



## Action Report

# Environment: Natural Resource Management

**Ameren**

March 29, 2011

Ticker	Exchange	Meeting Date	Record Date	Annual Meeting Location
AEE	NYSE	4-21-2011	2-28-2011	St. Louis, Missouri

## Agenda

Item	Proposal
1	MGT: Elect directors
2	MGT: Limit liability of directors
3	MGT: Reapprove performance goals under 2006 omnibus incentive compensation plan
4	MGT: Advisory vote on executive compensation
5	MGT: Advisory vote on the frequency of executive compensation advisory votes
6	MGT: Ratify selection of auditor
7	<b>SH: Report on coal combustion waste and risks</b>

**Si2 Briefing** [Environment: Natural Resource Management](#)

**Report Author** [Susan Williams](#)

**Links** [Proxy Statement](#)

**Resolved Clause** RESOLVED: Shareholders request that the Board prepare a 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 2011 annual meeting, be prepared at reasonable cost, and omit confidential information such as proprietary data or legal strategy.

**Lead Proponent** School Sisters of Notre Dame, St. Louis (Midwest Coalition For Responsible Investment)

**Vote History** This is the first time that a proposal requesting the company produce a report on coal combustion waste and risks has appeared on an Ameren proxy ballot. In 2010, five such proposals were submitted to companies, with two appearing on proxy ballots. The average level of support during 2010 was 34.9 percent.

**Summary** The proponents believe the changing regulatory environment, as well as possible health effects and remediation costs associated with the management of coal combustion waste, have heightened Ameren's legal, financial and reputational risks. They would like the company to join its competitors in disclosing more information and increasing efforts to exceed current regulatory requirements. Management believes the requested report is neither necessary nor cost-effective given its policies and practices and the information that already is publicly available to interested shareholders.

## I. Coal Combustion Waste

Coal combustion waste (CCW), also referred to as coal combustion residue (CCR) or coal combustion byproducts (CCB), is residue from the combustion of coal that is captured in a power plant's pollution control technologies. Each year, coal-fired power plants in the United States burn about a billion tons of coal and produce more than 130 million tons of solid waste annually. Just over half of CCW is fly ash, a fine, light powder; the remainder includes flue gas desulfurization residues (a fine particulate removed from exhaust gases), as well as heavier residues known as bottom ash and boiler slag. This material contains concentrations of substances with known health risks to humans such as arsenic, mercury, lead, barium, thallium, chromium and manganese. Recent advances in implementing new technology to "scrub" airborne particulates produced in combustion has helped to address the problem of airborne mercury and other substances, but has shifted these toxic materials from the air to the ground, creating a larger solid waste stream. Increased energy demand, coupled with cleaner airborne exhaust from coal-burning power plants, is creating a growing stream of coal combustion waste.

Potential environmental concerns from coal ash pertain to pollutants leaching into ground and surface waters from impoundments and landfills, as well as structural failures of impoundments, like that which occurred at the Tennessee Valley Authority's plant in Kingston, Tenn. In December 2008, a dike at the Kingston plant failed, spilling 1.1 billion gallons of fly ash sludge into the Emory River and flooding more than 300 acres of surrounding land. The spill covered roads and railroad tracks, destroyed three homes and seriously damaged dozens more. TVA estimates that the ongoing three-year cleanup may cost \$1.2 billion to complete. Dozens of pending lawsuits are likely to take years to settle and could impose significant additional costs on the publicly owned utility.

**Regulation:** At present, CCW is considered an exempt waste under the federal Resource Conservation and Recovery Act (RCRA) Section D, leaving enforcement to states and municipalities. The outlook for CCW regulations remains uncertain, however, and is caught up in political and scientific battles. In response to the Kingston spill, in spring 2010 the EPA proposed new regulations that included two options. The first would treat CCW as a hazardous waste subject to intense oversight under RCRA; the other would maintain the non-hazardous waste designation subject to RCRA. Either alternative would allow for some continued reuse of CCW, such as recycling, without classifying it as waste.

