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BEFORE THE
ILLINOIS COMMERCE COMMISSION
SPECIAL OPEN MEETING
Thursday, October 1, 2020
Chicago, Illinois

Met pursuant to notice via videoconference
at 3:00 p.m. at 160 North LaSalle Street, Chicago,
Illinois.

PRESENT:

- CARRIE ZALEWSKI, Chairwoman
- D. ETHAN KIMBREL, Commissioner
- SADZI M. OLIVA, Commissioner
(via videoconference)
- MARIA S. BOCANEGRA, Commissioner
(via videoconference)
- MICHAEL T. CARRIGAN, Commissioner
(via videoconference)

BRIDGES COURT REPORTING
BY: Stephen Mortensen,
Notary Public

1 CHAIRWOMAN ZALEWSKI: Good afternoon.

2 Before I begin, I'm just going to
3 make sure that we can hear all Commissioners.

4 Commissioner Bocanegra?

5 COMMISSIONER BOCANEGRA: Chairman, I'm here.
6 Thank you.

7 CHAIRWOMAN ZALEWSKI: Commissioner Oliva?

8 COMMISSIONER OLIVA: Yes. I'm here.

9 CHAIRWOMAN ZALEWSKI: Commissioner Carrigan,
10 he's in the --

11 COMMISSIONER OLIVA: Can you hear me?

12 CHAIRWOMAN ZALEWSKI: We can hear you.

13 Commissioner Carrigan, who is in
14 the Springfield office, can you hear us and can we
15 hear you?

16 COMMISSIONER CARRIGAN: Yes, Chairman. I can
17 hear you.

18 CHAIRWOMAN ZALEWSKI: Great. And then
19 Commissioner Kimbrel is here with me in Chicago.

20 We do have a quorum.

21 Judge Teague-Kingsley, can you hear
22 us?

1 JUDGE TEAGUE-KINGSLEY: Yes. I can hear you.

2 CHAIRWOMAN ZALEWSKI: Okay. Under the Open
3 Meetings Act and in accordance with the governor's
4 executive orders, I call the October 1st, 2020,
5 Special Open Meeting to order. However, I am going
6 to recess and reconvene in 30 minutes.

7 So at 3:30 today, October 1st,
8 2020, we will reconvene. Until then we're
9 recessed. Thanks.

10 (RECESS)

11 CHAIRWOMAN ZALEWSKI: Okay, we're still
12 technically convened, but I'm going to do just a
13 sound check.

14 Commissioner Bocanegra?

15 COMMISSIONER BOCANEGRA: I'm here.

16 CHAIRWOMAN ZALEWSKI: Commissioner Oliva?

17 COMMISSIONER OLIVA: Yes. I'm here.

18 CHAIRWOMAN ZALEWSKI: Commissioner Carrigan
19 in Springfield?

20 COMMISSIONER CARRIGAN: Yes. I'm here.

21 CHAIRWOMAN ZALEWSKI: Okay. And then
22 Commissioner Kimbrel is here with me.

1 Judge Teague-Kingsley, can you hear
2 us?

3 JUDGE TEAGUE-KINGSLEY: I can hear you.

4 CHAIRWOMAN ZALEWSKI: Okay. So we're just
5 reconvening from the original meeting that started
6 at 3:00 on October 1st, 2020.

7 Before we proceed, for clarity of
8 the record, I would ask everyone to state their
9 name before speaking and to speak slowly and
10 clearly so that the court reporter can capture
11 everything that is said.

12 I've already checked that all
13 Commissioners are with us. We have a quorum. We
14 have no requests to speak; no transportation
15 agenda. We only have one item on our Public
16 Utilities Agenda.

17 Item 1 concerns Ameren Illinois'
18 Investigation under Section 16-107.6(e) of the
19 Public Utilities Act into an annual process and
20 formula for the calculation of distributed
21 generation rebates.

22 On September 28, 2020, ELPC, NRDC,

1 Vote Solar, SEIA, ISEA, and the Coalition of
2 Community Solar Access, jointly filed an emergency
3 motion for stay and other interim relief --
4 otherwise known as the Emergency Motion.

5 Movants requested that the
6 Commission take emergency action to direct Ameren
7 to temporarily preserve retail net metering, which
8 they state Ameren intends to terminate as early as
9 October 1st, 2020. Movants request that the
10 Commission temporarily preserve the status quo by
11 issuing a temporary stay of sections of Ameren's
12 Rider Net Metering, or Rider NM, and order Ameren
13 to continue offering full retail net metering to
14 its customers. The Movants also request that the
15 Commission hold a special meeting on or before
16 October 1st, 2020, to grant this relief in order to
17 prevent Ameren's imminent termination of net
18 metering, and grant any other relief the Commission
19 determines to be just and reasonable to preserve
20 the status quo.

