



Dated: October 7, 2013

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on this 7th day of October, 2013, I have served electronically the attached **AMEREN ENERGY RESOURCES' BRIEF IN RESPONSE TO COMMENTS**, upon the following persons:

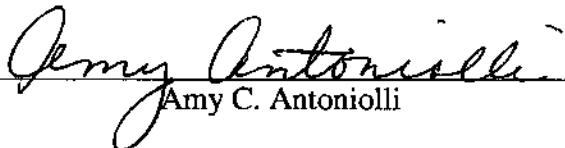
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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

ILLINOIS POWER HOLDINGS, LLC and	)	
AMERENENERGY MEDINA VALLEY	)	
COGEN, LLC,	)	
Petitioners,	)	
	)	
AMEREN ENERGY	)	PCB No. 14-10
RESOURCES, LLC	)	(Variance – Air)
Co-Petitioner,	)	
	)	
v.	)	
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

**AMEREN ENERGY RESOURCES' BRIEF IN RESPONSE TO COMMENTS**

AER and the Petitioners acknowledge the magnitude of the decision before the Board and the acute level of public interest. Without a doubt, the granting of the variance relief requested herein provides the best option for continued operation of the AER coal plants and the economic stability of their surrounding communities. But it does not and will not come at the expense of the environment. As in PCB 12-126, Petitioners herein have proposed a compliance plan that mitigates the environmental impact of the requested relief. The Parties have crafted a request and compliance plan that recognizes the core purpose of the MPS and provides the Board with comfort that the MPS's foundation of overall emission reductions will not be compromised. The granting of variance requested provides improved environmental benefits when compared to PCB 12-126, while increasing the economic stability of the AER energy centers and their surrounding communities.

## I. INTRODUCTION

ELPC<sup>1</sup> asks this Board to deny the variance as a matter of policy.<sup>2</sup> They state that granting the variance would amount to “*bail[ing] out what appears to be a failing industry.*” Tr., p. 321. Another opponent states that “*if granted, [the variance] would provide future buyers of environmentally risky assets a model for how to structure acquisitions to avoid environmental compliance costs under the guise of financial hardship.*” Tr., p. 304. There is further claim that the variance request is “*an unfair way to set up a choice*”—*a choice between jobs and the livelihood of thousands and others who have health related issues.*” Tr., p. 318. Despite these claims, all of the opponents and proponents before this Board, and respectfully this Board itself, must resist approaching this request as a choice between jobs and environmental protection. Indeed, Petitioners and Co-Petitioner are not asking the Board to make this choice; the elected officials in support of this variance request and the workers who run these energy centers everyday are also not asking this Board to make this choice.

The Illinois Supreme Court has clarified what was envisioned for the Board in a variance proceeding: “to decide if a regulation imposes an arbitrary or unreasonable hardship on an individual polluter. If the Board finds such hardship, it may then grant a variance.” *Monsanto Co. v. IPCB*, 367 N.E.2d 684, 67 Ill. 2d 276 (1977). This conduct is quasi-judicial and must be based on specific findings of fact, with the exception of setting variance conditions, which is considered policy-making and within the Board’s rulemaking authority “in the sense that its focus is on future conduct and its efficacy depends on agency expertise.” *Monsanto*, 67 Ill.2d at

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<sup>1</sup> In this Response Brief, Co-Petitioner will refer to the Natural Resource Defense Council, Sierra Club, Respiratory Health Association and Environmental Law and Policy Center collectively as “ELPC” for ease in reference.

<sup>2</sup> This Response Brief filed on behalf of AER will be referred to hereinafter as “AER’s Response to Comments.” This brief is intended to respond to comments made that require a response from AER only and is intended to compliment and supplement the Post Hearing Brief filed by Petitioners and Co-Petitioner. Further, the transcript of the September 17, 2013 hearing held in this matter will be cited to throughout this brief as “Tr., p. \_\_\_.”

290, 367 N.E.2d at 689. In granting variances, the Board has indeed set conditions that narrowly tailor each variance to the unique set of facts at hand. And in the MPS context, variance conditions the Board has imposed have required a demonstration of continual progress towards compliance with requirements more prescriptive and stringent than those found in the underlying regulation.

In its Recommendation<sup>3</sup> (“Recommendation”), the Illinois Environmental Protection Agency (“IEPA” or “Agency”), agrees that the Petitioners’ “compliance plan as set forth in the Petition shows a net environmental benefit consistent with previous net environmental benefit determinations” and proposed three additional conditions. Rec., p. 29-30. IEPA concludes there would be no injury to the public if the variance were granted with the conditions proposed. Rec., p. 17. The Petitioners have agreed to include the IEPA-proposed commitments as variance conditions and IPH has also agreed to an emissions cap to provide the Board with further assurance that an overall benefit will be achieved. Together, there is no doubt that environmental impact was fully considered and respected.

For the reasons more fully set forth in the Petitioners’ and Co-Petitioners’ Post-Hearing Brief also filed today and supplemented with the paragraphs below, AER respectfully requests this Board to grant the requested relief, subject to the proposed conditions.

**II. GRANTING THE VARIANCE WILL NOT COMPROMISE THE STRUCTURE AND PURPOSE OF THE MPS OR HARM THE ENVIRONMENT.**

The MPS is a unique regulatory structure different from any other regulatory structure on the books in Illinois and nationally. The MPS was a negotiated rule and a brief background of the creation of MPS provides context for responding to public comments. The United States Environmental Protection Agency (“U.S. EPA”) promulgated regulations requiring a reduction

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<sup>3</sup> The Agency’s Recommendation will be cited to through-out this Brief as “Rec., p.…”

of NO<sub>x</sub> and SO<sub>2</sub> (the “Clean Air Interstate Rule” or “CAIR”), and mercury (the “Clean Air Mercury Rule” or “CAMR”) in 2005. The Agency proposed rules in Illinois to implement both federal rules: *Proposed New 35 Ill. Adm. Code 225 Control of Emissions from Large Combustion Sources (Mercury)*, R06-25 (Dec. 21, 2006), and (2) *Proposed New Clean Air Interstate Rules (CAIR) SO<sub>2</sub>, NO<sub>x</sub>, Annual and NO<sub>x</sub> Ozone Season Trading Programs, 35 Ill. Adm. Code 225, Subparts A, C, D, E, and F*, R06-26 (Aug. 23, 2007). At hearing, Mr. Dan Thompson presented a chart identifying all of the pollution control equipment that has been installed on the AER plants to meet the Illinois Mercury Rule and the MPS, attached hereto as Exhibit 1. The total cost of these controls has exceeded \$1 billion dollars. One only needs to take a cursory look at Exhibit 1 to conclude that installation of pollution control equipment at coal-fired power plants is very complex. Installations must be sequenced and the equipment must be specifically fabricated for each project and site conditions. There are years of lead time for equipment and supplies ordering, labor retention, weather considerations, and, of course, permitting. Hundreds of workers are required for many of these pollution control installation projects and thousands of man hours go into managing the projects internally. With a number of very complex emission reduction programs converging at the same time and the State of Illinois’ desire to have one of the most stringent mercury reduction programs in the nation in place at the state level, AER stepped forward “*before they were required to do so*”<sup>4</sup> (as requested by Ms. Joyce Blumenshine in her comments before the Board, Tr., p. 166) to develop the MPS with IEPA technical expertise and guidance. The goal was to achieve a progressive reduction of emissions across a

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<sup>4</sup> ELPC includes as Exhibit B to their Post-Hearing Comments a copy of the Testimony of then Director Douglas Scott as he appeared before Congress on July 9, 2009. The Citizen Groups inaccurately cite to this testimony as standing for the proposition that the “MPS was adopted, in part, to address particulate matter.” The MPS was not adopted to address PM but certainly as then Director Scott noted in his testimony, reduction of NO<sub>x</sub> and SO<sub>2</sub> will result in lower PM emissions. The testimony also recognizes the genesis of the MPS and Ameren’s efforts in that regard, as relevant here.

period of time that would result in the synchronized implementation of technology to meet the proposed requirements at both the federal and state level. The MPS, which became effective on January 5, 2007, was a system-wide rule applicable to AER's fleet of seven coal-fired power plants and its structure is wholly dependent on compliance averaging by the Ameren MPS Group across *all* electric generating units in the system. The MPS structure, however, presupposed that federal regulations would set a level playing field nationally. That would not be the case.<sup>5</sup>

It is important to acknowledge that the MPS goes far beyond what has been accomplished at the federal level, and Illinois has imposed more stringent SO<sub>2</sub>, NO<sub>x</sub>, and mercury requirements than surrounding states, all to the benefit of the general public. Had setting a multi-pollutant standard for coal-fired electric generating units been easy, the U.S. EPA would have gotten it right by now. But it has not and compliance with the prescriptive, declining nature of the emission rates structured to synchronize with the now non-existing federal rules has been challenging especially in the face of additional factors that have arisen since the promulgation of the MPS. As a direct result, AER has sought modifications to the MPS emission rate timing on two occasions. First, AER sought an amendment to the MPS in 2009 which allowed the company to better synchronize construction projects so as to avoid devastating stranded costs. In seeking those amendments, AER worked with IEPA within the framework of the MPS to ensure that the integrity of the structure and purpose of the MPS were not compromised. AER then sought a variance from the 2015 and 2017 annual emission rates for SO<sub>2</sub> in 2013. In doing so, AER also worked closely with IEPA to ensure the integrity of the structure and purpose of the MPS was not compromised. Both times, the reworking of the MPS has resulted in additional

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<sup>5</sup> As previously, stated, the federal CAMR rule had been vacated (*New Jersey v. EPA*, 517 F.3d 574, 583 (D.C. Cir. 2008) and the federal CAIR rule remanded (*North Carolina v. EPA*, 550 F.3d 1176, 1777-78 (D.C. Cir. 2008). U.S. EPA attempted to replace the CAIR with the Cross-State Air Pollution Rule in 2011, but that rule was vacated as well (*EPA v. EME Homer City*, 696 F.3d 7 (D.C. Cir. 2012). As of the date of this filing there are still no federal replacements for these rules.



commitments above what was required by law to address any environmental impact resulting from the requested timing change. Both times, there has been a net benefit to the environment that has been crafted “hand in hand” with IEPA. Both times, AER did not make the request lightly and recognized the need to work with IEPA to respect the framework that it had helped develop. At no time has AER asked the Board or the State to walk away from the MPS, even as the Ameren MPS Group struggled through the unanticipated hardship caused by depressed power markets while putting best efforts towards reducing emissions from its seven-plant fleet. Even today faced with the same hardship, Petitioners, representing the seven-plant Ameren MPS Group upon closure of the transaction are not asking the Board or the State to walk away from the MPS.

ELPC’s argument that the variance would “*confer a benefit to a handful of corporations, at an unacceptably high cost to the general public*” ignores the achievements of the Illinois mercury rule and the MPS to date and the progressively stringent standards to which the Ameren MPS Group adheres. AER’s fleet has made drastic reductions in SO<sub>2</sub>, nitrogen oxides (“NO<sub>x</sub>”), and mercury emissions over the past decade. With respect to SO<sub>2</sub>, since 1990 AER has achieved a steady and significant decline in SO<sub>2</sub> emissions across the fleet--87% since 1990 and 51% over just the last five years. Second, with respect to NO<sub>x</sub>, AER has achieved a steady and significant drop in NO<sub>x</sub> emissions since 1990. These reductions have been accomplished even while utilizing greater quantities of coal. As Mr. Bell of the Coffeen Energy Center noted: “*AER has spent over a billion dollars on pollution control technology. So what does supporting the variance mean for us? It means we will continue to reduce SO<sub>2</sub> and NO<sub>x</sub> during this timeframe.*” Tr., p. 137. In granting AER’s request for variance in PCB 12-126, the Board recognized the benefit that would occur in part due to early reductions in annual emission rates

of SO<sub>2</sub>. *AER v. IEPA*, PCB 12-126, p. 54. Under the variance, the applicable annual SO<sub>2</sub> emission rate is currently 0.35 lb/mmBtu through December 31, 2019. Without the variance, the applicable annual SO<sub>2</sub> emission rate would be 0.50 lb/mmBtu during 2013 and 0.43 lb/mmBtu during 2014. ELPC ignores the commitments that AER made in agreeing to meet a more stringent emission rate than currently required by the MPS, including higher levels of control at the Duck Creek and Coffeen Energy Centers, and procurement of ultra-low sulfur coal for use at the Edwards, Newton, and Joppa Energy Centers on an ongoing basis. These commitments show that AER has not wavered on its promise to provide the greatest reductions economically possible. AER has continuously sought to provide greater environmental benefits than necessary to meet the standard required for seeking a variance – in spite of crumbling economic conditions and regulatory uncertainty at the federal level. Today, through this proceeding, IPH and Medina Valley are seeking to do the same. There can be no question that if granted the variance request with the compliance plan, as currently structured, will provide the greatest benefits to the State under the MPS to date.

**III. ELPC’S ANALYSES FAIL TO SHOW THAT THE E.D. EDWARDS, JOPPA, AND NEWTON ENERGY CENTERS ARE CAUSING LOCALIZED ENVIRONMENTAL HARM.**

ELPC relies on a report prepared on behalf of them by Mr. Klafka of Wingra Engineering to stand for the technical conclusion that “all three of AER’s unscrubbed coal plants all have been predicted to cause NAAQS exceedances,”<sup>6</sup> and the general proposition that the variance “would allow a negative environmental impact . . . to continue through the end of the decade.” PC#2337, p. 11, 14-15. The technical conclusion is drawn from what ELPC describes as “a dispersion modeling analysis” that was performed by Mr. Klafka for each plant (*e.g.*, Edwards,

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<sup>6</sup> *Post-Hearing Comments of Environmental Law and Policy Center, Natural Resources Defense Council, Respiratory Health Association, and Sierra Club* (PC# 2337), PCB 14-10, p. 14.

Newton and Joppa Energy Centers) “to assess compliance with the 2010 SO<sub>2</sub> NAAQS.” *Id.*, p. 15. They further explain that “[f]ollowing the most recent federal and state guidance, Mr. Klafka utilized U.S. EPA’s AERMOD air dispersion model to predict the downwind SO<sub>2</sub> concentrations associated with each plant’s emissions—both currently permitted and measured actual.” *Id.* ELPC goes on to state that “[f]or each plant, Mr. Klafka’s analysis predicted exceedances of the NAAQS throughout their respective regions, to a maximum distance of eight kilometers for the Edwards and Joppa plants, and a maximum distance of eight kilometers for the Newton plant.” *Id.* Mr. Gignac now believes that with the Klafka analyses in hand there is support for “the view that citizens could be exposed to unsafe levels of air pollution longer under the proposed variance than they would otherwise would be if IPH was required to comply with the MPS—and that this is true regardless of offsetting emission reductions in earlier years.”<sup>7</sup> The Klafka analyses are not credible and cannot be used to assess compliance with the 1-Hour SO<sub>2</sub> NAAQS standard. Moreover, the requested MPS variance will not impact compliance with the 1-hour NAAQS.

In order to respond to the technical conclusions reached by Mr. Klafka in his assessment, AER retained Mr. Robert Paine of AECOM. Mr. Robert Paine is a Certified Consulting Meteorologist and a Qualified Environmental Professional with 38 years of experience in air quality modeling and consulting, all with AECOM. He has participated in the design, coding, evaluation, and documentation of several air quality models over a period of 30 years, including AERMOD, which is EPA’s current guideline model. Mr. Paine continues to work with EPA on dispersion modeling improvements as an active member of the Technical Modeling Workgroup.

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<sup>7</sup> *Comments of the Illinois Attorney General’s Office* (PC# 2336), PCB 14-10, p. 7. Notably, Mr. Gignac appears to accept the modeling analysis presented by the Citizens Group as the technical “final word” and omits mention that Illinois EPA, based on its review of the technical data, did not recommend designating Hollis Township as non-attainment for the SO<sub>2</sub> 1 Hour NAAQS.

He also has worked with professional trade associations and scientific organizations such as the American Petroleum Institute and the Electric Power Research Institute on new modeling techniques and advances. Mr. Paine's biographical background and technical experience is more thoroughly presented in his *Curriculum Vitae* attached to Exhibit 6, Attachment A of the Petitioners' and Co-Petitioner's Post-Hearing Brief. Mr. Paine found that the modeling analyses performed by Mr. Klafka contained a number of flaws resulting in an over prediction of emissions from all three plants.<sup>8</sup> Mr. Paine concluded that the approach to modeling employed by Mr. Klafka that uses both allowable emission rates as well as peak actual emission rates "grossly overstates actual emissions from the three energy centers, as well as their impact on air quality." *Paine Report*, p. 1. Mr. Klafka himself admits that there are "a number of modeling assumptions that I used that made my analysis conservative." Tr., p. 86. Mr. Paine agrees and further concludes that "the Klafka modeling represents a very conservative analysis that does not present credible results." *Paine Report*, p. 1.

A draft guidance document released by U.S. EPA in May 2013, the SO<sub>2</sub> NAAQS Designations Modeling Technical Assistance Document, addresses ways in which third-party modeling for NAAQS review might be limited. *Id.*, p. 3. A key consideration is whether actual emissions data is used. As noted, Mr. Paine's technical review found that the Klafka modeling did not use actual hourly emissions monitoring data, but rather used both allowable emission rates and peak actual emission rates (which can be regarded, at best, as a conservative screening analysis, not evidence of a violation).<sup>9</sup> *Id.*, p. 6. In addition, Mr. Paine explains that the Klafka

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<sup>8</sup> See *Technical Critique of Recent Air Quality Modeling Analyses of the Edwards, Joppa and Newton Plants* dated September 30, 2013, Exhibit 6 to the Petitioners' and Co-Petitioner's Post-Hearing Brief ("*Paine Report*").

<sup>9</sup> Mr. Paine notes that both sets of these emission rates are often much higher than actual hourly emissions. *Paine Report*, p. 6. In fact, Klafka used the single highest maximum peak 1-hour SO<sub>2</sub> emission rate measured and assumed the Edwards units emitted at that rate 24 hours per day, seven days a week and 52 weeks per year when the

analyses resulted in modeled design concentration that is a factor of about 10 too high for the E.D. Edwards Energy Center. If this factor is corrected by scaling of Klafka's modeling results to represent typical plant conditions, the resulting SO<sub>2</sub> concentrations fall below the SO<sub>2</sub> NAAQS and are more consistent with monitored concentrations in Peoria that are well below the NAAQS, while Klafka's modeling indicated predicted violations at that monitor. *Id.*

Mr. Paine also found that Mr. Klafka similarly overstated emissions in his modeling for the Joppa Energy Center. By using a more typical emission rate to adjust the Klafka modeling results using allowable emissions and also with an adjustment correcting for the actual stack height for the facility, Mr. Paine found from scaling arguments that the total design concentration again falls below the 1-hour SO<sub>2</sub> NAAQS for the energy center. Not surprisingly, Mr. Paine found that Mr. Klafka overstated emissions for the two units at the Newton Energy Center as well. *Id.* By scaling the allowable emissions with more typical emission rates for the two units, Mr. Paine found that the total design concentration again falls below the 1-hour SO<sub>2</sub> NAAQS. In general, Mr. Paine's analysis shows that the Klafka analyses simply cannot be used as "evidence" of nonattainment with the 1-hour SO<sub>2</sub> NAAQS and, more importantly, does not rely on accurate information or provide credible results. As such, the Klafka analyses should also not be used to "support the view that citizens could be exposed to unsafe levels of pollution longer under the proposed variance" as suggested by Mr. Gignac.

