

**Docket Nos.:** 05-0160, 05-0161  
and 05-0162 (Cons.)

**Bench Date:** 07-13-05

**Deadline:** 01-27-06

## **MEMORANDUM**

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**TO:** The Commission

**FROM:** Larry Jones, Administrative Law Judge

**DATE:** July 7, 2005

**SUBJECT:** Central Illinois Light Company, d/b/a AmerenCILCO  
Central Illinois Public Service Company, d/b/a AmerenCIPS  
Illinois Power Company, d/b/a AmerenIP

Proposals to implement a competitive procurement process by establishing Rider BGS, Rider BGS-L, Rider RTP, Rider RTP-L, Rider D, and Rider MV pursuant to tariffs filed on February 28, 2005.

**PENDING REQUEST:** Petition for Interlocutory Review (“IR petition”) filed on June 22, 2005 by the People of the State of Illinois, the Citizens Utility Board and the Environmental Law and Policy Center, seeking reversal of the Ruling, issued June 1, 2005, denying the Motion to Dismiss filed May 17, 2005.

**STATUS:** Oral argument was held by the Commission on July 5, 2005.

**OPTIONS:** Pursuant to 83 Ill. Adm. Code 200.520, the Commission may (1) deny the IR petition, thereby affirming the Ruling denying the Motion to Dismiss; (2) grant the IR petition, thereby reversing the Ruling; or (3) take other “reasonable action” such as taking the IR petition with the case. The Commission may also affirm or reverse the ruling “in part.”

**RECOMMENDATION:** Deny the Petition for Interlocutory Review filed by the People of the State of Illinois, et al. on June 22, 2005.

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### **Introduction**

As the Commission is aware, the instant “procurement” proceeding in Dockets 05-0160, 05-0161 and 05-0162 (cons.) was docketed as a “proposal to implement a competitive procurement Process by establishing Rider BGS, Rider BGS-L, Rider RTP,

Rider RTP-L, Rider D, and Rider MV.” The riders were filed on February 28, 2005 by Central Illinois Light Company, Central Illinois Public Service Company and Illinois Power Company (“Ameren Companies” or “Ameren”). The procurement process proposed by the Ameren Companies utilizes a set of formulas intended to pass through, to customers, market-based procurement costs incurred through an auction process.

There are numerous Intervenors in the proceeding. A schedule is in place, and in progress, pursuant to prior rulings. Staff and Intervenors, including Movants, filed prepared testimony on June 15, 2005. The Ameren rebuttal filing is due July 13, 2005.

### **Motion to Dismiss**

On May 17, 2005 a Motion to Dismiss (“Motion”) the portion of above-referenced consolidated dockets relating to Riders BGS, BGS-L, D and MV (“Proposed Tariffs” or “Proposed Riders”) was filed jointly by the People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois; the Citizens Utility Board, and the Environmental Law and Policy Center (“Movants”). A similar motion was filed in the Commonwealth Edison Company (“ComEd”) procurement proceeding in Docket No. 05-0159.

On or about May 25, 2005, responses in opposition to the Motion were filed by the Ameren Companies; ComEd; the Commission Staff; Midwest Independent Power Suppliers; Electric Power Energy Association; Midwest Generation EME, LLC (“MWGen”); the Illinois Energy Association; and jointly by Constellation NewEnergy Inc., MidAmerican Energy Company, Peoples Energy Services Corporation and U.S. Energy Savings Corporation (“Constellation NewEnergy, et al.”).

A response supporting the Motion was filed by Local Unions 15, 51 and 702, International Brotherhood of Electrical Workers (“IBEW”).

On May 31, 2005, a reply to those responses was filed by Movants.

On June 1, 2005 a written **Ruling** (“Ruling”) was issued, by the administrative law judge, denying the Motion for the reasons provided therein. A similar Ruling was issued in Docket 05-0159. Copies of the rulings are available on e-Docket.

On June 22, 2005, a petition for interlocutory review (“**IR petition**”) of the June 1, 2005 ruling was filed by Movants pursuant to Section 200.520 of the Commission’s Rules of Practice, 83 Ill. Adm. Code 200.520. A similar petition was filed in 05-0159.

Among other things, Movants continue to argue that the Commission “does not have authority to approve the Riders because the Commission does not have authority to approve market-based rates for customers that have not been declared competitive pursuant to Section 16-113 of the PUA,” and they ask the Commission to dismiss the utilities’ requests for approval of the Proposed Riders. (IR petition at 2-4; 24-26)

On June 28, 2005, the Commission, on its own motion, ordered that oral argument be held, and notice of oral argument was served electronically that day.

On June 29, 2005, responses in opposition to the IR petition were filed by the Ameren Companies, ComEd and MWGen. On June 30, 2005, IBEW filed a response supporting the IR petition.

On June 30, 2005, a **Report** on the IR petition was filed with the Commission and served on the parties in accordance with 83 Ill. Adm. Code 200.520.

**Oral argument** on the IR petition and the Motion to Dismiss to which it relates was held before the Commission on July 5, 2005. Parties in the Ameren dockets who made presentations in support of the Motion were Movants and IBEW. Arguments in opposition to the Motion were presented by the Ameren Companies; ComEd; the Commission Staff; the Illinois Energy Association; Constellation Energy Commodities Group, Inc.; Constellation NewEnergy, et al.; and jointly by Midwest Independent Power Suppliers and Electric Power Energy Association.

In summary, based on the pleadings and oral argument, parties in the Ameren dockets who support dismissal of the proceedings are Movants and IBEW.

Parties opposing dismissal are the Ameren Companies; ComEd; the Commission Staff; Midwest Independent Power Suppliers; Electric Power Energy Association; MWGen, the Illinois Energy Association; Constellation Energy Commodities Group, Inc.; and, jointly, Constellation NewEnergy, et al.

### **Commission Options; Recommendation**

Under Section 200.520(b), “the Commission may affirm or reverse the ruling in whole or in part, and may take any other just and reasonable action with respect to the ruling, such as declining to act on an interlocutory basis.” Thus, the Commission may (1) deny the IR petition, thereby affirming the Ruling denying the Motion to Dismiss; (2) grant the IR petition, thereby reversing the Ruling; or (3) take other “reasonable action” such as taking the IR petition with the case, in which event the proceeding would move forward. As noted above, the Commission may also affirm or reverse the ruling “in part.”

It is my recommendation that the Petition for Interlocutory Review be denied, thereby affirming the Ruling denying the Motion to Dismiss.

LMJ/lw