

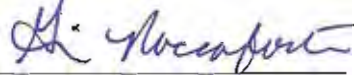
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AMEREN ENERGY RESOURCES,)	
)	
Petitioner,)	
)	
v.)	PCB 12-126
)	(Variance-Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE

TO: John Therriault, Assistant Clerk	Amy Antonioli
Illinois Pollution Control Board	Renee Cipriano
James R. Thompson Center	Schiff Hardin LLP
100 West Randolph St., Suite 11-500	233 South Wacker Drive
Chicago, IL 60601	Suite 6600
	Chicago, IL 60606
Carol Webb	
Hearing Officer	
Illinois Pollution Control Board	
1021 N. Grand Ave. East	
P.O. Box 19274	
Springfield, IL 62794-9274	

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board the RECOMMENDATION of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY
By: 
Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

DATED: July 23, 2012

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217.782.5544
217.782.9143 (TDD)

**THIS FILING IS SUBMITTED
ON RECYCLED PAPER**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AMEREN ENERGY RESOURCES,)	
)	
Petitioner,)	
)	PCB 12-126
v.)	(Variance-Air)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

RECOMMENDATION

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”) by its attorney, Gina Roccaforte, in response to the Petition for Variance of AMEREN ENERGY RESOURCES (“Ameren” or “Petitioner”) from both the 2015 and 2017 sulfur dioxide (“SO₂”) emission rate provisions of the Illinois Multi-Pollutant Standard (“MPS”), 35 Ill. Adm. Code 225.233; specifically, the SO₂ emission standards set forth in Section 225.233(e)(3)(C)(iii) and (iv). Ameren seeks relief from Section 225.233(e)(3)(C)(iii) for five years beginning January 1, 2015, and ending December 31, 2019, and relief from Section 225.233(e)(3)(C)(iv) for four years, beginning January 1, 2017, and ending December 31, 2020. Pursuant to Section 37(a) of the Illinois Environmental Protection Act (“Act”) [415 ILCS 5/37(a) (2010)] and 35 Ill. Adm. Code 104.216, the Illinois EPA neither supports nor objects to the Illinois Pollution Control Board (“Board”) granting the Petition subject to the terms and conditions contained herein. In support of its recommendation, the Illinois EPA states as follows:

I. INTRODUCTION

1. On May 3, 2012, Petitioner filed a Petition for Variance requesting that the Board grant a variance from both the 2015 and 2017 sulfur dioxide emission rate provisions of the Illinois MPS, specifically the SO₂ standards set forth in Section 225.233(e)(3)(C)(iii) and (iv).

Petitioner seeks relief from Section 225.233(e)(3)(C)(iii) for five years beginning January 1, 2015, and ending December 31, 2019, and relief from Section 225.233(e)(3)(C)(iv) for four years, beginning January 1, 2017, and ending December 31, 2020.

2. Petitioner specifically seeks a variance from the requirement that it comply with a system-wide SO₂ annual emission rate of 0.25 pound per million British thermal units (“lb/mmBtu”) for the period from January 1, 2015, through December 31, 2019, and from the requirement that it comply with a system-wide SO₂ annual emission rate of 0.23 lb/mmBtu for the period from January 1, 2017, through December 31, 2020.

3. Petitioner requests additional time to comply with the 2015 and 2017 SO₂ emission rates due to the fact that declining power market prices have resulted in an insufficient cash flow necessary to finance and maintain the construction completion schedule of flue gas desulfurization (“FGD”) equipment at the Newton Energy Center (“Newton FGD Project”) in time to meet those rates.

4. Petitioner owns seven coal-fired power plants for the generation of electricity in several locations in downstate Illinois. These seven power plants include 21 individual electric generating units that comprise the Ameren MPS Group. The plants are the Coffeen Energy Center located in Montgomery County, the Duck Creek Energy Center located in Fulton County, the E.D. Edwards Energy Center located in Peoria County, the Joppa Energy Center located in Massac County, the Hutsonville Energy Center located in Crawford County, the Meredosia Energy Center located in Morgan County, and the Newton Energy Center located in Jasper County. As of January 2012, the Petitioner generates electricity at five of these facilities, having ceased operation of the Meredosia and Hutsonville Energy Centers. Currently, all of these counties are designated attainment for all pollutants.

5. Pursuant to Section 104.214 of the Board's procedural rules, the Illinois EPA must provide public notice of any petition for variance within 14 days after filing of the petition. *See*, 35 Ill. Adm. Code 104.214. Section 104.214(a) provides that "the Agency must publish a single notice of such petition in a newspaper of general circulation in the county where the facility or pollution source is located." *See also*, 415 ILCS 5/37(a) (2010). Section 104.214(b) requires the Illinois EPA to serve written notice of a petition on the County State's Attorney, the Chairman of the County Board, each member of the General Assembly from the legislative district affected, and any person in the county who has in writing requested notice of variance petitions. The Illinois EPA published the required notice in the *Newton Press-Mentor* on May 10, 2012; the *Canton Daily Ledger* on May 11, 2012; the *Jacksonville Journal-Courier* on May 11, 2012; the *Robinson Daily News* on May 11, 2012; the *Peoria Journal Star* on May 11, 2012; the *Hillsboro Journal-News* on May 14, 2012; and the *Metropolis Planet* on May 16, 2012. Also, consistent with Section 104.214(b), the Illinois EPA mailed notices of the Petition for Variance on May 9, 2012.

6. To date, the Illinois EPA has received two written comments, but no requests for hearing. *See*, Exhibits 1 and 2, attached.

7. Pursuant to the Board's procedural rules, "[w]ithin 21 days after the publication of notice, the Agency must file with the Board a certification of publication that states the date on which the notice was published and must attach a copy of the published notice." *See*, 35 Ill. Adm. Code 104.214(f). The Illinois EPA has filed a certification of publication within this time frame.

8. The Illinois EPA is required to make a recommendation to the Board on the disposition of a petition for variance within forty-five (45) days of filing of the petition or any

amendment thereto or thirty (30) days before a scheduled hearing, unless otherwise ordered by the hearing officer or the Board, pursuant to 35 Ill. Adm. Code 104.216.

9. Since the filing of the Petition for Variance, the Petitioner and the Illinois EPA have had discussions regarding a modification to the Petition relating to the SO₂ emission rate for the compliance period of 2013 through 2019. The results of those discussions are more fully addressed *infra*.

II. BACKGROUND

10. As discussed, Petitioner owns seven coal-fired power plants, but currently generates electricity at only five of these facilities in several locations in downstate Illinois with principal emissions consisting of SO₂, nitrogen oxides (“NO_x”), and particulate matter (“PM”). Petitioner employs approximately 750 persons at the seven energy centers.

