BEFORE THE
ILLINOIS COMMERCE COMMISSION

PUBLIC UTILITY PREBENCH AGENDA

Chicago, Illinois
Tuesday, December 15, 2009

Met, pursuant to notice, at 1:30 p.m. in
the Main Hearing Room, Eighth Floor, 160 North
LaSalle Street, Chicago, Illinois.

PRESENT:

CHARLES BOX, Chairman
LULA M. FORD, Commissioner
ERIN M. O'CONNELL-DIAZ, Commissioner
SHERMAN J. ELLIOTT, Commissioner
JOHN T. COLGAN, Commissioner

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CHAIRMAN BOX: Pursuant to the provisions of
the Illinois Open Meetings Act I now commend a
regularly scheduled prebench session of the Illinois
Commerce Commission. With me in Chicago are
Commissioners Ford, O'Connell-Diaz, Elliott and
Colgan and myself, Chairman Box. We have a quorum.

Before moving into the agenda, this is
the time allowed members of the public to address the
Commission. Members of the public wishing to address
the Commission must notify the Chief Clerk's Office
at least 24 hours prior to the bench session.
According to the Chief Clerk's Office there are no
requests to speak.

We have two items on today's agenda.
The first item is Docket 09-0373. This is the
petition for approval by the Illinois -- Illinois
Power Agency notice for procurement plan.

Judge Jones, are you with us?

JUDGE JONES: Yes, I am, Mr. Chairman. And
Steve Hickey is here also.

CHAIRMAN BOX: You want to walk us through
this, just a brief overview of this particular case
and see if there's -- Commissioners will have
questions or comments of you or Mr. Hickey.

JUDGE JONES: I'll be happy to do so,
Mr. Chairman.

As the Commission is aware this is the
second annual filing by the Illinois Power Agency on
this procurement plan. The upcoming plan year runs
from June 2010 through May 2011. It covers
essentially a 5-year time horizon with the plan year
being the first of those 5 years. It, again, uses an
RFP process, which for the most part is statutorily
mandated. It applies to the eligible retail
customers, ComEd and Ameren Utilities. It covers a
residual power and energy requirements, which would
be those which are not already covered by prior
contracts, whatever they may be either from last
year's plan or the procurement plan from the previous
year primarily.

The eligible customers would not
include those larger customers that have been
declared competitive or deemed competitive by the
Public Utilities Act. The Illinois Power Agency in
addition this year also in its filed plan included a renewable energy -- long-term renewable energy proposal. That was the subject of much debate during the course of the proceeding.

Some of the other contested issues related to the demand response. There are some parties who still disagree with the demand response proposal that is on the table from Illinois Power Agency.

Based on what we saw in the briefs on exceptions, the only other issue in the case, at least that was cited in those filings, was the issue mentioning hedging during the peak periods in the summer and whether there should be some additional subscriptions to cover the potentially high costs of energy during those peak periods.

As you're aware, somewhat late in the case the IPA made a supplemental filing setting forth its updated version or modified version of the long-term renewables proposal providing -- more detail. It is one that is supported by -- directly by the two utilities, the Attorney General, Staff for
the most part, several other parties accorded in most
of its terms -- well, they would like to see some
changes made. One party essentially opposes the plan
in its entirety.

The Commission, as the Commission
knows, the deadline in this matter is December the
29th. I guess that would conclude the overview, but
I would be happy, of course, to supplement those
answers or to try to answer any questions you may
have.

CHAIRMAN BOX: Judge, as we go through this, I
have three areas I'd like just to ask questions on.
Not so much the hedging during the summer, but the
three throughout this afternoon I'd like to focus on
is the long-term contract, the demand response and
the whole issue of having one or two RFP sessions for
the rents or the renewables.

All right. Starting out with the
long-term contract, can you walk me through the
scenario of how this process -- this procurement
process will be different than the ones we've had in
the past? My concern is how it would -- how is that
process going to work with the long-term contracts?
Will they -- will the IPA negotiate with the
generators? Or documents will be prepared that all
the other parties will agree to for the Companies to
fill out? How is that going to work, do you know?

    JUDGE JONES: Chairman, it's a combination of
the things you just mentioned. Many details are
filled out, at least to some degree, in that
so-called Appendix K that was attached to that -- to
the supplemental filing.

    To be a little more specific, in terms
of the procurement process itself, the IPA does
propose to use a competitive RFP process where
contract terms will be standardized and winning bids
selected on the basis of price -- price alone.

    One of the big issues early in the
case was how these potential procurements or actual
procurements would be reviewed. So -- and the
supplemental filing, which the IPA made and several
parties support, they would specifically utilize
benchmarks. So the administrator in consultation
with the IPA and the procurement monitor and the ICC
Staff will dole confidential benchmarks and those will be subject to Commission approval for the resources procured prior to going forward with the RFP process.

And in connection with that -- I'll just mention this very briefly -- the IPA, again as part of that supplemental filing, indicate that it intends to count the REC, renewable energy credit portion toward the renewable requirements and billing cap. That had been an issue earlier in the case. To some degree it's not a totally resolved issue; but for purposes of this proceeding, that's how it will work.

As far as the contract structure, there have been a lot of debate about the proper term or length of the contracts. Some thought 5 years would be appropriate or -- up to 25. What the IPA eventually ended up proposing was a term of 20 years. They previously suggested the combination of 3 terms to attempt to accommodate people, but 3 terms is somewhat unwily and 20 terms has some benefits, too, one of which was an attempt to accommodate some of
the -- some of those parties or suppliers of that -- of that energy who indicated that some of those types of projects really take that long to get to the point where they are cost effective or profitable. So in order to go forward with those longer times -- it would be appropriate.

CHAIRMAN BOX: Judge, let me ask a question. When we established the benchmarks last year was the IPA part of that process when we set those benchmarks?

JUDGE JONES: Yes. Yes, their administrator would have been -- Steve, you want to step in on that?

MR. HICKEY: Yeah, I think that the benchmarks are -- we're not certain because this is something that happens after the Commission enters its final order in the procurement case and Staff is the one who presents the benchmarks. But if I'm not mistaken, the Staff, the IPA, the procurement monitor work together to develop the benchmarks and present them to the Commission for approval in the spring each year.
CHAIRMAN BOX: That brings us to another question. When this original plan was submitted, was there anything there concerning long-term contracts?

JUDGE JONES: When the preliminary plan was posted for ComEd by the parties before becoming a formal plan before the Commission, that preliminary plan did not propose long-term renewable contracts. After the receipt of comments during the 30-day comment period, then reviewing those, the IPA in its filed plan wanted to actually before you did -- did, in fact, include a long-term renewable proposal in it. So, yes.

CHAIRMAN BOX: Say, for instance -- and I'll be jumping around on this whole procurement issue. So please bear with me. Say a 20-year contract is entered into, what happens -- are the new -- any new generator or any new companies that come into existence during the 20 years would not be involved in this at all; is that correct? Just the existing companies?

