

1 ILLINOIS POLLUTION CONTROL BOARD

2 August 15th, 2006

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4 IN THE MATTER OF:)
 5)
 6 PROPOSED NEW 35 ILL. ADM.) R06-25
 7 CODE 225 CONTROL OF EMISSIONS) (Rulemaking-Air)
 8 FROM LARGE COMBUSTION SOURCES)
 9 (MERCURY),)

7

8 TRANSCRIPT OF PROCEEDINGS held in the
 9 above-entitled cause before Hearing Officer
 10 Marie E. Tipsord, called by the Illinois Pollution
 11 Control Board, pursuant to notice, taken before
 12 Kathy A. O'Donnell, CSR, RPR, a notary public within
 13 and for the County of Cook and State of Illinois, at
 14 the James R. Thompson Center, 100 West Randolph,
 15 Assembly Hall, Chicago, Illinois, on the 15th day of
 16 August, A.D., 2006, commencing at 9:00 a.m.

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

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ILLINOIS POLLUTION CONTROL BOARD:

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Ms. Marie Tipsord, Hearing Officer
4 Ms. Andrea S. Moore, Board Member
Mr. G. Tanner Girard, Acting Chairman, IPCB
5 Mr. Anand Rao, Senior Environmental Scientist
Mr. Nicholas J. Melas, Board Member
6 Mr. Thomas Fox, Board Member
Mr. Thomas Johnson, Board Member

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8 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY:

9

Mr. John J. Kim
Mr. Charles E. Matoesian
10 Mr. Jim Ross
Mr. Christopher Romaine

11

12

SCHIFF, HARDIN, LLP,
6600 Sears Tower
13 Chicago, Illinois 60606
(312) 258-5646

14

BY: MS. KATHLEEN C. BASSI
MR. STEPHEN J. BONEBRAKE
15 MR. SHELDON A. ZABEL

16

McGUIRE, WOODS,
17 77 West Wacker Drive
Suite 4100
18 Chicago, Illinois 60601-1815
(312) 849-8100
19 BY: MR. DAVID L. RIESER

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1 A P P E A R A N C E S: (Continued)

2

ALSO PRESENT:

3

Ms. Mary L. Frontczak, Peabody Energy

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Ms. Dianna Tickner, P.E., Peabody Energy

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Anne E. Smith, Ph.D., CRA International

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Mr. Michael Menne, Vice President,
Ameren Corporation

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8 Mr. Keith I. Harley

9 Ms. Faith E. Bugel

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1 HEARING OFFICER TIPSORD: My name is
2 Marie Tipsord, and this is Day Two of the second
3 group of hearings in R06-25. And I don't see a
4 lot of new people, so I just welcome you all this
5 morning. Currently we have Mr. Michael Menne and
6 Anne Smith, on behalf of Ameren. In addition,
7 both Jim Ross and Chris Romaine have been sworn
8 in.

9 When we finish with Mr. Menne and
10 Dr. Smith, we will go to Diane Tickner, then J.E.
11 Cichanowicz, Ishwar Prasad Murarka, William
12 DePriest, and James Marchetti this week. Then
13 starting Monday of next week, Krish
14 Vijayaraghavan, Gail Charnly, Peter Chapman,
15 Richard McRanie, C.J. Saladino, and Andy Yaros.

16 I will remind you not to speak
17 over one another in order for the court reporter
18 to get everything down. Please take your time and
19 make sure we don't talk over one another. Please
20 speak up and identify yourself for the court
21 reporter if you haven't already in advance.

22 I believe we are on Dynegy and
23 Midwest Generation's Question No. 26(a) and (b).

24 MR. ZABEL: Madam Hearing Officer, I

1 think we wanted to revisit the issue of the
2 motion. I said I'd respond. We will file it in
3 writing. I think you had a schedule -- I've not
4 got this on. If the reporter needs it -- Can you
5 hear me all right? Because the echo is killing
6 with these microphones. I'll use it when I'm
7 questioning, but for this I thought it wasn't
8 necessary.

9 We'll file a written motion. You
10 had a schedule in mind so the motion could make it
11 before the Board's -- not the hearing meeting this
12 week, but the following.

13 HEARING OFFICER TIPSORD: If you file
14 by August 31st --

15 MR. ZABEL: Well, you need seven days
16 for a response, I think.

17 HEARING OFFICER TIPSORD: August 24th,
18 and allow responses through August 31st. We'll
19 shorten the response time.

20 Okay with the Agency?

21 MR. KIM: Yes.

22 HEARING OFFICER TIPSORD: With that
23 said, the motion will be August 24th. Responses
24 are due by August 31st.

1 MR. RIESER: And it would be helpful,
2 given the short time frame -- and I know you'll do
3 this anyway -- if you would e-mail the motion when
4 you file it to the rest of us.

5 MR. ZABEL: We'll e-mail it to the
6 service list.

7 HEARING OFFICER TIPSORD: I apologize.
8 The Board meeting is September 7th. It's going to
9 be a long day already.

10 26(a) and (b), Mr. Menne.

11 MR. MENNE: Madam Hearing Officer,
12 there's two follow-up questions from yesterday I'd
13 like to just respond to. The first one, I
14 believe, was a follow-up question to No. 16 that
15 was asked by, I believe, Mr. Zabel. And that is,
16 which one of the Ameren units burn Illinois coal
17 that are not scrubbed? And the answer to that
18 question is Meredosia Units 1 through 4 and
19 Coffeen Units 1 and 2.

20 The second follow-up question was
21 Question 21(g) on page 6. And the question was:
22 Will Ameren have to trade to comply with CAIR
23 Phase I? The question was on SO2, and our current
24 projections suggest that we will have to do some

1 trading to meet the Phase I provisions of CAIR in
2 SO2.

3 MR. ZABEL: If I might, Madam Hearing
4 Officer?

5 HEARING OFFICER TIPSORD: Yes.

6 MR. ZABEL: Just as a follow-up,
7 Mr. Menne, would that be true if you're under the
8 MPS?

9 MR. MENNE: Yes.

10 MR. ZABEL: Thank you.

11 MR. MENNE: I guess I should clarify,
12 once we get to that first level, I believe it was
13 in 2012, under the MPS, then we will not be
14 allowed to purchase any allowances to meet that
15 rate. But prior to that time, it's the same as we
16 would in Phase I.

17 And we are on 26(a); is that
18 correct?

19 HEARING OFFICER TIPSORD: Correct.

20 MR. MENNE: The question is: Has
21 Ameren modeled the effect of the MPS? I believe
22 this question is in reference to attainment of the
23 ozone and PM2.5 standards, and the answer to that
24 is no.

1 (b): Has the Agency modeled the
2 effect of the MPS? If the Agency wants to --

3 MR. ROSS: The answer to that is no.

4 MR. MENNE: Question 27: Is this a
5 "significant" contribution towards attainment?
6 Again, I think yesterday we kind of clarified that
7 we have not stated it's a significant
8 contribution. We've not made any reference to
9 that, only that we believe it's a significant
10 contribution to the Agency's efforts to gain
11 attainment. So this sentence, as it is, really is
12 not applicable.

13 HEARING OFFICER TIPSORD: Yes,
14 Ms. Bassi?

15 MS. BASSI: Mr. Menne, what's the
16 difference between the Agency's efforts towards
17 demonstrating attainment and demonstrating
18 attainment?

19 MR. MENNE: The way we have always
20 done it in the modeling world is if you're making
21 a significant contribution to attainment, it's
22 something that you would model to show that you're
23 making a significant improvement under EPA's
24 guidelines of what significant is, and that has

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1 not been done. I think the statement that's in

2 the joint statement suggests that the Agency feels
3 that the reductions that we are making
4 significantly help them in their efforts to
5 achieve attainment. It may be a subtle
6 difference, but I think one is kind of a numerical
7 showing and the other is kind of a qualitative
8 statement. So I cannot answer 27(a).

9 HEARING OFFICER TIPSORD: And I
10 believe we've answered Question No. 28.

11 MR. MENNE: 28, I think has been
12 answered.

13 HEARING OFFICER TIPSORD: Question
14 No. 29.

15 MR. RIESER: Actually, I think the
16 Agency answered this, as well, yesterday.

17 HEARING OFFICER TIPSORD: Okay.
18 Question No. 30.

19 MR. ZABEL: I don't think all of 29
20 was answered, certainly not C.

21 MR. MENNE: Well, the question is:
22 How will Ameren and the Agency obtain agreement of
23 the Board and/or USEPA? You know, I think that's
24 up to the Board and the Agency, but I guess what

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1 we've done is, through our testimony, asked for

2 the Board to adopt this provision. But certainly
3 that's a decision that the Board has to make. I'm
4 not sure where else we could go with that.

5 MR. ZABEL: I think the question is
6 not directed at the MPS proposal. It's directed
7 at the post-CAIR assurances that you've gotten
8 from the Agency and how they intend to present
9 that or get support of that from either the Board
10 or the USEPA.

11 MR. MENNE: Again, to my knowledge,
12 there's been no discussion involving this
13 particular topic. Whether or not you want to have
14 anything formal or try to do anything formal
15 beyond the joint statement, I'm not aware of at
16 this point in time. I don't know if the Agency
17 wants to respond.

18 MR. ROSS: I think the understanding
19 we have reached is just between Ameren and the
20 Agency. I mean, I have no intent to go beyond
21 that.

22 MR. ZABEL: I understand that the
23 agreement signed by one party is only between the
24 two, Ameren and the Agency. But the question is,

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1 how will Ameren and the Agency obtain agreement of
2 the Board and/or USEPA? That is, what are your

3 plans for presenting your assurance that you'll go
4 after other sources first to the Board and/or
5 USEPA, I think, is the substance of that question.

6 MR. KIM: Who is that question
7 directed to?

8 MR. ZABEL: Well, it was obviously
9 directed to Ameren. We didn't know you were
10 testifying, but I'm happy to take the answer from
11 either party or both.

12 MR. MENNE: I think the other point
13 is, is that if we have to deal with particular
14 issues with regard to SO2 and provision with CAIR
15 and attainment, that would be done on a different
16 rulemaking than it would be here. And I'm
17 assuming that that would be pursued in those
18 rulemakings as opposed to all of this rulemaking.

19 MR. ZABEL: Is that also the Agency's
20 answer?

21 MR. ROSS: I think it's our belief
22 that the general understanding that we have
23 reached with Ameren is between the Agency and
24 Ameren, and I don't think we have a need to take

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1 it beyond that. The question implies that such a
2 general understanding needs some type of

3 approval from the Board or the USEPA, and I'm
4 not getting that connection here.

5 MR. ZABEL: Well, if you're going to
6 show substantial progress, isn't it necessary to
7 show that progress to USEPA?

8 MR. ROSS: I don't think, in regards
9 to the MPS, we're specifically utilizing this to
10 show substantial progress at this time. It may be
11 one component of a larger demonstration; and at
12 that time, it would be part of our plan that would
13 be presented to the USEPA, our larger attainment
14 plans. This may be one component.

15 MR. ZABEL: And wouldn't it, in part
16 at least, have to be presented to the Board first?

17 HEARING OFFICER TIPSORD: I'm a little
18 confused by the questions, and let me see if I can
19 -- Maybe it's because it's early in the morning,
20 and I've not had my coffee. But the question is
21 talking -- Question 29 is talking about what
22 assurances the Agency can give regarding
23 reductions beyond CAIR. That is, are sources that
24 opt in to the MPS sheltered from additional

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1 reduction requirements beyond CAIR?

2 But then your question was about
3 substantial compliance, which I think refers back

4 to what we were talking about, NAAQS. So I
5 just -- I'm a little confused. Which point are
6 you getting at here?

7 MR. ZABEL: The assurance question, I
8 think, plays into the other question. Let me
9 explain. The Agency, at this stage under this
10 Environmental Protection Act, doesn't adopt the
11 standards for this state. This Board does that.
12 If they committed to this entity not to go after
13 it for requirements to meet NAAQS, I think they
14 have to come to the Board for it and ultimately
15 take whatever the Board does to USEPA. Part of
16 this question is how do you play that assurance
17 that Ameren will be last in line, if I may phrase
18 it that way, to this Board and to USEPA. And,
19 with deference to Mr. Johnson, although it's on
20 SO2 and NOx and not mercury, that seems to have
21 been dragged into this proceeding. That's really
22 what I was after in that question, Madam Hearing
23 Officer. I'm confused too, to some extent, so I
24 appreciate your help.

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1 HEARING OFFICER TIPSORD: Thank you.

2 MR. KIM: With that understanding, I
3 think you're going to need to put your question

4 out again.

5 MR. ZABEL: I'll be happy to go at it
6 again, Mr. Kim. It seems to me that the MPS
7 contemplates additional limitations on other
8 sources before Ameren. I want to know how that
9 process for SO2 and NOx is going to be pursued
10 before the Board and USEPA.

11 MR. ROSS: I mean, the MPS in the
12 context of Illinois mercury rule stands on its
13 own. It seems like you're trying to tie this into
14 CAIR, that this will in some way replace what
15 we're doing in CAIR, and it won't. They're
16 completely separate.

17 MR. ZABEL: Does the Agency intend, in
18 any fashion, to rely on Ameren's SO2 and NOx
19 reductions that will be required of them if they
20 commit to the MPS in making an attainment
21 demonstration to the USEPA?

22 MR. ROSS: At some point that is
23 anticipated, yes.

24 MR. ZABEL: And how will that be done,

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1 Mr. Ross?

2 MR. ROSS: In the normal framework it
3 has always been done in, in the context of a state
4 implementation plan which we present to the USEPA,

5 which is our plan to reach our attainment goals.

6 MR. ZABEL: Will that plan first be
7 presented to the Pollution Control Board?

8 MR. ROSS: My understanding of the
9 process is that that is not part of the process.

10 MR. ZABEL: Will it involve additional
11 or new emission limitations on sources other than
12 Ameren?

13 MR. ROSS: The state implementation
14 plan will involve many rules and limitations. We
15 have NOx RAC (phonetic) going forward, and we're
16 still evaluating other -- contemplating other
17 rules which we may put in place and which may be
18 part of the state implementation plan. So it will
19 be a complex, comprehensive plan to bring Illinois
20 into attainment with PM2.5.

21 MR. ZABEL: And would those emission
22 limitations, that part of that plan, be submitted
23 to the Pollution Control Board?

24 MR. ROSS: No, I don't believe so.

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1 MR. ZABEL: You don't believe that new
2 emission limitations on sources in Illinois have
3 to be approved by the Pollution Control Board?

4 MR. ROSS: Well, this is before the

5 Board right now, being approved, and CAIR is
6 another rulemaking that we have before the Board.
7 And there will be other rulemakings forthcoming
8 that will be before the Board. So in that
9 context, yes, the Board will have the ability to
10 approve those rules or disapprove them or modify
11 them as they see fit.

12 MR. ZABEL: And SO2 and NOx
13 limitations in this rule will not be part of that
14 presentation to the Board; is that correct?

15 MR. ROSS: They are part of this
16 presentation at this time.

17 MR. ZABEL: That's not the question.
18 At the time you seek additional limitations for
19 which you have said further reductions needed
20 would first come from other sources, when you seek
21 those additional reductions, these limitations
22 will or will not be part of that presentation to
23 the Board?

24 MR. ROSS: In the context of other

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1 rulemakings that we have, I believe this is the
2 only rulemaking that will contain these specific
3 limitations.

4 MR. ZABEL: But they will
5 ultimately -- I'm sorry, Madam Hearing Officer.

6 HEARING OFFICER TIPSORD: Let me try
7 to get there. I think he's going like this
8 (gesturing) with your question.

9 MR. ZABEL: I think so too. That's
10 why I keep asking.

11 HEARING OFFICER TIPSORD: Mr. Ross, if
12 the Agency proposes additional reductions sometime
13 in the future to meet the National Ambient Air
14 Quality Standard and the PM2.5 -- is that correct
15 -- will Ameren's joint statement that says that
16 they're the last person, other sources will be
17 reduced before Ameren, in that context of that
18 type of a rulemaking, will Ameren's pass, for lack
19 of a better word, be included in that rulemaking?

20 MR. ROSS: No.

21 HEARING OFFICER TIPSORD: So Ameren
22 would be thrown in with the rulemaking at that
23 point in time and reductions would be discussed,
24 including Ameren?

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1 MR. ROSS: Yes, just like in the
2 context of CAIR that we have before the Board.
3 Ameren is -- their sources are affected by CAIR.

4 MR. ROMAINE: I guess the other way to
5 explain it, though, is that it's quite likely that

6 rulemaking would propose to bring other sources
7 that have not yet reduced emissions to the level
8 using the same body of control techniques that
9 Ameren is committing to as part of the MPS to the
10 same level of control as Ameren has committed to
11 in this rulemaking.

12 MR. ROSS: Again, we discussed that
13 yesterday, that after Ameren implements the
14 controls required to meet the MPS, we believe they
15 will be well-controlled. And in that context, we
16 will logically seek additional reductions from
17 sources that are not as well-controlled.

18 MS. BASSI: Two questions flow from
19 what you two guys just said. First, for
20 Mr. Romaine, if you are seeking reductions from
21 other sources first, will you either name Ameren
22 as being excluded from that, or would you name the
23 other sources from whom those reductions are being
24 sought in the beyond-CAIR context? That's the

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1 first question.

2 MR. ROMAINE: Well, that one, we
3 haven't gotten to that stage yet, so it's
4 premature for us to answer that.

5 MS. BASSI: Okay. And the second
6 question is, Mr. Ross, you've used the term

7 "well-controlled" a number of times. Is this
8 going to be defined in a rule anywhere?

