

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	
PETITION OF AMEREN ENERGY MEDINA	)	AS 21-008
VALLEY COGEN, LLC (OLD MEREDOSIA)	)	(Adjusted Standard - Land)
FOR ADJUSTED STANDARDS	)	
FROM 35 ILL. ADMIN. CODE PART 845	)	

**NOTICE OF FILING**

**To: Don Brown, Clerk**  
 Illinois Pollution Control Board  
 100 West Randolph St.  
 Suite 11-500  
 Chicago, Illinois 60601

**Stefanie N. Diers**  
**Sara Terranova**  
**Greg Stucka**  
 Illinois Environmental Protection Agency  
 1021 North Grand Avenue East  
 P.O. Box 19267  
 Springfield, IL 62795-9276

Please take notice that on April 28, 2023, the Petitioner filed electronically with the Office of the Clerk of the Illinois Pollution Control Board, the attached Amended Petition of Ameren Energy Medina Valley Cogen, LLC for Adjusted Standards from 35 Ill. Admin. Code, Part 845, and Certificate of Service, copies of which are served upon you.

Dated: April 28, 2023

Respectfully submitted,  
**Ameren Energy Medina Valley Cogen, LLC,**  
**Petitioner.**

By: /s/ Claire A. Manning  
 One of Its Attorneys

**BROWN, HAY & STEPHENS, LLP**  
 Claire A. Manning, #3124724  
 Anthony D. Schuering, #6333319  
 Lucas J. Hall, #6335982  
 205 S. Fifth Street, Suite 1000  
 P.O. Box 2459  
 Springfield, IL 62705-2459  
 (217) 544-8491  
 cmanning@bhslaw.com  
 aschuering@bhslaw.com  
 lhall@bhslaw.com

**CERTIFICATE OF SERVICE**

I, the undersigned attorney, certify that I have filed the foregoing document electronically with the Illinois Pollution Control Board and served the following persons with the same document by electronic transmission on April 28, 2023:

**Don Brown, Clerk**  
Illinois Pollution Control Board  
100 West Randolph St.  
Suite 11-500  
Chicago, Illinois 60601

**Stefanie N. Diers**  
**Sara Terranova**  
**Greg Stucka**  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19267  
Springfield, IL 62795-9276

Dated: April 28, 2023

Respectfully submitted,  
**Ameren Energy Medina Valley Cogen, LLC,**  
**Petitioner.**

By: /s/ Claire A. Manning  
One of Its Attorneys

**BROWN, HAY & STEPHENS, LLP**  
Claire A. Manning, #3124724  
Anthony D. Schuering, #6333319  
Lucas J. Hall, #6335982  
205 S. Fifth Street, Suite 1000  
P.O. Box 2459  
Springfield, IL 62705-2459  
(217) 544-8491  
cmanning@bhslaw.com  
aschuering@bhslaw.com  
lhall@bhslaw.com

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 )  
PETITION OF AMEREN ENERGY MEDINA ) AS 21-008  
VALLEY COGEN, LLC (OLD MEREDOSIA) ) (Adjusted Standard - Land)  
FOR ADJUSTED STANDARDS )  
FROM 35 ILL. ADMIN. CODE PART 845 )

**AMENDED PETITION FOR ADJUSTED STANDARD OR, IN THE  
ALTERNATIVE, A FINDING THAT PART 845 IS NOT APPLICABLE**

Ameren Energy Medina Valley Cogen, LLC (“Ameren” or “the Company”), by and through its attorneys, Claire A Manning and Lucas J. Hall of Brown, Hay + Stephens, LLP, and pursuant to Section 28.1 of the Environmental Protection Act, 415 ILCS 5/28.1 (the “Act”) and 35 Ill. Admin. Code §104.400 et seq., requests a determination from the Illinois Pollution Control Board (the “Board”) that its regulations entitled Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments, 35 Ill. Admin. Code Part 845 (“Part 845”) do not apply to the inactive Old Ash Pond at Meredosia Power Station (“Old Meredosia”), as Old Meredosia ceased operation and closed in the early 1970’s, over fifty years ago, prior to jurisdictional oversight of any state or federal agency or law.

Accordingly, for the reasons stated herein, Ameren asserts that Old Meredosia is not subject to the Act, nor specifically to Part 845. Should the Board agree with Ameren’s legal argument, it requests that a decision be issued to that effect, dismissing this matter.

On the other hand, should the Board find a rationale for entertaining jurisdiction over Old Meredosia, Ameren would accept regulatory authority only on the basis petitioned for herein – as Ameren has carefully framed this Amended Petition for Adjusted Standard in a manner that is consistent with Section 28.1 of the Act, the Board’s regulations concerning Adjusted Standards at 35 Ill. Admin. Code §104.406, and the Board’s environmental protection mission.

## I. BACKGROUND

The Meredosia Power Station (“MPS”), previously a coal-fired power station located in Morgan County, has three former ash ponds: Bottom Ash Pond, Fly Ash Pond, and Old Meredosia – all of which are closed. Ameren stopped generating power at MPS in 2011. Since that time, MPS has been inactive, and the power station infrastructure has been decommissioned and removed.

With the guidance, approval, and authorization of the Illinois Environmental Protection Agency (“IEPA”), Bottom Ash Pond and Fly Ash Pond (which ceased accepting coal combustion residue, “CCR,” in 2011) were closed, consistent with closure plans discussed, reviewed, and approved by the IEPA. Since Old Meredosia was closed in the early 1970’s – prior to any IEPA jurisdictional oversight – it was not included in the MPS closure discussions and approvals for Bottom Ash and Fly Ash Ponds – except that the MPS Groundwater Management Zone (“GMZ”) covers the area of Old Meredosia, which is geographically proximate to Bottom Ash and Fly Ash. MPS is now in post-closure care, with the above-described GMZ and reporting as approved by the IEPA. The MPS Closure Plan (“MPSCP”) documents are attached hereto as **Exhibit 1**.<sup>1</sup>

Pursuant to Part 845, Ameren timely applied for an operational permit for MPS, relevant to Bottom Ash Pond and Fly Ash Ponds. That permit application is still pending review by the IEPA. Given the distinct status of Old Meredosia, as described herein, the permit application did not include Old Meredosia.

The MPSCP Documents related to the Bottom Ash Pond and Fly Ash Pond include:

---

<sup>1</sup> **Exhibit 1** - *Geotechnology, Inc.*, Closure Plan: Fly Ash Pond and Bottom Ash Pond, Meredosia Power Station, Project No. J024917.01 (Aug. 15, 2016).

- Closure Plan for Meredosia Fly Ash and Bottom Ash Ponds.
- IEPA Approval Letter of Closure Plan for Meredosia Fly Ash and Bottom Ash Ponds.
- Construction Quality Assurance Report for Meredosia Fly Ash and Bottom Ash Ponds.

See **Exhibit 1**.

Following the closure of the Fly Ash and Bottom Ash Ponds, Ameren began submitting Annual Reports documenting post-closure activities in March 2020 to the IEPA.

While located in the area that encompassed MPS, Old Meredosia is distinct from the two closed ash ponds that are subject to the MPSC documents, because Old Meredosia ceased accepting CCR (and closed) prior to any authorized regulatory oversight of the IEPA or federal government. As explained in more detail later, by the time closure was sought for Bottom Ash and Fly Ash Ponds, Old Meredosia had been closed for approximately fifty years. As described in detail in Section VI(C), *infra*, (Anticipated Environmental Impact of Complying with Part 845), Old Meredosia is now covered by a mature native ecosystem that would be destroyed if compliance with the closure provisions of Part 845 is required.

As further explained below, Ameren is seeking a determination that Old Meredosia is not subject to Part 845, as it was closed prior to the regulatory authority of the IEPA, the USEPA and the Resource Conservation and Recovery Act (“RCRA”); thus, RCRA does not apply to Old Meredosia. Further, Old Meredosia does not constitute a CCRSI as defined in Section 3.143 of the Illinois Environmental Protection Act, 415 ILCS 5/3.143. Accordingly, should the Board agree with Ameren, Ameren requests a Board order stating so and dismissing its Petition, as the Board has done in previous cases where unnecessary regulatory relief mechanisms,

even those related to Part 845, were sought.<sup>2</sup> If the Board does not agree, Ameren believes the proposed Adjusted Standard presents a prudent, practical, and environmentally sound regulatory path for Old Meredosia.

