

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4	IN THE MATTER OF:)	
)	
5	PROPOSED NEW 35 ILL. ADM.)	R01-16
6	CODE 217, SUBPART V, ELECTRICAL)	(RULEMAKING - AIR)
	POWER GENERATION)	

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The following is a transcript of the

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above-entitled cause taken before GEANNA M.

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IAQUINTA, CSR, a notary public within and for the

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County of Cook and State of Illinois, before

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HEARING OFFICER BOBB BEAUCHAMP, at Room 9-040,

16

100 West Randolph Street, Chicago, Illinois, on

17

the 19th day of December, A.D., commencing at

18

1:30 p.m.

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1 A P P E A R A N C E S:

2 ILLINOIS POLLUTION CONTROL BOARD
3 100 West Randolph Street
4 Suite 11-500
5 Chicago, Illinois 60601
6 (312) 814-6926
7 BY: MR. BOBB BEAUCHAMP, HEARING OFFICER

8 ILLINOIS POLLUTION CONTROL BOARD MEMBERS
9 PRESENT:

10 Mr. Samuel Lawton, Jr.

11 Ms. Alisa Liu

12 Ms. Marili McFawn

13 Mr. Nicholas Melas

14 Mr. Joel Sternstein

15 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY MEMBERS
16 PRESENT:

17 Ms. Vera Herst

18 Mr. Dennis Lawler

19 Mr. Christopher Romaine

20 Mr. Richard Forbes

21 OTHERS WERE PRESENT, BUT NOT LISTED ON THIS
22 APPEARANCE PAGE

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1 HEARING OFFICER BEAUCHAMP: Good afternoon.
2 My name is Bobb Beauchamp, and I'm the hearing
3 officer in this proceeding. I'd like to welcome
4 you to this hearing being held by the Illinois
5 Pollution Control Board in the matter of Proposed
6 Amendments to 35 Illinois Administrative Code
7 217, Subpart V, Electric Power Generation.
8 Today's hearing is the first day of the second of
9 three scheduled hearings in this rulemaking.

10 Present today on behalf of the
11 Illinois Pollution Control Board and seated to my
12 right is Board Member Marili McFawn. Marili
13 McFawn is coordinating this rulemaking. Seated
14 to my left is Board Member Nick Melas. To his
15 left is his assistant, Joel Sternstein. Seated
16 to Ms. McFawn's right is Alisa Liu, a member of
17 our technical staff, and to her right is Board
18 Member Sam Lawton.

19 I've placed copies of the notice and
20 the service list sign-up sheets by the door at
21 the entrance to the room. Please note that if
22 your name is on the notice list, you will only
23 receive copies of the Board's opinions and orders

24 and all hearing officer orders. If your name is

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1 on the service list, not only will you receive
2 copies of the Board's opinions and orders and all
3 hearing officer orders, but you will also receive
4 copies of all documents filed by all persons in
5 this proceeding.

6 However, also keep in mind that if
7 your name is on the service list, you are also
8 required to serve all persons on the service list
9 with all documents you file with the Board.
10 Copies of the Board's October 19th, 2000, opinion
11 and order containing the proposed rule and the
12 October 27th, 2000, hearing officer order are
13 also located on that table. You will also find
14 copies of the current notice and service lists
15 and copies of the prefiled testimony received by
16 the Board.

17 On October 16th, 2000, the Illinois
18 Environmental Protection Agency filed this
19 proposal for a rulemaking to amendment 35
20 Illinois Administrative Code Part 217, Subpart V,
21 Electric Power Generation. On October 19th,
22 2000, the Board adopted for first notice the

23 Agency's proposal. This proposal was published
24 in the Illinois Register on November 3rd, 2000,

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1 at page 16,200.

2 Pursuant to Section 28.5(h) of the
3 Environmental Protection Act, the Board shall
4 accept evidence and comments on the economic
5 impact of any provision of the rule and shall
6 consider the economic impact of the rule based on
7 the record. Under Section 27(b) of the Act, the
8 Board shall request the Department of Commerce
9 and Community Affairs, which I will refer to as
10 DCCA, to conduct an economic impact study on
11 certain proposed rules prior to adoption of those
12 rules.

13 DCCA may produce a study of the
14 economic impact of the proposed rules within 30
15 to 45 days of the Board's request. The Board
16 must make the economic impact study, or DCCA's
17 explanation for not conducting that study,
18 available to the public at least 20 days before
19 the public hearing on the economic impact of the
20 proposed rules.

21 In keeping with Section 27(b), the

22 Board has requested, by a letter dated October
23 26th, 2000, that DCCA conduct an economic impact
24 study for this rulemaking. In addition to

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1 requesting an economic impact study, the letter
2 requested that DCCA notify the Board within ten
3 days after receipt of that request whether DCCA
4 intended to conduct the economic impact study.

5 The Board further noted that if it
6 did not receive such notification, the Board
7 would rely on the March 10th, 2000, letter from
8 DCCA as a required explanation for not conducting
9 the economic impact study. The March 10th, 2000,
10 DCCA letter notified the Board that DCCA would
11 not be conducting economic impact studies on
12 rules pending before the Board because DCCA lacks
13 staff and the financial resources to conduct such
14 studies.

15 The ten days for DCCA to notify the
16 Board have expired, and the Board has not
17 received any notification from DCCA that it will
18 conduct an economic impact study on this
19 rulemaking. Accordingly, the Board has relied on
20 the March 10th, 2000, letter as DCCA's

21 explanation for not producing an economic impact
22 study. DCCA's March 10th, 2000, letter, as well
23 as the Board's October 26th, 2000, letter to DCCA
24 requesting that an economic impact study be

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1 conduct are available for review at the Board's
2 Chicago office, Office of the Clerk, James R.
3 Thompson Center, 100 West Randolph, Suite 11-500,
4 Chicago, Illinois, and copies have also been
5 provided on the door by the table -- excuse me,
6 on the table by the door.

