

Memo

Subject: Grounds for a Yes vote on Ameren (AEE) shareholder resolution requesting a report on coal combustion waste risk mitigation

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Ameren Shareholders are encouraged to vote FOR the following resolution:

RESOLVED: Shareholders request that the Board prepare a complete report on the company's efforts, above and beyond current compliance, to identify and reduce environmental and health hazards associated with past and present handling of coal combustion waste, and how those efforts may reduce legal, reputational and other risks to the company's finances and operations. This report should be available to shareholders within 6 months of the 2012 annual meeting, be prepared at reasonable cost, and omit confidential information such as proprietary data or legal strategy.

Background on this proposal:

For decades, Ameren and its peers faced minimal regulation or oversight regarding the disposal of coal combustion waste (CCW or coal ash).¹ That landscape is changing, and anticipated regulatory changes will likely affect shareholder value.² Regulators and communities living near coal ash disposal sites have now realized that coal ash contains toxic metals that threaten human health and the environment, and those toxins have already caused contamination at dozens of sites across the country.³

Although a plurality of 47% of voting shareholders supported a 2011 resolution asking Ameren to report on its liabilities and plans to reduce risks associated with coal ash disposal, Ameren's SEC filings, website, and other public documents still fail to provide investors with sufficient evidence that it is addressing or mitigating coal ash-related risks.

Rationale for a 'FOR' vote:

- I. **Ameren's ash storage practices expose the company to significant financial and regulatory risks** due to environmental and health hazards caused by coal ash.
- II. **Ameren's public disclosure on this issue is insufficient.** While the company produced a Corporate Social Responsibility Report, with six pages on the subject of coal ash, it has

not provided the information requested in the proposal. Without improved disclosure, shareholders cannot adequately assess the risks of their investment in Ameren.

I. Ameren’s Ash Storage Practices Expose the Company to Significant Financial and Regulatory Risks:

- A. Ameren is unusually dependent on coal-fired power plants for its energy generation. Whereas the nation obtains 45% of its electricity from coal,⁴ Ameren relies on coal for 85% of the electricity it generates.⁵
- B. The use of unlined ponds for coal ash disposal is particularly risky,⁶ and many unlined ash ponds – including some at Ameren’s facilities – have already caused significant groundwater contamination.⁷
- C. Ameren continues to rely heavily on unlined ash ponds at its coal-fired power plants in Missouri and Illinois. These unlined ponds are as large as 400 acres and most have been in operation for 40, 50, or 60 years.⁸
- D. Leaching of coal ash from closed ponds at Ameren’s Venice plant has already resulted in significant contamination of offsite groundwater, and Ameren’s costs in containing the contamination from further spread are estimated to exceed \$11.2 million.⁹ Ameren has not indicated what it would cost to cleanup – rather than simply contain – the contaminated groundwater. The groundwater contamination at Venice was discovered after Ameren was required to conduct groundwater monitoring as a condition of its 1996 water pollution discharge permit.¹⁰
- E. The Illinois Environmental Protection Agency has required groundwater monitoring at several ash disposal sites,¹¹ and Ameren has now found contamination at several additional facilities in Illinois. While Ameren acknowledges the groundwater containment plans at the Hutsonville plant (\$6 million cleanup)¹² and Duck Creek plant (no cost estimate yet provided),¹³ it has not acknowledged to shareholders or the public the groundwater contamination at levels exceeding drinking water standards for arsenic and lead, respectively, reportedly detected at its Meredosia and Joppa plants.¹⁴
- F. Ameren has not conducted *any* groundwater monitoring at its Missouri coal plant ash ponds. In 1992, Ameren admitted to the Missouri Department of Natural Resources (DNR) that two “seeps” at its unlined pond at the Labadie plant – Ameren’s largest coal plant – were discharging over 50,000 gallons of ash pond

wastewater per day. In 2011, Ameren notified DNR of additional “seeps.” These leaks were found because they were visible to the naked eye; no one will know about subsurface leakage unless and until groundwater monitoring is conducted. All residents within miles of this site in Franklin County, Missouri rely on groundwater for drinking water and agriculture. The President of Ameren Services expressed the company’s cavalier attitude regarding the risk of contaminating neighbors’ groundwater wells as follows: “While we can state what we believe is obvious that the seeps have not contaminated groundwater nor does any of this water reach local drinking water, we do not have a definitive study at this point to confirm such statements.”¹⁵ With 20 years of known leakage and not a single groundwater monitoring result, Ameren lacks far more than a “definitive study” to confirm that the neighbors’ health is not at risk and that Ameren may not face potentially substantial liability.

