BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS POWER HOLDINGS, LLC and AMERENENERGY MEDINA VALLEY COGEN, LLC,	)	
Petitioners,	)	
AMEREN ENERGY RESOURCES, LLC,	)	PCB 2014-010
Co-Petitioner,	)	(Variance – Air)
v.	)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

NOTICE OF ELECTRONIC FILING

To: Attached Service List

PLEASE TAKE NOTICE that on September 13, 2013, I electronically filed with the Clerk of the Illinois Pollution Control Board of the State of Illinois the attached Written Statement of ACM Partners on behalf of the Sierra Club and Environmental Law and Policy Center, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

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Expert Commentary Report

An Economic and Financial Analysis of the proposed acquisition of Ameren coal plants by Illinois Power Holdings

David Johnson, ACM Partners

September 12, 2013

ACM Partners

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I. Background and Overview

Illinois Power Holdings, LLC ("*IPH*"), a subsidiary of Dynegy, Inc. ("*Dynegy*"), is seeking to purchase five Illinois-based coal-fired power plants (the "*Coal Plants*") by purchasing the equity in an entity ("*New AER*") formed or to be formed by the current owner, Ameren Energy Resources, LLC ("*AER*"). AER is a subsidiary of Ameren Corporation ("*Ameren*").[1]

IPH has chosen to make its obligation to move forward with the transaction contingent on it being able to obtain a variance allowing it to operate the Coal Plants without complying with certain otherwise applicable environmental obligations.[2] The parties originally petitioned the Illinois Pollution Control Board (the "*IPCB*") to approve a transfer of the existing variance from AER to IPH, but that petition was denied by the IPCB on June 6, 2013.[3]

Undeterred, and despite not yet owning the Coal Plants, IPH filed its own variance application (the "*Variance Application*") on July 22, 2013 – in essence seeking an advisory opinion from the IPCB. A public hearing on the Variance Application is scheduled for September 17, 2013.

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[1] The proposed transaction is governed by that certain *Transaction Agreement by and Between Ameren Corporation and Illinois Power Holdings, LLC* dated March 14, 2013 (the "*Transaction Agreement*").

[2] *See* Transaction Agreement at Article VIII, Section 8.2(f).

[3] *See* IPCB order denying Motion to Reopen the Docket and Substitute Parties dated June 6, 2013 in Case No. PCB 12-126.

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One of the primary arguments advanced by IPH in support of the Variance Application is that compliance with the environmental regulations would result in an "arbitrary and unreasonable" hardship due to IPH's anticipated post-acquisition financial condition. IPH argues, among other things, that:

- IPH will not have sufficient financial resources to comply with upcoming SO_2 compliance deadlines.[4]
- IPH cannot obtain financing from external third-party lenders.[5]
- Dynegy – IPH's corporate parent – cannot support the capital needs of IPH.[6]
- IPH's claimed financial hardship is not "self-imposed" or a "quagmire of its own making".[7]

[4] *See* Variance Application at Section (V)(D)(2).

[5] *See* Variance Application at Section (V)(D)(3).

[6] *See* Variance Application at Section (V)(D)(4).

[7] *See* Variance Application at Section (V)(E).

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ACM Partners has been retained to conduct an economic and financial analysis of the above claims in order to assist the IPCB with its analysis of the propriety (or impropriety) of the relief requested in the Variance Application. After carefully reviewing the proposed acquisition and the merits of IPH's request for regulatory relief based on a claim of financial hardship, ACM Partners has determined that the proposed transaction is severely flawed. IPH's request for relief from applicable environmental regulations on the grounds of financial hardship is without merit.

Most basically, any economic hardship that is projected to exist is a direct result of the intentional manner in which the transaction is being structured. Dynegy is creating a dangerously undercapitalized acquisition vehicle to acquire New AER (and thus the Coal Plants) and assume its debt, something that would make no economic sense absent: (a) Dynegy engineering the transaction such that it has no real economic exposure; (b) Ameren, the seller, committing approximately $226 million to divest or rid itself of the Coal Plants and (c) the transaction being contingent on IPH being able to obtain advanced approval of a public subsidy (in the form of relief from otherwise applicable environmental regulations).

Any financial hardship is thus plainly self-imposed, and to allow a variance under the circumstances would set very troubling precedent. It would basically give future buyers of environmentally problematic assets a "blueprint" for how to structure an acquisition so as to manufacture a perception of "financial hardship" and thereby avoid environmental compliance costs. Although the bases for these conclusions are discussed in detail below, several key points to note include:

1. The acquisition, as currently structured illustrates a strong commitment by Ameren to divest the assets of New AER and little commitment by IPH and Dynegy (IPH's parent) to properly capitalize the newly acquired operations.

    a. Ameren, the seller, is committing $226 million to divest New AER.

    b. The purchase is cash free for Dynegy. In total Dynegy is supporting the transaction with only $25 million in indemnity support.

    c. The lopsided nature of the above commitments, not to mention Dynegy's public statements to shareholders, raises immediate concern regarding Dynegy's willingness to support IPH (leaving it likely to fail absent an unexpected change in market conditions).

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2. Despite Ameren providing some initial capital, IPH will be undercapitalized from the start. Among other things, the Coal Plants are losing money and absent an unexpected turnaround in energy prices – something even IPH and Dynegy do not forecast – IPH will run out of capital and be unable to fund its operations and obligations within the next several years (and quite possibly significantly sooner if projected synergies are not fully realized or any of a number of other events occurs).

3. Dynegy, IPH's parent, has a strong capital structure as a result of a recent comprehensive refinancing, and has the ability to more robustly capitalize IPH. However, it has chosen not to, presumably because it realizes that the economic prospects for IPH post-acquisition are not good.

