BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

IN THE MATTER OF:	)	
	)	
COAL COMBUSTION WASTE	)	
SURFACE IMPOUNDMENTS	)	**R14-10**
AT POWER GENERATING	)	**(Rulemaking – Water)**
FACILITIES: PROPOSED NEW	)	
35 ILL. ADM. CODE 841	)	

NOTICE OF FILING

To: John T. Therriault, Clerk
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, IL 60601

And Attached Service List

Please take notice that on October 17, 2014, I electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the attached **Post-Hearing Comments of the City of Springfield, Office of Public Utilities**, a copy of which is attached and herewith served upon you. A copy was also mailed to Timothy J. Fox, hearing officer, at the address shown above.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

By _____
One of its Attorneys

Dated: October 17, 2014
Christine G. Zeman
Regulatory Affairs Director
Office of Public Utilities
800 East Monroe
Springfield, Illinois 62757
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Service List

Party Name	Address	City/State/Zip
Office of the Attorney General **Interested Party** • Stephen Sylvester - Asst. Attny. Genl.	69 West Washington Street, Suite 1800	Chicago IL 60602
IEPA **Petitioner** • Joanne M. Olson - Assistant Counsel • James Jennings - Assistant Counsel	1021 North Grand Avenue East P.O. Box 19276	Springfield IL 62794-9276
Much Shelist PC **Interested Party** • David Rieser	191 North Wacker Drive Suite 1800	Chicago IL 60606
McDermott, Will & Emery **Interested Party** • Mark A. Bilut	227 West Monroe Street	Chicago IL 60606-5096
Schiff Hardin, LLP **Interested Party** • Amy Antoniolli	6600 Willis Tower 233 South Wacker Drive	Chicago IL 60606-6473
Environmental Law and Policy Center **Interested Party** • Faith E. Bugel • Jessica Dexter • Jennifer L. Cassel • Andrew Armstrong • Josh Zaharoff	35 E. Wacker Drive Suite 1600	Chicago IL 60601
Sierra Club **Interested Party** • Jack Darin	70 E. Lake Street, Suite 1500	Chicago IL 60601-7447
Ameren Services **Interested Party** *	One Ameren Plaza PO Box 66149	St. Louis MO 63166
Illinois Department of Natural Resources **Interested Party**	One Natural Resources Way	Springfield IL 62702-1271

• *Office of General Counsel		
Southern Illinois Power Cooperative **Interested Party** • Jason McLaurin	11543 Lake of Egypt Road	Marion IL 62959-8500
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Prairie Rivers Network **Interested Party** • Traci Barkley	1902 Fox Drive Suite 6	Champaign Il 61820
Nijman Franzetti LLP **Interested Party** • Susan M. Franzetti	10 South LaSalle Street Suite 3600	Chicago IL 60603
IERG **Interested Party** • Alec Messina	215 E. Adams St.	Springfield IL 62701
Dynegy Midwest Generation, Inc. **Interested Party** • Rick Diericx - Senior Director	1500 Eastport Plaza Dr.	Collinsville IL 62234-6135
Ameren **Interested Party** • Michael Smallwood - Consulting Engineer	1901 Chouteau Avenue	St. Louis MO 63103
Environmental Integrity Project **Interested Party** • Abel Russ - Attorney	1000 Vermont Avenue NW Suite 1100	Washington DC 20005
Midwest Generation **Interested Party** • Christopher Foley - Senior Counsel	500 West Madison Street Suite 2640	Chicago IL 60661
Electric Energy, Inc.	2100 Portland Road	Joppa

Interested Party • *	P.O. Box 165	Il 62953
Kincaid Generation LLC **Interested Party**	P.O. Box 260	Kincaid Il 62540
Prairie Power, Inc. **Interested Party** • *	P.O. Box 10	Peral Il 62361
Prairie State Generating Company **Interested Party** • *	4190 County Highway 12	Marissa IL 62257
NRG Energy, Inc. **Interested Party** • Elizabeth Quirk-Hendry - General Counsel East Region • Keith Schmidt - Director of Environment	211 Carnrgie Center	Princeton NJ 08540
NRG Energy, Inc. **Interested Party** • Walter Stone - Vice President	8301 Professional Place Suite 230	Landover MD 20785

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POST-HEARING COMMENTS OF THE CITY OF
SPRINGFIELD, OFFICE OF PUBLIC UTILITIES

Now comes the undersigned on behalf of The City of Springfield, Office of Public Utilities, d/b/a City Water, Light and Power (CWLP) and pursuant to the Hearing Officer Order entered July 25, 2014, timely files these Post-Hearing Comments in this rulemaking proceeding.

Background

CWLP is a not-for-profit municipal electric utility organized pursuant to the Illinois Municipal Code (65 ILCS 5/11-117-1, et. seq.) which owns and operates Electric Generating Units (EGUs) at the Dallman Power Station, 3100 Stevenson Drive, Springfield, Illinois. The Dallman Power Station has one unit, Dallman Unit 4, which began commercial operation in 2009 and utilizes dry ash handling for both bottom and fly ash. Dallman Unit 4 was constructed to replace CWLP's older Lakeside units. Three other units (31, 32 & 33) are permitted to sluice ash to ash impoundments. Accordingly, CWLP is or will be directly impacted by this rulemaking proceeding.

