

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) No. R20-19
) (Rulemaking-Land)
Standards for the Disposal)
of Coal Combustion)
Residuals in Surface)
Impoundments: Proposed new)
35 Ill. Adm. Code 845)

REPORT OF THE PROCEEDINGS held in the
above entitled cause before Hearing Officer
Vanessa Horton, called by the Illinois Pollution
Control Board, taken by Steven Brickey, CSR, RMR,
for the State of Illinois, 1021 North Grand Avenue
East, Springfield, Illinois, on the 13th day of
August, 2020, commencing at the hour of 8:02 a.m.

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E X H I B I T S

Marked for
Identification

25 Exhibit No. 10..... 56
 26 Exhibit No. 11..... 183

1 HEARING OFFICER HORTON: Okay. Good
2 morning. Vanessa Horton in the hearing room.
3 This is the third day of hearings for R20-19. In
4 the room here is Board member Brenda Carter.
5 We'll be beginning today with 850 -- I'm sorry.
6 845.550 with Ms. Bugel, but before we do that I
7 just wanted to mention again our goal is to finish
8 the proposed regulations today, but if we don't,
9 I'd like for all participants to consider this
10 morning and when we reconvene after the public
11 comment portion at around 1:45 today we'll have a
12 discussion. If we think we're going to finish
13 today, great. If not, we'll talk about dates for
14 an additional day of hearing during the week of
15 August 24th. So if you guys can think of dates
16 that would work for you, that would be great.

17 Okay. Moving on, Ms. Bugel, are
18 you ready now for 550?

19 MS. BUGEL: Yes.

20 HEARING OFFICER HORTON: Wonderful.
21 Please proceed.

22 MS. BUGEL: I'm going to try to move
23 this a little closer to me.

24 HEARING OFFICER HORTON: No problem.

1 MS. BUGEL: Can you hear me okay?

2 HEARING OFFICER HORTON: Yes.

3 MS. BUGEL: Okay. Referring to
4 Exhibit 2, response to Board Question 45, Page
5 165, IEPA refers to the annual consolidated report
6 and indicates that it will be available on the
7 operator's publicly available website.

8 Have you found that reference?

9 MS. ZEIVEL: This is the Agency.
10 Christine Zeivel. We're there.

11 MS. BUGEL: Okay. And I'm going to
12 refer to Mr. Dunaway's answers and, Mr. Dunaway,
13 given that through annual progress reports you
14 have -- or the Agency has found instances where
15 corrective action wasn't working, would you agree
16 that it's important for the Agency to review the
17 annual consolidated report?

18 MR. DUNAWAY: Lynn Dunaway. Yes.

19 MS. BUGEL: And given that
20 importance, would the Agency be willing to require
21 that permittees submit the annual consolidated
22 report directly to the Agency in addition to
23 making it available on the website?

24 MR. DUNAWAY: Lynn Dunaway. I would

1 expect that we would require an annual report be
2 submitted to us as part of a closure plan, but
3 there's certainly no reason it couldn't be
4 submitted directly to the Agency.

5 MS. BUGEL: Would the Agency be
6 willing to make that a provision in the rules?

7 MR. DUNAWAY: Lynn Dunaway. The
8 Agency wouldn't object.

9 MS. BUGEL: Okay. All right. I
10 have no further questions on this part.

11 HEARING OFFICER HORTON: Certainly.
12 And I'll just open it up generally. Does anyone
13 have any questions on 550? Any follow-up
14 questions? Ms. Williams?

15 MS. WILLIAMS: Deborah Williams,
16 City of Springfield. Just very briefly.

17 In Section A2, the annual
18 consolidated report requires submittal of several
19 documents that are required on a one-time basis
20 under the federal rule, but are being required
21 annually under the state rule.

22 I would just like some
23 clarification from the Agency that given that
24 these annual reports must be submitted well into

1 the future into closure and postclosure care, what
2 does the Agency envision the effort on the part of
3 the permittee to be to do these type of reports
4 once a unit is closed?

5 MR. DUNAWAY: Lynn Dunaway. The
6 expectation would be that if these reports had not
7 changed that go into the annual report that they
8 could be resubmitted. The Agency's issue is that
9 when we're reviewing an annual report we don't
10 want to have to go back and find a report that may
11 already have been sent the records and have to dig
12 that out if we need it for our review.

13 MS. WILLIAMS: So would you say the
14 Agency's view in this section was that they would
15 get the latest report?

16 MR. DUNAWAY: Lynn Dunaway. Yes, as
17 long as those reports have not changed such that
18 they should be updated.

19 MS. WILLIAMS: Thank you.

20 HEARING OFFICER HORTON: Any further
21 follow-up questions on 550? I see none in the
22 room or on Webex. So we'll move on to Subpart F
23 Groundwater Monitoring and Corrective Action.
24 Starting with 600 Groundwater Protection

1 Standards. I'll begin with our first questioners
2 Little Village Environmental Justice, ELPC,
3 Prairie Rivers and Sierra Club.

4 MS. BUGEL: Bear with me one moment,
5 please.

6 HEARING OFFICER HORTON: No problem.

7 MS. BUGEL: Ms. Cassel should have
8 questions on this for the environmental groups.

9 HEARING OFFICER HORTON: Ms. Cassel?

10 MS. CASSEL: Good morning. Can you
11 hear me?

12 HEARING OFFICER HORTON: Yes.

13 MS. CASSEL: I think I see a head
14 nod. Okay. So in the beginning, I have some
15 questions pertaining to Subpart F that are general
16 questions relating to the relationship of this
17 program that are follow-up clarifications from the
18 pre-filed answers just to -- just to clarify.

19 My first question is in response
20 to the Agency's answers to Little Village
21 Environmental Justice Organization, or LVEJO for
22 short. Question 13, this is also Exhibit 2 on
23 Page 9 where the Agency stated that an owner or
24 operator of a CCR surface impoundment, quote, who

1 is subject to Part 845 is not specifically
2 prohibited from applying for enrollment in the
3 Site Remediation Program or SRP. However, all of
4 the requirements of Part 845 would still be
5 applicable.

6 My questions are, first, whether
7 there are any requirements in the Site Remediation
8 Program that are inconsistent with the
9 requirements in the Coal Ash Pollution Prevention
10 Act or proposed 845?

11 MR. DUNAWAY: Lynn Dunaway. I don't
12 work in the SRP program so I really can't tell you
13 what conflicts there may be. In general
14 familiarity with it, I know that the requirements
15 under 845 are different. They don't have the
16 closure alternatives analysis. They don't have
17 the assessment corrective measures that I'm aware
18 of laid out like this in 845. So there are -- I'm
19 sure there are differences, but I'm not intimately
20 familiar with that program. So I can't answer
21 precisely.

22 MS. CASSEL: So just to clarify, any
23 requirement in 845 would govern -- would trump any
24 inconsistent requirements in the SRP?

1 MR. DUNAWAY: Lynn Dunaway. Yes,
2 that's my opinion.

3 MS. CASSEL: Okay. Is that -- would
4 the Agency be willing to include a provision in
5 Part 845 that specifies that to make it more than
6 an opinion, make it clear?

7 MR. DUNAWAY: Lynn Dunaway. I'm not
8 sure what kind of provision you're talking about.

9 MS. CASSEL: Simply a mandate that
10 were an owner or operator to apply for an SRP that
11 the provisions of Part 845 would govern any
12 inconsistent provision in the SRP program.

13 MR. DUNAWAY: I believe that the --
14 Lynn Dunaway. SRP is a different -- within a
15 different Board rule and we can't do that under --
16 without some sort of Agency consideration, Board
17 consideration. We can't do that. I can't make
18 any kind of commitments at this point.

19 MS. CASSEL: Okay. I appreciate
20 that, but it is your understanding that the SRP
21 would not trump any provisions of Part 845, it
22 would continue to apply to any CCR surface
23 impoundments covered by Part 845?

24 MR. DUNAWAY: Lynn Dunaway. Yes,

1 that's my interpretation of 845.

2 MS. CASSEL: Thank you. Now,
3 Mr. Dunaway, turning to your response to ELPC,
4 Prairie Rivers Network and Sierra Club's Question
5 6(e), which is on Page 27 of Exhibit 2. You had
6 stated that the Agency is not aware of any CCR
7 surface impoundments that have caused
8 contamination of groundwater that is connected
9 hydrologically to surface waters. I'm curious in
10 Illinois is it common for groundwater adjacent to
11 surface waters such as rivers to be hydrologically
12 connected to that surface water?

13 MR. DUNAWAY: Lynn Dunaway. Could
14 you repeat what question you're referring to
15 exactly?

16 MS. CASSEL: Sure. 6(e), Subpart
17 6(e), Page 27, excuse the paper shuffling, of
18 Exhibit 2.

19 MR. DUNAWAY: Lynn Dunaway. We
20 don't -- we have not studied the amount of
21 hydrologic connection which is why I gave a
22 negative answer for that.

23 MS. CASSEL: Okay. So for the
24 various different impoundments for which you have

1 all identified exceedances or violations of the
2 Part 620 standards, you haven't looked into at all
3 whether there's a hydrological connection between
4 that groundwater and any adjacent surface water?

5 MR. DUNAWAY: Lynn Dunaway. In
6 the -- we have required modeling which assesses or
7 estimates the likely flow of groundwater, core
8 surface water, and have had companies assess the
9 potential impact of groundwater on those surface
10 waters, but we don't have specifics about the
11 degree of connection between groundwater and
12 surface water.

13 MS. CASSEL: If the groundwater is
14 affecting the surface water, is it fair to assume
15 there is a hydrological connection between the
16 groundwater and the surface water?

17 MR. MORE: I'm going to object to
18 the line of questioning. I'm sorry. Josh More.

19 HEARING OFFICER HORTON: Sorry. We
20 were muted.

21 MR. MORE: I'm sorry. Josh More.
22 I'm going to object to the line of questioning to
23 the extent that the examiner is seeking testimony
24 from IEPA regarding the opportunity -- the

1 development of when a hydrogeologic connection
2 exists. The same examiner has brought an
3 enforcement action alleging that very fact pattern
4 in connection with one of the impoundments and
5 this is under dispute currently.

6 MS. CASSEL: Hearing Officer, I
7 would just respond that my questions are all
8 general questions. I'm attempting to understand
9 whether the Agency has looked into the
10 hydrological connections in general at all
11 impoundments in Illinois because they made a
12 statement in response to our question that they're
13 not aware of any hydrological -- any -- let me
14 quote it exactly.

15 The question was "Is the Agency
16 aware of any CCR surface impoundments that have
17 caused contamination of groundwater that is
18 hydrologically connected to surface water?" The
19 answer was no. So I'm trying to follow up and
20 understand what has been done to gain any such
21 understanding, if anything.

22 MR. MORE: No, the question actually
23 asked if a certain fact pattern exists, is that
24 representative of a connection? So that's not the

1 case. Furthermore, the rule is about regulating
2 CCR surface impoundments and then sets forth a
3 requirement for remediating groundwater
4 contamination associated with those CCR surface
5 impoundments. So the line of questioning seems to
6 be going beyond the scope and I'm not seeing the
7 connection to the underlying rule.

8 HEARING OFFICER HORTON: I am --
9 I'll overrule.

10 MS. CASSEL: May I respond, Hearing
11 Officer, to that?

12 HEARING OFFICER HORTON: Certainly.

13 MS. CASSEL: Just quickly. If we
14 understand that surface waters do, in fact, affect
15 groundwater, then that affects what type of
16 corrective action, what types of protection and
17 other relationships that the surface water -- that
18 might need to be considered in establishing these
19 rules with regard to corrective action for
20 groundwater.

21 MR. MORE: All of the points she
22 just made go to the implementation of the rule,
23 not whether the rule needs to be changed. Today,
24 we are here to identify what are the requirements

1 that should be imposed in connection with the
2 rule. You're getting at how should the rule be
3 implemented. That's a separate question.

4 MS. CASSEL: I'm getting at what
5 requirements need to go into the rule, Mr. More.

6 HEARING OFFICER HORTON: I will
7 overrule Mr. More's objection, but I caution
8 Ms. Cassel to please not go into specifics about
9 specific facilities or sites, but only in
10 generalities. Please proceed.

11 MS. CASSEL: Absolutely. I'm sorry.
12 I forgot if there was a question pending.

13 MR. DUNAWAY: I would -- you should
14 probably just go ahead and pick up your
15 questioning where you think you need to.

16 MS. CASSEL: Okay. So you had noted
17 that the modeling had been done I believe and then
18 the question was whether if there is an effect of
19 groundwater on surface water, when can it be
20 assumed there is some hydrological connection
21 there? I will -- I'll scratch that question. Let
22 me -- let me ask you're a geologist, sir, is that
23 correct?

24 MR. DUNAWAY: Lynn Dunaway. That's

1 correct.

2 MS. CASSEL: In your understanding,
3 whether you can answer for yourself or the Agency,
4 is it common for groundwater adjacent to surface
5 waters such as rivers to be hydrologically
6 connected to that surface water?

7 MR. MORE: I'm going to make the
8 same objection.

9 MR. DUNAWAY: I'm sorry. Go ahead.

10 HEARING OFFICER HORTON: Mr. More,
11 you're objecting on the same grounds?

12 MR. MORE: Same grounds.

13 HEARING OFFICER HORTON: Your
14 objection is noted and please continue,
15 Ms. Cassel.

16 MR. DUNAWAY: Lynn Dunaway. In
17 answer to Ms. Cassel's last question, groundwater
18 typically has some degree of connection to surface
19 water. However, that varies from site to site.

20 MS. CASSEL: If the groundwater is
21 hydrologically connected to surface water, can
22 changes in the elevation of the surface water
23 affect the elevation of the groundwater adjacent
24 to that?

1 MR. DUNAWAY: Lynn Dunaway. It can,
2 yes.

3 MS. CASSEL: If a river were to
4 flood, for example, would you expect the elevation
5 of adjacent hydrologically connected groundwater
6 to rise?

7 MR. DUNAWAY: Lynn Dunaway. It
8 depends on the duration of the flood event and the
9 current stage of the river and the height of the
10 groundwater relative to that surface waterbody.

11 MS. CASSEL: Okay. And do you have
12 a sense for the duration of floods generally in
13 Illinois, is that something that you've looked at?

14 MR. DUNAWAY: Lynn Dunaway. No, I
15 don't.

16 MS. CASSEL: Is it fair to say that
17 floods are generally less than a month in
18 duration?

19 MR. DUNAWAY: Lynn Dunaway. I -- I
20 don't -- I can't answer that question. I have not
21 studied duration of floods.

22 MS. CASSEL: Okay. So a
23 hydrological connection between groundwater and
24 surface water, could that also affect the

1 direction of groundwater flow?

2 MR. DUNAWAY: Could you repeat that,
3 please?

4 MS. CASSEL: Sure. If groundwater
5 is hydrologically connected to surface water and
6 there's a change in the elevation of the surface
7 water, could that also potentially affect the
8 direction of groundwater flow in that
9 hydrologically connected groundwater?

10 MR. DUNAWAY: Lynn Dunaway. It
11 could.

12 MS. CASSEL: So as an example during
13 floods, surface water could -- I'm sorry. Water
14 could flow in the direction of the groundwater
15 from the surface water and then once the flood
16 recedes, the flow direction might reverse from the
17 groundwater towards the surface water, is that
18 correct?

19 MR. DUNAWAY: Lynn Dunaway. Well,
20 to an extent. The groundwater would typically --
21 will flow from a higher elevation to a lower
22 elevation. If the duration of a flood is long
23 enough over a certain distance, that groundwater
24 flow will go the other direction as surface water

1 infiltrates into the ground, but that's limited by
2 the extent of the connection between those two
3 bodies.

4 MS. CASSEL: Are you aware of
5 whether any such type of flow reversal has ever
6 happened in Illinois?

7 MR. DUNAWAY: Lynn Dunaway. Based
8 on information that we've been provided, it does
9 occasionally happen.

10 MS. CASSEL: Mr. Dunaway, has the
11 Agency done any review of surface water levels in
12 floods to the hydro berms of CCR surface
13 impoundments in the state?

14 MR. DUNAWAY: Lynn Dunaway. No.

15 MS. CASSEL: In preparing the
16 proposed rule, did the Agency evaluate any
17 information concerning the severity and frequency
18 of floods in Illinois?

19 MR. DUNAWAY: Lynn Dunaway. The
20 duration of flood information was provided within
21 some closure plans as supporting evidence for the
22 modeling.

23 MS. CASSEL: Does that complete your
24 answer, sir?

1 MR. DUNAWAY: Yes.

2 MS. CASSEL: So beyond the closure
3 plans that provided information about that, has
4 the Agency done any other more general review of
5 the severity or frequency of flooding in Illinois?

6 MR. DUNAWAY: Lynn Dunaway. I
7 believe I've answered that, but, no, we have not.

8 MS. CASSEL: All right. That's all
9 the questions I have for Part 600 specifically.
10 Thank you.

11 HEARING OFFICER HORTON: Okay.
12 Thank you, Ms. Cassel. Midwest Generation, Part
13 600?

14 MS. GALE: Yes.

15 HEARING OFFICER HORTON: Okay.

16 MS. GALE: If I can get my
17 microphone. This is Kristen Gale on behalf of
18 Midwest Generation. I just have a follow up to
19 one of my own questions, but a follow up to
20 Ms. Cassel's questions.

21 The Agency is aware that many of
22 the waterbodies in Illinois are controlled by lock
23 and dam systems, right?

24 MR. DUNAWAY: Lynn Dunaway. Yes.

1 MS. GALE: And the Agency agrees
2 that these lock and dam systems keep the pool
3 elevations within individual reaches of streams
4 fairly constant, right?

5 MR. DUNAWAY: Dunaway. Could you
6 repeat that question? You were cutting out a bit.

7 MS. GALE: Sure. So the Agency
8 agrees that these lock and dam systems they keep
9 the pool elevations in each individual reach
10 fairly constant, right?

11 MR. DUNAWAY: Lynn Dunaway. Within
12 a certain range, it varies. It becomes different
13 when rivers are in flood stage.

14 MS. GALE: Okay. But part of the
15 idea of these systems is for flood control,
16 wouldn't you agree?

17 MR. DUNAWAY: Lynn Dunaway. My
18 belief is these -- the lock and dams are for
19 navigation.

20 MS. GALE: To maintain the constant
21 level for ease of navigation?

22 MR. DUNAWAY: Yes.

23 MS. GALE: Thank you. I want to
24 turn to Exhibit 3. The Agency's answers to

1 Midwest Generation's questions page --
2 technically, it's Page 21, but we'll have to flip
3 to 20. I'll let you get there.

4 MR. DUNAWAY: I'm there.

5 MS. GALE: The Agency's answer to
6 Question 55(b) is identical to its answer in
7 55(a), was that intentional?

8 MR. DUNAWAY: Lynn Dunaway. I don't
9 see a 55(c) in my book.

10 MS. GALE: I'm sorry. 55(b) as in
11 boy.

12 MR. DUNAWAY: Okay. Sorry. I
13 misunderstood.

14 MS. GALE: No problem.

15 MR. DUNAWAY: Lynn Dunaway. Yes,
16 they are.

17 MS. GALE: My question was, was it
18 intentional?

19 MR. DUNAWAY: Lynn Dunaway. No.

20 MS. GALE: Okay. So can the Agency
21 answer that question? And I guess I will read it
22 into the record.

23 Midwest Gen's question was
24 "Please identify a scientific study or citation

1 for your following statement on Page 4 of your
2 written testimony, quote, when exceedances are
3 common, the tiered monitoring approach is
4 unnecessary since there is a high-degree of
5 likelihood that the groundwater monitoring will
6 show exceedances of multiple parameters, end
7 quote."

8 MR. DUNAWAY: Lynn Dunaway. That
9 statement was based on personal experience from
10 seeing groundwater monitoring results from
11 utilities and power producers throughout the
12 state.

13 MS. GALE: So the Agency didn't
14 actually conduct a study, it's just your
15 observation?

16 MR. DUNAWAY: Lynn Dunaway. That's
17 correct.

18 MS. GALE: And so this is -- just to
19 clarify, this is your rejection of the U.S. EPA's
20 tiered approach to groundwater monitoring system?

21 MR. DUNAWAY: Lynn Dunaway. That's
22 my -- when you say tiered approach, do you mean a
23 detection that assessment monitoring --

24 MS. GALE: Let's back that up. Why

1 are you saying the tiered monitoring approach is
2 unnecessary? What do you say by tiered approach?

3 MR. DUNAWAY: Lynn Dunaway. That is
4 what I was referring to.

5 MS. GALE: So you're referring to
6 the Part 257 detection monitoring and then
7 depending on the results of the detection
8 monitoring, the assessment monitoring?

9 MR. DUNAWAY: Lynn Dunaway.
10 Correct.

11 MS. GALE: So you think that
12 approach is unnecessary?

13 MR. DUNAWAY: Lynn Dunaway.
14 Correct.

15 MS. GALE: Why? I mean, you say
16 here it's unnecessary because there is a high
17 degree of likelihood.

18 What is your -- what is your
19 basis of saying it's a high degree of likelihood
20 other than looking at some monitoring reports?
21 Have you studied the monitoring reports that are
22 going on under the federal Part 257?

23 MR. DUNAWAY: No, I have not studied
24 the Part 257 monitoring reports. I have seen the

1 reports that are turned into the Agency under Part
2 620.

3 MS. GALE: Okay. And what is a
4 degree of high likelihood based upon your personal
5 observations?

6 MR. DUNAWAY: Lynn Dunaway. I've
7 been involved in several cases in which previously
8 the Agency issued violation notices, exceedances
9 of Part 620, and in addition the closure plans
10 that I reviewed, I reviewed quite a few of them in
11 the state, showed exceedances of Part 620
12 standards.

13 MS. GALE: Okay. But you didn't
14 answer my question.

15 What is a degree of high
16 likelihood? Do you have a metric for that?

17 MR. DUNAWAY: Lynn Dunaway. Each
18 one of those begin with a result of exceedances
19 and my observation on those closure plans have
20 showed exceedances, therefore, it's a hundred
21 percent.

22 MS. GALE: I guess is this based
23 upon a statistical analysis? Did you do a -- you
24 know, any sort of statistical analysis of when you

1 came in or is this your personal observation, you
2 know, over the days and what you've concluded?

3 MR. DUNAWAY: No, it's not a
4 statistical analysis. It's an observation of
5 monitoring results.

6 MS. GALE: So the Agency -- just so
7 I'm clear, the Agency hasn't conducted a
8 statistical analysis on --

9 MS. ZEIVEL: The question has been
10 asked and answered.

11 MS. GALE: Okay. One last question.
12 And the Agency can't identify a scientific study
13 to support this statement?

14 MR. DUNAWAY: Lynn Dunaway. Would
15 you please repeat that?

16 MS. GALE: Sure. The Agency cannot
17 identify a scientific study to support this
18 statement?

19 MR. DUNAWAY: Lynn Dunaway. That's
20 correct.

21 MS. GALE: Thank you. Nothing
22 further.

23 HEARING OFFICER HORTON: Thank you.
24 City of Springfield, any questions on 600?

1 MS. WILLIAMS: (Negative nod.)

2 HEARING OFFICER HORTON: Dynegy,

3 600?

4 MR. MORE: Yes. Josh More. In
5 response to Question 48(a) from the Board on
6 Page's 167, 168 on Exhibit 2.

7 MR. DUNAWAY: I'm there.

8 MR. MORE: Thank you. The Agency
9 talks about a step-wise approach and then states
10 "For any constituent which has no GWPS, and after
11 the active life of a CCR surface impoundment as
12 defined by Part 845, the requirements of Part 620
13 are applicable." Is the inverse also true?

14 MR. DUNAWAY: Will you state the
15 inverse?

16 MR. MORE: Yeah, let's use an
17 example. Boron. There's a groundwater protection
18 standard under 845 for boron, correct?

19 MR. DUNAWAY: Right.

20 MR. MORE: And there's also a
21 corresponding groundwater quality standard under
22 Part 60 for boron, correct? I'm sorry. 620.

23 MR. DUNAWAY: Correct.

24 MR. MORE: So for boron, are the

1 corresponding Part 620 standards applicable during
2 the active life of a CCR surface impoundment?

3 MR. DUNAWAY: Lynn Dunaway. No,
4 they're not.

5 MR. MORE: Okay. And can you give
6 me an example of a constituent where the Part 620
7 standards would be applicable during the active
8 life of a CCR surface impoundment?

9 MR. DUNAWAY: An example would be
10 nitrate.

11 MR. MORE: Thank you. Can you point
12 to any language in Part 845 that sets forth this
13 concept that we just went over that is that for
14 constituents which have no groundwater protection
15 standard under Part 845 and after the active life
16 of a CCR surface impoundment is defined by Part
17 845, so the requirements of Part 620 are
18 applicable? So, in essence, the stepwise approach
19 that you've described in your testimony, where in
20 845 is that?

21 MR. DUNAWAY: 845.600(c).

22 MR. MORE: Would the Agency be
23 amenable to language to further clarify this
24 stepwise concept?

1 MR. DUNAWAY: Lynn Dunaway. That
2 concept would be very complicated as many are
3 probably aware between a graph, a pre-submitted
4 draft and a final draft submitted to the Board,
5 there was a subsection that indicated that the
6 more stringent of 620 and -- or 840 was
7 applicable. However, 620 means far more than just
8 standards.

9 HEARING OFFICER HORTON: Mr.
10 Dunaway, sorry, you cut out there just at the end.
11 I think you were at 620.

12 MR. DUNAWAY: I should probably
13 start over because I probably mentioned 620
14 several times. In 845, it used to be a section
15 stated the more stringent of 845 or 620 applied.
16 The Agency removed that subsection because 620 is
17 far more than just the extent of numerical
18 standards and it's difficult -- it would be very
19 difficult and confusing to make a comparison of
20 which is more stringent when you go beyond the
21 more simplistic numerical values that were
22 provided in 845 and 620 applies now. Those
23 provisions that are not already -- that are not in
24 845 would continue to apply. So it would be a

1 very tricky and complex explanation put in there.

2 HEARING OFFICER HORTON: Before I
3 jump in. Is it possible to move the speaker in
4 the Agency's room a little bit? We're getting a
5 little bit of feedback on Mr. Dunaway.

6 MS. ZEIVEL: Is there a speaker on
7 this one?

8 HEARING OFFICER HORTON: Thank you.

9 MR. MORE: Thank you for that
10 answer, Mr. Dunaway. I agree that prior section
11 you mentioned that you considered created
12 confusion. I think the way you've described it in
13 your testimony is actually not very confusing. In
14 fact, the nitrate and the boron were clear
15 examples. We may take a stab at proposing
16 something that is almost identical to what you've
17 written here. I think what you've written in your
18 testimony makes it clear those constituents for
19 which there is a Part 620 standard and not a Part
20 845 standard apply during the active life and then
21 all Part 620 standards where there is a
22 corresponding 845 standard apply at the end of the
23 active life, isn't that your intent here?

24 MR. DUNAWAY: Lynn Dunaway. I

1 believe that's the goal we're going towards.
2 Obviously if you suggested that, we would review
3 it and give our opinion on it.

4 MR. MORE: Thank you. How are you
5 defining the active life of a CCR surface
6 impoundment? What do you mean by that?

7 MR. DUNAWAY: Lynn Dunaway. It's
8 defined in Part 845.120.

9 MR. MORE: Okay. Thank you. I must
10 have missed that. I have no further questions.

11 HEARING OFFICER HORTON: Okay. I'd
12 just like to take a one minute -- if Shannon
13 can -- it will just be literally a one-minute
14 break. We have to minimize something on our video
15 screen here in the hearing room.

16 Okay. We're back. We're at
17 Ms. Brown for IERG. Do you have questions on Part
18 600?

19 MS. BROWN: Melissa Brown. No, we
20 do not.

21 HEARING OFFICER HORTON: Thank you.
22 Ameren, Part 600?

23 MS. MANNING: No, we do not. Thank
24 you.

1 HEARING OFFICER HORTON: Thank you.

2 AG's Office, Part 600?

3 MR. SYLVESTER: Steve Sylvester. We
4 don't have any follow-up questions.

5 HEARING OFFICER HORTON: Mr. Rao,
6 Ms. Brown from the Board on 600?

7 MR. RAO: I have a few follow-up
8 questions on 600. Can you hear me?

9 HEARING OFFICER HORTON: Yes, we
10 can.

11 MR. RAO: Okay. I'm going to the
12 Board's Question 47(c) on Page 167. We asked the
13 Agency why they're not proposed groundwater
14 protection standards for calcium for existing and
15 inactive CCR surface impoundments for new surface
16 impoundments and the lateral expansion 845.600
17 states that the background concentration will be
18 the groundwater protection standards for calcium,
19 but similar standards was not proposed for
20 existing and inactive facility.