11. Petitioner generally controls SO₂ emissions with pollution control equipment at several facilities as well as through the use of low sulfur coal or blending low sulfur coal with Illinois coal containing higher levels of sulfur. (Pet. at 5) Three scrubbers (a.k.a. FGD units) are in service at the Duck Creek and Coffeen Energy Centers. (Pet. at 5) Petitioner generally controls NO_x emissions by burning various combinations of low sulfur coal, low NO_x burners, over-fired air, and selective catalytic reduction systems (“SCRs”). (Pet. at 5) PM is generally controlled through the use of flue gas conditioning and electrostatic precipitators (“ESPs”). (Pet. at 5) Petitioner controls mercury emissions through the use of scrubbers and sorbent injection technologies. (Pet. at 5)

12. In May 2005, the United States Environmental Protection Agency (“USEPA”) promulgated regulations requiring reductions of emissions of SO₂ and NO_x in the Clean Air Interstate Rule (“CAIR”) to address ozone and fine particulate (“PM_{2.5}”) nonattainment areas, 70

Fed. Reg. 25162 (May 12, 2005), and of mercury emissions in the Clean Air Mercury Rule (“CAMR”), 70 *Fed. Reg.* 28606 (May 18, 2005).

13. Following promulgation of the CAIR and CAMR, the Board adopted the Illinois mercury rule and the Illinois CAIR. *See, In the Matter of: Proposed New 35 Ill. Adm. Code 225 Control of Emissions from Large Combustion Sources (Mercury)*, R06-25 (Dec. 21, 2006), and *In the Matter of: Proposed New Clean Air Interstate Rule (CAIR) SO₂, NO_x Annual and NO_x Ozone Season Trading Programs, 35 Ill. Adm. Code 225, Subparts A, C, D, E, and F*, R06-26 (Aug. 23, 2007). Petitioner approached the Illinois EPA with a multi-pollutant proposal to address, in a coordinated fashion, SO₂, NO_x, and mercury. This proposal was reflected in the Illinois MPS and adopted by the Board as part of Illinois’ mercury rule. As a result, Petitioner voluntarily opted into the MPS on December 27, 2007. (Pet. at 12) Sections 225.233(e)(3)(c)(iii) and (iv) were added to the MPS on June 18, 2009, and became effective July 15, 2009, as a result of Petitioner seeking revisions to the 2013 and 2014 SO₂ emission rates of the MPS during a rulemaking proposal before the Board and agreeing to additional and more stringent SO₂ and NO_x emission limits. *See, In the Matter of: Amendments to 35 Ill. Adm. Code 225: Control of Emissions from Large Combustion Sources (Mercury Monitoring)*, R09-10 (June 18, 2009). (Pet. at 6)

14. In February 2008, the United States Court of Appeals for the District of Columbia vacated the CAMR, and in July 2008, vacated the federal CAIR. *See, State of New Jersey v. Environmental Protection Agency*, 517 F.3d 574 (D.C. Cir. 2008), and *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). Subsequently, the court remanded the CAIR in its entirety without vacatur, ordering that the CAIR remain effective until the USEPA replaced it with a new rule. *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008).

15. On May 3, 2011, in response to the vacatur of the CAMR, the USEPA proposed mercury and air toxics standards (“MATS”) for coal and oil-fired electric generating units that set emission limits for mercury, PM, hydrogen chloride, and trace metals, in addition to establishing alternative numeric emissions limits. *76 Fed. Reg.* 24876 (May 3, 2011). The USEPA finalized these standards, effective April 16, 2012. *77 Fed. Reg.* 9304 (February 16, 2012). Petitioner intends to comply with the MATS at its facilities through the use of a combination of existing FGD systems and sorbent injection technologies. (Pet. at 32)

16. On July 6, 2011, the USEPA finalized the Cross-State Air Pollution Rule (“CSAPR”) as a replacement to the CAIR. *76 Fed. Reg.* 48208 (August 8, 2011). However, several parties challenged the CSAPR, and the United States Court of Appeals for the District of Columbia has stayed the CSAPR and ordered USEPA to continue administering the CAIR pending resolution of the appeals. *See, EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. Dec. 30, 2011).

17. Since 2006, Petitioner has spent over \$1 billion on the installation of pollution control equipment across its five active coal plants. (Pet. at 18) Specifically with respect to the MPS, three scrubbers that control SO₂, mercury and hazardous gases have been installed at two plants. In addition, SCRs to control NO_x have been installed at three facilities. (Pet. at 18) State-of-the-art landfills exist at four facilities and mercury controls are in place across the fleet. (Pet. at 18) Such state-of-the-art systems at its energy centers have resulted in a drop in SO₂ emissions of 79% since 1990 and 23% over the past four years. (Pet. at 4)

18. Under Petitioner’s current MPS compliance plan, the completion of the Newton FGD Project is the next step planned in order to comply with the 2015 and 2017 MPS SO₂ annual emission rates. (Pet. at 4) Petitioner has incurred costs of \$237 million on the Newton

FGD Project to date and intends to continue the various engineering and construction activities it can fund so as to be positioned to complete the Newton FGD Project in time to comply with the 2015 MPS SO₂ annual emission rate by January 1, 2020, and the 2017 rate by January 1, 2021. (Pet. at 19) By the end of 2012, Petitioner will have incurred costs that represent over 50% of the projected cost. (Pet. at 19) Petitioner anticipates that the Newton FGD Project can be completed by January 1, 2020, and the SO₂ annual emission rate will reduce to 0.25 lb/mmBtu, and then to 0.23 lb/mmBtu by the end of 2020. (Pet. at 27)

19. Petitioner indicates that in 2011, the Ameren MPS Group achieved an overall NO_x annual emission rate of 0.11 lb/mmBtu and an overall SO₂ emission rate of 0.46 lb/mmBtu. (Pet. at 5)

20. As discussed further *infra*, recently, Petitioner has engaged in conversations with the Illinois EPA to discuss the subject of the Petition. As a result of those discussions, the parties have come to an understanding regarding SO₂ emission rates applicable to the Petitioner that would deviate from the MPS-established SO₂ emission rates, yet would still be acceptable to the Illinois EPA; however, the emission rates the parties came to an understanding on are not found or reflected in the Petition, but are set forth in Paragraph 61 of this Recommendation.

21. There are no pending State enforcement actions against the Petitioner.

III. RELIEF REQUESTED

22. Petitioner is currently required to comply with the provisions of the MPS. Specifically, regarding SO₂ emissions standards, the Petitioner is required to comply with Section 225.233(e)(3)(C), which provides, in part, as follows:

Section 217.233 Multi-Pollutant Standards (MPS)

* * *

e) Emission Standards for NO_x and SO₂.

* * *

3) Ameren MPS Group Multi-Pollutant Standard

* * *

C) SO₂ Emission Standards

- i) Beginning in calendar year 2010 and continuing in each calendar year through 2013, for the EGUs in the Ameren MPS Group, the owner and operator of the EGUs must comply with an overall SO₂ annual emission rate of 0.50 lb/million Btu.
- ii) In calendar year 2014, for the EGUs in the Ameren MPS Group, the owner and operator of the EGUs must comply with an overall SO₂ annual emission rate of 0.43 lb/million Btu.
- iii) Beginning in calendar year 2015 and continuing in calendar year 2016, for the EGUs in the Ameren MPS Group, the owner and operator of the EGUs must comply with an overall SO₂ annual emission rate of 0.25 lb/million Btu.
- iv) Beginning in calendar year 2017 and continuing in each calendar year thereafter, for the EGUs in the Ameren MPS Group, the owner and operator of the EGUs must comply with an overall SO₂ annual emission rate of 0.23 lb /million Btu.