CWLP, like the other EGU's in Illinois, voluntarily prepared and submitted a hydrogeologic investigation and a groundwater monitoring program to the Illinois Environmental Protection Agency (IEPA or Agency) for its ash impoundments, upon request of the IEPA, following the TVA ash spill, as part of the Agency's ash impoundment strategy. See, e.g., the Agency's Statement of Reasons (SOR) at 5. CWLP's plan was approved and has been implemented for the assessment of groundwater quality. Evaluation of potential off-site threats has also been completed, with CWLP's ash impoundments having no threat to any off-site potable wells and designated as low threat or Priority 2. See, e.g., Buscher Prefiled Testimony at 7, Cobb Prefiled Testimony at 4, and Attachment D of the SOR at 4.

Intent to establish a procedure of state-wide applicability

CWLP was notified by the Agency prior to initiating this rulemaking of its intent to file; CWLP attended the stakeholder meeting which the IEPA held June 27, 2013, and CWLP provided comments on the draft proposal to the IEPA. At the meeting, the IEPA suggested that this rulemaking is intended to establish a procedure (and only a procedure) to address and protect groundwater potentially impacted by ash impoundments, including through closure, so as to avoid having to do so on a case-by-case basis through site specific rulemaking such as that for Ameren's Hutsonville Power Station (R2009-21) and the pending site-specific rule for other Ameren ash impoundments currently stayed while this proceeding is pending (R2013-019).

In addition to the site specific rule procedure, another procedural mechanism the IEPA already has available to protect groundwater impacted by ash impoundments, in lieu of a state-wide rule of general applicability, is through the enforcement process of the Illinois Environmental Protection Act (415 ILCS 5/1, et. seq.) and the compliance commitment agreement (CCA) procedure (415 ILCS 5/31) over which the IEPA has extensive control. As documented in this proceeding, some owners of coal combustion waste (CCW) impoundments in Illinois have been issued Violation Notices (VN) by the IEPA and have submitted CCAs, demonstrating plans to comply, even without this proposed rule. See, e.g., the Agency's Technical Support Document (TSD).

The IEPA's intent to establish a procedure is repeated in its Statement of Reasons supporting its initial proposed rule: "This proposed rule sets forth a process to monitor CCW surface impoundments and groundwater, as well as a process for preventative response, corrective action and closure. The proposed rule allows each owner and operator to develop a site specific plan for groundwater monitoring, preventative response, corrective action and closure." (emphasis added) SOR at 1. "The rule provides a process...The preventive response, corrective action plan or closure plan is site-specific." (emphasis added) SOR at 9. The IEPA's comment in the SOR and the evidence presented throughout this rulemaking make clear that each EGU's ash impoundment is unique, such as in the material it contains, its history as it pertains to design, construction and operation, its geologic environment and condition, the nature of any engineered controls, whether its contents are periodically dewatered or removed for beneficial use or reuse, the life expectancy of the impoundment and the cost to retrofit or to close it. The Board should consider the original intent as it considers the record, including whether a procedural rule and new section 841 are even necessary, especially at this particular time. At minimum, setting specific design criteria or a timetable for closure is not supported by this record.

There is no evidence to support specific design criteria, a requirement to submit a closure plan within just one (1) year of this rule's effective date, a requirement or preference for CCW removal, nor financial assurance for closure/post-closure care

Just one day prior to hearings set for May 14, 2014, the Environmental Integrity Project, the Environmental Law & Policy Center, Prairie Rivers Network and Sierra Club (hereafter PRN) filed an unsupported counterproposal to the IEPA's, to establish, among other requirements, CCW impoundment and closure design criteria, a requirement or preference for removal of ash from an impoundment prior to closure, a requirement that the owner/operator submit a closure plan within just one (1) year of the effective date of this rule, and financial assurance for the closure/post-closure care of the impoundment, among other requirements. No SOR or TSD was filed with PRN's proposed rule, nor were the requirements of section 102.202 (c) or (e) followed, as required by the Board's procedural rule at 35 Ill.Adm.Code 102.202(b-e). Instead, PRN unsuccessfully attempted to support its counterproposal with generic testimony and exhibits, with little to no evidence of its applicability here, such as to our geology and hydrogeology, groundwater or surface waters in Illinois or the Midwest.

PRN's witness, Dr. Keir Soderberg, admitted that he has had no experience designing CCW impoundments or their closure; the industrial site he worked on per Exhibit 39 is not even marginally similar, if at all, to the experience necessary to provide reliable opinion to this Board on CCW impoundment design, construction, operation, maintenance or closure. He specifically stated he has little to no experience with CCW, though once visited two coal combustion facilities in another country, which appeared to have some fly ash. TR 5/14/14 at 120 and 149. He acknowledged that a remedy such as removal and the nature of closure and remedial activities are site-specific. TR 5/14/14 at 144. In

addition, PRN admitted that it had no evidence to support some elements of its counterproposal; for example, PRN admitted that in attempting to make coal conveyances subject to this rule, it admitted it had no evidence that such conveyances were contributing to groundwater or other contamination. TR 6/18/14 at 46. There was no evidence that any owner/operator in Illinois had failed to close an ash impoundment due to inadequate funds to do so; similarly there was no evidence presented that the state of Illinois has had to expend any taxpayer funds toward the closure of ash impoundments that an owner/operator was either unable or unwilling to pay.

Design criteria for ash impoundments and the available technological and engineering standards for the design, construction and operation of same, along with any cost-benefit or economic impact analysis, as is required by the Act and Board regulations, present complex issues that PRN's witnesses did not address, could not answer or did not have the requisite experience or expertise to do so. This rulemaking was not originally intended to address complex design criteria, including for the potential removal of CCW prior to closure, and has not addressed the impact of removal; the participating parties are not in a position to develop the evidence or expertise necessary to present testimony and exhibits on these issues in the timeframe of the evidentiary hearings set in this rulemaking, either through in-house expertise or via contractual consultants. Moreover, as acknowledged by the participants here, the U.S. EPA has a pending Coal Combustion Residual (CCR) rule that could require certain design criteria, including for closure, that by the terms of this proposed rule, would supercede, or at minimum, possibly overlap, part or all of what the IEPA and PRN are proposing to the Board here.

