

1 BEFORE THE
2 ILLINOIS COMMERCE COMMISSION

3 PUBLIC UTILITY PREBENCH AGENDA
4

5 Chicago, Illinois
6 Tuesday, December 15, 2009
7

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

11
12 PRESENT:

13 CHARLES BOX, Chairman

14 LULA M. FORD, Commissioner

15 ERIN M. O'CONNELL-DIAZ, Commissioner

16 SHERMAN J. ELLIOTT, Commissioner

17 JOHN T. COLGAN, Commissioner
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I N D E X

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

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

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

18 Judge Jones, are you with us?

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

21 CHAIRMAN BOX: You want to walk us through
22 this, just a brief overview of this particular case

1 and see if there's -- Commissioners will have
2 questions or comments of you or Mr. Hickey.

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

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

19 The eligible customers would not
20 include those larger customers that have been
21 declared competitive or deemed competitive by the
22 Public Utilities Act. The Illinois Power Agency in

1 addition this year also in its filed plan included a
2 renewable energy -- long-term renewable energy
3 proposal. That was the subject of much debate during
4 the course of the proceeding.

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

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

17 As you're aware, somewhat late in the
18 case the IPA made a supplemental filing setting forth
19 its updated version or modified version of the
20 long-term renewables proposal providing -- more
21 detail. It is one that is supported by -- directly
22 by the two utilities, the Attorney General, Staff for

1 the most part, several other parties accorded in most
2 of its terms -- well, they would like to see some
3 changes made. One party essentially opposes the plan
4 in its entirety.

5 The Commission, as the Commission
6 knows, the deadline in this matter is December the
7 29th. I guess that would conclude the overview, but
8 I would be happy, of course, to supplement those
9 answers or to try to answer any questions you may
10 have.

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

18 All right. Starting out with the
19 long-term contract, can you walk me through the
20 scenario of how this process -- this procurement
21 process will be different than the ones we've had in
22 the past? My concern is how it would -- how is that

1 process going to work with the long-term contracts?
2 Will they -- will the IPA negotiate with the
3 generators? Or documents will be prepared that all
4 the other parties will agree to for the Companies to
5 fill out? How is that going to work, do you know?

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

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

16 One of the big issues early in the
17 case was how these potential procurements or actual
18 procurements would be reviewed. So -- and the
19 supplemental filing, which the IPA made and several
20 parties support, they would specifically utilize
21 benchmarks. So the administrator in consultation
22 with the IPA and the procurement monitor and the ICC

1 Staff will dole confidential benchmarks and those
2 will be subject to Commission approval for the
3 resources procured prior to going forward with the
4 RFP process.

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

14 As far as the contract structure,
15 there have been a lot of debate about the proper term
16 or length of the contracts. Some thought 5 years
17 would be appropriate or -- up to 25. What the IPA
18 eventually ended up proposing was a term of 20 years.
19 They previously suggested the combination of 3 terms
20 to attempt to accommodate people, but 3 terms is
21 somewhat unwily and 20 terms has some benefits, too,
22 one of which was an attempt to accommodate some of

1 the -- some of those parties or suppliers of that --
2 of that energy who indicated that some of those types
3 of projects really take that long to get to the point
4 where they are cost effective or profitable. So in
5 order to go forward with those longer times -- it
6 would be appropriate.

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

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

14 MR. HICKEY: Yeah, I think that the benchmarks
15 are -- we're not certain because this is something
16 that happens after the Commission enters its final
17 order in the procurement case and Staff is the one
18 who presents the benchmarks. But if I'm not
19 mistaken, the Staff, the IPA, the procurement monitor
20 work together to develop the benchmarks and present
21 them to the Commission for approval in the spring
22 each year.

1 CHAIRMAN BOX: That brings us to another
2 question. When this original plan was submitted, was
3 there anything there concerning long-term contracts?

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

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

21 MR. HICKEY: Mr. Chairman, this is Steve
22 Hickey. As I understand it in this proposed

1 acquisition, either existing renewable resources or
2 proposed renewable resources that are relatively
3 close to completion can bid into this proposed
4 long-term renewable cycle.