MR. HICKEY: Mr. Chairman, this is Steve Hickey. As I understand it in this proposed
acquisition, either existing renewable resources or
proposed renewable resources that are relatively
close to completion can bid into this proposed
long-term renewable cycle.

Now, what will happen next year or the
year after, of course, is something that the
Commission and the IPA will have to deal with in the
future. But this particular instance there's -- the
proposal is to consider bids by either existing or
approved facilities.

CHAIRMAN BOX: And how would the price be
established from year to year? It might be a dumb
question. Again, this is something -- from year to
year? Or would you establish the price with
escalators when you negotiate this initial period?

MR. HICKEY: As I understand it, the proposal
is to solicit bids from renewable providers. The
bids are to be fixed-price bids with a -- and they
can include an escalation factor of 2 percent
annually. And they're supposed to be generating
unit-specific -- in other words, the bidder has to
identify the source of the renewable energy.
CHAIRMAN BOX: One of the issues concerned with one of the -- I think it was the retail -- or was it there's not enough evidence in the record. Was there ever any discussion as to -- any explanation given I think by the parties was that given the future of potential carbon tax, this is one reason why we should lock in a contract for 20 years. Was there any evidence introduced as to what that carbon price might be and what the tipping point might be and -- or just an analysis and discussion of those such issues?

MR. HICKEY: Well, I don't think there's a lot of evidence on that. There was citation in the IPA's plan as well as in, I believe, the AG's response to the ICEA about proposed carbon legislation. But, no, there's not, I don't believe, a discussion of a break-even point. As I understand it, the economic analysis -- the primary economic analysis determined whether or not renewable resources should and will be acquired will be the benchmarking that's discussed in that Appendix K.

CHAIRMAN BOX: Commissioner Elliott.
COMMISSIONER ELLIOTT: With regard to that and discussed earlier the wind RFPs are going to be bid based on price alone. I'm assuming by that that it's the price of long-term wind providers and not just the price of energy in general; is that correct?

MR. HICKEY: I'm not sure I understand your question.

COMMISSIONER ELLIOTT: Well, the question is the -- are the long-term wind providers bidding in the same -- for the same energy provision as other suppliers, fossil fuel or whatever their supply source? Are they all bidding on this or is the wind REP being held as a separate RFPs that's going to be based upon the bid price of the wind product versus alternative products?

MR. HICKEY: Well, again, I guess I'll try to tell you what I know and hopefully will address your question.

COMMISSIONER ELLIOTT: Okay.

MR. HICKEY: If I understand it, the proposal is to -- basically, as I understand it, there will be three things going on. There will be a bid
solicitation for what would be considered kind of the routine generation sources. There would also be simultaneously -- we'll talk about ComEd here specifically -- for REC sources through the -- a renewable resources wind -- I'm getting confused between renewables and demand response.

COMMISSIONER FORD: That's because they would do a separate auction if there was no one in demand response responding. Is that --

MR. HICKEY: Yeah, I guess -- I'm sorry. I was confusing the demand responses and the renewables, which, again, those were the two contested issues here. But my understanding is that there will be a solicitation for -- or acquisition of renewable energy credits in the short term, just like there was last year, Commissioner Elliot.

And the supplemental long-term renewable solicitation, if it happens, is going to be happening separately but basically at the same time. And it will have to meet all the requirements in the Public Utilities Act in order for those long-term renewables to be acquired by the IPA.
COMMISSIONER ELLIOTT: Yeah, I think what I'm trying to get at is the issue about it being based on price alone. And what I'm trying to determine is what price are we comparing? Is it --

MR. HICKEY: Well, as I understand it, there will be a comparison among the bidders. Okay. That's what the comparison based solely upon price means. Okay? Now --

COMMISSIONER ELLIOTT: Is it all bidders or just bidders for wind?

MR. HICKEY: It's not just bidders for wind. It's bidders for the long-term renewable resources, whether it's wind, solar, whatever else is allowed under the statute. Anybody who has a renewable resource can bid into long-term renewable solicitation for a 20-year product.

CHAIRMAN BOX: Practically speaking, the first one next year would be virtually all wind, I would think.

MR. HICKEY: I don't know the answer to that.

COMMISSIONER ELLIOTT: Nor do I, but it's bid based on the price of long-term renewables as opposed
to other energy providers.

MR. HICKEY: Yes, there will be a comparison -- if I'm understanding your question correctly, there will be a comparison among the long-term renewable providers. Okay?

COMMISSIONER ELLIOTT: But there won't be a comparison between those providers and alternative and traditional supply sources in terms of price?

MR. HICKEY: Right. That's where the comparison to the benchmarks will come into play. Only those -- those renewables -- and that's something which I meant to -- I should have mentioned earlier.

The one thing -- Judge Jones did a great job in summarizing this proposal, but the one thing that's important to remember is, the proposal is to acquire 3 1/2 percent, roughly, of ComEd and Ameren's energy requirements through this long-term renewable. The remainder's going to come elsewhere. So -- and the other thing is these renewable resources are intended, as I understand it, to contribute to the renewable portfolio requirements
that are in the statute.

So the utilities are required by statute to obtain a certain percentage of the requirements through renewables as long as they do not exceed the benchmarks. So, again, long-term renewables would be competing against themselves and they will be acquired as long as they meet the benchmarks for them to be presented to the Commission for approval as long as the price meets the benchmarking requirements.

I hope that helps.

COMMISSIONER ELLIOTT: Yes, they are competing against themselves and not -- also the other forms of energy, which is what I was trying to determine.

Another question to -- Chairman?

CHAIRMAN BOX: No.

COMMISSIONER ELLIOTT: -- with regard to the 3 1/2 percent cap, where did that come from and could you talk a little bit about the cap that exists for renewables that we worked with in the last three procurements and how this differs? And sort of -- you know, walk me through this process of the two --
the cap that I'm accustomed to is the one that we've utilized before. There's been a financial cap and an energy and it appears that the 3 1/2 percent energy requirement differs from that. I'd like to get a little bit better understanding of what that is all about. Could you...

MR. HICKEY: Well, we'll give that a try. The 3 1/2 percent was -- 3 1/2 percent of the energy requirements was actually in the filed plan, which I believe was filed September 30th. Where that came from, I believe it is the judgment of the IPA that it was a reasonable relatively small amount. It's not explained exactly where that came from.

As I understand it, it was clarified in the November 9th filing. The energy that comes from the long-term renewables is intended to be a piece of the statutorily mandated renewable requirements. If I was really good with this IPA, I could probably find you exactly what those are, but I can't quite put my finger on that.

But I believe there's a consensus that even if the IPA were to acquire the 600,000 megawatt
hours annually for Ameren and 1.4 million megawatt
hours annually for ComEd, that wouldn't get either
utility up to the number of megawatt hours that are
required under the renewable statutes. So the
remainder of the required renewables will be acquired
through the short-term REC market. I just don't have
the REC number of kilowatt hours in front of me.

