

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 23rd day of August, 2012, I have served electronically the attached MOTION TO FILE INSTANTER and PETITIONER'S POST-HEARING COMMENT, upon the following persons:

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

and electronically and by first class mail, postage affixed, upon:

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(PCB 12-126)

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Springfield, Illinois 62794-9276

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

MOTION TO FILE INSTANTER

NOW COMES THE PETITIONER, AMEREN ENERGY RESOURCES (“AER”), by and through its attorneys, SCHIFF HARDIN, LLP, and pursuant to 35 Ill. Adm. Code 101.522, and respectfully states as follows:

1. Section 101.522 of the Illinois Pollution Control Board (“Board”)’s procedural rules provides:

The Board or hearing officer, for good cause shown on a motion after notice to the opposite party, may extend the time for filing any document or doing any act which is required by these rules to be done within a limited period, either before or after the expiration of time. 35 Ill. Adm. Code 101.522.

2. At hearing in this proceeding a member of the Illinois Pollution Control Board (“Board”) asked about AER’s plan for compliance with the Cross-State Air Pollution Rule (“CSAPR”). Hearing Officer Webb set August 10, 2012 as the deadline for filing post-hearing public comments. AER timely filed its post-hearing brief on August 15, 2012.


3. On August 21, 2012, the United States Court of Appeals for the D.C. Circuit vacated the CSAPR.

4. AER states that because the vacatur directly relates to a question by a Board Member at hearing, AER has shown good cause for an extension of time to file a public comment, which it files concurrently with this motion.

WHEREFORE, the Petitioner respectfully requests that the Pollution Control Board grant this Motion to File Instanter and accept Petitioner's Post-Hearing Comment as timely filed.

Respectfully submitted,

AMEREN ENERGY RESOURCES, Petitioner.

By: 

Dated: August 23, 2012

Renee Cipriano
Gabriel Rodriguez
Amy Antonioli
Schiff Hardin, LLC
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Chicago, IL 60606

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

PETITIONER'S POST-HEARING COMMENT

NOW COMES AMEREN ENERGY RESOURCES (“AER”), by and through its attorneys, SCHIFF HARDIN, LLP, and, pursuant to Section 104.224(d) of the Illinois Pollution Control Board’s (“Board”) procedural rules (35 Ill. Adm. Code 104.220). On August 21, 2012, the United States Court of Appeals for the D.C. Circuit vacated the Cross-State Air Pollution Rule (“CSAPR”), holding that the United States Environmental Protection Agency (“USEPA”) exceeded its authority under the Clean Air Act (“CAA”) by requiring upwind states to reduce more pollution than necessary and denying states a post-Rule opportunity to set up their own state implementation plans before federally-promulgated Federal Implementation Plans (“FIPs”) took effect. *EME Homer City Generation, L.P. v. EPA, et al.*, No. 11-1302 (D.C. Cir., Aug. 21, 2012). The court vacated the rule and sent USEPA back to the drawing board to address interstate air pollution under the CAA.

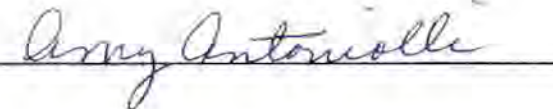
At hearing, Board Member Zalewski asked “*If CSAPR does go into effect, does Ameren have a compliance plan?*” (Tr. 41). In response, in Petitioner’s post-hearing brief, Ameren Energy Resources (“AER”) stated “[d]etermining AER’s CSAPR compliance plan requires a bit of forecasting because we can not necessarily assume that the rule will be upheld in its full and

Hearing Brief, pg. 46. Now we know the rule has not been upheld in its full and current form. With the D.C. Circuit's vacatur of CSAPR, several aspects of the CSAPR, including the states' emission budgets and emission allowances for power plants under the USEPA-promulgated FIPs will not be part of equivalent federal legislation. Based on the August 21, 2012 decision, it is also unclear at this point when a replacement rule will be promulgated, let alone what it would require in terms of emission reductions or when new compliance deadlines would take effect. To further answer Board Member Zalewski's question, a compliance plan for CSAPR is no longer necessary at this time.

WHEREFORE, Ameren Energy Resources asks the Illinois Pollution Control Board to accept this comment as a supplement to its answer given at hearing and in its post-hearing brief.

Respectfully submitted,

AMEREN ENERGY RESOURCES, Petitioner.

By: 

Dated: August 23, 2012

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