9 MR. ROSS: No. And I stated yesterday
10 that there is no specific table or chart you can
11 look to for what defines well-controlled. But in
12 the context of what we're talking about here
13 today -- I mean, we've been focusing on SO2
14 emissions yesterday, and it looks like we're
15 heading that way again today. As a matter of
16 fact, I'm sure we are because I've look at the
17 questions. We believe that use of low-sulfur
18 coal -- which has been a premise that some have
19 put forth is good sulfur control -- we have stated
20 that that is not good enough. We need SO2 control
21 beyond the use of low-sulfur coal. In fact, I
22 stated yesterday, and I'll state it again today,
23 that we believe that scrubbers are needed on some
24 of the larger units at a minimum to get to the

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1 level of well-controlled.

2 MS. BASSI: So is it true, then, that
3 what comprises well-controlled, in quotes, remains
4 a kind of amorphous Agency standard against which
5 things are going to be judged?

6 MR. ROSS: I believe historically

7 that's the way it's been, especially in the
8 context of coal-fired power plants. When we look
9 at them on a system-by-system basis and at their
10 emission rates currently being emitted from the
11 different systems, you'll see that -- and we
12 talked about this yesterday too -- that those
13 burning low-sulfur coal emitted in the range of
14 0.5 to 0.6 pounds per million BTU. And in the
15 MPS, Ameren has already agreed to less than half
16 of that. We believe that other systems can get to
17 around Ameren's level if they are well-controlled,
18 if they install some scrubbers.

19 MR. ROMAINE: I guess I will
20 supplement that simply by stating that a key
21 element in this decision is the need to comply
22 with the National Ambient Air Quality Standards.
23 That is the underlying goal of these decisions
24 about the need for additional controls on these

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1 existing units.

2 HEARING OFFICER TIPSORD: Mr. Zabel.

3 MR. ZABEL: I'd like to come back to
4 this well-controlled concept. Setting aside the
5 MPS -- Strike that.

6 Let me ask this question first,
7 and this is to Mr. Menne. How many of your units

8 are exclusively on low-sulfur coal, Mr. Menne?

9 MR. MENNE: I think we have a total of
10 21 units, and I testified that 4 by 6 -- 7 are on
11 Illinois coal, so 14.

12 MR. ZABEL: So like many of the other
13 utilities in this state, you have predominately a
14 subbituminous coal burner; is that correct, Mr.
15 Menne?

16 MR. MENNE: I would say that would be
17 an accurate statement.

18 MR. ZABEL: What percentage of your
19 fuel is subbituminous coal?

20 MR. MENNE: I believe that number is
21 84 percent.

22 MR. ZABEL: Thank you, Mr. Menne.

23 Now, Mr. Ross, Mr. Menne's --
24 Ameren is going to reduce its sulfur emissions to

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1 a rate of .33, I believe, under the MPS first
2 phase, or point-something, in that neighborhood.
3 It may be a little less. Is that correct?

4 MR. ROSS: The ultimate target is .25.

5 MR. ZABEL: Understood. But I'm
6 taking it one phase at a time. First phase is
7 about .33; is that right?

8 MR. ROSS: That's correct.

9 MR. ZABEL: Would all your other units
10 in the state that met a .33 be well-controlled in
11 your opinion?

12 MR. ROSS: Not necessarily. And we
13 discussed that yesterday, that it's based on
14 different starting points. We looked at each
15 system uniquely and what they are currently doing.
16 You need to recognize that there are different
17 ways of operating coal-fired power plants in
18 Illinois. There's different boiler types.
19 There's different fuel types. There's different
20 existing control mechanisms. So you look at each
21 system as a unique system and what can they do to
22 reduce their emissions. And that's the way we've
23 approached this.

24 MR. ZABEL: And so you've concluded

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1 that -- I think we've established yesterday, under
2 the MPS, that some of the sources we looked at on
3 that table would have to be 40 percent less than
4 Ameren's average to be well-controlled; is that
5 what we've established? .25 versus .15, I think,
6 was the number.

7 MR. ROSS: I don't recall that
8 specific number. I believe what we established

9 was that Ameren would need to reach .25, and then
10 the standard, the MPS standard, has an emission
11 rate and a percent reduction. And what we decided
12 and what is true is that the other systems would
13 most likely comply with the percent reduction, and
14 the percent reduction in SO2 is actually less than
15 what Ameren would be reducing their emissions.
16 Ameren is required to reduce their emissions 76.3
17 percent, their SO2 emission.

18 MR. ZABEL: Is that because they're
19 starting at almost twice as much as the others,
20 Mr. Ross?

21 MR. ROSS: We decided yesterday that
22 it wasn't twice as much, I believe.

23 MR. ZABEL: It's twice as much,
24 certainly, as Dominion, according to the table you

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1 said you believed was accurate.

2 MR. ROMAINE: I think there is a
3 different way to look at this, Sheldon.

4 MR. ZABEL: There's a lot of ways to
5 look at it.

6 HEARING OFFICER TIPSORD: Let's not
7 talk over one another.

8 MR. ROMAINE: One way to look at it is

9 to separately address what's happening with
10 low-sulfur coal and with high-sulfur coal. If
11 Ameren is also using a comparable low-sulfur coal
12 as other folks, it is being required ultimately to
13 reduce those low-sulfur emissions in half, from
14 approximately .5 pounds per million BTU to .25
15 pounds per million BTU. For its high-sulfur coal
16 that is in the range of 1.6 pounds per million
17 BTU, it's being required to, on average, reduce
18 its emissions from that coal supply to .25, which
19 is a reduction of approximately 85 percent. I
20 think that's a more effective and appropriate way
21 to evaluate what's being required of the MPS of
22 Ameren because it accounts for a display of how
23 different reductions are being required for
24 different elements of the coal supply that Ameren

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1 is using.

2 MR. ZABEL: So what I think Mr. Ross
3 said is, part of what is well-controlled depends
4 on where the sources start; and where a source
5 starts at a significantly lower level than Ameren,
6 means it's got to stay at a significantly lower
7 level than Ameren. Is that what you're saying,
8 Mr. Romaine?

9 MR. ROMAINE: Well, obviously our goal

10 is to reduce emissions. So if it starts lower, it
11 has to stay lower.

12 MR. ZABEL: Why is that?

13 MR. ROMAINE: Well, if we increase
14 emissions, we're not working toward achievement of
15 the goal of meeting the Ambient Air Quality
16 Standards.

17 MR. ZABEL: The contrast, Mr. Romaine,
18 is not between increasing or decreasing emissions;
19 it's between the relative decrease and the
20 ultimate emissions of each of the different
21 entities in the state. And this rule
22 discriminates against them in the view we took
23 them in; don't you agree?

24 MR. RIESER: I'm going to have to

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1 interpose an objection. I think the point that
2 Jim Ross made ten minutes ago has to be
3 emphasized. What happens in CAIR and what's going
4 to happen with whatever needs to be done with
5 nonattainment, are all things that are going to
6 come before the Board. What we're proposing now
7 has to do with the entry into the MPS, what levels
8 are necessary to enter into the MPS. For Ameren,
9 they've been proposed and they've been agreed to

10 by the Agency, and that's what we're presenting to
11 the Board for the Board's consideration. The
12 other companies, as Jim has said, are continuing
13 to negotiate with the Agency about what their
14 entry into a similar type of agreement with MPS
15 may be.

16 Whatever happens with CAIR,
17 whatever happens with nonattainment, whatever
18 rules have to be adopted to develop the SIP, all
19 of that has to be before the Board. So we're not
20 talking about limiting the Board's authority or
21 making those decisions now that would apply and
22 limit what's done under CAIR and under whatever
23 has to be done for nonattainment.

24 So, you know, we're going back

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1 over -- We're not only going back over testimony
2 that was discussed yesterday; we're also going
3 pretty far afield from what we need to deal with
4 to get through the rulemaking.

5 HEARING OFFICER TIPSORD: Mr. Zabel.

6 MR. ZABEL: I don't know whether I
7 asked him a question. He hasn't been sworn yet.

8 HEARING OFFICER TIPSORD: He was
9 entering an objection, Mr. Zabel.

10 MR. ZABEL: And I think I will

11 respond. I think it's relevant to what the Board
12 is doing in this proceeding to know whether it's
13 facing a completely piecemeal approach for the
14 program of this state for CAIR and attainment, and
15 it seems to me that was what I was trying to get
16 at. There's a piece of sulfur here. There's a
17 piece of NOx here. There will be a piece in CAIR.
18 There will be a piece in post-CAIR if it's
19 necessary. I don't think that's an appropriate
20 way to approach it, and that was the point of my
21 question.

22 MR. RIESER: I think Mr. Ross already
23 testified that it's the Agency's intention to work
24 through the Board's process for CAIR and for

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1 whatever needs to be done for nonattainment. So
2 it won't be piecemeal. It will be -- Those issues
3 will be worked through the -- be before the Board.
4 The CAIR rules are before the Board.

5 HEARING OFFICER TIPSORD: We're having
6 a very unique situation here because I absolutely
7 agree that this is not the NOx -- this is not the
8 CAIR rule. And on the other hand, the joint
9 statement has introduced NOx and CAIR -- NOx and
10 SO2 into the mercury rule. So I do have to give

11 some leeway, and I will continue to give some
12 leeway. But I do agree with Mr. Rieser now. We
13 beat this horse.

14 MR. BONEBRAKE: I do have a couple
15 short follow-ups, if I may.

16 HEARING OFFICER TIPSORD: Okay.

17 MR. BONEBRAKE: Mr. Menne, there was a
18 discussion between Mr. Zabel and Mr. Ross
19 regarding achieving .15 pounds per million BTU
20 versus .25 pounds per million BTU SO2 standards.
21 Do you recall that discussion?

22 MR. MENNE: I remember hearing it,
23 yes.

24 MR. BONEBRAKE: Is it more expensive

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1 to achieve a .15 standard as opposed to a .25?

2 MR. MENNE: Well, as a general rule,
3 the lower you go, the more expensive it's going to
4 be; but there are exceptions to that depending on
5 the technology you use and where you're starting
6 from. As a general rule, as emission rates get
7 lower and lower, particularly on the low end, it
8 starts to get much more expensive to control. I
9 would agree with that.

10 MR. BONEBRAKE: And if Ameren were to
11 need to achieve a .15 versus a .25 standard, it

12 would be more expensive for Ameren to achieve that
13 lower standard?

14 MR. MENNE: Yes, it would.

15 MR. BONEBRAKE: Mr. Menne, does Ameren
16 have any plans to change its type of fuel mix it
17 plans to combust in its units in order to comply
18 with the MPS?

19 MR. MENNE: In order to comply with
20 the MPS, I don't -- we do not have any firm plans
21 to change fuels. However, the fuel -- We'd like
22 to keep those options open. Our fuel people are
23 always looking for different coal supplies. We're
24 not into any real long contracts, that I'm aware

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1 of, these days, so we like to keep these options
2 open. So I have a little difficulty answering
3 your question because I'm not sure because we
4 don't have plans right now to say this is our set
5 fuel for compliance.

6 MR. BONEBRAKE: Would the MPS, in your
7 view, impose any constraints on the choice of
8 fuels combusted at Ameren?

9 MR. MENNE: The only constraint that
10 it would put on there would be if you decided to
11 go to a higher sulfur fuel on a particular unit.

12 You would have to adjust the pollution control
13 requirements on that or some other units in order
14 to make up whatever difference in sulfur. You'd
15 have to make that up in some way in order to meet
16 those limits.

17 MR. BONEBRAKE: So the MPS would have
18 the tendency to discourage the combustion of
19 higher sulfur Illinois coal?

20 MR. MENNE: I think you can achieve
21 the rates that are in there with higher sulfur
22 coal. Our intent is still to continue to use
23 Illinois-based coals with some of our plants. I
24 don't think it eliminates that possibility. I

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1 think there's ways and technologies that will get
2 you to those levels. Does it discourage it or
3 not? I think that decision is really based on the
4 economics of what coal you can use and the
5 pollution control requirements.

6 MR. BONEBRAKE: But the technologies
7 that you've mentioned, those do have a cost, do
8 they not?

9 MR. MENNE: That's correct.

10 MS. MOORE: Just one other question,
11 and this is for the Agency because we are trying
12 to stay with the mercury idea, but they seem as

13 though they are just inextricably joined together
14 with the MPS. There is a CAIR proposal that is
15 before the Board from the Agency, and the MPS does
16 provide flexibility for Ameren as far as meeting
17 the mercury requirements. Does Ameren meet the
18 proposed CAIR rules that are before the Board?
19 With the joint statement that you gave us and if
20 they go with the MPS, are they going to meet the
21 CAIR requirements that you propose?

22 MR. ROSS: We believe so, yes. I
23 believe Ameren has done their own analysis there,
24 and I think I heard them mention earlier that they

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1 believe so as well, that meeting the MPS allows
2 them to also meet CAIR.

3 MS. MOORE: The CAIR as proposed. Not
4 under the mercury rule, but under the CAIR rule
5 before the Board, you believe that you're going to
6 be able to meet that emission proposal?

7 MR. MENNE: We think so, yes.

8 HEARING OFFICER TIPSORD: Ms. Bassi.

9 MS. BASSI: One quick follow-up for
10 Mr. Ross. If Ameren were to switch to low-sulfur
11 coal in its current Illinois-based coal units,
12 would it still be well-controlled?

13 MR. ROSS: No. As we stated, we
14 believe low-sulfur coal alone does not constitute
15 good control.

16 MR. ZABEL: One last follow-up to
17 that. A system that burns 84 percent
18 subbituminous is well-controlled, and one that
19 burns 100 percent isn't; is that what you're
20 saying, Mr. Ross?

21 MR. ROSS: No, that is not what I'm
22 saying. I'm saying, and I've stated it numerous
23 times, the level of control we are looking for
24 requires installation of some amount of scrubbers.

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1 HEARING OFFICER TIPSORD: Can we go
2 off the record?

3 (A short break was had.)

4 HEARING OFFICER TIPSORD: I believe
5 we're on Question No. 30.

6 MR. MENNE: The economic analysis
7 included in Anne Smith's testimony addressed only
8 Ameren, yet the MPS is a rule of general
9 applicability. What evidence has been provided in
10 this record that the MPS is technically feasible
11 and economically reasonable as a
12 generally-applicable rule?

13 The only evidence that is there

14 would be what Ameren has put in its -- what is
15 there in the joint statement that says it is
16 economically viable for Ameren. And the only
17 other point I want to make is that it's a
18 voluntary program that you can go into. Other
19 than that, however, there's nothing in the rule
20 with regard to the general applicability of the
21 MPS.

22 (b), Anne Smith's testimony
23 indicates that for Ameren, compliance with the MPS
24 will be five times more costly relative to SO2 and

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1 ten times more costly relative to NOx than
2 compliance with CAIR. Do you agree that the MPS
3 is far less cost-effective than CAIR?

4 And if it's okay, I would like to
5 have Anne Smith answer that question because she's
6 really done the economic analysis.

7 HEARING OFFICER TIPSORD: Excuse me,
8 though. The question is do you agree with Anne
9 Smith's analysis. So initially could you answer
10 that? And if we want, we'll refer to Dr. Smith.

11 MR. MENNE: Well, the reason I wanted
12 to defer is because there's lots of different ways
13 of saying what is cost-effective. I think one of

14 the measures of whether it's cost-effective or
15 not -- We believe it's cost-effective in the long
16 run as a whole. Certainly some of the SO2 and NOx
17 installations, which I think they're referring to
18 with this five times and ten times number, would
19 suggest that those installations are not as
20 cost-effective from a corporation standpoint as
21 simple compliance with CAIR or something else
22 where you can buy allowances at a much lower rate
23 to achieve compliance with a particular rule.
24 From that respect, certainly there are pollution

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1 controls we are putting on our system that would
2 not be viewed as cost-effective. That would be my
3 answer. But I think as a whole, there's a
4 different way of answering that question.

5 HEARING OFFICER TIPSORD: Okay.
6 Dr. Smith.

7 DR. SMITH: First of all, I'd like to
8 comment -- And I don't think the question was
9 asking if he agreed with my analysis. The
10 question was asking whether he agreed that the MPS
11 is far less cost-effective than CAIR after quoting
12 some numbers out of my analysis. And what I would
13 like to clarify is that I never said that the MPS
14 is less cost-effective than CAIR. So I concur

15 with what Mr. Menne said there. The measure of
16 the cost effectiveness is a relative measure of
17 the relevant costs to achieve the same
18 environmental objectives. And the MPS -- And the
19 Illinois rule, with or without the MPS, has a very
20 different set of environmental objectives than the
21 CAIR rule. So it's impossible to say is it more
22 cost-effective or less. It is true that the
23 objectives in the Illinois rule are more stringent
24 than the environmental objectives of the CAIR, so

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1 it is true it's more costly.
2 I'd also like to clarify that it's
3 not as much more costly as this five times for SO2
4 and ten times for NOx might imply the way it's
5 been cited here. In my testimony, I stated that
6 the SO2 price under CAIR would be about one-fifth
7 what some of the units' dollars per ton to move
8 would be for Ameren under the MPS. Those are just
9 a couple of units. And the total cost to Ameren
10 under MPS is not anywhere near five or ten times
11 more costly than when looking at a total cost
12 basis. It's much, much less.
13 MS. BASSI: Could we mark 30(a) as an
14 Agency question and come back to it, please?

15 HEARING OFFICER TIPSORD: I guess we
16 can. But the answer was nothing, so I'm not
17 sure ...

18 MS. BASSI: Well, this is what the
19 Agency is supposed to provide in rulemaking. I
20 would think Mr. Menne would not be able to answer
21 it.