4. Dynegy management has been at pains to stress to investors the minimal risk of the IPH transaction. Due to the way in which it is structuring the acquisition (Dynegy has carefully "ring fenced" IPH to keep the Coal Plants and associated liabilities at arms' length), Dynegy will suffer minimal ill effects if IPH fails, but stands to benefit if the subsidiary performs according to management's (aggressive) forecasts.

5. Since the transaction does not involve any meaningful restructuring, it would do nothing to improve the balance sheet of New AER. The management teams at both companies have acknowledged that, post-transaction, IPH will be unable to access capital from third-party sources.

6. As a result of the manner in which Dynegy has chosen to structure the transaction – and, in particular, its decision to undercapitalize and isolate IPH in order to take a highly-leveraged "gamble" on the future of energy prices – Dynegy now claims in the Variance Application that IPH cannot meet environmental standards otherwise applicable to the Coal Plants due to projected "financial hardship." Such a self-imposed "hardship" – to the extent it even constitutes a hardship – should not be the basis for the public subsidy Dynegy and IPH are asking the IPCB to approve.

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II. Deal Structure

IPH's proposed acquisition of AER has plainly been structured to achieve three key objectives. For Ameren, it allows the company to exit its underperforming Merchant Generation business, with an estimated net benefit to the company of $900 million.[8] For Dynegy, it offers an investment opportunity with (i) minimal cost (non-cash transaction with no cash being infused by Dynegy for working capital) and (ii) low downside risk due to the "ring fenced" structure of IPH (meaning that if IPH ultimately fails, Dynegy will not be liable for its obligations).

Looking forward, the trouble with the proposed acquisition structure is that it does little or nothing to improve the highly-levered balance sheet or improve the viability of the underlying operations. Basically, the way the deal is structured leaves IPH undercapitalized and in financial distress from the outset.

Key portions of the proposed transaction include:

- Ameren paying $133 million to satisfy an intercompany put option
- Ameren providing $60 million to AER for general corporate purposes
- Ameren agreeing to leave $25 million in excess cash balances at AER
- Ameren agreeing to leave $8 million in proceeds from a property sale at AER
- Dynegy providing $25 million of indemnity support for a period of 2-years
- $825 million of debt remaining at AER (essentially moving the debt from Ameren's consolidated balance sheet to Dynegy's)

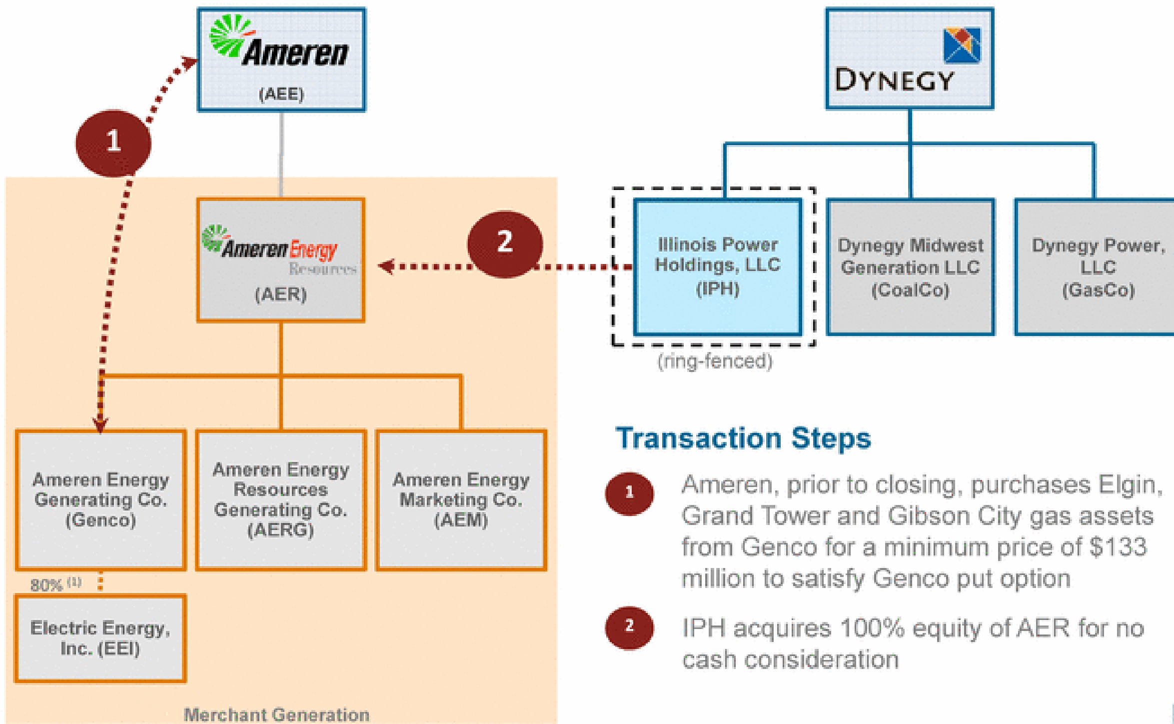
These steps are graphically depicted on Exhibit A (*see* page 8 below).

[8] *See* Ameren Corporation Securities and Exchange Commission Form 8-K, March 19, 2013. http://www.sec.gov/Archives/edgar/data/1002910/000119312513113527/d504910d8k.htm

In sum, it is accurate to summarize the proposed transaction as Ameren (the "seller") indirectly paying significant consideration – over $200 million – to Dynegy (acting through IPH, the "buyer") to induce Dynegy/IPH to acquire some of Ameren's most underperforming assets (*i.e.* the Coal Plants) and assume the associated debt. In other words, Ameren is paying millions of dollars to rid itself of unwanted and over-encumbered Coal Plants, and Dynegy appears to be agreeing to the transaction because (a) it is basically getting paid to take the assets (and not investing any cash of its own), (b) it has carefully shielded itself for the (likely) possibility that the experiment will fail and IPH will end up in a bankruptcy or other restructuring, and (c) it believes that by routing the acquisition through its undercapitalized IPH subsidiary it will be able to shield the underlying Coal Plants from existing environmental regulations (in essence obtaining a public subsidy for its acquisition).