21 Can you explain what the
22 rationale is for not having a groundwater
23 protection standard for calcium for existing and
24 inactive facility?

1 MR. DUNAWAY: Lynn Dunaway. Yes.
2 It comes from U.S. EPA plus also -- I'll let the
3 Agency respond. I will tell you it says 658
4 specifies that calcium must be monitored by all
5 CCR surface impoundments subject to Subpart F.
6 The Agency has intended for owners and operators
7 of CCR surface impoundments to monitor calcium as
8 a general groundwater chemistry parameter.
9 Discussion with Agency's office of toxicity and
10 assessment reveals that the specified
11 toxicological references it uses to establish
12 groundwater standards and cleanup objectives -- it
13 should say objectives -- had no toxicological data
14 for calcium. Hence, calcium does not have a
15 numerical standard in Part 620 and it is likely
16 that that's also the likely reason that calcium
17 does not have an MCL and U.S. EPA did not
18 calculate a risk-based value under Part 257.

19 Further, U.S. EPA included
20 calcium in Appendix 3 of Part 257 as a general
21 indicator of CCR leachate and because it is
22 associated with arsenic leaching and that
23 reference is at 80 CFR or -- I'm sorry. 80 Fed
24 Reg 21403 from April 17, 2015. Section 845.600

1 establishes an arsenic groundwater protection
2 standard and Section 845.650 requires routine
3 monitoring of arsenic in addition to calcium.
4 Therefore, the Agency didn't believe that a
5 groundwater protection standard for calcium was
6 necessary since it was a surrogate for arsenic.
7 It is, in fact, arsenic being monitored.

8 MR. RAO: If that's the case, why
9 have you proposed the groundwater protection
10 standard for the new facility?

11 MR. DUNAWAY: Because it's a
12 monitored parameter. They will have to establish
13 a background.

14 MR. RAO: Don't they have to do the
15 same thing for the existing facilities, too,
16 monitor the parameter?

17 MR. DUNAWAY: They do, but that's
18 not the groundwater protection standard.

19 MR. RAO: I know. If they're
20 monitoring for it and establishing background, why
21 don't you want to make it a groundwater protection
22 standard?

23 MR. DUNAWAY: There are no
24 health-based values that we would associate with

1 the groundwater protection standard which would be
2 protective of human health and the environment.

3 MR. RAO: I understand that. I'm
4 just asking why new facilities it's okay to have a
5 groundwater protection standard for calcium and
6 not for existing?

7 MR. DUNAWAY: Because for new ones
8 the background is the groundwater protection
9 standard.

10 MR. RAO: And for under
11 845.600(a)(2), you say "For constituents with a
12 background concentration higher than levels
13 clarified in (a)(1), background must be the
14 groundwater protection standard for new and
15 existing facilities."

16 HEARING OFFICER HORTON: Anand, can
17 you just repeat? We didn't hear that.

18 MR. RAO: Yeah. I was looking at
19 the 845.600(a)(2) where it cites for existing
20 facilities whenever levels are higher than the
21 groundwater protection standard background will be
22 the standard for that?

23 MR. DUNAWAY: That's correct.

24 MR. RAO: And all I'm saying is if

1 they are monitoring for calcium, if you have the
2 data, calcium is a well-known indicator of leaking
3 from CCR surface impoundments. So why not have a
4 groundwater protection standard for that
5 constituent? Arsenic is a good surrogate for
6 calcium.

7 Is there a need to monitor
8 calcium for the existing facility?

9 MR. DUNAWAY: Lynn Dunaway. Calcium
10 is a surrogate for arsenic. However, this -- this
11 is a function of the detection in Part 257 where
12 they had the detection monitoring, which included
13 calcium and the assessment monitoring, which does
14 not include calcium and those ground -- the Part
15 257 only established numerical health-based
16 numbers for the part for the Appendix 4
17 constituents.

18 In 845, we have established
19 health and environmentally-based groundwater
20 protection standards for all of what were Appendix
21 3 and Appendix 4 with the exception of calcium,
22 which has no health-based numbers that we could --
23 that we would use. In establishing our
24 groundwater standards, we also looked at other

1 sources of information such as irrigation,
2 livestock watering. Calcium does not impact any
3 of those. So, therefore, there doesn't appear to
4 be any rest for calcium. It is simply a surrogate
5 under 257. Since we have monitoring all the time
6 for arsenic, we don't need a surrogate for
7 arsenic.

8 MR. RAO: So what is the purpose for
9 monitoring calcium for existing facilities?

10 MR. DUNAWAY: The purpose is so we
11 are as comprehensive as Part 257 because that is
12 mandated under 22.59.

13 MR. RAO: Okay. I see now. So
14 you're just putting it in there because 257
15 requires that and your proposal does not have the
16 detection and assessment monitoring steps, I think
17 you go directly to corrective action, is that
18 correct?

19 MR. DUNAWAY: Correct, with the
20 caveat that they can make any demonstration of an
21 alternative source.

22 MR. RAO: Okay. I have one more
23 clarification question. This relates to Board's
24 Question 48 and also follows up on Mr. More's

1 questioning about applicability of Part 620 during
2 the life of the CCR surface impoundment.

3 In your response to the Board's
4 question, Question 48, you indicated that Part 620
5 will apply during the life of the CCR surface
6 impoundment, is that correct?

7 MR. DUNAWAY: Lynn Dunaway. It does
8 apply except for those constituents that have a
9 groundwater protection standard under Part 845 in
10 calcium, but there is no groundwater standard for
11 calcium. So that's sort of a moot point.

12 MR. RAO: Okay. And also I think
13 you indicated that for any constituents for which
14 there is a groundwater protection standard under
15 Part 845 the owner or operator cannot seek an
16 alternative groundwater standard under Part 620
17 until postclosure is complete, is that correct?

18 MR. DUNAWAY: That's correct.

19 MR. RAO: Okay. That's all I have.
20 Thank you.

21 HEARING OFFICER HORTON: Okay.
22 Thank you. Any follow-up questions on 600? I'm
23 sorry. Any follow-up questions on 600? Okay.

24 Moving on to 610 General

1 Requirements. The first set of questioners,
2 Ms. Cassel, do you have questions on 610?

3 MS. CASSEL: I do. Can you hear me?
4 I actually do have a follow up for 600 as well.

5 HEARING OFFICER HORTON: Yes, we can
6 hear you.

7 MS. CASSEL: Okay. Great. Just one
8 follow up. With regard to the locks and dams that
9 were mentioned by Ms. Gale, are those locks and
10 dams on -- you know, adjacent to the -- does the
11 Agency know whether such lock and dams are
12 adjacent to every surface impoundment in Illinois?

13 MR. DUNAWAY: Lynn Dunaway. I don't
14 know which locks and dams may be adjacent to
15 surface impoundments.

16 MS. CASSEL: Do you know if locks
17 and dams are on every river on which there is a
18 surface impoundment in Illinois?

19 MR. DUNAWAY: Lynn Dunaway. I don't
20 know for sure.

21 MS. CASSEL: Are there any rivers or
22 lakes that you know for sure there is not a lock
23 or dam?

24 MR. DUNAWAY: Lynn Dunaway. I don't

1 believe there are locks and dams on the Wabash
2 River and I'm not sure about their proximity on
3 the Ohio River relative to where it passes
4 Illinois.

5 MS. CASSEL: With others, you're not
6 certain, is that accurate?

7 MR. DUNAWAY: I'm uncertain about
8 the Ohio River.

9 MS. CASSEL: Are there any other
10 rivers on which you're uncertain as to whether
11 there's a lock and dam?

12 MR. DUNAWAY: I don't believe
13 there's locks and dams on the Kaskaskia and I
14 really don't know of any others.

15 MS. CASSEL: Okay. Thank you very
16 much.

17 So, yeah, I do have questions
18 about 610 if I should just move directly to those.

19 HEARING OFFICER HORTON: Yes, please
20 do.

21 MS. CASSEL: Okay. So I have a
22 question about 610(c). Sorry. Just gathering my
23 materials here. Proposed Section 610(c) relates
24 to the release of CCR surface impoundments notes

1 that in the event of a release, the owner or
2 operator must immediately take all necessary
3 measures to control all sources of the release so
4 as to reduce or eliminate to the maximum extent
5 feasible further release of the contaminates into
6 the environment. The owner or the operator of the
7 CCR must comply with all applicable requirements
8 in Section 845.660, 670 and 680.

9 So, first, with regards to the
10 definition of release, the Agency stated in
11 response to Board Question 49(b), which is on --
12 sorry. We were just there -- Page 20 -- sorry.
13 168 of Exhibit 2.

14 The Agency stated that it
15 proposes to define release for purposes of 845 as,
16 quote, leaching of dissolved constituents at a
17 concentration above the applicable groundwater
18 protection standard as mentioned at a CCR surface
19 impoundments point of compliance. That's the
20 first part of the definition. End quote.

21 Or physical movement of CCR
22 except subject to an Agency's approved closure or
23 corrective action from inside the CCR surface
24 impoundment to the outside of the CCR surface

1 impoundment.

2 Can you help me understand
3 whether the first component of this definition,
4 the leaching of dissolved constituents at
5 concentrations above the applicable groundwater
6 standards as measured at a CCR surface
7 impoundments point of compliance differs from the
8 groundwater monitoring and corrective action
9 mandates under Subpart F?

10 MR. DUNAWAY: Is there -- Lynn
11 Dunaway.

12 Is there a specific section in
13 Subpart F that you are questioning conflict with?

14 MS. CASSEL: Well, I guess I'm
15 trying to understand the concept of defining
16 release in a way that seems to encompass sort of
17 the entire scheme under groundwater monitoring,
18 which then triggers corrective action.

19 Isn't it the same exceedance of
20 a groundwater protection standard that leads to
21 the cascade of requirements in Subpart F for
22 evaluating effective -- effective corrective
23 measures, potentially an alternative source
24 demonstration and the various corrective action

1 requirements?

2 MR. DUNAWAY: Lynn Dunaway. To some
3 degree, but you also have to take into account the
4 second half of the definition of release. Only
5 part of it is dissolved constituents. The second
6 part would be some sort of catastrophic failure or
7 an erosional failure or CCR materials actually
8 wash down outside the CCR surface impoundments.
9 So the corrective actions apply in both instances.

10 MS. CASSEL: Sure. But what -- I
11 guess where I'm seeing those sort of redundancies
12 potentially is in the first part of the
13 definition, not in the second part, not with
14 regard to the physical release of CCR, but rather
15 with the leaching of constituents at
16 concentrations above the applicable groundwater
17 standards.

18 If that is found, rather than
19 taking immediate action subject to -- I'm sorry --
20 pursuant to 610(b), shouldn't the owner or
21 operator be pursuing assessment of corrective
22 measures from the various requirements under
23 Subpart F?

24 MR. DUNAWAY: Lynn Dunaway. The

1 exceedance of groundwater protection standards
2 with the caveat of making an alternative source
3 demonstration does trigger the corrective action.
4 However, you also have to consider that when a
5 corrective action is undertaken, 845 applies every
6 place within the rule that is identified. So,
7 therefore, you've got an additional area that --
8 where that -- where that release may have taken
9 place. So -- and you have to remediate all that
10 with your corrective action.

11 MS. CASSEL: So I guess I'm not an
12 owner or operator obviously, nor do I represent
13 one, but seeing how this would play out I'm an
14 owner/operator, I'm conducting monitoring
15 according to the requirements of Subpart F, I come
16 up with an exceedance and then confirm that
17 exceedance for one of the constituents in which
18 there is a groundwater protection standard.

19 Is my next action to, quote,
20 immediately take all necessary measures to control
21 all sources of the release so as to reduce or
22 eliminate to the maximum extent feasible further
23 releases of contaminants into the environment as
24 provided in 610(d) or is my next step to follow

1 the requirements set out in Subpart F for the
2 triggering of corrective or the various
3 assessments that take place once an exceedance is
4 confirmed?

5 MR. DUNAWAY: Lynn Dunaway. Once
6 your exceedance is confirmed, your -- you need to
7 proceed with the requirements under corrective
8 action.

9 MS. CASSEL: Maybe what is tripping
10 me up here is the word immediately take all
11 necessary measures.

12 Are there any measures that are
13 taken under part -- I'm sorry.

14 Were you done with your answer?
15 I apologize.

16 MR. DUNAWAY: Would you please
17 repeat your last question, not if I was finished,
18 but before that.

19 MS. CASSEL: I believe it was simply
20 just trying to understand the course of events
21 that would unfold and then I explained that what
22 is confusing me, I guess what I'm having trouble
23 with is the mandate to the owner or operator to
24 immediately take all necessary measures to control

1 all sources of the release so as to reduce or
2 eliminate the maximum extent feasible further
3 sources of -- further releases of contaminates as
4 provided in 610(d). That, to me, seems like a
5 different directive than completing the various
6 assessments and whatnot before any corrective
7 action is taken on the remainder of Subpart S.

8 MR. DUNAWAY: Okay. Lynn Dunaway.
9 D where it says independent release as we
10 discussed that may be talking about catastrophic
11 failure and need to take steps to stop that, but
12 in the event of the dissolved constituents their
13 immediate action would be to take a resample as
14 required under the corrective action.

15 If that is confirmed under
16 that -- if that resample confirms the detection,
17 then they launch into -- I can't lay my finger on
18 the section at the moment, but they have to assess
19 the -- they have to characterize the nature and
20 extent of the release and within 90 days they have
21 to begin their corrective measures.

22 MS. CASSEL: So if there isn't a
23 circumstance in which the confirmation of an
24 exceedance of a groundwater protection standard

1 would lead to an immediate measure to control all
2 sources of the release, that is not the full set
3 of mandates under the assessment and corrective
4 measures, why would that instance -- why would
5 that circumstance be included within the
6 definition of release as the Agency indicated in
7 response to the Board's Question 49?

8 MR. DUNAWAY: Lynn Dunaway. If I'm
9 following here, we've got part of this and I'm not
10 sure if this is part of the confusion.

11 Part of this is an artifact of
12 being consistent with Part 257 where we have
13 considered not only the dissolved constituent
14 release, but also the material release and another
15 part of this is that release is used -- the term
16 is used in other places within Part 845 in
17 addition to corrective action.

18 So we -- when there is a release
19 detected, D, the part that is giving you the first
20 concern, the immediate action in the event of
21 dissolved constituents is that resample. If that
22 resample is confirmed, then the owner/operator
23 must either make an alternative demonstration
24 within 60 days or they start their corrective

1 measures within 90.

2 HEARING OFFICER HORTON: Sorry.

3 This is Vanessa Horton in the hearing room. I'm
4 sorry to interrupt the flow, and this is not
5 necessarily a natural stopping point, but our
6 computer here that displays the screen is again
7 giving us a hard restart.

8 So if we can take a ten-minute
9 break and we'll resume with Ms. Cassel's questions
10 on this section. Thank you very much.

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

14 HEARING OFFICER HORTON: Hello,
15 everybody. We're back in the hearing room. Our
16 computer has successfully re-updated for about the
17 tenth time. We'll continue then with Ms. Cassel's
18 questions on 610. Please continue if the Agency
19 is ready.

20 MR. DUNAWAY: If you can give us one
21 second, our attorneys aren't back yet.

22 HEARING OFFICER HORTON: Oh, of
23 course.

24 MR. DUNAWAY: Okay. We have one

1 attorney. We can proceed. No, they're both back.

2 HEARING OFFICER HORTON: Sounds
3 good. And just as a reminder, we're going to be
4 breaking for lunch at 10:50, five zero, because of
5 the Board meeting at 11:00 and we'll reconvene at
6 noon. Please proceed, Ms. Cassel.

7 MS. CASSEL: Can you hear me?

8 HEARING OFFICER HORTON: Yes.

9 MS. CASSEL: Am I audible? Yes.

10 Okay. So I guess my -- sorry. Hold on. I guess
11 what is shifting up is my understanding the
12 mandate to immediately take all necessary measures
13 to control all sources of the release so as to
14 reduce or eliminate to the maximum extent feasible
15 for the releases.

16 Are there circumstances in which
17 the corrective action requirements set out in
18 Subpart F with all the assessments and the
19 mandates for a corrective action permit would not
20 be required in order to comply with Section
21 845.610(b)?

22 MR. DUNAWAY: Lynn Dunaway. None
23 that I can think of.

24 MS. CASSEL: So immediately means

1 immediately do all the things you would have to do
2 to comply with the entirety of 610(b) including
3 the assessment of corrective measures, the
4 corrective measures permitting, even if there's a
5 spill from CCR unit?

6 HEARING OFFICER HORTON: Ms. Cassel,
7 I'm sorry to interrupt. The court reporter didn't
8 catch that.

9 THE COURT REPORTER: Can they do,
10 like, Army lingo?

11 HEARING OFFICER HORTON: Whenever
12 someone is adding a letter at the end of the reg
13 or whatever you're talking about C, B, D, it's
14 hard, you know, just through Webex for the court
15 reporter to hear exactly what letter that is. So
16 he's suggesting Army lingo perhaps or, you know, C
17 as in cat. Please proceed.

18 MR. DUNAWAY: Would you repeat your
19 question, please?

20 MS. CASSEL: Sure. So I guess is
21 there -- is there a circumstance, even if there is
22 a spill of CCR, for example, where there would be
23 steps taken to address the release that do not go
24 through the full set of mandates under Subpart F

1 for corrective action?

2 MR. DUNAWAY: I don't recall the
3 exact subsection. There is a requirement that
4 operators take actions immediately prior to
5 submitting a formal corrective action assessment
6 which would be in those circumstances.

7 Let's say, for example, we had
8 major rain and it eroded the embankment of the
9 surface impoundments and CCR was flowing out of
10 it. We don't expect them to take three months to
11 do a corrective action assessment while that
12 continues to pour outside? We expect them to go
13 outside and throw some dirt in that hole and to
14 keep and stop that, then come back and see what
15 they really need to do to cleanup what has -- what
16 may have spilled out and get a full assessment of
17 what really needs to be done there. And I don't
18 know that subsection off the top of my head.
19 However, I do know there is a requirement and
20 believe someone asked a question about it.

21 MS. CASSEL: So just to make sure.
22 That would be the only circumstance or type of
23 circumstance in which the mandate to immediately
24 take necessary measures to control source of

1 releases would sort of require the owner or
2 operator to do something that bypasses effectively
3 or at least initially bypass the corrective action
4 mandate under Subpart F?

5 MR. DUNAWAY: Lynn Dunaway. Other
6 than those exemptions listed in 845.170, I believe
7 that is the case.

8 MR. MORE: Okay.

9 MS. CASSEL: Okay. Would the Agency
10 be willing to entertain possible language needed
11 to clarify that groundwater releases would in all
12 instances be subject to the full suite of
13 requirements under Subpart F whereas there might
14 be instances of physical releases of CCR which are
15 immediate emergencies in which there could be
16 actions taken prior to the full settlement of the
17 remainder of the Subpart F corrective action
18 mandates?

19 MR. DUNAWAY: Lynn Dunaway. I
20 believe our regulation is sufficient, that it
21 adequately addresses the needs for corrective
22 action.

23 MS. CASSEL: Right. What I'm asking
24 for is classification -- consideration of

1 classification as to when immediate actions could
2 be taken that don't -- aren't, you know, subject
3 to the full corrective action permitting mandate
4 such as the footings in the leak that you
5 indicated a few minutes ago.

6 MR. DUNAWAY: Lynn Dunaway. I
7 believe we do have a section that requires owners
8 and operators to take appropriate action. I think
9 any kind of specificity would tend to limit what
10 actions they may take whereas whether they take
11 interim actions to address those releases gives us
12 the ability to tell them to -- us being the Agency
13 to instruct them to take whatever action is needed
14 as opposed to having a list that may have been
15 limited. So we don't know exactly what -- what
16 our problem may be or the source of the problem.

17 MS. CASSEL: Is there any further
18 clarity by changing the proposed definition of
19 release to only include those instances that
20 involve releases not to groundwater, so physical
21 releases of CCR to land surface waters, collapses
22 of impoundments, more -- more came to the second
23 component of the definition of release that you
24 included in your response to the Board Question

1 49(c)?

2 MR. DUNAWAY: Lynn Dunaway. The
3 definition of release needs to encompass both
4 actions because we want both addressed when
5 there's a release. Even as a catastrophic release
6 of materials may impact groundwater because there
7 would be leachate going out with that material
8 which would potentially infiltrate the groundwater
9 and cause an area of contamination that would
10 ultimately need to be addressed and because of the
11 use of the word release in other areas, we don't
12 want to divide out that definition.

13 MS. CASSEL: Can I ask -- let me
14 bring up the environmental groups Exhibit 3 which
15 is the U.S. EPA website concerning the
16 relationship between RCRA, the CCR rule and the
17 Clean Water Act. And, if we could, I'd like to
18 enter Exhibit 3 into evidence.

19 HEARING OFFICER HORTON: One second
20 while we pull that up.

21 MS. CASSEL: Okay.

22 HEARING OFFICER HORTON: I have it.
23 Exhibit 3 U.S. EPA's web page relationship between
24 RCRA and CCR rule. That will be Exhibit 9. I'm

1 so sorry. Exhibit 10.

2 (Document marked as Hearing
3 Exhibit No. 10 for
4 identification.)

5 MS. CASSEL: Okay. I'd like to
6 direct the Agency's attention to the fourth page
7 of this PDF document, which, again, is a PDF of a
8 website. So there's a sub-header on the beginning
9 of that fourth page entitled Releases and -- are
10 entitled Releases and the Requirement to Respond.

11 Has the Agency reviewed this
12 website impact?

13 MR. DUNAWAY: Lynn Dunaway. No.

14 MS. CASSEL: So was the Agency
15 familiar with the recommendations or EPA's
16 understanding, U.S. EPA I should clarify,
17 understanding that immediately set the requirement
18 that a facility amend corrective action, quote,
19 immediately upon detection of a release from a CCR
20 unit, end quote, applies only to non --
21 non-groundwater releases and I'm quoting from the
22 first paragraph under Subpart A there?

23 MR. DUNAWAY: Lynn Dunaway. You
24 know, with a brief scan of this, it appears that

1 U.S. EPA is saying that -- when they're talking
2 about the releases, they're only talking about
3 released material. However, the Agency prefers to
4 be more protective and require corrective action
5 not only for released material, but also
6 groundwater releases.

7 MS. CASSEL: So the Agency
8 understands that its subpart -- I'm sorry.
9 Subpart 845.610(d), D as in dog, allows for
10 immediate corrective action in certain very
11 limited sort of emergency circumstances, but other
12 than that all other corrective action would have
13 to go through the whole corrective action process
14 in Subpart F, is that -- is that a correct
15 discussion?

16 MR. DUNAWAY: Lynn Dunaway. The
17 fact that they may have to do immediate actions
18 does not take them out of the long-term actions.

19 MS. CASSEL: Understood. My point
20 was trying to understand when any immediate action
21 would bypass the full corrective action process,
22 including the permitting process.

23 MR. DUNAWAY: Lynn Dunaway. I think
24 the word bypasses is not correct. There would

1 be -- there are immediate actions required before
2 a full assessment process, but I don't believe
3 it's a bypass of the full assessment process
4 because the full assessment process will still be
5 required.

6 MS. CASSEL: Okay. Thank you very
7 much. Let me -- I guess one more question on that
8 point and that is, would the permittee be allowed
9 to take any sort of emergency measure that are not
10 bypassing the corrective action process, but
11 simply preceding the corrective action process
12 without obtaining Agency approval?

13 MR. DUNAWAY: Lynn Dunaway. I
14 expect in an emergency situation like that they
15 would -- it would probably be verbal approval and
16 if they needed -- I expect if there was a
17 requirement for some sort of permitting, it would
18 be as-built so it can be done as quickly and
19 efficiently as possible.

20 MS. CASSEL: Would the Agency
21 provide for public opportunities for public input?

22 MR. DUNAWAY: Lynn Dunaway. No, not
23 in an emergency event because you want to get it
24 stopped. You don't want to give people 30 days to

1 review whether or not they want to put dirt in
2 that hole that opened up.

3 MS. CASSEL: But it would be limited
4 to those instances to abate the emergency in which
5 that would be the case?

6 MR. DUNAWAY: Lynn Dunaway. Yes,
7 that is our intent.

8 MS. CASSEL: All right. I think
9 those are all my questions with regard to 845.610.
10 Thanks very much.

11 HEARING OFFICER HORTON: Ms. Gale,
12 any questions on 610?

13 MS. GALE: Yes, just one brief one.
14 Can we go to Exhibit 3?

15 HEARING OFFICER HORTON: Could you
16 put the microphone --

17 MS. GALE: Oh, the microphone.
18 Sorry again. It's Kristen Gale on behalf of
19 Midwest Generation.

20 If the Agency can turn to
21 Exhibit 3 and its answers to questions or Agency
22 questions Page 22.

23 MS. ZEIVEL: If that's Kristen,
24 we're having a hard time hearing you.

1 MS. GALE: Sorry. I'll sit closer.
2 If the Agency could turn to Exhibit 3, its answers
3 to Midwest Generation's questions Page 22, is that
4 better?

5 MS. ZEIVEL: Yes, we can hear you
6 better.

7 MS. GALE: Now, I'm getting
8 feedback.

9 MS. ZEIVEL: This is Christine
10 Zeivel. Ms. Gale, I think you said Page 22, is
11 that correct?

12 MS. GALE: I did. Hang on a second.
13 I think we're having some adjustment of equipment
14 in this room.

15 Yeah, Page 22. Real quick. In
16 answer to 60 -- well, all of the subsections to 60
17 the Agency answered that Part 85 requires
18 consistent with Part 257 -- well, can the Agency
19 identify which part of 257 that it's relying upon
20 for a 60-day turnaround?

21 MS. ZEIVEL: The Agency -- this is
22 Christine Zeivel. We could look for a citation.
23 I'm not sure we should spend the time right now to
24 do that, but we'd be willing to do that in follow

1 up.

2 MS. GALE: It might come up later.
3 So -- it might come up later. Thanks. Nothing
4 further.

5 HEARING OFFICER HORTON: City of
6 Springfield, 610?

7 MS. WILLIAMS: No.

8 HEARING OFFICER HORTON: Dynegy,
9 610?

10 MR. MORE: Thank you. Josh More. I
11 want to follow up on questions raised by
12 Ms. Cassel in connection with 610 and the
13 definition of release. I think at one point she
14 said she found it confusing. We, too, find it
15 confusing and I want to see if we can obtain a
16 little clarification here and if the Board -- if
17 the Hearing Officer permits, I'd like to also at
18 the end of my questioning go to 660 to further
19 illustrate this confusion with respect to release
20 so that we deal with it kind of all at the same
21 time if that's permissible.

22 HEARING OFFICER HORTON: Sure.

23 MR. MORE: Okay. Thank you. So
24 let's turn -- let me ask the question.

1 Is 845.610(d), you mentioned
2 it's intended to be consistent with 257, right?

3 MR. DUNAWAY: Lynn Dunaway.
4 Correct.

5 MR. MORE: And, in fact, the
6 corresponding provision under 257 is 257.90(d),
7 correct?

8 MR. DUNAWAY: Lynn Dunaway. I would
9 have to look that up to see.

10 MR. MORE: So take a look at Exhibit
11 5 or even the CCR -- or Exhibit 8 and you'll find
12 there the CCR rule 257.90(d) as in David.

13 MR. DUNAWAY: Okay. I'm at the
14 spot. Proceed.

15 MR. MORE: 257.90(d), David, yes.
16 Okay.

17 Would you agree that is the
18 corresponding provision under the CCR rule to
19 845.610(d) as in David?

20 MR. DUNAWAY: Lynn Dunaway. Yes.

21 MR. MORE: Now, let's look at
22 Exhibit 5 which is the United States Environmental
23 Protection Agency's original proposed -- or not
24 proposal. The original rule, CCR rule, and the

1 preamble associated with it from April 17th, 2015.