COMMISSIONER ELLIOTT: Does this -- is this
still coming under the financial cap that exists
under the --

MR. HICKEY: I believe so. I believe that the
benchmarks that are proposed in Appendix K are
intended to comply, I believe, with the financial
caps.

COMMISSIONER ELLIOTT: So I guess the question
then would be which would be controlling? The 3 1/2
percent or the caps in the RPS statute?

MR. HICKEY: Well, I think -- probably I guess
both because if 3 1/2 percent of the requirements
were below the financial cap, then the 3 1/2 would
control. Whereas, if less than 3 1/2 percent met the
financial cap, then the financial cap would control.
So it depends on the outcome of the solicitation.

CHAIRMAN BOX: But that would almost guarantee that you can set benchmarks -- the benchmarks obviously would have to be set so that the financial caps and the stats wouldn't be exceeded; right?

MR. HICKEY: Right.

COMMISSIONER FORD: Well, my main concern is the fact that with the 20-year long-term contract, are we in peril that we're going to have some stranded costs in service and market dysfunction and it's going to go back to our ratepayers? That should be our major concern at this time with the contract. I don't have grandchildren, but I certainly don't want them to be indebted to a 20-year contract. Because if we are looking at that laddered approach that they are saying we're going to use for the procurement, I don't -- and it's going to be 2 years -- year to year, I don't see why we need 20 years if we're looking at that procurement plan and laddered approach. So I have some concerns with 20 years.

JUDGE JONES: Commissioner, that was one of the
issues that the parties were debating during the earlier stages of the proceeding. And then ultimately ComEd and Ameren and the IPA and the AG and Staff came either -- all in support of the particular proposal for the 20 years, and they -- they believe it does satisfy those concerns that you just mentioned.

COMMISSIONER ELLIOTT: In what manner would they, for example --

COMMISSIONER FORD: Strange bedfellows.

COMMISSIONER ELLIOTT: -- let's just hypothetically assume that 100 percent of the customers for the IPA were preparing for a switch to alternative providers, who of those parties would be responsible for the remaining 18 years of the contractual obligation?

COMMISSIONER FORD: Ratepayers.

COMMISSIONER ELLIOTT: The ratepayers or the utilities? Or was that brought forth in the evidence?

MR. HICKEY: I don't think that was explicitly addressed. That would probably be something that
would be in the -- as you know, the contracts -- the
RFPs are kind of hashed out after the Commission does
its approval of the plan as filed. So that would
presumably be a part of that process. And, again, I
don't know the answer to the question sitting here.

COMMISSIONER COLGAN: Mr. Chairman, I have a
question.

CHAIRMAN BOX: Okay. Mr. Colgan.

COMMISSIONER COLGAN: On long-term contracts
there seems to be -- at some point in the arguments
the issue of the availability of the Federal and
State subsidies was brought into the discussion. And
I looked for a substantive discussion on what those
subsidies actually are, and there's also some
indicators that those are time-sensitive.

And to what extent are they
time-sensitive? And what is it -- I saw some mention
of the ARRA funding and some State subsidies, but
what are those subsidies? How much money is at stake
and what is the time sensitivity on those?

MR. HICKEY: Commissioner, this is Steve Hickey
again. And I think the answer to your question
there's not a lot of information in the record in that. As we understand it, those type of financial incentives would be available to new developers of renewable resources. It's not money, as we understand it, that would be going to, for example, the utilities or directly, in this case -- or to the IPA or to customers. So, again, there's not a lot of information in the record.

And, again, I think what -- as it's presented in this order, the protections for the customers -- and I'm not sure this gets to your question -- is through those financial benchmarks not acquiring any renewable resources that are exceeding costs -- to benchmarks.

CHAIRMAN BOX: Maybe I'm confused. How is these federal stimulus moneys or ARRA moneys come into play in this particular case at all?

MR. HICKEY: Well, I think they come into play pretty indirectly because one of the things that the IPA is trying to take into consideration, as I understand it, is long-term availability of renewable resources because ComEd and Ameren will have to be
acquiring renewable resources not just this year, but in future years. And one of the things they're concerned about is the availability of renewable resources and, as I understand it, the availability of some government money along with their proposal to enter into long-term contracts for renewable resources might provide opportunities for the development of additional renewable resources that would be available in the future.

CHAIRMAN BOX: That's why I asked the question earlier, Mr. Hickey. That the -- you said that existing renewables facilities would be eligible and proposed. I asked that question -- is how does that not -- a return on future construction if the contracts we're talking about now are going to be tied up for 20 years? How is that -- isn't that a disincentive for future -- say wind generators or construction?

MR. HICKEY: I don't know the answer to that for certain. As I understand the plan, though, the delivery of renewable resources under the long-term piece of this plan begins June 1st, 2012. So -- and
the existing resources would have to be generated in
facilities not under long-term contract, existing
facilities.

COMMISSIONER O'CONNELL-DIAZ: Judge Jones or
Mr. Hickey, could you just kind of give the
Commission an idea -- I see this as risk shifting to
ratepayer subsidy of these new generators that are
going to be coming in to serve the renewable
requirements. And 20-year contracts that's just not
a nomenclature that I'm comfortable in dealing with
so many unknown features. What's going to happen
with carbon? What's that price going to look like 10
years down the road? And are ratepayers going to be
paying for this, just as Commissioner Ford noted, the
grandchildren, paying for a decision that we made
today that may not be prudent?

JUDGE JONES: Commissioner, I don't know if
there's really a solid answer to your question.
It's -- those issues certainly surfaced in the case
and were a concern to the Staff and to the AG and the
IPA and others. And I think what they attempted to
do here was to structure this proposal in a way that
would mitigate that to a large degree. And there
certainly are some risks here that are shifted to the
suppliers, the bidders and, of course, to some degree
they objected to that as adding premiums to the bids.
But there were a number of measures that were taken,
details were added to the proposal that are intended
to mitigate the risks on ratepayers, shift as many as
possible to the suppliers who are entering the
process. And, essentially, if they're too many
shifted and they don't bid in, well, then there's not
a deal.

So there are some tradeoffs there, but
I think that Staff and AG and the IPA and some others
did take a hard look at that. And I think one of the
concerns they expressed -- and I don't really express
an opinion myself -- they kind of noted in some of
the responses that they were not necessarily buying
into the idea that the -- the intervenor that is
objecting to long-term renewables plan is really the
better spokesperson for the small consumers than the
Staff or the AG or the IPA or some other parties for
that matter. So they thought they put together a --
kind of a package that will mitigate those problems. I guess ultimately it's for the Commission to decide.

COMMISSIONER O'CONNELL-DIAZ: We have seen packages before and some of them have been a little bit questionable that have been presented to us. So my concern is what the ratepayers are going to be paying 20 years out for something that we do today when we have so many unknowns.