7 The Board holds this hearing for the
8 public to comment on DCCA's explanation for not
9 conducting an economic impact study in this
10 rulemaking and also for the purpose of presenting
11 testimony, documents, and comments by affected
12 entities and other interested parties.

13 Like other Board regulatory hearings,
14 any person who testifies will be sworn
15 and subject to questioning. Moreover, this
16 hearing will be governed by the Board's
17 procedural rules for regulatory proceedings. All
18 information which is relevant and not repetitious
19 or privileged will be admitted.

20 The third hearing currently is
21 scheduled for Tuesday, January 2nd, 2001,
22 beginning at 11:00 a.m. In room 9-040 of the
23 James R. Thompson Center. It will be devoted
24 solely to any Agency response to the materials

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1 submitted at this, the second hearing. The third
2 hearing will be cancelled if the Agency indicates
3 to the Board that it does not intend to introduce
4 any additional material.

5 If the third hearing is cancelled,
6 all persons listed on the notice list will be so
7 advised through a hearing officer order. As
8 stated in the October 19th, 2000, opinion, the
9 Board is holding today's hearing consecutively
10 with the hearings in docket number R01-17 in the
11 matter of Proposed New 35 Illinois Administrative
12 Code 217, Subpart, NOx Control and Trading
13 Program for specified NOx Generating Units,
14 Subpart X Voluntary NOx emissions Reduction
15 Program, and Amendments to 35 Illinois
16 Administrative Code 211.

17 The second hearing in R01-17 is
18 scheduled to begin at 9:30 tomorrow morning in

19 room 2-025 in the James R. Thompson Center.
20 Before taking testimony regarding the economic
21 impact of the proposal, the Agency would like to
22 discuss a motion regarding the proposal and
23 address some issues raised in the first hearing.
24 After the Agency discusses these issues, we will

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1 hear from those who may want to comment on the
2 economic impact of this proposal and then from
3 those who prefiled testimony in this matter.

4 We received prefiled testimony from
5 one party, Ameren Corporation. We will ask for
6 questions of the Ameren witnesses directly
7 following their testimony.

8 Are there any questions regarding the
9 procedure we will follow this afternoon? Seeing
10 none, I would then like to ask Board Member
11 McFawn if she has anything else she would like to
12 add to my comments?

13 BOARD MEMBER McFAWN: I just want to thank
14 everyone for their patience in understanding that
15 we were delayed due to weather conditions and so
16 I, again, appreciate your understanding and your
17 patience, and to the Agency, I thank you for

18 making the trip. I know that you were subject to
19 powers beyond your control, and we're glad to
20 have that you arrived safely.

21 HEARING OFFICER BEAUCHAMP: Thank you. At
22 this time, I'd like to ask Ms. Herst from the
23 Agency if you have any matters which you would
24 like to address?

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1 MS. HERST: Yes. I believe that
2 Mr. Lawler -- we'll start by Mr. Lawler first
3 addressing issues that were raised at the last
4 hearing that we were asked to address at the
5 beginning of this hearing, and then after that,
6 we can go through the motion to amend that we
7 will be filing tomorrow.

8 HEARING OFFICER BEAUCHAMP: Very good.
9 Mr. Lawler, if we could get you to come up to the
10 front table and we'll have the court reporter
11 swear you in. Ms. Herst, if you'd like to come
12 as well and if you want to bring the panel with
13 you.

14 HEARING OFFICER BEAUCHAMP: If you can
15 swear the witnesses.

16 MR. LAWLER: Do we need to be resworn?

17 BOARD MEMBER McFAWN: It's customary.

18 (Witnesses sworn.)

19 MR. LAWLER: My name is Dennis Lawler.

20 The Board asked the Agency to address at the
21 start of this hearing several matters that were
22 raised at the first hearing. These matters
23 concern, first of all, the definition of control
24 period in part 211; secondly, the use of the

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1 terms person, owner, or operator and responsible
2 official; third, the earning of early reduction
3 credits, or ERCs, under Subpart W; and, fourth,
4 reporting requirements for units that are
5 participating in an averaging demonstration.
6 I'll take a couple minutes and talk about the
7 first three issues, and then Chris Romaine will
8 talk about the fourth one.

9 First of all, the definition of
10 control period. The Board asked why the
11 definition of control period in Part 211 would
12 not apply to Subpart V. This definition, which
13 was part of the Subpart W proposal, states, and I
14 quote, for purposes of 35 Illinois Administrative
15 Code 217, control period means the period

16 beginning March 1st of a year and ending on
17 September 30th of the same year inclusive except
18 that in 2004, control period means May 31st
19 through September 30th.

20 This reflects the order entered by
21 the U.S. Court of Appeals for the District of
22 Columbia Circuit in Michigan versus EPA. The
23 order moved the implementation date of the NOx
24 SIP Call and the rules promulgated thereunder

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1 from May 1st, 2003, to May 31st, 2004. Subpart
2 V, however, was not proposed to meet the
3 requirements of the NOx SIP Call. It has an
4 implementation date of May 1st, 2003, and adopts
5 the ozone control period otherwise used by
6 USEPA.

7 Proposed Section 217.700 in Subpart V
8 therefore provides, and I quote, the purpose of
9 this subpart is to control the emissions of
10 nitrogen oxides from electrical generating units,
11 EGUs, during the control period. For purposes of
12 Subpart V, the control period is May 1st through
13 September 30th of each year beginning in 2003,
14 unquote.

15 The Agency believes that the phrase,
16 for purposes of Subpart V, the control period is
17 May 1st through September 30th of each year
18 beginning in 2003, is sufficient to remove
19 Subpart V from the scope of the proposed
20 definition of control period in Part 211.

21 The second issue, the use of the
22 terms person, owner, or operator, and responsible
23 official, at the last hearing, the Board asked
24 how the terms person, owner or operator, and

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1 responsible official are used in Subpart V.
2 Owner or operator is used most frequently in
3 Subpart V. However, the term person appears once
4 in Section 217.706(a), which provides on or after
5 May 1st, 2003, no person subject to this subpart
6 shall cause or allow emissions of NOx into the
7 atmosphere.