## **II. OLD MEREDOSIA IS NOT A “SURFACE IMPOUNDMENT” AND THUS IS NOT SUBJECT TO PART 845.**

The Illinois Legislature adopted the Illinois Coal Ash Pollution Prevention Act, 415 ILCS 5/22.59 (the “Illinois CCR Act”) on July 30, 2019. The Illinois CCR Act’s applicability was expressly limited to “all existing CCR surface impoundments and any CCR surface impoundments constructed after July 30, 2019.”<sup>3</sup> The Act defines a surface impoundment in the same manner as the Federal CCRSI regulation – “a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.”<sup>4</sup>

Federal law regulates CCR disposal via the *Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities* (“Final Rule”), known as Part 257, promulgated pursuant to RCRA Subtitle D.<sup>5</sup> In the preamble to Part 257, the USEPA explained that it proposed to regulate only inactive surface impoundments that had not completed closure before the October 19, 2015 effective date.<sup>6</sup> It noted that “inactive” surface impoundments contain both CCR and water, but no longer receive additional wastes.<sup>7</sup> By contrast, the USEPA explained, a “closed” surface impoundment would no longer contain water, although it may still

---

<sup>2</sup> See, e.g., *In re: Petition of Ill. Power Res. Generating, LLC, for an Adjusted Standard*, Opinion and Order of the Board, AS 21-4, p. 6 (Feb. 17, 2022), available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-105337>.

<sup>3</sup> 415 ILCS 5/22.59(m).

<sup>4</sup> Compare 40 C.F.R. § 257.53 with 415 ILCS 5/3.143.

<sup>5</sup> See 80 Fed. Reg. 21,302 (Apr. 17, 2015), available at [govinfo.gov/content/pkg/FR-2015-04-17/pdf/2015-00257.pdf](http://govinfo.gov/content/pkg/FR-2015-04-17/pdf/2015-00257.pdf).

<sup>6</sup> 80 Fed. Reg. at 21,343.

<sup>7</sup> *Id.*

contain CCR, and would be capped or otherwise maintained.<sup>8</sup> The key difference between the two is the containment of water:

EPA did not propose to require “closed” surface impoundments to “reclose.” Nor did EPA intend, as the same commenters claim, that “literally hundreds of previously closed . . . surface impoundments—many of which were properly closed decades ago under state solid waste programs, have changed owners, and now have structures built on top of them—would be considered active CCR units.” Accordingly, the final rule does not impose any requirements on any CCR surface impoundments that have in fact “closed” before the rule's effective date—i.e., those that no longer contain water and can no longer impound liquid.<sup>9</sup>

As discussed in greater detail below, Old Meredosia ceased receiving CCR and was capped prior to the adoption of RCRA and the state and federal regulations applicable to CCRSIs. When Old Meredosia was closed, no state or federal standards existed or applied.

However, applying the CCR Surface Impoundment definition, IEPA has identified Old Meredosia as being subject to Part 845, despite that Old Meredosia is not subject to Part 257. The site no longer allows for the impoundment of water and has a raised elevation, and thus is not “a natural topographic depression, man-made excavation, or diked area,” as it is the site of a long-standing natural ecosystem and clearly does not meet the definition of a CCRSI.<sup>10</sup>

Should the Board decline to determine that Old Meredosia is not regulated by Part 845, it would create a situation in which the same words have different meanings for the purposes of Part 257 and Part 845. Part 257 plainly excludes Old Meredosia, as should Part 845. Indeed, it was the intent of the IEPA and the Board that Part 845 would regulate the same CCR surface impoundments as Part 257. For example, in its pre-filed answers, in the Part 845 rulemaking proceedings, the IEPA stated “[i]t is the Agency’s position that the same universe of CCR surface

---

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *See* 40 C.F.R. § 257.53; 415 ILCS 5/3.143.

impoundments is intended to be regulated by Part 845.”<sup>11</sup>

Further, at the most basic level, a unit cannot be considered an “existing” or “inactive” CCRSI without first meeting the definition of a CCRSI. As the Board has noted, “for an impoundment to be an inactive surface impoundment, first it must be a CCR *surface impoundment*, which is defined in Section 845.120 as being designed ‘hold CCR and liquid’”.<sup>12</sup> At no point during the existence of state law or Board rules related to CCR or following the enactment of RCRA has Old Meredosia been intended to hold liquids. Although Old Meredosia was initially designed to hold an accumulation of CCR and liquids, it was capped in the early 1970’s with materials sluiced from the Illinois River and graded to provide gentle slopes which convey stormwater off the Old Meredosia cover. **Exhibit 2** (HA Putrich Report), pp. 3–4.<sup>13</sup>

The top of the Old Meredosia embankment is approximately 10 feet above the existing grade/surrounding natural ground surface, and native vegetation had been established and allowed to mature naturally over the closed area for approximately forty-five years prior to the enactment of the Illinois CCR Act (and approximately forty years prior to Part 257). *Id.* It would defy logic and strain credulity to consider Old Meredosia to be a CCRSI where it was intentionally capped and graded in a manner that prevented it from holding liquids well before there was a regulatory definition of CCRSI. Although Part 845’s definition of an Inactive CCRSI is not restricted to just

---

<sup>11</sup> Pre-Filed Answers of the Ill. Env'tl. Prot. Agency, R20-19, p. 8 (Aug. 3, 2020), available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-102654>; *see also, e.g., id.* at 17 (“CCR surface impoundments not subject to Part 257, are not subject to the requirements of Part 845. (Agency Response)”); Aug. 11, 2020 Hearing Tr., R20-19, available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-102775> (Q: “[M]y question was is Part 845 intended to apply to the same ponds that are subject to requirements under Part 257 given that they both define CCR surface impoundments in an identical fashion?” A: “In the Agency’s opinion, they will be the same ones.”).

<sup>12</sup> In re: Standards for the Disposal of CCRs in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845, Opinion and Order of the Board (Second Notice), R20-19, p. 16 (Feb. 4, 2021), available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-103704>.

<sup>13</sup> **Exhibit 2**– Neal Kochis & Steven F. Putrich, Technical Memorandum – Engineering Review/Expert Witness Support: Petition for Adjusted Standard for Old Meredosia, Illinois Pollution Control Board Docket AS 2021-08, HALEY & ALDRICH. April 19, 2023.



those CCRSI's that still contain liquid, as is the case with Part 257, Old Meredosia was not designed to hold liquid at any point in this century and could not have followed an Agency-approved closure plan when it closed because, unlike the Bottom Ash and Fly Ash Ponds, Old Meredosia had never been subject to any regulations of any kind. Accordingly, Old Meredosia must be excluded from regulation under Part 845.

### **III. REGULATIONS FROM WHICH AN ADJUSTED STANDARD IS SOUGHT (35 ILL. ADMIN. CODE 104.406(a))**

Given Old Meredosia's history of closure prior to any applicable regulatory regime, Ameren requests a Board determination that Old Meredosia is simply not jurisdictionally subject to Part 845, for the reasons stated herein. Alternatively, Ameren seeks adjustment from the provisions of Part 845 that implicate potential closure and post-closure care.

In the Part 845 rulemaking proceeding, Ameren attempted to present evidence of the distinct nature of its closed former coal impoundments – including Old Meredosia. The State objected to such evidence, asserting such to be inappropriate in a general applicability rulemaking proceeding. The Board agreed that Part 845 was a rule “of general applicability” and specifically invited Ameren to file an Adjusted Standard Petition to address site specific characteristics in the context of Part 845.<sup>14</sup>

So, as an alternative to the legal argument related to jurisdictional inapplicability, Ameren has carefully framed this Amended Petition for Adjusted Standard in a manner that is consistent with Section 28.1 of the Act, the Board's regulations concerning Adjusted Standards at 35 Ill. Admin. Code Section 104.406, and the Board's environmental protection

---

<sup>14</sup> *In re: Standards for the Disposal of CCRs in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845, Opinion and Order of the Board (Final)*, R20-19, p. 5 (Apr. 15, 2021), available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-103956>.

mission. Clear from this record is the fact that the circumstances related to Old Meredosia are site-specific – and unique. Also clear is that Old Meredosia, which has existed naturally for over fifty years, does not pose an environmental threat and as described further below, is now a suitable habitat for several protected species.