22 HEARING OFFICER TIPSORD: All right.
23 We'll come back to 30(a) with the Agency.

24 MS. BASSI: Thank you.

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1 HEARING OFFICER TIPSORD: 30, subpart
2 C.

3 MR. MENNE: Figure 4 at page 12 of
4 Anne Smith's testimony indicates the cost of
5 complying with the proposed MPS is more expensive
6 over time than compliance with CAIR/CAMR or the
7 proposed Illinois mercury rule without the MPS.
8 Please explain why Ameren supports the MPS under
9 these circumstances.

10 There's two primary reasons why we
11 believe -- Even though it is going to be more
12 expensive for the corporation in the long run to
13 comply with the MPS than the proposed mercury
14 rule, there's two primary reasons why we support
15 that. One is we believe it provides additional

16 certainty in our overall pollution control
17 planning process going forward over the next ten
18 years. It ties in the SO2 and NOx requirements
19 with the mercury requirements. And as I said in
20 my opening statement, the mercury reduction and
21 SO2 reductions are tied together because one can
22 assist the other.

23 The second reason is for simple
24 cash flow and construction reasons. The MPS will

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1 allow us to spend less dollars over the next three
2 years in exchange for putting more pollution
3 control on over the course of the next ten years,
4 and the cash flow is much more even over the
5 course of those ten years. The mercury rule as
6 proposed would, in our view -- and again, I'm not
7 necessarily suggesting it's a requirement by the
8 rule -- but in our view, we would have gone to
9 great lengths to try to comply with the 90 percent
10 rule. But to spend a lot of money in a short
11 period of time, that's going to put a real
12 hardship on the company. So we feel that this is
13 the better alternative.

14 HEARING OFFICER TIPSORD: Mr. Zabel.

15 MR. ZABEL: Would a CAIR/CAMR regime

16 have created the same cash flow problem for you?

17 MR. MENNE: No.

18 HEARING OFFICER TIPSORD:

19 Mr. Bonebrake.

20 MR. BONEBRAKE: Mr. Menne, did you say
21 that compliance with the mercury proposed rule
22 without the MPS would have posed a hardship on
23 Ameren?

24 MR. RIESER: I'm sorry. On anyone or

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1 on Ameren?

2 MR. BONEBRAKE: On Ameren. I thought
3 that's what he was saying.

4 MR. MENNE: For us to obtain the
5 90 percent mercury requirement in three years, for
6 us to get the assurances that we want to make sure
7 we were in compliance, would have been a definite
8 economic hardship on the company, yes.

9 MR. BONEBRAKE: When you use the term
10 "hardship," what do you mean, Mr. Menne?

11 MR. MENNE: A lot of dollars in a
12 short period of time. I don't know how else I
13 could explain it. I'm not going to say so much of
14 our capital or revenue because I'm not a financial
15 part of the company, but it would have been very
16 difficult to finance a lot of those projects.

17 MR. BONEBRAKE: Would you expect other
18 companies in Illinois that are subject to the
19 mercury proposal who do not opt in to the MPS
20 would have similar hardships, Mr. Menne?

21 MR. MENNE: I really don't know
22 because I don't know their particular situations.
23 It just depends on where they stand with their
24 companies, each one of their units, and what they

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1 believe they'd have to do with them.

2 HEARING OFFICER TIPSORD: Mr. Zabel.

3 MR. ZABEL: Besides the financial
4 issue, do you believe it would have been a
5 physical construction problem in meeting the 2009
6 deadline?

7 MR. MENNE: I think if you're going
8 into a program where you're going to try to do
9 scrubbers and baghouses and fabric filters on all
10 your units, I think you could run into labor
11 issues. But again, I'm not an expert there, but
12 that's my impression.

13 MR. ZABEL: Thank you.

14 HEARING OFFICER TIPSORD: Mr. Harley.

15 MR. HARLEY: Since the hearing has
16 gone back to mercury, can I ask a series of

17 questions related to --

18 HEARING OFFICER TIPSORD: You sure
19 can, as long as you identify yourself for the
20 court reporter.

21 MR. HARLEY: For the record, my name
22 is Keith Harley. I'm the attorney for Illinois
23 Public Interest Research Group in Environment in
24 Illinois.

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1 Mr. Menne, I have a series of
2 questions for you related to the last testimony
3 which you just gave in response to the Midwest
4 Generation, Dynegy questions. The first question
5 that I would like to ask you is: Has Ameren
6 permanently installed a carbon injection system to
7 control mercury on any of its coal-burning
8 facilities in Illinois?

9 MR. MENNE: No.

10 MR. HARLEY: So Ameren has not
11 optimized a carbon injection system by permanently
12 integrating it with other facilities which own its
13 own technologies?

14 MR. MENNE: That is correct.

15 MR. HARLEY: Ameren does not have
16 long-term monitoring data from any of its
17 facilities as to the effectiveness of an optimized

18 carbon injection system to control mercury?

19 MR. MENNE: That is correct.

20 MR. HARLEY: Has Ameren ever tested a
21 carbon injection system on a nonpermanent basis on
22 any of its facilities?

23 MR. MENNE: Yes, we have.

24 MR. HARLEY: Would you be willing to

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1 describe for the Board what the results were of
2 that short-term installation and testing of a
3 carbon injection system on the Ameren facility?

4 MR. MENNE: There's two that I'm
5 familiar with. One was at our Meramec facility.
6 That was part of a Department of Energy project.
7 It was done a couple years ago. In that
8 particular test, there were a number of different
9 materials that were injected into the boiler that
10 got varying results. Some of those results
11 were -- By the end of that project, we were seeing
12 some very good capture results of a 90 percent
13 range on some of those injections.

14 MR. HARLEY: And that was done without
15 long-term optimization of that system; is that
16 correct?

17 MR. MENNE: That's correct.

18 MR. HARLEY: And you said there was a
19 second facility?

20 MR. MENNE: Well, the second facility
21 was at our Labadie facility, where we did some
22 testing specifically to look at the influence of
23 SO3 injection. And I think as I testified
24 yesterday, the removal results on that system were

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1 between 30 and 70 percent, at least on the tables
2 I looked at.

3 MR. HARLEY: If a carbon injection
4 system operates in a range of effectiveness that
5 can approach 90 percent on a short-term basis, why
6 does Ameren want to see an MPS component in the
7 mercury rule?

8 MR. MENNE: Well, I think -- I'm
9 trying to just explain that. First of all, we do
10 have SO3 injection in a number of our facilities.
11 And as a result, we are concerned that we cannot
12 make compliance simply with activated carbon
13 injection on a number of those units. As such, we
14 would have, in our view -- and again, it's just
15 our belief; I'm not saying it's required by the
16 regulation -- but to get the comfort level that we
17 would achieve 90 percent on all the units, we
18 would put on what we think is the maximum amount

19 of controls that exist today to try and get to
20 that level, which would either be a combination of
21 scrubbers and SCRs in each unit or ACI in
22 combination with fabric filters or baghouses.

23 MR. HARLEY: So Ameren has made the
24 decision that in order to have a comfort level

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1 with compliance, which I assume means 100 percent
2 compliance, you have made a decision that you will
3 need to essentially over-control; is that correct?

4 MR. MENNE: I guess that's the way we
5 like to look at compliance, to try to
6 over-control.

7 MR. HARLEY: Is it fair to say that in
8 order to ensure you're operating in compliance,
9 Ameren is willing to control emissions earlier and
10 more stringently than otherwise required under
11 CAIR with a co-benefit that you would get mercury
12 reductions as well?

13 MR. MENNE: That's the idea, yes.

14 MR. HARLEY: And would one of the
15 features of this over-control be the installation
16 of fabric filters at some of your facilities?

17 MR. MENNE: At some of the facilities,
18 that's correct.

19 MR. HARLEY: Now, by virtue of the
20 MPS, this compliance assurance strategy could be
21 used by any coal-fired EGU operator in the state
22 of Illinois; is that your understanding?

23 MR. MENNE: That's my understanding.

24 MR. HARLEY: Are you familiar with the

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1 MPS regulatory language?

2 MR. MENNE: Yes.

3 MR. HARLEY: Is Ameren specifically
4 identified at any point in the regulatory language
5 in the MPS?

6 MR. MENNE: No, it's not.

7 MR. HARLEY: Does the word "Ameren"
8 appear at any point in the MPS regulatory
9 language?

10 MR. MENNE: No, it does not.

11 MR. HARLEY: I have no further
12 questions. Thank you.

13 HEARING OFFICER TIPSORD: Thank you,
14 Mr. Harley.

15 Ready to go on to Question 31?

16 MR. RIESER: I believe that 31 and 32
17 are really both IEPA questions.

18 HEARING OFFICER TIPSORD: Okay. We'll
19 come back to those. 33.

20 MR. MENNE: At page 7 of your
21 testimony, you state that the TTBS does not allow
22 for multi-pollutant coordination and reductions,
23 and it does not address Ameren's technical
24 conclusions on the effectiveness of ACI or HCI at

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1 its plants. Please explain what technical
2 conclusions are referred to in this statement.

3 And I think I just did that when I
4 was discussing the SO3 that we use at a lot of our
5 facilities and that, from a technical standpoint,
6 we believe we'd have difficulty achieving 90
7 percent.

8 Explain what multi-pollutant
9 coordination and reductions are referred to in
10 this statement.

11 Again, I think we've stated
12 several times, you get the benefit of a single
13 plan for reducing SO2, NOx, and mercury, and you
14 get the benefit of reductions of mercury with the
15 same type of pollution control equipment. And
16 that's really what the multi-pollutant
17 coordination refers to.

18 HEARING OFFICER TIPSORD: 33(c).

19 MR. MENNE: Does the CAIR/CAMR

20 combination address Ameren's multi-pollutant
21 coordination and reduction concerns?

22 My answer to that in Illinois is
23 no, because it does not address what Illinois is
24 attempting to achieve. I think if you maybe

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1 suggested that if you just have to comply with
2 CAIR and CAMR, would it address those concerns,
3 and the answer to that would be yes.

4 (d), do you agree that the cost of
5 compliance with the MPS by other companies may be
6 greater because, for instance, they have lower SO2
7 or NOx emissions during the baseline period and,
8 therefore, the effective emissions limitations are
9 more stringent?

10 Again, this is one that I really
11 don't know. It just depends on what you're using
12 now to comply with SO2 and NOx and what you would
13 have to do. There are ways to lower emissions;
14 they could be more costly or less costly at some
15 plants than others. So it's a really difficult
16 question for me to answer.

17 (e), In developing the MPS, did
18 Ameren or the Agency consider whether the MPS
19 would be an attractive or viable alternative to
20 any other company?

21 I think we answered this very
22 early on. There was some consideration given,
23 particularly more with the Agency. We did not get
24 into any discussions on that, and the focus of the

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1 MPS was, again, on the Ameren system.

2 (f), If so, who participated?

3 Again, we talked about that early
4 on, that it was basically the members of Illinois
5 Environmental Protection Agency, counsel, and
6 myself and some of my staff. And the result of
7 that consideration, I guess you'd say, is the
8 proposal that came out. That was what was issued.

9 34, The MPS appears to require
10 units with hot-side electrostatic precipitators to
11 install baghouses. Is that correct?

12 I would almost have to defer that
13 to the Agency. There's no specific provisions for
14 hot-side electrostatic precipitators, so I don't
15 know how it would be handled.

16 Does Ameren have any Illinois
17 units 90 megawatts or greater with hot-side
18 precipitators? No.

19 Does Midwest Gen or Dynegy have
20 any units with hot-side precipitators? I don't

21 know.

22 And if so, doesn't that have

23 the --

24 HEARING OFFICER TIPSORD: Hold on.

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1 Hold on.

2 (Discussion off the record.)

3 MR. MENNE: Question 35, is EEI
4 included as part of the Ameren Illinois fleet?
5 The answer is yes.

6 HEARING OFFICER TIPSORD: Hang on. I
7 don't know -- Oh, wait, I'm sorry. (c) is taken
8 care of. Did you give the answer to 34(b)? Okay.
9 Go ahead. 35.

10 I'm sorry. Ms. Bassi?

11 MS. BASSI: Are we coming back --
12 Mr. Menne suggested that the Agency needed to
13 answer the first part of 34.

14 HEARING OFFICER TIPSORD: I have it
15 noted on my list to come back.

16 MS. BASSI: Thank you.

17 MR. MENNE: 36, if Ameren chooses to
18 opt in to the MPS, does that mean that EEI is
19 automatically opted in to the MPS as well? The
20 answer is yes.

21 37, are other companies faced with

22 the same problem as Ameren with respect to
23 management of financing, massive equipment
24 procurement and construction, and coordination of

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1 the numerous regulatory requirements applicable to
2 them?

3 Again, I don't know for sure, but
4 my suspicion would be yes.

5 38, you state in your testimony
6 that you do not believe that the Ameren system can
7 comply with the 90 percent mercury reduction
8 requirement relying on HCI alone.

9 HEARING OFFICER TIPSORD: Excuse me.
10 That's halogenated carbon injection. It's the
11 first time used today. I want to make sure you
12 got it in there.

13 MR. MENNE: I'm just looking at these.
14 (a) and (b), I believe, are Agency questions.

15 (c), is it your opinion that
16 reliance on HCI alone will not yield compliance
17 with the 90 percent mercury reduction requirement
18 also true for most of the other EGUs in Illinois?

19 And again, I -- Mercury reduction
20 with HCI is very site-specific, so I really can't
21 answer that question.

22 MR. RIESER: 39 is an Agency question.
23 HEARING OFFICER TIPSORD: 40.
24 MR. MENNE: How much of the \$2 billion

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1 necessary for Ameren to comply under the MPS is
2 related to actual mercury control equipment?

3 Again, it's a difficult question
4 because so much of the SO2 and NOx control
5 equipment we're putting on also achieves -- we're
6 anticipating is going to achieve a good part of
7 our mercury reduction as well. So it's really
8 difficult. There's a couple questions related to
9 this in here, and I spent a lot of time trying to
10 separate these things out, and it's really very
11 difficult.

12 But one of the things I can answer
13 is, the halogenated activated carbon injection
14 equipment we're planning to install in our units
15 is going to cost the company somewhere in the area
16 of 60 to \$70 million, and that would be dedicated
17 just to mercury control.

18 (a), Ameren's press release
19 concerning the MPS states that the proposed
20 agreement with Illinois will add a projected \$600
21 million, the majority of which is an acceleration
22 of emission-related capital expenditures that

23 would have been spent beyond 2016. How much of
24 that \$600 million would be spent on controls that

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1 were already planned by Ameren regardless of
2 whether the MPS is adopted?

3 We do have -- We do have a
4 statement in our 10(q) that addresses this. When
5 you say that it's already planned by Ameren, we do
6 not plan things operationally or within our budget
7 more than ten years out. So when you say beyond
8 2016, and we're advancing that, as a general rule,
9 that is partially true because we've always
10 assumed that it was going to be very difficult to
11 make attainment in the Chicago area and that
12 eventually additional controls would have to be
13 put on our system. But we really don't have
14 definitive plans for what we're going to be doing
15 with our plants 10, 15 years from now.

16 (b), please identify those
17 controls that would be installed and the
18 associated costs that would be incurred by Ameren
19 solely to comply with the MPS.

20 This is a little different. The
21 first one was mercury. This is the MPS. I think
22 the total amount is necessary to comply with the

23 MPS.

24 HEARING OFFICER TIPSORD:

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1 Mr. Bonebrake.

2 MR. BONEBRAKE: A follow-up,
3 Mr. Menne. I think you mentioned that the
4 company, Ameren, expects to spend 60 to 70 million
5 just for mercury controls. Does that number
6 include the cost of baghouses,
7 Mr. Menne?

8 MR. RIESER: I think it was just for
9 the HCI.

10 MR. MENNE: That is correct.

11 MR. BONEBRAKE: And I think you also
12 testified yesterday that Ameren expects it would
13 be necessary to install baghouses at all of these
14 units; is that correct?

15 MR. MENNE: No. We do not expect that
16 we'd have to put baghouses on all of our units.
17 Some of the wet scrubbers will not require
18 baghouses.

19 MR. BONEBRAKE: So what additional
20 baghouse costs that is in addition to the 60 to 70
21 million does Ameren expect to expend to comply
22 with the mercury requirements?

23 MR. MENNE: Again, this gets into the

1 answering before, because a lot of the dry fabric
2 filters are intended for SO2 control as well as
3 mercury control. I have not broken that out
4 separately in terms of what additional costs that
5 would be required just to put baghouses in for
6 mercury control.

7 MR. BONEBRAKE: I think you mentioned
8 yesterday, if I remember correctly -- and if I got
9 this wrong, please correct me -- but I think you
10 mentioned yesterday that you anticipated that
11 Ameren would spend 3- to \$400 million for
12 baghouses; am I understanding correctly?

13 MR. MENNE: That was correct. That
14 was an alternative plan, that is correct.

15 MR. BONEBRAKE: And when you say an
16 "alternative plan," I'm not sure what that caveat
17 means. Can you explain that to us?

18 MR. MENNE: Well, that would be what
19 we would anticipate if we had to comply with the
20 mercury rule as it was originally proposed. Maybe
21 the number is the same for just mercury control,
22 but it's hard for me to judge because we're
23 putting a lot of controls on. There's a lot of

1 MR. BONEBRAKE: Can Ameren identify
2 any baghouses that were included in that 3- to
3 400-million-dollar figure that it would not
4 install in light of -- or assuming that the MPS is
5 adopted?

6 HEARING OFFICER TIPSORD: And
7 Mr. Menne, can you raise your voice a little bit?

8 MR. MENNE: Sure. The question is, is
9 there any baghouses that we would have put on the
10 original rule that we may not be putting on now?