2 Could you turn to Federal
3 Register Page 21399, please. I'd like to direct
4 your attention to the bottom of the left-hand
5 column. The last paragraph that begins with "EPA
6 has added a new provision," do you see that
7 paragraph?

8 MR. DUNAWAY: Lynn Dunaway. Yes.

9 MR. MORE: I'm going to read it into
10 the record. The first sentence, "EPA has added a
11 new provision to Section 257.90 to address the
12 corrective action requirements that apply when CCR
13 have been released into the environment, such as
14 from the kind of structural failure that occurred
15 with TVA's Kingston Fossil Fuel plant release or
16 from the kind of a release that occurred in North
17 Carolina at that Dan River," do you see that?

18 MR. DUNAWAY: Lynn Dunaway. Yes.

19 MR. MORE: And is EPA's
20 interpretation of the word release in the context
21 of 257.90(d) as in David generally consistent with
22 the second half of your definition or your
23 proposed definition of release that you discussed
24 with Ms. Cassel?

1 MR. DUNAWAY: Lynn Dunaway. Yes.

2 MR. MORE: When U.S. EPA is
3 providing an explanation for how the word release
4 should be interpreted in the context of 257.90(d),
5 does it provide any reference to a dissolved phase
6 release?

7 MR. DUNAWAY: Lynn Dunaway.
8 Which -- which part are you referring to?

9 MR. MORE: Well, the sentence we
10 just read, sir, is talking -- I think we've
11 established it's only discussing the physical
12 release of CCR, correct?

13 MR. DUNAWAY: The one that was read,
14 yes.

15 MR. MORE: Right. And would you
16 agree with me that that sentence is providing U.S.
17 EPA's interpretation of what is a release in the
18 context of 257.90(d)?

19 MR. DUNAWAY: Lynn Dunaway. Based
20 on the sentence that you read, that's correct.
21 However, the rest of the paragraph goes on to
22 discuss what I would describe as release of
23 dissolved constituents.

24 MR. MORE: And the rest of the

1 paragraph, though, is talking about the corrective
2 action requirements in the proposed rule apply
3 exclusively upon detection of groundwater
4 contamination caused by a leaking unit. In
5 essence, the counterpart to Subpart F as in Frank
6 that Ms. Cassel inquired about and her questioning
7 suggested there was confusion as to the interplay
8 between these two provisions. I believe there is
9 confusion and I believe U.S. EPA here is
10 presenting clarity that release in this context is
11 exclusive to physical material.

12 What in 21 -- on Page 21399
13 leads you to believe that U.S. EPA is interpreting
14 release consistent with the proposed definition on
15 Page 168 of Exhibit 2? Mr. Dunaway --

16 MR. DUNAWAY: Yes.

17 MR. MORE: Let's go to even -- I
18 appreciate the complexity of the issue. So let's
19 just go to another provision here that I think
20 will further illustrate to you the confusion of
21 the definition.

22 MR. DUNAWAY: Okay.

23 MR. MORE: And it may help you come
24 to an answer on my prior question. Let's turn to

1 845.660(a)(1) as proposed on Page 77. 845.660,
2 for the court reporter, A as in alpha 1. Are you
3 there, sir?

4 MR. DUNAWAY: Yes, I am.

5 MR. MORE: So this provision
6 requires two components, right, one, the
7 assessment of corrective measures within 90 days
8 of a dissolved phased constituent release in
9 excess of the groundwater protection standards or,
10 two, the performance of assessment measures --
11 performance of assessment of corrective measures
12 upon immediate detection of a release, right? So
13 there is two triggers for assessment of corrective
14 measures. One, a dissolved phase. We start it
15 within 90 days. Two, you start it immediately or,
16 I'm sorry, immediately upon the detection of a
17 release, right?

18 MR. DUNAWAY: Lynn Dunaway. Yes.

19 MR. MORE: Okay. If the word
20 release includes a dissolved phase constituent
21 component to it, then haven't we created a
22 duplicatus requirement here or even arguably
23 inconsistent?

24 The first requirement is the

1 assessment of corrective measures within 90 days
2 of such event and then the second requirement is
3 an assessment of corrective measures immediately
4 upon the detection of that very same dissolved
5 phase requirement. U.S. EPA addresses that --

6 MS. ZEIVEL: Hold on.

7 MR. MORE: -- very issue in what
8 Ms. Cassel pointed to you, which this is the exact
9 same corresponding provision Exhibit 10 that she
10 pointed you to and U.S. EPA, again, gave the
11 interpretation of release as being a solid
12 physical release.

13 How do you rectify the
14 ambiguity? Would you be amenable to some proposed
15 language, for example, adding the words of CCR
16 after the word release when you're talking about
17 the physical release?

18 MR. DUNAWAY: Lynn Dunaway.

19 Certainly if you propose language, we would
20 consider it.

21 MR. MORE: Would you agree with me
22 that after this whole discussion that the
23 definition as proposed creates some ambiguity and
24 confusion as to how 610 and 660 should be

1 implemented?

2 MR. DUNAWAY: Lynn Dunaway. Given
3 the questions that I've had, it obviously creates
4 confusion.

5 MR. MORE: Okay. I'd like to turn
6 back to 610. 845.610(e).

7 MR. BUSCHER: E as in Edward?

8 MR. MORE: Yes, thank you. Let's
9 look at -- yes, Mr. Buscher. I'm sorry. 610(e),
10 as in Edward, (4)(a) as in alpha. There is a
11 corresponding question that was answered. I
12 understand now what you're asking for. Sorry,
13 Mr. Buscher.

14 It's the response to Question
15 20 -- I'm sorry. Response to Question 62
16 presented by Midwest Generation on Exhibit -- in
17 Exhibit 3.

18 MR. BUSCHER: Is that found on Page
19 23?

20 MR. MORE: It is, correct. Thank
21 you, sir.

22 Does a significant increase over
23 background when background is below the numeric
24 standard set forth in 845.600 trigger any

1 monitoring or corrective action requirements?

2 MR. DUNAWAY: Lynn Dunaway. Would
3 you please repeat that question?

4 MR. MORE: Yes. So the fact pattern
5 is this. The background that has been calculated
6 is below the numeric standard set forth in
7 845.600. Okay.

8 In that circumstance, does a
9 significant increase over background trigger any
10 monitoring or corrective action requirements?

11 MR. DUNAWAY: It depends on whether
12 it's a new or retrofit unit or an existing or
13 inactive unit.

14 MR. MORE: Thank you. So let's
15 start with an existing unit. In that circumstance
16 where the groundwater protection standard under
17 845.600 is the numeric standard because it is
18 higher than background when you have a
19 statistically significant increase over
20 background, are you required to perform any
21 monitoring or corrective action requirements at an
22 existing unit?

23 MR. DUNAWAY: Lynn Dunaway. If you
24 exceed the groundwater protection standards, you

1 are.

2 MR. MORE: Right. Which in that
3 instance would be the numeric standard?

4 MR. DUNAWAY: Correct.

5 MR. MORE: I have no further
6 questions on 610.

7 HEARING OFFICER HORTON: Moving on,
8 City of Springfield, 610?

9 MS. WILLIAMS: No questions.

10 HEARING OFFICER HORTON: I'm sorry.
11 I went out of order. Sorry. That is correct.

12 MS. WILLIAMS: That's okay.

13 HEARING OFFICER HORTON: Ms. Brown,
14 IERG, 610?

15 MS. BROWN: This is Melissa Brown.
16 IERG has no additional questions for the rest of
17 this subpart, but reserves the right to follow-up
18 questions.

19 HEARING OFFICER HORTON: Certainly.
20 Ameren, questions on 610?

21 MS. MANNING: Claire Manning,
22 Ameren. I have no questions on 610. Thank you.

23 HEARING OFFICER HORTON: AG's
24 Office, 610?

1 MR. SYLVESTER: Steve Sylvester. We
2 don't have any questions on 610 either.

3 HEARING OFFICER HORTON: Mr. Rao of
4 the Board, 610?

5 MR. RAO: No questions on 610.

6 HEARING OFFICER HORTON: Okay.
7 Moving forward to 620. I'm sorry. Any follow-up
8 questions on 610? Okay.

9 Moving forward to 620
10 Hydrogeologic Site Characterizations --
11 Characterization. Little Village Environmental,
12 ELPC, Prairie Rivers, Sierra Club, questions?

13 MS. BUGEL: Yes, we have questions
14 and I will be asking the questions. And, first, I
15 would like to -- we're referring to Section
16 845.620 and I am referring to Exhibit 2 which has
17 the responses to ELPC, PRN and Sierra Club
18 questions Question 1 on Page 46 under
19 hydrogeologic site characterization and I believe
20 Amy Zimmer answered these questions and the Agency
21 can let me know when they have found the
22 reference.

23 HEARING OFFICER HORTON: Is the
24 Agency ready? That's Ms. Zimmer.

1 Ms. Zimmer, are you using your
2 cellphone for audio?

3 MS. ZIMMER: Yes.

4 HEARING OFFICER HORTON: Okay.
5 That's much better. Please proceed.

6 MS. BUGEL: My first question, and
7 I'm sorry, let me just be clear. I'm referring to
8 1(b) as in boy, the answer to 1(b) as in boy,
9 which references groundwater flow being affected
10 by leakage from an unlined pond.

11 Are there ways that groundwater
12 flow could be affected by impoundment leakage that
13 would not be represented or shown by a radial
14 flow?

15 MS. ZIMMER: I'm sorry. Could you
16 repeat that, please? A moment -- repeat your
17 question. Thank you.

18 MS. BUGEL: Yes, are there ways that
19 groundwater flow could be affected by impoundment
20 leakage that would not be represented by a radial
21 flow?

22 MS. ZIMMER: In some cases, yes. It
23 would totally be site specific.

24 MS. BUGEL: And would that be

1 reflected on a potentiometric surface map?

2 MS. ZIMMER: It should be, yes.

3 MS. BUGEL: Okay. Could such
4 instances require a more technical analysis of
5 radiance and flow than simply identifying it on a
6 potentiometric surface map?

7 MS. ZIMMER: Could you be more
8 specific --

9 MS. BUGEL: Okay.

10 MS. ZIMMER: -- on what you're
11 asking in your question, if possible?

12 MS. BUGEL: Sure. I'll rephrase the
13 question. You indicated that leakage would be
14 shown by radial flow and that would be reflected
15 on a potentiometric surface map. So now I want to
16 talk about instances where leakage wouldn't be
17 reflected by a radial flow. I want to make sure
18 those instances would still be captured on a
19 potentiometric surface map.

20 MS. ZIMMER: If there -- I want to
21 be -- if there is radial flow from a leaking CCR
22 surface impoundment, it will be reflected on a
23 properly drawn potentiometric surface map. In
24 some cases on a site specific basis, you can have

1 leakage from a CCR surface impoundment where there
2 could be leakage, but that doesn't mean there
3 would be radial flow around the impoundment, but
4 there could still be leakage.

5 MS. BUGEL: Okay. Understood. I
6 want to capture -- I want to discuss those
7 instances where there is leakage that could be
8 affecting flow, will that always be captured by
9 the potentiometric surface map? And let's not
10 discuss radial flow because we've established
11 where there's radial flow that will be captured by
12 the potentiometric surface map. I want to talk
13 about leakage.

14 MS. ZIMMER: Okay.

15 MS. BUGEL: I'll stop.

16 MS. ZIMMER: I guess what I'm --
17 your question is will the potentiometric surface
18 map catch leakage if there is not radial flow?

19 MS. BUGEL: Yes, and I think your
20 answer to my first question said, yes, there are
21 instances where you could have leakage, but might
22 not have or would not have radial flow.

23 MS. ZIMMER: Well, I guess I should
24 be more specific and more clear. I didn't word

1 this correctly. A potentiometric map doesn't
2 actually -- okay. Yes, I -- all right. Let me
3 think of it. Hold on a minute. A potentiometric
4 map will always capture flow and direction of
5 flow. Generally, if there is radial flow from a
6 CCR surface impoundment, it would indicate
7 leakage. You could have leakage from one that is
8 not indicated by radial flow.

9 However, if there is not radial
10 flow, generally there will still be an indication,
11 even if there is not radial flow, the
12 potentiometric flow lines will still show some
13 kind of distortion around the CCR surface
14 impoundment indicating that there is an influence
15 of some kind of leakage from the surface
16 impoundment. Does that answer your question?

17 MS. BUGEL: Yes, it does. Thank
18 you.

19 MS. ZIMMER: Okay.

20 MS. BUGEL: Okay. Moving on to
21 hydraulic conductivity. I understand that 845.620
22 requires hydraulic conductivity to be included. I
23 want to understand what that requires.

24 Does that always require a test

1 to be conducted to establish hydraulic
2 conductivity?

3 MS. ZIMMER: I'm sorry. I didn't
4 catch part of your question. Can you repeat? I
5 didn't quite catch it. You cut out on my phone a
6 little bit. I apologize.

7 MS. BUGEL: Okay. Understood.
8 845.620 requires that hydraulic conductivity of
9 the various geologic units be included and I'm not
10 directly quoting it here, but the term in the
11 provision is included. Do you see that?

12 MS. ZIMMER: I'm trying to -- are
13 you talking about under 16?

14 MS. BUGEL: Okay. I'm going to pop
15 over to it myself.

16 MS. ZIMMER: You're talking about
17 620(b)(16), I think.

18 MS. BUGEL: Yes, 16(b) as in boy.

19 MS. ZIMMER: Yes.

20 MS. BUGEL: And this says -- 16
21 itself ends with the term including, do you see
22 that?

23 MS. ZIMMER: Yes, I see that.

24 MS. BUGEL: Does that require actual

1 testing of the hydraulic conductivity?

2 MS. ZIMMER: For aquifer
3 properties -- for aquifers which are the more
4 permeable units that we are concerned about,
5 that's where generally the migration of water and
6 any contaminants would be, there are tests that
7 will have to be done and turned in.

8 For less permeable units like
9 aquitards, you can't really properly do field
10 tests on aquitards and the last permeable unit. A
11 lot of times -- sometimes you can get a little
12 bit. So sometimes you can. Sometimes someone
13 will use a reference material to give a range of
14 the conductivity for those units. And those are
15 usually done on reported literature based on,
16 like, sometimes lab tests, but -- so they can be a
17 little more challenging and time-consuming. So a
18 lot of times those can be done and we will accept
19 for -- for aquitards. Sometimes we will accept,
20 like I said, reference -- reference conductivity.

21 So for the aquifer properties --
22 for the aquifer conductivity, yes, they will be
23 site specific, like I said, a lot of aquitard data
24 the Board -- the less permeable data they will

1 turn in something. For the more clay material, a
2 lot of those are still site specific also. The
3 bedrock a lot of times they don't test the bedrock
4 specifically at the site because there's a lot of
5 reference material that cite the bedrock
6 conductivity. Those have been studied
7 extensively.

8 MS. BUGEL: Would the Agency be open
9 to additional language here that reflects -- I
10 understand -- I understand your answer that you
11 can't test at every site and it is site specific
12 and for some sites you might need to rely on the
13 literature.

14 Would the Agency be open to
15 additional language, at least specifying that site
16 specific documentation needs to be submitted to
17 support hydraulic conductivity?

18 MS. ZEIVEL: This is Christine
19 Zeivel. In this instance, it's very difficult.
20 Ms. Zimmer is obviously testifying via video. The
21 rest of the Agency is not with her. It would be
22 very difficult for Ms. Zimmer to be able to speak
23 on behalf of what the Agency would or would not be
24 amenable to.

1 I'm wondering if these types of
2 questions, at least when they're specifically
3 directed to Ms. Zimmer, may be able to be followed
4 up by the Agency post-hearing because it's just --
5 it's kind of an impossible scenario in this
6 circumstance.

7 MS. BUGEL: Okay. We will follow up
8 post-hearing. Thank you. I have no further
9 questions.

10 HEARING OFFICER HORTON: Midwest
11 Generation, 620?

12 MS. GALE: No questions for now. I
13 may have follow-ups.

14 HEARING OFFICER HORTON: City of
15 Springfield, 620?

16 MS. WILLIAMS: No.

17 HEARING OFFICER HORTON: Dynegy,
18 620?

19 MR. GRANHOLM: Yes.

20 HEARING OFFICER HORTON: Okay.
21 Mr. Granholm.

22 MR. GRANHOLM: Good morning. This
23 is Ryan Granholm on behalf of the Dynegy entities.
24 I'd like to direct the Agency's attention to the

1 response to Question 21 from ELPC, PRN and Sierra
2 Club which appears on Page 35 of Exhibit 2.

3 Please let me know when you're there.

4 MS. ZEIVEL: We're there.

5 MR. GRANHOLM: The response to
6 Question 21 refers to site specific conditions in
7 which it could be necessary to measure the
8 elevation of water in an unlined impoundment in
9 order to determine the groundwater flow direction,
10 is that correct?

11 MS. ZEIVEL: Mr. Granholm, you may
12 have to repeat your question. We're having a bit
13 of a technical issue.

14 MR. GRANHOLM: Okay. Can you hear
15 me now?

16 MS. ZEIVEL: Amy, can you hear
17 Mr. Granholm?

18 MS. ZIMMER: Yes, I can. I did
19 actually respond, but I'm not sure I was -- I was
20 unmuted on my end.

21 MR. GRANHOLM: We did not hear your
22 response, Ms. Zimmer.

23 MS. ZIMMER: Okay. I'm sorry. Yes,
24 that is what it says.

1 MR. GRANHOLM: What are some of the
2 site specific conditions that you're referring to
3 in that response, that the Agency is referring to
4 in that response?

5 MS. ZIMMER: I'm sorry. This is
6 Ms. Zimmer. Can you all hear me?

7 MR. GRANHOLM: Yes, we can. Thank
8 you.

9 MS. ZIMMER: Okay. I just want to
10 check after the last time. I believe -- your
11 question was what conditions or what reasons --
12 can you just repeat your question? I'm sorry.

13 MR. GRANHOLM: The response to
14 Question 21 refers to site specific conditions and
15 my question was, what site specific conditions are
16 you referring to?

17 MS. ZIMMER: Okay. I think it could
18 be examples where it could be needed -- it could
19 be measuring water in the impoundment could be
20 helpful for radial flow determination. It could
21 be helpful for the level of impoundment in
22 relation to nearby rivers and aquifer levels.

23 It could be helpful in
24 determination of the head level where, you know,

1 in relation to the surrounding water table. So
2 the flow going out of the bottom. It could be
3 helpful in -- in -- those are just a few of the
4 examples. If you have a more specific question
5 that you're -- you know, those are some off the
6 top of my head.

7 MR. GRANHOLM: Ms. Zimmer, I believe
8 the response to Question 21 refers to situations
9 in which it is necessary, or could be necessary
10 were the Agency's words, to measure the elevation
11 of water in an impoundment.

12 I think the response you've just
13 given refers to the potential uses of that
14 information, but what I'm trying to get at is what
15 are the situations you're referring to in which
16 it's necessary or could be necessary to measure?

17 MS. ZIMMER: Okay. So let's change
18 that to it's necessary for all those because it's
19 useful and it's necessary to get that information
20 to evaluate those, does that help? I mean, we
21 want a full characterization. In order to have a
22 full characterization, you need that information
23 to evaluate all of those in relation to the water
24 level in the surface impoundment, in relation to

1 all those other issues.

2 MR. GRANHOLM: So is it the Agency's
3 position that it's necessary to measure the
4 elevation of water in an unlined impoundment in
5 certain conditions, but it's not necessary to do
6 so in other conditions?

7 MS. ZIMMER: I believe it's
8 necessary for full characterization to measure the
9 water level and the surface impoundment for full
10 characterization.

11 MR. GRANHOLM: Is the Agency
12 retracting its answer to Question 21?

13 MS. ZIMMER: This is really site
14 specific, but I think in most cases it would be
15 necessary.

16 MR. GRANHOLM: Okay. Nothing
17 further.

18 MS. ZIMMER: I can't think of
19 offhand if there would be any -- any -- if there
20 would be anywhere it would be not necessary. I
21 can't swear that there would be any case where it
22 would not be necessary, but there may be, but I
23 think in almost all instances it would be.

24 MR. GRANHOLM: Nothing further.

1 HEARING OFFICER HORTON: We're
2 skipping IERG. Ameren, any questions on 620?

3 MS. MANNING: No questions. Thank
4 you. Claire Manning.

5 HEARING OFFICER HORTON: AG's
6 Office, 620?

7 MR. SYLVESTER: This is Steve
8 Sylvester. We don't have any questions on 620.

9 HEARING OFFICER HORTON: Mr. Rao,
10 any questions on 620?

11 MR. RAO: No, I don't have any
12 questions until 845.700.

13 HEARING OFFICER HORTON: Okay.
14 Follow-up questions on 620?

15 MS. WILLIAMS: Deborah Williams,
16 City of Springfield. I'm going to try one quick
17 follow up on the last line of questioning from
18 Vistra.

19 So you indicated that -- I just
20 want to make sure I'm clear on what you were
21 testifying to, Amy.

22 MS. ZIMMER: Sure.

23 MS. WILLIAMS: Is it the case that
24 you want to have this information for every

1 impoundment in order -- that you need to have this
2 information for every impoundment or that you need
3 to have this information for every impoundment
4 every time you have a sample of groundwater
5 elevation? I probably should have used the word
6 measurement of groundwater elevation instead of
7 sample, but you understood.

8 MS. ZIMMER: This is Amy Zimmer.
9 It's necessary for the characterization of the
10 impoundment for the hydrogeologic
11 characterization. I don't think it would be
12 necessary for every time you go out and -- and do
13 a groundwater elevation sample for monitoring. I
14 think that would be more than necessary.

15 MS. WILLIAMS: Thank you, Amy.

16 HEARING OFFICER HORTON: Any further
17 follow up on 620? Okay. 630 Groundwater
18 Monitoring Systems.

19 Our first set of questioners
20 would it be Ms. Bugel?

21 MS. BUGEL: It will be Ms. Cassel.

22 HEARING OFFICER HORTON: Ms. Cassel,
23 questions on 630?

24 MS. CASSEL: Yes. Thank you. Can

1 you all hear me?

2 HEARING OFFICER HORTON: Yes.

3 MS. CASSEL: Okay. Great. So my
4 first question pertains to the Agency's answer to
5 ELPC and PRN Question 22, which is on Page 35 to
6 36 of Exhibit 2.

7 The Agency testified that the
8 Agency believed a landfill containing CCR has the
9 same meaning as a CCR landfill in Part 257. So my
10 question is, since the Agency understands the
11 term, quote, landfill containing CCR to have a
12 specific definition, does IEPA oppose including
13 that definition in Part 845?

14 MR. DUNAWAY: Lynn Dunaway. Since
15 the Part 845 is regulating CCR surface
16 impoundments, we did not include the definition as
17 we don't feel it's necessary because it is only
18 used once or perhaps twice in our document and it
19 is defined in Part 257.

20 MS. CASSEL: So because it is used,
21 does the Agency disagree that providing a specific
22 definition would help ensure clarity of what that
23 term means in the context of Part 845?

24 MR. DUNAWAY: Lynn Dunaway. I don't

1 see where inclusion of the definition would be
2 useful.

3 MS. ZEIVEL: That was the end of
4 Mr. Dunaway's response if you have another
5 question.

6 MS. CASSEL: Okay. So the term
7 landfill containing CCR are used in terms of
8 specifying where a background well or how a
9 background well must be established, is that
10 accurate?

11 MR. DUNAWAY: Lynn Dunaway. Yes, it
12 is.

13 MS. CASSEL: Isn't it important that
14 owners and operators understand precisely what
15 they must avoid in locating their background well
16 in terms of avoiding leachate from a landfill
17 containing CCR?

18 MR. DUNAWAY: Lynn Dunaway. There
19 are -- the owners and operators are already
20 familiar with Part 257. They know -- they should
21 know what a CCR landfill is.

22 MS. CASSEL: But this directive
23 pertains to the requirement in the Coal Ash
24 Pollution Prevention Act, that rule be at least as

1 protective as the Part 257 rule like here in Part
2 285 (sic) we don't have a definition of landfill
3 containing CCR, correct?

4 MR. DUNAWAY: Lynn Dunaway. No,
5 that's correct. We don't have that definition in
6 Part 845.

7 MS. CASSEL: Is the Agency open to
8 directing owners and operators to look to the
9 definition of CCR landfill in Part 857 in
10 understanding what a landfill containing CCR
11 means?

12 MS. ZEIVEL: Excuse me, Ms. Cassel.
13 Part 857?

14 MS. CASSEL: I'm sorry. Part 257.

15 MR. DUNAWAY: Lynn Dunaway. The
16 Agency would prefer to stay with the rule as it
17 was proposed.

18 MS. CASSEL: Would it hamper the
19 Agency's ability to administer the rule if there
20 was a clear definition of landfills containing CCR
21 set out in the rule?

22 MS. WILLIAMS: I'm going to object.
23 The City of Springfield --

24 MR. DUNAWAY: The --

1 MS. WILLIAMS: There's an objection,
2 Lynn. Stop.

3 HEARING OFFICER HORTON: Sorry.
4 This is Vanessa Horton. Sorry. We were muted
5 here, but we have an objection before Mr. Dunaway
6 began responding. Ms. Williams?

7 MS. WILLIAMS: Deborah Williams,
8 City of Springfield. I wanted to object to the
9 line of questioning. Ms. Cassel is asking the
10 Agency whether it would interfere to include a
11 definition of when we all know we're having a
12 dispute about the scope of this rulemaking that's
13 been unresolved. I don't think it's an
14 appropriate question to ask the Agency if you can
15 include a definition of a term when it's still
16 unresolved whether the Board agrees that including
17 landfills within the scope of the rule -- within
18 the rule or -- is beyond the scope.

19 So if we all agree that
20 landfills are beyond the scope of this rulemaking,
21 then including the definition might be very
22 ministerial, but if we don't agree that it's
23 beyond the scope, then it becomes substantive and
24 it could interfere.

1 HEARING OFFICER HORTON: Ms. Cassel?

2 MS. CASSEL: I'm asking about a term
3 that is used in the proposed regulation that is
4 related to where owners and operators may site
5 their background wells and what those background
6 wells must represent for purposes of understanding
7 contamination from CCR surface impoundments. It's
8 in the proposed rules. I'm simply asking for
9 clarification about a term used.

10 HEARING OFFICER HORTON: I'm going
11 to overrule the objection, but I believe the
12 Agency has substantively answered your question so
13 far, Ms. Cassel.

14 MS. ZEIVEL: This is Christine,
15 Ms. Horton. We didn't get a chance to finish the
16 answer and would like the opportunity to do so.
17 There is qualification.

18 HEARING OFFICER HORTON: Certainly.
19 Go ahead.

20 THE COURT REPORTER: I need the
21 whole answer.

22 HEARING OFFICER HORTON: And, I'm
23 sorry, just because of the objection in the room
24 here we did not hear the start of Mr. Dunaway's

1 answer. So if he can restart.

2 MR. DUNAWAY: Lynn Dunaway. The
3 Agency would consider language that was proposed,
4 but the implications are far reaching enough so
5 that we would not be able to -- it would have to
6 be something that would be considered and
7 evaluated.

8 MS. CASSEL: I'm sorry, Mr. Dunaway.
9 I didn't hear the last part of that. It would
10 have to be something that is what?

11 MR. DUNAWAY: That the Agency would
12 have to consider and evaluate.

13 MS. CASSEL: Can I ask in what way
14 the Agency believes including a definition of the
15 term landfill containing CCR as used in Part 600
16 would be problematic?

17 MS. ZEIVEL: This is Christine
18 Zeivel. I believe that question was answered. It
19 was answered and due to the issues that
20 Ms. Williams brought up along with the scope of
21 the rule and everything else, I'm going to direct
22 my witness not to respond to your question.

23 MS. CASSEL: Okay. Moving on. In
24 that case to the Agency's response to ELPC,

1 Prairie Rivers Network and Sierra Club's Question
2 22(b) wherein response -- I'm sorry -- in Exhibit
3 2 wherein response to a question about why
4 groundwater monitoring systems must be able to
5 produce groundwater samples that represent
6 groundwater which has not been impacted by a
7 landfill or surface impoundment containing CCR,
8 the Agency testified that such wells are necessary
9 to, quote, determine if or to what extent either
10 the first or second surface impoundments are
11 impacting groundwater or whether, unquote, the
12 exceedances have a different source, end quote.

