

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

AMENDMENTS TO 35 ILL. ADM.)
CODE 225: CONTROL OF)
EMISSIONS FROM LARGE)
COMBUSTION SOURCES)
(MERCURY MONITORING))

R09-10

(Rulemaking-Air)

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STATE OF ILLINOIS
Pollution Control Board

REPORT OF THE PROCEEDINGS held in
the above entitled cause before Hearing Officer
Timothy Fox, called by the Illinois Pollution
Control Board, taken by Steven Brickey, CSR, for
the State of Illinois, 100 West Randolph, Chicago,
Illinois, on the 10th day of February, 2009,
commencing at the hour of 9:00 a.m.

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MS. ALISA LIU, Board member
3 MS. ANDREA MOORE, Board member
MR. THOMAS JOHNSON, Board member
4 MR. ANAND RAO, Board member
MR. SHUNDAR LIN, Board member.

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1 MR. FOX: Good morning, every one.
2 My name is Tim Fox. I want to welcome you to this
3 Illinois Pollution Control Board hearing. I am
4 the hearing officer for this proceeding, which is
5 entitled Amendment to 35 Illinois Administrative
6 Code 225 Control of Emissions From Large
7 Combustion Sources Mercury Monitoring. The docket
8 number of the board as assigned to this
9 rule-making is R09-10.

10 The Illinois Environmental
11 Protection Agency filed the original rulemaking
12 proposal on October 3rd of 2008 and the board
13 accepted it for hearing in an order dated November
14 5th, 2008. Today we, of course, are holding the
15 second hearing in this rulemaking. The first took
16 place on December 17th, 2008, in Springfield. I
17 want to note that also present from the board here
18 today at my immediate left board member Andrea S.
19 Moore, who is the lead board member assigned to
20 this rulemaking and to her left is one of our new
21 board members, Gary Blankenship.

22 At my far right at the head
23 table is board member Thomas V. Johnson and to my
24 immediate right is Anand Rao of the boards'

1 technical staff. This proceeding is, of course,
2 governed by the boards' procedural rules and all
3 information that is relevant and is not privileged
4 or repetitious will be admitted into the record.

5 Please note that any of the
6 questions today that are posed either by the board
7 or its staff are intended solely to help develop a
8 clear and complete record and do not reflect any
9 prejudice or conclusions regarding substance of
10 the proposal or the testimony here today.

11 I want to do a brief recap of
12 what has occurred since the first hearing in
13 December. Specifically, the board has received
14 the following filings. On January 14th of 2009,
15 the board received the agencies post hearing
16 comments which addressed information that had been
17 requested and questions that had been raised at
18 the first hearing and on that same date of January
19 14th, the agency also filed a second errata sheet.

20 Then on January 30th of 2009,
21 the board received pre-filed testimony on behalf
22 of Midwest Generation by Mr. Scott Miller and on
23 the same day, a request to replace specific
24 language that had, according to that request, not

1 been printed properly.

2 On February 2nd of '09, the
3 board received pre-file testimony on behalf of
4 Kincaid Generation by Mr. David Nuckols on the
5 same date, pre-filed testimony on behalf of Dynegy
6 Midwest Generation by Mr. Eric Diericx. Also, on
7 February 2nd, pre-filed testimony on behalf of
8 Ameren by Mr. Michael Menne and finally on
9 February 5th and accompanied by a motion to file
10 in stanter pre-filed testimony also on behalf of
11 Ameren by Mr. Gary Rygh.

12 I'd like, first, just to address
13 a couple of preliminary issues related to these
14 pre-filings. First, Ms. Bassi, I referred to your
15 request that occurred on January 30th of 2009, to
16 replace specified language in Mr. Miller's
17 pre-filed testimony. I believe to the extent of a
18 single paragraph and that request referred to not
19 printing properly. Is there any participant that
20 wishes to be heard on that request to replace that
21 paragraph in the pre-filed testimony? Neither
22 seeing nor hearing any, Ms. Bassi, that request is
23 granted and that change will be reflected in the
24 board's consideration.

1 Second, Ms. Bassi, I note there
2 was the motion to file Mr. Rygh's testimony in
3 stanter. I'll simply open that up to see if any
4 participant wishes to be heard on that motion. I
5 find on the record today that while the board's
6 procedural rules allow a 14-day period to respond
7 to a motion, that undue delay would result from
8 allowing that 14-day period to expire. Having
9 done so, I grant the motion to file in stanter and
10 that will be accepted as filed. If there is any
11 other participant present here today in addition
12 to those that I mentioned as having pre-filed
13 testimony, we do have a sign-up sheet that I
14 believe is right in front of Ms. Bassi right in
15 front of the door to the room. If you would
16 indicate your willingness to testify and any
17 organization or entity that you might represent
18 and on whose behalf you might want to testify that
19 would be great. Like all witnesses, I must note
20 who have not pre-filed, you would be sworn in and
21 subject to questions about your testimony.

22 Now, we have briefly discussed
23 the procedural matter of the sequence of the
24 testimony of the participants who have pre-filed

1 their testimony. We'll intend to begin this
2 morning with testimony by Mr. Bloomberg and Mr.
3 Ross. Apparently, they have a statement on behalf
4 of the Environmental Protection Agency of the
5 Illinois Environmental Protection Agency as the
6 proponent in this proceeding and that will, of
7 course, be followed by questions that the other
8 participants may have for the two of them.

9 We will then continue with the
10 pre-filed testimony in this order: Mr. Nuckols
11 first and Mr. Miller. It was indicated in his
12 pre-filed testimony that Mr. Miller will be joined
13 by Ms. Crapisi and Mr. Nagel who will also be
14 available to answer any questions as necessary.
15 Following that panel, in effect, we will hear from
16 Mr. Diericx and then conclude the pre-filed
17 testimony with Mr. Menne and Mr. Rygh.

18 Does that differ from the order
19 or sequence that anyone was expecting this
20 morning? I don't see any indication that it does
21 differ. Of course, in each case of those
22 witnesses, their testimony will be followed by any
23 questions that the participants may have for them
24 and finally after those questions based on the

1 pre-filed testimony and as time permits, any other
2 participants who have signed up or otherwise
3 indicated they would like to do so may do that.
4 Finally, I understand that -- sorry to run through
5 some lengthy procedural issues. We have as many
6 as three persons wishing to offer a brief public
7 comment. Their names, as I recall, are
8 Ms. Hampton, Mr. Denison and Mr. Lewis. I'm not
9 certain that they are here. The ordinary course
10 of hearing would have them offer comments at the
11 conclusion of the testimony and questions. If the
12 hearing unfolds and some adjustment to that
13 sequence appears to make sense, we can certainly
14 examine those slight adjustments as the time goes
15 on. Finally, for the court reporter's benefit
16 today, please speak as clearly as you can and
17 avoid talking at the same time as any other
18 participant. Having reached that point, are there
19 any other questions about the procedures or the
20 sequence of testimony? Seeing none,
21 Mr. Matoesian, I think we're in order for the
22 agency and the presentation that it wishes to
23 make.

24 MR. MATOESIAN: Thank you. Just a

1 brief opening. Good day, everyone. My name is
2 Charles Matoesian. I'm representing the Illinois
3 Environmental Protection Agency. Here with me
4 today is my co-counsel, Dana Vetterhoffer as well
5 as David Bloomberg, manager of the compliance
6 unit. Jim Ross, manager of the division of air
7 pollution control. Kevin Mattison, environmental
8 protection specialist and Rory Davis,
9 environmental protection engineer. We're here
10 today on the matter of R09-10, part 2-25 control
11 admissions for large combustion sources mercury
12 monitoring.

13 As you mentioned in your
14 opening, sir, there were more -- several filings
15 by the agency including a second errata sheet,
16 post comments, a draft data form and a third
17 errata sheet -- of copies of which I have
18 available if anyone would like to see one. We
19 will now proceed to the testimony of Jim Ross and
20 David Bloomberg who will be giving limited
21 testimony to explain some of the issues contained
22 in the various filings and to answer a few
23 questions about these.

24 Brief statements should allow

1 the hearing to proceed much more smoothly and,
2 therefore, I will begin with the testimony of Jim
3 Ross.

4 MR. FOX: Mr. Matoesian, first, I
5 should thank you. The board did receive -- I
6 neglected to mention the third errata sheet that
7 was filed with the board on Friday, February 6th.
8 That is certainly in the boards records. It
9 sounds like you're ready. We can have the court
10 reporter swear in-- why don't we swear in both
11 Mr. Bloomberg and Mr. Ross just to take care of
12 the agencies witnesses at the same time.

13 (Witness duly sworn.)

14 DAVID BLOOMBERG AND JIM ROSS,
15 called as a witness herein, having been first duly
16 sworn, was examined and testified as follows:

17 MR. ROSS: I have a brief statement
18 on optimum manner. Sources subject to the MPS and
19 CPS are not required to meet any specific mercury
20 control efficiency, such as 80 percent or 70
21 percent or 60 percent. Instead, sources in the
22 MPS or CPS are allowed additional mercury
23 flexibility in exchange for reductions in NOx and
24 SO2. The mercury flexibility allowed is primarily

1 in the form of meeting mercury control system
2 design and operation requirements found
3 specifically in sections 225.233(c)(2) and
4 225.294(g). To summarize the requirements of
5 these sections, they require that sorbent be
6 injected in an optimum manner. Optimum manner is
7 then defined as.

8 A) The use of an injection
9 system designed for effective absorption of
10 mercury, considering the configuration of EGU and
11 its ductwork.

12 B) The injection of an approved
13 sorbent; and

14 C) The injection of sorbent at
15 minimum rates.

16 The Illinois EPA has not
17 proposed any change to these provisions other than
18 to add additional flexibility by including two
19 additional approved sorbents. These provisions
20 were designed to insure that installed mercury
21 control systems inject sorbent in an optimum
22 manner and achieve mercury reductions consistent
23 with the characteristics of the EGU's being
24 controlled. Clearly, the rule does not establish

1 a percent mercury control efficiency requirement
2 for MPS and CPS units in these provisions.

3 Therefore, the agency would like
4 to clarify for the record that compliance with
5 this provision will not be determined based on the
6 level of mercury control efficiency being
7 achieved. That is, MPS and CPS units are not
8 required to meet a numeric reduction emission
9 standard or any level of mercury control
10 efficiency. Instead, the agency intent on
11 reviewing the mercury control efficiencies of the
12 mercury control system is to evaluate if further
13 review of a control system is needed.

14 Such review would consist of
15 ensuring that the source is operating an injection
16 system designed for effective absorption of
17 mercury, that an approved sorbent is being used,
18 and ensuring the sorbent is being injected at the
19 specified minimum rates. The agency's mercury
20 control expert has testified that a mercury
21 control system that injects sorbent in an optimum
22 manner, should, in general, be able to reduce
23 mercury emissions by a value approaching around 90
24 percent. However, as I stated in the first

1 hearing regarding sources in the MPS an CPS, "They
2 are not required to achieve 90 percent." Indeed,
3 Mr. Bonebrake asked me at the first hearing "So if
4 60 percent could be supported, then that would be
5 satisfactory?" And I answered "Yes, if it could
6 be supported, it would be satisfactory. We're not
7 excluding any level."

8 I repeat here that if a mercury
9 control efficiency of any percent can be supported
10 by a demonstration that the control system is
11 injecting sorbent in an optimum manner, then the
12 source is in compliance. All we have been saying
13 is that a low level of mercury control efficiency
14 may be an indicator or flag that a mercury control
15 system is perhaps not functioning properly or as
16 design -- a low mercury control efficiency may be
17 a sign that an approved sorbent is not being used.
18 Therefore, a low mercury control efficiency may
19 warrant further review by the company and Illinois
20 EPA to ensure compliance. However, a low mercury
21 control efficiency in and of itself is not a
22 violation of the requirements.

23 In fact, no level of mercury
24 control efficiency would by itself constitute a

1 violation. If there is a low level of mercury
2 control efficiency being reported, it is the
3 agency's intent to work with the company to, as
4 Mr. Bloomberg said at the first hearing "Go back
5 to them and say, we need to look at this, let's
6 look at this together, let's cooperate and look at
7 this together."

8 MR. MATOESIAN: Thank you, Mr. Ross.
9 And now we'll proceed to a short statement by
10 Mr. Bloomberg.

11 MR. FOX: Actually, Mr. Matoesian,
12 if I may interrupt you. I noticed you handed what
13 appeared to be a printed copy of the statement to
14 the court reporter. Was that something that you
15 wish to introduce as a hearing exhibit?

16 MR. MATOESIAN: Did you --

17 MR. ROSS: It was verbatim of what I
18 said to assist him.

19 MR. MATOESIAN: We can enter that
20 exhibit.

21 MR. FOX: Why don't we wait until we
22 have copies so we can distribute it to the other
23 participants. If you need access to a copier, the
24 agency and the board both have one.

1 MR. MATOESIAN: Okay.

2 MR. FOX: I'm sorry for the
3 interruption.

4 MR. BLOOMBERG: Section 225.260(b)
5 describes the data availability requirements for
6 CEMS and accepted monitoring systems. The
7 agency's proposal requires 75 percent availability
8 on a calendar quarter basis.

9 However, pre-filed testimony
10 from both Scott Miller and David Nuckols requested
11 a change in that calculation methodology. Their
12 proposed change would entail calculation of the
13 data availability on a rolling 12-month basis
14 instead. After discussions with both of these
15 parties, the agency believes that an agreement has
16 been reached on a resolution to this issue. Under
17 this resolution, the data availability would be
18 calculated on a calendar quarter basis for the
19 first three years of the program when the STAC
20 testing alternative is available, i.e., July 1st,
21 2009, through June 30th, 2012. This quarterly
22 calculation methodology works in concert with the
23 requirement that STAC testing or compliance with
24 admission limits be done on a quarterly basis.

