

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
 )  
Standards for the Disposal ) No. R20-19  
of Coal Combustion ) (Rulemaking - Land)  
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 Pamela L. Cosentino, Certified Shorthand Reporter  
for the State of Illinois, at James R. Thompson  
Center, 100 West Randolph Street, Room 9-040, Chicago,  
Illinois, on the 25th day of August, 2020, commencing  
at the hour of 9:15 a.m.

1 A P P E A R A N C E S:

2 MR. VANESSA HORTON, Hearing Officer  
3 MS. BARBARA FLYNN CURRIE, Chairwoman (via video)  
4 MS. MARIE TIPSORD, General Counsel  
5 MR. ANAND RAO, Technical Unit (via video)  
6 MS. ESSENCE BROWN, Technical Unit (via video)  
7 MS. BRENDA CARTER (via video)  
8 MEMBER PALIVOS (via video)

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1 A P P E A R A N C E S: (CONT'D)

2

3 ILLINOIS EPA WITNESSES: (via video)

4 MR. WILLIAM BUSCHER

MR. LYNN DUNAWAY

5 MS. AMY ZIMMER

MS. LAUREN MARTIN

6 MR. CHRIS PRESSNALL

MR. ROBERT MATHIS

7 MR. DARIN LECRONE

MS. MELINDA SHAW

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1 HEARING OFFICER HORTON: This is Vanessa  
2 Horton in Chicago. Can I ask the IEPA Springfield  
3 group if you could hear us okay?

4 UNIDENTIFIED SPEAKER: Yes, we can hear you  
5 fine.

6 HEARING OFFICER HORTON: So we're going to  
7 get started here. Thank you for your patience. Just  
8 had some technical difficulties here, but I think  
9 we're up and going.

10 Good morning. It is 9:16. And welcome again  
11 to the resuming of the hearing in this matter for  
12 R20-19, Rulemaking for Proposed new 35 Illinois  
13 Administrative Code 845: Standards for the Disposal  
14 of Coal Combustion Residuals in Surface Impoundments.

15 I'll remind the witnesses that they are still  
16 under oath and that we will be resuming with 845.700.  
17 And I also remind all the questioners today that we  
18 are spending today on true follow-up questions only,  
19 as the Agency has done significant work in responding  
20 to the initial questions. So I believe at the end of  
21 the last hearing, questioners presented to us that  
22 there would be about an hour and a half or two hours  
23 left of questions. So hopefully we can stick to that  
24 this morning.

1 All right. Let's begin. So we'll begin with  
2 845.700. And I'm just going to start again on our  
3 order of questioning. So that would be with Little  
4 Village Environmental Justice, Environmental Law &  
5 Policy Center, Prairie Rivers Network, and Sierra  
6 Club, if you had any further questions on 845.700.

7 MS. BUGEL: Yes. Faith Bugel representing  
8 Sierra Club and, collectively, the environmental  
9 groups. I have no further questions on 845.700, but I  
10 would also ask Ms. Kiana Courtney if she has any  
11 further questions?

12 MS. COURTNEY: Yes, I have three follow-up  
13 questions.

14 HEARING OFFICER HORTON: Please proceed.

15 MS. COURTNEY: So my questions are mostly  
16 directed to Chris Pressnall. So my first question is:  
17 For facilities that are located along or near water  
18 bodies, did the Agency take into consideration the  
19 demographic of people that have to frequent that area  
20 around the facility, for instance, if low-income or  
21 minority communities travel outside that one-mile  
22 radius due river for fishing?

23 MR. PRESSNALL: This is Chris Pressnall of  
24 the Illinois EPA. No, we did not.

1 MS. COURTNEY: My next question: For coal  
2 plants located in industrial areas, so not residential  
3 neighborhoods, did the agency take into account  
4 consideration of the demographics of people who come  
5 to those industrial areas for work?

6 MR. PRESSNALL: This is Chris Pressnall of  
7 the Illinois EPA. No, we did not.

8 MS. COURTNEY: And my last question is  
9 related to a DWLP Question 16 on Page 132 of  
10 Exhibit 2.

11 MR. PRESSNALL: Okay.

12 MS. COURTNEY: So it mentions that facilities  
13 to be defined as being within an EJ area but still  
14 located greater than one mile from a residential home  
15 in a low-income or minority area, does that facility  
16 still disproportionately impact that community?

17 MR. PRESSNALL: This is Chris Pressnall of  
18 the Illinois EPA. Yes.

19 MS. COURTNEY: That is all for my questions.  
20 Thank you.

21 HEARING OFFICER HORTON: Thank you very much,  
22 Ms. Courtney.

23 This is Vanessa Horton again, and I neglected  
24 to mention on Webex, we have our chair of the Board,



1 Barbara Flynn Currie, and also on Webex in Springfield  
2 we have member of the Board Brenda Carter. And I'm  
3 Vanessa Horton, Hearing Officer. And Marie Tipsord,  
4 General Counsel, is also here in the Thompson Center.

5 So we'll move forward with Midwest  
6 Generation, any questions on 700?

7 MS. GALE: Yes, just three or four.

8 Turning to Exhibit 3, the Agency's Answers to  
9 Midwest Generation Page 29, and I'm going to be  
10 looking at the Agency's answer to Question 78.

11 MS. COURTNEY: Okay.

12 MS. GALE: The Agency, in response, said it  
13 believes it would be extremely changing for owner or  
14 operator to meet the burden of proof required to meet  
15 ultimate capacity demonstration under  
16 757.103(a)(1)(I).

17 And my question is: Why does the Agency  
18 believe that to be true?

19 MS. ZIMMER: Amy Zimmer. Because Part 257  
20 does not specify that the Agency does not consider  
21 inconvenience or cost.

22 MS. GALE: I'm sorry. Do you mean the USEPA  
23 or do you mean the Illinois EPA?

24 MS. ZIMMER: USEPA.

1 MS. GALE: So that's based upon what you  
2 think the USEPA is looking at.

3 Did you conduct or review any owner or  
4 operator's alternative capacity demonstrations to come  
5 to that conclusion?

6 MR. DUNAWAY: This is Lynn Dunaway. In  
7 looking at Part 257, since neither inconvenience nor  
8 cost can be considered, and since our 845 has to be at  
9 least stringent, the Agency -- it was the Agency's  
10 opinion that since these demonstrations of no  
11 alternative capacity would have to be reviewed every  
12 six months and we were not allowed, under part 257 or  
13 would not be allowed under part 257, to consider  
14 inconvenience or cost, that we would not be able to  
15 approve any of those, but we would have to review  
16 those demonstrations every six months, and it would  
17 consume our time reviewing demonstrations that we  
18 couldn't approve.

19 MS. GALE: I'm sorry. The original question  
20 was is, you believe it to be extremely challenging to  
21 meet the burden of proof under 257.103.

22 And just so I understand, your explanation is  
23 because you understand USEPA says that you can't  
24 consider inconvenience or cost and that you also don't

1 want to review them every six months. Is that it?

2 I'm just trying to understand you.

3 MR. DUNAWAY: Yes. Since we can't -- since  
4 we would not be able to consider cost or  
5 inconvenience, that means that if there would be any  
6 capacity anyplace within the world that you could find  
7 capacity, then you would have to do that.

8 Therefore, it would be, as an example, you  
9 might say, well, we couldn't find anything in Illinois  
10 in that six months. We would have to deny it. We  
11 would have to say, did you look in the other states.  
12 The next six months you might say, we looked in  
13 Indiana, we couldn't find anything. Did you look at  
14 any other states? And it would go on cyclically like  
15 that, or could, potentially, go on cyclically like  
16 that, that it would be a waste of the Agency's  
17 resources for something we couldn't approve.

18 MS. GALE: Okay. All right.

19 And a follow-up to that, because this is  
20 related to the extension to October 15, 2023, is the  
21 Agency aware that under the pre-publication new  
22 federal rule that will be issued any day now, online  
23 impoundments would be all locations' restriction and  
24 the safety factor assessment that has not detected an

1 SSI above an applicable groundwater protection may  
2 close by October 15, 2024?

3 MR. DUNAWAY: This is Lynn Dunaway. Could  
4 you repeat that question? I'm not sure we got all the  
5 particular time frames and everything.

6 MS. GALE: I know. It was long.

7 So are you aware that under the -- there's a  
8 new pre-publication federal rule that will be out any  
9 day now, and in that new pre-publication federal rule,  
10 online impoundments that meets all locations'  
11 restrictions, the safety factor assessment, and have  
12 not detected an SSI above an ethical groundwater  
13 protection standards may close a year later, on  
14 October 15, 2024?

15 MR. DUNAWAY: This is Lynn Dunaway. No, we  
16 were not aware of that.

17 MS. GALE: Okay. Should you become aware,  
18 would you follow that change in the federal rule?

19 MR. DUNAWAY: Lynn Dunaway. We've made our  
20 proposal to the Board, and any changes to the rule  
21 would now have to originate from the Board.

22 MS. GALE: Okay. Just two more questions. I  
23 want to turn to Page 52 of Exhibit 3, and it's the  
24 Agency's answers to Question 68. It's a Dynegy

1 Question 68, and then the answer on Page 53.

2 The answer actually is on Page 53. And in  
3 your answer, and it's about Category 2 or the  
4 Category 2 in Section 700, the Agency said that it  
5 will make a determination on the Category 2  
6 circumstances when it becomes aware of information  
7 that leads it to believe an impoundment is imminent  
8 threat.

9 So my question is, is the Agency's  
10 determination a final decision that could be appealed  
11 pursuant to part 105 of the Board's rules?

12 MS. ZIMMER: This is Amy Zimmer. Basically  
13 the facility will be categorizing their facilities.  
14 The Agency will look at those categories. If and when  
15 the Agency disagrees with a facility's placement in a  
16 category, places it in another category, that decision  
17 will be an agency decision that will then be  
18 appealable.

19 MS. GALE: Great. I do have one more  
20 follow-up about the alternative disposal capacity  
21 questions. And I want to turn to the exhibit for the  
22 2015 Rule, which is Exhibit 5.

23 (Technical difficulties.)

24 MS. GALE: So Exhibit 5, which is the 2015

1 Rule, let's turn to Page 21.423. And this goes to  
2 Mr. Dunaway's answer about looking for alternative  
3 capacity. So in the middle column at the bottom,  
4 under 1, I'll just read into the record:

5 "As a result, the facility may be faced with  
6 either violating the closure requirements in 257.101  
7 by continuing to place CCR in a unit that is required  
8 to close, or having decreased generating power at that  
9 facility because there's no place in which to dispose  
10 the resulting waste.

11 "For example, while it is possible to  
12 transport dry ash off-site to alternative disposal  
13 facility, that simply is not feasible for what  
14 generated CCR. Nor can facilities immediately convert  
15 to dry handling systems.

16 "As noted previously, the law cannot compel  
17 actions that are physically impossible, and it is  
18 incumbent on the EPA to develop a regulation that does  
19 not, in essence, establish such a standard."

20 So my question is: Based upon the Agency's  
21 evaluation of alternative CCR disposal capacity, does  
22 that change your answer about finding alternative  
23 locations for where to place the CCR and the  
24 difficulty of establishing an alternative disposal

1 capacity.

2 MR. DUNAWAY: Lynn Dunaway. Subsequent to  
3 the Federal Register that you were reading from, the  
4 USWAG, U-S-W-A-G decision, the petitioners made  
5 essentially the argument that you're making, that  
6 there would be -- there could only be capacity  
7 somewhere. And the court determined that, based on my  
8 non-attorney reading here, that while that might be  
9 the case, it's contrary to RCRA's requirement that  
10 there not be a consideration of the cost.

11 So I believe the USWAG decision makes that  
12 part of the preamble somewhat moot and supports the  
13 language within the rule.

14 MS. GALE: Mr. Dunaway, what you're referring  
15 to is the court's opinion on cost. What I'm referring  
16 to is feasibility of moving the material. So my  
17 question relates to feasibility of moving wet CCR  
18 material, which is referenced in the preamble that I  
19 just read into the record.

20 So, again, to the Agency's statement that it  
21 believes it would be extremely challenging, that is  
22 USEPA's opinion on the feasibility of moving wet CCR,  
23 change its opinion on making an alternative capacity  
24 demonstration.

1           And to add to that, do you have any  
2 information suggesting it is feasible to transport  
3 wet-generated ash off-site?

4           MR. DUNAWAY: Lynn Dunaway. An owner  
5 operator can dry out wet ash, transport it.

6           MS. GALE: So you disagree with the USEPA's  
7 conclusions in its preamble that it may be infeasible?

8           MR. DUNAWAY: I think it's a process that can  
9 be done.

10          MS. GALE: Okay. But I guess, to that end,  
11 doesn't having a hard deadline of October 23, in light  
12 of the somewhat infeasibility of driving out CCR ash  
13 in some length of time, create a physical  
14 impossibility?

15          MR. DUNAWAY: I don't -- I can't honestly say  
16 whether it is or is not impossible in that time frame.

17          MS. GALE: And you don't know how long it  
18 takes to dry out CCR, do you?

19          MR. DUNAWAY: No, I don't.

20          MS. GALE: Thank you. Nothing further.

21          HEARING OFFICER HORTON: Okay. Moving on.  
22 It would be the City of Springfield, Ms. Williams, do  
23 you have any questions on 700?

24          MS. WILLIAMS: Okay. I have one quick



1 question on 700. It'll be my practice question. Can  
2 you hear me?

3 HEARING OFFICER HORTON: Yes.

4 MS. WILLIAMS: This question is about the  
5 priority categories in 700(h). And in response to one  
6 of the questions, I can refer you back if I need to,  
7 but I think it's pretty basic. The Agency has  
8 testified that these dates for submittal of permit  
9 applications were "no later than" dates, and if a  
10 facility wanted to submit applications earlier, that  
11 that was encouraged.

12 Is that --

13 MS. ZIMMER: Amy Zimmer. Yes, that's true.

14 MS. WILLIAMS: So my question is, if a  
15 facility wanted to submit an application early,  
16 putting aside the practicality of whether the forms  
17 will be available, the meeting can be done, but,  
18 hypothetically, if you wanted to submit the  
19 application as early as possible, would that result  
20 potentially in a lower priority facility jumping ahead  
21 of -- before a higher priority facility?

22 So my question is how would an agency be  
23 prioritizing internally?

24 Will the time that you submitted it would be

1 first-in/first-out kind of thing?

2 MR. LECRONE: This is Darin Lecrone.

3 Generally, we do applications on first-in/first-out.

4 I think with these, if we receive several in different

5 category groupings around the same time, we'll just

6 have to take a look at what we have and internally

7 prioritize which ones can get done first. I'm not

8 really sure how many we expect to receive at different

9 time frames from different categories.

10 So it will be kind of having to deal with

11 that as we have to and see what applications we get

12 and make that decision on workload, who it's assigned

13 to, which one is going to get done first, and what the

14 schedules are for each facility, what the plans are,

15 whether it's waste removal, whatever. We're just

16 going to have to evaluate those applications and see

17 where they lead us.

18 MS. WILLIAMS: And will issues like

19 complexity of the review affect the priority with

20 which a permit is finished?

21 MR. LECRONE: It may affect when a permit is

22 finished, not necessarily when the review starts. If

23 we assume that every one of these is going to go to a

24 public hearing, then you look at, okay, how many

1 comments do we receive, all that factors into how long  
2 it takes to formulate a final decision document.

3 And so we're going to try to start all of  
4 them right away when they're received. The final  
5 issuance date will depend on the specifics of each  
6 individual application.

7 MS. WILLIAMS: Thank you.

8 HEARING OFFICER HORTON: Moving onto Dynegy,  
9 did you have any questions on 700?

10 MR. MORE: Yes. Just one question. I have a  
11 follow-up question to Mr. Gale's line of questioning  
12 and Mr. Dunaway's response that one could dry out the  
13 ash before transporting it off-site.

14 Mr. Dunaway, how would you propose that the  
15 sluice water be managed at that time?

16 MR. DUNAWAY: Lynn Dunaway. Without a  
17 specific proposal in front of us, we can't speculate  
18 on how that might work.

19 MR. MORE: You recognize that you have to  
20 manage both the physical material and the water for a  
21 period of time prior to ceasing operation, right?

22 MR. DUNAWAY: If you are sluicing ash, yes,  
23 they both have to be managed.

24 MR. MORE: And until you convert potentially

1 to a dry ash handling system, you'll have to manage  
2 both those waste streams during that period, correct?

3 MR. DUNAWAY: Correct.

4 MR. MORE: I have no further questions.

5 HEARING OFFICER HORTON: Okay. Moving on to  
6 IERG, the Illinois Environmental Regulatory Group.  
7 Melissa Brown, did you have any questions on 700?

8 MS. BROWN: Yes, I do. Can you hear me all  
9 right?

10 HEARING OFFICER HORTON: Yes.

11 MS. BROWN: Perfect. This is Melissa Brown  
12 on behalf of IERG. We do have a few short lines of  
13 questioning regarding EJ as it relates to this  
14 section. My first line of questioning deals with the  
15 Agency's pre-filed response to Board questions, so  
16 Hearing Exhibit 2, and starting on Page 149.

17 If the Agency can please let me know when  
18 they get to that page.

19 MR. LECRONE: Okay. We got it.

20 MS. BROWN: I believe all these subquestions  
21 are part of the Board question 1, but I'm looking at  
22 specifically at question "I," as in igloo. And in  
23 response to this question, the Agency references,  
24 quote, EJ starts 2019 data when identifying 29 out of

1 the 73 impoundments as being in areas of environmental  
2 justice concern.

3 I guess my first question is, is this EJ  
4 start 2019 dataset, is this specifically referenced in  
5 the proposed rule language anywhere?

6 MR. PRESSNALL: This is Chris Pressnall. No.

7 MS. WILLIAMS: And this is not to  
8 specifically reference this dataset in the proposed  
9 rule language?

10 MR. PRESSNALL: Is the question -- I'm sorry.  
11 Could you please repeat the question?

12 MS. BROWN: Sure. I was asking why the  
13 Agency chose to not reference the EJ start 2019  
14 dataset specifically in the proposed rule language?

15 MR. PRESSNALL: This is Chris Pressnall. One  
16 of the reasons is that the Illinois EPA updates its  
17 dataset on a yearly basis for the EJ start  
18 demographics screening program. So the rules, the  
19 proposed rules, call out areas of environmental  
20 justice concern, and then the way we do that is -- in  
21 practicality through or environmental justice program,  
22 is through the use of Illinois EPA's EJ start program,  
23 and, like I said, which is updated on a yearly basis.

24 MS. BROWN: So the stuff that's updated on a

1 yearly basis, that assumes that the data and the  
2 dataset changes or could change from year to year,  
3 correct.

4 MR. PRESSNALL: That is correct.

5 MS. BROWN: Is it conceivable then that a  
6 facility's status as being located in an area of EJ  
7 concern could change?