Not only does Dynegy thus seek to have local residents bear the costs of its "gamble" and profit seeking immediately – in the form of years of increased pollution levels and the resultant public health consequences of same – as noted, IPH will be at significant risk of going into bankruptcy in the first several years of its existence (putting pensions and jobs at even greater risk and quite possibly leaving behind major environmental issues).

Exhibit A: Proposed Deal Structure



Source: Dynegy, Inc. April 11, 2013 Investor Presentation (the "*Dynegy Management Presentation*").

Dynegy's management has consistently emphasized that IPH's proposed acquisition of New AER has been structured in a manner that is very favorable to Dynegy's shareholders.[9,10] The proposed acquisition has four key features that Dynegy management repeatedly highlight:

1) Presumption of Artificially Lowered Environmental Compliance Costs
   a. The structure of the proposed transaction and forward-looking operating plan presume that the acquired assets will continue to reap the economic benefits of regulatory relief pertaining to environmental regulations.
   b. Given the recent under-performance of the acquired coal plants, the presumption of permanently lower environmental compliance costs is in effect management's attempt at obtaining for itself an open-ended subsidy.
   c. It is noteworthy that Dynegy, through IPH, is seeking to avoid the very environmental compliance costs that management anticipates will be a source of competitive advantage in future years.[11]

2) Very Limited Downside Risk to Dynegy
   a. Dynegy will commit no cash to the transaction.
   b. Dynegy's economic exposure will be limited to a 2-year agreement to provide limited indemnity support.
   c. Dynegy is protected from downside risk due to the "ring-fenced" structure of the transaction – although IPH indirectly assumes the full $825 million in debt, Dynegy will not be liable if IPH ultimately fails.

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9 *See* Securities and Exchange Commission Form 8-K, Dynegy Inc. March 15, 2013. http://www.sec.gov/Archives/edgar/data/1379895/000110465913021180/a13-7595_18k.htm

10 *See* Dynegy Inc. Presentation at Power and Gas Deep Dive Conference. April 11, 2013. http://www.sec.gov/Archives/edgar/data/1379895/000110465913028558/a13-9885_1ex99d1.htm

11 *See* Dynegy Inc. 2012 Annual Report, Page 5. http://www.dynegy.com/downloads/Annual_Reports/Dynegy_2012_Annual_Report.pdf ("[W]e continue to expect that, over the longer-term, power pricing will improve as natural gas prices increase, marginal generating units retire, and more stringent environmental regulations force the retirement of power generation units that have not invested in environmental upgrades. As a result, we expect our coal-fired baseload fleet, with its environmental upgrades, is positioned to benefit from higher power and capacity prices.")

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3) Upside Potential

    a. Dynegy projects savings from "operating synergies" in the first year of $60 million. It is important to note, however, that these are *anticipated* savings, and would represent a more than doubling, in one year, of the cost reductions that Ameren – a similarly experienced operator – was able to achieve between 2010 and 2012.

    b. IPH will be well-positioned should the pricing for electricity improve in coming years. While accurate, this is highly speculative (as discussed below), and the upside clearly was not sufficient to induce Ameren to continue supporting AER.

4) Capital Allocation

    a. As a result of the non-cash nature of this transaction for Dynegy, the company retains flexibility in allocating capital to other projects.

In sum, the proposed deal structure includes features that seem counter-intuitive at first glance – such as the *seller* (Ameren) paying the buyer (IPH, but ultimately Dynegy) to take on the Coal Plants and associated liabilities, and the fact that IPH and Dynegy are willing to acquire the Coal Plants even though they are losing money and riddled with $825 million in debt.

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On further reflection, however, the structure speaks instead to the uncertain prospects of the operations being acquired and the irresponsible manner in which those operations have been capitalized (and will be capitalized moving forward). Although Ameren is committing considerable resources – approximately $226 million – to facilitate its divesture of AER, it seems economically justified in doing so as IPH will assume $825 of AER debt in this transaction.

Similarly, a buyer would ordinarily seem to have no appetite for assuming $825 million in debt to acquire assets that are losing money and require substantial capital to comply with both existing environmental regulations (particularly the Illinois Multi-Pollutant Standard ("*MPS*")) and anticipated regulations coming into force in the near future (such as the federal greenhouse gas regulations for existing coal powered plants set to be proposed in June 2014). Dynegy, however, is willing to "gamble" on the acquisition because it has carefully structured the proposed deal to ensure that: (a) it is committing no capital to the transaction (with Ameren providing all of the thin capitalization in order to divest the assets); (b) it will be protected in the event IPH collapses, as seems probable given the weak capital structure and speculative nature of the operating plan (*i.e*. reliant on aggressive operating synergies and a strong rebound in power prices); and (c) it only has to go through with the acquisition if the IPCB grants a variance allowing IPH to defer compliance with environmental regulations (since otherwise Dynegy would need to provide capital or the balance sheet of the acquired operations would need to be restructured as part of the transaction).