ELPC accurately notes that the U.S. EPA has designated Hollis Township, in Peoria County as non-attainment in the federal SO<sub>2</sub> designations and classifications rulemaking

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actual hourly emissions were significantly less on most days and near zero on other days. *Id.*, p. 2. This same methodology was used in the Newton and Joppa modeling studies.

docket.<sup>10</sup> PC#2337, pp. 14-15. This designation has the potential of impacting E.D. Edwards Energy Center. However, what ELPC did not explain is that the IEPA *did not* propose that Hollis Township (Peoria County) be included as a non-attainment area based upon its assessment of the data and relevant information.<sup>11</sup> They also do not consider that the SO<sub>2</sub> monitor in the Peoria area north of the energy center, more likely downwind of the facility, shows SO<sub>2</sub> concentrations well under the NAAQS. AER also submitted comments to U.S. EPA objecting to the inclusion of Hollis Township as non-attainment for the 1-hour SO<sub>2</sub> NAAQS. See “*Comments of Ameren Services dated March 15, 2013*,” EPA-HQ-OAR-2012-0233, and attached as Exhibit 2. Specifically, Ameren disagreed with the inclusion of Hollis Township based on four meaningful disputes with U.S. EPA’s analysis. Based on Ameren’s review of the technical data and meteorology and *based upon Illinois EPA’s analysis*, the facilities located north of the Tazewell monitor did not contribute to any of the measured exceedances of the 1-hour SO<sub>2</sub> NAAQS in Tazewell County. *Id.* The E.D. Edwards Energy Center is located directly north of the exceeding monitor. *Id.*

The Illinois Environmental Regulatory Group (“IERG”), an affiliate of the Illinois Chamber of Commerce, also disagreed with U.S. EPA’s inclusion of Hollis Township. See *IERG Comments on EPA Responses to Illinois’ 2010 Sulfur Dioxide Recommendations*, EPA-HQ-OAR-2012-0233, dated March 18, 2013 and attached as Exhibit 3. IERG states, in part: “we do not believe that U.S. EPA gave ample consideration to all of the meteorological information provided by Illinois supporting its recommendation to not include Hollis Township. Further,

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<sup>10</sup> U.S. EPA, *Air Quality Designation for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard*, 78 Fed. Reg. 47191 (Aug. 5, 2013).

<sup>11</sup> See also *Technical Support Document: Recommended Attainment/Nonattainment Designations in Illinois for the 2010 Revised Primary 1-Hour SO<sub>2</sub> National Ambient Air Quality Standard*, AQPSTR 11-01, IEPA, Jun. 2, 2011; available from USEPA’s website (last viewed Oct. 7, 2013): [http://www.epa.gov/so2designations/reletters/R5\\_IL\\_rec\\_wtechanalysis.pdf](http://www.epa.gov/so2designations/reletters/R5_IL_rec_wtechanalysis.pdf).

analysis of more recent data than 2007-2009 data provided by Illinois also supports the conclusion that sources located in Hollis Township do not impact the monitored exceedances of the standard that serves as the basis for nonattainment designation.” *Id.* On September 5, 2013, AER filed in the Seventh Circuit Court of Appeals a petition for judicial review of the designation by U.S. EPA of Hollis Township as an area that does not meet the 1-hour SO<sub>2</sub> NAAQS. AERG’s appeal, docketed as Case No. 13-2959, is attached as Exhibit 4.

The process for designating areas following the promulgation of a new or revised NAAQS is contained in section 107(d) of the Clean Air Act and that process for the future designations should proceed as intended. Contrary to Mr. Klafka’s analyses, Illinois EPA has not proposed to include as non-attainment the areas within which the Joppa and Newton Energy Centers are located and in Illinois, this is the state regulatory agency entrusted by Congress to recommend air quality designations. Further and importantly, if U.S. EPA believed it was prepared to proceed with additional non-attainment designations at this time, it would have done so, but it has not. ELPC simply cannot contend today as it does today that “[d]elaying compliance with the MPS means continuing localized NAAQS exceedances at the three unscrubbed plants” and therefore, localized environmental harm results.

#### **IV. THE FORESIGHT PROPOSAL IS NOT A VIABLE COMPLIANCE ALTERNATIVE.**

In both its written and oral public comments, Foresight Energy LLC presented a proposal that it has termed a “win- win” for the State of Illinois, the Illinois coal industry and the AER plants. Specifically, Foresight offers to fund the Newton scrubber in exchange for a long term Illinois coal contract or, alternatively, “assume Dynegey’s role in the proposed acquisition, acquire the assets as structured and construct the scrubbers.” PC# 2000, p. 2. Notwithstanding its facial appeal, there are many factors that must be considered by the Board before the Board

could determine that the Foresight proposal is a viable alternative to the current plan to complete the Newton Scrubber FGD Project by December 31, 2019.

Importantly, AER wishes to explain at the onset that Ameren Corporation and IPH have entered into a formal Transaction Agreement and are obligated to proceed in good faith towards closing that transaction. Negotiations with third parties to “*assume Dynegy’s role in the proposed transaction*” would constitute a breach under that Agreement. As explained to the Board, Ameren announced its intent to exit the merchant business in December 2012. The intent to exit was announced publicly in Ameren’s Form 8-K with the Securities Exchange Commission. Dynegy, upon learning of Ameren’s intent, contacted Ameren to express interest in the merchant assets and began the process of formal negotiations and due diligence. After three months of negotiation and due diligence, an agreement between the parties was reached. At no time during that three month period did Foresight indicate a desire to begin formal negotiations with Ameren Corporation. As noted above, now that a Transaction Agreement has been signed, neither Ameren nor AER can engage in negotiations with a new third party to acquire the business in lieu of IPH nor can AER negotiate a long-term coal supply contract along the lines sought by Foresight.

Further, based on the limited information presented, it appears that Foresight’s proposed financing of the Newton FGD Scrubber Project is conditioned entirely upon the execution of a long-term coal supply contract from one or more of its Illinois coal mines, with the specific commercial terms yet to be defined. The funding for the scrubber project, Foresight explains, would be embedded in the cost of the coal. PC# 2000, Attachment A, p. 2. However, the current design fuel for the Newton’s scrubber FGD project is a full range of PRB coal only. Redesigning the project to accommodate Illinois basin coal would result in almost a complete



duplication of the current configuration and construction efforts, excluding the stack. AER estimates that modifying the scrubber design to accommodate Illinois coal would significantly impact engineering, construction, and tie-in costs to well over \$1 billion.<sup>12</sup> For the Foresight proposal to be commercially viable, such increased costs embedded in a coal supply contract would still need to be cost competitive and it is unclear how the additional costs will be reflected in a competitive way through a long term coal contract. Under current market conditions, PRB coal from the Wyoming basin is more economical than Illinois coal notwithstanding the additional transportation and delivery costs.<sup>13</sup> It is hard to understand how these additional costs embedded in a fuel contract would improve the economics of the Newton Energy Center.

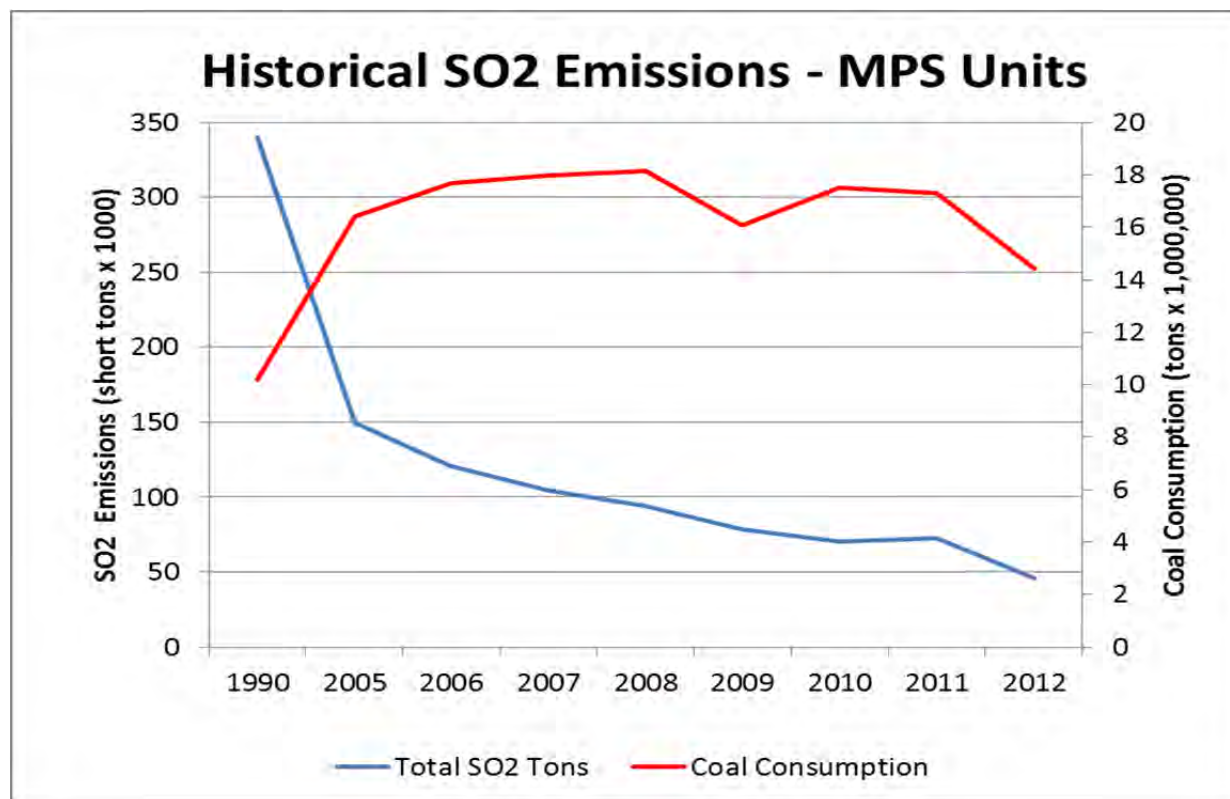
As compared to PRB, Illinois coal also has a higher sulfur and different elemental properties. These properties impact the scope of the Newton scrubber project and the proper operation of the boiler. While originally designed for Illinois coal, AER and its predecessors have methodically converted boilers across the fleet to burn PRB coal, in large measure to address increasing restrictive SO<sub>2</sub> emission limitation requirements. Set forth below is a chart that reflects the dramatic 87% decline in SO<sub>2</sub> emissions from AER's fleet.<sup>14</sup>

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<sup>12</sup> Based upon costs developed prior to the deceleration of the Newton scrubber, completion of the current project scope is estimated to be approximately \$250M for a total direct project cost of \$460M. Such direct costs would need to be recalculated once the construction aspects of the project resume in earnest and in accordance with the Board's Order in PCB 12-126.

<sup>13</sup> AER does burn a blend of Illinois basin and PRB coal at its Duck Creek and Coffeen Energy Centers. Earlier this Spring, AER experimented with burning Illinois coal from Foresight's Deer Run mine at Coffeen Energy Center but abandoned such efforts when the boiler back pass became plugged due to high sodium levels within the coal forcing the unit to shut down.

<sup>14</sup> The 87% drop in SO<sub>2</sub> emission since 1990 reflects a system-wide conversion of boilers to PRB coals (Joppa 1995; Newton 1999; Duck Creek 2004; E.D. Edwards and Coffeen 2005), as well as the installation of scrubber systems at Duck Creek and Coffeen.



More significantly, the current scrubber is simply not designed to accommodate Illinois coal.<sup>15</sup> The Newton scrubber has been designed for a full range of PRB coals, and AER has performed only conceptual engineering design related to the potential use of Illinois coal. To scrub Illinois coal would require almost a complete duplication of the current configuration/construction efforts, additional gypsum landfill space; and a water treatment facility. The current project calls for two absorber vessels and supporting equipment, buildings and facilities. If Illinois coal were to be used, the project scope would need to be expanded to include the following: two complete absorber vessels (including agitators, slurry nozzles, mist eliminators, jet air spargers, absorber bleed pumps, absorber transfer pumps, emergency quench system, outlet hoods, and associated piping and electrical); new absorber building (including recycle pumps and motors, and associated piping, valves, and electrical); booster fans; additional

<sup>15</sup> The scrubber chimney stack has been designed and constructed to accommodate both PRB and Illinois coals.

ductwork with modifications to existing ductwork; oxidation air blowers; gypsum slurry feed pumps; expansion of the existing dewatering system (including: belt filters, and vacuum pumps); additional limestone storage tanks with associated equipment (including: rotary feeders, limestone conveying blowers, limestone feed screw pumps; and air compressors); an additional gypsum storage tank; water treatment facility; new electrical building including all switchgear; transformers; and new power feed from the switchyard; miscellaneous valves; and modifications to the distributed control system control logic; and additional landfill gypsum storage. Under the existing scrubber design, the Newton FGD Project is at 59.3% completion level, with engineering at 90.5% complete as of August 23, 2013.

From an environmental impact perspective, in addition to SO<sub>2</sub>, the MPS contains system-wide NO<sub>x</sub> emission limitations of 0.11 lb/mmBtu. Illinois coal inherently has higher nitrogen levels than PRB coal. In response to the Foresight public comments (oral and written), AER has examined the impact a conversion to Illinois basin coal would have on NO<sub>x</sub> emissions at Newton. On PRB coal, Newton's NO<sub>x</sub> emission rate is typically 0.10 lb/mmBtu. In comparison, from 1994-1997, Newton Unit 1 burned Illinois coal and its NO<sub>x</sub> emission rate was approximately 0.30 lbs/mmBtu. Even with aggressive tuning and optimization of all existing pollution control equipment across the AER fleet (over-fired air; low NO<sub>x</sub> burners; and SCRs at Coffeen, Duck and Edwards), the projected system NO<sub>x</sub> emission rate would be approximately 0.133 lb/mmBtu based on current projected generation. The use of Illinois coal at Newton would result in an inability to comply with the MPS NO<sub>x</sub> requirements absent either a regulatory change to the MPS or the installation of NO<sub>x</sub> control equipment at either Joppa or Newton. The original estimate developed several years ago of an SCR was in excess of \$150 million. In addition, since Illinois coal has a high chlorine level, there is an increased potential for water

wall tube corrosion with low NOx burners and over fire air. Tubes located in the water area of the boiler would need to have alloy cladding to prevent corrosion. Such a project would require a two months outage and cost approximately \$20 million per unit.

**V. AER REQUESTED A VARIANCE IN 2012 IN GOOD FAITH AND IS BACK WITH IPH AND MEDINA VALLEY BECAUSE THE HARDSHIP DEMONSTRATED EXISTS REGARDLESS OF THE OWNER AND THE NET ENVIRONMENTAL BENEFIT EXPECTED BY THE BOARD WILL CONTINUE**

In an effort to diminish the request for relief, ELPC suggests that Ameren Corporation and AER were disingenuous in their representation before the Board in PCB 12-126. According to Ms. Bugel, Ameren is “*yet again crying wolf.*” Tr., p. 320. Mr. Armstrong believes that AER “*does not have a realistic plan for coming into compliance with the MPS*” and that, contrary to its prior representations before the Board, Ameren is walking away from these plant and their communities. Tr., p. 324. As a consequence, Petitioners and Co-Petitioner are not to be believed and ELPC urges the Board to “*closely examine IPH’s claims.*” PC# 2337, p. 22. Although AER knows this is unsubstantiated rhetoric, it feels compelled to respond appropriately for the Board’s full consideration.

First, the Board recognized the viability of AER’s proposed compliance plan and in fact conditioned relief upon the performance of specific project milestones that insures the Newton scrubber project will be in service by the end of 2019. IPH has pledged to continue those construction commitments and has budgeted sufficient capital expenditures to complete the Newton scrubber project. How is that not a “*realistic plan for coming into compliance with the MPS?*”

Second, Ameren Corporation and AER wish to reassure the Board that at no time – as implied by ELPC and some opponents – did the companies secure variance relief so as to ease Ameren Corporation’s exit from the merchant business. Rather, as the Board found in PCB 12-

126, AER approached the Board when it became apparent that market conditions and AER's financial resources had deteriorated to the point where it could not continue on its current course of construction so as to comply with the MPS's 2015 SO<sub>2</sub> emission rate. As the Board noted in its Order, third-party financing from either a financial institution or parental support from Ameren Corporation were not feasible compliance alternatives. The only other compliance option available to AER would be to shut down one or more units which would have tremendous human and economic repercussions. The Board determined that the evidentiary case presented by AER satisfied the regulatory standards for variance relief. AER filed its request for relief in the beginning of May, 2012 and the Board issued its ruling on September 20, 2012.

As detailed in Mr. Lyons' affidavit, Exhibit 1 to the Petition, accounting standards require public companies such as Ameren Corporation to evaluate, on an ongoing and continual basis, the viability of their business operations. Petition Exh. 1, par. 6. This accounting requirement is assessed every financial reporting quarter. ELPC cannot credibly dispute that due to a deep and lingering recession, power market prices are at or near historically low ranges. Nor can they dispute the predicament facing AER in its inability to access financing for the scrubber project. In fact, they seem to acknowledge the impact that natural gas prices have had across the energy sector. *Written Statement of ACM Partners on behalf of Sierra Club and Environmental Law and Policy Center* (PC#3162), p. 26. The fact remains – which ELPC does not and cannot dispute – market conditions in 2012 continued to worsen. Accordingly, Ameren Corporation, having performed the requisite accounting evaluation, had no choice but to publicly acknowledge that a material change in circumstance had occurred and record a \$1.95 billion impairment charge relating to the merchant business. Petition Exh. 1, par. 6. Given sustained weak market conditions, lack of strategic fit with its regulated businesses and the need to allocate

capital within those businesses, Ameren Corporation ultimately determined in December 2012 that it had no viable alternative but to exit the merchant generation business. *Id.* Do the opponents truly believe that Ameren Corporation would have worked to secure a variance for AER and taken a nearly two billion accounting impairment as a marketing ploy to entice prospective bidders such as Dynegy?

In fact, rather than abandoning the AER plants and their communities as argued by ELPC, Ameren Corporation has taken pains to ensure sufficient liquidity is left in AER post-closing so as to provide a runway for success. Working capital, proceeds from the Put Option, and credit support all speak to Ameren Corporation's desire to provide IPH/New AER with a solid financial footing. Ameren chose to negotiate with Dynegy/IPH based in large measure on the belief that IPH and Dynegy, with its deep roots in Illinois, will use its commitment to the merchant market and operational synergies to bring a more certain future to the energy centers.

## **VI. CONCLUSION**

In these economic times, businesses in this nation are fighting to survive.<sup>16</sup> This fight exists across almost every industry sector, but acutely within the coal-fired power sector. Despite these hard times, environmental regulation advances but the very regulations on paper are by nature blind to economic changes and temporary hardships that may challenge timely compliance. In its wisdom, the Illinois General Assembly put into place a process to allow our regulators and this Board to react to hard or exceptional times in a way the hard words in a regulation cannot—that process known as a “variance” is a statutory creature enacted within the very body of the Illinois Environmental Protection Act.