13 You go on to state or the Agency
14 goes on to state that, quote, such a gradient well
15 would not substitute for wells located between the
16 first and second CCR surface impoundment assuming
17 space for such wells is available.

18 Could you clarify what you mean
19 by the statement such up gradient well would not
20 substitute for wells located between the first and
21 second CCR surface impoundments?

22 MR. DUNAWAY: Up gradient wells
23 would be those wells which are not impacted by
24 either the two examples, subject CCR surface

1 impoundments or as further explanation, one of the
2 CCR surface impoundments could be leaking and the
3 other one may not be and we would need to know not
4 only down gradient of the most down gradient CCR
5 surface impoundment, but if there is space between
6 them, also the concentration between the two
7 subject surface impoundments.

8 That would be the way you
9 differentiate between what is up gradient of the
10 most up gradient one and what the concentrations
11 are between the two and what the final
12 concentration is down gradient.

13 MS. CASSEL: Okay. So to make sure
14 I understand, you would need wells not only
15 between gradients of surface impoundments to the
16 extent there is space available, but also
17 monitoring wells that established background that
18 is not impacted by CCR from either an impoundment
19 or a landfill, is that correct?

20 MR. DUNAWAY: That's correct.

21 MS. CASSEL: Now, in response to our
22 Question 24(b) on Page 37 of Exhibit 2,
23 Mr. Dunaway, you state that, quote, background
24 groundwater quality may be established to

1 determine the difference between natural
2 variations in groundwater quality and groundwater
3 potentially impacted by a CCR surface impoundment,
4 or background groundwater quality may be used to
5 distinguish between groundwater potentially
6 impacted by the CCR surface impoundment and
7 another CCR surface impoundment that may be
8 impacted -- that may impact -- or may be impacting
9 groundwater results -- may be impacting
10 groundwater quality.

11 So my question is even if there
12 were or are multiple CCR impoundments, you
13 wouldn't be able to tell whether any of those CCR
14 surface impoundments were affecting groundwater
15 quality without knowing what the natural
16 variations in groundwater quality that are not
17 affected by CCR are, is that correct?

18 MR. DUNAWAY: Lynn Dunaway. In
19 addition to the natural variation, there may be
20 anthropogenic sources of some contaminants that
21 would also have to be recognized and accounted
22 for.

23 MS. CASSEL: So you would need wells
24 that establish non-CCR levels of contaminants --

1 I'm sorry. Levels of contaminants that are not
2 coming from CCR leachate whether it's
3 anthropogenic or their natural variation --

4 MR. MORE: I'm going to object to
5 the question.

6 MS. CASSEL: -- is that correct?

7 HEARING OFFICER HORTON: I'm sorry.
8 We have an objection in the room.

9 MR. MORE: There is some ambiguity
10 as to CCR leachate. The witness has testified
11 prior that the objective is to avoid impact from a
12 CCR surface impoundment and landfill containing
13 CCR. So I'm not sure what you mean by CCR
14 leachate here.

15 MS. CASSEL: Okay. I can -- I can
16 clarify. I guess what I'm saying is you would
17 need a background well -- you'd need a background
18 well that sets out the quality of groundwater that
19 is not affected by leachate from a CCR surface
20 impoundment or landfill containing CCR --

21 MR. MORE: Thank you.

22 MS. CASSEL: -- is that correct?

23 MR. DUNAWAY: I'm sorry. I thought
24 you were discussing the objection.

1 We would need background wells
2 that are not affected by a CCR surface impoundment
3 or a landfill containing CCR.

4 MS. CASSEL: So in order to -- I'm
5 sorry. In order to evaluate -- I'm sorry. Let me
6 look at the next question.

7 So to determine whether there is
8 an SSI over background, again, which type of,
9 quote, background well would down gradient
10 monitoring well results be compared? Would it be
11 against the background well that establishes
12 natural variations in groundwater quality and/or
13 other sources of contamination that are not from
14 the CCR surface impoundment or landfill containing
15 CCR or would it be from the background well that
16 is used to distinguish between groundwater quality
17 potentially impacted by a different CCR
18 impoundment?

19 MR. DUNAWAY: Lynn Dunaway. It
20 depends on which CCR surface impoundment you're
21 evaluating. The -- if you have -- for example, if
22 we have two CCR surface impoundments, one down
23 gradient of the other, the first CCR surface
24 impoundment would be relying on those most up

1 gradient wells. The second CCR surface
2 impoundment would be relying on those wells lined
3 between the two CCR surface impoundments.

4 That way, for our example, if
5 the most up gradient CCR surface impoundment is
6 leaking, we would want -- it would be a -- one of
7 the wells down gradient of the second CCR surface
8 impoundment. You could be a statistical
9 comparison on the up gradient of the second one
10 versus the down gradient because if the first CCR
11 surface impoundment was impacting groundwater, you
12 have to be able to tell the difference between its
13 impact and whether or not there is impact from the
14 second. So it depends where you are in the
15 series.

16 MS. CASSEL: So when there is
17 initial comparison between a background well and a
18 down gradient well for evaluating whether there's
19 been an SSI, it's unclear which of those types of
20 background wells you would use or -- I'm sorry.
21 I'm not quite understanding which well would be
22 compared. The down gradient well would be
23 compared to which type of background?

24 MR. DUNAWAY: Lynn Dunaway. If you

1 want to simplify this, if you have one CCR surface
2 impoundment, if you have -- your up gradient
3 background that you're comparing to and that would
4 be in the up gradient that is not impacted by CCR
5 surface impoundment at the facility or a landfill
6 containing CCR, that would be compared to the down
7 gradient wells at that CCR surface impoundment and
8 keeping in mind unless your up gradient well
9 exceeds the numerical groundwater protection
10 standard for an inactive or existing CCR surface
11 impoundment, those down gradient -- down gradient
12 groundwater protection standard is a numerical
13 value in the 600's. So, therefore, unless those
14 up gradient wells exceed those values, there's a
15 statistically significant increase over background
16 levels or values for existing and inactive CCR
17 surface impoundments.

18 MS. CASSEL: Okay. I think I
19 understood your answer.

20 HEARING OFFICER HORTON: I'm sorry
21 to jump in again, Ms. Cassel. This is Vanessa
22 Horton. We're right at 10:50 and our Board
23 meeting is at 11:00. So if we could adjourn now
24 for lunch and the Board meeting and then

1 apologies. We'll have to resume with your
2 questions on this section at around 1:30 because
3 we will be having comments from members of the
4 public from noon to 1:30. So thank you very much
5 and we're adjourned for lunch.

6 (Whereupon, a break was taken
7 after which the following
8 proceedings were had.)

9 HEARING OFFICER HORTON: All right.
10 This is Vanessa back in the hearing room. Back on
11 the record. It's 1:43. And just before
12 proceeding back to 630 I know we mentioned this
13 morning talking about dates for reconvening for
14 the hearing in case we did not finish today and I
15 think we've been going at a pretty good clip, but
16 I know there are significant portions of the
17 proposed rules that we have not touched yet that
18 might have a lot of questions.

19 I was wondering if I could ask
20 people in the room if they had significant
21 questions for the remainder of the proposed rules
22 if they thought it would be reasonable to think
23 that we could finish by today? I'm seeing some
24 head shaking no.

1 MS. WILLIAMS: Does anyone think
2 that we're going to get done today raise your
3 hand?

4 MR. MORE: It depends how long we're
5 willing to go.

6 HEARING OFFICER HORTON: Well, I'm
7 asking you guys. I know we have the financial
8 assurance section coming up that we haven't
9 touched yet. Are there --

10 MR. MORE: I have one question.

11 HEARING OFFICER HORTON: You have
12 one question on financial assurance.

13 MS. GALE: I have one question on
14 financial assurance.

15 HEARING OFFICER HORTON: Another one
16 question. Wonderful.

17 MS. WILLIAMS: None. But, I mean,
18 we haven't started 700 yet, right?

19 HEARING OFFICER HORTON: I know we
20 have some groups on the line. I wondered if we
21 could just do sort of an informal poll of perhaps
22 Ameren, the AG's Office, if you had significant
23 questions for the remainder of the proposed rules.

24 MS. MANNING: This is Claire Manning

1 from Ameren. I have no questions on the
2 groundwater section, but the next subpart I have
3 about 15 to 20 minutes worth of questions on
4 closure.

5 HEARING OFFICER HORTON: Okay. And
6 financial assurance?

7 MS. MANNING: No financial
8 assurance. I'm sorry.

9 MR. MORE: And Josh More. We
10 probably have 20 minutes to 30 minutes tops on
11 Section 700, none on 800 and one question on 900.

12 HEARING OFFICER HORTON: That all
13 sounds wonderful and reasonable. Ms. Bugel?

14 MS. BUGEL: Yes, I know we still
15 have some questions to go in what is left of -- I
16 don't think we finished the 600.

17 HEARING OFFICER HORTON: No, we're
18 on 630.

19 MS. BUGEL: I have questions myself
20 in the 700's, probably 30 minutes of questions,
21 but two other members of our team also have
22 questions and I know for financial assurance I do
23 think we have some significant questions and we
24 have some questions as well on environmental

1 justice and that is scattered throughout. So --

2 HEARING OFFICER HORTON: Okay.

3 Mr. Rao, do you have --

4 MR. RAO: We have a few questions on
5 environmental justice issues. Other than that,
6 no.

7 HEARING OFFICER HORTON: Okay. I
8 hope I haven't skipped anyone. The Attorney
9 General's Office?

10 MR. SYLVESTER: This is Steve
11 Sylvester. We didn't file any pre-filed questions
12 and so we would only reserve the right to ask
13 follow-up questions. So we don't have any
14 scheduled questions.

15 HEARING OFFICER HORTON: Certainly.
16 Okay. Sounds good. Okay. Well, we'll forge
17 ahead and with the goal of finishing today and
18 then I guess --

19 MS. BROWN: I apologize to
20 interrupt. This is Melissa Brown from IERG.

21 HEARING OFFICER HORTON: My
22 apologies.

23 MS. BROWN: I just want to let you
24 know we have a handful of questions in the 700's,

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1 but they're not very extensive.

2 HEARING OFFICER HORTON: Okay. Then
3 let's talk at 4:30 then and see how we're going
4 and move on from there. All right.

5 MS. ZEIVEL: Vanessa?

6 HEARING OFFICER HORTON: Go ahead.

7 MS. ZEIVEL: Before we get started,
8 I just wanted to mention if the hearing room is
9 going to mute so that we can't hear at other
10 points, I don't know if we want to do a hand raise
11 system regarding objections or not, but we need to
12 find some way so that our witnesses are aware that
13 objections have occurred so that we don't continue
14 to speak on the record while that is being
15 discussed amongst participants.

16 HEARING OFFICER HORTON: I agree.
17 The one issue we were having -- the reason why we
18 mute ourselves is because those participants on
19 Webex say there is a feedback that they're hearing
20 when other people are talking and our mic is on
21 and we're not talking.

22 So I guess, you know, the
23 individuals who have been raising objections here
24 in the room have called my attention to that and I

1 have tried to interject when either the witness is
2 talking or another attorney is speaking.

3 Can you see us well enough in
4 the room to see a hand raised?

5 MR. DUNAWAY: Sure.

6 MS. ZEIVEL: Yes, absolutely.

7 HEARING OFFICER HORTON: Okay.

8 Well, attorneys in the room, please raise your
9 hands if you have an objection and apologies for
10 jumping into anybody's testimony. Okay. I think
11 we left off with it was Ms. Cassel in 630.

12 MS. CASSEL: Yes, I believe that's
13 right. Can you all hear me?

14 HEARING OFFICER HORTON: Yes.

15 MS. CASSEL: Okay. Great. I don't
16 have any more questions for 630. I would just
17 reserve the right for follow up.

18 HEARING OFFICER HORTON: Okay.

19 Midwest Generation?

20 MS. GALE: I have no questions for
21 630.

22 HEARING OFFICER HORTON: City of
23 Springfield?

24 MS. WILLIAMS: No questions.

1 HEARING OFFICER HORTON: Dynegy?

2 MR. MORE: We have no questions for
3 630.

4 HEARING OFFICER HORTON: Okay.
5 Melissa Brown, IERG?

6 MS. BROWN: No questions. This is
7 Melissa Brown. I just wanted to note. I
8 apologize. I'm having some issue with video on my
9 end so you might not see me for the duration of
10 the hearing, but audio is fine and I can see
11 everybody else. I just wanted to apologize for
12 that.

13 HEARING OFFICER HORTON: No problem.
14 That's fine. Ameren, questions on 630?

15 MS. MANNING: No questions on 630
16 for Ameren. Thank you.

17 HEARING OFFICER HORTON: AG's
18 Office, 630?

19 MR. SYLVESTER: Steve Sylvester. No
20 questions on 630.

21 HEARING OFFICER HORTON: Mr. Rao,
22 630? I apologize. I --

23 MR. RAO: No questions for 630.

24 HEARING OFFICER HORTON: Okay. And

1 I think you said earlier you don't have any
2 questions until 700?

3 MR. RAO: Yes, that's correct.

4 HEARING OFFICER HORTON: Okay.

5 Moving on to 640.

6 MS. CASSEL: All right. I do have a
7 question for 640. So this refers to the Agency's
8 response to Board Question 54, which is on Page
9 170 of Exhibit 2.

10 And in that response the
11 Agency -- the Board had asked for clarification as
12 to whether compliance wells refer to all down
13 gradient wells and the Agency responded that the
14 term compliance well includes all groundwater
15 monitoring wells installed at the down gradient
16 compliance point of a CCR surface impoundment as
17 well as any groundwater monitoring wells which are
18 not background wells installed as part of a
19 corrective action plan.

20 Given that the Agency has a
21 clear definition in mind for compliance wells,
22 does the Agency object to including that
23 definition in the definition portion of the rule?

24 MR. DUNAWAY: This is Lynn Dunaway.

1 Hang on just a minute. We're having some
2 technical issues here.

3 MS. ZEIVEL: Hi. This is Christine
4 Zeivel. I'm sorry for the delay. We -- I spoke
5 with senior management over lunch about these
6 lines of questioning regarding whether the Agency
7 would object or support inclusion of certain --
8 all different types of provisions that have been
9 proposed by the different participants through
10 this hearing and the Agency's position moving
11 forward is that we have put forward a rule for the
12 Board's consideration.

13 If somebody -- any other
14 participant would like to propose their own
15 language, they can do so and provide justification
16 to the Board, but this group of people are not in
17 a position to state the entirety of the Agency's
18 support or opposition for individual provisions
19 that had not received management review like the
20 proposal that is in front of the Board.

21 So for all of these questions
22 moving forward about Agency support or opposition,
23 that is going to be the Agency's position and we
24 would prefer not to consider them on an individual

1 basis moving forward.

2 MS. CASSEL: May I ask if the Agency
3 has any objection to us asking whether a
4 particular inclusion of a particular provision
5 would hinder the Agency's ability to administer
6 the rules given that I believe it is at least in
7 large part the folks in the room who will be
8 engaged in that?

9 MS. ZEIVEL: I did speak with senior
10 management about that as well. The difficulty is
11 that the Agency has multiple different bureaus and
12 sections that all work interchangeably with one
13 another and there is no way for us to provide the
14 entirety of those individuals as witnesses for
15 this particular hearing and so whether something
16 would hinder administration -- we have fiscal
17 divisions that have to be consulted.

18 We have other management levels
19 for different sections, divisions and bureaus
20 within the Agency and so we feel that we have put
21 forward a proposal in front of the Board that the
22 Agency in its entirety feels that it can
23 administer and implement and if there is any other
24 provisions that other participants would like to

1 propose they would need to justify those proposals
2 to the Board and the Agency would provide their
3 comment at that time which has been vetted by
4 Agency management.

5 HEARING OFFICER HORTON: There is an
6 objection in the hearing room or a comment.

7 MS. WILLIAMS: I don't necessarily
8 want to call it -- maybe it is. It's not an
9 objection. I think that clarification is very
10 helpful for everybody. It makes it a little
11 clearer how this is going to play out at the next
12 steps, but I would like to restate my position
13 from Tuesday that I think in this matter it would
14 be appropriate and helpful and expeditious for the
15 Agency to file an errata sheet prior to
16 post-hearing comments understanding that we're not
17 getting ready to go to first notice.

18 I would be more agreeable with
19 what the Agency was saying if we were getting
20 ready to go to first notice, but we're getting
21 ready to go to second notice and there is some
22 confusion in the Agency's answers, written
23 answers, as to things that it has determined need
24 to be changed to make it clear and workable and

1 things that they were willing to accept if the
2 Board needed them to be changed and I don't have,
3 you know, a strong opinion about when that needs
4 to happen, but it definitely, I feel, needs to
5 happen prior to the post-hearing comment period.

6 MS. ZEIVEL: Vanessa, if I may
7 respond?

8 HEARING OFFICER HORTON: Of course.

9 MS. ZEIVEL: The Agency set forth
10 the proposal and believes in it. We believe that
11 there were certain lines of questioning that may
12 have highlighted confusion or possible gaps within
13 the proposal. We -- our intention in providing
14 suggested revisions was for the Board's
15 consideration in light of the questioning
16 received.

17 It's not the Agency's position
18 at this point to be rewriting the rule. Our
19 intention in providing those suggested revisions
20 were if the Board deems them appropriate. The
21 Board is free to reject those suggestions, provide
22 its own revision if it would like.

23 I know that Mr. Rao has asked
24 the Agency to provide suggested language

1 specifically regarding one or two other provisions
2 which we are more than happy to do, but that is
3 all for the Board's consideration. The Agency has
4 made its proposal.

5 MS. WILLIAMS: And I think if all
6 the parties are in agreement that the only
7 language to be referred to in the Agency proposal
8 is the language that was published at first
9 notice, I think I would withdraw that request. I
10 don't know if I'm going to get everybody to agree
11 that that's how they'll look at everything that's
12 been included in these answers, but, if so, I am
13 very fine with that result. The only Agency
14 proposal before the Board is the one that was held
15 prior to the hearing.

16 HEARING OFFICER HORTON: There is
17 another objection in the room.

18 MS. GALE: Not an objection. Just a
19 question or clarification.

20 On the Agency's just stated
21 position, is that just going forward from today or
22 does that apply to what was said on Tuesday and
23 Wednesday?

24 MS. ZEIVEL: The answer regarding

1 what the Agency would or would not oppose or be
2 amenable to is always subject to management
3 approval. No one in this room is at the level of
4 senior management that would be able to make
5 overall policy decisions.

6 So you were getting the -- the
7 opinion of the individuals in the room speaking
8 obviously as representatives of the Agency.
9 However, we are all subject to final management
10 review and any additional revisions that would
11 provide or require additional responsibilities or
12 duties placed on the Agency all have to go through
13 fiscal review and other levels and so everything
14 stated throughout the course of this hearing to
15 this point would be subject to those things by
16 nature of the way the Agency operates.

17 MS. GALE: Great. Thanks for the
18 clarification.

19 HEARING OFFICER HORTON: Okay. This
20 is Vanessa Horton. I support your -- I believe it
21 was stated as an objection, I believe, Ms. Zeivel?

22 MS. ZEIVEL: It was stated as -- it
23 was not an objection. It was an explanation as to
24 our directive and limitations and continuing to

1 provide responses to these lines of questioning.
2 They can continue to be asked. However, the
3 response will be the same and I think for
4 efficiency sake I wanted to make clear that was
5 the case.

6 That being said, in response to
7 Ms. Williams' comments regarding errata sheets, I
8 still do think it would be prudent for the Agency
9 to provide a comprehensive list of the revisions
10 that the Agency would be amenable to in one place
11 with the same subject caveat that they're only
12 being presented for purposes of Board
13 consideration.

14 HEARING OFFICER HORTON: I find that
15 to be reasonable and I think we can continue
16 moving forward if Ms. Cassel -- Ms. Zeivel --

17 MS. CASSEL: Yes, given the
18 limitation of the Agency's authority to answer,
19 then I don't have any current questions for 640.
20 I'll reserve the right for follow up. Thank you.

21 HEARING OFFICER HORTON: Okay.
22 Midwest Generation, 640?

23 MS. GALE: Yes, I just have very
24 few. If the Agency can turn to Exhibit 3, Page 24

1 which I'm going to go to Question 68, Midwest
2 Generation Question 68 Subpart B. I'll give
3 everyone a minute.

4 In Subpart B, Midwest Generation
5 asked if we could drop a parameter that has not
6 been detected and can be shown and is not expected
7 to be present with the CCR and I want to refer
8 back to a couple days ago we were discussing
9 Section 220(a)(2)(a) where the Agency wants
10 chemical analysis of CCR and if I recall its
11 answer, I wrote it down in scribbles, but I
12 think -- I believe the Agency said they wanted the
13 analysis to help make site specific decisions
14 relating to closure analysis.

15 So, with that in mind, why
16 wouldn't here the Agency allow the same analysis
17 to make site specific decisions relating to
18 monitoring analysis?

19 MR. DUNAWAY: This is Lynn Dunaway.
20 Can you -- I have your question --

21 MS. GALE: Yeah.

22 MR. DUNAWAY: -- here, but can you
23 tell me the section again that you're referring
24 back to in 845.220, please?

1 MS. GALE: Yes. So I'm referring
2 back to Section 220(a)(2)(a) and I can give you
3 the page number. It's Page 20 of the filed copy.
4 I can repeat the question if need be.

5 MR. DUNAWAY: Okay. Would you
6 repeat your question, please?

7 MS. GALE: Yeah. So my question was
8 Question 68(b). We asked about dropping
9 monitoring parameters. If the parameter is not
10 detected in the groundwater analysis and it can be
11 shown it's not expected to be present within the
12 CCR placed in the unit and the Agency's answer was
13 not based on as proposed.

14 When we were discussing
15 220(a)(2)(a), the Agency, according to my notes,
16 stated that it wanted the chemical analysis of the
17 CCR to help it make site specific decisions
18 related to the closure analysis and so my question
19 is why wouldn't that same analysis apply here in
20 that we can make site specific decisions related
21 to the groundwater monitoring analysis?

22 And I guess I'll go for an
23 example. If I have -- if a parameter is not --
24 let's just pretend. I will pick up thallium for

1 fun and it's not detected in the groundwater and
2 it's not detected in the CCR placed in the unit,
3 why would a regulated entity continue to analyze
4 for it throughout the length of the operation,
5 closure and postclosure of a CCR unit?

6 MR. DUNAWAY: Lynn Dunaway. The
7 purpose of 220(a)(2)(a) is to find out what is in
8 the CCR such that it may be a dust concern at
9 present. However, it may or may not leach a
10 concentration above the groundwater protection
11 standard whereas in B because -- just because a
12 parameter doesn't occur at a given time that
13 monitoring is taking place doesn't mean that it
14 will.

15 MS. GALE: Even if it is not
16 detected in the material that is placed in the
17 unit?

18 MR. DUNAWAY: Lynn Dunaway.
19 Depending on how units are closed at a particular
20 facility, you may combine materials from more than
21 one CCR surface impoundment and, for example, a
22 metal cleaning basin might have constituents that
23 were not originally in CCR that could show up in
24 the leachate and, therefore, be in groundwater.

1 MS. GALE: I guess my question is,
2 but isn't that -- aren't you then treating the
3 metal cleaning basin on a case-by-case basis?
4 You've just identified a metal cleaning basin as
5 an example, but there are other examples of CCR
6 units that don't collect that type of ash, right?

7 MR. DUNAWAY: Correct. There are
8 CCR surface impoundments that don't collect metal
9 cleaning waste.

10 MS. GALE: Right. So my question is
11 since the units collect different types of CCR,
12 why can't we treat them on a case-by-case basis
13 related to groundwater monitoring?

14 MR. DUNAWAY: The Agency would
15 prefer to have a single list of parameters that
16 they need to look at instead of site specific
17 limits for each CCR unit. It becomes very
18 confusing.

19 MS. GALE: Okay. But then I guess
20 another follow-up question is why does the Agency
21 think we can't use this information and knowledge
22 gathered over time when these things are, you
23 know, going to be a long time, including
24 postclosure, to make streamlining decisions? And

1 that's my final question.

2 MR. DUNAWAY: Lynn Dunaway. The
3 Agency stands behind the rule as it was drafted.

4 MS. GALE: Okay. Thanks.

5 HEARING OFFICER HORTON: Okay. City
6 of Springfield, questions on this section?

7 MS. WILLIAMS: No. No questions.

8 HEARING OFFICER HORTON: 630,
9 Dynegy?

10 MR. MORE: Josh More. In
11 Mr. Dunaway's testimony, pre-filed testimony on
12 Pages 10 through 11 and in response to ELPC, PRN
13 and Sierra Club's Question 24 on Exhibit 2, Page
14 37 the Agency notes that statistics held to
15 account for natural variation in groundwater
16 quality, is that a correct statement?

17 MR. DUNAWAY: Lynn Dunaway. Yes,
18 that is correct.

19 MR. MORE: Yet am I correct that
20 when evaluating whether an exceedance of a
21 numerical groundwater protection standard has
22 occurred under Part 45, statistics are not allowed
23 to determine whether or not there has been an
24 exceedance at the down gradient edge of the

1 impoundment, is that correct?

2 MR. DUNAWAY: Lynn Dunaway. That
3 depends on the up gradient concentration.

4 MR. MORE: That's why -- it depends
5 on the up gradient concentration because the up
6 gradient concentration determines whether or not
7 you use background which takes into account
8 statistics, correct, Mr. Dunaway?

9 MR. DUNAWAY: Yes, I would add that
10 if we're talking about an existing or inactive.

11 MR. MORE: Thank you. So for an
12 existing surface impoundment, the groundwater
13 protection standard is the greater of, the higher
14 of, background or the numeric standard in 845.600,
15 correct?

16 MR. DUNAWAY: That is correct.

17 MR. MORE: And if the background
18 level is higher than the numeric standard when
19 evaluating whether or not there is an exceedance
20 of the groundwater protection standards, one is
21 allowed to use a statistical evaluation, correct?

22 MR. DUNAWAY: That's correct.

23 MR. MORE: Yet one is not allowed to
24 use a statistical evaluation for an existing

1 impoundment when the numeric standard at the up
2 gradient well is higher than background to
3 determine whether or not there's an exceedance,
4 correct?

5 MR. DUNAWAY: I don't -- we're not
6 determining compliance at the up gradient well.

7 MR. MORE: I mixed that up. That's
8 fair, Mr. Dunaway. I mixed that up.

9 We just determined when the
10 groundwater protection standard is background, one
11 uses statistics when evaluating the down gradient
12 well to determine if there's an exceedance?

13 MR. DUNAWAY: Correct.

14 MR. MORE: When the groundwater
15 protection standard is the numeric standard, is
16 one allowed to use statistics to evaluate whether
17 or not there's an exceedance of that groundwater
18 protection standard at the down gradient well of
19 an existing surface impoundment?

20 MR. DUNAWAY: No, because the -- if
21 your up gradient well is below the numeric
22 standard, then for an existing CCR surface
23 impoundment your groundwater protection standard
24 is the numeric standard.

1 MR. MORE: Right. Has the Agency
2 performed any analysis to determine whether
3 variations in groundwater quality exist down
4 gradient of existing surface impoundments in
5 Illinois?

6 MR. DUNAWAY: The Agency has not
7 done any studies. However, from observation, all
8 concentrations and all down gradient monitoring
9 wells are not the same.

10 MR. MORE: And those not being the
11 same would suggest then that there is variation,
12 is that fair?

13 MR. DUNAWAY: There is variation in
14 the concentrations detected, yes.

15 MR. MORE: And under the CCR rule,
16 do you know whether or not one can take into
17 account statistics at an existing -- when
18 evaluating whether or not there's an exceedance of
19 a groundwater protection standard at the down
20 gradient well of an existing surface impoundment?

21 MR. DUNAWAY: In Part 257, that's
22 done because Appendix 3 constituents don't have
23 numerical groundwater protection standards. They
24 are specifically based on statistics and

1 background.

2 MR. MORE: The Appendix 4
3 constituents are used to trigger corrective
4 action, correct, under the CCR rule?

5 MR. DUNAWAY: That's correct.
6 Excuse me. With the exception of chloride, which
7 is also in Appendix 3.

8 MR. MORE: Okay. And when
9 determining whether or not a unit under the CCR
10 rule has to go into corrective action, an owner or
11 operator is allowed to use a statistical
12 evaluation of the data on its down gradient well,
13 is it not?