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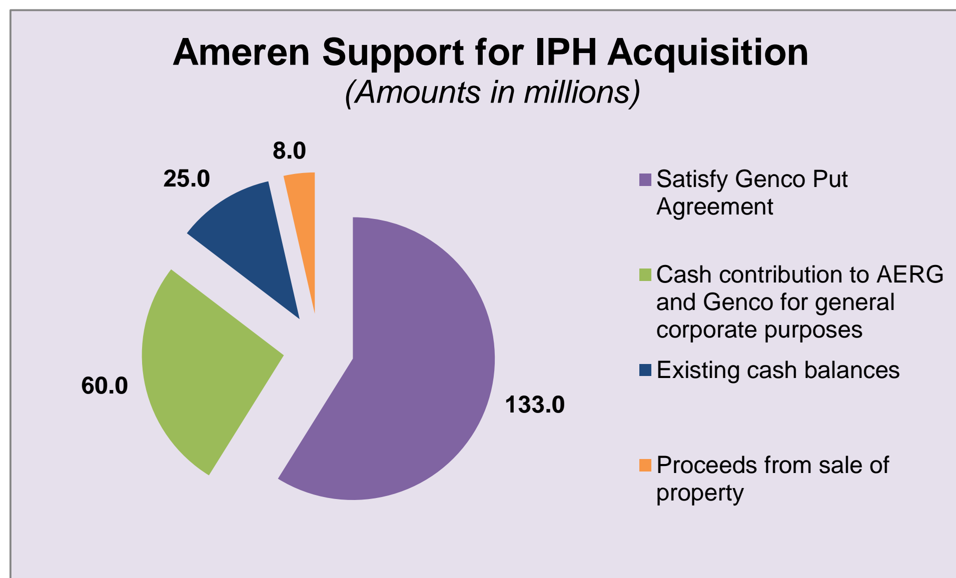
Ameren Transaction Support

One particularly noteworthy feature of this proposed transaction is the extent of the seller support involved and how that level of support contrasts with the unwillingness of Dynegy to commit resources to IPH. Ameren support includes settling an inter-company put agreement, a cash contribution, allowing the acquirer to keep all existing cash balances, committing the proceeds from the sale of property, and additional risk sharing for future indemnities. In all, Ameren is committing $226 million (*see* breakdown in Exhibit B below) to divest AER and the $825 million of debt that AER currently holds. By contrast, Dynegy is committing no cash and assuming risk of only $25 million.

Exhibit B: Ameren Support for IPH Acquisition of AER



Source: Dynegy Management Presentation

Catalyst for the Sale of AER

The historical financial performance of AER is troubling and helps to explain why Ameren would go to such expense to divest the Coal Plants. Specifically, the operations IPH is seeking to purchase have struggled with poor capital availability, escalating costs, and growing losses. Additionally, Ameren's financial filings indicate that an impending loan covenant default by the Merchant Generation division (the operations that IPH would be acquiring), coupled with recent poor performance, may have been the catalyst for the IPH transaction.[12]

Exhibit C: New AER Recent Performance

(Amounts in Millions)

	Six months	
Period	2013	2012
Operating revenues	567.0	504.0
Operating expenses	(557.0)	(436.0)
Operating income (loss)	10.0	68.0
Other income (loss)	(1.0)	-
Interest charges	(22.0)	(29.0)
Income (loss) before income taxes	(13.0)	39.0
Income tax expense (benefit)	(28.0)	195.0
Income (loss) from discontinued operations, net of taxes	(41.0)	234.0

Source: August 2013 Ameren 10-Q

It appears that absent considerable improvements New AER will be challenged to operate at break-even cash flow, let alone generate cash.[13]

12 *See* Ameren 2012 Annual Report, pg 24. http://www.ameren.com/Reference/AmerenProxyMaterial/Documents/Ameren10K.pdf

13 *See* Ameren Corporation Securities and Exchange Commission Form 10-Q, Ameren Corporation. August, 2013 . Page 74.

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Post-Transaction Concerns

Capital Markets. Both Ameren and Dynegy management have been at pains to note the crucial importance of access to the capital markets in their reporting to investors. The ability to hedge exposure to volatile input prices, and thereby lock in the gross margins necessary to generate an adequate level of profitability, is largely a function of expertise and capital. IPH will undoubtedly have the market expertise, but its weak capital structure raises the specter that in coming years it will be severely hampered in its ability to generate adequate profitability absent a substantial increase in electricity prices in its market. In fact, the buyer's Variance Application cites AER's inability to attract third-party capital and the recent downgrades of its debt as substantial challenges moving forward.[14]

The importance of a strong balance sheet and steady access to third-party capital is seen in the focus that both Ameren and Dynegy management pay to the issue.

In its most recent Annual Report, Dynegy management stated:

> The power industry is a cyclical commodity business with significant price volatility requiring ongoing considerable capital investment requirements. As such, it is imperative to build and maintain a balance sheet with manageable debt levels supported by a multi-faceted liquidity program.[15]

Prior to the identification of IPH as a buyer of Ameren's Merchant Generation Assets, the company noted the following challenges an under-capitalized subsidiary might face:

> [C]ounterparties may not extend credit to the Merchant Generation segment, which could limit Merchant Generation revenue opportunities and may result in a need for additional liquidity to operate the business.[16]

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14 *See* Variance Application at Section (V)(D)(2).

15 *See* Dynegy Inc. 2012 Annual Report. Page 7. http://www.dynegy.com/downloads/Annual_Reports/Dynegy_2012_Annual_Report.pdf

16 *See* Ameren Corporation 2012 Annual Report. Page 24.

