

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	:	
On Its Own Motion	:	
	:	Docket No. 07-0291
Consideration of the federal standard	:	
on fuel sources in Section 1251 of the	:	
Energy Policy Act of 2005.	:	

**STAFF OF THE ILLINOIS COMMERCE COMMISSION'S
INITIAL COMMENTS RESPONSIVE TO ALJ'S NOTICE**

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NOW COMES the Staff of the Illinois Commerce Commission, and, for its Initial Comments responsive to the Administrative Law Judge's May 25, 2007 Notice of Continuance of Hearing and Notice of Administrative Law Judge Ruling, states as follows:

1. Introduction

On May 25, 2007, the Administrative Law Judge (hereafter "ALJ") issued a Notice directing the parties to address, in filed Comments, the following preliminary issues:

- a.) Is the standard in the federal statute applicable to the utilities in question (Ameren, ComEd and MidAmerican)?
- b.) If so, how can that standard be applied to those utilities?
- c.) The parties' initial positions regarding implementation of the federal statute.
- d.) The public policy regarding the standard in the federal statute.
- e.) Are there any comparable standards that affect the utilities?

On August 8, 2005, the President signed the federal Energy Policy Act of 2005 (Pub. L.109-58, hereafter referred to as "EPAAct") into law. Certain provisions of EPAAct amend the Public Utility Regulatory Policies Act of 1978 ("PURPA") to mandate certain considerations by state regulatory agencies.

Specifically relevant to this proceeding is Section 1251 of EPAAct, which amends Section 111(d) of PURPA, 16 U.S.C. §2621(d), by adding, *inter alia*, the following provision:

(12) Fuel sources--Each electric utility shall develop a plan to minimize dependence on 1 fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.

16 U.S.C. §2621(d)(12)

Section 1251(b)(1) of EPAAct provides that: "[N]ot later than 2 years after the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) ... shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to each standard established by paragraphs (11) through (13) of section 111(d)." 16 U.S.C. §2622(a). Each state regulatory authority must complete the consideration, and must make the determination, not later than three years after the date of the enactment of the new legislative provision, which deadline falls upon August 8, 2008. 16 U.S.C. §2622(b)(3)(B).

2. ComEd, Ameren and MidAmerican are Subject to the Standard

PURPA, by its specific terms, applies to:

[E]ach electric utility in any calendar year, and to each proceeding relating to each electric utility in such year, if the total sales of electric energy by such utility for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

16 U.S.C. §2612(a)

There is no dispute, to Staff's knowledge, that the Commonwealth Edison Company (ComEd), Central Illinois Public Service Company (AmerenCIPS), Central Illinois Light Company (AmerenCILCO), Illinois Power Company (AmerenIP)¹, and MidAmerican Energy Company fall within this definition.

Initiating Order at 1-2.

¹ AmerenCIPS, AmerenCILCO, and AmerenIP will be referred to collectively as "Ameren", unless the context calls for individual treatment.

3. It is Difficult or Impossible to Apply the Standard to ComEd or Ameren

As the standard is, by its terms, applicable to ComEd, Ameren, and MidAmerican, it is therefore necessary in this proceeding to determine whether it is appropriate to implement the federal alternative fuel source standard.

The question of how the federal standard can be applied is complicated in Illinois by action several Illinois utilities subject to Section 111 have taken pursuant to Section 16-111(g) of the Illinois Electric Service Customer Choice and Rate Relief Law of 1997. Pursuant to that Section:

During the mandatory transition period, an electric utility may, without obtaining any approval of the Commission other than that provided for in this subsection and notwithstanding any other provision of this Act or any rule or regulation of the Commission that would require such approval: ... (3) sell, assign, lease or otherwise transfer assets to an affiliated or unaffiliated entity... [.]

220 ILCS 5/16-111(g)

Since 1998, several Illinois utilities have sold substantially all of their generation facilities to entities not regulated by the Commission. ComEd sold all of its coal-, gas- and oil-fired generation plants in 1999. See Order Commonwealth Edison Company: Petition to protect confidential and proprietary information from public disclosure submitted pursuant to Section 16-111(g) of the Public Utilities Act as part of a Notice of Property Sale / Illinois Commerce Commission On Its Own Motion vs. Commonwealth Edison Company: Proceeding pursuant to Section 16-111(g) of the Public Utilities Act concerning proposed sale of fossil fuel fired generating plants, ICC Docket Nos. 99-0273; 99-0282 (Consolidated): 1999 Ill. PUC Lexis 551; 194 P.U.R.4th 149 (August 3,

