

Docket No.: 13-0077
Bench Session: 05/15/13
Deadline: 05/19/13

MEMORANDUM

TO: The Commission

FROM: D. Ethan Kimbrel, Administrative Law Judge

DATE: May 2, 2013

SUBJECT: Illinois Commerce Commission
On Its Own Motion
-vs-
Ameren Illinois Company d/b/a Ameren Illinois,
Commonwealth Edison Company, The Peoples Gas Light &
Coke Company, North Shore Gas Company, and Northern
Illinois Gas Company d/b/a Nicor Gas Company

Adoption of Policies Concerning the Illinois Statewide
Technical Reference Manual for Energy Efficiency.

Applications for Rehearing filed by Ameren Illinois Company
d/b/a Ameren Illinois, Commonwealth Edison Company, The
Peoples Gas Light & Coke Company, North Shore Gas
Company, and Northern Illinois Gas Company d/b/a Nicor
Gas Company and also the Illinois Attorney General

RECOMMENDATION: Grant the requests for rehearing, in their entirety.

On April 29, 2013, Ameren Illinois Company d/b/a Ameren Illinois, Commonwealth Edison Company, The Peoples Gas Light & Coke Company, North Shore Gas Company, and Northern Illinois Gas Company d/b/a Nicor Gas Company (collectively, referred to herein as "Petitioners") and the Illinois Attorney General (the "AG") filed Applications for Rehearing in this matter. For the reasons stated herein, both the Petitioners and the AG's Applications should be granted, in their entirety.

The Applicable Law Regarding Rehearing

The Public Utilities Act provides, in pertinent part, that:

Within 30 days after the service of any . . . order or decision of the Commission any party to the action or proceeding may apply for a rehearing in respect to any matter determined in said action or proceeding and specified in the application for rehearing.

220 ILCS 5/10-113. This statute further provides that the Illinois Commerce Commission (the "Commission") shall receive and consider such application and it "shall grant or deny such application in whole or in part within 20 days from the date of the receipt thereof by the Commission." *Id.* Further, no appeal is allowed from any order or decision "unless and until an application for a rehearing thereof shall first have been filed with and finally disposed of by the Commission." Therefore, no party can appeal a Commission order without filing an application for rehearing. *Id.* Additionally, applications for rehearing must state with specificity the issues for which rehearing is sought. 83 Ill. Adm. Code 200.880(b).

Petitioners and the AG's Applications for Rehearing

Background

On January 24, 2013, and on the recommendation contained in a Staff Report submitted by the Commission Staff's Policy Division dated December 18, 2012, the Commission issued an order initiating this docket to consider adoption of policies concerning the Illinois Statewide Technical Reference Manual for Energy Efficiency ("IL-TRM"). Pursuant to notice duly given in accordance with the law and the rules and regulations of the Commission, a status hearing was held before a duly authorized Administrative Law Judge ("ALJ") of the Commission, at its offices in Chicago, Illinois on February 20, 2013. In preparation for said hearing, Staff of the Commission ("Staff") prepared a draft Proposed Order which was circulated to the Parties for review. All of the parties to this docket subsequently agreed to Staff's Proposed Order and on March 8, 2013, Staff filed the Order on the Commission's E-docket system. On March 19, 2013, the ALJ marked the record "Heard and Taken". The Final Order was entered by the Commissioners at the March 27, 2013 Regular Open Meeting. A copy of the Order was served electronically to the parties of record the following day.

Issues on Rehearing

Although the Petitioners believe that the Final Order is well-reasoned and supported by the record, they have since come to understand that a fundamental disagreement did in fact exist among the parties to this docket regarding three core questions of the TRM's application:

- (1) Does the TRM cease to be effective at the end of each Plan Year?
- (2) Should an existing measure in the TRM be removed entirely if there is disagreement over any subcomponent of the measure during the update process?
- (3) Should measure level non-consensus issues that have been properly raised and then resolved by the Commission be applied retroactively to the beginning of the current plan year or prospectively (and if prospectively, how)?

The AG also filed its Application based upon these same issues. Both the Petitioners and the AG argue in their Applications for Rehearing that in order to move forward with the application of the TRM, it is imperative that the Commission address and answer these questions as expeditiously as possible.

The AG states that timely clarification on these questions are essential to enable the Petitioners to develop and select energy efficiency program measures to be used in an annual efficiency portfolio based on forecasted energy savings. The AG continues that without such clarification, calculation of the savings that a utility forecast predicts will be achieved over a program year becomes difficult, if not impossible. Ensuring consistent, transparent calculation of program measure energy savings likewise helps ensure that ratepayer-funded programs are both innovative and cost-effective.

The Petitioners maintain that the purpose of Commission approval of the TRM Policies in this docket was to eliminate the inefficiencies of litigating these policies in each of the utilities' separate three-year EE Plan dockets and to provide certainty regarding the use and application of the TRM on an on-going basis. They argue that granting their requests would allow for the record to accurately reflect the positions in this docket with respect to the TRM Policies. More importantly, it would also provide the Commission with the opportunity to review the record, the Final Order, and any additional evidence and argument and then provide clarity with respect to the interpretation and application of the TRM Policies approved by way of the Final Order.

The Petitioners also note that clarity and certainty regarding how the TRM should be interpreted and applied affects issues involving the Illinois Power Agency's procurement plan for 2014, each Petitioner's program plan for the final year of its current three-year EE program, which begins June 1, 2013, and the filing of Petitioners' next three-year EE Plans, which are currently being developed by each Petitioner for submission to the Commission on September 1, 2013. Accordingly, Petitioners request that the Commission grant their request and set a schedule that expeditiously resolves the three issues set forth above.

I agree with both the Petitioners and the AG and find that for the reasons stated herein, the Commission should grant the Petitioners and the AG's Applications for Rehearing, in their entirety.

DEK:fs