The USEPA's final CCR rule due December, 2014, will likely supercede part or all of the IEPA's proposal and PRN's counterproposal; so as to preserve valuable and limited resources and utter confusion in the initial implementation of competing state and federal rules on the complex issues these two rules present, the Board should consider the U.S. EPA's final CCR rule prior to issuing its opinion and order here

On May 10, 2010, the U.S. EPA published its proposed CCR rule, with two primary options, one under subtitle C and the other under subtitle D of the Resource Conservation and Recovery Act (RCRA). The U.S. EPA also invited comment on a subtitle D "prime" option. The draft CCR rule under RCRA includes some design criteria, including a liner requirement for certain impoundments, dam safety requirements for structural integrity, and groundwater monitoring requirements, which could result in some impoundments being required to cease accepting CCR wastes five (5) years after certain events occur, with closure required two (2) years thereafter, depending on which option the U.S. EPA selects in the final CCR rule. Depending on which option is selected, certain design criteria may become federal and through delegation, also state law. See, 75 Fed.Reg. 35128, et.seq. (June 21, 2010). Removal of ash or CCW is not mandated in the U.S. EPA's CCR rule. Under all of the options in the draft CCR rule, beneficial use of ash and coal combustion byproduct is encouraged, because, according to the U. S. EPA, there is no data that shows encapsulation of CCR poses a threat to human health or the environment, and related beneficial uses pose no significant threat. See, e.g., 75 Fed.Reg at 35154. The final CCR rule is expected to be published this December. Throughout the record here are references to the CCR rule and ways in which the two rules differ.

Parts of the IEPA's proposal here overlap parts of the U.S. EPA's draft CCR rule, and parts of PRN's counterproposal conflict with the U.S. EPA's draft CCR rule. By its own terms, the Agency's proposed rule provides that any rules governing CCW adopted under RCRA will apply if more stringent or inconsistent with the rules contained in this new section 841. Section 841.450.

The timeframe of this rulemaking with the timing of the release of the U.S. EPA's CCR rule presents extreme uncertainty and the potential for a waste of valuable and limited resources. For example, affected participants will need to implement either the procedures that may result from this rulemaking, or the procedures and regulations that may be required to effectuate the federal CCR rule. For small municipal utilities such as CWLP, with 130 fewer employees today than in 2010, planning to implement certain requirements in order to comply with one or the other rule, determining which parts of which rule may become effective, which may be superceded, and which must be implemented within timeframes set forth in each rule, strains already limited resources. Further, for a municipal utility such as CWLP to comply even with just one of the rules, much less potentially two, will likely require a request for proposal (RFP) or city council approval of ordinances and contracts to retain consultants and/or contractors to develop plans, acquire products or equipment, or develop alternatives to the existing system, depending on the final federal CCR and Board rule here. Even developing the requisite RFP where the two rules could conflict and/or overlap could become complex or confusing, and take valuable time to develop correctly, to ensure funds are properly expended to comply in the most efficient manner. To move forward with finalizing this rule, while expecting publication of the U.S. EPA's CCR rule in just a few weeks, threatens confusion and a waste of valuable limited resources for all parties involved. Judicial and administrative economy require no less.

In the alternative, the Board should grant the Agency's Motion to Sever and Open Subdocket

CWLP restates here its Response in Support of Illinois Environmental Protection Agency's Motion to Sever and Open Subdocket, filed July 3, 2104, which is attached and incorporated as if fully set forth in these post-hearing comments. Should the Board intend to address CCW removal and financial assurance requirements or establish design criteria, it should first create a subdocket so that these complex technical and engineering issues can be fully aired, as they have not yet been in this rulemaking proceeding. Further, opening a subdocket on substantive criteria, financial assurance and closure standards, including possible removal of ash, would also allow consideration of the final U.S. EPA CCR rule, rather than speculating on its final terms, assuming it will be published in December of this year as it has stated.

Establishing either a requirement or preference for removal of ash prior to closure is environmentally unsound, impractical, and excessively costly, as suggested in part by the Burns & McDonnell Environmental Compliance Study prepared for CWLP and by the clarification provided here

PRN introduced a portion of the Burns & McDonnell Environmental Compliance Study (Study) prepared for CWLP that included a cost estimate for ash impoundment "dredging", suggesting that the cost to remove ash prior to closure is reasonable and the information in the Study is sufficient for this Board to mandate removal. TR 6/18/14 136-137, 141, 143. But the Study was prepared specifically for CWLP, contrary to PRN's assertions at hearing (TR 6/18/14 at 141, 143) using specific site conditions and upon certain assumptions appropriate only to CWLP (TR 6/18/14 at 140), which may or may not be realized. PRN submitted only the portion of the Study as it relates to CWLP's ash impoundments and CCR rule options (Ex # 44)TR 6/18/14 at 135-136. PRN appeared to claim that the cost information in the Study can and should be applied universally by the Board to all EGU's or owners/operators of ash impoundments across the state, and to all aspects of ash removal, even though the cost estimate applied only to "dredging". TR 6/18/14 at 141, 143. Further, PRN appeared to suggest that costs referenced in the Study demonstrate that all costs of removal are reasonable, in support of its position that removal should be a requirement or a preferred design criteria, unless the applicant demonstrates that it is technically infeasible (but whether such is determined by the Agency or the Board was unclear.)