Regardless of which route the Board takes, the area that encompasses Old Meredosia will continue to be part of the Bottom Ash and Fly Ash Ponds CCRSIs' GMZ due to its geographic proximity to those CCRSIs. The MPS GMZ was approved by the IEPA for the Meredosia Power Station Closure Plan ("MPSCP") and will be applicable to the Bottom Ash and Fly Ash CCRSIs' Part 845 post-closure care operational permit and, as stated, Old Meredosia is located within its physical boundaries.

Accordingly, should the Board find it has jurisdiction to entertain this Petition, Ameren would accept an order exempting it from the closure and post-closure provisions of Part 845 for the site specific reasons stated herein and instead require that it follow provisions similar to the environmental protections contained in Part 845 that are unrelated to closure and post-closure care, specifically: Part 845.760(h) (Deed Notation) and Part 845, Subpart I (Financial Assurance). See Section VIII for Proposed Board Order.

#### **IV. THE LEVEL OF JUSTIFICATION REQUIRED FOR THE ADJUSTED STANDARD (35 ILL. ADMIN. CODE 104.406(c))**

The Part 845 regulations from which Ameren seeks the Adjusted Standard do not specify a level of justification. Therefore, the level of justification specified by Section 28.1(c) of the Act applies, and the Board may grant this Petition after determining that:

- (1) factors relating to the petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to the petitioner;
- (2) the existence of those factors justifies an adjusted standard;

- (3) the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and
- (4) The adjusted standard is consistent with any applicable federal law.<sup>15</sup>

Ameren must also justify all the requested adjustments consistent with Section 27(a) of the Act.<sup>16</sup> Section 27(a) of the Act requires the Board to consider the following factors in promulgating regulations:

[T]he Board shall take into account the existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, the nature of the existing air quality, or receiving body of water, as the case may be, and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution.<sup>17</sup>

**V. DESCRIPTION OF THE NATURE OF PETITIONER'S ACTIVITIES (35 ILL. ADMIN. CODE 104.406(d))**

The Meredosia power plant site (referenced as Meredosia Power Station or MPS) is at 800 South Washington Street along the east bank of the Illinois River, just south of the Village of Meredosia. *See Exhibit 3* (HA Bradley Report), Figure 1 (site location map).<sup>18</sup> Old Meredosia has not been in operation for more than 50 years; it ceased its “activities” at Old Meredosia in 1971. In other words, no fly ash or bottom ash has been deposited in Old Meredosia for more than half a century.

The rest of the former MPS (the Fly Ash Pond and the Bottom Ash Pond), each of

---

<sup>15</sup> 415 ILCS 5/28.1(c)(1)–(4).

<sup>16</sup> 415 ILCS 5/28.1(a) (2006).

<sup>17</sup> 415 ILCS 5/27(a).

<sup>18</sup> **Exhibit 3** – *Lisa JN Bradley*, Report on Old Meredosia Risk Evaluation, Meredosia, Illinois, HALEY & ALDRICH, April, 2023.

which are adjacent to Old Meredosia, stopped receiving ash for disposal in December 2011. *Id.* at § 1.1. Ameren submitted a revised Closure Plan for both ponds to the IEPA on February 16, 2017, which the IEPA approved on March 8, 2017. *See generally* **Exhibit 1** (MPSCP). In connection with the MPSCP, the IEPA approved a 211.94-acre GMZ pursuant to 35 Ill. Admin. Code Section 620.250; said GMZ encompasses a three-dimensional area beneath the closed ash ponds and the surrounding area. **Exhibit 3** (HA Bradley Report), Figure 2 (GMZ Map). Closure of the Fly Ash and Bottom Ash ponds in accordance with the MPSCP Documents was complete on December 5, 2018.<sup>19</sup> Ameren subsequently submitted its Construction Quality Assurance (“CQA”) Closure Completion Report on January 31, 2019. Pursuant to the approved Plan, Ameren began submitting Annual Reports documenting post-closure activities in March 2020. Ameren expended approximately \$12.0 million to close the Fly Ash and Bottom Ash Ponds pursuant to the MPSCP. *See id.* With the closure of these two remaining ponds, the MPS facility is fully closed.

#### **A. Background**

Central Illinois Public Service Company (“CIPS”), a predecessor of Ameren, began operation of the Meredosia power plant in 1948, several decades before the creation of IEPA in the spring of 1970. CIPS placed the bottom ash and fly ash from the operation of the Meredosia facility in Old Meredosia prior to IEPA’s existence. In spring 1971, CIPS applied to the newly formed IEPA for a permit to build the Bottom Ash and Fly Ash Ponds. IEPA granted this permit on July 9, 1971, noting that the project consisted of a fly ash storage basin of 1 million cubic yards and a bottom ash storage basin of 300,000 cubic yards, and that these

---

<sup>19</sup> *Ramboll*, 2021 Annual Report: Meredosia Power Station, Project No. 1940100700, § 1.1 (Mar. 25, 2022), available at <https://www.ameren.com/company/environment-and-sustainability/managing-coal-combustion/inactive-basins/meredosia>.

ponds would discharge to the Illinois River in accordance with plans and specifications submitted by the registered professional engineers working with CIPS. **Exhibit 4.**<sup>20</sup> The permit did not require CIPS to take any action related to the closed Old Meredosia. *Id.*

On October 18, 1972, Congress passed Public Law 92-500 to amend the Federal Water Pollution Control Act into what is now known as the Clean Water Act and to establish the National Pollutant Discharge Elimination System (“NPDES”).<sup>21</sup> Under the new NPDES program, the Bottom Ash and Fly Ash ponds required an NPDES permit. In February 1973, IEPA denied CIPS’ application for a permit to operate the MPS, asserting the two ponds exceeded effluent limitations. Upon challenge of the IEPA’s denial of the company’s new NPDES permit application, the Pollution Control Board reversed – finding, on February 14, 1975, that “the trace amounts in Petitioner’s effluent at Hutsonville and Meredosia are not sufficient grounds to deny the Petitioner its permits.”<sup>22</sup> Clear from the above discussion and permit history is the fact that Old Meredosia was irrelevant to the then new and developing environmental regulatory regimes; it was not discharging to the Illinois River – instead, it had been closed.

Specifically important to this Adjusted Standard Petition is the fact that Old Meredosia ceased receiving CCR, closed, and was capped with native materials from the Illinois River well before not only the enactment of the federal Clean Water Act NPDES program, but also well before the federal enactment of RCRA on October 21, 1976. **Exhibit 2** (HA Putrich Report), p. 3. As such, it was closed by the best engineering standards that existed at the

---

<sup>20</sup> **Exhibit 4** – the July 9, 1971 CIPS Permit, along with the application and reviewer’s notes.

<sup>21</sup> See 33 U.S.C. § 1342.

<sup>22</sup> See Illinois Pollution Control Board’s February 14, 1975 Order in PCB 74-149, at p. 7 (available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-35850>)

time, well before any federal or IEPA programs existed relative to its closure.