8 MR. PRESSNALL: Yes.

9 MS. BROWN: Does the Agency think its  
10 required or should it be required that this dataset be  
11 incorporated by reference into the rule?

12 MS. ZIMMER: This is Amy Zimmer. The EJ  
13 start data, the use of it is going to be tied to  
14 prioritization. So whenever a facility is required to  
15 prioritize their impoundments, the date of the  
16 prioritization, the applicable EJ start dataset that  
17 is used at the time of prioritization, is going to be  
18 the dataset that applies that year for that -- like,  
19 for instance, if a facility -- many facilities are  
20 going to prioritize next year. So 2021 data is going  
21 to apply.

22 If there, for some reason, a new facility  
23 comes online in, you know, 2025 and they're required  
24 to prioritize that year, then 2025 data will be

1 applicable.

2           So it's kind of -- it's not static in that we  
3 will never use updates. But it is static in that when  
4 the facility prioritizes the dataset for that year,  
5 it's going to be applicable for that prioritization to  
6 that facility and that impoundment for that facility.

7           MS. BROWN: Okay. Thank you.

8           Sticking with Exhibit 2, referring to  
9 Page 176, please let me know when you get to that  
10 page.

11           MS. ZIMMER: Okay.

12           MS. BROWN: Thank you. This is Board's  
13 Question 64, but on Page 176 we're looking at  
14 subsection "C" as in Charlie. And in response to this  
15 question, the Agency responded that its data source is  
16 the American Community Survey Five-Year Average, or  
17 the ACS.

18           Can the Agency provide any examples in any of  
19 its other programs or in any agency program where this  
20 ACS dataset is used for regulatory purposes?

21           MR. PRESSNALL: This is Chris Pressnall. I'm  
22 not aware of any other agency program to use that  
23 dataset. But what I can point to is we modeled it  
24 after the USEPA, Environmental Justice screen, and

1 that's where they obtained their demographic data. So  
2 that's why we chose it.

3 MS. BROWN: Okay. Just a few follow-up  
4 questions on the rule language itself, specifically  
5 745.700, subsection "G" as in golf, 6. So this  
6 subsection G(6) and the next subsection G(7) use the  
7 term "Census Block Group."

8 Is it correct that Census Block Group is not  
9 defined in this proposed regulation?

10 MR. PRESSNALL: This is Chris Pressnall. I  
11 believe that's correct.

12 MS. BROWN: How does the Agency define Census  
13 Block Group?

14 MR. PRESSNALL: A standard definition used by  
15 the U.S. Census, so the United States.

16 MS. BROWN: Can you provide or do you have  
17 that definition of Census Block Group handy?

18 MR. PRESSNALL: No, I do not.

19 MS. BROWN: Is that something that the agency  
20 would be willing to follow up on an post-hearing  
21 comments and provide that physical definition of  
22 census block group?

23 MR. PRESSNALL: Yes.

24 MS. BROWN: Thank you.



1           Sticking with the same section, so, again,  
2 "G" as in golf, 6, getting into 6(a), 6(a) starts or  
3 states: "Any area within one mile of a census block  
4 group where the number of low-income persons is twice  
5 the statewide average."

6           So my question is: How is that statewide  
7 average of low-income persons determined for purposes  
8 of this section?

9           MR. PRESSNALL: By using the American  
10 Community Survey data that on the table that tells us  
11 white alone, not Hispanic. So we take that number for  
12 the State of Illinois and then double it.

13           MS. BROWN: And so that number, is that the  
14 entire statewide average of low-income persons, or is  
15 that the average of low-income persons in a census  
16 block group and that's what you use to compare for  
17 purposes of this section?

18           MR. PRESSNALL: If I'm following your  
19 question, we are comparing each census block group to  
20 the statewide average.

21           MS. BROWN: Okay. Do you have the statewide  
22 average number of low-income persons for 2019 handy  
23 today?

24           MR. PRESSNALL: I may or I may not.

1           This is Chris. I don't think I know it off  
2 the top of my head.

3           MS. BROWN: Would the Agency be willing to  
4 follow up with that in post-hearing comments for both  
5 2019 and 2020?

6           MR. PRESSNALL: This is Chris. We can't do  
7 2020 because that won't be released until next year.  
8 It's always a little bit confusing, but it's always  
9 trailing one year because we're using -- you're using  
10 the five-year rolling average. And so the 2020 data  
11 doesn't come out, 2020, 2019, '18, '17, '16, doesn't  
12 come out until 2021.

13           MS. BROWN: Okay. Can the Agency follow up  
14 on just 2019?

15           MR. PRESSNALL: Yes.

16           MS. BROWN: Thank you.

17           So sticking with the same section, it goes on  
18 to state that where low-income means the number or  
19 percent of a Census Block Group's population and  
20 household where the household income is less than or  
21 equal to twice the Federal Poverty Level.

22           How is the Federal Poverty Level determined?

23           MR. PRESSNALL: I can't answer that question  
24 at this time.

1 MS. BROWN: Is that something you could  
2 follow-up on?

3 MR. PRESSNALL: Yes, it is.

4 MS. BROWN: Thank you.

5 And along with that, if you could also follow  
6 up with what that number was for 2019, that would be  
7 appreciated.

8 Then my last question is similar, but  
9 concerns subsection "G" as in golf, 6(b), and here it  
10 states that: "Any area within one mile of a Census  
11 Block Group or the number of minority persons is twice  
12 the statewide average."

13 So then your answer would be similar for this  
14 subsection with regard to how the statewide average is  
15 determined for the number of minority persons; would  
16 that be correct?

17 MR. PRESSNALL: Could you please rephrase  
18 your question or state the whole question?

19 MS. BROWN: Yeah. Not a problem.

20 So my question here is, how is the statewide  
21 average of number of minority persons, for purposes of  
22 comparing to the number in the Census Block Group  
23 determined?

24 MR. PRESSNALL: Okay. So you're asking the

1 same thing only instead of low-income minority?

2 MS. BROWN: Uh-huh. Correct.

3 MR. PRESSNALL: Yeah, we would have to follow  
4 up on that. But it's the same -- same process as the  
5 low-income.

6 MS. BROWN: And then can you please also  
7 follow up on what the statewide average number of  
8 minority persons would have been for 2019?

9 MR. PRESSNALL: Yes.

10 MS. BROWN: Thank you. That's all I have at  
11 this time.

12 HEARING OFFICER HORTON: Thank you.

13 Next up would be Ameren, Ms. Manning, do you  
14 have any questions on Page 700?

15 Ms. Manning?

16 MS. MANNING: We're having trouble with audio  
17 I think.

18 HEARING OFFICER HORTON: We hear you now.

19 MS. MANNING: Yes. I have a few follow-up  
20 questions.

21 Number one, a follow-up question related to  
22 the definition of -- in response to questions from  
23 IREG contained on Page 137 of the Agency's responses  
24 to questions, on Page 137, if you have that page

1 available, I'll go ahead and ask the question.

2 IERG asked the question: "If a closed  
3 inactive surface impoundment has a post-closure plan  
4 arrived by the agency prior to the effective date of  
5 these rules, would it be appropriate to add clarifying  
6 language to Section 845.780 as laid out below?

7 And then they lay out language saying that  
8 unless the owner/operator of a CCR surface impoundment  
9 has a post-closure plan approved by the Agency, the  
10 owner or operator of the CCR surface  
11 impoundment (inaudible).

12 One of the things the Agency said in response  
13 to this question is, as a point of clarification,  
14 quote, "inactive closed surface impoundments and  
15 closed inactive CCR surface impoundments are defined  
16 differently in 845.120 and, accordingly, have  
17 different requirements under Part 845."

18 I see, of course, that inactive closed  
19 surface impoundments are defined in Section 845.120.  
20 But I don't see a definition for closed inactive CCR  
21 surface impoundments that's different than that.

22 Is this just a typo on the part of the  
23 Agency, or is there a difference between those two  
24 things, inactive closed surface impoundments and

1 closed inactive CCR surface impoundments? And if so,  
2 what is that difference?

3 MR. DUNAWAY: Lynn Dunaway. Inactive CCR  
4 surface impoundments are defined as a closed inactive  
5 CCR surface impoundment as an inactive CCR surface  
6 impoundment that meets the definition of closed.

7 MS. MANNING: But an inactive closed CCR  
8 surface impoundment has to meet two parts of the  
9 definition of inactive closed surface impoundment.  
10 That is, it has to close before October 19, 2015, and  
11 also pursuant to an agency-approved closure plan.  
12 Correct?

13 MR. DUNAWAY: For inactive closed, that's  
14 correct.

15 MS. MANNING: And looking at the Agency's  
16 exhibit that you attached to the Board's questions, in  
17 response to the Board's questions, on Page 181 and  
18 182, out of the universe, you've identified water  
19 treatment units that the Agency has identified for the  
20 Board, there are only four former funds that would fit  
21 the definition of inactive closed surface impoundment;  
22 is that correct?

23 MR. DUNAWAY: That's correct.

24 MS. MANNING: Three of Ameren's, Venice North

1 Pond, Venice South Pond, Pond D in Hudsonville, and  
2 also a pond owned by Prairie Power. Correct?

3 MR. DUNAWAY: Correct.

4 MS. MANNING: So the second part of the  
5 definition of "inactive closed surface impoundment"  
6 that the ash pond has closed pursuant to an  
7 agency-approved closure plan, could you define the  
8 universe of entities on your list of 73 as to which of  
9 those ponds that that definition they were closed  
10 pursuant to an agency-approved closure plan?

11 MR. DUNAWAY: Lynn Dunaway. We'll identify  
12 those in post-hearing.

13 MS. MANNING: I'm sorry?

14 MR. DUNAWAY: We'll identify --

15 MS. MANNING: Would they be off of the Ameren  
16 ponds that you have listed from number 1 through 11  
17 that says "see closure date" on your column H?

18 In other words, Mr. Dunaway, haven't all of  
19 those been closed pursuant to an IEPA-approved closure  
20 plan?

21 MR. HAMMONS: Hearing Officer, this is  
22 Jeff Hammons from the Environmental Law & Policy  
23 Center. I just want to note that at the last hearing,  
24 we were not supposed to get into site-specific

1 discussion, and it seems like we're veering back into  
2 that territory.

3 HEARING OFFICER HORTON: Is this an  
4 objection?

5 MR. HAMMONS: Yes.

6 MS. MANNING: Madam Hearing Officer, to  
7 respond, it appears from the Agency's exhibit, that  
8 all the entities that have closed as of this date  
9 pursuant to an agency-approved closure plan are the  
10 Ameren facilities.

11 The Agency's proposal, particularly their  
12 part 700 proposal, would have -- will impact that in  
13 that the closure plans that have already been approved  
14 are now subject to being completely reopened and  
15 redone.

16 So my question is, are Ameren's facilities  
17 that are listed "see closure date number one," have  
18 they been closed pursuant to an agency-approved  
19 closure plan?

20 HEARING OFFICER HORTON: I'm going to  
21 overrule the objection because the document that we're  
22 speaking about lists specific facilities. And so if  
23 the Agency would like to follow up during its  
24 post-hearing comments to identify the facilities,



1 Ms. Manning is questioning about, that would be fine.

2 MS. MANNING: I would like them also to  
3 identify that the closure occurred prior to June 30,  
4 2019, the effective date of the Illinois CCR Act.

5 HEARING OFFICER HORTON: This is Vanessa  
6 Horton. That would be up to the agency.

7 MS. MANNING: I'm going to move on. The  
8 Agency does intend, does it not, that those closures  
9 that have occurred prior to July 30, 2019, be subject  
10 to the full gamut of part 700, including, for example,  
11 doing closure alternatives pursuant to 845.710, even  
12 though these facilities have already closed pursuant  
13 to an agency-approved closure plan. Is that the  
14 Agency's intention?

15 MS. ZEIVEL: This is Christine Zeivel. I'm  
16 sorry, Ms. Manning. There were so many questions kind  
17 of that ran on top of one another that we were still  
18 trying to answer the first one, too, and then we  
19 couldn't follow your last one.

20 So if we could go back and respond to the  
21 request to identify the specific ponds and make some  
22 points of clarification on those original questions  
23 and then return to your most recent question, we will  
24 probably ask you to re-ask that. We were not able to

1 follow.

2 MS. MANNING: The only question I have right  
3 now then, Ms. Zeivel, does the Agency intend that, as  
4 an example, 845.710 that requires a facility to -- an  
5 ash pond to present the closure alternatives analysis,  
6 apply to an ash pond that has already closed pursuant  
7 to an agency-approved closure plan?

8 MR. DUNAWAY: Lynn Dunaway. No CCR surface  
9 impoundments that meet the definition of closed in the  
10 rule would not need to do that.

11 In addition, there is an exemption under  
12 Section 22.59(e) of the Act where CCR surface  
13 impoundments that have a closure plan approved by  
14 the -- or submitted by May 1, 2019, and a complete  
15 closure within 24 months would not have to have a  
16 construction permit pursuant to part 845. Those would  
17 not have to get a construction permit.

18 The closure alternatives analysis is part of  
19 that construction permit. So, therefore, those that  
20 fall within that exemption under 22.59 would not need  
21 an alternatives analysis for that permit.

22 MS. MANNING: Thank you. I would simply ask  
23 that in response to my question as to the universe of  
24 entities that have closed prior to the effective date

1 of the CCR law, that is June 30, 2019, and -- but  
2 after October 19, 2015, I would like the Agency to  
3 confirm that the only entities, the only ash ponds  
4 within that period of time that would be affected  
5 would be those Ameren facilities that are listed as  
6 inactive but not inactive closed?

7 MR. DUNAWAY: Based on the definition of  
8 closed but not inactive closed, those specific Ameren  
9 ponds do not meet the definition of closed.

10 MS. MANNING: And that is, Mr. Dunaway,  
11 because, although they closed pursuant to an  
12 agency-approved closure plan and met that portion of  
13 the definition, they did not close by October 19,  
14 2015, correct?

15 MR. DUNAWAY: That's correct.

16 MS. MANNING: So if Ameren were to propose a  
17 change to the Board to remove the date before  
18 October 19, 2015, and insert June 30, 2019, the only  
19 ponds that would be affected were those that we just  
20 discussed with Ameren, correct?

21 MR. DUNAWAY: I would have to look at all the  
22 data from other ponds. I can't affirmatively answer  
23 that question right now.

24 MS. MANNING: Well, none of the other plans

1 on here, on your list, closed prior to July 30, 2021,  
2 you have in column H. So there are not any listed  
3 beyond the ones that we discussed and that are listed  
4 on here.

5 So there wouldn't be any other closed ponds  
6 that are not included in your list, would there be?

7 MR. ARMSTRONG: Andrew Armstrong from the  
8 Attorney General's Office. Objection asked and  
9 answered. And we're not here to determine the facts  
10 of any particular ponds. We're talking about a list  
11 of impoundments.

12 The witness has already answered the  
13 question. We'll have to take a look at all the facts.

14 MS. MANNING: I think I've had my questions  
15 answered anyway, Mr. Armstrong. So thank you. I'll  
16 stop now.

17 HEARING OFFICER HORTON: Moving on, and it'll  
18 be back to Mr. Armstrong, do you have any questions on  
19 700?

20 MR. ARMSTRONG: The Attorney General's Office  
21 does not.

22 HEARING OFFICER HORTON: Then it would be the  
23 Technical Unit for the Pollution Control Board,  
24 Ms. Brown or Mr. Rao, do you have questions on 700?

1 MS. E. BROWN: We have no questions for this  
2 subsection.

3 HEARING OFFICER HORTON: And that was  
4 Ms. Brown, just for the court reporter?

5 MS. E. BROWN: Yes.

6 HEARING OFFICER HORTON: Are there any  
7 follow-up questions on 700 from the room here?

8 Okay. I don't see any.

9 Are there any follow-up questions on 700 on  
10 Webex?

11 Okay. Moving on to 710, and we'll start  
12 again with Little Village, Environmental Law & Policy  
13 Center, Prairie Rivers, Sierra Club, any questions on  
14 710.

15 MS. BUGEL: I do not have any further  
16 questions at this time. I did ask my questions on 710  
17 at the last hearing. Thank you.

18 HEARING OFFICER HORTON: Okay. Right. We  
19 did start 710 at the last hearing. I'm not a hundred  
20 percent sure if we finished 710.

21 So I guess let me just run through everyone  
22 and see if there's any questions on 710, and we'll  
23 categorize them as follow-up questions.

24 Midwest Generation, any on 710?

1 MS. GALE: I do not.

2 HEARING OFFICER HORTON: City of Springfield,  
3 Ms. Williams, any questions on 710?

4 MS. WILLIAMS: My questions were addressed at  
5 the last hearing. Thank you.

6 HEARING OFFICER HORTON: No problem.

7 Dynegy, 710? None?

8 IERG, 710?

9 MS. BROWN: Melissa Brown. No questions.

10 HEARING OFFICER HORTON: Ameren, Ms. Manning,  
11 any on 710?

12 Ameren, Ms. Manning, any questions on 710?

13 MS. MANNING: Can you hear me now?

14 HEARING OFFICER HORTON: Yes.

15 MS. MANNING: Thank you. I have nothing on  
16 710. I'm sorry. We're having a hard time with the  
17 muting and unmuting on our end. Thank you.

18 HEARING OFFICER HORTON: No problem. It's  
19 going around.

20 AG's office, any questions on 710?

21 MR. SYLVESTER: This is Steve Sylvester. We  
22 have no questions.

23 HEARING OFFICER HORTON: Okay.

24 And the Technical Unit for the Board, any

1 questions on 710?

2 MR. RAO: This is Anand Rao. I have no  
3 questions for 710.

4 HEARING OFFICER HORTON: Moving on. 720,  
5 closure plan.

6 Ms. Bugel, any questions on 720?

7 MS. BUGEL: We have no questions on 720.

8 HEARING OFFICER HORTON: Okay.

9 Midwest Generation, 720?

10 MS. GALE: No questions.

11 HEARING OFFICER HORTON: Ms. Williams, City  
12 of Springfield, any questions on 720?

13 MS. WILLIAMS: Yes. I just have one quick  
14 question on 720. This one is a follow-up to a  
15 pre-filed question that we submitted, Question 19.  
16 Let me know when you're ready.

17 HEARING OFFICER HORTON: And just as a  
18 reminder for questioners. If you have a letter at the  
19 end of the section, just say it out military style for  
20 our court reporter.

21 MS. WILLIAMS: I'm sorry. What did you say?

22 HEARING OFFICER HORTON: I'm sorry. Just a  
23 general reminder for everyone asking questions. If  
24 you're stating a section that ends in a letter, just

1 say "C" as in cat.

2 MS. WILLIAMS: This is Question 19(a), as in  
3 apple.

4 MS. ZEIVEL: Agency is ready.

5 MS. WILLIAMS: In the response to this  
6 question, the Agency has said that use of a closed  
7 site would require an amendment to the operating  
8 permit. And I just wanted to explore generally a  
9 concept that I had seen in other states to evaluate  
10 whether this is something the Agency is going to be  
11 open to.