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

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

16 MR. HICKEY: As I understand it, the proposal
17 is to solicit bids from renewable providers. The
18 bids are to be fixed-price bids with a -- and they
19 can include an escalation factor of 2 percent
20 annually. And they're supposed to be generating
21 unit-specific -- in other words, the bidder has to
22 identify the source of the renewable energy.

1 CHAIRMAN BOX: One of the issues concerned with
2 one of the -- I think it was the retail -- or was it
3 there's not enough evidence in the record. Was there
4 ever any discussion as to -- any explanation given I
5 think by the parties was that given the future of
6 potential carbon tax, this is one reason why we
7 should lock in a contract for 20 years. Was there
8 any evidence introduced as to what that carbon price
9 might be and what the tipping point might be and --
10 or just an analysis and discussion of those such
11 issues?

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

22 CHAIRMAN BOX: Commissioner Elliott.

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

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

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

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

19 COMMISSIONER ELLIOTT: Okay.

20 MR. HICKEY: If I understand it, the proposal
21 is to -- basically, as I understand it, there will be
22 three things going on. There will be a bid

1 solicitation for what would be considered kind of the
2 routine generation sources. There would also be
3 simultaneously -- we'll talk about ComEd here
4 specifically -- for REC sources through the -- a
5 renewable resources wind -- I'm getting confused
6 between renewables and demand response.

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

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

17 And the supplemental long-term
18 renewable solicitation, if it happens, is going to be
19 happening separately but basically at the same time.
20 And it will have to meet all the requirements in the
21 Public Utilities Act in order for those long-term
22 renewables to be acquired by the IPA.

1 COMMISSIONER ELLIOTT: Yeah, I think what I'm
2 trying to get at is the issue about it being based on
3 price alone. And what I'm trying to determine is
4 what price are we comparing? Is it --

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

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

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

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

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

21 COMMISSIONER ELLIOTT: Nor do I, but it's bid
22 based on the price of long-term renewables as opposed

1 to other energy providers.

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

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

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

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

1 that are in the statute.

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

11 I hope that helps.

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

15 Another question to -- Chairman?

16 CHAIRMAN BOX: No.

17 COMMISSIONER ELLIOTT: -- with regard to the
18 3 1/2 percent cap, where did that come from and could
19 you talk a little bit about the cap that exists for
20 renewables that we worked with in the last three
21 procurements and how this differs? And sort of --
22 you know, walk me through this process of the two --

1 the cap that I'm accustomed to is the one that we've
2 utilized before. There's been a financial cap and an
3 energy and it appears that the 3 1/2 percent energy
4 requirement differs from that. I'd like to get a
5 little bit better understanding of what that is all
6 about. Could you...

7 MR. HICKEY: Well, we'll give that a try. The
8 3 1/2 percent was -- 3 1/2 percent of the energy
9 requirements was actually in the filed plan, which I
10 believe was filed September 30th. Where that came
11 from, I believe it is the judgment of the IPA that it
12 was a reasonable relatively small amount. It's not
13 explained exactly where that came from.

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

21 But I believe there's a consensus that
22 even if the IPA were to acquire the 600,000 megawatt

1 hours annually for Ameren and 1.4 million megawatt
2 hours annually for ComEd, that wouldn't get either
3 utility up to the number of megawatt hours that are
4 required under the renewable statutes. So the
5 remainder of the required renewables will be acquired
6 through the short-term REC market. I just don't have
7 the REC number of kilowatt hours in front of me.

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

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

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

18 MR. HICKEY: Well, I think -- probably I guess
19 both because if 3 1/2 percent of the requirements
20 were below the financial cap, then the 3 1/2 would
21 control. Whereas, if less than 3 1/2 percent met the
22 financial cap, then the financial cap would control.