As part of its proposal, the EPA is considering alternative regulatory approaches that require coal-fired power plants to either close surface impoundments such as ash ponds or retrofit such facilities with liners. Existing impoundments and landfills used for the disposal of CCW would be subject to groundwater monitoring requirements and requirements related to closure and postclosure care under the proposed regulations.

The EPA was supposed to make a final decision once the public comment period ended in September 2010, but it extended the comment period to November 2010. The EPA still is reviewing the more than 400,000 responses it received. The agency's decision also may take into account the results from its own assessment of 189 CCW impoundments across the country, which between 2008 and 2010 found 54 in fair condition and 51 in poor condition.

**Previous regulatory attempts**—These proposed regulations are not the first time that the EPA has considered regulation of CCW as a hazardous waste under RCRA. Environmental groups have worked for decades to give the EPA oversight. In 1978, the EPA proposed such a designation, but Representative Tom Bevill (D-Ala.) successfully delayed regulation by passing an amendment that required more study of the issue. Two EPA reports in 1988 and 1999 determined that CCW did not pose threats worthy of hazardous waste, but a final study in 2000 came to the opposite conclusion. Since then, coal industry lobbying effectively derailed EPA efforts to regulate CCW until the Kingston spill.

**Financial requirements**—In January 2010, the EPA also announced its intent to develop regulations establishing financial responsibility requirements for the electric generation industry, among other industries, and specifically discussed CCW as a reason for developing the new requirements.

**Disposal methods:** Current methods of CCW disposal include the following:

- “wet” disposal of ash slurry in surface impoundments, waste ponds held back by dams or dikes;
- “dry” disposal of ash in landfills (some lined and some unlined);
- “minefill” disposal in which coal combustion waste is used to fill depleted coal or other mines (often with no liners); and
- “beneficial reuse,” in which coal combustion waste is used in the manufacture of products such as concrete and gypsum wallboard, or is used as a component of agricultural fertilizer, roadways, dams and other applications.

About 38 percent of coal combustion waste is used in beneficial reuse applications, another 36 percent is “dry” landfilled, about 21 percent is disposed of in “wet” impoundments, and the remaining 5 percent is disposed of as mine fill, according to 2007 data from the Government Accountability Office.

**Beneficial reuse**—In March 2011, the EPA’s office of Inspector General issued a [report](#) concluding that the EPA promoted reuse of coal ash without properly testing the environmental risks. The report also recommended the EPA investigate whether action is needed at sites where the substance has been used as structural filler. Historically, the EPA has promoted Coal Combustion Products (CCPs). The EPA established a Coal Combustion Products Partnership (C2P2) in 2001 to work with federal and state government agencies as well as companies to reduce barriers to the commercialization of CCW. EPA stopped promoting beneficial uses and removed a related website, however, while it is assessing comment on the proposed rulemaking.

For the coal energy industry, beneficial reuse applications mean significantly reduced disposal costs—in some cases converting cost centers into profit centers. Sales of CCW for reuse applications generate \$5 to \$10 billion each year for coal-burning utilities, EPRI estimates. In addition to causing a loss of this income, a senior program manager for EPRI told *The New York Times* in [January 2010](#), a “hazardous” designation applied to CCW could cause disposal costs to increase exponentially, from \$10-\$15 per ton to as much as \$150 a ton, amounting to \$10 billion to \$15 billion in additional expenses for each year. An EPA classification of CCW as hazardous waste, even if there is an exemption clause for recycled CCW, could cause users of products like concrete and wallboard to shy away from the stigma of the hazardous designation. In addition, local government building codes might not allow their use.

**Potential health risks:** The EPA released a peer-reviewed report on the potential health risks of coal combustion waste in April 2010. That report, *Human and Ecological Risk Assessment of Coal Combustion Wastes*, found that there is a high risk of human exposure to carcinogens, such as lead, selenium, and arsenic, when CCW is deposited into unlined landfills and surface impoundments.<sup>1</sup> The EPA found that higher risks are associated with disposal in “wet” surface impoundment ponds, with unlined ponds having a significantly higher risk of leaching-related health effects. Although the current trends in disposal are toward “dry” landfill-type disposal in lined containment sites, the EPA report indicated that peak pollution from unlined surface impoundments can occur long after those sites are retired from use—as late as 78 to 105 years after the impoundments were first opened. The EPA report also listed another risk factor for health and ecological effects—the co-disposal of CCW with coal refuse, waste coal produced in preparation operations before coal combustion.

