

**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 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 reply comments regarding the implications of Senate Bill 680, now P.A. 95-0420, in the above-captioned Docket, for the consideration of the Administrative Law Judge (“ALJ”) and the Illinois Commerce Commission (“Commission”).

On September 5, 2007, the ALJ held an Emergency Status Hearing to address the implications of newly enacted P.A. 95-0420. At that hearing, the ALJ requested comments on the issue of whether P.A. 95-0420, specifically subsection (h), requires completion of all matters related to this Docket within 120 days. On September 17, 2007, the Ameren Illinois Utilities, Commission Staff (“Staff”), the Environmental Law and Policy Center (“ELPC”) and Commonwealth Edison Company (“ComEd”) submitted comments, and MidAmerican Energy Company (“MidAmerican”) joined in the comments of the Ameren Illinois Utilities and ComEd. The Ameren Illinois Utilities, ComEd, MidAmerican, and Staff all agree that P.A. 95-0420 does not require the Commission to accelerate consideration of the matters before the Commission pending in Docket No. 06-0525, primarily because the Commission has already “acted” in accordance with the statute through implementation of the Interim Order. Staff also presented additional statutory interpretations for the ALJ’s and the Commission’s consideration.

ELPC argued that the Commission must adopt rules regarding net metering and interconnection within 120 days. To that end, ELPC argues that the Commission should quickly institute an emergency rule, followed by a permanent rulemaking proceeding, addressing net metering and interconnection as two separate concepts. In pertinent part, the ELPC argued: “[T]he 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.” ELPC further argues that the Commission should consider and adopt settlement materials discussed in the ongoing interconnection workshops related to 06-0525 as the emergency rule.

Ameren Illinois Utilities disagree with ELPC’s interpretation of P.A. 95-0420 with respect to the timing issue, for all of the reasons previously discussed. The Ameren Illinois Utilities also agree with ComEd’s point that to interpret the phrase “if the Commission has already acted on its own initiative” in the way ELPC suggests would render the condition meaningless. (ComEd Comments, p. 3.)

The Ameren Illinois Utilities also disagree with the broad interpretation of the term “interconnection” offered by ELPC, as a logical leap far outside the limited context of P.A. 95-0420. The broad meaning given by ELPC to a short and ambiguous clause ignores the limited context of the complete enactment. P.A. 95-0420 has a very specific purpose: It is intended to mandate net-metering service for a select number of customers operating small renewable generating facilities below 2,000 kW. There is no clause suggesting that the Commission, utilities, and ARES, who will be effected by the new net-metering requirement, should establish any charges, rates, fees, costs, terms or conditions of service, for customers with facilities larger than 2,000 kW. Moreover, ELPC has essentially argued that the legislature is mandating the

consideration of all matters presented in a specific proceeding related to a specific federal enactment, when, in fact, that proceeding and that federal enactment are not cited, referenced, noted, or otherwise identified within the body of the legislation.

It is also important to consider that P.A. 95-0420 does not mandate or otherwise suggest that the Commission is required to promulgate rules or regulations within the enactment, only that such service should be provided by utilities and ARES, and that the Commission should establish standards for such service. It clearly does not proscribe an emergency rule, followed by a permanent rulemaking as a required procedure as suggested by the ELPC. It should be noted that other statutes related to the imposition of new requirements on utilities typically contain the term “rule” or “regulation” when the legislature intends to permit the Commission to enact such regulations, unlike section (h) of P.A. 05-0420. See 220 ILCS 5/7-101 (4) (providing for waiver authority related to certain affiliate transactions); 220 ILCS 5/19-110 (providing for regulations pertaining to alternative natural gas suppliers); 220 ILCS 5/16-115 (providing for regulation of alternative retail electric service providers).

In the present docket, the Commission has already approved an IEEE technical standard related to interconnections. Like all other services offered, the Ameren Illinois Utilities must file tariffs to provide for the rates, charges, terms and conditions of service in order to offer net-metering service. Any remaining provisions necessary to comply with the act can be set forth in those tariffs, and will likely be supported by affidavit, testimony, or stipulation on the record as to the reasonableness of such provisions in the traditional manner associated with the approval of new public utility services.