21 The Commission finds that the
22 emergency order should be denied in part and

1 granted in part.

2 The Commission denies the request
3 to issue a temporary stay of Ameren's Rider NM
4 sheets and ordering Ameren to continue offering
5 full retail net metering to its customers. The
6 Commission cannot grant these requests without a
7 hearing. The Commission also denies a request to
8 rehear and clarify its interim order to direct
9 Ameren to file an amended Rider NM on less than 45
10 days' notice. The Commission does not find this
11 option feasible because a new interim tariff
12 implementing the 5% threshold should not be adopted
13 before the conclusion of the investigation into
14 Rider NM.

15 The Commission, however, grants a
16 relief that the Commission determines to be just
17 and reasonable as specified in the written order.
18 The Commission orders Staff to present for the
19 October 8th, 2020, regular open meeting the order
20 initiating an investigation to determine whether
21 Rider Net Metering should be amended to comport
22 with Section 16-107.5 of the Public Utilities Act,

1 directed in the September 23rd, 2020, interim
2 order. The Commission also directs Staff to
3 include language in the order that Ameren is
4 instructed to show cause by October 15th, 2020, as
5 to why the provisions of Rider NM that are
6 implemented after the 5% threshold is reached,
7 should not be stayed.

8 The Commission further directs
9 Staff to perform the audit of the Ameren's
10 calculations of the 5% threshold before Ameren
11 proceeds with the implementation of the changes
12 resulting from reaching the 5% threshold under
13 Rider NM. Ameren is directed to submit sufficient
14 information and cooperate with Staff to enable an
15 efficient audit before implementing these changes.
16 Ameren is also directed to calculate and maintain
17 records of customers that are affected by the
18 threshold.

19 Before I call the vote, do any
20 Commissioners have comments?

21 COMMISSIONER KIMBREL: Yes. This is
22 Commissioner Kimbrel. I have a few questions for

1 the administrative law judge.

2 Commissioner Haynes, are you
3 available? I'm sorry --

4 JUDGE HAYNES: I am.

5 COMMISSIONER KIMBREL: -- did I say
6 Commissioner Haynes? I meant Administrative Law
7 Judge Haynes.

8 Judge Haynes, can you explain to
9 the Chair what your recommendation is here?

10 JUDGE HAYNES: Yes. I believe that for the
11 most part, the Chair did what I recommended. I
12 recommended the Commission not break the emergency
13 motion as requested by the Movants. I think that
14 this is the wrong docket to consider Rider NM, and
15 that the Commission cannot make this decision
16 without a hearing, but because of the alleged
17 impact on the solar industry and the ISEA
18 statements regarding the impact on its ability to
19 implement this statute, I do believe that some
20 action would be appropriate on the part of the
21 Commission.

22 And so that's why I recommended

1 that the Commission direct Staff to include
2 additional language in the initiating order for the
3 investigation into Rider NM. And then, additional
4 language would direct Ameren to show cause why
5 Rider NM should not be stayed; to delay the
6 implementations of the changes resulting from
7 reaching the 5% threshold.

8 And also, I recommended that Staff
9 be directed to prepare it for the October 8th
10 agenda.

11 And I recommended that the audit be
12 offered -- and not necessarily in addition to this,
13 but I have no issue with the adaption, or the
14 requirement, that an audit be required.

15 COMMISSIONER KIMBREL: Okay. Thank you.
16 That's all I have.

17 CHAIRWOMAN ZALEWSKI: Do Commissioners have
18 any other comments, questions?

19 COMMISSIONER BOCANEGRA: Chair Zalewski, this
20 is Commissioner Bocanegra.

21 Let me just -- for clarity of the
22 record, I do have some comments, but I'd like to

1 reserve those for after the vote.

2 CHAIRWOMAN ZALEWSKI: Okay. Anyone else?

3 (No verbal response.)

4 CHAIRWOMAN ZALEWSKI: I do want to read a
5 couple of comments before -- I just want to note
6 that I share many of the concerns laid out by the
7 joint solar parties overall. I share the concern
8 that legislative intent could be eroded. Allowing
9 Ameren to end net metering before the Commission
10 approved the replacement tariff, as required by
11 statute, could violate the -- potentially violate
12 the legislator's intent in transitioning smoothly
13 from retail net metering to a successor distributed
14 generation rebate.

15 Also, ending net metering, without
16 the rebate in place, could also have a chilling
17 effect on solar sales at a time when the state is
18 working to further decarbonize the grid and
19 increase renewables. This could also, possibly,
20 lead to layoffs in the solar industry at a time
21 when the state is still recovering from an economic
22 downturn. We are indeed limited in our approach by

1 the requirements of properly making a change to the
2 tariff, but I want to highlight an important point
3 that was captured in the order.

