

Docket No.: 05-0159
Bench Date: 07-13-05
Deadline: 01-25-06

M E M O R A N D U M

TO: The Commission

FROM: Michael L. Wallace, Administrative Law Judge

DATE: July 7, 2005

SUBJECT: Commonwealth Edison Company

Proposal to implement a competitive procurement process by establishing Rider CPP, Rider PPO-MVM, Rider TS-CPP and revising Rider PPO-MI. (Tariffs filed February 25, 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: 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 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.

Introduction

The instant “procurement” proceeding in Docket 05-0159 was docketed as a “proposal to implement a competitive procurement process by establishing Rider CPP, Rider PPO-MVM, Rider TS-CPP and revising Rider PPO-MI.” The riders were filed February 25, 2005 by Commonwealth Edison Company (“ComEd”). The procurement process proposed by ComEd 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 8, 2005. The ComEd rebuttal filing came in on July 6, 2005.

Motion to Dismiss

On May 17, 2005 a Motion to Dismiss (“Motion”) the portion of above-referenced docket relating to Riders CPP (“Proposed Tariff” or “Proposed Rider”) 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, Cook County State’s Attorney, and the Environmental Law and Policy Center (“Movants”). A similar motion was filed in the Ameren companies dockets 05-0160 et al.

On or about May 25, 2005, responses in opposition to the Motion were filed by ComEd; the Ameren Companies; 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”) and Building Owners and Management Association, (“BOMA”).

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

On June 1, 2005 a written **Ruling** (“Ruling”) was issued, by this administrative law judge, denying the Motion for the reasons provided therein. A similar Ruling was issued in Dockets 05-0160 et al. 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 05-0160 et al.

Among other things, Movants continue to argue that the Commission “does not have authority to approve the Rider 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.

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. Presentations in support of the Motion were made by Movants, BOMA, and IBEW. Arguments in opposition to the Motion were presented by the Ameren Companies; ComEd; the Commission Staff; Midwest Independent Power Suppliers; Electric Power Energy Association; the Illinois Energy Association; and Constellation NewEnergy, et al.

In summary, based on the pleadings and oral argument, parties supporting dismissal of the proceedings are Movants, BOMA, 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; 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 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.

MLW/lw