- G. Ameren is currently seeking regulatory approval to build a large coal ash landfill in the Missouri River floodplain and floodway near its Labadie plant. The proposed site is also at risk of liquefaction during an earthquake,¹⁶ possibly resulting in landfill collapse and contamination of land and water supplies. The risks associated with the proposed site have drawn opposition to the proposal from local residents concerned about groundwater contamination as well as from residents across the St. Louis metropolitan area, many of whom rely on the adjacent Missouri River for their drinking water intake.¹⁷

II. Ameren’s Public Disclosure on this Issue is Insufficient.

- A. Ameren’s draft statement opposing the resolution claims that its 2011 Corporate Social Responsibility Report (CSR) “provides substantial information on our environmental compliance procedures” regarding coal ash management. That claim suffers from two fatal flaws.
 - 1. Given the minimal “environmental compliance procedures” currently applicable to Ameren’s coal ash management activities, the resolution focuses on “the company’s efforts, *above and beyond current compliance,*” to reduce the hazards related to its coal ash management. The CSR, as Ameren states, is largely limited to compliance rather than above-and-beyond. What Ameren describes as efforts to “minimize both environmental and financial risks” are, in reality, simply doing what is minimally required:
 - a. Ameren instituted internal dam safety inspections and annual assessments of its ash disposal facilities – after the catastrophic collapse

of a coal ash pond at TVA's Kingston plant, and EPA subsequently questioned all utilities about their dam safety programs.

- b. Ameren is moving from wet ponds to dry landfills – “dependent to some extent on future regulations [and] remaining storage capacity of existing facilities,” among other factors. In other words, when and if it is legally or practically required to do so, Ameren may move from wet ponds to dry landfills. Moreover, Ameren's peers have already been moving in this direction for at least the past decade.
- c. Ameren hails “increased scrutiny of our discharge monitoring reports.” Those reports are legally required under Ameren's water pollution discharge permits. Of course Ameren should scrutinize them; they identify legally-enforceable violations.
- d. Ameren credits itself with working with state regulators to “initiate closure plans for historical ponds.” This has occurred in Illinois at those plants where groundwater monitoring – required by the state – detected contamination. In other words, these formal pond closures would likely have been forced if Ameren had not agreed to them. Moreover, Ameren has not initiated any such activity in Missouri, where groundwater monitoring has not yet been required. The State is now starting to require monitoring, but giving companies four years after renewal permits are issued before they have to commence monitoring. None of Ameren's four Missouri plants is yet under a renewal permit that requires groundwater monitoring.

- 2. The six pages of the CSR that address coal ash contain few relevant facts or meaningful discussions of risks, giving investors little useful information. For example:
 - a. Ameren states: “There is no evidence of any risk to wildlife, crops or the environment.” CSR p. 48. Because Ameren conducts *no* monitoring of the groundwater in which its Missouri (and some of its Illinois) ash ponds sit, even with known leakage where neighbors rely on groundwater for drinking water, and *no* monitoring of coal ash toxins in the rivers and streams into which it discharges many millions of gallons of coal ash wastewater each day, its claim of “no evidence of any risk” falls flat.
 - b. Ameren claims “a strong record for managing [its ash ponds] responsibly.” CSR p. 48. It does not explain how allowing 50,000 gallons per day of coal ash wastewater to leak from its unlined Labadie ash pond for two decades, while failing to conduct any groundwater monitoring to

determine whether local neighbors might be at risk, constitutes responsible management.

- c. Ameren claims that USEPA found the structural integrity of its ash ponds to be “sound.” CSR p. 49. Ameren neglects to note that of the 23 Ameren ash ponds rated by USEPA, only 2 were deemed “satisfactory” whereas 7 were rated “poor” and 14 “fair.”¹⁸
- d. While noting USEPA proposed regulations in 2010 that would establish federal requirements for coal ash disposal, the CSR includes the overall national compliance costs estimated by USEPA but offers no estimate of Ameren’s anticipated costs to bring its operations into compliance with new federal regulations. CSR p. 49.

- B. Neither the CSR nor Ameren’s SEC filings nor its website satisfy the resolution’s request for a complete report that describes efforts to go beyond current compliance in order to reduce legal, reputational and other risks to the company’s finances and operations associated with its coal ash management activities.

Conclusion:

Ameren has not fulfilled the request in the 2011 resolution in which 47% of shareholders asked for a report on the company’s efforts, above and beyond current compliance, to identify and reduce environmental and health hazards associated with coal combustion waste. The company’s response to that resolution fails to provide essential information to assist investors in assessing the risks of their investment. Shareholders should vote FOR the proposed resolution.

¹ NYTimes, “Hundreds of Coal Ash Dumps Lack Regulation,” Jan. 6, 2009, available at <http://www.nytimes.com/2009/01/07/us/07sludge.html?scp=1&sq=hundreds%20coal%20ash%20dumps%20regulation&st=Search>.

² See, e.g., EPA, *Hazardous and Solid Waste Management, Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities; Proposed Rule (“EPA Proposed Rule”)*, 75 Fed. Reg. 35128 (June 21, 2010). Recently-finalized air pollution rules affecting Ameren’s coal plants will increase the volume of toxicity of coal ash generated by Ameren and its peers. See EPA, *Primary National Ambient Air Quality Standard for Sulfur Dioxide; Final Rule*, 75 Fed. Reg. 35520 (June 22, 2010) available at <http://www.epa.gov/ttn/naaqs/standards/so2/fr/20100622.pdf>; EPA, *Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals*, 76 Fed. Reg. 48208, Aug. 8, 2011 (with subsequent modifications) (known also as Cross-State Air Pollution Rule), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-08-08/pdf/2011-17600.pdf>; and EPA, *National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-*

Commercial-Institutional Steam Generating Units, Final Rule, pre-publication copy signed Dec. 16, 2011 and available at <http://www.epa.gov/mats/pdfs/20111216MATSfinal.pdf>.

