

1                                   BEFORE THE  
2                                   ILLINOIS COMMERCE COMMISSION

3           ILLINOIS POWER COMPANY and                                   ) DOCKET NO.  
4           AMEREN CORPORATION    ) 04-0294

5           Application for authority to                                   )  
6           engage in a reorganization and to                                )  
7           enter into various agreements in                                 )  
8           connection therewith, including                                 )  
9           agreements with affiliated                                        )  
10          interests, and for such other                                    )  
11          approvals as may be required under                               )  
12          the Illinois Public Utilities Act                                 )  
13          to effectuate the reorganization.                                )

14                                   Springfield, Illinois  
15                                   August 10, 2004

16                   Met, pursuant to notice, at 4:00 P.M.

17           BEFORE:

18                   MR. JOHN ALBERS, Administrative Law Judge

19           APPEARANCES:

20                   MR. MICHAEL EARLEY  
21                   MR. CHRISTOPHER W. FLYNN  
22                   Jones Day  
                  77 West Wacker  
                  Suite 3500  
                  Chicago, Illinois 60601-1692

                  (Appearing on behalf of Ameren  
                  Corporation via teleconference)

                  SULLIVAN REPORTING COMPANY, by  
                  Carla Boehl, Reporter, CSR License #084-002710

1 APPEARANCES: (Cont'd)

2 MR. DAVID I. FEIN  
3 550 West Washington Boulevard  
4 Suite 300  
5 Chicago, Illinois 60661

6 (Appearing on behalf of Constellation  
7 NewEnergy, Inc., via  
8 teleconference)

9 MR. CARMEN L. FOSCO  
10 MS. CARLA SCARSELLA  
11 160 North La Salle Street  
12 Suite C-800  
13 Chicago, Illinois 60601

14 (Appearing on behalf of the Staff of the  
15 Illinois Commerce Commission via  
16 teleconference)

17 MS. FREDDI L. GREENBERG  
18 1603 Orrington Avenue  
19 Suite 1050  
20 Evanston, Illinois 60201

21 (Appearing on behalf of Aquila Merchant  
22 Services, Inc., via teleconference)

MR. SIMON HALFIN  
77 West Wacker Drive  
Chicago, Illinois 60601

(Appearing on behalf of Peoples Energy  
Company via teleconference)

22

1 APPEARANCES: (Cont.'d)

2 MR. JOSEPH L. LAKSHMANAN  
3 500 South 27th Street  
4 Decatur, Illinois 62521-2200

5 (Appearing on behalf of Illinois Power  
6 Company and Dynegy, Inc.)

7 MR. OWEN MacBRIDE  
8 Schiff, Hardin & Waite  
9 6600 Sears Tower  
10 Chicago, Illinois 60606

11 (Appearing on behalf of the Illinois  
12 Power Company via teleconference)

13 MR. JAMES P. MOODY  
14 Cavanagh & O'Hara  
15 407 East Adams Street  
16 Post Office Box 5043  
17 Springfield, Illinois 62705

18 (Appearing on behalf of IBEW Locals 51,  
19 309, 702 & 1306)

20 MR. WILLIAM A. MURRAY  
21 Fourth Floor  
22 Municipal Center East  
Springfield, Illinois 62757

(Appearing on behalf of the City of  
Springfield)

MR. E. GLENN RIPPIE  
Foley & Lardner, LLP  
321 North Clark Street  
Suite 2800  
Chicago, Illinois 60610

(Appearing on behalf of the Exelon  
Companies via teleconference)

22

1 APPEARANCES: (Cont'd)

2 MR. RYAN ROBERTSON  
3 Lueders, Robertson & Konzen  
4 1939 Delmar Avenue  
5 P.O. Box 735  
6 Granite City, Illinois 62040

7 (Appearing on behalf of the Illinois  
8 Industrial Energy Consumers via  
9 teleconference)