12 So, in other states, facilities have closed  
13 impoundments with a cap in a manner that they  
14 reference as "solar ready." And I just want to  
15 confirm that if a closure plan is submitted with an  
16 initial operating permit that would allow for the cap  
17 to be "solar ready," whether that would be something  
18 that could be done without requiring a leader  
19 amendment to the operating permit as long as it was  
20 included in the initial.

21 MR. LECRONE: This is Darin Lecrone. I think  
22 that would be okay. If the submitted post-closure  
23 care plan includes solar as a potential use and that's  
24 taken into account in the final post-closure care



1 plan, then I think that would be fine. I think that  
2 type of construction later would have already been  
3 accounted for and wouldn't require modification to the  
4 operating permit.

5 MS. WILLIAMS: Okay. Great. Thank you.  
6 That answers my question.

7 HEARING OFFICER HORTON: Dynegy, any  
8 questions on 720?

9 MR. GRANHOLM: Ryan Granholm for Dynegy. We  
10 have no questions on this section.

11 HEARING OFFICER HORTON: Okay.  
12 Environmental Regulatory Group, Ms. Brown,  
13 any questions on 720?

14 MS. BROWN: Melissa Brown. No questions on  
15 this section.

16 HEARING OFFICER HORTON: Ameren, any  
17 questions on 720?

18 MS. MANNING: Mr. Dunaway, would the  
19 exemption you spoke of in 22.59(e) with regard to  
20 exempting Ameren's closed ash ponds from compliance  
21 with Section 845.710 also exempt the Ameren's closed  
22 pond from 845.720?

23 MR. DUNAWAY: Lynn Dunaway. Yes. The  
24 closure plan is part of the construction permit.

1 Therefore, the exemption in 22.59 would also apply to  
2 the closure plan.

3 MS. MANNING: Thank you. That's all.

4 HEARING OFFICER HORTON: Okay. Attorney  
5 General's Office, any questions on 720?

6 MR. ARMSTRONG: We have no questions on this  
7 subpart. Andrew Armstrong from the Attorney General's  
8 Office.

9 HEARING OFFICER HORTON: Mr. Rao, Ms. Brown,  
10 any questions on 720?

11 MR. RAO: We don't have any --

12 HEARING OFFICER HORTON: Can you repeat, MR.  
13 Rao? I'm sorry. I didn't catch that.

14 MR. RAO: We don't have any questions until  
15 the next subpart.

16 HEARING OFFICER HORTON: All right. We'll  
17 move on to 730.

18 And I'll just note that an additional board  
19 member has joined. Board Member Santos is joining us  
20 on Webex.

21 So we'll move on to 730, Initiation of  
22 Closure.

23 So, Ms. Bugel, any questions on 730?

24 MS. BUGEL: We do not have any questions.

1 HEARING OFFICER HORTON: Okay. Midwest  
2 Generation?

3 MS. GALE: No questions.

4 HEARING OFFICER HORTON: Okay. City of  
5 Springfield, 730?

6 MS. WILLIAMS: No questions.

7 HEARING OFFICER HORTON: Dynegy?

8 MR. GRANHOLM: No questions on this section.

9 HEARING OFFICER HORTON: Ms. Brown, any  
10 questions on 730?

11 MS. BROWN: No questions on this section.

12 HEARING OFFICER HORTON: Ms. Manning, 730?

13 MS. MANNING: Mr. Dunaway, same question I  
14 discussed previously with regard to Section 22.59(e),  
15 exempting Ameren's closed ash ponds from compliance  
16 with 845.720 and 845.710 and 720, would the same apply  
17 to 845.730?

18 MR. DUNAWAY: Lynn Dunaway. I don't know  
19 that as exempt as much as the ponds in question have  
20 already initiated closure. So it's probably not  
21 applicable.

22 MS. COURTNEY: Hearing Officer, Courtney.

23 HEARING OFFICER HORTON: Yes?

24 MS. COURTNEY: Jenny Cassel has an objection

1 and she's trying to speak but is muted.

2 THE COURT REPORTER: Who's speaking?

3 HEARING OFFICER HORTON: Who's speaking?

4 MS. COURTNEY: Sorry. This is Kiana Courtney  
5 from ELPC, from Environmental Law & Policy Center.

6 HEARING OFFICER HORTON: Okay. We'll try and  
7 unmute Ms. Cassel.

8 For us, she is unmuted. On our Webex screen,  
9 it's showing that she does not have any audio. So she  
10 might have to have the Webex call her phone or change  
11 her audio input.

12 We'll give her a second. I understand it's  
13 an objection. But, Ms. Cassel, you can log out and  
14 log back in. Sometimes that helps.

15 Okay. She's saying that she will log back in  
16 in the comments.

17 Perhaps, Ms. Courtney, you would like to  
18 state her objection?

19 MS. COURTNEY: Yes. This is Kiana Courtney  
20 from the Environmental Law & Policy Center. She  
21 stated in the chat same objection as Mr. Armstrong  
22 raised with regard to asking applicability of rules to  
23 particular plants.

24 MS. MANNING: And I would respond that it's

1 the role and obligation of the Board to determine how  
2 its rules are going to play out in the regulated  
3 community, the facilities which the agency has  
4 identified in its exhibit, as to those that are -- the  
5 rules apply to.

6 And as we've established, Ameren is about the  
7 only facility, the only company, that has ponds that  
8 have closed prior to the effective date of the CCR  
9 log, but that have not closed prior to October 19,  
10 2015.

11 So they are a special class of ponds, and it  
12 makes absolute sense for the Board to understand how  
13 this rule will apply to ponds that effectively have  
14 already closed with the approval of the IEPA.

15 HEARING OFFICER HORTON: This is --

16 MR. ARMSTRONG: Andrew Armstrong.

17 HEARING OFFICER HORTON: Go ahead,  
18 Mr. Armstrong.

19 MR. ARMSTRONG: Andrew Armstrong from the  
20 Attorney General's Office. I just want to say for the  
21 record, I don't think you've established any such  
22 thing.

23 That said, I think that the witness is just  
24 talking about the applicability and the effects of the

1 exemption in 22.59(e). That's one thing, which is  
2 what I understand is what my question is getting at.

3 But if we're saying that -- we're talking  
4 about applying the rules to specific impoundments.  
5 That's clearly not the Board's rule in this hearing.  
6 The Board's rule in this hearing is to adopt  
7 regulations, not to apply them.

8 I believe Mr. More stated that last time we  
9 were here.

10 MS. MANNING: And the question,  
11 Mr. Armstrong, is: The Board's adoption of rules,  
12 there needs to be understanding of how and in what  
13 context they apply. And my question went to that  
14 issue. What context would apply to the initiation of  
15 closure -- we're talking about a section called  
16 "Initiation of Closure" -- as to facilities that,  
17 based on the Agency's own exhibit, have already  
18 closed.

19 So the question is --

20 HEARING OFFICER HORTON: Go ahead,  
21 Ms. Manning.

22 MS. MANNING: The question is: Does the  
23 construction exemption that Mr. Dunaway discussed in  
24 22.59(e) apply also such that 845.730, Initiation of

1 Closure, does not apply to an ash pond that, as of  
2 today's date, has closed with the approval of the  
3 Agency?

4 HEARING OFFICER HORTON: This is Vanessa  
5 Horton. Based on my previous rulings in the previous  
6 days of this hearing, I will sustain the objection of  
7 Ms. Courtney and Ms. Cassel and Mr. Armstrong.

8 And I ask that, Ms. Manning, please only ask  
9 your question generally, as I think you just did, and  
10 not reference back to specific sites and whether the  
11 rule will apply to specific sites but more generally.

12 If you could continue.

13 MS. MANNING: So thank you. I believe then  
14 you suggested that the general nature of the way I  
15 asked the question was appropriate for the Agency to  
16 answer it; is that what I understand?

17 HEARING OFFICER HORTON: Yes.

18 MS. MANNING: Thank you. Then I'll wait for  
19 the Agency to answer.

20 MR. DUNAWAY: Lynn Dunaway. Any CCR surface  
21 impoundment that has initiated closure per 845.730,  
22 would really not be applicable because they've already  
23 initiated closure. So it's something of a moot point.

24 MS. MANNING: Thank you. That's it.

1 HEARING OFFICER HORTON: Okay. Attorney  
2 General's Office, any questions on 730?

3 MR. ARMSTRONG: We do not have any questions  
4 on the initial part.

5 HEARING OFFICER HORTON: Okay. Mr. Rao, any  
6 questions on 730 from the Board?

7 MR. RAO: No questions.

8 HEARING OFFICER HORTON: You said not until  
9 the next subpart and I forgot. Sorry about that.

10 Okay. Moving on to any follow-up questions  
11 on 730 in the room?

12 None.

13 Any follow-up questions on 730 on Webex?

14 Okay. None.

15 Moving on to 740, Closure By Removal,  
16 beginning with Ms. Bugel, any questions on 740?

17 MS. BUGEL: Yes. Mr. Mychal Ozaeta will be  
18 asking questions for the Environmental Group.

19 HEARING OFFICER HORTON: Mr. Ozaeta, are you  
20 on the line?

21 MR. OZAETA: Can you all hear me okay?

22 HEARING OFFICER HORTON: Yes.

23 MR. OZAETA: Thank you. Mychal Ozaeta from  
24 Earthjustice on behalf of Prairie Rivers Network.



1 I would like to start by directing the Agency  
2 to the response to Ameren's Question 4 on Page 139 of  
3 Exhibit 2. Please just let me know when the Agency  
4 has turned to the appropriate page.

5 UNIDENTIFIED SPEAKER: We got it.

6 MR. OZAETA: In its response, the Agency  
7 states that its proposed language at 845.740(b), as  
8 in bravo, is based on a proposed amendment to  
9 40 CFR Part 257, and if that amendment is not adopted,  
10 the Agency, "believes it will have to request that the  
11 Board delete Section 845.740(b) and related  
12 subsections in order to meet the requirements of  
13 Section 22.59(b)(1) of the Act."

14 40 CFR 257.102(c), as in Charlie, in  
15 particular, includes mandates or closure by removal.  
16 If the amendment referenced by the Agency is not  
17 finalized by the time this Rulemaking concludes, and  
18 the Agency does request that the Board deletes  
19 Section 845.740(b), as in bravo, would the Agency  
20 offer replacement language for that section?

21 MR. DUNAWAY: Lynn Dunaway. Discussions  
22 between staff and management are still ongoing  
23 regarding this language. If we do not come to a final  
24 conclusion, it will absolutely have to be deleted.

1 MR. OZAETA: I'm sorry. Could you repeat  
2 that last part? I heard you say it would absolutely  
3 have to and I missed the --

4 MR. DUNAWAY: There's not been a final  
5 determination whether or not this language will have  
6 to be deleted.

7 MR. OZAETA: Thank you.

8 I guess, if the Agency does suggest a  
9 replacement language that is the ultimate route they  
10 decided to go subsequent to closure of the record of  
11 this Rulemaking, can you please clarify what  
12 opportunity the members of the public, including the  
13 environmental groups participating in this Rulemaking,  
14 would have to provide input into this suggested  
15 replacement language, if any?

16 MS. ZEIVEL: This is Christine Zeivel for the  
17 Agency. We believe that, while the record closes at  
18 the end of October, we will be submitting post-hearing  
19 comments. We don't know what the Board plans to do  
20 procedurally for allowing time for setting deadlines  
21 for post-hearing comments, and we're allowing some  
22 kind of response or reply time period. So that's more  
23 of a Board procedural question that we don't believe  
24 has been determined yet. And so the Agency witnesses

1 don't feel confident in responding.

2 MR. OZAETA: As a follow-up question, does  
3 the Agency believe that if this language in  
4 845.740(b), as in bravo, were to be deleted, that this  
5 would be something that would be worthy of public  
6 participation or public input?

7 MS. ZEIVEL: This is Christine Zeivel. At  
8 this point, it is a proposal in front of the Board,  
9 and whether something warrants public comment or not  
10 is outside of the Agency's determination and should be  
11 directed to the Board.

12 MR. OZAETA: Thank you.

13 I'd like to next direct the Agency to its  
14 response to the environmental group's Question 18 on  
15 page 63 of Exhibit 2.

16 MS. ZEIVEL: This is Christine Zeivel.

17 MR. OZAETA: Can the Agency respond regarding  
18 how the Agency will determine compliance with a  
19 transportation plan and other removal requirements in  
20 proposed Section 845.740(c), as in Charlie?

21 The Agency stated that it: "Will defer  
22 enforcement questions to the appropriate state and  
23 federal agencies for the specific issues that arise."

24 The Agency is charged with carrying out the

1 mandates of the Illinois Environmental Protection Act,  
2 correct?

3 MS. MARTIN: Lauren Martin. Yes.

4 MR. OZAETA: And air quality is one of those  
5 mandates; is that correct?

6 MS. MARTIN: Yes.

7 MR. OZAETA: Responsible removal is,  
8 likewise, mandated in the Coal Ash Pollution  
9 Prevention Act Amendments to the Illinois  
10 Environmental Protection Act; is that correct?

11 MS. MARTIN: Can you repeat the question?

12 MR. OZAETA: Yes. The question is: Is the  
13 responsible removal in the Coal Ash Pollution  
14 Prevention Act Amendments to the Illinois  
15 Environmental Protection Act also mandated?

16 MS. ZEIVEL: This is Christine Zeivel. The  
17 statute will speak for itself, and I don't believe  
18 that (inaudible) hearing to confirm or deny  
19 (inaudible) --

20 THE COURT REPORTER: I can't hear her.

21 MS. ZEIVEL: And I don't think the Board  
22 wants us spending our time doing that.

23 So if you have a direct question regarding  
24 the proposed rules, we would be willing to take those.

1 But spending the time to confirm statutory  
2 language I don't believe is in our best interest.

3 MR. OZAETA: I don't think I'm trying to  
4 confirm statutory language. I guess I'm just trying  
5 to confirm whether, under the Coal Ash Pollution  
6 Prevention Act Amendments to the Illinois  
7 Environmental Protection Act, which is relevant, I  
8 believe, to this Rulemaking, whether responsible  
9 removal is a requirement or mandated?

10 MS. ZEIVEL: Well, then the Board will --  
11 everyone will have to give us a moment and wait while  
12 we all turn to the statute and read it.

13 HEARING OFFICER HORTON: This is Vanessa  
14 Horton in the hearing room.

15 It's right at 11 right now. So why don't we  
16 take a ten-minute break, and we'll be back at five  
17 after, at 11:05.

18 (Whereupon, the record was  
19 read as requested.)

20 HEARING OFFICER HORTON: This is the hearing  
21 room at the Thompson Center. Is the Agency ready to  
22 continue?

23 MR. DUNAWAY: Not quite. We're waiting on  
24 our attorneys to come back yet.

1 HEARING OFFICER HORTON: Okay. No problem.

2 MR. DUNAWAY: Okay. We are ready.

3 HEARING OFFICER HORTON: Sounds good.

4 Mr. Ozaeta, I believe we were waiting for the  
5 Agency's response to his question.

6 Before beginning, I'd just like to mention  
7 that Member Palivos from the Board is also  
8 participating as a call-in user.

9 MR. MORE: Could the court reporter read back  
10 the question?

11 HEARING OFFICER HORTON: Well, how about  
12 Mr. Ozaeta -- Mr. Ozaeta, if you're online, could you  
13 please restate your question?

14 MR. OZAETA: Yes. The question was: Is  
15 responsible removal mandated in the Coal Ash Pollution  
16 Prevention Act Amendments to the Illinois  
17 Environmental Protection Act?

18 MR. DUNAWAY: Lynn Dunaway. When closure is  
19 by removal, Section 22.59(g), as in goat, 10 requires  
20 that these rules define when complete removal of CCR  
21 is achieved, and specify the standards of responsible  
22 removal of CCR.

23 MR. OZAETA: Thank you for going and taking a  
24 look at that.

1 My next question is: Does the Agency have  
2 the authority to propose rules to minimize air  
3 pollution from the transport of coal ash?

4 MS. MARTIN: Lauren Martin. We do not have  
5 the authority; that these are already covered under  
6 Federal and State Department of Transportation rules  
7 and OSHA safety regulations.

8 THE COURT REPORTER: Can you ask her to  
9 repeat the very beginning of what she said.

10 HEARING OFFICER HORTON: Ms. Martin, could  
11 you just repeat that for our court reporter?

12 MS. MARTIN: Sorry about that. Yes.

13 We do not have the jurisdiction or the agency  
14 does not have the jurisdiction. However, this is  
15 already covered under the U.S. and State Department of  
16 Transportation regulations and OSHA safety  
17 regulations.

18 MR. OZAETA: Thank you.

19 Does the Agency have the authority to enforce  
20 fugitive dust restrictions that protects adjacent  
21 communities, among others, from CCR dust?

22 MS. MARTIN: Lauren Martin. Yes.

23 MR. OZAETA: And are there fugitive dust  
24 regulations in place that the Agency does administer?

1 MS. MARTIN: Yes.

2 MR. OZAETA: And do some of those regulations  
3 concern trucks or transport?

4 MS. MARTIN: Lauren Martin. We can't speak  
5 to Bureau of Air. However, yes, there are some  
6 respective to mines on the actual site. Once you  
7 enter a public state, a federal roadway, U.S.  
8 Department of Transportation and the State Department  
9 of Transportation has the jurisdiction there.

10 MR. OZAETA: Thank you.

11 In proposed Section 845.740(c), as in  
12 Charlie, 2, the agency lists certain on-site dust  
13 controls that must be developed and implemented.

14 Is there a reason the Agency did not specify  
15 any additional minimum dust control measures?

16 MS. MARTIN: Can you repeat that?

17 MR. OZAETA: Yes. In proposed  
18 Section 845.740(c), as in Charlie, 2, the Agency lists  
19 certain on-site dust controls that must be developed  
20 and implemented.

21 Is there a reason the agency did not specify  
22 any additional minimum dust control measures?

23 MS. MARTIN: Lauren Martin. The Agency  
24 believes that the proposed rules there now are



1 adequate.

2 MR. OZAETA: Does the Agency have the  
3 authority to establish or specify minimum mitigation  
4 procedures or measures for reducing dust in the air as  
5 necessary to protect nearby communities and the  
6 public?

7 MS. MARTIN: Lauren Martin. Can you restate  
8 the question?

9 MR. OZAETA: Yes. Does the Agency have the  
10 authority to establish or specify minimum mitigation  
11 procedures or measures for reducing dust in the air,  
12 as necessary, to protect communities nearby, polluting  
13 facilities, and the public?

14 MS. MARTIN: Lauren Martin. The minimum  
15 mitigation measures for dust in the air or  
16 particulates in the air are already established in  
17 845.500, Air Pressure.