1 After the three year period in which the STAC
2 testing alternative is allowed -- has ended, i.e.,
3 from July 1st, 2012, and thereafter, the agency
4 agrees that the methodology for calculating data
5 availability can be changed to a rolling 12-month
6 basis. This change will entail a modification to
7 section 225.260(B) and also to related record
8 keeping and reporting requirements.

9 MR. MATOESIAN: I'd like to move the
10 changes he just mentioned be entered as an
11 exhibit.

12 MR. FOX: Is that the forth errata
13 sheet, is that the caption or the title given?

14 MR. MATOESIAN: We didn't caption
15 the errata sheet.

16 MR. FOX: That's fine. We can label
17 it any way that makes sense, but if you don't mind
18 distributing those we can take up the motion in
19 just a moment. Thank you. Mr. Matoesian has
20 obviously distributed copies of a document marked
21 exhibit, which proposed changes both to section
22 225.260(b) as it appears in the third errata and
23 also suggests an amendment to section 1.8 of
24 appendix B. Is there any response anyone wishes

1 to make to the motion to admit that as what will
2 be appearing as Exhibit Number 8? Ms. Bassi?

3 MS. BASSI: It appears there are
4 also changes on the backside.

5 MR. FOX: You are correct. I should
6 note that the paper has two sides that does
7 address section 225.290(b)3(c) as well. Thank you
8 for pointing that out, Ms. Bassi. Did you have
9 any other response to the motion at all?

10 MS. BASSI: No.

11 MR. FOX: Neither seeing nor hearing
12 any objections certainly, Mr. Matoesian, that will
13 be admitted into the record as hearing Exhibit
14 Number 8.

15 MR. BLOOMBERG: The agency would
16 also like to clarify that in appendix B section
17 1.4(b)3(g)V., the reference to 1.0 milligrams per
18 SCM added in the third errata at item 36 refers
19 only to mercury errata and not the CO2 or O2.
20 This section should be modified from the third
21 errata.

22 MR. MATOESIAN: And I would move
23 this be admitted as Exhibit 9.

24 MR. FOX: It would be 9, yes.

1 MR. MATOESIAN: Thank you.

2 MR. FOX: And Mr. Matoesian has
3 obviously distributed copies of an exhibit
4 proposing an amendment to section 1.4(b)3(g)V. Is
5 there any response to the motion to admit that
6 Hearing Exhibit Number 9. Neither seeing nor
7 hearing any, that will be marked and admitted as
8 Exhibit Number 9.

9 MR. MATOESIAN: Thank you. And that
10 is the end of Mr. Bloomberg's statements so
11 Mr. Ross and Mr. Bloomberg can take questions at
12 this time.

13 MR. FOX: Very well. Why don't we
14 go ahead and proceed to questions. If, for the
15 first time, you want to pose any questions, if you
16 would kindly provide your name and any spelling
17 and any association or representation that may
18 bring you here today. That would be helpful for
19 the record. For either Mr. Ross or Mr. Bloomberg
20 is there any question at all to the basis of their
21 statement? Ms. Bassi, please go ahead.

22 MS. BASSI: Good morning. My name
23 is Kathleen Bassi. I'm with Schiff Hardin and I'm
24 here today on behalf of Midwest Generation and

1 Dynegy. Also with me is Mr. Steve Bonebrake down
2 at the end and he may jump in with questions at
3 any time. You never know. Mr. Bloomberg, the
4 provisions of this rule require for certain units
5 that the average monthly mercury concentration of
6 the coal combusted be reported and if multiple
7 required coal samples are tested, that the tests
8 must be averaged. The average mercury content of
9 the coal combusted may be determined by straight
10 averaging of coal samples or weighted averaging of
11 coal samples and that is the amount of coal burned
12 weight by the amount of mercury in that coal. For
13 example, the weighted averaging could reflect ten
14 tons of coal containing 0.02 parts per million on
15 day one and five tons of coal containing 0.05
16 parts per million on day two and so forth rather
17 than nearly tumbling the amount of coal used in
18 the average of the mercury. Will sources be
19 allowed to choose either straight or weighted
20 averaging of coal samples under the rule including
21 for reporting purposes?

22 MR. BLOOMBERG: Yes.

23 MS. BASSI: I have another question.

24 Mr. Bloomberg, as noted in Mr. Diericx's pre-filed

1 testimony, the rule uses the term excepted with an
2 "ex" as in sections 225.234(a)4, 225.238(a)4 and
3 225.239(A)1, 3 and 4 with respect to the use of
4 sorbent traps. We understand that the use of
5 sorbent traps is acceptable to the agency. Could
6 you explain the origin of that term excepted, ex,
7 and why the word accepted -- my old english
8 teacher background says is not more correct -- or
9 should be more correct?

10 MR. BLOOMBERG: The ex excepted is
11 taken straight from the part 75 that was vacated
12 thus necessitating this rule making. The US EPA
13 used excepted throughout part 75 such as, for
14 example, the title of 75.15 is Special Provisions
15 for Measuring HG Mass Emissions Using the excepted
16 Sorbent trap Monitoring Methodology. They used
17 that way because to US EPA and to us, a sorbent
18 trap methodology is an exception to the way that
19 continuous monitoring methodology would normally
20 be done. So that is the reason that we are using
21 ex to follow along in US EPA's use of that
22 terminology.

23 Q. So excepted monitoring methods are
24 accepted?

1 MR. FOX: Allowed.

2 MR. BLOOMBERG: Under the conditions
3 laid out in the rule, yes.

4 MS. BASSI: Thank you. Finally, and
5 I'm not sure who this would be better posed to,
6 the agency included a draft of form 450 C-A-A-P-P,
7 an acronym, with its second errata. Isn't the
8 agency's intent that the form be considered a part
9 of the proposed rule?

10 MR. BLOOMBERG: No. It was provided
11 for informational purposes to demonstrate what we
12 would be looking for in those to go along with the
13 rule language that we supplied.

14 MS. BASSI: I have no further
15 questions.

16 MR. FOX: Very good. Thank you,
17 Ms. Bassi. Mr. Rieser, I see your hand up.

18 MR. RIESER: David Rieser here on
19 behalf of Kincaid Generation. A couple of
20 questions. First, with respect to Exhibit 8, the
21 revised language for 260(b). Does the 12-month
22 rolling average -- when does it start? Does it
23 start on July 1st, 2012, or June 30th, 2013?

24 MR. BLOOMBERG: The use of the

1 12-month rolling average begins on July 1, 2012.
2 However, because it is a 12-month period and to
3 avoid overlap with the previous quarterly method
4 of looking at the average, the first full 12-month
5 period will end June 30, 2013. And at that point,
6 the source will evaluate whether they have met 75
7 percent for the proceeding year, which began on
8 July 1, 2012.

9 MR. RIESER: Mr. Nuckols would like
10 to ask a question. Mr. Nuckols is with Kincaid
11 Energy as well.

12 MR. NUCKOLS: So I just want to make
13 sure I understand. You said the first quarter of
14 2012 after this starts, we don't have to meet it
15 on a quarterly basis, but the only 75 percent
16 compliance with the data availability will be
17 checked on July of 2013?

18 MR. BLOOMBERG: When you say the
19 first quarter, I presume you mean the first three
20 months after it starts in July?

21 MR. NUCKOLS: Yes.

22 MR. BLOOMBERG: Okay.

23 MR. NUCKOLS: I guess the real
24 question is for the year of 2012 and the first

1 half of 2013, is there any interim data
2 availability requirement until the last day of
3 July or June 30th of 2013?

4 MR. BLOOMBERG: From July 1, 2012,
5 until you get the entire 12 months at June 30th,
6 2013, there is no interim standard to meet during
7 that point.

8 MR. NUCKOLS: Thank you very much.

9 MR. RAO: Why is there no interim
10 standard -- during the quality period?

11 MR. BLOOMBERG: We will still have
12 information because we will still be required to
13 report information on the form that Ms. Bassi just
14 mentioned. If there is a problem, we will notice
15 it and certainly talk to them and say "What's
16 going on here?" But, for example, their monitor
17 could be down for the entire month of July 2012,
18 and it is up for the -- until June -- once it's
19 back up again until June 2013, they will have met
20 the 12-month rolling 75 percent.

21 MR. RAO: So there won't be any
22 enforceable interim standard during that 12-month
23 period. You can informally talk to them and ask
24 them if something is wrong or why data is not as

1 expected?

2 MR. BLOOMBERG: That's correct. In
3 that way it is identical to the way the mercury
4 rule itself works in that the 90 percent control
5 or the 0.0080 is also on the 12-month rolling
6 standard and the first 12 months that you are to
7 meet that standard, whether because you're
8 starting from it or you're moving it in from the
9 MPS or the CPS, it's the same thing. For that
10 first 11 months and 30 days, there's no standard
11 until it hits the end of that and you look back
12 and see the entire 12 month period.

13 MR. RAO: And can you explain why
14 you need quarterly data initially when you start
15 out? So just going with the 12 month rolling --

16 MR. BLOOMBERG: The quarterly data
17 works together with the quarterly STAC testing.
18 For one thing, if we had a 12-month rolling while
19 STAC testing was available, it would be more
20 dangerous to the companies that they could find
21 themselves in noncompliance and not be able to use
22 the STAC testing option to get themselves out.
23 If, for example, they went through three quarters
24 or almost three quarters and then they were fine

1 and then they suffered some sort of failure and
2 they were not able to meet 75 percent on a
3 12-month basis, they could STAC test to meet that
4 final quarter, but the previous three quarters,
5 they can't go back in time and do anything about.

6 They would be out of compliance
7 for those entire three quarters. So it's more
8 advantageous to keep it on a quarterly basis so if
9 there is a problem, they can STAC test and take
10 care of that issue and demonstrate compliance.

11 MR. RAO: Thank you.

12 MR. FOX: Mr. Rieser?

13 MR. RIESER: Just a couple more
14 questions and I don't know to whom this ought to
15 be directed, but is the agency going to produce a
16 final version of their -- what's now their actual
17 proposal that combines all of the various errata
18 that have been presented to the board and to the
19 parties?

20 MR. BLOOMBERG: Yes. We will work
21 on providing those.

22 MR. RIESER: If there's any
23 possibility that can be presented before our final
24 comments are due so we can see what the full

1 proposal is that would be appreciated.

2 MR. FOX: And we can certainly take
3 up deadlines for post hearing comments and any
4 other filings before we wrap up today. Point well
5 taken.

6 MR. RIESER: And my last questions
7 had to do with Exhibit 9 and it sort of ties back
8 into with an issue that Mr. Nuckols was going to
9 talk about, but one of the issues is that -- as I
10 understand it, the agency tried to take all of the
11 40CFR75 and try to put it into the proposal
12 primarily by using the exhibits, the attachments
13 and the exhibits. And one of the issues Mr.
14 Nuckols talks about is making sure that only
15 relates to the mercury issues and not relates to
16 requirements for other CEMS because of the concern
17 that there might be changes to the federal rules
18 that wouldn't be captured -- with respect to the
19 other CEMS, the non-mercury CEMS. With respect to
20 the -- that there might be changes to the non-CEMS
21 rules that would be captured in the agencies --
22 the boards' rules that relate to these non-mercury
23 CEMS and whether the agency has looked at or made
24 an attempt to pair down these attachments and

1 exhibits so that they only relate to mercury CEMS
2 issues.

3 MR. BLOOMBERG: Sorry. I lost you.

4 MR. RIESER: The last question was,
5 has the agency made an effort to pair down the
6 attachments and exhibits so that they only go to
7 the mercury CEMS requirements?

8 MR. BLOOMBERG: We have made that
9 effort and I think you'll see it in the various
10 erratum that there were places that we removed
11 requirements that only applied to, for example, to
12 NOx or SO2. There is a need to keep some of the
13 information in for ease of use by the regulated
14 community such as flow monitors or CO2 monitors
15 which relate to the way the mercury CEMS, the
16 entire system works and -- one moment. One other
17 point to note is that when -- you mentioned that
18 any changes that might be made to the federal
19 rules at a later date would not match the Illinois
20 rules and just to note, it's my understanding, not
21 as an attorney, that when the board references a
22 federal rule it references it as a specific
23 publication. And, as such, any changes to federal
24 rules in the future still wouldn't be represented

1 by our rules. So it wouldn't matter whether they
2 appear here or are referenced. It's the same
3 overall effect. With that said, I don't expect
4 there to be that type of change that you're
5 talking about.

6 MR. RIESER: Well, the purpose of
7 having the language regarding the operation of
8 mercury CEMS is that the federal rules having to
9 do with that issue were vacated by the court,
10 correct?

11 MR. BLOOMBERG: Yes.

12 MR. RIESER: So in that same part,
13 75, aren't there federal requirements for flow
14 meters and CO2 and those types of things that
15 you're talking about?

16 MR. BLOOMBERG: Yes.

17 MR. RIESER: Okay. So those things
18 could be changed by the federal EPA and those
19 changes would not be captured by the board rules
20 unless the board went through an identical
21 substance rule making of some sort.

22 MR. BLOOMBERG: That's correct.

23 MR. RIESER: So people would be
24 subject with respect to the operation of those

1 types of meters to two different requirements
2 potentially?