* * *

35 Ill. Adm. Code 225.233(e)(3)(C)(i-iv).

23. Petitioner requests a variance from the SO₂ emission standards set forth in 35 Ill. Adm. Code 225.233(e)(3)(C)(iii) and (iv). Petitioner specifically requests a variance from the requirement that it comply with a system-wide SO₂ annual emission rate of 0.25 lb/mmBtu for the period from January 1, 2015, through December 31, 2019, and from the requirement that it comply with a system-wide SO₂ annual emission rate of 0.23 lb/mmBtu for the period from

January 1, 2017, through December 31, 2020.

24. The Petitioner's primary basis for requesting additional time to comply with the 2015 and 2017 SO₂ emission rates under the MPS is because inadequate cash flow and restrictions on additional borrowings preclude completion of the Newton FGD Project as scheduled. (Pet. at 7) Furthermore, Petitioner cites to poor economic conditions resulting in low demand for power, increased natural gas supplies combined with one of the mildest winters of record resulted in a "perfect storm" of events, where cash flows have dropped precipitously and financing is simply not currently available to complete the Newton FGD Project in time to meet the 2015 and 2017 system-wide rates. (Pet. at 2) Petitioner states that absent marketplace stability and the improvement of power prices, Petitioner will be left with no choice but to cease operations at additional energy centers as its only other viable compliance alternative. (Pet. at 2)

25. In support of its request for relief, and as part of its variance compliance plan, Petitioner expects to continue various limited construction activities at the Newton Energy Center to the extent it can financially do so. (Pet. at 4) By continuing such limited construction activities, Petitioner will be in a position to respond quickly once power market prices and cash flows improve. (Pet. at 4)

IV. FACTS PRESENTED IN THE PETITION

26. As required by Section 104.216(a), the Illinois EPA has investigated the facts alleged in Petitioner's Petition for Variance. 35 Ill. Adm. Code 104.216(a). To date, the Illinois EPA has received two written comments regarding the Petition. *See*, Exhibits 1 and 2, attached.

27. For informational purposes, the Illinois EPA notes Petitioner filed appeals before the Board relating to Clean Air Act Permit Program ("CAAPP") permits for the Coffeen Energy Center in PCB 06-64, the Duck Creek Energy Center in PCB 06-66, the E.D. Edwards Energy

Center in PCB 06-67, the Joppa Energy Center in PCB 06-65, the Hutsonville Energy Center in PCB 06-70, the Meredosia Energy Center in PCB 06-69, and the Newton Energy Center in PCB 06-68. Currently, these appeals are pending, but the Board has granted a stay of the entirety of these CAAPP permits. In addition, an appeal of a non-CAAPP permit is also currently pending before the Board for the E.D. Edwards Energy Center in PCB 06-126.

V. ENVIRONMENTAL IMPACT

28. Pursuant to Section 104.216(b)(2), the Illinois EPA is required to state the location of the nearest air monitoring station, where applicable. 35 Ill. Adm. Code 104.216(b)(2). Exhibit 1 of the Petition for Variance contains a copy of the map included in the Illinois EPA's Illinois Annual Air Quality Report 2010. The locations of the air quality monitoring stations relative to Petitioner's facilities are delineated on page 34 of this report and contained in Petitioner's Exhibit 1.

29. Petitioner states that despite delaying the effective date of the 2015 and 2017 MPS SO₂ annual emission rates during the variance period, Petitioner has voluntarily offered to meet an earlier more stringent SO₂ emissions rate in mitigation resulting in total SO₂ mass emissions lower than the projected emissions under the current MPS SO₂ annual emission rates, and thus providing a net environmental benefit to the State. (Pet. at 26) Petitioner further states that by offering to meet this mitigation rate, the total projected SO₂ emissions from the Ameren MPS Group will be *lower* than anticipated under the current MPS from 2012 through 2021. (Pet. at 27)(emphasis in original)

30. Petitioner specifically offers to meet an annual emission rate of 0.38 lb/mmBtu SO₂ on a yearly system average from 2012 through 2019 (with a 0.55 lb/mmBtu or less SO₂ coal on the non-scrubbed units) that is more stringent than the existing 2012 and 2013 SO₂ emission

rate of 0.50 lb/mmBtu and the 2014 SO₂ emission rate of 0.43 lb/mmBtu. (Pet. at 27)

31. Petitioner provides calculations that depict the level of SO₂ emissions expected to occur under the current MPS as compared to projected emissions calculated under the compliance plan. (Pet. at 26; Pet. Ex. 7) Petitioner states that based upon these calculations, by implementing a more stringent emission rate in 2012, there is a net reduction of SO₂ tons as compared to projected emissions under the existing MPS resulting in an overall environmental benefit. (Pet. at 27; Pet. Ex. 7) Petitioner's calculations yield an overall SO₂ reduction of 29,217 tons for years 2010 through 2021, as compared to expected SO₂ emissions under the MPS. (Pet. at 26; Pet. Ex. 7)

32. Based upon further discussions with Petitioner, the parties have discussed an alternative proposal that will result in a greater decrease in SO₂ emissions than contained under the MPS. Under the alternative proposal, Petitioner commits to meet an annual SO₂ emission rate of 0.35 lb/mmBtu on a yearly system average from 2013 through 2019. The Illinois EPA has evaluated the SO₂ emissions calculations and related information submitted by Petitioner and agrees that Petitioner's compliance alternative will result in a greater net environmental benefit. Committing to this emission rate yields an overall SO₂ reduction of 64,964 tons for years 2010 through 2021 by Petitioner, as compared to expected SO₂ emissions under the MPS.¹ Accordingly, in conjunction with the ceasing of operation of the Meredosia and Hutsonville Energy Centers, the Illinois EPA does not believe that any environmental harm will result if the Board were to grant the Petition for Variance subject to the provisions of this alternative proposal.

¹ Based upon 2009 heat input and SO₂ emission reductions from the ceasing of operation of the Meredosia and Hutsonville Energy Centers, projected SO₂ emissions under the MPS are 694,510 tons for years 2010 through 2021, and under the alternative proposal, projected SO₂ emissions are 629,547 tons for years 2010 through 2021; thereby, resulting in an overall SO₂ reduction of 64,964 tons for such years.

VI. ARBITRARY AND UNREASONABLE HARDSHIP

33. In considering whether to grant or deny a variance pursuant to Section 35(a) of the Act, the Board is required to determine whether the Petitioner has shown that it would suffer an arbitrary or unreasonable hardship if required to comply with the regulation or permit requirement at issue. 415 ILCS 5/35(a) (2010). The Act provides that “[t]he Board may grant individual variances beyond the limitations prescribed in this Act, whenever it is found, upon presentation of adequate proof, that compliance with any rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship.” *Id.*

34. Also, Section 104.216(b)(5) of the Board rules requires the Illinois EPA to estimate the cost that compliance would impose on the Petitioner and on others. 35 Ill. Adm. Code 104.216(b)(5).