11 MR. BONEBRAKE: That's correct.

12 MR. MENNE: I can't answer that
13 directly because I don't recall specifically what
14 units they would have gone on before. It's
15 probably about the same number. I don't know if
16 it's the same units.

17 HEARING OFFICER TIPSORD: Mr. Zabel.

18 MR. ZABEL: Mr. Menne, under the MPS,
19 does Ameren plan to install any new wet scrubbers?

20 MR. MENNE: Yes.

21 MR. ZABEL: How many?

22 MR. MENNE: Well, again, we're leaving
23 the option open as to whether we go wet scrubbing
24 or dry scrubbing or some other technology on some

1 units. But I believe we're committing to three
2 wet scrubbers.

3 MR. ZABEL: How many does is it
4 currently have?

5 MR. MENNE: One.

6 MR. ZABEL: Which unit is that?

7 MR. MENNE: That's Duck Creek.

8 HEARING OFFICER TIPSORD:

9 Mr. Bonebrake.

10 MR. BONEBRAKE: Mr. Menne, is Ameren
11 planning on installing any SCRs to comply with the
12 MPS?

13 MR. MENNE: Additional SCRs, I believe
14 so. Yes, we are.

15 MR. BONEBRAKE: And how many,
16 Mr. Menne, will be added?

17 MR. MENNE: Will we be adding; is that
18 the question?

19 MR. BONEBRAKE: That's correct. How
20 many will be added?

21 MR. MENNE: Well, again, I don't want
22 to commit on record to say that we're going to be
23 adding SCRs, because if there's other technologies
24 that come along that will allow us to achieve the

1 NOx rates in a different fashion, we would like to
2 use that. But I believe in terms of the cost that
3 we've got there, it probably reflects two more
4 SCRs in the system.

5 MR. BONEBRAKE: What is the average
6 cost of an SCR?

7 MR. MENNE: Well, others will testify
8 that know more about that than I will.

9 DR. SMITH: I don't know specifically
10 the number off the top of my head on a dollars per
11 kilowatt basis that we used for analysis. We got
12 it from a hedge economist. I can say it's in the
13 range of about 150 to 250 -- sorry -- between
14 about 150 and \$200 a KW, I believe. But I don't
15 know the numbers specifically off the top of my
16 head.

17 MR. BONEBRAKE: Can you translate that
18 into the cost to a 600-megawatt unit, for
19 instance?

20 DR. SMITH: Do you have a calculator?
21 Multiply it by 600 -- 600,000. Sorry. 600,000.

22 MR. ZABEL: At \$100 a KW, Dr. Smith,
23 that would be \$60 million?

24 DR. SMITH: That would be right.

1 MR. ZABEL: Just to give a ballpark
2 number.

3 HEARING OFFICER TIPSORD: Question
4 No. 41.

5 MR. MENNE: It is not apparent what
6 advantages Ameren has gained with this proposal
7 other than elimination of the
8 25 percent generation capacity limitation of the
9 TTBS. Please describe what those advantages are
10 that Ameren would gain from complying with the
11 MPS.

12 I believe I've already answered
13 that by saying it's really in our planning process
14 for pollution control equipment going forward. It
15 gives us some degree of certainty for the next ten
16 years and evens out our cash flow.

17 HEARING OFFICER TIPSORD: Question
18 No. 42.

19 MR. MENNE: What other NOx and SO2
20 requirements were requested by the Agency and not
21 included in the MPS?

22 I'm not sure what the intent of
23 that is. I mean, I think I got what they wanted
24 in the MPS. I guess that's how I would answer

1 that.

2 MR. ZABEL: If you can live with that
3 answer, Mr. Menne.

4 HEARING OFFICER TIPSORD: Question 43.

5 MR. MENNE: Why would Ameren agree to
6 give up its regulatory and statutory right to
7 trade emission allowances?

8 MR. RIESER: And before Mike answers
9 this, I'll note that this really does call for
10 something of a legal conclusion and assumes that
11 they have given up regulatory and statutory rights
12 to trade emission allowances. What's in the rule
13 is what the rule provides for with respect to
14 allowances.

15 HEARING OFFICER TIPSORD: With that
16 caveat ...

17 MR. MENNE: I would just say that that
18 was a key part of the negotiations from the
19 Agency's standpoint, was that we would not use,
20 not buy allowances in order to meet the emission
21 rates that are in the MPS, that we would actually
22 have to put control equipment on to meet those
23 limits. And that's just what the agreement called
24 for.

1 MR. ZABEL: I can understand the
2 concept of not using the allowances to meet the
3 MPS, but why weren't you allowed to retain them
4 and sell them?

5 MR. MENNE: Well, my understanding, we
6 are allowed to sell allowances up until the time
7 we begin to get into these -- the timetable for
8 compliance with those specific limits. And
9 because it's not anticipated we're going to have
10 excess allowances -- If we have excess allowances
11 above and beyond what we need to comply, we still
12 are allowed to go out and sell and trade on the
13 market those allowances.

14 MR. ZABEL: As I understand the rule,
15 Mr. Menne, there's some increment of allowances
16 you may not need to pay over the federal program,
17 if you will, that are gained on the hardware
18 you're installing under the MPS; is that correct?

19 MR. MENNE: There will be on some
20 units, that's correct.

21 MR. ZABEL: And you're to surrender
22 those to the Agency; is that correct?

23 MR. MENNE: We are allowed to trade
24 them among the units in our system, that is

1 correct. But beyond that, we have to surrender
2 them to the Agency if it's necessary to meet the
3 compliance level.

4 MR. ZABEL: And my question was, why
5 can't you just sell those? If you've installed
6 the hardware and done the controls that it
7 requires, why do you also have to surrender the
8 allowances? Maybe that's a question for the
9 Agency.

10 MR. MENNE: I think part of the
11 Agency's -- and they can address this as
12 well -- but part of the Agency's desire here was
13 to make sure that we don't so-call profit by
14 putting on these pollution control measures. But
15 I'm struggling with where we're actually going to
16 be retiring -- or giving up allowances. Because
17 in most instances, it's going to take everything
18 we can to meet these emission reduction -- to meet
19 the levels that are there.

20 MR. ZABEL: I mean, within your
21 system, I assume?

22 MR. MENNE: Right, yes.

23 MR. ZABEL: So within your system,
24 it's unlikely you're going to generate allowances

1 to surrender to the Agency?

2 MR. MENNE: Excess allowances, I would
3 think that would be the case.

4 HEARING OFFICER TIPSORD: Ms. Bassi,
5 you have a question?

6 MS. BASSI: Mr. Menne, that just
7 doesn't sound logically intuitive to me, but that
8 doesn't mean it's wrong.

9 MR. MENNE: Is that a question?

10 MS. BASSI: I'm getting to the
11 question. I'm laying the foundation for the
12 question. If you have to reduce SO2 emissions,
13 for example, far below what you are currently
14 emitting and you have SO2 allowances that have
15 been allocated by the USEPA out to, I believe, 30
16 years or so, would you, by reducing your SO2
17 allowances to the levels that are included in the
18 MPS, not be required to surrender so many of those
19 allowances to the Title IV program as was required
20 in the past; and therefore, you would be
21 generating, effectively, excess allowances or
22 excess emission credits? In other words, you
23 would be getting more allowances now, or at that
24 point, than you would have needed to comply with

1 Title IV; is that not true?

2 MR. MENNE: I would rather have Anne
3 Smith -- because she's modeled this in how we're
4 complying with it and how many allowances are
5 going to be needed or
6 excess -- respond to this, if we can.

7 HEARING OFFICER TIPSORD: We're going
8 far afield here to answer this question. I think
9 we can move on to the next.

10 MR. ZABEL: It is part of the rule.

11 HEARING OFFICER TIPSORD: I understand
12 that, and we can get into a legal argument. But I
13 think that part of what Ms. Bassi was asking in
14 Title IV is -- what?

15 MS. BASSI: Title IV is the Acid Rain
16 Program, and Title IV is the Clean Air Act.

17 HEARING OFFICER TIPSORD: Thank you.

18 MR. BONEBRAKE: Just for some context
19 here in terms of the relevancy question, to the
20 extent that companies that participate in the MPS
21 are required to surrender allowances under the
22 programs in Title IV, there's an imposition of
23 costs on companies. So it seems to us that since
24 there are some prohibitions in this rule on

1 trading, part and parcel of evaluation of the
2 proposal and its costs is a discussion of
3 prohibition and its impact on the company.

4 HEARING OFFICER TIPSORD: And I
5 understand that, but we've already established
6 that Ameren doesn't believe there's going to be
7 any -- and this is a follow-up to -- They've
8 already said they're not going to have anything to
9 surrender. And this is a follow-up where we're
10 getting more into modeling. We're not going to go
11 down the road extensively on Ameren's ability to
12 have excess trades. I don't have a problem with
13 general questions about the trading; that's fine.
14 But the Ameren-specific stuff, I think he's
15 already answered.

16 MR. MENNE: But Anne can verify
17 whether I was right or not.

18 HEARING OFFICER TIPSORD: Go ahead
19 Dr. Smith. Just remember to keep your voice up a
20 little bit.

21 DR. SMITH: From our analysis and just
22 a forecast of the implications under the MPS, we
23 estimated in Phase I of CAIR, that -- this is
24 system-wide -- sorry -- Illinois-wide Ameren

1 system numbers -- that in Phase I, especially in
2 the early part of it, that's 2010 through 2015,
3 Ameren would have fewer allocations than they
4 would need to make their emissions. It would be a
5 fairly substantial need for additional allowance
6 use -- purchase or use.

7 And in Phase II, we're projecting
8 the emissions from the Ameren Illinois units to be
9 approximately 38,000 a year, and their allocation
10 would be approximately the equivalent of 43,000
11 tons. It's the equivalent because there's a
12 trading ratio. It's not the actual allocation,
13 but it had to be adjusted by the quantities that
14 needed to be traded in. So there's a very slight
15 excess forecasted. It's not sufficient to really
16 believe that that's an excess. It looks to me
17 like about a net balance. "Net balance," meaning
18 nongenerated, nonpurchased.

19 HEARING OFFICER TIPSORD:

20 Mr. Bonebrake.

21 MR. BONEBRAKE: The numbers you just
22 provided, Dr. Smith, were all SO₂; is that
23 correct?

24 DR. SMITH: That's SO₂. I don't know

1 their NOx allocation, so it's very difficult to
2 know. But our projection, just an estimate of
3 approximate NOx allocations that they might
4 expect, suggests that they'll probably still be
5 needing to purchase throughout Phase I and Phase
6 II.

7 MR. BONEBRAKE: If I understood you
8 correctly, I believe what you are saying is that
9 for Phase I CAIR compliance, Ameren would be in --
10 would need to buy SO2 allowances in the 2010 to
11 2015 time period; is that correct?

12 DR. SMITH: Especially in the first
13 part of that time that emissions will
14 decline -- sorry -- projected to buy during the
15 entire period, yes.

16 MR. BONEBRAKE: And then in post-2015
17 time period, you're expecting either to roughly
18 break even or perhaps even a slight generation of
19 a small number of excess SO2 allowances as
20 compared to the Phase II CAIR requirements?

21 DR. SMITH: Yes.

22 MR. ZABEL: Just to follow up,
23 Ms. Smith, is the problem in the early years, 2010
24 to -- beginning of the 2010-2015 period due to

1 their current high emission rate of SO2?

2 DR. SMITH: Currently they're
3 purchasing at the current emission rates; and if
4 the emission rates don't fall, they'll continue to
5 purchase. They do start to fall about 2010 as
6 scrubbers are brought on-line.

7 MR. ZABEL: And is that in your
8 analysis of CAIR or MPS?

9 DR. SMITH: That's the MPS result.

10 MR. ZABEL: That's not the same as --
11 Your analysis under CAIR would be different, in
12 fact, right?

13 DR. SMITH: That's right.

14 HEARING OFFICER TIPSORD: 43(a).

15 MR. MENNE: Has Ameren or the Agency
16 assessed whether prohibition on the trading of SO2
17 and NOx is unlawful?

18 No, at least not Ameren.

19 44, is the preclusion on trading
20 emission allowances absolute?

21 MR. REISER: And again, I think this
22 is a question that's better directed to the
23 Agency.

24 HEARING OFFICER TIPSORD: Okay.

1 MR. MENNE: And I think all these
2 subquestions really talk about what kind of
3 demonstration you're going to have to make, so I
4 would like to defer these.

5 HEARING OFFICER TIPSORD: Okay.
6 Question 45.

7 MR. MENNE: Again, I think these are
8 really Agency questions, in terms of which years
9 were set -- I don't want to put Jim on the spot --
10 but, I think, which years were set for the
11 baseline.

12 HEARING OFFICER TIPSORD: Question 46.

13 MS. BASSI: Just a quick follow-up.
14 So Ameren had no -- Are you saying that Ameren had
15 no input or no opinion as to which baseline years
16 would be better?

17 MR. MENNE: To be quite honest, I
18 don't remember the question of baseline years ever
19 being discussed.

20 MS. BASSI: Okay. Thank you.

21 HEARING OFFICER TIPSORD: Question 46.

22 MR. MENNE: Section 225.233(a)(3)(A)
23 of the proposed amendment to the proposed rule
24 establishes July 1, 2006, as a cut-off date for

1 determining which EGUs would be included in an MPS
2 group. The subsection says, all EGUs it owns in
3 Illinois as of July 2001 -- July 1, 2006, shall be
4 thereafter subject to the standards and control
5 requirements of this section.

6 Does this mean that each of the
7 Ameren's three Illinois operating companies can
8 separately opt in or out of the MPS? No.

9 Is Ameren's agreement with the
10 Agency premised on all three companies opting in?
11 Yes.

12 What happens if a non-MPS company
13 purchases EGUs that are subject to the MPS after
14 July 1, 2006?

15 These questions we really didn't
16 examine. They really never came up in our
17 discussions. And again, I think some of this is
18 going to have to be interpreted as this rule is
19 implemented and how it would get implemented.

20 MS. BASSI: Can we defer these to the
21 Agency, please?

22 HEARING OFFICER TIPSORD: Yes.

23 MS. BASSI: And (d)?

24 HEARING OFFICER TIPSORD: And (d).

1 MR. MENNE: (e), if Ameren opts in to
2 the MPS, will it be required to include the EEI
3 units? Yes.

4 (f), why must the MPS require
5 inclusion of all of a company's units rather than
6 merely some of them?

7 Well, that's the way the rule was
8 written. But I think the intent was that if
9 you're going to get in, you're going to use your
10 entire system to comply with these provisions so
11 that they get sufficient reductions in SO2 and NOx
12 system-wide. So you can't cherry-pick, if you
13 will, which units that might be -- that are less.
14 But that's just the way the rule came out, and it
15 was intended that way. I can't say anything more
16 on the intent one way or the other.

17 HEARING OFFICER TIPSORD:
18 Mr. Bonebrake.

19 MR. BONEBRAKE: Mr. Menne, did Ameren
20 make that proposal; that is, that it's all or
21 nothing?

22 MR. MENNE: We always just discussed
23 our system as a whole, so I guess that's the way
24 that it ended up being written because we've never

1 really talked about just certain units or just
2 certain companies.

3 I cannot answer number (g).

4 MS. BASSI: Leave that for the Agency,
5 please?

6 HEARING OFFICER TIPSORD: Okay.

7 MR. MENNE: (h), (i), and (j), I
8 cannot answer them as well.

9 MR. RIESER: Pretty much the same with
10 47.

11 HEARING OFFICER TIPSORD: Okay. 48.

12 MR. MENNE: If Ameren were to opt in
13 to the MPS, would that mean that there are entire
14 generating stations owned or operated by the
15 Ameren family of companies in Illinois that would
16 install no mercury reduction equipment prior to
17 2013? The answer is yes.

18 At which of Ameren's stations
19 would there be no mercury reduction equipment
20 prior to 2013?

21 The answer is Hutsonville.

22 What would be the coal-fired
23 capacity at each of Ameren's stations that would
24 not be subject to mercury reduction requirements

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1 prior to 2013 under the MPS?

2 Again, that's the two units at
3 Hutsonville, which are roughly 80 megawatts
4 apiece. There are four boilers and two turbines
5 that feed two turbines at Meredosia. Those four
6 boilers -- Those two turbines are about 62
7 megawatts apiece. That's four boilers and two
8 62-megawatt turbines.

9 49, under Section 225.233(c)(1),
10 what applies to units that blend coal?

11 Again, this particular section,
12 my -- I don't think we ever contemplated blending
13 in this section. We specifically looked at
14 blending under Section (c)(2). We're looking at
15 injection ratios. But we never really
16 contemplated blending when we looked at this
17 section. So I guess I would defer to the Agency
18 as to what they would require for blending units
19 in this section.

20 50, how many Ameren units blend
21 coal?

22 In Illinois, we don't really have
23 any units that blend on a continuous basis. We
24 are burning a combination of bituminous and

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1 Illinois coal at our Coffeen units currently, but

2 none in a -- what I would call a pure-blending
3 fashion. We burn one or the other.

4 51, I would like to defer if I
5 could. Although 51(b), when you're talking about
6 the configuration of the EGU and its ductwork for
7 effective absorption of mercury, I think that's a
8 very site-specific element with regard to EGUs.
9 How effective injection is going to be on
10 controlling mercury has a lot to do with the
11 temperature, the length of duct, and the flow in
12 those ducts, things of that nature. So how that
13 -- How you fit that sort of thing in terms of what
14 the rule requires in terms of effective absorption
15 of mercury, I don't know. I don't know how that
16 will play into that.

