STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISION

Illinois Commerce Commission On Its Own Motion	:	
	:	
Rulemaking concerning the establishment of mandatory provisions for money pool agreements involving public utilities and incumbent local exchange carriers	:	Docket No. 02-0581

REPLY BRIEF ON EXCEPTIONS OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION ON PROPOSED RULE ON MONEY POOL AGREEMENTS

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NOW COMES the Staff of the Illinois Commerce Commission ("Staff") and pursuant to Section 200.830 of the Illinois Commerce Commission Rules of Practice (83 Ill. Adm. Code 200.830), respectfully submits this reply brief on exception.

I. INTRODUCTION

Briefs on Exceptions ("BOE") to the Administrative Law Judge's (ALJ) Proposed Order ("PO") were filed by Staff, Northern Illinois Gas Company ("Nicor Gas"), Citizens Telecommunications Company of Illinois ("CTC") and Verizon North Inc. and Verizon South Inc. (collectively, "Verizon").

Staff's comments previously filed in this rulemaking proceeding have addressed the arguments raised by Nicor Gas, CTC and Verizon in their BOEs. For the reasons set forth in those comments the Commission should reject Nicor Gas', CTC's and Verizon's arguments. Although addressed in Staff's previously filed comments, Staff will again respond to Verizon's argument that the proposed rule is unnecessary, overly restrictive and inflexible. Staff will also respond to certain arguments raised by CTC. Staff will not respond again to the arguments raised by Nicor since Staff has thoroughly explained its opposition to allowing a utility to borrow outside the money pool agreement in order to make loans to a parent company. Staff Rebuttal Comments, pp. 7-8 and Staff Surrebuttal Comments, pp. 26-27. Further, Nicor did not explain what utility or public interest would be furthered by its proposal.

In addition, with respect to subsection 340.40(h), which sets forth filing requirements for a utility to demonstrate that an affiliate meets one of the eligibility requirements under subsection 340.40(b), Staff recommends a modification to subsection 340.40(h). This modification to subsection 340.40(h) is necessary so that there is no misunderstanding as to the number of reports from credit rating agencies required to be filed under 340.40(b). Staff's recommended revised language for 340.40(h) is described below and noted in underline in an attachment to this brief.

II. ARGUMENT

A. The Proposed Rule On Money Pool Agreements Is Necessary, Appropriate, and Flexible.

Verizon argues that the proposed Rule on Money Pool Agreements is unnecessary, overly restrictive and inflexible. Staff addressed these arguments in its comments previously filed in this proceeding. Staff's Initial Comments set forth that the proposed rule was designed to achieve three objectives. Those objectives are: (1) to enhance the safety of utility money deposited with or loaned, advanced or temporarily transferred to affiliates; (2) to ensure that any utility money lent, advanced, or transferred to affiliates does not hinder the utility from carrying out its duty to provide safe, adequate, and reliable utility service; and (3) to ensure that utilities do not unjustly subsidize affiliates. Staff Initial Comments, p. 2. These objectives are consistent with the Commission's stated goal to protect the "interests" of Illinois Public Utilities and incumbent local exchange carriers. (Docket No. 02-0581 Initiating Order, p. 1). In order to achieve the Commission's goal of protecting the interests of Illinois Public Utilities and incumbent local exchange carriers, the Commission should adopt the ALJ's proposed rule on Money Pool Agreements as amended as shown in the attachment to this brief.

Verizon's criticism of the rule consists of unsubstantiated vague generalities. Verizon fails to specify the unique financial situation of the entity seeking approval, the future security innovations and the future changes in the field of credit ratings. Verizon BOE, pp 3-4. Staff recognizes that restricting the use of money pool agreements has costs. When properly administered, money pool agreements can reduce both administrative and interest costs for participants. However, money pool agreements are not an exception to the financial rule that no benefit can be obtained without paying a price. To gain the benefits associated with money pool agreements, risks are incurred; namely, utility surplus funds are not diversified and a utility's insulation and independence from unregulated, non-utility affiliates is reduced. Staff Rebuttal Comments, pp. 2-3. In Staff's opinion the Proposed Order has achieved a proper balance between risk and return (i.e., benefit).

Finally, as Staff pointed out in its Rebuttal and Surrebuttal Comments recent history has shown that financially troubled companies will use utility affiliates to obtain financing to the detriment of those utilities. The proposed rules are designed to prevent those types of transactions. With the rules in place utility interests will be better protected. Staff Rebuttal Comments, pp. 2-3 and Staff Surrebuttal Comments, p. 4.

B. The Proposed Rule's Minimum Credit Rating Requirements for Non-Utility Affiliates to Borrow from Utilities are Necessary to Reduce the Lending Utility's Exposure to Default and Liquidity Risk.

Verizon claims that that the proposed rule, because of its credit quality requirements, would put any financially distressed utility in a precarious financial position. CTC states that the Illinois utility is precluded from participating in a money pool arrangement under the proposed rules if it does not meet the high-grade rating floor. However, the credit rating requirements do not apply to the utility. The ability of the utilities to obtain funds remains flexible under the requirements of Section 340.30. Section 340.40 would only restrict the utility's ability to lend funds; it would in no way hinder the liquidity of an Illinois utility. Section 340.40 is intended to restrict access to the utility's money by affiliates that are unrelated to the functions of the utility and are of questionable financial condition. Thereby, the liquidity of the utility would be enhanced, given the higher level of assurance that the utility will be able to recover money lent to affiliates on demand.