**B. Current Description of Old Meredosia**

Presently, Old Meredosia is no longer geomorphologically considered a pond due to its convex, raised nature. **Exhibit 5**.<sup>23</sup> Rather, Old Meredosia is a man-made dirt mound that was constructed above the floodplain and is therefore isolated and separate from other designated waters of the United States. **Attachment A** (2023 WSP Site Investigation Report) to **Exhibit 2** (HA Putrich Report), at § 2.2. Clay and sand materials were used to cap Old Meredosia and range from 1-6 feet in thickness. **Attachment B** (2022 Geotechnology Sampling and Testing Report) to **Exhibit 2** (HA Putrich Report), at p. 1. Old Meredosia is approximately 17 acres, with ash ranging between 9-11.5 feet in thickness. **Exhibit 2** (HA Putrich Report) at pp. 3–4. The vegetation and tree growth established on the footprint of Old Meredosia includes over 10 acres (about half the area of Chicago's Millennium Park) of deciduous forest. *Id.* The majority of the remaining 7 acres are vegetated with shrub-scrub and undeveloped herbaceous/grassland cover. *Id.* This vegetation, tree growth, and natural cover have resulted in Old Meredosia becoming a suitable habitat for the following protected species: Indiana bat, northern long-eared bat, tricolored bat, gray bat, bald eagle, northern harrier, Illinois chorus frog, monarch butterfly, regal fritillary, decurrent false aster, and Eastern prairie fringed orchid. *See Attachment A* (WSP Report) to **Exhibit 2** (HA Putrich Report) at Table 3-2. Moreover, there are thirteen migratory birds of conservation concern that could be near Old Meredosia. **Attachment A** (WSP Report) to **Exhibit 2** (HA Putrich Report) at Table 3-3.

Independent from the history and current natural resources status of Old Meredosia,

---

<sup>23</sup> **Exhibit 5**- Elevation Rendering of Old Meredosia.

Ameren begun discussions with IEPA as to closure of the Fly Ash and Bottom Ash Ponds and – importantly – closed those ponds consistent with the plans presented to and approved by IEPA.

Old Meredosia is separated from the Illinois River by the adjacent Fly Ash and Bottom Ash Ponds, each of which maintain groundwater monitoring systems. *See Figures 1 & 3* within **Exhibit 3** (HA Bradley Report). Also, the area encompassed by Old Meredosia is in the GMZ of the Fly Ash and Bottom Ash Ponds that were closed with IEPA approval. *See Figure 2* within **Exhibit 3** (HA Bradley Report).

Notably, Old Meredosia has been closed for so long that it is not even included in the list of CCR surface impoundments maintained by the United States Environmental Protection Agency (“USEPA”) and referenced in the Court’s opinion in *Util. Solid Waste Activities Grp. v. Env’tl. Prot. Agency*.<sup>24</sup> To date, the IEPA has never requested that Ameren take any action with regards to closure of Old Meredosia, even as Ameren proceeded to obtain closure of the other two ponds at the Meredosia facility. Further, while the USEPA’s Risk Assessment of Coal Combustion Residuals, used in the Part 845 rulemaking proceedings, acknowledges the closure of Old Meredosia,<sup>25</sup> the IEPA indicated that Ameren had three CCRSIs at Meredosia and declined to acknowledge that Old Meredosia was closed.<sup>26</sup>

---

<sup>24</sup> 901 F.3d 414, 434 (D.C. Cir. 2018) (citing Regulatory Impact Analysis for EPA’s Proposed RCRA Regulation of Coal Combustion Residues, *Information Request Responses from Electric Utilities* (April 30, 2010), available at [https://archive.epa.gov/epawaste/nonhaz/industrial/special/fossil/web/xlsx/survey\\_database\\_041212.xlsx](https://archive.epa.gov/epawaste/nonhaz/industrial/special/fossil/web/xlsx/survey_database_041212.xlsx)).

<sup>25</sup> U.S. ENVTL. PROTECTION AGENCY, EPA-HQ-RCRA-2009-11993, HUMAN & ECOLOGICAL RISK ASSESSMENT OF COAL COMBUSTION RESIDUALS (2014), pp. A-1-5 & A-2-27, available at <https://www.regulations.gov/document/EPA-HQ-RCRA-2009-0640-11993>.

<sup>26</sup> *See IEPA’s Statement of Reasons*, R20-19, pp. 36–37 (Mar. 30, 2020), available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-102005>.

**VI. DESCRIPTION OF THE IMPACT OF PETITIONER'S ACTIVITIES ON THE ENVIRONMENT (35 ILL. ADMIN. CODE 104.406(g))**

The following discussion summarizes relevant technical details concerning site geology and groundwater quality at the former Meredosia Station and the environmental impacts of Old Meredosia.

**A. Site Geology**

Although called an ash pond, Old Meredosia is a large mound of dirt in a densely wooded area covered with mature trees and other flora. *See Exhibit 5; Exhibit 2* (HA Putrich Report), pp. 3–4. Moreover, Old Meredosia does not contain water, does not act as an impoundment, and was not on the USEPA's list of CCRSIs when USEPA conducted its risk assessment in promulgating Part 257, even though the Old Ash and Fly Ash Ponds were on said list.<sup>27</sup> Although former ash ponds typically do not qualify as jurisdictional waters of the United States due to their manmade and isolated characteristics, some former ash ponds have been shown to exhibit wetland functional characteristics when the saturation zone is at or near the surface. **Attachment A** (WSP Report) to **Exhibit 2** (HA Putrich Report) at §3.2.2. Old Meredosia, however, has a deep sand cover and the well-established vegetation consistently removes moisture from the soil through evapotranspiration processes, resulting in dry surface soils at Old Meredosia that do not exhibit wetland functional characteristics. *Id.*

Further, the ash strata within Old Meredosia are above the groundwater table, meaning that there is always separation between the buried ash and the groundwater table – even during periods when the water table is at a seasonal high. **Exhibit 2** (HA Putrich Report), p. 6. In addition, Old Meredosia is located within the GMZ which was authorized by the IEPA upon

---

<sup>27</sup> *See* Footnote 25, *supra*.



the closure of the Fly Ash and Bottom Ash Ponds at Meredosia and, as such, any impacts from Old Meredosia on groundwater would be subject to monitoring and annual reporting. Specifically, the lowest portion of Old Meredosia is 445.9 feet above mean sea level, and a seasonal high groundwater table evaluation revealed that groundwater surrounding Old Meredosia was 431.4 feet above mean sea level at the highest, a difference of 14.5 feet. *See Exhibit 2* (HA Putrich Report), pp. 4–5. The highest measured groundwater levels near Old Meredosia were recorded on June 4, 2019, when the peak elevation was 443, with the highest groundwater elevations observed in the southwest corner of the pond footprint. *Id.* at 5. During high river water levels, the groundwater reverses directions and flows towards the East. *Id.* Under historical flood conditions, Old Meredosia has not been inundated from surface waters nor a rising groundwater table. **Attachment B to Exhibit 2** (HA Putrich Report), p. 2. Therefore, precipitation that percolates through the cap is the only liquid meeting the ash material rather than rising levels of groundwater. *Id.* The natural evapotranspiration processes occurring at Old Meredosia reduce the risk of additional pressure by effectively pumping water from the soil and subsoil, which minimizes the amount of downgradient water movement and reduces the likelihood of exerting hydraulic head above the buried ash. **Attachment A** (WSP Report) to **Exhibit 2** (HA Putrich Report), at § 4.

#### **B. Groundwater Quality**

A review of the location of water supply wells within a one-mile radius of the MPS indicated that 20 private water supply wells are located within a one-mile radius of the MPS, but five of those are located on the west side of the Illinois River, and the wells closest to the station are approximately 340 feet to the south and southeast of Old Meredosia (i.e., upgradient of Old Meredosia). **Exhibit 3** (HA Bradley Report), § 1.6. Further, the MPS has a GMZ that can and

does provide information relative to groundwater impacts. The MPS has a GMZ that includes Old Meredosia. When Ameren submitted its closure plan for the Meredosia Fly Ash and Bottom Ash Ponds, Ameren included a discussion identifying the existence of Old Meredosia. **Exhibit 1**, §3.0. IEPA did not require any actions specific to closing Old Meredosia as part of the closure of the Fly Ash and Bottom Ash Ponds.