18 MR. OZAETA: Thank you.

19 I'd like to next direct the Agency to their  
20 response to Question 20 on Page 63 of Exhibit 2.

21 MS. MARTIN: We're there.

22 MR. OZAETA: In the response, the Agency  
23 states that, "The owners, operators, and site staff  
24 are more equipped to determine the specific levels of

1 monitoring per OSHA regulations."

2 And I believe this insinuates more equipped  
3 than the Agency to determine those specific levels.

4 The Agency is charged with administering  
5 numerous provisions in the Illinois Environmental  
6 Protection Act relating to air pollution control and  
7 air monitoring; is that correct?

8 MS. MARTIN: Lauren Martin. Yes, but the  
9 Agency is not in charge of worker safety, and that is  
10 what that response is referring to.

11 THE COURT REPORTER: Can you have her repeat  
12 that, please?

13 HEARING OFFICER HORTON: Ms. Martin, could  
14 you just repeat that for the court reporter?

15 MS. MARTIN: Yes. Lauren Martin.

16 Yes. However, the Agency is not responsible  
17 for safety, and that's what that response was  
18 referring to.

19 MR. OZAETA: Does the Agency panel know  
20 whether the Agency has ever received complaints about  
21 dust pollution from residents of communities near  
22 polluting facilities?

23 MR. DUNAWAY: This is Lynn Dunaway. I'm  
24 familiar with some reports from communities that have

1     been made.

2             MR. OZAETA:   Thank you.

3             Does the Agency have the authority to require  
4     air monitoring as it deems necessary to protect nearby  
5     communities and the public from fugitive dust?

6             THE COURT REPORTER:   Can he repeat that?

7             HEARING OFFICER HORTON:   Mr. Ozaeta, for our  
8     court reporter, could you repeat your last question?

9             MR. OZAETA:   Yes, of course.

10            Does the Agency have the authority to require  
11   air monitoring as it deems necessary to protect nearby  
12   communities and the public from fugitive dust?

13            And when I say "nearby communities," I'm  
14   referring to the residents of communities near  
15   polluting facilities as I referenced in the previous  
16   question.

17            MS. ZEIVEL:   This is Christine Zeivel.   The  
18   Agency doesn't have any witnesses in the room that can  
19   speak generally to the broad nature of the question.  
20   But we would be willing to provide a response in our  
21   post-hearing comments.

22            MR. OZAETA:   Thank you.

23            So if owners, operators, and site staff are  
24   more equipped than the Agency to determine the

1 specific levels of air monitoring, what happens if  
2 owners, operators, or site staff fail to implement  
3 adequate dust control during the closure-by removal  
4 process?

5 MS. MARTIN: Lauren Martin. The response is  
6 specific to worker safety, and under OSHA, it is site  
7 specific, competent personnel as defined by OSHA that  
8 would be making those decisions on-site. So that  
9 would be people contracted to the owner/operator.

10 MR. OZAETA: Thank you.

11 I would like to direct the Agency now to its  
12 response to the Board's Question 13 on Page 154 of  
13 Exhibit 2.

14 MS. MARTIN: We're there.

15 MR. OZAETA: In its response, the Agency  
16 states that, "The duration over which a CCR storage  
17 pile exists will be limited by the time required to  
18 complete CCR removal from the CCR surface  
19 impoundment."

20 Proposed section -- and I know this is a  
21 different subsection, but it's relevant to this  
22 answer.

23 Proposed Section 845.760(c), as in Charlie, 3  
24 is the subsection addressing extensions of closure

1 deadlines for impoundments closing by removal; is that  
2 correct?

3 MS. ZIMMER: Amy Zimmer, yes.

4 MR. OZAETA: Does Part 845 include a maximum  
5 time period for closure by removal to be completed,  
6 including extensions?

7 MS. ZIMMER: Could you repeat your question  
8 just so I understand it thoroughly, please?

9 MR. OZAETA: Yeah.

10 Does Part 845, anywhere in Part 845, is there  
11 a maximum time period for closure by removal to be  
12 completed, including extensions?

13 MS. ZIMMER: Amy Zimmer. No, there is not.

14 MR. OZAETA: Thank you.

15 In its response to the Board's Question 13,  
16 the Agency also references the requirement that a  
17 storage pile have a liner and concludes that,  
18 "Therefore, the area of a CCR storage pile is fixed."

19 Can CCR storage pile liners cover multiple  
20 acres?

21 MS. ZIMMER: Amy Zimmer. Potentially, yes.

22 MR. OZAETA: Is there any technical limit to  
23 the size of a CCR storage pile liner?

24 MR. DUNAWAY: This is Lynn Dunaway. The rule

1 doesn't contain a maximum size. However, there are  
2 practical limitations given the geometry of the site  
3 and the time it would take to construct such a  
4 facility within the time allowed for closure.

5 MR. OZAETA: And this is a bit of a related  
6 question. Does Part 845 set out any limit to the  
7 acreage that a CCR pile can cover?

8 MR. DUNAWAY: No. It's limited to the size  
9 of the liner.

10 MR. OZAETA: And liners -- I didn't mean to  
11 interrupt you.

12 And liners do not limit the height of a pile,  
13 correct?

14 MR. DUNAWAY: There's a physical limitation.  
15 You can't stack pile beyond the angle proposed or it  
16 will fail and move off the liner.

17 Other than that, there's not a stated limit.

18 MR. OZAETA: Thank you.

19 I'd like to move on to Ms. Zimmer's response  
20 to Environmental Group's Question 22 on Page 64 of  
21 Exhibit 2.

22 MS. ZIMMER: I'm sorry. Can you repeat that,  
23 please, which question?

24 MR. OZAETA: Question 22 on Page 64 of

1 Exhibit 2.

2 MS. ZIMMER: Okay. Thank you.

3 MR. OZAETA: In Ms. Zimmer's response,  
4 Ms. Zimmer stated that the Agency did not define the  
5 term "temporary" or "temporarily" as it pertains to  
6 CCR being stored in piles because the removal process  
7 "will take multiple years," and "the record keeping  
8 requirements of Section 845.740 will assure a balance  
9 between CCR removed from the surface and CCR  
10 transported off-site, such that no net accumulation  
11 will occur."

12 How precisely will the recordkeeping  
13 requirements of Section 845.740 assure a balance  
14 between CCR removed from the CCR surface impoundment  
15 and CCR transported off-site so that no net  
16 accumulation will occur?

17 MS. ZIMMER: Amy Zimmer. There's monthly  
18 reports, so while it's going to vary somewhat monthly,  
19 month by month, there shouldn't be a greater -- a  
20 significantly greater amount from month to month of  
21 accumulation versus removal. And the monthly reports  
22 should show that, and we'll be looking at those  
23 monthly reports.

24 MR. OZAETA: When you say there shouldn't be,

1 is that specifically required in the rulings in  
2 Part 845?

3 MS. ZIMMER: It does not specify it in the  
4 rules. But, in practical terms, it's going to be  
5 limited by the space and the size of the pile. And  
6 removal will be ongoing, and we will be monitoring  
7 those monthly reports. If it starts to accumulate in  
8 significant amounts, the Agency will be looking at  
9 those reports and saying, okay, we need to -- if it's  
10 accumulating, the Agency will no longer view those as  
11 temporary if they're accumulating large amounts in  
12 those storage piles.

13 MR. OZAETA: Do recordkeeping requirements --  
14 the recordkeeping requirements of proposed  
15 Section 845.740 set limits for the duration that CCR  
16 may be stored in a pile?

17 MS. ZIMMER: Amy Zimmer. There is -- I  
18 would -- there is no time limit on a storage pile  
19 other than it can be there during closure, but it's  
20 not the same material the whole time closure is  
21 ongoing. It's the same ongoing process of removal,  
22 accumulation and removal of the same type of material.  
23 So it's a cycle. You're bringing material into the  
24 pile; you're bringing material out of the pile. It's



1 kind of a process of moving through the pile. So  
2 you're not going to have the same material sitting in  
3 the pile and accumulating. You're having material  
4 during closure; you're having a location where it's  
5 temporarily stored after it's being moved off-site.  
6 So you're going to be cycling materials through the  
7 storage pile. It's not just going to be coming in and  
8 sitting there, which is why we can't limit it to a  
9 certain time frame, because it has to be there to be  
10 used during closure.

11 MR. OZAETA: Do the recordkeeping  
12 requirements of proposed Section 845.740 require that  
13 the CCR be transported off-site at any particular time  
14 intervals?

15 MS. ZIMMER: Amy Zimmer. I think the rules  
16 as written show that it cannot accumulate, and that  
17 covers the process of transport. It cannot  
18 accumulate, so it has to be moved.

19 MR. OZAETA: Is the Agency familiar with the  
20 requirement in Section 3.135A, as in Alpha, -5(e), as  
21 in echo, of the Illinois Environmental Protection Act  
22 that CCR is, "not to be accumulating speculatively"?

23 MS. ZIMMER: Can you repeat your question and  
24 reference, please?

1 MR. OZAETA: Yes. Is the agency familiar  
2 with the requirement in Section 3.135A, as in alpha,  
3 -5(e), as in echo, of the Illinois Environmental  
4 Protection Act that requires that CCR, "is not to be  
5 accumulated speculatively"?

6 MR. MORE: I'm going to object to the  
7 question. Mischaracterizes -- this is Josh More. I'm  
8 going to object to the question. The use of CCR is  
9 not in the Illinois Environmental Protection Act.  
10 It's a different term.

11 HEARING OFFICER HORTON: Mr. Ozaeta, were you  
12 able to hear that objection?

13 MR. OZAETA: I'm not sure what he said.

14 HEARING OFFICER HORTON: I'm sorry. He'll  
15 restate the objection.

16 MR. MORE: I'm objecting to the use -- to the  
17 characterization that the term "CCR" is referenced in  
18 the Illinois Environmental Protection Act and, in  
19 particular, Section 3.135.

20 MR. OZAETA: So this section refers  
21 specifically to coal combustion by-product, which is  
22 coal ash waste that is to be used beneficially. And  
23 so I guess I'll rephrase.

24 Is the Agency familiar with a requirement of

1 that section that this coal combustion by-product is  
2 not to be accumulated speculatively?

3 MR. DUNAWAY: Lynn Dunaway. Yes. The Agency  
4 is familiar that coal combustion by-products as  
5 defined in 3.135 of the Act, subsection (e), as in  
6 elephant, are not to be accumulated speculatively.

7 MR. OZAETA: Is the Agency familiar with how  
8 this specific provision of the Act defines  
9 "accumulated speculatively"?

10 MR. DUNAWAY: Yes.

11 MR. OZAETA: Has the Agency been able to  
12 enforce this provision of the Act?

13 MR. MORE: Josh More again. I'm going to  
14 object to this line of questioning. We're now getting  
15 into how the Agency has enforced different sections of  
16 the Act that are inapplicable. We're talking about  
17 removal and storage for removal.

18 And now the examiner is asking questions  
19 about the storage for beneficial use of a CCB and how  
20 that provision is implemented.

21 I think it's beyond the scope of the rule.

22 MR. OZAETA: I can rephrase the question or  
23 ask a more specific question that's directly related  
24 to this provision of the 845.

1           So Section 3.135A-5(e) states that CCR "is  
2 not accumulated" -- I'm sorry -- "coal combustion  
3 by-product is not accumulated speculatively if, during  
4 the calendar year, the CCB (coal combustion  
5 by-product) used is equal to 75 percent of the CCB by  
6 weight or volume accumulated at the beginning of the  
7 period."

8           And so my question is, would it add clarity  
9 to Part 845 if the Agency included a definition of  
10 "temporary accumulation" or "temporarily stored"  
11 similar to this definition included in the Illinois  
12 Environmental Protection Act?

13           MS. ZEIVEL: This is Christine Zeivel. As we  
14 previously stated on the last day of hearing, that any  
15 proposals the participants would like to make  
16 regarding the rule would need to be made by the  
17 participant with justification, and the Agency is not  
18 in a place to approve, object, or otherwise any  
19 proposals from third-parties beyond what has already  
20 been provided to the Board in its proposal.

21           MR. OZAETA: That's fine. Thank you.

22           I have no further direct questions relating  
23 to 740. But I reserve the right for follow-up. Thank  
24 you.

1 HEARING OFFICER HORTON: Okay. Thank you.

2 Moving on to Midwest Generation, 740?

3 MS. GALE: I do. I'm going to sit up there,  
4 so give me a second.

5 HEARING OFFICER HORTON: I'll just note that  
6 we'll probably break for lunch at noon. It's about  
7 15 minutes away.

8 MS. GALE: I'm going to turn to Exhibit 3,  
9 Page 32, Question 82. And the Agency can let me know  
10 when they're there?

11 There? I can't see you guys.

12 MS. ZEIVEL: Yes, we're there.

13 MS. GALE: In the Agency's answer, the Agency  
14 states that if the CCR is reused -- excuse me -- CCR  
15 surface impoundment --

16 THE COURT REPORTER: Can you start over and  
17 please slow down.

18 MS. GALE: I'm sorry. I'm mumbling.

19 The Agency states that if the CCR surface  
20 impoundment is reused for a different purpose, the  
21 Agency considers that the reuse for a different  
22 purpose, a removal, and subject to the corrective  
23 action if there are exceedances of the groundwater  
24 protection standards at the time of removal.

1           So my question is, if there are not  
2 exceedances of the groundwater protection standards at  
3 the time of removal, then would the CCR surface pond  
4 not be subject to corrective action pursuant to  
5 845.620, 845.670, and 845.680?

6           MR. DUNAWAY: Lynn Dunaway. If there's no  
7 exceedance in groundwater protection standard, that  
8 CCR surface impoundment would not be subject to  
9 corrective action. However, it would have to  
10 demonstrate compliance with the groundwater protection  
11 standards for three years.

12           MS. GALE: So you mean it would have to go  
13 through post-closure?

14           MR. DUNAWAY: There would have to be  
15 monitoring for three years. It's not defined as  
16 post-closure in these rules.

17           MS. GALE: Okay. Okay.

18           Same question. I want you guys to open to  
19 740 as well, just so we're on the same page.

20           You also state here in the first sentence  
21 that "closure by removal that would also require  
22 removal of the contaminated liner."

23           And my question is is, Part 740(a), as in  
24 alpha, does not require removal of the liner.

1 Correct?

2 MS. ZIMMER: Amy Zimmer. We consider  
3 decontaminating would be removing of the liner --  
4 would be removing the contaminated liner.

5 MS. GALE: So the Agency believes a liner is  
6 always contaminated and it cannot be contaminated any  
7 other way?

8 MS. ZIMMER: Can you restate your question?  
9 I'm not quite understanding. It seemed like a partial  
10 question.

11 MS. GALE: Sure. My question is: The Agency  
12 believes there's no other method to decontaminate the  
13 liner other than removal?

14 And I'm sorry. I should add, I'm speaking of  
15 a polymer liner, like an HDPE liner.

16 MS. ZIMMER: Amy Zimmer. We believe removal  
17 is the only way to be sure decontamination has  
18 occurred.

19 MS. GALE: What is your basis for that  
20 belief?

21 MS. ZIMMER: Amy Zimmer. Any liner, any type  
22 of liner always has leakage, pinholes, tears, so  
23 there's always leakage, which means if there's  
24 contamination, there will always be contamination

1 through the liner.

2 MS. GALE: Okay. Earlier I just asked about  
3 if there was no exceedances in the groundwater  
4 protection standards, that would still have -- and you  
5 said there would not be any corrective action. If  
6 there's no --

7 MS. ZIMMER: Amy Zimmer. I was under the  
8 impression -- okay. Are we talking about a  
9 contaminated site or doing corrective action?

10 MS. GALE: Well, I guess that goes to the  
11 question about this answer, is that: Is removal of a  
12 liner always required?

13 And the way I understood your answer was,  
14 regardless of the situation, removal of a liner was  
15 always required for a removal?

16 MS. ZIMMER: Amy Zimmer. Yes. In all  
17 circumstances, removal will include removing the  
18 liner.

19 MS. GALE: Regardless of the groundwater  
20 protection standards status?

21 MS. ZIMMER: Amy Zimmer. Correct.

22 MS. GALE: What is the Agency's basis for  
23 that?

24 MS. ZIMMER: Amy Zimmer. A couple of the



1 things at least in play for leaving a liner in place  
2 during removal, any time you remove ash, generally,  
3 you're using machinery and you're on the liner. There  
4 will be damage. Could be significant damage.

5 The other possibility is there could be  
6 impacts to groundwater beneath the liner, whatever  
7 levels they may be. So there could be -- those are  
8 two reasons that we believe the liner needs to be  
9 removed.

10 MS. GALE: Okay. And to be clear, I'm  
11 talking about polymer liners here, which are plastic  
12 HDPE, to make sure we're just on the same baseline.

13 So the Agency doesn't think a polymer liner  
14 cannot be decontaminated by a washing, a plastic  
15 liner?

16 MS. ZIMMER: Amy Zimmer. Once again, any  
17 type of liner could be damaged, probably would be  
18 damaged by removing the ash and fully cleaning it  
19 during ash removal.

20 MS. GALE: So that's an assumption you're  
21 making?

22 MS. ZIMMER: Amy Zimmer. Based on  
23 information and belief.

24 MS. GALE: And also, the basis of my question

1 is that there's not going to be any CCR in that unit  
2 after removal. So if there's not going to be any CCR  
3 in that unit after removal, what is the Agency's basis  
4 for requiring removal of the liner if it can clean the  
5 pond?

6 MS. ZIMMER: Amy Zimmer. Our interpretation,  
7 the Agency interpretation of Part 257, is that all  
8 areas be removed that had been contaminated and that  
9 includes the liner.

10 MS. GALE: Okay. Well, let's turn to 257,  
11 257.102(c). And under there it's, "Closure by Removal  
12 of CCR: An owner or operator may elect to close a CCR  
13 unit by removing and decontaminating all areas  
14 affected by releases from the CCR unit. CCR removal  
15 and decontamination of the CCR unit are complete when  
16 constituent concentrations throughout the CCR unit and  
17 any areas affected by releases from the CCR unit have  
18 been removed and groundwater monitoring concentrations  
19 do not exceed the groundwater protection standards."

20 Right?

21 MS. ZIMMER: Excuse me. We're not even there  
22 yet. Could you tell us what page and then we'll go?

23 MS. GALE: Sorry. Sure. Sorry. Sorry. I'm  
24 reading from exhibit -- reading from the most recent

1 one, which is not Exhibit 5, but Exhibit -- not 5 --  
2 Exhibit 8.

3 HEARING OFFICER HORTON: You're at 257?

4 MS. GALE: 257.102(c). So Exhibit 8,  
5 Page 483.

6 MS. ZIMMER: We're ready. Thank you.

7 MS. GALE: And I won't repeat the whole thing  
8 again. But if you read through 102(c), which is about  
9 Closure By Removal, this section does not say you must  
10 remove the liner. Correct?

