

**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)**

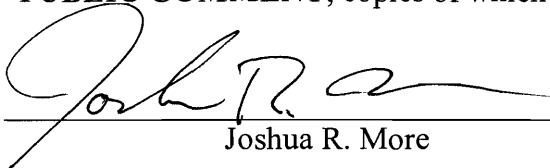
**NOTICE OF FILING**

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 ADDITIONAL PUBLIC COMMENT**, copies of which are herewith served upon you.

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

Dated: November 10, 2009

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

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<b>(HUTSONVILLE POWER STATION)</b>	)	<b>(Rulemaking – Land)</b>
<b>PROPOSED: 35 ILL. ADM. CODE PART</b>	)	
<b>840.101 AND 840.144</b>	)	

**AMEREN’S MOTION FOR LEAVE TO FILE ADDITIONAL PUBLIC COMMENT**

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 An Additional Public Comment, states as follows:

1. On October 30, 2009, Prairie Rivers Network (“PRN”), in conformance with the October 9, 2009 Hearing Officer Order, filed a public comment in opposition to the joint proposed site-specific rule filed by the Illinois Environmental Protection Agency and Ameren on September 22, 2009.

2. The pre-first notice public comment period ended October 31, 2009.

3. Under the Illinois Pollution Control Board’s (“Board”) procedural rules, a party is not entitled to file an untimely comment, except as permitted by the Board or Hearing Officer to prevent material prejudice. 35 Ill. Adm. Code § 102.108(d).

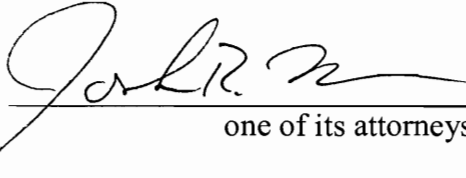
4. PRN’s public comment misconstrues or mischaracterizes several facts relating to the technical justification and environmental impact of the proposed site-specific rule and alleges that Ameren has not met its burden of proof in this matter. Therefore, Ameren respectfully requests the Board consider Ameren’s additional public comment, attached hereto, prior to first notice.

5. Ameren seeks leave to file the attached additional public comment with the Board for consideration to prevent material prejudice that would result if PRN's public comment was allowed to stand containing such allegations and misrepresentations.

WHEREFORE, Ameren respectfully requests that the Illinois Pollution Control Board grant Ameren leave to file its Additional Comment, and accept the Additional Comment.

Respectfully submitted,

AMEREN ENERGY GENERATING  
COMPANY

by:   
one of its attorneys

Dated: November 10, 2009

Kathleen Bassi  
Joshua R. More  
Amy Antonioli  
SCHIFF HARDIN LLP  
233 South Wacker Drive, Suite 6600  
Chicago, Illinois 60606  
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AMEREN ASH POND CLOSURE RULES	)	R09-21
(HUTSONVILLE POWER STATION) :	)	(Rulemaking – Land)
PROPOSED 35 ILL. ADM. CODE 840.101	)	
THROUGH 840.144	)	

AMEREN ENERGY GENERATING COMPANY'S ADDITIONAL  
POST-HEARING COMMENTS

NOW COMES Ameren Energy Generating Company (“Ameren” or “the Company”), by and through its attorneys, SCHIFF HARDIN LLP, and respectfully submits the following additional post hearing comment in the above-entitled matter to the Illinois Pollution Control Board (“Board”) to address some of the assertions set forth in the public comment filed by the Prairie Rivers Network (“PRN”) on October 30, 2009 (“PC#3”). Ameren appreciates this opportunity to supplement its testimony already filed in this matter and presented during the public hearing held on September 29, 2009.

PRN implies that Ameren misled its neighbor to the south of the Hutsonville Power Plant, Mrs. Margaret R. DeMent, with respect to the extent of contamination on her property and the limits of the agreed-to use restriction. In response to PRN’s public comment, Ameren contacted Mrs. DeMent to confirm that she was comfortable with Ameren’s actions and representations with respect to this matter. Attached as Exhibit A is a letter Ameren sent to PRN and Mrs. DeMent in response to the inaccurate inferences set forth in PRN’s public comment.