8 For purposes of consistency, we have
9 changed person to owner or operator in a motion
10 that we'll be filing to appeal -- to amend. I
11 note that Subpart V uses owner or operator and
12 responsible official in the same manner as the
13 terms are used in Subpart W. As Chris Romaine

14 noted at the first hearing, responsible official
15 has a specific use. It identifies the particular
16 person who has submitted a Title 5 application
17 for a facility and provided an authoritative
18 signature for filing the report with the Agency.

19 The third issue, which was effect of
20 Subpart V on the ability to earn ERCs, early
21 reduction credits, under subpart W. Proposed
22 Subpart V has a compliance date of May 1st, 2003,
23 which means that as of that date, no EGU, with
24 the exception of those participating in an

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1 averaging demonstration, can emit NOx emissions
2 that exceed .25 pounds per million btu of actual
3 heat input during each control period.

4 At the same time, Section 217.770 of
5 Subpart W provides that for an EGU to earn early
6 reduction credits, ERCs, it must reduce its NOx
7 emissions rate at least 30 percent less than the
8 NOx emission rate specified in its Title 5 permit
9 or other applicable federally enforceable
10 permit.

11 The issue then becomes whether an EGU
12 has to reduce its NOx emissions 30 percent

13 below .25 pounds per million btu in order to earn
14 early reduction credits. It's the Agency's
15 position that proposed Section 217.770 requires
16 an EGU reduce its NOx emission rate at least 30
17 percent below .25 pounds per million btu to earn
18 ERCs in the 2003 control period.

19 The Agency notes, however, that this
20 proposed section provides that one-half of the
21 15,261 ERCs available may be earned in the 2001
22 control period. Not more than one-half may be
23 earned in the 2002 control period, and any ERCs
24 not earned in the 2001 and 2002 control periods

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1 may be earned in the 2003 control period.

2 This means that Subpart V will affect
3 the earning of ERCS only in the 2003 control
4 period and only to the extent that any ERCs are
5 available after the 2001 and 2002 control
6 periods. The Agency believes it is likely that
7 few, if any, ERCs will be available in 2003. The
8 Agency, therefore, does not believe that
9 complying with Subpart V will have a significant
10 impact only EGUs' ability to earn ERCs under
11 Subpart W.

12 To the extent that ERCs are available
13 in 2003, they are reasonably restricted to
14 sources that have gone well beyond the .25 pounds
15 per million btu required by Subpart V, and that
16 concludes my portion of the statements. Should
17 we go ahead with Mr. Romaine?

18 HEARING OFFICER BEAUCHAMP: Before we go
19 to Mr. Romaine, I'd like to ask would you like to
20 submit your statements in written form as an
21 exhibit or are you satisfied having read them
22 into the record?

23 MS. HERST: There's a lot of chicken
24 scratch.

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1 MR. LAWLER: No, not at this time.

2 HEARING OFFICER BEAUCHAMP: Okay. We'll
3 go to Mr. Romaine and then we'll see if there are
4 any questions.

5 MR. ROMAINE: I'm going to address the
6 question that Board Member McFawn asked about how
7 records would be kept for facilities that are
8 relying upon averaging. Our proposal was based
9 on the presumption that adequate records or
10 reports would be required under the Acid Rain

11 Program.

12 Certainly, there are significant
13 penalties under the Acid Rain Program for
14 inadequate records. So we do have a body of
15 enforcement to assume the adequacy of those
16 records. Nevertheless, we think it is
17 appropriate to explicitly state as part of
18 Subpart V that you have to have the appropriate
19 records to be able to average to show
20 compliance. Otherwise, you would not have any
21 additional consequences or penalties under
22 Subpart V if somebody didn't keep the records
23 necessary to implement it, and at this point, we
24 propose language to the effect that simply

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1 provides that someone can't average with somebody
2 else who doesn't keep appropriate records.

3 That would apply both to buyers who
4 have excess emissions, more emissions, and
5 sellers who have compliance units. I don't think
6 there would be significant consequences for that
7 knowing the population we're dealing with.
8 Obviously, everybody out there should be aware of
9 the consequences of noncompliance under the Acid

10 Rain Program, which would certainly be a very
11 significant incentive to comply, but it would
12 require people engaged in trading to exercise
13 reasonable diligence to trade with responsible
14 sources, and it might suggest they might, as part
15 of their independent activities, look at certain
16 contractual provisions to address default in that
17 their trading partner doesn't follow through on
18 the required monitoring activities.

19 We've thought about the other
20 choices. Certainly, we would
21 require -- could require people involved in
22 averaging to have records for every other unit
23 involved in the averaging plan. That would be
24 burdensome, and we wouldn't believe it anyway.

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1 We'd still go back to the primary records, and
2 then we would have to question and compare
3 primary records to secondary records, and we'd
4 simply create a paperwork nightmare of trying to
5 sort things out.

6 The other thing we might consider is
7 the approach taken under the Acid Rain Program.
8 Under the Acid Rain Program, in general terms,

9 each unit has to have a component emission rate
10 as part of the averaging plan. Overcomplying
11 units must be at or above their emission rates.
12 Undercomplying units have to be at or below their
13 targets.

14 That would certainly be a possible
15 approach, but, again, that would generate
16 paperwork. Those plans could be revised until
17 the last minute, and we want to keep this
18 procedure as simple as possible, and, again, it
19 would create another limitation to comply with.
20 It would be slightly different than the exact
21 obligation to average to show compliance.

22 So the language that we are thinking
23 of would say something to the effect that the
24 owner or operator of any EGU that elects to

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1 average with other EGUs to demonstrate compliance
2 with this subpart cannot average with any other
3 EGU for which the owner or operator of such EGU
4 does not maintain the required records, data, and
5 reports or submit copies of such records, data,
6 or reports to the Agency upon request.