TR 6/18/14 at133, 137, 141, 143. In fact, as noted in some pointed questions posed to PRN by other participants at hearing, which PRN could not and did not answer, the Study demonstrates that the cost information is limited and does not support PRN's removal requirement. TR 6/18/14 at 139-145. The estimated costs for dredging CWLP's particular impoundments are limited in application and definitely not reasonable. CWLP provides answers here to some of the questions raised at hearing, including the background of how and why the Study was developed, and the limits on the information in the Study. Despite CWLP being a participant in this rulemaking, at no time did any representative of PRN seek to contact CWLP concerning the Study or its intent to introduce portions as an exhibit, which may have otherwise allowed PRN to answer the questions posed to it at hearing and enable a proper foundation for its limited application, if any.

CWLP attaches here two statements of CWLP engineers. Douglas A. Brown is Major Projects Development Director for CWLP who oversaw the development of the Study and prepared the attached Response Regarding Use of the Environmental Compliance Study. In the Response, Mr. Brown notes that the information in the Study should not be treated as universal nor applied to utilities generally; he notes too that the estimates have only a thirty (30%) accuracy and are known to be low. Brown notes that the Study did not include costs to dispose of any CCR material at a private licensed landfill, and assumed that CWLP would be able to obtain the land and a permit for a future landfill within a ten (10) mile radius, even though no land was identified and the regulatory hurdles for such a landfill continue to increase. Burns & McDonnell, Brown notes, also assumed that it would be acceptable to cap sixty percent (60%) of the existing ash pond area, assuming that the U.S. EPA would select the subtitle D CCR option, but that under either option, ash would be allowed to remain in place with a properly designed cap, consistent with the terms of the U.S. EPA's CCR proposal. Burns & McDonnell did not include costs for dewatering, based upon an assumption that CWLP personnel could dewater. Finally, Mr. Brown also addresses the Santee Cooper proposal, noting that utility articles state that Santee Cooper ash will be reused in concrete, based upon a sale of the material for reuse, thus justifying the cost of removal.

Pat Metz, another CWLP engineer who is the principal engineer responsible for the utility's waste practices, investigated landfill disposal capacity and costs, to help demonstrate that Illinois landfill capacity is limited, as are certain landfill's policies and practices that influence whether permitted landfills would accept CCW. His investigation of Illinois landfill capacity is such that the total volume of ash that CWLP would expect to remove for disposal, if the Board imposes such a requirement or preference, would outpace permitted capacity of the most local landfill. Using the private solid waste landfill closest to CWLP's Dallman Power Station, our estimated volume is more than twenty (20) times the current rate of disposal at this landfill and would require 120,000 truckloads. Dewatering alone is estimated to cost $10,000,000. Loading the trucks following dewatering would cost over $6 million. Transportation to the landfill is estimated to cost $24,000,000 and disposal is estimated to cost over $57 million. These costs do not include the cost to develop an alternative to CWLP's existing ash impoundment system (including for the lime sludge from CWLP's potable water treatment plant located on the same site as our Dallman Power Station permitted for our pond) nor if the U.S. EPA selects the option under subtitle C of RCRA. Mr. Metz expresses concern, too, with the absence in this rulemaking of evidence of the environmental impact of removal. His attached statement provides the basis for these estimates. As already noted, the U.S. EPA CCR rule does not mandate removal (and supports beneficial use) including because proper management presents no significant risk to human health or the environment. See, e.g., 75 Fed.Reg at 35154.

Burns & McDonnell was retained by the City to assess the potential impact of various new and proposed rules on CWLP's Dallman Power Station, using site specific data but also assuming certain conditions that may or may not be realized. The Study was made available to the City Council and online for reference, and is used for planning purposes by CWLP

The U.S. EPA has proposed, planned to propose or finalized several rules that significantly impact, or may significantly impact CWLP's Dalman operations, such as the Cross-State Air Pollution Rule (CSAPR) the Mercury and Air Toxics Rule (MATS) and the Clean Power or Greenhouse Gas Rule (GHG) Rule under the Clean Air Act, the Section 316(b) rule under the Clean Water Act, and the CCR rule under RCRA. Individually, the impact of these rules could be so significant as to impact CWLP's budget, rates, bond debt, headcount and other long term finance and planning, as well as the potential retirement of certain units. Accordingly, CWLP retained consultants to assist us in anticipating the individual and collective impacts and options. As a municipal utility, CWLP is subject to the Freedom of Information Act. As the ordinance for retaining Burns & McDonnell for a comprehensive environmental study became more widely known, CWLP received numerous requests for the Study, including from the Sierra Club, even before it was final, and therefore we made it available online at approximately the same time that CWLP made it available to our City Council.

The Board lacks evidence and authority to require financial assurance for closure/post-closure care of CCW impoundments

In its rule proposal, the Agency did not include a financial assurance requirement. PRN has proposed that the Board require financial assurance for closure and post-closure care, even though no evidence was presented that any owner/operator of an ash impoundment has failed to close or required state funds to close. Accordingly, the Board has no evidence to support such a mandate. More importantly, the Board has no authority to impose a financial assurance requirement for closure/post-closure care of CCW impoundments, because the General Assembly has not authorized it to do so.