1 So it depends on the outcome of the solicitation.

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

6 MR. HICKEY: Right.

7 COMMISSIONER FORD: Well, my main concern is
8 the fact that with the 20-year long-term contract,
9 are we in peril that we're going to have some
10 stranded costs in service and market dysfunction and
11 it's going to go back to our ratepayers? That should
12 be our major concern at this time with the contract.
13 I don't have grandchildren, but I certainly don't
14 want them to be indebted to a 20-year contract.
15 Because if we are looking at that laddered approach
16 that they are saying we're going to use for the
17 procurement, I don't -- and it's going to be 2
18 years -- year to year, I don't see why we need
19 20 years if we're looking at that procurement plan
20 and laddered approach. So I have some concerns with
21 20 years.

22 JUDGE JONES: Commissioner, that was one of the

1 issues that the parties were debating during the
2 earlier stages of the proceeding. And then
3 ultimately ComEd and Ameren and the IPA and the AG
4 and Staff came either -- all in support of the
5 particular proposal for the 20 years, and they --
6 they believe it does satisfy those concerns that you
7 just mentioned.

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

10 COMMISSIONER FORD: Strange bedfellows.

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

17 COMMISSIONER FORD: Ratepayers.

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

21 MR. HICKEY: I don't think that was explicitly
22 addressed. That would probably be something that

1 would be in the -- as you know, the contracts -- the
2 RFPs are kind of hashed out after the Commission does
3 its approval of the plan as filed. So that would
4 presumably be a part of that process. And, again, I
5 don't know the answer to the question sitting here.

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

8 CHAIRMAN BOX: Okay. Mr. Colgan.

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

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

21 MR. HICKEY: Commissioner, this is Steve Hickey
22 again. And I think the answer to your question

1 there's not a lot of information in the record in
2 that. As we understand it, those type of financial
3 incentives would be available to new developers of
4 renewable resources. It's not money, as we
5 understand it, that would be going to, for example,
6 the utilities or directly, in this case -- or to the
7 IPA or to customers. So, again, there's not a lot of
8 information in the record.

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

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

18 MR. HICKEY: Well, I think they come into play
19 pretty indirectly because one of the things that the
20 IPA is trying to take into consideration, as I
21 understand it, is long-term availability of renewable
22 resources because ComEd and Ameren will have to be

1 acquiring renewable resources not just this year, but
2 in future years. And one of the things they're
3 concerned about is the availability of renewable
4 resources and, as I understand it, the availability
5 of some government money along with their proposal to
6 enter into long-term contracts for renewable
7 resources might provide opportunities for the
8 development of additional renewable resources that
9 would be available in the future.

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

19 MR. HICKEY: I don't know the answer to that
20 for certain. As I understand the plan, though, the
21 delivery of renewable resources under the long-term
22 piece of this plan begins June 1st, 2012. So -- and

1 the existing resources would have to be generated in
2 facilities not under long-term contract, existing
3 facilities.

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

17 JUDGE JONES: Commissioner, I don't know if
18 there's really a solid answer to your question.
19 It's -- those issues certainly surfaced in the case
20 and were a concern to the Staff and to the AG and the
21 IPA and others. And I think what they attempted to
22 do here was to structure this proposal in a way that

1 would mitigate that to a large degree. And there
2 certainly are some risks here that are shifted to the
3 suppliers, the bidders and, of course, to some degree
4 they objected to that as adding premiums to the bids.
5 But there were a number of measures that were taken,
6 details were added to the proposal that are intended
7 to mitigate the risks on ratepayers, shift as many as
8 possible to the suppliers who are entering the
9 process. And, essentially, if they're too many
10 shifted and they don't bid in, well, then there's not
11 a deal.

12 So there are some tradeoffs there, but
13 I think that Staff and AG and the IPA and some others
14 did take a hard look at that. And I think one of the
15 concerns they expressed -- and I don't really express
16 an opinion myself -- they kind of noted in some of
17 the responses that they were not necessarily buying
18 into the idea that the -- the intervenor that is
19 objecting to long-term renewables plan is really the
20 better spokesperson for the small consumers than the
21 Staff or the AG or the IPA or some other parties for
22 that matter. So they thought they put together a --

1 kind of a package that will mitigate those problems.
2 I guess ultimately it's for the Commission to decide.

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

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

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

21 COMMISSIONER O'CONNELL-DIAZ: We forget that
22 California crisis where we get 10-year contracts and

1 we're not too far from that in time.