7 BOARD MEMBER McFAWN: Thank you, Mr. Romaine.

8 HEARING OFFICER BEAUCHAMP: At this time,
9 I'd like to ask if there are any questions
10 regarding the Agency's presentation here?

11 Mr. Reiser.

12 MR. REISER: I'll just ask a couple of
13 questions of Mr. Lawler first regarding the ERC
14 issue.

15 When you say that this will effect
16 ERCs only in 2003 and that you don't think there
17 are going to be very many ERCs left in 2003,
18 you're assuming that there will be federal
19 approval of the program in 2001; is that
20 correct?

21 MR. LAWLER: That's correct.

22 MR. REISER: Based on the information you
23 have to date, how valid is that assumption?

24 MR. LAWLER: It's hard to speculate on

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1 that. We don't know if USEPA will approve it in
2 2001 or not. It may take a while.

3 MR. REISER: So if there's not approval in
4 2001, then half of the ERCs will be available for
5 use in 2002 and then the other half will be
6 available in 2003?

7 MR. LAWLER: That's correct.

8 MR. REISER: So the problem that people
9 are concerned with in terms of reducing from the
10 Subpart V levels in the amount of 30 percent in
11 order to be eligible to receive the ERCs will be
12 a larger problem in that event?

13 MR. LAWLER: If the situation happens that
14 you're postulating, then the situation will be
15 there, but we've still stated how we believe it
16 should be interpreted at that point.

17 MR. REISER: Mr. Romaine, I want to follow
18 up with the issue on the recordkeeping.

19 How do you expect -- let's say -- I
20 think it's the Agency's expectation, is it not,
21 that most averaging will be within companies, not
22 between companies; is that correct?

23 MR. ROMAINE: I don't have an expectation
24 in that regard. I certainly expect that there

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1 could be averaging between different companies.

2 MR. REISER: If the average something
3 between different companies, then what exactly do
4 you expect of the -- what exactly do you expect
5 the companies to do to do due diligence to make

6 sure that their averaging partner is
7 appropriately maintaining the records?

8 MR. ROMAIN: At this point, I don't think
9 we've put into concrete terms. It would probably
10 depend on circumstances where people fail to
11 maintain records. Then we'd have to verify or
12 examine what practices were followed to determine
13 whether, in fact, a company did exercise
14 appropriate forethought and care before they
15 entered into the averaging agreement.

16 I don't think this is a circumstance
17 where we're expecting people to fail and not keep
18 records. Under the Acid Rain Program, as I said,
19 there's serious consequences if people do not do
20 that.

21 MR. REISER: Are there a specific set of
22 records that you're talking about here that you
23 expect to be maintained?

24 MR. ROMAIN: It would be the records

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1 required under the Acid Rain Program for NOx as
2 specified in Subpart V for the folks that are
3 using the subpart of 96 monitoring or the
4 alternative records for peaking units or the

5 alternate methodology for small combustion
6 turbines that we've talked about.

7 MR. REISER: And the records that would be
8 required to be maintained in particular were
9 those for the control period for which averaging
10 was being used as a compliance methodology?

11 MR. ROMAINE: Certainly, that's the
12 intent. We have no interest, for purposes of
13 Subpart V, for information outside of the control
14 period or for information that has not been
15 relied upon for averaging at least in this
16 particular division.

17 MR. REISER: And how is it that you would
18 expect this problem to -- a failure to keep
19 records, how would you expect it to come to the
20 Agency's attention?

21 MR. ROMAINE: The most obvious way it
22 would come to our attention is if one particular
23 partner in a trading agreement doesn't follow the
24 required compliance implication at the time.

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1 That would be, you know, the most obvious
2 failure. It would be failure to comply that
3 particular report that this whole program is

4 based upon.

5 MR. REISER: Is there some -- assuming the
6 report is filed and that there are, you know,
7 backup documentations determined to be missing at
8 some later date, is there some, I'm going to use
9 the word statute of limitations, but I'm not
10 using it in a certain legal sense, is there some
11 cutoff date beyond which this is not an issue?

12 MR. ROMAINE: I'm certainly not aware of
13 any such date beyond the general statutory
14 provisions for statute of limitations. I think
15 it would come down to enforcement discretion as
16 to the nature of what types of deficiencies were
17 subsequently identified and whether they are
18 significant, whether they've already been
19 corrected, do they change the overall consequence
20 to the averaging plan.

21 MR. REISER: And I guess I suppose the
22 question is, you know, for whatever reason you
23 start bringing an enforcement action against one
24 company as part of the investigation associated

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1 with the enforcement action and you discover that
2 certain records are not being maintained which

3 relate to this issue and all of a sudden you then
4 have an enforcement right against the other
5 company, even though the compliance
6 demonstrations that you're talking about have
7 been made for three or four years or were made
8 three or four years ago?

9 MR. ROMAIN: I can't say that wouldn't
10 happen.

11 MR. REISER: Then I guess I get back to my
12 initial question, which is what do you expect the
13 companies to do to review each other's
14 recordkeeping practices to make sure that they're
15 not put in that situation?

16 MR. ROMAIN: Again, the practices would
17 depend on the particular company, but at this
18 point, I can't make a recommendation as to
19 whether you should go over them, do a detailed
20 on-site audit of every particular one, or simply
21 review the historical performance of that
22 company, look for past clients' inquiry letters,
23 review the qualifications of the people running
24 the program.

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1 There's a variety of steps that could

2 be taken, but in terms of suggesting any
3 particular one, we'll only become concerned if
4 there has been a failure to maintain adequate
5 records.

6 MR. REISER: Thank you very much.

7 HEARING OFFICER BEAUCHAMP: Mr. Reiser,
8 could we get you to state your full name and the
9 company you represent?

10 MR. REISER: I'm sorry. David Reiser with
11 the law firm of Ross & Hardies, and I'm
12 representing Ameren Corporation.