14 MR. DUNAWAY: Did you say when
15 deciding whether to go with assessment monitoring?

16 MR. MORE: No, sir. Corrective
17 action. So we're in assessment monitoring and now
18 the question is, do we have to move into
19 corrective action? Is it not true that in that
20 circumstance under the federal program, one is
21 allowed to take into account or to utilize a
22 statistical evaluation for determining whether or
23 not a corrective action is triggered?

24 MR. DUNAWAY: I believe the federal

1 rule uses statistical evaluation so that it
2 doesn't have to determine whether you're dealing
3 with a value that is already above the numerical
4 values or below, plus I don't believe the federal
5 rule went back and changed that language when
6 initially there were Appendix 4 constituents which
7 were based on background, but later U.S. EPA
8 provided risk-based concentrations for those.

9 I don't believe they changed the
10 language that initiated it. So I think that's a
11 fact -- a relic of language that was used when
12 there were no numeric values, only statistical
13 values for some Appendix 4 parameters.

14 MR. MORE: Let me just -- let's just
15 go to a section here because I think that was a
16 yes, but why don't we go to 2- -- 40 CFR
17 257.95(g). Exhibit 8 contains the current version
18 of the CCR rule. So let's just start with the
19 beginning 257.95. That's the assessment
20 monitoring program, correct, sir?

21 MR. DUNAWAY: Lynn Dunaway. Yes, it
22 is.

23 MR. MORE: Then when we go to G it
24 says -- G as in George. "If one or more

1 constituents in Appendix 4 to this part are
2 detected at statistically significant levels above
3 the groundwater protection standard established
4 under Paragraph H, as in Henry, of this section in
5 all sampling -- in any sampling event, the owner
6 or operator must prepare a notification
7 identifying the constituents in Appendix 4 to this
8 part that has exceeded the groundwater protection
9 standard.

10 It then goes on to list a series
11 of requirements including implementing all the
12 corrective action components, is that correct?

13 MR. DUNAWAY: Yes.

14 MR. MORE: So the evaluation is, is
15 there a statistically significant level above the
16 groundwater protection standards, right?

17 MR. DUNAWAY: That is what the
18 federal rule says, yes.

19 MR. MORE: And that's a
20 statistical -- that is -- in other words, one uses
21 statistics to evaluate whether you trigger
22 corrective action under the federal program,
23 correct?

24 MR. DUNAWAY: The way this is

1 stated, yes. However, I stick by my previous
2 explanation that this rule is written before U.S.
3 EPA added numerical standards for all the Appendix
4 4 constituents, therefore, they have to use this
5 language because some of them were statistically
6 based as opposed to numerically based.

7 MR. MORE: Mr. Dunaway, are you
8 trying to draw a distinction between the
9 methodology used to develop -- to set the numeric
10 standards for Appendix 4 of the federal program
11 versus the methodology used to set the standards
12 under 845.600?

13 MR. DUNAWAY: No, I'm trying to draw
14 a distinction as to why the language in the
15 federal rule is as it is. They couldn't just say
16 an exceedance of the groundwater protection
17 standard outright because they didn't have
18 numerical standards for all of them as we proposed
19 in 845.

20 MR. MORE: Okay. We're going to
21 pull up Appendix 4 here in a minute because I have
22 to say I'm a little confused.

23 Are you saying in the CCR rule
24 as it exists today there are not numeric standards

1 for the Appendix 4 parameters?

2 MR. DUNAWAY: No, I'm not saying
3 that. As it exists today, there are --

4 MR. MORE: Okay.

5 MR. DUNAWAY: -- numeric standards
6 for all of them.

7 MR. MORE: And as we --

8 MR. DUNAWAY: However, the paragraph
9 you were reading was not -- was written before the
10 current version when there were numeric standards.

11 MR. MORE: Sir, I'm taking you to
12 the current version 40 CFR 257 -- 19 -- the 2019
13 edition. If you're aware of a more current
14 version, please identify it for me. I'm not aware
15 of U.S. EPA changing the methodology for
16 triggering whether one has to go into corrective
17 action.

18 MR. DUNAWAY: This is Lynn Dunaway.
19 I have looked at the current version and that is
20 the issue. It uses the same language. Numerical
21 values have been adopted. It still uses the
22 statistical increase -- statistically significant
23 levels above background and if you're exceeding a
24 numerical value, which is a health-based number,

1 and your background isn't above that number, then
2 it is by its nature a statistically significant
3 increase.

4 MR. MORE: So you're saying U.S. EPA
5 has it wrong, they didn't -- they should not be
6 allowing a statistical evaluation?

7 MR. DUNAWAY: This is Lynn Dunaway.
8 That is my interpretation of Part 257, yes.

9 MR. MORE: Give me a minute, please.
10 I have no further questions on 845.640.

11 HEARING OFFICER HORTON: Ms. Brown,
12 any questions on 640?

13 MS. BROWN: Melissa Brown from IERG.
14 No. And IERG does not have any questions for the
15 remainder of 600, but would like to reserve the
16 right to follow up.

17 HEARING OFFICER HORTON: Okay.
18 Thank you. Ameren on 640?

19 MS. MANNING: Claire Manning for
20 Ameren. We also do not have any questions on 600
21 and reserve the right to ask if we need to, but we
22 don't anticipate any. Thank you.

23 HEARING OFFICER HORTON: AG's Office
24 on 600 -- 640?

1 MR. SYLVESTER: This is Steve
2 Sylvester. I don't have any questions.

3 HEARING OFFICER HORTON: I'm
4 skipping over Mr. Rao.

5 Ms. Cassel, any follow-up
6 questions on 640?

7 MS. CASSEL: Yes, I do.

8 MR. RAO: Ms. Horton, I have a
9 follow-up question.

10 HEARING OFFICER HORTON: Sorry,
11 Mr. Rao.

12 MR. RAO: Yeah, this is a follow-up
13 question based on Agency's response to Mr. More.

14 Mr. Dunaway, is your
15 interpretation of exceedance of a numeric
16 groundwater protection standard, is that
17 consistent with how exceedance of Part 620
18 standards are evaluated by the Agency?

19 MR. DUNAWAY: Lynn Dunaway. Yes.

20 MR. RAO: And Part 620 still applies
21 to these CCR surface impoundments, correct?

22 MR. DUNAWAY: It applies right now
23 for all the constituents. Once Part 845 is
24 adopted, a constituent that doesn't have a

1 groundwater protection standard under 845.600 it
2 will still apply, too.

3 MR. RAO: So if we find any
4 constituent for which there's a Part 620 standard
5 as well as a groundwater protection standard, if
6 you had -- if you consider only statistically
7 significant increases as an exceedance, would that
8 be inconsistent with Part 620?

9 MR. DUNAWAY: That's -- for Part
10 620, it depends on your class of groundwater. For
11 620, if you've exceeded the numerical standard,
12 corrective action is the -- you don't have a
13 choice. If, however, you are in a resource
14 groundwater, non-degradations provisions apply and
15 it could be a statistically significant increase
16 over background. That is a situation where we
17 don't have an exceedance over the standard.

18 Once you've exceeded the
19 groundwater standard, the numerical standard, you
20 don't use -- for that constituent at least, you
21 don't use background anymore because preventive
22 response is what you're supposed to use under 620
23 for statistically significant increases over
24 background.

1 However, once you go over the
2 numerical standard, you're supposed to use
3 corrective action which is -- which points out
4 another reason why you have to be very careful
5 about applying 620 and 845 at the same time. It
6 gets very confusing.

7 MR. RAO: Now, I just wanted to get
8 a clarification as to, you know, if we went with
9 the Federal Rules interpretation of statistically
10 significant increase for a numeric groundwater
11 protection standard, I just wanted to get the
12 Agency's, you know, position as to whether that
13 would be consistent with Part 620 or not?

14 MR. DUNAWAY: Lynn Dunaway. I
15 believe we're consistent or we're protected.

16 MR. RAO: As you have proposed the
17 rule, correct?

18 MR. DUNAWAY: Correct, yes.

19 MR. RAO: Thank you. That's all I
20 have.

21 HEARING OFFICER HORTON: Ms. Cassel,
22 you had a follow-up question?

23 MS. CASSEL: Unmuted? Yes, thank
24 you. You can hear me now?

1 HEARING OFFICER HORTON: Yes.

2 MS. CASSEL: Okay. Mr. Dunaway, I
3 just wanted to follow up to ask whether a
4 sample -- a groundwater monitoring sample followed
5 by an immediate resample, is that a reliable
6 indicator of the amount of concentration in
7 groundwater?

8 MR. DUNAWAY: Lynn Dunaway. It
9 should be.

10 MS. CASSEL: Are there instances in
11 which you would be concerned about the reliability
12 of a sample followed by an immediate resample?

13 MR. DUNAWAY: There -- Lynn Dunaway.
14 Obviously, the more samples you can take, the more
15 confidence you would have that it's a realistic
16 value. However, we prefer to err on the side of
17 protection and not have three months or four
18 months or five months worth of sampling before we
19 decide it's important.

20 MS. CASSEL: In your opinion, is the
21 current proposal -- I'm sorry. Let me scratch
22 that.

23 The current proposal does
24 provide for a sample and then an immediate

1 resample before corrective measures and the
2 various mandates of corrective action are
3 triggered, is that right?

4 MR. DUNAWAY: Yes, that's correct.

5 MS. CASSEL: And you're comfortable
6 with that approach?

7 MR. DUNAWAY: Yes.

8 MS. CASSEL: That's all I have.

9 Thank you.

10 HEARING OFFICER HORTON: Any
11 follow-up questions on 640? Okay. Moving on to
12 650 Groundwater Monitoring Program.

13 Ms. Cassel or Ms. Bugel, any
14 questions on 650?

15 MS. BUGEL: I believe Ms. Cassel has
16 questions.

17 HEARING OFFICER HORTON: Okay.

18 MS. CASSEL: Am I unmuted now?

19 HEARING OFFICER HORTON: Yes.

20 MS. CASSEL: Okay. Thank you. Yes,
21 just a few questions on 845.650. So wouldn't if
22 an exceedance of a groundwater protection standard
23 is detected and confirmed, whether corrective
24 action will be required under the proposal depends

1 on the success or failure of any alternate source
2 demonstration, is that right?

3 MR. DUNAWAY: Lynn Dunaway. Yes,
4 corrective action will be required if -- if an
5 owner or operator is not successful in their
6 demonstration of an alternative source.

7 MS. CASSEL: And proposed
8 regulations do not provide for public review and
9 comment on the alternate source demonstration
10 before the Agency determines whether to concur or
11 not concur with the demonstration, correct?

12 MR. DUNAWAY: That's correct.

13 MS. CASSEL: Did it provide any
14 other mechanisms for public input into the
15 Agency's determination of whether there is a --
16 whether do concur or do not concur with an
17 alternate source demonstration?

18 MR. DUNAWAY: If the Agency doesn't
19 concur, then the owner/operator will move
20 corrective action and that will have to be a
21 corrective action assessment which I believe is
22 subject to public review.

23 MS. CASSEL: I asked earlier about
24 the Agency's decision, specifically whether to

1 concur or not concur.

2 Are there specified
3 opportunities for public input into that
4 determination?

5 MR. DUNAWAY: No, there is not
6 because the operator has 60 days to make that
7 demonstration and 90 days in order to start their
8 assessment criteria. So the timeframe there is
9 very limited.

10 MS. CASSEL: So in deciding to
11 exclude -- I'm sorry. First, I'd ask the Agency
12 to take a look at Exhibit -- I believe it is
13 Exhibit 9. It's the decision -- the interim final
14 order, I should say, excuse the paper shuffling,
15 in the Sierra Club versus Midwest Generation
16 matter from June 2019.

17 MS. ZEIVEL: 13-15.

18 MS. CASSEL: I know it's correct,
19 right, that you, Mr. Dunaway, and Mr. Buscher both
20 testified you had some familiarity with this
21 decision?

22 MR. DUNAWAY: This is Lynn Dunaway.
23 Yes, I had some familiarity and we're trying to
24 get to the point. If you can wait for a little

1 bit.

2 MS. CASSEL: Sure. Sorry about
3 that.

4 MR. DUNAWAY: Okay. We have the
5 exhibit in front of us.

6 MS. CASSEL: Okay. Great. So,
7 Mr. Dunaway, in deciding to exclude public input
8 from its evaluation of alternate source
9 demonstration, did the Agency consider the
10 portions of this decision where workers or former
11 workers testified as to the presence of ash
12 disposal sites, including ash piles, former ash
13 disposal areas and ash left underneath liners?
14 And I can point you to specific pages if that
15 would be helpful.

16 MR. DUNAWAY: That would be helpful.

17 MS. CASSEL: Sure.

18 MS. GALE: I would register an
19 objection again that this is outside the scope of
20 the rulemaking and that those areas are not --
21 were not CCR surface impoundments.

22 MS. CASSEL: May I respond?

23 HEARING OFFICER HORTON: Yes.

24 MS. CASSEL: The alternate source

1 demonstration is an opportunity for an
2 owner/operator to claim that there is ash
3 contamination or contamination found in the
4 groundwater is coming from elsewhere. I'm
5 pointing to instances where folks have identified
6 sources of ash contamination and I'm wondering
7 whether the Agency considers that excludeing the
8 public from those determinations. So it is
9 relevant to these rules.

10 HEARING OFFICER HORTON: I'll
11 sustain Ms. Gale's objection just on the basis
12 that this is pending -- a pending matter before
13 the Board. It continues to be. I'd ask,
14 Ms. Cassel, I believe you can ask this question in
15 a more general manner and not related specifically
16 to this case 13-15.

17 MS. CASSEL: Thank you, Hearing
18 Officer.

19 Mr. Dunaway, did you or other
20 Agency staff in preparing this rule consider
21 instances where workers, former workers or the
22 public have identified sources of contamination at
23 coal ash sites?

24 MR. DUNAWAY: Lynn Dunaway. No, we

1 did not review that information.

2 MS. ZEIVEL: Ms. Cassel, you're
3 muted.

4 MS. CASSEL: I just wanted to say no
5 further questions. I reserve the right for
6 further follow up.

7 HEARING OFFICER HORTON: Thank you.
8 Moving onto Midwest Generation, 650?

9 MS. GALE: Yes. Thank you. Before
10 I ask a question, just can you please pull out
11 Exhibit 8, the current CCR rule, and turn to Page
12 472. I'll be asking questions from Exhibit 3
13 Midwest Generation's Question 69 -- excuse me --
14 Agency response to Midwest Generation Question 69.

15 HEARING OFFICER HORTON: What page
16 is that?

17 MS. GALE: That's on Page 24 of
18 Exhibit 3. Midwest Generation asked about the
19 Agency's timeframe for background data development
20 to 180 days and the Agency's answer was there was
21 a 180-day requirement established in U.S. EPA Part
22 257. Looking at Exhibit 8, Page 472, Subpart
23 257.94(b).

24 HEARING OFFICER HORTON: B as in

1 boy?

2 MS. GALE: B as in boy. Yes. Thank
3 you.

4 Actually, I'm looking at the top
5 right corner or the top right column and I will
6 read it "For new CCR landfills and new CCR surface
7 impoundments and all lateral expansions of CCR
8 units, a minimum of eight independent samples for
9 each background must be collected during the first
10 six months of sampling," is that the Agency's
11 citation for the 180 days?

12 MR. DUNAWAY: Lynn Dunaway. Yes,
13 that would be an appropriate section for new CCR
14 surface impoundments.

15 MS. GALE: Okay. And I guess that's
16 what you were citing to for the 180 days in your
17 answer to Question 69?

18 MR. DUNAWAY: Correct.

19 MS. GALE: But looking at that same
20 section just before it, it states "For existing
21 CCR landfills and existing CCR surface
22 impoundments, a minimum of eight independent
23 samples from each background and down gradient
24 well must be collected and analyzed for the

1 constituents listed in Appendix 3 and Appendix 4
2 to this part no later than October 17th, 2017,"
3 and this rule was passed on October 15th, 2015.

4 So the Agency would agree that
5 existing CCR surface impoundments received two
6 years to conduct the eight independent samples,
7 right?

8 MR. DUNAWAY: From the time that the
9 rule was passed, yes.

10 MS. GALE: So I guess my broad
11 question in answer to our Question 69(a) if the
12 Agency can explain to me how it thinks that 180
13 days for existing CCR surface impoundments is
14 consistent with Part 257?

15 MR. DUNAWAY: For a few CCR surface
16 impoundments which might also include those that
17 have never done any monitoring in Part 257, that
18 would be consistent with a new one. For existing
19 ones, the monitoring is already out there and Part
20 845 doesn't prohibit the use of existing data.

21 MS. GALE: Agree. But the Agency
22 also agrees that there are some units that are in
23 dispute, right, and may not have been considered
24 CCR surface impoundments under the Federal Rules?

1 MR. DUNAWAY: The owners or
2 operators may not have considered them CCR surface
3 impoundments.

4 MS. GALE: Right. So I guess my
5 question is your reference to data that may
6 already be there may not be there, right?

7 MR. DUNAWAY: For the disputed CCR
8 surface impoundments, the data may not be there.

9 MS. GALE: So 180 days for existing
10 CCR surface impoundments is not consistent with
11 Part 257, right?

12 MR. DUNAWAY: The consistency would
13 be -- if we had a new CCR surface impoundment, it
14 would have to conduct that monitoring within 180
15 days. Those that have not done any monitoring
16 would have to conduct the monitoring within 180
17 days the way 845 is written.

18 MS. GALE: And moving on to the same
19 question -- Question 69(b)(2). So it's on Page
20 25.

21 MR. DUNAWAY: Okay.

22 MS. GALE: I'm sorry. I should have
23 said (b)(1). The Agency states in its answer
24 "Independent samples can be collected even if they

1 are highly autocorrelated."

2 I guess I'm asking, how does the
3 Agency -- why does the Agency think they can be
4 collected even if they're highly autocorrelated?

5 MR. DUNAWAY: Just because the
6 groundwater is not moving very fast doesn't mean
7 that the sample is not independent. It simply
8 means that the quality will not change quickly.
9 That's the state of being of groundwater in that
10 particular location.

11 MS. GALE: So it's possible you
12 could be sampling the same groundwater?

13 MR. DUNAWAY: Well, it obviously
14 won't be the exact same groundwater because that's
15 already been extracted from the well, but it could
16 be very similar groundwater.

17 MS. GALE: Okay. But the Agency is
18 not suggesting that there is some -- I guess my
19 personal thing there is not some mechanism or
20 sampling mechanism that can collect highly
21 autocorrelated that is, you know, unknown or some
22 special way to do it? I was curious about if you
23 were thinking of a specific way to collect
24 autocorrelated or not.

1 MR. DUNAWAY: Well, autocorrelation
2 is a -- a function of samples looking similarly.
3 Samples can look similar given a high permeability
4 area. It depends on the variation of groundwater
5 quality, but I'm not suggesting that there is any
6 specific way to collect groundwater samples in a
7 low permeability area that is special.

8 MS. GALE: Great. Thank you.
9 Page -- same Page 25, Question 71 -- 71(a).

10 So the Agency states in the
11 answer that Part 620 and Part 257 do not require a
12 resample prior to initiation of corrective action.

13 To be clear, Part 620 doesn't
14 have an automatic trigger for a corrective action,
15 right?

16 MR. DUNAWAY: It does not have an
17 automatic trigger, no.

18 MS. GALE: Part 257 is a two-tiered
19 system. I believe you already discussed that with
20 Mr. More. There's detection monitoring and then
21 there's assessment monitoring, right?

22 MR. DUNAWAY: It is two-tier, yes.

23 MS. GALE: Okay. And then under
24 Part 257, the detection monitoring, you have to --

1 within 90 days of detection you have to conduct
2 assessment monitoring, right?

3 MR. DUNAWAY: Correct.

4 MS. GALE: And then once you're in
5 assessment monitoring, depending on the results,
6 within 90 days you have to conduct corrective
7 measures, right?

8 MR. DUNAWAY: Correct.

9 MS. GALE: So that's at least 180
10 days from the date of a detection to the date to
11 initiate corrective action, right?

12 MR. DUNAWAY: No.

13 MS. GALE: Okay.

14 MR. DUNAWAY: The detection -- the
15 detection monitoring you're not necessarily
16 monitoring your assessment. In Part 257, your
17 detection monitoring is monitoring Appendix 3
18 constituents. When you get a detection there, you
19 monitor Appendix 4 constituents. If you find a
20 detection in 4, then you go corrective action
21 assessment within 90 days with no resample.

22 MS. GALE: Right. But you get 90
23 days in each -- you get 90 days in detection
24 monitoring and then you get 90 days in assessment

1 monitoring, right?

2 MR. DUNAWAY: Yes. In Part 257,
3 that's what happens.

4 MS. GALE: Right. I guess I'm
5 confused why you thought 90 plus 90 didn't mean
6 180 days?

7 MR. DUNAWAY: Can you repeat that,
8 please?

9 MS. GALE: I had asked that -- I had
10 asked, you know, that 90 days of detection
11 monitoring, 90 days of assessment monitoring, so
12 that's 180 days from the date of detection,
13 detection monitoring, to the date of initiated
14 corrective action and you said no and I'm just
15 confused by that answer.

16 MR. DUNAWAY: Because the initiation
17 of corrective action is based on an Appendix 4
18 constituent, not an Appendix 3 constituent. It
19 would be 180 days to detect in an Appendix 3.
20 Let's say as an example sulfate. You detect
21 sulfate on Day 1. Within 90 days, you have to do
22 your assessment monitoring. When you do
23 assessment monitoring, let's say you detect
24 arsenic as well as sulfate, that arsenic sample

1 can lead you to corrective assessment under Part
2 257 within 90 days.

3 MS. GALE: Right. So then from the
4 date of detecting sulfate to the date of
5 corrective action is 180 days?

6 MR. DUNAWAY: No. Because your
7 corrective action in Part 257 is not based on
8 sulfate. It's based on your detection of arsenic.

9 MS. GALE: But you weren't in
10 assessment monitoring until -- until you detected
11 sulfate?

12 MR. DUNAWAY: That's the assessment.
13 You detect something that says you need to look
14 for other things. When you detect those other
15 things, then you go to corrective action.

16 MS. GALE: Okay. So I guess,
17 correct me if I'm wrong, is that the basis for why
18 the Agency chose not to do a two-tier system?

19 MR. DUNAWAY: No, the basis for why
20 we went with a one-tier system is because Part 620
21 already has standards for all those tiered systems
22 except calcium. All those tier-three -- or
23 Appendix 3 constituents it didn't make sense to
24 the Agency to not have a standard under 845, a

1 groundwater protection standard under 845,
2 wouldn't exist in Part 620.

3 MS. GALE: All right. I guess what
4 I'm getting at, though, is you can agree that
5 under the federal two-tiered system, there is just
6 more time between detection and corrective action?

7 MR. DUNAWAY: There is now more time
8 between a constituent that triggered corrective
9 action and that corrective action.

10 MS. GALE: But my question was
11 detection, from detection monitoring to corrective
12 actions. Baked into the two-tier system is
13 detection monitoring and then an assessment
14 monitoring and then a corrective action?

15 MR. DUNAWAY: If you -- if your
16 detection monitoring triggers your assessment
17 monitoring and you don't find any Appendix 4
18 chemicals, you don't have to do any corrective
19 action at all under Part 257.

20 MS. GALE: Agreed.

21 MR. DUNAWAY: So it's not more time
22 until you have to do corrective action. It
23 depends on the constituent you find.

24 MS. GALE: Agreed. But there is --

1 it's -- in your example where you said sulfate and
2 then arsenic, let's do sulfate, and then if we
3 have sulfate detection monitoring and then we get
4 into assessment monitoring and it's still just the
5 sulfate that kicks us into corrective action,
6 wouldn't that be then --

7 MR. DUNAWAY: Not in Part 257 it
8 doesn't.

9 MS. GALE: Okay. I guess my
10 ultimate question is by moving to a one-tier we've
11 taken away 90 days of groundwater monitoring,
12 right?

13 MR. DUNAWAY: No, what we're doing
14 is having what used to be a chemical that simply
15 triggered more monitoring now triggering
16 corrective action because it's above a numerical
17 standard as opposed to having it -- just having it
18 make you look for other constituents.

19 MS. GALE: And the Agency doesn't
20 consider that a shortened timeframe?

21 MR. DUNAWAY: No.

22 MS. GALE: Okay. Page 27,
23 technically it's Page 26 to 27. Well, Question
24 72(g), which is on 27.

1 Midwest Generation asked what
2 criteria applied to the review process to
3 determine whether the exceedance now resolved to
4 the operation of the unit, but we're talking about
5 the alternative source demonstration.

6 MR. DUNAWAY: Okay.

7 MS. GALE: And in the proposed rule,
8 the Agency's language is a bit different than the
9 language in Part 257. So I just want a
10 clarification on that.

11 In 650(d)(4), the Agency's
12 language is "Submit a demonstration to the Agency
13 that a source other than the CCR surface
14 impoundment caused the contamination and the CCR
15 surface impoundment did not contribute to the
16 contamination" and I guess my question is what
17 criteria does the Agency envision that the CCR
18 surface impoundment did not contribute to the
19 contamination?

20 HEARING OFFICER HORTON: If
21 you're -- as an example -- this is Lynn Dunaway.
22 As an example, if your background monitoring
23 indicated a concentration above the numerical
24 standard and then your down gradient compliance

1 well was a statistically significant increase over
2 that, that would be a contribution to that value.

3 MS. GALE: Okay. Thanks for that.

4 72(j). So we're on Page 28. It's a follow up to
5 the Agency's position that non-concurrence is a
6 final decision which can be appealed to the Board.

7 Will an appeal stay the
8 requirement to initiate corrective action?

9 MR. DUNAWAY: I'm sorry. Can you
10 repeat that, please?

11 MS. GALE: Sure. Excuse me. Sorry.
12 The Agency answered that the non-concurrence with
13 an adjusted standard -- excuse me. Adjusted --
14 man. Alternate source demonstration is a final
15 decision which can be appealed and my question is
16 will the appeal or un-appeal stay the requirement
17 to initiate corrective action?

18 MR. DUNAWAY: Lynn Dunaway. The
19 rules are not written to allow a stay. That would
20 mean a Board -- Board decision.

21 MS. GALE: Okay. So based upon what
22 Ms. Zeivel said earlier, if a party was to
23 introduce that information, that would be the
24 Board's -- language like that would be a Board's

1 decision?

2 MS. ZEIVEL: This is Christine
3 Zeivel. Yes, if an entity was to provide proposed
4 language, the Agency may provide comment, but it's
5 ultimately the Board's decision.

6 MS. GALE: Thank you. I have no
7 further questions on this section.

8 HEARING OFFICER HORTON: City of
9 Springfield, 650?

10 MS. WILLIAMS: Thank you for
11 reminding me. I might have lost track. I think
12 this will be shortened a little bit by the
13 Agency's earlier discussion about proposed
14 changes. I just want to ask a few questions about
15 groundwater elevation monitoring.

16 Could the Agency just generally
17 describe what groundwater elevation monitoring is
18 and how it is done?

19 MR. DUNAWAY: Groundwater elevation
20 monitoring is monitoring a well before -- have a
21 sample taken, there is typically an electronic
22 sensor or a tape measure that you lower into the
23 well from the measuring point from the top of the
24 well to determine -- you've already had the well

1 surveyed. So you know its elevation. You measure
2 the distance to the top of the water, subtract
3 that distance and that's the elevation to
4 groundwater.

5 MS. WILLIAMS: I'm told it's
6 important to do groundwater elevation monitoring
7 when you take constituent samples, but I don't
8 know that I could explain why. So could you
9 explain why the Agency wants elevation monitoring
10 to be done when quarterly constituent sampling is
11 done?

12 MR. DUNAWAY: Part of the reason is
13 you can make potentiometric surface maps. So you
14 know what direction groundwater is flowing and
15 which obviously you can also determine the rate of
16 groundwater flow, but obviously you want to know
17 that what you believe to be your compliance well
18 is, in fact, hydraulically down gradient from your
19 background.

20 MS. WILLIAMS: So you're saying
21 every time you need to make sure of that, every
22 quarter once you have an approved sampling program
23 that's supposed to account for that, the Agency
24 needs to confirm that the up gradient well is

1 truly up gradient?