2 And my comfort level is certainly not
3 assuaged as what I've seen in the record. It's
4 troubling to me.

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

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

22 COMMISSIONER O'CONNELL-DIAZ: But those amounts

1 may change over time as we move along the development
2 of all these renewable modalities that are out there.
3 So 20 years, again, I don't know. I just...

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

10 COMMISSIONER COLGAN: I had recalled seeing
11 that ComEd at one point was recommending -- and I
12 think it was in the same paragraph -- recommending
13 that there not be contracts any longer than 10 years.
14 But then towards the end of the paragraph they said
15 if the Commission decided to go to longer terms that
16 all of the contracts should be at least 20 years.

17 And I wasn't clear as to what the
18 reasoning was on that. And I don't know if either of
19 you could shed some light on that.

20 MR. HICKEY: Well, if my memory is correct,
21 that would have been a filing by ComEd prior to the
22 November 9th filing by the IPA --

1 COMMISSIONER COLGAN: Yes, it was.

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

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

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

22 CHAIRMAN BOX: Commissioner Elliot.

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

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

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

21 MR. HICKEY: I really don't think so,
22 Commissioner. As I mentioned earlier this afternoon

1 there was some discussion about proposed legislation
2 at the federal level, in the IPA level and also the
3 AG's response subsequent to the November 9th, but as
4 for the actual -- I don't think there's a lot of --

5 COMMISSIONER ELLIOTT: Thank you.

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

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

21 But there is a fair level of detail
22 with respect to the application of -- to the RPS, and

1 that is utilized in connection with the benchmark
2 process on Pages 2 to 3 of that Appendix K that the
3 parties support.

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

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

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

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

22 CHAIRMAN BOX: I'm just saying that it's more

1 expensive because of the statute that was passed
2 saying part of the portfolio has to be renewables,
3 which cost a little more. Are the people who want
4 the 20-year contracts then saying because it has to
5 be a little more now, lock in these prices now in
6 case there is a war carbon tax or in case the -- when
7 the recession's over there's more of a demand or
8 prices go up, consumers will then benefit by these
9 locked-in contracts? Is that the whole thinking?
10 Those two things together?

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

21 But I do not disagree with what you're
22 saying.

1 CHAIRMAN BOX: But that's why I kept asking the
2 question -- and asked it twice before -- isn't this
3 more of a disincentive for new construction if we're
4 locking in for a 20-year period?

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

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

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

1 additional long-term renewables.

2 I don't -- I think there's an
3 assumption that the requirement for acquiring
4 long-term renewal resources is not going to go away.
5 And a 20-year contract, yeah, it's longer than a
6 1-year contract; but, you know, 30 years from now,
7 40 years from now I think there's an assumption there
8 would still be a requirement for Illinois utilities
9 to acquire renewable resources.

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

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

18 But, you know, something happened in
19 the intervening period of time -- if it's that
20 important, why was it not even thought about or
21 discussed before there was any filing, getting the
22 parties together --

1 COMMISSIONER O'CONNELL-DIAZ: This is -- the
2 Chairman embraces a really important question that I
3 have. Is any of this, what's contained in this
4 what's called Exhibit K, was that laid out and robust
5 discussions had with regard to what was contained
6 therein other than just these comments that we have?
7 Or was there a workshop process or the thought of one
8 or -- there are just so many unknowns that as I see
9 and look at this that it's -- it's problematic.

10 JUDGE JONES: Commissioner, if there was a
11 workshop process, I don't know that there was one.
12 In terms of the timing, the filed plan that they
13 submitted to the Commission did contain a long-term
14 renewables proposal in it. It did not have as much
15 detail as the Appendix K does. That was one of
16 issues that was raised by the parties, lack of detail
17 and some uncertainty as to how it works. So that was
18 a very fluid issue that got a great lot of attention.

19 Through the course of the case it was
20 the subject of many -- I think the statute allows for
21 one filing of the parties -- which is why they had 5
22 days to submit objections. We expanded that to 6 and

1 actually every single one of those addressed this
2 issue. So it got a lot of attention once it hit
3 the -- hit the e-Docket here. And prior to that it
4 was the subject of comments during that 30-day
5 comment period.

