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.	))))	

BRIEF ON EXCEPTIONS

Pursuant to 83 Ill. Adm. Code 200.830, the Environmental Law & Policy Center (ELPC) and the People of the State of Illinois (People) hereby file this Brief on Exceptions in response to the May 23, 2008 Proposed Order (PO) in this docket. While, on balance, the proposed Part 466 rules move Illinois in the right direction, this brief highlights several critical changes that must be adopted to eliminate unjustified market barriers to the development of clean and efficient distributed generation in Illinois. As required by 83 Ill. Adm. Code 200.830(b)(2), suggested replacement statements are included in the attached separate document entitled "Exceptions."

1) Section 466.60(h) & (i) – External Disconnect Switches for Level 1 Generators

Sections 466.60(h) & (i) of the draft electric interconnection rule contain a blanket requirement that all generators, even small inverter-based equipment, be equipped with an external disconnect switch (EDS). The utilities claim that these switches are needed even though modern inverters are rigorously tested to ensure that they automatically disconnect if there is a loss of power or other irregularity on the grid.[1]

[1] An "inverter" is a device that converts DC electricity from the generator into AC electricity suitable for use in the home. Modern inverters must be rigorously tested and "certified" to ensure that they disconnect in accordance with Underwriter Laboratory (UL) standards. See NREL Report at Sec. 3.2 (cited below). Generators are required to be equipped with UL-listed inverters in order to qualify for Level 1 review under the Illinois rules. Sec. 466.70(f)(2).

The Proposed Order cited two reasons for retaining the EDS requirement for small, inverter-based (i.e. "Level 1") generators: (1) ELPC/AG and IREC comments did not sufficiently explain why inverter-based systems do not require an EDS; and (2) the understanding that an EDS is necessary for safety. See PO Sec. V(d), Analysis & Conclusions. Both rationales are incorrect.

First, the ELPC/AG and IREC Comments did explain why an EDS is unnecessary. In support of its position, ELPC referenced a detailed study from the National Renewable Energy Lab (NREL). (This study is also attached to this filing as Exhibit 1). In addition to those initial comments, several solar PV installers, experts in utility engineering, and other professionals attended the May 20, 2008 public hearing and explained, in detail, why an EDS is redundant, adds unnecessary cost, will not increase safety, increases operational complexity, and hampers market deployment of grid-tied systems.

The bottom line is that the generators at issue here (UL-certified, small inverters) already have multiple layers of redundant disconnect equipment. The NREL report includes a detailed diagram of a typical PV system and notes that "there are at least nine means of disconnecting the PV system from the grid." NREL Rep. at 9-10. Requiring an *extra* utility-accessible EDS simply is not necessary. As one expert remarked at the hearing, an EDS is like an appendix in a human body -- nobody knows what it's there for. (Statement of Dave Merrill, SunAir Systems). Several comments at the public hearing noted the primary obstacle caused by an EDS requirement is not the initial price of the equipment, but other burdens related to the design, installation and additional complication of the system. (E.g. Statements of Dave Merrill and Michael Sheehan).

In this docket, the Commission's mandate is to seek out and adopt procedures based on "current best practices of interconnection for distributed generation." 16 U.S.C. § 2621(d)(15); 220 ILCS 5/16-107.5(h); see PO Sec. I (Introduction). The NREL report concludes that an EDS requirement "may have been justifiable 5 or 10 years ago," but today is "increasingly viewed as

redundant and unnecessary." NREL Rep. at 23. The Commission should not lock-in an unnecessary requirement that does not meet the "current best practice" standard. Accordingly, the Commission should clarify that Level 1 generators are not subject to the EDS requirement in Section 466.60(h) and (i), as outlined in the attached Exceptions document.

2) Appx A – Level 1 Contract - Requirement to add utility as "additional insured" is an unnecessary burden

The Proposed Order added a requirement that Level 1 generators "name the EDC as an additional insured" on their homeowner's insurance policy based on a perceived need to provide "assurance that such a customer would be able to pay for damages, court costs and attorney's [sic] for any third-party claims." Proposed Order Sec. VI(d), Analysis and Conclusions. Both Ameren and MidAmerican – who suggested the requirement – presume that such "third-party" claims occur. While this may sound reasonable on its face, in reality it is not. There has been no evidence presented in this docket of any such claims resulting from the operation of the tens of thousands of small generators across the country.