What other jurisdictions are entertaining or have granted these 20-year contracts? Is there anything in the record?

JUDGE JONES: There is some information on that. I think there were several instances cited where there have been some pretty long-term contracts granted with respect to renewables. I think -- so there is some information. I guess the other point they make is they always point to -- really to the percentage of the overall requirements that are attributable to these purchases as well as itself being a mitigating factor.

COMMISSIONER O'CONNELL-DIAZ: We forget that California crisis where we get 10-year contracts and
we're not too far from that in time. And my comfort level is certainly not assuaged as what I've seen in the record. It's troubling to me.

COMMISSIONER FORD: Also in the record, ComEd does acknowledge that it would be difficult to develop reliable benchmarks for periods of time beyond 10 years, even though you said that they were a part of it. They did in their record said it would be very difficult.

JUDGE JONES: Well, I think early on, Commissioner, they did take that approach, I think -- I think those concerns have gone away as they have seen what is available and what source of protections or specifics have been built in there. And all of these parties are -- whether the Commission decides -- quick to point out we're talking about a very small percentage of the overall requirements here as opposed to something like the California situation. We're really -- it was the high majority of the power that was being used in that state.

COMMISSIONER O'CONNELL-DIAZ: But those amounts
may change over time as we move along the development
of all these renewable modalities that are out there.
So 20 years, again, I don't know. I just...

JUDGE JONES: Well, again, if the Commissioners
didn't like the benchmark process, if they felt
like -- made the case at the benchmark process when
it is presented to the Commission, then, of course,
the Commission holds the authority to take action at
that time and not move forward.

COMMISSIONER COLGAN: I had recalled seeing
that ComEd at one point was recommending -- and I
think it was in the same paragraph -- recommending
that there not be contracts any longer than 10 years.
But then towards the end of the paragraph they said
if the Commission decided to go to longer terms that
all of the contracts should be at least 20 years.
And I wasn't clear as to what the
reasoning was on that. And I don't know if either of
you could shed some light on that.

MR. HICKEY: Well, if my memory is correct,
that would have been a filing by ComEd prior to the
November 9th filing by the IPA --
COMMISSIONER COLGAN: Yes, it was.

MR. HICKEY: -- and I believe one of the things that ComEd was expressing was its concern for the IPA's original proposal to acquire what they call long-term resource but of multiple terms, such as, for example, what they call 10, 15 and 20. ComEd -- and I believe probably some other parties -- found that to be problematic. And that's why I think what they were trying to say in that particular filing that they should be at least 10 years in length. But regardless of what length they are, there shouldn't be bids for solicitations for multiple long-term renewable resources with different terms.

COMMISSIONER COLGAN: And that was so that the bids could be evaluated on the same basis?

MR. HICKEY: Right. That was -- again, that was a major concern in the original filing of the IPA is how are you going to compare all these different bids with different terms, including different lengths? And that was one of the things that was resolved in the November 9th filing.

CHAIRMAN BOX: Commissioner Elliot.
COMMISSIONER ELLIOTT: I think one of the things that sort of flows throughout this whole filing is the statement that these are going to be utilized as a hedge against future carbon prices. And I think implicit in that is that there is an economic cost. And at some point these economic costs is either -- the benchmark is met or it's exceeded.

And it seems to me that there's little record evidence on that particular economic argument as to what the carbon price -- the effective price of carbon would be to make this an economic argument for imposing a 20-year contract on ratepayers. That's what I find to be most difficult for me is that no one has dictated what that price is and we have no idea, in fact, whether or not or when that carbon future is going to be upon us.

To your knowledge, is there anything that I can look to in the record that would give me comfort with regard to that issue?

MR. HICKEY: I really don't think so,

Commissioner. As I mentioned earlier this afternoon
there was some discussion about proposed legislation at the federal level, in the IPA level and also the AG's response subsequent to the November 9th, but as for the actual -- I don't think there's a lot of --

COMMISSIONER ELLIOTT: Thank you.

JUDGE JONES: I would just note that along that line the benchmarks and application of the RPS but the parties did develop quite a bit of detail in terms of how the -- that application of the RPS, works, development of 20 year for price curbs for energy at the load zone including the estimated value to the timing of price effects related to federal carbon controls.

So there are some analytical measures in there that will be utilized at the time in connection with those benchmarks when those proposals are made to you. And if you're not -- it gets that far and you're not satisfied with them, then the Commission would have the authority to take appropriate action.

But there is a fair level of detail with respect to the application of -- to the RPS, and
that is utilized in connection with the benchmark process on Pages 2 to 3 of that Appendix K that the parties support.

CHAIRMAN BOX: Judge Jones, is there an assumption here -- putting the carbon aside, say there is no carbon tax -- is there an assumption by all the parties that no matter what the wind -- let me start over.

Since the legislature passed a law saying that, in this case, about 4 percent of the loads of both parties would have to be with renewables and 75 percent of that have from wind, that's automatically assumes -- or people assume that in and of itself makes electricity prices go up because renewables are more expense than regular energy right now; is that correct?

That's an assumption that everybody's making; right?

JUDGE JONES: Mr. Chairman, I think that that is -- certainly the first part of that, that the parties would be improving --

CHAIRMAN BOX: I'm just saying that it's more
expensive because of the statute that was passed saying part of the portfolio has to be renewables, which cost a little more. Are the people who want the 20-year contracts then saying because it has to be a little more now, lock in these prices now in case there is a war carbon tax or in case the -- when the recession's over there's more of a demand or prices go up, consumers will then benefit by these locked-in contracts? Is that the whole thinking?

Those two things together?

MR. HICKEY: Well, I think there's -- I think that's true. I think there's one additional consideration that the IPA has and that is by providing -- and you know this is, again, as I understand the IPA's view, not my view -- the IPA is opposing the acquisition of long-term renewables in part to spur the development of additional renewable resources because the requirements in Illinois and elsewhere is going to be increasing the demand for them.

But I do not disagree with what you're saying.
CHAIRMAN BOX: But that's why I kept asking the question -- and asked it twice before -- isn't this more of a disincentive for new construction if we're locking in for a 20-year period?

JUDGE JONES: Mr. Chairman, that is an interesting question. I think that the parties that we had in the case that are from that industry, they did not look at it that way. And we had --

CHAIRMAN BOX: Because their members -- their voting members are probably in business or going to be in business pretty soon. It's like -- that's like the NFL, the players, they negotiate for existing players, not for retired. These people are negotiating from themselves and existing companies, not for their future members.

MR. HICKEY: The other piece of that, I think -- and, again, I'm not really advocating for this, but I suspect the view is that if the acquisition of the long-term renewable resources were to be approved this year and was somewhat successful next year, then perhaps the year after we would be looking -- Illinois would be looking at acquiring
additional long-term renewables.