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<sup>1</sup> The report is widely cited in current publications but is not readily accessible on the internet. A 2007 draft of the report is available at <http://earthjustice.org/sites/default/files/library/reports/epa-coal-combustion-waste-risk-assessment.pdf>.

The EPA report indicated coal combustion wastes could pose an increased cancer risk from arsenic exposure via contaminated groundwater, as well as non-cancer risks such as damage to the liver, kidneys, lungs and other organs from exposure to metals and metalloids such as cadmium, cobalt, lead, selenium and boron. In terms of environmental impact, the most significant issues identified were elevated levels of boron, lead, selenium and arsenic, introduced into surface waters via groundwater leachate. These elements can enter the food chain and bio-accumulate in carnivores, such as fish and river otters.

The [Environmental Integrity Project \(EIP\)](#) and [Earthjustice](#), environmental advocacy groups, released a report in 2009, [Coming Clean: What the EPA Knows about the Dangers of Coal Ash](#), which analyzed data from a 2007 draft version of the EPA report. Building on these findings, in 2009 a coalition of more than 100 environmental advocacy groups sent a letter to the EPA Administrator calling for the creation of uniform national standards for the handling and disposal of coal ash, the phasing out of “wet” CCW impoundments and tougher requirements for “dry” landfill disposal standards.

In 2010, shareholder proponents withdrew a shareholder resolution at **FirstEnergy** that is similar to the one before Ameren when FirstEnergy agreed to eliminate “wet” surface impoundments for coal ash disposal at its utility operations. A FirstEnergy spokesman stated that this agreement was “simply consistent with our long-term strategy,” and that ending wet storage is a move it has been considering for some time. FirstEnergy is the first utility company to announce a policy to use only “dry” landfill disposal methods for its coal combustion wastes; the company operates only one wet storage facility, which is nearing capacity.

**CCW damage assessment**—The EPA also has conducted assessments of purported instances in which coal combustion wastes may have caused health and/or environmental harm. As part of its proposed rulemaking on CCW, the EPA noted that it had documented 27 cases of proven damages to ground or surface water and 40 cases of potential damages resulting from the mismanagement of CCW disposal.

**EPRI report**—In September 2009, the Electric Power Research Institute (EPRI), a utility industry trade group, released [Is Coal Ash Toxic?](#), a publication that concludes CCW does not pose a significant threat to human health or the environment when managed properly. The reports says,

The constituents found in coal ash are the same as those found in rocks and soils. And like other naturally occurring and man-made materials, coal ash contains some constituents that can be toxic. However, the mere presence of these constituents in coal ash does not equate to toxicity; the magnitude and duration of exposure to these constituents (the dose) must be sufficiently large to cause adverse health effects.

The EPRI report adds that less than 1 percent of fly ash, by weight, contains trace elements that can be toxic under certain exposure conditions, including arsenic, cadmium, chromium, copper, lead, mercury and selenium.

The key to determining whether that exposure is toxic, the report emphasizes, is establishing the bio-availability of the element, potential exposure pathways, and the “dose,” or magnitude of the exposure. Citing data from 2000 and 2002 EPA reports, EPRI argues that coal combustion wastes do not meet the definition of “toxic” for the two main potential human exposure pathways: windblown ash and groundwater leaching. In the case of accidental releases, such as the 2008 Kingston ash spill, EPRI acknowledges that human exposure to potentially toxic elements would be increased, but argues that “short-term contact...is unlikely to cause any acute health effects.” EPRI concludes, “At ash management facilities, public exposure to the constituents in coal ash can be minimized by standard operating practices. When an accidental release does occur, additional steps are taken to contain the release and limit the potential for public exposure.”

