

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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.)	
)	

REPLY COMMENTS OF THE ENVIRONMENTAL LAW & POLICY CENTER

ELPC files these comments in reply to the Parties' September 17, 2007 comments regarding the effect on this docket of subsection (h) of SB 0680, Public Act 095-0420, 220 ILCS 5/16-107.5. The main issue to be resolved is whether the Commission has "already acted" in a manner that would relieve the Commission from establishing interconnection standards within 120 days. The Act states:

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 Act further states that these interconnection standards "shall address any procedural barriers, delays, and administrative costs" associated with interconnection while "ensuring the safety and reliability" of the system.

In their initial comments Ameren and ComEd assert that the fact that the Commission has issued an interim order in Docket No. 06-0525 satisfies the requirement that it act within 120 days, and Staff seems to support this position.

ELPC strongly disagrees with that interpretation, and as set forth below, submits that SB 0680 clearly requires the Commission to set both net metering and interconnection standards in 120 days.

I ComEd and Ameren’s Positions Ignore the Legislature’s Intent to Set Standards Within 120 Days

In the initial round of comments, ComEd and Ameren argue that the Commission has “already acted” because it issued an Interim Order on July 25, 2007 in this docket. They are incorrect. The July 25th Interim Order, which leaves many aspects of interconnection “unresolved” (Interim Order at 3), does not satisfy SB 0680.

When examined carefully, the utilities’ argument is not a reasonable interpretation of the statute. No one disputes that the Legislature wanted to move on net metering within 120 days, and interconnection is a fundamental prerequisite to net metering. If a net metering customer is not able to negotiate an interconnection agreement with his or her electric utility, the customer will not be able to net meter. Therefore, it is no surprise that the GA wanted interconnection standards in place when the new net metering program takes effect, and included both in the same sentence.

The July 25, 2007 Interim Order does not satisfy SB 0680 because it is only an “interim” order, and because it does not even approach “establishing standards.” At best, it initiates a process by which interconnection standards will eventually be set at some indefinite time in the future. If the General Assembly were merely interested in beginning a process towards the development of interconnection standards it would have required the Commission to “initiate a proceeding to establish standards within

120 days.” “Beginning a process” is not consistent with “establishing standards” and having “already acted.” Indeed, when the legislature passed SB 0680, this docket to address interconnection was already under way. Thus, the only reasonable interpretation of this language is that the legislature expected the Commission to establish standards within 120 days, not simply continue the ongoing workshop process into the indefinite future.

The best evidence for the interim, procedural nature of July 25th Interim Order is the language of the Order itself. The emphasized language in the attached copy of the Interim Order highlights the Commission’s view that “only one issue” has been resolved in this docket and that “setting the standards that need to be developed for interconnection *involves much more* than determining whether IEEE Standard 1547 should be utilized.” (Attachment A at 3) (emphasis added). The Order goes on to describe many of the “unresolved” issues that remain in this docket, including nearly all of the factors addressed in SB 0680. *Compare* Attachment A at 3 (describing the issues that “remain unresolved”) *with* SB 0680 subsection (h) (describing the factors that the “interconnection standards shall address”).

The Interim Order further notes that “no provisions have been developed or formulated as to how this Standard should be implemented,” and “provisions have not yet been formulated regarding the other types of generators and the many other aspects of interconnection.” (Attachment A at 3). The Interim Order, by its terms, is “not final; and is not subject to the Administrative Review Law.” (Attachment A at 5).

It does not establish interconnection standards,¹ nor does it set a definite timeline for establishing standards. It simply is not a reasonable interpretation of SB 0680 to conclude that the Interim Order satisfies that law.

II. Staff's Definition of "Act" is Inconsistent with the Legislature's Intent to Establish Interconnection Standards

Although Staff notes that the Commission must follow the "plain language" of the new statute (Staff Comments p. 7), the Staff Comments offer some interpretations of the phrase "already acted" that stray far from its natural meaning when read in context. While equivocating quite a bit and discussing different ways to interpret the language in SB 0680, Staff ultimately takes the position that the Commission met its obligation when it issued its Interim Order:

Thus, it seems relatively clear that, particularly when the Commission issued its Interim Order on July 25, 2007, which adopted the IEEE 1547 engineering standard, that the Commission had already acted upon its own initiative, albeit not completed acting, on interconnection.

(Staff Comments at 11). With all due respect to Staff, it's odd that it would take the position that the Commission has acted, while noting, "[the Commission] has not completed acting." Generally speaking, in legal terms, one has not "acted" if one is in the middle of process.

In support of its interpretation, Staff selects one definition of the word "act" from a website called Dictionary.com to support the view that "already acted" means "the process of doing." (See Staff Comments p. 10). ELPC notes two things regarding this definition. First, the definition does not make sense in the context of SB 0680, where

¹ The Order does not even establish and implement the IEEE 1547 technical standard – it merely orders that any

the legislature directs the Commission to establish standards for net metering and interconnection standards within 120 days. In this context, by the plain language in the Act, the Commission has not “acted” until it establishes standards. Second, Staff failed to discuss the other definitions of “act” from the same website, including: “(3) a formal decision, law, or the like, by a legislature, ruler, court, or other authority;” or “(11) to reach, make, or issue a decision on some matter.”² When read in the context of SB 0680, these alternative definitions of “act” are far more appropriate and imply that the GA’s use of the phrase “already acted” refers to a formal decision or something that has been completed or finished.³

In the final analysis, Docket No. 06-0525 is not a case that, by statute or rule, must be completed in a set time frame, such as a rate case that must be completed in eleven months. Thus, the case could conceivably take many months or years before the Commission issues its final order and this is not consistent with the legislature’s direction to “establish standards.”