35. Petitioner states “inadequate cash flow and restrictions on additional borrowings preclude the completion of the Newton FGD Project as scheduled.” (Pet. at 7) Petitioner asserts, “Since the timing of the construction and installation of the two Newton FGDs was coordinated so as to allow the Ameren MPS Group to meet **both** the 2015 and 2017 SO₂ annual emission rates,” it “will not under current market conditions be able to meet either compliance date.” (Pet. at 7)(emphasis in original) Petitioner claims that if relief is not granted, it “will need to mothball multiple units” across its coal fleet, “which may include E.D. Edwards, Joppa, and/or Newton units, so as to comply with the MPS SO₂ annual emission rates until such time as market prices recover to the level that the Newton FGD Project is financially viable and installation can be completed.” (Pet. at 8)

36. Petitioner asserts that the sharp decline in power prices is due to lower demand because of the recession, the exceptionally mild weather this winter, and an increased supply of

natural gas from shale gas that has contributed to very low natural gas prices. (Pet. at 19-20)

Petitioner further states that given these conditions, its financial health and access to capital have both been severely impaired. (Pet. at 20)

37. Petitioner explains that in 2006 and 2007, the purchase price per megawatt hour (“Mwh”) was in the \$60 range. (Pet. at 20) In February 2012, the purchase price per Mwh electricity was in the range of \$29.50 to \$33.60 Mwh for June 2013 through May 2014. (Pet. at 20) Petitioner states that based upon available information, and analyst predictions, power prices over the next three years are not expected to improve to the level to support the installation of the Newton FGD Project by either 2015 or 2017. (Pet. at 20)

38. Petitioner is a subsidiary of Ameren Corporation and consists of merchant generating operations including Ameren Energy Generating Company (“AEG”), Petitioner’s only publicly registered and rated company, and Ameren Energy Resources Generating Company (“AERG”). (Pet. at 4, fn. 6; Pet. Ex. 6, at 2) Petitioner states that Illinois has adopted significantly more stringent emission reduction requirements than most other states for coal-fired power plants, thus Illinois merchant generators are at a competitive disadvantage. (Pet. at 10) Such merchant generators must install pollution control equipment not required in surrounding states based upon market revenue, without the benefit of a regulated rate regime that allows recovery of costs through captive customer rates. (Pet. at 10) Rather, Illinois merchant generators are entirely dependent upon the power price market for their revenue stream. With the price of power at or near the cost of power production, there is no excess revenue to fund capital projects such as the Newton FGD Project or any similar project. (Pet. at 10-11)

39. Petitioner also cites to regulatory uncertainty from the vacatur of the CAMR, the remand of the CAIR, and the appeal of the CSAPR, in conjunction with eroding market

conditions, and substantial and certain costs of compliance with the MPS as the basis of the arbitrary and unreasonable hardship. (Pet. at 11-23)

40. As stated above, since 2006, Petitioner states that it has spent over \$1 billion on the installation of pollution control equipment across its five active coal plants and incurred costs of \$237 million on the Newton FGD Project to date. (Pet. at 18-19) By the end of 2012, Petitioner will have spent over 50% of the project cost. (Pet. at 19)

41. Petitioner states that to fund its business operations, including the \$1 billion in environmental compliance capital projects, AEG issued an \$825 million secured debt held by bondholders. (Pet. at 21) Petitioner asserts that as conditions of various loan agreements for the secured debt issued between 2002 and 2008, AEG agreed to operate the business in particular manner to provide additional assurances to bondholders that they would be repaid. (Pet. at 21) In order to be eligible for additional borrowings, AEG must maintain specified interest-coverage and debt-to-capital ratios. (Pet. at 21) Petitioner further states that AEG's operating cash flow has been adversely affected by the decreasing market price for power over the last few years. (Pet. at 21) In fact, despite a number of steps taken to reduce cash flows and capital expenditures, including cessation of operations at the Hutsonville and Meredosia Energy Centers and decelerating construction of the Newton FGD Project, AEG's interest rate ratio is expected to fall below the required minimum contained in the debt covenants by 2013. (Pet. at 21) Petitioner states that unless and until power price market conditions improve, AEG will not be able to borrow additional funds to finance any project of the magnitude of the FGD Project. (Pet. at 21-22)

42. Petitioner further asserts that AEG's bond maturities also require AEG to preserve cash until market prices recover. (Pet. at 22) Petitioner states that approximately \$300 million

of AEG's \$825 million in long-term public bonds matures in 2018, and approximately \$250 million of this debt matures in 2020. (Pet. at 22) Generally, AEG would plan to refinance these bonds in the public market and extend the maturity of the debt. (Pet. at 22) However, Petitioner states that if AEG's interest coverage ratios do not improve materially by 2018, indenture borrowing restrictions will prohibit refinancing the 2018 maturity, and the \$300 million will have to be repaid to bondholders. (Pet. at 22) Petitioner stresses that an inability to repay the bonds when due would constitute an event of default under the AEG bond indenture, which would likely lead to an AEG bankruptcy. The same is true for the 2020 maturity. (Pet. at 22) Petitioner further stresses that given these pending maturities, a weak financial forecast, and covenant provisions that are expected to restrict AEG's access to debt capital market, it is vitally important that AEG preserve cash until market prices recover, operating results and cash flows improve, and borrowing capacity is restored. (Pet. at 22) Petitioner declares that failure to do so could threaten the long-term viability of the business and result in substantial losses for all Petitioner's stakeholders, including both investors and those in the communities in which Petitioner operates. (Pet. at 22)

43. Petitioner also states that funding from Ameren Corporation is also not a viable option because merchant business segment must be self-funding and its expenditures must be supported by its operating revenues. (Pet. at 22) Petitioner further states that Ameren Corporation must balance the credit and lending needs of all of its businesses, and similar to third party lenders, it cannot assume additional unsecured debt on behalf of Petitioner where there is not a secure revenue stream to support such an obligation. (Pet. at 22) Petitioner further asserts that credit rating agencies have been very clear that if Ameren Corporation were to lend additional monies to Petitioner such a capital injection would have adverse financial

consequences on the ratings of the parent corporation. (Pet. at 22) Accordingly, Petitioner states that the financial distress of Petitioner and its subsidiaries cannot extend to the parent company.

(Pet. at 22)

44. Petitioner states that with power prices at depressed levels and restrictions of additional borrowings, there is no viable funding mechanism for completion of the Newton FGD Project by 2015 or 2017. (Pet. at 23) Without relief from the Board, and in the absence of the Newton FGD, Petitioner states that its only other compliance alternative has severe consequences. (Pet. at 23)

45. Petitioner asserts that at this time and under existing conditions, retiring at least two plants across its fleet such as, for example Joppa, E.D. Edwards, and/or Newton, would be necessary in order to maintain compliance in absence of completing the Newton FGD Project. (Pet. at 23) Such action would substantially impact Petitioner's employees, the surrounding community, and consumers. (Pet. at 23)

46. Petitioner provides the results of an independent analysis that reveals that taking into account direct economic impacts (capital expenditures, non-payroll operations, and salaries) and indirect economic impacts (multiplier effect of wages and expenditures), Petitioner puts \$44.4 million into the local economy surrounding the E.D. Edwards Energy Center, including Peoria, Fulton, Mason, and Tazwell counties, and \$76.7 million into the local economy surrounding Joppa Energy Center, including Johnson, Pulaski, and Massac counties. (Pet. at 24; Pet. Exhibit 10) Based upon these results, the E.D. Edwards Energy Center has a \$124,071,000 impact on the State's economy and the Joppa Energy Center has a \$214,221,000 impact on the State's economy annually. (Pet. at 24) Petitioner provides that together, the energy centers provide 274 paying positions and contribute to an additional 1,209 positions held by Illinois

residents. (Pet. at 24) Accordingly, Petitioner asserts that ceasing operations at these facilities would cause dramatic impacts to the regional and state-wide market economies. (Pet. at 24-25)

47. Petitioner provides cost factors, but did not include itemized calculations or supporting data as to those cost factors; therefore, the Illinois EPA is not able to estimate the costs that compliance would impose on the Petitioner. However, in relation to the compliance plan, the Board has requested estimated costs from Petitioner for each phase of the Newton FGD Project. *See*, Hearing Officer Order, July 5, 2012.