## II. Ameren and Coal Combustion Waste

Ameren is among the nation's largest investor-owned electric and gas utilities, with about \$24 billion in assets. The largest electric utility in Missouri and the second largest in Illinois, Ameren companies provide energy services to 2.4 million electric and nearly one million natural gas customers throughout its 64,000-square-mile territory. Ameren is the parent of two regulated electric utilities—Ameren Illinois and Ameren Missouri— and Ameren Energy Resources Co., LLC, which is the holding company for merchant generation, development, marketing and fuels services companies.

In 2010, coal represented 85 percent of Ameren's total electric generation, excluding purchased power. Ameren burned 39 million tons of coal, nearly all of which came from the Powder River Basin in Wyoming. In terms of generating capacity available for dispatch, Ameren companies' net generating capacity is approximately 16,900 megawatts, including Ameren's 80 percent share of generating stations in Joppa, Ill. Ameren's coal-fired plants represent around one-third of Ameren's total generating capability and just over half of Ameren Missouri's generating capability. (Ameren Illinois does not have any generating plants.) Ameren operates 11 coal-fired plants, including its 80 percent share in the Joppa, Ill., coal-fired station. Ameren Missouri operates four of these plants and the remaining eight are merchant generating facilities. In addition to its coal-fired plants, Ameren operates a nuclear facility in Callaway County, Mo., three hydroelectric plants in Missouri and Iowa, and more than a dozen combustion turbine facilities fueled by natural gas or oil.

Financials				
<b>Operating Revenue</b>	\$7,638 million	<b>Net Income</b>	\$139 million	<b>Reporting Year</b> 2010

### *Environmental Policy and Oversight*

**Policy:** Ameren has an [Environmental Policy](#) and a [Safety and Health Policy](#). Both policies have a goal of protecting employees, the public and the environment. The Environmental Policy states that it is the duty of each employee to comply with environmental laws and regulations, and the responsibility of each operating group to ensure such compliance (with assistance from Environmental, Safety & Health).

**Board oversight:** Ameren's board of directors has a Nuclear Oversight and Environmental Committee to assist the board in providing oversight of Ameren's policies, practices and performance relating to environmental affairs. These activities include compliance with applicable federal and state governmental requirements relating to the environment and the promotion of efficiency in the generation, distribution and end use of energy. The Nuclear Oversight and Environmental Committee coordinates this oversight with the board's Audit and Risk Committee, which has been delegated oversight responsibility of the company's overall business risk management process.

### *Coal Combustion Waste*

Management declined to respond to any of Si2's inquires about its CCW practices and operations. The following information is derived from Ameren's filings with the U.S. Securities and Exchange Commission (SEC), including the shareholder resolution, and Ameren's website. Eight of Ameren's 12 coal-fired power plants produce more than two million tons of fly ash and bottom ash annually. To manage and/or dispose of its coal ash, Ameren's subsidiaries construct and operate on-site storage ponds and on-site landfills. Ameren subsidiaries also reuse more than half of the CCW they generate.

**Ash ponds and landfills:** Ameren operates 35 active coal ash ponds, including 19 unlined ones, according to the shareholder resolution. Ameren reported to the EPA that it is not aware of any spills or unpermitted releases of CCW from its surface impoundments to surface water or to the land in the last ten years. Ameren's subsidiaries tailor the design and operation of their ash storage ponds and landfills to

applicable federal, state and local regulatory requirements. State and local regulatory authorities review the design of these facilities and associated monitoring systems through a framework of facility-specific permits and operating plans. Management says that Ameren's subsidiaries have programs in place to ensure the safety and integrity of dams and dikes at on-site surface impoundments. In addition, its ash disposal landfills use monitoring wells. Frequency of monitoring varies, depending on state or local requirements, but at a minimum occurs semi-annually. Monitoring results are reported to state or local authorities as required by the facility monitoring plan or permit.