3 MR. BLOOMBERG: Potentially. But,
4 one, we do not foresee changes to the flow meters
5 or CO2 or anything like that. And, two, again, it
6 would still take a rule making to modify the
7 boards rule to point to the newest version of the
8 federal rule if such a change occurred.

9 MR. RIESER: Okay. Thank you.
10 Those were my questions. Thank you.

11 MR. FOX: Very well. Thank you,
12 Mr. Rieser. Any further questions for Mr.
13 Bloomberg or Mr. Ross on behalf of the agency?

14 MR. RAO: I had a follow up.
15 Mr. Ross, recently you came to the hearing docket
16 R08-19. The agency testified that the reason the
17 United States Court of Appeals decision on
18 December 23rd, 2008, reminded the CAIR -- EPA and
19 I think Mr. Colledy (phonetic) stated that because
20 of that decision, CAIR rules still remain in
21 effect. Can you elaborate a little bit more on
22 indications that the decision may have on the
23 clean air mercury rule?

24 MR. ROSS: Well, it's my

1 understanding that CAIR phase one remains in
2 effect and CAIR phase two was remanded back to the
3 US EPA for correction or fixing by the US EPA.
4 The overall implications to CAMR I think are
5 minimal. We do have some Nox and SO2 reduction
6 requirements for sources electing to enter the MPS
7 and CPS in the mercury rule and, of course, CAIR
8 is in SO2 and NOx's trading program, but I think
9 those kind of are separate and yet they're
10 interrelated and, I guess, the overall take away
11 from it is that there is no major impact to the
12 Illinois mercury rule and the MPS and CPS
13 requirements whether CAIR is in place or not in
14 place. The language we have in there that
15 addresses the Nox and SO2 allowances in the MPS
16 and CPS is such that the requirements for the
17 allowances -- are able to meet those requirements
18 regardless of the status of CAIR.

19 MR. RAO: Thank you.

20 MR. FOX: Any further questions?

21 MR. RAO: No.

22 MR. FOX: It appears we've exhausted
23 the questions for Mr. Bloomberg and Mr. Ross.
24 Thank you for your appearance and your testimony

1 here today. I want the record to reflect very
2 quickly before we turn to Mr. Nuckols in our
3 agreed order of testimony that one of the boards
4 other new members, Dr. Shundar Lin at my far left
5 has joined us and we wanted to welcome you to the
6 hearing Dr. Lin. That brings us to this point,
7 Mr. Rieser, if you're prepared for Mr. Nuckols, I
8 believe he had a statement with which he wished to
9 begin and was ready after that to proceed to
10 questions.

11 MR. RIESER: We can start with his
12 testimony, which I'd like entered as an exhibit.

13 MR. FOX: Very well.

14 MR. RIESER: So I believe this would
15 be Exhibit Number 10.

16 MR. FOX: Yes, Exhibit 10. Could
17 Mr. Nuckols be sworn, please?

18 WHEREUPON:

19 DAVID NUCKOLS
20 called as a witness herein, having been first duly
21 sworn, deposeth and saith as follows:

22 MR. RIESER: Could you state your
23 name, please?

24 MR. NUCKOLS: David Nuckols.

1 MR. RIESER: And spell it for the
2 court reporter?

3 MR. FOX: Mr. Nuckols, I'm sorry to
4 interrupt. Your voice is a little soft. If you
5 could raise the volume a little bit, it would be
6 much easier for us in the back part of the room to
7 hear you.

8 MR. NUCKOLS: I'll try to do that.

9 MR. FOX: Thank you very much.

10 MR. NUCKOLS: It's N-U-C-K-O-L-S.

11 MR. RIESER: Mr. Nuckols, I'm going
12 to show you a copy of your testimony that's been
13 marked as Exhibit 10 and ask if you can tell me
14 that it's a true and correct copy of your
15 testimony.

16 MR. NUCKOLS: Yes, it is.

17 MR. RIESER: At this point, I'd like
18 the testimony to be admitted as read, please.

19 MR. FOX: Mr. Rieser, as you've
20 heard, has moved for the admission of Mr. Nuckols'
21 pre-filed testimony as an Exhibit Number 10. In
22 this proceeding, I did note that he's distributed
23 copies of that. Is there any response or
24 objection of motion? Neither seeing nor hearing

1 any, Mr. Rieser, it will be admitted as Exhibit
2 Number 10. Thank you.

3 MR. RIESER: Thank you very much.
4 Mr. Nuckols has a brief summary of his testimony
5 for the ease of the participants of the hearing
6 today so that we know what the questions are
7 about. Mr. Nuckols, proceed.

8 MR. NUCKOLS: Good morning. My name
9 is David Nuckols and I'm the manager of the
10 Dominion's Emissions Monitoring Support Group.
11 Dominion owns and operates electric generating
12 facilities in 11 states, including the
13 1250-megawatt coal fired Kincaid Generation LLC
14 power plant located in Kincaid, Illinois and a 50
15 percent interest in the 1400-megawatt natural
16 gas-fired Elwood Energy LLC combustion turbine
17 plant located in Elwood, Illinois.

18 We appreciate this and previous
19 opportunities to comment on the proposed mercury
20 monitoring rules. We believe that the Illinois
21 EPA has been very receptive to Dominions' concerns
22 regarding fundamental differences in monitoring
23 for this compliance limit type program versus the
24 trade emissions program. Our biggest concerns

1 involve the use of missing data substitution and
2 bias adjustment factors which have been addressed.

3 This testimony seeks to respond
4 to the significant details in the proposed
5 regulations in the areas of data availability
6 requirements, system integrity test requirements,
7 the duplication of part 75QA requirements for SO₂,
8 NO_x, CO₂ and FLO in the rule and the requirements
9 for the air emissions testing bodies. Any
10 remaining bias adjustment factor from sorbent trap
11 monitors and extending the option to conduct STAC
12 testing in place of monitors. Dominion has more
13 experience in operating mercury CEMS than most
14 utilities, although, our industry experience is
15 very limited.

16 Dominion operated three CEMS and
17 three sorbent trap systems for the state's
18 compliance in 2008 and started up and operated
19 nine other systems during 2008. Our experience
20 indicates that these are much more complex
21 monitoring systems than we have been used to
22 operating for SO₂ and NO_x and downtimes tends to
23 be in days and weeks rather than hours.
24 Therefore, we are concerned about our ability to

1 comply with the data availability of 75 percent
2 per quarter where more than three weeks downtime
3 per quarter puts you in noncompliance.

4 We proposed changing the start
5 date of the availability requirement and making it
6 based on the emissions compliance period of 12
7 months. However, we believe the proposal
8 discussed in a conference call with David
9 Bloomberg of Illinois EPA had the quarterly
10 availability requirements while able to conduct
11 STAC test compliance in a 12-month rolling
12 availability after that as a reasonable approach.

13 We also recommended the change
14 in the QA limits set for weekly integrity tests.
15 Our experience is these are difficult limits to
16 meet consistently with today's technology so we
17 recommend that the current limits be used to
18 initiate maintenance and twice the limit be used
19 to invalidate the monitoring. We also ask that
20 there be more flexibility in the time between
21 tests since the current rule would require the
22 tests to be conducted exactly 168 hours or 7 days
23 apart. This requirement is similar to having a 26
24 hour for a daily calibration.

1 The concern about the
2 duplication of part 75 QA requirements for SO₂,
3 NO_x, CO₂ and FLO in this rule -- any time the same
4 detailed technical requirements are contained in
5 more than one document, there is a problem making
6 sure that they are the same and then assuming the
7 same when they are not. It is essential that the
8 rule adopted by the board deal only with mercury
9 monitoring issues and not restate federal
10 requirements for these parameters.

11 We recommend that these
12 requirements be provided by reference. We have
13 requested the requirement for air emissions
14 testing body be removed, be consistent with and
15 for the same reasons it was stayed in the federal
16 rules and there is a bias adjustment factor
17 remaining in the sorbent trap rule which we
18 believe can be removed.

19 Finally, we request the option
20 to conduct a quarterly STAC test in lieu of CEMS
21 should be extended beyond 2012 to provide more
22 time for the monitoring technology to mature.
23 Thank you for this opportunity to provide comments
24 and discuss these issues with you today.

1 MR. FOX: Thank you, Mr. Nuckols.

2 And Mr. Rieser, if we can go off the record for
3 just one moment, please.

4 (Whereupon, a discussion was had
5 off the record.)

6 MR. FOX: Mr. Nuckols has completed
7 his testimony and I believe we're set to go to
8 questions that any participants may have for him.
9 Is there anyone who wishes to pose a question to
10 Mr. Nuckols this morning?

11 MR. MATOESIAN: We'd like to ask a
12 few questions if you would give us a moment.

13 MR. FOX: Absolutely, Mr. Matoesian.
14 Not a problem.

15 MR. MATOESIAN: The first question
16 is can you restate about what you said about bias
17 adjustment factors in sorbent trap monitoring? I
18 don't remember seeing that in your initial system.

19 MR. NUCKOLS: There is a bias
20 adjustment factor that is in the rule that's to be
21 applied if you lose one of the paired sorbent
22 tubes in a sorbent trap system. It's a bias
23 adjustment factor of 1.1111 that we feel like is
24 inappropriate for this type of program.

1 MR. RIESER: It's item F in Exhibit
2 10, which you'll find on page 16.

3 MR. MATOESIAN: Thank you. Now, on
4 page 16 through 17 of your testimony, that's
5 section F, you recommended the leashing of a
6 footnote related to a multiplier for sorbent trap
7 monitors. Since filing your testimony, have you
8 had an opportunity to review dates on the third
9 errata sheet?

10 MR. NUCKOLS: No.

11 MR. MATOESIAN: Did you see -- I was
12 just going to say in item 69 that you wouldn't
13 happen to notice that the agency is proposing to
14 change that section with account to your
15 recommendation.

16 MR. NUCKOLS: So you're already
17 proposing to remove that?

18 MR. MATOESIAN: Yes.

19 MR. FOX: Mr. Matoesian, just for
20 the record, you're referring to language that
21 appears on pages 44 and 45 of the third errata
22 sheet?

23 MR. MATOESIAN: Yes.

24 MR. FOX: Very good. Thank you.

1 MR. NUCKOLS: Thank you.

2 MR. MATOESIAN: Just a few more
3 questions. In your testimony, you stated that you
4 had a number of concerns about the availability of
5 mercury CEMS, but has not the agency proposed a
6 temporary STAC testing option for that very
7 reason? In other words, to provide an alternative
8 to sources who have possible CEMS downtime issues?

9 MR. NUCKOLS: I guess you are
10 referring to the proposal to allow STAC testing
11 for the first three years in lieu of CEMS
12 availability at 75 percent?

13 MR. MATOESIAN: Yes.

14 MR. NUCKOLS: Yes. We have
15 discussed that and think that's a viable approach
16 to our concern.

17 MR. MATOESIAN: So if during that
18 initial period through July 1st, 2012, Dominion
19 were to have a problem with their CEMS, they could
20 always use STAC testing to demonstrate compliance?

21 MR. NUCKOLS: I believe we can.
22 There may be some situations that it may turn out
23 not to be possible if the units were to go offline
24 prematurely or if there is a problem with the

1 unit, but I believe that in most cases we should
2 be able to use that option to preclude being in
3 noncompliance under most cases.

4 MR. MATOESIAN: Okay. Thank you.
5 Now, on page five of your testimony, the very
6 first line. You noted that Dominion had installed
7 three mercury CEMS for mercury monitoring, is that
8 correct?

9 MR. NUCKOLS: Yes. That's a
10 facility in Massachusetts.

11 MR. MATOESIAN: Okay. And aren't
12 sorbent trap systems, referred to in the
13 regulations as an accepted monitoring system,
14 also an allowable alternative to CEMS and STAC
15 testing under the agency's proposal?

16 MR. NUCKOLS: I believe it is, yes.

17 MR. MATOESIAN: And sorbent trap
18 systems are permanent, correct?

19 MR. NUCKOLS: They can't be. The
20 old part 75 had a section called appendix K that
21 allowed you to use sorbent trap monitoring as an
22 accepted monitoring technique in lieu of
23 continuous CEMS.

24 MR. MATOESIAN: Okay. Thank you.

1 And just for clarification, sorbent trap systems
2 don't suffer from the same problems that you
3 listed as mercury CEMS pose?

4 MR. NUCKOLS: They are much less
5 complex than the continuous mercury CEMS. They
6 can have data availability issues because normally
7 you'll run a trap for a period of a week before
8 you change it out and realize that you don't have
9 a valid sample for that week or it can be anywhere
10 from two or three days to seven days or even
11 longer you can run these. So they can be -- you
12 can lose data for weeks and on a quarterly basis
13 if you lose more than three weeks of data, you
14 could possibly be out of the 75 percent
15 compliance.

16 MR. MATOESIAN: But they don't have
17 the same longer term problems of the CEMS that you
18 mentioned earlier about the CEMS, correct, sorbent
19 trap monitoring systems?

20 MR. NUCKOLS: I'm not sure what you
21 mean by longer term problems.

22 MR. MATOESIAN: You stated that some
23 of the problems you have seen with CEMS could
24 result in a longer downtime.

1 MR. NUCKOLS: Right.

2 MR. BLOOMBERG: But compared to what
3 you said sorbent traps, we're talking about a much
4 shorter potential period in the individual
5 problem?

6 MR. NUCKOLS: Well, there's always a
7 chance that things will happen with any of the
8 CEMS systems that could cause weeks of downtime.
9 Sorbent trap systems tend to be less complex and
10 so, therefore, there's probably less probability
11 of downtime and our experience with sorbent traps
12 has indicated that we have had less downtime with
13 those systems than we have had with our mercury
14 CEMS systems. The issue that we're concerned with
15 here in Illinois is that we have already invested
16 and installed continuous mercury CEMS at our
17 Kincaid facility and would plan to try to operate
18 those systems.