I don't -- I think there's an assumption that the requirement for acquiring long-term renewal resources is not going to go away. And a 20-year contract, yeah, it's longer than a 1-year contract; but, you know, 30 years from now, 40 years from now I think there's an assumption there would still be a requirement for Illinois utilities to acquire renewable resources.

So there is some validity to your point, Mr. Chairman; but I think that the IPA may be trying to think even longer.

CHAIRMAN BOX: Well, that's why I originally asked also was there any contract language in the original filing or when it was first discussed. When you say no, then you say it's so important we got to have 20 years maybe -- I'll stop there.

But, you know, something happened in the intervening period of time -- if it's that important, why was it not even thought about or discussed before there was any filing, getting the parties together --
COMMISSIONER O'CONNELL-DIAZ: This is -- the Chairman embraces a really important question that I have. Is any of this, what's contained in this what's called Exhibit K, was that laid out and robust discussions had with regard to what was contained therein other than just these comments that we have? Or was there a workshop process or the thought of one or -- there are just so many unknowns that as I see and look at this that it's -- it's problematic.

JUDGE JONES: Commissioner, if there was a workshop process, I don't know that there was one. In terms of the timing, the filed plan that they submitted to the Commission did contain a long-term renewables proposal in it. It did not have as much detail as the Appendix K does. That was one of issues that was raised by the parties, lack of detail and some uncertainty as to how it works. So that was a very fluid issue that got a great lot of attention. Through the course of the case it was the subject of many -- I think the statute allows for one filing of the parties -- which is why they had 5 days to submit objections. We expanded that to 6 and
actually every single one of those addressed this issue. So it got a lot of attention once it hit the -- hit the e-Docket here. And prior to that it was the subject of comments during that 30-day comment period.

COMMISSIONER ELLIOTT: And you raise a great point. And -- you know, when you mention California and the 10-year contracts, the part and parcel of the 10-year contracts was suspension of customer choice --

COMMISSIONER O'CONNELL-DIAZ: Which they are now going to have to reconfigure.

COMMISSIONER ELLIOTT: Exactly, now 10 years later.

-- extending an obligation for that length of time without consideration of customer switching, which we've been very cognizant of in the IPA's procurement plans over the past several years, particularly to deal with issues of customer switching, which is a clear issue. As this market is just now developing, I think we've had a dozen or more ABCs certification. We're getting more RES
interest in this. It seems to agitate against going
going anything other than short term from a perspective of
dratepayer risk and obligations.

So I'm sort of puzzled by all this.

I'm not...

COMMISSIONER COLGAN: I had a question. I know

that the statute says that we need to move to

25 percent of the energy level by 2025. And so I see

us in the situation where we are really required in

some ways to move in this direction.

And -- but I'm hearing that -- I guess

my question is, how far does this get us along that

path towards 25 by 25? And I also see that

75 percent of that has to be wind. I think I'm

correct in that. How long -- how far along that path
does this proposal take us? Is there any evidence

that's been presented in terms of how that satisfies

that goal?

MR. HICKEY: That's a good question and I -- it

kind of ties back to what Commissioner Elliott was

talking about. It all depends, to some extent, from

the switching statistics. If you assume -- let me
say this: If one assumes that the majority of the residential retail customers stayed with the bundled service that's acquired through the IPA, I think it's probably safe to say that this proposal that's on the table for long-term renewables this year is not going to make a whole lot of progress. But if there's a lot of switching, that could change.

And the record really doesn't contain much information about, you know -- if you had said, for example, 50 percent of residential customers were to switch, where would that get us? I could probably do the calculations in my head.

COMMISSIONER ELLIOTT: I think the issue there is 25 by 25. But there's -- there are waivers. There are financial caps that limit the impact to customers to specific -- is it 5 percent -- less than 5 percent bill impact?

COMMISSIONER COLGAN: Yeah, 5 percent.

COMMISSIONER ELLIOTT: So you have that issue. The second issue is to the degree that if customer switching does occur -- for example, if we're imposing higher-than-market prices, our
customer base is not forced to accept it and they
decide to go to lower cost alternatives, then you
could reach that 25 percent number real quick because
you'll have a -- to achieve it with.

So I think the concern is that
mandating -- and I can't think of a better term to
use but picking winners -- for 20 years in the face
of uncertainty and allowing the captive audience to
have the ability to escape those obligations creates
a significance amount of uncertainty.

COMMISSIONER COLGAN: What happens when we hit
that price, the cost cap? What happens to these
contracts if it could be demonstrated that the cost
of this is higher than what we can do statutorily?

COMMISSIONER ELLIOTT: Well, I think that's --
what you find is that you can only acquire X amount
up to this dollar value. That's the hard cap. So
given the constraints of 75 percent of wind or
whatever, there's a hard cap. Now, we've been able
to meet that in our prior IPA, meet the requirements
of the percentage of renewables through RECs without
exceeding that amount. As that number goes up, that
may be far difficult to do. I wouldn't hazard a

guess.

COMMISSIONER COLGAN: Well, does that hard cap
apply? If we enter into 20-year contracts do we have
to continue to pay out on the contracts, even though
the contracts may actually cause us to exceed the
price cap or is that a control that we have in terms
of setting benchmarks?

COMMISSIONER ELLIOTT: That was one of my first
questions to the Judge was --

CHAIRMAN BOX: Well, my understanding is the
benchmarks would be -- and maybe I'm totally off
on this -- the benchmarks will be set for the first
long-term contract, 20 years, for the price the first
year and each year after that it's fixed at 2 percent
annually; am I correct?

MR. HICKEY: The contract price would
increase -- the fixed contract price of the -- the
long-term renewables would increase 2 percent
annually.

CHAIRMAN BOX: So hopefully we can never exceed
the financial caps; right?
COMMISSIONER ELLIOTT: Well, the question would be would that 2 percent escalation factor be considered as something that would come under the cap in addition to whatever the next --

CHAIRMAN BOX: There's so many loose ends here. The same line of thought that they're talking about right there, you keep having 2 percent escalators and part of the justification of any of us is we want to encourage more development of the wind. The more wind development you have, you would think there'd be more people to bid if we were putting these off RFPs. But the people who have the 20-year contracts in that 20th year is going to have the contract plus 20 percent and it's not going to be too competitive with new people coming into the market because their price is going to have to be much higher; right?

COMMISSIONER O'CONNELL-DIAZ: The market's closed.

CHAIRMAN BOX: Well, you would think with more competitors in the market the price would go down, but it won't be able to go down because you've got the 20-year contracts locked in. And whatever the
benchmark or whatever bid happened to be the first year, plus the 2 percent escalator, then you get, say, how many megawatts more of wind power. You've got that much more in the State of Illinois and thereby you think that prices are going to go down, but they can't because you've got a locked-in price for 20 years.

Am I missing something, Judge Jones?

MR. HICKEY: This is Steve Hickey again.