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Ameren management also provided the following, more general commentary on the importance of capital availability in its industry:

> Any adverse change in Ameren's or in its subsidiaries' credit ratings may reduce access to capital and trigger additional collateral postings and prepayments. Such changes may also increase the cost of borrowing and fuel, power and natural gas supply, among other things, which could have a material adverse effect on our results of operations, financial position, and liquidity.[17]

Power Prices. Ameren – the current owner of the Coal Plants and an experienced operator – clearly made a determination that a gamble on a substantial increase in electricity prices was unjustified based on current trends and forecasts by government agencies and others (*see*, *e.g.*, price forecast chart set forth below as Exhibit J (*see* page 28)). Power prices declined from $60 in 2006-2007 to as low as $33.50 in 2012, and even Dynegy notes a nearly 16% decline in Average On-Peak power prices from 2011 to 2012 (to $38/MWh, from $45 the prior year). IPH itself only projects prices moving from $31.85 to $34.47 by 2017, with a *drop* in process over the next two years.[18] Under the circumstances, the only thing that can realistically be motivating Dynegy management to take on the Coal Plants is the nearly risk and cost-free nature of the IPH transaction to Dynegy shareholders.[19]

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[17] *See* Ameren Corporation 2012 Annual Report. Page 25.

[18] Variance Application at (V)(D)(1), Table D.

[19] Pages 70 & 75. 2012 Dynegy Annual Report. http://www.dynegy.com/downloads/Annual_Reports/Dynegy_2012_Annual_Report.pdf

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Balance Sheet. If the deal goes through, IPH will be dangerously undercapitalized, as it will consist of loss-making operations that are burdened with $825 million in debt.[20] While the company will initially begin operations with over $220 million in cash and $160 million in working capital (none contributed by Dynegy or IPH), it will also have over $825 million in debt and due to AER's history of operating losses it will likely be unable to obtain additional financing outside of support from its parent, Dynegy.[21] And given the lengths that Dynegy has gone to structure the acquisition to avoid risking its own cash – including touting this fact to investors as discussed above – it is unlikely that any such support will be forthcoming.

Although we do not have data on the performance of just the Coal Plants over the last several years (since AER's financial results are consolidated and include other better performing assets such as the multiple gas plants that Ameren is keeping), even Dynegy admits in the Variance Application that New AER will burn through its $220 million in capitalization "over the next several years."[22] And this optimistically assumes that Dynegy realizes the $60 million in operational savings it hopes to – which as noted above is far from certain. So it is possible that the initial capitalization Ameren is supplying may be depleted even more quickly. And no argument by Ameren, Dynegy or IPH can ignore the fact that the seller, Ameren, is spending $226 million to part with AER's operations, while the acquirer is providing only $25 million of economic support in the form of a 2-year indemnity.

The most recent variance application for the five Coal Plants IPH is seeking to acquire from Ameren lists Ameren's desire to avoid a restructuring of the operating unit currently owning these plants if the IPH transaction is not completed.[23] Based on the high fixed costs that independent power producers wrestle with, and the highly leveraged capital structure of a post-transaction IPH, there is a reasonable concern that such a restructuring will not be avoided, but only deferred.

[20] *See* Variance Application at Section (V)(D)(2) (stating that "IPH will in the near term face almost the identical balance sheet challenges as those currently faced by AER").

[21] Variance Application at Section (V)(D)(2).

[22] Variance Application at Section (V)(D)(2).

[23] Variance Application at Section (III)(C).

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The challenges of a weak balance sheet in this industry are myriad. The volatile nature of power prices dictates that there will be periods of weak economic performance by power producers, and sufficient cash reserves and borrowing ability are crucial to maintain operations during these periods. Absent a strong balance sheet, hedging transactions require additional collateral deposits, consuming precious cash or leaving the company unable to lock in input prices to match forward commitments to provide energy at a set price (a dangerous situation that can result in catastrophic losses). Unlike some industries, power companies like IPH need strong balance sheets to succeed, a view to which both Ameren and Dynegy wholeheartedly subscribe.

Given that IPH will be severely undercapitalized from the start and Dynegy is obviously unwilling to risk its own assets in support of IPH, a bankruptcy is very likely. As noted, although IPH and Dynegy believe projected cost synergies may allow IPH to survive up to a couple of years, if these do not fully materialize, or if any unforeseen issues arise (anything from a small increase in coal prices to a boiler blow-up), IPH could easily fail *much* faster. Thus, the proposed transaction puts pensions and jobs at even greater risk and threatens a situation where there is simply no money to address serious environmental clean-up issues.[24]

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[24] Although a restructuring or bankruptcy is certainly a possibility even if the transaction does not go through, at least AER has other assets – such as the gas plants that Ameren is proposing to keep as part of the proposed deal – that could potentially support operations at the Coal Plants and/or be looked to by creditors in a bankruptcy scenario. Not to mention Ameren has been operating the Coal Plants for years and has not yet taken this step. If the proposed transaction goes through, however, IPH will be perfectly positioned for a bankruptcy due to the "ring-fenced" acquisition structure that Dynegy has devised.

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III. Financial Strength

Any claim of financial hardship on the part of Illinois Power Holdings LLC must be mitigated by an understanding of the financial strength of its parent, Dynegy. Upon completion of its current refinancing initiative, Dynegy management claims that the company will be the least indebted of all independent power providers in the U.S.[25] Additionally, the company's recent efforts to streamline its capital structure through a comprehensive refinancing campaign suggest that Dynegy has the financial resources necessary to properly capitalize IPH in connection with its acquisition of the Coal Plants if it chooses to.

Dynegy is a financially strong and focused competitor among integrated power providers. The company is coming off an impressively profitable year (*see* Exhibit D on page 19) in which it managed to show superior profitability despite a decline in revenue (a result of asset divestitures). The company emerged from bankruptcy with a strengthened balance sheet, and management has worked to bolster that advantage through a comprehensive restructuring that will result in substantial financial flexibility (*see* Exhibit E on page 20). A review of Dynegy's financial picture reveals a company with considerable resources. Given Dynegy's strength, any claim of financial hardship by IPH, a subsidiary Dynegy is setting up for this purpose, must be viewed as self-imposed.