19 MR. FOX: Mr. Mattison, do you have
20 a question?

21 MR. MATTISON: Yes. In regards to
22 your sorbent trap, I just want to make a point of
23 indicating that the sorbent traps have two traps
24 in them, is that correct?

1 MR. NUCKOLS: That's correct.

2 MR. MATTISON: And with the
3 revisions that we're proposing in the third
4 errata, if one of those traps breaks, fails, the
5 other one can be used without penalty with a bias
6 adjustment factor?

7 MR. NUCKOLS: As long as it's only a
8 problem with that particular trap, the other pair.
9 It's possible that you could have a problem with
10 both systems.

11 MR. MATTISON: But in essence, you
12 have a built-in redundancy system in sorbent
13 traps, whereas with a continuous monitoring
14 system, you don't necessarily have that built into
15 this system?

16 MR. NUCKOLS: That's true.

17 MR. MATTISON: Thank you.

18 MR. MATOESIAN: Now, moving on. In
19 the proposed rule language, if it modified per
20 Mr. Bloomberg's statement earlier in the hearing,
21 such CEMS measured on a quarterly basis until STAC
22 testing is no longer available and as an
23 alternative and then after June 30th, 2012, and
24 after the date the CEMS changes to the rolling 12

1 month average that you have suggested, would you
2 agree to such a change moving to a rolling an
3 annual average after June 30th, 2012?

4 MR. NUCKOLS: Yes. We would be in
5 favor of that.

6 MR. MATOESIAN: Now, on page nine of
7 your testimony, you suggest completely eliminating
8 the CEMS uptime requirement for the first year and
9 then phasing in a lesser requirement after that,
10 but hasn't the Illinois EPA already agreed to push
11 back the monitoring deadlines from the original
12 mercury regulation?

13 MR. NUCKOLS: What do you mean by
14 the original mercury regulation? Are you talking
15 about Mr. Bloomberg's proposal to go to a
16 quarterly for the first three years or are we
17 talking the way it was originally proposed?

18 MR. MATOESIAN: The original
19 proposal in 2006, the original.

20 MR. NUCKOLS: Well, the reason I was
21 concerned about the first year availability is
22 that when you start a monitor up and run it for,
23 say, the first three months, you only have three
24 months data and operating time to calculate a data

1 availability number. So the reason I requested
2 that the first year there be no requirement is
3 that because you would not have built a 12-month
4 database of operating time and uptime and
5 operating time to be able to run that calculation.

6 So what I didn't want to have is
7 the first quarter of 2009 or, I guess, it would be
8 the third quarter of 2009, have to calculate a
9 data availability of 75 percent. I wanted to
10 be -- and be out of compliance. I wanted to wait
11 until the end of that first year before we had to
12 make that calculation and start an availability
13 basically on July 1st, which would be using the
14 data from the previous 12 months.

15 MR. BLOOMBERG: But now the new
16 change has addressed that?

17 MR. NUCKOLS: Yes.

18 MR. BLOOMBERG: Okay.

19 MR. MATOESIAN: And going on on page
20 twelve of your testimony, section C. You discuss
21 weekly system integrity tests. Isn't the purpose
22 of the integrity test to insure that CEMS
23 accurately counts for oxidized mercury?

24 MR. NUCKOLS: Yes.

1 MR. MATOESIAN: And were system
2 integrity tests part of the original rule as
3 proposed by the federal government.

4 MR. NUCKOLS: Yes, it was.

5 MR. MATOESIAN: Has the agency
6 modified the integrity of the findings of part 75
7 when incorporating those requirements into this
8 proposed rulemaking?

9 MR. NUCKOLS: I don't know what the
10 agency has done as far as reviewing their
11 requirements that were on the books in part 75.
12 Nobody in the industry has much experience on how
13 these systems actually operate. I don't know the
14 basis for their -- the numbers that they cited
15 were necessary for QA check. I don't know where
16 ten percent came from. I don't know that they had
17 any basis of experience to come up with that
18 number.

19 It's been our experience that
20 ten percent is difficult to meet on a weekly
21 basis. It's a cause for considerable data
22 downtime and invalid data. So we're proposing
23 that that limit is unreasonable and it should be
24 expanded some.

1 MR. BLOOMBERG: When you said they a
2 couple times, were you talking about US EPA?

3 MR. NUCKOLS: Yes.

4 MR. BLOOMBERG: And to follow up on
5 Mr. Matoesian's question, are you aware of any
6 differences in the Illinois EPA proposal as
7 opposed to what was in the part 75 rule?

8 MR. NUCKOLS: No.

9 MR. RIESER: I'm sorry. With
10 respect to this particular issue?

11 MR. BLOOMBERG: Yes. Sorry.

12 MR. NUCKOLS: That doesn't mean we
13 agreed with what EPA had proposed nor do we -- did
14 we have a reason when this was proposed to think
15 different because we had not had any experience or
16 had enough experience to say that that's a limit
17 that's not necessarily achievable on a continuous
18 basis.

19 MR. MATOESIAN: Okay. Now, if a
20 CEMS failed the integrity test, isn't it true that
21 the CEMS would be underreporting total mercury
22 emissions since it is not accounting for all the
23 oxidized mercury emissions?

24 MR. NUCKOLS: Well, assuming that it

1 fails on the low side, that's true. And I don't
2 really have enough information to know that it
3 always fails low, but I don't know whether that's
4 a reasonable assumption or not.

5 MR. MATOESIAN: And what is the
6 basis for your proposed increase in the allowable
7 measurement error, that is, from where did you
8 obtain this value?

9 MR. NUCKOLS: I can't say I have
10 done extensive research to say that twice is the
11 right number. I base that number on some other
12 sections in part 75 such as the daily calibration
13 for SO2 and NOx. The standard for daily
14 calibration is twice the value that you have to
15 be, say, on a 7-day drift or in the initial
16 certification.

17 So I pitched twice as what I
18 considered to be a reasonable value that we could
19 probably meet and the data that I have reviewed
20 indicated that 85, you know, we can meet 85
21 percent most of the time and what we're proposing
22 is if you're below 90 percent, then it's a point
23 of taking action similar to what we do for daily
24 calculations. Half of the out of control is what

1 we call a maintenance limit and it's a time to
2 take action, but it's not invalidated data.

3 MR. MATOESIAN: Okay. Thank you.

4 MR. NUCKOLS: I believe there are
5 some justifications for not making the oxidized
6 mercury calibration as stringent as the elemental
7 mercury calibration, but I haven't gone through
8 that exercise to try to prove that.

9 MR. MATOESIAN: Okay. Thank you.
10 And as far as your proposal, have you gathered any
11 supporting data for that proposal showing how it
12 will effect CEMS measurements?

13 MR. NUCKOLS: I have not. I'd be
14 willing to do that if you need me to, but I have
15 not done that.

16 MR. MATOESIAN: Okay. Moving on
17 then. On page 14 of your testimony, section E,
18 you discuss the air emission testing body
19 accreditation requirements and suggest that the
20 associated regulations should be removed from this
21 rule. Are you aware that US EPA did not actually
22 remove the requirements as you state, but instead
23 have simply stayed the effectiveness of the
24 requirements?

1 MR. NUCKOLS: Yes, I am.

2 MR. RAO: May I ask a follow up on
3 this question? Mr. Nuckols, can you explain a
4 little bit more about why you need the provision
5 to be removed, is it just because it's being
6 removed in the federal rules or is that some other
7 downside for retaining it in the agencies
8 proposal?

9 MR. NUCKOLS: Well, Dominion's
10 opinion is that the air emissions testing body
11 requirements is a good thing for the industry in
12 general. However, the UARG, which is the utility
13 air emissions regulatory group, has some legal
14 issues with the way it was put in there and so,
15 therefore, we feel like there's probably going to
16 be some legal issues with having it in here. Our
17 normal practice is to require our test people to
18 be meeting the requirements of the AETB, but we
19 don't feel it should be in the rule.

20 MR. RAO: And as far as Dominion is
21 concerned, you are accurate at the AETB?

22 MR. NUCKOLS: The group that I
23 manage is accredited through the STAC testers
24 accreditation counsel as an air emissions testing

1 body. My group may not be the ones doing the
2 errata and audits at the Kincaid facility.

3 MR. RAO: But if the provision is
4 retained, you have to train these people to
5 monitor data facilities?

6 MR. NUCKOLS: We will have to ensure
7 that anybody who does testing on -- for this
8 program is accredited and --

9 MR. RAO: Is there any cost
10 implications for this provision?

11 MR. NUCKOLS: I could not tell you
12 that.

13 MR. RAO: Thank you.

14 MR. BLOOMBERG: A follow up question
15 and this is sort of repetitious of what
16 Mr. Matoesian just asked you, but to clarify
17 because of what Mr. Rao just repeated "removed".
18 Again, isn't it true that it has been stayed, not
19 removed, from the federal regulations?

20 MR. NUCKOLS: I'm not a lawyer so
21 I'm not quite sure what that all means, but I
22 understand it is stayed which means it will come
23 back and I believe it will come back, but I
24 believe until they rectify the concerns of other

1 people, there's a reason for it not to be there.

2 MR. BLOOMBERG: And also following
3 up what Mr. Rao just asked on whether you would
4 have to certify and the cost. If it stayed, will
5 you have to certify or put any costs in while it
6 is stayed?

7 MR. NUCKOLS: Are you asking for the
8 period between, say, now and until the requirement
9 is put back in the federal rules or stayed or
10 whatever the term might be?

11 MR. BLOOMBERG: Yes.

12 MR. NUCKOLS: Is there additional
13 costs for us to be able to comply with that? I
14 don't know. There are costs to the testing
15 companies. There are costs to us in order to
16 implement these programs. Whether they'll be
17 passed on and we'll be able to see a significant
18 increase from a company that has accreditation
19 versus someone who doesn't have accreditation, I
20 don't know that I have that information.

21 MR. BLOOMBERG: To clarify my
22 question. During the time it has stayed and let
23 me put it this way. During the time it stayed,
24 isn't it true that you will not need accredited

1 STAC testing people?

2 MR. NUCKOLS: The way I have read
3 this rule is we would have to use accredited STAC
4 testing people to do these tests while it's --
5 from day one.

6 MR. BLOOMBERG: Okay. I think to
7 help clarify, we have the federal register, the
8 federal register that discusses the stay.

9 MS. BASSI: May I ask a question?

10 MR. FOX: Yes.

11 MS. BASSI: Is provision one that
12 was in there by reference or is it in there
13 printed in your rule?

14 MR. BLOOMBERG: The first errata
15 changed it from being printed in the rule to by
16 reference.

17 MS. BASSI: So is it the agencies
18 position then that it's in there by reference if
19 it's stayed on a federal level, there's nothing to
20 comply with until it comes back on a federal
21 level?

22 MR. BLOOMBERG: That is the agencies
23 position.

24 MR. BONEBRAKE: My name is Stephen

1 Bonebrake. I'm with Schiff Hardin. I represent
2 Midwest Generation and Dynegy. Just to further
3 clarify, Mr. Bloomberg, assuming that the federal
4 accreditation requirements are still stayed as of
5 July '09, that will remain there will be no
6 requirements under the Illinois rule for
7 accreditation, is that correct?

8 MR. BLOOMBERG: Correct.

9 MR. FOX: Mr. Bonebrake, any further
10 questions?

11 MR. BONEBRAKE: No.

12 MR. RIESER: May I follow up just to
13 keep this thought going? If the section that
14 we're talking about in the federal rules is
15 incorporated by reference, that incorporates a
16 specific CFR and a specific day, correct?

17 MR. BLOOMBERG: That's my
18 understanding. Well, specific CFR, yes.

19 MR. RIESER: So if that CFR is
20 subsequently stayed not by a court, but by a
21 subsequent federal register notice admitted by the
22 EPA, US EPA, isn't the incorporation by reference
23 still effective in terms of them having a
24 requirement?

1 MR. BLOOMBERG: I'm going to repeat
2 what Mr. Nuckols said a little while ago. I'm not
3 a lawyer, but I have been advised by attorneys
4 that because it is a stay and not a change in the
5 language, not removed, it is still in there, but
6 the effectiveness has been stayed, the enforcement
7 has been stayed. It is the agencies belief that
8 once US EPA removes the stay, the reference will
9 stay valid.

10 MR. RIESER: Thank you.

11 MR. BLOOMBERG: But until such time
12 it's stayed, they don't need to comply.

13 MR. FOX: Mr. Matoesian, you had a
14 document that you had referred to.

15 MR. MATOESIAN: Yes. I was
16 wondering whether I could submit the federal
17 register in question as an exhibit?

18 MR. FOX: If you have copies and you
19 don't mind distributing those, we can proceed.
20 Mr. Matoesian has distributed copies of the
21 federal register, volume 73 at page 65554
22 regarding the, quote, stay of the effectiveness of
23 requirements for air emission testing bodies,
24 unquote. I recall that he has moved that that be

1 admitted into the record at this proceeding as
2 what will be Exhibit Number 11. Any response or
3 comments on that motion to admit? Neither seeing
4 nor hearing any, it will be admitted, Mr.
5 Matoesian, as Exhibit Number 11.

6 MR. MATOESIAN: Thank you. We have
7 no more questions at this point for Mr. Nuckols.

8 MR. FOX: Very well. Was there any
9 other participants that had a question to pose to
10 Mr. Nuckols? Mr. Rao does have one. Go ahead.