To the extent the Commission decides that an emergency rulemaking is necessary for the implementation of net-metering, the Ameren Illinois Utilities will work with Staff and the parties

to advance reasonable rules and regulations in order to get the net-metering law implemented according to the time constraints imposed by P.A. 95-0420. However, given the limited time available it is not reasonable to try to layer on the consideration of rules and regulations that go beyond the scope of net-metering and consider and adjudicate all interconnection matters that have been raised in the workshops in this docket. Moreover, as Staff correctly notes, all of the utilities participating in 06-0525 currently provide interconnection services (Staff's Sept. 17, 2007 Comments, p. 12), and, at the end of two rounds of briefing in this Docket, the record did not support implementation of a rule.

Finally, the Ameren Illinois Utilities note that, like the other parties to this docket, we have participated in workshop discussions in good faith and with the understanding that workshop materials and discussions would be kept confidential and would not be used in this Docket or in any other litigated proceeding. ELPC suggests in its comments that considerable discussion has taken place in workshops related to this Docket with regard to the analysis of an out-of-state regulatory regime governing interconnection, and that Staff should use the "expertise and the guidance it has received from the workshops" – i.e., workshop "product" – as the model for an emergency rule. (ELPC Comments, p. 8.) It is true that the Ameren Illinois Utilities agreed to participate and have participated in confidential workshop discussion regarding an out-of-state regulatory regime, *but only* under the (repeatedly) expressed understanding that this regulatory regime would not be used as anything more than a means of guiding the discussion and addressing specific topics. The Ameren Illinois Utilities, and other parties, have also repeatedly noted that workshops are in the nature of settlement discussions, and comments made within the workshops (in particular, regarding the out-of-state regulatory regime ostensibly used to promote discussion) may not be plucked out of the settlement context and promoted as an

“agreed-upon” item. Moreover, the Ameren Illinois Utilities note that the Commission may only implement standards as Illinois law provides, and it is highly improper to assume that a comprehensive regulatory regime that complies with the law and practice of one state, as well as the tariffs of that state’s electric utilities, could simply be cut-and-pasted into the Commission’s rules. This suggestion is improper, unwise, and unnecessary.

The Ameren Illinois Utilities have made candid comments in workshops related to specific provisions of the out-of-state regulatory regime, with the expressed understanding that such comments would be kept confidential. It would not be proper to take notations from such discussions and force them into a rule before a consensus is reached on *all* items. Otherwise, parties including Ameren Illinois Utilities may in fact be forced to litigate a document that their settlement work product was used in producing. Parties would also be forced to litigate a document that includes input from workshop participants who are not a party to this or any other Commission Docket. This would not only create problems associated with violating the workshop’s preamble provisions, but would also discourage future, full participation in workshops, particularly where (as here) non-parties are involved.¹ If parties fear that participation in and candid comments and work product shared during good faith settlement negotiations will be used against them during litigation, this would have a chilling effect on settlement discussions in the future.

While the Ameren Illinois Utilities agree that the workshop discussions have been productive and should continue, the workshops have not resulted in anything approximating a consensus on several major issues, including topics identified in P.A. 95-0420 as well as the ultimate mode of implementing any given standard. Reasonable resolutions to important public

¹ Further, to do as ELPC suggests would not only affect the rights of the workshop participants, but also the rights of parties who have not participated in workshops but who may be affected by the new law.

policy issues, such as those presented in this Docket, often come from amicable cooperation of otherwise adverse parties, and comments made in workshops should *only* find their way into an adjudicated proceeding after full agreement by the participating parties. Such agreement has not been reached. ELPC's suggestion to implement an emergency rule based on workshop discussion and materials should thus be rejected.

WHEREFORE, the Ameren Illinois Utilities believe that interconnection standards referenced in the net-metering law should be implemented according to the specific context of the law, and additional interconnection rules should be addressed outside of the process of implement the specific services mandated by the Illinois Legislature in P.A. 95-0420.

Dated: September 25, 2007

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CERTIFICATE OF SERVICE

I, Laura M. Earl, certify that on September 25, 2007, I served a copy of the foregoing Reply Comments of the Ameren Illinois Utilities by electronic mail to the individuals on the Commission's official Service List for Docket 06-0525.

/s/ Laura M. Earl

Laura M. Earl