Next, PRN alleges that Ameren did not use readily available information in developing a groundwater cleanup plan and in modeling potential scenarios. Regretfully, the series of questions PRN poses regarding the neighboring irrigation wells is based on assumptions that did not involve a close or detailed review of the evidence of record. PRN’s arguments

not involve a close or detailed review of the evidence of record. PRN's arguments mischaracterize the record for two primary reasons. First, PRN states Ameren has failed to meet its burden to describe the area affected by the proposed rule, asking if Ameren was aware of the irrigation wells on neighboring property. PC#3 at 2. The irrigation well closest to the Ameren property was documented on various figures, including cross-sections and flow maps, in the April 2009 closure alternatives analysis report. TSD Ch. 5, pp 31-48. In addition, as set forth in Appendix H of Chapter 7 of the TSD, Ameren performed a search of the Illinois State Geological Survey IL WATER database which identified six wells within one-half mile of Ash Pond D. Two of the wells are the plant production wells, and the other four are irrigation wells utilized by adjacent property owners. *See* TSD, Ch. 7, pp. 482-484; *see also*, TSD, Ch. 7, p. 200. Therefore, contrary to the assertion, Ameren did adequately describe the area affected by the proposed rule.

Second, PRN states this information does not appear to have been included in the assumptions and data input for the modeling of the design and operation of the groundwater collection trench to mitigate off-site impacts. PRN is correct that Ameren's consultant did not account for irrigation or plant wells in the modeling. This is because the upper zone of the underlying aquifer was modeled, while the irrigation and plant wells are finished in the lower zone of the underlying aquifer. The lower zone of the aquifer both on and off-site complies with water quality standards. The modeling performed was consistent with modeling regularly used for landfill settings and was found to be sufficient by the Illinois Environmental Protection Agency. *See e.g.*, Sept. 29, 2009 hearing transcript at 30-32. Because the data suggests that withdrawals in the lower zone of the underlying aquifer do not impact flow in the shallow zone,

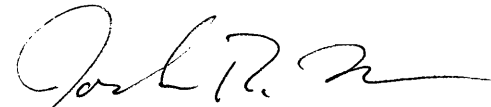
Tr. at 89-91, there was no need to consider the plant production wells or the irrigation wells in the modeling.

Finally, the public comment states that the Board cannot adopt regulations inconsistent with federal law, suggesting that Ameren is “attempting an end run around anti-degradation requirements.” That statement could not be further from the truth, as discussed at the hearing and as set forth in the proposed rule, Ameren will seek a modification to its existing NPDES permit to discharge the groundwater collected in the proposed groundwater collection trench. As PRN, the Illinois Environmental Protection Agency and the Board are all well aware, the modification of an NPDES permit results in the re-opening of the permit allowing for public participation and for the Illinois Environmental Protection Agency to perform appropriate anti-degradation analysis at that time.

Respectfully submitted,

AMEREN ENERGY GENERATING  
COMPANY

by:

  
\_\_\_\_\_  
one of its attorneys

Dated: November 10, 2009

Kathleen Bassi  
Joshua R. More  
Amy Antonioli  
SCHIFF HARDIN LLP  
233 South Wacker Drive, Suite 6600  
Chicago, Illinois 60606  
312-258-5500  
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**Exhibit A**

*Ameren Corporation*

One Ameren Plaza  
1901 Chouteau Avenue  
PO Box 66149  
St. Louis, MO 63166-6149  
**314.621.3222**

Nov. 3, 2009

Glynnis Collins, Executive Director  
Prairie Rivers Network  
1902 Fox Drive, Suite G  
Champaign, IL 61820

Dear Ms. Collins:



We were particularly concerned about Prairie Rivers Network's apparent attempt to mislead the Illinois Pollution Control Board, the Illinois Environmental Protection Agency and the public through the public comments filed by Traci Barkley on behalf of PRN. While we certainly understand that PRN may differ from Ameren on certain issues, we were stunned and disheartened by the implication that we have misled our neighbor to the south of Hutsonville Plant – Mrs. Margaret R. DeMent. As we reached out to discuss this project with Ms. Barkley, we also reached out to Mrs. DeMent on several occasions. As a result of the filing of these comments, we felt it necessary to discuss with Mrs. DeMent the statements made in the Oct. 30 PRN filing. In the statements contained in the filed comments, we discovered misimpressions as to Mrs. DeMent's perspective on a number of points:

- Mrs. DeMent has never requested that her wells be tested; however, we assured her we stand ready to test those wells at any time she so requests.
- In addition, we would share any sampling results with Mrs. DeMent that she requests. We wish to highlight, though, that we did share all the information with Traci Barkley, and the information was also included in our filing with the Illinois Pollution Control Board.

We value our relationship with our neighbor and have worked hard to establish an open line of communication with her. Ameren has not, and is not, hiding any information from Mrs. DeMent and to imply that we are hiding information in a publicly filed document, without any support for such a serious accusation, is more than troubling. In addition, as you are aware from the testimony and materials provided, there is no evidence that water quality standards are exceeded in the aquifer in which Mrs. DeMent's irrigation wells are located. In fact, deep wells on our property within a short distance of Mrs. DeMent's wells have consistently complied with water quality standards. Mrs. DeMent has advised us, and Ms. Barkley, that her land has produced the same amount of crops the last several years, in stark contrast to the misimpressions contained in PRN's public comments.



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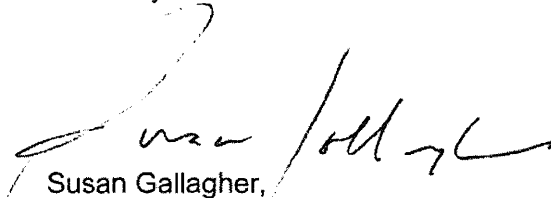
Again, to imply the contrary in a publicly filed document without support is more than unfortunate.

Lastly, the filing includes an allegation that we are "attempting an end run around anti-degradation requirements." This is a clear and knowing distortion of the facts. PRN is well aware that before we can discharge water into the Wabash River, we must apply for a modification to our existing NPDES permit. This requirement is clearly stated in our proposed rule. PRN is also well aware that at that time under state law, PRN can review the application, comment on the application and ask for a public hearing. Indeed, the full public process is afforded to those who wish to participate. It is inappropriate to charge us with circumventing the process when the process has not even begun. In addition, there is no evidence that our company has ever circumvented permitting processes. In fact, quite to contrary, we have taken the lead in trying to close the Hutsonville ash pond in a way that offers a model for other utility companies and in the absence of any clear regulatory guidance.

In an hour-long call with Ms. Barkley, we outlined our proactive efforts to close the pond, beneficially use ash and establish effective ash pond management approaches. In a PRN newsletter, your organization advocates for safe management of existing and future ash ponds. That is what we are trying to accomplish with this filing.

We would like to continue to work to foster a constructive dialogue with PRN; however, we needed to set the record straight on the incorrect and misleading impressions that the filing perpetuated.

Sincerely

A handwritten signature in black ink, appearing to read "Susan Gallagher", is written over a horizontal line.

Susan Gallagher,  
Director, Corporate Communications, Ameren Corporation

Cc: Traci Barkley, water resources scientist, Prairie Rivers Network  
Mark Wight, assistant counsel, Illinois Environmental Protection Agency  
Margaret R. DeMent

**CERTIFICATE OF SERVICE**


I, the undersigned, certify that on this 10<sup>th</sup> day of November, 2009, I have served electronically the attached **AMEREN'S MOTION FOR LEAVE TO FILE ADDITIONAL PUBLIC COMMENT** 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

Mark Wight, Assistant Counsel  
Kyle Nash Davis, Assistant 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

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

  
Joshua R. More

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

<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	Virginia Yang General Counsel Illinois Dept. of Natural Resources One Natural Resources Way Springfield, Illinois 62702-1271
Tracy Barkley Prairie Rivers Network 1902 Fox Drive, Suite G Champaign, IL 61820	