STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Central Illinois Public Service Company d/b/a AmerenCIPS, Union Electric Company d/b/a AmerenUE, Central Illinois Light Company d/b/a AmerenCILCO, Illinois Power Company d/b/a AmerenIP, Commonwealth Edison Company, Illinois-American Water Company, MidAmerican Energy Company, Northern Illinois Gas Company, d/b/a Nicor Gas Company, North Shore Gas Company, and The Peoples Gas Light and Coke Company	)	No. 05-0237
Petition To Initiate Rulemaking With Notice and Comment for Approval of Certain Amendments to Illinois Administrative Code Part 280 Concerning Deposit Requests and Deposit Refunds by Utilities	)	

JOINT PETITIONERS' INITIAL BRIEF

Central Illinois Public Service Company d/b/a AmerenCIPS ("AmerenCIPS"), Union Electric Company d/b/a AmerenUE ("AmerenUE")[1], Central Illinois Light Company d/b/a AmerenCILCO ("AmerenCILCO"), Illinois Power Company d/b/a AmerenIP ("AmerenIP"), Commonwealth Edison Company ("ComEd"), Illinois-American Water Company, MidAmerican Energy Company ("MidAmerican"), Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor Gas"), North Shore Gas Company ("North Shore"), and The Peoples Gas Light and Coke Company ("Peoples Gas") (collectively "the Joint Petitioners") hereby submits this Initial Brief to the Illinois Commerce Commission (the "Commission") pursuant to the procedural schedule established by the Administrative Law Judge ("ALJ").

[1] AmerenUE – Illinois was merged into AmerenCIPS in 2005 in Docket No. 03-0657 and is no longer an Illinois utility.

I.
Introduction

The Joint Petitioners are seeking limited amendments to Part 280 of the Commission's Rules, 83 Ill. Adm. Code § 280, for the purpose of better managing risk and reducing uncollectible expense, which will benefit both customers and the utilities. In general, Part 280 sets forth the conditions under which a public utility may request a deposit and make refunds, discontinue service, or decline service to applicants and current customers based on a public utility's objective evaluation of financial risk. However, under current Part 280, the methods available to utilities to assess and mitigate financial risk are unduly limited, and outdated from a technology perspective. Falcone Dir., Joint Pet. Ex. 1.0, p. 3. Accordingly, the Joint Petitioners propose limited amendments to Part 280 that will permit the early detection, monitoring and mitigation of financial risk and are intended to more effectively reduce uncollectible expenses that would otherwise be borne by utility ratepayers through higher rates. This proposal is based on the operational and financial experience of the Joint Petitioners. In adopting the proposed amendments, ComEd, the Ameren Companies and Nicor Gas estimate, collectively, an annual reduction in bad debt expense of approximately $2.5 million. Falcone Reb., Joint Pet. Ex. 2.0, p. 4. The evidence demonstrates that such amendments are reasonable and should be adopted.

Specifically, the Joint Petitioners' propose amendments to Part 280 that would: (a) adopt a "household" rule consistent with the authority currently available to Illinois local exchange telecommunications carriers under 83 Ill. Adm. Code § 735(b)(1); (b) extend the effective period for a notice of disconnection and clarify how utilities must provide such notice; (c) provide an alternative to disconnection for certain residential customers who fail to timely pay for service; and (d) authorize the use by utilities that have filed a tariff consistent with the proposed amendment of recognized credit risk assessment methods for commercial customers. The

proposed amendments also would make minor changes to Part 280 concerning a utility's obligations related to deposit requests and refunds, and technical changes consistent with the Small Business Utility Deposit Relief Act, 220 ILCS 35/3. The proposed amendments to Part 280 are set forth in legislative style in the document attached hereto as Attachment A. Joint Pet. Ex. 3.0.