1999) (Commission finds sale by ComEd of Crawford, Fisk, Waukegan, Will County, Joliet, Powerton, Collins, Calumet, Joliet, Bloom, Electric Junction, Seabrooke and Lombard power stations to comply with Section 16-111(g)). Pursuant to the same authority, ComEd sold all of its nuclear power stations in 2000. See Order, Commonwealth Edison Company: Request for confidential treatment for portions of the notice of transfer of generating assets and wholesale marketing business and entry into related agreements pursuant to Section 16-111(g) of the Illinois Public Utilities Act / Illinois Commerce Commission On Its Own Motion -vs- Commonwealth Edison Company: Proceeding pursuant to Section 16-111(g) of the Public Utilities Act concerning proposed transfer of generating assets and wholesale marketing business and entry into related agreements, ICC Docket Nos. 00-0369 / 00-0394 (Cons.); 2000 Ill. PUC Lexis 667 (August 17, 2000) (Commission finds sale by ComEd of all its nuclear generating stations to comply with Section 16-111(g)). Accordingly, ComEd is now without any substantial generating capacity of its own. It obtains the electricity necessary to serve its customers pursuant to contract with generating entities. See Order, 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), ICC Docket No. 05-0159 (January 24, 2006) (Commission authorizes ComEd to obtain power under contract reach through reverse auction process).

The Ameren companies have likewise sold substantially all of their generation assets. The Central Illinois Public Service Company (Ameren CIPS)

sold all of its generating capacity to an affiliate in 1999. See Order, Illinois Commerce Commission On Its Own Motion -vs- Central Illinois Public Service Company: Proceeding pursuant to Section 16-111(g) of the Public Utilities Act concerning proposed sale of generating plants, ICC Docket No. 99-0398; 1999 Ill. PUC Lexis 766 (October 12, 1999) (Commission finds sale by Ameren CIPS of power plants at Newton, Coffeen, Meredosia, Grand Tower, Hutsonville, as well as Ameren CIPS' 20% interest in Joppa plant, to comply with Section 16-111(g)). CILCO likewise sold all of its generating capacity in 2002. See Order, Central Illinois Light Company: Request for the confidential treatment of the notice of transfer of generation assets to a subsidiary and entry into various agreements pursuant to Section 16-111(g) of the Illinois Public Utilities Act / Illinois Commerce Commission On Its Own Motion -vs- Central Illinois Light Company: Proceeding pursuant to Section 16-111(g) of the Public Utilities Act concerning proposed transfer of generation assets to a subsidiary and entry into related agreements, ICC Docket Nos. 02-0140 / 02-0153 (Consolidated); 2002 Ill. PUC Lexis 414 (April 10, 2002) (Commission finds sale by CILCO of all of its power plants to comply with Section 16-111(g)). Illinois Power, subsequently acquired by Ameren, sold both its fossil fired and nuclear generating plants during 1999. See Order, Illinois Commerce Commission On Its Own Motion -vs- Illinois Power Company: Proceeding pursuant to Section 16-111(g) of the Public Utilities Act concerning proposed sale of fossil fuel fired generating plants, ICC Docket No. 99-0209; 1999 Ill. PUC Lexis 467 (July 8, 1999) (Commission finds sale by Illinois Power of all of its fossil-fired power plants to comply with Section

16-111(g)); see also Order, Illinois Power Company: Petition requesting entry of an order finding that a determination by the Federal Energy Regulatory Commission that the Clinton Power Station is an "eligible facility" under Section 32 of the Public Utility Holding Company Act of 1935, as amended, will benefit consumers, is in the public interest, and does not violate Illinois law; Illinois Power Company / Petition to protect confidential and proprietary information from public disclosure regarding the sale of the Clinton Power Station / Illinois Commerce Commission On Its Own Motion -vs- Illinois Power Company: Proceeding pursuant to Section 16-111(g) of the Public Utilities Act concerning proposed sale of the Clinton Power Station, ICC Docket Nos. 99-0409; 99-0410; 99-0411 (Consolidated); 1999 Ill. PUC Lexis 809 (October 26, 1999) (Commission finds sale by Illinois power of its Clinton nuclear generating station to comply with Section 16-111(g)). Ameren, like ComEd, obtains the electricity necessary to serve its customers pursuant to contract with generating entities. Order, Central Illinois Light Company d/b/a AmerenCILCO: Proposal to implement a competitive procurement process by establishing Rider BGS, Rider BGS-L, Rider RTP, Rider RTP-L, Rider D, and Rider MV (Tariffs filed on February 28, 2005) / Central Illinois Public Service Company d/b/a AmerenCIPS: Proposal to implement a competitive procurement process by establishing Rider BGS, Rider BGS-L, Rider RTP, Rider RTP-L, Rider D, and Rider MV (Tariffs filed on February 28, 2005) / Illinois Power Company d/b/a AmerenIP: Proposal to implement a competitive procurement process by establishing Rider BGS, Rider BGS-L, Rider RTP, Rider RTP-L, Rider D, and Rider MV (Tariffs filed on