11 MS. ZIMMER: Amy Zimmer. It does not specify  
12 a liner. However, it does say decontamination must  
13 occur throughout the unit.

14 MS. GALE: Agreed. But it does not say liner  
15 removal is required, right?

16 I think you answered that question.

17 So my question is, if the Agency requires  
18 removal of a liner, even if the groundwater protection  
19 standards -- if the groundwater is below the  
20 groundwater protection standards -- the Agency can say  
21 that a cost of the removal or replacement of that  
22 liner for repurposing a CCR (inaudible) for a use  
23 solely unrelated to CCR?

24 MS. ZIMMER: Amy Zimmer. No.

1 MS. GALE: Did the Agency consider the volume  
2 of material that would go into landfills even though  
3 the groundwater protection standards are established,  
4 instead of reusing the material?

5 MS. ZIMMER: Amy Zimmer. No.

6 MS. GALE: Okay. Considering the energy and  
7 manufacturing impacts associated with manufacturing of  
8 plastic HDPE liners, isn't it more environmentally  
9 responsible to reuse this resource if it's able to be  
10 cleaned?

11 MS. ZIMMER: Amy Zimmer. That would require  
12 the Agency to speculate because we don't know what the  
13 next use would be.

14 MS. GALE: Well, you've already speculated  
15 that the liner has leaks in it, right? You have made  
16 that assumption?

17 MS. ZIMMER: Yes. Amy Zimmer.

18 MS. GALE: So you can't speculate this way as  
19 well?

20 MS. ZEIVEL: The question was asked and  
21 answered.

22 MS. GALE: Okay.

23 HEARING OFFICER HORTON: I hate to interrupt,  
24 but could we pause here for lunch?

1 MS. GALE: Yes. That's a good idea.

2 HEARING OFFICER HORTON: So we'll pause here  
3 for lunch for an hour. We'll resume at 1. Thanks  
4 very much.

5 (Whereupon, at 12:03 p.m., a  
6 luncheon recess was taken to  
7 1:00 p.m.)

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AFTERNOON SESSION

HEARING OFFICER HORTON: This is Vanessa Horton in the hearing room in the Thompson Center.

The Agency in Springfield, are you guys all set?

MS. ZIMMER: No attorneys.

HEARING OFFICER HORTON: Okay.

MS. ZIMMER: The Agency is ready.

HEARING OFFICER HORTON: Ms. Gale, are you ready to proceed?

MS. GALE: Yes.

I just want to turn to Exhibit 2, Page 139. These are the Agency's first questions -- or answers to the first questions.

I am looking specifically at the answer to Question 4.

Shall I wait until Christine is there, Ms. Zeivel?

MS. ZIMMER: No. Go ahead.

MS. GALE: Are you ready?

MS. ZIMMER: Yes, we're ready.

MS. GALE: Thanks.

The Agency says that Section 845.740(b) applies to any CCR surface impoundment that closed by

1 removal after October 19, 2015.

2 So my question is: If the CCR was removed  
3 from the impoundment before October 15, 2015, then  
4 Section 845.740 does not apply?

5 MR. DUNAWAY: Lynn Dunaway. Yes, it appears  
6 that 845.740(b) applies to a CCR closure by removal  
7 after October 15, 2019.

8 MS. GALE: Okay. So my question was: Does  
9 that mean if CCR is removed from the unit before  
10 October 19, 2015, that section does not apply to that  
11 unit?

12 MR. DUNAWAY: Whether closure was completed  
13 or not as defined in part 845.

14 MS. GALE: I'm sorry. I missed the front end  
15 of that. What did you say?

16 MR. DUNAWAY: It depends on whether closure  
17 has been completed based on requirements of Part 845.

18 MS. ZIMMER: Yes. We're good.

19 MS. GALE: Nothing further. Thanks. I'm  
20 good.

21 HEARING OFFICER HORTON: Okay. So moving on,  
22 it would be City of Springfield. Did you have any  
23 questions on Section 740?

24 MS. WILLIAMS: I just had a couple quick

1 questions on the applicability of Section 740, and  
2 specifically I'm looking at 740(c), as in cat, 1(a),  
3 as in apple, regarding manifest.

4 I asked a similar question I think last time,  
5 but I just want to make sure that I'm clear. This  
6 language regarding manifest is only going to apply to  
7 closure of surface impoundments, correct? It wouldn't  
8 apply to operation of ability with dry ash handling,  
9 for example?

10 HEARING OFFICER HORTON: Can you repeat that  
11 last bit?

12 MS. WILLIAMS: As an example, it wouldn't  
13 apply to a facility operating with dry ash handling?  
14 It would apply only to the closure of an impoundment?

15 MS. MARTIN: Lauren Martin. The manifests  
16 are only for CCR surface impoundments and the  
17 materials therein.

18 MS. WILLIAMS: Okay. Thank you.

19 And just to kind of build on that question,  
20 this section also only applies to removal of CCR  
21 material, not non-CCR material; is that correct? As I  
22 read it anyway...

23 MS. MARTIN: Lauren Martin. This rule is  
24 only for CCR, CCR materials. However, it does not



1 exempt any other materials from State and Federal  
2 regulations.

3 MS. WILLIAMS: One last question about that  
4 then. As I understood Mr. Dunaway's testimony last  
5 time with the -- really, we were on Section 710, the  
6 Agency's definition, for lack of a better word, the  
7 Agency's interpretation or definition of this section  
8 Closure by Removal, includes only closure by complete  
9 removal and decontamination. Correct?

10 MR. DUNAWAY: 710 deals with the closure  
11 alternatives. 740 is closure by removal. So I'm  
12 not --

13 MS. WILLIAMS: So as I understood your  
14 testimony last time, Lynn, closure by removal is only  
15 complete closure; if you are going to do partial  
16 removal for some type of hybrid, that would have to  
17 fall under, by necessity, closure in place, because  
18 you weren't completing complete removal. Is that your  
19 understanding?

20 MR. DUNAWAY: Lynn Dunaway. Yes, that's the  
21 case. If you don't do complete removal, then you have  
22 closing in place.

23 MS. WILLIAMS: Okay. I appreciate that.  
24 That answers my questions.

1 HEARING OFFICER HORTON: Okay. Moving on,  
2 Dynegy, do you have any questions on 740?

3 MR. MORE: We do.

4 Josh More. I have a couple questions and  
5 Mr. Granholm has a couple questions after that.

6 I'd like to direct the Agency to Lauren  
7 Martin's pre-filed testimony, Page 2 of her pre-filed  
8 testimony under the heading, "Air Criteria."

9 MS. ZIMMER: Go ahead.

10 MR. MORE: Mr. Ozaeta asked a number of  
11 questions regarding the appropriate air monitoring at  
12 a site during various activities. And I wanted to  
13 read into the record a statement and then just confirm  
14 that the Agency's position has not changed.

15 The last paragraph on Page 2 begins:  
16 "Although the preamble."

17 The second sentence of that paragraph reads:  
18 "Worker safety protections, when properly implemented,  
19 will also protect the surrounding communities by  
20 controlling the hazards within the work site."

21 "Worker safety protections on-site by  
22 extension prevents the hazardous materials from  
23 traveling off-site in quantities that could impact the  
24 health and well-being of the surrounding community."

1 Does that statement remain true today?

2 MS. MARTIN: Lauren Martin. Yes.

3 MR. MORE: And is it the Agency's position  
4 that 845, as currently proposed, requires owners and  
5 operators to adopt measures that will effectively  
6 minimize CCR from becoming airborne at the facility?

7 MS. MARTIN: Lauren Martin. Yes.

8 MR. MORE: I'm going to turn it over to  
9 Mr. Granholm.

10 MR. GRANHOLM: Ryan Granholm on behalf of the  
11 Dynegy entities.

12 Following up on some questions from  
13 Mr. Ozaeta, where an owner/operator elects to close a  
14 unit by removal, does the Agency expect that the  
15 planned use of temporary storage files during that  
16 removal will be discussed in the closure plan  
17 submitted to the Agency?

18 MS. MARTIN: Can you repeat the question?  
19 I'm sorry.

20 MR. GRANHOLM: Where an owner/operator elects  
21 to close by removal, does the Agency expect that the  
22 use of storage piles, temporary storage piles, will be  
23 discussed in either the closure plan or the  
24 construction permit application materials that are

1 submitted to the Agency?

2 MS. ZIMMER: Amy Zimmer. Yes.

3 MR. GRANHOLM: And construction permit  
4 application materials must also include an anticipated  
5 schedule for closure of a unit; is that correct?

6 MS. ZIMMER: Amy Zimmer. Yes.

7 MR. GRANHOLM: Will the Agency approve a  
8 construction permit where it believes the use of a  
9 temporary storage pile will create a threat to human  
10 health or the environment?

11 MS. ZIMMER: Amy Zimmer. No.

12 MR. GRANHOLM: Will the Agency approve a  
13 construction permit that calls for CCR to accumulate  
14 in a storage pile indefinitely?

15 MS. ZIMMER: Amy Zimmer. No.

16 MR. GRANHOLM: Nothing further.

17 HEARING OFFICER HORTON: Okay. Ms. Brown  
18 from IERG, any questions on 740?

19 MS. BROWN: Melissa Brown. No questions on  
20 this section.

21 HEARING OFFICER HORTON: Okay. Ameren, any  
22 questions on 740?

23 MS. MANNING: Yes. I just have a few  
24 questions. Thank you.

1 HEARING OFFICER HORTON: Okay.

2 MS. MANNING: First of all, Mr. Dunaway --  
3 I'm trying to understand, I think it was Mr. Dunaway's  
4 answer to Ms. Gale's question related to 845.740(b).  
5 I believe she asked whether if clean closure occurred  
6 prior to October 19, 2015 --

7 HEARING OFFICER HORTON: If everybody can  
8 mute themselves. Okay. You should be able to  
9 proceed. Okay. You can proceed.

10 MS. MANNING: Could you hear me now?

11 HEARING OFFICER HORTON: Yes.

12 MS. MANNING: Okay. Thank you.

13 I'm again trying to understand the answers  
14 that Mr. Dunaway gave to Ms. Gale related to Part --  
15 Section 845.740(b). I believe she asked whether  
16 closure by removal occurred prior to October 19, 2015,  
17 would that section apply.

18 And Mr. Dunaway, I believe, responded that if  
19 closure was otherwise complete and the three-year  
20 monitoring requirement was met, the implication of  
21 that then would be that monitoring would have to have  
22 taken place beginning in 2012.

23 Was that what Mr. Dunaway intended as a  
24 response to Ms. Gale's question?

1 MR. DUNAWAY: I wasn't discussing monitoring  
2 in the answer to that question.

3 MS. MANNING: The implication of closure not  
4 being complete, how does that play into the three-year  
5 monitoring requirement?

6 When does the three-year monitoring  
7 requirement kick in?

8 MR. DUNAWAY: The three-year monitoring  
9 requirement would kick in for any CCR surface  
10 impoundment that had not completed closure by  
11 October 19, 2015. I believe it's the 19th. Maybe the  
12 15th.

13 MS. MANNING: Isn't the implication of that,  
14 then, three years of monitoring would be required  
15 prior to closure in order to meet the definition --  
16 the section as written?

17 MR. DUNAWAY: For those CCR surface  
18 impoundments that closed prior to October -- or after  
19 October 19, 2015, yes, they would have to have three  
20 years of monitor specific to the surface impoundment.

21 MS. MANNING: That is right. Thank you.

22 I just have a couple of other questions then.  
23 Would an ash pond that has already completed closure  
24 by removal, pursuant to an agency-approved closure

1 plan, have to obtain an construction permit from the  
2 Agency for removal?

3 MR. DUNAWAY: Lynn Dunaway. As a point of  
4 clarification, are you asking about a construction  
5 permit for the installation of monitoring wells, or  
6 are you asking about a construction permit for the  
7 closure itself?

8 MS. MANNING: I'm asking about a construction  
9 permit for the closure itself, similar to the  
10 questions I asked in the other sections related to  
11 whether a closure permit was required.

12 And you responded that it would not be  
13 required because of Section 22.59(e).

14 MR. DUNAWAY: Based on the way we believe it  
15 would work out is that the construction permit for a  
16 closure would not be required if it met the 22.59(e)  
17 exemption. However, all CCR surface impoundments are  
18 going to have to have an operating permit, and if  
19 additional wells were needed, they would have to be  
20 included within that operating permit.

21 MS. MANNING: That's all I have right now.

22 HEARING OFFICER HORTON: The AG's office,  
23 Mr. Sylvester, Mr. Armstrong, any questions on 740?

24 MR. ARMSTRONG: Andrew Armstrong. We have no

1 questions.

2 HEARING OFFICER HORTON: Okay. And I'm  
3 skipping our technical units. They won't have  
4 questions until the next subpart.

5 So any follow-up questions on 740, in the  
6 room? No?

7 Any follow-up questions on 740 on Webex?

8 MR. OZAETA: Yes. This is Mychal Ozaeta. I  
9 have some.

10 HEARING OFFICER HORTON: Okay. Please  
11 proceed.

12 MR. OZAETA: Thank you. Mychal Ozaeta with  
13 Earthjustice on behalf of Prairie Rivers Network.

14 Regarding the use of CCR storage piles, I  
15 believe Ms. Zimmer spoke earlier about the cycling of  
16 coal ash. She mentioned that the material will be  
17 going to the pile when material is coming out.

18 Is there an explicit requirement in Part 845,  
19 that coal ash must be taken out of a CCR storage pile  
20 before more can be placed in the pile?

21 MS. ZIMMER: Amy Zimmer. The answer -- the  
22 simple answer is no. The expanded answer is it's a  
23 cycle. So it's going to be continuously coming in,  
24 going out, coming in, going out. So it's limited by



1 the size. But, once again, it's coming in and going  
2 out. So I'm not sure -- that's my answer. I'm sorry.

3 MR. OZAETA: Is there a provision of Part 845  
4 that mandates that coal ash cannot be accumulated in a  
5 pile?

6 MS. ZIMMER: Can you restate your question,  
7 please? I'm sorry.

8 MR. OZAETA: Yeah. I was referring back to  
9 Ms. Zimmer's response or your response to Question 22  
10 on Page 64 of Exhibit 2, the mention of no net  
11 accumulation will occur.

12 And so my question is, is there a provision  
13 of Part 845 that mandates that this net accumulation  
14 cannot occur?

15 MS. ZIMMER: This is Amy Zimmer. I'm going  
16 to point to the definition of "temporary accumulation"  
17 in the proposed rule for -- and it means, "An  
18 accumulation on the land that is neither permanent nor  
19 indefinite. To demonstrate that the accumulation of  
20 the land is temporary, all CCR must be removed from  
21 the piles at the site. The entity engaged in the  
22 activity must have a record in place, such as a  
23 contract, purchase order, facility operation and  
24 maintenance, or fugitive dust control plan,

1 documenting that all of the CCR in the pile will be  
2 completely removed according to a specific timeline.

3 THE COURT REPORTER: Can you have her repeat?

4 HEARING OFFICER HORTON: Sorry, Ms. Zimmer?

5 MS. ZIMMER: Yes.

6 HEARING OFFICER HORTON: This is Vanessa  
7 Horton. Our court reporter -- you went a little bit  
8 too fast, so it's a little --

9 MS. ZIMMER: Okay. I can repeat that.

10 Okay. I'm just going to point you to the  
11 definition of "temporary accumulation" in  
12 Section 845.120.

13 It's on my Page 12, but I don't know if it's  
14 everybody's Page 12.

15 MR. OZAETA: Thank you. And is that the  
16 complete answer to the question?

17 MS. ZIMMER: Yes.

18 MR. OZAETA: Thank you.

19 Referring back to Section 3.135A, as in  
20 alpha, -5(e), as in echo, of the Illinois  
21 Environmental Protection Act, does the Agency know if  
22 there has been any problems enforcing or any issues  
23 enforcing the pile of accumulation limits for CCD?

24 HEARING OFFICER HORTON: We have an objection

1 here in the hearing room.

2 MR. MORE: Josh More. I'm going to object  
3 again. The implementation of other programs, and, in  
4 particular, the enforcement of another program, is  
5 beyond the scope of this Rulemaking.

6 And if there is an enforcement, it may be  
7 pending; we're running the risk of getting into  
8 privileged information.

9 MR. OZAETA: I'm just referring to piles of  
10 coal ash. So whether they're called CCRs or CCB, I  
11 believe understanding how important those piles had  
12 worked and forms these proposed rules. That's all I'm  
13 trying to get at with that question.

14 MS. DIERS: This is Stephanie Diers with the  
15 Illinois EPA. I'm going to object to that question.  
16 You're asking about CCB. There is a difference  
17 between CCB and CCR.

18 We also do not have an enforcement attorney  
19 or other people on enforcement staff that can answer  
20 those type of questions.

21 HEARING OFFICER HORTON: So this is Vanessa  
22 Horton. I'm going to sustain the objection, and we'll  
23 limit ourselves to 845.

24 MR. OZAETA: Thank you. Okay.

1           In reference to a response to one of  
2 Mr. Granholm's questions, I believe, do the proposed  
3 rules require closure plans or construction permit  
4 application materials to discuss the use of CCR  
5 storage piles?

6           MR. LECRONE: This is Darin Lecrone. Any  
7 construction permit application for any modification  
8 or closure or taking out of service replacement of a  
9 CCR surface impoundment is going to have to include a  
10 plan for handling ash that's going to continually be  
11 generated or be removed from the pile. So I don't see  
12 any way you can file an application and not address  
13 temporary storage piles or the use of them in that  
14 process.

15           So my answer would be yes, it's going to be  
16 required for them to provide that information in an  
17 application.

18           MR. OZAETA: And is that explicitly stated in  
19 a provision of Part 845?

20           MR. LECRONE: This is Darin Lecrone.  
21 845.740, looks like, (c)(4)(B), states that "CCR  
22 storage piles shall" and it lists five things, and  
23 basically dust control, tarped, that sort of thing.

24           They're going to have to provide that sort of

1 detail in an application. Like I mentioned, if  
2 they're going to describe or intend to use temporary  
3 storage piles either during the hook by removal or  
4 otherwise moving the ash around as part of the closure  
5 plan, that type of information is going to have to be  
6 part of that application, how they're going to comply  
7 with this part of 740, you know, they're going to have  
8 to tell us how they're going to do that.

9 So I think that it is required, explicitly or  
10 otherwise.

11 MR. OZAETA: Thank you.

12 Do the proposed rules require the denial of a  
13 construction permit application that would include the  
14 accumulation of coal ash in storage piles?

15 MR. LECRONE: This is Darin Lecrone. It's  
16 only going to be for temporary accumulations. We're  
17 not going to approve a long-term or permanent storage  
18 pile.

