

RECEIVED
CLERK'S OFFICE

SEP 16 2016

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS POWER HOLDINGS, LLC, and)
 AMERENENERGY MEDINA VALLEY)
 COGEN, LLC,)
)
 Petitioners,)
)
 AMEREN ENEGRY RESOURCES, LLC)
)
 Co-Petitioner,)
 v.)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

PCB 2014-010
(Variance - Air)

PC# 2338

NOTICE OF ELECTRONIC FILING



ORIGINAL

To: Attached Service List

PLEASE TAKE NOTICE that on September 16, 2016, I electronically filed with the Clerk of the Illinois Pollution Control Board: COMMENTS OF ENVIRONMENTAL LAW & POLICY CENTER, NATURAL RESOURCES DEFENSE COUNCIL, RESPIRATORY HEALTH ASSOCIATION OF METROPOLITAN CHICAGO, AND SIERRA CLUB, a copy of which is served on you along with this notice.

Respectfully submitted,

Kristin Field
 Legal Assistant
 Environmental Law & Policy Center
 35 E. Wacker Drive, Suite 1600
 Chicago, IL 60601
 312-795-3718

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**COMMENTS OF ENVIRONMENTAL LAW & POLICY CENTER,
NATURAL RESOURCES DEFENSE COUNCIL, RESPIRATORY HEALTH
ASSOCIATION OF METROPOLITAN CHICAGO, AND SIERRA CLUB**

Pursuant to 35 Ill. Adm. Code 104.224(d), the Environmental Law & Policy Center, Natural Resources Defense Council, Respiratory Health Association of Metropolitan Chicago, and Sierra Club (collectively, “Citizens Groups”) hereby offer the following comments on Joint Motion to Terminate Variance (“Motion”) filed by IPH, LLC (formerly known as ILLINOIS POWER HOLDINGS, LLC) (“IPH”) and AMERENENERGY MEDINA VALLEY COGEN, LLC, an Illinois limited liability company (“Medina Valley”) with the Pollution Control Board (“Board”) on September 2, 2016. Citizens Groups neither support nor oppose the motion to terminate the variance but the motion in and of itself raises several very serious concerns.

First, the Board’s original grant of a variance to both Ameren and then subsequently IPH was meant to prevent plant closures and save jobs. However, despite receiving the variance, IPH is still shuttering units and therefore cutting jobs. Citizens Groups are troubled by this outcome and the representations that coal plant operators made before the Board when petitioning for these variances. As Citizens Groups stated in the public hearing for the Ameren variance,

[C]hoosing the variance doesn't mean that we avoid a shutdown. ... [T]here are a lot of things going on right now with regulations and the economy that . . . that contribute to whether or not these plants will survive. These include a poor economy, natural gas prices that are at all-time lows due to the availability of new natural gas reserves, several regulations including the Cross State Air Pollution Rule, the Mercury Air Toxics Rule, new PM_{2.5} designations.

. . . [T]here have already been layoffs at Joppa, and that's before the variance was even considered, so there are a lot of things that could lead to these plants closing. Some of those other things include the fact that Joppa and E.D. Edwards are both very, very old plants that do not have modern pollution controls. The only plant that is being discussed for scrubbers is Newton.

If there are not modern pollution controls installed on these plants, it means that they are likely reaching the end of their viable life anyway and that with or without the variance, it is likely that these plants will shut down.

. . . [P]eople are losing their jobs, and that is a horrible thing to go through, but . . . that . . . does not simply turn on whether or not this variance is granted.

Ameren Hrg. Tr., PCB 12-26, at 116-117 (Aug. 1, 2012). In other words, under current circumstances with current natural gas prices and electric prices, plant closures have been unavoidable and variances should not be granted based on these representations by electric generating companies that the relief is needed to prevent closures, save jobs, and protect the local tax base.

Granting the variance was also supposed to assure that the scrubber project at Newton would go forward. Ameren offered assurances that the variance would enable the scrubber project to go forward, as did IPH. In seeking its variance, Ameren stated that it “expects to maintain a continuous program of construction at the Newton Energy Center so as to be in a position to have the Newton FGD Project completed and operational to meet compliance obligations.” Ameren Variance Pet., PCB 12-26, at 9 (May 3, 2012). When IPH later sought the same variance for the plants formerly owned by Ameren, IPH stated that it “analyzed all of the commitments made by AER in the prior proceeding [PCB 12-126], and has agreed to assume each and every commitment.” IPH Variance Pet., PCB 14-10, at 22 (July 22, 2013).

As it turns out, granting the variance did not secure the Newton scrubber project. Even though the Board, relying on Ameren’s representations, concluded that the point of the variance was to allow Ameren the time and cash flow to complete the scrubber project¹, and – at the strong urging of Citizens Groups – required Ameren and later IPH to submit annual reports documenting the progress of the scrubber project to provide assurance that it was on track,² the project clearly wasn’t on track and the community and state are not going to receive the benefit of the reduced SO₂ pollution from Newton Unit 1 that the scrubber would have delivered.