CTC claims that the Commission should not rely on the credit rating agencies to determine if Illinois utilities and telecommunications carriers should be allowed to participate in money pool agreements. Verizon proposes to eliminate the credit rating requirements of Sections 340.40 and 340.50. Staff rejects the position of both CTC and Verizon. The ratings provided by the credit rating agencies are an invaluable tool utilized by the financial community in assessing the financial strength of companies. The short-term ratings emphasize the liquidity necessary to meet financial commitments in a timely manner. The Commission can rely upon the opinion of the credit rating agencies as to the creditworthiness of a company to ascertain whether an affiliate is financially capable of repaying the utility for funds advanced under a money pool agreement. No evidence has been presented to the contrary.

Verizon's arguments for lowering the required commercial paper ratings to be consistent with the Investment Company Act of 1940 should be rejected as explained in Staff's Rebuttal Comments at page 9. CTC's position that the investment grade ratings are sufficient should also be rejected. The PO correctly concludes that the high-grade ratings are the appropriate minimum standard for affiliates to be able to borrow funds from the utility. As Staff has repeatedly argued, high-grade credit ratings provide a high level of assurance that a utility will be able to recover money lent to an affiliate on demand. Staff Rebuttal Comments, pp. 9-11 and Staff Surrebuttal Comments, pp. 16-23.

The Commission should disregard Verizon's argument that there will be unanticipated changes in credit agency criteria for maintaining credit ratings. Any changes to the credit rating agencies or the credit ratings themselves can be handled if and when they impact the effectiveness of these rules.

C. The Reporting Requirements in Section 340.60 are Essential for Ensuring Compliance with the Rule.

The Section 340.60 reporting requirements are designed to ensure compliance with the proposed rules by allowing Staff to monitor transactions between affiliates and utilities pursuant to Commission-approved money pool agreements. The PO agrees with Staff that the reporting is essential to keep Staff informed of the money pool transactions involving an Illinois utility. The PO reflects Staff's proposed revision to Section 340.60(c) to incorporate the notification of new participants in the money pool into the quarterly report. The PO also reflects Staff's proposed revision to Section 340.60(d) to limit the ten-day reporting requirement to downgrades that result in a credit rating below high-grade. Other changes in credit ratings can be reported on a quarterly basis, as Verizon requested.

D. Section 13-601 Does Not Exempt the "Non-Competitive" Cash Flow of a Telecommunications Carrier that also provides Noncompetitive Services from Section 7-102

CTC argues that Section 340.10(b) should exempt from Sections 340.30 and 340.40 loans of surplus funds generated from incumbent local exchange carrier's non-competitive services. (CTC BOE, pp.3-5) CTC initially addressed this exemption in its reply comments. Staff responded to CTC's exemption request in its rebuttal comments. Staff pointed out that by accepting CTC's proposed exemption, protecting a utility's non-competitive services would be impossible since both non-competitive and competitive services share much of the same capital investment. Thus, non-competitive service cash flows would not be sufficient to support a telecommunication carrier's infrastructure alone. (Staff Rebuttal Comments, pp. 4)

In its reply comments CTC made a policy argument to support its exemption. CTC argued that because the rules <u>would not</u> be imposed on companies that <u>only</u> provide competitive telecommunication service and competitive local exchange providers (all services), the rules would undermine an incumbent local exchange carrier’s ability to provide competitive service and its ability to compete with telecommunication carriers not subject to the rules. (CTC Reply Comments, pp. 7-8). In its exceptions CTC now attempts to support such an exemption with a legal argument. CTC argues now that the first sentence of Section 13-601 limits the application of Article VII to the Commission’s regulation of noncompetitive telecommunication services. CTC BOE, pp. 3-5). CTC’s statutory interpretation of Section 13-601 is incorrect.

The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Bruso v. Alexian Brothers Hospital, 178 Ill. 2d 445 (1997). In determining the legislature's intent, the court considers the plain and ordinary meaning of the statute's language in the overall context of its reason and necessity and its stated purpose. Illinois Bell Telephone Co. v. Illinois Commerce Commission, 282 Ill. App. 3d 672 (1996). Under CTC’s reading of Section 13-601 the “Commission’s regulation thereof” refers to just “the Commission’s regulation of noncompetitive telecommunication services” and not to “the Commission’s regulation of telecommunications carriers offering or providing noncompetitive telecommunications services”. CTC’s interpretation should be rejected. The statute clearly provides for Article VII regulation of telecommunications carriers that offer or provide noncompetitive telecommunications services not just the regulation of those noncompetitive telecommunications services.

CTC confuses the meaning of the first sentence in Section 13-601. The first sentence of Section 13-601 simply provides that the provisions of Article VII and the Commission’s regulation pursuant to Article VII are applicable only to telecommunications carriers offering or providing noncompetitive telecommunication services. Any other interpretation does not make sense.

E. Subsection 340.40(h) Requires Modification

Subsections 340.40(h)(1)-(5) and (7) state that "reports from three credit rating agencies" (emphasis added) are to be provided. However, subsections 340.40(b)(1)-(5) and (7) only require reports from at least two credit rating agencies and a third if the credit rating agency's rating exists. This contradiction in the number of credit rating agencies might cause some confusion as to how many credit rating agencies reports are required under 340.40(b). By adding subsection 340.40(h) Staff did not intend to change the number of reports that are required under subsection 340.40(b). Therefore, Staff recommends that the word "three" be stricken and replaced with the phrase "two or if available three" in subsection 340.40(h): (1), (2)(B), (3), (4)(B), (5)(C), and (7)(C)(ii). Staff's final proposed modifications to the ALJ's proposed rule are attached to this brief.

III. CONCLUSION

WHEREFORE, for the reasons set forth above and those previously stated in its exceptions, the Staff of the Illinois Commerce Commission respectfully requests that its modifications to the Administrative Law Judge's Proposed Order and Proposed Rule on Money Pool Agreements be adopted and those of Nicor Gas, CTC and Verizon be rejected.

Respectfully submitted,

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