10 MS. SUSAN L. SATTER  
11 MR. MARK KAMINSKI  
12 100 West Randolph  
13 Chicago, Illinois 60601

14 (Appearing on behalf of the People  
15 of the State of Illinois via  
16 teleconference)

17 MS. TRISHA CROWLEY  
18 102 North Neil  
19 Champaign, Illinois 61820

20 (Appearing on behalf of the Cities of  
21 Champaign and Urbana via teleconference)

22 MR. CHRISTOPHER J. TOWNSEND  
MR. WILLIAM A. BORDERS  
Piper Rudnick  
203 North La Salle Street  
Suite 1500  
Chicago, Illinois 60601-1293

(Appearing on behalf of the Coalition of  
Retail Energy Suppliers via  
teleconference)

1 APPEARANCES: (Cont'd)

2 MS. JANIS E. VON QUALEN  
3 527 East Capitol Avenue  
4 Springfield, Illinois 62701

5 (Appearing on behalf of the Staff of the  
6 Illinois Commerce Commission)

7 MR. STEPHEN WU  
8 208 South La Salle Street  
9 Chicago, Illinois 60604

10 (Appearing on behalf of the Citizens  
11 Utility Board via teleconference)

12

13

14

15

16

17

18

19

20

21

22

I N D E X

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

WITNESSES  
(None)

DIRECT    CROSS    REDIRECT    RECROSS

EXHIBITS  
(None)

MARKED    ADMITTED

## 1 PROCEEDINGS

2 JUDGE ALBERS: By the authority vested in me by  
3 the Illinois Commerce Commission, I now call Docket  
4 Number 04-0294. This docket was initiated by  
5 Illinois Power Company and Ameren Corporation. The  
6 Joint Applicants seek authority to engage in  
7 reorganization and to enter into various other  
8 agreements in connection therewith.

9 May I have the appearances for the record,  
10 please? Why don't we start in the Springfield  
11 location.

12 MR. LAKSHMANAN: Joseph L. Lakshmanan, 500  
13 South 27th Street, Decatur, Illinois 62521,  
14 appearing on behalf of Illinois Power Company and  
15 Dynegy, Inc.

16 MS. VON QUALEN: Janis Von Qualen and also  
17 Carla Scarsella and Carmen Fosco on behalf of the  
18 Staff of the Illinois Commerce Commission, 527 East  
19 Capitol Avenue, Springfield, Illinois 62701.

20 MR. MOODY: Jim Moody on behalf of the IBEW  
21 Local, Intervenors, address is 407 East Adams  
22 Street, Springfield, Illinois 62701.

1           MR. MURRAY: William Murray on behalf of the  
2 City of Springfield, 800 East Monroe, Springfield,  
3 Illinois 62757.

4           MS. SATTER: Susan L. Satter and Mark Kaminski  
5 appearing on behalf of the People of the State of  
6 Illinois, 100 West Randolph Street, Chicago,  
7 Illinois 60601.

8           MR. WU: Stephen Wu appearing on behalf of the  
9 Citizens Utility Board, 208 South LaSalle, Chicago  
10 Illinois 60604.

11          MR. MacBRIDE: Appearing on behalf of Illinois  
12 Power Company and Dynegy, Inc., Owen MacBride, 6600  
13 Sears Tower, Chicago, Illinois 60606.

14          MR. FLYNN: Appearing on behalf of Ameren  
15 Corporation, Christopher W. Flynn and Michael  
16 Earley, Jones Day, 77 West Wacker, Suite 3500,  
17 Chicago, Illinois 60601.

18          MR. RIPPPIE: On behalf of the Exelon companies,  
19 Glenn Rippie, Foley and Lardner, LLP, 321 North  
20 Clark Street, Chicago, Illinois 60610.

21          MR. FEIN: On behalf of Constellation  
22 NewEnergy, Inc., David I. Fein, 550 West Washington

1 Boulevard, Suite 300, Chicago, Illinois 60661.

2 MR. ROBERTSON: Appearing on behalf of IIEC,  
3 Ryan Robertson, Lueders, Robertson and Konzen, LLC,  
4 P.O. Box 735, 1939 Delmar Avenue, Granite City,  
5 Illinois 62040.