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<sup>16</sup> “Not unlike the automobile industry after 2008, we just need a little time to fiscally get across this bridge through a poor economy and finish the scrubber without decimating our company and the jobs that it provides.”, Mr. Larry Quick, storeroom stockman, newton Energy Center. (Tr., p. 231)

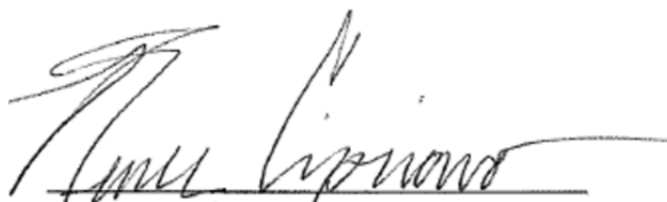
Petitioners and Co-Petitioners are before this Board requesting that they be granted a variance. And even though the Parties are before this Board once more for the purpose of demonstrating need for the continuation of the same relief this Board provided the Ameren MPS Group in PCB 12-126, this is not, as it was not before, a choice between the plants and jobs on one side, and the environment and public health on the other. Just as in PCB 12-126, Petitioners and Co-Petitioner worked hard to craft a request that both recognized the core purpose of the MPS and then, going further, Petitioners followed through by agreeing to conditions that provide the Board with further comfort that the MPS's foundation of overall emission reductions would not be compromised.

ELPC asks “[s]o why are we back here?” Tr., p. 319. Specifically, Ms. Bugel posits, “[t]he granting of the variance was supposed to avoid all of this a year ago. Granting the variance a year ago was supposed to allow the plants to stay open, and at that time, we even discussed the possibility that granting the variance would not allow the plants to stay open.” Tr., p. 319. With the utmost respect for the Board, AER and Petitioners would like nothing more than to not be here. Ameren would like nothing more than to have AER not be here. AER put forth its best effort to make the variance and economics of the energy centers work within the Ameren family, but further degradation of economic circumstances coupled with the regulated nature of it's core business left Ameren Corporation no choice but to exit the merchant business. This was not a shell game move on Ameren's part. This was not a “let's hoodwink the Board and get what we want so we can turn around and switch out the owners.” This was a decision that had to be made and the promise of a company like IPH, as part of the Dynegy family, made Ameren more comfortable that AER's representation of “not giving up on the plants” that was made to the Board roughly one year ago would still ring true. Petitioners and Co-Petitioners are

before this Board again because they have no other viable alternative. The hardships have not changed nor will they in time for AER to meet the current MPS rates should the variance not be granted. The relief is still vitally needed—indeed, this is just simply not a circumstance of “*crying wolf*.”

WHEREFORE, Co-Petitioner Ameren Energy Resources, LLC, respectfully requests that the Board grant the requested variance to Petitioners, Illinois Power Holdings, LLC and AmerenEnergy Medina Valley Cogen, LLC, and Co-Petitioner, Ameren Energy Resources, LLC, to become effective after the closing of the transaction and upon filing an executed certificate of acceptance with the Illinois Pollution Control Board.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Renee Cipriano", written over a horizontal line.

Renee Cipriano  
Amy Antonioli  
Schiff Hardin LLP  
233 South Wacker Drive, Suite 6600  
Chicago, IL 60606  
Tel: 312-258-5500

Counsel for Ameren Energy Resources, LLC



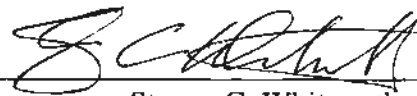
**AFFIDAVIT OF STEVEN C. WHITWORTH**

**I. BACKGROUND AND QUALIFICATIONS**

1. My name is Steven C. Whitworth, and I am employed by Ameren Services Company as the Director of Environmental Services. Ameren Services Company provides business services to Ameren Corporation's operating companies including Ameren Energy Resources ("AER") and its subsidiary companies, Ameren Energy Generating Company ("GENCO") and AmerenEnergy Resources Company. In addition to supervising staff personnel, I am responsible for implementing policies and procedures relating to environmental compliance, including reporting requirements under federal and state laws. In this capacity, I am responsible for representing the Ameren Companies before regulatory and administrative bodies with respect to state and federal permitting conditions and regulatory requirements. I am familiar with Illinois Multi-Pollution Standard ("MPS") and AER's efforts to comply with that regulation.

2. I have reviewed Ameren Energy Resources' Brief in Response to Comments and confirm the accuracy of the statements contained therein.

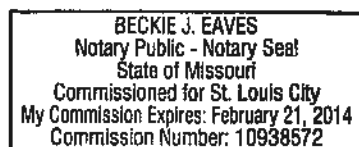
Further affiant sayeth not.

  
Steven C. Whitworth

Subscribed and sworn to before me

this 7<sup>th</sup> day of October, 2013.

  
Notary Public

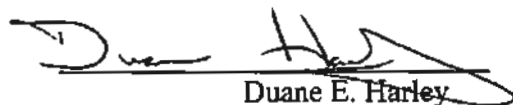


**AFFIDAVIT OF DUANE E. HARLEY**

My name is Duane E. Harley and I am the Senior Director of Engineering for Ameren Energy Resources ("AER"). Through its subsidiary companies Ameren Energy Generating, Ameren Energy Resources Generating Company, and Electric Energy Inc. (collectively, the "AER Companies"), AER owns the following coal fired generating stations: Duck Creek, E.D. Edwards, Coffeen, Newton, Meredosia, Hutsonville and Joppa.

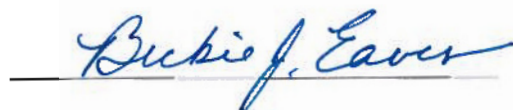
As part of my duties, I am responsible for all aspects of the Newton Scrubber Project including the following: engineering design, contract negotiation, budget and resource estimate and planning and project construction and execution. I have reviewed the written public comment filed by Foresight Energy regarding the proposed use of Illinois Basin Coal at the Newton Energy Center. I have reviewed Ameren Energy Resources' Brief in Response to Comments including those made by Foresight Energy and confirm the accuracy of the statements contained in AER's response.

Further, Affiant sayeth not.

  
Duane E. Harley

Subscribed and sworn to before me

this 7<sup>th</sup> day of October, 2013



BECKIE J. EAVES  
Notary Public - Notary Seal  
State of Missouri  
Commissioned for St. Louis City  
My Commission Expires: February 21, 2014  
Commission Number: 10938572

**EXHIBIT 1**

**LIST OF AER POLLUTION CONTROL EQUIPMENT**

## POLLUTION CONTROL EQUIPMENT INSTALLED ON AER PLANTS

	CATEGORY	UNIT	CONTROL TECHNOLOGY	DATE INSTALLED	
COFFEEN	SO <sub>2</sub> Control	U1	WFGD	Nov 2009	
		U2	WFGD	Mar 2010	
	NO <sub>x</sub> Control	U1	OFA	2001	
			Comb. Opt.	2002	
			SCR	2003	
		U2	OFA	2000	
			Comb. Opt.	2002	
			SCR	2002	
	Mercury Control	U1	WFGD	2009	
			AER uses refined fuel for enhancement for mercury removal.	2012	
		U2	WFGD	2010	
			AER uses refined fuel for enhancement for mercury removal.	2012	
		U1/U2	Mercury Sorbent Traps	2012	
	Particulate Matter	U1	ESP / Upgrade	1973	
			FGC (SO <sub>3</sub> Inj.)	2001	
		U2	ESP / Upgrade	1972	
			FGC (SO <sub>3</sub> Inj.)	2001	
			New ESP	Mar 2010	
	DUCK CREEK	SO <sub>2</sub> Control	U1	WFGD Replacement	Mar 2009
NO <sub>x</sub> Control		U1	LNB	2002 /	
			LNB	2003 2009	
			SCR	2003	
Mercury Control	U1	WFGD co-benefit for mercury control	July, 2009		
		AER uses refined fuel for oxidation enhancement for mercury removal.	2011		

	CATEGORY	UNIT	CONTROL TECHNOLOGY	DATE INSTALLED
			Mercury Sorbent Traps	2012
	Particulate Matter	U1	ESP / Upgrade	1976 /
			New ESP	2009
	SO <sub>2</sub> Control	U1 – U3	PRB fuel conversion	2005
EDWARDS	NO <sub>x</sub> Control	U1	LNB	1998
		U2	LNB	1993
			LNB / OFA upgrade	2008
			LNB	1994
		U3	SCR	2003
			LNB / OFA upgrade	2008
EDWARDS (cont'd)	Mercury Control	U1	ACI	Jul 2009
		U2	ACI	Jul 2009
		U3	ACI	Jul 2009
	Particulate Matter	U1	FGC (SO <sub>3</sub> Inj) / Upgrade for ESP Performance	1979 / 2003
		U2	FGC (SO <sub>3</sub> Inj) / Upgrade for ESP performance Power Supply Upgrade	1979 / 2003 2009
			ESP upgrade for SO <sub>3</sub> injection Elimination	2012-2013
		U3	ESP FGC (SO <sub>3</sub> Inj)	1972 1979
NEWTON	SO <sub>2</sub> Control	U1 & U2	PRB Fuel Conversion	1997
		U1	WFGD	In Progress
		U2	WFGD	In Progress

	CATEGORY	UNIT	CONTROL TECHNOLOGY	DATE INSTALLED
	<b>NO<sub>x</sub> Control</b>	U1	LNB / OFA	1994
			Comb. Opt.	2003
		U2	LNB / OFA	2001
			Comb. Opt.	2003
	<b>Mercury Control</b>	U1	ACI with optimization by CaBr2	2009
		U2	ACI with optimization by CaBr2	2009
	<b>Particulate Matter</b>	U1	ESP	1977
			FGC (SO <sub>3</sub> Inj) / Upgrade	1995 / 2001
		U2	ESP	1982
			FGC (SO <sub>3</sub> Inj) / Upgrade	1987 / 2001
			Upgrade	2012
<b>JOPPA</b>	<b>SO<sub>2</sub> Control</b>	U1 - 6	PRB Fuel Conversion	1992 - 1994
	<b>NO<sub>x</sub> Control</b>	U1	LNB	1993
			Comb. Opt.	2002
			SOFA	2008
		U2	LNB	1994
			Comb. Opt.	2002
		U3	LNB	1993
			Comb. Opt.	2003
			SOFA	2007
		U4	LNB	1993
			Comb. Opt.	2002
			SOFA	2009
		U5	LNB	1995
			Comb. Opt.	2002
			SOFA	2006
<b>JOPPA (cont'd)</b>	<b>NO<sub>x</sub> Control (cont'd)</b>	U6	LNB	1994
		Comb. Opt.	2001	
		SOFA	2005	
	<b>Mercury Control</b>	U1	ACI	2009

CATEGORY		UNIT	CONTROL TECHNOLOGY	DATE INSTALLED
		U2	ACI	Jul 2009
		U3	ACI	Jul 2009
		U4	ACI	Jul 2009
		U5	ACI	Jul 2009
		U6	ACI	Jul 2009
		U1-6	Mercury Sorbent Traps stacks 1-3	2007 - 2008
	<b>Particulate Matter</b>	U1	ESP Upgrades	1994
			FGC (SO <sub>3</sub> inj)	1994
		U2	ESP Upgrades	1994
			FGC (SO <sub>3</sub> inj)	1994
		U3	ESP Upgrades	1994
			FGC (SO <sub>3</sub> inj)	1993
		U4	ESP Upgrades	1994
			FGC (SO <sub>3</sub> inj)	1993
U5	ESP Upgrades	1994		
	FGC (SO <sub>3</sub> inj)	1994		
U6	ESP Upgrades	1994		
	FGC (SO <sub>3</sub> inj)	1994		

**EXHIBIT 2**

**AMEREN COMMENTS IN RULEMAKING DOCKET EPA-HQ-OAR-2012-0233**





March 15, 2013

United States Environmental Protection Agency  
 Air Docket  
 Attention Docket ID No. EPA-HQ-OAR-2012-0233  
 Mail Code 6102T  
 1200 Pennsylvania Ave., NW  
 Washington, DC 20460

Dear Sirs,

Ameren appreciates the opportunity to comment on the US EPA recommendations for the Pekin, IL SO<sub>2</sub> nonattainment area. Ameren Corporation ("Ameren") is based in St. Louis, MO, and through its operating companies serves 2.4 million electric and nearly one million natural gas customers across a 64,000-square-mile area in Illinois and Missouri. Ameren companies' net generating capacity is more than 16,400 megawatts. Our power plants use a variety of fuels to generate electricity—principally coal, nuclear, hydro and natural gas.

Specifically Ameren disagrees with the inclusion of the Hollis Township in Peoria County to the Pekin, IL SO<sub>2</sub> non-attainment area for the following reasons:

- 1) The Pekin area map displayed in Figure 2 of the Illinois EPA's technical support document<sup>1</sup> shows that the Hollis Township (in particular the Ameren Edwards Energy Center) is located almost directly north of the exceeding Pekin SO<sub>2</sub> monitor. Figure 3 in that same document shows the wind rose for the nearby Peoria Regional Airport. This figure indicates that winds from the north account for less than 5% of total direction occurrences. US EPA makes the following statement in their response to the Illinois technical support document:

"The wind rose provided by Illinois suggests that winds come most frequently from the south, and somewhat frequently from the northwest, but winds come from all directions with sufficient frequency to suggest that meteorology is not a significant factor in defining this nonattainment area."<sup>2</sup>

This statement is misleading. With such a low percentage of winds from the north the probability of facilities located north of the exceeding monitor having a significant impact is expected to be low.

- 2) Figure 4 of the Illinois technical support document<sup>1</sup> shows the pollution rose for the years 2008-2010. This figure shows that over 90% of the occurrences of hours with SO<sub>2</sub> > 75 ppb occurred for wind directions from the West to Southwest. The remaining hours with SO<sub>2</sub> > 75 ppb occurred for wind directions from the East to South-Southwest. Figure 1 below and Attachment I shows a more detailed picture of this pollutant rose.<sup>3</sup> This figure uses data from the Tazewell county SO<sub>2</sub> monitor and meteorology from the Greater Peoria Regional Airport (see Attachment I). The enhanced pollutant rose

<sup>1</sup> Technical Support Document, Recommended Attainment/Nonattainment Designations in Illinois for the 2010 Revised Primary 1-Hour SO<sub>2</sub> National Ambient Air Quality Standard (AQPSTR 11-02); June 2, 2011

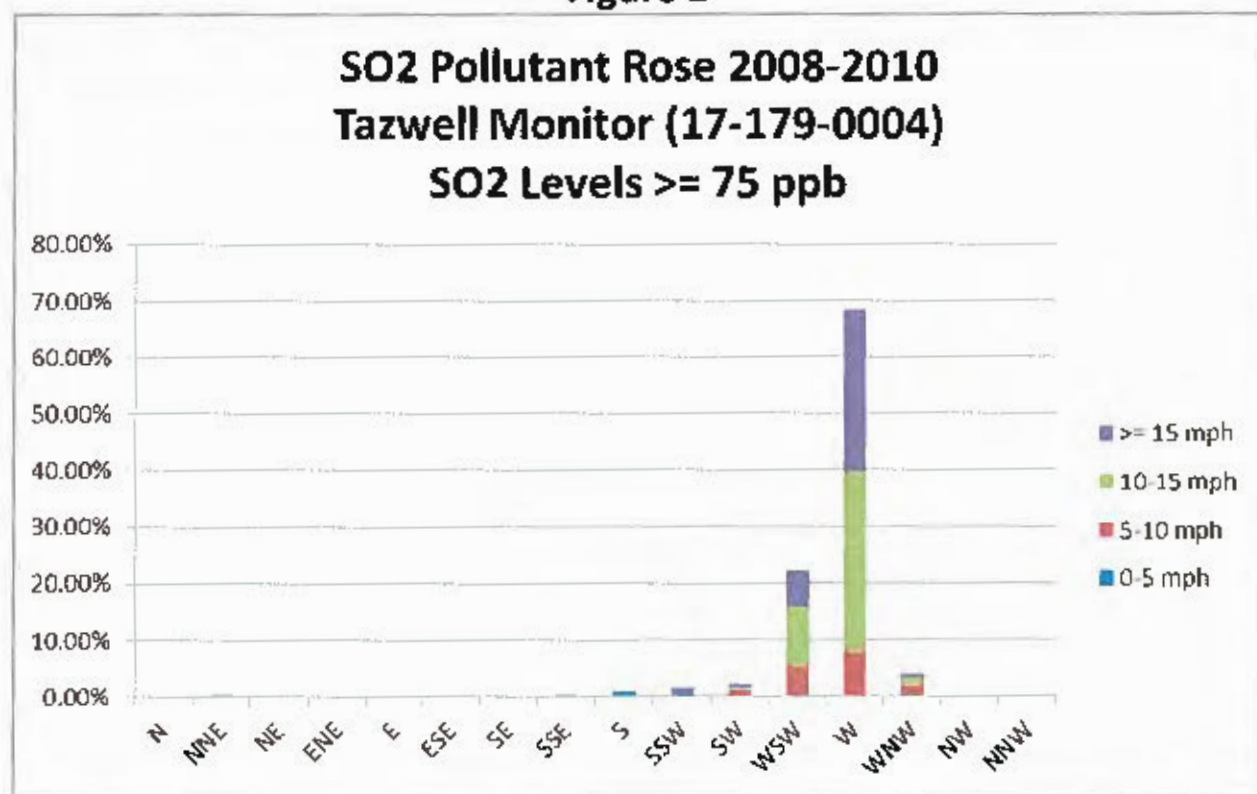
<sup>2</sup> Draft Technical Support Document Illinois Area Designations For the 2010 SO<sub>2</sub> Primary National Ambient Air Quality Standard; US EPA February 2013.

<sup>3</sup> See references in Attachment I for data sources

shown in Figure 1 demonstrates that for the 3 year period 2008-2010 there were no contributions from facilities located north of the Tazewell county monitor for measured SO<sub>2</sub> levels greater than or equal to 75 ppb. Actually over 99% of the measured SO<sub>2</sub> levels 75 ppb or larger occurred for winds from the South-Southeast to West-Northwest. The majority of these occurred with winds from the West and West-Southwest.

- 3) Further evaluation of Figure 1 (as well as the detailed hourly data in Attachment I) indicates that the meteorology associated with elevated SO<sub>2</sub> levels was occurring a majority of the time with wind speeds greater than 10 mph. These relatively high wind speeds can cause plumes from relatively short stacks to experience significant downwash. Such stacks exist just west of the Tazewell county SO<sub>2</sub> monitor.
- 4) US EPA in its response to Illinois' analysis for designating the Pekin, IL area nonattainment insinuates that just because there is a significant SO<sub>2</sub> emitting source north of the monitor that it automatically contributes to the higher levels monitored. This assumption is false based on the analysis described above. In addition as US EPA surely knows that the level of emissions emitted is not the only factor that should be considered. US EPA needs to consider the actual location of the source relative to the monitor and area's meteorology (as discussed above); the sources stack height; sources stack flow and temperature; and the sources other relevant operating characteristics. It is presumptuous of US EPA to assume that a source that emits SO<sub>2</sub> automatically contributes to the exceedances measured without considering all relevant information.

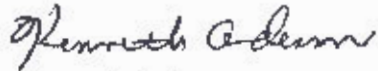
**Figure 1**



Based on this analysis and Illinois EPA's analysis the facilities located north of the Tazewell monitor did not contribute to any of the measured exceedances of the one hour SO<sub>2</sub> standard in Tazewell County. US EPA has not sufficiently demonstrated that Hollis Township, Peoria County should be included in the Pekin, IL SO<sub>2</sub> nonattainment area and thus Hollis Township should be removed from US EPA's recommendation.

If you have any questions please don't hesitate to contact me at 314-544-2089.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth Anderson".