The reasonableness of the Joint Petitioners' proposals is additionally evident by the fact that the Commission Staff has not objected to the majority of the proposed amendments. Indeed, Staff's comments are limited solely to Section 280.50, and are addressed herein. Howard Dir., Staff Ex. 1.0, pp. 2-5. Moreover, the proposed amendments to Part 280 do not affect programs in place for customers who require financial assistance or other protections related to the provision of gas and electric service. Karman Dir., Ameren Ex. 1.0, p. 3. Accordingly, the Joint Petitioners respectfully request that the Commission adopt the proposed amendments to Part 280.

II.
Argument

A. Overview

By the very nature of utility service, whether it is electric, gas or water, service is provided well in advance of billing and payment and the product is consumed almost immediately. Falcone Dir., Joint Pet. Ex. 1.0, p. 4. Unlike normal businesses, however, utilities have an obligation to serve customers and are required to extend service, regardless of credit risk. *Id*. Moreover, utilities are required to provide service despite the fact that a customer may represent a significant and unreasonable payment risk. *Id*.

Utilities also have an obligation to maintain a reasonable level of costs. One such cost is uncollectible expense. Indeed, in 2004 alone, Illinois utilities collectively wrote off more than

$125 million in bad debt. Karman Dir., Ameren Ex. 1.0, p. 3. The Joint Petitioners' proposal constitutes a way of better managing uncollectible expense is for the utilities to have "the ability to assess the full scope of financial risk presented by applicants and, rather than refuse service to those that present great risk, take reasonable and appropriate measures to protect against non-payment." Falcone Dir., Joint Pet. Ex. 1.0, p. 4. Otherwise, increases in uncollectible expenses will be borne by all customers through higher rates.

Given these facts, the Joint Petitioners seek to amend Part 280 to provide utilities with additional tools to mitigate financial risk and update the Rule to reflect new technologies and the current environment in which these companies operate and better manage bad debt expense.

B. Section 280.50 - Applicants for Service

1. Joint Petitioners' Proposal

The Joint Petitioners seek to amend Section 280.50 to add a provision that would create a "household rule" related to applications for new service. Pursuant to this proposal, utilities would have the ability to decline service to a new applicant for service if a former customer, who is still responsible for payment of a past due bill at the same class of service, continues to occupy the premises. Falcone Dir., Joint Pet. Ex. 1.0, p. 5. This proposal is substantially similar to the rule currently in effect for local exchange telecommunications carriers, which was promulgated by the Commission in 1994. 83 Ill. Adm. Code § 735.130(b)(1). The precise language the Joint Petitioners are proposing is found in Attachment A to this brief. Joint Pet. Ex. 3.0.

Joint Petitioners' witness Mr. Mark Falcone testified that "it is common practice among those individuals that are seeking to avoid payment to switch names on the account." Falcone Dir., Joint Pet. Ex. 1.0, p. 6. Under Part 280 as currently in effect, a utility cannot deny a new applicant service at a residence where the former utility customer, who has unpaid utility bills,

continues to reside at the premises and enjoy the benefit of utility service. *Id*. A good example of this abuse occurs with roommates. Mr. Falcone noted that this is common at colleges and universities, where three or four roommates can cycle through each one of their names to establish service and none pay for service: despite the fact they all continue to reside at that premises and enjoy utility service. Tr., pp. 200-01. Ameren witness Laurie Karman also corroborated Mr. Falcone's testimony concerning the problems with roommates switching service among themselves. Tr., pp. 215-16.

Mr. Falcone further testified that the utilities do not want to make the application process cumbersome. Falcone Dir., Joint Pet. Ex. 1.0, p. 6. Rather, investigation into this issue would occur only when an applicant seeking new service seeks such service for a premise that has been disconnected, or where the premise is under a threat of disconnection for a substantial unpaid bill—with the threshold being about $250 to $500. *Id*. Under this circumstance, for example, the utility would require a lease or statement from the landlord that the former customer is no longer an occupant. *Id*., p. 7. Alternatively, if the applicant cannot provide such information, the utility may conduct its own investigation to ascertain whether the former customer continues to reside at the premises. Tr., p. 143. Ultimately, the burden is on the utility to prove that the former customer remains on the premises; if there is doubt, the utility will offer service to the applicant assuming all other conditions of eligibility are met.