Any concern that utilities are not adequately protected from liability claims is unfounded. First, as mentioned above, Level 1 generators are safe and there has been no evidence presented of any such liability claims ever being filed in this country. Second, the manufacturers of certified Level 1 equipment maintain product liability insurance to protect against potential property damage or personal injury claims. See Starrs Report sec 7. (This study is attached to this filing as Exhibit 2). Third, Level 1 equipment is covered by existing homeowner and commercial insurance policies (without the "additional insured" requirement). Fourth, existing legal remedies, such as mutual indemnification, are adequate to protect the interests of all parties. Id. Fifth, utilities that continue to be concerned about potential liability have the ability to obtain an insurance rider which covers utility liability of these systems. Id.

As reported in a detailed study of insurance requirements for PV systems, "a more fundamental problem with additional insured requirements is that while such requirements are not unusual in commercial insurance, they are largely unheard of for homeowner's insurance." Starrs Report sec. 2.2.1. Thus, the Commission is requiring something that is simply not available. See id. ("most net metering customers who have explored this issue have reported that their insurers refused to list the utility as an additional insured").[2]

As the authors of the Starrs Report concluded after reviewing the "historical experience and the development and adoption of new IEEE and UL standards,"[3] "there is no technical or historical evidence to justify imposing additional insurance requirements on the owners of small-scale inverter-based PV and wind systems. The primary effect of such requirements is to discourage customers from investing in these renewable technologies." Starrs Report sec. 4.2. By including such a requirement, the Commission would undermine the General Assembly's intent to expand net metering in Illinois. See 220 ILCS 5/16-107.5(a). The Commission should accordingly decline to adopt the "additional insured" requirement in the PO and should reinstate the original draft language issued for public comment and reproduced in the attached "Exceptions" document.

3) Appx. D – Level 2-4 Contract – Article 5.2 – The Customer Deposits Requirement is Inequitable

Article 5.2 requires interconnection customers to pre-pay 100% of construction costs, without the opportunity to earn interest, "prior to the commencement" of any necessary distribution upgrades. Appx. D, Level 2-4 Contract, Art. 5.2. There are two problems with this: (1) requiring 100% pre-

[2] For instance, while the provisions of the Illinois Insurance Code dealing with life insurance (215 ILCS 5/229(m)(3)) or accident and health insurance (215 ILCS 5/370(a)) specifically authorize the insurance industry to name an independent third party as a beneficiary, this is not common practice under a homeowner's property or casualty insurance policy. Furthermore, nowhere in the Code is there any mention of renewable energy devices. Any requirement imposed by the Commission that homeowners obtain an insurance policy on something not expressly provided for in state law may require a change in Code.

[3] These "IEEE and UL standards" form the foundation of the proposed Illinois interconnection rule. See Sec. 466.40 and 466.70(f).

payment for these types of projects is unnecessary and departs from standard business practices as reflected in FERC, PJM and MISO procedures; and (2) allowing utilities to hold thousands of dollars in customer funds *without paying interest* is fundamentally unfair and creates the disincentives for the utility to expedite the interconnection process.

FERC's Small Generator Interconnection Agreement (SGIA) reflects the industry standard and does not require a 100% customer deposit. [The SGIA, which was intended to serve as a model for state interconnection procedures, is available at http://www.ferc.gov/industries/electric/indus-act/gi/small-gen.asp]. Article 5.1 of the Illinois rule was built on the SGIA model, and requires billing "on a monthly basis," according to milestones set by the parties, with the customer responsible to pay each bill "within 30 calendar days after receipt." (Appx. D, Art. 5.1.1). However, Article 5.2 adds the pre-payment requirement, which does not appear in the SGIA. (Appx. D, Art. 5.2). As a result, the Illinois rule is unfair, internally inconsistent and unworkable.[4] As discussed at the public hearing, interconnection customers simply cannot obtain the capital and financing necessary to pre-pay 100% of construction costs, which can amount to hundreds of thousands of dollars. (E.g. Statement of Kathy Quasey, EMI) The ELPC/AG initial comments follow the SGIA's approach and provide for alternative security arrangements (such as a guarantee, payment bond or letter of credit) that preclude the need for this onerous pre-payment requirement.

In addition to the rule being unduly burdensome, allowing utilities to keep hundreds of thousands of dollars of customer funds for many months, even years, *without paying interest* is not only fundamentally unfair and it creates incentives that undermine the purpose of the rule. The Proposed Order is based on a misunderstanding that these deposits would be held for only "a very short period of time." See PO Sec. VI(e) (Analysis and Conclusions). This assumption is false. The Order relied on Staff's Reply Comments, which focused on deposits for interconnection *studies*. PO

Sec. VI(e) (citing Staff Reply Comments at 24-25). But the deposit at issue in Article 5.2 does not apply to interconnection *studies*,[5] it applies to *construction* costs. Appx. D, Art. 5.2. The time required to "procure, install, or construct" distribution system upgrades can take many months (or years) and cost several hundred thousand dollars.

