
INTEROFFICE MEMORANDUM

TO: LARRY JONES, ADMINISTRATIVE LAW JUDGE
FROM: ANN MCCABE, COMMISSIONER
SUBJECT: QUESTIONS FOR PARTIES IN DOCKET NO. 13-0034
DATE: 6/17/2013

After a review of the record in this case, some outstanding issues appear worthy of exploration. I am forwarding questions for the Illinois Power Agency (“IPA”), with the hope that such questions would allow us to more thoroughly explore and evaluate the merits of the case. I also invite Staff and other parties to submit responses to these questions, to the extent they believe such responses will help us come to a prudent decision. I request an answer to all questions within seven days of service. The responses should be thorough, detailed, and accompanied by a sworn and notarized verification.

1. As the IPA has acknowledged, “there is no statutory confidentiality requirement in Section 1-75(d)(5).” (IPA Reply Comments, Filed April 24, 2013, at 2.) As the IPA has further explained, other statutory benchmarking provisions do provide that “[t]he benchmarks shall be confidential but shall be provided to, and will be subject to Commission review and approval, prior to a procurement event.” (220 ILCS 5/16-111.5(e)(3), as cited in Attachment A of the IPA’s Initial Comments, Filed March 20, 2013, at (B)(2).) Given this statutory construction and the structural differences between this procurement and one subject to competitive bidding, what justification does the Illinois Commerce Commission have in this case that allows it to keep such benchmarks confidential?
2. Given that the IPA is “is comfortable with ... releasing the Benchmark ‘bottom line’ numbers as soon as they are agreed to ... and releasing the entire benchmark (including the methodology) once this proceeding ends and appeals are exhausted,” please identify the specific harm(s) that will occur if the entire benchmark is released immediately, along with the “bottom line” numbers. (IPA Reply Comments, Filed April 24, 2013, at 2.)