2 MR. DUNAWAY: Yes, that's standard
3 operating procedure.

4 MS. WILLIAMS: How frequently have
5 you had cause to determine an up gradient well --
6 well, let me strike that.

7 So I'm understanding the
8 purpose -- you've articulated a purpose then to
9 make sure that the well you're sampling from is
10 truly a compliance well or a background well and
11 that those things aren't switched, correct?
12 Switched probably isn't the right way to put it.

13 MR. DUNAWAY: Correct.

14 MS. WILLIAMS: Okay. Can you think
15 of any other reasons?

16 MR. DUNAWAY: That if you have
17 variation in the -- significant variation in the
18 analysis that you get from your -- from your
19 compliance wells a slight shift where your
20 background is still background, but you may have a
21 slight variation to account for different
22 concentrations of different wells at different
23 times. You would also be able to account for
24 seasonal fluctuation.

1 MS. WILLIAMS: Seasonal fluctuation
2 in the constituent data or in the elevation
3 itself?

4 MR. DUNAWAY: Actually, both because
5 as you have more precipitation you may have more
6 concentration, you may also have rising or falling
7 groundwater levels.

8 HEARING OFFICER HORTON:
9 Mr. Dunaway, you said rising or falling
10 groundwater levels?

11 MR. DUNAWAY: Yes.

12 HEARING OFFICER HORTON: Go ahead.

13 MS. WILLIAMS: So what use would the
14 Agency make of groundwater elevation data in the
15 absence of correlative monitoring data --
16 constituent monitoring data? Sorry.

17 MR. DUNAWAY: That they would be
18 important for doing groundwater transport flow
19 models.

20 MS. WILLIAMS: I'm sorry. Can you
21 repeat that? I had a little trouble hearing the
22 end.

23 MR. DUNAWAY: Yes, that data would
24 be useful for creating and calibrating groundwater

1 flow and transport models.

2 MS. WILLIAMS: So -- but that
3 wouldn't be that the Agency would be creating
4 that, right? I'm assuming you're saying the
5 permittee would be able to use that to develop a
6 better model?

7 MR. DUNAWAY: Correct.

8 MS. WILLIAMS: Okay. Do you have a
9 general sense of the amount of variation that you
10 see in elevation levels in wells?

11 MR. DUNAWAY: That varies quite a
12 bit on a case-by-case basis. Some are relatively
13 steady, some have wide fluctuations.

14 MS. WILLIAMS: And is the
15 fluctuation generally a seasonal issue from rain
16 levels or could it be a multitude of factors?

17 MR. DUNAWAY: It's a multitude of
18 factors. It may be seasonal, but it may also be
19 impacted if you're close enough to a major river
20 based on river stage.

21 MS. WILLIAMS: So you might not have
22 rain, but there might have been a lot of rain up
23 in Minnesota and you're on the Mississippi River
24 or something, is that what you're saying, an

1 example of not -- not related to weather directly,
2 but indirectly?

3 MR. DUNAWAY: Correct.

4 MS. WILLIAMS: Do you have an
5 opinion on a length of monthly groundwater
6 elevation samples that would give you a good sense
7 of this range of fluctuation that you might see?

8 MR. DUNAWAY: Could you repeat that
9 question, please? I'm not sure I understand what
10 you said.

11 MS. WILLIAMS: I'm just asking if
12 you have an opinion based on your expertise of how
13 much sampling would you need to see to feel you
14 have seen all the range of fluctuation in the
15 elevations that you're going -- that -- what
16 covers the range?

17 MR. DUNAWAY: Typically --
18 typically, we have that -- that groundwater
19 elevation over a period of time a chemical sample
20 was taken.

21 MS. WILLIAMS: Okay. All right.
22 That's enough for me. Thank you.

23 HEARING OFFICER HORTON: Okay. I
24 see that it is 3:12. Let's take a ten-minute

1 break and resume with Dynegy if you have questions
2 on 650. We'll be back at 3:23.

3 (Whereupon, a break was taken
4 after which the following
5 proceedings were had.)

6 HEARING OFFICER HORTON: We're back
7 in the hearing room. Sorry for that little bit of
8 a longer break. So let's continue powering on to
9 get the best record we can here. Okay. We were
10 on 650 and at Dynegy, I believe.

11 Did you have any questions on
12 650?

13 MR. GRANHOLM: Yes, this is Ryan
14 Granholm. Just a couple of follow-up questions on
15 the same topic that we were on before the break,
16 which is groundwater monitor- -- groundwater
17 elevation monitoring. I ask the Agency to turn,
18 please, to Exhibit 2, Page 129 continuing into
19 130.

20 HEARING OFFICER HORTON: Were you
21 muted? Oh, we're muted.

22 MS. TIPSORD: Sorry.

23 MS. ZEIVEL: Thank you.

24 MS. TIPSORD: Start over.

1 HEARING OFFICER HORTON: Did you
2 hear --

3 MS. TIPSORD: Shannon, come back.

4 HEARING OFFICER HORTON: Did you
5 hear Mr. Granholm's question?

6 MS. ZEIVEL: No, we heard him say
7 "This is Mr. Granholm" and nothing after that.

8 MR. GRANHOLM: That's really all I
9 had. I just wanted you to be aware of my
10 presence.

11 Just a couple of follow-up
12 questions on the same topic that we were on before
13 the break, groundwater elevation monitoring. I
14 ask the Agency to turn, please, to Exhibit 2, Page
15 129 to 130. I'm going to ask you about the
16 Agency's responses to CWLP's Question 6, which
17 was, I believe, posed to Mr. Dunaway.

18 In response to 6(b), as in
19 bravo, the Agency cites quarterly groundwater
20 monitoring requirements and other regulatory
21 programs as support for monthly elevation
22 monitoring in this program Part 845. Consistent
23 with the programs mentioned in response 6(b),
24 wouldn't quarterly groundwater mentoring be

1 sufficient here? Groundwater elevation
2 monitoring. Excuse me.

3 MR. DUNAWAY: This is Lynn Dunaway.
4 We received public comments regarding groundwater
5 elevations at our public outreach and we had
6 suggestions of everything from daily to weekly
7 monitoring suggested for elevations. So we -- we
8 felt that much information was too much. So we
9 ratcheted it back to monthly as a more reasonable
10 compromise.

11 MR. GRANHOLM: But the other
12 programs require quarterly monitoring, correct?

13 MR. DUNAWAY: To the best of my
14 knowledge, yes, or -- or if the monitoring
15 frequency for chemicals is more frequent, I would
16 expect the groundwater elevation is collected each
17 time that chemical analysis is done.

18 MR. GRANHOLM: So wouldn't it be
19 sufficient for purposes of 845 to -- for
20 groundwater elevation monitoring to be on the same
21 schedule as groundwater chemical monitoring in the
22 other programs that you just noted?

23 MR. DUNAWAY: Lynn Dunaway. I have
24 provided the reason why we did that so we will

1 stick by that, by the rule as proposed.

2 MR. GRANHOLM: Does the Agency have
3 any evidence that quarterly monitoring schedules
4 as noted in the other programs in response to 6(b)
5 are insufficient for the purposes of those
6 programs?

7 MR. DUNAWAY: I don't have any
8 evidence that they are insufficient in general.
9 Those may not be unusual for the establishment --
10 establishment of background to be more frequent
11 for a time period.

12 MR. GRANHOLM: Does the Agency have
13 any rationale other than the public comments it
14 received for acquiring monthly elevation
15 monitoring here?

16 MR. DUNAWAY: No.

17 MR. GRANHOLM: I think that
18 concludes Dynegy's questions on all of Subpart F
19 allowing for follow-ups of course.

20 HEARING OFFICER HORTON: Certainly.
21 Skipping over those who have said that they would
22 only have follow-up questions on 600. I ask now
23 for follow-up questions on 650? Okay. Seeing
24 none.

1 MS. BUGEL: I believe Ms. Cassel has
2 one follow up.

3 HEARING OFFICER HORTON: My
4 apologies. Ms. Cassel?

5 MS. BUGEL: I could be wrong.

6 MS. ZEIVEL: You may be muted,
7 Ms. Cassel.

8 MS. CASSEL: Can you hear me now?

9 HEARING OFFICER HORTON: Yes.

10 MS. CASSEL: I just wanted to ask a
11 follow up related to the line of questioning
12 related to groundwater elevation. I'm just
13 curious that if by monitoring groundwater
14 elevation monthly it's possible that the peak
15 elevation of groundwater or a peak elevation of
16 groundwater might occur within that month that is
17 missed by only monitoring on a monthly basis?

18 MR. DUNAWAY: That could happen,
19 yes. That was Lynn Dunaway.

20 MS. CASSEL: Okay. That was my only
21 question. Thanks very much.

22 HEARING OFFICER HORTON: Okay.
23 Thank you. 660 -- I'm sorry. Still on 650. 660
24 Assessment of Corrective Measures.

1 Ms. Cassel, did you have any
2 questions on 660?

3 MS. CASSEL: I do. Just a few. Am
4 I unmuted?

5 HEARING OFFICER HORTON: Yes.

6 MS. CASSEL: Okay. Great. So I
7 wanted to follow up on two answers the Agency
8 provided concerning groundwater management zones.
9 One was a response to Midwest Generation Question
10 59(a), which is page -- the question is on Page
11 21, the answer is on Page 22 of Exhibit 3 and then
12 there is a related answer to Dynegy's Question 49
13 which I believe is on Page 48 of that same
14 exhibit. Let me know when you're ready.

15 MR. DUNAWAY: Okay. We're there.

16 MS. CASSEL: Okay. Thank you. So
17 in the answer to Midwest Generation Question
18 59(a), the Agency answered like -- excuse me. The
19 Agency answered "Like any other final.
20 Determination made by the Agency, GMZ's,
21 groundwater management zones, are subject to Board
22 review. The Agency's position is that any GMZ
23 which the Board has not determined to be invalid,
24 remains in effect pursuant to Part 620."

1 So my question is if a
2 previously approved GMZ is in place relating to
3 exceedances of Part 620 standards for a
4 constituent for which there are groundwater
5 protection standards set under Part 845, is it the
6 Agency's position that such GMZ continue to apply
7 for that constituent?

8 MR. DUNAWAY: For an inactive closed
9 CCR surface impoundment, that is yes. For -- for
10 any other existing or inactive surface impoundment
11 845 -- just as we explained earlier 845 should be
12 addressed first. Once the groundwater protection
13 standards of 845 are met, then 620 would prevail.

14 MS. CASSEL: Okay. So is it correct
15 to confirm that groundwater corrective action
16 implemented pursuant to Part 620 could not replace
17 corrective actions under Part -- excuse me --
18 under Part 845 after compliance with the
19 assessment of corrective measures, corrective
20 action requirements including the requirement to
21 submit a construction permit application for
22 corrective action?

23 MR. DUNAWAY: For corrective action,
24 there would be a requirement for construction

1 permit, yes.

2 MS. CASSEL: I believe that's all I
3 have for 660 except follow-ups.

4 HEARING OFFICER HORTON: Okay.
5 Midwest Generation, 660?

6 MS. GALE: I have no questions for
7 the rest of this part.

8 HEARING OFFICER HORTON: Okay. City
9 of Springfield?

10 MS. WILLIAMS: I have no questions
11 for the rest of this part either.

12 HEARING OFFICER HORTON: Okay.
13 Dynegy already said the same thing. So any
14 follow-up questions on 660? Okay.

15 Hearing none, 670 Corrective
16 Action Plan? Ms. Cassel, any questions on 670?

17 MS. CASSEL: Yes. Thank you. I'm
18 sorry. Ms. Bugel, did you have a follow up for
19 660?

20 MS. BUGEL: No, I did not.

21 MS. CASSEL: Okay. My apologies.
22 For 670, the corrective action plan, I'm looking
23 at the Agency's answer to ELPC Question's 32 and
24 33 to Page 41 of Exhibit 2. Let me know when

1 you're ready.

2 MR. DUNAWAY: Yeah, we're ready.

3 MS. CASSEL: Okay. In response to
4 this -- to Question 32, 32 and 33 which asks about
5 what information will be considered -- let me
6 clarify -- 32(b) asked about what information
7 would be considered in determining what is
8 feasible in terms of the requirement that the
9 corrective action plan must meet controls of
10 releases to the maximum extent feasible to
11 eliminate future releases and the Agency's answer
12 was "All of the factors required for consideration
13 by the owners or operators in Section 845.670 is
14 what will be considered in determining what is
15 feasible" and then the following answer was that
16 "Cost is not a factor listed for consideration for
17 any activity required by Part 245."

18 Given the Agency's statement, is
19 it the Agency's understanding that costs cannot be
20 considered in decisionmaking processes under Part
21 845?

22 MR. DUNAWAY: Lynn Dunaway. 845
23 requires financial assurance for corrective action
24 and, therefore, there has to be some cost analysis

1 done there. However, for selecting a corrective
2 action, there is not a cost element in Part
3 845.670.

4 MS. CASSEL: How will the Agency
5 ensure that costs are not considered in that
6 evaluation for corrective action?

7 MR. DUNAWAY: The Agency will review
8 the information provided which only those elements
9 in Part 670 are what the Agency would consider.
10 So an owner/operator could attach costs to all of
11 those which would probably be useful for
12 calculating their financial assurance. However,
13 that is not what the Agency considers if it is not
14 listed here. So it's not open for consideration.

15 MS. CASSEL: So in determining the
16 financial assurance, that's a separate analysis
17 based on whatever the corrective action was
18 selected or, I'm sorry, approved as consistent
19 with the factors set out in the proposal, is that
20 correct?

21 MR. DUNAWAY: Yes.

22 MS. CASSEL: Will the Agency require
23 or do the rules require companies to set out all
24 available feasible options that could be used for

1 corrective action without consideration to cost?

2 MR. DUNAWAY: I don't know that
3 every potential one is required, but they
4 certainly have a long list of requirements they do
5 have to consider.

6 MS. CASSEL: Will the Agency do any
7 independent review of whether there are options
8 that were not set out as considered in an
9 application that should have been part of what was
10 analyzed?

11 MR. DUNAWAY: Well, it would -- that
12 would be somewhat speculation on my part what we
13 may have to do. However, it's a common practice
14 if there is something that strikes us as being
15 missing or lifted or short we may request more
16 information about it.

17 I believe one of the factors --
18 the last factor is other relevant factors. So if
19 we believe that they missed something, Part
20 845.670(f)(6), I believe, gives the Agency the
21 authority to ask for more information.

22 MS. CASSEL: So if the Agency
23 believes that potential corrective action measures
24 were improperly excluded because they cost too

1 much, will the Agency require that information?

2 MR. DUNAWAY: Well, we wouldn't know
3 if they were excluded because they cost too much,
4 but if they were what we think are maybe
5 reasonable actions that aren't included, we can
6 certainly request the operator to provide those
7 for us.

8 MS. CASSEL: Is that the Agency
9 practice?

10 MR. DUNAWAY: Could you repeat that,
11 please?

12 MS. CASSEL: So is that the Agency
13 practice to request such information?

14 MR. DUNAWAY: Yes, I've frequently
15 requested additional information that I felt was
16 missing from submissions.

17 MS. CASSEL: Is information that is
18 added to the record, the permitting application
19 record, based on an Agency request, is that -- are
20 there opportunities for the public to review that
21 additional supplemental information?

22 MR. LECRONE: This is Darin Lecrone.
23 It's kind of a case-by-case thing depending on
24 what information is, the timing on when it is

1 requested and how it affects a permit
2 determination. In other words, where is the
3 permit at its process and how -- how big of a deal
4 the information is.

5 If it's something that is a
6 major consideration, then, you know, it could
7 theoretically require another public notice for
8 instance, but many times we request information
9 based on a comment received during public notice
10 and that additional question is to address a
11 perceived deficiency. So depending on the timing,
12 it may or may not be available for public review,
13 but it is part of the permit decision record
14 regardless.

15 MS. CASSEL: Okay. I think I have
16 no further questions. I'm just reserving
17 opportunities for follow up. Thanks.

18 HEARING OFFICER HORTON: Okay. And
19 I believe the rest of the participants do not have
20 questions for 670. Are there any follow-ups?
21 Okay.

22 Moving on to 680 Implementation
23 of the Corrective Action Plan. Ms. Cassel, did
24 you have questions on 680?

1 MS. CASSEL: I do not. Thank you.

2 HEARING OFFICER HORTON: Okay. We
3 move to 700. We move to Subpart G. 845.700
4 Required Closure or Retrofit of CCR Surface
5 Impoundments.

6 I'll begin with Ms. Cassel and
7 Ms. Bugel, did you have any questions on Part 700?

8 MS. BUGEL: Yes, I am covering the
9 questions for this part along with Ms. Courtney.
10 So I'm going to refer to I think -- now, I forget
11 whether it's Exhibit 2 or Exhibit 3, but IEPA's
12 pre-filed answers to the environmental groups
13 questions from August 3rd, Page 49, Question 6(d).
14 And I'll wait to make sure the Agency has found
15 that.

16 The question is on Page 48 and
17 the answer is on Page 49. And this answer
18 references affording public input into the
19 category designation and I have just one question
20 about this when the Agency is ready.

21 MS. ZEIVEL: Ms. Bugel, we are all
22 lost as to where you are. Would you mind
23 repeating the page number and question number
24 again?

1 MS. BUGEL: Sure. Page 49. It's
2 48 -- the question is on 48. The answer is on 49.
3 It's Question 6 and D as in dog.

4 HEARING OFFICER HORTON: It's
5 Exhibit 2.

6 MS. BUGEL: And it's Exhibit 2.
7 Thank you. I have just one question about that
8 which the question is, does the Agency agree that
9 the public could have valuable information as to
10 the -- or insight into the category designation?

11 MS. ZEIVEL: I'm sorry. Could you
12 repeat that question? Are we on Question 6?

13 MS. BUGEL: Okay. Starting with
14 Exhibit 2, the Agency responses to the
15 environmental groups questions, among others.
16 Okay.

17 And on Page 48, do you see the
18 heading Closure or Retrofit of CCR Surface
19 Impoundments?

20 MS. ZEIVEL: Yes.

21 MS. BUGEL: Question 6 and Subpart
22 D, as in dog, which is about whether the public
23 will be afforded opportunities to provide input
24 into the owner/operator's proposed category

1 designation.

2 MS. ZIMMER: Okay.

3 MS. BUGEL: I'm paraphrasing the
4 question. Carrying on to the next page, which is
5 Page 49, the Agency's answer appears there at the
6 top of the page and the Agency indicated that the
7 current proposed rules do not afford public input
8 into category designation, do you see that?

9 MS. ZIMMER: Yes.

10 MS. BUGEL: So my question is -- my
11 question -- do you need me to repeat the question?

12 MS. ZIMMER: Yes, please.

13 MS. BUGEL: Okay. So the question
14 is whether the public could have valuable
15 information or insight into the category
16 designation?

17 MS. ZIMMER: This is Amy Zimmer.

18 Based on the way the categorization is setup and
19 the information required for the categorization,
20 which is private wells or existing potable wells,
21 EJ areas, groundwater protection standards, I
22 don't -- the Agency does not believe -- while the
23 public may have information on that, we don't
24 believe they will generally have unique

1 information that the Agency does not have access
2 to.

3 MS. BUGEL: Okay. I'm turning to
4 Question 7(a), A as in apple, which is also on
5 Page 49 and this is about factors of safety and
6 location restrictions in addition to the risks to
7 health and the environment, do you see that?

8 MS. ZIMMER: Yes.

9 MS. BUGEL: My first question is,
10 are there risks to health and the environment that
11 are not captured by groundwater monitoring data?

12 MS. ZIMMER: Zimmer. Yes.

13 MS. BUGEL: Can you identify any of
14 those?

15 MS. ZIMMER: Zimmer. I think
16 Mr. Lecrone answered the other day there are
17 certainly risks to health and the environment from
18 any kind of physical failure of the impoundment
19 that could cause a release of solids or liquids
20 that could impact people or the environment from
21 the impoundments.

22 MS. BUGEL: Are there -- are there
23 air quality risks from coal ash, especially if
24 it's not in wet form?

1 MS. ZIMMER: Zimmer. Yes.

2 MS. BUGEL: Turning to Page 50,
3 turning over to Page 51. I am looking at Question
4 7(e) as in elephant.

5 MS. ZIMMER: Okay.

6 MS. BUGEL: And following up on this
7 question, are there risks from allowing lined
8 impoundments in a floodplain?

9 MS. ZIMMER: Zimmer. There are
10 risks to having an impoundment anywhere within the
11 state or anywhere. There are always risks to
12 having an impoundment. So it would really be
13 specific to a floodplain.

14 MS. BUGEL: Okay. I want to try to
15 focus specifically on the risks from allowing
16 lined impoundments in a floodplain and the unique
17 risks that would be seen there, do you agree there
18 are unique risks to having a lined impoundment in
19 a floodplain?

20 MR. DUNAWAY: This is Lynn Dunaway.
21 There are -- there are not unique risks for having
22 lined impoundments.

23 MS. BUGEL: Following up on that.
24 You know, Ms. Zimmer's answer was that there are

1 risks of having any impoundments anywhere and I do
2 want to focus on lined impoundments in a
3 floodplain, but taking your answer, are there
4 risks from having impoundments in floodplains
5 lined or unlined?

6 MR. DUNAWAY: Well, as this is the
7 extent, there are -- this is Lynn Dunaway again.

8 As Ms. Zimmer stated, there are
9 certain risks associated with the impoundment
10 regardless of where it's located.

11 MS. BUGEL: And I am asking about
12 the risks of having impoundments in floodplains.
13 So not the risks of impoundments anywhere, but in
14 floodplains.

15 MR. DUNAWAY: Well, given the
16 previous answer, the risk would be -- would be the
17 same as having one any place else.

18 MS. ZEIVEL: This is Christine
19 Zeivel. The question about what the risks are in
20 a floodplain have been answered in writing in
21 response to the written questions. So unless
22 there's a new question to be asked, I think we
23 would need to move forward.

24 MS. BUGEL: I'm going to ask for a

1 little leeway here because I feel like the
2 witnesses are not answering the question. I
3 can -- I can ask leading questions if that will
4 facilitate things.

5 HEARING OFFICER HORTON: I believe
6 you're asking, Ms. Bugel -- I believe that the
7 answer that the Agency has provided refers to
8 unlined impoundments and you are specifically
9 asking about lined impoundments in floodplains.

10 MS. BUGEL: Right. And I don't
11 believe I've gotten an answer to that question.

12 HEARING OFFICER HORTON: The Agency
13 has said that there is a risk always with an
14 impoundment, but could they perhaps specifically
15 respond to, is there a specific risk to having a
16 lined impoundment in a floodplain if that was your
17 question, right?

18 MS. BUGEL: Right.

19 MS. ZEIVEL: Ms. Bugel asked if
20 there are unique risks to having a lined
21 impoundment in a floodplain and Mr. Dunaway
22 responded to that question. He said there are no
23 unique risks to having a lined impoundment in a
24 floodplain.

1 HEARING OFFICER HORTON: Okay.

2 MS. BUGEL: Then I asked about lined
3 or unlined because I believe the objection was to
4 the word unique. So I'm trying to work with the
5 witness to rephrase the question to address the
6 deficiencies that the witness is pointing out and
7 I feel like the Agency isn't answering the
8 question and I can ask leading questions about it.

9 MS. CASSEL: If you'd like to ask a
10 different question, that would be fine. We
11 believe the questions asked have been answered.

12 MS. BUGEL: Okay. Can floodwaters
13 overtop an impoundments berms during a period of
14 flooding?

15 MR. DUNAWAY: Lynn Dunaway. It is
16 theoretically possible that a flood could overtop
17 a surface impoundments embankments. However, it
18 is my belief that there are rules in place for
19 siting that require consideration of that.

20 MS. BUGEL: And can you give me a
21 citation to those rules?

22 MR. DUNAWAY: No, I can't.

23 MS. BUGEL: Will the Agency take
24 into account whether an impoundment is located in

1 a floodplain in evaluating the risk to health and
2 the environment that the impoundment poses?

3 MR. MORE: Hearing Officer, I have a
4 clarifying question. The question was, will the
5 Agency consider the risks to human health and the
6 environment? In what context in 845 are you
7 referring to that consideration? The prior
8 questions related to the categorization of the
9 units, is that what you're talking about or is it
10 in connection with other elements of 845?

11 MS. BUGEL: It is in connection with
12 categorization of the units including Category 2
13 and the -- Category 2 talks about imminent threat
14 to human health and the environment.

15 MR. MORE: Thank you.

16 MS. ZIMMER: Amy Zimmer. Category
17 2, which is what you just said you were referring
18 to, human health and the environment for
19 prioritization referred to as determined by the
20 Agency pursuant to Subsection G5. So if you look
21 at Subsection G5, it lays out the factors that the
22 Agency will use to categorize a category as
23 Category 2.

24 MS. WILLIAMS: Can I just say

1 something for the record? Did everyone else --
2 you said G5, right? I just --

3 HEARING OFFICER HORTON: I thought
4 it was.

5 MS. ZIMMER: Yes, G5.

6 HEARING OFFICER HORTON: G as in
7 Gerald?

8 MS. ZIMMER: This is Amy. Sorry.
9 It's my husband's phone. It's Amy. Amy Zimmer.

10 HEARING OFFICER HORTON: No problem.
11 But it is the letter G as in good?

12 MS. ZIMMER: Yes.

13 MS. BUGEL: I have just one more
14 question on this part.

15 Ms. Zimmer, were you done with
16 your answer?

17 MS. ZIMMER: Yes.

18 MS. BUGEL: I just have one more
19 question on this. Mr. Dunaway referenced siting
20 rules that take into consideration the
21 floodplain -- locating in floodplains.

22 Mr. Dunaway, were those rules in
23 place when the 73 or 74 existing surface
24 impoundments in Illinois were constructed?

1 MR. DUNAWAY: This is Lynn Dunaway.
2 We don't know the answer to that question at this
3 point.

4 MS. BUGEL: I have no more questions
5 on Section 700, but I believe Ms. Courtney does.

6 HEARING OFFICER HORTON: And I'm so
7 sorry to interrupt, but our computer that has our
8 main screen here is doing a hard restart again in
9 about two minutes.

10 So apologies. This is not a
11 natural stopping point, but we'll restart the
12 computer and be back in five minutes.

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

16 HEARING OFFICER HORTON: Okay.
17 We're back and running. Sorry about that. Okay.
18 I believe we left off with -- I'll just make a
19 note, Ms. Courtney, we'll proceed with her
20 questions and then perhaps after Ms. Courtney
21 we'll just have a brief discussion about how we'll
22 proceed for the rest of the afternoon seeing where
23 we are and how many questions we have left. Okay.
24 Ms. Courtney, please proceed.

1 MS. COURTNEY: Thank you. Can you
2 hear me?

3 HEARING OFFICER HORTON: Yes.

4 MS. COURTNEY: Great. So my first
5 question is about Exhibit 2, Question 1(a) as in
6 apple on Page 88. Sorry. Question 1 to Chris
7 Pressnall on Page 88 of Exhibit 2.

8 My questions generally are going
9 to be about environmental justice. So most of
10 them will likely be directed to Chris Pressnall.
11 Are you at that page?

12 MR. PRESSNALL: This is Chris
13 Pressnall. Yes, I am.

14 MS. COURTNEY: Great. So in
15 response to Question 1(a) as in apple, the
16 response was that Illinois EPA proposed utilizing
17 the existing demographic screening tool for
18 consistency in application of EJ concepts across
19 Agency programs.

20 What are those -- are the other
21 Agency programs that rely on, quote, EJ concepts?

22 MR. PRESSNALL: This is Chris
23 Pressnall. We -- an example is our enhanced
24 public outreach program which is our EJ

1 notification letters that we send out for permit
2 applications that we receive in areas of
3 environmental justice concern. That would be one
4 example.

5 MS. COURTNEY: Are there any other
6 examples?

7 MR. PRESSNALL: I believe there is a
8 water grant program that is using it as a
9 screening tool to 319 I think is what it is
10 called, a grant program. It is looking to
11 incorporate the environmental justice screening
12 into their grant award process.

