

1 ENVIRONMENTAL PROTECTION AGENCY

2 STATE OF ILLINOIS

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4 IN RE:

5 Revised State Implementation Plan

for a Variance Granted by the

6 Illinois Pollution Control Board to

Illinois Power Holdings, LLC, and

7 AmerenEnergy Medina Valley Cogen, LLC

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14 Public Hearing held, pursuant to

15 Notice, on the 20th day of May, 2014, between the

16 hours of 9:00 a.m. and 9:22 a.m., at 1021 North

17 Grand Avenue East, Springfield, Illinois, before

18 Mr. Dean Studer, duly appointed Hearing Officer.

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1 TRANSCRIPT OF PROCEEDINGS

2 HEARING OFFICER STUDER: I've got 9:00,  
3 so we'll go ahead and go on the record.

4 Good morning, my name is Dean Studer  
5 and I'm the hearing officer for Illinois EPA. I  
6 would like to welcome you to this morning's  
7 hearing. This hearing is being held for the  
8 purpose of gathering public comment on the proposed  
9 State Implementation Plan, otherwise referred to as  
10 SIP, S-I-P, revision submittal related to a  
11 variance granted by the Illinois Pollution Control  
12 Board to Illinois Power Holdings, LLC, otherwise  
13 referred to as IPH, and to AmerenEnergy Medina  
14 Valley Cogen, LLC. That variance was granted in  
15 PCB 2014-010 and that was granted on November 21st,  
16 2013. The issues considered by the Illinois  
17 Pollution Control Board, otherwise referred to  
18 simply as the Board or IPCB, in the variance  
19 proceeding, and again that's PCB 2014-010, are not  
20 necessarily relevant in this proceeding. Illinois  
21 EPA has no authority to reconsider the previously  
22 granted variance by the Board, and as such, the  
23 issues involved with the granting of a variance are  
24 not relevant in this proceeding. What is relevant

1 in this proceeding are the compliance requirements  
2 for the SIP revision submittal to USEPA, the United  
3 States Environmental Protection Agency.

4 The criteria for determining the  
5 completeness of SIP submissions to USEPA are set  
6 forth at Appendix V to Part 51 of the Code of  
7 Federal Regulations, 40 CFR 51. In order for a  
8 variance to be considered for approval as a  
9 revision to the SIP, the State must submit it in  
10 accordance with the requirements of 40 CFR Section  
11 51.104.

12 The Illinois EPA plans to submit this  
13 proposal to USEPA for review and approval as a  
14 revision to the SIP to address the visibility  
15 protection requirements of Section 169A of the  
16 federal Clean Air Act, 42 USC Section 7491, and the  
17 Regional Haze Rule, as codified in 40 CFR Section  
18 51.308. Copies of the draft SIP proposal are and  
19 have been available for review at Illinois EPA  
20 locations in Des Plaines, Collinsville, and here in  
21 Springfield.

22 IPH, an indirect subsidiary of Dynegy,  
23 Incorporated, has acquired ownership of the Ameren  
24 operating merchant generation stations, namely the

1 Coffeen Energy Center located in Montgomery County,  
2 the Duck Creek Energy Center located in Fulton  
3 County, the E.D. Edwards Energy Center located in  
4 Peoria County, the Joppa Energy Center located in  
5 Massac County, and the Newton Energy Center located  
6 in Jasper County, under a transaction agreement  
7 between Ameren and Illinois Power Holdings. Medina  
8 Valley has acquired the shuttered generating  
9 stations, the Meredosia Energy Center located in  
10 Morgan County and the Hutsonville Energy Center in  
11 Crawford County. On November 21st, 2013, the Board  
12 granted the variance to IPH and Medina Valley from  
13 the applicable requirements of the Illinois  
14 Multi-Pollutant Standard, MPS, set forth at 35  
15 Illinois Administrative Code 225.233(e)(C) --  
16 excuse me, (e)(3)(C)(iii) for a period beginning  
17 January 1st, 2015, through December 31st, 2019,  
18 and 35 Illinois Administrative Code  
19 255.233(e)(3)(C)(iv) for a period beginning January  
20 1st, 2017, through December 31st, 2019, and it's  
21 subject to certain conditions in that variance.

