

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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| Illinois Commerce Commission |) | |
| On its Own Motion |) | |
| |) | Docket No. 06-0525 |
| Consideration of the Federal Standard on |) | |
| Interconnection in Section 1254 of the |) | |
| Energy Policy Act of 2005. |) | |
| |) | |

COMMENTS OF THE ENVIRONMENTAL LAW & POLICY CENTER

These comments respond to the Commission’s request for clarification of the meaning and effect on this docket of subsection (h) of SB 0680, Public Act 095-0420, 220 ILCS 5/16-107.5, which was enacted into law by the Governor’s signature on August 24, 2007. Although the majority of SB 0680 relates to net metering, subsection (h) also refers to the development of interconnection standards for distributed generation. In particular, subsection (h) states that “if the Commission has not already acted on its own initiative,” then it shall establish “standards for the interconnection of eligible renewable generating equipment to the utility system” within 120 days after the effective date of the Act.

These comments address three general questions: (1) what is the scope of the “standards” described by subsection (h)?; (2) has the Commission “already acted” to establish such standards?; and (3) how can the Commission move forward to satisfy these requirements in a timely manner? After careful review of the text and structure of the Act, and in light of the months of work put in by the parties in

workshops under this docket, the Environmental Law & Policy Center (ELPC) offers the following conclusions and suggestions:

- First, SB 0680 creates two independent obligations for the Commission – the development of both: 1) net metering standards, *and* 2) interconnection standards within the 120-day window that ends on approximately December 21, 2007.
- Second, the Commission’s July 25, 2007 interim order, which identified IEEE 1547 as the technical basis for any “standards arising from this docket” does not relieve the Commission from establishing standards pursuant to SB 0680.
- Third, although some parties have suggested that SB 0680 may only require the Commission to develop interconnection standards for smaller (i.e. < 2,000 kW) generators, the language in subsection (h) requiring the development of interconnection standards for “eligible renewable generating equipment” applies to all sizes of eligible generators (at least to the extent they are subject to state jurisdiction), not some subset of smaller generators.
- Finally, by building on the substantial efforts of the parties in the workshops, the Staff is now in a good position to develop draft standards that could form the basis for an emergency rule. This would give the Commission and all parties time to complete a general rulemaking process in a thorough and orderly manner. The rulemaking and comment periods could be efficiently coordinated with the process in the parallel net metering docket (07-0293), which is also addressed by SB 0680. Given the thorough discussion of the

relevant issues and the expertise developed by the Staff and all parties through the workshop process, ELPC is confident that this is a realistic and achievable task.

The following discussion provides some additional support and explanation for the four conclusions summarized above.

I. Background and timeline

On July 26, 2006, the Commission initiated this docket (No. 06-0525) in order to meet the requirements of the federal Energy Policy Act of 2005 (the “EPAAct”), which require state commissions to “consider” several different energy policies, including interconnection standards, and make a “determination” by August 8, 2007 regarding whether the state intends to implement those policies. *See* 16 U.S.C. § 2621(a); 16 U.S.C. § 2622(b)(5)(B). On July 25, 2007, the Commission issued an “interim order” which accomplished two basic things: (1) it implements a process to satisfy the EPAAct “determination” deadline by finding that the Commission would indeed implement interconnection standards “based on practices best suited for Illinois” (although the Commission noted that much more work remained before such standards could be implemented in Illinois); and (2) it identified the Institute of Electrical and Electronics Engineers (IEEE) Standard 1547 as the set of technical requirements that would be incorporated into the Illinois interconnection standards that were to be developed. The Commission explained that the parties would continue to participate in workshops to resolve the many other aspects related to

the development of interconnection standards, including the standardization of business practices, legal matters and dispute resolution.