Kenneth Anderson  
Managing Supervisor - Air Quality Management

Attachment

**Attachment I**

**Hourly SO<sub>2</sub> Data from the Tazewell Monitor and  
Wind Data from the Peoria Airport for  
Measured SO<sub>2</sub> Levels  $\geq$  75 ppb  
2008-2010**

## SO2 and Wind Data for Tazewell Area 2008

Date	Hour	SO2 (ppb)	Wind Speed (mph)	Wind Direction (deg)
12/27/2008	21:00	277	5	200
11/08/2008	0:00	260	17	260
12/28/2008	0:00	256	18	260
05/02/2008	18:00	243	15	260
12/27/2008	23:00	231	24	270
11/08/2008	2:00	229	14	260
12/28/2008	3:00	225	15	260
12/28/2008	2:00	211	20	260
11/07/2008	23:00	207	14	260
			14	260
			17	260
12/28/2008	1:00	205	18	260
12/28/2008	6:00	181	13	260
11/07/2008	22:00	165	15	270
12/27/2008	22:00	164	15	270
			22	270
12/28/2008	4:00	164	11	250
			21	270
04/12/2008	5:00	160	11	270
03/25/2008	15:00	155	20	280
05/03/2008	8:00	155	20	260
03/25/2008	16:00	143	15	270
04/12/2008	4:00	143	11	250
04/12/2008	2:00	142	15	260
			16	260
05/03/2008	9:00	140	20	270
11/08/2008	1:00	136	14	260
04/26/2008	8:00	119	16	250
			15	260
			16	250
12/29/2008	11:00	119	14	270
10/02/2008	14:00	118	11	260
01/17/2008	22:00	117	10	260
04/26/2008	13:00	115	18	280
04/07/2008	12:00	114	16	270
03/21/2008	13:00	112	11	220
12/02/2008	1:00	112	8	250
			9	260
12/28/2008	7:00	111	9	270

01/17/2008	21:00	110	11	260
			14	260
10/02/2008	15:00	109	7	280
11/08/2008	9:00	105	20	270
04/26/2008	5:00	103	14	270
04/07/2008	11:00	102	14	290
01/17/2008	16:00	100	15	270
04/12/2008	1:00	97	16	260
04/26/2008	10:00	96	15	260
04/12/2008	6:00	95	16	280
04/26/2008	7:00	90	15	250
			20	260
12/02/2008	2:00	90	8	260
			7	260
			8	260
03/25/2008	14:00	89	22	260
04/26/2008	11:00	87	15	260
11/07/2008	18:00	86	13	250
12/28/2008	5:00	85	5	230
04/26/2008	12:00	81	18	270
04/26/2008	9:00	80	15	240
05/04/2008	16:00	80	9	260
12/28/2008	8:00	80	15	260
11/10/2008	12:00	79	0	0
06/28/2008	16:00	78	14	290
03/26/2008	12:00	77	3	VR
04/12/2008	3:00	77	11	250
06/28/2008	11:00	77	10	250
10/02/2008	16:00	77	7	280
05/02/2008	19:00	76	10	250
11/08/2008	4:00	76	13	260

## SO2 and Wind Data for Tazewell Area 2009

Date	Hour	SO2 (ppb)	Wind Speed (mph)	Wind Direction (deg)
03/31/2009	17:00	352	22	260
12/09/2009	7:00	282	28	260
			28	260
			22	260
			26	260
10/23/2009	16:00	263	14	250
			14	260
12/09/2009	9:00	262	25	260
			29	260
			29	260
			26	260
			29	270
12/09/2009	8:00	252	29	260
			30	260
			28	260
			31	260
			26	260
10/23/2009	17:00	235	14	260
			13	260
			15	260
			11	260
			10	270
			10	270
10/30/2009	23:00	233	18	260
			13	260
04/30/2009	10:00	231	17	280
			14	280
12/28/2009	2:00	230	10	260
05/21/2009	11:00	229	15	210
08/20/2009	15:00	202	16	270
12/09/2009	10:00	198	31	270
			28	260
			24	280
03/31/2009	18:00	197	15	250
03/10/2009	18:00	193	20	290
			14	290
10/31/2009	3:00	187	15	250
10/31/2009	2:00	183	15	260

03/08/2009	14:00	181	31	270
08/20/2009	17:00	175	7	250
10/31/2009	0:00	173	14	250
			13	280
01/17/2009	15:00	171	18	290
12/28/2009	4:00	170	10	260
			11	270
04/30/2009	14:00	169	14	270
			11	260
			11	250
04/30/2009	9:00	163	18	280
			18	270
			17	260
			15	260
06/01/2009	11:00	161	8	250
05/21/2009	10:00	160	17	260
10/31/2009	7:00	160	13	260
08/20/2009	14:00	155	17	240
12/03/2009	21:00	155	13	260
10/03/2009	3:00	154	10	260
			11	250
			11	250
12/27/2009	23:00	151	11	270
			11	260
10/31/2009	5:00	149	8	260
05/30/2009	14:00	148	5	290
10/31/2009	4:00	147	13	260
05/29/2009	11:00	146	3	VR
03/08/2009	13:00	144	28	280
05/31/2009	11:00	144	3	160
03/24/2009	21:00	144	11	250
10/23/2009	15:00	142	14	260
			15	260
			13	250
05/14/2009	11:00	142	13	280
10/06/2009	16:00	141	18	270
10/03/2009	5:00	140	10	260
			10	260
08/20/2009	16:00	139	14	250
12/10/2009	12:00	138	18	260
12/09/2009	6:00	138	25	260
			25	260
			23	260



12/10/2009	6:00	138	14	270
10/23/2009	14:00	137	13	260
			13	250
			11	250
06/09/2009	12:00	137	0	0
10/24/2009	10:00	137	9	270
06/01/2009	12:00	134	11	280
12/28/2009	3:00	134	11	260
10/24/2009	12:00	133	10	280
10/02/2009	21:00	130	14	240
			15	250
10/31/2009	1:00	129	13	270
			14	270
10/30/2009	22:00	129	25	260
			21	260
08/20/2009	13:00	127	18	240
10/03/2009	4:00	127	10	250
			10	260
05/29/2009	10:00	126	5	280
03/31/2009	16:00	125	26	270
10/03/2009	8:00	125	14	250
06/28/2009	23:00	125	6	260
10/03/2009	11:00	123	8	260
			9	250
06/01/2009	15:00	120	8	270
10/24/2009	13:00	119	10	250
04/08/2009	10:00	119	9	290
06/05/2009	9:00	118	8	230
11/25/2009	19:00	118	10	270
08/21/2009	12:00	113	13	270
10/31/2009	8:00	113	14	280
			14	270
12/09/2009	13:00	112	20	270
			28	270
11/25/2009	11:00	112	14	280
			11	260
			14	270
05/31/2009	12:00	112	6	VR
10/23/2009	20:00	112	17	270
			10	270
			10	260
12/10/2009	23:00	110	7	260
05/30/2009	12:00	109	13	250

12/10/2009	21:00	108	13	270
05/10/2009	14:00	107	13	310
08/21/2009	11:00	107	8	260
			14	260
04/25/2009	15:00	105	8	260
05/30/2009	11:00	105	13	260
10/06/2009	14:00	104	17	280
10/30/2009	20:00	103	15	250
03/25/2009	12:00	102	11	240
12/10/2009	7:00	102	13	260
12/28/2009	1:00	101	11	260
03/25/2009	14:00	100	13	250
05/11/2009	9:00	99	5	VR
10/04/2009	14:00	98	5	260
10/24/2009	11:00	98	14	260
			9	280
05/21/2009	13:00	97	9	240
11/04/2009	11:00	97	10	270
06/19/2009	10:00	97	18	250
03/25/2009	10:00	97	15	250
			16	260
			14	260
			15	260
02/07/2009	13:00	96	13	250
03/08/2009	15:00	95	29	270
05/23/2009	8:00	95	0	0
06/01/2009	10:00	95	9	240
03/25/2009	11:00	94	10	260
12/04/2009	9:00	94	11	260
05/14/2009	10:00	94	13	260
12/10/2009	22:00	93	10	270
11/25/2009	18:00	91	10	260
			11	260
04/30/2009	13:00	91	11	270
04/25/2009	14:00	91	6	270
05/14/2009	12:00	91	13	260
11/25/2009	13:00	90	16	270
06/20/2009	14:00	90	9	260
10/23/2009	18:00	89	14	260
			15	280
12/28/2009	0:00	87	13	260
12/03/2009	17:00	85	10	260
07/31/2009	13:00	85	7	280

12/03/2009	20:00	85	11	260
12/10/2009	13:00	84	14	280
07/15/2009	12:00	84	11	290
06/09/2009	13:00	83	6	280
05/29/2009	12:00	83	5	250
10/23/2009	21:00	83	14	270
			14	260
			11	280
06/05/2009	12:00	82	8	240
03/25/2009	15:00	80	11	250
			11	280
05/21/2009	9:00	80	11	260
12/11/2009	0:00	80	7	260
10/06/2009	15:00	79	16	270
04/01/2009	13:00	79	16	270
06/01/2009	19:00	79	0	0
11/04/2009	10:00	79	10	270
03/25/2009	1:00	79	3	210
04/09/2009	10:00	78	0	0
11/25/2009	21:00	78	15	280
12/26/2009	21:00	78	10	260
			10	270
05/27/2009	11:00	77	11	270
11/03/2009	12:00	76	5	230
07/31/2009	10:00	76	10	280
06/05/2009	17:00	75	9	240
05/29/2009	9:00	75	5	300

**SO2 and Wind Data for Tazewell Area 2010**

<b>Date</b>	<b>Hour</b>	<b>SO2 (ppb)</b>	<b>Wind Speed (mph)</b>	<b>Wind Direction (deg)</b>
05/13/2010	15:00	331	21	250
06/02/2010	8:00	254	10	260
01/25/2010	11:00	241	16	270
09/07/2010	9:00	228	15	260
09/07/2010	11:00	224	20	260
10/27/2010	13:00	220	22	250
09/07/2010	10:00	217	21	260
09/07/2010	14:00	210	15	270
09/07/2010	12:00	202	24	260
10/20/2010	16:00	198	9	250
10/20/2010	14:00	196	18	260
09/07/2010	13:00	195	20	260
05/13/2010	14:00	190	14	260
04/07/2010	14:00	179	14	260
01/25/2010	12:00	178	17	280
			17	260
			16	270
			21	270
			22	270
			17	280
			17	270
			17	260
03/18/2010	13:00	177	9	240
01/24/2010	12:00	174	10	250
			11	270
10/20/2010	15:00	173	13	270
10/30/2010	13:00	172	16	260
04/21/2010	20:00	170	10	260
11/13/2010	23:00	167	15	270
01/24/2010	11:00	161	11	270
10/14/2010	12:00	160	8	260
11/13/2010	18:00	151	17	250
01/25/2010	6:00	150	11	260
			10	250
11/30/2010	8:00	149	13	260
			13	260
			15	260
			14	260

10/20/2010	13:00	145	17	260
11/13/2010	20:00	144	21	270
11/30/2010	6:00	144	13	260
11/26/2010	7:00	138	10	260
11/30/2010	12:00	137	16	270
11/26/2010	2:00	134	6	240
04/15/2010	11:00	134	16	250
10/20/2010	17:00	127	7	250
11/30/2010	10:00	125	16	270
11/14/2010	3:00	122	10	260
11/13/2010	19:00	122	20	270
10/14/2010	14:00	120	13	260
03/11/2010	20:00	117	9	250
11/26/2010	8:00	116	13	270
04/15/2010	12:00	116	15	230
06/19/2010	13:00	115	7	290
11/13/2010	21:00	114	13	260
02/19/2010	11:00	114	3	190
11/30/2010	5:00	114	15	270
			11	260
11/30/2010	11:00	114	20	270
11/30/2010	2:00	113	20	270
			14	270
11/26/2010	14:00	111	15	260
10/26/2010	15:00	111	17	250
09/12/2010	13:00	110	14	250
04/21/2010	15:00	109	0	0
03/19/2010	12:00	108	14	250
10/14/2010	13:00	108	14	280
03/23/2010	14:00	108	15	210
10/27/2010	12:00	107	21	250
07/28/2010	13:00	107	13	260
05/11/2010	12:00	106	15	270
10/20/2010	12:00	105	13	270
11/14/2010	13:00	104	13	240
05/09/2010	12:00	104	7	VR
04/03/2010	11:00	102	14	290
09/16/2010	6:00	102	13	260
			11	260
			11	260
			13	260
11/13/2010	17:00	102	17	250
12/31/2010	23:00	99	20	260

10/06/2010	15:00	98	13	260
05/09/2010	14:00	97	3	VR
05/13/2010	16:00	97	16	270
10/01/2010	13:00	97	6	300
04/15/2010	13:00	97	15	230
10/27/2010	16:00	96	22	270
11/30/2010	14:00	95	21	270
11/30/2010	9:00	95	13	250
07/28/2010	12:00	94	13	250
09/12/2010	11:00	92	9	280
01/25/2010	10:00	91	13	260
			14	250
			13	260
12/31/2010	22:00	91	16	260
02/03/2010	12:00	89	3	170
01/17/2010	1:00	89	3	10
			5	40
			5	20
			3	20
			0	0
12/11/2010	20:00	88	13	250
06/27/2010	14:00	87	13	280
06/27/2010	13:00	87	15	260
01/24/2010	13:00	86	13	280
05/03/2010	14:00	86	13	280
03/11/2010	15:00	82	15	240
12/11/2010	19:00	81	14	270
03/19/2010	13:00	81	13	240
05/03/2010	17:00	81	10	280
06/19/2010	14:00	80	11	260
10/30/2010	14:00	77	11	250
02/19/2010	10:00	77	0	0
01/25/2010	5:00	77	10	260
11/30/2010	7:00	77	14	260
02/23/2010	14:00	75	9	270
05/14/2010	10:00	75	10	260
11/30/2010	4:00	75	21	270
11/30/2010	3:00	75	13	270

**Note:**

1. Zero for wind speed/direction indicates calm

2. Multiple wind speed/direction readings indicate more than one reading was taken for that hour because of changing conditions.
3. VR – variable
4. SO<sub>2</sub> data from US EPA AirData – Tazewell monitor (ID: 17-179-0004) Pekin, IL
5. Wind Speed/Direction data from NOAA – Quality Controlled Local Climatological Data (QCLC) Greater Peoria Regional Airport – Station ID: 14842/PIA

**EXHIBIT 3**

**IERG COMMENTS IN RULEMAKING DOCKET EPA-HQ-OAR-2012-0233**





Illinois Environmental Regulatory Group  
An Affiliate of the Illinois Chamber of Commerce

215 East Adams Street  
Springfield, IL 62701  
217-522-5512 (FAX -5518)  
Email: [iergstaff@ierg.org](mailto:iergstaff@ierg.org)

March 18, 2013

United States Environmental Protection Agency  
Air Docket  
Attention Docket ID No. EPA-HQ-OAR-2012-0233  
Mail Code 6102T  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Re: Comments on EPA Responses to Illinois' 2010 Sulfur Dioxide Recommendations

Dear Sir/Madam:

Thank you for the opportunity to provide these comments regarding U.S. EPA's February 6, 2013 response to Illinois' June 2, 2011 recommendations identifying specific areas of Illinois that it believed met the criteria for being designated as nonattainment for the 2010 sulfur dioxide National Ambient Air Quality Standard. U.S. EPA has accepted Illinois' recommendation that the nonattainment area in Tazewell County consist of Cincinnati and Pekin Townships. However, U.S. EPA is also proposing to include Hollis Township in Peoria County. We believe that U.S. EPA has overlooked important and relevant information contained in Illinois' submittal in proposing this change. Specifically, we do not believe that U.S. EPA gave ample consideration to all of the meteorological information provided by Illinois supporting its recommendation to not include Hollis Township. Further, analysis of more recent data than the 2007-2009 data provided by Illinois also supports the conclusion that sources located in Hollis Township do not impact the monitored exceedences of the standard that serve as the basis for the nonattainment designation.

The Illinois Environmental Regulatory Group ("IERG") is a not-for-profit Illinois corporation affiliated with the Illinois Chamber of Commerce. IERG is composed of fifty (50) member companies throughout the State of Illinois, including major industrial facilities in the chemical, food, pharmaceutical, transportation equipment, energy, heavy manufacturing, steel, oil, cement and power generation sectors, that are regulated by governmental agencies that promulgate, administer or enforce environmental laws, regulations, rules or other policies. The nonattainment designations contained in U.S. EPA's response will ultimately impact the permitting and operation of IERG members with facilities located in the geographic areas identified for designation.

The five factor analysis used by Illinois pursuant to guidance issued by the U.S. EPA includes consideration of emissions-related data (location and sources of potential contribution to ambient SO<sub>2</sub> concentrations) and meteorology (weather/transport patterns) “as well as other relevant information.”<sup>1</sup> The Illinois recommendation identified 5 emission sources in Peoria and Tazewell Counties that are in the general vicinity of the violating monitor and have emitted over 100 tons per year for at least one of the years from 2007 through 2009. Two of these sources are in Tazewell County, with one being in Cincinnati Township and the other in Pekin Township. The Ameren-Edwards Station facility is located in Hollis Township approximately 4.5 km (~2.8 miles) north of the violating monitor. U.S. EPA’s analysis states the following:

“...EPA finds that Ameren’s E.D. Edwards power plant is only 4 kilometers from the monitor and has significant emissions with potential to have significant impact on concentrations at the monitor. This source is located in Hollis Township, and so this township warrants being considered an area that contributes to the violation measured in Pekin.”<sup>2</sup>

In evaluating the meteorological conditions in the Pekin area, Illinois compiled a wind frequency distribution that showed, “...that southerly winds are most frequent in the Peoria area, with a secondary maximum from the northwest.”<sup>3</sup> U.S. EPA acknowledged Illinois’ conclusion but added that “...winds come from all directions with sufficient frequency to suggest that meteorology is not a significant factor in defining this nonattainment area.”<sup>4</sup> The following Figure A graphically illustrates the wind patterns at the violating monitor in Pekin. Figure A is a composite of two figures presented in Illinois’ Technical Support Document included with its June 2, 2011 recommendation to U.S. EPA. One of the figures in the composite is Illinois’ Figure 2 (Location of Major SO<sub>2</sub> Emission Sources in Tazewell and Peoria Counties) and the second figure is Illinois’ Figure 3 (Greater Peoria Airport Climatological Wind Rose).

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<sup>1</sup> Designations guidance memorandum from Stephen D. Page, Director, U.S. EPA Office of Air Quality Planning and Standards, Attachment 2, Page 1-2.

<sup>2</sup> Draft Technical Support Document Illinois Area Designations For the 2010 SO<sub>2</sub> Primary National Ambient Air Quality Standard, U.S. EPA, February 2013. (“U.S. EPA TSD”) at 10.

<sup>3</sup> Technical Support Document: Recommended Attainment/Nonattainment Designations in Illinois for the 2010 Revised Primary 1-Hour SO<sub>2</sub> National Ambient Air Quality Standards, AQPSTR 11-02, June 2, 2011. (“IL TSD”) at 13.

<sup>4</sup> U.S. EPA TSD at 10.