4 As indicated in the order, Ameren
5 should not go forward with the tariff language that
6 is triggered at 5% until a thorough, up-to-date
7 audit is complete. Independent verification of
8 this trigger is imperative. I believe it's
9 incumbent upon regulators to ensure consumers have
10 access to the services and products that they had
11 been promised. Generation choice is the linchpin
12 of the democratization of Illinois' energy mix.

13 We hope that rooftop solar has
14 taken off to trigger the 5% mark in the tariff, but
15 I believe we need to see the results of the audit
16 first. Trust, but verify. So I will suspend my
17 congratulations to Ameren to meeting this important
18 target until the trigger is thoroughly vetted and
19 verified.

20 If there's no more comments, I am
21 going to go ahead and do a roll call for the vote.

22 If you are in favor of approving

1 the order, please say, "Aye," and if you are
2 opposed, please say, "Nay."

3 Commissioner Bocanegra?

4 COMMISSIONER BOCANEGRA: Aye.

5 CHAIRWOMAN ZALEWSKI: Commissioner Carrigan?

6 COMMISSIONER CARRIGAN: Aye.

7 CHAIRWOMAN ZALEWSKI: Commissioner Kimbrel?

8 COMMISSIONER KIMBREL: Nay.

9 CHAIRWOMAN ZALEWSKI: Commissioner Oliva?

10 COMMISSIONER OLIVA: Aye.

11 CHAIRWOMAN ZALEWSKI: The four ayes have it,
12 and the order is approved.

13 Commissioner Bocanegra, did you
14 want to make comments now or -- yeah. Okay.

15 COMMISSIONER BOCANEGRA: Okay. Thank you,
16 Chair.

17 I wanted to wait until the vote
18 just to highlight some concerns I still have.
19 While I agree with the majority today in the
20 essential outcome -- I do think it's correct. I
21 think the ALJ struck a nice balance.
22 Unfortunately, I don't think that our order goes

1 far enough. Specifically, what we really failed to
2 do here today is address the very relief requested
3 by the solar parties, and that was to decide
4 whether Ameren should or should not be using its
5 own methodology. Now, whether that was in the form
6 of staying some or all of the tariff, or staying
7 some or all of their methodology, we have not
8 addressed that.

9 Instead, what we're doing today is
10 we are urging Ameren to cease using its own
11 methodology, even though we've previously upheld
12 Judge Haynes' July 7th order where that methodology
13 was upheld. We had directed Ameren to use that
14 same methodology. That methodology was referenced
15 in a lot of the documents that were filed pertinent
16 to this emergency motion today. I'm concerned that
17 some of us seem to think there's no authority by
18 this Commission to ask Ameren to stay
19 implementation of their methodology. But I think
20 what we'll see is the order and how it does things.
21 We do have legal authority to ask Ameren to stay
22 implementation of what happens after the threshold

1 is met.

2 I'm not exactly sure how we are to
3 reconcile those two things. We are no closer today
4 to answering the party's questions, mainly whether
5 Ameren should continue to use its own methodology.
6 I think Ameren has suggested in its response to the
7 emergency motion that the law requires it to use
8 its methodology in calculating the thresholds that
9 are at issue, but I completely disagree with that.
10 The statute does not say that we are to use any
11 particular party's methodology. In fact, that's
12 the reason we are ordering this investigation.
13 There's clearly a dispute into the language. So I
14 don't know where we, possibly, agree with that
15 interpretation that we have to allow Ameren to use
16 their methodology. And so I guess I say all that
17 to say I do agree with the outcome, but I am
18 reserving the right for a concurrent opinion fully
19 detailing what I said here today. But that's all I
20 want to say. Thank you.

21 CHAIRWOMAN ZALEWSKI: Any other comments?

22 COMMISSIONER KIMBREL: Yeah. I do.

1 Madam Chair, I just want to state
2 that I agree with the order to the extent that
3 we're not staying Sheet No. 24.4005 and ordering
4 Ameren to do something in contradiction of the
5 tariff. But that -- there's been a lot of "ifs"
6 going back and forth, so I just don't know what
7 we're voting on, frankly. So that's all I have to
8 say.

9 CHAIRWOMAN ZALEWSKI: Okay. Anyone else?

10 (No verbal response.)

11 CHAIRWOMAN ZALEWSKI: Okay. This concludes
12 our Public Utilities Agenda.

13 Judge Teague-Kingsley, do we have
14 other matters to come before the Commission today?

15 JUDGE TEAGUE-KINGSLEY: No, Madam Chairman.

16 CHAIRWOMAN ZALEWSKI: Do any of the
17 Commissioners have any other business to discuss?

18 (No verbal response.)

19 CHAIRWOMAN ZALEWSKI: Hearing none and
20 without objection, the meeting is adjourned.

21 Thanks.

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(Whereupon, the above-entitled
matter was adjourned.)