In addition to possible new federal regulatory approaches to surface ponds and landfills, the Illinois EPA has requested that Ameren and its subsidiaries establish groundwater monitoring plans for their active and inactive ash impoundments in that state. Ameren has entered into discussions with the Illinois EPA about a framework for closure of ash ponds, including ash ponds at its Venice, Hutsonville, and Duck Creek generating facilities, when such facilities ultimately are taken out of service. Below are descriptions of some of Ameren's ash management sites derived from the company's 10-K and the shareholder resolution:

- **Venice, Ill.** The Venice plant operated as a coal fired power plant from approximately 1942 to the mid-1970s and then was converted to burn natural gas or oil. The shareholder resolution says that leaching of CCW contaminants from inactive unlined ponds at the Venice coal plant has resulted in high concentrations of arsenic, boron, and cadmium in excess of federal and state standards at the plant site and in off-site groundwater wells. The resolution adds that costs of containment and clean-up, in addition to an estimated \$11.2 million to cap the ponds, are currently unknown but may be significant. Because levels of some chemicals in groundwater exceed Illinois' groundwater quality standards, Ameren plans to implement a groundwater management zone at the Venice station. To close the ponds, Ameren has proposed placing a synthetic cover over the top of the ash and continued monitoring of the concentration of chemicals in the groundwater. The Illinois EPA has issued its interim approval for closure of these ash ponds.
- **Duck Creek plant in Canton, Ill.:** In December 2004, AmerenEnergy Resources Generating Co. (AERG) submitted a plan to the Illinois EPA to address groundwater and surface water issues associated with the recycle pond, ash ponds and reservoir at Duck Creek. In 2010, AERG closed the recycle pond system. At the end of 2010, AERG recorded a liability of \$0.1 million for the remaining remediation work on the recycle pond. Additionally, at the end of 2010 AERG has an asset retirement obligation of \$23 million for the eventual closure of the Duck Creek ash ponds, which is estimated to occur between 2014 and 2017.
- **Labadie, Mo.:** Ameren's 1992 water permit application for the Labadie, Mo., power plant noted that an unlined CCW pond in use since 1970 was leaking up to 51,000 gallons per day, according to the shareholder resolution. The proponents charge that there is no indication that the leaks have been remedied or that any measures to monitor groundwater or address on-site contamination are in place.
- **Hutsonville, Ill.:** In October 2010, the Illinois Pollution Control Board approved a site-specific plan proposed by Ameren and the Illinois EPA that include detailed closure requirements for an ash pond. Those closure requirements include capping and covering the pond, groundwater monitoring and the establishment of alternative groundwater standards. This plan is expected to be used by the IEPA in subsequent pond closures.
- **Coffeen, Ill.:** An Ameren subsidiary is responsible for the cleanup of a former coal ash landfill in Coffeen. At the end of 2010, the subsidiary estimated that obligation at \$0.5 million to \$6 mil-

lion. The company recorded a liability of \$0.5 million to represent its estimated minimum obligation for this site, reporting that no other amount within the range was a better estimate.

- **Sioux, Mo.:** Ameren Missouri recently voluntarily increased the synthetic liner thickness at its Sioux Plant landfill to provide additional protection for groundwater.

**Beneficial reuse:** Ash from Ameren coal plants is recycled into concrete production, paint manufacturing, road construction and roofing products and structural fills. Ameren estimates this reuse reduces more than 180,000 tons of CO<sub>2</sub> annually. Management says in the 2011 proxy statement that Ameren has made significant investments in research and development to find innovative ways to beneficially use CCBs and has funded several projects that use CCBs. One example is a concrete packaging facility that Ameren opened in 2006 in Labadie, Mo. The facility recycles more than 10,000 tons of fly ash and 60,000 tons of bottom ash each year into 2 million bags of high-quality concrete mix.