Ameren’s and IPH’s histrionic claims that, absent the variance, they would have to shutter multiple plants in order to comply with the MPS have also proved to be disingenuous. Ameren claimed that, unless the variance was granted, it would have to take “draconian

¹ “The Board finds that AER has demonstrated that the requested dual variance terms to 2020 are reasonable to allow AER to budget money and resources toward completion of the Newton FGD project.” Board Order on Ameren Variance, PCB 12-26, at 59 (Sept. 20, 2012).

² Board Order on Ameren Variance, PCB 12-26, at 66; Board Order on IPH Variance, PCB 14-10, at 100-102 (Nov. 21, 2013).

operational measures”³ – including shuttering multiple *plants* (not single units but entire plants) – in order for it to comply with the MPS. Ameren stated, “Without relief from the Board, and in the absence of the Newton FGD, AER's only other compliance alternative has severe consequences. At this time and under existing conditions, retiring at least two plants across AER's fleet such as, for example, Joppa, E.D. Edwards, and/or Newton, would be necessary in order to maintain compliance in absence of completing the Newton FGD Project.” Ameren Variance Pet., PCB 12-26, at 23 (citing Martin Aff., Par. 9.). IPH made the same claim in its variance petition. “Given depressed power prices that have existed over the past several years and which will continue for several more years, compliance with the MPS 2015 and 2017 overall SO₂ annual emission rates in Sections 225.233(e)(3)(C)(iii) and (iv) is not achievable without the shutdown of Energy Centers, in this case the E.D. Edwards and Joppa Energy Centers.” IPH Variance Pet., PCB 14-10, at 32. IPH devoted at least five pages to discussing the hardship of shuttering two plants. IPH Variance Pet., PCB 14-10, at 30-34. The Board relied on Ameren’s and IPH’s representations that they would have to close at least two plants when the Board concluded Ameren and IPH would suffer a hardship without the relief of a variance. Board Order on Ameren Variance, PCB 12-26, at 62 (Sept. 20, 2012); Board Order on IPH Variance, PCB 14-10, at 75 (Nov. 21, 2013).

Apparently, and contrary to claims in the Ameren and IPH variance petitions, IPH needed only retire one unit—Unit 2 at Newton⁴—in order to achieve the emissions rate required by the MPS for 2017. IPH states, “Moreover, in lieu of completing the Newton FGD project identified in Condition 9, with the retirement of Newton Unit 2, the MPS Group can comply with the SO₂ emission limit in 35 Ill. Adm. Code 225.233(e)(3)(C)(iv) without the Variance in calendar year 2017 and each calendar year thereafter. *Id.*” IPH Mot. to Term. Variance at ¶ 6. “[W]ith the retirement of Newton Unit 2, it will no longer be necessary to complete construction of the Newton FGD project (*i.e.*, perform Conditions 9(c) - 9(g)) for the MPS Group to meet the MPS rule’s applicable SO₂ emission rate limit as the MPS Group will comply with the MPS limit beginning with 2016 (35 Ill. Adm. Code 225.233(e)(3)(C)(iii)) and continuing each year thereafter (35 Ill. Adm. Code 225.233(e)(3)(C)(iv)).” IPH Mot. to Term. Variance at ¶ 9. IPH has thus shifted its position from 2013 when it petitioned for the variance and indicated that two entire plants would need to retire on top of the one unit at Edwards for it to comply with the MPS. IPH now indicates in the motion to terminate that retiring merely one unit enables it to comply with the MPS. IPH doesn’t even acknowledge this shift let alone offer any explanation of what has changed in the interim. Citizens Groups urge the Board to inquire of IPH what has changed in terms of operations, pollution control equipment, emissions, and/or other elements that now enable it to comply with the MPS by merely retiring one unit.

Further, IPH claims that at Coffeen it is achieving an SO₂ removal efficiency of 99.8%. IPH Mot. to Term. Variance, Ex. B, Ex. C. Citizens Groups note that this is an unusually high removal efficiency, especially for a facility burning low-sulfur coal. Citizens Groups urge the

³ Ameren Variance Pet., PCB 12-26, at 1-2.

⁴ IPH requested that it be allowed to retire Edwards Unit 1 before IPH ever requested the variance, and the SO₂ reductions from Edwards 1 were considered in balancing the environmental impacts of the variance. Thus, the statements by IPH that it would need to shutter plants to achieve the MPS limits if it did not obtain the variance, necessarily meant retirements in addition to Edwards Unit 1.

Board to request from IPH further documentation of and technical details on how this removal efficiency is being achieved.