6 COMMISSIONER ELLIOTT: And you raise a great
7 point. And -- you know, when you mention California
8 and the 10-year contracts, the part and parcel of the
9 10-year contracts was suspension of customer
10 choice --

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

13 COMMISSIONER ELLIOTT: Exactly, now 10 years
14 later.

15 -- extending an obligation for that
16 length of time without consideration of customer
17 switching, which we've been very cognizant of in the
18 IPA's procurement plans over the past several years,
19 particularly to deal with issues of customer
20 switching, which is a clear issue. As this market is
21 just now developing, I think we've had a dozen or
22 more ABCs certification. We're getting more RES

1 interest in this. It seems to agitate against going
2 anything other than short term from a perspective of
3 ratepayer risk and obligations.

4 So I'm sort of puzzled by all this.

5 I'm not...

6 COMMISSIONER COLGAN: I had a question. I know
7 that the statute says that we need to move to
8 25 percent of the energy level by 2025. And so I see
9 us in the situation where we are really required in
10 some ways to move in this direction.

11 And -- but I'm hearing that -- I guess
12 my question is, how far does this get us along that
13 path towards 25 by 25? And I also see that
14 75 percent of that has to be wind. I think I'm
15 correct in that. How long -- how far along that path
16 does this proposal take us? Is there any evidence
17 that's been presented in terms of how that satisfies
18 that goal?

19 MR. HICKEY: That's a good question and I -- it
20 kind of ties back to what Commissioner Elliott was
21 talking about. It all depends, to some extent, from
22 the switching statistics. If you assume -- let me

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

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

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

18 COMMISSIONER COLGAN: Yeah, 5 percent.

19 COMMISSIONER ELLIOTT: So you have that issue.

20 The second issue is to the degree that
21 if customer switching does occur -- for example, if
22 we're imposing higher-than-market prices, our

1 customer base is not forced to accept it and they
2 decide to go to lower cost alternatives, then you
3 could reach that 25 percent number real quick because
4 you'll have a -- to achieve it with.

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

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

15 COMMISSIONER ELLIOTT: Well, I think that's --
16 what you find is that you can only acquire X amount
17 up to this dollar value. That's the hard cap. So
18 given the constraints of 75 percent of wind or
19 whatever, there's a hard cap. Now, we've been able
20 to meet that in our prior IPA, meet the requirements
21 of the percentage of renewables through RECs without
22 exceeding that amount. As that number goes up, that

1 may be far difficult to do. I wouldn't hazard a
2 guess.

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

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

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

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

21 CHAIRMAN BOX: So hopefully we can never exceed
22 the financial caps; right?

1 COMMISSIONER ELLIOTT: Well, the question would
2 be would that 2 percent escalation factor be
3 considered as something that would come under the cap
4 in addition to whatever the next --

5 CHAIRMAN BOX: There's so many loose ends here.
6 The same line of thought that they're talking about
7 right there, you keep having 2 percent escalators and
8 part of the justification of any of us is we want to
9 encourage more development of the wind. The more
10 wind development you have, you would think there'd be
11 more people to bid if we were putting these off RFPs.
12 But the people who have the 20-year contracts in that
13 20th year is going to have the contract plus
14 20 percent and it's not going to be too competitive
15 with new people coming into the market because their
16 price is going to have to be much higher; right?

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

19 CHAIRMAN BOX: Well, you would think with more
20 competitors in the market the price would go down,
21 but it won't be able to go down because you've got
22 the 20-year contracts locked in. And whatever the

1 benchmark or whatever bid happened to be the first
2 year, plus the 2 percent escalator, then you get,
3 say, how many megawatts more of wind power. You've
4 got that much more in the State of Illinois and
5 thereby you think that prices are going to go down,
6 but they can't because you've got a locked-in price
7 for 20 years.