48. As stated *supra*, Petitioner requests additional time to comply with the 2015 and 2017 SO₂ emission rates due to the fact that declining power market prices have resulted in an insufficient cash flow necessary to finance and maintain the construction completion schedule of the Newton FGD Project in time to meet those rates. Furthermore, Petitioner is requesting this temporary relief from the MPS requirements due to regulatory uncertainty, State mandates that impose capital costs that cannot be financed through the rate base, unique market conditions, and severely depressed power prices, while still providing greater SO₂ emissions reductions than as agreed to under the MPS.

VII. CONSISTENCY WITH FEDERAL LAW

49. Pursuant to Section 35 of the Act [415 ILCS 5/35 (2010)] and 35 Ill. Adm. Code 104.208(a), all petitions for variances must be consistent with federal law. Petitioner states, "The requested variance is consistent with current federal law." (Pet. at 29)

50. Petitioner asserts that the terms of the requested variance are consistent with federal Best Available Retrofit Technology ("BART") and Regional Haze requirements. (Pet. at 30) On June 24, 2011, the Illinois EPA submitted portions of the MPS to USEPA for inclusion in the Illinois SIP [State Implementation Plan] addressing BART and regional haze. (Pet. at 29)

Also, as noted above, the CSAPR has been stayed pending the outcome of current litigation regarding the rule. (Pet. at 29)

51. For coal-fired EGUs, BART guidelines provide presumptive emission limits for various boiler type and coal type combinations. (Pet. at 30) The Illinois EPA compared presumptive BART to Illinois' "on the books" emission reduction requirements in Illinois and determined that Illinois' approach will "yield much larger reductions of NO_x and SO₂ than will implementation of BART controls on just subject to BART emission units." (Pet. at 30)

52. Petitioner states that despite the delay in complying with the 2015 SO₂ annual emission rate, the variance will be consistent with federal BART requirements. (Pet. at 30) Moreover, Petitioner points out that according to USEPA, "[t]he MPS and CPS provide emission reduction well in excess of simply implementing BART on the subject units." (Pet. at 30-31) Petitioner states that its system-wide emissions under the proposed variance will provide even greater reductions compared to presumptive BART by 2015. (Pet. at 31) Petitioner further states that given the voluntary compliance with a lower emission rate of 0.38 lb/mmBtu beginning in 2012 (as opposed to 0.50 lb/mmBtu through 2013 and 0.43 lb/mmBtu during 2014) through 2019, the variance will result in mass emissions of SO₂ by 2015 even lower than Illinois' estimates under current MPS requirements. (Pet. at 31) Petitioner asserts that the net reduction in SO₂ emissions continues to 2020 and beyond and, thus, does not impact the State's BART determinations. (Pet. at 31)

53. As to the CSAPR, which is not yet effective, Petitioner asserts that once effective, the Ameren MPS Group will comply with the CSAPR. (Pet. at 31) Furthermore, Petitioner intends to comply with the MATS at its facilities through the use of a combination of existing FGD systems and sorbent injection technologies. (Pet. at 32)

54. Petitioner is correct that there is currently no authority that precludes granting the instant variance request. However, Illinois must still develop plans to attain and maintain the ozone and PM_{2.5} National Ambient Air Quality Standards. More importantly, Illinois must address its impact on downwind states pursuant to Section 110(a)(2)(D) of the CAA. 42 U.S.C § 7410(a)(2)(D).

55. The USEPA approved the revisions to the Illinois SIP addressing regional haze. *77 Fed. Reg.* 39943 (July 6, 2012). Accordingly, the Illinois EPA will submit the variance order, if granted by the Board, for approval as a SIP revision.

VIII. COMPLIANCE PLAN

56. Pursuant to Section 104.204(f), the Petitioner is required to present a detailed compliance plan in the Petition for Variance. *See*, 35 Ill. Adm. Code 104.204(f). The Petitioner provided the following compliance plan in its Petition for Variance.

57. The Petitioner provides that as an integral part of its compliance plan accompanying the variance request, and in mitigation of the relief requested, Petitioner first voluntarily offers that the Ameren MPS Group will meet an overall SO₂ annual emission rate in 2012 through 2019 of 0.38 lb/mmBtu. (Pet. at 8-9) Such proposed voluntary rate will effectively commit Petitioner to the cessation of operations at the Hutsonville and Meredosia Energy Centers while maximizing FGD performance at the Duck Creek and Coffeen Energy Centers. (Pet. at 9) Petitioner agrees to voluntarily meet this compliance plan rate in spite of the associated constraints and operating requirements to mitigate any potential negative environmental impacts resulting from the variance. (Pet. at 9) Petitioner will also continue to burn low-sulfur coal from the Powder River Basin and manage operations as necessary to maintain compliance. (Pet. at 9)

58. Consistent with cash flows, Petitioner expects to maintain a continuous program of construction at the Newton Energy Center so as to be in a position to have the Newton FGD Project completed and operational to meet compliance obligations. (Pet. at 9) Petitioner states that proceeding in this manner will position Petitioner for compliance with the 2015 SO₂ annual emission rate by January 1, 2020, with the installation of the Newton FGDs. (Pet. at 9)

59. Petitioner states that it anticipates the Newton FGD Project can be completed by January 1, 2020, and the Ameren MPS Group SO₂ annual emission rate will reduce to 0.25 lb/mmBtu, and then to 0.23 lb/mmBtu by the end of 2020. (Pet. at 27)

60. Petitioner has worked diligently to comply with all other components of the MPS and will continue to comply with NO_x and mercury control annual emission standards under the MPS. (Pet. at 28)

61. However, discussions between Petitioner and the Illinois EPA that post date the filing of the Petition resulted in Petitioner further proposing that it would commit to a system-wide annual average SO₂ emission rate of 0.35 lb/mmBtu (as opposed to 0.38 lb/mmBtu as set forth in Paragraph 57, above) from January 1, 2013, through December 31, 2019.

IX. RECOMMENDATION AND CONCLUSION

62. Under Section 37(a) of the Act and Section 104.216(b)(11) of the Board rules, the Illinois EPA is required to make a recommendation to the Board as to the disposition of the petition. *See*, 415 ILCS 5/37(a) (2010) and 35 Ill. Adm. Code 104.216(b)(11). The burden of proof in a variance proceeding is on the Petitioner to demonstrate that compliance with the rule or regulation would impose an arbitrary or unreasonable hardship. *See*, 415 ILCS 5/35(a) (2010) and 35 Ill. Adm. Code 104.238.