13 HEARING OFFICER BEAUCHAMP: Thank you.
14 Are there any other questions for the Agency
15 regarding the information they have presented
16 today?

17 MS. FAUR: Cindy Faur, Sonnenschein, Nath
18 & Rosenthal here on behalf of Midwest
19 Generation.

20 Mr. Romaine, in your testimony today,
21 you mentioned that there is alternative an
22 monitoring approach to our small combustion
23 units. Could you explain what that approach is?

24 MR. ROMAINE: Is it time, Vera?

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1 MS. HERST: That was going to be -- we
2 were going to do that when we enter the motion to
3 amend, but if you want it now -- the language we
4 worked out, is that what you're talking about?

5 MS. FAUR: Well, if you could, at least
6 describe it on the record here at this hearing as
7 well.

8 HEARING OFFICER BEAUCHAMP: Would you like
9 to do that now or would you like to make that
10 just part of tomorrow's presentation?

11 MS. FAUR: We can wait.

12 MS. HERST: It's all right to do it now.

13 HEARING OFFICER BEAUCHAMP: Okay.

14 BOARD MEMBER McFAWN: So the Agency will
15 be referring to its draft on proposed amendments
16 which is on the back table in case anyone in the
17 audience doesn't have it; is that right?

18 MS. HERST: Yes. It is a draft, as you
19 can tell, with all the scratch-outs and
20 everything. All right.

21 MR. ROMAINE: At the last hearing, Midwest
22 Generation expressed concerns with regard to the
23 cost burden of the monitoring -- otherwise
24 required monitoring practices for small

1 combustion turbines, that is small, that they
2 operate infrequently. We have developed an
3 alternate approach or method for recordkeeping
4 for these units that is based on a low mass
5 emission methodology adopted by USEPA under the
6 Acid Rain Program.

7 We don't believe that this method
8 would require further testing to be conducted by
9 affected combustion turbines. We also believe
10 that it would allow them to avoid having to
11 install additional metering systems.

12 The key element of this alternate
13 method is the use of default emission factors as
14 the basis for determining NOx emissions from
15 these combustion turbines. The USEPA, as part of
16 its low mass emission methodology, have
17 established default emission factors of 0.75
18 pounds per million btu for gas-fired combustion
19 turbines and 1.2 pounds per million btu for
20 oil-fired combustion turbines.

21 Obviously, these factors are well
22 above the 0.25 pounds per million btu emission
23 limit that's being sought under Subpart V. So
24 units that use this alternative method will also

1 have to rely on the averaging provisions.

2 What this means is that more credits
3 will be needed for these units from the
4 overcomplying units to the extent that we've
5 overstated the emissions of these small
6 combustion turbines. So in that sense, it's a,
7 again, conservative approach.

8 The other element of the methodology
9 addressed is the method used to determine the
10 heat input of the combustion turbine. Because
11 Subpart V requires compliance with an emission
12 rate of pounds per million btu, you do have to
13 determine both the NOx emissions and the heat
14 input for combustion turbines. The proposed
15 alternate method would allow someone to either
16 use fuel meters on the unit if those are
17 present.

18 Alternatively, if the unit is not
19 equipped with fuel meters, they could use the
20 operating hour meters and simply assume that
21 whenever it's operating, it's operating at full
22 capacity and determine its theoretical working
23 heat input for that purpose.

24 Again, to the extent that that

1 overstates the operation of the unit, more
2 credits would be required from overcomplying
3 units. Obviously, if that source become
4 concerned that they were getting excessively
5 penalized to the extent they've overstated their
6 emissions, they could evaluate whether they want
7 to install fuel meters or go back to one of the
8 more conservative approaches, one of the more
9 exact methods for determining emissions in
10 operation of one of these small combustion
11 turbines.

12 The draft language has been
13 circulated. We have sent it past both Ameren and
14 Midwest Generation, and at this point, we believe
15 we have consensus on this approach.

16 MS. FAUR: Thank you.

17 HEARING OFFICER BEAUCHAMP: Thank you,
18 Ms. Faur. Just note that at this point the
19 Agency will not be submitting something into the
20 record, but will be submitting a motion to amend
21 at a later point, including this language.

22 Are there any other questions
23 regarding the Agency's -- information the Agency
24 presented today?

1 BOARD MEMBER McFAWN: I had a question to
2 follow up on your description of this
3 alternative. I just want to make sure -- at the
4 last hearing, we talked about developing an
5 alternative. We talked about Midwest Generation
6 specifically. So this is what you came up with?

7 MR. ROMAINE: That's correct.

8 BOARD MEMBER McFAWN: And at the time, you
9 talked about something being less expensive than
10 a fuel meter or fuel-filled monitors I think was
11 the term you used, Mr. Romaine, and would this be
12 an example of a less expensive methodology?

13 MR. ROMAINE: Yes, it would. My
14 understanding is that combustion turbines are
15 equipped with run meters that keep track of how
16 many hours they operate simply by keeping track
17 of the hours of operation using those run meters
18 and assuming that each hour the turbine operates
19 it's operating at its maximum capacity one can
20 calculate the heat input or seasonal heat input
21 from the available monitoring devices or metering
22 devices.

23 BOARD MEMBER McFAWN: You mentioned that
24 the numbers were developed by the USEPA.

1 What resource would we look to for
2 those numbers and their development?

3 MR. ROMAINE: They were developed as part
4 of the Acid Rain Program. There's a specific
5 citation, regulatory language, for the low mass
6 emission methodology, and I could provide that to
7 you after the hearing.

8 BOARD MEMBER McFAWN: That would be
9 helpful. Thank you.

10 HEARING OFFICER BEAUCHAMP: Thank you,
11 Board Member McFawn. Any other questions?

12 BOARD MEMBER McFAWN: I had one question
13 since you're here and maybe we won't have to
14 recall you, if you don't mind, venturing into a
15 different subject somewhat.