6 MR. HALFIN: On behalf of Peoples Energy  
7 Company, Simon Halfin, 77 West Wacker Drive,  
8 Chicago, Illinois 60601.

9 JUDGE ALBERS: Wait a minute. Sir, could you  
10 please spell your name? We didn't catch that.

11 MR. HALFIN: Simon Halfin, H-A-L-F as in Frank  
12 L-I-N.

13 MS. GREENBERG: On behalf of Aquila Merchant  
14 Services, Inc., Freddi L. Greenberg, 1603 Orrington  
15 Avenue, Evanston, Illinois 60201.

16 MR. TOWNSEND: On behalf of collectively  
17 Constellation NewEnergy, Inc., Direct Energy  
18 Marketing, Inc., MidAmerican Energy Company, and  
19 Peoples Energy Services Corporation, as the  
20 Coalition of Retail Energy Suppliers, the law firm  
21 of Piper Rudnick, 203 North LaSalle, Chicago,  
22 Illinois 60601, by Christopher J. Townsend and

1 William A. Borders.

2 MS. CROWLEY: On behalf of the City of  
3 Champaign-Urbana, Trisha Crowley, deputy city  
4 attorney, 102 West Neil Street, Champaign, Illinois  
5 61821.

6 JUDGE ALBERS: Are there any others wishing to  
7 enter an appearance? Let the record show no  
8 response.

9 The purpose of today's status hearing is to  
10 determine exactly which day we will be starting the  
11 evidentiary hearings in this matter. But, first, I  
12 do have some preliminary matters to address, the  
13 first of which is the Sorling Power Cooperative,  
14 Inc.'s, July 26, 2004, motion concerning the request  
15 in the change of its status as an intervening party.  
16 Is there any objection to that motion? Hearing  
17 none, it is granted.

18 I also have the July 27, 2004, motion of  
19 the City of Springfield seeking to withdraw its  
20 intervention. Is there any objection? Hearing  
21 none, then that motion is granted as well.

22 I have the Applicants' July 21, 2004,

1 motion to strike the panel testimony of  
2 Constellation NewEnergy, Inc., et al., as well as  
3 the July 21, 2004, motion to strike the testimony of  
4 Kathryn Tholin on behalf of the AG. I received the  
5 responses and the replies regarding both motions and  
6 hereby deny both motions to strike. I would ask,  
7 though, that if Ameren or IP intend to appeal either  
8 of those rulings to the Commission, I suggest that  
9 you do so soon so we can resolve that before the  
10 start of the hearings, whenever that may be.

11 Next on my list is I also at this time  
12 would like to ask the parties to before the  
13 evidentiary hearing take a look at which issues they  
14 believe are still in contention and work together to  
15 provide me with one list of all -- well, rather, an  
16 outline of all contested issues in this docket and  
17 give it to me at the start of the evidentiary  
18 hearings for my review. It is my intention that  
19 such an outline be used in the briefs so as to make  
20 it easier to follow the arguments and prepare an  
21 order in this case. Is there any questions about  
22 that? I think that's been done in some other larger

1 cases so it shouldn't be something new.

2 MS. SATTER: This is Susan Satter. Is it your  
3 intention that the parties try to come up with one  
4 outline together?

5 JUDGE ALBERS: Well, I think that would be best  
6 so that we can all at least agree on what is still  
7 contested.

8 MR. MacBRIDE: Well, Judge, this is Owen  
9 MacBride. It sounds like your real objective is to  
10 get a comment outline for the briefs that everyone  
11 would use so that you have all -- you have the  
12 issues addressed sort in the same place in each  
13 party's brief.

