

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

CENTRAL ILLINOIS LIGHT COMPANY d/b/a AmerenCILCO,)	
)	
Proposed general increase in rates for delivery service.)	Docket No. 06-0070
)	
CENTRAL ILLINOIS PUBLIC SERVICE COMPANY d/b/a AmerenCIPS,)	
)	
Proposed general increase in rates for delivery service.)	Docket No. 06-0071
)	
ILLINOIS POWER COMPANY d/b/a AmerenIP,)	
)	
Proposed general increase in rates for delivery service.)	Docket No. 06-0072 (consol.)
)	

**MOTION TO STRIKE TESTIMONY OF DANIEL F. MILLER, MATT J. MOORE AND
TOM PETERSON FILED ON BEHALF OF LOCAL UNIONS 51 AND 702,
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AND FOR
EXPEDITED TREATMENT**

Central Illinois Light Company d//b/a Ameren CILCO, Central Illinois Public Service Company d/b/a/ AmerenCIPS and Illinois Power Company d/b/a Ameren IP (collectively, “Ameren” or “Companies”), pursuant to Section 200.190 of the Commission’s Rules of Practice, move to strike, in their entirety, the testimonies of Daniel F. Miller, Matt J. Moore and Tom Peterson, filed on behalf of Local Unions 51 and 702, International Brotherhood of Electrical Workers (“IBEW” or “Unions”). Because the due date for the Ameren rebuttal testimony is May 26, 2006, grounds exist for expedited response to this motion. Ameren requests that any response be due in seven days and that Ameren’s response follow in three days. This motion should be granted for the reasons that follow.

I. INTRODUCTION

Three separate witnesses from IBEW Locals 51 and 702 have filed essentially the same testimony urging the Commission to reject the Ameren Companies' proposed metering and line extension tariffs.¹ None of these witnesses claim that the Ameren Companies will not perform metering services or line extensions under their tariffs. None of them claim that any rate or charge for metering or line extension services will be unjust or unreasonable. And none of them claim that any aspect of the metering or line extension tariffs is in any way relevant to whether any costs that the Companies seek to recover in rates were prudently incurred. Instead, the gist of these witnesses' testimony is that the Companies' tariffs are unjust and unreasonable because the Companies propose to allow private contractors or customers to do certain meter and line extension-related work that the Unions believe they have the exclusive right to perform. The Union witnesses admit that the heart of the claim for why the proposed tariffs are "unjust and unreasonable" is that the Unions supposedly will lose work.

The Unions' witnesses' prefiled testimony is "déjà vu all over again." In arguing that Ameren's proposed tariffs are unjust and unreasonable, the Unions resurrect the same arguments they made in two separate labor grievances previously filed against the Companies. Their complaint about allowing non-Ameren employees to do line extension work was also raised in Docket No. 03-0767, a Commission-imitated investigation into line extension policies. The Unions conveniently ignore the Commission's recent admonishment in that docket that labor matters have nothing to do with the Public Utilities Act and therefore are not the appropriate

¹ Mr. Miller's testimony corresponds to the AmerenCIPS tariff, Mr. Moore's testimony corresponds to the AmerenCILCO tariff and Mr. Peterson's testimony corresponds to the AmerenIP tariff. Because the substantive portions of each Companies' tariffs are the same and the substantive portions of each witness's testimony are also the same, each witness's testimony should be stricken for the same reasons. Rather than repeat the arguments for each witness's testimony, the Companies refer to the prefiled testimony of Daniel F. Miller and the proposed tariffs filed by AmerenCIPS.

subject of Commission proceedings. (*Investigation Into the Proper Allocation of Line Extension and Service of Installation Costs*, Docket No. 03-0767, Order of Rehearing of April 6, 2006, at 3.)

The testimony filed in this case is simply a continuation of the Unions' efforts to stop the Companies from contracting out certain work. The Commission, of course, is not the proper forum to resolve labor grievances. If the Unions believe that the Companies are violating a collective bargaining agreement, their remedy is to file a labor grievance, and they have. If they believe the Companies are violating any provision of the Public Utilities Act or Commission rules, their remedy is to file a complaint with the Commission. But the Unions cannot pursue labor grievances through the back door of a rate case. Because none of these witnesses testify about any issue that is remotely relevant to this proceeding, the testimony of each should be stricken in its entirety.

II. ARGUMENT

A. The Unions' Testimony Raises Labor Jurisdictional Issues That Are Irrelevant To These Proceedings And Beyond The Commission's Jurisdiction.