And, again, I'm not trying to talk anybody into the idea that long-term contracts is necessarily the best thing the Commission should adopt here. But I also want to caution you against making assumptions about what the long-term renewable bidders would do when they're bidding because if they -- if the contract and the RFP laid out that the price is going to escalate 2 percent per year, everybody's going to know that. And so to assume that they're going to bid, for example, their cost the first year and ignore the fact that the price that they're going to receive in subsequent years is going to increase by 2 percent, I'm not sure that's a
good assumption. Do you understand what I'm saying?
They're going take into consideration over a 20-year period the amount of money that they're going to get from the contract if they prevail in the solicitation.

And if I could go back for just one second -- and, again, I'm not talking just about long-term renewables here, but Commissioner Elliott raised the issue about the switching again and the noncompetitiveness of the IPA-acquired power. And, again, I'm not trying to push long term here; but, remember, as I understand it, the requirement for acquiring renewable resources applies -- not just to the utilities, but to alternative retail electric suppliers as well. Not for long term, but they are going to have to acquire renewable resources.

COMMISSIONER ELLIOTT: All right. But it's only 50 percent.

MR. HICKEY: Right.

COMMISSIONER ELLIOTT: So they have a built-in price advantage. And it's interesting that the retail suppliers are the party that comes down the
hardest.

CHAIRMAN BOX: Given the law that's been passed, you'd think that something this controversial or having such an impact on the future potentially would be one of the areas where the Attorney General would have asked for oral argument and we have maybe flushed out some of these things that we're talking about now because as far as I'm concerned, I'm assuming -- and I really appreciate the answers of Steve Hickey and Judge Jones, but a lot of their answers were prefaced with "I think," "to the best of my knowledge." There are a lot of answers out there that maybe could have -- questions could have been answered during a workshop process or a process where more people were involved and thinking about what the answers of these questions should have been -- or should be.

Any other questions of the Judges on just the procurement issue?

COMMISSIONER COLGAN: Just one more. And I'm not sure I totally understand this, but -- I'm not sure I'm alone in that either.
COMMISSIONER FORD: You're not.

CHAIRMAN BOX: You're not.

COMMISSIONER COLGAN: But I sense that there's -- you know, there's a lot of concern about this 20-year contract thing. And I guess what I was trying to get at with my question was are there any controls on that? And this -- I looked at the 5 percent cap and I didn't understand how the dynamic of how that might be able to control prices escalating out of control and having that and that be stuck on consumers.

Does that question make sense?

MR. HICKEY: Well, Commissioner, I think if you were to look at the Appendix K, the bottom of Page 2 and the top of Page 3, not that it's worded in a manner that's extraordinarily clear, but it discusses how the IPA plans to impose the financial cap and what the implication for customers would be, I think.

COMMISSIONER COLGAN: I don't have Appendix K.

COMMISSIONER FORD: I would go back to --

JUDGE JONES: Yeah, that's at the back of the November 9th supplemental filing that the IPA made.
COMMISSIONER FORD: Well, I'm looking at what NexGen had in their document, the fact that with operating reserves, PJM, they must pay the difference in the deadhead end unit from the actual performance in real time. And according to them, they would -- the cost of 500 megawatts of wind would exceed 700 million over the lifetime of a 20-year PPA.

And yet they are not -- the IPA is not explaining how these charges would be allocated. And so $700 is not anything to sneeze at, in my opinion. And I want to know how the money would be allocated. And this is just the 500 megawatts. So I'm having issues with a lot of the testimony. So I will leave that for you all to chew on for now.

CHAIRMAN BOX: You had questions on the procurement long-term contract issues.

Mr. Elliott, you had the concern earlier I think on the demand response.

COMMISSIONER ELLIOTT: Yeah, I obviously sent some questions into -- the Judge's order put forth the responses. I think that pretty similarly to the issues that we were discussing on wind, I think that
the relationship of the wholesale markets and
resource adequacy and capacity markets in wholesale,
both in PJM and MISO, are works in progress. I mean,
clearly there are costs of filings going back and
forth. We have the Seventh Circuit Court decision on
cost allocation, the transmission. We've got a lot
of issues that surround this.

And, you know, I'm just unclear as to
how these mechanisms work between third-party
aggregators, IPA, the supplier contract, the LSE, the
ComEd and Ameren both. I know that ComEd has been
tapped in this DUR go-around. But I just have a lot
of uncertainty about the relationship of these
changing markets and how the end user would
essentially give value in terms of the settlements
between all of the various parties. And I'm afraid
that some of the responses that were received didn't
add a lot to the clarity.

COMMISSIONER O'CONNELL-DIAZ: I concur with
Commissioner Elliott. And I don't -- I'm not left
with how does this get to -- what's the language of
statute lose cost over time. I'm not seeing in the
record that's been developed or the plan that's been presented to us on this issue and we're kind of beating a dead horse.

COMMISSIONER ELLIOTT: Yeah, that's a good way to characterize it. It's trying to determine the lowest cost to the consumer for the environmentally sustainable and provision of power. And I think that there is an awful lot of information that we're just lacking to make that determination of what we're deciding to do here, in fact, delivers that.

COMMISSIONER O'CONNELL-DIAZ: Well, considering how when we're sitting in a rate case setting and we're looking at the actual costs when we have numbers. And here we don't really have any of that, and so for us to say -- the ratepayers 20 years down the pike and that's okay. It doesn't set well with me. And we get enough grumbling. We unfortunately have to entertain rate increases. I think this is going to be a much larger number. Each and every ratepayer would represent a significant amount. And I think we just need to be cautious and in that caution I'm just not comforted by the record that is.
COMMISSIONER ELLIOTT: Agreed.

I think that this is both a DR and a long-term contracting issue -- are both substantial deviation from the procurement that we've done in the past. And given that -- the magnitude, while it may be small initially, the policy shift and where it could be presents a number of questions that I don't -- from my perspective, I don't have a lot of comfort level.

CHAIRMAN BOX: Any other comments on the demand response or the RPM?

COMMISSIONER COLGAN: Well, I had a question. It seemed to me that ComEd made a pretty compelling argument in the PJM market that the demand response is already present there. There was some question that came up about the statutory requirement that we bid this to solicit from outside that market to get some demand response. But it seemed that in doing so that would in effect pay for demand response two times, that in my simplistic look at how that would work, I guess that would be my question to the Judge about -- is that a realistic point of view?
JUDGE JONES: Commissioner, I don't believe that there would be any scenarios in which they would be paying for the same thing two times. What the order would -- I mean, the way it's written now would require the IPA to present their proposal -- or actually request approval of the proposal to the Commission prior to going forward with it. And at that time all the cost-effectiveness issues, such as the ones you just raised and those cited by Staff and ComEd, would be provided and evaluated. And it would be the Commission's call in terms of whether to let the IPA go forward.

In the meantime, they may decide that it is not in their mind cost effective to do so and may not even make such a proposal to you. But what the order before you would do is allow them to attempt to do so.