13 MS. COURTNEY: Thank you. My next
14 set of questions is to follow up on questions from
15 LVEJO on Page's 14 through 15 and to also clarify
16 one of our questions to Chris Pressnall on Page
17 89, 1(e), but mostly about Page's 14 through 15 of
18 Exhibit 2. So question 8 --

19 MR. PRESSNALL: This is Chris. I'm
20 there.

21 MS. COURTNEY: Thank you. So the
22 question on -- Question 8 on Page 14 through 15 as
23 far as -- mentions a letter describing the
24 methodology that the Illinois Commission On

1 Environmental Justice recommended for the Illinois
2 Power Agency to determine what were environmental
3 justice communities.

4 So I wanted to enter -- move to
5 enter that exhibit, Exhibit 1 from ELPC, PRN,
6 Prairie Rivers Network and Sierra Club. It's the
7 EJ commission letter.

8 HEARING OFFICER HORTON: One second.
9 One second.

10 MS. COURTNEY: It'll be 10. Sorry.
11 11.

12 HEARING OFFICER HORTON: Okay. So
13 ELPC's exhibit packet would be Exhibit 1, the EJ
14 commission letter?

15 MS. COURTNEY: Yes.

16 HEARING OFFICER HORTON: That is now
17 Exhibit 11.

18 (Document marked as Hearing
19 Exhibit No. 11 for
20 identification.)

21 MS. COURTNEY: Thank you. Are you
22 familiar with the contents of this letter?

23 MR. PRESSNALL: This is Chris
24 Pressnall. Yes, I am.

1 MS. COURTNEY: And you signed it,
2 correct?

3 MR. PRESSNALL: That is correct.

4 MS. COURTNEY: So the letter
5 mentions other state and federal criteria and, for
6 the record, some of those criteria include looking
7 at pollution burdens such as exposure to drinking
8 water contaminants and diesel particulate matter
9 emissions and those factors are used in
10 combination with population characteristics that
11 include poverty and educational attainment, right?

12 MR. PRESSNALL: That is correct.

13 MS. COURTNEY: On Page 7, so the
14 last page of the letter in the next -- or in the
15 last paragraph above ongoing collaboration it
16 states that combining state databases and federal
17 databases provide indicators that are needed to
18 implement the act, right?

19 MR. PRESSNALL: That is correct.

20 MS. COURTNEY: And this letter was
21 to help define what environmental justice
22 community is, right?

23 MR. PRESSNALL: For the purposes of
24 the Illinois Solar for All program, yes.

1 MS. COURTNEY: Now, directing you to
2 the third page. Unfortunately, the page numbers
3 on the original were not numbered. So this would
4 be the page that says, "IEPA EJ policy" as the
5 first bolded section.

6 MR. PRESSNALL: I'm there.

7 MS. COURTNEY: So it says, "IEPA EJ
8 policy, methodology for identification of
9 communities of potential EJ concern." When
10 referencing the IEPA methodology uses that word
11 potential -- potential could mean that there are
12 other communities that could be included in that
13 factors are not all encompassing to identify a
14 community, right?

15 MR. PRESSNALL: The word potential,
16 or now the terminology we use is area of EJ
17 concern, recognizes that it's a demographic
18 screening tool.

19 MS. COURTNEY: So what does it mean
20 in this letter by potential?

21 MR. PRESSNALL: It means we're using
22 a demographic screening tool to identify a
23 potential environmental justice community.

24 MS. COURTNEY: Does potential mean

1 that it's all-inclusive or all-encompassing?

2 MR. PRESSNALL: Encompassing of
3 what?

4 MS. COURTNEY: Of all communities.

5 MR. PRESSNALL: I'm not real sure
6 I'm following your question. It's a screening
7 tool just like the Illinois Solar for All mapping
8 tool. It's just a screening tool.

9 HEARING OFFICER HORTON: Mr.
10 Pressnall, just like the what?

11 MR. PRESSNALL: The Illinois Solar
12 for All mapping tool.

13 HEARING OFFICER HORTON: Illinois
14 Solar for All mapping tool.

15 MS. COURTNEY: So does this include
16 every possible environmental justice community?

17 MR. PRESSNALL: I don't think any
18 screening tool includes every possible
19 environmental justice community.

20 MS. COURTNEY: Including the IEPA
21 screening tool?

22 MR. PRESSNALL: I reckon.

23 MS. COURTNEY: Now, I want to turn
24 to -- excuse me -- still LVEJO's Question 8(p) on

1 Page 15. The Agency was asked why it did not use
2 the same methodology in Solar for All as to the
3 present rulemaking and in response the Agency
4 was -- in response, the Agency was tasked with
5 identifying areas of EJ concern whereas Illinois
6 Power Agency was given a statutory mandate to
7 define EJ communities.

8 So what is the difference
9 between identifying communities of EJ concern and
10 defining what an EJ community is?

11 HEARING OFFICER HORTON: Ms.
12 Courtney, so sorry. This is Vanessa Horton. You
13 cut out a little bit there. Could you please
14 repeat for our court reporter?

15 MS. COURTNEY: Yes. Sorry about
16 that. So my question was LVEJO 8(p), P as in Pat,
17 on Page 15, the Agency was asked why it did not
18 use the same methodology in Solar for All as the
19 present rulemaking and the response was that the
20 Agency was tasked with identifying areas of EJ
21 concern whereas Illinois Power Agency was given a
22 statutory mandate to define EJ communities.

23 So what is the difference
24 between identifying areas of EJ concern and

1 defining what an EJ community is?

2 MR. PRESSNALL: We interpret it at
3 the Illinois EPA, the legislation that led to this
4 rulemaking, to -- I guess we interpret it since
5 they use the term areas of EJ concern, that is the
6 same terminology we utilize, therefore, we use our
7 mapping tool that we have in our current EJ
8 program.

9 MS. COURTNEY: So is there a
10 difference between identifying and defining?

11 MR. PRESSNALL: I'm not really sure
12 of your question. Could you rephrase it?

13 MS. COURTNEY: Just because in the
14 answer there was a distinguishing between the two
15 agencies, but also one was identifying and the
16 other was defining. So I'm wondering if there is
17 a difference in those -- in those two requests by
18 the law, the two identifiers to --

19 MR. PRESSNALL: The answer was
20 designed to help illustrate that on one hand you
21 had a completely different law, completely
22 different program and they instructed the Illinois
23 Power Agency to do something.

24 In this case, in this

1 rulemaking, we have the law that led to the coal
2 ash rulemaking that we're here discussing and
3 mentioned areas of EJ concern and that's -- and we
4 interpreted it to go along with our existing
5 environmental justice screening tool.

6 MS. COURTNEY: So the difference is
7 the areas of -- the areas of EJ concern versus
8 environmental justice communities?

9 MR. PRESSNALL: Not really. It's
10 just two different programs, two different
11 agencies, two different programs.

12 MS. COURTNEY: Would one -- would
13 one program be more inclusive than the other in
14 terms of the number of communities that are
15 counted?

16 MR. PRESSNALL: I -- potentially,
17 yes.

18 MS. COURTNEY: Which one?

19 MR. PRESSNALL: Ours. The Illinois
20 EPA's.

21 MS. COURTNEY: Why? Why would that
22 be?

23 MR. PRESSNALL: Well, I can tell you
24 I've done some screening to analyze which one has

1 more areas, you know, which one, for instance, of
2 the coal ash impoundments. Ours is more
3 conservative or more inclusive.

4 MS. COURTNEY: So by inclusive, you
5 mean there are more communities identified or
6 fewer by having fewer factors?

7 MR. PRESSNALL: More are identified
8 by Illinois EPA's EJ Start.

9 MS. COURTNEY: So the Solar for All
10 program doesn't include -- has more factors so
11 more ways to be included, but by having more ways
12 to be included, it limits communities from being
13 included?

14 MR. PRESSNALL: That's -- that's
15 exactly right.

16 MS. COURTNEY: How is that -- how
17 does that happen since you looked at both
18 programs?

19 HEARING OFFICER HORTON: Ms.
20 Courtney, you just said how does that happen, but
21 we didn't catch the rest.

22 MS. COURTNEY: Because you looked at
23 both programs.

24 MR. PRESSNALL: The way it's

1 possible is the Illinois Solar for All mapping
2 tool does the scoring system and only the -- only
3 sort of 25 percent of the communities that are,
4 quote, unquote, the worst, and this is an
5 oversimplification, but Solar for All takes the,
6 quote, unquote, 25 worst of the different
7 demographic and environmental indicators and
8 scores them on a relative basis and so, for
9 instance, where that becomes problematic is in
10 downstate Illinois. There are no EJ communities
11 in the town of Springfield where I'm sitting right
12 now.

13 MS. COURTNEY: Okay.

14 MR. PRESSNALL: But there are in
15 EJ's Start.

16 HEARING OFFICER HORTON: Mr.
17 Pressnall, but there are in?

18 MR. PRESSNALL: In Illinois EPA's EJ
19 Start screening tool.

20 HEARING OFFICER HORTON: EJ Start
21 screening tool.

22 MR. MORE: Start.

23 HEARING OFFICER HORTON: Start.

24 MR. PRESSNALL: EJ. Environmental

1 Justice Start.

2 MS. COURTNEY: And that is because
3 of the percentage it looks at rather than the
4 specific type of factors?

5 MR. PRESSNALL: It's because
6 Illinois EPA looks at our demographic screening --
7 yeah, looks at the demographic information and
8 we've been meeting our screening criteria as
9 deemed area of environmental justice concern.

10 MS. COURTNEY: Sorry. To clarify,
11 the Solar for All program looks at a certain
12 percentage or certain core after those factors
13 rather -- it's more about that score and the
14 percentage rather than looking at the factors
15 themselves?

16 MR. PRESSNALL: If I'm following
17 your question, yes, it looks at all the different
18 factors and what percentile rank each of those are
19 and then, you know, sort of crunches them in a
20 formula to come up with then a census block group
21 level ranking, percentage -- percentile ranking
22 and then the ones that are 25 -- whichever way you
23 want to look at it, but the 25, quote, unquote,
24 worst, the ones that are highest on percentages,

1 those are the ones you deem environmental justice
2 communities.

3 MS. COURTNEY: So it's based on a
4 ranking system?

5 MR. PRESSNALL: Yes, modeled after
6 California's environmental justice screening.

7 HEARING OFFICER HORTON: Ms.
8 Courtney, sorry. This is Vanessa Horton. I'm
9 just going to jump in just for a moment. Let's
10 pause your questions just for a second and talk a
11 little bit about the rest of the evening and
12 moving on to another day or two of hearings.

13 THE COURT REPORTER: Off the record?

14 HEARING OFFICER HORTON: Yes, let's
15 go off the record.

16 (Whereupon, a break was taken
17 after which the following
18 proceedings were had.)

19 HEARING OFFICER HORTON: Ms.
20 Courtney, you can restart.

21 MS. COURTNEY: Thank you. Can you
22 hear me?

23 HEARING OFFICER HORTON: Yes.

24 MS. COURTNEY: I'm trying to get

1 back to where I was. Okay. Could a community
2 have exposure to higher levels of drinking water
3 contaminate and diesel particulate matter
4 emissions and also have lower education attainment
5 and linguistic isolation so that measures like
6 that would identify the community as an
7 environmental justice community, but still be a
8 few percentage points less than twice the state
9 average for low income and race?

10 MR. PRESSNALL: I --

11 HEARING OFFICER HORTON:

12 Mr. Pressnall, sorry.

13 Ms. Courtney, could you please
14 repeat a little bit slower for our court reporter?

15 MS. COURTNEY: I think that's also
16 what Mr. Pressnall was asking.

17 So is it possible could a
18 community have exposure to higher levels of
19 drinking water contaminant and diesel particulate
20 matter emissions and also have lower education
21 attainment and linguistic isolation so that
22 measures like that would identify the community as
23 an environmental justice community, but still be a
24 few percentage points less than twice the state

1 average for low income and race?

2 MR. PRESSNALL: This is Chris
3 Pressnall. Yes, that's possible. We look at
4 census block group in our screening tool and so we
5 look at census block groups that qualify, but we
6 also added a one-mile buffer to every census block
7 group that qualifies.

8 So that -- one of the functions
9 of that buffer is to provide a margin for error
10 for this type of thing that you're speaking of
11 because, well, I guess that's my answer that all
12 of the census block groups that qualify under
13 those demographic factors are then buffered one
14 mile.

15 MS. COURTNEY: So it's possible for
16 a census block group to fall into that former
17 category, but not the latter?

18 MR. PRESSNALL: Please rephrase the
19 question. I'm not sure what you're referring to.

20 MS. COURTNEY: So the factors that I
21 listed it's possible -- so I was changing the
22 question to say census block rather than
23 community.

24 MR. PRESSNALL: I reckon that

1 anything is possible and any screen is not going
2 to capture every -- you know, things are only so
3 good as the data that feeds into them, but I still
4 don't know if I'm understanding your question.

5 I'm saying we have a built-in
6 margin there with our one-mile buffer and so,
7 yeah, I guess if you're going -- yeah, even beyond
8 the one-mile buffer in theory, yes, you -- there
9 could be folks that you cherry-picked any
10 particular indicator that could be high, low,
11 middle relative to the rest of the state.

12 MS. COURTNEY: Okay. Next set of
13 questions is in relation to Board Question 64(b)
14 on Page 176 of Exhibit 2. Sorry. 64(b) as in
15 boy.

16 MR. PRESSNALL: Okay. I'm there.

17 MS. COURTNEY: In response to
18 Question 64(b), you mentioned the American
19 Community Survey as a source for the data to
20 determine whether a community is an area -- area
21 of environmental justice concern.

22 What American Community data was
23 used or being used to determine what communities
24 fall into areas of EJ concern?

1 MR. PRESSNALL: As of right now, the
2 data that's being used is the five years of -- I
3 think the most recent data available was for 2019.
4 So it's '19, '18, '17, '16, '15.

5 MS. COURTNEY: Okay. Do you know
6 how the survey gathers its data?

7 MR. PRESSNALL: No, I do not.

8 MS. COURTNEY: Is it possible for
9 the demographic data relied upon by EJ Start to
10 underestimate the minority population or the
11 income data by a percentage point?

12 MR. PRESSNALL: I'm sure it's
13 possible.

14 MS. COURTNEY: Okay. And my last --
15 yes, last set of questions is in response to
16 Question 7 at Page 95 still Exhibit 2. Are you
17 there? Can I go ahead?

18 MR. PRESSNALL: Ms. Courtney, could
19 you please repeat which page you said you were on
20 in Exhibit 2?

21 MS. COURTNEY: Yes, 95.

22 MR. PRESSNALL: Okay.

23 MS. COURTNEY: It's in relation to
24 Question 7.

1 MR. PRESSNALL: We're there.

2 MS. COURTNEY: In response to
3 Question 7, the Agency stated that communities
4 under Category 3 will be notified by their status
5 designate by putting it in the owner/operators
6 publicly available website.

7 Will this notification also be
8 included in the notice to the community for those
9 who cannot access the website?

10 MS. ZEIVEL: There is not a
11 consensus. Is this a question that the Agency can
12 follow up on following the hearing for purposes of
13 efficiency for this evening?

14 MS. COURTNEY: Yes. Thank you.
15 That was my last question given that answer.

16 HEARING OFFICER HORTON: Okay.
17 Thank you. So I think, Ms. Gale, you said you
18 have a question?

19 MS. GALE: Yes, I have maybe a
20 follow-up question. If you can turn to Exhibit 2,
21 it's actually an answer to CWLP's question. So
22 Page 129. I'm looking at Question 4(b). In
23 answer to the question Mr. Dunaway stated that
24 closure could be different for each CCR unit, one

1 CCR surface impoundment cannot close by removal
2 and with a final cover system and I guess my
3 question is, why is that and part of that in my
4 question is thinking why not allowing hotspot
5 removal?

6 MR. DUNAWAY: Lynn Dunaway. You can
7 certainly -- if your closure plan called for
8 removal of a certain area, you can certainly do
9 that. However, each CCR surface impoundment would
10 have to be either considered to be closed by
11 removal or closed in place because of different
12 postclosure care requirements.

13 MS. GALE: Okay. So what you mean
14 by that if we were to do hotspot removal and then
15 put a cap on it, we would be subject to the
16 closure in place requirements of 30 years of
17 postclosure care?

18 MR. DUNAWAY: That's correct.

19 MS. GALE: Thank you. Nothing
20 further.

21 HEARING OFFICER HORTON: Okay. My
22 apologies. I think Mr. Rao was the only other
23 person who had questions on this section.

24 MS. BROWN: Sorry to interrupt.

1 This is Melissa Brown. IERG had questions as
2 well.

3 HEARING OFFICER HORTON: My
4 apologies.

5 MS. MANNING: And Ameren does as
6 well.

7 HEARING OFFICER HORTON: Ms. Brown,
8 one second. Ms. Gale?

9 MS. GALE: Simply saying that -- I
10 have other questions related to 700 that I skipped
11 for the interest of efficiency. So I'm just
12 reserving my right to ask those questions at the
13 next date.

14 HEARING OFFICER HORTON: Yeah, I
15 think that is reasonable and we'll have time for
16 follow-up questions on the sections at the next
17 hearing.

18 MR. MORE: Josh More on behalf of
19 Dynegy.

20 Would IERG be willing to do the
21 same, to hold off on its 700 questions and reserve
22 them for the next hearing so we can make sure
23 Ms. Bugel has time to ask her questions related to
24 710?

1 MS. BROWN: Yes, IERG would be
2 agreeable to that.

3 HEARING OFFICER HORTON: Mr. Rao,
4 would you be willing to reserve your questions on
5 700 to the next hearing date?

6 MR. RAO: Can you hear me?

7 HEARING OFFICER HORTON: Yes.

8 MR. RAO: Essence will be asking
9 those questions.

10 HEARING OFFICER HORTON: Would it be
11 okay -- Essence, would it be okay to save those
12 questions for our next hearing date which will
13 be --

14 MS. ESSENCE BROWN: I can't --

15 HEARING OFFICER HORTON: Are you
16 having trouble hearing? Is that what she said?

17 MS. ESSENCE BROWN: I was having
18 trouble. Can you repeat -- can you repeat what
19 you said?

20 HEARING OFFICER HORTON: Sorry,
21 Essence. Yes. So the consensus in the room is
22 perhaps to skip the rest of the questions for 700,
23 save them for when we reconvene, which will
24 probably be August 25th, around that time, we'll

1 go back to 700. The consensus in the room is to
2 focus on 710 tonight and to power through and then
3 when we reconvene we'll go through initial
4 questions and follow-up questions on 700.

5 MS. ESSENCE BROWN: I can hold my
6 questions until the next hearing.

7 HEARING OFFICER HORTON: Thank you.
8 I appreciate it. And, Ameren, the same question
9 to you.

10 MS. MANNING: We will hold our
11 questions until the next hearing in the
12 expeditious -- in the interest of time.

13 HEARING OFFICER HORTON: Okay. So
14 we'll move on to 710, but now I have forgotten if
15 the Agency wanted to have dinner now or to focus
16 on 710 and have dinner at a certain time.

17 MS. ZEIVEL: The Agency would prefer
18 to keep going and break about 5:30 or 5:40.

19 HEARING OFFICER HORTON: Okay.
20 Great. Okay. So I'll start with Ms. Bugel for
21 710.

22 MS. BUGEL: Sure. And I do have one
23 other question for our team which is just that
24 people would like a confirmation that we are not

1 going to do either Subpart H or Subpart I tonight
2 and that's the 800's and the 900's?

3 HEARING OFFICER HORTON: We're going
4 to get as far through 710 as we can right now and
5 perhaps get to 770 and then everything else we'll
6 get to at the next date.

7 MS. BUGEL: Very good. Thank you.
8 Okay. Section 710 my first reference is to -- I
9 know somebody told me this once before whether
10 it's Exhibit 2 or 3 and it's not sticking in my
11 head, but it's the Agency's answers to the
12 environmental groups questions from August 3rd and
13 I am looking at Page 53 of that.

14 HEARING OFFICER HORTON: I believe
15 it is Exhibit 2.

16 MS. BUGEL: Thank you. I'm looking
17 at Page 53 of that and the question -- the heading
18 is closure alternatives analysis. The question is
19 10(a), as in apple, and Ms. Zimmer is the one --
20 the witness who answered these questions.

21 MS. ZEIVEL: This is Christine
22 Zeivel. For clarification, No. 10 is marked as an
23 Agency response.

24 MS. BUGEL: Thank you for the

1 clarification.

2 In that, the Agency references
3 the performance-based standard under proposed Part
4 845.670(d) as in dog (3), do you see that?

5 MS. ZIMMER: Yes, we see that.

6 MS. BUGEL: And that reference is
7 answering a question about the terms -- that one
8 is about the term effective or effectiveness, do
9 you see that?

10 MS. ZIMMER: Yes.

11 MS. BUGEL: Just for confirmation
12 the term effective appears in 710(b)(1), correct?

13 MS. ZIMMER: Yes.

14 MS. BUGEL: And the performance
15 standard is from 670(d)(3), correct?

16 MS. ZIMMER: That is what is
17 included in the answer, yes.

18 MS. BUGEL: In the closure
19 alternatives analysis, does 670(d)(3) always
20 apply?

21 MS. ZIMMER: For -- for CCR surface
22 impoundments that do not have to perform
23 corrective action that it would -- it would not
24 apply, no.

1 MS. BUGEL: In the context of CCR
2 surface impoundments that are not -- that are
3 closing, but not as a part of corrective action,
4 the owner/operator would still be required to
5 consider effectiveness, right?

6 MS. ZIMMER: That is correct.

7 MS. BUGEL: Can you explain in that
8 context what effectiveness would mean?

9 MS. ZIMMER: Amy Zimmer here. In
10 the case where there is not a corrective action, I
11 believe the Agency would view the effectiveness of
12 the closure message based upon the final cover
13 system minimizing infiltration into the
14 impoundment and that would also gradually lower
15 the hydraulic head within the impoundment.

16 So it would be basically
17 getting -- let water in and also gradually over
18 time there would be less water -- the water -- the
19 water level in the impoundment would lower. So it
20 would be draining over time.

21 MS. BUGEL: Would that be true if
22 the bottom of the impoundment were in contact with
23 the water table?

24 MS. ZIMMER: Yes, it would still be

1 true. It would still drain and if you have a
2 higher -- sorry. This is Amy Zimmer.

3 If you have higher water level
4 in the impoundment compared to what is outside the
5 impoundment, it would still drain, yes.

6 MS. BUGEL: Would it stop draining
7 when the water level in the impoundment reached
8 the same level as the water table?

9 MS. ZIMMER: Well, it's a little
10 more complicated, but basically kind of. Until
11 the pressures equalize within the impoundment and
12 outside the impoundment.

13 MS. BUGEL: Turning to the next
14 page, Page 54. The Agency also referenced the
15 performance standard in answering Question B as in
16 boy on that page, correct?

17 MS. ZIMMER: I see your -- I see B
18 as in boy.

19 MS. BUGEL: Do you see --

20 MS. ZIMMER: Did you have a question
21 in relation to that? I'm sorry. I may have
22 missed it. I apologize.

23 MS. BUGEL: I just wanted to confirm
24 that the answer to B, as in boy, which is about

1 the term protective, also used language from the
2 performance -- the performance standard.

3 MS. ZIMMER: I believe it does.

4 HEARING OFFICER HORTON: Ms. Bugel?

5 MS. BUGEL: I apologize. I realized
6 I had misidentified. I called it the performance
7 standard when the Agency was calling it the
8 performance-based standard, but, Ms. Zimmer, I
9 apologize. Because I interrupted you, I don't
10 believe the court reporter heard your answer.

11 MS. ZIMMER: Court reporter, would
12 you like me to repeat that?

13 HEARING OFFICER HORTON: Go ahead.

14 MS. ZIMMER: I believe the answer in
15 Part B does reference that performance reference,
16 yes.

17 MS. BUGEL: So without going through
18 the same question again, I would ask the same
19 ultimate question which is what does protective
20 mean when the performance-based standard does not
21 apply to closures?

22 MS. ZIMMER: This is Ms. Zimmer
23 again. I think it would be -- I think it -- in
24 this case, it would be protective in that the

1 final cover system is properly constructed and
2 inspected and maintained so there wouldn't be a
3 physical failure that would cause infiltration
4 while it is dewatering.

5 MS. BUGEL: Can you repeat what you
6 said about -- I didn't catch completely what you
7 said about physical failure during dewatering.

8 MS. ZIMMER: That is all I said,
9 that there wouldn't -- part of that would not --
10 basically not -- making sure it's properly built
11 and inspected so that there wouldn't be a physical
12 failure during dewatering of the impoundment after
13 the final cover is placed because it does take a
14 while for the water to gradually lower after
15 infiltration is left after the final cover is
16 placed.

17 MS. BUGEL: Okay. Moving on to
18 Question 10(c)(i) Roman -- Roman 1. 10(c) as in
19 cat, small i as in Roman numeral 1 and that is on
20 Page 54.

21 MS. ZIMMER: Okay.

22 MS. BUGEL: And in that answer, you
23 reference small spatial gradients, do you see
24 that?

1 MS. ZIMMER: I just want to specify
2 again this is an Agency answer, but let me get to
3 it. What phrase are you looking for again?

4 MS. BUGEL: Small spatial gradients
5 and that is in the third paragraph at the very end
6 of that paragraph.

7 MS. ZIMMER: Okay. Let me read it.
8 I see it. Let me read it. Okay.

9 MS. BUGEL: My question is, what are
10 small spatial gradients?

11 MS. ZIMMER: That basically means --
12 gradient refers to a slope. That just basically
13 means generally Illinois water tables are
14 relatively flat. So the gradients are rather
15 small. They're not large slopes. They're small
16 slopes. It's not a very steep slope. It's a
17 relatively flat slope. The bigger the number, the
18 more steep. The less, the smaller the number.

19 MS. BUGEL: Understood. Thank you.
20 And in the same answer, the Agency goes on to
21 discuss contaminates getting pushed up because the
22 water wants to flow up and that's in the next
23 paragraph.

24 MS. ZIMMER: Okay. Hold on. Let me

1 read it a minute. Okay.

2 MS. BUGEL: And my question is, does
3 that depend on where the water table is in
4 relation to the pond bottom?

5 MS. ZIMMER: The vertical
6 gradient -- I'm trying to figure out how your
7 question relates to the concept and how to answer
8 it. Excuse me.

9 Once the vertical gradients
10 going downward are reduced, they kind of flatten
11 out and as you get away, it kind of wants to -- it
12 kind of wants to -- some of it does want to
13 push -- it does want to push back up a little. It
14 is going to somewhat -- everything is dependent on
15 water levels in relation to each other.

16 So -- hold on a minute. I'm
17 sorry. I'm trying to think of how to word this.
18 I apologize. Can you -- can you just -- can you
19 just repeat your question so I can understand what
20 exactly you are asking in relation to this
21 concept? I may be misunderstanding it. I
22 apologize.

23 MS. BUGEL: My question is about the
24 idea that contaminants are going to be pushed up

1 because the water wants to flow up and my question
2 specifically is whether that is dependent on where
3 the water table is in relation to the pond bottom?

4 MS. ZIMMER: Excuse me a minute.

5 Let me think about this and how I'm going to word
6 this.

7 Sorry. This is Amy Zimmer. I
8 think -- if there is a vertical gradient and
9 starts to -- any water nearby -- if there is
10 water -- if there is water nearby that is at a
11 higher level, water table at a higher level, it
12 will influence those gradients, yes. I'm not sure
13 that answers your question or if I'm understanding
14 the question quite correctly in relation to this.
15 I'm trying. I apologize.

16 MS. BUGEL: You answered the
17 question. Thank you.

18 MS. ZIMMER: Okay. Okay.

19 HEARING OFFICER HORTON: Ms. Bugel,
20 let's pause here for dinner.

21 MS. BUGEL: Okay.

22 HEARING OFFICER HORTON: So we'll
23 pause for 20 minutes and so that will bring us
24 back at 5:50 and we will finish today by 7:00 p.m.

1 (Whereupon, a break was taken
2 after which the following
3 proceedings were had.)

4 HEARING OFFICER HORTON: Vanessa
5 Horton back in the hearing room. Just wondering
6 if the Agency, if you're all set? In the Agency
7 room, are you guys all set for questions to
8 resume?

9 MR. BUSCHER: We're good.

10 HEARING OFFICER HORTON: Okay.

11 Ms. Bugel, please resume.

12 MS. BUGEL: Okay. I need to wait
13 for my glasses to stop fogging up. Okay.
14 Referring to Page 55 of the same document Exhibit
15 2. I'm scrolling down towards the bottom of 55.
16 There is a question that is 10(f), F as in Frank,
17 and the Agency's response and in the second --
18 well, it's really in the third sentence if you
19 count see above.

