

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

CENTRAL ILLINOIS LIGHT COMPANY)	
D/B/A AMERENCILCO)	Docket No. 05-0160
)	
Petitioner.)	
)	
Proposal to implement a competitive)	
procurement process by establishing)	
Rider BGS, Rider BGS-L, Rider RTP,)	
Rider, Rider RTP-L, Rider D, and Rider)	
MV)	
)	
CENTRAL ILLINOIS PUBLIC SERVICE)	
COMPANY D/B/A AMERENCIPS)	Docket No. 05-0161
)	
Proposal to implement a competitive)	
procurement process by establishing)	
Rider BGS, Rider BGS-L, Rider RTP,)	
Rider, Rider RTP-L, Rider D, and Rider)	
MV)	
)	
)	
ILLINOIS POWER COMPANY)	Docket No. 05-0162
D/B/A AMERENIP)	
)	
)	
Proposal to implement a competitive)	
procurement process by establishing)	
Rider BGS, Rider BGS-L, Rider RTP,)	
Rider, Rider RTP-L, Rider D, and Rider)	
MV)	

**RESPONSE OF THE STAFF OF THE ILLINOIS COMMERCE
COMMISSION TO EMERGENCY MOTION TO STAY IMPLEMENTATION
OF 2007 TARIFFS FILED BY THE PEOPLE OF THE STATE OF ILLINOIS**

Pursuant to 83 Ill. Adm. Code 200.190, Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned attorneys, hereby files its

response to the Emergency Motion To Stay Implementation Of 2007 Tariffs (the “Motion”) filed by The People of the State of Illinois by Lisa Madigan, Attorney General (the “AG”) on December 7, 2006.

1. The Motion filed by the AG seeks to stay implementation of certain tariffs approved by the Illinois Commerce Commission (“Commission”) eleven months ago with its Order entered on January 24, 2006. In short, the AG seeks to stay implementation of the tariffs allowing AmerenCILCO, AmerenCIPS and AmerenIP (collectively “Ameren”) to recover in rates beginning January 2, 2007, the cost of power and energy procured for bundled customers pursuant to supply contracts entered into through the Illinois Auction. For the reasons stated below, Staff recommends that the Commission deny the Motion.

2. The Commission’s discretionary power to stay the effect of its orders¹ is derived from Section 10-113 of the Public Utilities Act, 220 ILCS 5/1-101 *et seq.* (See 220 ILCS 5/10-113). In deciding whether or not to grant a stay of the effectiveness of a Commission order, the Commission is guided by the traditional factors used by reviewing courts to grant interlocutory injunctive relief. (Commonwealth Edison Company, Ill. C.C. Docket No. 87-0427; 87-0169; 88-0189; 88-0219; 88-0253 On Remand; 90-0169 Consol., 1993 Ill. PUC LEXIS 21 (Order, January 8, 1993)) These factors are: (1) the petitioner’s likelihood of prevailing on the merits; (2) the irreparable

¹ The Motion specifically seeks a stay of Ameren’s tariffs, but mentions that Supreme Court Rule 335(g) refers to applications for stays of orders or decisions by an agency. (Motion, ¶¶ 7-8) Staff notes that the Commission’s power to stay or suspend tariffs is specifically limited in Section 9-201 of the Public Utilities Act, and Staff does not believe that the current request fits within that authority. However, the Commission is generally regarded to have discretionary authority to stay its decisions or orders on appeal under Section 10-113 of the Public Utilities Act, and Staff’s response assumes that the Motion seeks such relief.

harm petitioner will suffer if the stay is not granted; and (3) the harm to other parties which would result from the issuance of a stay. *City of Chicago v. Illinois Commerce Commission*, 133 Ill. App. 3d 435, 478 N.E. 2d 1369, 1380, 88 Ill.Dec. 643, 654 (1st Dist. 1985).

3. As an initial matter, Staff must note that the Motion fails to adequately address why the request for a stay of the Commission's order entered eleven months ago is sought just weeks before new rates are to take effect. While it may be impossible to predict when the Appellate Court will rule, there is no explanation of the decision to wait until three weeks before new rates will take effect to file this motion.

4. With respect to the likelihood of success on the merits, the Motion simply refers to the AG arguments that were presented to the Commission and rejected. The Commission's reasons for rejecting the AG's arguments were sound and compelling, and the Motion fails in Staff's view to establish that there is a likelihood of success on appeal.

5. With respect to the harm to petitioner if the stay is not granted, the Motion relies upon the rate increases that would occur after January 1, 2006. Staff notes that the Motion does not allege that refunds would not be available if the AG succeeds on appeal. If refunds are possible in the event the AG succeeds on appeal, or ordered by the Appellate Court as part of its ruling or opinion, then it would appear there is no irreparable harm as affected customers could be made whole. Since the AG argues that the Commission did not have authority to approve the tariffs it approved (Motion, ¶ 9), it is not clear to Staff that the Commission could not order refunds if the AG succeeds on appeal.

6. The only statement in the Motion with respect to the harm to other parties which would result from the issuance of a stay is as follows:

Because the Appeal is already fully briefed, the requested stay would not unnecessarily prolong these proceedings, nor would it cause undue harm to Ameren.

(Motion, ¶ 13) Staff finds the Motion to be totally deficient with respect to this factor. The Illinois Auction has occurred, and Ameren has entered into new supply contracts with the winning bidders pursuant to the Commission's order to supply power and energy to bundled customers after January 1, 2007. The Motion fails to address in any way the harm that would result from denying Ameren the ability to recover those new costs in its rates. The Motion fails to address the potential impact on suppliers of a decision to prevent Ameren from recovering these costs during the appeal. Finally, the Motion also fails to address the potential impact of the requested stay on Ameren's ability to obtain and pay for power and energy during the appeal, and the potential impact on customers if that ability is affected by a stay. The Motion also fails to address the potential effect of a stay on Ameren's credit rating and its cost of capital, and the potential impact of such an increase on ratepayers. Accordingly, Staff finds that the Motion has failed to sufficiently establish the need for a stay pending appeal.

WHEREFORE, for the reasons set forth above, Staff respectfully requests that the Commission deny the AG's Emergency Motion To Stay Implementation Of 2007 Tariffs.

Respectfully submitted,

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