[25] *See* Dynegy Inc. Presentation at Power and Gas Deep Dive Conference. April 11, 2013. Page 20. http://www.sec.gov/Archives/edgar/data/1379895/000110465913028558/a13-9885_1ex99d1.htm

Exhibit D: Dynegy Company-wide Performance

(Amounts in Millions)

	Year Ended December 31,		
	2010	2011	2012
Revenues	$ 2,059	$ 1,333	$ 1,293
Cost of sales	(1,060)	(866)	(930)
Gross Profit	999	467	363
Selling General and Administrative	(488)	(356)	(307)
Non Recurring	(146)	(5)	-
Other expense	(397)	(295)	(155)
Total Operating Expenses	(1,031)	(656)	(462)
Operating Income / (Loss)	(32)	(189)	(99)
Total Non Operating Expense (Income)	(210)	(751)	(40)
Net Income (loss)	$ (242)	$ (940)	$ (139)
EBITDA Add Backs			
Depreciation and Amortization	457	347	283
Interest Expense	363	348	136
Income Tax Expense	(194)	(144)	(9)
EBITDA	$ 384	$ (389)	$ 271
EBITDA Margin %	*18.6%*	*-29.2%*	*21.0%*

Source: Dynegy Financial Statements

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Exhibit E: Dynegy Pro Forma Capitalization

(Amounts in Millions)

Pro Forma Capitalization		Estimated at close
Unrestricted Cash and Equivalents	$	550
Dynegy Inc. $500 million Senior Secured Revolver		-
Dynegy Inc. Tranche B-1 Term Loan		500
Dynegy Inc. Tranche B-2 Term Loan		800
Total Debt	**$**	**1,300**
Net Debt	**$**	**750**

Source: Dynegy Management Presentation

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IV. Dynegy Coal Experience

Dynegy is not unfamiliar with the challenges coal operations face in the current climate. The company's own Dynegy Midwest Generation ("*DMG*") operates in substantially the same area as AER, though with a slightly lower net generating capacity (*see* Exhibits F & G on pages 22 and 23). In fact, negative profitability trends seem to have encouraged management to focus on minimizing capital expenditures (*see* Exhibits H & I on pages 24 and 25) as it hopes for an improvement in power pricing.

Given the foregoing, the enthusiasm Dynegy's management has expressed for the acquisition of New AER and the Coal Plants contrasts sharply with the uninspiring performance of Dynegy's own coal operations (not to mention Dynegy's true outlook for future years, as reflected in its efforts to minimize capital expenditures).

In other words, absent the nearly risk-free acquisition structure Dynegy has negotiated, Dynegy management's enthusiasm for coal operations seems muted at best. This again calls into question the theoretical underpinnings of the transaction. Again, this looks more like a leveraged gamble on future price increases – with Dynegy bearing no real risk, and the public (and to some degree Ameren) subsidizing the deal – than a transaction based on a rational belief that IPH will actually be able to sustain itself.

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Exhibit F: Dynegy and AER Coal Operations

Source: Dynegy Management Presentation

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Exhibit G: Dynegy Coal Plant Detail

Facility	Net Generating Capacity (MW)	Fuel Type	Dispatch Type	Location
Baldwin	1,800	Coal	Baseload	Baldwin, IL
Havana	441	Coal	Baseload	Havana, IL
Hennepin	293	Coal	Baseload	Hennepin, IL
Wood River	446	Coal	Baseload	Alton, IL
Total Coal Segment	*2,980*			

Source: 2012 Dynegy Annual Report

Exhibit H: Historical Performance of Dynegy Coal Operations

(Amounts in Millions)

	Year Ended December 31,		
	2010	2011	2012
Revenues	$ 837	$ 460	$ 273
Cost of sales	(355)	(237)	(271)
Gross Profit	482	223	2
Operating and maintenance expense	(175)	(105)	(93)
Depreciation and amortization expense	(256)	(156)	(21)
Impairment and other charges	(4)	-	-
General and administrative expense	-	-	-
Operating income (loss)	$ 47	$ (38)	$ (112)
Depreciation and amortization expense	256	156	21
Other items, net[1]	-	-	5
EBITDA from continuing operations	$ 303	$ 118	$ (86)

Source: 2012 Dynegy Annual Report

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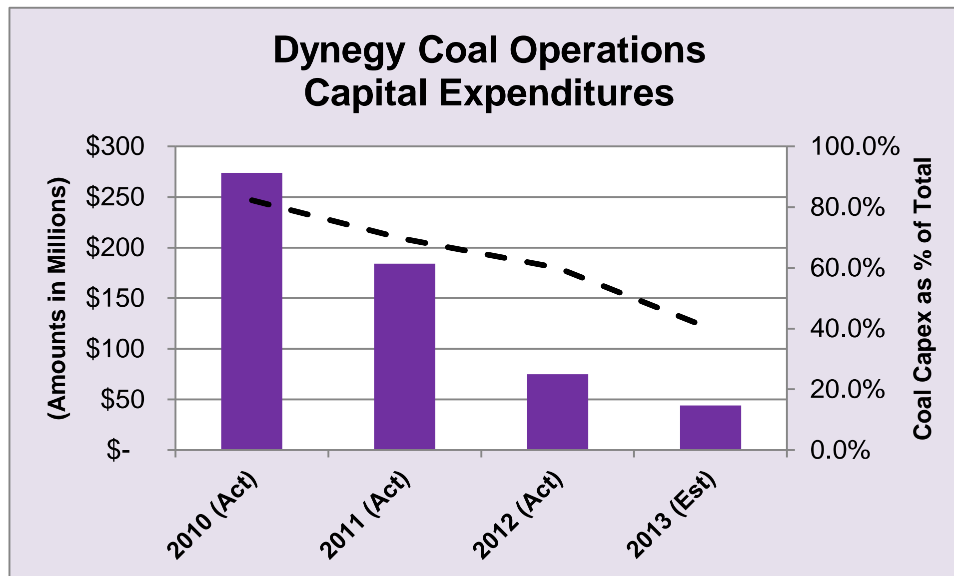
Suite 2200, Chicago IL 60606

Exhibit I: Capital Expenditures of Dynegy Coal Operations



Source: 2012 Dynegy Annual Report

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V. Power Prices

IPH's proposed acquisition of the Coal Plants represents a strongly levered bet on the future of power prices in the MISO region. As noted earlier, the optimism of Dynegy management for IPH pricing seems somewhat at odds with the cautious tone that it has taken with DMG coal operations, which are competing in the same market.