14 JUDGE ALBERS: Yes, that is the ultimate goal.

15 MR. MacBRIDE: Well, let me say I think  
16 probably the Applicants should probably undertake to  
17 sometime before the hearing to put together such an  
18 outline of what we think are the remaining issues  
19 and circulate that among the parties for comment and  
20 issue it, etc., so that we can hopefully present the  
21 finished product to you as you requested.

22 JUDGE ALBERS: I would appreciate that.

1           Whoever wants to take the lead on that, it is fine  
2           with me. And along similar lines, just having  
3           things organized, I would also ask that when the  
4           evidentiary hearings start, please bring to give to  
5           me a list of all of the exhibits that you have  
6           previously filed and intend to offer into evidence.  
7           If there have been revisions to any particular  
8           exhibit and those revisions are on e-Docket already,  
9           please identify on that list which version of the  
10          exhibit by date that it was filed on e-Docket that  
11          you intend to offer into evidence. Are there any  
12          questions about that?

13                 MR. MacBRIDE: Judge, this is Owen MacBride  
14                 again. You want that by party or by witness?

15                 JUDGE ALBERS: That one can be by party. If  
16                 you just give me -- I would suggest this. In the  
17                 case of the Applicants, I think your first witness  
18                 is Mr. Rainwater, at least numerically as far as the  
19                 exhibits are identified.

20                 MR. MacBRIDE: Yes.

21                 JUDGE ALBERS: If you just want to give me a  
22                 list with Mr. Rainwater Applicants' Exhibit 1.0,

1 Applicants' exhibits whatever is his rebuttal and  
2 just keep them by witness together, but you can have  
3 whatever witness for your particular client on the  
4 same piece of paper for me. Does that make sense?

5 MR. MacBRIDE: Yep.

6 MS. VON QUALEN: Judge, did you say you want a  
7 hard copy of that list or do you want us to send it  
8 to you electronically or does it matter?

9 JUDGE ALBERS: It doesn't matter as long as I  
10 have something at the hearing to go by. It would  
11 make it a lot easier for me to follow which versions  
12 are being offered, particularly if there is multiple  
13 versions on e-Docket already. Just be sure to  
14 include the dates of the e-Docket filing that you  
15 want to have considered part of the record.

16 And in case I forget to mention this later,  
17 when it comes time to submit briefs, I would ask  
18 that people serve me with a Word version of the  
19 brief to assist me in preparing the order. And I  
20 would also hope that my request at our last hearing  
21 would have spurred more parties to evaluate their  
22 testimony filing compliance with the proprietary

1 treatment requirements in the Commission's rules. I  
2 have only received one revised filing and that was  
3 from the Attorney General's office and I appreciate  
4 that. I don't mean by identifying the following  
5 examples to pick on any particular party in the  
6 case, but these are just readily available to me. I  
7 am sure that there are others out there that I will  
8 not be identifying, but I am simply offering these  
9 as examples.

10 On the Applicants' Stock Purchase  
11 Agreement, Exhibits B, C and G, the proprietary  
12 version -- I am sorry, the public version on  
13 e-Docket is simply a one piece of paper with the  
14 word "redacted" printed on it. I don't believe that  
15 that complies with the Commission's rules regarding  
16 having a public and proprietary version of  
17 documents.

18 Another example would be the Applicants'  
19 Exhibits 23.1 and 23.2. I believe again the public  
20 version of those is just a simple sheet of paper  
21 with the word "redacted" printed on it. There is  
22 some other items that I have noticed, I assume are

1 just mistakes. That would be, for example,  
2 Applicants' Exhibit 10.3. This is a two-page  
3 attachment to Mr. Frame's testimony, all of which on  
4 e-Docket is marked proprietary, yet many of the  
5 pages are his resume' and a list of abbreviations he  
6 uses in his testimony. I wouldn't think that the  
7 Applicants are asking to keep his resume'  
8 proprietary. I think that's just an oversight, but  
9 tell me if I am wrong. But, again, I just think it  
10 is better to get this figured out now, as opposed to  
11 trying to sort through these type of things at the  
12 evidentiary hearing. There is some other just again  
13 mistakes that I don't want to necessarily bring up  
14 on the record because, again, I am not trying to  
15 embarrass anyone; I am just using examples of things  
16 to look for.