### **Reporting**

**2010 10-K:** In Ameren's 2010 10-K, management discloses that the "handling and storage of fossil-fuel combustion byproducts, such as coal ash," is one of the operational risks that could materially adversely affect the results of operations, financial position and liquidity of its electric generating, transmission and distribution facilities

Management also discusses pending federal regulation, noting in the 2010 10-K that the EPA is developing numerous new environmental regulations that will have a significant impact on the electric utility industry. Management adds that these regulations, including one governing coal ash impoundments, could be particularly burdensome for companies such as Ameren and its subsidiaries that operate coal-fired power plants. Management further reports that Ameren and its subsidiaries are evaluating all of the proposed regulations to determine whether their current management of CCB, including beneficial reuse and the use of the ash ponds should be altered. Ameren and its subsidiaries also are evaluating the potential costs associated with compliance with the proposed regulation of CCB impoundments and landfills, says the 10-K, adding that the costs "could be material, if such regulations are adopted." The Form 10-K also warns that all of the actions required to ensure that Ameren's facilities and operations are in compliance with environmental laws and regulations could be prohibitively expensive and could require the company to close or significantly alter the operation of its generating facilities,

The 2010 10-K also reports on the EPA's January 2010 announcement of its intent to develop regulations establishing financial responsibility requirements for the electric generation industry, and that the EPA specifically discussed CCB as a reason for developing the new requirements.

**Costs—**Ameren's 2010 10-K did not provide any cost data specific to CCW beyond the data on the Coffeen and Duck Creek plants as discussed above. Its 2010 10-K did report combined estimates of the known capital costs to comply with existing environmental regulations and its preliminary assessment of the potential impacts of the EPA's proposed regulations for coal combustion byproducts, the Clean Air Transport Rule, and the revised ambient air quality standards for SO<sub>2</sub> and NO<sub>x</sub> emissions as of the end of 2010. The combined estimates start at \$170 million in 2011 and climb to \$1.7 billion in 2020 for a total estimated cost of \$3.6 billion by 2020. The estimates assume that coal combustion byproducts will ultimately be regarded as nonhazardous.

Ameren's 10-K also noted that Ameren and its subsidiaries have recorded AROs (Asset Retirement Obligations), based on current laws, for the estimated costs of the retirement of ash ponds.

**Website:** Ameren posts an environmental report published in 2007 on its website. The 55-page report, [\*Stewardship — Balancing the Needs of Our Environment, Our Customers and Our Economy\*](#), focuses on the corporation's actions and policy position on climate change. The report was written as part of a ne-

gotiated withdrawal of a shareholder resolution on Ameren's greenhouse gas emissions. The report contains a few references to and descriptions of the management and beneficial use of CCBs.

Ameren includes a section on its website entitled "[Ash Management](#)" that highlights Ameren Fuels and Services' capabilities and services for potential users of coal ash.

**EPA:** In response to the Kingston coal ash spill (see Section I), the EPA conducted a survey of the coal ash surface impoundments at the nation's coal plants to evaluate their structural integrity. Ameren and its subsidiaries participated in the survey in 2009 and 2010, and their brief responses are on the EPA website. Ameren's responses to the 10-question survey generally were under two pages. All of Ameren's responses indicated that no state or federal regulatory official has inspected or evaluated the safety (structural integrity) of the management units and that the company was not aware of a planned state or federal inspection or evaluation in the future.

### III. Proponent Position

The shareholder proponents, the School Sisters of Notre Dame (Midwest Coalition for Responsible Investment), do not believe that Ameren is doing enough to address the risks of CCW. In addition, Barbara Jennings of the School Sisters does not believe the company is disclosing to investors the significance of the risks—both regulatory and reputational—associated with their CCW storage practices, or providing sufficient information on how the risks will be managed. Jennings points out that it could cost utilities significant sums if CCW is designated a hazardous waste, and that such a designation would likely affect shareholder value.