The Union's testimony reads like a brief filed in a labor dispute. The testimonies are filled with claims, issues and positions that already have been, or soon will be, addressed in arbitration. Among other impertinent, irrelevant and off-the-wall comments that have nothing to do with these rate cases are the following:

- "Even though I am not a lawyer, I believe that each of the functions that Cellnet or Terasen will perform qualifies as a meter service under Section 460.15 of the Commission's Rules." (Miller Testimony, p. 13 line 292 – p. 14 line 1.)
- "Counsel informs me that the IBEW has been unable to obtain copies of the actual training materials that Ameren will provide Cellnet and Terasen because Ameren wants the IBEW to sign a confidentiality agreement that is unduly restrictive and unreasonable." (*Id.* at 15, lines 328-31.)

- “I wish to point out, however, that Terasen’s job posting on jobsinchicagoland.com for “AMR Installers” indicates that no previous electric meter experience is required.” (*Id.* at 16, lines 341-3.)
- “The Commission should require AmerenCIPS to have Cellnet and Terasen employ or use persons who have the same level of training, skills, and experience and AmerenCIPS’ IBEW employees providing the same metering services.” (*Id.* at 21, lines 445-47.)
- “For residential subdivision developers/owners, AmerenCIPS offers an entirely new option not currently available. The residential subdivision developer/owner has the option of installing their own electrical distribution facilities and conduit systems, rather than AmerenCIPS personnel installing electric distribution facilities and directly burying the conductor on the public and/or private right-of-ways of each lot.” (*Id.* at 30, lines 647-51.)
- “Based on Ameren’s response to another IBEW data request, it seems that one of the real reasons behind the policy change, at least with respect to subdivision developers, is for the Company to implement the agreement it entered into with the Home Builders Association of Illinois in Docket No. 03-0767.” (*Id.* at 32, lines 703-06.)
- “I wish to point out that IBEW Local 702 filed a labor grievance against AmerenCIPS for the policy change. I was personally involved and testified in that labor arbitration proceeding.” (*Id.* at 31, lines 677-79.)
- “We are awaiting a decision from the arbitrator and expect a decision in next [sic] few weeks. The IBEW reserves the opportunity to discuss the results of the arbitrator’s decision in the IBEW’s rebuttal testimony.” (*Id.* at 32, lines 690-92.)
- “AmerenCIPS doesn’t care who does the work. It’s up to the customer to decide based on Ameren’s response to IBEW DR 4-32. See IBEW Exhibit 1.18.” (*Id.* at 34, lines 742-43.)
- “With Ameren’s new line and service extension policy it is quite clear that the Commission has absolutely no assurances that ‘good people’ will be used or that the Company will follow its own specifications.” (*Id.* at 35, lines 764-66.)
- “I believe there would be a significant and detrimental economic impact on the number of IBEW members needed to install underground line extensions and service extensions for AmerenCIPS.” (*Id.* at 37, 807-09.)
- “What we’re talking about here is a dramatic loss in man hours that would otherwise be performed by IBEW members.” (*Id.* at 37, lines 811-12.)

In addition to the above, the testimonies also contain discussion of impertinent topics such as IBEW pay scales and job classifications, training and apprenticeship standards, and

hypothetical discussions of whether Ameren employees meet certain standards under meter service rules that all agree do not apply to Ameren employees.

The obvious question that these examples raise is, how is any of this relevant to the pending rate cases? Clearly it is not. The Commission held as much when it observed in Docket No. 03-0767 that “it is not clear that the issue to which IBEW avers concerning the HBAI agreements is anything more than a labor ‘jurisdictional dispute,’ i.e., an issue concerning the identity or union membership of the persons performing the labor to install the electric line or gas main extensions.” (Docket No. 03-0767, Order on Rehearing of April 5, 2006, at 3.) The Commission determined that such allegations concern labor relations matters and not matters relevant to the Public Utilities Act. (*Id.*) The Commission also found that to the extent the Unions believe the Companies have violated the Public Utilities Act or Commission rule or order, their remedy is to file a complaint. (*Id.*)

The Commission’s observation that the Union’s positions in Docket No. 03-0767 concern labor matters is confirmed by the fact that the Unions raised the very same claims in a labor grievance. That grievance is also referenced in the testimonies filed in this case. (*E.g.*, Miller Testimony, p. 31.) The arbitrator has decided this grievance and ruled in favor of the Companies. (*See* Arbitration between AmerenCIPS and International Brotherhood of Electric Workers, Local Union No. 702, Opinion and Award of Apr. 24, 2006, attached as Exhibit A.) The arbitrator found that allowing customers to perform conduit work is commercially reasonable and does not result in less work for the Unions because the Unions are still involved in pulling cable and performing inspections. (*Id.* at 18-19.)