22 The MPS is a multi-pollutant  
23 comprehensive approach to reducing emissions of  
24 nitrogen dioxides, sulfur dioxide, and mercury.

1 Section 225.233(e) is an approved rule of the  
2 Illinois SIP. On July 6th, 2012, the USEPA  
3 approved the Illinois plan submitted to address the  
4 visibility protection requirements of Section 169A  
5 of the federal Clean Air Act and the Regional Haze  
6 Rule, which is approved. It's -- you can check  
7 that out at 77 Federal Register 39943, and that was  
8 on July 6th, 2012. The Illinois plan includes  
9 Section 225.233(e). Accordingly, since the  
10 petition for variance sought relief from the  
11 provisions of the MPS and such relief was granted  
12 by the Board, the variance must be submitted to  
13 USEPA for approval as a SIP revision addressing the  
14 visibility requirements under the Clean Air Act and  
15 the Regional Haze Rule.

16 This hearing is being held under the  
17 provisions of 35 Illinois Administrative Code 164,  
18 Procedures for Informational and Quasi-Legislative  
19 Public Hearings. Copies of these procedures can be  
20 accessed on the website for the Illinois Pollution  
21 Control Board at [www.ipcb.state.il.us](http://www.ipcb.state.il.us), or if you do  
22 not have ready access to the web, they can be  
23 obtained from me.

24 Gina Roccaforte, sitting here on my

1 right, will introduce the Illinois EPA staff  
2 members present today. Following this, I will  
3 allow the public to ask relevant questions or  
4 provide comments and ask relevant questions. You  
5 are not required to verbalize your comments at this  
6 hearing as written comments are given the same  
7 consideration and weight and may be submitted to  
8 the agency at any time within the public comment  
9 period, which ends on June 20th, 2014. Any person  
10 who wants to make oral comments may do so as long  
11 as the statements are relevant to the issues that  
12 are addressed at this hearing and such person has  
13 indicated on their registration card that they  
14 would like to speak. If you have lengthy comments  
15 or questions, it would be helpful to submit them to  
16 me in writing before the close of the comment  
17 period, and I will ensure that they are included in  
18 the hearing record as an exhibit.

19 Please keep your comments and questions  
20 relevant to the issues at hand. If your comments  
21 fall outside the scope of this hearing, I may ask  
22 you to proceed to another issue. Remember, all  
23 comments made at this hearing or submitted in  
24 writing before the close of the comment period will

1 become part of the official hearing record and will  
2 be considered. If you would like to comment at  
3 this hearing, please complete a registration card  
4 which can be found on the registration tables and  
5 indicate on the card your desire to speak. Anyone  
6 who completes a registration card or submits  
7 written comments in this matter will be notified of  
8 Illinois EPA's final decision in this matter. That  
9 notification will also contain information as to  
10 how you may access the agency responsiveness  
11 summary. In this summary, Illinois EPA will answer  
12 all relevant and significant issues raised at this  
13 hearing or submitted to me in writing while the  
14 record is open.

15 Again, the written record in this  
16 matter will close on June 20th, 2014. And again,  
17 all relevant documents, comments, and data will be  
18 placed into the hearing record as exhibits. Please  
19 send all written comments or data to me at the  
20 following address and that is: Dean Studer,  
21 Hearing Officer, Office of Community Relations, and  
22 this is regarding IPH Variance SIP Revision,  
23 Illinois Environmental Protection Agency, 1021  
24 North Grand Avenue East, P.O. Box 19276,

1 Springfield, Illinois 62794-9276. And this address  
2 is also listed on the public notice for the hearing  
3 today.

4 A court reporter is here today taking a  
5 verbatim record of this proceeding for the purpose  
6 of us making our administrative record. For the  
7 benefit of the court reporter, please keep general  
8 background noise in the room to a minimum so he --  
9 or, excuse me, so she can hear everything that is  
10 said. And also, when you begin to speak, please  
11 state your name and, if applicable, any  
12 governmental body, organization, or association you  
13 represent. If you are representing yourself, you  
14 may simply indicate that you are a concerned  
15 citizen. Also, for the benefit of the court  
16 reporter, please spell your last name. If there  
17 are alternate spellings of your first name, you may  
18 also want to spell your first name so that an  
19 accurate record of your comments can be made.  
20 People who have requested to speak will be called  
21 forward to come to the podium.