It is in the interests of utilities to have customers taking utility service at all premises located in the service territory. Tr., p. 194. However, to the extent a utility is losing money as a result of customers "gaming" the system, it is beneficial to both the utility and the vast majority of its customers to put in place rules that will limit such activity. In this regard, the Joint Petitioners proposal to create a household rule is consistent with the rule currently in place for

Illinois local exchange telecommunications carriers for the past twelve years. 83 Ill. Adm. Code § 735.135(b)(1). Indeed, the proposed amendment to Section 280.50 is more narrow in application than what is currently being used in Section 735.135(b)(1). Tr., p. 90. It is more narrow because the Joint Petitioners would only deny service if the occupant at the household was, in fact, a former customer at the premises. In contrast, under the rule for local exchange telecommunication carriers, if any member of the household had a utility debt, service would be denied to the applicant. For the foregoing reasons, therefore, the Joint Petitioners urge the Commission to adopt the proposed changes to Section 280.50 as set forth in Attachment A.

2. Staff's Proposals

Staff witness, Joan Howard, offered four proposals in response to the Joint Petitioners' proposed amendments to Section 280.50. First, Ms. Howard proposed that a utility should provide written notice to an applicant should a request for new service be denied as a result of application of the household rule. Howard Dir., Staff Ex. 1.0, p. 4. The Joint Petitioners accepted this proposal. Falcone Reb., Joint Pet. Ex. 2.0, p. 13. Second, Ms. Howard proposed that a utility issue a notice of denial of service pursuant to the household rule within two business days from the receipt of an application for service. Howard Dir., Staff Ex. 1.0, p. 4. The Joint Petitioners also accepted this proposal, subject to the timely provision of information required to process the application. Falcone Reb., Joint Pet. Ex. 2.0, p. 14.

Ms. Howard also proposed that service must begin to be provided to a new applicant for service after two business days if a utility cannot determine whether the proposed household rule is applicable. Howard Dir., Staff Ex. 1.0, p. 4. She also noted that a utility could later disconnect service if, within 30 days of the application, the utility could determine that there was a violation of the household rule. *Id*. The Joint Petitioners oppose this proposal for several

reasons. This practice likely would increase the past due balance outstanding. Falcone Reb., Joint Pet. Ex. 2.0, p. 14. Also, the utility would incur additional costs related to discontinuance of service, plus the additional bad debt accumulated during the 30 day period, if there was a violation of the household rule. *Id*. Finally, electric and gas utilities may be precluded from disconnecting such customers pursuant to other laws and regulations, such as prohibitions on disconnections during the winter. Tr., p. 186. Such prohibitions on disconnection would further exacerbate the bad debt problem and allow non-paying customers to receive service. For these reasons, this Staff proposal should not be accepted.

Finally, Staff proposes a new subsection, Section 280.50(h), which would require all utilities to maintain data on all denials of service based on application of the household rule. Adoption of Staff's proposal clearly would impose additional costs on utilities by virtue of the requirement to maintain such data. Falcone Reb., Joint Pet. Ex. 2.0, p. 15. Moreover, the Joint Petitioners also oppose this proposal because no such obligation is imposed on telecommunications carriers under Section 735.130(b). The imposition of these additional costs are not justified, and Staff offered no explanation in testimony as to how the retention of such information would be beneficial. Consequently, Staff's proposal on this point should be rejected.