17 I will use as a good example of something  
18 Applicants' Exhibit 25.0. In that particular  
19 document I believe the witness has, you know, in the  
20 public version the word "confidential testimony  
21 begins here" and then Xs or some other mark, you  
22 know, through the proprietary information and then

1 at the end of that section it says "proprietary  
2 information ends here." That is good. That is what  
3 I would want to see. So those of you that have  
4 proprietary information in your testimony, the  
5 public version should reflect something like that.

6 With regard to the direct testimony of the  
7 City of Champaign and the City of Urbana, the cover  
8 page of that document indicates that certain  
9 portions were proprietary as well as the report  
10 attached thereto, yet nowhere in the testimony do I  
11 see any particular language identified as  
12 proprietary. It is only when I compare the public  
13 and proprietary versions can I tell what has been  
14 marked as confidential or what is perceived as being  
15 confidential. And in that particular document, the  
16 testimony portion of it, there is certain  
17 recommendations and findings that are considered  
18 proprietary. It will be very difficult to address  
19 these points in a hearing or an order, for that  
20 matter, if they are considered proprietary. So I  
21 would urge the cities of Urbana and Champaign to at  
22 least reconsider those markings or at least have a

1 reason why those recommendations should be  
2 proprietary.

3 And, again, I want to emphasize I am not  
4 trying to embarrass anyone. I just think we should  
5 get these things straightened out now as opposed to  
6 try to spend time on them at the evidentiary  
7 hearing. I am sure there are others that I did not  
8 identify that have similar mistakes or errors in  
9 their documents as well. So I would just ask that  
10 everyone take a look at whatever it is you have  
11 previously submitted to make sure that it is  
12 consistent with the Commission's rules in those  
13 respects.

14 And I don't believe I received -- I don't  
15 think I received any motions for proprietary  
16 treatment of any of the previously submitted  
17 documents. The Commission's rules require that as  
18 well. I realize probably in most instances parties  
19 other than the Applicants have information marked as  
20 proprietary because the Applicants have requested  
21 that it be treated as such. Nevertheless, those  
22 parties still need to file a motion. We can't rely

1 on whatever IP and Ameren file. I don't think it  
2 would be appropriate to allow them to carry that  
3 burden for everyone.

4 MS. VON QUALEN: Judge, are you saying that to  
5 the extent a witness relies upon a document that has  
6 been marked as proprietary or confidential by the  
7 Applicants, that it is the burden of the parties  
8 whose witness is relying on that document to file a  
9 motion?

10 JUDGE ALBERS: No, only, for example, if one of  
11 the Staff witnesses, their testimony, contains  
12 proprietary information, I would expect a motion  
13 from Staff requesting proprietary treatment for that  
14 document, even though I suspect that the reason it  
15 is proprietary in Staff's testimony is not because  
16 Staff believes it is such but rather because the  
17 Applicants believe it is such. Does that make  
18 sense?

19 MS. VON QUALEN: So even though the information  
20 for which we are requesting proprietary treatment is  
21 information of the Applicants which they have  
22 identified as proprietary, we should still file a

1 motion?

2 JUDGE ALBERS: It is my understanding that the  
3 rules require that, yes.

4 MR. KAMINSKI: Judge Albers, just a  
5 clarification on that point, if we were to file a  
6 motion for confidential treatment of that material  
7 but it is because it has been designated as such by  
8 Ameren, I am trying to figure out what our burden  
9 would be or whether that burden should be Ameren to  
10 actually satisfy some standard or such that that is  
11 required.