Geotechnology Inc. performed a liquefaction analysis study on the MPS; the study was submitted to the Illinois Department of Natural Resources (IDNR) on September 20, 2017, to demonstrate to IDNR that the berms at Old Meredosia and the Fly Ash Pond no longer need be subject to IDNR's dam safety regulations. The study included information and investigation relevant to Old Meredosia that is relevant here. To summarize the investigation, six about 25 feet deep cone penetration test (CPT) soundings were performed as to Old Meredosia and eight, about 25 feet CPT soundings as to the Fly Ash Pond. Direct push samples from the impounded ash were collected about 24 feet deep in Old Meredosia and about 24 feet in the Fly Ash Pond. *See Attachment D* (2017 Geotechnology Liquefaction Analysis) to **Exhibit 2** (HA Putrich Report).

Geotechnology analyzed the CPT data for liquefaction potential and dynamic (post liquefaction) settlement utilizing a design PGA of 0.08g and an earthquake magnitude of 7.5. The analysis incorporated the results of the laboratory tests to refine the fines content within the soundings. Based on the liquefaction results there were not potentially liquefiable layers identified within the impounded ash. Ameren records show the design of the old pond, with a top of berm elevation of 460 and bottom at 450, well above the groundwater elevation as indicated by CPT O002 (-29' to water table, i.e., 441'+/-) and CPT O003 (-26' to water table, i.e. 444'+/-) in the liquefaction study, as well as out of the record flood elevation of 446.86'.

Further, when responding to the IEPA's specific question regarding whether "Ameren

obtained site specific data on what the water level is with in the footprint of the [Old Meredosia]?",

Ameren's witness, Gary King provided pre-filed testimony addressing the question, stating:

Geotechnology analyzed the CPT data for liquefaction potential and dynamic (post liquefaction) settlement utilizing a design PGA of 0.08g and an earthquake magnitude of 7.5. The analysis incorporated the results of the laboratory tests to refine the fines content within the soundings. Based on the liquefaction results there were not potentially liquefiable layers identified within the impounded ash. Ameren records show the design of the old pond, with a top of berm elevation of 460 and bottom at 450, well above the groundwater elevation as indicated by CPT O002 (-29' to water table, i.e. 441'+/-) and CPT O003 (-26' to water table, i.e. 444'+/-) in the liquefaction study, as well as out of the record flood elevation of 446.86'. In responding to the study and Ameren's request, on April 12, 2019, IDNR concluded there are no structures at the Meredosia Power Station which are jurisdictional under the Part 3702 rules stating as follows:

\* \* \*

Old Ash Pond [Old Meredosia] - The investigation shows that the material within the structure is no longer capable of acting as a fluid. By definition, the structure is no longer intended to provide impoundment and is not considered to be a dam.

**Exhibit 6.**<sup>28</sup>

**1. Groundwater Monitoring Network**

With IEPA's approval, Ameren established a GMZ pursuant to the Board's groundwater regulations, specifically 35 Ill. Adm. Code Section 620.250 at its Meredosia facility as part of the process of closing the Fly Ash and Bottom Ash Ponds. The area encompassed by Old Meredosia is within the GMZ of the two other ponds at the Meredosia site closed with IEPA approval. *See Figure 3* within **Exhibit 3** (HA Bradley Report). Ameren provides reports annually as to the Meredosia site relative to groundwater impacts.

---

<sup>28</sup> **Exhibit 6** - Pre-Filed Answers of Gary King, R20-19, p. 24 (Sep. 24, 2020).

## 2. Groundwater Flow

The groundwater flow direction and gradient are based on groundwater elevations observed during several monitoring events. While flow direction at the site can vary due to proximity to the Illinois River, during normal river conditions the groundwater flow direction is typically toward the Illinois River, to the northwest.

### C. Anticipated Environmental Impact of Complying with Part 845

Old Meredosia is now characterized by 10.2 acres of deciduous forest, 2.3 acres of shrub-scrub, 3.5 acres of undeveloped herbaceous/grassland cover, and 1.3 acres of developed, low intensity land. **Attachment A** (WSP Report) to **Exhibit 2** (HA Putrich Report), § 3.2.1. This terrain provides a habitat for an array of common wildlife species, including American goldfinches, downy woodpeckers, northern cardinals, black-capped chickadees, American robins, yellow-rumped warblers, mourning doves, tufted titmice, turkey vultures, white-tailed deer, eastern cottontails, eastern gray squirrels, Virginia opossums, raccoons, and eastern moles. *Id.* at § 3.2.3.

Notably, Old Meredosia is also a suitable habitat for various sensitive species of animals, including bald eagles, Indiana Bats, Northern long-eared bats, tricolored bats, and the Illinois Chorus Frog. *Id.* at § 3.2.4.1. This habitat, which includes a bald eagle nest, has not been disturbed for over 50 years. Taking steps to “close” Old Meredosia under Part 845 would necessarily result in tree and vegetation removal and disruption, which would result in a net loss of ecosystem value. *Id.* at § 4. During the “closure” process, mobile wildlife present on Old Meredosia would disperse to adjacent or similar habitats, but less mobile wildlife and those species that are more limited in their habitat preferences may be adversely impacted by the inability to find a suitable replacement habitat in the vicinity. *Id.* Removing the deciduous forestry and shrub-scrub to “close” Old

Meredosia would directly impact the migratory birds that nest onsite and is thus subject to regulatory compliance in accordance with the Migratory Bird Treaty Act.<sup>29</sup> Additionally, removing Old Meredosia's deciduous forestry during "closure" would eliminate the suitable foraging and summer roost habitat present onsite and in the vicinity for the bat species. *Id.* at § 4.

An established bald eagle nest is present on the site's western portion, and four bald eagles have been observed near Old Meredosia, indicating that the nest is viable and active. *Id.* The Bald and Golden Eagle Protection Act ("BGEPA") makes it unlawful for anyone, without a permit issued by the Secretary of the Interior, to "take" bald or golden eagles, including their parts, nests, or eggs.<sup>30</sup> BGEPA defines the term "take" to include "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb."<sup>31</sup> Regulations further define the term "disturb" as any action that agitates or bothers a bald or golden eagle to a degree that causes, or is likely to cause, injury to an eagle, a decrease in its productivity or nest abandonment by interfering with normal breeding, feeding, or sheltering behavior.<sup>32</sup> In addition to the immediate "take" associated with the destruction of the bald eagle nest observed at Old Meredosia, these definitions would also cover effects that will result from the human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagles' return, such alterations agitate or bother the eagles to a degree that it interferes with or interrupts their normal breeding behavior, reproductive success, feeding, or sheltering habitats, and causes injury, death, or nest abandonment.

The Illinois Chorus Frog ("ICF") is a threatened species native to Illinois and spends

---

<sup>29</sup> 16 U.S.C. § 703 *et seq.*

<sup>30</sup> 16 U.S.C. § 668 (a).

<sup>31</sup> 16 U.S.C. § 668c.

<sup>32</sup> 50 C.F.R. § 22.6.

roughly 85% of its life burrowed underground in sparsely vegetated areas with sandy soil near breeding ponds. **Attachment A** (WSP Report) to **Exhibit 2** (HA Putrich Report), § 3.2.4.3. Due to the fossorial nature of the ICF, population surveys are impractical except during breeding season when they are vocalizing at their breeding ponds. *Id.* Because survey methods are not available for the terrestrial habitat of the ICF, the Illinois Natural History Survey recommends that ICF “presence should be assumed in an area if it contains sandy soil and is within 1 mile of an occupied breeding pond.”<sup>33</sup> ICF breeding has been recorded within 1 mile of Old Meredosia, and thus it should be assumed that there is an ICF presence at Old Meredosia given the deep sand cover. **Attachment A** (WSP Report) to **Exhibit 2** (HA Putrich Report), § 3.2.4.3. Under the Illinois Endangered Species Protection Act (“IESPA”), it is unlawful for any person to “take” any threatened animal species, which, in reference to animals, means “to harm, hunt, shoot, pursue, lure, wound, kill, destroy, harass, gig, spear, ensnare, trap, capture, collect, or to attempt to engage in such conduct.”<sup>34</sup> The extensive construction activities that would be required in conjunction with “closure” of Old Meredosia would harm, harass, and potentially kill or destroy any ICF present and thus constitute a “take” under the IESPA.