16 I was wondering at the last hearing
17 you mentioned that the USEPA was parallel
18 processing this subpart, and I wondered if you
19 had any feedback from them on it?

20 MR. LAWLER: They are parallel processing
21 it. It was submitted to them and they're
22 reviewing it. We've really gotten no substantive
23 feedback from them at this point, nothing
24 negative. That's good.

1 BOARD MEMBER McFAWN: Okay. Thank you.

2 HEARING OFFICER BEAUCHAMP: Let's go off
3 the record for a few minutes.

4 (Discussion had
5 off the record.)

6 HEARING OFFICER BEAUCHAMP: Are there no
7 further questions for the Agency regarding the
8 information they've presented today? Mr.
9 Romaine?

10 MR. ROMAINE: The citation for the low
11 mass emission methodology is 40 CFR 75.19.

12 HEARING OFFICER BEAUCHAMP: Thank you.

13 Ms. Herst, do you have any other
14 matters for the Agency to raise today?

15 MS. HERST: Two brief ones. The motion to
16 amend, we will be filing that tomorrow and
17 serving those of you on the service list. We've
18 already talked about the NOx averaging, the
19 recordkeeping, and alternative monitoring
20 requirements for units with low capacity
21 factors. So I won't go into those again, but I
22 just want to say in addition to those two matters
23 which will be addressed in the motion to amend,

24 Board Member McFawn raised some questions about

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1 our purpose provision in Section 217.700.

2 What we did, pursuant to your
3 request, was added the word ozone in front of
4 control period so that it's consistent with other
5 of our filings, and also, I believe, you wanted
6 another phrase or sentence that made it a little
7 more explanatory. So what we're posing is, and
8 I'll just read this, read it into the record, the
9 purpose of the subpart is to control the emission
10 of nitrogen oxides, NOx, from electrical
11 generating units, EGUs, during the ozone control
12 period, and then for purposes of Subpart W --
13 excuse me, Subpart V, such and such, and then
14 what we're adding is, by limiting the emissions
15 of NOx from EGUs to no more than 0.25 pounds per
16 billion btu of actual heat input during each
17 ozone control period. So that last -- by
18 limiting that language is going to be new. That
19 addresses your concerns or requests, and then --

20 BOARD MEMBER McFAWN: It does and it was
21 the question I was probably going to ask you.

22 MS. HERST: Well, we're taking care of it.

23 BOARD MEMBER McFAWN: Thank you. I
24 appreciate you remembering it.

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1 HEARING OFFICER BEAUCHAMP: If we could
2 just note that that is proposed language for
3 Section 217.700.

4 MS. HERST: And you have that on your
5 proposed amendments.

6 Then 217.706 we've mentioned -- Mr.
7 Lawler mentioned that person will be replaced
8 wither owner or operator for consistency, and I
9 believe that's it. So I got off easy today.
10 Although, I do want to say that we're also filing
11 the revised economic and budgetary statement.
12 There are copies of that up there. I think that
13 we should serve it on everyone on the service
14 list.

15 HEARING OFFICER BEAUCHAMP: I think so.
16 You'll be filing that tomorrow as well?

17 MS. HERST: We'll be filing that tomorrow
18 as well also.

19 HEARING OFFICER BEAUCHAMP: Are there any
20 other matters besides those then, Ms. Herst?

21 MS. HERST: Not that I'm aware of.

22 HEARING OFFICER BEAUCHAMP: Well, then
23 let's let the Agency step down for a few
24 moments. We'll go off the record.

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1 (Discussion had
2 off the record.)

3 HEARING OFFICER BEAUCHAMP: Back on the
4 record.

5 Ms. Herst, would you care to have a
6 motion to admit the draft, Subpart V Proposed
7 Amendments, into the exhibit -- as an exhibit,
8 but not --

9 MS. HERST: I so move.

10 HEARING OFFICER BEAUCHAMP: Do we have any
11 objections to admitting this as a exhibit to the
12 record?

13 BOARD MEMBER McFAWN: Actually, we're
14 going to mark it as an exhibit.

15 HEARING OFFICER BEAUCHAMP: I'm sorry.
16 We're just marking it as an exhibit. We will
17 then mark this as Exhibit 3.

18 (Exhibit No. 3 marked
19 for identification,
20 12-19-00.)

21 HEARING OFFICER BEAUCHAMP: Before we move
22 on and hear from Ameren Corp., is there anyone
23 who would like to comment on the lack of an
24 economic impact study in this matter? Seeing

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1 none, let's begin our testimony.

2 BOARD MEMBER McFAWN: As you gentlemen
3 come up, I just want to clarify on the record
4 that we marked the Agency's draft proposed
5 amendment as Exhibit 3. It is not moved for
6 admission because the Agency intends to submit to
7 the board a clean copy of it, but for purposes of
8 referring to it in our recent discussion, I
9 thought it best to have it entered as a marked
10 document.

11 HEARING OFFICER BEAUCHAMP: Mr. Reiser, if
12 you would introduce yourself again.

13 MR. REISER: Good afternoon. My name is
14 David Reiser. I'm from the law firm of Ross &
15 Hardies. I'm here on behalf of Ameren
16 Corporation. We have prefiled testimony, and I
17 have sitting next to me Mr. Steve Whitworth of
18 Ameren Corporation who is going to summarize his
19 testimony. I suppose we should submit the

20 prefiled testimony as an exhibit prior to his
21 testifying. There are additional copies of the
22 testimony available on the back table for those
23 who don't have a copy of it.

24 HEARING OFFICER BEAUCHAMP: If we could

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1 have Mr. Whitworth sworn in and if you could
2 present a motion to admit his prefiled testimony
3 into the record.

4 (Witness sworn.)

5 MR. REISER: I'd like to submit my
6 copies -- the copies to be marked as an exhibit.

7 HEARING OFFICER BEAUCHAMP: Motion to
8 admit the testimony of Ameren Corporation, are
9 there any objections? Seeing none, we will mark
10 this and admit it into the record as Exhibit 4.