12 JUDGE ALBERS: Well, I suspect in that instance  
13 that you would indicate why you are requesting  
14 proprietary treatment. And if it is because one of  
15 the Applicants has indicated that they consider it  
16 such and you use that information in one of your  
17 pieces of testimony, if a question arises as to  
18 whether it is appropriately marked proprietary, it  
19 would fall back ultimately on the party seeking the  
20 proprietary treatment.

21 MR. KAMINSKI: But I guess that on that would  
22 they then be required to file an additional motion

1 or would it be dealt with in the pleadings on the  
2 original motion?

3 MR. MacBRIDE: Well, Judge, this is Owen  
4 MacBride. It sounds like all you are suggesting is  
5 that you would like a party to indicate to you in  
6 some fashion that the material designated on, you  
7 know, page 10 of Witness Jones' testimony or X's  
8 testimony is designated proprietary because it was  
9 provided to us by the Applicants on a proprietary  
10 basis.

11 JUDGE ALBERS: Right.

12 MR. MacBRIDE: You are just trying to identify  
13 the reason why each item that was designated  
14 proprietary was in fact proprietary, and I think  
15 your assumption is right. I can't off the top of my  
16 head think of any information that has been  
17 designated as proprietary by any Intervenor or Staff  
18 witness that wasn't because they were referring to  
19 information they had gotten in discovery from the  
20 Applicants. I don't recall seeing any, I will call  
21 it, independent proprietary information of any  
22 intervenor, for example, in the testimony.

1           JUDGE ALBERS:  Yeah, and I don't recall  
2 anything like that either.  I just didn't want to  
3 assume that that was the case, not having gone  
4 through all the testimony myself at this point.

5           MR. MacBRIDE:  Well, I mean, I am wondering if  
6 there is a way -- to be frank with you, I don't  
7 think we have done before what you are suggesting.  
8 But I am wondering if perhaps you could ask the  
9 parties to do this by exception.  In other words, if  
10 anyone has designated any proprietary -- any  
11 information that's proprietary for a reason other  
12 than that it came from the Applicants, you know, to  
13 so advise you of that and you don't know need to  
14 know with specification what that particular item  
15 is.

16           JUDGE ALBERS:  I don't want to make this into  
17 anything more than I think it needs to be.  I would  
18 suggest this, that if your testimony contains  
19 proprietary information in it, regardless of the  
20 source, when you offer it for admission into the  
21 record -- at this point typically the rules require  
22 that that motion be made when it is filed.  Given as

1 I guess we are in the process and the hearing is a  
2 couple weeks away, I would suggest that if you are  
3 going to offer a piece of testimony with proprietary  
4 information in it, simply make an oral motion at the  
5 time of offering and indicate why it is you believe  
6 it is proprietary and that's because you signed an  
7 agreement with the Applicants and they requested  
8 that you treat it as such, to simply state that, and  
9 if someone has an objection, they can raise it then.  
10 I am not asking for any additional written pleadings  
11 at this point. I am just suggesting that this  
12 particular aspect of the rules needs to be  
13 recognized.

14 MS. SATTER: This is Susan Satter. We have  
15 contacted the Applicants on occasion to change  
16 proprietary designation, and one of the effects of  
17 that is that in our testimony it is not proprietary  
18 and yet in somebody else's testimony it might be  
19 proprietary, and obviously that shouldn't be. So I  
20 would be willing to get together with the  
21 Applicants' attorney and see if we can make these  
22 designations consistent and maybe that would be

1 helpful for you in preparing your final  
2 recommendations to the Commission and also to the  
3 parties in writing their briefs. My concern is that  
4 there will be inconsistencies out there and that has  
5 been a problem in the past.

6 JUDGE ALBERS: I appreciate that comment. That  
7 is in part behind my comments as well. I suspected  
8 that that might be the case and that's also why I  
9 suggested that perhaps no one file anything right  
10 away and just wait until the hearing to make the  
11 oral motion and hopefully by then we will have a  
12 better sense of, you know, what really is  
13 proprietary and what isn't. So I think that's a  
14 good suggestion, that people, you know, think about  
15 that and talk to each other if they need to. Any  
16 other thoughts on that area?

