

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**IN THE MATTER OF:**

**AMEREN ASH POND CLOSURE RULES  
(HUTSONVILLE POWER STATION)  
PROPOSED: 35 ILL. ADM. CODE PART  
840.101 AND 840.144**

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**R09-21  
(Rulemaking – Land)**

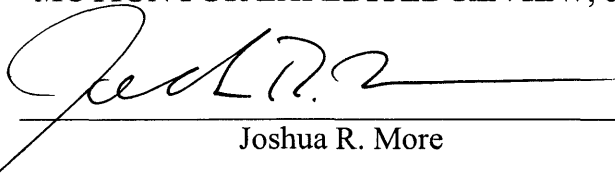
**NOTICE OF FILING**

To:

John Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601

**ATTACHED SERVICE LIST**

PLEASE TAKE NOTICE that we have today electronically filed with the Office of the Clerk of the Pollution Control Board **AMEREN'S MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF MOTION FOR EXPEDITED REVIEW and REPLY IN SUPPORT OF MOTION FOR EXPEDITED REVIEW**, copies of which are herewith served upon you.

  
\_\_\_\_\_  
Joshua R. More

Dated: June 3, 2009

Kathleen C. Bassi  
Joshua R. More  
Amy Antonioli  
SCHIFF HARDIN, LLP  
6600 Sears Tower  
233 South Wacker Drive  
Chicago, Illinois 60606  
312-258-5500

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<b>PROPOSED: 35 ILL. ADM. CODE PART</b>	)	
<b>840.101 AND 840.144</b>	)	

**AMEREN’S MOTION FOR LEAVE TO FILE REPLY  
IN SUPPORT OF MOTION FOR EXPEDITED REVIEW**

NOW COMES Proponent, Ameren Energy Generating Company (“Ameren”) by and through one of its attorneys, and in support of Ameren’s Motion for Leave to File Reply in Support for Expedited Review (“Reply”), states as follows:

1. On May 19, 2009, Ameren filed its Petition with the Board for the above captioned proceeding as well as a Motion for Expedited Review (“Motion”) pursuant to 35 Il. Adm. Code § 101.512.

2. On June 1, 2009, the Illinois Environmental Protection Agency (“Agency”) filed a Response to Motion for Expedited Review (“Response”) requesting that the Board deny the Motion.

3. Under the Board’s procedural rules, a moving party is not entitled to file a reply, except as permitted by the Board or Hearing Officer to prevent material prejudice. 35 Ill. Adm. Code § 101.500(e).

4. In its Response, the Agency mischaracterizes several items as set forth more fully in the attached Reply. Therefore, it is imperative that the Board consider Ameren’s Reply.

5. As discussed in the attached Reply, Ameren has conversed with the Agency for many years in its quest to identify the proper circumstances to close Ash Pond D.

6. Neither the Agency nor the public would be prejudiced by the Board's granting of Ameren's Motion for Expedited Review, but Ameren would suffer irreparable harm if the Motion is not granted.

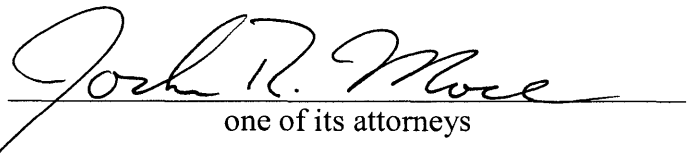
7. Ameren respectfully requests leave to file the attached Reply with the Illinois Pollution Control Board for consideration to prevent material prejudice that would result if the Response was allowed to stand containing such misrepresentations.

WHEREFORE, Ameren respectfully requests that the Board grant Ameren leave to file its Reply to the Illinois Environmental Protection Agency's Response to Motion for Expedited Review, and accept the Reply.

Respectfully submitted,

AMEREN ENERGY GENERATING  
COMPANY

by:

  
one of its attorneys

Dated: June 3, 2009

Kathleen Bassi  
Joshua R. More  
Amy Antonioli  
SCHIFF HARDIN LLP  
6600 Sears Tower  
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**REPLY IN SUPPORT OF MOTION FOR EXPEDITED REVIEW**

NOW COMES Petitioner, AMEREN ENERGY WHATEVER (“Ameren”), by and through its attorneys, SCHIFF HARDIN LLP, pursuant to WHAT, and replies to the Illinois Environmental Protection Agency’s (“Agency”) Response to Motion for Expedited Review (“Response”) in this matter.

On May 19, 2008, Ameren filed with the Board its Petition in the above captioned proceeding seeking to add a new Part 840 to the Board’s waste rules for the site-specific closure of Ash Pond D located at its Hutsonville Power Station (“Ash Pond D”), including its Motion for Expedited Review (“Motion”) pursuant to 35 Il. Adm. Code 101.512. On June 1, 2009, undersigned counsel for Ameren received service of the Response.

In its Response, the Agency suggests proceeding expeditiously would be contrary to the public interest in conducting a proceeding that thoroughly and deliberately evaluates the proposal and does not consider Agency resource limitations. While Ameren appreciates the Agency’s concerns, it believes that an expedited proceeding would not adversely impact the public’s interest, and the Agency’s limited resources are a chronic problem that would not be solved by less than prompt review of this matter.

