

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have electronically filed today with the Illinois Pollution Control Board the Initial Comments of the Illinois Attorney General's Office, a copy of which is hereby served upon you.

Dated: July 23, 2012

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN, Attorney
General of the State of Illinois



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**INITIAL COMMENTS OF THE
ILLINOIS ATTORNEY GENERAL’S OFFICE**

The Illinois Attorney General’s Office, on behalf of the People of the State of Illinois (the “People”), hereby submits its initial comments in this matter, pursuant to 415 ILCS 5/32 and 35 Ill. Adm. Code § 104.224(d). The Illinois Pollution Control Board (“Board”) should deny the petition for variance filed by Ameren Energy Resources (“Ameren”) or, in the alternative, grant 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.

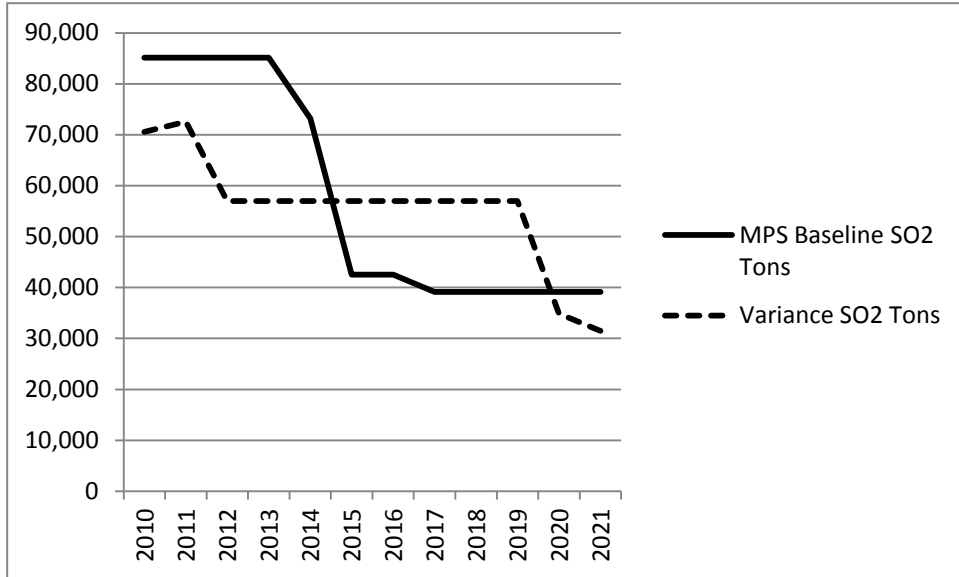
According to Ameren's own figures (Petition at 26), the proposed variance and alternative compliance plan would result in sulfur dioxide (SO₂) emission levels significantly higher than what the Multi-Pollutant Standards would allow in the years 2015 through 2019. The following chart shows the comparison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

Year	Variance SO₂ Tons	MPS SO₂ 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):



The People submit that SO₂ 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 valuable. A ton of SO₂ avoided in 2010 does not help an asthmatic or other sensitive individual exposed to emissions in 2018 or 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 Board must analyze and determine 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 the People 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 Newtown 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 determining whether to grant or deny the variance, the Board 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. The Board should require Ameren to prove that it has fully explored alternative compliance measures before granting any variance.

IV. Conclusion


For the reasons stated above, the Board should deny 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 Board could consider granting 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.

Dated: July 23, 2012

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN, Attorney
General of the State of Illinois

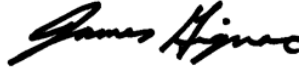


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CERTIFICATE OF SERVICE

I, James P. Gignac, an Assistant Attorney General in this case, do certify that I caused to be served this 23rd day of July, 2012, the foregoing Initial Comments of the Illinois Attorney General's Office upon the persons listed on the Service List by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 69 W. Washington St., Chicago, Illinois, at or before the hour of 5:00 p.m.



JAMES P. GIGNAC