

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>Illinois Commerce Commission</b>	)	
<b>On its own motion</b>	)	
	)	<b>Docket No. 06-0800</b>
<b>Investigation of Rider CPP of</b>	)	
<b>Commonwealth Edison Company, and</b>	)	
<b>Rider MV of Central Illinois Light</b>	)	
<b>Company d/b/a AmerenCILCO, of</b>	)	
<b>Central Illinois Public Service</b>	)	
<b>Company d/b/a AmerenCIPS, and of</b>	)	
<b>Illinois Power Company d/b/a</b>	)	
<b>AmerenIP , pursuant to Commission</b>	)	
<b>Orders regarding the Illinois Auction.</b>	)	

**AMEREN ILLINOIS UTILITIES’ RESPONSE IN OPPOSITION TO  
MOTION TO SUSPEND SCHEDULE**

Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS and Illinois Power Company d/b/a AmerenIP (the “Ameren Illinois Utilities”) hereby submit this response in opposition to the Motion to Suspend Schedule (“Motion”) of the Attorney General (“AG”). The AG demands suspension of the schedule “unless or until the utilities propose one or more viable alternatives to the declining-clock reverse auction.” (Mot., p. 1.) The Motion is without basis and should be denied.

The gist of the AG’s Motion is that the Commission was wrong in limiting the issues in this docket to improving the auction because, in the AG’s view, the auction’s death is imminent. The AG bases its view on: the scheduling of oral argument in the AG’s appeal from the Commission’s order approving the auction (in a case in which the Commission, the appellate court and the Illinois Supreme Court declined to issue a stay); the passage by the House of a bill that does not call for the elimination of the auction; the consideration of a bill by the Senate that does not call for elimination of the auction; and public statements by representatives of the Ameren Illinois Utilities that do not call for elimination of the auction.

In other words, the AG's Motion is based on events that have not canceled the next auction.

The appropriateness of the auction as a procurement method was fully vetted in the Post 2006 Initiative process and litigated in Dockets 05-0160, -0161, and -0162 (cons.) and in 05-0159. The evidence in those dockets supported the Commission's approval of the vertical tranche auction as a procurement method:

Based on the record presented in the instant docket, the Commission finds that the vertical tranche auction proposed by the Ameren Companies, subject to the modifications and conditions found appropriate herein, best meets the needs of Ameren Companies' customers in providing adequate, reliable, and reasonably priced supply post-2006.

Final Order, 05-0160, -0161, and -0162 (cons.) (the "Final Order"), pp. 105-06.

In initiating this docket, the Commission instructed parties to provide testimony and briefs for the Commission's consideration "in order to determine whether any changes should be made in the tariffs of ComEd and the Ameren Companies that embody the auction process." (Initiating Order, p. 5.) These proceedings were initiated solely as "a docketed review of the auction process," not as a relitigation of the appropriateness of the auction itself. (*Id.*) In fact, the Commission expressly forbade the parties from using this Docket to relitigate previously settled issues:

The Commission also wishes to emphasize that in initiating this proceeding, we are not inviting wholesale relitigation of issues the Commission disposed of in its orders in the Procurement Dockets. Rather, it is our intention that the issues in this case be directly related to matters that have come to the attention of the parties as a result of the conduct of the auction process itself, or that relate to proposed changes to the auction process to address facts or circumstances that are new or different from those considered in the Procurement Dockets.

(*Id.*, pp. 5-6.) Thus, the Initiating Order provides no latitude to entertain the AG's request.

It is worth remembering that in Dockets 05-0160, -0161, and -0162, *no party* suggested any viable alternatives to the auction. Final Order, p. 80 ("[N]o alternatives were presented that

represent a more viable approach for procuring power supply after January 1, 2007.”) And, the AG does not have one now. The AG wants the Commission to order the utilities to put their thinking caps on and come up with something different, contrary to the stated purpose of this Docket in the Initiating Order.