The Unions’ complaint about using Cellnet and Terasen employees likewise concerns a labor jurisdiction dispute. In fact, as was the case with the line extension policy, whether the

Companies may use non-employee personnel for the AMR deployment is currently in arbitration. (*See* Response to DR-2, IBEW Ex. 2.4 AmerenCIPS.) The Unions essentially claim that these employees are unqualified and will pose a threat to public safety if allowed anywhere near an electric meter. What the Unions fail to tell the Commission is that at the time they filed their testimony, the Unions were in negotiations to represent Terasen employees. Those negotiations have since concluded and Terasen employees are now part of Locals 51, 702 and 309. Thus, if the Unions' claims about Terasen employees are to be believed, then the Unions have disqualified themselves from working on the AMR deployment because the employees that will do the work are, according to the Unions, unqualified.

Because the Unions' testimony is, at best, a subterfuge to pursue labor grievances, and because labor grievances are irrelevant to the Public Utilities Act in general, and to these rate cases in particular, all of the Unions' testimony should be stricken in its entirety.

B. The Unions' Testimony Is Irrelevant To The Metering Services Tariff.

As demonstrated above, and as clearly evident from the testimonies as a whole, the Unions' positions are facially irrelevant. The underlying premises of their arguments are also wrong, which further justifies striking their testimony for lack of relevance.

The Unions testify that the Companies' metering service tariffs are unjust and unreasonable. The disputed portion of the Companies' proposed tariff state:

Company will own, furnish, install, calibrate, test, and maintain all Company meters and all associated equipment used for retail billing and settlement purposes in its service area. In the event that the Customer arranges for an MSP to provide its metering and metering services, the MSP shall provide all services in accordance with the Supplier Terms and Conditions of this Schedule.

Company will continue to read its own meters in its service area. The MSP shall be responsible for reading its meters and for

providing the meter readings to the Company in accordance with the Supplier Terms and Conditions of this Schedule.

(AmerenCIPS Proposed ICC No. 35, Original Sheet No. 4.021.)

The Unions claim that the tariffs “are in part false” because Cellnet, an Ameren contractor, will install and own AMR modules scheduled for deployment on Ameren meters. (Miller Testimony, p.12-13.) Cellnet will also read meters installed with an AMR. The Unions argue that Cellnet’s activities, as well as those of its subcontractor, Terasen Utility Services, constitute “metering services” as contemplated by 83 Ill Admin. Code Part 460. The implication of all of this, according to the Unions, is that Ameren’s tariffs are unjust and unreasonable because they falsely state that Ameren will provide “metering services” where, in fact, those services will be performed by contractors who purportedly do not meet the requirements of Part 460 and are otherwise unqualified to do this work. Left unsaid is why the Unions have not filed a complaint against Ameren, Cellnet or Terasen alleging noncompliance with Part 460.

Nonetheless, the Unions’ arguments about Part 460 are irrelevant because Part 460 does not apply to the work that Cellnet or Terasen will perform. Electric utilities such as the Ameren Companies are exempt from Part 460. 83 Ill. Admin. Code Section 460.20. Cellnet and Terasen are *not* subject to certification under Part 460 because they will be performing work on behalf of Ameren, and not on their own behalf as Meter Service Providers (“MSPs”). The work they will perform will be limited to AMR deployment and reading AMR-equipped meters. The AMR modules are not an integral part of the meters. The modules simply allow the meter to be read electronically. (Response to DR-2, IBEW Ex. 2.4 AmerenCIPS.) Neither contractor will have any relationship with customers.

Thus, although Section 460.15 lists 16 functions that constitute “metering service,” Cellnet and Terasen will perform, at most, only a few of them, and only then on behalf of

Ameren, and not under contract with any customers. These contractors simply will not provide the full panoply of services that subject them to regulation as MSPs. Utilities have hired outside contractors for many years. The Unions cannot plausibly argue that hiring a contractor to perform limited services at their direction that meet the definition of a *component* of metering service, subjects the contractor to full-fledged regulation as an MSP. Performing limited subcontractor work at the direction of the utility and participating in the market as an MSP are completely different activities.

Although the Unions claim that Part 460 applies to utilities when they use outside contractors (Miller Testimony, p. 18), nothing in Part 460 says that. Likewise, nothing in Part 410 says that a utility has to use its own employees to perform metering services under that Part. (*Id.* at 18-19.) The Unions cite the testimony of Staff Witness Christel Templeton in Docket No. 99-0013 as support for their interpretation of Parts 410 and 460, but this witness never said what the Unions say she said. (*See id.* at 19.) Even if she had (and with all due respect to Ms. Templeton), her views are not those of the Commission. Nonetheless, in the testimony cited by the Unions, Ms. Templeton opined that an MSP would have to demonstrate that its employees have knowledge and skills comparable to utility employees, but she made no conclusions about whether a utility could comply with Part 410 using subcontracted employees. Finally, if the Unions' quarrel is an interpretation of Part 460 or Part 410, they should seek a declaratory ruling from the Commission.

