

**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.)	

VERIFIED INITIAL COMMENTS OF THE AMEREN ILLINOIS UTILITIES

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 their initial comments. By request of the Administrative Law Judge (“ALJ”), these comments address the following topics:

- whether the federal source standard is applicable to Commonwealth Edison Company, Ameren Illinois Utilities, and Mid-American Energy Company;
- the utilities’ initial position on applying or not applying that standard;
- whether the utilities have incentives to follow this standard;
- the public policies regarding this standard;
- whether there are comparable standards that affect the utilities.

As noted in the Commission’s May 2, 2007 order initiating this docket (“Initiating Order”), the Energy Policy Act of 2005 (“EPAAct”) mandated state regulatory agencies to consider through public hearings whether to adopt several different federal standards for electric utilities within their regulatory jurisdiction. (Initiating Order, p. 1 (citing 16 USCS § 2621).)

(a) Consideration and determination. Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) *and each nonregulated electric utility* shall consider each standard established by subsection (d) and make a determination concerning whether or not it is appropriate to

implement such standard to carry out the purposes of this chapter. . . .

16 USCS § 2621(a) (emphasis added). The statute thus requires *both* the Illinois Commerce Commission *and* non- regulated electric utilities to consider and determine whether to a standard that requires jurisdictional utilities to “...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 USCS § 2621(d)(12).

The above standard assumes electric utilities have ownership of generation facilities or somehow maintain the ability to control the development of generation infrastructure. Because the Ameren Illinois Utilities do not own significant generation resources, and because of the competitive reforms contained in the Electric Service Customer Choice and Rate Relief Act of 1997, this federal standard is not appropriate for application to the Ameren Illinois Utilities. Currently in the Ameren Illinois Utilities’ service areas, the commodity of electricity is exchanged in a competitive market, and most recently procured in a declining price auction for bundled retail customers taking service from the Ameren Illinois Utilities. All electricity is produced and sold on a competitive basis on the wholesale level and such transactions are subject to the jurisdiction of the Federal Energy Regulatory Commission (“FERC”).

The Ameren Illinois Utilities simply are not in a position to effectuate fuel source diversity in generation planning because of the divestiture of generation assets pursuant to the Electric Service Customer Choice and Rate Relief Act of 1997 and the current means by which the procurement of power takes place.

The Ameren Illinois Utilities agree with the Initiating Order’s determination to initiate this docket in accordance with EPCRA and make the Ameren Illinois Utilities parties to this docket, as the law states that each state regulatory agency must do. However, as applied to most

of Illinois, the fuel source diversity standard would be more appropriately considered by reformation to any potential market barriers at the wholesale level that prevent the development of a diverse regional generation portfolio (if, in fact, that is the case). Potential market barriers related to participation by energy generators in the electricity markets Midwest Independent System Operator (“MISO”) facilitates would be most appropriately addressed within the processes and forums afforded within that organization or before the FERC.

The fact that the Ameren Illinois Utilities cannot implement the fuel source standard in a manner consistent with competitive provision of generation resources or the reforms in the Electric Service Customer Choice and Rate Relief Act of 1997 generally constitutes a sufficient basis for the Commission to determine that it is not appropriate to implement any such standard with respect to the Ameren Illinois Utilities, as EPAct clearly recognizes the Commission’s authority to do:

. . . For purposes of such consideration and determination in accordance with subsections (b) and (c), and for purposes of any review of such consideration and determination in any court in accordance with section 2633, the purposes of this title supplement otherwise applicable State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

16 USCS § 2621(a) (emphasis added). The Commission’s authority to determine it is not appropriate to implement any federal standard is also clearly stated in 16 USCS § 2621(c):

The State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility may, to the extent consistent with otherwise applicable State law . . . (B) decline to implement any such standard.

16 USCS § 2621(c).

The Ameren Illinois Utilities also note Staff's recent analysis regarding the bounds of the Commission's legal authority to implement such initiatives in Docket 06-0800:

As stated in Staff's testimony, with P.A. 90-561, effective December 16, 1997, the General Assembly repealed what were sections 8-402 and 8-404 of the Illinois Public Utilities Act. Section 8-402 required utilities to provide 20-year energy plans, which considered and utilized all available, practical and economical conservation, renewable resources, cogeneration and improvements in energy efficiency. (220 ILCS 5/8-402 (1996)) Similarly, Section 8-404 authorized the Commission to "require any public utility to implement energy conservation, demand control, or alternative supply programs" (220 ILCS 5/8-404) As a result of the repeal of these PUA sections, the Commission Staff's infrastructure for evaluating energy plans and conservation programs was eliminated. . . .

In addition to repealing Sections 8-402 and 8-404 of the PUA, P.A. 90-561 created an Energy Efficiency Trust Fund, to be funded by Illinois electric utilities, and managed by the Illinois Department of Commerce and Community Affairs rather than utilities or the Commission. Thus, by virtue of P.A. 90-561, the legislature clearly revised certain aspects of the Commission's authority and responsibility with respect to demand management and energy efficiency. . . .

While Staff's position is not that the Commission has no authority whatsoever with respect to demand response and energy efficiency, the repeal of key provisions of the PUA providing specific authority with respect to demand response and energy efficiency cannot be disregarded as meaningless legislative action. As explained in *Caterpillar Finance Corp. v. Ryan*, 266 Ill. App. 3d 312, 318-319 (3rd Dist. 1994), the legislature's intent in repealing a specific statutory authorization is assumed to be the elimination of that specific authority

(ICC Docket 06-0800, June 12, 2007, Corrected Reply Brief of Staff of the Illinois Commerce Commission, pp. 14-17.) Staff's comments do not directly address the Commission's authority here; however, the above analysis may be useful for the Commission in reaching a well-reasoned determination in this docket.

The Ameren Illinois Utilities agree that reasonable diversity in fuel sources should result from proper generation planning and development. This docket, however, cannot be the mode by which such a statewide policy or federal standard is developed and implemented. For all of the reasons stated above, the Commission should enter an order (1) finding that the fuel source standard does not appropriately apply to the Ameren Illinois Utilities and (2) rejecting such federal standard with respect to the Ameren Illinois Utilities.

Dated: July 9, 2007

CENTRAL ILLINOIS LIGHT COMPANY
d/b/a AmerenCILCO, CENTRAL ILLINOIS
PUBLIC SERVICE COMPANY d/b/a
AmerenCIPS, ILLINOIS POWER
COMPANY d/b/a AmerenIP

by: /s/ Laura M. Earl

Christopher W. Flynn
E-mail: cwflynn@jonesday.com
Laura M. Earl
E-mail: learl@jonesday.com
JONES DAY
77 West Wacker
Chicago, IL 60601-1692
Telephone: (312) 782-3939
Facsimile: (312) 782-8585

Edward C. Fitzhenry
E-mail: efitzhenry@ameren.com
Matthew Tomc
E-mail: mtomc@ameren.com
AMEREN SERVICES COMPANY
One Ameren Plaza
1901 Chouteau Avenue
P.O. Box 66149, MC 1310
St. Louis, Missouri 63166-6149
Telephone: (314) 554-3533
Facsimile: (314) 554-4014

CERTIFICATE OF SERVICE

I, Laura M. Earl, certify that on July 9, 2007, I served a copy of the foregoing Verified Initial Comments of the Ameren Illinois Utilities by electronic mail to the individuals on the Commission's Service List for Docket 07-0291.

/s/ Laura M. Earl

Laura M. Earl
Attorney for the Ameren Illinois Utilities