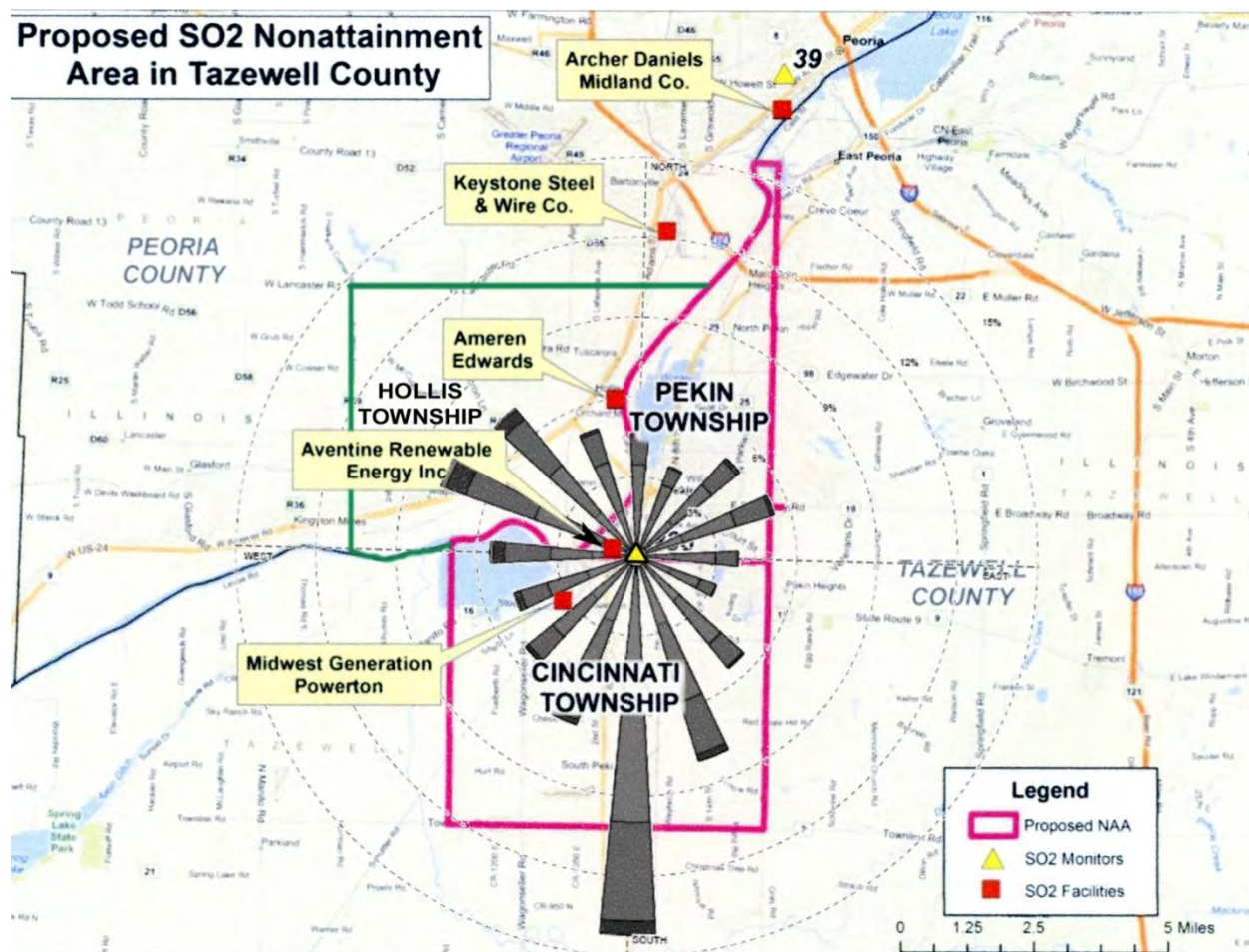
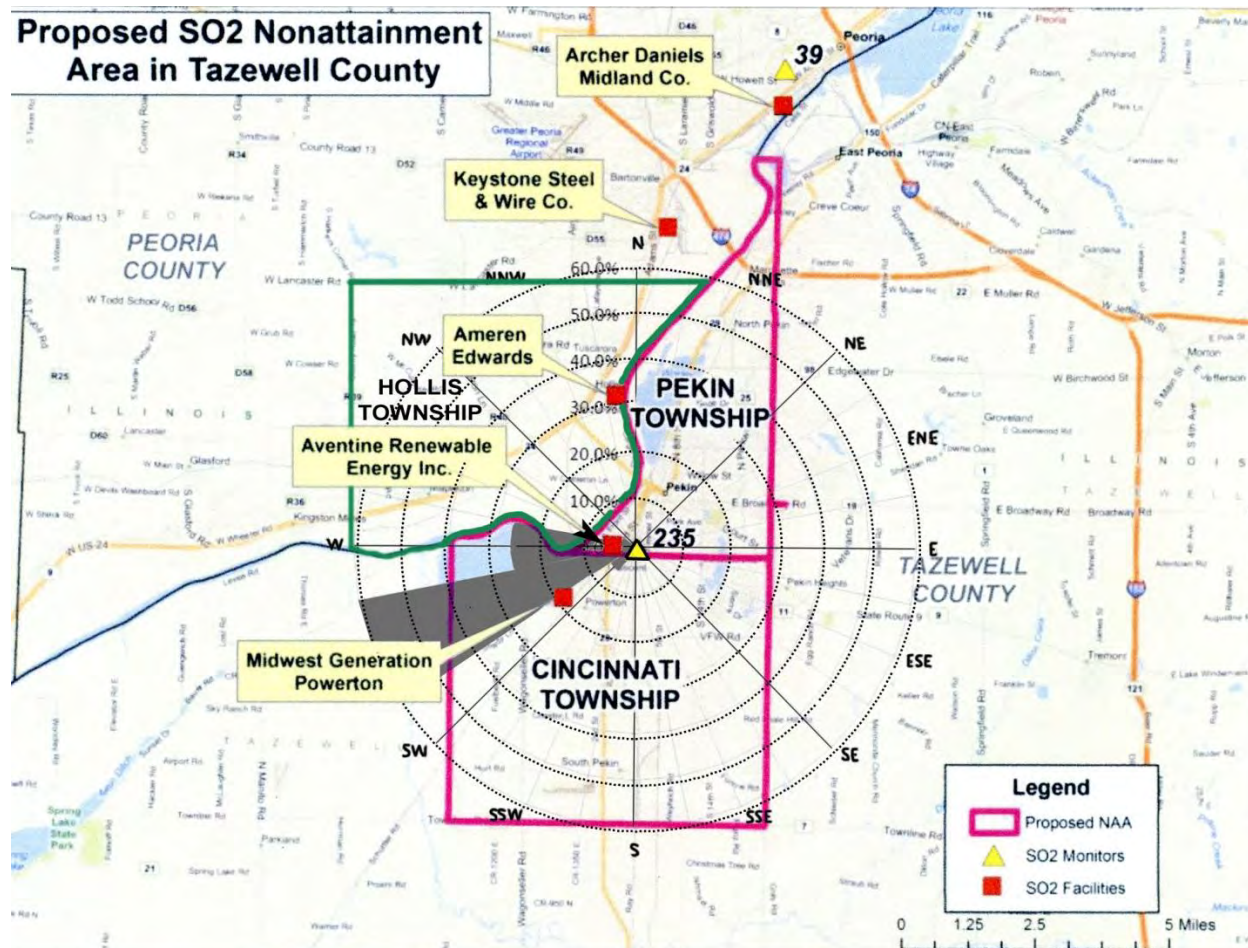
Figure A: Map of Pekin Area SO<sub>2</sub> Emissions Sources with Climatological Wind Rose

Figure A shows that the wind flow in the Peoria area would be capable of blowing emissions from any of the 5 major sulfur dioxide sources to the Pekin monitor. However, Illinois also evaluated the meteorological data in concert with hourly readings from its Pekin sulfur dioxide monitor from 2007 – 2009 to identify wind directions associated with measured SO<sub>2</sub> concentrations exceeding 75 ppb. Since the Ameren facility is north of the Pekin monitor, Illinois' analysis shows that the Ameren facility is not contributing to violations measured at that monitor.

The following Figure B graphically illustrates this conclusion and shows the wind directions associated with hourly values of sulfur dioxide greater than 75 ppb at the Pekin monitor. This Figure is a composite of two figures presented in Illinois' Technical Support Document included with its June 2, 2011 recommendation to U.S. EPA. One of the figures in the composite is Illinois' Figure 2 (Location of Major SO<sub>2</sub> Emission Sources in Tazewell and Peoria Counties) and the second figure is derived from Illinois' Figure 4 (Pekin Pollution Rose).

Figure B: Map of Pekin Area SO<sub>2</sub> Emissions Sources with Graphical Depiction of Wind Directions Associated with SO<sub>2</sub> Values >75ppb



U.S. EPA did not make comment, or refer in any way, to Illinois' analysis of the relationship between wind direction and elevated sulfur dioxide levels when it concluded that Hollis Township should be considered nonattainment due to its potential impact at the Pekin monitor. U.S. EPA did make note of the same type of analysis conducted for the Lemont area. U.S. EPA stated the following in its analysis of Illinois' meteorological assessment:

“For this area [Lemont], winds can be from any direction. Therefore, for a one-hour standard, it is useful to consider all directions to have potential contribution. Nevertheless, according to wind information provided with Illinois' recommendations, winds in this area come from the west and southwest more frequently than from other quadrants, particularly when concentrations are high at the Lemont monitor, so sources to the west and southwest of the monitor are most likely to contribute to violations at this monitor.”<sup>5</sup>

<sup>5</sup> U.S. EPA TSD at 7.

IERG extended the analysis conducted by Illinois to include quality assured sulfur dioxide data for the years 2007 – 2011. Hourly wind speed and direction data<sup>6</sup> from the Greater Peoria Regional Airport was paired with hourly sulfur dioxide data from the Pekin monitor that was greater than 75 ppb. Table 1 shows the results of this analysis which further supports the conclusion, demonstrated by Illinois' analysis, that the Ameren-Edwards Station facility does not impact the Pekin sulfur dioxide monitor when hourly readings exceed 75 ppb.

Table 1. Wind Directions Associated with Hourly 2007-2011 SO<sub>2</sub> Values > 75 ppb

WIND DIRECTION	SO <sub>2</sub> VALUES > 75 PPB	PERCENT OF TOTAL	AVERAGE SO <sub>2</sub> (PPB)	AVERAGE WIND DIRECTION
N				
NNE				
NE				
ENE				
E				
ESE				
SE				
SSE				
S	1	0.2%	114	190°
SSW	8	1.8%	127	210
SW	13	2.8%	116	227
WSW	98	21.4%	131	248
W	304	66.5%	136	267
WNW	14	3.1%	117	291
NW	2	0.4%	103	310
NNW				
VARIABLE	17	3.7%	102	

The data provided by Illinois and the additional data provided in Table 1 by IERG shows that Ameren's Peoria County facility has not been implicated in any of the 457 hours over the last 5 years where sulfur dioxide values exceeded 75 ppb.

<sup>6</sup> National Oceanic and Atmospheric Administration, National Climatic Data Center, Local Climatological Data from Greater Peoria Regional Airport (14842/PIA), Final Edited (VER3) Data, Hourly Observations

IERG encourages U.S. EPA to reconsider its proposal to include Hollis Township as a designated nonattainment area. The evaluation of wind frequency coupled with high monitored sulfur dioxide values at the Pekin monitor clearly show that the Ameren facility is not a contributor to the monitored sulfur dioxide violations. Hollis Township should be designated unclassifiable as recommended by Illinois. Once Illinois completes its dispersion modeling for the Pekin area, that information can be used to verify the attainment status of Hollis Township and the Peoria and Tazewell Counties in general.

Thank you for your consideration of these comments.

Cordially,

A handwritten signature in black ink, appearing to read "Alec Messina". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alec Messina  
Executive Director

**EXHIBIT 4**

**7<sup>TH</sup> CIRCUIT APPEAL OF FEDERAL AIR QUALITY DESIGNATIONS FOR THE 2010  
SULFUR DIOXIDE (SO<sub>2</sub>) PRIMARY NATIONAL AIR QUALITY STANDARD**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

AMERENENERGY RESOURCES  
GENERATING COMPANY,

Petitioner,

v.

U.S. ENVIRONMENTAL PROTECTION  
AGENCY and GINA MCCARTHY,  
ADMINISTRATOR,

Respondents.

Case No.

SHORT RECORD

FILED 9/5/13

APPEAL NO. 13-2959

**PETITION FOR JUDICIAL REVIEW**

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure and Section 307(b) of the Clean Air Act, 42 U.S.C. § 7607(b), AmerenEnergy Resources Generating Company petitions the Court for review of a final action of respondents—the U.S. Environmental Protection Agency, and Gina McCarthy, Administrator, U.S. Environmental Protection Agency—entitled “Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard,” 78 Fed Reg. 47191 (August 5, 2013), a copy of which is attached hereto.



Dated: September 5, 2013

Respectfully submitted,



Renee Cipriano

J. Michael Showalter

Kathryn McCollough Long, IL

(Motion for Admission forthcoming)

SCHIFF HARDIN LLP

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(b) The Secretary must provide each agency by January 15 of each year with the format and guidelines for electronically submitting the agency's occupational injury and illness recordkeeping information.

(c) Each agency must submit to the Secretary by May 1, 2014, a list of all establishments. The list must include information about the department/agency affiliation, NAICS code, a street address, city, state and zip code. Federal agencies are also responsible for updating their list of establishments by May 1 of each year when they submit the annual report to the Secretary required by § 1960.71(a)(1).

\* \* \* \* \*

■ 8. Add new § 1960.73 to read as follows:

**§ 1960.73 Federal agency injury and illness recordkeeping forms.**

(a) When filling out the OSHA Form 300 or equivalent, each agency must enter the employee's OPM job series number and job title in Column (c).

(b) When recording the injuries and illnesses of uncompensated volunteers, each agency must enter a "V" before the OPM job series number in Column (c) of the OSH Form 300 log or equivalent.

(c) Each agency must calculate the total number of hours worked by uncompensated volunteers.

[FR Doc. 2013-18457 Filed 8-2-13; 8:45 am]

BILLING CODE 4510-26-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG-2013-0687]

**Drawbridge Operation Regulation; Albemarle Sound to Sunset Beach, Atlantic Intracoastal Waterway (AICW), Wrightsville Beach, NC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the operation of the S.R. 74 Bridge, at mile 283.1, over the AICW, at Wrightsville Beach, NC. The deviation is necessary to facilitate electrical system and equipment upgrades to the bridge. This temporary deviation allows the drawbridge to remain in the closed to navigation position.

**DATES:** This deviation is effective from 7 p.m. on August 19, 2013 to 7 p.m. August 27, 2013.

**ADDRESSES:** The docket for this deviation, [USCG-2013-0687] is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Jim Rousseau, Bridge Administration Branch Fifth District, Coast Guard; telephone (757) 398-6557, email [James.L.Rousseau2@uscg.mil](mailto:James.L.Rousseau2@uscg.mil). If you have questions on reviewing the docket, call Barbara Hairston, Program Manager, Docket Operations, (202) 366-9826.

**SUPPLEMENTARY INFORMATION:** The North Carolina Department of Transportation, who owns and operates this bascule bridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.821 (a)(4), to facilitate electrical system and mechanical equipment upgrades to the bridge.

Under the regular operating schedule, the draw for the S.R. 74 Bridge, at mile 283.1 over the AICW, at Wrightsville Beach, NC shall open on signal for commercial vessels at all times and on signal for pleasure vessels except between 7 a.m. and 7 p.m., need only open on the hour; and except for annual triathlon events that occur from September through November. The S.R. 74 Bridge has a temporary vertical clearance in the closed position of 18 feet above mean high water due to additional ongoing maintenance.

Under this temporary deviation, the drawbridge will be maintained in the closed to navigation position, beginning at 7 p.m., on Monday, August 19, 2013 until 7 p.m., on Tuesday August 20, 2013. In the event of inclement weather, the alternate dates and times will begin at 7 p.m., on Monday August 26, 2013 ending at 7 p.m., on Tuesday August 27, 2013. The bridge will operate under its normal operating schedule at all other times. The Coast Guard has carefully coordinated the restrictions with commercial and recreational waterway users.

Vessels able to pass under the bridge in the closed position may do so at

anytime and are advised to proceed with caution. The bridge will be able to open for emergencies but at a slower rate. There is no immediate alternate route for vessels transiting this section of the AICW but vessels may pass before and after the closure each day. The Coast Guard will also inform additional waterway users through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 25, 2013.

**Waverly W. Gregory, Jr.,**  
Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2013-18740 Filed 8-2-13; 8:45 am]

BILLING CODE 9110-04-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

[EPA-HQ-OAR-2012-0233; FRL 9841-4]

RIN 2060-AR18

**Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes air quality designations for certain areas in the United States for the 2010 primary Sulfur Dioxide (SO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS). The EPA is issuing this rule to identify areas that, based on recorded air quality monitoring data showing violations of the NAAQS, do not meet the 2010 SO<sub>2</sub> NAAQS and areas that contribute to SO<sub>2</sub> air pollution in a nearby area that does not meet the SO<sub>2</sub> NAAQS. At this time, the EPA is designating as nonattainment most areas in locations where existing monitoring data from 2009-2011 indicate violations of the 1-hour SO<sub>2</sub> standard. The EPA intends to address in separate future actions the designations for all other areas for which the agency is not yet prepared to issue designations and that are consequently not addressed in this final rule. The Clean Air Act (CAA) directs areas designated nonattainment by this rule to undertake certain planning and pollution control

activities to attain the NAAQS as expeditiously as practicable.  
**DATES:** *Effective Date:* The effective date of this rule is October 4, 2013.  
**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2012-0233. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday

through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Air Docket is (202) 566-1742.

In addition, the EPA has established a Web site for this rulemaking at: <http://www.epa.gov/so2designations>. The Web site includes the EPA's final SO<sub>2</sub> designations, as well as state and tribal initial recommendation letters, the EPA's modification letters, technical support documents, responses to comments and other related technical information.

**FOR FURTHER INFORMATION CONTACT:** For general questions concerning this action, please contact Rhonda Wright, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Planning Division, C539-04, Research Triangle Park, NC 27711, telephone (919) 541-1087, email at [wright.rhonda@epa.gov](mailto:wright.rhonda@epa.gov).

**SUPPLEMENTARY INFORMATION:**  
*Regional Office Contacts:*

- Region I—Donald Dahl (617) 918-1657,
- Region II—Kenneth Fradkin (212) 637-3702,
- Region III—Ruth Knapp (215) 814-2191,
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- Region VIII—Crystal Ostigaard (303) 312-6602,
- Region IX—John Kelly (415) 947-4151, and
- Region X—Steve Body (206) 553-0782.

The public may inspect the rule and state-specific technical support information at the following locations:

Regional offices	States
Dave Conroy, Chief, Air Programs Branch, EPA New England, 1 Congress Street, Suite 1100, Boston, MA 02114-2023, (617) 918-1661. Richard Ruvo, Chief, Air Planning Section, EPA Region II, 290 Broadway, 25th Floor, New York, NY 10007-1866, (212) 637-4014. Cristina Fernandez, Associate Director, Office of Air Program Planning, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2187, (215) 814-2178. R. Scott Davis, Chief, Air Planning Branch, EPA Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, 12th Floor, Atlanta, GA 30303, (404) 562-9127. John Mooney, Chief, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604, (312) 886-6043. Guy Donaldson, Chief, Air Planning Section, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202, (214) 665-7242. Joshua A. Tapp, Chief, Air Programs Branch, EPA Region VII, 11201 Renner Blvd., Lenexa, KS 66129, (913) 551-7606. Gail Fallon, Acting Unit Chief, Air Quality Planning Unit, EPA Region VIII, 1595 Wynkoop Street, Denver, CO 80202-1129, (303) 312-6281. Doris Lo, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3959. Debra Suzuki, Manager, State and Tribal Air Programs, EPA Region X, Office of Air, Waste, and Toxics, Mail Code OAQ-107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553-0985.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. New Jersey, New York, Puerto Rico and Virgin Islands. Delaware, District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia. Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee. Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin. Arkansas, Louisiana, New Mexico, Oklahoma and Texas. Iowa, Kansas, Missouri and Nebraska. Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming. American Samoa, Arizona, California, Guam, Hawaii, Nevada and Northern Mariana Islands. Alaska, Idaho, Oregon and Washington.

