

MEMORANDUM

TO: Mayor Satterthwaite and Urbana City Council

FROM: Steve Holz, City Attorney

DATE: April 19, 2004

SUBJECT: Resolution Authorizing City to Intervene in Ameren/IP merger case at ICC

A. Introduction: The attached resolution would authorize the City Attorney to intervene in a pending Illinois Commerce Commission case in which Ameren Corporation is requesting ICC approval of acquisition of the distribution and transmission assets of Illinois Power Company.

B. Background:

1. Illinois Power's Recent History. Although originally a locally owned and operated full service electric and gas utility company, Illinois Power has spun off its generating assets pursuant to the 1997 Illinois Electric Deregulation Law, and was purchased by Dynegy, Inc. in 2000 as part of a nationwide trend of utility mergers. Dynegy quickly found itself in severe financial difficulties. It is headquartered in Texas, and Illinois Power is its only regulated transmission and distribution operation. IP operations are regulated by the Illinois Commerce Commission, the Federal Energy Regulatory Commission, and other federal agencies. As a result of Dynegy's financial difficulties, it sought to sell this anomalous subsidiary. The first attempted sale was to Exelon, which owns Commonwealth Edison, and therefore provides electricity to the entire northern part of Illinois (75% to 80% of the electricity needs of the state). That sale fell through after Exelon tied it to proposed legislation increasing electric rates after 2007. Subsequently, Dynegy entered into a contract to sell its assets to Ameren Corporation.

2. Ameren's History. Ameren is a utility company originally centered in Missouri, providing electric and gas service to a small area in Illinois near St. Louis. However, it has embarked on an aggressive acquisition of regulated electric and gas utilities in central and southern Illinois, including CIPS in 1997, and CILCO in 2003. This acquisition brought Ameren next door to Champaign-Urbana. With this acquisition, Ameren became the major investor-owned utility in downstate Illinois together with Illinois Power. Their service territories are interconnected. The service map attached shows such interconnection. Ameren, because of the geographic contiguity of service territories with its other subsidiaries, is a natural purchaser of Illinois Power.

3. Ameren/IP Purchase. Ameren and Illinois Power have entered into a proposed purchase agreement. Such an agreement must be approved by a number of regulatory agencies including, most prominently, the Illinois Commerce Commission and the Federal Energy Regulatory Commission. The major substantive issues in this particular merger are likely to be decided at the Illinois Commerce Commission level. These issues include which expenses from the sale

may be put into the electric and gas rate base; how savings from the transaction will be treated; what future obligations for economic development and capital investment Ameren will make for its IP service territories; and where it will purchase the electric power for its customers. Ameren filed its Request for Merger or Acquisition on March 24, 2004. While the statute allows the Illinois Commerce Commission eleven months to make such a decision in such a case, Ameren has requested that the Commerce Commission make a decision within six months or by September 24, 2004, in order to allow it to close the transaction prior to the end of the 2004 calendar year.

4. Intervention. Cities have a statutory right to intervene in cases such as this. Such intervention gives the City the right to present testimony and arguments to the Illinois Commerce Commission concerning aspects of the proposed acquisition. Without an official intervention into the Illinois Commerce Commission case, the City has no right to present such arguments or evidence. The City could, however, discuss issues with Ameren Corporation outside the context of the Illinois Commerce Commission case.

The intervention would allow the City to participate in the case before the Illinois Commerce Commission and authorize the City to act in concert with the City of Urbana and the University of Illinois. It would continue the coordinated activity of these jurisdictions in electric utility service. Previous Council action has authorized a \$100,000.00 fund that consists of equal contributions by Champaign, Urbana, and the University of Illinois. The staffs of the City and the University have been reviewing proposals by consultants to provide technical and legal services that could assist both the intervention and the study of acquisition of the system. Hiring of these consultants is likely in the immediate future. Many of the issues in an intervention case are similar to issues raised by acquisition of the system, so these consultants can be used for either purpose.

One of the principal advantages of the intervention would be that it would allow the Cities and the University to have specific local concerns, including specific issues of reliability and customer service in this area, to be addressed in a binding order of the ICC or settlement agreement approved and enforced by the ICC.

5. Staffing Impact: Whether or not the City Council authorizes an intervention, a significant amount of staff time will continue to be involved in the previously-authorized actions relating to Illinois Power. This presently includes principally Legal and City Administration, as well as some involvement by Finance and Public Works. These staffs will be heavily involved in any alternative and could delay other projects of a lower priority.

RESOLUTION NO. 2004-04-010R

A RESOLUTION
AUTHORIZING THE CITY OF URBANA TO INTERVENE
IN ILLINOIS COMMERCE COMMISSION CASE NO. 04-0294
(PURCHASE BY AMEREN CORPORATION OF ILLINOIS POWER COMPANY)

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF URBANA,
ILLINOIS, as follows:

Section 1. That the City Council authorizes the intervention into Illinois Commerce Commission Docket No. 04-0294, for the purpose of representing the City's interest in the purchase of Illinois Power Company by Ameren Corporation.

Section 2. That the Chief Administrative Officer is hereby authorized to take such action as necessary to effectuate such intervention.

Section 3. That the Chief Administrative Officer is authorized to cooperate with the City of Urbana and the University of Illinois in such intervention.

This Resolution is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a regular meeting of said Council.

PASSED by the City Council this _____ day of _____, 2004.

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 2004.

Tod Satterthwaite, Mayor