Pursuant to Section 28 of the Illinois Environmental Protection Act (“Act”) and Sections 102.604 through 102.608 of the Board’s procedural rules, a hearing will be held in the vicinity of the Hutsonville Power Station regardless of whether the Board grants expedited review. The Board must provide at least 20 days’ notice of the hearing, again, regardless of expedited review. 35 Ill.Adm.Code § 102.604. Finally, the Board must allow for a 45-day public comment period prior to second notice. 35 Ill.Adm.Code § 102.608. During this entire process, the Agency, the Board, and the public have sufficient time to thoroughly and deliberately evaluate the rule, as provided by the Board’s regulations.

As discussed in the Statement of Reasons, existing regulations addressing waste, waste hauling, and landfills at Parts 700 through 849 (nonconsecutive) of the Board’s rules do not sufficiently address the closure of surface impoundments, in particular, ash ponds used as water treatment facilities in connection with the management of coal combustion waste associated with coal-fired power plants. Ameren has been engaged in consultation, on an intermittent basis, for many years. Ameren’s experts made presentations summarizing the underlying technical data, groundwater analysis and site conditions. Ameren has provided draft petitions for relief and solicited Agency feedback. As it is critical for Ameren to define applicable closure standards, Ameren filed in August 2008, its proposal for adjusted standard to the landfill regulations to provide for closure of Ash Pond D at the Hutsonville Power Station. *Petition of Ameren Energy Generating Company for Adjusted Standards from 35 Ill. Adm. Code 811, 814, and 815 (Hutsonville Power Station)*, AS 09-1 (“Ameren Hutsonville AS”). The Board, however, determined that a site-specific rule is the appropriate mechanism under which Ameren should close Ash Pond D. *Ameren Hutsonville AS*, AS 09-1, slip op. at 11 (Mar. 5, 2009).

While the form of the requested relief has changed, the underlying substance has not. Since discontinuing its use of Ash Pond D in 2000, Ameren has been discussing the appropriate regulatory mechanism for closure with the Agency. During those discussions, Ameren provided the Agency with virtually all of the documents that comprise the Technical Support Document.

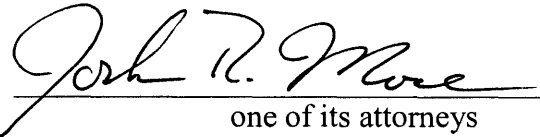
The proposal is on the Board's June 4, 2009, agenda. If the Board grants Ameren's Motion and adopts the rule for first notice publication in the Illinois Register at the June 4, 2009, Board meeting, the hearing will not occur before the end of June – at least 30 days after Ameren filed the proposal and more than 10 months after Ameren filed AS 09-1. Even so, Ameren would not object to the Board setting the hearing for the end of July 2009, which would give the Agency the requested 60 days to complete its review of the risk assessment. *See* Paragraph 16 of the Response. Ameren has repeatedly advised the Agency that it would make available its technical experts in order to facilitate its review.

Contrary to the Agency's claims that this rulemaking proceeds "in haste", the issues in this proposal are not new to the Agency or materially different than what has been discussed by the participants for years. Ameren simply can no longer afford to continue to accommodate the Agency's desired schedule through seemingly never-ending negotiations. . While this rulemaking is certainly novel in its application to the proper closure of Ash Pond D, the Company has acted prudently in aggressively promoting the need for regulatory clarity. Ameren has offered the plant for sale, and public and regulatory interest in ash ponds at coal-fired power plants has heightened nationwide, including in Illinois. For all of these reasons, a timely resolution to this matter is warranted.

WHEREFORE, for the reasons set forth above and in its Motion, Ameren respectfully requests that the Board accept this proposed rulemaking and adopt it for first notice publication in the Illinois Register as soon as possible and that it set a hearing and move toward adopting a final rule expeditiously.

Respectfully submitted,

AMEREN ENERGY GENERATING  
COMPANY

by:   
one of its attorneys

Dated: June 3, 2009

Kathleen Bassi  
Joshua R. More  
Amy Antonioli  
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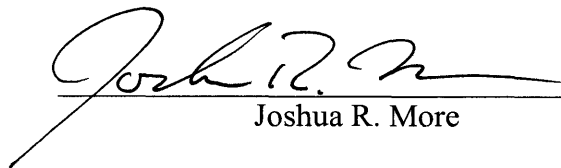
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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on this 3<sup>rd</sup> day of June, 2009, I have served electronically the attached **AMEREN'S MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF MOTION FOR EXPEDITED REVIEW and REPLY IN SUPPORT OF MOTION FOR EXPEDITED REVIEW** upon the following persons:

John Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601

and by first class mail, postage affixed, to the persons on the **ATTACHED SERVICE LIST**.

  
Joshua R. More

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Joshua R. More  
Amy Antonioli  
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<b><u>SERVICE LIST</u></b> <b>(R09-21)</b>	
Matthew J. Dunn, Chief Office of the Attorney General Environmental Bureau, North 69 West Washington Street, Suite 1800 Chicago, Illinois 60602	Kyle Nash Davis, Assistant Counsel Mark Wight, Assistant Counsel John Kim, General Counsel Illinois Environmental Protection Agency 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276
Tim Fox, Hearing Officer Illinois Pollution Control Board James R. Thompson Center Suite 11-500 100 West Randolph Chicago, Illinois 60601	Virginia Yang General Counsel Illinois Dept. of Natural Resources One Natural Resources Way Springfield, Illinois 62702-1271