17 HEARING OFFICER TIPSORD:

18 Mr. Bonebrake.

19 MR. BONEBRAKE: Mr. Menne, when you
20 say you don't know, is that because you're not
21 sure how the rule would be interpreted by the
22 Agency?

23 MR. MENNE: That's correct. I don't
24 know if they'll take those things into

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1 consideration when they look at effective control.

2 MR. BONEBRAKE: So 51 sounds like, in

3 its entirety, a set of questions we need to direct
4 to the Agency.

5 HEARING OFFICER TIPSORD: Question
6 No. 52.

7 MR. RIESER: I think 52 and 53 are
8 also Agency questions.

9 HEARING OFFICER TIPSORD: Question
10 No. 54.

11 MR. MENNE: 54, is it the case that
12 the provision for an evaluation of the
13 effectiveness of various sorbents or other
14 mercury-reduction techniques in Section
15 225.233(c)(4) is not a requirement of the rule but
16 rather that that section sets forth the provisions
17 that apply if a source chooses to perform an
18 evaluation?

19 The answer is yes.

20 HEARING OFFICER TIPSORD: Ms. Bassi.

21 MS. BASSI: Does the Agency concur
22 with his interpretation?

23 MR. ROMAINE: Yes.

24 HEARING OFFICER TIPSORD: Question 55.

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1 MR. MENNE: I can't answer 55. That's
2 an Agency question.

3 MR. RIESER: I guess my suggestion, if
4 it suits you, is that the next series of questions
5 have definite technical background. Would this be
6 a good time to take a break?

7 HEARING OFFICER TIPSORD: It would be
8 a great time to take a break. Let's take ten
9 minutes.

10 (A short break was had.)

11 HEARING OFFICER TIPSORD: I think
12 we're at Question No. 56 for Mr. Menne.

13 MR. MENNE: Number 56, what is
14 50 percent of Ameren's annual NOx base rate?

15 The number is 0.11 pounds per
16 million BTU.

17 HEARING OFFICER TIPSORD: Can you
18 repeat that, please?

19 MR. MENNE: 0.11 pounds of NOx per
20 million BTU.

21 (a), does this average rate
22 include EEI? Yes.

23 57, what is 80 percent of Ameren's
24 seasonal NOx base rate?

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1 Answer is 0.12 pounds per NOx per
2 million BTU.

3 Does this average rate include

4 EEI? Yes.

5 58, what is 35 percent of Ameren's
6 SO2 base rate?

7 The answer is 0.36 pounds of SO2
8 per million BTU. It does include EEI.

9 59, what is 30 percent of Ameren's
10 SO2 base rate.

11 The answer is 0.31 pounds of SO2
12 per million BTU, and it does include EEI.

13 60, are the current emission rates
14 for EEI for SO2 and NOx greater or less than the
15 rates for Ameren's Illinois coal-fired units?

16 The answer is EEIs are lower.

17 61, I cannot answer. It's with
18 regard to other companies.

19 MR. ZABEL: Save that for the Agency?

20 HEARING OFFICER TIPSORD: Yes.

21 MR. MENNE: 62, I would like to defer
22 to the Agency.

23 63, the base question, I would
24 like to defer to the Agency, but I can answer the

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1 subquestions. For NOx, are the prescribed rates
2 or the percentage reductions more stringent for
3 Ameren?

4 The rates are more stringent.

5 Question (b), for SO2, are the
6 prescribed rates or the percentage reductions more
7 stringent for Ameren?

8 Again, the answer is the rates.

9 Question 3 [sic], how, why, and by
10 whom, were the emission rates included in the MPS
11 selected?

12 These were negotiated.

13 Question (d), how, why, and by
14 whom were the percentage reductions selected?

15 Those were installed by the
16 Agency.

17 Question 64 is an Agency question.

18 Question 65, notwithstanding the
19 general preclusion of trading, the MPS appears to
20 allow trading among affiliated parties. Is that
21 correct? Yes.

22 Must those affiliated parties all
23 be located within the state of Illinois? Yes.

24 Is the purpose of the trading

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1 among affiliates to allow Ameren Illinois to
2 transfer SO2 and NOx allowances created by these
3 reductions to Ameren Missouri? No.

4 Could a unit in the MPS transfer

5 all of its SO2 and NOx allowances to a unit that
6 will not be installing controls and therefore not
7 generating excess allowances through compliance
8 with the MPS and thereby not have to surrender any
9 allowances to the Agency? The answer is no.

10 MS. BASSI: I have two follow-ups. On
11 65(a), could you point to the portion of the rule
12 or could the Agency mark this and point to the
13 portion of the rule that prohibits the sale of
14 your allowance -- a company's allowances to
15 affiliates that are outside of the state, please?

16 MR. MENNE: I will let the State
17 answer, but I believe it's an eligibility
18 requirement for an eligible EGU under the MPS.

19 MS. BASSI: Where is that?

20 MR. REISER: (a)(2)(A).

21 HEARING OFFICER TIPSORD: Very first
22 page.

23 MS. BASSI: Okay. And then where is
24 the limitation on where trading is limited to

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1 eligible BTUs?

2 MR. MENNE: Those are in Section 5, I
3 believe.

4 MR. RIESER: It's (f)(1).

5 MR. MENNE: Section (f)(1) on page 7
6 of the --
7 HEARING OFFICER TIPSORD: Which is
8 Exhibit 75.
9 MS. BASSI: It's not in the rule?
10 MR. RIESER: It's in the rule. The
11 rule's attached to the joint statement.
12 MS. BASSI: So is it your position
13 that the last words in Section (f)(1) on
14 page 7 of the rule that's part of Exhibit 75,
15 where it says that -- the last sentence, this
16 provision does not apply to the resale, exchange,
17 gift, or trade of allowances of other EGUs in an
18 MPS group?
19 MR. MENNE: That's correct.
20 MS. BASSI: And then following up on
21 Question 65(c), would not your Hutsonville unit be
22 part of your MPS group?
23 MR. MENNE: I believe it would, yes.
24 MS. BASSI: And so is there a reason

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1 why you do not transfer all of your SO2 allowances
2 or NOx allowances, or whatever, that you may have
3 banked -- and I'm not asking whether you do or
4 don't -- but that you may have banked over to
5 Hutsonville where there would not be any

6 reductions generated?

7 MR. MENNE: We could transfer them
8 there, yes, but I don't know what the point would
9 be. You still have to true up your allowances on
10 a system-wide basis.

11 MS. BASSI: Well, it assumes that you
12 have banked allowances, that you have more
13 allowances, that you would be generating excess --
14 essentially excess allowances because your
15 reductions are so low. And recognizing that Dr.
16 Smith's numbers were just ranges and approximates
17 and the 5,000 allowances is not really a
18 difference that is significant, to some folks
19 5,000 allowances might be a lot. And if you had
20 an additional 5,000 allowances that were generated
21 by this that were not required for true up of the
22 Acid Rain Program of Title IV of the Clean Air Act
23 or the NOx CAIR or SO2 CAIR, why could those not
24 be sold through Hutsonville?

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1 MR. MENNE: Again, if I understand the
2 question right, the MPS includes all the units in
3 your system. When you get to your true up or your
4 reporting period, you have to demonstrate what --
5 how you're achieving that emission rate, and you

6 have to basically come up with the number of
7 allowances it takes you to get to that emission
8 rate. And any of those allowances that you might
9 have available that would be included in
10 calculating an equivalent emission rate would have
11 to be given to the Agency. It's still done on a
12 system average, so I'm not sure I'm following your
13 point.

14 MS. BASSI: And maybe that's the
15 problem. It appears to me -- and please confirm
16 if this is true -- that it's talking about just
17 EGUs in the MPS group in Section (f)(1) as opposed
18 to the system.

19 MR. ROMAINE: The EGUs in the MPS
20 group do include Hutsonville.

21 MS. BASSI: Yes, but Hutsonville would
22 not be generating any reductions.

23 MR. ROMAINE: As Mr. Menne explained,
24 it is included in the system-wide average and it

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1 is part of the MPS group. It could not be handled
2 separately in the manner you're suggesting.

3 MS. BASSI: Mr. Romaine, do you think
4 the language says that?

5 MR. ROMAINE: Yes.

6 MS. BASSI: Where?

7 period after the end of the year is, you have to
8 buy or put in your account allowances equal to
9 amount of sulfur you emitted; is that correct?

10 MR. MENNE: That's correct.

11 MR. ZABEL: But if that were less than
12 the allowances for 2020 that you've sold, you
13 would have no excess allowances to surrender in
14 that year, would you?

15 MR. MENNE: If I understand your
16 question correctly, that's correct.

17 MR. ZABEL: And so if you could have
18 made a profit off those excess allowances that you
19 anticipated you'd generate in 2020, you, in fact,
20 don't have them to surrender to the Agency in
21 2020; is that correct?

22 MR. MENNE: If I follow your logic, I
23 think that's correct.

24 MR. ZABEL: Thank you. I'm glad you

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1 did; I'm not sure I did. But I appreciate your
2 answer.

3 HEARING OFFICER TIPSORD: Question
4 No. 66.

5 MR. MENNE: Is Missouri generally
6 upwind of Illinois?

7 I'm sure if you talk to the State

8 of Illinois, when you look at Chicago
9 nonattainment, they will tell you Missouri is
10 upwind. If you talk to Missouri officials about
11 St. Louis, they will tell you southern Illinois is
12 upwind of Missouri, so ...

13 MR. ZABEL: Mr. Menne, do you feel a
14 little schizophrenic on that topic?

15 MR. MENNE: Yes, I do.

16 Is there anything that prevents
17 the Agency from -- that's an Agency question. I
18 can't answer that.

19 HEARING OFFICER TIPSORD: Question 67,
20 for the record.

21 MR. MENNE: 68, what percentage
22 reduction of SO2 emissions has Ameren's Illinois
23 plants, excluding EEI, achieved since 1998?

24 The answer is 48 percent of

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1 emission rate.

2 Subquestion (a), what percentage
3 reduction of SO2 emissions has Ameren Illinois
4 plants, including EEI, achieved since 1998?

5 The answer is 34 percent, in terms
6 of a rate reduction.

7 And (b), I do not have the answer

8 to.

9 Question 69, does Ameren burn high
10 sulfur or other bituminous coal in any of its
11 Illinois units? Yes.

12 Did Ameren burn such coal during
13 the 2003-2005 baseline period of the MPS? Yes.

14 (b), will Ameren continue to burn
15 such coal if it opts in to the MPS?

16 It's not a requirement one way or
17 the other, but our intent is to continue to burn
18 that coal, yes.

19 (c), how many tons of SO2 could be
20 emitted by Ameren's Illinois plants each year
21 under the terms of the proposed MPS?

22 I really struggle trying to get an
23 answer to this question because when you talk
24 about tons, it is based on a lot of factors: what

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1 type of fuel you have, what the heat rate of your
2 boiler is, what capacity factor you're operating
3 under. So I did not estimate how many SO2 tons
4 could be emitted from the Illinois plants because
5 it's really a variable number.

6 (d), is that annual tonnage
7 greater than -- Again, (d), (e), and (f), I just
8 don't know the answer to.

9 70, will Ameren be able to recover
10 it's capital costs for compliance with the MPS
11 through electric rates it charges to its Illinois
12 customers?

13 Certainly we're going to try to
14 recover costs. But as you know, in Illinois, it's
15 a deregulated state. So your only -- you can only
16 sell electricity to whatever the price in the
17 market allows you to sell it to. So it's nothing
18 like a direct pass-through. You can only -- It's
19 really just a market rate that's there. And
20 assuming with all the new pollution control rules
21 that are coming on board, that that rate will go
22 up and we'll be able to recover some of the costs.

23 (a), are wholesale electricity
24 providers in Illinois guaranteed recovery of their

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1 capital expenditures for pollution control
2 equipment?

3 Again, this is not my area of the
4 company, but I don't believe there's any
5 guaranteed recovery.

6 Number 71, Ameren claims it would
7 make SO2 and NOx reductions above those required
8 by CAIR. Would these reductions be beyond those

9 required under Illinois CAIR proposal, which is
10 more stringent than the federal requirement?

11 Again, we can't know for sure,
12 because we're still examining the Illinois CAIR
13 proposal, whether or not we'd be eligible for any
14 additional allowances under the hold back and
15 things of that nature. But in general, our sense
16 is, is that on the NOx side, we're very close to
17 where we would have to be under the Illinois
18 proposed CAIR rule. And under the SO2 program, we
19 believe we're well under where we need to be under
20 the CAIR rule.

21 HEARING OFFICER TIPSORD:

22 Mr. Bonebrake.

23 MR. BONEBRAKE: Mr. Menne, when you
24 say you would be well below where you need to be

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1 under the CAIR rule, do you mean if Ameren opts in
2 to MPS, that would be the result?

3 MR. MENNE: That's true.

4 HEARING OFFICER TIPSORD: 72.

5 MR. MENNE: 72 is an Agency question.

6 MR. RIESER: As is 73. I think 73 and
7 74 are as well.

8 HEARING OFFICER TIPSORD: Okay. 75.

9 MR. MENNE: Isn't it true that the

10 imposition of the percentage reduction from base
11 rate emission, if that leads to a more stringent
12 emission limit, does not substantially affect
13 Ameren, given its base rate? That's correct.

14 Isn't it true that given Ameren's
15 base rate emissions, under the MPS the percentage
16 reduction of SO2 emissions and the SO2 emission
17 rate beginning January 2013 are essentially
18 equivalent?

19 The percentage reduction is .36;
20 the rate is .33. So it's -- You could call it
21 essentially equivalent. Actually, .33 is a little
22 more stringent.

23 (b), isn't it true that Ameren's
24 base rate under the MPS for percentage reduction

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1 of SO2 emissions and the SO2 emission rate
2 beginning in January 2015 are essentially
3 equivalent?

4 Again, the percentage reduction is
5 .31 and the rate is .25, so the rate is
6 significantly less.

7 MR. RIESER: 76 and 77, I think are
8 both Agency questions.

9 MR. ZABEL: I assume silence from the

10 Agency on this is that they will intend to answer
11 them?

12 MR. ROSS: We were instructed to be
13 silent, I believe.

14 HEARING OFFICER TIPSORD: But you will
15 be answering these questions?

16 MR. ROSS: We're ready right now.

17 MR. ZABEL: You're not disagreeing
18 with Mr. Reiser's characterizations.

19 HEARING OFFICER TIPSORD: That's
20 actually the end of the questions for
21 Mr. Menne, I believe.

22 MR. REISER: Correct. Can we proceed
23 with Dr. Smith's testimony?

24 HEARING OFFICER TIPSORD: Actually,

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1 no. I think we need to go to the Agency questions
2 and get these questions out of the way before we
3 start with Dr. Smith. That also will allow for
4 any additional feedback that may be necessary from
5 Ameren since

6 Mr. Menne is still with us. Mr. Bonebrake?

7 MR. BONEBRAKE: I did have one
8 follow-up for Mr. Menne. I think you said earlier
9 when there were some questions pertaining to the
10 development of the percent reduction and the

11 emission rates, I think you said that the rates
12 were negotiated and the percent reduction was, I
13 think you said, installed by IEPA. Do you recall
14 that testimony?

15 MR. MENNE: Yes.

16 MR. BONEBRAKE: And that suggested to
17 me that Ameren did not negotiate the percent
18 reduction set forth in the rule for SO2 and NOx;
19 is that correct?

20 MR. MENNE: That's correct.

21 MR. BONEBRAKE: And was the reason for
22 that that the net effect of the percent reduction
23 was a rate that was higher than the negotiated
24 rate so Ameren didn't really care?

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1 MR. MENNE: Well, our rates were
2 actually lower than what would be required under
3 the percent reduction. But the percent reductions
4 were inserted into the rule. Since we were
5 already meeting those -- exceeding those percent
6 reductions, right, it did not interfere with our
7 negotiated rates, that's correct.

8 MR. BONEBRAKE: So as long as the
9 percent reductions were at a level that resulted
10 in a rate that was higher than the negotiated

11 rate, you had no reason to negotiate the percent
12 reduction with IEPA, correct?

13 MR. MENNE: That's correct.

14 HEARING OFFICER TIPSORD: Then let's
15 go back to Question No. 30(a). And that question
16 is: What evidence has been provided in this
17 record that the MPS is technically feasible and
18 economically reasonable as a generally-applicable
19 rule? Mr. Ross, Mr. Romaine?

20 MR. ROSS: I would say we agree with
21 Dr. Smith's answer. Obviously at least one
22 company believes it to be both technically
23 feasible and economically reasonable.

24 HEARING OFFICER TIPSORD: Mr. Ross,

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1 you're going to have to speak way up. Let's put
2 the mike back there. From prior experience, we're
3 go to have to put the mike back there. But let's
4 leave it out a little bit, and let's see if that
5 picks you up.

6 MR. ROSS: We agree with Dr. Smith's
7 answer. And obviously, at least one company,
8 Ameren, believes it to be both technically
9 feasible and economically reasonable. And as for
10 evidence provided in this record, I refer to Dr.
11 Smith's testimony as the only evidence provided.

12 HEARING OFFICER TIPSORD: Ms. Bassi.

13 MS. BASSI: Dr. Smith, was your
14 analysis on the economic reasonableness
15 and technical -- the economic reasonableness, at
16 least, limited to Ameren?

17 DR. SMITH: My statement was limited
18 to Ameren.

19 MS. BASSI: Thank you. Mr. Ross, is
20 it not the case that this is intended to be a rule
21 of general applicability?

22 MR. ROSS: The option to use the MPS
23 is available to others. And, in fact, we have
24 been in discussion with other companies, and we

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1 are extremely confident that other companies will
2 utilize the MPS, with perhaps some minor
3 revisions.