22 When your name is called, please come  
23 forward and state your name. And again, if you are  
24 representing a governmental body or organization,



1 you may so indicate or should so indicate. If you  
2 are representing yourself, you may simply indicate  
3 you are a member of the general public.

4 And before I introduce Illinois EPA  
5 staff here this morning, I'd like to record a few  
6 preliminary documents into the official record as  
7 exhibits. And for the record, Exhibit 4 is a  
8 comment letter received from Bob Jorgenson, in East  
9 Peoria, and that was received on February 18th,  
10 2014, and Exhibit 5 is a request for a hearing in  
11 this matter from Earthjustice, Environmental Law &  
12 Policy Center, and the Sierra Club, dated February  
13 14th, 2014.

14 Are there questions on how I'll conduct  
15 the hearing this morning?

16 (No response)

17 HEARING OFFICER STUDER: Okay. Gina.

18 MS. ROCCAFORTE: Good morning. I'm  
19 Gina Roccaforte. I'm Assistant Counsel on behalf  
20 of the Illinois Environmental Protection Agency.  
21 And with me today is Mr. Rory Davis, Environmental  
22 Protection Engineer with the Bureau of Air.

23 HEARING OFFICER STUDER: Thank you.

24 Okay. We have one person that has

1 registered to speak and that's Andrew Armstrong.

2 MR. ARMSTRONG: Yes. Thank you,  
3 Mr. Studer.

4 HEARING OFFICER STUDER: I will allow  
5 you to sit at your seat as long as it can be heard,  
6 if people in the back can hear. You're going to  
7 have to project your voice because you do have  
8 people behind you a little bit, so --

9 MR. ARMSTRONG: Will do.

10 My name is Andrew Armstrong. I'm a  
11 Staff Attorney at the Environmental Law & Policy  
12 Center. I am here today on behalf of ELPC,  
13 Earthjustice, and Sierra Club to offer comments on  
14 the proposed modification to the Illinois Regional  
15 Haze SIP.

16 Illinois EPA is currently proposing to  
17 request that the Regional Haze SIP be modified to  
18 continue to recognize the Multi-Pollutant Standard,  
19 MPS, to be a best available retrofit technology, or  
20 BART, alternative for the Illinois coal plants  
21 formerly owned by Ameren and now owned by Illinois  
22 Power Holdings, even though the Illinois Pollution  
23 Control Board has granted a variance from the  
24 sulfur dioxide requirements of the MPS for the

1     former Ameren fleet until 2020.

2                     This variance will allow Illinois Power  
3     Holdings to continue operating the former Ameren  
4     fleet without installing any additional pollution  
5     controls until well past the 2018 deadline by which  
6     the Regional Haze Rule would have required that  
7     BART controls be installed to address sulfur  
8     dioxide contributing to regional haze in downwind  
9     national parks and forests.

10                    Illinois EPA has never done a source-  
11     specific analysis of what BART would require at the  
12     BART-subject units in the former Ameren fleet, but  
13     instead only evaluated "presumptive BART on" limits  
14     that do not reflect the reductions in sulfur  
15     dioxide emissions that would result from installing  
16     BART controls at BART-subject units.

17                    The United States Environmental  
18     Protection Agency did its own calculation based on  
19     much more stringent assumptions about the level of  
20     sulfur dioxide reductions that BART would require.  
21     USEPA ultimately approved the Illinois Regional  
22     Haze SIP based upon these calculations, which found  
23     that the total emissions reductions that the MPS  
24     would require at the former Ameren fleet would

1 exceed the emissions reductions that would result  
2 from only requiring BART at the BART-subject units.

3 First, we think this is the wrong  
4 standard because we continue to believe, as we  
5 commented originally on the Illinois Regional Haze  
6 SIP when it was first submitted, that BART is a  
7 mandatory Clean Air Act requirement that may not be  
8 replaced by fleetwide standards such as the MPS.  
9 Even were this the right standard, though, USEPA  
10 needs to reevaluate whether it can lawfully approve  
11 the Illinois Regional Haze SIP modification for the  
12 former Ameren fleet by doing a new calculation of  
13 whether the MPS as implemented with variances for  
14 the former Ameren fleet is still "better than  
15 BART."