11 MR. RAO: Mr. Nuckols, on page 11 of
12 your pre-filed testimony, you state that the final
13 percent data availability should be phased into 75
14 percent. You recommend 65 percent data
15 availability requirement during the first year and
16 rising to 75 percent in the second year. Could
17 you please clarify whether the proposed first year
18 requirement of 65 percent is based on monitoring
19 data from Dominion's plan?

20 MR. NUCKOLS: It's not based on our
21 actual data availability from our current plan.
22 It's based on our concerns and our realizations
23 that there are a lot of things that could happen
24 to these systems. These are very complex systems.

1 The system that we operate, Tekran, has over 200
2 points that we have to monitor or can monitor to
3 indicate the health of the system. So they're
4 very complex systems. In our experience, it takes
5 weeks, days to weeks to get these systems up and
6 operating again once we have a problem or a
7 concern that if we should have an umbilical
8 failure while these systems are in operation that
9 that could take, you know, months even in order to
10 have those systems returned to service and so we
11 are concerned of our ability to comply.

12 So we're trying to make it such
13 that we feel like we have a reasonable probability
14 of being able to be in compliance. Our goal is to
15 be in compliance and have rules that we feel like
16 we can comply with given the complexity of the
17 systems and the information we have about them at
18 this point.

19 MR. RAO: With the changes proposed
20 by the agency in the further errata sheet and some
21 of the changes that were discussed today and the
22 flexibility in the rules, do you still believe
23 that you require like a -- in the data reliability
24 requirement?

1 MR. NUCKOLS: The way we understand
2 it, the changes should have about three years of
3 operation with the ability to do a STAC test if we
4 do get into trouble. Of course, we would like to
5 have more flexibility in the future, but at this
6 time, we're not asking for it.

7 MR. RAO: Thank you.

8 MR. FOX: Anything else Mr. Rao?

9 MR. LIN: On page four of your
10 pre-trial testimony, at the bottom, you say --
11 from your experience, can you tell us how
12 expensive it is?

13 MR. NUCKOLS: I'm sorry. I still
14 don't understand the question. How expensive what
15 is?

16 MR. LIN: How much expense.

17 MR. NUCKOLS: A standard size
18 calibration gas cylinder has been priced at \$3,000
19 to \$3,500 per cylinder and they don't last very
20 long at all. I think most everyone in the
21 industry has agreed that the calibration gases are
22 not suitable for daily calibration.

23 MR. LIN: My second question -- how
24 long, one year two years?

1 MR. NUCKOLS: We're talking weeks.

2 MR. LIN: Weeks?

3 MR. NUCKOLS: Yes. If you use them
4 for daily calibration, these cylinders would be
5 expired or spent in weeks and they're not stable
6 much more than -- they're not certified for more
7 than six months, if that. These cylinders, the
8 technology for calibration gas cylinders is not
9 where we need it to be and most of us who operate
10 this -- these systems, are not considering them at
11 this time.

12 MR. LIN: So most tests are tests
13 you conduct in your laboratory, outside
14 laboratory?

15 MR. NUCKOLS: There was a study that
16 was conducted by RMB Consultants in conjunction
17 with EPRI and EPA and looked at these calibration
18 cylinders with the idea of doing, say, quarterly
19 checks on your calibrator and I don't know that we
20 even have a cylinder that we could use to do that
21 with. There's problems with the regulators.
22 There's problems with the cylinders. There's
23 problems with the storage. And they're not, you
24 know -- this is -- just having a hard time being

1 able to certify them. So, right now, calibration
2 gases are something that we're looking at for the
3 future, but they're not available for normal use
4 at this point. Really, we're just studying it.

5 MR. LIN: Okay. Thank you.

6 MR. FOX: Any further questions for
7 Mr. Nuckols at this point? Seeing none,
8 Mr. Nuckols, thank you very much for your time and
9 your testimony today. Before we turn in the order
10 that we had discussed to Midwest Generation, we've
11 been at it for nearly an hour and a half. Why
12 don't we take a break and resume at 25 to 11:00?

13 (Whereupon, a break was taken
14 after which the following
15 proceedings were had.)

16 MR. FOX: I think everyone is back
17 from our break and if the court reporter is ready,
18 we can go right back on the record. Thank you all
19 for returning promptly. When we broke for the
20 break approximately 20 minutes ago, we concluded
21 the testimony of Mr. Nuckols and the questions
22 based upon it and we indicated to Ms. Bassi and
23 Mr. Bonebrake that we were ready to proceed to
24 Mr. Miller and his pre-filed testimony which

1 referred, as I mentioned before, to Ms. Crapisi
2 and Mr. Nagel. I think at this point we are ready
3 for any -- to swear the three of them in and any
4 summaries or brief introductions that they might
5 like to make. Are we ready to swear them in or
6 was there any preliminary issues you wish to
7 address?

8 MR. BONEBRAKE: At this point, the
9 pre-file testimony of Scott Miller is of record
10 and we would move to have that testimony admitted
11 as if read.

12 MR. FOX: And Ms. Bassi is supplying
13 copies.

14 MS. BASSI: I just have one.

15 MR. FOX: I have a copy and it has,
16 of course, as Mr. Bonebrake mentioned been filed
17 and accessible on the boards web page for some
18 time. I will construe that, Mr. Bonebrake and,
19 Ms. Bassi, as a motion to admit Mr. Miller's
20 pre-filed testimony as Hearing Exhibit Number 12.
21 I believe there's a second document that Ms. Bassi
22 wants to offer as well.

23 MS. BASSI: We would also move to
24 admit as an exhibit request to replace proposed

1 regulatory language contained in the testimony of
2 Scott Miller as Exhibit 13.

3 MR. FOX: And that motion to replace
4 does identify the course of specific language that
5 you seek to replace in his pre-filed testimony.
6 Those have been marked again. The pre-filed
7 testimony itself is Exhibit Number 12 and the
8 motion to replace is Exhibit Number 13. Any
9 response or objection to the admission of those
10 exhibits as numbered? Neither seeing nor hearing
11 any, they will be admitted, Ms. Bassi and
12 Mr. Bonebrake, as those exhibit numbers.

13 MR. BONEBRAKE: Mr. Scott Miller and
14 Ms. Andrea Crapisi and Mr. Chris Nagel to my right
15 and, Mr. Fox, would the appropriate thing to do is
16 swear the witnesses in?

17 MR. FOX: Very well. Why don't we
18 swear all three of them in at the same time?

19 (Witness duly sworn.)

20 SCOTT MILLER, CHRIS NAGEL AND ANDREA CRAPISI,
21 called as witnesses herein, having been first duly
22 sworn, was examined and testified as follows:

23 MR. BONEBRAKE: Thank you, Mr. Fox.
24 Mr. Miller has a short opening statement prior to

1 turning the witnesses over to questions that
2 others may have.

3 MR. FOX: Very good. Mr. Miller, I
4 think we're in order for you to proceed.

5 MR. MILLER: My name is Scott
6 Miller. I am the environmental program manager of
7 air quality at Midwest Generation. In my
8 pre-filed written testimony, I rate several issues
9 and concerns that Midwest Generation has regarding
10 this proposed rule.

11 Since the last hearing in
12 December and continuing after my pre-filed
13 testimony had to be submitted, we have discussed
14 those issues in more with IEPA and have reached
15 resolution on all of them. While we do not agree
16 a hundred percent with every position the IEPA has
17 taken, we believe the rule is generally acceptable
18 and we encourage the board to adopt it as the
19 proposal has been revised through the three
20 erratas and Mr. Bloomberg's additions this
21 morning. Specifically regarding optimum manner,
22 Mr. Ross's statement this morning about the
23 optimum manner provisions of the rule have
24 resolved the concern set forth at pages one and

1 three, 212 of my written testimony addressing
2 IEPA's position regarding optimum manner.
3 Accordingly, Midwest Generation requests no
4 further clarification of optimum manner nor any
5 other determination by the board concerning
6 optimum manner.

7 We appreciate Mr. Bloomberg's
8 clarification regarding weight averaging of the
9 mercury content in the pole. We also appreciate
10 the IEPA's willingness to further amend the rule
11 to allow for a 75 percent monitoring availability
12 to be determined on an annual rolling basis.

13 Mr. Bloomberg presented language
14 this morning that had the -- satisfactorily
15 addresses this issue and we encourage the board to
16 incorporate that language into the rule. We agree
17 that Mr. Bloomberg's proposed language for
18 appendix B, section 1.4(b)3(g)V clarifies the
19 question regarding mercury errata and encourages
20 the board to adopt that change.

21 IEPA resolved our concerns
22 regarding temperature correction in the third
23 errata is acceptable -- the language proposed is
24 acceptable to Midwest Generation. We note that

1 the agency addressed the issue of retrospective
2 noncompliance determinations in section
3 225.239(g)2 of the third errata. The IEPA's
4 proposed new language is a great improvement over
5 the third language. We do not object in the
6 language to the third errata. Thank you.

7 MR. BONEBRAKE: That will conclude
8 the opening statement.

9 MR. FOX: Very well. Are the
10 witnesses ready to take questions at this point?

11 MR. BONEBRAKE: Ms. Crapisi and
12 Mr. Nagel have opening statements as well.

13 MR. FOX: You can proceed with
14 whichever order that you prefer.

15 MS. CRAPISI: My name is Andrea
16 Crapisi, that's C-R-A-P-I-S-I. I'm an
17 environmental engineer employed by Midwest
18 Generation. I assist Midwest Generations six
19 generating stations in compliance with their air
20 permit, the clean air interstate rule, new
21 standards for mercury requirements and any other
22 air compliance matters that arise.

23 In the course of these duties, I
24 help the stations obtain air permits and manage

1 the air permitting efforts for new projects at the
2 stations. I've worked with Midwest Generation
3 since the summer of 2005. Prior to that, I was an
4 air quality consultant at Trinity Consultants for
5 two and a half years. I have a Bachelor's of
6 Science degree in chemical engineering from Iowa
7 State University. As part of my air permitting
8 duties at Midwest Generation, I assisted in the
9 permitting of the activated carbon injection
10 system, generating stations and I'm currently
11 tracking compliance with the applicable
12 regulations regarding carbon injections.

13 I also participated in
14 discussions regarding amending the temperature
15 correction provision in section 225.294(g)4. I'm
16 familiar with requirements of the Illinois mercury
17 rule, particularly the combined pollutant standard
18 that is applicable to Midwest Generation and can
19 answer questions on that topic.

20 MR. FOX: Thank you, Ms. Crapisi and
21 Mr. Nagel, it's your turn now to speak.

22 MR. NAGEL: My name is Chris Nagel,
23 N-A-G-E-L. I'm a project manager at Midwest
24 Generation. I'm responsible for all aspects of

1 large capital projects from development to the
2 scope, schedule, budget through execution. Large
3 capital projects include monitoring controlled
4 projects, specifically mercury monitoring and
5 activated carbon injection systems that Midwest
6 Generation has installed. I've been employed by
7 Midwest Generation for over nine years and been in
8 that capacity the entire time.

9 Previously, I worked at
10 Commonwealth Edison for over 17 years in a variety
11 of positions, including quality assurance,
12 procurement, engineering, construction management
13 and projects management. I have a Bachelor of
14 Science in mechanical engineering from Michigan
15 Tech University. I have a Master of Engineering
16 Management from Northwestern University.

17 I've been responsible for the
18 procurement, installation and start up of the
19 continuous mercury monitoring systems at Midwest
20 Generation's power plants. I've dealt with the
21 problems associated with construction, start up
22 and commissioning of these systems on a daily
23 basis and can answer any questions regarding the
24 issues that Midwest Generation has experienced.

1 At this point in time, I do not believe that it is
2 possible for Midwest Generation to maintain 75
3 percent monitoring availability with the mercury
4 monitoring systems.

5 MR. BONEBRAKE: I believe that
6 concludes our opening statements.

7 MR. FOX: Very good, Mr. Bonebrake.
8 If the three of them are ready, we can proceed to
9 questions. Is there anyone who wishes to pose a
10 question to any of the three witnesses on behalf
11 of Midwest Generation?

12 MS. VETTERHOFFER: The agency does
13 if we can just have one moment?

14 MR. FOX: Absolutely,
15 Ms. Vetterhoffer.

16 MS. VETTERHOFFER: We're ready.

17 MR. FOX: Ms. Vetterhoffer, please
18 go ahead.

19 MS. VETTERHOFFER: Mr. Nagel and Mr.
20 Miller would be better --

21 MR. FOX: Ms. Vetterhoffer, we do
22 need some volume for the court reporter.

23 MS. VETTERHOFFER: I'm just asking
24 for a point of clarification from Mr. Miller's

1 opening statement. It sounded like as if the
2 negotiations that Midwest Generation has been
3 involved with, that the agency had resolved most
4 of the issues -- actually all of the issues in
5 your pre-filed testimony, is that correct?

6 MR. MILLER: Yes.

7 MS. VETTERHOFFER: But then in
8 Mr. Nagel's opening statement it sounded like
9 Midwest Generation is still having problems with
10 the 75 percent uptime requirement and I'm just
11 asking for clarification between those two
12 statements.

13 MR. MILLER: The monitoring and
14 availability and STAC testing options, the first
15 two and a half years of the program and then post
16 July 1st, 2012, the availability on a rolling
17 basis. I think Chris meant as of today, I don't
18 have any monitors. We have attempted to install
19 11 monitors for all our units in the state who is
20 done meeting the 75 percent availability monthly
21 rolling no matter what the average. We would like
22 the two year period to learn -- to get all our
23 ducks in a row to get to that point. I can't say
24 for sure at the end of the two years or two and a

1 half years, we'll reach that on every unit, the 75
2 percent rolling.