4 MS. BASSI: If this is a rule of
5 general applicability, why do you have to be in
6 discussion with other companies?

7 MR. ROSS: Well, it's always good to
8 discuss rules with other companies. We always
9 prefer that. And that's why we offered that from
10 day one, that we want to discuss rules and discuss
11 flexibility mechanisms and still achieve our

12 goals, which are significant reductions in
13 mercury. And with the MPS, also significant
14 reductions in NOx and SO2 in conjunction with
15 those mercury reductions.

16 HEARING OFFICER TIPSORD:

17 Mr. Bonebrake.

18 MR. BONEBRAKE: Actually, I think I'll
19 pass.

20 HEARING OFFICER TIPSORD: Okay. Would
21 you identify yourself, please?

22 MS. BUGEL: Faith Bugel, from
23 Environmental Law & Policy Center.

24 Mr. Ross, when there is a rule --

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1 an aspect of a rule that is voluntary, is the
2 Agency required to submit evidence that it is
3 economically reasonable and technically feasible?

4 MR. ROSS: I don't believe so. It is
5 an option available to companies. As you stated,
6 it is not a requirement per se.

7 HEARING OFFICER TIPSORD: Ms. Bassi.

8 MS. BASSI: Mr. Ross, are you familiar
9 with Section 27 of the Environmental Protection
10 Act?

11 MR. ROSS: Probably not as familiar as
12 you are.

13 MS. BASSI: I'll let it go at that.

14 HEARING OFFICER TIPSORD: Okay. I

15 think that the next question was Question

16 No. 31. And I'll let you read this one,

17 Mr. Ross.

18 MR. ROSS: Will the MPS be submitted

19 to the USEPA for approval as part of a SIP?

20 The Illinois EPA is still

21 evaluating how the MPS will be submitted as part

22 of Illinois SIP.

23 31(a), if so, which SIP, e.g. the

24 attainment SIPs or CAIR SIPs?

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1 As stated above, the Illinois EPA
2 is still evaluating how the MPS will be submitted
3 as part of Illinois SIP.

4 (b), as the mercury program will
5 not be a SIP per se, as it is Clean Air Act,
6 Section 111(d) NSPS program, how can the Agency
7 submit the MPS as part of a Section 110 SIP?

8 In the event that the MPS is
9 submitted as part of a Section 110 SIP, mercury
10 emission reductions can be obtained as a
11 co-benefit of controlling emissions of SO₂ and
12 NO_x.

13 HEARING OFFICER TIPSORD: Ms. Bassi, I
14 believe she has a question.
15 MS. BASSI: I'll wait until the end.
16 I'm sorry.
17 HEARING OFFICER TIPSORD: No, that's
18 okay.
19 MS. BASSI: I'll wait until the end.
20 MR. ROSS: (C), if not, will it be
21 submitted to USEPA for approval as part of
22 Illinois' 111(D) program requirement?
23 Regardless of whether the Illinois
24 EPA submits the MPS, if adopted as part of the

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1 Illinois SIP, the MPS, if adopted, will be
2 submitted as part of the state plan required under
3 CAMR.
4 (d), if the latter, (c) above, is
5 true, how can 111(d) program for mercury even
6 include a voluntary requirement for reductions of
7 SO2 and NOx?
8 The advantage of regulating
9 mercury simultaneously and utilizing the same
10 regulatory mechanisms as for SO2 and NOx is that
11 significant mercury emission reductions are
12 achievable by the air pollution control devices
13 designed and installed to reduce SO2 and NOx.

14 Furthermore, the MPS is intended as a voluntary
15 mechanism for pollutant reduction that also adds
16 an additional mechanism of flexibility to aid in
17 compliance with the rules.

18 (e), does -- That's an Ameren
19 question.

20 MR. RIESER: The questions were, of
21 course, originally directed to Ameren, but I think
22 the underlying question is one that is probably
23 best answered by the Agency.

24 HEARING OFFICER TIPSORD: What does

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1 the Agency believe?

2 MR. ROSS: Does the Agency believe
3 that whatever form SIP or 111(d) program the MPS
4 takes that it is approvable by USEPA, and why do
5 you think that?

6 We believe we can work through
7 these issue with USEPA.

8 HEARING OFFICER TIPSORD:
9 Mr. Bonebrake

10 MR. BONEBRAKE: Mr. Ross, have there
11 been any discussions with USEPA to date concerning
12 the MPS?

13 HEARING OFFICER TIPSORD: That would

14 be the next question.

15 MR. BONEBRAKE: I'm clairvoyant.

16 MR. ROSS: The answer to that is no,
17 but we intend to in the near future.

18 HEARING OFFICER TIPSORD: Mr. Zabel.

19 MR. ZABEL: What issues are you
20 referring to, Mr. Ross, in your answer?

21 MR. ROSS: All the above issues on how
22 we would integrate the MPS into our SIP, into the
23 111(d), into our attainment planning, all of those
24 issues.

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1 HEARING OFFICER TIPSORD: I believe
2 that moves us to Question 32.

3 MS. BASSI: What was the answer to
4 (f), please?

5 MR. ROSS: No, but we intend to in the
6 near future.

7 HEARING OFFICER TIPSORD: You had a
8 follow-up earlier?

9 MS. BASSI: Yeah, I know. Probably
10 not, but that's okay.

11 HEARING OFFICER TIPSORD: Okay.
12 Question No. 32.

13 MR. ROSS: Is the TTBS as proposed
14 just prior to the June hearing still available?

15 Yes, to those sources not
16 utilizing the MPS.

17 HEARING OFFICER TIPSORD: And I
18 believe that brings us to Question 34.

19 MS. BASSI: Mr. Ross, why can't you
20 use both, the TTBS and the MPS?

21 MR. ROSS: Well, I believe the MPS is
22 a system-wide requirement; that once you opt in to
23 it, that, in essence, is what you need to comply
24 with to comply with Illinois' mercury rule.

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1 MS. BASSI: So the TTBS gets subsumed
2 into the MPS essentially? Does it do any good for
3 you? It's no more -- It provides no more
4 flexibility?

5 MR. ROSS: That's correct. You're
6 excluded from being able to utilize it.

7 HEARING OFFICER TIPSORD: Question 34,
8 and I believe it's just the main question.

9 MR. ROSS: The MPS appears to require
10 units with hot-side electrostatic precipitators to
11 install baghouses. Is that correct?

12 For hot-side units, the
13 installation of a baghouse is one option
14 available. They could also convert the hot-side

15 to a cold-side and install ACI.

16 Does Ameren have any --

17 HEARING OFFICER TIPSORD: I think he
18 answered those.

19 MR. ROSS: Yeah, I'm going to need
20 some direction of which questions. I wasn't
21 marking any.

22 HEARING OFFICER TIPSORD: I was
23 marking them.

24 MR. ROSS: So I'll follow your lead.

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1 HEARING OFFICER TIPSORD: Question
2 38(a).

3 MR. ZABEL: I think 34(c) was left for
4 the Agency.

5 MR. ROSS: 34(c), if so, doesn't that
6 have the effect of increasing the costs for
7 Midwest Generation or Dynegy to participate in the
8 MPS?

9 The answer is not necessarily,
10 since without using the MPS, the same options are
11 available. Again, the MPS is an option. In our
12 TSD and cost analysis, we figured that hot-side
13 ESP units are likely to install a baghouse to
14 control mercury to the required level.

15 HEARING OFFICER TIPSORD: 38(a).

16 MR. ROSS: You state in your testimony
17 that you do not believe that Ameren systems can
18 comply with the 90 percent mercury reduction
19 requirement relying on HCI alone.

20 HEARING OFFICER TIPSORD: Just for
21 purpose of the record, that's Mr. Menne's
22 testimony, not Mr. Ross's testimony.

23 MR. ROSS: Does the Agency agree with
24 your conclusion?

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1 We believe that Ameren could
2 comply with the proposed rule absent the MPS using
3 the flexibility mechanisms available, including
4 the use of abergene (phonetic) and the TTBS,
5 consistent with our technical support document and
6 previous testimony.

7 HEARING OFFICER TIPSORD: (b).

8 MR. ROSS: If so, how does that affect
9 the Agency's economic analysis of the rule
10 generally?

11 It has no effect.

12 HEARING OFFICER TIPSORD: Then I
13 believe Question 39.

14 MR. ROSS: 39, if the Agency is
15 confident that HCI will produce a 90 percent

16 reduction in mercury, would the Agency support a
17 technology-based standard, that is the MPS without
18 the provisions that apply to SO2 and NOx?

19 And the answer is no. This was
20 discussed in detail at the hearing in Springfield.

21 MS. BASSI: Could you just summarize,
22 please, why not?

23 MR. ROSS: Well, there are inherent
24 issues with using a technology-based standard.

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1 One primary issue is compliance and enforcement.
2 Of course, with a technology-based standard, a
3 company must install the equipment and operate it
4 appropriately and in accordance with some
5 preestablished criteria, but there is broad
6 interpretation and discretion in what constitutes
7 a violation. There is also a --

8 HEARING OFFICER TIPSORD: Mr. Ross,
9 could you slow down just a little bit?

10 MR. ROSS: Yes, I can. There is also
11 a larger burden on the enforcement agency to show
12 a violation, as a demonstration of improper
13 operation is not as clear-cut as whether a precise
14 numerical emission standard is being met. An
15 emission standard, obviously you either meet it or
16 you don't. We are using a technology-based

17 standard as a means of flexibility, both with the
18 TTBS and with the MPS.

19 But another inherent difficulty
20 with the technology-based standard alone would be
21 in a demonstration to USEPA that our rule would
22 meet their emission caps, as we've discussed in
23 some detail both in Springfield and yesterday.

24 HEARING OFFICER TIPSORD: Mr. Zabel.

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1 MR. ZABEL: And if everyone opts in to
2 the MPS, don't you have exactly those problems
3 state-wide, Mr. Ross?

4 MR. ROSS: No. As we discussed
5 yesterday, there is a 90 percent mercury reduction
6 requirement in 2015 for 94 percent of a company's
7 capacity for units less than 90 megawatts -- or
8 greater than 90 megawatts, as it's currently
9 written. So the only units which are not required
10 to meet 90 percent are small, low-emitting units.
11 And they still have to install mercury controls.

12 MR. ZABEL: Then would you accept the
13 technology-based standard that became a
14 90 percent standard state-wide in 2015?

15 MR. ROSS: I think that's exactly what
16 we've done in the MPS. So as a means of

17 flexibility in the MPS, we have accepted that to
18 provide some flexibility for those sources who
19 agree to accept and also achieve significant
20 reductions in NOx and SO2.

21 MR. ZABEL: And then I come back to my
22 first question. Aren't you going to face all
23 those problems at least until 2015 if everybody
24 opts in to the MPS? Every problem you identified

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1 with the technology.

2 MR. ROSS: And we talked about this
3 yesterday in some detail, and I'll rehash my
4 arguments there. No, by 2015, 94 percent of the
5 capacity of all systems that opt in to the MPS
6 have to reach 90 percent. We have a 3,000 pound
7 per year cushion in CAMR until 2018. So we will
8 get that 90 percent reduction three years before
9 you would see it under the CAMR rule. And we have
10 discussed this somewhat with USEPA; not in terms
11 of the MPS, but in terms of the TTBS. And they
12 understand that, and I don't believe they have
13 identified any specific issues with that. We're
14 working with them. We've discussed it in person.

15 MR. ZABEL: You said, Mr. Ross, that
16 one of the problems with the technology-based
17 standard is the difficulty enforcement would face

18 in demonstrating proper operation.

19 MR. ROSS: If it's ongoing.

20 MR. ZABEL: Let me finish the
21 question, please, Mr. Ross, before you give me an
22 answer that's nonresponsive, as you've done three
23 times.

24 MR. ROSS: It's the same question.

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1 MR. ZABEL: Wouldn't that problem
2 exist for Ameren until 2015? Wouldn't it exist
3 for every source in the state until 2015 that opts
4 in to the MPS?

5 MR. ROSS: But 2015 is prior to 2018,
6 which is --

7 MR. ZABEL: That's not the question,
8 Mr. Ross. I'm asking about --

9 HEARING OFFICER TIPSORD: Let him --

10 MR. ZABEL: I would let him if he
11 would answer the question.

12 MR. ROSS: I've answered this question
13 numerous times, and you're not willing to --

14 MR. ZABEL: You haven't answered the
15 question, Mr. Ross.

16 HEARING OFFICER TIPSORD: Time out.
17 Time out. Let's all take a step back. Arguing

18 with one another isn't going to get us anywhere on
19 the record. Let's take a step back.

20 Mr. Ross, finish your answer; and
21 Mr. Zabel, I'll let you.

22 MR. ROSS: As I've stated numerous
23 times, 94 percent of a company's capacity under
24 the MPS needs to meet a 90 percent reduction. So

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1 we are guaranteed that level of mercury control by
2 2015. The CAMR caps is 3,000 pounds per year up
3 until 2018. And therefore, as we discussed
4 yesterday under an assessment and worst case
5 analysis, the highest we feel we could get in
6 mercury emissions is somewhere in the neighborhood
7 of 1500 pounds per year, including the 6 percent
8 of capacity that will have mercury controls on
9 them but are not technically required to achieve
10 90 percent reduction. So we are still well below
11 USEPA's CAMR caps of 3,000 pounds up to 2018.

12 MR. ZABEL: Mr. Ross, I'm not asking
13 about CAMR. I'm not asking about 2015. I'm
14 asking about the period between 2009 and 2015.
15 I'm asking about what happens to your problem of
16 the enforcement burden in the period 2009 to 2015,
17 not with respect to CAMR -- let me finish the
18 question -- not with respect to CAMR, but if

19 everybody opts in to the MPS, isn't the
20 enforcement burden you've just described as one of
21 the problems for the technology standard
22 state-wide applicable if everyone opted in to MPS
23 in the 2009 to 2015 period? Is that now clear,
24 Mr. Ross?

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1 MR. ROMAINE: Let me attempt to answer
2 the question. The other part of the MPS
3 requirement is an obligation to install controls
4 by 2012. Those controls will most likely consist
5 of SCRs, which will facilitate reduction of
6 mercury emissions by co-benefit. They will also
7 require a reduction of SO2 emissions, which will
8 require scrubbers to be installed in two phases.
9 The first phase completed at the end of 2012, and
10 the other phase completed 2014. Those actions
11 compensate for any effect of enforceability, in my
12 opinion, as they provide additional control
13 measures that will benefit not only SO2 and NOx
14 emission reductions, but also act to benefit
15 effective control of mercury emissions.

16 MR. ZABEL: Then let me ask you,
17 Mr. Romaine. The enforcement burden would in fact
18 apply, but you're willing to trade it off; is that

19 what you're saying?

20 MR. ROMAINE: Simplistically stated,
21 yes. But we are, in fact, getting something in
22 exchange in terms of other control measures that
23 will help control pollutants other than mercury.

24 MR. ZABEL: A pollutant other than

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1 mercury. You mentioned SO₂, as I recall.

2 MR. ROMAINE: But that also provides
3 control of mercury with co-benefit.

4 HEARING OFFICER TIPSORD: I think
5 we're ready for Question 43(a).

6 MR. ROSS: Why would Ameren agree to
7 give up its regulatory and statutory right to
8 trade emission allowances?

9 MR. RIESER: I think we answered the
10 main question, and the things that we deferred to
11 the Agency were the (a), (b), and (c) questions.

12 HEARING OFFICER TIPSORD: Well, you
13 answered them, but they wanted the Agency's
14 response too, I believe.

15 MR. REISER: Oh, I'm sorry.

16 HEARING OFFICER TIPSORD: But I do
17 think you answered all of them as well. Has the
18 Agency assessed whether a prohibition on the
19 trading of SO₂ and/or NO_x allowances is unlawful?

20 MR. ROSS: I believe our initial
21 assessment is we believe that the MPS provisions
22 are optional, not required; and therefore, such an
23 analysis is not necessary. Companies make a
24 choice whether to utilize the MPS option

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1 provisions or comply with the non-MPS rule
2 provisions. Therefore, there technically is no
3 prohibition, only a voluntary opting into the
4 provision that requires surrendering a proportion
5 of a company's allowances. And trading is still
6 allowed for that portion of allowances not needed
7 for compliance with the MPS standards.

8 HEARING OFFICER TIPSORD: Mr. Zabel.

9 MR. ZABEL: Just so I'm clear, Mr.
10 Ross, if somebody opts in, the prohibition is
11 legally binding, is it not?

12 MR. ROSS: If somebody opts in, they
13 are agreeing to meet the requirements of the rule.
14 So in that sense, I would say they are binding.

15 MR. ZABEL: It would be legally
16 enforceable in an enforcement action before the
17 Board or the Circuit Court if they fail to comply?
18 Mr. Matoesian can answer if you prefer.

19 MR. MATOESIAN: Yes, I believe it

20 would be.

21 HEARING OFFICER TIPSORD: That's a
22 legal opinion?

23 MR. MATOESIAN: Yes, just a legal
24 opinion.

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1 HEARING OFFICER TIPSORD: I believe
2 Question 44 is next.

3 MR. ROSS: Is the preclusion on
4 trading emission allowances absolute? That is,
5 before a participant in the MPS can trade emission
6 allowances for whatever reason, including
7 participation in the business of allowance
8 trading, as opposed to surrendering allowances for
9 compliance, must it demonstrate to some entity
10 that the available allowances were not created
11 because of its use of the MPS?

12 And the response is: Now that the
13 MPS is currently drafted, the company operating
14 under the MPS must submit an annual report after
15 the end of each year to show that it has complied
16 to the applicable requirements of MPS for trading
17 of allowances.