Jennings told Si2 that Ameren's CCW practices came to the proponents' attention as the result of Ameren's attempt to place a new coal ash landfill in the Missouri River floodplain at the Labadie plant. Noting that 50 percent of Missourians drink from Missouri River water and that St. Louis is only 30 miles downstream, Jennings would like to see Ameren's evaluation of alternative sites as well as an analysis of the financial risks if a flood caused leaks into drinking water. Jennings recalled that Ameren's Taum Sauk Reservoir (at a pumped storage facility) breached its banks because of heavy rains in December 2005, leading to the release of 1.5 billion gallons of water and severely damaging a state park. Jennings also told Si2 that local residents believe Ameren is trying to get approval for the new landfill at Labadie before EPA's new rules go into effect, calling into question Ameren's commitment to protect public health and the environment.

Jennings says Ameren has not been forthcoming about contamination at the Venice plant or past leaks at the Labadie plant. Jennings also criticizes Ameren's response to an EPA questionnaire of its coal ash disposal practices, saying Ameren's response offered limited disclosure and was insufficient for investors' decision-making. Jennings also notes the EPA survey was sent, at least in part, to provide data for EPA's proposed rulemaking on CCW. The proponents conclude that an increasing number of studies and reports underscore that current practices for storing, managing, reusing and disposing of CCW are "1) insufficient to protect human and environmental health, and 2) insufficient to protect utilities from financial and regulatory risk." If Ameren loses the trust of its customers and the public, it will be more difficult to undertake major new projects and recover costs, say the proponents.

### IV. Management Position

Management opposes the resolution, saying that it is not necessary, prudent or cost-effective to prepare the requested report given actions it already undertakes. Management says that Ameren fulfills its commitment to safety and environmental compliance, and that a board committee oversees Ameren's policies, practices and performance relating to environmental affairs. Ameren's subsidiaries have safely

managed CCBs at their facilities for decades, adds management, and their on-site storage ponds and landfills are constructed and operated in compliance with state and local environmental requirements and are protective of public health and the environment. Ameren's subsidiaries also strive to make advantageous use of CCBs, noting that ash reuse has many associated environmental and economic benefits, including a reduction in energy consumption, greenhouse gases, need for additional landfill space and raw material consumption.

With regard to disclosure, management says that it provides "extensive, detailed information" about management of CCBs to the EPA that is released on the EPA's website. Moreover, management says that notes to the company's financial statements in filings with the SEC disclose that the company is evaluating all of the proposed state and federal regulations that may affect its coal ash management to determine whether current management of CCBs, including beneficial reuse, and the use of the ash ponds should be altered. In addition, Ameren has disclosed in its filings certain risks related to coal ash management and risk mitigation measures, including plans to install caps and covers at some existing ponds. Management concludes that "Ameren's existing policies, together with board oversight and the regulatory process, will appropriately and adequately address the potential issues raised by this proposal."

## V. Analysis

### *Key Points at Issue*

- Is coal combustion waste a significant issue for the electric utility industry?
- Is Ameren doing enough to ensure that its coal combustion waste is disposed of or reused in an environmentally responsible manner?
- Do investors already have sufficient information about Ameren's coal combustion waste practices?

Si2's [Briefing Paper on Natural Resource Management](#) issues contains a general analysis of issues investors may want to consider when voting on this topic (pp. 28-29). Additional considerations relating to coal combustion waste and Ameren are discussed below.

### *Coal Combustion Waste*

Coal combustion waste has received significant attention in the last few years. The debate over whether to designate CCW as a hazardous waste under the Resource Conservation and Recovery Act has become hotly contested. The EPA closed a public comment period in November 2010 on proposed regulations that could treat CCW as a hazardous waste. Most recently, in March 2011, the EPA's office of Inspector General issued a report concluding that the EPA promoted the reuse of coal ash without properly testing the environmental risks. In addition, problems with coal combustion waste were thrust into the public eye in December 2008, when dikes holding back a series of fly ash slurry impoundments at a Kingston, Tenn., coal-fired plant failed in the middle of the night three days before Christmas. About 1.1 billion gallons of fly ash sludge spilled into the Emory River and surrounding area, covering some 300 acres. The cleanup cost has been estimated to reach \$1.2 billion.