63. Petitioner engaged in dialogue with the Illinois EPA regarding its requested relief

and did improve the conditions of its alternative compliance proposal to the satisfaction of the Illinois EPA. Petitioner proposes to commit to a system-wide annual average SO₂ emission rate of 0.35 lb/mmBtu, as opposed to 0.38 lb/mmBtu as set forth in the Petition, from January 1, 2013, through December 31, 2019. The Illinois EPA's position is that inclusion of this emission rate, as opposed to the 0.38 lb/mmBtu emission rate proposed in the Petition, in conjunction with the ceasing of operation of the Meredosia and Hutsonville Energy Centers, would result in a net environmental benefit through 2021 greater than initially proposed in the Petition. Currently, there is no regulatory requirement for Meredosia or Hutsonville to remain shut down. The granting of this variance will serve to ensure that these two facilities remain shut down throughout the term of the variance.

64. In regard to concerns about whether emission reductions due to shutdowns should be allowed to "offset" potential delays in emission decreases and/or emission increases, it is important to note that providing credit for actions (e.g., unit shutdowns) that result in emission reductions is an acceptable part of the established regulatory process. As an environmental regulator, the Illinois EPA is accustomed to recognizing and allowing such reductions to offset potential emission increases under the New Source Review and Prevention of Significant Deterioration permitting regulations. 35 Ill. Adm. Code 203; 40 C.F.R. § 52.21. The Illinois EPA believes that if the requested relief is granted under the terms and conditions contained herein, the emission reduction offsets that Petitioner is seeking to rely on are creditable and allowable.

65. Furthermore, the MPS was created and designed to achieve significant SO₂ and NO_x reductions in exchange for mercury control flexibility in the Illinois Mercury Rule. The timing of the MPS reductions was negotiated and the result of the consideration of many

variables, including Petitioner's ability to install pollution control equipment in a timely manner and a desire to achieve the greatest amount of reductions within a reasonable amount of time.

The MPS was not designed to address the new 2010 1-hour SO₂ National Ambient Air Quality Standard, which was not proposed at the time the MPS was being negotiated. Moreover, it was agreed to that the MPS reductions could be used in Illinois SIPs, as needed. The Illinois EPA's analysis of the Petition indicates that if such relief is granted under the terms and conditions contained herein, there will be no detrimental impact in the ability to rely on the new variance-adjusted MPS emission reductions in the Illinois SIPs, as needed.

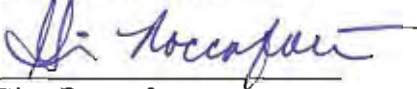
66. The Illinois EPA agrees with Petitioner that there will be a net environmental benefit if the Board were to grant the requested relief subject to the terms and conditions contained herein. The Illinois EPA also does not believe that any environmental harm would result therefrom.

67. Therefore, as presented, the Illinois EPA neither supports nor objects to the Board granting the Petition subject to the terms and conditions contained herein.

WHEREFORE, for the reasons set forth above, the Illinois EPA neither supports nor objects to the Board granting the Petition subject to the terms and conditions contained herein.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

DATED: July 23, 2012
1021 North Grand Avenue East
P. O. Box 19276
Springfield, IL 62794-9276
217/782-5544

DISTRICT OFFICE:
19 S. CAPITOL ST.
PEKIN, ILLINOIS 61554
309-620-8631
FAX: 309-349-3046
repunes@gmail.com



STATE OF ILLINOIS
MICHAEL UNES
STATE REPRESENTATIVE • 91st DISTRICT

COMMITTEES:
CITIES & VILLAGES
TRANSPORTATION: VEHICLES,
& SAFETY
INSURANCE
SMALL BUSINESS EMPOWERMENT
& WORKFORCE DEVELOPMENT
INTERNATIONAL TRADE
& COMMERCE
TOURISM & CONVENTIONS
AGING

SPRINGFIELD OFFICE:
240A-W STRATTON BUILDING
SPRINGFIELD, ILLINOIS 62706
217-782-8152
FAX: 217-782-1275

May 29, 2012

John Kim
Acting Director
Illinois Environmental Protection Agency
1000 Converse Avenue, Floor 2
Springfield, IL 62794

RECEIVED IN THE
OFFICE OF THE DIRECTOR

MAY 30 2012

Dear Acting Director Kim,

I am writing to ask for your agency's support of a petition for variance that has been filed by Ameren Energy Resources with the Pollution Control Board (PCB). The attached letter, which I shared with the PCB, outlines the situation and the company's request. As I understand it, the EPA can weigh in on these matters, and I strongly encourage you to do so in favor of the company's petition.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Unes".

Michael Unes
State Representative
91st District

DISTRICT OFFICE:
19 S. CAPITOL ST.
PEKIN, ILLINOIS 61554
309-620-8631
FAX: 309-349-3046
repunes@gmail.com

SPRINGFIELD OFFICE:
240A-W STRATTON BUILDING
SPRINGFIELD, ILLINOIS 62706
217-782-8152
FAX: 217-782-1275



STATE OF ILLINOIS
MICHAEL UNES
STATE REPRESENTATIVE • 91st DISTRICT

COMMITTEES:
CITIES & VILLAGES
TRANSPORTATION: VEHICLES
& SAFETY
INSURANCE
SMALL BUSINESS EMPOWERMENT
& WORKFORCE DEVELOPMENT
INTERNATIONAL TRADE
& COMMERCE
TOURISM & CONVENTIONS
AGING

May 21, 2012

Mr. John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph Street
Chicago, Illinois 60601

RE: Public Comment in **Support** of the Granting of Ameren Energy Resources'
Petition for Variance, Docket Number 2012-126 (Air-Variance)

Dear Honorable Members of the Illinois Pollution Control Board:

Please consider this my letter of support for Ameren Energy Resources' (AER) Petition for Variance currently pending before the Illinois Pollution Control Board. The seriousness of the request, and possible extreme consequences should relief not be granted, compels me to share my views and ask you to grant AER the temporary relief requested.

I currently serve as State Representative of the 91st District and the Edwards Energy Center in Bartonville and the Duck Creek Energy Center in Canton are located within my District. These two plants employ dozens of my constituents and without this variance request, those jobs will be in jeopardy. This would be very harmful to our economic climate in Central Illinois and the Spoon River Valley.

At the time of adoption, I recognize there was an interest in stepping out in front and putting in place environmental regulations to control power plant emissions in Illinois. I also recognize, however, that there was a strong understanding that our state rules would have been followed shortly by similar federal rules. The federal rules would have applied throughout most of the nation requiring other power plants located outside Illinois to install the very costly pollution control equipment at issue in this case. As of today, those federal rules are still not in place and as far as I can tell, predicting what may happen at the federal level is anyone's guess. In the meantime, the people and communities in Illinois could suffer even more economic hardship should AER be forced to take drastic action and shutter any one of the energy centers if the requested relief is not granted.

Therriault.John

Page 2

AER is not asking this Board to relieve it of its obligation to install the required pollution control equipment. Instead, it asks for more time to allow the financial conditions to improve and the federal regulatory uncertainty to be addressed. As I also understand it, AER has also recognized its obligation to reduce its impact to the environment and has taken a voluntary lower emission limit that will apply during the time it needs to get back on its feet and manage this crisis. I believe AER is trying its best to meet its environmental obligations under the very trying circumstances it faces.