Dynegy's thesis for a recovery in power prices holds that a combination of natural gas price increases, the closure of marginal power plants due to financial and regulatory burdens, and the impact of economic growth will drive a recovery in power prices to levels at which IPH would be more robustly profitable.

The difficulties with this thesis are numerous:

- **Renewable Energy Prices.** Renewable energy resources have a number of potential structural advantages over fossil fuels in terms of cost structure. With these energy sources, input costs (generally the largest expense for fossil fuel providers) are effectively zero. Additionally, many renewable energy sources are at a relatively early stage in their development, suggesting considerable decreases in cost per megawatt hour as technological advances continue to be implemented in generating facilities. Given the mature nature of the technologies fossil fuel providers utilize, as well as the costs of environmental compliance, the long-term trend suggests that fossil fuel based energy providers will suffer a long-term disadvantage in terms of cost structure.

- **Natural Gas Prices.** The emergence of fracking has in many ways been seen as a "game changer" in the energy industry (as admitted by IPH in the Variance Application). We are in the early stages of what many are terming the "age of extreme energy" and it would be premature for anyone to bet heavily on a longed-for return to what used to be the status quo.

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- **Elimination of Marginal Producers.** Dynegy's theory that the closure of marginal plants may also drive up prices, therefore helping IPH in the long term, is also flawed on several levels. For one thing, inefficient producers often hang on longer than might seem possible, particularly when part of a larger producer inclined to support them. One reason for this is that the inefficient producers themselves – or their parent companies – may have the exact same idea, hoping to fund losses until the elimination of excess capacity in the industry returns them to acceptable levels of profitability. IPH on the other hand, will be under-capitalized, composed of plants with worrying financial performance, and owned by a parent (Dynegy) who has structured IPH to be "bankruptcy remote" (i.e. a bankruptcy filing by the subsidiary will not impose losses on the parent company) and has gone to great effort *not* to risk its own assets to support IPH or to fund future losses. It is an open question whether IPH under the proposed structure will be strong enough to survive the very shakeout that Dynegy management is counting on.

- **Economic Growth.** It almost goes without saying that forecasting economic growth is dangerous and fraught with error. Notably, growth levels since the end of the "great recession" have if anything remained fairly stagnant, with many commentators suggesting that low growth may persist for the foreseeable future.

In fact, as reflected in the chart attached hereto as Exhibit J (*see* page 28), energy experts predict electricity prices will remain relatively stable for the next 5 years, with the market seeing little of the volatility that defined the previous decade's pricing. As noted above, IPH itself only projects prices moving from $31.85 to $34.47 by 2017, with a *drop* in prices over the next two years.[26] This, in part, is due to the increase in availability of both renewable energy resources and natural gas and the corresponding increase in competitiveness from the coal industry which will further compress pricing.

[26] Variance Application at (V)(D)(1), Table D.

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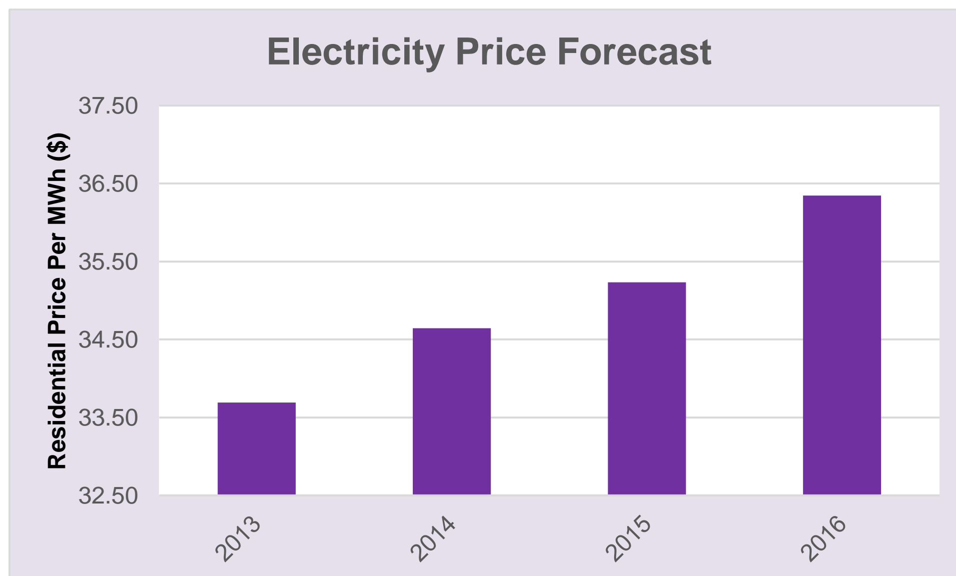
Exhibit J: Power Price Forecast



Source: U.S. Energy Information Administration

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VI. Foreseeable Compliance Costs

No responsible market actor would propose a plan of operation that ignored structural costs inherent to the industry. And yet, that is exactly what Dynegy, through IPH, is seeking to accomplish. By seeking relief from environmental regulations as a condition of acquiring New AER, IPH is seeking a subsidy in the form of long-term relief from existing environmental compliance costs.