8 Am I missing something, Judge Jones?

9 MR. HICKEY: This is Steve Hickey again.

10 And, again, I'm not trying to talk
11 anybody into the idea that long-term contracts is
12 necessarily the best thing the Commission should
13 adopt here. But I also want to caution you against
14 making assumptions about what the long-term renewable
15 bidders would do when they're bidding because if
16 they -- if the contract and the RFP laid out that the
17 price is going to escalate 2 percent per year,
18 everybody's going to know that. And so to assume
19 that they're going to bid, for example, their cost
20 the first year and ignore the fact that the price
21 that they're going to receive in subsequent years is
22 going to increase by 2 percent, I'm not sure that's a

1 good assumption. Do you understand what I'm saying?
2 They're going take into consideration over a 20-year
3 period the amount of money that they're going to get
4 from the contract if they prevail in the
5 solicitation.

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

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

19 MR. HICKEY: Right.

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

1 hardest.

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

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

20 COMMISSIONER COLGAN: Just one more. And I'm
21 not sure I totally understand this, but -- I'm not
22 sure I'm alone in that either.

1 COMMISSIONER FORD: You're not.

2 CHAIRMAN BOX: You're not.

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

12 Does that question make sense?

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

19 COMMISSIONER COLGAN: I don't have Appendix K.

20 COMMISSIONER FORD: I would go back to --

21 JUDGE JONES: Yeah, that's at the back of the
22 November 9th supplemental filing that the IPA made.

1 COMMISSIONER FORD: Well, I'm looking at what
2 NexGen had in their document, the fact that with
3 operating reserves, PJM, they must pay the difference
4 in the deadhead end unit from the actual performance
5 in real time. And according to them, they would --
6 the cost of 500 megawatts of wind would exceed 700
7 million over the lifetime of a 20-year PPA.

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

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

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

19 COMMISSIONER ELLIOTT: Yeah, I obviously sent
20 some questions into -- the Judge's order put forth
21 the responses. I think that pretty similarly to the
22 issues that we were discussing on wind, I think that

1 the relationship of the wholesale markets and
2 resource adequacy and capacity markets in wholesale,
3 both in PJM and MISO, are works in progress. I mean,
4 clearly there are costs of filings going back and
5 forth. We have the Seventh Circuit Court decision on
6 cost allocation, the transmission. We've got a lot
7 of issues that surround this.

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

19 COMMISSIONER O'CONNELL-DIAZ: I concur with
20 Commissioner Elliott. And I don't -- I'm not left
21 with how does this get to -- what's the language of
22 statute lose cost over time. I'm not seeing in the

1 record that's been developed or the plan that's been
2 presented to us on this issue and we're kind of
3 beating a dead horse.

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

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

1 COMMISSIONER ELLIOTT: Agreed.

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

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

12 COMMISSIONER COLGAN: Well, I had a question.
13 It seemed to me that ComEd made a pretty compelling
14 argument in the PJM market that the demand response
15 is already present there. There was some question
16 that came up about the statutory requirement that we
17 bid this to solicit from outside that market to get
18 some demand response. But it seemed that in doing so
19 that would in effect pay for demand response two
20 times, that in my simplistic look at how that would
21 work, I guess that would be my question to the Judge
22 about -- is that a realistic point of view?

1 JUDGE JONES: Commissioner, I don't believe
2 that there would be any scenarios in which they would
3 be paying for the same thing two times. What the
4 order would -- I mean, the way it's written now would
5 require the IPA to present their proposal -- or
6 actually request approval of the proposal to the
7 Commission prior to going forward with it. And at
8 that time all the cost-effectiveness issues, such as
9 the ones you just raised and those cited by Staff and
10 ComEd, would be provided and evaluated. And it would
11 be the Commission's call in terms of whether to let
12 the IPA go forward.

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

18 MR. HICKEY: This is Steve Hickey.

19 And I think what Judge Jones has said,
20 Commissioner, and I guess, as you suggested, there
21 was concerns raised about the ability to avoid
22 incurring additional costs. And that's the reason

1 that the conclusion on Page 150 to 153 is structured
2 the way that it was. It was intended to provide --
3 to defer to the -- IPA an opportunity to try to
4 obtain additional demand response on the one hand and
5 provide protection to make sure that we don't have
6 cost -- incremental costs added onto ratepayers.