I ask the Board to please give careful thought to the devastating impact the closure of the Edwards Energy Center and Duck Creek Energy Center, will have on our already troubled State economy and, particularly with respect to these two energy centers, on my constituents. We just cannot afford to lose the good paying jobs and the critical support of our local schools, emergency response organizations, and functions of city government across dozens of communities made possible by the operations of these Energy Centers.

Thanks for your thoughtful consideration of this matter.

Sincerely,



State Representative, 91st District



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 19, 2012

VIA ELECTRONIC MAIL

Gina Roccaforte
Assistant Counsel, Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794
gina.roccaforte@illinois.gov

Re: Ameren Energy Resources Petition for Variance, PCB 2012-126

Dear Ms. Roccaforte:

On behalf of the Office of Illinois Attorney General Lisa Madigan, I am writing in regards to the petition for variance filed by Ameren Energy Resources ("Ameren") with the Illinois Pollution Control Board (the "Board"). Pursuant to 415 ILCS 5/37(a), the Illinois Environmental Protection Agency (the "Agency") shall consider the views of "persons who might be adversely affected by the grant of a variance" in developing its recommendation on the petition for the Board. The Attorney General represents the People of the State of Illinois, many of whom will be or could be adversely affected by the variance.

The purpose of this letter is twofold. The first is to provide our input to the Agency as it finalizes its recommendation to the Board. Even though the deadline to submit the recommendation is only a few days away, we expect and request that the Agency will give as much consideration as possible to these comments as allowed under the circumstances. The second purpose of this letter is to alert the Agency to our office's views prior to filing a formal comment in the docket before the Board, which we plan to do early next week.

We believe the Agency should recommend denial of the petition or, in the alternative, granting of it only with conditions that would minimize the amount of excess pollution allowed in the years 2015 through 2019. As discussed in more detail below, Ameren has failed to satisfy its burden of showing that the hardship of compliance with the regulations in question would outweigh the harm to the environment and public health that the variance would allow.

I. Background

A. Legal Requirements for a Variance

Under the Illinois Environmental Protection Act, the Board is authorized to grant variances from regulations when it finds that compliance would impose an “arbitrary or unreasonable hardship” on the petitioner. 415 ILCS 5/35(a). “When deciding whether to grant or deny a variance request, the Board is required to balance the hardship of continued compliance on the business against the adverse impact the variance will have on the environment.” *Marathon Oil Co. v. EPA*, 242 Ill.App.3d 200, 206 (5th Dist. 1993) (citing *Monsanto Co. v. PCB*, 67 Ill.2d 276, 293 (1977)). In addition, “[t]he party requesting the variance has the burden of establishing that the hardship resulting from a denial of the variance outweighs any injury to the public or the environment from a grant of the variance.” *Id.* This burden has been described as “heavy.” *Willowbrook Motel v. PCB*, 135 Ill. App. 3d 343, 349 (1st Dist. 1985). Indeed, “if the one requesting the variance demonstrates only that compliance will be difficult, that proof alone is an insufficient basis upon which to grant the variance. The petitioner must go further and show that the hardship it will encounter from the denial of the variance will outweigh any injury to the public or environment from the grant of the variance.” *Marathon*, 242 Ill.App.3d at 206.

B. Relief Requested by Ameren

Under the Illinois Multi-Pollutant Standards (“MPS”), Ameren is required to reduce the annual average sulfur dioxide (“SO₂”) emissions from its coal plant fleet according to the following schedule set forth in 35 Ill. Adm. Code § 225.233(e)(3)(C):

Year	SO ₂ Emission Rate
Jan. 1, 2010 – Dec. 31, 2013	0.50 lb/mmBtu
Jan. 1, 2014 – Dec. 31, 2014	0.43 lb/mmBtu
Jan. 1, 2015 – Dec. 31, 2016	0.25 lb/mmBtu
Jan. 1 2017 – [ongoing]	0.23 lb/mmBtu

Here, Ameren is requesting relief from Section 225.233(e)(3)(C)(iv), which are the 2015 and 2017 standards (.025 and .023 lb/mmBtu, respectively). Ameren seeks to be excused from meeting the 0.25 standard for five years and the 0.23 standard for four years. In other words, Ameren would not have to meet the 0.25 standard until Jan. 1, 2020 and the 0.23 standard until Jan. 1, 2021. The reason for making this request is that the company states that it is unable to secure the financing necessary to complete flue gas desulfurization (FGD) equipment (*i.e.*, scrubbers) at the two units located at Ameren’s Newton facility.

C. Ameren’s Alternative Compliance Plan

In exchange for the variance on the 2015 (0.25 lb/mmBtu) and 2017 (0.23 lb/mmBtu) standards, Ameren proposes an alternative compliance plan whereby Ameren would commit to meeting a 0.38 lb/mmBtu yearly system average from 2012 through 2019. Petition at 8-9. Ameren states that it will meet the 0.38 lb/mmBtu by maintaining the closures of the Hutsonville and Meredosia stations, by maximizing scrubber performance at the Duck Creek and Coffeen facilities, by burning low-sulfur Powder River Basin (PRB) coal, and by “manag[ing] operations as necessary to maintain compliance.” *Id.* at 9. Starting on Jan. 1, 2020, Ameren hopes to have one of the Newton scrubbers completed to

coincide with the end of the variance on the 0.25 lb/mmBtu standard. *Id.* Ameren expects to have the second Newton scrubber completed in 2020 to allow it to comply with the expiration of the variance on the 0.23 lb/mmBtu standard on Jan. 1, 2021. *Id.* at 9-10.

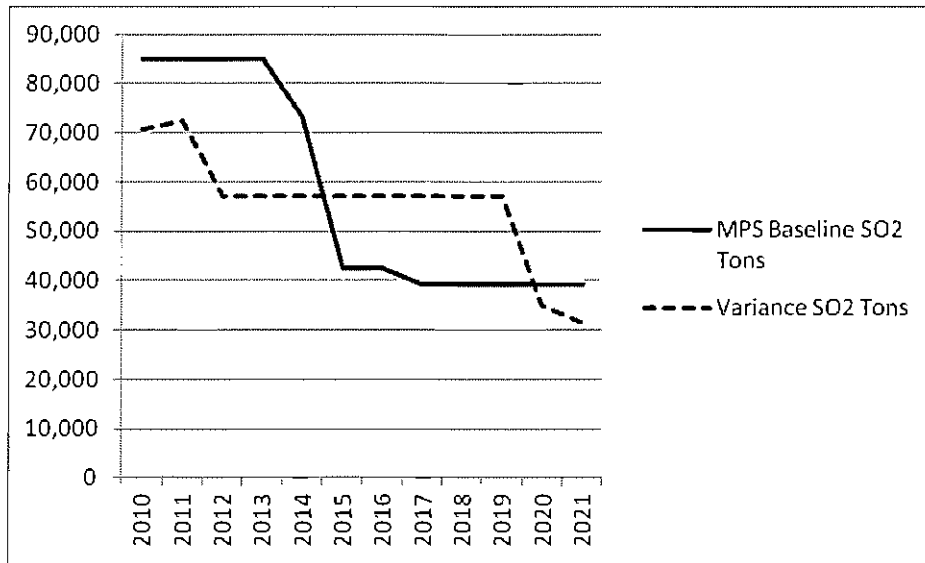
II. The Variance Would Allow Excess Emissions in 2015 through 2019.