On August 24, 2007, Governor Blagojevich signed SB 0680, which included the following subsection (h):

Within 120 days after the effective date of this amendatory Act of the 95th General Assembly, the Commission shall establish standards for net metering and, if the Commission has not already acted on its own initiative, standards for the interconnection of eligible renewable generating equipment to the utility system. The interconnection standards shall address any procedural barriers, delays, and administrative costs associated with the interconnection of customer-generation while ensuring the safety and reliability of the units and the electric utility system. The Commission shall consider the Institute of Electrical and Electronics Engineers (IEEE) Standard 1547 and the issues of (i) reasonable and fair fees and costs, (ii) clear timelines for major milestones in the interconnection process, (iii) nondiscriminatory terms of agreement, and (iv) any best practices for interconnection of distributed generation.

SB 0680 changed the Commission's mandate with respect to interconnection. Instead of simply "considering" standards under the EPAct, SB 0680 directed the Commission to "establish" standards within 120 days. The Commission convened a status hearing on September 5, 2007 and directed the parties to file comments regarding the scope of SB 0680 and its effect on the current docket.

II. SB 0680 requires the Commission to establish both net metering standards and interconnection standards.

The first sentence of SB 0680 subsection (h) requires the Commission to do two independent things: (1) establish standards for net metering, **and** (2) as long as the Commission has not "already acted," establish "standards for the interconnection of eligible renewable generating equipment to the utility system."

The rest of subsection (h) describes what must be included in the interconnection standards.

The structure of subsection (h) and the General Assembly's use of the word "and" make clear that the directive to establish net metering standards and the directive to establish interconnection standards are separate and independent requirements. The 120-day deadline applies to both requirements.

III. The Commission has not "already acted" in a way that could satisfy the requirements of SB 0680.

When it passed SB 0680, the General Assembly was aware that the Commission was already considering the establishment of interconnection standards in the instant docket pursuant to the federal EPCAct. That is presumably why subsection (h) requires the Commission to establish interconnection standards only if it hadn't "already acted on its own initiative." It would make no sense for the Commission to establish standards pursuant to the EPCAct, only to have to establish new standards pursuant to SB 0680.

At this time, the Commission has not "already acted." Although it has taken an interim step in this docket by identifying IEEE 1547 as the technical basis for any future interconnection standards, it has not yet "established" any standards that would satisfy the requirements of SB 0680. The Commission's July 25, 2007 Interim Order itself explains that "setting the standards that need to be developed for interconnection involves much more than determining whether IEEE Standard 1547 should be utilized..." (Interim Order p. 3) These issues, which according to the Order "remain unresolved," include such things as "standardization of legal matters

... standardized fees ... insurance requirements, dispute resolution alternatives and other issues.” (Id.)

SB 0680 requires the Commission to address the broader procedural and business practice issues that the Interim Order recognizes have not yet been resolved in this docket. In particular, subsection (h) states that the Commission’s interconnection standards “shall address any procedural barriers, delays, and administrative costs” associated with interconnection. In addition to the IEEE 1547 technical standard, the Commission is directed to consider the issues of fees and costs, timelines, nondiscriminatory terms of agreement, and best practices. Because the Commission has not “already acted” to resolve these issues, the 120-day deadline remains effective.

IV. SB 0680’s requirement to establish interconnection standards does not distinguish between smaller and larger eligible generators.

SB 0680 subsection (h) requires the Commission to establish interconnection rules for “eligible renewable generating equipment.” This raises the question of what kinds of equipment are “eligible.” Subsection (b) includes definitions for both eligible “customers” and eligible “facilities.” Although the definition of eligible “customers” for the purposes of net metering is limited to those customers operating generators with a rated capacity of no more than 2,000 kW, the definition of eligible “facilities” is not limited by capacity. (Compare subsections (b)(i) and (b)(iii)). Furthermore the broad language in subsection (h) requires the establishment of standards to address “any procedural barriers, delays, and administrative costs

associated with the interconnection of customer-generation” and does not include any indication of intent to limit these requirements to smaller facilities. Thus, the statute effectively requires the Commission to develop interconnection standards applicable to all state-jurisdictional facilities, which in some cases may be substantially larger than 2,000 kW.