It is a basic principle of administrative law that an agency of the state can only do what it is authorized to do. For example, the Board is specifically authorized to require financial assurance associated with landfill closure and post-closure care at Section 21.1 of the Act, 415 ILCS 5/21.1(b). A principle of statutory construction provides that where the legislature has identified one thing, it did not intend to include anything else. Expressio unius est exclusio alterius, roughly translates to: whatever is omitted is understood to be excluded. From this maxim of statutory construction, the Board is only authorized to establish financial assurance regulations for closure and post-closure care of landfills, but is not authorized to establish financial assurance regulations for closure and post/closure care of CCW or ash impoundments. Similarly, while PRN contends that the Board's authority lies in general statements in the Act to adopt rules that serve the Act's purposes, another rule of statutory construction provides that specific provisions (such as that in Section 21.1) control more generic provisions. Because the Act is silent with respect to the Board's authority to require financial assurance for closure/post-closure care of CCW impoundments, but specifically authorizes the Board to do so as to landfill closure/post-closure care, it is clear that the legislature does not intend and has not authorized the Board to require financial assurance for CCW impoundment management/care.

CWLP notes too that section 21.1(a) generally exempts units of local government like the City of Springfield, of which the Office of Public Utilities is a department, from the financial assurance requirement for landfills, subject to any appropriate regulations the Board adopts for units of local government, pursuant to section 21.1(b).

If the Board establishes a financial assurance requirement for closure and post-closure care of CCW impoundments, it should adopt language from the landfill regulations specifying the manner in which a municipality or unit of local government such as the City of Springfield and its Office of Public Utilities can provide financial assurance

While CWLP objects to the Board requiring financial assurance for ash impoundment care as stated above, should it decide otherwise, then it should adopt language from the landfill regulations which provide that a unit of local government can provide financial assurance in a different manner from private companies. The rationale for the distinction is because the City has the ability to increase taxes, increase rates or use its bond authority to provide necessary funds for closure/post-closure and/or for financial assurance for same. Therefore, acquiring and paying for a financial instrument such as those authorized for private companies in the landfill regulations, is unnecessary.

The landfill regulations of this Board provide two different procedures in which a unit of local government such as the City of Springfield (and its Office of Public Utilities or CWLP) may meet the necessary financial assurance requirement. One is the Local Government Financial Test at section 811.716; the other is through a Local Government Guarantee at section 811.717. 35 Ill.Adm.Code 811.716-717. CWLP again notes that authorization for the Board to adopt a regulation for a unit of local government to provide financial assurance for closure/post-closure care of landfills is specific at Section 21.1(b) of the Act, following language generally exempting a unit of local government from performance bonds or other such instruments in section 21.1(a) of the Act. Without such specific authorization authorizing the Board to adopt a regulation requiring a unit of local government to participate in providing financial assurance for CCW impoundment closure or post-closure care, CWLP contends the Board lacks authority to do so.

Conclusion

CWLP is also concerned with other provisions of the IEPA's and PRN's proposals, including, for example, the concern that our hydrogeologic study and groundwater monitoring plan will be required to be revisited under these regulations, requiring a duplication of cost and effort. Our groundwater monitoring plan has already been approved by the Agency, with monitoring wells already installed for sampling and analyses, which is well underway in establishing groundwater quality. Yet, CWLP sees some inconsistencies in the proposed section 841.165, which appears to protect previously approved investigations, plans and programs, with the newly proposed section 841.200 describing what constitutes adequate site characterization. Therefore, we have concerns with what the investigation, plan or program must address, including factors that heretofore have not been been required and have not been shown to be necessary. We are concerned, too, with the extent of additional public participation in the technical planning process (which potentially could add both cost and delay in the planning process alone). While CWLP understands the Agency's intent in adding section 841.165, extending public notification to additional submittals such as an alternative cause demonstration as suggested by PRN, or adding other public participation requirements the Agency must satisfy strains limited resources of the IEPA and this municipal utility, for little added environmental gain. CWLP asks the Board to consider whether such regulatory changes are necessary to fulfill the purposes of the Act or have been adequately supported in the record of this proceeding.

Wherefore, CWLP requests that the Board consider the final CCR rule due in December of this year prior to issuing any opinion and order in this rulemaking rule. Alternatively, CWLP asks the Board to

find that there is no support in this record for establishing substantive design criteria for CCW impoundments, for their closure or post-closure care or financial assurance for same, and specifically reject any preference or requirement for the removal of ash.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

By _____
One of its Attorneys

Dated: October 17, 2014
Christine G. Zeman
Regulatory Affairs Director
Office of Public Utilities
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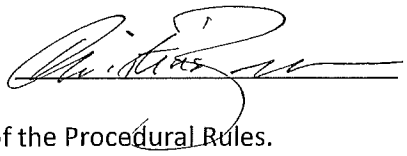
CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that I have served upon the individuals named on the foregoing Notice of Filing Service List a true and correct copy of the **POST-HEARING COMMENTS OF THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITES**, by First Class Mail, postage prepaid on October 17, 2014, from Springfield, Illinois.



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MOTION FOR LEAVE TO FILE INSTANTER AND RESPONSE IN SUPPORT
Of ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S MOTION
TO SEVER AND OPEN SUBDOCKET

Now comes the undersigned on behalf of The City of Springfield, Office of Public Utilities, d/b/a City Water, Light and Power (CWLP) and pursuant to 35 Illinois Administrative Code 101.500 (d) moves the hearing officer, Tim Fox, to grant CWLP's Motion for Leave to File Instanter the attached Response in Support of the Motion to Sever and Open Subdocket of the Illinois Environmental Protection Agency ("IEPA" or "Agency") and moves the Illinois Pollution Control Board to grant the Agency's said Motion. In support of this Motion for Leave to File Instanter and its Response in Support of the Agency's Motion to Sever and Open Subdocket, CWLP states:

I. In support of Motion for Leave to File Instanter

1. CWLP is a municipal utility participant in the rulemaking proceeding, who also participated in the Agency's outreach conducted between April 2013 and its filing of this rulemaking proposal on October 23, 2013.