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## I. Preamble Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

APA	Administrative Procedure Act
CAA	Clean Air Act
CFR	Code of Federal Regulations
DC	District of Columbia
EO	Executive Order
EPA	Environmental Protection Agency
FR	Federal Register
NAAQS	National Ambient Air Quality Standards
NTTAA	National Technology Transfer and Advancement Act
OMB	Office of Management and Budget
SO <sub>2</sub>	Sulfur Dioxide
SO <sub>x</sub>	Sulfur Oxides
RFA	Regulatory Flexibility Act
SIP	State Implementation Plan
UMRA	Unfunded Mandate Reform Act of 1995
TAR	Tribal Authority Rule
TSD	Technical Support Document
U.S.	United States
VCS	Voluntary Consensus Standards

## II. What is the purpose of this document?

The purpose of this action is to announce and promulgate designations and boundaries for certain areas of the country not meeting the 2010 SO<sub>2</sub> NAAQS based on available information, in accordance with the requirements of the CAA. The initial list of areas being designated nonattainment in each state and the boundaries of each area appear in the tables within the regulatory text.

This notice identifies the 29 initial areas being designated as nonattainment areas for the 2010 SO<sub>2</sub> NAAQS. The basis for designating each area as “nonattainment” is monitored air quality data from calendar years 2009–2011 indicating a violation of the NAAQS in the area. For these areas being designated nonattainment, the CAA directs states to develop State Implementation Plans (SIPs) that meet the requirements of sections 172(c) and 191–192 of the CAA and provide for attainment of the NAAQS as expeditiously as practicable, but no later than October 4, 2018. The CAA directs states to submit these SIPs to the EPA within 18 months of the effective date of these designations, i.e., by April 6, 2015.

## III. What is sulfur dioxide?

SO<sub>2</sub> is one of a group of highly reactive gasses known as “oxides of sulfur” (SO<sub>x</sub>). The largest sources of SO<sub>2</sub> emissions are from fossil fuel combustion at power plants (73 percent) and other industrial facilities (20 percent). Smaller sources of SO<sub>2</sub> emissions include industrial processes, such as extracting metal from ore, and the burning of high sulfur containing

fuels by locomotives, large ships and non-road equipment. SO<sub>2</sub> is linked with a number of adverse effects on the respiratory system.

## IV. What is the 2010 SO<sub>2</sub> NAAQS and what are the health concerns that it addresses?

The Administrator signed a final rule revising the primary SO<sub>2</sub> NAAQS on June 2, 2010. The rule was published in the **Federal Register** on June 22, 2010 (75 FR 35520), and became effective on August 23, 2010. Based on the Administrator’s review of the air quality criteria for oxides of sulfur and the primary NAAQS for oxides of sulfur as measured by SO<sub>2</sub>, the EPA revised the primary SO<sub>2</sub> NAAQS to provide requisite protection of public health with an adequate margin of safety. Specifically, the EPA established a new 1-hour SO<sub>2</sub> standard at a level of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations is less than or equal to 75 ppb, as determined in accordance with Appendix T of 40 CFR part 50. 40 CFR 50.17(a)–(b). The EPA also established provisions to revoke both the existing 24-hour and annual primary SO<sub>2</sub> standards, subject to certain conditions. 40 CFR 50.4(e).

Current scientific evidence links short-term exposures to SO<sub>2</sub>, ranging from 5 minutes to 24 hours, with an array of adverse respiratory effects including bronchoconstriction and increased asthma symptoms. These effects are particularly important for asthmatics at elevated ventilation rates (e.g., while exercising or playing). Studies also show a connection between short-term exposure and increased visits to emergency departments and hospital admissions for respiratory illnesses, particularly in at-risk populations including children, the elderly and asthmatics.

The EPA’s NAAQS for SO<sub>2</sub> is designed to protect against exposure to the entire group of SO<sub>x</sub>. SO<sub>2</sub> is the component of greatest concern and is used as the indicator for the larger group of gaseous SO<sub>x</sub>. Other gaseous SO<sub>x</sub> (e.g., SO<sub>3</sub>) are found in the atmosphere at concentrations much lower than SO<sub>2</sub>.

Emissions that lead to high concentrations of SO<sub>2</sub> generally also lead to the formation of other SO<sub>x</sub>. Control measures that reduce SO<sub>2</sub> can generally be expected to reduce people’s exposures to all gaseous SO<sub>x</sub>. This may also have the important co-benefit of reducing the formation of fine sulfate particles, which pose significant public health threats. SO<sub>x</sub> can react with other

compounds in the atmosphere to form small particles. These particles penetrate deeply into sensitive parts of the lungs and can cause or worsen respiratory disease, such as emphysema and bronchitis, and can aggravate existing heart disease, leading to increased hospital admissions and premature death.<sup>1</sup> The EPA’s NAAQS for particulate matter are designed to provide protection against these health effects.

## V. What are the CAA requirements for air quality designations and what action has the EPA taken to meet these requirements?

After the promulgation of a new or revised NAAQS, the EPA is required to designate areas as “nonattainment,” “attainment,” or “unclassifiable,” pursuant to section 107(d)(1) of the CAA.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d) of the CAA. The CAA requires the EPA to complete the initial designations process within 2 years of promulgating a new or revised standard. If the Administrator has insufficient information to make these designations by that deadline, the EPA has the authority to extend the deadline for completing designations by up to 1 year. On July 27, 2012, the EPA announced that it had insufficient information to complete the designations for the 1-hour SO<sub>2</sub> standard within 2 years and extended the designations deadline to June 3, 2013.

At this time, the EPA is initially designating as nonattainment most areas in locations where existing monitoring data from 2009–2011 indicate violations of the 1-hour SO<sub>2</sub> standard. In some cases, we have had to use data from a different three-year period or are still evaluating whether data from 2009–2011 are influenced by exceptional events. In separate future actions, the EPA intends to address the designations for all other areas for which the agency is not yet prepared to issue designations and that are consequently not addressed in this final rule. With input from a diverse group of stakeholders, the EPA has developed a comprehensive implementation strategy for the future SO<sub>2</sub> designations actions that focuses resources on identifying and addressing unhealthy levels of SO<sub>2</sub> in areas where people are most likely to be exposed to violations of the standard. For

<sup>1</sup> See Fact Sheet Revisions to the Primary National Ambient Air Quality Standard, Monitoring Network, and Data Reporting Requirements for Sulfur Dioxide at <http://www.epa.gov/airquality/sulfurdioxide/pdfs/20100602fs.pdf>.

informational purposes, the strategy is available at: <http://www.epa.gov/airquality/sulfurdioxide/implementation.html>. The EPA plans to continue to work closely with state, tribal and local air quality management agencies to ensure health-protective, commonsense implementation of the 1-hour SO<sub>2</sub> NAAQS.

By not later than 1 year after the promulgation of a new or revised NAAQS, CAA section 107(d)(1)(A) provides that each state governor is required to recommend air quality designations, including the appropriate boundaries for areas, to the EPA. The EPA reviews those state recommendations and is authorized to make any modifications the Administrator deems necessary. The statute does not define the term "necessary," but the EPA interprets this to authorize the Administrator to modify designations that did not meet the statutory requirements or were otherwise inconsistent with the facts or analysis deemed appropriate by the EPA. If the EPA is considering modifications to a state's initial recommendation, the EPA is required to notify the state of any such intended modifications to its recommendation not less than 120 days prior to the EPA's promulgation of the final designation. During this period of no less than 120 days, if the state does not agree with the EPA's modification, it has an opportunity to respond to the EPA and to demonstrate why it believes the modification proposed by the EPA is inappropriate, as contemplated by section 107(d)(1)(B)(ii). Even if a state fails to provide any recommendation for an area, in whole or in part, the EPA still must promulgate a designation that the Administrator deems appropriate, pursuant to section 107(d)(1)(B)(ii).

Section 107(d)(1)(A)(i) of the CAA defines a nonattainment area as any area that does not meet an ambient air quality standard or that is contributing to ambient air quality in a nearby area that does not meet the standard. If an area meets either prong of this definition, then the EPA is obligated to designate the area as "nonattainment."

The EPA believes that section 107(d) provides the agency with discretion to determine how best to interpret the terms in the definition of a nonattainment area (e.g., "contributes to" and "nearby") for a new or revised NAAQS, given considerations such as the nature of a specific pollutant, the types of sources that may contribute to violations, the form of the standards for the pollutant, and other relevant information. In particular, the EPA believes that the statute does not require

the agency to establish bright line tests or thresholds for what constitutes "contribution" or "nearby" for purposes of designations.<sup>2</sup>

Similarly, the EPA believes that the statute permits the EPA to evaluate the appropriate application of the term "area" to include geographic areas based upon full or partial county boundaries, and contiguous or non-contiguous areas, as may be appropriate for a particular NAAQS. For example, section 107(d)(1)(B)(ii) explicitly provides that the EPA can make modifications to designation recommendations for an area "or portions thereof," and under section 107(d)(1)(B)(iv) a designation remains in effect for an area "or portion thereof" until the EPA redesignates it.

Designation activities for federally-recognized tribal governments are covered under the authority of section 301(d) of the CAA. This provision of the CAA authorizes the EPA to treat eligible tribes in a similar manner as states. Pursuant to section 301(d)(2), the EPA promulgated regulations, known as the Tribal Authority Rule (TAR), on February 12, 1999. 63 FR 7254, codified at 40 CFR part 49. That rule specifies those provisions of the CAA for which it is appropriate to treat tribes in a similar manner as states. Under the TAR, tribes may choose to develop and implement their own CAA programs, but are not required to do so. The TAR also establishes procedures and criteria by which tribes may request from the EPA a determination of eligibility for such treatment. The designations process contained in section 107(d) of the CAA is included among those provisions determined to be appropriate by the EPA for treatment of tribes in the same manner as states. Under the TAR, tribes generally are not subject to the same submission schedules imposed by the CAA on states. As authorized by the TAR, tribes may seek eligibility to submit designation recommendations to the EPA. In addition, CAA section 301(d)(4) gives the EPA discretionary authority, in cases where it determines that treatment of tribes as identical to states is "inappropriate or administratively infeasible," to provide for direct administration by regulation to achieve the appropriate purpose.

To date, six tribes have applied under the TAR for eligibility to submit its own recommendations under section 107(d). Nonetheless, the EPA invited all tribes to submit recommendations concerning designations for the 2010 SO<sub>2</sub> NAAQS. The EPA worked with the tribes that

requested an opportunity to submit designation recommendations. Tribes were provided an opportunity to submit their own recommendations and supporting documentation and could also comment on state recommendations and the EPA modifications.

Designation recommendations and supporting documentation were submitted by most states and several tribes to the EPA by June 3, 2011. After receiving these recommendations, and after reviewing and evaluating each recommendation, the EPA provided a response to the states and tribes on February 7, 2013.<sup>3</sup> In these letter responses, we indicated whether the EPA intended to make modifications to the initial state or tribal recommendations and explained the EPA's reasons for making any such modifications. For the majority of the areas, the EPA agreed with the state's recommended boundary. The EPA requested that states and tribes respond to any proposed EPA modifications by April 8, 2013. The EPA received comments from some states suggesting changes to the EPA's proposed modifications and providing additional information. The EPA evaluated these comments, and all of the timely supporting technical information provided. As a result, and based on that input and analysis, some of the final designations reflect further modifications to the initial state recommendations. The state and tribal letters, including the initial recommendations, the EPA's February 2013 responses to those letters, any modifications, and the subsequent state comment letters, are in the docket for this action.

Although not required by section 107(d) of the CAA, the EPA also provided an opportunity for members of the public to comment on the EPA's February 2013 response letters. In order to gather additional information for the EPA to consider before making final designations, the EPA published a notice on February 15, 2013 (78 FR 1124) which invited the public to comment on the EPA's intended designations. In the notice, the EPA stated that public comments must be received on or before March 18, 2013. The EPA received several requests from stakeholders for additional time to prepare their comments. Some of the requesters noted that the original 30-day comment period was insufficient time to

<sup>3</sup> As indicated in the February 2013 letters, the EPA is not yet prepared to designate any areas in Indian country. The EPA intends to address the designations for these areas in separate future actions.

<sup>2</sup> This view was confirmed in *Catawba County v. EPA*, 571 F.3d 20 (DC Cir. 2009).

review the EPA's responses to states' and tribes' recommended designations and to compile meaningful responses due to the complexity of the issues impacting certain areas. Taking that into consideration, the EPA extended the public comment period to April 8, 2013. State and tribal initial recommendations and the EPA's responses, including modifications, were posted on a publically accessible Web site (<http://www.epa.gov/so2designations>). Timely comments from the public and the EPA's responses to significant comments are in the docket for this action.

#### **VI. What guidance did the EPA issue and how did the EPA apply the statutory requirements and applicable guidance to determine area designations and boundaries?**

In the notice of proposed rulemaking for the revised SO<sub>2</sub> NAAQS (74 FR 64810; December 8, 2009), the EPA issued proposed guidance on its approach to implementing the standard, including its approach to initial area designations. The EPA solicited comment on that guidance and, in the notice of final rulemaking (75 FR 35520; June 22, 2010), provided further guidance concerning implementation of the standard and how to identify nonattainment areas and boundaries for the SO<sub>2</sub> NAAQS. Subsequently, on March 24, 2011, the EPA provided additional designations guidance to assist states with making their recommendations for area designations and boundaries.<sup>4</sup> In that guidance, the EPA recommended that monitoring data from the most recent three consecutive years be used to identify a violation of the SO<sub>2</sub> NAAQS. This is appropriate because the form of the SO<sub>2</sub> NAAQS is calculated as a 3-year average of the 99th percentile of the yearly distribution of 1-hour daily maximum SO<sub>2</sub> concentrations (specifically the most recent 3 consecutive years).<sup>5</sup> The EPA is basing these initial final designations on monitored SO<sub>2</sub> concentrations from Federal Reference Method and Federal Equivalent Method monitors that are sited and operated in accordance with 40 CFR Parts 50 and 58. The EPA notes that data from 2008–2010 were the most recent data available to states and tribes when they made their recommendations to the EPA in June 2011. Accordingly,

<sup>4</sup> See, "Area Designations for the 2010 Revised Primary Sulfur Dioxide National Ambient Air Quality Standards," memorandum to Regional Air Division Directors, Regions I–X, from Stephen D. Page, dated March 24, 2011.

<sup>5</sup> This notice refers to monitoring data for "calendar years 2009–2011" which includes data from January 2009 through December 2011.

although the determination of whether an area violates the standard was based on 2009–2011 data, the EPA considered state recommendations and data from 2008–2010, as appropriate, in determining boundaries for nonattainment areas.

In the guidance, the EPA stated that the perimeter of a county containing a violating monitor would be the initial presumptive boundary for nonattainment areas, but also stated that the state, tribe and/or the EPA could conduct additional area-specific analyses that could justify establishing either a larger or smaller area. The EPA indicated that the following factors should be considered in an analysis of whether to exclude portions of a county and whether to include additional nearby areas outside the county as part of the designated nonattainment area: (1) Air quality data; (2) emissions-related data; (3) meteorology; (4) geography/topography; and (5) jurisdictional boundaries, as well as other available data. States and tribes may identify and evaluate other relevant factors or circumstances specific to a particular area.

Most states and several tribes submitted their designations recommendations in June 2011. In each case, the EPA reviewed the state recommendations and, where appropriate, the EPA accepted the state's recommendations. However, where the EPA determined that changes were necessary to a state's initial recommendation, we conveyed those preliminary determinations to the state in February 2013, and have worked with states to further review appropriate boundaries.

#### **VII. What air quality data has the EPA used?**

The final SO<sub>2</sub> designations contained in this action are based upon violations of the NAAQS determined by air quality monitoring data from calendar years 2009–2011, except where it was necessary or appropriate to use a different three-year period. The form of the standard requires a calculation of monitoring values from 3 consecutive years. The 1-hour primary standard is violated at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of the daily maximum 1-hour average concentrations exceeds 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. For comparison to the level of the standard, ambient air quality shall be measured by a reference method based on appendix A or A–1, or by a Federal Equivalent

Method designated in accordance with 40 CFR part 53.

#### **VIII. How do designations affect Indian Country?**

All counties, partial counties or Air Quality Control Regions listed in the tables within the regulatory text are designated as indicated. For the first round of SO<sub>2</sub> designations, the EPA is only designating certain nonattainment areas shown to be violating the NAAQS based on monitored data. There are no areas in Indian Country being designated nonattainment at this time. All remaining areas, including areas of Indian Country, for which the EPA is not yet prepared to issue final designations will be addressed in a subsequent round of designations.

#### **IX. Where can I find information forming the basis for this rule and exchanges between the EPA, States and tribes related to this rule?**

Information providing the basis for this action are provided in several technical support documents (TSDs), a response to comments document (RTC) and other information in the docket. The TSDs, RTC, applicable EPA's guidance memoranda, copies of correspondence regarding this process between the EPA and the states, tribes and other parties, are available for review at the EPA Docket Center listed above in the **ADDRESSES** section of this document and on the agency's SO<sub>2</sub> Designations Web site at <http://www.epa.gov/so2designations>. Area-specific questions can be addressed to the EPA Regional Offices.

#### **X. Statutory and Executive Order Reviews**

Upon promulgation of a new or revised NAAQS, the CAA requires the EPA to designate areas as attaining or not attaining the NAAQS. The CAA then specifies requirements for areas based on whether such areas are attaining or not attaining the NAAQS. In this final rule, the EPA assigns designations to selected areas as required.

##### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action responds to the CAA requirement to promulgate air quality designations after promulgation of a new or revised NAAQS. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (67 FR 3821, January 21, 2011).

### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action responds to the requirement to promulgate air quality designations after promulgation of a new or revised NAAQS. This requirement is prescribed in the CAA section 107 of title 1. This action does not establish any new information collection apart from that already required by law.

### C. Regulatory Flexibility Act

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This action is not subject to notice-and-comment requirements under the APA or any other statute because the action is not subject to the APA. CAA section 107(d)(2)(B) does not require the EPA to issue a notice of proposed rulemaking before issuing this final action.

### D. Unfunded Mandates Reform Act

This action contains no federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It does not create any additional requirements beyond those of the CAA and SO<sub>2</sub> NAAQS (40 CFR 50.17); therefore, no UMRA analysis is needed. This action establishes nonattainment designations for certain areas of the country for the 2010 SO<sub>2</sub> NAAQS. The CAA requires states to develop plans, including control measures, based on the designations for areas within the state.

The EPA believes that any new controls imposed as a result of this action will not cost in the aggregate \$100 million or more annually. Thus, this federal action will not impose

mandates that will require expenditures of \$100 million or more in the aggregate in any 1 year.