3. Government and Consumer Parties' Proposals

The Citizens Utility Board, the City of Chicago, the South Austin Coalition Community Council, Community Action for Fair Utility Practice, and The People of the State of Illinois (collectively "GCP") witness, Barbara Alexander, testified that the proposed household rule should be rejected based on her opinion that the rule does not have appropriate criteria and that it is overly broad. Alexander Dir., GCP Ex. 1.0, pp. 5-17. This argument should be rejected for several reasons. First, the Commission already has had in place for 12 years a household rule

applicable to local exchange telecommunications carriers. 83 Ill. Adm. Code § 735.130(b). In this regard, Ms. Alexander failed to provide any information, and there is none, pointing to an inappropriate application of the existing rule. Moreover, Ms. Alexander's position fails to consider that the Joint Petitioners proposed household rule is actually narrower in scope than the rule currently being utilized by telecommunications carriers. Tr., p. 90. Thus, her claim that the Joint Petitioners' proposal is "overly broad" misses the mark. Accordingly, GCP's objections to the proposed household rule should be rejected.

Meanwhile, the South Austin Coalition Community Council's witness, Mr. Howat, also urges the rejection of the proposed household rule. Howat Dir., LIRC Ex., p. 3. First, he addresses the proposal based upon the perspective of low-income customers. However, as a matter of policy, the Commission must consider all customers, as well as the utility and its shareholders. Consequently, the Commission should not accept Mr. Howat's opinion on this point. Indeed, efforts to change application of the rule based on a customer's income is problematic. Utilities do not maintain records detailing the financial status of their customers, other than the provisions of LIHEAP assistance. Tr., p. 200.

Mr. Howat also suggests that customers who are not "gaming" the system may be adversely impacted by the proposed household rule. Howat Dir., LIRC Ex., p. 8. In rebuttal testimony, Mr. Falcone testified that such a result may occur (Falcone Reb., Joint Pet. Ex. 2.0, p. 16), but there is no evidence to demonstrate the frequency of such an occurrence. The proposed rule governs those situations where a non-paying customer, who still resides at the premises, will continue to enjoy the benefits of utility service while not paying the outstanding balance due. Such a circumstance ultimately results in all customers bearing the cost of this otherwise unpaid service. It would be bad policy to allow such events to continue, particularly

when the Commission has recognized this problem in the provision of telecommunications service and has provided carriers with the tools to better manage bad debt using the household rule.

C. Section 280.60 - Present Customers

Two sets of amendments are proposed for Section 280.60, and each is set forth in the draft Rule in Attachment A. First, the Joint Petitioners seek to implement modern credit risk assessment tools for commercial customers. Second, the Joint Petitioners propose to eliminate the current arbitrary restriction prohibiting the imposition of deposits on residential customers who have had service for more than 24 months. Notably, Staff witness Howard offered no objection to either of these proposals. Howard Dir., Staff Ex. 1.0, p. 5. Each proposal is addressed in turn below.

1. Commercial Customers

The Joint Petitioners seek to add to Section 280.60(c) language that will allow utilities to better assess and monitor the credit risk of commercial customers.[2] Falcone Dir., Joint Pet. Ex. 1.0, p. 8. Under this proposal, a utility could request a deposit from a current commercial customer should a question arise concerning that customer's financial condition. *Id*. Examples of "financial insecurity" include when a commercial customer's credit score falls below the industry average or some other predetermined value, or when a public company fails to timely file its required financial disclosures. *Id*. For small businesses, any required deposit would be established in accordance with Section 3 of the Small Business Utility Deposit Relief Act. 220 ILCS 35/3.

[2] This proposal also requires the addition of new definitions to Part 280.40. The new definitions are set forth in the draft Rule attached to this Brief.

The Joint Petitioners' proposal is based on real-world experience. Various utilities have seen commercial customers, who have historically paid on time, suddenly go out of business leaving a substantial unpaid utility bill. Falcone Dir., Joint Pet. Ex. 1.0, pp. 9-10. One recent example is Kmart, which paid on time until it suddenly declared bankruptcy. Falcone Reb., Joint Pet. Ex. 2.0, p. 21. Under the current Part 280 regulations, utilities cannot impose a deposit requirement on a commercial customer whose financial situation has changed for the worse. Now, however, there are tools available to utilities that can provide a real-time, objective assessment of a commercial customer's risk. *Id*., p. 10. In order to mitigate the financial risk related to serving commercial customers, and better manage uncollectible expense, the Joint Petitioners urge the Commission to adopt the proposed amendments to Section 280.60(b) & (c).