2. – 14. CWLP adopts and incorporates as if set forth paragraphs 1 – 13 of Section I of the Agency's Motion to Sever and Open Subdocket filed June 11, 2014, ("Agency's Motion") as the Background and Procedural History of this Motion for Leave to File Instanter and Response in Support of the Agency's Motion.

15. Since the Agency's Motion was filed, two days of additional hearings were held by the Board, and yet another hearing is scheduled for July 24, 2014, but the Bond has yet to rule on the Agency's Motion. The Environmental Groups filed their Response to the Agency's Motion on or about June 17, 2014, and a Response in Support of IEPA's Motion to Sever and Open Subdocket was filed by Ameren Missouri and Ameren Energy Medina Valley Cogen, LLC, on or about June 26, 2014, ("Ameren's Response in Support").

16. While this Response is sought to be filed slightly beyond the fourteen days for a Response to a Motion allowed per Rule 101.500 (d) of the Board's Procedural Rules, no prejudice will result, including because the Board has yet to rule and an additional day of hearing is yet scheduled.

II. In support of the Agency's Motion

1 – 19. CWLP adopts and incorporates by reference paragraphs 1-19 of Section II of the Agency's Motion as if set forth here.

20 – 25. CWLP adopts and incorporates paragraphs, 3 – 8 of Ameren's Response in Support as if set forth here.

26. CWLP further asserts that the Environmental Group's Response itself provides additional reasons to grant the Agency's Motion. In its outreach and in this rulemaking, the Agency has repeatedly asserted that this rule making is to establish a process, while recognizing the unique site characteristics and conditions of ash impoundments across the state.

27. For example, in its Statement of Reasons, the Agency states: "This proposed rule sets forth a process to monitor CCW surface impoundments and groundwater, as well as a process for preventative response, corrective action and closure. The proposed rule allows each owner and operator to develop a site specific plan for groundwater monitoring, preventative response, corrective action and closure." (emphsais added). Statement of Reasons at 1. Yet, just one day prior to hearings set for May 14, 2014, the Environmental Groups filed an unsupported counterproposal that would establish substantive design criteria, financial assurance, and a requirement that owners or operators of units subject to Part 841 file a closure plan and post-closure care plan within one year of the effective date of these new rules.

28. As to the timing of the filing of closure and post-closure care plans, the Environmental Groups' Response acknowledge that even the "Subtitle D" coal combustion residual rate proposal of the U.S. EPA, utilities would have five (5) years to retrofit or close. (Environmental Groups' Response at Page 3; emphasis added.) The Environmental Groups provide scant explanation or evidentiary support to explain these counter proposals to the Agency's or to U.S. EPA's proposed rules.

29. Active ash impoundments like that at CWLP are an integral part of electric generation, such that the timing of closure and submittal of closure plans (and developing alternatives thereto) is a complex, time-consuming and costly process impacting operations. Moreover, in the case of CWLP, a municipal utility, contracting with experts and purchasing must adhere not only to the City's Code, but also to the Municipal Code of the State of Illinois, customarily requiring more time to develop, negotiate and pass ordinances approving of such contracts that would be required for potential closure and developing alternatives to the sluicing of ash from certain CWLP units, than is required for investor-owned utilities owned or operated by private-sector companies.

30. In addition, CWLP maintains its drinking water filter plant on the same site as its Dallman Power Station, and is permitted to utilize its ash impoundments for handling of the byproduct from the treatment process for its drinking water supply, which would be impacted by the potential closure of its ash impoundments. Exhibit 44 references this byproduct of the potable water treatment process in discussing alternatives for our "lime sludge" for example at page 714.

31. CWLP should have the opportunity to more fully present more comprehensive information to the Board in a more focused setting that a subdocket would allow on

design standards, financial assurance and the timing of the development and submittal of closure plans and post-closure care plans, which, as already addressed in the Agency's Motion and Ameren's Response, would not have a detrimental impact on human health or the environment as the Environmental Groups contend.

32. Opening a Subdocket may have the additional benefit of U.S. EPA finalizing its coal combustion residual rule, as referenced by participants at the hearing held June 18, 2014, is currently due in December 2014, which would enable consideration of U.S. EPA's actual standards rather than speculation on a proposal. Having actual standards of U.S. EPA to consider would clearly add efficiencies to the Board's consideration of any design standards at issue here.

For these reasons, CWLP request that the hearing officer grant CWLP's Motion for Leave to File Instanter the attached Response in Support of the Agency's Motion to Sever and Open Subdocket, and that the Board grant the Agency's Motion.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

By _____
One of its Attorneys

Dated: July 3, 2014

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CWLP Response Regarding

Use of the Environmental Compliance Study

This is written on behalf of City Water Light & Power (CWLP) to address questions raised in this hearing regarding the Burns & McDonnell (BMCD) study entitled "Report on the Environmental Compliance Study" for CWLP dated December 2013 (the BMCD Study). BMCD was commissioned to conduct a study of the various proposed, pending or recently enacted environmental regulations of the US EPA and Illinois EPA to enable CWLP to ascertain compliance options, such as whether to install additional compliance equipment or retire units based upon an economic comparison.

The BMCD study was prepared for CWLP's Major Projects Development department, utilizing, for example, site specific data, drawings, operational histories, equipment designs and permits particular to the units at the Dallman Power Station. I am the Major Projects Development Director for CWLP. I have been employed by CWLP since 1994, and have held this position for five (5) years. I have a Master degree in Business Administration and a Bachelor degree in Electrical Engineering from the University of Illinois, and am also a licensed Professional Engineer in Illinois.