11 (Exhibit No. 4 marked
12 for identification,
13 12-19-00.)

14 HEARING OFFICER BEAUCHAMP: Mr. Whitworth.

15 MR. WHITWORTH: Good afternoon,
16 everybody. I'd like to introduce myself. My
17 name is Steve Whitworth. I'm supervising
18 environmental scientist for Ameren Services in

19 the Environmental, Safety, and Health
20 department. I'd like to thank you for the
21 opportunity to express our views this afternoon,
22 even with the dreadful weather.

23 My background basically is in air
24 quality programs at Ameren. I've been involved

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1 in the NOx rulemakings as well as with continuous
2 emissions monitoring, recordkeeping and
3 reporting, and permitting activities for power
4 plants both with Ameren UE and Ameren CIPS, now
5 Ameren Energy Generating Company.

6 A little bit of background, I guess,
7 on background with Ameren. It was formed in 1998
8 as a merger between Central Illinois Public
9 Service Company and Union Electric Company. We
10 have affected sources, six fossil-fired power
11 plants, existing sources under Appendix F under
12 Subpart W in Illinois, as well as some new
13 combustion turbine facilities that have just come
14 on in the last year.

15 I'd like to express our general
16 support for this rule. It's an important and
17 necessary part of the attainment plan for the

18 St. Louis Metro East Nonattainment Area. I'd
19 also like to commend Illinois EPA for their
20 efforts, and we also appreciate the Agency's
21 openness and willingness to work with all the
22 stakeholders throughout the last couple of years
23 on these complex rules.

24 Ameren has been kind of a leader in

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1 innovative technology in trying to determine
2 cost-effective ways to reduce NOx emissions.
3 Some of the activities have been predominantly in
4 Missouri, and we're now applying those
5 technologies to our Illinois facilities as well,
6 and we've been continuing to work on these and
7 also try to make -- find
8 cost-effective ways in addition to reducing NOx
9 even in advance of these rules as well as other
10 utilities in the state have been.

11 The .25 rate-based emission standards
12 statewide will still reduce NOx emissions and
13 allow cost-effective solutions and provide
14 flexibility to meet the ozone requirements. As
15 many of you probably already know, Missouri has
16 also adopted a .25 rate-based rule that will

17 become applicable at the same period of time for
18 the eastern third of Missouri and then a .35
19 rule. This is kind of a key work -- a key
20 portion of the interface between those states to
21 achieve the ambient air quality standards for
22 ozone in the St. Louis area.

23 There's a couple of the item, I
24 guess, that we'd like to express that I've

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1 summarized or indicated in my testimony, and one
2 is that we'd request some consideration for
3 removing Subpart V if and when Subpart W is
4 implemented. There will be an additional
5 reporting burden in that the .25 rule is
6 essentially a rate-based averaging plan; whereas,
7 the SIP Call rule, Subpart W rule, is essentially
8 a mass emission limitation with a cap and there
9 will be discrete emission allowances. There also
10 is some differences in the reporting cycles
11 between the existing Acid Rain Program, which is
12 quarterly, and the ozone reporting season;
13 whereas, the data would still be available, the
14 existing data that now we report is reported
15 quarterly, and that essentially May 1st through

16 June 30th will be kind of a partial quarter that
17 will be consolidated with the third quarter data
18 and with a different reporting cycle.

19 When we add in the additional Subpart
20 W reporting on a mass emissions basis, we
21 actually will have three different sets of
22 records and things over different time periods.
23 Even though it will be the same data, it will
24 have to be analyzed separately and will require

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1 some additional burdens on sources as well as the
2 Agency to review those.

3 One of the issues that was already
4 discussed here that we are supportive of the
5 alternative monitoring proposals for low capacity
6 combustion turbines, and we support, along with
7 Midwest and others, I think the Agency's
8 alternative proposal for those sources.

9 One other point I'd like to emphasize
10 is that there are still some cost issues, and
11 there is a significant impact even with the .25
12 rule in that specifically for Ameren with the
13 Illinois sources it will still require
14 approximately a 60 percent reduction from our

15 current emission levels. We have reduced -- in
16 fact, this year, we've realized about a 15
17 percent reduction through the implementation of
18 some technology on some of our units in advance
19 of these rules being in place and would still
20 allow us or require us to reduce an additional 50
21 percent just to meet the .25 rule.

22 As an additional increment, the
23 significance between the .25 rule and the .15
24 rule or the SIP Call rule would equate for us

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1 similar to the .12 pound per million btu some
2 additional 50 percent beyond the .25 rule when
3 that rule becomes effective, and there are some
4 significant cost factors that we've -- I guess
5 we've submitted our information to the Bored, and
6 remains essentially the same as it was under the
7 Subpart W rulemaking. That completes the summary
8 of my testimony, and I'd be happy to entertain
9 any questions that anybody would have.

10 HEARING OFFICER BEAUCHAMP: Thank you,
11 Mr. Whitworth. Any there questions for Mr.
12 Whitworth?

13 BOARD MEMBER McFAWN: I had a couple

14 questions on your costs.

15 If you could, just refresh my memory,
16 you mentioned that they were submitted as part of
17 Subpart W, but in your prepared testimony, you
18 talk about your costs under the .25 rule and then
19 subsequently in Subpart W the costs associated
20 there.

21 Were these for all your sources or
22 just Illinois sources?

23 MR. WHITWORTH: These are just for
24 Illinois sources that will have to be retrofitted

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1 in order to meet the new regulations, and it does
2 not include the Grand Tower Repowering Project
3 costs. Those are separate from these. These are
4 essentially either low NOx burner technology,
5 combustion control technologies, or add-on
6 controls, selective catalytic reductions
7 specifically in the case of the cycling units.

8 BOARD MEMBER McFAWN: I had these figures
9 in my mind. When you were discussing the 50
10 percent reduction, what set of regulations is
11 that associated with, the 25 or the --

12 MR. WHITWORTH: Well, what my point was is

13 that in order from current emission levels in
14 2000 during the ozone season to get to a .25
15 average for our system, we'll have to reduce an
16 additional 50 over our 2000 levels.