Dynegy witness, Mr. Roethemeyer, objects to this proposal and offers an alternative proposal that would "grandfather" a customer's existing credit status. Roethemeyer Dir., Dynegy Ex. 1.0, pp. 3-5. Dynegy's proposal should be rejected as it fails to consider the fact that there are customers whose present credit standing is so poor that there is no room for further decline. Falcone Reb., Joint Pet. Ex. 2.0, p. 21. As such, there is no room for an adverse change in the customer's credit rating. In short, Mr. Roethemeyer's proposal would not allow a utility to assess a deposit to a commercial customer that poses a significant credit risk. Such a proposal is unreasonable and should be rejected.

2. Residential Customers

Presently, under Section 280.60(a) utilities cannot impose a deposit requirement on a residential customer who has been taking service for more than 24 months, even though such a customer chronically pays his/her bills late. The unrebutted evidence demonstrates that a significant portion of uncollectible expense attributable to residential customers comes from

customers that have received service for more than two years. Falcon Dir., Joint Pet. Ex. 1.0, p. 9. For example, during 2002, such customers accounted for approximately 25% of ComEd's residential losses. *Id*. Under the current terms of Section 280.60(a), the only option a utility has for dealing with such customers is disconnection. Once disconnected, such a customer can then restore service, subject to a deposit requirement. *Id*. As Mr. Falcone testified, such a process makes little sense. *Id*. Rather than disconnecting a customer first, requesting a deposit "is a reasonable credit action that may cure the payment behavior before a disconnection is needed, and benefits both the utility and its customers." *Id*.

GCP witness, Ms. Alexander, objects to this proposal as well. Alexander Dir., GCP Ex. 1.0, pp. 17-22. Ms. Alexander's position is not grounded in fact. While the current 24-month dividing point is of apparent importance to her position regarding deposits, her position fails to realize that "[b]ad debt is bad debt, no matter when it occurs." Falcone Reb., Joint Pet. Ex. 2.0, p. 11. Indeed, her position ignores the fact that, using ComEd as an example, that approximately 25% of its residential bad debt expense comes from customers who have received service for more than 24 months. *Id*. Finally, her position fails to realize that the Joint Petitioners only seek to impose a deposit if a customer has been untimely in payment four times in a 12 month period. Tr., p. 147. During this time, the customer will receive notice that he may be subject to a deposit if his late payment behavior continues. Consequently, the customer has the opportunity to change his behavior before a deposit is required. This is a tool that has been used successfully to correct a customer's behavior *before* a deposit request is imposed. *Id*. Accordingly, GCP's position on this issue should be rejected.

D. Section 280.130 - Discontinuance of Service

The Joint Petitioners propose substantive amendments to Sections 280.130(a)(2), (c) and (d) of the current rules which address two points.[3] First, the Joint Petitioners' seek to increase the period a notice of disconnection is effective to 40 days, which simply increases the current 20 day period. Second, the Joint Petitioners propose to eliminate the current requirement that a utility employee contact the customer prior to disconnection. As discussed below, the evidentiary record demonstrates that these proposals are reasonable and should be adopted. Here, again, Staff had no objection to these proposals. Howard Dir., Staff Ex. 1.0, p. 5.