Conducting “closure” activities at Old Meredosia would also remove numerous plant species with high conservation values and disrupt the natural evapotranspiration function they provide. *See Attachment A* (WSP Report) to **Exhibit 2** (HA Putrich Report), §§ 3.2.1, 4. The ash at Old Meredosia is buried up to eight feet below grade, and rain is the only surface water input. *Id.* at § 4. The trees and other vegetation present on site have extensive root systems that effectively pump water from the soil, minimizing the potential for additional pressure on

---

<sup>33</sup> Conservation Guidance for Illinois Chorus Frog, PRAIRIE RES. INST.: ILL. NAT. HIST. SURV., p. 9, available at <https://www.ideals.illinois.edu/items/98219> (last visited Apr. 28, 2023).

<sup>34</sup> 520 ILCS 10/2 & 3(1).

groundwater that may otherwise promote the transportation of ash constituents from Old Meredosia to offsite areas. *Id.* Removal of this vegetation would interrupt this natural process that is controlling constituent transport. *Id.* Although there are perceived benefits with covering in place or removing the ash under Part 845, such as a degree of infiltration reduction and additional drainage control, Old Meredosia in its current condition presents no risks and the implementation of a Part 845 closure would not provide any notable benefit to the overall environmental protectiveness of the site. **Exhibit 2** at p. 11.

In addition to the destruction of wildlife at Old Meredosia, implementing a Part 845 closure would generate fugitive dust and would require extensive fuel consumption. *Id.* at 12. At a minimum, this would require excavators, loaders, bulldozers, rollers, and haul trucks. *Id.* In the case of closure by removal, it is estimated that 400,000 cubic yards of vegetation would need to be removed along with existing cover soils and CCR material, which would be transported to an off-site landfill by the truckload. *Id.* It would take approximately 30,000 truckloads. *Id.* In the case of closure with a final cover system, approximately 175,000 cubic yards of earthen materials would be required to construct the low-permeability and final protective soil layers, which would take approximately 15,000 truckloads. *Id.* Along with the fuel consumption and emissions Part 845 closure would require, landfill space will be taken up by removed CCR in the case of closure by removal and soil would need to be taken from an off-site source in the case of closure with a final cover system. *Id.* Taking 175,000 cubic yards of soil and earthen material from another site would require additional fuel consumption and emissions and potentially harm two or more habitats instead of just Old Meredosia's. *Id.* It is estimated that covering Old Meredosia in place would cost \$4–6 million, and that removing the CCR would cost \$12–15 million. *Id.* at 14. Either closure option “would result in a net loss of ecosystem value and potential direct and indirect

effects on notable species and habitats.” **Attachment A** (WSP Report) to **Exhibit 2** (HA Putrich Report), § 4. These monetary and environmental costs will be avoided by the Board granting this Adjusted Standard, as proposed.

**VII. DESCRIPTION OF EFFORTS TO COMPLY (35 ILL. ADMIN. CODE 104.406(e))**

The Board regulations require Ameren to describe the efforts necessary to comply with the regulations of general applicability. Ameren expended \$12.1 million for its closure of the Fly Ash and Bottom Ash Ponds at Meredosia which surround and provide monitoring for Old Meredosia. Old Meredosia has been closed for almost fifty years – and was understandably not required to “re-close” by the IEPA with its approval of the MPSCP. Since Part 845 was a rule of general applicability, the Board was reluctant to deal with site specific issues in its promulgation of Part 845. Without the regulatory relief requested herein, the IEPA intends to include Old Meredosia in new regulatory requirements that have been developed for the closure of existing ash ponds – not ash ponds which are dewatered, covered, and have mature, thriving ecosystems that are now fifty years old. In addition, Old Meredosia is enclosed within a groundwater management zone which was developed for the closure of the MPS generally. In its August 3, 2020, Response to pre-filed questions during the rulemaking process for Part 845, IEPA provided a list of 73 facilities in the State that have existing, inactive, or inactive closed CCR surface impoundments that could be affected by Part 845. Old Meredosia was identified on that list as inactive and (erroneously) not closed.

**VIII. NARRATIVE DESCRIPTION OF PROPOSED ADJUSTED STANDARD (35 ILL. ADMIN. CODE 104.406(f))**

Ameren requests that the Board determine that Old Meredosia is not a CCRSI, as defined by Section 3.143 of the Act and otherwise not covered by Part 845. Should the Board make such a determination, Ameren proposes the following language for the Board’s finding:



The Board finds that Ameren has presented sufficient evidence that Old Meredosia is not subject to Part 845 and, accordingly, dismisses Ameren's petition as unnecessary.

As an alternative to such a determination by the Board, Ameren requests an Adjusted Standard providing that the only provisions of Part 845 which apply to Old Meredosia, which was closed before any regulatory scheme for closure existed and is located entirely within an existing GMZ, are Section 845.760(h)<sup>35</sup> and the entirety of Subpart I. Petitioner requests that, should the Board grant Petitioner an Adjusted Standard, said standard should read as follows:

Pursuant to Section 28.1 of the Environmental Protection Act (415 ILCS 5/28.1), the Illinois Pollution Control Board (the "Board") grants Ameren Energy Medina Valley Cogen, LLC (Ameren) an Adjusted Standard as follows:

- (1) The inactive Old Ash Pond at Meredosia Power Station ("Old Meredosia") ceased accepting CCR and was capped with native materials in the early 1970's, prior to the existence of any regulatory procedures that could have been followed for closure. Old Meredosia has not been operational, and coal ash has not been deposited at the site for over fifty years. In the intervening time, ten acres of deciduous forest and seven acres of shrub-scrub, herbaceous/grassland cover have grown on the site, which has become a suitable habitat for various protected species, including an established bald eagle

---

<sup>35</sup> (h) Deed Notations

(1) Following closure of a CCR surface impoundment, the owner or operator must record a notation on the deed to the property, or some other instrument that is normally examined during title search.

(2) The notation on the deed must in perpetuity notify any potential purchaser of the property that:

(A) The land has been used as a CCR surface impoundment; and

(B) Its use is restricted under the post-closure care requirements as provided by Section 845.780(d)(1)(C) or groundwater monitoring requirements in Section 845.740(b).

(3) Within 30 days after recording a notation on the deed to the property, the owner or operator must submit to the Agency a notification stating that the notation has been recorded. The owner or operator must place the notification in the facility's operating record as required by 845.800(d)(26). 35 ILL. ADMIN. CODE § 845.760(h).

nest. The destruction of this suitable habitat to perform closure in conformity with the Board's Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments ("CCRSIs"), 35 Ill. Admin. Code Part 845, would cause more environmental harm than benefit, and would constitute a take of the protected species, punishable under federal and state law. Old Meredosia is geographically proximate to two closed CCRSIs at Meredosia Power Station with closure plans that created a groundwater monitoring zone that includes the geographic area of Old Meredosia, such that any impacts from Old Meredosia will be ascertained and addressed pursuant to those closure plans and any relevant permitting applicable to those two closed CCRSI's.

(2) Therefore, Ameren is granted this Adjusted Standard, which will exempt it from Part 845's closure and post closure provisions. Unless otherwise provided below, the provisions of Part 845 shall not be applicable to Old Meredosia:

- a. Ameren shall record a notation on the deed to the parcel on which Old Meredosia is located in accordance with 35 Ill. Admin. Code Section 845.760 (h).
- b. Ameren shall maintain financial assurance for Old Meredosia, in accordance with 35 Ill. Admin. Code 845, Subpart I.

**IX. STATEMENT OF JUSTIFICATION (35 ILL. ADMIN. CODE 104.406(H))**

Consistent with Section 28.1(c) of the Act, Petitioner has demonstrated that it is entitled to an Adjusted Standard from the Board's Part 845 regulations.<sup>36</sup>

---

<sup>36</sup> See 415 ILCS 5/28.1(c).