### E. Executive Order 13132: Federalism

This final action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the process whereby states take primary responsibility in developing plans to meet the SO<sub>2</sub> NAAQS in areas designated nonattainment by this action. This action will not modify the relationship of the states and the EPA for purposes of developing programs to attain and maintain the SO<sub>2</sub> NAAQS. Thus, Executive Order 13132 does not apply to this action.

### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action concerns the designation of certain areas as nonattainment for the 2010 SO<sub>2</sub> NAAQS, but no areas of Indian Country are being designated by this action. Because this action does not have tribal implications, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to this rule, the EPA communicated with tribal leaders and environmental staff regarding the designations process. The EPA also sent individualized letters to all federally recognized tribes to explain the designation process for the 2010 SO<sub>2</sub> NAAQS, to provide the EPA designations guidance, and to offer consultation with the EPA. The EPA provided further information to tribes through presentations at the National Tribal Forum and through participation in National Tribal Air Association conference calls. The EPA also sent individualized letters to all federally recognized tribes that submitted recommendations to the EPA about the EPA's intended designations for the SO<sub>2</sub> standards and offered tribal leaders the opportunity for consultation. These communications provided opportunities for tribes to voice concerns to the EPA about the general designations process for the 2010 SO<sub>2</sub> NAAQS, as well as concerns specific to a tribe, and informed the EPA about key tribal

concerns regarding designations as the rule was under development.

### G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not an economically significant regulatory action as defined in Executive Order 12866. While not subject to the Executive Order, this final action may be especially important for asthmatics, including asthmatic children, living in SO<sub>2</sub> nonattainment areas because respiratory effects in asthmatics are among the most sensitive health endpoints for SO<sub>2</sub> exposure. Because asthmatic children are considered a sensitive population, the EPA evaluated the potential health effects of exposure to SO<sub>2</sub> pollution among asthmatic children as part of the EPA's prior action establishing the 2010 SO<sub>2</sub> NAAQS. These effects and the size of the population affected are summarized in the EPA's final SO<sub>2</sub> NAAQS rules. See <http://www.epa.gov/ttn/naaqs/standards/so2/fr/20100622.pdf>.

### H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

### I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA of 1995, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by VCS bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any VCS.

### J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs

federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the U.S.

The CAA requires that the EPA designate as nonattainment “any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant.” By designating as nonattainment areas where available information indicate a violation of the 2010 SO<sub>2</sub> NAAQS or a contribution to a nearby violation, this action protects all those residing, working, attending school, or otherwise present in those areas regardless of minority or economic status.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

**K. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the U.S. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined

by 5 U.S.C. 804(2). This rule will be effective October 4, 2013.

**L. Judicial Review**

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, if “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.”

This final action designating areas for the 2010 SO<sub>2</sub> NAAQS is “nationally applicable” within the meaning of section 307(b)(1). This final action establishes designations for areas across the U.S. for the 2010 SO<sub>2</sub> NAAQS. At the core of this final action is the EPA’s interpretation of the definition of nonattainment under section 107(d)(1) of the CAA, and its application of that interpretation to areas across the country. For the same reasons, the Administrator also is determining that the final designations are of nationwide scope and effect for the purposes of section 307(b)(1). This is particularly appropriate because, in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator’s determination that an action is of “nationwide scope or effect” would be appropriate for any action that has a scope or effect beyond a single judicial circuit. H.R. Rep. No. 95–294 at 323, 324, *reprinted* in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this final action extends to numerous judicial circuits since the designations apply to areas across the country. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the action to be of “nationwide scope or effect” and for venue to be in the DC Circuit.

Thus, any petitions for review of final designations must be filed in the Court

of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 25, 2013.

**Gina McCarthy**,  
EPA Administrator.

For the reasons set forth in the preamble, 40 CFR part 81 is amended as follows:

**PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

■ 1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401, et seq.

**Subpart C—Section 107 Attainment Status Designations**

**§ 81.301 [Amended]**

■ 2. Section 81.301 is amended by revising the table heading for “Alabama—Sulfur Dioxide” to read “Alabama—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.302 [Amended]**

■ 3. Section 81.302 is amended by revising the table heading for “Alaska—SO<sub>2</sub>” to read “Alaska—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

■ 4. Section 81.303 is amended as follows:

■ a. By revising the table heading for “Arizona—SO<sub>2</sub>” to read “Arizona—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”; and

■ b. By adding a new table entitled “Arizona—2010 Sulfur Dioxide NAAQS (Primary)” following the newly designated table “Arizona—1971 Sulfur Dioxide NAAQS (Primary and Secondary)” to read as follows:

**§ 81.303 Arizona.**

\* \* \* \* \*

**ARIZONA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)**

Designated area	Designation	
	Date	Type
Hayden, AZ <sup>1</sup> ..... Gila County (part) The portions of Gila County that are bounded by: T4S, R14E; T4S, R15E; T4S, R16E; T5S, R15E; T5S, R16E Pinal County (part)	10–4–13	Nonattainment.



ARIZONA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)—Continued

Designated area	Designation	
	Date	Type
The portions of Pinal County that are bounded by: T4S, R14E; T4S, R15E; T4S, R16E; T5S, R14E; T5S, R15E; T5S, R16E; T6S, R14E; T6S, R15E; T6S, R16E Miami, AZ <sup>1</sup> ..... Gila County (part) The portions of Gila County that are bounded by: T2N, R14E; T2N, R15E; T1N, R13E; T1N, R14E; T1N, R15E; T1S, R14E; T1S, R14 1/2E; T1S, R15E	10-4-13	Nonattainment.

<sup>1</sup> Excludes Indian country located in each area, if any, unless otherwise specified.

\* \* \* \* \*

**§ 81.304 [Amended]**

■ 5. Section 81.304 is amended by revising the table heading for “Arkansas—SO<sub>2</sub>” to read “Arkansas—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.305 [Amended]**

■ 6. Section 81.305 is amended by revising the table heading for “California—SO<sub>2</sub>” to read “California—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.306 [Amended]**

■ 7. Section 81.306 is amended by revising the table heading for “Colorado—SO<sub>2</sub>” to read “Colorado—

1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.307 [Amended]**

■ 8. Section 81.307 is amended by revising the table heading for “Connecticut—SO<sub>2</sub>” to read “Connecticut—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.308 [Amended]**

■ 9. Section 81.308 is amended by revising the table heading for “Delaware—SO<sub>2</sub>” to read “Delaware—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.309 [Amended]**

■ 10. Section 81.309 is amended by revising the table heading for “District

of Columbia—SO<sub>2</sub>” to read “District of Columbia—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

■ 11. Section 81.310 is amended as follows:

■ a. By revising the table heading for “Florida—SO<sub>2</sub>” to read “Florida—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”;

■ b. By adding a new table entitled “Florida—2010 Sulfur Dioxide NAAQS (Primary)” following the newly designated table “Florida—1971 Sulfur Dioxide NAAQS (Primary and Secondary)” to read as follows:

**§ 81.310 Florida.**

\* \* \* \* \*

FLORIDA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

Designated area	Designation	
	Date	Type
Hillsborough County, FL <sup>1</sup> ..... Hillsborough County (part) That portion of Hillsborough County encompassed by the polygon with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 17 with datum NAD83 as follows: (1) vertices—UTM Easting (m) 35881, UTM Northing 3076066; (2) vertices—UTM Easting (m) 355673, UTM Northing 3079275; (3) UTM Easting (m) 360300, UTM Northing 3086380; (4) vertices—UTM Easting (m) 366850, UTM Northing 3086692; (5) vertices—UTM Easting (m) 368364, UTM Northing 3083760; and (6) vertices—UTM Easting (m) 365708, UTM Northing 3079121	10-4-13	Nonattainment.
Nassau County, FL <sup>1</sup> ..... Nassau County, (part) That portion of Nassau County encompassing the circular boundary with the center being UTM Easting 455530 meters, UTM Northing 3391737 meters, UTM zone 17, using the NAD83 datum (the location of the violating ambient monitor) and the radius being 2.4 kilometers	10-4-13	Nonattainment.

<sup>1</sup> Excludes Indian country located in each area, if any, unless otherwise specified.

\* \* \* \* \*

**§ 81.311 [Amended]**

■ 12. Section 81.311 is amended by revising the table heading for “Georgia—SO<sub>2</sub>” to read “Georgia—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.312 [Amended]**

■ 13. Section 81.312 is amended by revising the table heading for “Hawaii—SO<sub>2</sub>” to read “Hawaii—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.313 [Amended]**

■ 14. Section 81.313 is amended by revising the table heading for “Idaho—

SO<sub>2</sub>” to read “Idaho—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

■ 15. Section 81.314 is amended as follows:

■ a. By revising the table heading for “Illinois—SO<sub>2</sub>” to read “Illinois—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”;

■ b. By adding a new table entitled “Illinois—2010 Sulfur Dioxide NAAQS

(Primary)” following the newly designated table “Illinois—1971 Sulfur Dioxide NAAQS (Primary and Secondary)” to read as follows: **§ 81.314 Illinois.**  
\* \* \* \* \*

ILLINOIS—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

Designated area	Designation	
	Date	Type
Lemont, IL <sup>1</sup> ..... Cook County (part) Lemont Township Will County (part) DuPage Township and Lockport Township	10-4-13	Nonattainment.
Pekin, IL <sup>1</sup> ..... Tazewell County (part) Cincinnati Township and Pekin Township Peoria County (part) Hollis Township	10-4-13	Nonattainment.

<sup>1</sup> Excludes Indian country located in each area, if any, unless otherwise specified.

\* \* \* \* \*  
 ■ 16. Section 81.315 is amended as follows:  
 ■ a. By revising the table heading for “Indiana—SO<sub>2</sub>” to read “Indiana—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”; and  
 ■ b. By adding a new table entitled “Indiana—2010 Sulfur Dioxide NAAQS (Primary)” following the newly designated table “Indiana—1971 Sulfur Dioxide NAAQS (Primary and Secondary)” to read as follows: **§ 81.315 Indiana.**  
 \* \* \* \* \*

INDIANA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

Designated area	Designation	
	Date	Type
Indianapolis, IN <sup>1</sup> ..... Marion County (part) Wayne Township, Center Township, Perry Township	10-4-13	Nonattainment.
Morgan County, IN <sup>1</sup> ..... Morgan County (part) Clay Township, Washington Township	10-4-13	Nonattainment.
Southwest Indiana, IN <sup>1</sup> ..... Daviess County (part) Veale Township Pike County (part) Washington Township	10-4-13	Nonattainment.
Terre Haute, IN <sup>1</sup> ..... Vigo County (part) Fayette Township, Harrison Township	10-4-13	Nonattainment.

<sup>1</sup> Excludes Indian country located in each area, if any, unless otherwise specified.

\* \* \* \* \*  
 ■ 17. Section 81.316 is amended as follows:  
 ■ a. By revising the table heading for “Iowa—SO<sub>2</sub>” to read “Iowa—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”; and  
 ■ b. By adding a new table entitled “Iowa—2010 Sulfur Dioxide NAAQS (Primary)” following the newly designated table “Iowa—1971 Sulfur Dioxide NAAQS (Primary and Secondary)” to read as follows: **§ 81.316 Iowa.**  
 \* \* \* \* \*

IOWA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

Designated area	Designation	
	Date	Type
Muscatine, IA <sup>1</sup> ..... Muscatine County (part) Sections 1-3, 10-15, 22-27, 34-36 of T77N, R3W (Lake Township) Sections 1-3, 10-15, 22-27, 34-36 of T76N, R3W (Seventy-six Township) T77N, R2W (Bloomington Township). T76N, R2W (Fruitland Township) All sections except 1, 12, 13, 24, 25, 36 of T77N, R1W (Sweetland Township)	10-4-13	Nonattainment.

<sup>1</sup> Excludes Indian country located in each area, if any, unless otherwise specified.

\* \* \* \* \*

**§ 81.317 [Amended]**

■ 18. Section 81.317 is amended by revising the table heading for “Kansas—SO<sub>2</sub>” to read “Kansas—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

■ 19. Section 81.318 is amended as follows:  
 ■ a. By revising the table heading for “Kentucky—SO<sub>2</sub>” to read “Kentucky—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”;  
 ■ b. By adding a new table entitled “Kentucky—2010 Sulfur Dioxide

NAAQS (Primary)” following the newly designated table “Kentucky—1971 Sulfur Dioxide NAAQS (Primary and Secondary)” to read as follows:

**§ 81.318 Kentucky.**

\* \* \* \* \*

**KENTUCKY—2010 SULFUR DIOXIDE NAAQS (PRIMARY)**

Designated area	Designation	
	Date	Type
Campbell-Clermont Counties, KY—OH <sup>1</sup> ..... Campbell County (part) That portion of Campbell County which lies south and west of the Ohio River described as follows: Beginning at geographic coordinates 38.9735 North Latitude, 84.3017 West Longitude (NAD 1983) on the edge of the Ohio River running southwesterly to KY Highway 1566; thence continuing running southwesterly along KY Highway 1566 to KY Highway 9 (AA Highway); thence running north westerly along KY Highway 9 (AA Highway) from Hwy 1566 to Interstate 275; thence running northeasterly along Interstate 275 to Highway 2345 (John’s Hill Road), Hwy 2345 to US–27, US–27 to I–275, I–275 to the Ohio River; thence running southeasterly along the Ohio River from Interstate 275 to geographic coordinates 38.9735 North Latitude, 84.3017 West Longitude (NAD 1983)	10–4–13	Nonattainment.
Jefferson County, KY <sup>1</sup> ..... Jefferson County (part) That portion of Jefferson County compassed by the polygon with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 16 with datum NAD83 as follows: (1) Ethan Allen Way extended to the Ohio River at UTM Easting (m) 595738, UTM Northing 4214086 and Dixie Highway (US60 and US31W) at UTM Easting (m) 59751, UTM Northing 4212946; (2) Along Dixie Highway from UTM Easting (m) 597515, UTM Northing 4212946 to UTM Easting (m) 595859, UTM Northing 4210678; (3) Near the adjacent property lines of Louisville Gas and Electric—Mill Creek Electric Generating Station and Kosmos Cement where they join Dixie Highway at UTM Easting (m) 595859, UTM Northing 4210678 and the Ohio River at UTM Easting (m) 595326, UTM Northing 4211014; (4) Along the Ohio River from UTM Easting (m) 595326, UTM Northing 4211014 to UTM Easting (m) 595738, UTM Northing 4214086	10–4–13	Nonattainment.

<sup>1</sup> Excludes Indian country located in each area, if any, unless otherwise specified.

\* \* \* \* \*

■ 20. Section 81.319 is amended as follows:  
 ■ a. By revising the table heading for “Louisiana—SO<sub>2</sub>” to read “Louisiana—

1971 Sulfur Dioxide NAAQS (Primary and Secondary)”;  
 ■ b. By adding a new table entitled “Louisiana—2010 Sulfur Dioxide NAAQS (Primary)” following the newly designated table “Louisiana—1971

Sulfur Dioxide NAAQS (Primary and Secondary)” to read as follows:

**§ 81.319 Louisiana.**

\* \* \* \* \*

**LOUISIANA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)**

Designated area	Designation	
	Date	Type
St. Bernard Parish, LA <sup>1</sup> ..... St. Bernard Parish	10–4–13	Nonattainment.

<sup>1</sup> Excludes Indian country located in each area, if any, unless otherwise specified.

\* \* \* \* \*

**§ 81.320 [Amended]**

■ 21. Section 81.320 is amended by revising the table heading for “Maine—SO<sub>2</sub>” to read “Maine—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

■ 22. Section 81.321 is amended by revising the table heading for “Maryland—SO<sub>2</sub>” to read “Maryland—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.322 [Amended]**

■ 23. Section 81.322 is amended by revising the table heading for “Massachusetts—SO<sub>2</sub>” to read “Massachusetts—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

■ 24. Section 81.323 is amended as follows:

- a. By revising the table heading for “Michigan—SO<sub>2</sub>” to read “Michigan—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”; and
- b. By adding a new table entitled “Michigan—2010 Sulfur Dioxide NAAQS (Primary)” following the newly designated table “Michigan—1971 Sulfur Dioxide NAAQS (Primary and Secondary)” to read as follows:

**§ 81.323 Michigan.**  
\* \* \* \* \*

MICHIGAN—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

Designated area	Designation	
	Date	Type
Detroit, MI <sup>1</sup> Wayne County (part) ..... The area bounded on the east by the Michigan-Ontario border, on the south by the Wayne County-Monroe County border, on the west by Interstate 75 north to Southfield Road, Southfield Road to Interstate 94, and Interstate 94 north to Michigan Avenue, and on the north by Michigan Avenue to Woodward Avenue and a line on Woodward Avenue extended to the Michigan-Ontario border	10-4-13	Nonattainment.

<sup>1</sup> Excludes Indian country located in each area, if any, unless otherwise specified.

\* \* \* \* \*

**§ 81.324 [Amended]**

- 25. Section 81.324 is amended by revising the table heading for “Minnesota—SO<sub>2</sub>” to read “Minnesota—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.325 [Amended]**

- 26. Section 81.325 is amended by revising the table heading for “Mississippi—SO<sub>2</sub>” to read “Mississippi—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.
- 27. Section 81.326 is amended as follows:
  - a. By revising the table heading for “Missouri—SO<sub>2</sub>” to read “Missouri—

- 1971 Sulfur Dioxide NAAQS (Primary and Secondary)”; and
- b. By adding a new table entitled “Missouri—2010 Sulfur Dioxide NAAQS (Primary)” following the newly designated table “Missouri—1971 Sulfur Dioxide NAAQS (Primary and Secondary)” to read as follows:

**§ 81.326 Missouri.**  
\* \* \* \* \*

MISSOURI—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

Designated area	Designation	
	Date	Type
Jackson County, MO <sup>1</sup> Jackson County (part) ..... The portion of Jackson County bounded by I-70/I-670 and the Missouri River to the north; and, to the west of I-435 to the state line separating Missouri and Kansas	10-4-13	Nonattainment.
Jefferson County, MO <sup>1</sup> Jefferson County (part) ..... That portion within Jefferson County described by connecting the following four sets of UTM coordinates moving in a clockwise manner: (Herculaneum USGS Quadrangle) 718360.283 4250477.056 729301.869 4250718.415 729704.134 4236840.30 718762.547 4236558.715 (Festus USGS Quadrangle) 718762.547 4236558.715 729704.134 4236840.30 730066.171 4223042.637 719124.585 4222680.6 (Selma USGS Quadrangle) 729704.134 4236840.30 730428.209 4236840.3 741047.984 4223283.996 730066.171 4223042.637 (Valmeyer USGS Quadrangle) 729301.869 4250718.415 731474.096 4250798.868 730428.209 4236840.3 729704.134 4236840.30	10-4-13	Nonattainment.

<sup>1</sup> Excludes Indian country located in each area, if any, unless otherwise specified.

