

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Ameren Illinois Company)	
d/b/a Ameren Illinois,)	
)	
Applicant.)	<u>Docket No. 13-0188</u>
)	
First Amended Request for a Waiver of Certain)	
Contract Provisions Applicable to the)	
Interconnection of Distributed Generation)	
Facilities.)	

FIRST AMENDED REQUEST FOR A WAIVER OF CERTAIN CONTRACT PROVISIONS APPLICABLE TO THE INTERCONNECTION OF DISTRIBUTED GENERATION FACILITIES

COMES NOW Ameren Illinois Company d/b/a Ameren Illinois (“Ameren Illinois”, “AIC” or “the Company”) and respectfully requests a waiver of certain provisions of 83 Ill. Admin. Code Part 466 governing approval by the Illinois Commerce Commission (“the ICC” or “the Commission”) of certain distributed generation interconnection agreements. In the alternative, the Company request a declaratory ruling, pursuant to 83 Ill. Admin. Code § 200.220, finding that the agreement further described below is exempted from compliance with the below-articulated provisions of Part 466.50 due to the preemptive effect of federal law. In support of its request, Ameren Illinois states as follows:

1. AIC is an Illinois corporation duly organized and existing under the laws of the State of Illinois with is principal office in Peoria, Illinois. Ameren Illinois is a public utility within the meaning of Section 3-105(a)(1) the Public Utilities Act and is an “electric distribution company” (“EDC”) as defined in 83 Ill. Admin. Code § 466.

2. The United States Army ("the Army") is an agency of the United States Government, within the Department of Defense. Officers, agents, or employees of the Army are required to comply with all laws and regulations applicable to officers, agents, or employees of

the United States Government. As further explained below, the Army is an “applicant” as defined in 83 Ill. Admin. Code § 466.

3. The Army recently installed at a base located at 2611 Weiss Lane in Quincy, Illinois, several photovoltaic (“PV”) cells capable of generating 16.56 kilowatts of electricity annually. A system of this capacity qualifies as a Level 2 distributed generation system. Ameren Illinois has been approached by the Army about interconnecting these facilities with Ameren Illinois’ distribution system.

4. Ameren Illinois has inspected the facilities and believes those facilities to be installed up to the applicable industry standards such that absent the situation described below, Ameren Illinois would approve of interconnection of those facilities with its distribution system.

5. 83 Ill. Administrative Code Part 466 applies to certain generation facilities operated in parallel with those owned by an EDC. See 83 Ill. Admin. Code § 466.10. 83 Ill. Admin. Code § 466.50 provides that an applicant seeking to interconnect a distributed generation facility shall submit an interconnection request to the EDC that owns the electric distribution system to which the interconnection is sought and, in doing so, shall use the forms approved by the Commission. 83 Ill. Admin. Code § 466.50. The Commission-approved interconnection forms relevant to this request are attached to 83 Ill. Admin. Code § 466 as Appendices C (Levels 2 to 4 Application) and D (Levels 2 to 4 Contract).

6. In this case, and for the reasons explained below, Ameren Illinois is unable to obtain the requisite forms from the Army because the Army is unable to execute, without modification, the interconnection contract approved by the Commission. This contract is attached to Part 466 as Appendix D and is attached to this Request as Exhibit 1. In specific,

Ameren Illinois believes the Army is unable to agree to the following provisions, for the following reasons:

- Article 5 – “Billing, Payment, Milestones, and Financial Security”. Article 5 provides the terms governing billing for, and payment of, certain design, engineering construction and procurement costs. Specifically, Article § 5.2 anticipates that the Army would pay a deposit equal to 100% of the estimated cost of said costs prior to commencement of the related work.
 - The Army is unable to agree to the deposit arrangement outlined in Article § 5.2 because the Army is legally prohibited from paying for services prior to such services being rendered. 31 U.S.C. § 3324.
- Article 6 – “Assignment, Limitation on Damages, Indemnity, Force Majeure, and Default”. Article § 6.3 generally provides the terms governing when one party to the interconnection agreement is required to indemnify the other.
 - The Army is legally prohibited from entering into indemnification agreements because such agreements violate the Anti-Deficiency Act, 31 U.S.C. § 1341(a) (“ADA”) (Prohibiting an officer or employee of the United States Government from authorizing an expenditure that may exceed funds in appropriation). *See e.g., Union Pacific Railroad Corp. v. United States*, 52 Fed. Cl. 730 (2002); *United States Park Police Indemnification Agreement*, B-242146, 1991 US Comp. Gen., Aug. 16, 1991 (stating that absent specific statutory authority, indemnification provisions which subject the government to indefinite or potentially

unlimited liability violate the ADA) . Therefore, the government cannot agree to Article § 6.3.

- Article 7 “Insurance”. Article 7 generally outlines the insurance requirement of interconnection customers/applicants.
 - The Army is self-insured and cannot agree to carry liability insurance. See 21 Comp. Gen. 928, 929 (1942); B-237654, Feb. 21, 1991.
- Article 9 – “Miscellaneous”. Among the miscellaneous provision found in Article 9 is § 9.1, which provides that the contract shall be interpreted and governed according to the laws of the State of Illinois.
 - The governing law for a contract to which the federal government is a party is federal law. *Clearfield Trust Co. v. United States*, 318 U.S. 363, 366 (1943); *Downey v. State Farm Fire & Cas. Co.*, 266 F.3d 675 (C.A.7 ,2001). As such, the Army cannot agree to the choice of law terms found at Article § 9.1

7. In this case, good cause to grant the requested waiver exists because, as indicated above, Ameren Illinois has inspected the Army's PV facilities and believes those facilities to be installed up to applicable industry standards such that absent the situation described herein, Ameren Illinois would approve of interconnection of those facilities with its distribution system. For this reason, the Army should not be placed in a disadvantageous position due to the fact that unlike private citizens or other third-party applicants, the Army cannot agree to certain provisions of the Commission-approved interconnection contract based upon the legal prohibitions recounted above. Moreover, public policy favors granting this Request, as the

renewable generator at issue, and the facilities at issue dedicated to purposes in furtherance of national defense.

8. The Commission has granted waivers in the past for deviation from its rules for good cause. *See* Order dated January 24, 2013, Docket No. 12-0692. If the Commission determines it does not have the requisite legal authority to grant a waiver of 83 Ill. Admin. Code § 466.50, then, in the alternative, Ameren Illinois requests that the Commission issue a declaratory ruling pursuant to 83 Ill. Admin. Code § 200.220. If a declaratory ruling is preferred, the Company requests that the Commission declare that the Ameren Illinois is exempted from compliance with the above-articulated provisions of Part 466.50 due to the preemptive effect of federal law.

9. Please send service of all pleadings to the following contact at the United States Army:

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WHEREFORE, Ameren Illinois Company respectfully requests a waiver from 83 Ill. Admin. Code § 466.50 and Commission approval to enter into an interconnection agreement absent those provisions provided above.

DATE: April 09, 2013

Respectfully Submitted,

By: /s/ Eric Dearmont

Eric Dearmont

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**COUNSEL FOR AMEREN ILLINOIS
COMPANY D/B/A AMEREN ILLINOIS**

VERIFICATION

I, Eric Dearmont, certify that: i) I am Counsel for Ameren Illinois Company d/b/a Ameren Illinois; ii) I have read the foregoing *First Amended Request for a Waiver of Certain Contract Provisions Applicable to the Interconnection of Distributed Generation Facilities*; iii) I am familiar with the facts stated therein; and iv) the facts are true to the best of my knowledge, information and belief.



Eric Dearmont

STATE OF MISSOURI)
) SS
CITY OF SAINT LOUIS)

SUBSCRIBED and SWORN to before me this 9th day of April, 2013.



Notary Public