IPH claims that its motion to withdraw the variance is the result of the “conditions . . . anticipated upon the filing of a petition for variance . . . *not* [being] realized.” IPH Mot. to Term. Variance at ¶ 8 (emphasis added). Yet those conditions (an improvement in electric prices) were never legitimately anticipated. The variance was a mechanism for Ameren and IPH to hedge their bets. They have been and continue to externalize all the risks of low power prices in contrast to how they internalized all of the rewards when power prices were higher. The likelihood of power prices not increasing was in fact anticipated at the time of the various petitions for the variances along with the need to plan for the eventuality. As pointed out by Citizens Groups in our initial objection to Ameren’s petition for the same variance:

Ameren argues that power prices must improve before the investments in SO₂ control equipment required by the MPS will be economically feasible, but acknowledges that such an improvement in power prices may never occur. Indeed, Ameren’s supporting evidence demonstrates that, if Ameren’s compliance plan is premised entirely on an increase in power prices, it likely will never come to fruition. One of Ameren’s affiants states that power prices “have continued to fall, and are not expected to improve in the near to immediate term.” Petition, Ex. 7, Martin Aff. at ¶ 12. As the Standard and Poor’s report excerpted in his affidavit indicates, Ameren’s decision to stop spending money on legally required environmental controls “suggests management’s lack of confidence in the longer-term economic sustainability of [Ameren’s] business model.” *Id.* at ¶ 12.

As such, . . . it is far from certain that Ameren will genuinely commit to the revised standards it requests here.

Citizens Groups Objection, PCB 12-126, PC-6, at 8 (May 31, 2012) (citations omitted). IPH conceded similar points at the time of the filing of its Petition for a variance. “[D]epressed power prices . . . have existed over the past several years and . . . will continue for several more years.” IPH Variance Pet., PCB 14-10, at 32. “Dynergy continues to face near-term economic challenges posed by depressed power prices. For example, Dynergy reported operating losses of \$104 million for the fourth quarter of 2012 and \$142 million for the first quarter of 2013.” IPH Variance Pet., PCB 14-10, Ex. 7, Alonso Aff. at ¶ 26. Consequently, IPH’s claim that these conditions were not anticipated is not credible.

IPH’s request to terminate the variance is yet another self-serving move by an electric generating company, just as Ameren’s and IPH’s original decisions to seek the variance were. Originally, Ameren wanted to be relieved of the obligation to meet the stringent MPS requirements that it negotiated and agreed to (which would have required completion of the Newton scrubber project by 2015). Similarly, IPH wanted to be relieved of those same obligations when purchasing the fleet. Now, once again, IPH wants to be relieved of the obligations imposed by the variance—that is, completion of the Newton scrubber project. Not only is IPH opting in and out of state regulations at their whim, these proceedings are not cost-free. It goes without saying that the original variance proceedings and this subsequent motion

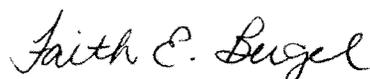
consume the valuable time and resources of the Board and also of the IEPA. In addition, this motion necessitate another amendment to the Illinois State Implementation Plan that relies upon the MPS for compliance with the BART requirement of the Regional Haze Rule. *See., e.g., 77 Fed. Reg. 39943 (July 6, 2012).*

Instead of granting variances, what the Board – and the State – need to be focusing on is the fact that these plant closures are inevitable under current electric, natural gas, and coal prices. Instead of filing for variance after variance, electric generating companies should be supporting the community during these closures and investing in pollution controls for those plants that will continue to operate. In short, allowing more pollution by means of these variances is not saving jobs, but rather is simply adding to the pollution burden Illinois communities face while jobs at old, dirty, inefficient coal plants disappear under market pressure.

In conclusion, Citizens Groups urge the Board to seek additional information from IPH related to the Joint Motion to Terminate Variance, including:

1. What has changed that now enables IPH to comply with the MPS by merely retiring one unit compared to 2013 when IPH originally petitioned for the variance.
2. Documentation of and technical details on how Coffeen's 99.8% SO₂ removal efficiency is being achieved.

Respectfully submitted,



Attorney for Sierra Club
1004 Mohawk Rd.
Wilmette, IL 60091

DATED: September 16, 2016

CERTIFICATE OF SERVICE

I, Kristin Field, hereby certify that I have filed the attached **COMMENTS OF ENVIRONMENTAL LAW & POLICY CENTER, NATURAL RESOURCES DEFENSE COUNCIL, RESPIRATORY HEALTH ASSOCIATION OF METROPOLITAN CHICAGO, AND SIERRA CLUB**, in PCB 14-10 upon the attached service list by electronic mail, in Chicago, Illinois on September 16, 2016.

Respectfully submitted,



Kristin Field
Legal Assistant
Environmental Law and Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601
312-795-3718

SERVICE LIST

September 16, 2016

Gina Roccaforte
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794

Claire A. Manning
William D. Ingersoll
Brown, Hay & Stephens LLP
205 South Fifth Street, Suite 700
P.O. Box 2459
Springfield, Illinois 62705-4259

Amy Antonioli
Renee Cipriano
Schiff Hardin, LLP
6600 Willis Tower
233 South Wacker Dr
Chicago, IL 60606