\* \* \* \* \*

- 28. Section 81.327 is amended as follows:
  - a. By revising the table heading for “Montana—SO<sub>2</sub>” to read “Montana—

- 1971 Sulfur Dioxide NAAQS (Primary and Secondary)”; and
- b. By adding a new table entitled “Montana—2010 Sulfur Dioxide NAAQS (Primary)” following the newly

- designated table “Montana—1971 Sulfur Dioxide NAAQS (Primary and Secondary)” to read as follows:

**§ 81.327 Montana.**  
\* \* \* \* \*

MONTANA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

Designated area	Designation	
	Date	Type
Billings, MT <sup>1</sup> Yellowstone County (part) ..... The area originates at the point defined as the southwest corner of Section 11, Township 1S, Range 26E. From that point the boundary proceeds north along the western section line of Section 11 to the point of intersection with the midline of Interstate Highway 90. From that point the boundary follows the midline of Interstate Highway 90, across the Yellowstone River, to the point where the highway midline intersects the northern boundary of Section 35, Township 1N, Range 26E. From that point the boundary proceeds east along the northern section line of Sections 35 and 36 to the point where Old US 87/Hardin Road leaves the section line and turns southeast. The boundary follows the midline of Old US 87/Hardin Road southeast to the point where the road intersects the western boundary of the SE ¼ of the SE ¼ of Section 31, Township 1N, Range 27E. From that point the boundary proceeds south along the ¼ section line to the southern boundary of Township 1N, then east to the northeast corner of Section 5, Township 1S, Range 27E. The boundary then proceeds south along the eastern section line of sections 5 and 8 to the southeast corner of Section 8, Township 1S, Range 27E, where it turns west and follows the south section line of Sections 8 and 7, Township 1S, Range 27E; and Sections 12 and 11, Township 1S, Range 26E, back to the point of origin	10-4-13	Nonattainment.

<sup>1</sup> Excludes Indian country located in each area, if any, unless otherwise specified.

\* \* \* \* \*

**§ 81.328 [Amended]**

■ 29. Section 81.328 is amended by revising the table heading for “Nebraska—SO<sub>2</sub>” to read “Nebraska—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

■ 30. Section 81.329 is amended by revising the table heading for “Nevada—

SO<sub>2</sub>” to read “Nevada—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

■ 31. Section 81.330 is amended as follows:

■ a. By revising the table heading for “New Hampshire—SO<sub>2</sub>” to read “New Hampshire—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”; and

■ b. By adding a new table entitled “New Hampshire—2010 Sulfur Dioxide NAAQS (Primary)” following the newly designated table “New Hampshire—1971 Sulfur Dioxide NAAQS (Primary and Secondary)” to read as follows:

**§ 81.330 New Hampshire.**

\* \* \* \* \*

NEW HAMPSHIRE—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

Designated area	Designation	
	Date	Type
Central New Hampshire, NH <sup>1</sup> Hillsborough County (part) ..... Goffstown Town Merrimack County (part) Allenstown Town, Bow Town, Chichester Town, Dunbarton Town, Epsom Town, Hooksett Town, Loudon Town, Pembroke Town, Pittsfield Town, City of Concord Rockingham County (part) Candia Town, Deerfield Town, Northwood Town	10-4-13	Nonattainment.

<sup>1</sup> Excludes Indian country located in each area, if any, unless otherwise specified.

\* \* \* \* \*

**§ 81.331 [Amended]**

■ 32. Section 81.331 is amended by revising the table heading for “New Jersey—SO<sub>2</sub>” to read “New Jersey—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.332 [Amended]**

■ 33. Section 81.332 is amended by revising the table heading for “New Mexico—SO<sub>2</sub>” to read “New Mexico—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.333 [Amended]**

■ 34. Section 81.333 is amended by revising the table heading for “New York—SO<sub>2</sub>” to read “New York—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.334 [Amended]**

■ 35. Section 81.334 is amended by revising the table heading for “North Carolina—SO<sub>2</sub>” to read “North Carolina—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.335 [Amended]**

■ 36. Section 81.335 is amended by revising the table heading for “North

Dakota—SO<sub>2</sub>” to read “North Dakota—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

■ 37. Section 81.336 is amended as follows:

■ a. By revising the table heading for “Ohio—SO<sub>2</sub>” to read “Ohio—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”; and

■ b. By adding a new table entitled “Ohio—2010 Sulfur Dioxide NAAQS (Primary)” following the newly designated table “Ohio—1971 Sulfur Dioxide NAAQS (Primary and Secondary)” to read as follows:

**§ 81.336 Ohio.**

\* \* \* \* \*

OHIO—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

Designated area	Designation	
	Date	Type
Campbell-Clermont Counties, KY–OH <sup>1</sup> Clermont County (part) .....	10–4–13	Nonattainment.
Lake County, OH <sup>1</sup> Lake County .....	10–4–13	Nonattainment.
Muskingum River, OH <sup>1</sup> .....	10–4–13	Nonattainment.
Morgan County (part) Center Township Washington County (part) Waterford Township		
Steubenville OH–WV <sup>1</sup> Jefferson County (part) .....	10–4–13	Nonattainment.
Cross Creek Township, Steubenville Township, Warren Township, Wells Township, Steubenville City		

<sup>1</sup> Excludes Indian country located in each area, if any, unless otherwise specified.

\* \* \* \* \*

**§ 81.337 [Amended]**

■ 38. Section 81.337 is amended by revising the table heading for “Oklahoma—SO<sub>2</sub>” to read “Oklahoma—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.338 [Amended]**

■ 39. Section 81.338 is amended by revising the table heading for “Oregon—SO<sub>2</sub>” to read “Oregon—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

■ 40. Section 81.339 is amended as follows:

■ a. By revising the table heading for “Pennsylvania—SO<sub>2</sub>” to read

“Pennsylvania—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”; and  
 ■ b. By adding a new table entitled “Pennsylvania—2010 Sulfur Dioxide NAAQS (Primary)” following the newly designated table “Pennsylvania—1971 Sulfur Dioxide NAAQS (Primary and Secondary)” to read as follows:

**§ 81.339 Pennsylvania.**  
 \* \* \* \* \*

PENNSYLVANIA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

Designated area	Designation	
	Date	Type
Allegheny, PA <sup>1</sup> Allegheny County (part) .....	10–4–13	Nonattainment.
The area consisting of: Borough of Braddock Borough of Dravosburg Borough of East McKeesport Borough of East Pittsburgh Borough of Elizabeth Borough of Glassport Borough of Jefferson Hills Borough of Liberty Borough of Lincoln Borough of North Braddock Borough of Pleasant Hills Borough of Port Vue Borough of Versailles Borough of Wall Borough of West Elizabeth Borough of West Mifflin City of Clairton City of Duquesne City of McKeesport Elizabeth Township Forward Township North Versailles Township		
Beaver, PA <sup>1</sup> Beaver County (part) .....	10–4–13	Nonattainment.
Area consisting of Industry Borough, Shippingport Borough, Midland Borough, Brighton Township, Potter Township and Vanport Township		
Indiana, PA <sup>1</sup> .....	10–4–13	Nonattainment.
Indiana County Armstrong County (part) Area consisting of Plumcreek Township, South Bend Township, and Elderton Borough		
Warren, PA <sup>1</sup>		

PENNSYLVANIA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)—Continued

Designated area	Designation	
	Date	Type
Warren County (part) ..... Area consisting of Conewango Township, Glade Township, Pleasant Township, and the City of Warren	10-4-13	Nonattainment

<sup>1</sup> Excludes Indian country located in each area, if any, unless otherwise specified.

\* \* \* \* \*

**§ 81.340 [Amended]**

■ 41. Section 81.340 is amended by revising the table heading for “Rhode Island—SO<sub>2</sub>” to read “Rhode Island—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.341 [Amended]**

■ 42. Section 81.341 is amended by revising the table heading for “South Carolina—SO<sub>2</sub>” to read “South

Carolina—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.342 [Amended]**

■ 43. Section 81.342 is amended by revising the table heading for “South Dakota—SO<sub>2</sub>” to read “South Dakota—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

■ 44. Section 81.343 is amended as follows:

■ a. By revising the table heading for “Tennessee—SO<sub>2</sub>” to read

“Tennessee—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”;

and ■ b. By adding a new table entitled “Tennessee—2010 Sulfur Dioxide NAAQS (Primary)” following the newly designated table “Tennessee—1971 Sulfur Dioxide NAAQS (Primary and Secondary)” to read as follows:

**§ 81.343 Tennessee.**

\* \* \* \* \*

TENNESSEE—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

Designated area	Designation	
	Date	Type
Sullivan County, TN <sup>1</sup> Sullivan County (part) ..... That portion of Sullivan County encompassing a circle having its center at the B-253 power house coordinates 36.5186 N; 82.5350 W and having a 3-kilometer radius	10-4-13	Nonattainment.

<sup>1</sup> Excludes Indian country located in each area, if any, unless otherwise specified.

\* \* \* \* \*

**§ 81.344 [Amended]**

■ 45. Section 81.344 is amended by revising the table heading for “Texas—SO<sub>2</sub>” to read “Texas—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.345 [Amended]**

■ 46. Section 81.345 is amended by revising the table heading for “Utah—SO<sub>2</sub>” to read “Utah—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.346 [Amended]**

■ 47. Section 81.346 is amended by revising the table heading for “Vermont—SO<sub>2</sub>” to read “Vermont—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.347 [Amended]**

■ 48. Section 81.347 is amended by revising the table heading for “Virginia—SO<sub>2</sub>” to read “Virginia—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

**§ 81.348 [Amended]**

■ 49. Section 81.348 is amended by revising the table heading for “Washington—SO<sub>2</sub>” to read

“Washington—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

■ 50. Section 81.349 is amended as follows:

■ a. By revising the table heading for “West Virginia—SO<sub>2</sub>” to read “West Virginia—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”;

and ■ b. By adding a new table entitled “West Virginia—2010 Sulfur Dioxide NAAQS (Primary)” following the newly designated table “West Virginia—1971 Sulfur Dioxide NAAQS (Primary and Secondary)” to read as follows:

**§ 81.349 West Virginia.**

\* \* \* \* \*

WEST VIRGINIA—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

Designated area	Designation	
	Date	Type
Steubenville, OH—WV <sup>1</sup> Brooke County (part) ..... Area bounded by the Cross Creek Tax District	10-4-13	Nonattainment.
Marshall, WV <sup>1</sup> Marshall County (part) ..... Area consisting of Clay Tax district, Franklin Tax District, and Washington Tax District	10-4-13	Nonattainment.

<sup>1</sup> Excludes Indian country located in each area, if any, unless otherwise specified.

\* \* \* \* \*

■ 51. Section 81.350 is amended as follows:

■ a. By revising the table heading for “Wisconsin—SO<sub>2</sub>” to read

“Wisconsin—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”; and

■ b. By adding a new table entitled “Wisconsin—2010 Sulfur Dioxide NAAQS (Primary)” following the newly designated table “Wisconsin—1971

Sulfur Dioxide NAAQS (Primary and Secondary)” to read as follows:

§ 81.350 Wisconsin.  
 \* \* \* \* \*

WISCONSIN—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

Designated area	Designation	
	Date	Type
Rhineland, WI <sup>1</sup> Oneida County (part) ..... City of Rhineland, Crescent Town, Newbold Town, Pine Lake Town, and Pelican Town	10-4-13	Nonattainment.

<sup>1</sup> Excludes Indian country located in each area, if any, unless otherwise specified.

\* \* \* \* \*

§ 81.351 [Amended]

■ 52. Section 81.351 is amended by revising the table heading for “Wyoming—SO<sub>2</sub>” to read “Wyoming—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

§ 81.352 [Amended]

■ 53. Section 81.352 is amended by revising the table heading for “American Samoa—SO<sub>2</sub>” to read “American Samoa—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

§ 81.353 [Amended]

■ 54. Section 81.353 is amended by revising the table heading for “Guam—SO<sub>2</sub>” to read “Guam—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

§ 81.354 [Amended]

■ 55. Section 81.354 is amended by revising the table heading for “Northern Mariana Islands—SO<sub>2</sub>” to read “Northern Mariana Islands—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

§ 81.355 [Amended]

■ 56. Section 81.355 is amended by revising the table heading for “Puerto Rico—SO<sub>2</sub>” to read “Puerto Rico—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

§ 81.356 [Amended]

■ 57. Section 81.356 is amended by revising the table heading for “Virgin Islands—SO<sub>2</sub>” to read “Virgin Islands—1971 Sulfur Dioxide NAAQS (Primary and Secondary)”.

[FR Doc. 2013-18835 Filed 8-2-13; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

[EPA-HQ-SFUND-2000-0003; FRL 9842-7]

**National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Direct Deletion of the Imperial Refining Company Superfund Site**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 6 is publishing a direct final Notice of Deletion of the Imperial Refining Co. Superfund Site located in Ardmore, Carter County, Oklahoma, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Oklahoma, through the Oklahoma Department of Environmental Quality (ODEQ), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** This direct final deletion is effective September 19, 2013 unless EPA receives adverse comments by September 4, 2013. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-2000-0003, by one of the following methods:

- <http://www.regulations.gov>: Follow internet on-line instructions for submitting comments.
- *Email:* Brian W. Mueller, [mueller.brian@epa.gov](mailto:mueller.brian@epa.gov).
- *Fax:* 214-665-6660.
- *Mail:* Brian W. Mueller; U.S. Environmental Protection Agency, Region 6; Superfund Division (6SF-RA); 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202-7167.

- *Hand delivery:* U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 700; Dallas, Texas 75202-2733; Contact: Brian W. Mueller (214) 665-7167. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-AFUND-2000-0003. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and



Appellate Court No: \_\_\_\_\_

Short Caption: AmerenEnergy Resources Generating Company v. U.S. Environmental Protection Agency, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.

PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

AmerenEnergy Resources Generating Company ("AERG")

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Schiff Hardin LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

AmerenEnergy Resources Company LLC ("AER"). Ameren Corporation is the parent of AER.

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Ameren Corporation is a publicly held company and owns 100% of the membership interests in AER.

Attorney's Signature: \_\_\_\_\_

Date: September 5, 2013

Attorney's Printed Name: J. Michael Showalter

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes  No

Address: Schiff Hardin LLP, 233 S. Wacker Dr., Ste. 6600

Phone Number: (312) 258-5561 Fax Number: (312) 258-5600

E-Mail Address: mshowalter@schiffhardin.com

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

AMERENENERGY RESOURCES  
GENERATING COMPANY,

Petitioner,

v.

U.S. ENVIRONMENTAL PROTECTION  
AGENCY and GINA MCCARTHY,  
ADMINISTRATOR,

Respondents.

Case No. \_\_\_\_\_

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Judicial Review and Rule 26.1  
Statement have been served by first-class U.S. mail postage prepaid on this 5th day of  
September, 2013, upon each of the following:

U.S. Environmental Protection Agency  
Correspondence Control Unit  
Office of General Counsel (2311)  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Gina McCarthy  
Administrator (4101M)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

The Honorable Pat Quinn  
Governor of Illinois  
207 State House  
Springfield, Illinois 62706

Lisa Bonnett  
Director  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276

Julie Armitage  
Chief, Bureau of Air  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276

Alec Messina  
Executive Director  
Illinois Environmental Regulatory Group  
215 East Adams Street  
Springfield, IL 62701



J. Michael Showalter

CH2\13489241.1

**UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

Everett McKinley Dirksen United States Courthouse  
 Room 2722 - 219 S. Dearborn Street  
 Chicago, Illinois 60604



Office of the Clerk  
 Phone: (312) 435-5850  
 www.ca7.uscourts.gov

**NOTICE OF CASE OPENING**

September 5, 2013

No.: 13-2959	AMERENENERGY RESOURCES GENERATING COMPANY, Petitioner  v.  ENVIRONMENTAL PROTECTION AGENCY, et al., Respondents
<b>Originating Case Information:</b>	
Agency Case No: EPA-HQ-OAR-2012-0233 Environmental Protection Administration Clerk/Agency Rep null Environmental Protection Agency  Case date filed: 09/05/2013 Case type: ag/rvw Fee status: Due	

The above-captioned appeal has been docketed in the United States Court of Appeals for the Seventh Circuit.

**Deadlines:**

<u>Appeal No.</u>	<u>Filer</u>	<u>Document</u>	<u>Due Date</u>
13-2959	Amerenenergy Resources Generating Company	Fee Due	09/19/2013
13-2959	Environmental Protection Agency	Agency record due	10/15/2013

13-2959

Gina McCarthy

Agency record due

10/15/2013

**NOTE:**This notice is issued to counsel of record, in furtherance of the revised *Circuit Rule 3(d)*, to provide necessary information regarding this appeal. Please verify this notice for accuracy. Counsel are encouraged to provide a fax and/or e-mail address to the court. If any corrections are necessary, please indicate those corrections on this notice and return it to the Clerk's Office within ten (10) days.

**THIS NOTICE SHALL NOT ACT AS A SUBSTITUTE FOR MOTIONS FOR NON-INVOLVEMENT / SUBSTITUTION OF COUNSEL. COUNSEL ARE STILL REQUIRED TO FILE THE APPROPRIATE MOTIONS.**

Important Scheduling Notice!

Notices of hearing for particular appeals are mailed shortly before the date of oral argument. Criminal appeals are scheduled shortly after the filing of the appellant's main brief; civil appeals after the filing of the appellee's brief. If you foresee that you will be unavailable during a period in which your particular appeal might be scheduled, please write the clerk advising him of the time period and the reason for such unavailability. Session data is located at <http://www.ca7.uscourts.gov/cal/calendar.pdf>. Once an appeal is formally scheduled for a certain date, it is very difficult to have the setting changed. See Circuit Rule 34(e).

form name: c7\_Docket\_Notice(form ID: 108)

## UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse  
Room 2722 - 219 S. Dearborn Street  
Chicago, Illinois 60604



Office of the Clerk  
Phone: (312) 435-5850  
www.ca7.uscourts.gov

**AGENCY PETITION FOR REVIEW  
CASE OPENING COVER LETTER**

September 5, 2013

No.: 13-2959	<p>AMERENENERGY RESOURCES GENERATING COMPANY, Petitioner</p> <p>v.</p> <p>ENVIRONMENTAL PROTECTION AGENCY, et al., Respondents</p>
<b>Originating Case Information:</b>	
<p>Agency Case No: EPA-HQ-OAR-2012-0233 Environmental Protection Administration</p>	

A petition for review of an order of the **Environmental Protection Administration** has been filed this day in this court in the above entitled cause, and a copy of said petition is herewith served upon you.

CC:

Avi Garbow

Bharat Mathur

James Michael Showalter

form name: c7\_Agency\_PetRev\_CoverLetter(form ID: 184)

## UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse  
Room 2722 - 219 S. Dearborn Street  
Chicago, Illinois 60604



Office of the Clerk  
Phone: (312) 435-5850  
www.ca7.uscourts.gov

### AGENCY CIRCUIT RULE 3(b) FEE NOTICE

September 5, 2013

No.: 13-2959	<p>AMERENENERGY RESOURCES GENERATING COMPANY, Petitioner</p> <p>v.</p> <p>ENVIRONMENTAL PROTECTION AGENCY, et al., Respondents</p>
<b>Originating Case Information:</b>	
<p>Agency Case No: EPA-HQ-OAR-2012-0233 Environmental Protection Administration</p>	

Circuit Rule 3(b) empowers the clerk to dismiss a petition for review if the docket fee is not paid within fourteen (14) days of the docketing of the petition for review. This petition for review was docketed and the fee has not been paid as of **September 5, 2013**. Depending on your situation, you should:

1. Pay the required \$450.00 docketing fee to the Clerk of the Court of Appeals.
2. File a motion to proceed on appeal in forma pauperis with the Court of Appeals. An original and three (3) copies of that motion, with proof of service on your opponent, is required. This motion must be supported by an affidavit in the form of a sworn statement listing the assets and income of the petitioner(s). See **Form 4** of the *Appendix of Forms to the Federal Rules of Appellate Procedure*.

If one of the above stated actions is not taken, the petition for review will be dismissed.