III. The Commission Does Not Need to Decide the Issue of What Renewable Generators the Act Covers

Finally, the utilities argue that even if required to Act within 120 days the Commission need only address “renewable generators no larger than 2000 kW capacity.” (ComEd Comments p. 3). Although ELPC does not agree with this interpretation (See ELPC Initial Comments pp. 6-7), the Commission need not decide

standards that eventually arise from this docket shall “incorporate” the IEEE 1547 standard. (Interim Order p. 4)

² See <http://dictionary.reference.com/browse/act>.

³ This is even clearer in view of the example phrases used by Dictionary.com to illustrate the various definitions.

Definition (11) – “to reach, make, or issue a decision on some matter” – includes the example phrase: “I am required to

this issue at this juncture. Rather, the details of implementing the interconnection standards required by SB 0680 should be addressed in the first instance through the continuing workshop process.

IV. Conclusion

By directing the Commission to “establish standards” for both net metering and interconnection within 120 days, the Legislature intended to bring to completion a process that has been under consideration at the Commission since at least 2001. It would not be consistent with the intent of SB 0680 to conclude that the Commission’s Interim Order, which does not establish standards and simply provides for further ongoing consideration which could last for many additional months or years, meets the law’s requirement that the Commission have “acted” within 120 days.

Dated this 25th day of September, 2007.

Respectfully submitted,



Brad Klein
Environmental Law & Policy Center
35 E. Wacker Drive, Suite 1300
Chicago, IL 60601
(312) 795-3706

act before noon tomorrow.” If you substitute the words “within 120 days” for the words “before noon tomorrow” you have almost precisely what the GA required here.

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NOTICE OF FILING

PLEASE TAKE NOTICE that on this date, September 25, 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
Environmental Law & Policy Center

CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that on this date, September 25, 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.



Bradley D. Klein
One of the Attorneys for the
Environmental Law & Policy Center

Brad Klein
Environmental Law & Policy Center
35 E Wacker Drive, Suite 1300
Chicago, Illinois 60601
Telephone: (312) 673-6500
Facsimile: (312) 795-3730
bklein@elpc.org

SERVICE LIST
ICC Docket No. 06-0525

Darryl Bradford
Vice President
Commonwealth Edison Company
PO Box 805379
Chicago IL 60680-5379

Eric Bramlet
Koger & Bramlet, P.C.
316 ½ Market St.
PO Box 278
Mt. Carmel IL 62863

Sean R. Brady
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601-3104

Erika Dominick
Paralegal
Legal Dept.
Ameren Services Company
(m/c 1310)
1901 Chouteau Ave.
St. Louis, MO 63103

Laura M Earl
Atty. for Central Illinois Light Company d/b/a
AmerenCILCO
Illinois Power Company d/b/a AmerenIP
Jones Day
77 W. Wacker
Chicago IL 60601-1692

David Eley
South Beloit Water, Gas and Electric Company
228 Dancette Dr.
Rockton IL 61072

Edward C Fitzhenry
Ameren Services Company
PO Box 66149 (M/C 1310)
1901 Chouteau Ave.
St. Louis MO 63166-6149

Christopher W Flynn
Atty. for Central Illinois Light Company d/b/a
AmerenCILCO
Illinois Power Company d/b/a AmerenIP
Jones Day
77 W. Wacker, Ste. 3500
Chicago IL 60601-1692

Betty Gallagher
Commonwealth Edison Company
440 S. LaSalle St., Ste. 3300
Chicago IL 60605

James M Helm
Electric Energy, Inc.
PO Box 165
Joppa IL 62953

Karen M Huizenga
Senior Attorney
MidAmerican Energy Company
106 E. Second St.
PO Box 4350
Davenport IA 52808

Robert P Jared
MidAmerican Energy Company
106 E. Second St.
PO Box 4350
Davenport IA 52808

Stefanie R. Glover
Office General Counsel
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601

Michael J Lannon
Illinois Commerce Commission
160 N. LaSalle, Suite C-800
Chicago IL 60601

Barry Matchett
Environmental Law & Policy Center
35 E. Wacker Dr., Ste. 1300
Chicago IL 60601

Scot McClure
Interstate Power and Light Company
Alliant Energy
4902 N. Biltmore Ln.
PO Box 77007
Madison WI 53707-1007

Jennifer Moore
Regulatory Attorney
Alliant Energy Corporate Services
200 First St., SE, 12th Fl.
Cedar Rapids IA 52401-1409

Carrie Thompson
Regulatory Specialist
Commonwealth Edison Company
440 S. LaSalle St., Ste. 3300
Chicago, IL 60605

Michael S Pabian
Assistant General Counsel
Exelon Business Services
10 South Dearborn, 35th FL
Chicago IL 60680-5379

E. Glenn Rippie
Atty. for Commonwealth Edison Company
Foley & Lardner LLP
321 N. Clark St., Ste. 2800
Chicago IL 60610

Jeff Schirm
MidAmerican Energy Company
716 17th St.
Moline IL 61265

Suzan M Stewart
Managing Senior Attorney
PO Box 778
401 Douglas St.
Sioux City IA 51102

Steven R Sullivan
Sr. Vice President
d/b/a AmerenCILCO, et al.
1901 Chouteau Ave.
PO Box 66149, MC 1300
St. Louis MO 63166-6149

Jackie K Voiles
Central Illinois Light Company d/b/a
AmerenCILCO, et al.
607 E. Adams St.
Springfield IL 62739