18 (a), how would the participant
19 make such a demonstration?

20 The availability of allowances for

21 trading would be determined from the actual
22 emission rate in pounds per million BTU achieved
23 for NOx or SO2 in the particular year. The
24 difference between the required rate and a lower

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1 actual rate would be converted into allowances
2 that could be traded in state, interstate, however
3 the company chose.

4 (b), who would review the
5 demonstration?

6 The Illinois EPA would review the
7 compliance report.

8 (c), must every trading
9 transaction be approved by the Agency? No.

10 (d), what turnaround does Ameren
11 expect on such approvals?

12 It's not applicable, as the answer
13 was no.

14 (e) and (f) are also not
15 applicable.

16 MR. BONEBRAKE: Just to follow up.

17 Mr. Ross, are you saying then that the Agency does
18 not believe that an approval of any allowance
19 transfer will be required under the MPS?

20 MR. ROSS: I believe that's correct.

21 We would just review the annual compliance report
22 to make sure that the rule was complied with.

23 MS. BASSI: If the rule were not
24 complied with and there was trade that you, after

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1 the fact, determined was improper or illegal under
2 this rule, how does that get remedied?

3 MR. ROSS: Well, I believe if there is
4 such a disagreement that we can't resolve, then
5 the Board or judicial review would occur in the
6 context of an enforcement action.

7 MS. BASSI: Would you expect just a
8 penalty, or would you expect allowances to be
9 purchased and given to you anyway?

10 MR. ROSS: That would all be decided
11 in the context of the enforcement action.

12 (g), what role does USEPA play in
13 approving trades?

14 Once the rule is approved as part
15 of the SIP that occurs, the USEPA can also elect
16 to review these annual compliance reports.

17 HEARING OFFICER TIPSORD: Before we
18 move on, we're experiencing a little bit of
19 confusion, Mr. Ross. I want to clarify a point.
20 When you were talking about the trading, I believe
21 you said that there could be trading within the

22 company, but you also seemed to say that they
23 could trade outside of the state. Did I
24 misunderstand you, mishear you?

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1 MR. ROSS: Only allowances generated
2 from over-compliance can be traded freely.

3 HEARING OFFICER TIPSORD: And how
4 would that be distinguished from Mr. Menne's
5 statements earlier that said that they would not
6 be -- anything that they achieved over what they
7 didn't need, basically would have to be given back
8 to the Agency and they couldn't trade them outside
9 of the state of Illinois.

10 MR. ROSS: Any allowances needed to
11 reach the level of compliance need to be retired
12 or surrendered to the state. Anything generated
13 from over-compliance can be freely traded outside
14 of the state, in the state, wherever. So there's
15 a distinction there between those allowances
16 needed for compliance purposes to meet the
17 emission rate limits in the MPS and those
18 allowances generated from over-compliance.

19 HEARING OFFICER TIPSORD: So Question
20 No. 65 that Mr. Menne answered that they had to be
21 all within the state -- page 17 of the questions,

22 and Mr. Menne please step in if I'm
23 mischaracterizing your answers -- those answers
24 are only involving allowances that are necessary

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1 to meet the emission rate?

2 MR. MENNE: That's correct.

3 HEARING OFFICER TIPSORD: So anything
4 above that, you can trade anywhere you want?

5 MR. MENNE: That's correct.

6 HEARING OFFICER TIPSORD: That clears
7 up the confusion, I think. Ms. Bassi.

8 MS. BASSI: Mr. Ross, in this
9 surrendering of allowances to the Agency, does
10 this occur after the sources have surrendered
11 allowances to the EPA in compliance with CAIR and
12 with Title IV of the Clean Air Act?

13 MR. ROMAINE: Yes.

14 MR. ROSS: Yes. Technically I believe
15 those allowances are termed retired. There's a
16 distinction in the rule between retired allowances
17 and surrendered. You surrender to the State. The
18 other allowances are retired.

19 MS. BASSI: Is there something -- What
20 does the State plan to do with these allowances
21 that are surrendered to it?

22 MR. ROSS: I believe that's a question

23 coming up.

24 MS. BASSI: I'm sorry. I'm

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1 clairvoyant too.

2 MR. ROSS: Where were we?

3 HEARING OFFICER TIPSORD: 44(h).

4 MR. ROSS: How will the Agency
5 determine if an allowance is generated as a result
6 of actions taken to comply with the standards in
7 the MPS for SO2 and NOx?

8 The availability of allowances for
9 trading would be determined from the actual
10 emission rate in pounds per million BTU achieved
11 for NOx and SO2 in the particular year. The
12 difference between the required rate and the lower
13 actual rate would be converted into allowances
14 that could be traded.

15 HEARING OFFICER TIPSORD:

16 Mr. Bonebrake.

17 MR. BONEBRAKE: Mr. Ross, does that
18 mean that regardless of when control technology is
19 installed, that the IEPA will take the view that
20 any emissions above the level of control required
21 by the rule are going to be considered to be for
22 compliance purposes and therefore the allowances

23 will not be tradable?

24 MR. ROSS: I believe that's correct.

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1 MR. ROMAINE: Clarifying, what time
2 period were you thinking of?

3 MR. BONEBRAKE: I think we discussed
4 already a scenario with Mr. Menne where Ameren has
5 been contemplating installation of pollution
6 control for purposes of compliance with CAIR. It
7 may well be that the same pollution controls that
8 would be required to install for purposes of CAIR
9 have the incidental benefit of compliance with the
10 MPS. So another way to put my question would be,
11 in that circumstance, you will always assume that
12 the installation of controls that have the effect
13 of reducing SO2 and NOx emissions will be for
14 purposes of compliance with the MPS; is that
15 correct?

16 MR. ROMAINE: There's a date specified
17 when the restrictions on allowance trades come
18 into effect, which is linked to the date of the
19 emissions standards under the multi-pollutant
20 standard. So prior to that year, we would be
21 assuming that reductions and emissions to go
22 beyond allowance compliance would be surplus.
23 Once the emission standard comes into effect for

1 whether and to the extent to which the emission
2 reductions have gone beyond the requirements of
3 the multi-pollutant standard so that surplus
4 allowances are available to a company.

5 MR. BONEBRAKE: So does the phrase
6 then in the rule -- and I'm looking at (f)(1) in
7 the first sentence -- beyond that would otherwise
8 be available for sale, trade, or exchange as the
9 result of actions taken to comply with the
10 standards in Subsection (e) of this section. Can
11 you explain to us, Mr. Romaine, what that phrase
12 means?

13 MR. ROMAINE: That means, beginning in
14 year 2012, there is a restriction on trading of
15 NOx allowances that goes beyond otherwise
16 applicable requirements under CAIR that would
17 preclude trading of allowances on the open market
18 if the emission reduction that generated those
19 allowances were required by the multi-pollutant
20 standard.

21 MS. BASSI: Mr. Romaine, just to
22 clarify then, when a source surrenders or a
23 company surrenders to you allowances for

1 examining the vintage year -- the vintage of the
2 allowances that are surrendered; is that correct?

3 MR. ROMAINE: Yes.

4 MS. BASSI: And are you also going to
5 be examining the serial numbers of the allowances
6 that are surrendered to ensure that those were the
7 ones that were allocated to the company that is
8 surrendering them to you?

9 MR. ROMAINE: We have not gotten to
10 that level of evaluation of what we would be
11 doing.

12 MS. BASSI: What was the last thing
13 you said?

14 MR. ROMAINE: We haven't evaluated
15 what we're going to be doing as part of our
16 examination of what a company would have to show
17 us.

18 MS. BASSI: If earlier Mr. Menne
19 agreed that a source or a company could sell its
20 future allocations that have been -- the future
21 allocations that are in its accounts now, for
22 whatever reason, whether it's totally unrelated to
23 this or related to this, and not have such
24 allowances available in the vintage and serial

1 numbers, assuming you're going to check the serial
2 numbers, to surrender to the state.

3 MR. ROMAINE: That's a good point. I
4 don't think we've thought of that. We were
5 working with Ameren on this proposal. We're going
6 to have to think about some comments that would
7 suggest a way to fix that oversight. It certainly
8 would be easy enough to include a provision that
9 would say that if such trades have already
10 occurred, a company must take appropriate action,
11 either designate future allowances or purchasing
12 other allowances to basically get us back to
13 starting position so this provision could be
14 complied with.

15 MS. BASSI: Is there a reason the
16 Board -- I'm sorry -- well, maybe the Board or the
17 Agency, whomever, would wish to preclude the
18 business of allowance trading, viewing it as a
19 separate business, so long as the requisite number
20 of allowances are surrendered to the Agency?

21 MR. ROMAINE: Yes.

22 MS. BASSI: And that reason is?

23 MR. ROMAINE: Allowance trading is not
24 a separate business. Allowances reflect

1 emissions. We are concerned about emissions and
2 the consequences of trading allowances.

3 MS. BASSI: I think I misstated my
4 question or I didn't state it clearly enough. If
5 the requisite number of allowances are surrendered
6 to the Agency, does it matter to the Agency
7 whether there have been transactions that have
8 occurred regarding those allowances prior to the
9 time of surrender? In other words, the price of
10 those allowances -- I might guess that the price
11 of those allowances in the future are different
12 than the prices today; and therefore, I might want
13 to engage in trading today. Also, there are
14 people who are not emitters who trade. So it is a
15 business.

16 If there were transactions that
17 were occurring, does that make a difference to the
18 Agency's goal, having vintage 2012 allowances
19 surrendered at the end of 2012?

20 MR. ROMAINE: Our goal is not to have
21 vintage 2012 allowances surrendered at the end of
22 2012. Our goal is to address what the
23 consequences would be if those allowances were not
24 surrendered. In terms of discussions with Ameren,

1 it does not do Illinois the desired air quality
2 benefit if Ameren simply controls its plants in
3 Illinois and then transfers those allowances to
4 plants in Missouri and does not control emissions
5 there. We need regional reductions of emissions
6 on both the Illinois and Missouri side. So our
7 underlying concern is not per se allowances; it's
8 what's the implication of allowances.

9 MS. BASSI: Mr. Romaine, would not
10 just the emission rate achieve that goal?

11 MR. ROMAINE: We are not in the
12 position to set an emission rate that applies to
13 Missouri.

14 HEARING OFFICER TIPSORD:
15 Mr. Bonebrake.

16 MR. BONEBRAKE: Mr. Romaine, the sale
17 of allowances is a way to generate revenue, is it
18 not?

19 MR. ROMAINE: I've never thought about
20 it that way.

21 MR. BONEBRAKE: But the sale of
22 allowances can bring in revenue to a client -- to
23 a company, can it not?

24 MR. ROMAINE: I've always said it's a

1 way to compensate for the expense of control of
2 emissions. I'm not sure that many people go into
3 the emission control business as a money-making
4 opportunity.

5 MR. BONEBRAKE: The sale of
6 allowances, though, generates dollars, does it
7 not?

8 MR. ROMAINE: Yes.

9 MR. BONEBRAKE: If Illinois companies
10 are prohibited from selling allowances and
11 companies in Missouri are not prohibited from
12 selling allowances, isn't it true then that the
13 Illinois companies are at a relative competitive
14 disadvantage vis-a-vis the Missouri company?

15 MR. ROMAINE: I don't know all the
16 circumstances of the Missouri companies versus the
17 Illinois companies.

18 MR. BONEBRAKE: But the sale of
19 allowances by the Missouri companies would be a
20 way for those companies to generate funds that
21 would not be available to Illinois companies that
22 participate in the MPS; is that correct?

23 MR. ROMAINE: That simple factual
24 statement is true.

1 HEARING OFFICER TIPSORD: Mr. Zabel.

2 MR. ZABEL: Mr. Romaine, you are aware
3 there are people who trade allowances that don't
4 operate emissions sources; is that true?

5 MR. ROMAINE: Yes.

6 MR. ZABEL: Would this rule preclude
7 any company that was under the MPS from engaging
8 in that business?

9 MR. ROMAINE: Yes -- Well, I'm sorry.
10 I shouldn't say that. It would have no effect on
11 what was done with surplus allowances, as has been
12 explained --

13 MR. ZABEL: I couldn't hear you,
14 Mr. Romaine.

15 MR. ROMAINE: It would have no effect
16 on surplus allowances. Surplus allowances that
17 were generated by reduction of codes beyond the
18 requirements of the MPS could be traded anywhere
19 to any party. This rule, if somebody opts in to
20 it, would restrict allowance trading outside of
21 the pool of EGUs in the MPS group.

22 MR. ZABEL: So if Ameren, for example,
23 in the MPS or anybody else in the MPS had a
24 separate trading arm engaged in buying and selling

1 allowances as a trading device, they would have to
2 be exceedingly careful not to step on the ones
3 they may need under this rule; is that correct?

4 MR. ROMAINE: I think so, yes.

5 MR. ZABEL: So you would be
6 restricting that interstate trade; is that
7 correct?

8 MR. ROMAINE: No.

9 MR. ZABEL: Why not?

10 MR. ROMAINE: Again, I'm not sure
11 whether or not Ameren would undertake those
12 activities. You said be extremely careful. That
13 would seem to open up the opportunity that Ameren
14 could take advantage of certain services provided
15 by that trading group, although not necessarily
16 all services provided by that trading group.

17 MR. ZABEL: Thank you.

18 HEARING OFFICER TIPSORD: Okay.

19 44(i).

20 MR. ROSS: For Ameren in particular,
21 if Ameren were otherwise planning to install a
22 control for NOx or SO2 but the installation of
23 such control has the effect of assisting Ameren's
24 compliance with the MPS, is any allowance

1 generated by such a control a result of actions
2 taken to comply with the standards in the MPS and
3 thus an allowance that cannot be traded?

4 Not under the MPS, as compliance
5 is based on specified emissions standards for SO2
6 or NOx.

7 (j), is there anything that
8 prevents a company that may opt in to the MPS from
9 selling prior to the opt in deadline all of the
10 SO2 or NOx allowances that it currently has been
11 or will be allocated for future years?

12 That's a good question. We will
13 review the MPS to see if such a provision is
14 needed.

15 MS. BASSI: Mr. Ross, does that
16 suggest that there might be amendments to the MPS?

17 MR. ROSS: Well, as a result of this
18 hearing and some of the questions brought to
19 light, we certainly will need to go back and
20 reevaluate this, being one aspect of the MPS, and
21 potentially there could be amendments.

22 MR. ROMAINE: I don't think this is a
23 particularly complex issue, and I think certainly
24 some of the Board could address it if needed.

1 HEARING OFFICER TIPSORD: Question 45.

2 MR. ROSS: Why is the baseline for
3 seasonal NOx only two years, 2004 and 2005, while
4 the baseline for annual NOx is three years, 2003
5 through 2005?

6 The answer is really quite simple.
7 We originally only had good data for seasonal
8 ozone for '04 and '05, so these were the years
9 used.

10 (a), why were these particular
11 years chosen as the baselines?

12 They are the most recent years for
13 which we have good and complete data, and we use
14 an average so as to minimize any anomalies.

15 (b), who selected these baseline
16 periods?

17 The Illinois EPA did.

18 (c), would the selection of
19 different baseline periods increase Ameren's
20 compliance costs?

21 We have not analyzed that. It's
22 unknown.

23 (d), was any consideration given
24 in the development of the MPS to the impact that

1 the use of these baselines would have on other
2 companies?

3 And yes, we discussed that
4 yesterday. As previously stated, we have looked
5 at other company's operating parameters when we
6 drafted the MPS.

7 HEARING OFFICER TIPSORD: Ms. Bassi.

8 MS. BASSI: Could I jump back a bit to
9 a question about the base years. Why didn't you
10 use three years for the seasonal NOx instead of
11 just two?

12 MR. ROSS: At the time we only had
13 good seasonal data for two years.

14 MS. BASSI: But the two years are 2004
15 and 2005. Didn't you have data for 2003?

16 MR. ROSS: At the time there were some
17 issues with that data. I think the confidence
18 level was not as high as it was for 2004 and 2005.
19 We wanted to use what we considered good solid
20 data; and there being a question at the time on
21 that data, we elected not to use it.

22 MS. BASSI: Are those data problems
23 fixed now?

24 MR. ROSS: I believe so.

1 HEARING OFFICER TIPSORD: (e).

2 MR. ROSS: Is Ameren aware of any
3 environmental significance to using 2003 through
4 2005 as the baseline period from which percent
5 reductions are determined?

6 From Illinois EPA's standpoint, we
7 are using the most recent numbers that reflect
8 recent emissions. This ensures that real
9 reductions will occur on existing equipment and
10 consistent with how that equipment is now
11 operating and emitting.

12 (f), is Ameren aware if the 2001
13 through 2003 averaging period was considered?

14 And again, we decided to use the
15 most recent data to best reflect current
16 operations and emissions.

17 HEARING OFFICER TIPSORD: (g), it's
18 the same question only for 2004.

19 MR. ROSS: The answer is the same.

20 MS. BASSI: Mr. Ross, oftentimes the
21 baseline that's used for something of this sort or
22 for trading program or whatever is the three
23 highest years of operation during a five-year
24 look-back period. Was any consideration given to

1 following that pattern as opposed to just choosing
2 three years in order to minimize the disadvantage
3 to any companies that might have had serious
4 outages during the three-year period?

5 MR. ROSS: I know that we looked at
6 the data, and we didn't see any large anomalies.
7 So we felt that 2003 through 2005 was
8 representative of emissions and operations during
9 those periods.