**A. Factors relating to Petitioner are substantially different from factors relied upon by the Board in Part 845, thus justifying an Adjusted Standard.**

As a general proposition, and as stated above, Old Meredosia is substantially different than the CCRSIs intended to be covered by the Board's Part 845 regulations – which, as noted by the participants at hearing, is a “rule of general applicability” relative to the closure and post-closure care of existing CCRSIs, consistent with federal rules that derived from RCRA. Yet, as explained at length above and below, Old Meredosia is not subject to RCRA, as it was closed before its enactment. Further, unlike the existing ash ponds Sections 22.59 and 3.143 of the Act are intended to regulate, Old Meredosia has not accepted CCR for almost fifty years. As such, it no longer contains water, cannot be considered an embankment or an impoundment, and is not identified by the USEPA on its list of legacy ponds. Yet, nonetheless, the area encompassing Old Meredosia is within the GMZ established by the MPSCP so that any unexpected impacts from Old Meredosia will be understood and addressed pursuant to that Plan, as part of the Part 845 obligations of the adjacent and existing CCRSIs at Meredosia. Ameren offers that this set of circumstances does not exist at any other site in the State.

Further, unlike “legacy ponds” (a term that was loosely used in the Part 845 hearing without regard to any specific facts or sites), Old Meredosia is not a pond of any sort and currently has a forest of trees growing on it. Simply put, it is not a “pond” at all and poses little to no environmental risk—certainly nothing like the risks related to “legacy ponds” that the USWAG court referenced in its opinion. In fact, Old Meredosia is not even among the inventory of sites discussed in that case.<sup>37</sup>

---

<sup>37</sup> See *Util. Solid Waste Activities Grp. v. Env'tl. Prot. Agency*, 901 F.3d at 434 (citing Regulatory Impact Analysis for EPA's Proposed RCRA Regulation of Coal Combustion Residues, Information Request Responses from Electric Utilities (April 30, 2010), available at [https://archive.epa.gov/epawaste/nonhaz/industrial/special/fossil/web/xlsx/survey\\_database\\_041212.xlsx](https://archive.epa.gov/epawaste/nonhaz/industrial/special/fossil/web/xlsx/survey_database_041212.xlsx)).

As stated in Section II, *supra*, Old Meredosia is not a “surface impoundment” as defined by Section 3.143 of the Act. The Act uses the exact same definition of “CCR surface impoundment” as is found in the CCR Rule: “*a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.*”<sup>38</sup> Old Meredosia’s geomorphology clearly illustrates that the location is not “*a natural topographic depression*” nor is it designed “*hold an accumulation of CCR and liquids*”. Further, Old Meredosia’s closure predates the entire regulatory structure established by the USEPA and IEPA such that there was no regulatory procedure that could have been followed when Old Meredosia closed. Nonetheless, it was closed pursuant to industry standards in place at the time and as set forth herein, serves as an environmental benefit – not a detriment.

These factors, unique to Old Meredosia, are clearly and substantially different from those factors relied upon by the Board when it promulgated Part 845, as well as the legislature when it adopted Section 22.59 of the Act and Congress when it adopted the CCR Law. Thus, an Adjusted Standard is appropriate for Ameren.

**B. The requested standard will not result in substantially and significantly more adverse environmental or health effects.**

There will not be any resulting substantial or adverse environmental or health effects of not applying Part 845 to Old Meredosia. As discussed in Section VI(C), imposing Part 845 obligations on Old Meredosia will result in the destruction of a mature and thriving ecosystem.

Old Meredosia does not presently hold water, groundwater impacts are not anticipated, and the area is within the GMZ established pursuant to the MPSCP documents. *See Exhibit 1* (MPSCP

---

<sup>38</sup> 415 ILCS 5/3.143 (emphasis added); 40 C.F.R. § 257.53 (emphasis added).

Documents). Any risks from the area will be identified and addressed through said GMZ. There are 20 private supply wells located within the one-mile radius of Old Meredosia, five of those are on the west side of the Illinois River and the closest wells to the station are approximately 340 feet away in an upgradient direction. **Exhibit 3**, (HA Bradley Report), § 1.6.

In 2017, Ameren engaged Geotechnology to conduct a liquefaction analysis study the results of which demonstrated that the ash strata within Old Meredosia is above the groundwater table, the material within the structure is no longer capable of acting as a liquid and the structure is no longer considered an impoundment. *See Attachment D* (2017 Geotechnology Liquefaction Analysis) to **Exhibit 2** (HA Putrich Report).

When Ameren submitted its closure plan for the Meredosia Fly Ash and Bottom Ash Ponds, Ameren included a brief discussion identifying the existence of Old Meredosia. IEPA did not require any actions specific to investigating or closing Old Meredosia as part of the closure of the Fly Ash and Bottom Ash ponds. The IEPA never asked Ameren to address any issues at Old Meredosia, nor did it ever seek to include it in the Closure Plan during its review and approval. Further, the USEPA's risk assessment, which it relied on in promulgating Part 257, does not even acknowledge the Meredosia Old Ash Pond.<sup>39</sup>

The Part 845 closure requirements, if required to be applied to Old Meredosia, would cause more environmental harm than they would achieve in environmental benefit. It is unnecessary to regulate Old Meredosia under Part 845, particularly because doing so would mean clearing nearly ten acres of trees and seven acres of mature vegetation and destroying a mature and thriving ecosystem that has been undisturbed for fifty years. Construction could last years or more, potentially consuming substantial amounts of diesel fuel due to the construction equipment

---

<sup>39</sup> See Footnote 25, *supra*.

required for the closure.

**X. CONSISTENCY WITH FEDERAL LAW (35 ILL. ADMIN. CODE 104.406(i))**

Ameren's proposed standards are consistent with federal law because the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901, *et. seq.*, and hence the federal CCR rules, do not apply to Old Meredosia. The federal standards for the disposal of CCR in landfills and surface impoundments, found at 40 C.F.R. Part 257, Subpart D, specifically exempt CCR landfills that have ceased receiving CCR prior to October 19, 2015 and electric utilities that have ceased producing electricity prior to October 19, 2015.<sup>40</sup> RCRA, the enabling federal statute for Part 257 does not contemplate within its regulatory ambit areas which were closed and ceased accepting waste prior to its promulgation. An analysis of relevant law on this point follows.

RCRA is "essentially a codification of common law public nuisance remedies" which "incorporates the legal theories used for centuries to assess liability for creating a public nuisance . . . ." <sup>41</sup> Under RCRA, "[a]ll individuals and all forms of business entities which generate, transport, store, or dispose of hazardous wastes" in a manner regulated by RCRA must comply with its regulations.<sup>42</sup>

Under RCRA, the act of open dumping is prohibited, and an action can be brought against any person engaging in open dumping.<sup>43</sup> However, to be found liable under RCRA, one must actively engage in contaminating the site.<sup>44</sup> It is not enough that contamination may have occurred

---

<sup>40</sup> 40 C.F.R. § 257.50 (d) & (e).

<sup>41</sup> *Cox v. City of Dallas, Tex.*, 256 F.3d 281, 291–92 (5th Cir. 2001) (*quoting* S.Rep. No. 98-172, at S (1979), reprinted in 1980 U.S.C.C.A.N 5019, 5023).

<sup>42</sup> *Modern federal environmental statutes—The Resource Conservation and Recovery Act (RCRA)*, 1 ENVTL. INS. LITIG.: L. & PRAC. § 1:46 (2020).

<sup>43</sup> See 42 U.S.C. § 6972(a)(1)(A) (permitting suit against any person alleged to be in violation of RCRA), § 6945(a) (RCRA provision prohibiting open dumping).

<sup>44</sup> See *S. Rd. Assocs. v. Int'l Bus. Machines Corp.* ("South Road"), 216 F.3d 251, 254 (2d Cir. 2000).

prior to the enactment of RCRA.<sup>45</sup> Indeed, RCRA's ban on open dumping can only be applied prospectively, not retroactively.<sup>46</sup>

To the extent Ameren's activities could be considered open dumping under RCRA—a point which Ameren vigorously disputes—any activity which could form the basis for RCRA liability occurred prior to the enactment of RCRA. Specifically, Ameren stopped depositing coal ash into Old Meredosia in the early 1970s, several years before RCRA was enacted.<sup>47</sup> As a result, Ameren's depositing of coal ash into Old Meredosia is the type of conduct which RCRA cannot apply to—since RCRA is “prospective only”,<sup>48</sup> it cannot create “retroactive liability”<sup>49</sup> based on Ameren's conduct, which ceased prior to the enactment of RCRA.