19 MR. OZAETA: Thank you.

20 I'd like to direct the Agency to Midwest  
21 Generation's Question 82 on Page 32 of Exhibit 3.

22 MR. LECRONE: We got it.

23 MR. OZAETA: In Ms. Zimmer's response,  
24 Ms. Zimmer states that closure by removal "would also

1 require removal of the contaminated liner and any CCR  
2 that was released" --

3 HEARING OFFICER HORTON: Mr. Ozaeta, you cut  
4 out a little bit there. Could you repeat your  
5 question?

6 MR. OZAETA: Yes. Of course.

7 In Ms. Zimmer's response, Ms. Zimmer states  
8 that closure by removal "would also require removal of  
9 the contaminated liner and any CCR that was released  
10 from the CCR surface impoundment."

11 Will that include any removal of soil  
12 underlying the impoundment if affected by a release?

13 MS. ZIMMER: Amy Zimmer. We would require  
14 any ash that was released from the surface impoundment  
15 if somehow it got through the liner. Yes, it would  
16 need to -- that would need to be cleaned up.

17 MR. OZAETA: Thank you.

18 In 845.740(a), as in alpha, states that an  
19 owner/operator may elect to close a CCR surface  
20 impoundment by removing.

21 I just want to see if the Agency could  
22 clarify what they mean by "elect" in that context.

23 MS. ZIMMER: Amy Zimmer. I just want to -- I  
24 would like to point out they have -- the

1 owner/operator has choices of removal, retrofitting,  
2 closure in place. However, they still have to go  
3 through the closure alternative analysis and all of  
4 the approval processes throughout Section 845.

5 MR. OZAETA: Thank you. I have no further  
6 follow-up questions, unless Ms. Bugel does.

7 MS. BUGEL: Yes. This is Faith Bugel  
8 representing Sierra Club and asking questions on  
9 behalf of the Environmental Groups.

10 I do have one follow-up question on  
11 Ms. Zimmer's last answer.

12 And, Ms. Zimmer, I believe you said the  
13 owner/operator has the choice of removal of retrofit  
14 or close in place but still have to go through the  
15 approval process.

16 Does that mean the owners'/operators' choice  
17 is constrained by the approval process?

18 MS. ZIMMER: Amy Zimmer. The owner/operator  
19 can choose a preferred path, but they have to meet the  
20 requirements of the rule.

21 MS. BUGEL: Thank you. I have no further  
22 questions.

23 HEARING OFFICER HORTON: Any further  
24 follow-up questions on 740 in the room? No?

1 On Webex? Any follow-up questions on 740?

2 Okay. We'll move on to 750, Closure with a  
3 Final Cover System. And I'd just like to reiterate  
4 something that I mentioned this morning when we began  
5 and mentioned at the previous three days of hearing.  
6 I'd like all questioners to please limit themselves to  
7 true follow-up questions only. The Agency has -- the  
8 questioners have asked over a thousand questions; the  
9 Agency has answered them. So if there is a true  
10 follow-up question, please go ahead with that. But  
11 otherwise, let's move forward through 845.

12 So 750, Closure With a Final Cover System.  
13 I'll begin with Ms. Bugel.

14 MS. BUGEL: Yes, I have questions, and bear  
15 with me while I get to the microphone.

16 HEARING OFFICER HORTON: No problem.

17 MS. BUGEL: Faith Bugel, again, representing  
18 Sierra Club. And my first question is, in response to  
19 Dynegy's Question 83, and this can be found on Page 55  
20 to 56. And I will give the Agency a moment to get to  
21 that spot.

22 Ms. Zimmer: Okay.

23 MS. BUGEL: And this response discusses final  
24 cover systems at Havana, Hudsonville, and Venice and



1 also the closed-in-place Havana South Ash Pond System.

2 Is that right?

3 MR. DUNAWAY: That's correct.

4 MS. BUGEL: And my first question is about  
5 the Havana South Ash Pond, and that has no  
6 intersecting groundwater; is that correct?

7 MR. DUNAWAY: When you say "no intersecting  
8 groundwater," what do you mean?

9 MS. BUGEL: I would mean that the groundwater  
10 is not even intermittently in contact with the ash in  
11 the ash pond.

12 MR. DUNAWAY: This is Lynn Dunaway. I don't  
13 recall the details of that particular circumstance.

14 MS. BUGEL: Is anyone at the Agency on the  
15 witness panel able to answer that question?

16 MR. DUNAWAY: Not right now.

17 MS. BUGEL: We are not certain if the Agency  
18 is trying to answer or if they're done.

19 Ms. Zimmer: No, we're not trying to answer.  
20 We're just waiting for you to go on. Thank you.

21 MS. BUGEL: Okay. Okay.

22 Is this something that the Agency could  
23 follow up with in writing after the hearing?

24 MR. DUNAWAY: Yes, we could follow up on

1 that.

2 MS. BUGEL: And turning to the  
3 closed-in-place Hudsonville Ash Pond, does the Agency  
4 know whether they have failed to meet Part 620,  
5 groundwater quality standards for constituents at the  
6 monitoring wells?

7 MR. DUNAWAY: Lynn Dunaway. Yes. They have.

8 MS. BUGEL: Regarding the closed-in-place  
9 Venice Ash Pond, have they also failed to meet the  
10 Part 620, groundwater quality standards at the  
11 monitoring wells there?

12 MR. DUNAWAY: Lynn Dunaway. Yes, they have.

13 MS. BUGEL: Okay. And also regarding the  
14 Venice closed-in-place ash ponds, do you know if the  
15 groundwater is intermittently in contact with the ash  
16 in those ash ponds?

17 MR. DUNAWAY: Lynn Dunaway. I believe, to  
18 the best of my recall, groundwater does intermittently  
19 contact ash at Venice.

20 MS. BUGEL: And do you know if there are  
21 other ash ponds in Illinois that are not closed in  
22 place where the groundwater also is in contact with  
23 ash in the ash ponds?

24 MS. GALE: I would only object to the extent

1 we are getting into specific ponds. Again, this is a  
2 Rulemaking, a general Rulemaking, for generalities.  
3 And to the extent that we moved into discussing  
4 specific individual ponds throughout the state and  
5 their connection or nonconnection with the  
6 groundwater, I would object to that line of  
7 questioning.

8 MS. BUGEL: May I respond?

9 HEARING OFFICER HORTON: Yes.

10 MS. BUGEL: Today we've -- it's been unclear  
11 in this hearing whether we can discuss specifics for  
12 the point of trying to understand how the rule will  
13 apply to various general situations.

14 In addition, we did have a longer discussion  
15 today about specific Ameren ash ponds. And this line  
16 of questioning is important because it goes to how the  
17 Agency is going to treat coal ash in contact with  
18 groundwater.

19 HEARING OFFICER HORTON: These are Dynegy  
20 questions. They have listed these specific sites. I  
21 believe Ms. Bugel is continuing with follow-up  
22 questions about the Agency's response to these  
23 specific sites. So to these three I will allow it.

24 And responding generally to Ameren's question

1 from before, we allowed the questioning on that  
2 specific list of 73 sites, but I would ask that you  
3 perhaps make your question more general if at all  
4 possible.

5 MR. MORE: We did not get into the specifics  
6 of each site. Instead, we just asked whether there  
7 had been approvals and whether or not certain actions  
8 were required.

9 We didn't get into the facts underlying each  
10 site and the basis for any of the approvals. We're  
11 just asking, has there been a closure, has there been  
12 required corrective action. Not into the underlying  
13 facts supporting or not calling into question whether  
14 or not these approvals were right or wrong.

15 MS. MANNING: Madam Hearing Officer, may I,  
16 please, lodge an objection as well?

17 HEARING OFFICER HORTON: Go ahead. I didn't  
18 quite hear that.

19 MS. MANNING: We were muted, Madam Hearing  
20 Officer, and, therefore, I could not also lodge an  
21 objection to this line of questioning.

22 We were foreclosed from presenting any sort  
23 of specific as to the Ameren ash ponds. And I would  
24 agree with the representative from Dynegy that this

1 line of questioning ought not to be presented without  
2 a whole sludge of facts of all of the site-specific  
3 aspects of the rules.

4 We'll be presenting testimony as to the  
5 Ameren ponds, and certainly Ms. Bugel can ask  
6 questions as to the information that we present. But  
7 to present this in the context of Board questioning  
8 and Agency questioning, when we were foreclosed from  
9 asking the Agency specific questions relating to the  
10 Agency's exhibit, I think it's just something that  
11 ought not to be asked right now.

12 MS. BUGEL: I've got one question, and I'm  
13 not sure how I phrased it, but I'm happy to rephrase  
14 my question in a general manner.

15 HEARING OFFICER HORTON: That sounds good.  
16 Please proceed.

17 MS. BUGEL: Does the Agency know if there are  
18 open ash ponds in Illinois where the ash is in contact  
19 with the groundwater at all times?

20 MS. GALE: Madam Hearing Officer, I don't  
21 object to this question as long as it stays general  
22 and to the Agency's knowledge. But I would object to  
23 any identification of any surface impoundment.

24 MS. BUGEL: I think you can hold your

1 objection until the question is asked in that way.

2 MS. GALE: Okay.

3 MR. DUNAWAY: Lynn Dunaway. The Agency  
4 doesn't have specific information on all impoundments.  
5 So it would be hard to say if there are any.

6 MS. BUGEL: Does the Agency know if there are  
7 ash ponds in Illinois where the coal ash is  
8 intermittently in contact with groundwater?

9 MR. DUNAWAY: Lynn Dunaway. Yes, there are.

10 MS. BUGEL: I have no further questions on  
11 Part 750.

12 HEARING OFFICER HORTON: Thank you,  
13 Ms. Bugel.

14 Midwest Generation?

15 MS. GALE: No questions on this part. And I  
16 have no questions for the rest of this section,  
17 although I reserve the right for follow-up should the  
18 need be.

19 HEARING OFFICER HORTON: Okay. Thank you.

20 City of Springfield, any questions on 750?

21 MS. WILLIAMS: Yes, real quick. I have one  
22 really quick question on this section.

23 I'm looking at 850(c), as in cat, (1), which  
24 references standards for the low permeability layer.

1 Are you with me?

2 MS. ZIMMER: Do you mean 750(c)(1)?

3 MS. WILLIAMS: Are we on 750? Yes,  
4 750(c)(1).

5 MS. ZIMMER: Okay. We're there. You had  
6 just said 850, I thought, so I was trying to clarify  
7 where we are at.

8 MS. WILLIAMS: Thank you.

9 So are we all in the same place now?

10 MS. ZIMMER: Yes, we are.

11 MS. WILLIAMS: Okay. I'm just going to read  
12 the first sentence regarding the low permeability  
13 layers.

14 "The low permeability layer must have a  
15 permeability less than or equal to the permeability  
16 of any bottom liner system or natural subsoils  
17 present, or a hydraulic conductivity no greater  
18 than 1 times 10 to the negative 7 centimeters per  
19 second, whichever is less."

20 Does the Agency agree that the 1 times 10 to  
21 the negative 7 centimeters per second is an example of  
22 a way that the Agency's regulations are more stringent  
23 than the Federal?

24 MS. ZIMMER: Amy Zimmer. Yes.

1 MS. WILLIAMS: And so in designing this low  
2 permeability layer, I would assume the facility will  
3 design the low permeability layer to meet this minimum  
4 requirement.

5 Can I assume then that in developing the  
6 modeling in support of the permanent application, we  
7 will also be modeling the hydraulic connectivity no  
8 greater than 1 times 10 to the negative 7 centimeters  
9 per second from that illustration?

10 HEARING OFFICER HORTON: Your last sentence,  
11 your last comment there, Ms. Williams, we didn't  
12 catch.

13 MS. WILLIAMS: Okay. I will start from the  
14 beginning and rephrase because I'm not sure I can  
15 repeat it exactly as I just said it.

16 So once you have designed a final cover that  
17 complies with the rule, you'll also be doing modeling  
18 to show the performance of that final cover, correct?

19 MS. ZIMMER: Amy Zimmer. Yes.

20 MS. WILLIAMS: Okay. And when you do that  
21 modeling, I assume we'll also be using the same  
22 standard of 1 times 10 to the negative 7 centimeters  
23 per second; is that correct? If that's what's been  
24 designed?



1 MS. ZIMMER: If that's the way you design it,  
2 yes. I will just point out, you have to know what  
3 your bottom is before you decide on your low  
4 permeability layer.

5 MS. WILLIAMS: I'm sorry, before you can  
6 decide which is -- whichever is less you mean?

7 MS. ZIMMER: Yes.

8 MS. WILLIAMS: Okay. I guess that answered  
9 it. Thank you.

10 HEARING OFFICER HORTON: Dynegy, any  
11 questions on the 750?

12 MR. GRANHOLM: Ryan Granholm on behalf of  
13 Dynegy.

14 I don't know that you necessarily need to  
15 turn to it, but Page 12 of Ms. Zimmer's pre-filed  
16 testimony notes that "The final cover system must be  
17 designed to accommodate settling and subsidence to  
18 minimize disruption of the integrity of the final  
19 cover system."

20 So my question is, with respect to settling  
21 or subsidence, is it correct that increasing the  
22 thickness of the final cover system is one way to  
23 minimize the disruption of the integrity referred to  
24 in Ms. Zimmer's testimony?

1 MS. ZIMMER: Amy Zimmer. It could be one  
2 way, yes.

3 MR. GRANHOLM: So, as a general matter, is it  
4 correct that the more settling and subsidence are  
5 expected, the thicker a final cover system would need  
6 to be?

7 MR. BUSCHER: This is Bill Buscher. It  
8 really depends on site-specific circumstances. If  
9 you're putting on a thicker cover, you are increasing  
10 the loading on the facility. It depends, basically,  
11 upon characteristics of the site.

12 MR. GRANHOLM: Let's turn to Exhibit 2,  
13 Page 133. This is CWLP Question 18. I'll refer you  
14 specifically to response 18(b), as in bravo.

15 The Agency notes in that response, it says  
16 settling associated with municipal landfills would  
17 generally be greater than that associated with CCR  
18 surface impoundments, correct?

19 MR. BUSCHER: Could you repeat the question  
20 again?

21 MR. GRANHOLM: That response notes that  
22 settling at municipal landfills is expected to be  
23 greater than that at CCR surface impoundments,  
24 correct?

1 MR. BUSCHER: Correct.

2 MR. GRANHOLM: And one of the reasons noted  
3 is that material in a landfill is much more  
4 compactible.

5 Is it also true that, unlike CCR, much of the  
6 material in landfills also decomposes over time?

7 MR. BUSCHER: That is correct.

8 MR. GRANHOLM: So given the differences in  
9 compaction and decomposition, has the Agency performed  
10 any analysis to determine whether the same thickness  
11 of a final cover system is required for CCR surface  
12 impoundments as is required for municipal landfills?

13 MR. BUSCHER: No, we have not done any  
14 analysis of that.

15 MR. GRANHOLM: If you would, please, turn to  
16 Exhibit 3, Page 54 to 55.

17 Following up on the Agency's responses  
18 starting at Question 76, did the Agency rely on any  
19 scientific or technical materials when drafting the  
20 final cover standards in Part 845?

21 MR. BUSCHER: We based it on 811.

22 MR. GRANHOLM: So just to confirm, is the  
23 answer to that, no, you did not rely on any scientific  
24 or technical materials?

1 MR. BUSCHER: That is correct.

2 MR. GRANHOLM: Nothing further.

3 Actually, sorry about that. I have to change  
4 just to cover one more topic, and that is 750(d). And  
5 I'll ask you to turn to Exhibit 4, please, Page 7.

6 Question 85 actually appears on Page 6.

7 Question 85 refers to 5 percent slope, which  
8 is provided in 750(d), as in David, 4(a), as in alpha.

9 Does the landfill program limit the slope of  
10 final cover systems to 5 percent?

11 MS. BUGEL: I'm going to object to the  
12 question on the grounds that it is referencing another  
13 regulatory scheme, and earlier the Hearing Officer  
14 determined that other regulatory schemes aren't  
15 relevant.

16 MR. GRANHOLM: The Agency, in its last answer  
17 and also in the pre-filed answers we were discussing  
18 on my last set of questions, referred to the landfill  
19 program as the basis of at least parts of its final  
20 cover system standards.

21 So if the Agency is relying on those, I think  
22 it's appropriate for us to inquire about those today.

23 HEARING OFFICER HORTON: Perhaps you could  
24 ask if the Agency is relying on this landfill cover

1 program.

2 I'll sustain Ms. Bugel's objection for the  
3 same reasons I sustained the objection earlier.

4 MR. MORE: May I weigh in? The objection was  
5 based on the question regarding enforcement. Not how  
6 a prior program is interpreted or applied. It was  
7 whether the Agency has enforced a certain provision.  
8 That was the line of questioning related to  
9 Section 3.135 of the Act, which also the Agency  
10 objected to because it got into the enforcement of  
11 that.

12 HEARING OFFICER HORTON: This Question 85 is  
13 dealing with the 845.750(d), as in dog, 4 alpha.

14 The Agency, in its response, is saying that  
15 it is related to 840.124(d)(3).

16 MR. MORE: That's fine.

17 MR. GRANHOLM: Looking at 845.750(d)(4)  
18 Alpha, the 5 percent slope referred to in that  
19 provision, that applies only when consolidating ash  
20 between multiple units; is that correct?

21 MS. ZIMMER: Amy Zimmer. If I'm  
22 understanding your question correctly, yes, it's just  
23 for final grading and such for the cover system.

24 MR. GRANHOLM: Just to clarify, final grading

1 and such of a cover system when adding additional  
2 material and before closing an impoundment in place.

3 MS. ZIMMER: Yes. Amy Zimmer. Yes.

4 MR. MORE: And only when adding -- Josh More.

5 And only when adding additional CCR is that material  
6 for final grading and cover. This provision is only  
7 dealing with adding CCR for the final grading and  
8 cover, correct?

9 Put another way, Ms. Zimmer, if I'm not using  
10 CCR in the closure, am I allowed to use a greater  
11 5 percent grade on a slope?

12 MR. DUNAWAY: So this is Lynn Dunaway. 845  
13 says: For purposes of grading and contouring for the  
14 final cover system, and it's referring to the use of  
15 CCR. So, yes, this is -- for CCR, you should not have  
16 a slope greater than 5 percent.

17 MR. MORE: Just to be clear, when you say  
18 "for CCR," that's when I'm adding CCR as a grading  
19 material?

20 MR. DUNAWAY: That's correct.

21 MR. MORE: And so if I'm not using CCR as a  
22 grading material, I could have a slope, for example,  
23 at 10 percent, correct?

24 MS. ZIMMER: Amy Zimmer. If there are

1 allowances, yes, there are greater slope percentages  
2 that would be allowed for, like, soil or something  
3 that would be used.

4           However, I'm not saying it's a blind date,  
5 you could use whatever you want. It would be looked  
6 at as part of the design and as part of the permit.