February 28, 2005), ICC Docket Nos. 05-0160 / 05-0161 / 05-0162 (Cons.) (January 24, 2006) (Commission authorizes Ameren to obtain power under contract reach through reverse auction process). .

In cases where a utility purchases all of its electricity on the wholesale market, there is a clear disconnect between the federal diverse fuel standard and the utility's ability to implement that standard. A utility that does not generate any electricity has, logically, little or no control over the types of fuel used to generate the electricity it purchases. This is especially true where, as is the case with both ComEd and Ameren, a utility satisfies all of its electricity requirements through purchases in an auction process in which, by definition, the purchaser's major goal is to obtain power and energy at the lowest possible price, other considerations notwithstanding. Furthermore, neither auction order contains any requirement that fuel diversity be required of the winning bidders. See Order, Commonwealth Edison Company: Proposal to implement a competitive procurement process by establishing Rider CPP, Rider PPOMVM, Rider TS-CPP and revising Rider PPO-MI (Tariffs filed February 25, 2005), ICC Docket No. 05-0159 (January 24, 2006) (hereafter "ComEd Auction Order"); Order, Central Illinois Light Company d/b/a: AmerenCILCO Proposal to implement a competitive procurement process by establishing Rider BGS, Rider BGS-L, Rider RTP, Rider RTP-L, Rider D, and Rider MV (Tariffs filed on February 28, 2005) / Central Illinois Public Service Company d/b/a AmerenCIPS: Proposal to implement a competitive procurement process by establishing Rider BGS, Rider BGS-L, Rider RTP, Rider RTP-L, Rider D, and Rider MV (Tariffs filed on February 28, 2005) /

Illinois Power Company d/b/a AmerenIP: Proposal to implement a competitive procurement process by establishing Rider BGS, Rider BGS-L, Rider RTP, Rider RTP-L, Rider D, and Rider MV (Tariffs filed on February 28, 2005), ICC Docket Nos. 05-0160 / 0161 / 0162 (Consol.) (January 24, 2006)(hereafter “MidAmerican Auction Order”).

Accordingly, ComEd and Ameren can doubtless be required to develop plans to minimize dependence on one fuel source and to ensure that the electric energy each sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies. However, it is difficult to see how either ComEd or Ameren can develop a meaningful plan to accomplish these objectives, at least, over the near term. Both ComEd and Ameren are obliged, through May 2010, to purchase electricity from the successful bidders in the September 2006 auction process, regardless of the fuel with which the electricity is generated. ComEd Auction Order at 121, Ameren Auction Order at 127, 129. While it is perhaps feasible to require ComEd and Ameren to engage in such planning subsequent to the expiration of their current contracts, even then each utility will likely be dependent on purchased power to supply its customers. Accordingly, any such plan that either utility formulates for the longer term will be circumscribed by the availability on the wholesale market, and the cost, of power generated using alternative fuel sources.

4. It is Unnecessary to Apply the Standard to MidAmerican

With respect to the Standard's applicability to MidAmerican, unlike Ameren and ComEd, MidAmerican has not taken action to divest its generating facilities. MidAmerican is a multi-state, vertically integrated utility that owns or has partial ownership of three generating facilities in Illinois. MidAmerican owns a 25% / 435 megawatt share of the Quad Cities Generating Station that is operated by Exelon Generating Company, L.L.C. MidAmerican Response to Staff Data Request RL1.0. MidAmerican owns and operates a 64 megawatt combustion turbine facility in Moline Illinois that is fueled by natural gas. Id. Additionally, MidAmerican owns and operates a three megawatt hydroelectric facility. Id. Staff notes that MidAmerican can also supplement its generation with purchases from other suppliers and through the PJM and MISO markets.

5. It is Not Appropriate to Require ComEd, Ameren or MidAmerican to Implement the Standard at this Time

This Commission is charged with: "consider[ing] each standard established by subsection (d) and mak[ing] a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this title." 16 U.S.C. §2621(a). In other words, the question is one of propriety – whether the standard should, as a matter of public policy, be implemented.