1. The Proposed 40 Day Effective Period For A Notice Of Disconnection Is Reasonable

The evidence demonstrates that extending the effective period for a notice of disconnection to 40 days is reasonable and should be adopted. Mr. Falcone testified that complying with the current 20 day period results in inefficiencies and additional operational and administrative costs related to scheduling field crews and mailing successive disconnection notices, among other things. Falcone Dir. Joint Pet. Ex. 1.0, p. 11; Falcone Reb. Joint Pet. Ex. 2.0, p. 12. Mr. Falcone further noted that in many cases, additional time is required due to access issues. *Id*. For example, issues such as dogs preventing safe access, locked gates or the inability to get to inside meters impact a company's ability to disconnect service within the current notice period. *Id*. Moreover, where repeated attempts by a meter technician to access a meter are unsuccessful, then efforts to disconnect the customer will be assigned to crews that work with overhead or underground facilities in order to disconnect a non-paying customer. *Id*. Scheduling of such crews must be done with several days' notice, which impacts the utility's

[3] Joint Petitioners also propose non-substantive changes to Section 280.130.(b), which are found in Attachment A.

ability to disconnect within the 20 day notice period. *Id*. Inevitably, under the current rule, the utility proceeds with two successive 20 day notice periods.

2. Elimination Of The Requirement That A Utility Employee Personally Contact A Customer Prior To Disconnection Is Reasonable

The Joint Petitioners propose two amendments to the current requirement that a utility employee contact a customer prior to disconnection. First, Section 280.130(d) currently requires that a utility employee attempt to advise the customer that his service is being disconnected at the time service is scheduled to be disconnected. This requirement is a vestige of the past, promulgated at a time when utility employees could collect payment personally, prior to disconnection. Falcone Dir., Joint Pet. Ex. 1.0, p. 10. For obvious safety reasons, utility employees no longer collect payments in the field from customers. *Id*. at 11; Tr., p. 135. At present, with no ability to accept payment from a customer in the field, it is unlikely that a utility employee on site to disconnect service will be warmly greeted by the non-paying customer. Consequently, for obvious safety and practical reasons, the proposal to eliminate this requirement is reasonable and should be adopted.

The second proposed amendment concerning customer contact prior to disconnecting a customer is found in Section 280.130(c). In that Section, in the event a utility employee cannot contact the non-paying customer at his premises or billing address, the utility *must* have telephone contact with the customer. The Joint Petitioners propose deleting Section 280.130(c) in its entirety. The reasons for eliminating the need for a utility employee to attempt to make contact at the customer's premises have been discussed above. The requirement that the utility must make telephone contact with the customer is equally unreasonable, as many customers will purposely avoid answering calls from the utility, thereby making it far more difficult to disconnect a customer. Although, as Mr. Falcone noted during cross-examination, utilities will

try to make contact with customers via a telephone call as it is good business practice. Tr., 192. A good business practice, however, should not be supplanted by a requirement that allows non-paying customers more time to receive service from the utility—service that all other customers will eventually pay for through higher rates. Accordingly, the Joint Petitioners' proposal to eliminate Section 280.130(c), and amend Section 280.130(d), is reasonable and should be adopted.

E. Section 280.70 - Deposits

The Joint Petitioners propose to amend Section 280.70, as such amendments relate to proposed amendments of Section 280.60. These amendments are for purposes of complying with Section 3 of the Small Business Utility Deposit Relief Act. 220 ILCS 35/3. No party has objected to these amendments.

III.
Conclusion

For the reasons set forth above, the Joint Petitioners respectfully request that the Commission adopt in total the limited amendments to Part 280.

Respectfully submitted,

AMERENCIPS, AMERENUE, AMERENIP, AMERENCILCO, COMMONWEALTH EDISON COMPANY, ILLINOIS-AMERICAN WATER CO., MIDAMERICAN ENERGY CO., NORTHERN ILLINOIS GAS COMPANY, NORTH SHORE GAS COMPANY, AND THE PEOPLES GAS LIGHT AND COKE COMPANY

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CERTIFICATE OF SERVICE

I, John E. Rooney, hereby certify that I caused a copy of the Joint Petitioners' Initial Brief to be served upon the service list in Docket No. 05-0237 by email on July 14, 2006.

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John E. Rooney