During the IPCB hearing of June 18, 2014, it was suggested that the costs developed by BMCD pertaining to CWLP's ash ponds and coal combustion residuals (CCR) could be treated as universal and applied to any utility. The BMCD Study does not allow for that inference, as the costs were developed for CWLP's use, for its specific situations. BMCD's cost estimates were conducted at a high level with an accuracy of only thirty percent. It has been my experience and is commonly known in the industry that an engineer's estimate is usually low.

The BMCD Study did not include the costs to dispose of the CCR material at a private licensed landfill. The BMCD Study assumed that CWLP would develop and then transfer the material into our existing on-site permitted landfill and a newly constructed permitted landfill within a 10 mile radius of Dallman, in order to construct smaller lined ponds for ash and lime sludge. Lime sludge is a byproduct of CWLP's filter plant process for the potable water supply of the City of Springfield. CWLP is permitted to place the lime sludge from the filter plant process (located on the same site as the power plant units) into its ash ponds with the sluiced ash material. Once the smaller lined ponds were constructed, ash would be transferred from them to the nearby landfill in a dry state. The advantage is that the active wet ponds would be much smaller and reduce any associated risks.

This arrangement would have 15 years of capacity. For the last 5 years of the 20 year study, BMCD assumed that CWLP would be able to obtain the land and a permit for a future landfill within a 10 mile radius, although no land was identified as part of the study. The BMCD Study included costs to develop and line the existing and future landfills. It should be noted that in the future, purchasing land and constructing a new permitted landfill within the vicinity of Dallman as BMCD assumed for its cost estimates might prove too difficult in today's climate of ever changing environmental regulations.

BMCD also assumed that it would be acceptable to cap 60% of the existing ash ponds' area. This scenario assumes that the Subtitle D option would be selected by the US EPA in its final CCR Regulations

that have been proposed. Another option, Subtitle C, would require complete closure of the ash ponds in 5 years. Both options, however, allow the ash to remain in place with a properly designed cap.

The BMCD Study also did not include costs for dewatering the CCR material. BMCD assumed that CWLP would perform the dewatering internally. It was later determined that CWLP does not have the man power or equipment to properly perform the dewatering task.

Although CWLP is not involved with Santee Cooper's ash recycling efforts, it is CWLP's understanding from industry articles that the Santee Cooper ash is being sold to a private concrete company. The private company built a new facility to use this ash and will depend upon Santee Cooper's continued operation as is. Mr. Armstrong uses the Santee Cooper case to reference ash removal costs to justify closure of ash ponds in general when these costs generated by his referenced article are for selling the ash to a private company in which the two are not the same.

Thank you for the opportunity to provide these comments and clarification.

Submitted by: Douglas A. Brown, Major Projects Development Director, PE, CWLP.

Cost Estimates for Landfill Disposal of Ash Pond Material
City Water Light and Power
Springfield, Illinois

August, 2014

Prepared by Pat Metz

Pat Metz is a Licensed Illinois Professional Engineer employed by City Water, Light and Power (CWLP) which is a municipally owned utility serving approximately 150,000 customers in the Springfield area with drinking water and electricity. He has an Associate of Arts degree from Springfield College in Illinois and a Bachelor's degree in General Engineering from the University of Illinois in Champaign/Urbana. His employment includes 2 years with the Illinois Environmental Protection Agency in the Division of Water Pollution Control, 25 years with the Illinois Department of Public Health as an Environmental Engineer and 10 years with the CWLP's Office of Environmental Health and Safety. He has been licensed for 34 years as a professional engineer.

Mr. Metz's responsibilities with CWLP include assuring compliance with state and federal solid waste regulations. He annually completes EPA certified Hazardous Waste Management Training and Department of Transportation Hazardous Materials Transportation Training. He is a member of the Illinois Environmental Health Association.

There are several issues that will be involved if it is required to actually remove the material from the two CWLP ash ponds. These issues make it difficult to estimate an exact cost because of the many unknowns. Efforts will be made to find the most economical legal home for the material which could include returning some of the material to a coal mine, use of the lime sludge on gob piles, temporarily storing the material off site and lining the area and returning the material and other possible beneficial uses. This document will provide cost estimates for the material being disposed at either a hazardous or non-hazardous waste permitted EPA landfill. One scenario will assume that based on an analysis of the material it is eligible to be disposed in a Subtitle D landfill (municipal non-hazardous waste). Another scenario will provide a cost estimate for disposal at a Subtitle C landfill (hazardous waste) hundreds of miles away.

Some of the issues pertaining to this estimate include the following:

- The total volume of the material is not known so an estimate is made based on engineering calculations.

  Dallman Ash Pond – 1,000,000 cubic yards

  Lakeside Ash Pond – 1,080,000 cubic yards

  Approximately 50 % of the Lakeside Ash Pond contains lime sludge. This material is a byproduct of the utility's potable water treatment plant which is located on the same site as the Dallman Power Station. CWLP is permitted to place the Filter Plant lime sludge in the Lakeside Ash Pond. This material would be required to be removed and disposed in order to access the ash material.

The total estimated volume of material in the two ponds is **2,080,000 cubic yards**.

The weight of the lime sludge and ash may vary between 1.0 to 1.5 tons per cubic yard. Using a figure of 1.15 tons per cubic yard, this volume equates to **2,392,000 tons.**

For comparison purposes, the Sangamon Valley Landfill in Springfield accepted a total of 117,377 tons of material in 2013, so CWLP's estimated volume is more than 20 times the current rate of disposal at the landfill closest to CWLP. If we assume a truck will transport 20 tons, this volume represents approximately 120,000 truckloads.