17 I don't think I have any other preliminary  
18 matters. Does anyone else have any preliminary  
19 matters to raise?

20 MS. VON QUALEN: Yes, Judge, Staff would like  
21 to request an extension of time for the filing of  
22 Staff and Intervenor rebuttal testimony. That

1 testimony is now due to be filed tomorrow, August  
2 11. And we would request an extension to August 13.  
3 We have spoken to the Applicants about this request,  
4 and they have indicated they have no objection.  
5 They have requested that the date for their  
6 surrebuttal testimony be moved from August 17 to  
7 August 19.

8 In addition, Staff sent a note  
9 electronically to the parties in this case  
10 yesterday, stating that we wish to have this  
11 scheduling change. We have heard from a number of  
12 the parties, all of whom indicated that they had no  
13 objections, and we have not heard from anyone to  
14 indicate that they do have an objection to this  
15 extension of time.

16 JUDGE ALBERS: Does anybody have any other  
17 comments or responses to that?

18 MR. FOSCO: Judge Albers, this is Carmen Fosco,  
19 one more point. Mr. MacBride had circulated or had  
20 gathered from all of the parties the dates that  
21 witnesses were available, and just so you are aware  
22 on the record if you are not otherwise aware, no one

1 needs to go on the 19th or 20th that we had set  
2 aside. So in connection with this motion, those  
3 dates are now open. And I think we are anticipating  
4 that we won't have hearings on those dates.

5 JUDGE ALBERS: Thanks for pointing that out.

6 Mr. MacBride sent a copy of his proposed schedule to  
7 me as well and that leads me into my next thought.

8 If we are contemplating no longer using the 19th and  
9 20th for hearings, I am assuming everyone -- that

10 does in fact work for everyone. The only concern I  
11 have is just the length of the days that we are

12 going to have hearings. The five days on the

13 schedule that Mr. MacBride sent to me understandably

14 has as many witnesses on each day and certainly I

15 suspect some will have little cross and some will

16 have extensive cross, but I would just note that if

17 we find ourselves on August 31 with many more

18 witnesses to go, we will just be rolling this into

19 September 1 and however far we need to go because I

20 don't want to try to cram in enough witnesses. I

21 don't want to try to actually -- basically, I am

22 concerned about the hearings running well into the

1 evening as a practical matter. When that happens,  
2 we have problems as far as court reporter scheduling  
3 and my own schedule and I am sure others. You may  
4 have thoughts on that as well. But I just want to  
5 point that out there.

6 And I also note at this time that since the  
7 Commission moved their regular open meeting from  
8 August 24 to August 25, that there will most likely  
9 be a portion of that morning we will all be in the  
10 Commission meeting as opposed to in this hearing.  
11 So please be aware of that now.

12 Does anyone have any objection to the  
13 request that Ms. Von Qualen just made?

14 MR. MacBRIDE: Judge, this is Owen MacBride.  
15 We don't object. I just -- I wonder if Staff and  
16 others could possibly commit to filing the testimony  
17 at least a couple hours in advance of 5:00 o'clock.  
18 This is a Friday 5:00 p.m. I had some difficulty  
19 last time we had a Friday filing, not that it was  
20 anyone's fault, but the problem from the recipient's  
21 point of view is that if it comes to be 6:00 or 7:00  
22 o'clock on Friday night and you realize you haven't

1 gotten someone's testimony, as a practical matter  
2 you may not be able to get ahold of them until  
3 Monday morning as opposed to a filing earlier in the  
4 day, you can get it the next day. So if at all  
5 possible if the testimony could be served at, you  
6 know, 2:00 or 3:00 o'clock in the afternoon, I think  
7 that would be better.