The Unions' claim that the tariffs will allow unregulated, unqualified personnel to perform metering services is patently illusory. Under the proposed tariffs, the Ameren Companies will continue to own electrical meters, just as they always have. The Unions will continue to inspect and replace meters as necessary, just as they always have. The only thing

that Cellnet and Terasen will do is install AMR modules so that the meters can be read remotely. Ameren will remain subject to the metering service requirements of Part 410. If the Unions come to believe at some future time that Ameren or its contractors have violated Part 410, they are perfectly free to file a complaint with the Commission.

The Unions admit that they have no personal knowledge of the level of training, skills or experience of Cellnet or Terasen employees. (Miller Testimony, p.16.) They then go on to speculate about what training they *think* these employees might have, but their testimony is just that: speculation. The Unions have offered *no evidence*, not that it would be relevant in any instance, that Cellnet or Terasen employees are, or will, be unqualified. Indeed, the Unions conclude their testimony by urging the Commission to reject the Companies meter service tariffs “because of the inadequate installation practices that the Company intends to use” (*id.* at 21), but they never identify what practices they are talking about. It is difficult to conceive how such speculative claims, which admittedly are not based on any personal knowledge, can be probative of any issue in this proceeding.

The Commission should view the Union witnesses’ testimony for what it is, which is a labor grievance concerning jurisdiction over meter-related work. This is not the proper forum to resolve that debate. Each witness’s testimony concerning the Companies’ metering service tariffs should be stricken in its entirety.

C. The Unions’ Testimony Is Also Irrelevant To The Line Extension Tariff.

The Unions also testify that the Commission should reject the Companies’ line and service extension tariffs. As with the testimony concerning metering services, the underlying premise of the line extension testimony is also wrong, rendering this testimony irrelevant and inadmissible as well.

The disputed portion of the Companies' line extension tariffs state:

The Company, in limited circumstances, may provide the Customer, consistent with good engineering practices, the option of supplying and installing conduit, in accordance with Company specifications, in lieu of the Company directly burying the conductor on public right-of-way. When Customer installs conduit, Customer will receive a cost adjustment for that portion of the Extension for which Customer provides and installs conduit.

(AmerenCIPS Proposed ICC No. 35, Original Sheet No. 4.011, 4.012 and 4.013.)

The Unions' witnesses attempt to make a case that allowing customers or non-employee contractors to do this work presents safety hazards because the Companies will not control how this work is performed, but this simply is not true. In fact, the witnesses' testimony is so misleading that this provides an additional basis that it be stricken. For example, at pages 34 and 38 of Mr. Miller's testimony, the witness says that Ameren "doesn't care" whether contractors or customers are competent to perform line or service extensions, but the tariffs states otherwise. Under the tariff, regardless of whether a customer or contractor performs the work, the work must be performed in accordance with "good engineering practices" and within "Company specifications." (ICC No. 35, Original Sheet No. 4.011, 4.012 and 4.013.) The Unions then argue the Commission should not believe the Companies' claims that they will provide specifications or supervise this work, citing as support a report critical of the practices of *ComEd*. (Miller Testimony, p.35; IBEW Ex. 2.20.) To say that a report of ComEd's practices is in any way relevant to the Ameren Companies' line extension policies strains not only logic, but credibility as well. Moreover, to the extent the Unions believe that the Companies have violated any regulations pertinent to tree trimming practices (how those practices are relevant to line extensions, the Unions never say), they are perfectly free to present evidence of such to the Commission in a complaint proceeding.

All of the Unions' arguments about the line extension and service extension tariffs are plainly irrelevant. The tariffs reflect current policies implemented in March 2004. (Miller Testimony, p. 30.) The Companies anticipate that installations performed by customers or contractors will be the exception rather than the rule, as the tariffs provide that these installations will occur only "in limited circumstances." Where these installations have been performed in the past, the Unions do not and cannot cite a single example where such an installation was performed improperly. Whether these installations can be performed by non-utility personnel under existing labor agreements is immaterial to any analysis of the justness and reasonableness of the tariffs, particularly where that issue has already been decided by a labor arbitrator. Moreover, if the Unions believe that any non-utility service installations in any way violate the Public Utilities Act or Commission rules, once more, the proper remedy is to file a complaint at the Commission, as the Commission instructed them to do in Docket No. 03-0767. If the Commission's order on this issue is to mean anything, the testimony in this case must be stricken.

III. CONCLUSION

The Unions' prefiled testimony is irrelevant to any issue in this proceeding and represents a collateral attack of a prior Commission order and a labor arbitrator's decision. The testimonies of Daniel F. Miller, Matt J. Moore and Tom Peterson should be stricken in their entirety.

Dated: May 5, 2006

Respectfully submitted,

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CENTRAL ILLINOIS PUBLIC SERVICE
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PROOF OF SERVICE

I, Laura M. Earl, certify that on May 05, 2006, I served a copy of the foregoing Motion by electronic mail to the individuals on the Commission's Service List for this Docket.

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