MR. HICKEY: This is Steve Hickey. And I think what Judge Jones has said, Commissioner, and I guess, as you suggested, there was concerns raised about the ability to avoid incurring additional costs. And that's the reason
that the conclusion on Page 150 to 153 is structured the way that it was. It was intended to provide -- to defer to the -- IPA an opportunity to try to obtain additional demand response on the one hand and provide protection to make sure that we don't have cost -- incremental costs added onto ratepayers.

Now, I guess it's up to you to decide whether that conclusion accomplishes that.

CHAIRMAN BOX: Any questions, comments on that issue?

COMMISSIONER COLGAN: Do we have any similar assurances on the 20-year contract? I mean, do those eventually come back to us?

JUDGE JONES: Commissioner, yes, there were those benchmark requirements built into that Appendix K that is intended to do that. It might be a tall task to evaluate that at the time but certainly -- I mean, if the Commission allows that to go forward, that would be the idea that the IPA would have to prepare its presentation in sufficient detail and scope and then would seek Commission approval on it through the benchmark process for the 20-year
program. And then at that point if it comes up or comes down as the Commission sees fit.

COMMISSIONER COLGAN: So if we were to approach the 20-year scenario, there would still be another chance for us to have a look at the actual impact of that?

MR. HICKEY: Well, again, this is Steve Hickey. And I think what I would state is essentially I believe so. And, again, that conclusion starts on Page 116 of the order was drafted to provide some deference to the IPA and give the IPA the opportunity to attempt to solicit long-term renewables. I don't know if they're going to be successful. I know I have some doubts myself, but we drafted that conclusion in a way that would give them the opportunity to attempt to do so. And as we understand it, the benchmarking would come back before the Commission. And, again, I'm not trying to sell long-term renewables. We wrote the conclusion in a way that would provide protection to customers. Again, I'm not trying to tell you it will be completely
successful.

COMMISSIONER COLGAN: That was the goal of the parties involved in establishing the benchmarks? If you could refresh my memory on that. Is it just the IPA or it's the Staff and...?

JUDGE JONES: Commissioner, those two, the IPA and Staff, the Attorney General, ComEd and Ameren --

CHAIRMAN BOX: No. No.

JUDGE JONES: -- and those five specifically taking into consideration the input received in previous filings that preceded the Commission of that supplemental filing. Now, when it comes time for submitting the market-based priced benchmarks to the Commission, that will involve the procurement administrator and consultation with the Commission Staff, Illinois Power Agency Staff and the procurement monitor. And that's pursuant to statute.

CHAIRMAN BOX: And the IPA would be part of that benchmarking session?

JUDGE JONES: That's correct, Mr. Chairman.

CHAIRMAN BOX: Is that required?

JUDGE JONES: I'd say that it is. As the
statute reads procurement administrator, which is in consultation with the Commission Staff, Agency Staff, which is the Illinois Power Agency and the procurement monitor; so I would say yes.

CHAIRMAN BOX: That's also assuming there's not a lot of communication with other parties in this whole proceeding; right?

MR. HICKEY: I think what Judge Jones was answering there is when it comes time to present the benchmarks to the Commission for approval, that's what the statute requires.

COMMISSIONER COLGAN: So if we approve this plan the way it's presented, then what we're -- I think I heard you say -- that what we're doing is giving the IPA the opportunity to present a valid case for this back to us?

JUDGE JONES: That's correct.

MR. HICKEY: Yeah, that's the way we attempted to draft the conclusions with regard to both demand response and long-term renewables.

CHAIRMAN BOX: In a perfect world I think this would work.
COMMISSIONER ELLIOTT: I'm not sure.
CHAIRMAN BOX: I said "perfect world."
COMMISSIONER ELLIOTT: I'm looking at it from the perspective of, you know, once we set forth the contract concept, then the benchmark -- the benchmarking issue is completely separate. It's whether or not that contract meets the benchmark or exceeds it as to whether or not we can accept or reject those bids utilizing the benchmark.

But it's not rejection or acceptance of the long-term contracting issue. That would never have been done. The benchmark is more or less whether or not the contracts have that have -- or the RFP fees that were received made that mark.

JUDGE JONES: Yeah, the way they worded that, Commissioner, the procurement administrator in consultation with the procurement monitor and the ICC Staff shall develop confidential benchmarks to protect consumers that will be approved by the ICC for the resources procured at solicitation. They shall be used to evaluate bids and reject bids. The benchmarks they felt had to go a little further in
terms of consumer protection with the benchmark language that they wrote into the -- into the Appendix for better or worse and tied that to the -- somewhat more detailed language that follows all under the procurement process section.

COMMISSIONER ELLIOTT: Yeah, I think the key term there is "to protect" and how that is defined.

CHAIRMAN BOX: Any questions on this particular area?

I just had one other, Judge, Mr. Hickey. You're proposing two separate RFPs, one for Ameren, one for Commonwealth Edison on the renewables?

MR. HICKEY: Yeah, I believe that's correct.

CHAIRMAN BOX: You want to explain your reason there a little bit -- and just one RFP because I've had some concerns in past years that the Company that went second, obviously, they ended up paying higher prices because obviously they -- need is a calculator to figure out how much -- how many megawatts were left in Illinois and bid accordingly. You still propose in your order to have one company go first
and then another second rather than having simultaneously RFPs?

JUDGE JONES: One moment. We'll just pull that up.

MR. HICKEY: You caught us off-guard there, Chairman.

CHAIRMAN BOX: You didn't think we read this stuff, did you?

MR. HICKEY: No, I didn't say that. I think the primary concern that we had -- which, you know, the IPA proposed in the September 30th filing to undertake a single procurement event for renewables short term. And Staff expressed some concerns with how that would be coordinated and I believe -- this is based on my memory -- that the -- in our view the IPA didn't do a very good job of explaining how the consolidated procurement would work, particularly between MISO and PJM. And so we put into the order that we would recommend the Commission stay with separate acquisitions.

And my only other thought on that is that the IPA didn't take exception to that.
JUDGE JONES: That's correct. And as mentioned, that's under the short-term renewable section. And those Staff concerns that were raised are the ones that are outlined in the beginning on Page 120. And that's essentially the directional for the -- the ultimate recommendation before you.

CHAIRMAN BOX: Okay. I'll put that in. Any other questions of the Judge and Mr. Hickey?

The drop-dead date on this is December 29th?

MR. HICKEY: That's correct, Mr. Chairman.

CHAIRMAN BOX: And, hopefully, we will have -- we will be able to vote this out on the 22nd, which is the last scheduled meeting of the year. The key words being "hopeful."

But I think that a lot of things have been cleared up today, a lot have not. No -- and it's not your fault. I think, once again, there's the lack of transparency and having everybody at the table. That's why I asked some of the questions I asked about how we could be involved because there is some concern. I have some concerns about this
process in the way it was done, but hopefully we can
get those things resolved by next week.

    Mr. Hickey and Judge Jones, we
appreciate it. Thank you very much.