17 When Subpart W kicks in, we'll have
18 to reduce an additional 50 percent below the .25
19 levels to meet that requirement. The impact to
20 the cap on the emissions really makes the Subpart
21 W rule more stringent is what my point is, and
22 for us with the cap -- the impact of a cap
23 between the rate-based system and a cap system
24 equates to a .12 emission rate in lieu of a .15

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1 in the case of our specific sources, and that was
2 the point that I was trying to make.

3 BOARD MEMBER McFAWN: Thank you. That
4 helped a lot. All right. Thank you.

5 HEARING OFFICER BEAUCHAMP: Are there any
6 other questions for Mr. Whitworth?

7 BOARD MEMBER McFAWN: I have one more
8 question.

9 HEARING OFFICER BEAUCHAMP: Sorry.

10 BOARD MEMBER McFAWN: No. It's okay. I
11 was hesitating.

12 Would you use intercompany
13 averaging?

14 MR. WHITWORTH: There's a potential for
15 that, I would think. I'm not sure -- it would be
16 something, I think, that everybody was
17 potentially contemplating, whether it would be
18 available to us. I think it would ensure some
19 compliance margin as well.

20 BOARD MEMBER McFAWN: But that alternative
21 or that approach hasn't been factored into your
22 cost estimate?

23 MR. WHITWORTH: No, it hasn't. I think
24 really conservatively everybody is going to more

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1 or less have to rely on their own systems
2 initially. I would think from a corporate
3 planning and contingency standpoint that that
4 would be our means of compliance would be on a
5 stand-alone basis. However, I think if there's
6 an economic alternative from a compliance margin
7 issue, that those opportunities would be looked
8 at.

9 BOARD MEMBER McFAWN: Thank you again.

10 HEARING OFFICER BEAUCHAMP: I'll ask again

11 if there are any other questions for Mr. Whitworth?

12 MS. LIU: I do have a question.

13 Mr. Whitworth, in your prefiled
14 testimony, you also spoke about percentages, and
15 when you were speaking with Member McFawn, you
16 mentioned 50 percent and then another 50 percent
17 under Subpart W.

18 Your prefiled testimony, you talk
19 about a 62 percent reduction first and then an
20 additional 15 percent. Am I confusing the two?

21 MR. WHITWORTH: No. The 62 percent is
22 actually a baseline of the 1999 emissions, and so
23 we've actually more updated the data, I guess,
24 since looking at our 2000 emissions through the

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1 ozone season that are more recent that we've
2 actually -- for a similar heat input for the
3 season we've actually realized about a 15 percent
4 reduction between 1999 and our 2000 levels, and
5 that's the difference between the 62 percent and
6 the rough 50 percent number.

7 MS. LIU: Okay. Thank you.

8 HEARING OFFICER BEAUCHAMP: Any further
9 questions? Seeing none, thank you.

10 MR. REISER: Thank you very much.

11 HEARING OFFICER BEAUCHAMP: Let's go off
12 the record.

13 (Discussion had
14 off the record.)

15 HEARING OFFICER BEAUCHAMP: We ask if
16 there are any other parties present today that
17 wish to testify this afternoon? Seeing none, let
18 me then ask the Agency if they will require the
19 third hearing as scheduled?

20 MS. HERST: No, we will not.

21 HEARING OFFICER BEAUCHAMP: Very good
22 then. Let me run through some of the procedures
23 that we go through here. The record for this
24 proceeding will close 14 days after the Board

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1 receives the transcript from the final hearing,
2 which will be today. We will requested an
3 expedited transcript, which should be available
4 this Friday, December 22nd. That would mean that
5 the public comment period on the record will
6 close Friday, January 5th, 2001, at 4:30.

7 Until that time, all parties may file
8 a public comment. If you do file a public

9 comment, file the original and nine copies with
10 the Board and also please contact me for a
11 current service list so you can send a copy of
12 your public comment to those persons on the
13 service list.

14 The board will post the transcript
15 from this hearing on its web site. The Board's
16 web sit is a <http://www.ipcb.state.il.us>. As I
17 just stated, the transcript should be available
18 this Friday, December 22nd. It should be posted
19 to the Board's web site next Wednesday.

20 If you would require or you wish to
21 get a copy before then, you may go through the
22 court reporter or you may obtain a copy from the
23 Board. However, please note that the Board
24 charges 75 cents per page.

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1 At this point, let me ask if there
2 are any other matters that need to be addressed
3 at this time? Seeing none, please allow me on
4 behalf of the Illinois Pollution Control Board to
5 extend a sincere thanks to all present here for
6 your contribution to the development of this
7 rule. We look forward to considering your

8 comments as we proceed towards a final adopted
9 rule, and I'd like to thank the Agency for all
10 your hard work and especially to all those who
11 also drove in from Springfield for braving the
12 elements to make it into Chicago today. I know
13 some of you had quite a trip. Also, thank you to
14 the members of the regulated community who were
15 here for your attention and comments on this
16 matter. This matter is hereby adjourned.

17 (Whereupon, these were all the
18 proceedings held in the
19 above-entitled matter.)
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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

3

4 I, GEANNA M. IAQUINTA, CSR, do
5 hereby state that I am a court reporter doing
6 business in the City of Chicago, County of Cook,

7 and State of Illinois; that I reported by means
8 of machine shorthand the proceedings held in the
9 foregoing cause, and that the foregoing is a true
10 and correct transcript of my shorthand notes so
11 taken as aforesaid.

12

13

14

GEANNA M. IAQUINTA, CSR
Notary Public, Cook County, IL
Illinois License No. 084-004096

15

16

17 SUBSCRIBED AND SWORN TO
18 before me this ____ day
19 of _____, A.D., 2000.

19

Notary Public

20

21

22

23

24