8 MS. VON QUALEN: Staff will make every effort  
9 to see that the testimony is filed by 3:00 o'clock.

10 MR. MacBRIDE: Thank you.

11 MS. SATTER: The Attorney General will, too.

12 MR. WU: CUB has no problem with that.

13 JUDGE ALBERS: Okay. So where things stand  
14 then is the Staff and Intervenor rebuttal and  
15 Applicants' surrebuttal testimony are both extended  
16 two days, to August 13 and August 19 respectively.  
17 We will not have hearings on August 19 and 20. And  
18 everyone understands that if we are running late, we  
19 will just have to move -- just have to continue into  
20 September 1.

21 As far as a starting time on August 25, I  
22 assume most people will probably come down the night

1           before. Is there any objection to starting the  
2           hearing at 9:00 o'clock on the 25th? Hearing none,  
3           we will go ahead and use that as our start time.

4           MR. MacBRIDE: Judge, this is Owen MacBride  
5           again. I have gotten a few people who have sent me  
6           notes now about witnesses were available on a day  
7           and now they are not available, and so I am having  
8           to do some moving around here. I wonder -- and we  
9           are also -- we will be getting the rebuttal  
10          testimony here on Friday. I wonder if we could like  
11          on Monday or Tuesday circulate a revised list.  
12          Hopefully, anyone who has any changes in  
13          availability here will have been able to tell me  
14          what they are by then, and also the rebuttal  
15          testimony may give us more indication of what  
16          witnesses are likely to have more cross or less  
17          cross or may have only a couple of issues, have been  
18          eliminated or at least from the Applicants' point of  
19          view will be eliminated based on, for example, Staff  
20          and Intervenor witnesses making a proposal in the  
21          rebuttal testimony that the Applicants can accept to  
22          resolve an issue. So in summary I would propose to

1 take that all into account and try and send around a  
2 final witness schedule here on Monday or Tuesday of  
3 next week.

4 JUDGE ALBERS: Okay. I think that sounds fine.

5 MS. SATTER: This is Susan Satter. We have two  
6 out-of-state witnesses and would it be possible on  
7 the dates that they are scheduled to accommodate  
8 them so that they do get on those days?

9 MR. MacBRIDE: Yes, we don't have any objection  
10 to that. You know, as I think I said in the note  
11 when I sent the schedule around, one of the things I  
12 took into account in putting the schedule together,  
13 because I figured that what people might infer is  
14 that if, for example, we had an Applicants' witness,  
15 a direct witness, and then an Intervenor witness who  
16 is responding, I would put the Applicants' witness  
17 first and the Intervenor witness second. Now, you  
18 know, we can certainly change that if you want to do  
19 that to insure that the witness is back and done and  
20 out the door in time to make a flight or something.

21 MS. SATTER: I was just hoping that on the date  
22 of the hearing we can be flexible like that.

1           JUDGE ALBERS: This is Judge Albers. I would  
2 just note that certainly from my perspective I will  
3 try to accommodate people's travel arrangements on  
4 the day of the hearing.

5           MS. SATTER: Thank you.

6           JUDGE ALBERS: I don't think I have anything  
7 else. I am just going through my notes here  
8 briefly. Does anyone else have something you want  
9 to add?

10                   One final thought, those of you that do  
11 have revised exhibits concerning proprietary stuff  
12 or just correction of errors, at this point I would  
13 suggest that if it is not something that would  
14 substantively change other's responses to the  
15 testimony, just bring it to the hearing in a hard  
16 copy format as opposed to trying to load additional  
17 revisions onto e-Docket and further confusing me as  
18 to what you want me to look at, and just note on  
19 your list of exhibits that this is not on e-Docket.

20                   Any other questions or comments? I thank  
21 everyone for coming. I think it was helpful to get  
22 together this one last time. And with that I will

1           continue this to August 25 at 9:00 a.m. thank you,  
2           everyone.

3           (Whereupon the hearing in this matter  
4                               was continued until  
5                               August 25, 2004, at  
6                               9:00 a.m. in  
7                               Springfield, Illinois.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22