According to Ameren's own figures (Petition at 26), the proposed variance and alternative compliance plan would result in sulfur dioxide (SO₂) emission levels significantly higher than what the Multi-Pollutant Standards would allow in the years 2015 through 2019. The following chart shows the comparison and excess emissions in tons between the MPS and the proposed variance:

Year	Variance SO ₂ Tons	MPS SO ₂ Tons	Increase
2015	56,986	42,556	+14,430
2016	56,986	42,556	+14,430
2017	56,986	39,151	+17,835
2018	56,986	39,151	+17,835
2019	56,986	39,151	+17,835

Ameren attempts to gloss over this pollution increase by framing its alternative compliance plan in terms of the cumulative, or overall, number of tons that will be emitted from 2010-2021 as compared to what is anticipated under the MPS. Ameren believes it should be able to "offset" the additional tonnage shown above by claiming credit for emissions that have been (or projected to be) lower than expected in the years 2010-2014, plus some lower emissions in the last two years (2020-2021).

The problem with this framework is that the MPS was not intended to be a 12-year averaging period of pollution reduction. Rather, it was designed to ratchet down emissions of SO₂ and other pollutants over a period of time by triggering incremental clean ups of Ameren's coal fleet. Moreover, the lower emission levels and projections for 2010-2014 have come about not from any commitments Ameren has made (or promises to make) as part of the variance request but rather from having its coal plants dispatched less and less and also from previous business decisions made by Ameren to mothball uneconomic units (Hutsonville and Meredosia). Through the variance request, Ameren is seeking to use these events, which led or will lead to emission levels lower than what it intended, to essentially impose a large plateau in the middle of its MPS compliance schedule, as depicted in the following chart created using the emission figures in the Petition (page 26):



Sulfur dioxide is not a pollutant that should be subjected to a long-term averaging analysis because its primary public health impacts occur relatively quickly after being released, such as short-term respiratory exposure to the gas itself, formation of particulate matter in the atmosphere that returns to ground level, and acid deposition that damages lakes and vegetation. Sulfur dioxide is not a persistent and cumulative pollutant in the atmosphere like greenhouse gases nor does it bioaccumulate in the environment like mercury for which early reductions are just as valuable as later emissions. A ton of SO₂ avoided in 2010 does not help an asthmatic or other sensitive individual exposed to emissions in 2018 or to the lake that receives acid rain pollution in that later year.

In short, Ameren's proposal will allow increased pollution for the years 2015 through 2019 in significant excess from what the MPS would permit and would cause harm that cannot be undone or offset through earlier or later reductions. Accordingly, the Agency and the Board must analyze whether this environmental harm is outweighed by the hardship claimed by Ameren.

III. Ameren Fails to Analyze Other Options Besides the Newton Scrubber Project.

Most of Ameren's petition is spent on establishing why it cannot get the financing it needs to construct the Newton scrubbers on time because of the difficult economic forces and the shifting regulatory landscape it faces. Even if one concedes all of this to be true (which we do not necessarily do at this time), those factors are not the hardship Ameren would confront by complying with the MPS. The hardship is the alternative measures Ameren would have to take assuming its preferred compliance plan (scrubbers at Newton) is unavailable. Ameren pays very little attention to this in its petition or supporting documents. Indeed, the petition seems to assume that the only alternative to the Newton scrubbers is to "cease operations at additional energy centers as its only other viable compliance alternative" and that it would have to retire "at least two plants across AER's fleet such as, for example, Joppa, E.D. Edwards, and/or Newton." Petition at 2, 23.

The affidavits submitted with the petition do not support these statements about having to retire two or more plants as the only option. For example, according to Ryan J. Martin of Ameren Services Company, without the Newton scrubber Ameren "would need to resort to extreme operational

curtailments to comply with existing standards, likely including, but not limited to, the mothballing of units at the Joppa, Edwards, and/or Newton energy centers.” Martin Affidavit, Par. 12 (emphasis added). Note that likely is not the same as must and units are not the same as plants (E.D. Edwards has three units, Joppa has six, and Newton has two). Another affiant, Steven C. Whitworth, states only that compliance with the MPS has become “a significant economic hardship.” Whitworth Aff., Par. 2.

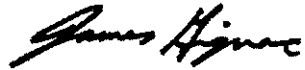
Thus, in developing its recommendation, the Agency should closely scrutinize other options available to Ameren besides completing the Newton scrubber because the company has failed to do this in its petition. Given the conflicting statements and lack of clarity in Ameren’s petition and supporting affidavits, it is certainly possible and perhaps even likely that there are measures short of closing two entire plants that could bring Ameren into compliance or at least closer to it—even if those options are not as financially preferable to the company as the installation of scrubbers at Newton would be.

For example, Ameren has already pointed out that it plans to take certain operational and technical steps to reduce emissions (*i.e.*, maximizing scrubber performance at the Duck Creek and Coffeen facilities, burning low-sulfur PRB coal, and implementing other unspecified operational management measures). Petition at 9. Could scrubbers at Ameren’s plants be further optimized to reduce emissions or are there less expensive pollution control technologies that could assist? Could Ameren run certain units less or temporarily power down a unit at each facility? What are these other operational management measures and could more of them be pursued to reduce emissions? All of these are potential options other than Ameren’s unsupported claim that two entire facilities would have to be closed down in order to comply. Unfortunately, the company fails to examine the options in its petition. IEPA and the Board should require Ameren to prove that it has fully explored alternative compliance measures before granting any variance.

Accordingly, the Agency should recommend denial of Ameren’s request for a variance on the grounds that the company has failed to properly articulate and support the hardship it would suffer from complying with the MPS (*i.e.*, what the real options are aside from the Newton scrubber project). In the alternative, if there are other steps that can be taken, the Agency could consider recommending the granting of the variance with conditions incorporated into Ameren’s compliance plan to minimize the amount of excess emissions a variance would produce. If there is more the company could do to reduce the proposed 0.38 lb/mmBtu limit closer to the intended rate of 0.25 lb/mmBtu, then it should be required. Such an approach would provide more of a balance between giving credit to Ameren for earlier reductions (even if they were unwanted and unintended) and the goal of continuing to step down emissions over the course of the MPS.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "James P. Gignac". The signature is written in a cursive, slightly slanted style.

James P. Gignac
Environmental and Energy Counsel
Illinois Attorney General's Office
69 W. Washington St., 18th Floor
Chicago, IL 60602
(312) 814-0660
jgignac@atg.state.il.us

STATE OF ILLINOIS

COUNTY OF SANGAMON

)
)
)
)
)

SS

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served electronically the attached RECOMMENDATION upon the following person:

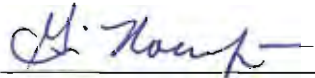
John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
Chicago, IL 60601

and electronically and by mailing it by first-class mail from Springfield, Illinois, with sufficient postage affixed to the following persons:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 N. Grand Ave. East
P.O. Box 19274
Springfield, IL 62794-9274

Amy Antonioli
Renee Cipriano
Schiff Hardin LLP
233 South Wacker Drive
Suite 6600
Chicago, IL 60606

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,



Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

DATED: July 23, 2012

1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
217.782.5544
217.782.9143 (TDD)