent with Section 104.202(a) of the Board's regulations, or make any other appropriate filing concerning the facilities consistent with this order.

IT IS SO ORDERED.

Chairman Holbrook Abstained

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 6, 2013, by a vote of 4-0.

John Therriault, Assistant Clerk
Illinois Pollution Control Board