This approach, becomes more worrying in light of future regulation. If IPH is unable to operate under existing environmental regulation, how does management propose to finance compliance costs for anticipated future regulations? For instance, the Obama Administration has stated that it will issue proposed regulations for greenhouse gas emissions from existing coal-fired power plant in June 2014. How will IPH finance compliance costs for this and other anticipated regulations given its undercapitalized structure? This gaping hole in IPH's operational plan speaks to the razor-thin margin of error for the company. A coal plant operator unable to purchase raw materials or pay employees would be considered unfit for the market. Likewise, a coal plant operator with a balance sheet that has intentionally been structured so that it lacks the minimal financial resources to comply with existing and future environmental regulations is also unfit.

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VII. Conclusion

Post-close, Illinois Power Holdings will be a highly levered company with weak operating cash flow and minimal access to additional credit facilities. It will be dangerously undercapitalized from the start and absent a completely unexpected change in energy prices – something even IPH does not predict – it appears that it will at most be able to cover losses and other costs for at most a few years (and quite possibly significantly less than that).

The precarious financial situation that IPH will immediately find itself in is plainly not an accident. Dynegy has gone to lengths to structure the transaction in this exact manner to keep it from having to invest money in or otherwise properly capitalize IPH. It has highlighted the non-cash nature of the deal to investors, presumably to assuage concerns about what might otherwise appear to be a questionable acquisition. After all, Ameren – itself a financially troubled public company – is affirmatively devoting $226 million (not counting risk sharing on future liabilities) to divest the Coal Plants and shed expected future losses (and likely restructuring costs).

In light of the above – *i.e.* the problematic nature of the assets being acquired and the likelihood that a restructuring or bankruptcy of IPH will be necessary in the relative short term (absent an turnaround in energy prices that even IPH does not predict) – Dynegy management has also been at pains to assure its investors that IPH is "ring-fenced" (*i.e.* Dynegy will not be harmed by IPH failing).

In short, it appears that Dynegy – a financially viable company that could properly capitalize IPH if it chose to – is attempting to structure the acquisition to position itself to make a low risk "gamble" on future energy prices. If wholesale electricity prices climb unexpectedly fast, the acquisition could be a great success, and if not – the far more likely outcome – Dynegy loses little even if IPH fails spectacularly.

Dynegy's conscious and strategic decision not to capitalize IPH and to generally structure the proposed transaction in a manner that will allow it to speculate on future energy prices, more than any other factor, is the overriding cause of any financial hardship claim IPH is currently claiming. Any financial hardship is thus plainly self-imposed, and to allow a variance under the circumstances would set very troubling precedent. It would in essence give future buyers of environmentally problematic assets a "blueprint" for how to structure the acquisition so as to manufacture a perception of "financial hardship" and thereby avoid environmental compliance costs.

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ACM Partners' findings are as follows:

1. IPH parent Dynegy has purposefully structured this transaction to minimize its risk and maximize future gains. It is further clear that while Ameren is clearly anxious to divest the assets of New AER, Dynegy is viewing the opportunity as little more than a highly leveraged bet on rapid improvement in power prices. In the event of such an unexpected turnaround Dynegy would make a windfall profit, if not, the "ring fenced" subsidiary will likely face bankruptcy.

2. IPH parent Dynegy has sufficient resources to properly capitalize the company, or could have acquired the assets in a more traditional manner (i.e. though a restructuring, which absent the structure agreed to here would likely be needed). As the entire structure here and IPH's thin capitalization has been created by Dynegy to pursue an investment strategy, we view all projected claims of post-acquisition financial hardship as self-imposed.

3. Despite the financial strength of its parent, the acquisition of New AER by IPH will do nothing to strengthen the balance sheet of the underlying assets, and in fact post-transaction IPH will face the same balance sheet challenges that those same operations did under the ownership of Ameren.

Ameren, Dynegy and IPH are seeking to avoid environmental compliance costs in the hopes that power prices will rebound before the heavily indebted operations of New AER exhaust their meager resources. These companies are seeking to place an undue burden on the citizens of Illinois in pursuit of a speculative play on the direction of power prices. Dynegy itself expects that margin producers will go offline in coming years, but left unsaid is the fact that the evidence suggests IPH is acquiring just the kind of margin assets that Dynegy expects will ultimately exit the market. The operations of New AER are heavily indebted and supported by money-losing operations. This is generally an indication that a restructuring is in order. Ameren, Dynegy and IPH are seeking to delay such a restructuring in hopes that uncontrolled market forces may unexpectedly render such a step unnecessary. While this sense of optimism may be laudable in some circumstances, when viewed in the context of the health of the citizens of Illinois, the future of New AER's employees, and the financial well-being of the many stakeholders of New AER, the proposed course of action seems irresponsibly speculative and callous.

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VIII. Expert Qualifications

David Johnson is a founding partner of ACM Partners, a boutique advisory firm providing due diligence, performance improvement, restructuring and turnaround services.

David is a recognized expert in his field, with a deep background in advising management, creditors and other key stakeholders on restructurings, distressed transactions, and the adequacy of proposed capital structures. He has authored over twenty articles in trade publications, and he routinely presents to management groups, lenders, and professional associations. He is also a frequent lecturer at business schools and has been cited in numerous business publications as a subject matter expert.

David completed his undergraduate studies at Fairleigh Dickinson University and earned his MBA from the University of Chicago Business School.

CERTIFICATE OF SERVICE

I, Andrew Armstrong, hereby certify that I have filed the attached WRITTEN STATEMENT OF ACM PARTNERS in PCB 2014-010. The aforementioned documents have been served upon the attached service list by email and by depositing said documents in the United States Mail, postage prepaid, in Chicago, Illinois on September 13, 2013.

Respectfully submitted,

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