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

9 CHAIRMAN BOX: Any questions, comments on that
10 issue?

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

14 JUDGE JONES: Commissioner, yes, there were
15 those benchmark requirements built into that Appendix
16 K that is intended to do that. It might be a tall
17 task to evaluate that at the time but certainly -- I
18 mean, if the Commission allows that to go forward,
19 that would be the idea that the IPA would have to
20 prepare its presentation in sufficient detail and
21 scope and then would seek Commission approval on it
22 through the benchmark process for the 20-year

1 program. And then at that point if it comes up or
2 comes down as the Commission sees fit.

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

7 MR. HICKEY: Well, again, this is Steve Hickey.

8 And I think what I would state is
9 essentially I believe so. And, again, that
10 conclusion starts on Page 116 of the order was
11 drafted to provide some deference to the IPA and give
12 the IPA the opportunity to attempt to solicit
13 long-term renewables. I don't know if they're going
14 to be successful. I know I have some doubts myself,
15 but we drafted that conclusion in a way that would
16 give them the opportunity to attempt to do so.

17 And as we understand it, the
18 benchmarking would come back before the Commission.
19 And, again, I'm not trying to sell long-term
20 renewables. We wrote the conclusion in a way that
21 would provide protection to customers. Again, I'm
22 not trying to tell you it will be completely

1 successful.

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

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

8 CHAIRMAN BOX: No. No.

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

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

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

21 CHAIRMAN BOX: Is that required?

22 JUDGE JONES: I'd say that it is. As the

1 statute reads procurement administrator, which is in
2 consultation with the Commission Staff, Agency Staff,
3 which is the Illinois Power Agency and the
4 procurement monitor; so I would say yes.

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

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

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

17 JUDGE JONES: That's correct.

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

21 CHAIRMAN BOX: In a perfect world I think this
22 would work.

1 COMMISSIONER ELLIOTT: I'm not sure.

2 CHAIRMAN BOX: I said "perfect world."

3 COMMISSIONER ELLIOTT: I'm looking at it from
4 the perspective of, you know, once we set forth the
5 contract concept, then the benchmark -- the
6 benchmarking issue is completely separate. It's
7 whether or not that contract meets the benchmark or
8 exceeds it as to whether or not we can accept or
9 reject those bids utilizing the benchmark.

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

15 JUDGE JONES: Yeah, the way they worded that,
16 Commissioner, the procurement administrator in
17 consultation with the procurement monitor and the ICC
18 Staff shall develop confidential benchmarks to
19 protect consumers that will be approved by the ICC
20 for the resources procured at solicitation. They
21 shall be used to evaluate bids and reject bids. The
22 benchmarks they felt had to go a little further in

1 terms of consumer protection with the benchmark
2 language that they wrote into the -- into the
3 Appendix for better or worse and tied that to the --
4 somewhat more detailed language that follows all
5 under the procurement process section.

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

8 CHAIRMAN BOX: Any questions on this particular
9 area?

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

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

15 CHAIRMAN BOX: You want to explain your reason
16 there a little bit -- and just one RFP because I've
17 had some concerns in past years that the Company that
18 went second, obviously, they ended up paying higher
19 prices because obviously they -- need is a calculator
20 to figure out how much -- how many megawatts were
21 left in Illinois and bid accordingly. You still
22 propose in your order to have one company go first

1 and then another second rather than having
2 simultaneously RFPs?

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

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

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

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

21 And my only other thought on that is
22 that the IPA didn't take exception to that.

1 JUDGE JONES: That's correct. And as
2 mentioned, that's under the short-term renewable
3 section. And those Staff concerns that were raised
4 are the ones that are outlined in the beginning on
5 Page 120. And that's essentially the directional for
6 the -- the ultimate recommendation before you.

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

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

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

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

16 But I think that a lot of things have
17 been cleared up today, a lot have not. No -- and
18 it's not your fault. I think, once again, there's
19 the lack of transparency and having everybody at the
20 table. That's why I asked some of the questions I
21 asked about how we could be involved because there is
22 some concern. I have some concerns about this

1 process in the way it was done, but hopefully we can
2 get those things resolved by next week.