Here, Old Meredosia is similarly situated to the land in *Ascon* and *Mervis*. In *Ascon*, the plaintiff filed suit against defendant based on allegedly unlawful disposal of hazardous materials which occurred prior to the enactment of RCRA.<sup>50</sup> The district court dismissed the RCRA count, holding that RCRA had not been violated. The Ninth Circuit affirmed, explaining that RCRA did not impose retroactive liability and “the alleged activity occurred before the enactment of the statute.”<sup>51</sup> The Ninth Circuit affirmed, explaining that RCRA's ban on open dumping does not impose “retroactive liability” for open dumping.<sup>52</sup>

---

<sup>45</sup> See *Ascon Properties, Inc. v. Mobil Oil Co.* (“*Ascon*”), 866 F.2d 1149, 1159 (9th Cir. 1989).

<sup>46</sup> *Mervis Indus., Inc. v. PPG Indus., Inc.* (“*Mervis*”), No. 1:09-CV-0633-SEB-JMS, 2010 WL 1381671, at \*3 (S.D. Ind. Mar. 30, 2010) (“[T]he RCRA's prohibition on open dumping is prospective only and may not be applied to conduct that occurred prior to the Act's effective date.”); See also *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 488 (1996) (RCRA “permits a private party to bring suit only upon an allegation that the contaminated site presently poses an “imminent and substantial endangerment to health or the environment,” and not upon an allegation that it posed such an endangerment at some time in the past.”).

<sup>47</sup> See Pub. L. 94-580, § 2.

<sup>48</sup> *Mervis*, 2010 WL 1381671 at \*3

<sup>49</sup> *Ascon*, 866 F.2d at 1159

<sup>50</sup> See *id.* at 1151.

<sup>51</sup> *Id.* at 1159.

<sup>52</sup> *Id.* at 1159; see also *Mervis*, 2010 WL 1381671 at \*3 (“[T]he RCRA's prohibition on open dumping is prospective only and may not be applied to conduct that occurred prior to the Act's effective date.”).

In *Mervis*, the plaintiff attempted to sue a glass manufacturer for violating RCRA based on glassmaking operations it ceased in the 1930s, even though the defendant was actively attempting to remediate the site.<sup>53</sup> The District Court granted defendant's motion to dismiss, explaining that RCRA could not apply to the prior glassmaking activities because RCRA "is prospective only and may not be applied to conduct that occurred prior to [RCRA]'s effective date."<sup>54</sup>

Moreover, compliance with state-sponsored remediation plans cannot form the basis for RCRA's applicability.<sup>55</sup> In *South Road*, the plaintiff alleged (1) that the defendant violated RCRA by causing a prior exceedance of groundwater protection standards, and (2) that defendant "continued to introduce wastes" by complying with its "state-ordered remediation program."<sup>56</sup> The Second Circuit held that neither was sufficient to state a claim for violation of RCRA. First, the Court concluded—as the *Ascon* Court did—that a prior dumping of waste was not enough to state a claim for violating RCRA.<sup>57</sup> Second, the Court held that any remediation done pursuant to a "state-sponsored or state-authorized plan or program" does not create a claim under RCRA.<sup>58</sup>

In this case, Ameren has groundwater monitoring wells around Old Meredosia due to closure plans approved by the IEPA for all ash ponds at its Meredosia facility. If, as a part of maintaining those monitoring wells, or remediating exceedances which those monitoring wells record, Ameren were to remediate all or part of Old Meredosia, it still could not serve as the basis for concluding that Ameren had violated RCRA.<sup>59</sup> In effect, the only way for RCRA to apply to Old Meredosia would be for Ameren to begin depositing coal ash into Old Meredosia—something

---

<sup>53</sup> See *Mervis*, 2010 WL 1381671 at \*1.

<sup>54</sup> *Id.* at \*3.

<sup>55</sup> See *South Road*, 216 F.3d at 257.

<sup>56</sup> *Id.* at 257.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*



it cannot and will not do, since it no longer generates coal ash at its Meredosia facility.<sup>60</sup> Because RCRA and its accompanying federal regulations related to CCR do not apply to Old Meredosia, the proposed Adjusted Standard is consistent with federal law.

However, should Ameren be forced to re-close Old Meredosia in accordance with Part 845, the required closure activities would constitute “takes” under both federal and state law. As discussed in Section VI.C, *supra*, the federal BGEPA makes it unlawful to agitate or bother a bald eagle to a degree that causes, or is likely to cause, injury to the eagle, a decrease in its productivity, or nest abandonment by substantially interfering with normal breeding, feeding, or sheltering behavior.<sup>61</sup> The penalty for doing so is a mandatory criminal fine of up to \$5,000 and/or up to one year of imprisonment, and a discretionary civil fine of \$5,000.

Further, the Indiana Bat and the Gray Bat are endangered species under the federal Endangered Species Act (“ESA”) and are potentially occurring species within or near Old Meredosia. The ESA likewise makes it unlawful to “take” an endangered species and imposes a discretionary civil penalty of up to \$25,000 for each violation, and a mandatory criminal penalty of up to \$50,000 and one year in jail.

Should Ameren be required to re-close Old Meredosia in accordance with Part 845, the individuals involved would certainly be committing a take under the BGEPA and would potentially also be in violation of the ESA if Indiana Bats or Gray Bats are found during the excavation.

#### **XI. WAIVER OF RIGHT TO A HEARING (35 Ill. Admin. Code 104.406(j))**

Ameren believes that this petition is straightforward and, as such, waives its right to a

---

<sup>60</sup> *See id.* at 254 (to be found liable under RCRA, the defendant must be actively engaged in contaminating the ground).

<sup>61</sup> 50 C.F. R. § 22.6; 16 U.S.C. 668c.

hearing. Ameren would be happy to answer any questions that the Board has in writing and will respond to whatever comments or questions the IEPA may have to facilitate its statutorily required recommendation to the Board as to this Petition. Since its original filing, Ameren has addressed items suggested by the IEPA – and those items are reflected in the changes from the original petition to this Amended Petition. As no new relief is sought in this Amended Petition, renewed notice is not required pursuant to Section 104.408 of the Board’s procedural rules.<sup>62</sup>

**XII. DOCUMENTS RELIED UPON (35 ILL. ADMIN. CODE 104.406(k))**

Ameren has attached as exhibits relevant portions of the sources relied upon in this petition.

**XIII. CONCLUSION**

WHEREFORE, for all the foregoing reasons Ameren Energy Medina Valley Cogen, LLC respectfully requests that its Petition for Adjusted Standard be granted and the Board provide Ameren the relief requested herein – specifically that the Board determine Old Meredosia exempt from Part 845 and, alternatively, grant an Adjusted Standard which exempts Old Meredosia from all Subparts of Part 845 except Subpart I (Financial Assurance) and Section 845.760(h).

Dated: April 28, 2023

Respectfully submitted,  
**Ameren Energy Medina Valley Cogen, LLC,**  
**Petitioner.**

By: /s/ Claire A. Manning  
One of Its Attorneys

---

<sup>62</sup> See 35 ILL. ADMIN. CODE § 104.408.

**BROWN, HAY & STEPHENS, LLP**

Claire A. Manning, #3124724

Anthony D. Schuering, #6333319

Lucas J. Hall, #6335982

205 S. Fifth Street, Suite 1000

P.O. Box 2459

Springfield, IL 62705-2459

(217) 544-8491

[cmanning@bhslaw.com](mailto:cmanning@bhslaw.com)

[aschuering@bhslaw.com](mailto:aschuering@bhslaw.com)

[lhall@bhslaw.com](mailto:lhall@bhslaw.com)