7           MR. GRANHOLM: Does the Agency have any  
8 information suggesting that using final cover slopes  
9 steeper than 5 percent, greater than 5 percent,  
10 creates a threat to human health or the environment?

11           MR. DUNAWAY: Lynn Dunaway. We don't have  
12 that information.

13           MR. GRANHOLM: Nothing further. Thank you.

14           HEARING OFFICER HORTON: All right. Thank  
15 you.

16           Ms. Brown from IERG, any questions on 750?

17           MS. BROWN: No questions on this section.

18           HEARING OFFICER HORTON: Okay. Ms. Manning  
19 at Ameren, any questions on 750?

20           MS. MANNING: Yes.

21           HEARING OFFICER HORTON: Ms. Manning, you're  
22 muted right now. We are trying to unmute you.

23           MS. MANNING: I think I'm muted on your side.

24           HEARING OFFICER HORTON: Okay. You're all

1 set. We can hear you.

2 MS. MANNING: All right. Thank you.

3 Where an ash pond has already been closed  
4 pursuant to agency-approved closing plan and includes  
5 the final cover system that has been approved and is  
6 in place, what part, if any, of Section 845.750 does  
7 the Agency intend applies to that closed ash pond with  
8 a final cover system already in place?

9 MR. DUNAWAY: Are you referring to the  
10 5 percent slope issue?

11 MS. MANNING: I'm referring to 845.750,  
12 generally, where a final cover system has already been  
13 in place that has been approved by the Agency, what  
14 sections of this continue to apply?

15 MR. HAMMONS: Hearing Officer, this is  
16 Jeffrey Hammons from the Environmental Law & Policy  
17 Center. I'm going to object to this question because  
18 it's not really following up on any of the Agency's  
19 pre-filed answers. It's veering into unchartered  
20 territory that the questioner had the opportunity to  
21 ask, the pre-trial questions did not, and in the  
22 interest of time and in the interest of true  
23 follow-up, this line of questioning should be shut  
24 down.



1 MS. MANNING: In the interest of time, I'll  
2 withdraw the question.

3 HEARING OFFICER HORTON: Okay.

4 MS. MANNING: Thank you.

5 HEARING OFFICER HORTON: Thank you. All  
6 right. Attorney General's Office, any questions on  
7 750?

8 MR. ARMSTRONG: We have no questions for the  
9 subpart G. Andrew Armstrong.

10 HEARING OFFICER HORTON: Okay. I'll skip  
11 over you then.

12 Any follow-up questions on 750?

13 Not in the room.

14 Any on Web Ex?

15 Okay. Moving on. 760, Completion of Closure  
16 Activities."

17 Ms. Bugel, any questions on 760?

18 MS. BUGEL: I believe Mr. Ozaeta has  
19 questions on 760.

20 HEARING OFFICER HORTON: Okay. Mr. Ozaeta?

21 MR. OZAETA: Thank you. Mychal Ozaeta with  
22 Earthjustice on behalf of Prairie Rivers Network.

23 I would like to direct the Agency to  
24 Ms. Zimmer's response to the Environmental Group's

1 Question 27 on Page 66 of Exhibit 2.

2 MR. LECRONE: We got it.

3 MR. OZAETA: In Ms. Zimmer's response,  
4 Ms. Zimmer stated that the Agency feels that unlimited  
5 extensions for impoundments closing by removal are  
6 justified, as long as the need for the extension is  
7 demonstrated because the process "may need quite a bit  
8 of time to remove the CCR."

9 Is it the Agency's opinion that closing an  
10 impoundment in place could also require quite a bit of  
11 time?

12 MS. ZIMMER: Amy Zimmer. Yes, I do believe  
13 closure in place could take quite a bit of time. The  
14 Agency, in general, believes closure by removal from  
15 any of these facilities would take more time.

16 That's a general statement. That's obviously  
17 very -- we have some sites that are very large. If  
18 they chose to close by removal, it could take very,  
19 very large amounts of time, so...

20 MR. OZAETA: Since the closure in place and  
21 the closure by removal process, it's been established  
22 they could both take quite a bit of time.

23 What was the basis for establishing a maximum  
24 amount of extensions for impoundments closing in place

1 but not impoundments closing by removal?

2 MS. ZIMMER: Amy Zimmer. The Federal rule  
3 has maximum time frames or a number of extensions and  
4 the amount of times for closure by removal where a  
5 closure must be completed. So we cannot go beyond  
6 those timelines.

7 I meant closure in place. Excuse me. I was  
8 corrected. I meant closure in place.

9 MR. OZAETA: And so just to clarify, are you  
10 saying that the reason that there are a max amount of  
11 extensions for impoundments closing in place is  
12 because the Federal rule requires that?

13 MS. ZIMMER: Amy Zimmer. Yes.

14 MR. OZAETA: No further questions for 760,  
15 but I may have some follow-up.

16 HEARING OFFICER HORTON: Okay. Skipping over  
17 Midwest Generation.

18 City of Springfield, any questions on 760?

19 MS. WILLIAMS: No questions.

20 HEARING OFFICER HORTON: Okay. Dynegy, 760?

21 MR. MORE: No questions.

22 UNIDENTIFIED SPEAKER: No questions.

23 HEARING OFFICER HORTON: Ms. Brown, any  
24 questions on 760?

1 MS. BROWN: No questions from IERG on this  
2 section.

3 HEARING OFFICER HORTON: Ameren, Ms. Manning,  
4 any questions on 760?

5 MS. MANNING: No. No questions on 760 at  
6 this point, Hearing Officer.

7 HEARING OFFICER HORTON: Skipping over the  
8 AG's office and the Board's technical unit, any  
9 follow-up questions on 760?

10 Okay.

11 Moving on to 770, Retrofitting.

12 Mr. Ozaeta?

13 MS. BUGEL: We should not have any questions  
14 on 770.

15 HEARING OFFICER HORTON: Okay.

16 MS. BUGEL: We reserve the right for  
17 follow-up.

18 HEARING OFFICER HORTON: All right. Skipping  
19 over Midwest Generation.

20 City of Springfield, any questions on 770?

21 MS. WILLIAMS: No.

22 HEARING OFFICER HORTON: Okay. Dynegy, 770?  
23 No?

24 Ms. Brown, 770?

1 MS. BROWN: No questions on this section.

2 HEARING OFFICER HORTON: Ameren, Ms. Manning,

3 770?

4 MS. MANNING: No questions on this section.

5 HEARING OFFICER HORTON: Moving on. 780,

6 Post-Closure Care Requirements.

7 Ms. Bugel, any questions on 780?

8 MS. BUGEL: Yes, we have questions. And if  
9 you'll give me a moment, I'll move to the microphone.

10 HEARING OFFICER HORTON: No problem.

11 MS. BUGEL: Faith Bugel representing Sierra

12 Club questioning on behalf of Environmental Groups.

13 And I am turning to Page 20 of the -- I'm sorry --

14 Question 20, Page 154 of the Agency's responses to

15 Board questions.

16 Bear with me. I think I've got a mistake

17 here.

18 I'm sorry. We're on Page 156, not 154,

19 Question 20, the response to Board questions. And let

20 me know when you're there.

21 MR. LECRONE: Yeah, we got it.

22 MS. BUGEL: And this answer refers to

23 inactive closed impoundments that -- whether you could

24 use a previously approved post-closure care plan.

1           And my question is, does the Agency intend to  
2 require the owner or operator of an inactive closed  
3 impoundment that has not completed post-closure care  
4 to modify their post-closure plan to meet the  
5 requirements of this part if the previously approved  
6 plan does not meet those requirements?

7           MR. LECRONE: Yes, as required by 845.170.

8           MS. BUGEL: And I am now turning to Page 30,  
9 and I think I have a wrong page number again. No.  
10 Page 30, Question 9(d), that is a correct page number.

11           And this response indicates that the Agency  
12 is not aware of leaching at concentrations above the  
13 applicable groundwater protection standards -- do you  
14 see that -- as measured at the points of compliance?

15           MR. LECRONE: Ms. Bugel, can you repeat where  
16 we're at? Which question you're talking about again?

17           MS. BUGEL: Okay. I'm on Page 30 of the same  
18 exhibit, and I'm on Question 9(d).

19           MR. LECRONE: 9(d), as in dog?

20           MS. BUGEL: Correct, (d), as in dog.

21           MR. LECRONE: We got it.

22           MS. BUGEL: And do you see the response to  
23 that question where it mentions point of compliance?

24           MR. LECRONE: Yes.

1 MS. BUGEL: Can you explain where -- in the  
2 Agency's view, where are the points of compliance?

3 MR. DUNAWAY: Lynn Dunaway. For inactive  
4 closed CCR surface impoundments, the points of  
5 compliance are the monitoring wells which were  
6 approved as part of that CCR surface impoundments  
7 closure plan.

8 MS. BUGEL: Did the Agency require those  
9 monitoring wells to be in any specific location?

10 MR. DUNAWAY: Lynn Dunaway. They would have  
11 to have been installed pursuant to Part 620.

12 MS. BUGEL: Did Part 620 require them to be  
13 in any specific location?

14 MR. DUNAWAY: Part 620 requires that  
15 groundwater standards be met no greater than 25 feet  
16 from the edge of a surface impoundment and at any  
17 point where groundwater monitoring is conducted.

18 MS. BUGEL: And is that different from where  
19 Part 845 proposes monitoring to take place?

20 MR. DUNAWAY: Lynn Dunaway. Yes.

21 MS. BUGEL: And Part 845 requires monitoring  
22 at the waste boundary; is that correct?

23 MR. DUNAWAY: Lynn Dunaway. Yes, it does.

24 MS. BUGEL: Is it possible that -- referring

1 back to the inactive closed impoundments in this  
2 question, is it possible that there could be  
3 exceedances of the groundwater protection standards at  
4 those wells sometime in the future?

5 MR. DUNAWAY: Lynn Dunaway. It's possible.

6 MS. BUGEL: And would a scenario be a plume  
7 of contamination that's still moving towards those  
8 wells?

9 MR. DUNAWAY: That would be one scenario,  
10 yes.

11 MS. BUGEL: I have no further questions on  
12 this part.

13 HEARING OFFICER HORTON: Okay. Skipping  
14 Midwest Generation.

15 City of Springfield, any questions on 770?

16 MS. WILLIAMS: I don't have any questions on  
17 this one.

18 HEARING OFFICER HORTON: Dynegy?

19 MR. GRANHOLM: We have no further questions  
20 for the rest of the rule. We reserve the right to  
21 follow-ups.

22 HEARING OFFICER HORTON: Rest of the rule or  
23 rest of the subpart?

24 MR. GRANHOLM: Rest of the rule. We're done.



1 HEARING OFFICER HORTON: Ms. Brown, any  
2 further questions?

3 MS. BROWN: Yes, we do have a few quick  
4 follow-up questions on this.

5 This is Melissa Brown on behalf of IERG. And  
6 we're looking at the Agency's pre-filed responses to  
7 IERG's pre-filed questions.

8 So hearing Exhibit 2, Page 137. Please let  
9 me know when the Agency gets to that page.

10 MR. LECRONE: Yeah, we got it.

11 MS. BROWN: Thanks.

12 So IERG's pre-filed Question 3 asks regarding  
13 closed inactive surface impoundments, and the Agency  
14 made the point of clarification there's a difference  
15 between closed inactive, inactive closed, which they  
16 addressed in response to a prior question by  
17 Ms. Manning, so we appreciate that.

18 But our follow-up in regard to IERG's  
19 pre-filed Question 3(a), as in alpha, so the Agency  
20 provided a response to this question as to closed  
21 inactive surface impoundments and we would like the  
22 Agency, if they could provide a response to this  
23 question but as to inactive closed surface  
24 impoundments.

1           So if an inactive closed surface impoundment  
2 had a post-closure plan approved by the Agency prior  
3 to the effective date of these rules, would it be  
4 appropriate to add clarifying revisions to  
5 Section 845.780(d), as in Delta, 2, as IERG had laid  
6 out in its pre-filed questions?

7           MR. DUNAWAY: This is Lynn Dunaway. I  
8 believe you may have asked your question differently  
9 than you intended to, because you asked about inactive  
10 closed CCR surface impoundments.

11           MS. BROWN: Yes. So our pre-filed question,  
12 as written, asked about closed inactive. And the  
13 Agency answered that in pre-filed responses. But at  
14 this point we want to ask the same question but as to  
15 inactive closed CCR surface impoundments.

16           MR. DUNAWAY: Okay. Inactive closed CCR  
17 surface impoundments are subject, according to  
18 845.170, and as long as they meet the requirements of  
19 845.170, they would not need to alter their  
20 post-closure care plan other than required by .170.

21           MS. BROWN: Right. But if they do need to  
22 alter their already approved post-closure care plan,  
23 then they still need to submit that written  
24 post-closure care plan along with their initial

1 operating permit application pursuant to 845.780(d),  
2 as in Delta, 2, correct?

3 MR. DUNAWAY: Lynn Dunaway. A closed -- an  
4 inactive closed CCR surface impoundment would have --  
5 should submit their post-closure care plan with their  
6 initial operating permit. If it needs to be modified,  
7 that's when they would make that modification.

8 MS. BROWN: Okay. Thank you.

9 And then just similar question but to IERG's  
10 pre-filed Question 3(b) on the same page, so we asked  
11 that question in pre-filed questions as to closed  
12 inactive. But we would like to ask the same question  
13 now as to inactive closed or inactive closed surface  
14 impoundment that has a post-closure care plan approved  
15 by the Agency prior to the effective date of these  
16 rules would be revision to 845.780(e), as in echo,  
17 that IERG proposed in a pre-filed question be  
18 appropriate?

19 MR. DUNAWAY: Lynn Dunaway. The Agency's  
20 opinion is that 845.170 lays out the sections which  
21 are applicable to inactive closed, CCR surface  
22 impoundments, and no clarification is necessary.

23 MS. BROWN: Okay. Thank you. That's all I  
24 had.

1 HEARING OFFICER HORTON: Ms. Manning and  
2 Ameren, any questions on 780?

3 MS. MANNING: I have no questions at this  
4 point. Thank you.

5 HEARING OFFICER HORTON: Any follow-up  
6 questions on 780 in the room?

7 None.

8 Any follow-up questions on 780 on Web Ex?

9 Let's move forward with 845.800.

10 Ms. Bugel any questions on 800?

11 MS. BUGEL: I believe Ms. Courtney has  
12 questions on 800.

13 HEARING OFFICER HORTON: Okay. Ms. Courtney,  
14 on Webex, any questions on Section 800?

15 MS. COURTNEY: Yes, I do. I have a couple of  
16 questions about 815.800. So Kiana Courtney for the  
17 Environmental Law & Policy Center Question 4,  
18 Environmental Group.

19 If the Agency could turn to Exhibit 2,  
20 Page 24, this is in regards to Question 23(b), as in  
21 beta.

22 If you could let me know when you're there.

23 MR. LECRONE: Yeah, we got it.

24 MS. COURTNEY: The Agency's response to that

1 question was that Section 845.280(a) requires Agency  
2 approval before a permit can be transferred and will,  
3 hence, become a part of the permit record.

4 Clarifying question. And by "permit record"  
5 in the operating records or as a part of a permit  
6 application? I'm looking for clarity on the phrase  
7 "permit record."

8 MR. LECRONE: Yes, that's correct. If  
9 there's a change of ownership, the facility is going  
10 to have to file a modification request for change of  
11 ownership, and then that documentation will be  
12 provided to the Agency and it will be part of the  
13 permit record.

14 MS. COURTNEY: So it's not the operating  
15 record?

16 MR. LECRONE: The permit would go in the  
17 operating record as well, but the change of ownership  
18 documentation for the Agency would be part of the  
19 permit record.

20 MS. COURTNEY: And in relation to that  
21 question on that page in 23(c) as well, so 800(d)(1)  
22 states that the owner/operator of a CCR surface  
23 impoundment must place copies -- it says 800(d), as in  
24 dog -- must place copies of all permit application and

1 permit issues under this part in the timeline of  
2 submitting information.

3 Does the operating application and the  
4 construction application -- I'm sorry.

5 When does the operating application and  
6 construction application go into the operating record?

7 MS. MARTIN: This is Lauren Martin. We  
8 already answered this on the first day.

9 MS. COURTNEY: So on the first day, we had  
10 talked about different plans and trying to get a  
11 clarifying on those. I'm talking about the permit  
12 applications or the operating permit application, when  
13 that goes into the operating record. So this is a  
14 slightly different question.

15 MR. LECRONE: This is Darin Lecrone. We  
16 believe it would be on the same schedule.

17 MS. COURTNEY: Could you clarify what that  
18 schedule is and where it mentions that in the rule?

19 MS. DIERS: All right. This is Stephanie  
20 Diers from the Agency. We answered -- we believe we  
21 answered this on the first day. It's going to take us  
22 some time to go back through the documents and find  
23 what you're looking for. So we would like to answer  
24 this in writing in post-hearing comments.

1 MS. COURTNEY: I'm sorry. You said you would  
2 respond in post-hearing comments to that question?

3 MS. DIERS: Yes, because, due to time, we'd  
4 like to move on.

5 MS. COURTNEY: Okay. Thank you. Those are  
6 all my questions for Section 800.

7 HEARING OFFICER HORTON: Okay. Moving on,  
8 Midwest Generation?

9 MS. GALE: I have no questions for the whole  
10 subpart. Although I reserve right to follow-up.

11 HEARING OFFICER HORTON: City of Springfield,  
12 any questions on 800?

13 MS. WILLIAMS: Nothing on 800.

14 HEARING OFFICER HORTON: Okay. Skipping  
15 Dynegy.

16 Ms. Brown, any questions on 800?

17 MS. BROWN: This is Melissa Brown. IERG has  
18 no questions for the remainder of the rule but would  
19 like to reserve follow-up questions.

20 HEARING OFFICER HORTON: Ms. Manning, Ameren,  
21 any questions on 800?

22 MS. MANNING: I'm sorry. On 800?

23 HEARING OFFICER HORTON: Yes.

24 MS. MANNING: No, we have no questions on

1 part 800.

2 HEARING OFFICER HORTON: AG's office, any  
3 questions on 800?

4 MR. ARMSTRONG: Andrew Armstrong, the AG's  
5 office has no questions on the remaining two subparts  
6 but reserves the right to ask follow-up questions.

7 HEARING OFFICER HORTON: Okay. And, Mr. Rao,  
8 any questions on 800?

9 MR. RAO: No questions on 800.

10 HEARING OFFICER HORTON: Okay. You said no  
11 questions for 800? Sorry, you cut out.

12 MR. RAO: Yes, no questions on 800.

13 HEARING OFFICER HORTON: Okay. Thank you.  
14 All right. Moving on.

15 Marie was just pointing out it's almost 3:00.  
16 It's 2:54 right now. Let's take a 10-minute break.  
17 And we'll come back at 3:05, and we'll start up with  
18 810.