At a minimum, utilities should not be able to earn interest on the *customer's* money set aside while they work. The payment of compound interest would ensure all parties have a vested interest in minimizing the time and expense associated with interconnection. Allowing utilities to keep the customer's interest reduces their incentive to timely complete the interconnection. Accordingly, the Commission should either eliminate Article 5.2 or, at a minimum, revise it to require no more than a 50% deposit, with the option for the parties to agree to an alternative financial security arrangement, as outlined in the attached "Exceptions" document.

4) Sections 466.10 & 466.40 – Scope of the Interconnect Rule Should Be Expanded

Section 466.10 limits the scope of the Rule to generators with a nameplate capacity of 10 MVA or less. Several commenters at the public hearing described how this leaves many generators in a "regulatory black-hole," ineligible for protection under either state or federal rules. See, e.g., testimony of Bruce Papiech (describing his unsuccessful appeal for FERC coverage of his wind development in Lee County).

The Proposed Order acknowledges the need to fill this "gap," but proposes to initiate an entirely new rulemaking, rather than fix the problem now. This decision is based on a concern that the "possible use of IEEE 1547 as the technical standard, could be inappropriate for larger interconnections." ALJPO Sec. V(b) (Analysis & Conclusions). This concern is unfounded. Larger generators need access to the standardized *business* terms and dispute resolution provisions of the

[4] The rule is internally inconsistent because it one cannot pay bills "on a monthly basis" as required by Art. 5.1.1 and at the same time pay 100% of all costs "prior to the commencement" of any work, as required by Article 5.2.

draft rules, not access to the IEEE 1547 *technical* standard. (See, e.g., Statement of Myra Karegianes). The Initial Comments proposed a simple solution to apply these procedural protections to all state-jurisdictional projects without modifying the application of the IEEE 1547 technical standard. ELPC/AG Initial Comments at 6-8. The Commission should adopt this recommendation (reproduced in the attached "Exceptions document) rather than expend additional resources on an unnecessary rulemaking.

5) Sec. 466.110(a)(6) -- 15% screen is not necessary for Level 3 interconnections

The Proposed Order rejects the ELPC, AG, and IREC position that the 15% screen is unnecessary and unduly limits the Level 3 interconnection pathway. PO Sec. V(l), Analysis & Conclusions. Several commenters addressed this point at the public hearing and described why the Commission's concerns about "overloaded circuits" are not relevant to Level 3 non-exporting generators. Accordingly the Commission should carefully review the record and hearing transcript before adopting a provision that could eliminate much of the value of the Level 3 pathway.

6) Sec. 466.80 and 466.10 -- Area network rules

Interconnections to area networks are extremely important in large urban areas. The Commission should modify the draft rule to ensure that it does not inadvertently foreclose the ability of customers and utilities to negotiate in good faith regarding interconnections on such networks. ELPC and the People fully support the City of Chicago's suggested approach to allow evolution of interconnection processes for area networks and other circumstances, as knowledge or experience is gained. See Brief of Exceptions of the City of Chicago, Exception #2.

Dated this 30th day of May, 2008.

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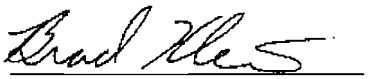
[5] The deposits for interconnection studies are separately addressed in the study agreements. E.g. Appx. E para. 7; Appx. F para. 6.

Respectfully submitted,



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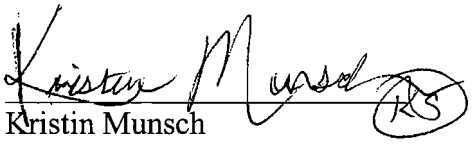

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NOTICE OF FILING

PLEASE TAKE NOTICE that on this date, May 30, 2008, I caused to be filed with the Chief Clerk of the Illinois Commerce Commission via e-docket the enclosed Brief on Exceptions of the Environmental Law & Policy Center.

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CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that on this date, May 30, 2008, I, Brad Klein, hereby certify that I did electronically file with the Illinois Commerce Commission the foregoing Brief on Exceptions of the Environmental Law & Policy Center and electronically served the same upon the persons identified on the attached Service List.

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