- CWLP's coal supply is from the Viper Mine in Elkhart Illinois. Because the ash is from high sulfur coal, the Total Sulfates may exceed the limits established by some Subtitle D landfills. Even if the sulfates are below the acceptable level, some landfills limit the volume of sulfate containing material that they will accept annually. For example, the Sangamon Valley Landfill operators have indicated they will only allow 20,000 tons of this material per year, which would require 120 years to remove all of the material. Obviously, 120 years for removal and disposal presents an unacceptable scenario but exemplifies that mandatory removal requirements without further analysis of factors such as disposal cost, transportation distances and landfill capacities is problematic at best. A thorough analysis of the environmental risks and benefits should be conducted.

- For the purpose of this estimate, it will be assumed that the material will be required to be removed in a five year period. This will be difficult to accomplish because the material cannot be taken to any landfill unless it is dry to the extent that it passes the paint filter test. It will be a major effort to dewater the material by placing it in piles. The material naturally retains moisture. It is estimated that at least a 5 man crew would be needed. Because of CWLP's limited resources, it will be necessary to contract this work. The labor and equipment dewatering cost is estimated at **$10,000,000.**

- Besides the concern with the ability to dewater the material in a five year period, it is unreasonable to physically remove this much material in this period of time. Assuming 225 working days in five years at 8 hours a day, that results in 9,000 hours of activity. If 120,000 truckloads are required, that equates to every hour 13 trucks need to be loaded, travel to the landfill and unload. A ten year period would even require substantial efforts and coordination with the excavators, the trucking company and the landfill.

- It is estimated that the cost to load the trucks will be $3 to $5 per cubic yard for a minimum total of over **$6,240,000**.

Scenario #1
Disposal at Subtitle D Landfill

If CWLP is required to remove all of the material from the ash ponds, bids will be sought from Subtitle D landfills in the area. One or more samples will be analyzed to confirm the material can be accepted by the landfill. Below is a list from IEPA's *Illinois Landfill Projections of Disposal Capacity as of January 2014* that indicates the active landfills within 100 miles of Springfield. Of the 13, seven have sufficient remaining capacity to handle CWLP's volume. These are indicated in bold.

	Landfill	Remaining Tonnage	Location	Distance (miles)
1.	ADS/McLean County Landfill #2	347,000	Bloomington	68
2.	Advanced Disposal Services Valley View Landfill Inc.	6,861,000	Decatur	39
3.	**Clinton Landfill #3**	**15,560,000**	**Clinton**	**50**
4.	**Envirofil of Illinois Inc.**	**5,221,000**	**Macomb**	**95**
5.	**Five Oaks Recycling and Disposal Facility**	**6,465,000**	**Taylorville**	**25**
6.	Hickory Ridge Landfill	1,303,000	Baylis	77
7.	**Indian Creek Landfill No. 2**	**9,985,000**	**Hopedale**	**55**
8.	Litchfield-Hillsboro Landfill	939,000	Litchfield	48
9.	Milam Recycling and Disposal Facility	336,000	East St. Louis	93
10.	**North Milam Landfill**	**13,424,000**	**East St. Louis**	**93**
11.	Peoria City / County Landfill #2	1,588,000	Peoria	90
12.	**Roxana Landfill Inc.**	**7,286,000**	**Edwardsville**	**83**
13.	Sangamon Valley Landfill Inc.	1,633,000	Springfield	11

For estimate purposes, it will be assumed that the landfill is 60 miles away and the transportation cost is $200 per truckload, resulting in a total transportation cost of **$24,000,000**. An estimated disposal cost of $22.25 per ton (though other estimates up to $26 per ton were also quoted) will result in a total estimated disposal cost of at least **$57,850,000**. Combining the dewatering, loading, transportation and disposal cost, the total estimated cost of Scenario #1 is at least $**98,090,000**.

Scenario #2
Disposal at a Subtitle C Landfill

If the material is not eligible for disposal at a Subtitle D landfill, it would be required to be disposed at a Subtitle C landfill. There currently are only 21 hazardous waste landfills in the country. In 2010, CWLP prepared an estimate for having Coal Combustion Residual transported and disposed at a hazardous waste landfill. The lowest combined disposal and transportation cost then was $126 per ton. If all of the material needed to be disposed as hazardous waste, based on 2010 estimates this expense would be **$301,392,000**. In addition to this cost, the current estimated minimum cost of dewatering ($10,000,000) and estimated minimum for loading ($6,240,000) would need to be added, for a total cost of at least **$317,632,000.**

Conclusion

The above estimates indicate the costs range depending on the actual analysis of the material to be removed or regulatory mandates. Besides being excessively costly for no proven environmental gain, the environmental aspect of using such a large percentage of the limited remaining capacity of the landfills is a concern. The effect of multiple ash pond removals to landfills by utilities across Illinois would reduce landfill capacity that could increase the disposal cost for municipal waste disposal and necessitate the need for additional landfills. It is questionable if the existing environmental concerns for surface and groundwater warrant this effort.

Please note that the above costs only pertain to the removal of the existing materials in the ash ponds and do not include cost associated with developing an alternative for CWLP's current ash disposal. Also the volumes estimated are based on the current quantity which increases each day prior to initiation of removal, thus potentially increasing the total estimated cost. Contrary to comments made regarding removal costs to CWLP contained in the Burns & McDonnell Compliance Report (Exhibit #44 of the June 18, 2014 Illinois Pollution Control Board Hearing), these disposal costs are not reasonable.