19 (Whereupon, a break was taken,  
20 after which the following  
21 proceedings were had:)

22 HEARING OFFICER HORTON: This is Vanessa  
23 Horton. We are back in the hearing room. It's 3:05.

24 Is the Agency ready?



1 Is Springfield?

2 MR. LECRONE: Yes, we're ready.

3 HEARING OFFICER HORTON: Okay. So we're  
4 moving on to 810.

5 Ms. Bugel, any questions on 810?

6 MS. BUGEL: I believe Ms. Courtney has  
7 questions on 810.

8 HEARING OFFICER HORTON: Okay. Ms. Courtney?

9 MS. COURTNEY: Yes.

10 Can you hear me?

11 HEARING OFFICER HORTON: Yes.

12 MS. COURTNEY: So the couple follow-up  
13 questions for 845.810 in relation to Exhibit 2 on  
14 Page 133, Question 17. Please let me know when you're  
15 there.

16 MR. LECRONE: Okay. We're ready.

17 MS. COURTNEY: So that question and answer  
18 refers to having a website for Federal rule compliance  
19 and Illinois rule compliance.

20 My first question is, does the Agency think  
21 it's unreasonable to ask a company to have two web  
22 pages, where one web page identifies documents  
23 required by 40 CFR Part 275 and the other identifies  
24 documents required by Part 845 proposed rule?

1 MR. MORE: I'm going to object. These  
2 questions were asked the first day of hearing.  
3 Ms. Gale particularly had a whole series of questions  
4 regarding the answer to this question on the duplicate  
5 websites.

6 In an effort to move the process along, I  
7 believe all the questions relating to this were asked  
8 the first day in connection with Section 170.

9 MS. COURTNEY: May I respond?

10 HEARING OFFICER HORTON: Of course.

11 MS. COURTNEY: So in effort to also move  
12 things along, we held off on asking those follow-up  
13 questions because they were directly related to the  
14 website rather than the definition section. And the  
15 website is referenced in part 845.810.

16 HEARING OFFICER HORTON: I will overrule your  
17 objection, Mr. More.

18 And you can continue, Ms. Courtney.

19 MS. COURTNEY: Should I repeat the question?

20 MR. LECRONE: Please repeat the question.

21 Thanks.

22 MS. COURTNEY: So does the Agency think it's  
23 unreasonable to ask the company to have two web pages,  
24 where one web page identifies documents required by

1 the Federal Rule 40 CFR Part 257 and the other  
2 identifies documents so far as by the Illinois rule,  
3 the proposed Part 845 rules?

4 MR. LECRONE: The Agency does not think  
5 that's unreasonable.

6 MS. COURTNEY: Thank you.

7 And second question, does the Agency think  
8 the public would benefit from having clearly  
9 demarcated websites so they easily can discern what  
10 documents are pursuant to 40 CFR Part 257 Federal rule  
11 and what documents are pursuant to Part Code 845?

12 MR. LECRONE: This is Darin Lecrone. As we  
13 put in our answer for 17, you know, we suggested it be  
14 labeled "Illinois CCR Rule Compliance Dated  
15 Information." That way it's clear what we're talking  
16 about.

17 MS. COURTNEY: Okay. Thank you.

18 And those are my questions for 810, and we  
19 reserve the right to follow-up.

20 HEARING OFFICER HORTON: Okay. City of  
21 Springfield, any questions on 810?

22 MS. WILLIAMS: I guess I'll just follow up  
23 briefly. This was originally my question. Based on  
24 this --

1 HEARING OFFICER HORTON: Ms. Williams, you  
2 are breaking up a little bit. If you could repeat.

3 MS. WILLIAMS: All right. So in the earlier  
4 hearing when the Agency was asked about this  
5 question -- can you hear me okay?

6 HEARING OFFICER HORTON: If everybody could  
7 mute themselves.

8 MS. WILLIAMS: Excuse me?

9 HEARING OFFICER HORTON: I'm sorry, everyone  
10 but yourself could mute themselves. But you can  
11 continue, Ms. Williams.

12 MS. WILLIAMS: I can't hear the Hearing  
13 Officer. I'm not sure what she's saying.

14 HEARING OFFICER HORTON: All right. You can  
15 go ahead. We were having some interference but,  
16 please, go ahead.

17 MS. WILLIAMS: When the Agency was asked  
18 about this at the first hearing, I had a perception in  
19 the hearing room, at least, that there was a  
20 consensus, which may not actually be the case. That  
21 this proposal by the Agency to change the way the  
22 websites are labeled and this interpretation of having  
23 two websites would be confusing and less beneficial to  
24 the public.

1           If it were determined by the parties to be  
2 the case, that this is not as helpful to the public  
3 due to separate websites, does the Agency see a  
4 substantive or operational problem from their end with  
5 allowing a single place for the public to go that  
6 identifies the different documents needed for the  
7 different roles?

8           MR. LECRONE: This is Darin Lecrone. At this  
9 point, the way things stand, the Agency prefers two  
10 websites.

11           MS. WILLIAMS: Yes, I understand that, and  
12 I'm giving you an opportunity to explain a reason that  
13 it would interfere with your operations, and so I'm  
14 assuming that you don't have one. Is this your  
15 preference?

16           MR. LECRONE: This is Darin Lecrone. We just  
17 think it would be easier to keep separate the  
18 requirements of the two separate rules, at least for  
19 now, as the way things stand.

20           MS. WILLIAMS: Okay. Thank you.

21           HEARING OFFICER HORTON: Okay. Moving on to  
22 Ms. Manning for Ameren. Any questions on 810?

23           MS. MANNING: I have no questions on 810.  
24 Thank you. And I don't expect to have any questions

1 on financial assurance either.

2 HEARING OFFICER HORTON: Okay. Thank you.

3 All right. Any follow-up questions in the  
4 room to 810? No?

5 Any follow-up questions on Webex to 810?

6 MS. E. BROWN: This is Essence from the  
7 Technical Unit.

8 HEARING OFFICER HORTON: I'm sorry.

9 MS. E. BROWN: I do have a question on 810.

10 HEARING OFFICER HORTON: I skipped over you.  
11 Please go ahead, Ms. Brown.

12 MS. E. BROWN: So in addition to the  
13 documentation, providing the final permit being  
14 available, from the owner's website --

15 HEARING OFFICER HORTON: Ms. Brown?

16 MS. E. BROWN: Yes.

17 HEARING OFFICER HORTON: You need to slow  
18 down, please.

19 MS. E. BROWN: In addition to the  
20 documentation regarding the final permit being  
21 available on the owner's website, is the Agency  
22 willing to put all the documents for all CCR surface  
23 impoundments in one place to make it easier for the  
24 public to access these documents?

1 Do you want me to restate my question.

2 MR. LECRONE: This is Darin Lecrone. Can you  
3 clarify, are you asking if the Agency would be willing  
4 to put it on the -- all on the Agency's website as  
5 well?

6 MS. E. BROWN: Yes.

7 MR. LECRONE: This is Darin Lecrone.  
8 Currently, we don't have the ability, the technical  
9 resources to be able to post all of that.

10 MS. E. BROWN: Okay. I have no further  
11 questions.

12 HEARING OFFICER HORTON: Okay. Thank you.

13 Moving on to subpart I, financial assurance,  
14 845.900, general provisions.

15 Ms. Bugel, any questions on 900?

16 MS. BUGEL: Mr. Hammon should have questions  
17 for us on this subpart.

18 HEARING OFFICER HORTON: Mr. Hammons,  
19 questions on 900?

20 MR. HAMMONS: Hearing Officer, I don't have  
21 any questions -- this is Jeff Hammons from the ELPC.  
22 I don't have any questions on 900.

23 HEARING OFFICER HORTON: Okay.

24 Moving onto City of Springfield, 900? I'm

1 sorry, Midwest Generation.

2 MS. GALE: No questions on this.

3 HEARING OFFICER HORTON: City of Springfield,  
4 Part 845.900?

5 MS. WILLIAMS: I don't expect to have any  
6 questions on this subpart.

7 HEARING OFFICER HORTON: Okay.

8 I am skipping Dynegy. I am skipping IERG. I  
9 am skipping Ameren. The AG's office.

10 And I'm returning to the Board's Technical  
11 Unit, Ms. Brown or Mr. Rao, any questions on 900?

12 MR. RAO: No questions on subpart I.

13 HEARING OFFICER HORTON: No questions on  
14 subpart I?

15 MR. RAO: Subpart A, the financial assurance.  
16 I misspoke.

17 HEARING OFFICER HORTON: Got it. All right.  
18 So moving on to 910, upgrading financial assurance.

19 Ms. Bugel?

20 MS. BUGEL: I'll turn it over to Mr. Hammon,  
21 if he has questions.

22 HEARING OFFICER HORTON: Okay. Mr. Hammons,  
23 any questions on 910?

24 MR. HAMMONS: Yes, this is Jeff Hammons with



1 ELPC. I will be doing all the questions for this  
2 subpart. I have one follow-up question under 910.  
3 This is in response to an Agency answer to one of our  
4 questions in particular. It's Exhibit 2 at Page 122.  
5 And this is for Question 4(b), as in bravo.

6 If the Agency could just let me know when  
7 you're there.

8 MR. LECRONE: We're good.

9 MR. HAMMONS: So this question has to do with  
10 upgrading financial assurances. In particular, the  
11 Agency responded the regulating community has  
12 generally upgraded financial assurances as required.

13 So my follow-up question is, in the event a  
14 corrective action plan or closure plan is amended that  
15 causes cost estimates to increase, but an owner or  
16 operator lacks the ability to obtain financial  
17 assurances sufficient to meet that cost estimate, do  
18 the rules provide for who will cover the difference  
19 between the existing financial assurances and those  
20 updated cost estimates?

21 MR. MATHIS: This is Bob Mathis. And no, the  
22 rules do not address that.

23 MR. HAMMONS: Thank you. That's my only  
24 question.

1 HEARING OFFICER HORTON: Okay.

2 Any follow-up questions on the room to 910?

3 None?

4 Any follow-up questions on Webex to 910?

5 Okay. Moving onto 920, Release of Financial  
6 Institution and Owner or Operator?

7 Mr. Hammons, any questions on 920.

8 MR. HAMMONS: No questions on 920.

9 HEARING OFFICER HORTON: Okay. Moving on to  
10 930, cost -- I'm sorry, Midwest Generation?

11 MS. GALE: I have a question on 930. I'm  
12 sorry.

13 HEARING OFFICER HORTON: No problem. 930,  
14 Cost Estimates.

15 Mr. Hammons, any questions on 930?

16 MR. HAMMONS: Yes, I have one question that's  
17 another follow-up to Agency pre-filed answer.

18 This is on Page 123 of Exhibit 2, the  
19 Agency's response to Question 5(b), as in bravo. Just  
20 let me know when you're there.

21 MR. LECRONE: We're ready.

22 MR. HAMMONS: All right. So this question  
23 has to do with the timing of initial costs. We asked  
24 how the Agency would verify cost estimates. And it

1 indicated that initial cost estimates would be  
2 submitted to the permit section for approval.

3 So my question is just about timing. For  
4 existing impoundments that are required to submit cost  
5 estimates and financial assurance within 60 days of  
6 this Rule's final promulgation, how will the  
7 impoundment provide those cost estimates when it's not  
8 required to provide a preliminary closure plan until  
9 September 30th of 2021, which is more than 60 days  
10 after these rules are supposed to be finalized?

11 MR. MATHIS: This is Bob Mathis. We're going  
12 to have to take a look at that in the language and get  
13 back to you in the post-hearing comments.

14 MR. HAMMONS: Thank you. That's the only  
15 question I had on that section.

16 HEARING OFFICER HORTON: Ms. Gale, Midwest  
17 Generation?

18 MS. GALE: Yes.

19 I just want to turn to Exhibit 3, Page 34 --  
20 33, 34. And I can't see you in my screen, so you're  
21 going to have to let me know when you're ready.

22 MR. LECRONE: Ready.

23 MS. ZIMMER: We're ready.

24 MS. GALE: Thank you.

1           Really, the follow-up is the Agency's  
2 answer -- the question was, was what was the basis for  
3 the 25 percent. The Agency answered that it believes  
4 25 percent is not unreasonable.

5           So I guess my follow-up question is, where  
6 did the Agency come up with 25 percent? Or how did  
7 the Agency come up with 25 percent?

8           MR. MATHIS: This is Bob Mathis. We answered  
9 that Question 95 in the pre-filed questions. We did  
10 express that there are exceedances with a lot of these  
11 CCR facilities. And we know some type of corrective  
12 action is probably going to be necessary.

13           So we do believe that 25 percent of the total  
14 cost is not unreasonable.

15           MS. GALE: Okay. That's what you said. I  
16 guess, what made you think 25 percent as opposed to  
17 15 percent or even as opposed to 35 percent? What I'm  
18 asking for is how did you come up with 25 percent?  
19 I'm really just curious.

20           MR. MATHIS: This is Bob Mathis again.  
21 Through Agency discussions, when we discussed this, we  
22 had differing opinions and we determined -- we agreed  
23 on 25 percent sounded like that was not unreasonable.

24           MS. GALE: Okay. Thank you.

1 HEARING OFFICER HORTON: Are there any  
2 follow-up questions on 930 in the room?

3 No?

4 Any follow-up questions on 930 on Webex?

5 Okay. Moving on.

6 940, Revision of Cost Estimates.

7 Mr. Hammons, any questions on 940?

8 MR. HAMMONS: Yes. This is Jeff Hammons with  
9 ELPC. I have one question. And this is related to  
10 the last question just in regards to -- it's a  
11 question about timing. So this is a follow-up to  
12 Agency's response to Question 6 on Page 123 of  
13 Exhibit 2.

14 For clarification, for the record, the  
15 question is on Page 123, but their answer is on  
16 Page 124 of Exhibit 2.

17 Is the Agency there?

18 MS. ZIMMER: The Agency is there.

19 MR. HAMMONS: Thank you.

20 The screen is really tiny so I can't really  
21 tell.

22 So this Question Number 6 asks about cost  
23 revisions to modifications to corrective action  
24 closure plans and post-closure plans, and the Agency

1 response indicated that there's a 30-day time period  
2 from Section 940(b), as in bravo.

3 My follow-up question is just for the initial  
4 construction permit application and approval for  
5 closure plans, what is the time period applicable for  
6 when cost estimates must be updated for that?

7 So rather than asking about the modifications  
8 to closure plans, asking about the timeline for the  
9 initial approval of the initial closure plan.

10 MR. MATHIS: This is Bob Mathis. The  
11 facilities will have 60 days from the effective date  
12 of this cost estimate, initial cost estimate, and  
13 financial assurance submitted into the Agency.

14 MR. HAMMONS: Okay. My question is, when  
15 they apply for the final closure plans for a  
16 construction permit, and then the Agency approves that  
17 application, is the 60-day time requirement, are they  
18 required to, you know, obtain the new process of  
19 financial assurance within 60 days or some other time  
20 period?

21 MR. MATHIS: That would be 60 days. This is  
22 Bob Mathis. This would be 60 days.

23 MR. HAMMONS: Thank you. No more questions  
24 on this section.

1 HEARING OFFICER HORTON: Okay. Thank you.

2 Midwest Generation, any questions on 940?

3 MS. GALE: No. I'm done for the remainder.

4 HEARING OFFICER HORTON: Okay. So we'll move  
5 on to 950, Mechanisms for Financial Assurance.

6 Mr. Hammons, any questions on 950?

7 MR. HAMMONS: No questions on 950.

8 HEARING OFFICER HORTON: Okay. Moving on to  
9 960, Trust Fund.

10 Mr. Hammons, any questions on 960?

11 MR. HAMMONS: Yes. I have one follow-up  
12 question to the Agency's pre-filed answer in response  
13 to our Question 8(b), as in bravo, which is on  
14 Page 125 of Exhibit 2.

15 MS. ZIMMER: We're ready.

16 MR. HAMMONS: Thank you. So the question  
17 was, what is the procedure for making determinations  
18 of whether to withhold in response to request for  
19 reimbursement of a trust fund. And the Agency's  
20 answer was that staff compares current cost estimates  
21 in the latest approved permit to the latest valuation  
22 of the trust fund.

23 So my question is, if an owner or operator  
24 has an approved closure permit and has undertaken some

1 activities pursuant to that permit but they haven't  
2 requested a modification of that permit that reflects  
3 those changes, potential changes in cost estimates,  
4 can they still get reimbursed?

5 MR. MATHIS: This is Bob Mathis. Not until  
6 they've had that included in the cost estimate because  
7 we want our technical staff to look at that to be sure  
8 what is being done at the site is actually reducing  
9 the cost.

10 MR. HAMMONS: Okay. Thank you. That was my  
11 only question.

12 HEARING OFFICER HORTON: Okay. Moving on to  
13 970, Surety Bond Guaranteeing Payment.

14 Mr. Hammons, any questions on 970?

15 MR. HAMMONS: No. And I have no more  
16 questions on the remainder of this subpart.

17 HEARING OFFICER HORTON: Okay. Then --

18 MR. HAMMONS: I reserve the right for  
19 follow-up.

20 HEARING OFFICER HORTON: By my count, that is  
21 no other participants have any questions for the  
22 remainder of the subpart.

23 Are there any follow-ups for 900?

24 Okay. Ms. Court Reporter, I'd like to go off



1 the record.

2 (Whereupon, a discussion was had  
3 off the record.)

4 HEARING OFFICER HORTON: We're back on the  
5 record, and we just went off the record briefly to  
6 discuss some procedural issues. We'll be reconvening  
7 for the second hearing on October 29th. And we've  
8 added a fourth day, which will be on October 6th. And  
9 we'll be having public comments on Wednesday,  
10 September 30th, during the lunch hour, from 12:00 to  
11 1:30 tentatively. And then Thursday evening will be  
12 on Webex, public comment starting at about 5:30. And  
13 I will follow-up with the Hearing Officer order  
14 describing these dates.

15 So as long as there's nothing further, we'll  
16 conclude this first hearing, and thank you very much.

17 (Whereupon the meeting  
18 concluded at 3:49 p.m.)

19  
20  
21  
22  
23  
24

1 STATE OF ILLINOIS )  
2 ) SS:  
3 COUNTY OF C O O K )

4 I, PAMELA L. COSENTINO, being first duly  
5 sworn on oath says that she is a court reporter doing  
6 business in the City of Chicago; that she reported in  
7 shorthand the proceedings given at the taking of said  
8 meeting and that the foregoing is a true and correct  
9 transcript of her shorthand notes so taken as  
10 aforesaid and contains all the proceedings given at  
11 said meeting.

12 IN TESTIMONY WHEREOF: I have hereunto set my  
13 verified digital signature this 1st day of September,  
14 2020.

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17 \_\_\_\_\_  
18 PAMELA L. COSENTINO, CSR  
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