³ See, e.g., EPA, Coal Combustion Waste Damage Assessments, July 9, 2007, available at <http://www.publicintegrity.org/assets/pdf/CoalAsh-Doc1.pdf>; Physicians for Social Responsibility and Earthjustice, *Coal Ash: The Toxic Threat to Our Health and Environment*, Sept. 2010, available at <http://www.psr.org/assets/pdfs/coal-ash.pdf>; Environmental Integrity Project, *Risky Business: Coal Ash Threatens America's Groundwater Resources at 19 More Sites*, Dec. 12, 2011, available at <http://www.environmentalintegrity.org/documents/121311EIPThirdDamageReport.pdf>; Environmental Integrity Project et al., *In Harm's Way: Lack of Federal Coal Ash Regulations Endangers Americans and Their Environment*, Aug. 26, 2010, available at http://www.environmentalintegrity.org/news_reports/documents/INHARMSWAY_FINAL2.pdf; and Environmental Integrity Project and Earthjustice, *Out of Control: Mounting Damages from Coal Ash Waste Sites*, Feb. 24, 2010, available at http://www.environmentalintegrity.org/news_reports/documents/OutOfControl-MountingDamagesFromCoalAshWasteSites.pdf.

⁴ U.S. Energy Information Agency, Energy Explained, at http://205.254.135.7/energyexplained/index.cfm?page=electricity_in_the_united_states.

⁵ Ameren Corp. 10-K for 2010, filed Feb. 24, 2011, at 10, available at <http://phx.corporate-ir.net/phoenix.zhtml?c=91845&p=irol-sec>.

⁶ EPA Proposed Rule, 75 Fed. Reg. at 35149.

⁷ See, e.g., studies referenced in footnote 3 above.

⁸ In response to the 2011 shareholder resolution, Ameren posted on its website some basic information about its ash disposal facilities. See <http://www.ameren.com/Environment/Documents/AshPondListingAmerenMissouri.pdf> and <http://www.ameren.com/Environment/Documents/AshPondListingAER.pdf>. The data provided in the web site charts regarding lined and unlined ponds and landfills do not match the total numbers presented in Ameren's 2011 Corporate Social Responsibility Report (p. 52), although the report references the website for further information.

⁹ See documents available at <http://www.epa.state.il.us/water/ash-impoundment/ameren-venice-station/index.html>.

¹⁰ Ameren letter to the Illinois Environmental Protection Agency, March 10, 2010, re Ash Pond Closures at AmerenUE's Venice Plant, p. 7, available at <http://www.epa.state.il.us/water/ash-impoundment/ameren-venice-station/index.html>

¹¹ See generally IEPA's Ash Impoundment Strategy website at <http://www.epa.state.il.us/water/ash-impoundment/index.html>, including Coal Combustion Residue Management in Illinois, Sept. 2010, available at <http://www.epa.state.il.us/water/ash-impoundment/documents/coal-ash-fact-sheet.pdf>, and most recent progress report, Illinois EPA's Ash Impoundment Strategy Progress Report, Oct. 2011, available at <http://www.epa.state.il.us/water/ash-impoundment/documents/ash-impoundment-progress-102511.pdf>.

¹² 2011 Corporate Social Responsibility Report at 50-51 and website at <http://www.ameren.com/Environment/Pages/DisposingandRecyclingofWaste.aspx>.

¹³ 2011 Corporate Social Responsibility Report at 51.

¹⁴ Environmental Integrity Project and Prairie Rivers Network, *Illinois at Risk*, Aug. 17, 2011, available at <http://www.environmentalintegrity.org/documents/IllinoisatRisk.pdf>.

¹⁵ E-mail from Dan F. Cole, Ameren Services, to Sister Barbara Jennings, Midwest Coalition for Responsible Investment, Jan. 9, 2012.

¹⁶ State of Missouri, Earthquake Hazards Map of the St. Louis, Missouri Metro Area, 1995, available at http://www.dnr.mo.gov/geology/images/StLouis_Discl.jpg.

¹⁷ See, e.g., St. Louis Post-Dispatch, Editorial: Franklin County Must Not Put Coal Ash Landfill in Flood Plain, Oct. 12, 2011, available at http://www.stltoday.com/news/opinion/columns/the-platform/editorial-franklin-county-must-not-put-coal-ash-landfill-in/article_2e97e9fd-5fa6-5d5b-8835-80ffa367befc.html.

¹⁸ EPA, Coal Combustion Residuals Impoundment Assessment Reports, see Summary Table for Impoundment Reports (XLS), Oct. 12, 2011, available under Reports at <http://www.epa.gov/osw/nonhaz/industrial/special/fossil/surveys2/index.htm>.