3 We're going to strive to get
4 those monitors working. We want to operate these
5 monitors. We're doing everything we can to get
6 them operating. At this point in time, we're not
7 close to 75 percent availability. We've had some
8 installed since September of 2007.

9 MS. VETTERHOFFER: I think you did
10 clarify this, but just so we're clear. So the
11 rule as written and modified in the agencies
12 second and third errata is acceptable to Midwest
13 Generation?

14 MR. MILLER: Yes.

15 MS. VETTERHOFFER: Thank you.
16 That's all the questions I have.

17 MR. FOX: Thank you, Ms.
18 Vetterhoffer. Were there any further questions?

19 MS. BASSI: I'm sorry. I need to
20 further clarify also. The second and third
21 errata, I believe, you said in the testimony plus
22 what Mr. Bloomberg provided today, which I think
23 is what provides for the rolling 12 month average?

24 MR. FOX: And those -- I'm certain

1 I'm understanding you correctly is that it was
2 Exhibits 8 and 9 were offered to you by
3 Mr. Bloomberg and Mr. Ross on the basis of their
4 statements earlier today.

5 MS. BASSI: Yes.

6 MR. BONEBRAKE: Just referring to
7 the statement of Mr. Ross regarding optimum
8 manner. So that is also represented in Mr.
9 Miller's testimony regarding the view of Midwest
10 Generation concerning where we are today.

11 MR. FOX: And that statement was
12 certainly part of the record. Just for additional
13 clarification, were there any further questions
14 for Mr. Miller, Ms. Crapisi or Mr. Nagel at this
15 point?

16 MR. RAO: I have a follow up.

17 MR. FOX: Mr. Rao has a follow up.

18 MR. RAO: Mr. Miller, when you
19 mentioned you're not achieving 75 percent monitor
20 availability, what levels are you seeing based on
21 the data that you have?

22 MR. MILLER: I always look at the
23 start point to start measuring monitor
24 availability the way the rules are written and

1 QA/QC, quality assurance and quality control
2 requirements, who have deduced my monitors in
3 their rule. I need to have passed all of my
4 quality insurance, quality control tests and that
5 includes seven-day drifts, the integrity test that
6 Dominion talked about earlier. We're having
7 trouble passing that test. Errata and calibration
8 tests.

9 I need to pass all those tests
10 and then that's day one of when my monitoring
11 availability starts. We've had numerous failures
12 as you've read in my testimony in the umbilical,
13 the lack of support from the vendor, numerous part
14 failures. So it's taken me all this time since
15 September of '07 to get to that point where I can
16 perform all these QA/QC tests.

17 So as of today, I don't have any
18 records of monitoring availability. In fact, it's
19 zero percent because I need to pass all the QA
20 tests to start my clock. And hopefully I'll be at
21 that point later towards 2008, but as of today, we
22 have zero percent availability.

23 Now, I am reading mercury
24 emissions, but in the rule that would not be

1 acceptable because I have to pass all that QA
2 testing for the data to be quality assured and
3 that's the way the rule is, that's how it is for
4 the SO2 and the NOx program. Mercury is much more
5 difficult to measure and the systems are much more
6 difficult to operate and the testing is even more
7 difficult to pass those tests. So I'm zero
8 percent today.

9 MR. RAO: Thank you.

10 MR. JOHNSON: Tom Johnson. One more
11 level of clarification. The way those statements
12 that you made are reconciled, that being that
13 you're unable to make the 75 percent, but you're
14 satisfied with the rule as amended, in that, at
15 least at this juncture, you intend to use the
16 alternative monitoring provided for in the rule?

17 MR. MILLER: If I had to make a
18 decision today, I would probably use the STAC test
19 option and run parallel my monitors as
20 diagnostics, but that's Midwest Generation's data,
21 the official data would be the STAC testing of the
22 compliance.

23 MR. JOHNSON: Thanks.

24 MR. FOX: Mr. Johnson, anything

1 further?

2 MR. JOHNSON: No.

3 MR. BONEBRAKE: Any further
4 questions of Midwest Generation and its witnesses?
5 Neither seeing nor hearing any, Mr. Miller, Ms.
6 Crapisi, Mr. Nagel, thank you very much for your
7 time and your testimony today and your
8 availability for questions. That would lead us to
9 Mr. Diericx's on behalf of Dynegy according to our
10 schedule that we had discussed at the top of the
11 day. And as a public matter, I believe Ms. Bassi
12 has a copy of the testimony of Mr. Diericx,
13 pre-filed, and we will move to admit that
14 pre-filed testimony into the record as read and I
15 believe we're up to Exhibit 14?

16 MR. FOX: That's correct,
17 Mr. Bonebrake. That motion, again, is, of course,
18 to admit the pre-filed testimony from Monday,
19 February 2nd, and is there any participant who
20 wishes to be heard in response or objection to
21 that motion for admission? Neither seeing nor
22 hearing any, that motion, Mr. Bonebrake, will be
23 granted and that pre-filed testimony of Mr.
24 Diericx will be marked and admitted as Exhibit

1 Number 14.

2 MR. BONEBRAKE: I believe that
3 Mr. Diericx has a short opening statement and will
4 be available for questions. So I believe,
5 Mr. Fox, would it be appropriate to have the court
6 reporter swear in Mr. Diericx at this time?

7 MR. FOX: Yes, that sounds great.
8 If the court reporter could do so, please.

9 (Witness duly sworn.)

10 ARIC DIERICX,
11 called as a witness herein, having been first duly
12 sworn, was examined and testified as follows:

13 MR. BONEBRAKE: We are now ready for
14 the opening statements.

15 MR. DIERICX: Good morning. My name
16 is Aric Diericx. I am the senior director of
17 operations environmental compliance for Dynegy
18 Midwest Generation, encompassing generating
19 stations in four states, including Illinois.
20 Additionally, my group provides environmental
21 compliance for a new coal fired plant under
22 construction in Arkansas. Dynegy had a number of
23 concerns with proposed amendments to the Illinois
24 mercury rule that I've identified in my pre-filed

1 the third errata. We encourage the board to adopt
2 this language. The agency has proposed language
3 in the third errata to amend the retrospective
4 noncompliance element of section 225.239(g)2, an
5 issue also raised in my written testimony.

6 The agencies proposal is
7 acceptable to Dynegy and resolves this issue in
8 this ruling. In the third errata, the agency
9 proposed that the commencing of monitoring
10 requirements should match the control installation
11 date in the multi-pollutant standard. This was
12 one of Dynegy's issues and we appreciate the
13 alignment of the dates in sections 225.233(c)1(a)
14 and 225.240(b). As I said, all of Dynegy's issues
15 raised in my written testimony have been resolved.
16 Dynegy encourages the board to adopt the proposed
17 rules as amended by the three erratas and by
18 Mr. Bloomberg's statement this morning regarding
19 monitor availability determined on an annual basis
20 beginning July 1, 2012. I can answer questions at
21 this time.

22 MR. FOX: Very good, Mr. Diericx.
23 Thank you for your testimony. Is there any
24 participant who wishes to pose a question to him

1 based on his testimony here this morning? I
2 literally am seeing no hands or indications that
3 there is a question. Mr. Diericx, please accept
4 our thanks for your time and testimony this
5 morning.

6 MR. DIERICX: Thank you.

7 MR. FOX: That brings us, Ms. Bassi
8 and Mr. Bonebrake, to the point in your testimony
9 of Mr. Menne and Mr. Rygh. Would it be helpful to
10 take a quick break while we have a little
11 realignment so to speak? If could go off the
12 record for just a moment.

13 (Whereupon, a break was taken
14 after which the following
15 proceedings were had.)

16 MR. FOX: We took a brief break so
17 that we could bring into the room some witnesses,
18 including Mr. Menne who has pre-filed testimony.
19 Ms. Cipriano and Mr. More, if you don't mind my
20 proposing this, it might make sense for the
21 benefit of those of us who are here overlooking
22 the folks who want to offer comments and we will
23 certainly turn to you at an appropriate time if
24 you would like to introduce the folks who are now

1 at the head table on behalf of Ameren just for the
2 benefit of making those names clear.

3 MS. CIPRIANO: Certainly. I think
4 it would be appropriate for them to individually
5 state their name and their position and that would
6 be clearer.

7 MR. FOX: Perfect. We can start at
8 whatever.

9 MS. CIPRIANO: I'll begin. Renee
10 Cipriano with the law firm Schiff Hardin on behalf
11 of Ameren.

12 MR. MORE: Josh More with Schiff
13 Hardin on behalf of Ameren.

14 MR. MENNE: Mike Menne, head of the
15 environmental department of Ameren Corporation.

16 MR. WHITWORTH: Steve Whitworth,
17 manager of environmental services with Ameren.

18 MR. LORING: David Loring, attorney
19 at Schiff Hardin on behalf of Ameren.

20 MR. HUGHES: Darryl Hughes and I'm
21 supervisor of evaluations at Ameren Finance.

22 MR. RYGH: Gary Rygh. I'm a
23 managing director of Barclay's Capital.

24 MR. ARTMAN: Tony Artman. I'm a

1 managing supervisor in strategic initiatives of
2 Ameren.

3 MR. MORE: We would like to have
4 Mr. Menne read a short summary of his testimony to
5 add context to any questions that might be asked
6 of the panel and we'd like at this time to move to
7 have Mr. Menne's testimony admitted as if read
8 along with Mr. Rygh's testimony as read. We have
9 copies of those.

10 MR. FOX: You have copies of those?

11 MR. MORE: We do. 15 and 16?

12 MR. FOX: Actually, 14 and 15. I
13 was mistaken. Number 14 was Mr. Diericx's
14 pre-filed testimony and it was my error and I
15 appreciate you pointing that out. These will be,
16 Mr. More has indicated, Exhibits 15 and 16. We
17 will make Mr. Menne 's testimony Exhibit Number 15
18 and the testimony of Mr. Rygh that was admitted
19 instanter earlier today as Exhibit Number 16.
20 We've heard a motion to admit those two documents
21 under those numbers. Is there any participants
22 who wishes to be heard in response or objection?
23 Neither seeing nor hearing any, Mr. More, those
24 will be admitted as Exhibits 15 and 16.

1 MR. MORE: With that, why don't you
2 go ahead.

3 MR. FOX: Why -- Mr. More, I'm sorry
4 to interrupt. You had referred to the panel with
5 the exception of Mr. Loring and Ms. Cipriano,
6 would all of the gentlemen seated at the head
7 table -- why don't we have the court reporter
8 swear in each of those fine gentlemen so we can
9 avoid doing that midstream.

10 MR. MORE: That's consistent with
11 Mr. Menne's testimony that he's confirmed with
12 each of these individuals in developing his
13 testimony. Therefore, they're here to answer any
14 questions that you might have.

15 WHEREUPON:

16 MICHAEL MENNE, STEVEN WHITWORTH, DARRYL HUGHES,
17 GARY RYGH AND ANTHONY ARTMAN
18 called as witnesses herein, having been first duly
19 sworn, deposeth and saith as follows:

20 MR. FOX: Very good. And I think I
21 interrupted you in referring to an introductory
22 statement or summary that Mr. Menne wished to. It
23 sounds like we're right in order to do that.

24 MR. MENNE: Thank you very much. As

1 I've mentioned, my name is Michael Menne. I'm the
2 vice president of the environmental services
3 department for Ameren Corporation and I'm here
4 today representing Ameren Energy Generating
5 Company, Ameren Energy Resources generating
6 Company and Electric Energy, Inc., all of which
7 are subsidiaries of Ameren Corporation in which I
8 will collectively refer to today as Ameren.

9 I am responsible for developing
10 policies and procedures related to environmental
11 compliance for Ameren Corporation and its
12 operating subsidiaries. In the past, I have been
13 responsible for representing Ameren before
14 regulatory or administrative bodies with respect
15 to state and federal permitting conditions and
16 regulatory requirements.

17 As indicated, I did submit
18 pre-filed testimony so I'm not going to read my
19 statement here today, but just provide a very
20 brief of what that statement is. Ameren is
21 seeking an amendment to section 225.233, the
22 multi-pollutant standard in which we refer to as
23 MPS. In particular, Ameren is seeking to amend
24 the SO2 admission limit of 0.33 pounds of SO2 per

1 million BTU in calendar years and 2013 and 2014
2 in that statute, in that regulation.

3 What we are seeking for is to
4 eliminate that 0.33 interim level in the MPS. As
5 a result of the unforeseen and extreme financial
6 conditions of the US and global economy and the
7 risk associated with the regulatory uncertainty
8 surrounding the new greenhouse gas regulations,
9 compliance with the 213 and the 214 SO2 admission
10 rate of 0.33 will cause Ameren to suffer
11 unreasonable economic hardship.

12 In consideration of the
13 amendment we are asking today in elimination of
14 this interim 213 and 214, Ameren after extensive
15 discussions with the Illinois Environmental
16 Protection Agency has agreed to earlier an
17 additional admission rates, limitations or both
18 NOx and SO2 admissions and starting in 2017, an
19 even more stringent rate for SO2.

20 These earlier and additional NOx
21 and So2 admission rate limitations will result in
22 a net environment benefit to the state of
23 Illinois.

24 Despite the extreme economic

1 circumstances facing Ameren, the proposed
2 amendment is economically reasonable and
3 technically feasible and thus appropriate for the
4 board to consider. The technology associated
5 with the SO2 and NOx admission reductions have
6 been found economically reasonable and technically
7 feasible by the board, including the original rule
8 making which is the subject of the hearing today.