    JUDGE JONES: Thank you, Mr. Chairman.

    CHAIRMAN BOX: Why don't we take a -- say, an
8-minute break before we start the AT&T and we'll
start again right at 3:00 o'clock.

    (Whereupon, a recess was taken.)

    COMMISSIONER BOX: The next item is Docket
08-0569. This is Illinois Bell Telephone Company's
petition to declare services to be competitive in
several MSAs outside of Chicago.

    Administrative Law Judge Hilliard,
could you please brief us on this matter.

    JUDGE HILLIARD: The issue before the
Commission is the hearing regarding the imposition of
DSL requirements in the greater Illinois MSAs
pursuant to the Commission's June 24th, 2009 order.
AT&T takes the position that there's nothing in the
record that supports the conclusions that DSL
requirements are warranted and required as a
The Company says that -- and I agree -- that there's no analysis as required by the Act in the order as supporting the decision mandating the requirements. The only argument in connection between DSL service and competitive local exchange service is the Voice Over Internet Protocol service through DSL connection can provide an alternative to landline service.

The Company points out that the Commission's assertion that DSL requirements are warranted in this instance is contradicted by the orders finding that residential local exchange service is properly classified as competitive and especially true because the order finds that reclassification is justified without considering the availability of Voice Over Internet Protocol.

Staff takes the view that the DSL deployment that the Commission has suggested would, regardless of the current status of VOIP, enhance the ability of the VOIP providers to increase competitive pricing in the future. Staff concedes that the
Commission cannot rely on evidence of actual deployment in the record but supports opposing the requirements because it will intend to enhance future availability of such offerings throughout the greater Illinois MSAs.

CUB essentially argues that promoting DSL is a good public policy and that the provision of the PUA that says that the Commission can take other factors other than -- that may affect competition of public interest is -- makes it viable.

The AG makes similar policy and statutory arguments and notes that the revenue streamed from the Commission's decision to declare these areas that local service rates to be competitive is approximately equal to the cost of putting the DSL in place.

The deadline for Commission action on this is December 26th.

COMMISSIONER BOX: Any questions of the Judge?

I'll start. Judge, was there any evidence or anything in the record referring to the agreement from the last case with Chicago LATA why
there was an agreement that they would provide DSL?
Do you know the basis of that over the parties other agreement?

JUDGE HILLIARD: Actually, the record in that case specifically excludes Commission consideration of the imposition of DSL. AT&T and CUB had a joint proposal and the order in that case specifically provides that two provisions that do not require Commission approval were an amount of money provided to CUB to fund consumer education and the AT&T's commitment to expand DSL availability. The order says that these were voluntarily commitments by AT&T and the Commission need not analyze them under the PPI. There is nothing in either record as to the basis for the imposition of the requirements in that case.

COMMISSIONER BOX: Commissioner Elliott.

COMMISSIONER ELLIOTT: The requirements then weren't imposed by the --

JUDGE HILLIARD: Say that again.

COMMISSIONER ELLIOTT: The requirements were not imposed?
JUDGE HILLIARD: By the Commission, that's correct. The Commission had nothing to do with the DSL commitment made by AT&T in that case.

It came to be part of this case not through any evidence, per se, but from the argument of CUB that having a similar commitment in this case would be good public policy. But there was no evidentiary -- beyond the fact that everybody seems to agree that it's good public policy to expand broadband and DSL.

There isn't any connection between the determination by the Commission that the rates, local services in the greater Illinois MSAs are competitive has anything to do with VOIP. The Commission specifically determined that VOIP had nothing to do with competition in those areas. And the only connection between DSL and competition is a platform for VOIP.

COMMISSIONER ELLIOTT: And that was in both cases MSA-1 and this case?

JUDGE HILLIARD: Yes.

COMMISSIONER BOX: Any questions?
Commissioner Colgan.

COMMISSIONER COLGAN: I'm wondering -- maybe this is not in our purview -- but the question comes to mind as to why AT&T had offered this previously but not now?

JUDGE HILLIARD: That was Commissioner Elliott's questions also and there's nothing in the record that answers the question.

I think it's less of a stretch -- less of a financial commitment and I must say one that isn't in these other areas of the state, but that's summarized on my part -- no, actually I think there is evidence in the record that that's the case. The cost of providing DSL is roughly -- in MSA-1 is roughly half of what it would cost in the other MSAs in total.

One other point that I should mention is that the Company has asked that if the Commission decides to stay with the imposition of the DSL requirements that the time limit for accomplishing this be extended to, I think, it's July 1st of 2012 because the -- it's a more extensive undertaking than
it was in MSA-1 and because of the delay occasioned by the rehearing it involves two periods of winter weather when it's impossible to accomplish a lot of what needs to be done.

COMMISSIONER O'CONNELL-DIAZ: Judge Hilliard, there were two other arguments that were raised by the Company with regard to preemption and -- could you go through those in your conclusions and your conclusions on that.

JUDGE HILLIARD: The Company argued that the DSL requirements of the order exceeded the Commission authority under State law. And in order to -- the requirements of the order -- well, they argued that the requirements of the order exceeded the cover standards in 21-1101(e) set by the legislature as well as the duties delegated to the Commission by that and other sections of the PUA. The Company also argued that the DSL requirements are preempted by federal law.

My analysis of that is that AT&T is incorrect in both counts. The statutory -- under State law there is status here as a licensee under
the Illinois Cable and Competition Act isn't relevant to this proceeding. Similarly, the High Speed Internet Services Act does not prohibit the possession of DSL requirements. Those are the two Illinois arguments. Similarly from my analysis, the Commission doesn't preempt by federal law because what we're attempting to do here and what the Commission is attempting to do is in imposing the DSL build-out would not frustrate or impede to federal policy to encourage the entry of VOIP providers. So if you want to do that, I don't think that's an insurmountable barrier.

COMMISSIONER O'CONNELL-DIAZ: Thank you.

COMMISSIONER BOX: Any other questions?

Thank you very much, Judge.

Hopefully, once again, the deadline's the 26th. We will be voting on this on December 26th.

Judge Wallace, anything else to come before us today?

JUDGE WALLACE: No, Mr. Chairman.

COMMISSIONER BOX: With that, the meeting is
adjourned.

(Whereupon the meeting was adjourned.)
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COUNTY OF COOK  )

TITLE: Prebench Session December 15, 2009

I, Alisa A. Sawka, do hereby certify that I am a court reporter contracted by SULLIVAN REPORTING COMPANY of Chicago, Illinois; that I reported in shorthand the evidence taken at the proceedings had in the hearing of the above-entitled case on December 15, 2009; that the foregoing 69 pages are a true and correct transcript of my shorthand notes so taken as aforesaid and contains all of the proceedings directed by the Commission or other person authorized by it to conduct the said hearing to be stenographically reported.

Dated at Chicago, Illinois, this 5th day of January 2010.

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Alisa A. Sawka