16 The Illinois plan contains separate  
17 emissions limits for each fleet. The former Ameren  
18 fleet has its own emissions limits specified in the  
19 MPS and the variance applies to only the former  
20 Ameren facilities. Since the Illinois plan  
21 consists of fleet-specific emissions limits and  
22 since the proposed SIP revision applies only to  
23 Ameren, the BART alternative must be judged on the  
24 same fleet-by-fleet basis. If the Illinois plan is

1 not better than BART at the former Ameren  
2 facilities, it cannot be approved by USEPA.

3 Now, if Illinois EPA were to attempt to  
4 make a showing that the MPS with the variance is  
5 better than BART, it should not be allowed to rely  
6 on purported emissions reductions at the Meredosia  
7 and Hutsonville units that have now been retired  
8 for several years due to economic reasons, nor  
9 emissions reductions from Edwards Unit 1 which is  
10 now only being operated for grid reliability  
11 purposes subject to a short-term System Support  
12 Resource Agreement with MISO. These plants have  
13 retired or are retiring before the MPS reductions  
14 are implemented, such that the MPS is not driving  
15 emissions reductions at those plants at all.  
16 Moreover, the Meredosia and Hutsonville units were  
17 not purchased by Illinois Power Holdings and should  
18 not be included in any analysis of emissions  
19 reductions at the former Ameren fleet.

20 If USEPA performs a new calculation of  
21 the emissions reductions at the former Ameren fleet  
22 from the MPS that excludes purported SO2 emissions  
23 reductions from the Meredosia and Hutsonville units  
24 and from Edwards Unit 1, then it will find that

1 implementation of the MPS at the remaining Ameren  
2 units is no longer better than BART, as will be  
3 demonstrated in the environmental groups' written  
4 comments.

5 We also would note that the Regional  
6 Haze Rule further requires that the burden is on  
7 the State to demonstrate that any BART alternative  
8 will achieve greater reasonable progress towards  
9 national visibility conditions in Class 1 areas  
10 than requiring BART controls to be installed at  
11 BART-eligible units. That demonstration has not  
12 been made here yet.

13 Finally, we further contend that USEPA  
14 cannot approve the requested SIP revision because  
15 Illinois has not conducted required visibility  
16 modeling to show that the Illinois plan will  
17 achieve greater reasonable progress than would BART  
18 towards reducing visibility impairment. In order  
19 to demonstrate that an alternative program is  
20 better than BART, a state is required by 40 CFR  
21 51.308(e)(3) to perform dispersion modeling unless  
22 the distribution of emissions is not substantially  
23 different under the alternative program relative to  
24 BART. EPA conceded that the Part 225 rules reflect

1 substantial averaging across units and across  
2 facilities. So visibility modeling of the Illinois  
3 plan and its relationship with BART must be  
4 conducted.

5 So thank you very much for the  
6 opportunity to offer these comments. We will  
7 submit written comments by the deadline.

8 HEARING OFFICER STUDER: Thank you,  
9 Mr. Armstrong.

10 Is there anyone else that has comments  
11 or questions that they would like to ask on the  
12 record this morning?

13 (No response)

14 HEARING OFFICER STUDER: Okay. Let the  
15 record indicate no one raised their hand.

16 I remind everyone that the comment  
17 period is open for 30 days and we will be accepting  
18 written comments as indicated on the public notice  
19 for this hearing.

20 This hearing is adjourned.

21 (The hearing adjourned at 9:22 a.m.)

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CERTIFICATE OF REPORTER

STATE OF ILLINOIS )

) ss

COUNTY OF SANGAMON )

I, DOROTHY J. HART, a Registered Professional Reporter and Certified Shorthand Reporter within and for the State of Illinois, do hereby certify that the foregoing proceedings were taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties involved in this proceeding, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Registered Professional Reporter

Certified Shorthand Reporter

Illinois CSR No. 084-001390



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