10 HEARING OFFICER TIPSORD: That takes
11 us to Question 46(c).

12 MR. ROSS: What happens if a non-MPS
13 company purchases EGUs that are subject to the MPS
14 after July 1, 2006?

15 We did not contemplate that
16 occurrence. The new owner, however, would be
17 responsible for compliance of the units. And if
18 the new owner is not using the MPS, then the units
19 have to comply with the non-MPS provisions.

20 MS. BASSI: I'm sorry. Did you just
21 say that the MPS units would have to stay in the
22 MPS but the non-MPS units would not?

23 MR. ROMAINE: I believe so, yes.
24 There's nothing, as this rule is drafted, that

1 would say somebody purchasing a unit out of the
2 multi-pollutant standard group would then be
3 excused from compliance requirements of the
4 multi-pollutant standards. It wouldn't
5 necessarily trigger compliance with the
6 multi-pollutant standard because they haven't
7 opted in before, but that obligation would apply
8 to units that have accepted that option.

9 HEARING OFFICER TIPSORD: Mr. Zabel.

10 MR. ZABEL: I guess I'm a little
11 confused how that's going to work, Mr. Romaine.
12 Let me give you a hypothetical.

13 MR. ROMAINE: Let me jump in and say
14 it could be very complicated, and we certainly
15 have not considered all the hypothetical
16 circumstances that that might trigger.

17 MR. ZABEL: My hypothetical would be
18 that assuming Ameren opts in and for whatever
19 reason decides to sell it's Coffeen plant to the
20 Northern Indiana Public Service Company, how do
21 you enforce a system-wide average when somebody
22 just dropped out of the system?

23 MR. ROMAINE: Actually, I think that's
24 the easier part of it. It's simply as a group of

1 the Ameren units that Ameren still owns plus at
2 the Coffeen unit because the appropriate owners
3 must comply with a particular emission rate. So
4 the particular aspect, there are some things like
5 allowances because there could be over-compliance
6 from Coffeen separate from over-compliance of
7 other units. Hopefully, when Ameren entered into
8 such an agreement, it would work out those details
9 to avoid the need for litigation to resolve how
10 those matters should be handled.

11 MR. ZABEL: Well, assuming in that
12 hypothetical, that for whatever reason Ameren
13 makes a mistake and emits too much sulfur, you're
14 going to sue Northern Indiana Public Service?
15 Let's assume it happened at Newton, which Ameren
16 still owns, or three of their plants, however you
17 like. Who gets sued?

18 MR. ROMAINE: Good question. Who do
19 you sue?

20 MR. ZABEL: That's why I asked it.

21 MR. ROMAINE: Obviously there's
22 complications that this type of arrangement would
23 pose in a particular circumstance. Obviously that
24 makes sale of units more complicated if Ameren

1 would ever elect to do that.

2 MR. ZABEL: Thank you.

3 HEARING OFFICER TIPSORD: I have a
4 question that's been bothering me since the joint
5 statement first appeared. I guess you guys are
6 the best ones to ask this of. What is the
7 significance of the July 1, 2006 date? Where did
8 that come from? All units owned by July 1, 2006.

9 MR. ROMAINE: That was simply a fixed
10 date to make clear when the ownership evaluation
11 has to be made.

12 HEARING OFFICER TIPSORD: And why
13 would you not use, like, the applicability date of
14 the rule?

15 MR. ROMAINE: I guess the simplest
16 answer I have is that we were discussing the
17 circumstances with Ameren, the individual that is
18 seriously looking at pursuing the multi-pollutant
19 standard, and we wanted to make sure that we were
20 addressing the ownership arrangement at the
21 current time. We are not discussing speculative
22 future changes in ownership of Ameren units.

23 HEARING OFFICER TIPSORD: Okay.

24 Mr. Zabel.

1 MR. ZABEL: I guess that raises
2 another question, which I don't know that the
3 Agency has thought of. What if Ameren buys
4 another plant that isn't in the MPS?

5 HEARING OFFICER TIPSORD: By rule they
6 couldn't opt in to it at that point. If they
7 purchased a plant after July 1, they can't then
8 bring that in.

9 MR. ZABEL: Don't ask me. I didn't
10 write the rule.

11 HEARING OFFICER TIPSORD: I mean,
12 that's the way I would read the rule. And just as
13 a follow-up, I apologize for jumping in on your
14 question, Mr. Zabel.

15 MR. ROMAINE: That would be my
16 understanding as well, that because the ownership
17 arrangements are defined as of July 1, 2006, that
18 that unit would not be able to be part of the
19 Ameren MPS group.

20 HEARING OFFICER TIPSORD: I guess I'm
21 really a little confused now. You also answered a
22 question that if an MPS unit is purchased by
23 someone else after it's been an MPS unit, you
24 would then require that unit to continue to meet

1 the MPS requirements. So I guess I'm looking for
2 a little clarification on why a company that wants
3 to use the MPS who purchases a piece of property
4 even before the applicability of this rule
5 couldn't then use the entire system; but yet, if
6 they sold the piece of property, that piece of
7 property would then still have to meet the
8 requirements of the entire system that it's no
9 longer a part of. Did that make any sense?

10 MR. ROMAINE: The circumstances are
11 different. In terms of getting the emission
12 reduction pursuant to the multi-pollutant standard
13 that has been relied upon as part of this option,
14 it's necessary to make it a binding agreement to
15 the units that were subject to that option that
16 have opted in to the MPS. So looking at future
17 changes to ownership, it's clear in my mind, the
18 Agency's mind, that we cannot allow a source, a
19 company, once they've opted in to the MPS, then to
20 somehow get units out of the MPS, not provide the
21 emission reductions or cease to provide the
22 emission reductions that have contributed to
23 achieving the SO2 and NOx emission rates that are
24 part of the MPS.

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1 On the other aspect of it, I think

2 that's a more interesting question. We can
3 certainly evaluate whether the ownership
4 determination could be made on the effective date
5 of the rule. As I said, it's a little bit
6 arbitrary. It reflects today's date. Whether
7 that will change to October, whenever this rule is
8 final, I don't think it will have that significant
9 effect.

10 HEARING OFFICER TIPSORD: Or perhaps
11 even the date the company chooses to elect to
12 become subject to the MPS requirement?

13 MR. ROMAINE: We could also consider
14 that.

15 HEARING OFFICER TIPSORD:
16 Mr. Bonebrake.

17 MR. BONEBRAKE: I just had a follow-up
18 to that, Mr. Romaine, to make sure I understood
19 it. With respect to the scenario where a company,
20 let's say Ameren, were to sell one plant to
21 another company that's not in the MPS, it's your
22 view that that particular plant that's been sold
23 by Ameren remains subject to the MPS requirements?

24 MR. ROMAINE: That is correct. That's

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1 the way I believe that MPS proposal is currently

2 written.

3 MR. BONEBRAKE: And what would be the
4 system average for that plant?

5 MR. ROMAINE: The system average would
6 continue to that plant and the other plants that
7 are part of the MPS group.

8 MR. BONEBRAKE: Notwithstanding the
9 sale of that plant?

10 MR. ROMAINE: That's correct.

11 HEARING OFFICER TIPSORD: Ms. Bassi.

12 MS. BASSI: I think a light bulb just
13 went off. Are you saying that if Ameren sold a
14 plant to, you know, Company X, that that plant
15 that Ameren sold still must be included in
16 Ameren's MPS average?

17 MR. ROMAINE: Yes.

18 MS. BASSI: And what if Ameren sold
19 another plant to Company Y and Ameren sold another
20 one -- it's got 21 plants or units or whatever --
21 and it sold them all over the place and Ameren
22 went out of existence? Although it would have a
23 lot of money then.

24 MR. MENNE: Not necessarily.

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1 MR. ROMAINE: As the rule is currently
2 drafted, the MPS group would still be in existence

3 and there would be a system-wide rate that would
4 be applicable to those units.

5 MS. BASSI: What if one of those
6 plants were shut down?

7 MR. ROMAINE: Well, then that
8 particular plant would no longer have to worry
9 about the complexities of this.

10 MS. BASSI: Would they get to average
11 zero?

12 MR. ROMAINE: There wouldn't be an
13 average of zero because there would be neither
14 emissions nor heat input. They would not be
15 contributing to the system-wide average once shut
16 down.

17 MS. BASSI: What if it started up
18 after ten years?

19 MR. ROMAINE: Another speculative
20 contingency we haven't addressed. I don't believe
21 that power plants usually shut down for ten years
22 and start back up.

23 HEARING OFFICER TIPSORD: I think
24 we're ready to move on to 46(d), which, I think,

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1 has already been answered through Mr. Zabel and I.

2 Then, I believe, 46(g).

3 MR. ROSS: An eligible unit under the
4 MPS is one that commenced commercial operation on
5 or before December 31st, 2000. Does this
6 applicability threshold, then, exclude Southern
7 Illinois Power Cooperative from participating in
8 the MPS since Unit 123 commenced operation in mid
9 2001?

10 MS. BASSI: I need to make a
11 correction. I think it's mid 2003, just to be
12 clear.

13 MR. ROSS: And the answer is yes, it
14 is excluded.

15 Or does this mean that only SIPC's
16 Unit 4 is eligible for participation in the MPS?

17 It is only available on a
18 system-wide basis.

19 Was SIPC's Unit 123 intentionally
20 excluded?

21 Yes and no. New units were
22 intentionally excluded. However, SIPC Unit 123
23 was not intentionally excluded. It was not
24 considered during the development of the MPS. So

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1 in response to the question, the Illinois EPA is
2 currently considering whether the MPS could
3 reasonably and appropriately be applied to SIPC 4

4 by itself or to the combination of both units at
5 that plant.

6 MS. BASSI: I'm sorry. Did you say
7 you're considering that or reconsidering that?

8 MR. ROSS: Right. We're evaluating
9 that. That was a very good question, and it
10 brought that issue to light,

11 HEARING OFFICER TIPSORD: So the
12 December 31st, 2000 date, then, is one that's
13 included to expressly keep new units from being
14 part of the MPS?

15 MR. ROSS: That's correct.

16 HEARING OFFICER TIPSORD: Thank you.
17 Ms. Bassi.

18 MS. BASSI: If you're reconsidering or
19 reevaluating this particular point with the MPS,
20 are you also doing the same thing with the TTBS
21 that excludes Dominion?

22 MR. ROSS: No. We are not
23 reevaluating TTBS.

24 MS. BASSI: Okay. Thank you.

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1 HEARING OFFICER TIPSORD: Question 47.

2 MR. ROSS: Please explain the meaning
3 of Section 225.233(b)(1). This subsection states

4 that the applicant must submit identification of
5 each of the EGUs that will be complying with this
6 subpart, which suggests that not all of the EGUs
7 belonging to a company must be included in an MPS,
8 but then goes on to say, with evidence that the
9 owner has identified all EGUs that it owns in
10 Illinois. This last part of the sentence
11 contradicts the first part, particularly when
12 considered with Subsection (b)(5), which says,
13 identification of any EGU or EGUs that are
14 scheduled for permanent shut down.

15 And the suggestion that this
16 allows the exclusion of some EGUs, that the
17 question suggests, other than those targeted for
18 shut down is inaccurate. It simply requires the
19 company to identify all its EGUs. EGUs scheduled
20 for permanent shut down do not have to be included
21 just as in the non-MPS provisions.

22 HEARING OFFICER TIPSORD: I believe 49
23 is the next one.

24 MR. ROSS: Under Section

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1 225.233(c)(1), what applies to units that blend
2 coal?

3 The MPS, as currently
4 drafted, does not explicitly address units burning

5 a coal blend. This was not identified as a
6 scenario of concern with discussions with Ameren.
7 As a practical matter, if the unit were to burn
8 predominantly bituminous coal, it would be
9 considered to be a bituminous coal-fired unit.
10 Also, to clarify, the use of SCRs and scrubbers as
11 an alternative to the use of halogenated ACI is
12 not available to units that burn subbituminous
13 coal.

14 HEARING OFFICER TIPSORD: Question 51.

15 MR. ROSS: Section 225.223(c)(2)(A)
16 includes the following phrase: Use of an
17 injection system designed for effective absorption
18 of mercury, considering the configuration of the
19 EGU and its ductwork, (a), please explain the
20 meaning of designed for effective absorption of
21 mercury.

22 The parameters that will be looked
23 at include placement of the injection lance to
24 ensure sorbent distribution and in consideration

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1 of any SO₃ injection. Another parameter would be
2 engineering or a modeling study to determine how
3 to optimize effectiveness.

4 (b), please explain the role of

5 the configuration of the EGU and its ductwork in
6 the design for effective absorption of mercury.

7 And the response is, where in the
8 ductwork one places the injection lance is
9 important to ensure good sorbent distribution.
10 Placement is important in consideration of any SO3
11 injection as well. It should be upstream of SO3
12 injection.

13 HEARING OFFICER TIPSORD: Mr. Zabel.

14 MR. ZABEL: Does this contemplate that
15 you're also possibly compelling a source to
16 redesign or reconfigure its ductwork?

17 MR. ROSS: Not necessarily.

18 MR. ZABEL: Well, I don't think that
19 really -- Does it contemplate that the Agency has
20 the authority and may order a source in a
21 necessary circumstance, in the Agency's view, to
22 reconstruct or reconfigure its ductwork?

23 MR. ROMAINE: We have not contemplated
24 requiring a source to reconfigure its ductwork.

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1 MR. ZABEL: So there could be
2 circumstances where the ductwork is not conducive
3 to good mixing or not conducive to avoidance of
4 SO3 interference?

5 MR. ROMAINE: That's correct. And

6 then the goal is certainly the obligation to
7 appropriately design the carbon injection system
8 to address those less than desirable features that
9 are present.

10 MR. ZABEL: Which could lead to
11 reconstructing the ductwork, Mr. Romaine?

12 MR. ROMAINE: We're not going that
13 far; that is, where the language talking about
14 considering the configuration of the EGU and its
15 ductwork.

16 HEARING OFFICER TIPSORD:
17 Mr. Bonebrake.

18 MR. BONEBRAKE: Who makes the
19 determination of whether an injection system is
20 properly designed for effective absorption of
21 mercury?

22 MR. ROMAINE: This is a showing that
23 the owner or operator of the EGU would make as it
24 goes forward showing its use, standard engineering

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1 techniques for the design of the activated carbon
2 injection system.

3 MR. BONEBRAKE: And when is the
4 showing to be made?

5 MR. ROMAINE: It would be part of the

6 information submitted as part of the final
7 election for reliance on the MPS, then be
8 subsequently supplemented as additional
9 engineering is completed.

10 MR. BONEBRAKE: And does the Agency
11 reserve the right if it later determines that the
12 system is not designed for effective absorption of
13 mercury then to require something different?

14 MR. ROMAINE: We have not included a
15 provision that would do that in the MPS.

16 MR. BONEBRAKE: So the answer is no,
17 Mr. Romaine?

18 MR. ROMAINE: Repeat the question,
19 please.

20 MR. BONEBRAKE: I think what we were
21 just talking about was a company that's opting in
22 to the MPS makes its submission to the Agency that
23 describes a design for effective absorption of
24 mercury. My question to you was, if at some later

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1 point in time the Agency determines that that
2 design is not for effective absorption of mercury,
3 does the Agency then reserve its opportunity at
4 some later point in time to require something
5 different?

6 MR. ROMAINE: No, we have not.

7 HEARING OFFICER TIPSORD: Okay.

8 Question 52.

9 MR. ROSS: Are all of the three
10 subsections of Section 225.233(c)(2), that is
11 subsections(2)(A)(B) and (C), necessary to achieve
12 an optimum manner of HCI? That is, should there
13 be an "and" or an "or" following Subsection (B)?

14 And they should be read together,
15 that is correct.

16 MS. BASSI: So there should be an
17 "and"?

18 MR. ROSS: Yes. They should be read
19 together; so grammatically speaking, there should
20 be an "and" there.

21 HEARING OFFICER TIPSORD: Question
22 No. 53.

23 MR. ROSS: Why is Section
24 225.233(c)(3)(C) necessary?

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1 We believe it provides
2 clarification and certainty.

3 (a), is it not the case that any
4 permit decision of the Agency is appealable under
5 the Environmental Protection Act?

6 Yes, as well as to the USEPA for

7 certain types of permits such as TOC (phonetic)
8 and CAT (phonetic) permits.

9 HEARING OFFICER TIPSORD: Question
10 No. 55.

11 MR. ROSS: Under what circumstances
12 might a company participating in the MPS notify
13 the Agency that it will comply with the
14 generally-applicable mercury emission standards
15 prior to July 1, 2015 -- January 1, 2015?

16 In the circumstances where they no
17 longer wish to inject sorbent at the required
18 rates. Once a unit complies with the numerical
19 standards of 90 percent or .0080 pounds per
20 gigawatt hour, the required injection rates go
21 away.

22 HEARING OFFICER TIPSORD: Actually,
23 it's about a quarter after 12:00. I do see that
24 we're going to go into the SO2 and NOx questions,

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1 so maybe we could all use a lunch break now and
2 come back in about an hour.

3 (WHEREUPON, the proceedings were
4 adjourned until 1:15 p.m.,
5 August 15, 2006.)
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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF COOK)

3

4 Kathy O'Donnell, being first duly sworn, on
5 oath says that she is a Registered Professional
6 Reporter doing business in the City of Chicago,
7 County of Cook and the State of Illinois;

8 That she reported in shorthand the
9 proceedings had at the foregoing hearing;

10 And that the foregoing is a true and
11 correct transcript of her shorthand notes so taken
12 as aforesaid and contains all the proceedings had at
13 the said hearing.

14

15

16

17

KATHY A. O'DONNELL, RPR

18

CSR No. 084-004466

19

20 SUBSCRIBED AND SWORN TO
21 before me this _____ day of
_____ , A.D., 2006

22

23

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