Shareholders may wish to base their vote on this proposal on their view of whether coal combustion waste has become a significant enough public and regulatory concern that it could significantly alter the economics of coal generation for Ameren, which relied on coal for 85 percent of its total electric generation in 2010. Those who agree with the proponent that the issue has provoked significant concerns may vote in favor of the proposal as a way to signal the company that shareholders are concerned about the issue's potential impact on Ameren and its industry in general. Investors who think that management

has the controversy well in hand and that it is not likely to negatively affect Ameren's ability to continue to generate electricity from coal may choose to vote against the resolution. So may those who agree that management is uniquely qualified to recognize and respond to this and other issues of significance to the company's business interests.

### **Compliance**

There has been increased activity at both the federal and state level regarding additional regulation of ash pond facilities and CCW, and recent EPA findings may warrant increased remediation for operations that have been in compliance with state and local regulations. An April 2010 EPA report found a high risk of human exposure to carcinogens when CCW is deposited into unlined landfills and surface impoundments, especially unlined "wet" surface impoundments. Ameren operates 19 unlined coal ash ponds. The EPA indicated that peak pollution can occur as late as 78 to 105 years after the impoundments were first opened. EPA's March 2011 report also recommended investigations at sites where CCW has been reused as structural filler.

Some investors may believe that Ameren's responsibility is to comply with applicable regulations, and that it is the government's responsibility to make regulations more stringent when warranted. Those investors need to further consider whether the company is well poised to adapt to changing regulations or whether the requested report would assist both management and investors in assessing the implications of potential new regulations. Other investors may agree with the proponents that it would be prudent for the company to go "above and beyond" current compliance efforts given the evolving regulatory environment and potential costs of remediation. Investors may note that shareholder proponents withdrew a similar shareholder resolution at FirstEnergy when it became the first utility company to announce a policy to use only "dry" landfill disposal methods for its coal combustion wastes and to eliminate "wet" surface impoundments for coal ash disposal at its utility operations.

Moreover, in its 2010 Form 10-K, Ameren's management noted that its preliminary cost estimates associated with proposed regulations for CCW assume that it will continue to be regulated as a nonhazardous waste. Shareholders concerned that EPA may decide to regulate CCW as a hazardous waste may want more information on how such a designation would affect Ameren's operations, both from an operational and financial standpoint.

### **Disclosure**

The proponents would like management to report on how its efforts regarding CCW may reduce legal, reputational and other risks to the company's finances and operations. Ameren includes limited information on its CCW operations in its 2010 Form 10-K and on its website, and in a publicly available survey response to the EPA on impoundment safety (all discussed in Section II).

Other companies have provided fuller information on CCW. In 2010, in response to a similar shareholder resolution, **Southern Co.** prepared and posted on its website a [Coal Combustion Byproducts report](#) that provides an overview of its affiliates' production and management of coal combustion byproducts, as well as steps it is taking in this area beyond current compliance. Similarly, **MDU Resources Group** issued a 33-page [report](#) on the subject after a similar shareholder resolution came to a vote in 2010, and **CMS Energy** made a [report](#) available on its website following a similar vote. Proponents withdrew a resolution filed at **Xcel Energy** in 2010 when the company agreed to increase disclosure regarding caps and liners for CCW storage facilities, descriptions of groundwater monitoring activities, descriptions of projects for beneficial reuse of CCW and more efforts at education to inform shareholders of EPA regulations about CCW and resources for more information.

Shareholders who vote in favor of the proposal may do so because they agree with the proponent that more information on Ameren's CCW practices is necessary. They may believe investors need such information to adequately value their holdings and fulfill their fiduciary responsibilities, or because they believe that increased disclosure on the issue would help to focus management's attention on the issue or calm the fears of critics. Others may agree with management that preparing and producing the requested report would be an unwise use of company resources, and/or may feel the requested report could draw more negative attention to a routine operation and unavoidable result of Ameren's heavy reliance on coal generation.

## V. Resources

### Company and Industry Reports and Documents

- Ameren's 2010 Proxy Statement  
<http://www.sec.gov/Archives/edgar/data/1002910/000119312511060782/ddef14a.htm>
- Ameren's 2010 Company 10-K  
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