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

5 JUDGE JONES: Thank you, Mr. Chairman.

6 CHAIRMAN BOX: Why don't we take a -- say, an
7 8-minute break before we start the AT&T and we'll
8 start again right at 3:00 o'clock.

9 (Whereupon, a recess was taken.)

10 COMMISSIONER BOX: The next item is Docket
11 08-0569. This is Illinois Bell Telephone Company's
12 petition to declare services to be competitive in
13 several MSAs outside of Chicago.

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

16 JUDGE HILLIARD: The issue before the
17 Commission is the hearing regarding the imposition of
18 DSL requirements in the greater Illinois MSAs
19 pursuant to the Commission's June 24th, 2009 order.
20 AT&T takes the position that there's nothing in the
21 record that supports the conclusions that DSL
22 requirements are warranted and required as a

1 condition of approving the classification.

2 The Company says that -- and I
3 agree -- that there's no analysis as required by the
4 Act in the order as supporting the decision mandating
5 the requirements. The only argument in connection
6 between DSL service and competitive local exchange
7 service is the Voice Over Internet Protocol service
8 through DSL connection can provide an alternative to
9 landline service.

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

18 Staff takes the view that the DSL
19 deployment that the Commission has suggested would,
20 regardless of the current status of VOIP, enhance the
21 ability of the VOIP providers to increase competitive
22 pricing in the future. Staff concedes that the

1 Commission cannot rely on evidence of actual
2 deployment in the record but supports opposing the
3 requirements because it will intend to enhance future
4 availability of such offerings throughout the greater
5 Illinois MSAs.

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

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

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

19 COMMISSIONER BOX: Any questions of the Judge?

20 I'll start. Judge, was there any
21 evidence or anything in the record referring to the
22 agreement from the last case with Chicago LATA why

1 there was an agreement that they would provide DSL?
2 Do you know the basis of that over the parties other
3 agreement?

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

17 COMMISSIONER BOX: Commissioner Elliott.

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

20 JUDGE HILLIARD: Say that again.

21 COMMISSIONER ELLIOTT: The requirements were
22 not imposed?

1 JUDGE HILLIARD: By the Commission, that's
2 correct. The Commission had nothing to do with the
3 DSL commitment made by AT&T in that case.

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

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

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

21 JUDGE HILLIARD: Yes.

22 COMMISSIONER BOX: Any questions?

1 Commissioner Colgan.

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

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

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

17 One other point that I should mention
18 is that the Company has asked that if the Commission
19 decides to stay with the imposition of the DSL
20 requirements that the time limit for accomplishing
21 this be extended to, I think, it's July 1st of 2012
22 because the -- it's a more extensive undertaking than

1 it was in MSA-1 and because of the delay occasioned
2 by the rehearing it involves two periods of winter
3 weather when it's impossible to accomplish a lot of
4 what needs to be done.

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

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

20 My analysis of that is that AT&T is
21 incorrect in both counts. The statutory -- under
22 State law there is status here as a licensee under

1 the Illinois Cable and Competition Act isn't relevant
2 to this proceeding. Similarly, the High Speed
3 Internet Services Act does not prohibit the
4 possession of DSL requirements. Those are the two
5 Illinois arguments. Similarly from my analysis, the
6 Commission doesn't preempt by federal law because
7 what we're attempting to do here and what the
8 Commission is attempting to do is in imposing the DSL
9 build-out would not frustrate or impede to federal
10 policy to encourage the entry of VOIP providers.

11 So if you want to do that, I don't
12 think that's an insurmountable barrier.

13 COMMISSIONER O'CONNELL-DIAZ: Thank you.

14 COMMISSIONER BOX: Any other questions?

15 Thank you very much, Judge.

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

19 Judge Wallace, anything else to come
20 before us today?

21 JUDGE WALLACE: No, Mr. Chairman.

22 COMMISSIONER BOX: With that, the meeting is

1 adjourned.

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(Whereupon the meeting was

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adjourned.)

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CERTIFICATE OF REPORTER

STATE OF ILLINOIS)
) SS:
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.

Alisa A. Sawka