In light of the extreme difficulty or outright impossibility of applying the fuel diversity standard to ComEd and Ameren, the Staff is of the opinion that it is not appropriate – at this time, at least – to require such implementation by those utilities. As seen above, neither utility currently has any control over the fuel used

to generate the electricity it supplies to its customers, so requiring either to develop a fuel diversity plan for the short term would be a singularly pointless exercise. While requiring such planning over the longer term might yield some modest result, it is not clear that this would necessarily be the case.

As for MidAmerican, Staff notes that MidAmerican's Illinois generation portfolio, consisting of a nuclear, natural gas-fueled, hydroelectric facilities (recognizing, however, that the facilities are of unequal size), could be considered responsive to Standard 12's recommendation that an electric utility utilize a "diverse range of fuels and technologies, including renewable technologies."² Staff therefore recommends that the Commission not require MidAmerican to develop a plan to increase the amount of diversity among the technologies it employs to generate electricity.

6. Public Policy Underlying the Standard

Standard 12 appears to consist of two interrelated parts. First, the Standard states that each electric utility shall minimize dependence on a single fuel source. Reliance on a single fuel source (or more realistically, a limited number of fuel sources) would leave a utility vulnerable to unexpected price increases, fuel price volatility, and fuel supply disruptions. Use of multiple fuel

² It should be noted that MidAmerican's Iowa generation portfolio contains a substantial amount of wind generation and other renewable resources. MidAmerican projects that by 2008, its renewable resources will represent approximately 8 percent of nameplate capacity (490 MW) and approximately 5 percent (1.5 million MWh) of generated and purchased energy. MidAmerican Energy Company Response To Illinois Commerce Commission Resolution, Docket 05-0437, August 18, 2005.

resources – that is, using a variety of technologies and fuel sources to generate electricity -- could limit a utility's exposure to these problems.

The second part of the Standard encourages utilities to ensure that the electricity sold to customers is generated through a variety of fuel sources, including renewable technologies. The public purposes supporting this Standard may include the following: minimization of a state's susceptibility to fuel price increases, thereby minimizing the volatility of customer electric rates; promotion of environmentally benign generating technologies; and, promotion of the use of the natural resources that may be available in a state.

Standard 12 would apply most directly to vertically integrated electric utilities and to those utilities with substantial generation portfolios. Neither situation applies to the present status of the electric industry in Illinois. As explained above, neither ComEd nor the Ameren utilities own nor operate any sizable generation facilities. MidAmerican owns and/or operates a diverse set of generation resources in Illinois; however, these resources consist of only a relatively small percentage of their 6,048 MW total systemwide generation portfolio. MidAmerican Response to Staff Data Request RL1.1

7. No Comparable State Standard Exists

The requirements of Section 111 do not apply if a state has undertaken certain prior state actions prior to enactment. For example, if a state has implemented for such utility the standard concerned, or a comparable standard; the state regulatory authority for such state has conducted a proceeding to

consider implementation of the standard concerned, or a comparable standard, for such utility; or the state legislature has voted on the implementation of such standard, or a comparable standard for such utility. 16 U.S.C. §2622(d). The Staff is aware of no such comparable state alternative fuel source standard; certainly, none is articulated in Article XVI of the Public Utilities Act, *see, generally*, 220 ILCS 5/16-101, *et seq.*³

8. Summary of Staff's Initial Position

While ComEd, Ameren and MidAmerican are each subject to the fuel diversity standard articulated in 16 U.S.C. §2621(d)(12), the Staff does not recommend application of the standard to any of them at this time. ComEd and Ameren have each divested themselves of virtually all generation assets, and each supplies its customers using electricity purchased pursuant to an auction process. In light of the fact that neither of these utilities has any control over the fuels used to generate the electricity it purchased, applying the standard to either would be a relatively pointless exercise. MidAmerican, while it has retained substantial generation assets, currently uses a diverse range of fuels (nuclear, natural gas, hydroelectric) to generate the electricity it sells to customers. Staff's views regarding public policy are set forth above. Staff is of the opinion that no comparable state standard exists.

³ The Commission adopted a resolution on July 19, 2005, accepting Commission's Staff's proposed modifications to Governor Blagojevich's proposed Sustainable Energy Plan. The modified plan recommended that the Commission encourage the electric utilities under its jurisdiction to voluntarily comply with specified goals concerning, among other things, the use of renewable resources to procure power (ICC Docket No. 05-0437). Documents associated with the Commission's examination of these issues are available at: <http://www.icc.illinois.gov/industry/publicutility/energy/SustainableEnergyPlanInitiative.aspx>.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

/s/ _____

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