

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission :
On Its Own Motion :
-vs- : 01-0701
Illinois Power Company :
: :
Reconciliation of revenues collected under :
gas adjustment charges with actual costs :
prudently incurred. :

**RESPONSE OF THE STAFF OF THE ILLINOIS COMMERCE
COMMISSION TO ILLINOIS POWER COMPANY'S SECOND VERIFIED
MOTION TO REOPEN THE RECORD AND ADMIT ADDITIONAL EVIDENCE**

Pursuant to Section 200.190 of the Rules of Practice, 83 Ill. Adm. Code 200.190, Staff of the Illinois Commerce Commission (“Staff” and “Commission”), by and through its attorneys, hereby submits its Response to Illinois Power Company’s (“IP” or “Company”) Second Verified Motion to Reopen the Record and Admit Additional Evidence (“Second Motion”). IP’s April 3, 2003, Second Motion alleges an accounting error was recently discovered that caused IP to under-recover \$2,534,240 from its purchased gas adjustment (“PGA”) customers in 2001. (IP Second Motion at 1-2.)

I. ARGUMENT

As IP states, the hearing in the instant proceeding was held on October 1, 2002, at the conclusion of which, the record was marked “Heard and Taken”. Initial Briefs were filed by the parties on October 25, 2002. On November 6, 2002, IP filed a Verified Motion to Reopen the Record and Admit Additional Evidence, which was subsequently denied by the Administrative Law Judge (“ALJ”). There is no final Commission Order in the proceeding. (IP Second Motion at 2.)

However, it is what IP does not state that is significant. The Commission initiated this docket on November 7, 2001 (almost one and one-half years ago). IP filed its direct testimony on April 3, 2002 (over one year ago), its rebuttal testimony on July 31, 2002 (over eight months ago) and its surrebuttal testimony on September 18, 2002 (seven months ago). All of this dated testimony relates to the 2001 reconciliation year that ended fifteen months ago. Staff opposes IP's Second Motion because it is no longer timely to reopen the record and admit additional evidence. Introduction of additional evidence at this point in the proceeding eschews the normal Commission review process.

Furthermore, Staff and IP agreed to a proposed schedule for this proceeding prior to the May 8, 2002, Prehearing Conference. At the Prehearing Conference, however, the ALJ drastically shortened the previously agreed-upon schedule (See May 8, 2002, Transcript at 5, wherein the ALJ acknowledges that some of the dates might impose a burden on the parties) and indicated that he intended to send a Proposed Order to the Commission for issuance of a final Order by the end of December, 2002. It is ironic, at best, that IP now seeks to drastically expand the schedule in this proceeding, when it enthusiastically supported the ALJ's shortened schedule at the Prehearing Conference.

A. 83 III. Adm. Code 200.870

IP predicates its Second Motion on Sections 200.190, 200.870 and 200.875(c) of the Commission's Rules of Practice. (IP Second Motion at 1.) Section 200.870 requires an application for additional hearings to "state the reasons therefor, including material changes of fact or of law. . ." IP has not demonstrated that its new evidence is

due to a significant and material change. In fact, no change has occurred. If IP's assertions are correct, the facts surrounding the accounting error have always existed; IP simply missed them. The new evidence is the result of an IP employee detecting a potential error in accounting. Staff believes that IP should bear the brunt of its accounting error, not IP's gas customers who would be positioned to pay for the error. When utilities cut costs by reducing employee levels to benefit shareholders, the remaining reduced employee levels cannot achieve the same quality of financial reporting and mistakes are made.

In fact, it is Staff's understanding from discussions with IP that this potential accounting error extends back to 1994. It is no coincidence that this fact appears neither in IP's Second Motion nor in the supporting testimony of Company witness Gary J. Murphy (IP Exhibit 1.12). If the Commission were to allow IP to reopen the instant proceeding, Staff surmises that this will encourage the Company to attempt to reopen the eight PGA proceedings from 1994 to 2000.

B. 83 III. Adm. Code 525

Section 525.70(a) of the Commission's rules regarding annual reconciliations of PGA clauses requires that a utility file with the Commission an annual reconciliation statement, which must be certified by the utility's independent public accountants and verified by an officer of the utility. While IP's independent public accountants have certified the information that is currently in the record of this proceeding, the numbers regarding the accounting error have neither been certified by the independent public accountants nor verified by an officer. As such, these numbers should not be considered by the Commission.

C. Docket No. 02-0721

Docket No. 02-0721 is IP's 2002 PGA reconciliation proceeding. While the Company filed its direct testimony on April 2, 2003, there has been no Prehearing Conference nor has one been scheduled. Presumably, that proceeding will be indefinitely held in abeyance until the resolution of the instant 2001 reconciliation case. It is unknown how much time Staff would need for an adequate review of the numbers associated with IP's accounting error. Staff suspects that the adjustment is not as clearcut as IP would have the Commission believe. It may, in fact, take significant Staff resources to adequately review the associated information. Extending the schedule in the instant proceeding to provide Staff an ample opportunity to review IP's mistake will undoubtedly delay the progression of Docket No. 02-0721 for an indefinite period.

II. CONCLUSION

For the foregoing reasons, Staff of the Illinois Commerce Commission respectfully requests that the Commission deny Illinois Power Company's Second Verified Motion to Reopen the Record and Admit Additional Evidence.

Respectfully submitted,

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