STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

The People of the State Of Illinois                   :

Petition to initiate Rulemaking with                :
Notice and Comment for Approval of 09-0511
Certain Amendments to Illinois Administrative Code Part 200 Concerning Interlocutory Review. :

FIRST NOTICE ORDER

By the Commission:

The Illinois Commerce Commission had previously adopted 83 Ill. Admin. Code § 200.520 dealing with the scope of the hearing examiner (administrative law judge) in the interlocutory review process.

The Attorney General of the State of Illinois has filed a verified petition pursuant to 83 Ill. Admin Code § 200.210 requesting that the Illinois Commerce Commission initiate a rule making proceeding to amend 83 Ill. Admin Code § 200.520 to clearly define the scope of the participation of hearing examiners in the interlocutory review process. Both the petition and the proposed rule changes are the product of negotiations among many parties including the Staff of the Commission, the utilities, consumer advocates and various other stakeholders. According to the petition, the Attorney General has interest in ensuring that Illinois Consumers of public utility services receive the highest quality service possible at just and reasonable rates.

Section 520 authorizes the Commission to conduct interlocutory reviews of a hearing examiner’s ruling. The current rule provides in part that the hearing examiner whose ruling is challenged shall file a report with the Commission 83 Ill Admin. Code § 200.520. This report contains a summary of the ruling at issue, factual and procedural issue of the case and the explanation of the hearing Examiner’s conclusion. The Hearing Examiner is then given further opportunity to explain the conclusion before the Commission during a pre-bench or bench session. The petitioning party is not given an opportunity to address the Commission to present their view of the controversy answer any questions by the Commissioners or respond to the hearing examiner’s written or oral explanation to the Commission.
A status was held in this matter on November 13, 2009 before a duly authorized Administrative Law Judge at the Commission offices in Chicago, Illinois. The Attorney General’s office and the Staff of the Commission were represented at the status. A Petition to Intervene filed by the Citizens Utility Board (CUB) was granted. The parties recommended that the Commission initiate a rulemaking to revise Section 200.520 without the entry of an order authorizing the submission of the first notice of proposed amendment to the Secretary of State. A proposed order was issued on November 13, 2009. No exceptions were filed by any party.

On December 2, 2009, the Commission approved an Interim Order initiating a rulemaking docket to revise 83 Ill. Administrative Code Section 200.520. A status was held in this matter on January 20, 2010 before a duly authorized Administrative Law Judge at the Commission offices in Chicago, Illinois. The Attorney General’s office, CUB, Commonwealth Edison and the Staff of the Commission were represented at the status. A Petition to Intervene filed by Commonwealth Edison was granted. The parties agreed to submit a stipulation of the changes for Section 200.520. This stipulation was filed on January 27, 2010. The stipulation provides a synopsis of the proposed changes to Section 200.520 and is attached as an Appendix to this Order.

The Commission is satisfied that there is sufficient support for the changes and to submit the first notice of the proposed rulemaking to the Secretary of State.

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

1) the Commission has jurisdiction over the subject matter herein;

2) the Stipulation of the parties filed on January 27, 2010 shall be made a part of the record of this proceeding;

3) the recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;

4) this proceeding is a rulemaking and should be conducted as such;

5) the Notice of the proposed revisions to 83 Ill. Adm. Code § 200.520, as reflected in the attached Appendix, should be submitted to the Secretary of State pursuant to Section 5-40 of the Illinois Administrative Procedure Act.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Notice of the proposed revisions to 83 Ill. Adm. Code § 200.520, as reflected in the attached Appendix, should be submitted to the Secretary of State pursuant to Section 5-40 of the Illinois Administrative Procedure Act.
IT IS FURTHER ORDERED that the Stipulation of the parties dated January 27, 2010 shall be made a part of the record of this proceeding.

IT IS FURTHER ORDERED that this proceeding is a rulemaking and shall be conducted as such.

IT IS FURTHER ORDERED that this Order is not final; it is not subject to the Administrative Review Law.

By order of the Commission this 24th day of March, 2010.

(SIGNED) MANUEL FLORES

Acting Chairman
APPENDIX

Section 200.520 Interlocutory Review of Hearing Examiner’s Ruling

a) Any ruling by a Hearing Examiner, including rulings of the Chief Hearing Examiner under Sections 200.510 and 200.870, may be reviewed by the Commission, but failure to seek immediate review shall not operate as a waiver of any objection to such ruling. Unless good cause is shown or unless otherwise ordered by the Hearing Examiner or the Commission, the party or Staff seeking review of the ruling shall file a petition for interlocutory review within 21 days after the date of the action that is the subject of the petition. The petition shall be filed with the Chief Clerk together with any offer of proof and shall be served upon the Hearing Examiner and upon Staff and all parties to the proceeding. Other parties and Staff may file responses within seven days of the filing of the petition. The Hearing Examiner shall have 14 days from the filing of the petition within which to file a report to the Commission with the Chief Clerk, who shall serve copies of such report on the parties and Staff. Petitions for interlocutory review of a hearing examiner ruling, and any responses and replies thereto, shall be forwarded by the hearing examiner directly to the Commission for review without communicating further advice or recommendation from any hearing examiner, including the hearing examiner presiding over the case; provided, however, that a hearing examiner may provide a written explanation for the ruling on or before the due date for responses to the petition, which shall be served on the parties. In that case, the hearing examiner shall schedule a time for the petitioner to reply. Only in extraordinary circumstances shall an interlocutory review of a ruling of a Hearing Examiner suspend a hearing.

b) On review of a Hearing Examiner’s ruling, the Commission may affirm or reverse the ruling in whole or in part, and may take any other just and reasonable action with respect to the ruling, such as declining to act on an interlocutory basis. Petitions to rehear or reconsider Commission action taken under this Section shall not be entertained by the Commission and are not allowed under this Part, except as to persons who have been denied leave to intervene by such action.