The AG can cite no reason why the Ameren Illinois Utilities would somehow be required to present alternatives to the auction in this Docket.<sup>1</sup> Indeed, there is no alternative purchasing method that would allow the Ameren Illinois Utilities to avoid purchasing power in the wholesale market, as the Commission noted in the Final Order:

[R]egardless of the state of [wholesale power] markets in terms of competitiveness, or issues raised in relation thereto such as “seams” or market power, the Ameren utilities must rely on them for power supply regardless of whether they do so through an auction process or some other means.

...

[T]he record does not indicate that [concerns] would satisfied if an auction process were rejected in favor of some other method of procurement from the wholesale market. Simply rejecting the auction would not make capacity any more readily available within MISO, where the Ameren Companies operate, than it would be in the auction scenario.

Final Order, p. 101.

The fact that various politicians have recommended to extend the rate freeze, create a public power authority, or enact other types of legislation (Mot., pp. 2, 3, ¶¶ 3, 4, 8, 10, and 11) does not alter the Commission’s findings. If such legislation were enacted tomorrow, the Ameren Illinois Utilities would still need to purchase power in the wholesale market. Further, there is no certainty that any such legislation would ever become law, and if it did, what the details of that law would be. The AG does not and cannot claim otherwise.

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<sup>1</sup> This position is not only incorrect, it is also wholly inconsistent with the AG’s position in the procurement dockets – that the Commission is not required to approve, and no party is required to propose, any power procurement method. See AG Init. Br., 05-0160, -0161, and -0162 (cons.), pp. 3, 4.

It is also irrelevant that utilities have indicated a willingness to consider proposed alternatives to the auction. (Mot., pp. 2, 3, ¶¶ 6, 7.) This fact does not alter the utilities' duty to supply power to their customers and their need to purchase that power at wholesale, unless and until circumstances were to dramatically and fundamentally change. The proceedings in 06-0800 do not preclude the parties from exploring alternatives – but such alternatives are not the focus of this Docket.

The fact that an appeal is pending in the courts (Mot., p. 3, ¶ 9) also has no effect on this proceeding. It is of no consequence that “the 2007 rates went into effect without any judicial review of the Commission’s orders” (Mot., p. 3, ¶ 11); that is simply the way that the Public Utilities Act works. *See* 220 ILCS 5/10-204. And, it is highly unlikely that the Second District will overturn the Final Order, because (1) the appellate court must show substantial deference to the Commission’s interpretation of the Public Utilities Act, and (2) the AG’s arguments continue to be as baseless today as they were two years ago, when they were rejected by the Commission. There is simply no indication that the Second District will do anything but reject the AG’s arguments as well. With the Motion, the AG has essentially asked the Commission to give up on the Final Order before the Second District has finished reviewing it.

Finally, it does not matter that the Second District has set a date for oral argument. The appeal has been pending for months. The AG should have expected oral argument to be set for some date. If the AG truly believed the pendency of the appeal should have some bearing on this Docket’s schedule, the AG should have made that claim, doubtful as it is, when this schedule was prepared and agreed to by all parties, including the AG. The AG has no more certain knowledge now of how and when the Second District will rule than it did in December 2006, when the AG claimed that a favorable ruling on its Second District appeal was surely imminent. (*See* AG’s Reply in Support of Motion to Stay Implementation of 2007 Tariffs, 05-0160, -0161, -0162 (cons.), pp. 5-6.)

For all of the above reasons, the Motion should be denied.

Dated: April 17, 2007

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d/b/a AmerenCILCO, CENTRAL ILLINOIS  
PUBLIC SERVICE COMPANY d/b/a  
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**CERTIFICATE OF SERVICE**

I, Laura M. Earl, certify that on April 17, 2007, I served a copy of the foregoing Ameren Illinois Utilities' Response In Opposition to Motion to Suspend Schedule by electronic mail to the individuals on the Commission's Service List for Docket 06-0800.

/s/ Laura M. Earl  
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