9 The amendment we're seeking
10 today will provide Ameren with the time necessary
11 to make more informed decisions regarding the
12 commitment of substantial sums of money, capital
13 dollars, leading up to its compliance with the SO2
14 admission limitations in 2015 and 2017. It also
15 allows us -- I would just mention that we are in
16 the process of -- the SO2 amendment we are asking
17 for really requires us to begin the installation
18 of new SO2 scrubbers starting in the very near
19 future and happening to be starting this year. I
20 want to make it clear that we are in the process
21 right now of installing three scrubbers on our
22 system at three of our large generating plants and
23 will be installing another one in the interim
24 period and we will continue to keep the emission

1 limitation in 2015 so that will require that we
2 put the scrubbers on. We're basically just asking
3 for a two year delay in a couple of the scrubbers.
4 Just in anticipation of the question we may get,
5 should the amendment not be granted what would the
6 company do? First of all, the 0.33 pound limit
7 would continue to be in the regulation and Ameren
8 will comply with that group.

9 However, we would have to take a
10 look at what options we might have for compliance
11 with that rule. Because of the inability for us
12 to -- and the extreme difficulty for us to finance
13 capital projects at this time, what we would have
14 to do is look at other options that we could
15 consider for complying with the rule and we would
16 look at things like reduce -- drastically reduce
17 the generation from some of our facilities so that
18 we get the generation low enough so we can comply
19 with the admission limitations of the rule. We
20 also would be looking at the potential for
21 mothballing some of these facilities and taking
22 them offline for a few years until the financial
23 conditions get better, until we have better
24 certainty on the regulatory requirements that are

1 facing us.

2 And the third options we could
3 take a serious look at is close down some
4 facilities just so that our financial condition
5 would approve so we would have the ability to put
6 pollution control equipment on our larger units.
7 As mentioned earlier, with me today is Steve
8 Whitworth, Darryl Hughes, Tony Artman and Gary
9 Rygh. I confer with each of these individuals in
10 developing the testimony I have prepared and at
11 this time we are prepared to answer any questions
12 that you might have.

13 MR. FOX: Thank you, Mr. Menne.
14 Ms. Cipriano, Mr. More, would Mr. Rygh wish to
15 offer any brief introduction or summary before we
16 proceed to questions?

17 MS. CIPRIANO: I don't think that's
18 necessary. Thank you, though. But he is
19 available for answering questions.

20 MR. FOX: Very good. Why don't we
21 proceed with those questions if you're all set.
22 Is there anyone who wishes to pose a question to
23 Mr. Menne or any of the other members of the panel
24 here on behalf of Ameren?

1 MR. RAO: I have a couple questions.

2 MR. FOX: Mr. Rao has a couple of
3 questions.

4 MR. RAO: Mr. Menne, in Ameren's
5 proposed rule language, if -- limits only in terms
6 of pounds per million BTU for NOx and SO2, the
7 existing rule language provided limits in terms of
8 both pounds per million BTU and a percent of the
9 base seasonal rate and requires compliance with
10 whichever is more stringent. Will you please
11 explain the rationale for not including personal
12 limitations in your proposed change?

13 MR. MENNE: If it would be clearer,
14 we could actually do that, but, in fact, the
15 limitations, the numerical limitations that are in
16 there are much more stringent than the percent
17 reductions which is the alternative in the
18 existing rule language. So we are -- we didn't
19 put that in there because what we're proposing is
20 the more stringent of the two.

21 MR. RAO: With the limitations that
22 were proposed based on pounds per million BTU,
23 would it be possible for you to estimate what
24 percent reductions you'd get?

1 MR. MENNE: I assume you want to
2 compare it to the baseline of the language that is
3 in there.

4 MR. RAO: If you don't have a
5 number, you can provide it in your comments.

6 MR. MENNE: I think we'll probably
7 follow up. I don't know that we've made that
8 calculation, but we'd be happy to provide that.

9 MR. WHITWORTH: We were required
10 under the regulation, the existing regulation, to
11 file a notice of intent to comply by means of the
12 NTS by the end of 2007. Part of that
13 demonstration included the analysis that
14 determined whether or not the base emission rates
15 or the percent removal were more stringent. So
16 for those rates and the case for NOx with the case
17 0.11, that would be the rate that is more
18 stringent than the percent removal that was in the
19 original rule as well as with the SO2 rates going
20 with the phase one and phase two rates. The 0.25,
21 was the more stringent rate ultimately.

22 MR. RAO: Okay. Thank you. Also,
23 on page 16 of your pre-filed testimony you stated
24 that the total projected SO2 and NOx emission for

1 the period of 2010 through 2020 under the proposed
2 language was calculated at 867,287 tons, to the
3 extent you're able to break this number down into
4 tons per SO2 and the tons on production from NOx
5 and, if possible, do it on an annual basis from
6 each of your power stations and, again, you don't
7 have to provide this information if you don't have
8 it right now. It can be provided at another time.

9 MR. MENNE: Very roughly, the SO2
10 ton part of that is around 648,000 and the NOx on
11 this is around 220,000. Roughly, that's the
12 breakdown of those tons. So it's -- 650 to 220 is
13 the ratio. I'm sorry. You asked for that
14 annually?

15 MR. RAO: Yes.

16 MR. MENNE: Would it be easier for
17 us to provide you with the information --
18 annually, well, it doesn't vary because of the
19 timing when you put the different pollution
20 controls on. We can't provide you with the annual
21 numbers on the system for SO2 and NOx for each of
22 the years between 2010 and 2020 to give you that
23 calculation.

24 MR. RAO: Okay. That would be fine.

1 The last question I had was on page three of your
2 pre-filed testimony. You stated Ameren's proposed
3 amendment would allow Ameren Illinois Generating
4 Company to defer approximately \$500 million of
5 capital from 2009 through 2012 timeframe to 2013
6 to 2015 timeframe. Would it be possible for
7 Ameren to identify what portion of that \$500
8 million would be attributable to SO₂, NO_x and
9 mercury compliance?

10 MR. MENNE: The deferral of the \$500
11 million is the cost associated with the
12 construction of two large scrubbers on our system.
13 So those scrubbers would be the compliance
14 mechanism primarily for the SO₂. They do not deal
15 with NO_x. The scrubbers also would end up being
16 in compliance for mercury. However, we are
17 required under the mercury provisions to have
18 mercury controls installed at the plants beginning
19 in this year. So it will take the place of
20 assuming activated carbon injection on those units
21 where these scrubbers would be referred. So while
22 the scrubbers -- we're talking about the SO₂, but
23 that also would become a mercury compliance. So
24 we'll have mercury controls at the same facilities

1 up until we get those scrubbers installed.

2 MR. RAO: I have one last final
3 question.

4 MR. FOX: And I had a question that
5 may be directed more specifically to you,
6 Ms. Cipriano or you, Mr. More. Ameren had in
7 PCB 9-21, of course, recently filed a petition for
8 a variance that had information pertaining both to
9 emissions and their controls. Would Ameren have
10 any objection of the board on its own notion,
11 incorporate that petition into the record at this
12 proceeding?

13 MR. MORE: Some things have been
14 updated since that filing. Let us take another
15 look at it. What I'm suspecting will happen is
16 we'll file some additional information that
17 Mr. Rao has asked for which was included in the
18 petition.

19 MR. FOX: And if it's helpful to
20 identify what has been revised, updated, corrected
21 or otherwise amended in that petition, that would
22 be helpful to the board in having that data or
23 information.

24 MR. RAO: To be more specific, there

1 was a table one in the petition which indicated
2 information regarding the affected power stations,
3 the boiler places, emission rates and that was
4 what we were looking for.

5 MR. MORE: What we'll do is we'll
6 submit that with our comments, that whole
7 petition, and then identify those things that have
8 changed since then and this additional information
9 Mr. Rao has asked for.

10 MR. FOX: Very well. And certainly
11 we'll be talking about the deadlines for
12 pre-filing those comments very soon. So that
13 would work. Thank you very much.

14 MR. RAO: You've been very helpful.
15 Thank you very much.

16 MR. FOX: Were there any further
17 questions for Ameren and its panel? I'm seeing no
18 indication that there are any questions. Anything
19 further Ms. Cipriano or Mr. More?

20 MS. CIPRIANO: No, I think we --
21 again, we're available to answer any questions if
22 there's no further questions. We'll certainly
23 follow up with the information requested in
24 comments.

1 MR. FOX: Very good. We appear to
2 have exhausted the questions and although I'll
3 certainly give any one else an opportunity to
4 indicate that they have one. You had mentioned
5 that you had persons that -- the lady and
6 gentlemen seated behind you that they wish to
7 offer a public comment and we have come to the
8 point in the conclusion of the pre-filed testimony
9 and the questions based upon it where it would be
10 in order to take those up. I don't think there's
11 any particular order that the board would expect.

12 MS. CIPRIANO: Just because of
13 timing constraints --

14 MR. FOX: Just for the court
15 reporter, if you can identify yourself by full
16 name and include any affiliation or membership
17 that might bring you here today for your comment.

18 MS. HAMPTON-KNODLE: Okay. The last
19 name is kind of tricky. Hello. My name is
20 Heather Hampton-Knodle and I'm the executive
21 director of the Montgomery County Economic
22 Development Corporation. My mailing address is
23 P.O. Box 213, Hillsboro, Illinois 62049. It may
24 sound like I'm from Tennessee, but I'm not. As

1 home to Ameren's Energy Generating Coffeen Plant
2 since 1965, Montgomery County, specifically, the
3 economic development corporation, would like to
4 add our voice of support of Ameren's request in
5 this proceeding to modify certain requirements
6 contained in regulations pending before the
7 Illinois Pollution Control Board. It's our
8 understanding that the relief that Ameren is
9 requesting doesn't seek to undue any broad-based
10 environmental commitments, but it does seek to
11 allow the company more time to make informed and
12 prudent decisions in the time of economic and
13 regulatory uncertainty.

14 It's also our understanding that
15 the decision before this pollution control board
16 could also lead to significant economic impacts
17 for our county and that's what brings us here
18 today. While some of our residents, actually,
19 many of them remain anxious about any potential
20 short-term stimulus from additional and continuous
21 instruction of the Coffeen Power Plant, we're more
22 concerned about the long-term economic viability
23 and the environmental integrity of the plant's
24 operations. Just to highlight some of the facts

1 and figures of why this is so critical to our
2 county.

3 The Coffeen facility and its 199
4 employees play a significant role in the vitality
5 of our Montgomery County economy. For example,
6 our economy has 30,000 people, which could fit in
7 this building, but we're spread over 702 square
8 miles, try to let that sink in. 702 square miles,
9 703.6, 30,000 people. So the \$3 million that
10 Ameren paid in the 2007 tax year payable in 2008
11 are very critical for our infrastructure.

12 A reassessment that was
13 conducted in 2007 that will continue through 2017,
14 which Ameren agreed to pay property taxes that
15 will accumulate to approximately \$36.795 million
16 over the course of these ten years. Again, it's
17 very critical for our roads and bridges in
18 particular, our emergency services and our
19 schools. Also, when we talk about those 199
20 employees. They are also very well paid. I
21 believe Ameren's average employment salary for
22 them is \$71,000, which compared to our county
23 average per capita income is almost three times
24 higher than the county average. So that may give

1 you a sense of the contrast of the types of jobs
2 that are provided by the plant, but in November of
3 2008, Montgomery County had the distinction of
4 leading the state of Illinois in unemployment with
5 a rate of 11.2 percent. So I'm fortunate to have
6 a job standing here before you.

7 By December, unemployment was at
8 10.9 percent placing us third in the state behind
9 Boone and Winnebago County. This brings the
10 importance of the steady, well paid jobs and sharp
11 relief. Of the plants annual operating budget,
12 which is more than \$45 million, \$14 million of
13 that goes directly into wages and according to Bob
14 Lewis who will speak later about some of the
15 multiplier effects with his business development
16 and strategy, some of the multiplier effects of
17 these dollars and wages turn into 122 more jobs in
18 our county and additional household earnings of
19 \$5.9 million and an additional direct economic
20 impact of \$46.2 million. And that's not chicken
21 feed in Montgomery County.

22 In our effort to identify the
23 economic impacts that the plant has, we observed
24 the human impact that this facility and the people

1 who work at Ameren Generating have on communities.
2 Another Montgomery trivia fact for you, besides
3 Matt Hughes, the ultimate fighting champion coming
4 from our town is that we have 214 volunteer
5 organizations and it takes people to make that
6 happen as well as most of our local government,
7 require volunteer leadership. So these Coffeen
8 plant employees are very important to community
9 development as well as economic development.

10 Simply put, it's an integral
11 part of the fabric of both our economy and our
12 community. And I think that sums it up. You've
13 probably gathered by now that permitting Ameren to
14 make these changes they will be more effectively
15 managed in this time of economic and regulatory
16 uncertainty and work to preserve much needed
17 employment for our citizens. Thank you.

18 MR. FOX: Ms. Hampton-Knodle, thank
19 you for your comments. The printed copy that you
20 supplied is in the hands of the court reporter
21 and it will be, of course, reflected in the record
22 of these proceedings. So thank you for your time.

23 MS. HAMPTON-KNODLE: Thank you.

24 MR. FOX: Ms. Cipriano, whichever

1 one of the commenters would wish to go next and go
2 when they're set.