20 In the third sentence, it
21 references "Transient groundwater modeling will
22 also need to be conducted to determine the effect
23 of the seasonally intersecting water table." Do
24 you see that reference?

1 MS. ZIMMER: Yes, I do. This is
2 Zimmer.

3 MS. BUGEL: And can you explain --
4 can you explain what a seasonally intersecting
5 water table is?

6 MS. ZIMMER: This is Zimmer. I
7 think this is referencing seasonally -- water
8 table fluctuates by season on a site by site
9 basis. I think this is in reference to -- once
10 again, I'm just explaining this is an Agency
11 response, but I'm explaining what this is reading
12 to me.

13 In some cases, there may be a
14 wet -- a wet season, you know, spring. You have a
15 wet spring, et cetera. There may be a time period
16 at some of the sites of the CCR impoundment where
17 the water table may intersect with the water in
18 the bottom of the -- or the water table may
19 intersect with the bottom of the ash
20 impoundment -- CCR impoundment. Excuse me.

21 MS. BUGEL: Ms. Zimmer, since you've
22 been answering questions about modeling, I'm going
23 to direct my modeling questions to you although I
24 realize others from the Agency might jump in,

1 but --

2 MS. ZIMMER: I'm sorry. I didn't
3 understand what you said there. I apologize.

4 MS. BUGEL: I apologize. I'm not
5 talking into the microphone.

6 MS. ZIMMER: Thank you.

7 MS. BUGEL: I have questions about
8 modeling now and my understanding is that you --
9 you have the expertise on modeling for the Agency
10 witnesses?

11 MS. ZIMMER: Yes. Yes.

12 MS. BUGEL: So do you -- do you
13 review modeling that permit applicants submit to
14 the Agency related to closure of ash ponds?

15 MS. ZIMMER: Zimmer. Yes, I do.

16 MS. BUGEL: And did you review
17 modeling submitted to the Agency related to
18 closure of an ash pond or ponds at the Hennepin
19 facility?

20 MS. ZIMMER: Zimmer. That is -- I'm
21 not the project manager on that site. I may have
22 seen some of it at some point, but I'm not
23 positive. I may have read over some of it in the
24 past. I'm not absolutely positive. It's not my

1 site to review, but I may have been asked about
2 it. I really can't remember honestly.

3 MS. BUGEL: Do you know if -- I
4 realize you can't remember, but since you may have
5 reviewed some of it, I'm just going to ask a
6 question or two about it.

7 Do you know if that modeling
8 accounted for seasonal variations in the water
9 table?

10 MS. ZEIVEL: This is Christine
11 Zeivel. I'm going to have to object to the
12 question. It's very site specific and outside the
13 scope of the rulemaking.

14 MS. BUGEL: I realize it's site
15 specific, but the modeling that has already been
16 submitted related to closure of existing ash ponds
17 speaks to Agency practices in relation to modeling
18 that they accept and I will tie this up to the
19 modeling requirements in the rule if I'm given a
20 little leeway.

21 MS. ZEIVEL: The Agency's objection
22 stands.

23 HEARING OFFICER HORTON: I'll
24 sustain -- yes, I'll sustain the objection just

1 based on prior objections relating to specific
2 cites such as in 13-15. If you could perhaps make
3 a general question.

4 MS. BUGEL: I can make some general
5 questions.

6 Ms. Zimmer, have you ever seen
7 modeling related to the closure of ash ponds
8 submitted to the Agency that does not account for
9 seasonal variations in the water table?

10 MS. ZIMMER: This is Zimmer. Yes.

11 MS. BUGEL: And did the Agency
12 accept that modeling as submitted without seasonal
13 variations?

14 MS. ZIMMER: Zimmer.

15 MR. BUSCHER: This is Bill Buscher.
16 We've looked at several models and we have -- I
17 expect in somewhere they may have not taken
18 seasonal variation into account.

19 MS. BUGEL: Mr. Buscher, I just want
20 to ask the court reporter if he got your whole
21 answer or ask the Hearing Officer, I apologize,
22 just because I'm not -- I saw him lean to try to
23 hear.

24 HEARING OFFICER HORTON: He says

1 yes.

2 MS. BUGEL: And so referring again
3 to the actual language from Question 10(f) as in
4 Frank Page 55 that mentions the need for
5 groundwater modeling to determine the effect of a
6 seasonally intersecting water table, is that
7 explicitly required by the rules?

8 MS. ZIMMER: This is Zimmer. I
9 think -- I think I answered this question
10 somewhere in the thousands or so questions we
11 looked at, but we believe it is. I don't remember
12 if I can find offhand where it is, but on -- even
13 if it's not explicitly stated, we believe it is
14 implicitly in there and as a practice we will be
15 asking for it.

16 MS. BUGEL: And I understand that
17 you believe it either is explicitly or implicitly
18 in there, but my question was whether it's
19 explicitly required by the rules and we can move
20 on then.

21 Again, a general question about
22 modeling submitted to the Agency. Do you know if
23 the Agency has accepted modeling that has only
24 relied on a subset of the data obtained from

1 groundwater monitoring?

2 MS. ZIMMER: Zimmer. I'm sure we
3 have, yes.

4 MS. BUGEL: And has the Agency, in
5 those instances, requested -- gone back and
6 requested that the modeling rely on the complete
7 dataset obtained from groundwater monitoring?

8 MS. ZIMMER: Zimmer. It really
9 depends on how the modeling is setup. If you're
10 saying it depends -- if it's a -- what timeframe
11 they're modeling for, if they're doing a steady
12 state, if they're doing a certain timeframe, if
13 they're doing a predictive.

14 There is many factors here. If
15 you've got, like, two years from 20 years ago and
16 then you've got, you know, the last five years
17 you've got a really complete set, you're going to
18 use the five years.

19 You're not going to use the two
20 years from 20 years ago. So it really is very
21 dependent on the data itself and how the model is
22 setup. So in some -- in many cases, I have asked
23 them to go and say, "Okay. I want you to go and
24 do a better calibration and include more data,"

1 but I haven't necessarily said "I want you to
2 include all the data you have on the site" because
3 it doesn't necessarily make sense for the modeling
4 effort and for the site and for the data that is
5 available.

6 MS. ZEIVEL: This is Christine
7 Zeivel. We would like to make a clarification on
8 the previous question regarding seasonal
9 variations for purposes of the record.

10 HEARING OFFICER HORTON: Go ahead.

11 MR. DUNAWAY: This is Lynn Dunaway.
12 The requirement in Part 845 to consider seasonal
13 variability is in Section 845.710(d) as in dog
14 (3).

15 MS. ZEIVEL: That response was also
16 provided in response to the ELPC questions
17 directed to Darin Lecrone as well.

18 MS. BUGEL: And just a follow-up
19 question on this 710(d)(3). This is for the
20 closure alternatives analysis, correct?

21 MR. DUNAWAY: Lynn Dunaway. Yes.

22 MS. BUGEL: And does (d)(3)
23 specifically require modeling?

24 MR. DUNAWAY: Generally, the safe

1 transport of contaminates over time would require
2 a model.

3 MS. BUGEL: And I have some
4 questions that actually relate to how the
5 correct -- I'm sorry. The closure alternative
6 analysis relates to the corrective action
7 alternatives analysis and one is, is there -- is
8 this same requirement for modeling of the safe
9 transport of contaminants, does that also appear
10 in the corrective action alternatives analysis?

11 MS. ZEIVEL: Ms. Bugel, can you
12 please repeat your question?

13 MS. BUGEL: My question is about the
14 alternatives action analysis and whether this same
15 language appears there.

16 MR. MORE: Josh More. Ms. Bugel,
17 you're referring to 845.670?

18 MS. BUGEL: Yes.

19 MR. MORE: (e)?

20 MS. BUGEL: I believe so. I'm
21 trying to do this off the top of my head. I know
22 it's 845.670. Thank you. I believe it is (e).

23 MS. ZIMMER: This is Amy Zimmer.
24 I -- unless someone else on my team finds it, I do

1 not see the same language. I will say in
2 670(d)(2), when it says "Attain the groundwater
3 protection standards as specified in Section
4 845.600," generally the only way we look at that
5 and evaluate that is if a model is done to -- in a
6 predictive sense, to determine whether those
7 groundwater protection standards are expected to
8 be met and when they are expected to be met and
9 that's how we do the evaluation, but I don't see
10 the same language.

11 MS. BUGEL: And --

12 MR. DUNAWAY: This is Lynn Dunaway.
13 The group here concurs with Amy's answer.

14 MS. BUGEL: Just one question about
15 that.

16 If the same language doesn't
17 appear regarding the fate and transport and
18 considering seasonal variations, then it's not
19 explicitly required by the corrective action
20 alternatives analysis, correct?

21 MS. ZIMMER: It is not. Amy Zimmer.
22 It is not explicitly required implicitly and by
23 that language, and as Agency practice, that is how
24 it will be applied.

1 MS. BUGEL: Moving on to Page 56 of
2 Exhibit 2. Question 10(1) as in lima bean.

3 MS. ZIMMER: Okay.

4 MS. BUGEL: The response there
5 references meandering rivers, do you see that?

6 MS. ZIMMER: I do.

7 MS. BUGEL: And it says they can be
8 addressed by engineering controls on a
9 case-by-case basis, right?

10 MS. ZIMMER: Yes.

11 MS. BUGEL: Is the Agency familiar
12 with instances where engineering controls have
13 failed at meandering rivers?

14 MS. ZIMMER: It's Amy Zimmer. I
15 want to, first of all, clarify that in that
16 response there was a mistake. Instead of implicit
17 concerns about rivers meandering can be addressed,
18 it was supposed to be may be addressed. So I just
19 want to clarify that. There was a mistake in
20 drafting. And then I will say the answer to your
21 question is yes.

22 MS. BUGEL: Can you please describe?

23 MS. ZIMMER: The one I am aware of
24 is the gabion basket at the Middle Fork of the

1 Vermilion River by the impoundment at the Dynegy
2 Vermilion Plant.

3 HEARING OFFICER HORTON: Ms. Zimmer,
4 this is Vanessa Horton. What was the first
5 instance, the name of the site?

6 MS. ZIMMER: Dynegy Vermillion or
7 the Middle Fork. I'm not sure what you're
8 referring to. It was the Middle Fork River of the
9 impoundment at Dynegy Vermilion.

10 HEARING OFFICER HORTON: Thank you.
11 But there was one before that.

12 MR. MORE: Gabion, G-A-B-I-O-N.

13 HEARING OFFICER HORTON:
14 G-A-B-I-O-N.

15 MS. ZIMMER: Oh, gabion basket.

16 HEARING OFFICER HORTON: Thank you.

17 MS. BUGEL: Is gabion basket the
18 engineering control?

19 MS. ZIMMER: It's one engineering
20 control. You asked about a failure. I answered
21 my awareness of the failure there.

22 MS. BUGEL: I'm sorry. I was just
23 asking to clarify what gabion basket is because
24 it's a term that I'm not familiar with.

1 MS. ZIMMER: Okay. Okay. I
2 understand. Sorry. I misunderstood.

3 MS. BUGEL: Let me rephrase my
4 question to make it a little better.

5 Is gabion basket the engineering
6 control that failed on the Middle Fork at the
7 Vermilion site?

8 MS. ZIMMER: Yes, it is.

9 MS. BUGEL: Turning to Page 57, I'm
10 looking at Question 12.

11 MS. ZIMMER: Okay.

12 MS. BUGEL: In the third sentence of
13 the response, the second sentence after the number
14 one it says, "Water removal from a CCR surface
15 impoundment is critical to construction and
16 long-term performance" and I will direct this
17 question to the Agency because I realize this is
18 also an Agency response.

19 My question is construction and
20 long-term performance of what?

21 MS. ZIMMER: This is Zimmer. It's
22 really I think related to the final cover. In
23 order to construct a final cover, you have to
24 remove some water in order to even construct it

1 and then the long-term performance -- I think
2 that's what they're talking about and then of
3 course -- okay. Let me read this a little more.
4 Sorry.

5 MR. DUNAWAY: This is Lynn Dunaway.
6 With regard to long-term performance, if you
7 didn't dewater the ash, you would have difficulty
8 installing the final cover properly as you
9 wouldn't have a smooth surface because you'd have
10 ruts from the machinery that was being used and
11 wouldn't have a good cover installation.

12 MS. BUGEL: Proper dewatering is
13 also necessary before removal, correct?

14 MR. DUNAWAY: Lynn Dunaway. Yes.

15 MS. BUGEL: So is dewatering of an
16 impoundment required for both closure in place and
17 closure by removal?

18 MR. BUSCHER: To some degree, yes.
19 Bill Buscher.

20 MS. BUGEL: And have trucks been
21 used in Illinois to transport dewatered CCR?

22 MS. ZIMMER: This is Amy Zimmer.
23 Can you repeat your question? I'm sorry.

24 MS. BUGEL: Have trucks been used to

1 transport dewatered CCR in Illinois?

2 MS. ZIMMER: Trucks, is that what
3 you're saying?

4 MS. BUGEL: Trucks, yes.

5 MS. ZIMMER: I would -- my personal
6 knowledge I don't know. I would assume they have
7 been, yes. Anybody else on the panel --

8 MR. BUSCHER: That is correct. My
9 knowledge really consists of off-road trucks being
10 utilized. Bill Buscher.

11 MS. BUGEL: And this answer talks
12 about liquefaction of CCR surface impoundments,
13 solids after transport to a disposal area being a
14 difficulty factor.

15 In those instances where trucks
16 have transported dewatered CCR, does the Agency
17 know how the difficulty factor of potential
18 liquefaction has been addressed?

19 MR. BUSCHER: I'm not aware of that
20 actually happening, but it is a potential
21 depending on the material type. If you transport
22 it, you get it to the point where you can
23 transport it and then wherever you're working it
24 if -- if the moisture content goes up, it can

1 become a problem because it is more unstable,
2 harder to work with.

3 MS. BUGEL: Is the Agency aware of
4 trucks transporting CCR in areas outside of
5 Illinois?

6 MR. BUSCHER: I'm sure there are
7 some CCR that's been transported in trucks outside
8 of Illinois, but I don't know specifics.

9 MS. BUGEL: Is the Agency aware of
10 how the difficulty factor of potential
11 liquefaction was dealt with in any of those
12 instances?

13 MR. BUSCHER: No.

14 MS. BUGEL: Moving on to Page 58.
15 And I am looking at Question 13 -- the response to
16 Question 13(b).

17 HEARING OFFICER HORTON: B as in
18 boy.

19 MS. BUGEL: B as in boy.

20 MS. ZIMMER: Okay.

21 MS. BUGEL: And this response
22 indicates that the types -- the types of
23 transportation available for closure by removal
24 will be thoroughly reviewed for each impoundment

1 in the closure alternatives analysis, do you see
2 that?

3 MS. ZIMMER: I see the answer, yes.

4 MS. BUGEL: And the very end of the
5 answer refers to the Agency thoroughly referring
6 it for each impoundment in the closure
7 alternatives analysis, do you see that statement?

8 MS. ZIMMER: I see what it says,
9 yes.

10 MS. BUGEL: And I'm also -- I want
11 to just ask Section 845.740(c)(1)(b)(1) is not the
12 closure alternatives analysis, right?

13 MS. ZIMMER: No, it is not.

14 MS. BUGEL: And it sets out closure
15 by requirements for removal?

16 MS. ZIMMER: Yes. Yes.

17 MS. BUGEL: And it provides that the
18 owner/operator needs to develop a CCR
19 transportation plan, is that right?

20 MS. ZIMMER: Yes.

21 MS. BUGEL: So does it -- does this
22 mean that the Agency will be requiring the closure
23 alternatives analysis to include a comparison of
24 the transportation options available at a site for

1 transporting CCR removed from impoundments?

2 MS. ZIMMER: I'm not sure -- first,
3 I'm not sure -- this is Amy Zimmer. I'm not sure
4 how 740 and the transportation plan, which comes
5 later, relates to your question. So I may be
6 missing something there.

7 All of end of closure
8 alternatives analysis transportation for each
9 alternative must be included in the closure
10 alternatives analysis, which the Agency will then
11 review.

12 MS. BUGEL: Okay. Let me then -- I
13 will try to tie this up and I think Mr. Dunaway
14 might be able to help out because Mr. Dunaway
15 provided an answer very similar to yours, but he
16 specifically referenced 845.740(c)(1)(b)(1) and
17 that -- that is Question C on Page 42. And I
18 asked the question here simply because you both
19 had similar answers.

20 MR. DUNAWAY: This is Lynn Dunaway.
21 Okay. Lynn Dunaway. The Agency will thoroughly
22 review closure alternatives analysis. Every
23 closure alternatives analysis has to include
24 closure by removal and since closure by removal

1 requires identification of transportation methods,
2 the Agency will thoroughly review the
3 transportation methods. That's the chain that
4 links it all together.

5 MS. BUGEL: And just to confirm if a
6 closures alternatives analysis does not thoroughly
7 review the transportation options available for
8 closure by removal, the Agency will require the
9 owner/operator to revise the closure alternatives
10 analysis to include such a review?

11 MR. DUNAWAY: Lynn Dunaway. The
12 Agency has the authority under the rule to ask for
13 additional information.

14 MS. BUGEL: Mr. Dunaway, will you be
15 involved in the closure alternatives analysis?

16 MR. DUNAWAY: This is Lynn Dunaway.
17 I expect to be, but I really can't predict the
18 future very well.

19 MS. BUGEL: Would it be your
20 intention to request an analysis of the
21 transportation options if you receive a closure
22 alternatives analysis that does not include that
23 analysis?

24 MR. DUNAWAY: Lynn Dunaway. I would

1 expect those analysis would be in there. If
2 they're not, it's something I believe the rule
3 calls for and I would ask for it.

4 MS. BUGEL: Moving on to Page 58,
5 Question 13(c). C as in cat. And this question
6 and answer discusses fuel cell trucks, electric
7 salts and low sulfur diesel trucks and just one
8 question about this.

9 The Agency -- does the Agency
10 have the authority to require the use of the least
11 polluting available mode of transportation when
12 dealing with site closure -- facility impoundment
13 closures? Excuse me.

14 MR. DUNAWAY: Dunaway. I am not
15 sure about authority with the entire Agency
16 because it's not part of this rule. So I wouldn't
17 expect to make that requirement as part of this
18 rule.

19 MS. BUGEL: I wasn't asking if you
20 expect to make it part of this rule. I was asking
21 if the Agency has the authority and I am not sure
22 what your answer was.

23 MR. DUNAWAY: My answer is I don't
24 know the entire authority of the Agency.

1 MS. BUGEL: And 13(d) as in dog on
2 Page 59, the Agency's answers that the Agency was
3 uncertain as to the feasibility or availability of
4 these types of vehicles.

5 Does requiring the least
6 polluting transportation alternative depend on
7 feasibility or availability of certain types of
8 trucks?

9 MR. DUNAWAY: Dunaway. Of course it
10 does. If a truck -- truck type doesn't exist, you
11 can't use it.

12 MS. BUGEL: And the language I used
13 was the least polluting alternative, therefore,
14 referencing what is available, what is an
15 alternative, not specific types of trucks.

16 MR. DUNAWAY: Dunaway. I'm no
17 expert on types of transportation or the potential
18 pollutions or the pollution potential of each type
19 of vehicle. So I really can't answer that
20 question.

21 MS. BUGEL: Would one way to obtain
22 site specific information about what is available
23 would be to require owners and operators to
24 explore the alternatives in their closure

1 alternatives analysis?

2 MR. DUNAWAY: Dunaway. That would
3 be one way.

4 MS. BUGEL: I have about two or
5 three questions left. Page 60 Question 14(f), F
6 as in Frank.

7 MS. ZIMMER: Okay.

8 MS. BUGEL: And this answer
9 discusses the model needing to meet a steady state
10 after passive remedial activities have been
11 installed, do you see that?

12 MS. ZIMMER: Yes, I do.

13 MS. BUGEL: Is that specifically
14 required by the rules?

15 MS. ZIMMER: I don't -- this is
16 Zimmer, Amy Zimmer. I don't believe it is
17 specifically required in the rule, in those terms.
18 This would just be how it would just in practical
19 sense and how Agency applies this for the
20 modeling, for modeling.

21 MS. BUGEL: And does the Agency
22 agree that a closure method must be able to
23 achieve the groundwater protection standards
24 without continued operation of active remedial

1 activities?

2 MS. ZIMMER: Can you repeat your
3 question? I apologize.

4 MS. BUGEL: Sure. Does the Agency
5 agree that a closure method must be able to
6 achieve the groundwater protection standards
7 without continued operation of active remedial
8 activities?

9 MR. DUNAWAY: This is Lynn Dunaway.
10 Closure is not required to meet the groundwater
11 protection standards without corrective action,
12 but corrective action is not necessarily -- does
13 not necessarily have to be required.

14 MS. BUGEL: Okay. Let me rephrase
15 the question then.

16 Does the Agency agree that a
17 closure performed for the purposes of corrective
18 action that method must be able to achieve the
19 groundwater protection standards without continued
20 operation of active remedial measures?

21 MR. DUNAWAY: Dunaway. If a closure
22 is intended to not have corrective action or the
23 closure is the only corrective action, then the
24 rule requires that groundwater protection

1 standards be met.

2 MS. BUGEL: Okay. I have no further
3 questions at this time, but I reserve follow up.

4 HEARING OFFICER HORTON: Certainly.
5 Midwest Generation?

6 MS. GALE: I'm going to let Dynegy
7 go first and then I'll come back.

8 HEARING OFFICER HORTON: Dynegy? I
9 skipped City of Springfield.

10 MS. WILLIAMS: No, you did not. I
11 did not have any questions.

12 MR. GRANHOLM: Ryan Granholm on
13 behalf of the Dynegy entities. One follow up to
14 Ms. Bugel's questions.

15 Ms. Bugel asked the Agency a
16 number of questions about the, quote,
17 effectiveness and protectiveness, end quote, of
18 the closure alternatives analysis required in Part
19 845.710. 710(b) as in boy (1) lists factors A as
20 in alpha, through F as in Frank. Excuse me.
21 Through H as in Henry.

22 Those are the factors that are
23 used to determine the effectiveness and
24 protectiveness of a closure method, correct?

1 MR. DUNAWAY: Dunaway. Those are
2 the factors for assessing long and short-term
3 effectiveness and protectiveness.

4 MR. GRANHOLM: I'm going to change
5 gears here. The Agency answered a number of
6 questions about the consideration of costs
7 including consideration of costs in the closure
8 alternatives analysis.

9 Is the Agency aware of anything
10 in the federal CCR rule that precludes the
11 inclusion of costs as a factor in the closure
12 alternatives assessment required under 845.710?

13 MR. DUNAWAY: Dunaway. To the best
14 of my understanding, the USWAG, U-S-W-A-G,
15 decision the court determined that the RCRA
16 regulations do not authorize the EPA to consider
17 costs.

18 MR. GRANHOLM: I'm going to refer
19 the Agency to the original CCR rule preamble which
20 has been entered as Exhibit 5 in this hearing and
21 I'd like to refer you to Page 21412.

22 My apologies for the delay.
23 It's correct that under the federal CCR rule Part
24 257 owners or operators must go through a closure

1 analysis -- closure alternatives analysis,
2 correct?

3 MR. DUNAWAY: Repeat that question.

4 MR. MORE: Mr. Dunaway, Josh More.

5 Under 40 CFR 257, is an owner or operator required
6 to go through a closure alternatives analysis?

7 MR. DUNAWAY: Not to my knowledge.

8 MR. MORE: Okay. When faced with
9 two competing closure options that meet the
10 performance standards under 257.102, can an owner
11 or operator take into account any factors it so
12 chooses in selecting those two competing
13 performance standards -- I'm sorry -- two
14 competing closure options that meet the
15 performance standards?

16 So by way of example, I can
17 choose closure by removal and meet the performance
18 standard or I can choose closure in place and
19 demonstrate I can meet that performance standard
20 under the CCR rule.

21 Am I then -- do I have the right
22 under the CCR rule to choose either one based on
23 any factor I want to?

24 MR. DUNAWAY: Dunaway. To the best

1 of our understanding in Part 257, yes, that's
2 correct.

3 MR. MORE: So I can take into
4 account costs if I wanted to, correct, there is
5 nothing in 257 that limits me from taking into
6 account costs, correct, in that analysis?

7 MR. DUNAWAY: To my knowledge, Part
8 257 doesn't eliminate it from that analysis.

9 MR. MORE: Thank you.

10 MR. GRANHOLM: We have nothing
11 further.

12 HEARING OFFICER HORTON: Okay.
13 IERG, did you have questions on 710?

14 MS. BROWN: Melissa Brown. No, I do
15 not.

16 HEARING OFFICER HORTON: Ameren,
17 710?

18 MS. MANNING: I do not.

19 HEARING OFFICER HORTON: Okay. I'm
20 going to hold off on Mr. Rao -- well, Mr. Rao, did
21 you have questions on 710?

22 MR. RAO: No, I don't have anything
23 on 710.

24 HEARING OFFICER HORTON: Okay. Are

1 there any follow-up questions on 710?

2 MS. BUGEL: I have no follow-ups
3 right now.

4 HEARING OFFICER HORTON: Okay. So
5 would we like to proceed to 770? I'm just pooling
6 the room informally if we think we can.

7 MS. GALE: 770 was just me. I was
8 going to say we can kick it, although I would ask
9 the Agency remember my kindness tonight, I'm being
10 very generous, when we come back in two weeks.

11 HEARING OFFICER HORTON: Okay.
12 Let's go off the record a bit, Steven.

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

16 HEARING OFFICER HORTON: On the
17 record. Okay. We briefly went off the record to
18 discuss procedural matters. We're back on. We
19 will be continuing this hearing on the record to
20 August 25th and we will be beginning with 845.700
21 with any remaining questions and then following
22 section by section through the remainder of 845.
23 We'll begin at 9:00 a.m. and we will -- it will
24 be -- be a Webex and also in person here in

1 Springfield and in the Thompson Center.

2 Are there any questions from the
3 Agency?

4 MS. ZEIVEL: We're just questioning
5 the 9:00 a.m. start time considering we want to
6 finish this in one day. Can we start at 8:00
7 a.m.?

8 MS. TIPSORD: 8:00 a.m. is
9 problematic to get into the Thompson Center.

10 HEARING OFFICER HORTON: The
11 Thompson Center is quite locked down at this
12 point. It's difficult to get it.

13 MS. TIPSORD: 8:00 a.m. is going to
14 be difficult. I mean, you're going -- you may be
15 pushing to get in at 9:00. There's one entrance
16 for guests. There is security to go through.
17 There is temperature checks. So -- and the
18 building itself is pretty much in lockdown until
19 8:00 a.m. So --

20 MS. ZEIVEL: Understood. Thank you
21 for the explanation.

22 MS. TIPSORD: So 9:00 is probably
23 the best we're going to do. We won't be able to
24 stay late because of cleaning. They will need to

1 get us out of there. So they can come in and
2 disinfect and clean the room which is what they do
3 on a regular basis in the Thompson Center.

4 For those of you who haven't
5 been in the Thompson Center since this has
6 started, they're -- they're -- it's the cleanest
7 I've ever seen the Thompson Center in 30 years.
8 I'm just saying. So, yeah, that's the reality.
9 So I just don't think there is any way we can
10 start at 8:00 a.m.

11 MS. ZEIVEL: We understand. Thank
12 you for the explanation.

13 HEARING OFFICER HORTON: Okay. We
14 are adjourned.

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1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
2

3 I, Steven Brickey, Certified Shorthand
4 Reporter, do hereby certify that I reported in
5 shorthand the proceedings had at the trial
6 aforesaid, and that the foregoing is a true,
7 complete and correct transcript of the proceedings
8 of said trial as appears from my stenographic
9 notes so taken and transcribed under my personal
10 direction.

11 Witness my official signature in and for
12 Cook County, Illinois, on this _____ day of
13 _____, A.D., 2020.
14
15
16
17
18

19 _____
20 STEVEN BRICKEY, CSR, RMR
21 8 West Monroe Street
22 Suite 2007
23 Chicago, Illinois 60603
24 Phone: (312) 419-9292
CSR No. 084-004675

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