This makes sense from a practical as well as legal standpoint. Through the workshop process, the parties have learned the importance of a comprehensive approach to the interconnection process. The model the parties have been working on includes standardized rules, procedures, forms and agreements that all relate to each other in important ways. Just to take one example, an interconnection application for a small generator (e.g. 100 kW) may be subject to the same engineering review requirements of a much larger generator (e.g. 10 MW) if the small generator does not meet certain up-front technical screening criteria to ensure that it will not create system impacts on the electrical grid. Because of these interrelated requirements, there does not appear to be a way to rationally bifurcate the rule development process between small and large generators. A piecemeal approach may seem attractive at first glance, but in the end it may lead to confusion and inconsistent requirements.

V. The Commission can meet the requirements of SB 0680 through an emergency rulemaking based on the discussion in workshops, followed by a standard rulemaking process.

SB 0680 requires the establishment of interconnection standards within 120 days from the effective date of the new law. This works out to approximately

December 21, 2007. This deadline could be satisfied by the adoption of Emergency Rules under Section 5-45 of the Illinois Administrative Procedure Act, (IAPA) 5 ILCS 100/5-45. The ICC has had a long standing practice wherein Staff proposes rules for the consideration of the Parties, the ALJ and the ICC. The ICC Staff has been leading workshops for a number of months regarding the provision of interconnection services. Everyone has been working together at the workshops to come to a consensus on interconnection standards. At the workshops, the Maryland rule as well as other state and FERC rules have been used as a reference point. In addition, the Parties have presented language concerning various provisions of the Maryland and other rules. There has been consensus on some provisions, but not on others. The debate as to various provisions has been insightful and instructive. At this point in time, we suggest that Staff propose a rule utilizing its expertise and the guidance it has received from the workshops. That rule could be published as an emergency rule under Section 5-40 of the IAPA.

Because emergency rules are in effect for only 150 days, the Commission could simultaneously publish the First Notice Order of a General Rule with language identical to the Emergency Rule. There is a 45-day notice requirement for a General Rule that begins on the first day that the notice appears in the Illinois Register.¹ During that 45-day notice period, the Parties will have the opportunity to file comments regarding the General Rule and the ALJ could propose to the ICC to modify the First Notice General Rule based on the comments. The ICC would then

¹ It usually takes about two weeks from the date that the first notice of rulemaking is sent to the Secretary of State until it is published in the Illinois Register.

have the opportunity to modify the General Rule based on the comments and file a Second Notice Order. All rules are considered by the Joint Committee on Administrative Rules (JCAR). JCAR has up to 45 days to consider the General Rule after the Second Notice Order has been filed. This 45-day time period can be extended by mutual agreement between JCAR and the ICC for another 45 days. Once JCAR acts, either within the 45-day time frame or in any 45-day extension of the time frame, the ICC would consider any guidance provided by JCAR and issue a final order modifying or adopting the General Rule.

The ICC has developed a practice, as outlined above, which accommodates the statutory time frame of an Emergency Rule and concurrently accommodates the statutory time frames for a General Rule. We respectfully urge the ICC to adopt an Emergency Rule for interconnection services and simultaneously proceed with the General Rules as outlined above.

Dated this 17th day of September, 2007.

Respectfully submitted,



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NOTICE OF FILING

PLEASE TAKE NOTICE that on this date, September 17, 2007, I caused to be filed with the Chief Clerk of the Illinois Commerce Commission via e-docket the enclosed Comments of the Environmental Law & Policy Center.



Bradley D. Klein
One of the Attorneys for the
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CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that on this date, September 17, 2007, I, Brad Klein, hereby certify that I did electronically file with the Illinois Commerce Commission the foregoing Comments of the Environmental Law & Policy Center and electronically served the same upon the persons identified on the attached Service List.



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