3 MR. DENISON: Good morning. My name
4 is Terry Denison. My business address is 221 East
5 State Street in Jacksonville, Illinois. I am
6 employed by the Jacksonville Regional Economic
7 Development Corporation. It's a non-profit
8 community and business development organization
9 dedicated to attracting, retaining and creating
10 job opportunities throughout a two county area of
11 Morgan and Scott County in Illinois. Like other
12 interested community reps who are attending this
13 hearing, I am speaking in support of granting
14 Ameren Energy Generating Company regulatory relief
15 on the timing associated with installing specific
16 control equipment to meet interim emission
17 standards in favor of helping the plant meet its
18 long-term environmental commitment since
19 sustaining power generation operations in our
20 county.

21 Meredosia, in Morgan County, has
22 been close to the Ameren Energy Generating
23 Company's Meredosia power plant since being built
24 in 1948. We recognize that the age of the plant

1 presents key operating challenges for Ameren
2 Energy Generating Company as they work to address
3 impending environmental standards while keeping
4 the facility viable in the energy marketplace.

5 As previously stated during
6 other filed testimony at this meeting, it's our
7 understanding that the relief that Ameren is
8 requesting does not seek to undue its overall
9 environmental commitments, but merely allows the
10 company additional time in the wake of the
11 uncertainty related to court challenges, to the
12 federal environmental regulations and to allow
13 Ameren flexibility in response to the current
14 economic and financial crisis facing the United
15 States.

16 The current economic conditions
17 have also had a devastating effect on the
18 Jacksonville area economy. In December of 2008,
19 Morgan County's unemployment rate was 7.3 percent.
20 And since that time the county has experienced
21 additional job losses, including a recently
22 announced closure of ACH Food Company resulting in
23 the anticipated loss of 210 jobs. Rural areas in
24 Illinois, which is where Heather and I come from,

1 face unique challenges when it comes to the
2 attraction of new business investment and we want
3 to do our part to help our existing businesses and
4 employers like Ameren Energy Generating Company
5 plan and implement capital programs in a manner
6 that can help sustain operations in the county for
7 many years to come.

8 The local economic impact of the
9 Meredosia Power Plant in Morgan County and the
10 surrounding counties is much like that of similar
11 facilities in the Ameren fleet. Our Ameren
12 facility employs 113 people at the plant for a
13 combined payroll of almost \$8 million. These jobs
14 in turn multiply throughout our economy creating
15 an additional economic output, household income
16 and new jobs.

17 Again, according to data
18 provided by Development Strategies, an independent
19 economic development consulting firm, the Ameren
20 Energy Generating jobs at Meredosia support an
21 additional \$14 million in economic activity and 62
22 in direct jobs throughout the four county areas of
23 Brown, Pike, Scott and Morgan Counties.

24 This impact is above the

1 stimulus provided directly by the Ameren
2 facilities. These additional jobs are employed
3 across the region in retail, banking, personal
4 service sectors and also help drive our housing
5 and construction trade industries. In terms of
6 tax revenue derived from the facility, Ameren's
7 Meredosia plant accounts for over \$490,000 in
8 property taxes that were payable in 2008 to
9 support public services like our schools and our
10 local government. And Ameren's employees, as
11 Heather mentioned, are conspicuously present on
12 virtually every volunteer organization or board
13 from the Boy Scouts to the school board and in our
14 case, the Meredosia Community Advisory Committee.

15 They had been involved in
16 numerous community projects, a state of the art
17 safety and siren system for the community,
18 emergency training for our local volunteer fire
19 and rescue squads and help in construction of a
20 much needed industrial bypass road around the main
21 part of Meredosia. The Meredosia plant has been a
22 model steward of the community for over the six
23 decades that the plant has been our neighbor.
24 Obviously, we cannot predict what the future

1 holds, but we need to give companies like Ameren
2 the opportunity to make prudent, capital
3 investment decisions in the best interests of
4 realizing long term operating success.

5 Thank you for your consideration
6 of our economic interests in rural Illinois and
7 for your help in giving Ameren the opportunity for
8 sustaining operations in Meredosia. Thank you.

9 MR. FOX: Mr. Denison, thank you for
10 your comments and as was with Ms. Hampton-Knodle,
11 that's been made part of the record. Thank you
12 for your time.

13 MR. MARTIN: Good morning. My name
14 is Alvis Martin. I'm with the Illinois AFL-Cio.
15 My mailing address is 999 McClintock Drive, Burr
16 Ridge, Illinois 60527. I am the field director
17 for the Illinois AFL-Cio. I'm here today
18 representing working people across the state of
19 Illinois and I represent the leadership of the
20 AFL-Cio on behalf of President Michael Carrigan
21 and Timothy E. Drea, secretary of the treasury.

22 We support and we believe in
23 Ameren's request for a change and we believe that
24 it is important that their request be taken

1 seriously and that you make a move on that to help
2 sustain a very important commodity in the state of
3 Illinois, the workers in Illinois. It is vital
4 that members of the board remember that Ameren
5 companies for more than a century have provided
6 good jobs and stable employment to thousands of
7 Illinoian's. Ameren's seven coal fired plants are
8 located in central and southern Illinois and
9 provide critical employment in these communities.
10 Taxes paid by these companies are critical to the
11 support of schools, emergency response
12 organizations and city governments of dozens of
13 communities around the state. This fall, Ameren
14 sought to move one time frame for installing new
15 controls for two reasons, regulatory uncertainty
16 and the unanticipated financial crisis gripping
17 our nation. Almost every industry sector has been
18 effected by this, the auto and banking industry
19 being the most public examples.

20 We know the company has great
21 difficulty in assessing capital markets to support
22 its operation and refinance debt and it's our
23 memberships best interest to ensure companies like
24 Ameren are making the best decisions possible in

1 light of the economy and uncertain markets. We
2 support Ameren's request for relief made last fall
3 and we renew our support today.

4 Ameren has stated that it is not
5 reneging on its emissions reduction agreement and,
6 in fact, has agreed to more stringent emission
7 requirements than the original regulation. We are
8 confident that Ameren over the next decade will be
9 continuing with its commitments to reduce
10 emissions and these projects will provide hundreds
11 of permanent and contract jobs to unionize
12 workers. Thank you for allowing me to express the
13 view of union represented workers in this state.
14 Ameren has power plants offering good paying and
15 stable jobs. The Illinois AFL-Cio respectfully
16 requests that the board accept the rule change as
17 proposed in light of the economy and in light of
18 the uncertainties presented. Thank you.

19 MR. FOX: Thank you, Mr. Martin for
20 your comment.

21 MR. LEWIS: Good late morning to
22 you. My name is Robert Lewis. I'm a principal
23 with Development Strategies Inc., in St Louis.
24 We're an economic, development and urban planning

1 consulting firm as you've heard referenced already
2 two or three times. My mailing address is 10
3 South Broadway, St Louis, Missouri 63102.

4 Ameren has hired our company,
5 Development Strategies, to provide supporting
6 documentation on the economic impact that each of
7 its six coal fired plants have on the local
8 economies of the host counties. The information
9 we've developed helps substantiate Ameren's
10 position that the generating facilities play
11 significant parts in the local economy and without
12 these facilities, communities would experience
13 significant economic consequences. Our
14 methodology to use operational spending
15 information provided by Ameren and by using
16 multipliers obtained from the US Department of
17 Commerce and with that we estimated three economic
18 impacts triggered by each of the six coal plants.
19 These economic impacts are designed, described as
20 the economic output impacts, household earnings
21 impacts and employment impacts. The economic
22 output impacts are essentially a measure of added
23 gross domestic product. It's a crude definition,
24 but that's the way to look at it, how much more

1 GDP is created in these counties because of
2 Ameren's spending. The household earnings impacts
3 measures the benefits of the earnings for the
4 counties labor force as a result of the multiplier
5 effects Ameren is spending and the employment
6 effects are the same thing that counts additional
7 jobs. Some of those numbers you've already heard
8 for some of the counties. To keep things
9 relatively simple, I won't list all of these
10 millions of dollars, but I do want to point out
11 instead the job creation that results from the
12 multiplier effects for the six plants. The
13 Hutsonville Power Plant directly employs 58
14 people. The spending by these employees and the
15 added spending by Ameren for other operations
16 supports another 36 jobs in Crawford County. The
17 Duck Creek Power Plant in Fulton County employes
18 83 people, multiplier effect adds another 75 jobs
19 in the county. The Newton Power Plant in Jasper
20 County employes 190 and supports an additional 88
21 jobs through multiplier effects. The Coffeen
22 Power Plant employes 199 people and supports an
23 additional 122 jobs throughout Montgomery County.
24 The Edwards Plant in Peoria County employes 149

1 people. It supports an additional 102 jobs in
2 Peoria County and the Meredosia plant employs 113
3 people and supports an additional 62 jobs through
4 multiplier effects for the combined counties of
5 Brown, Morgan and Pike. We were given those three
6 counties as the economic influence area by Ameren
7 as opposed to one county. All together, these six
8 plants employs 792 people in Illinois and as they
9 spend their wages and Ameren spends other money to
10 support its operations, another 485 jobs are
11 supported in the eight counties where these plants
12 are located. Thank you for your consideration and
13 recognition of the concerns for these communities
14 throughout Illinois.

15 MR. FOX: Mr. Lewis. Thank you for
16 your comments this morning. That brings us to the
17 conclusion, I believe, Ms. Cipriano and Mr. More,
18 of the comments on behalf of Ameren at this time.
19 And I had prepared a list on which people could
20 indicate that they wished to testify. I should
21 have taken that up before the comments. I
22 believe, Mr. More, if I could rely on you to pass
23 that to me. I think virtually everyone in the
24 room has either been sworn or represents someone

1 who has and, in fact, every name on here has
2 either testified or offered a comment. So we have
3 exhausted the testimony here today.

4 It would be time to move on to
5 the issue of the economic impact study. Since
6 1998, of course, section 27B of the Environmental
7 Protection Act has required that the board request
8 from the department now known as the Department of
9 Commerce and Economic Opportunity an economic
10 impact study of proposed rules before the board
11 adopts them. The board then must make either that
12 economic impact study or the department's
13 explanation for not conducting one available to
14 the public at least 20 days before a public
15 hearing.

16 In the letter that was dated
17 November 7th, 2008, and which can be viewed on the
18 board's website, acting chairman, Dr. Gerard,
19 requested that of the Department of Commerce and
20 Economic Opportunity. On this proposal to date,
21 the board has received nothing from the department
22 in response to that request. Is there anyone who
23 would like to testify regarding the request from
24 the board or the response or lack of response from

1 the Department of Commerce and Economic
2 Opportunity? As I suspected, there is not anyone
3 who wishes to do so. Why don't we go off the
4 record, if it's time to do so, to address a couple
5 of procedure issues?

6 (Whereupon, a discussion was had
7 off the record.)

8 MR. FOX: If we could go back on the
9 record briefly please. In going off the record
10 for a short time, the participants discussed
11 procedural issues chiefly if not exclusively, the
12 filing of post hearing comments. As a result of
13 those discussions, the Illinois Environmental
14 Protection Agency has committed to filing a
15 revised proposal to amend part 225 that would
16 incorporate each of its three errata sheets filed
17 with the board in addition to the proposed
18 amendments filed today at hearing as Exhibit
19 Numbers 8 and 9. That deadline, again, is
20 Thursday, February 19th of 2009.

21 Post hearing comments based on
22 the availability of the transcript of this hearing
23 by Friday, February 20th. Those post hearing
24 comments would be due at the board on or before

1 March 6th of 2009. What I should have addressed
2 off the record is the issue of the boards mailbox
3 rule. My intention would be when we have the
4 transcript and when we have the amended proposal
5 to issue a hearing officer order that simply
6 clarifies in black and white what the deadline
7 post hearing comments is and I would expect to
8 provide that the mailbox rule does not imply in
9 part, Mr. Bonebrake, to address your concern about
10 the speed of proceeding to the board's opinion and
11 order and also based on the fact that it's
12 something that virtually every one of these
13 participants has relied on electronic filing,
14 which is, of course, an option.

15 As indicated copies of the
16 transcript are expected to be available by Friday
17 the 20th and very soon after it is filed with the
18 board, the board's clerk will make it available on
19 the board's website from which, of course, it may
20 be viewed and printed. In addition to the four
21 persons who offered spoken comments today,
22 participants may file written public comments with
23 the clerk of the board. Those may also be filed
24 electronically and any questions about that filing

1 option can be directed to the board's clerks
2 office. If anyone has questions about the
3 procedural aspects of this rule, they may reach
4 the board's clerk or me through the contact
5 information that is listed on the board's website.

6 Of course, there are now no
7 other hearings scheduled in this matter. This
8 concluding the second hearing on the agencies
9 original proposal. Are there any other matters
10 that need to be addressed today? Seeing no hands,
11 noting the hour and feeling the temperature, it
12 looks like we are prepared to adjourn. I thank
13 you all for your patience and flexibility through
14 some room arrangements and warm weather. I know
15 the board and the staff are very grateful for your
16 testimony and your responses to questions. Thank
17 you. We're adjourned.

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1 STATE OF ILLINOIS.)
2) SS.
3 COUNTY OF COOK)
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7 I, STEVEN BRICKEY, being a Certified
8 Shorthand Reporter doing business in the City of
9 Chicago, Illinois, County of Cook, certify that I
10 reported in shorthand the proceedings had at the
11 foregoing hearing of the above-entitled cause.
12 And I certify that the foregoing is a true and
13 correct transcript of all my shorthand notes so
14 taken as aforesaid and contains all the
15 proceedings had at the said meeting of the
16 above-entitled cause.

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Steven Brickey

STEVEN BRICKEY, CSR
CSR NO. 084-004675

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