

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Central Illinois Light Company d/b/a AmerenCILCO)	
)	
)	Docket No. 06-0070
Proposed general increase in rates for delivery service (tariffs filed December 27, 2005))	(Cons.)
)	
Central Illinois Public Service Company d/b/a AmerenCIPS)	
)	
)	Docket No. 06-0071
Proposed general increase in rates for delivery service. (tariffs filed December 27, 2005))	
)	
Illinois Power Company d/b/a AmerenIP)	
)	
)	Docket No. 06-0072
Proposed general increase in rates for delivery service (tariffs filed December 27, 2005))	
)	
)	

**RESPONSE OF THE STAFF OF THE ILLINOIS
COMMERCE COMMISSION TO THE ILLINOIS
INDUSTRIAL ENERGY CONSUMERS' MOTION TO
STRIKE PORTIONS OF STAFF WITNESS MIKE LUTH'S
REBUTTAL TESTIMONY**

NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), through its undersigned counsel, and pursuant to 83 Ill. Adm. Code Sec. 200.190, respectfully submits its Response to the Illinois Industrial Energy Consumers' Motion to Strike Portions of Staff Witness Mike Luth's Rebuttal Testimony ("Motion"). In support of this Response, Staff states as follows:

I. INTRODUCTION

The Illinois Industrial Energy Consumers (“IIEC”) has provided no valid basis for striking the portions at issue of the rebuttal testimony of Staff witness Mike Luth. (ICC Staff Exhibit 19.0, p. 1, lines 12-16 and pp. 4-7, lines 68-136) The testimony that IIEC seeks to strike is proper rebuttal because it directly rebuts the direct testimony of IIEC witnesses Robert Stephens (IIEC Exhibit 1.0, pp. 10-13, lines 184-269) and the rebuttal testimony of Ameren witness Leonard M. Jones (Respondents’ Exhibit 20.0, pp. 5-6, lines 104-123). Accordingly, the Motion should be denied.

II. BACKGROUND

As part of their rate case filing, Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP (collectively, “Ameren” or the “Ameren Companies”) proposed a two-step revenue allocation methodology. (AmerenCILCO Exhibit, p. 5; AmerenCIPS Exhibit, p. 5; AmerenIP Exhibit, p. 5) The first step applies to DS-1 through DS-3 classes. (*Id.*) The second step, which applies to the DS-4 class, ensured that the DS-4 class received at least a 5% increase to delivery service, regardless of the actual revenue allocation. (*Id.*)

III. ARGUMENT

The IIEC sets forth two arguments in support of its Motion both of which are without merit. First, the IIEC claims that Staff witness Luth’s testimony “does not constitute proper rebuttal because it does not repel, contradict, or disprove evidence

introduced by any other party in this proceeding.” The IIEC adds that Staff witness Luth’s testimony could have been placed into the record as part of Staff’s direct testimony. (Motion, ¶¶ 4, 5, 7) The IIEC claims that the subject testimony is not “in response to any specific position taken or argument made by any party to this proceeding in the testimony (intervenor direct and Ameren rebuttal).” (*Id.*, ¶ 2) However, Mr. Luth’s testimony not only repels, contradicts, or disproves evidence introduced by another party in this proceeding, namely the IIEC witness Stephens’ direct testimony, but it would have been impossible to include the subject testimony in Staff’s direct case.

Mr. Luth’s rebuttal testimony responds to the direct testimony of IIEC witness Stephens. With respect to the revenue allocation, Mr. Stephens concludes and proposes that the Commission not allow any cross-subsidies in Ameren’s rates. (IIEC Exhibit 1.0, pp. 10-13)

Specifically, Mr. Stephens states:

However, this revenue allocation criterion would result in an inter-class rate subsidy in at least the AmerenCILCO area, has not been justified by Ameren, and should be rejected. Also, depending on the Commission’s revenue requirements conclusion in this case, it could affect the other Ameren utilities’ DS-4 rates as well and create subsidies within those utilities’ rates.

(*Id.*, p. 10, lines 195-199) Mr. Stephens continues, stating:

However, with the aforementioned constraint, Ameren would seek to **raise** the DS-4 delivery service revenues by 5%, thus resulting in a total 26% swing in revenues as shown on page 6 of Schedule 10.1. This will mean the AmerenCILCO DS-4 class revenues would be approximately \$1.9 million higher than they would need to be, with this \$1.9 million being credited against smaller customer classes’ revenue requirements.

(*Id.*, p. 11, lines 205-210) Further, Mr. Stephens states:

This proposal will result in the creation of a cross-subsidy in the AmerenCILCO rates and the potential for cross-subsidies in the other Ameren companies' rates.

(*Id.*, p. 13, lines 263-264)

Staff witness Luth's rebuttal testimony clearly and properly responds to the direct testimony of IIEC witness Stephens. (ICC Staff Exhibit 19.0, pp. 4-7) Mr. Stephens is arguing that cross-subsidies should not be allowed and Mr. Luth responds that there are good reasons for the Commission to allow such cross-subsidies (ICC Staff Exhibit 19.0, pp. 5-6, lines 99-113 and pp. 6-7, lines 116-136). Therefore, contrary to the IIEC's assertions (Motion, ¶ 7), Mr. Luth's testimony provides evidence that is contradictory to IIEC witness Stephens' testimony. Furthermore, since Staff cannot predict the arguments intervenors will make in their direct case, the only opportunity Mr. Luth was afforded to respond to IIEC witness Stephens was in rebuttal testimony.

Mr. Luth's rebuttal testimony also responds to Ameren witness Jones' rebuttal testimony. (Respondents' Exhibit 20.0, pp. 5-6, lines 104-123) In his rebuttal testimony, Mr. Jones concludes that

...the Ameren Companies no longer believe it is appropriate to hold the DS-4 class to a 5% minimum increase threshold. Instead, rates for DS-4 should be allowed to be set at COS.

(Respondents' Exhibit 20.0, p. 5, lines 120-123)

However, until an order is issued in this proceeding, there remains the possibility that some amount of cross-subsidy will be necessary. Mr. Luth's rebuttal testimony responds to Ameren witness Jones' conclusion so that the Commission is aware of the possibilities which are open to it when determining final rates to be charged to the customer classes. (ICC Staff Exhibit 19.0, pp. 5-6, lines 82-113) Once again, the only

opportunity Mr. Luth was afforded to respond to Ameren witness Jones' rebuttal testimony was in his rebuttal testimony.

Finally, the IIEC argues that it will be prejudiced because they have no opportunity to respond to Staff witness Luth's testimony. (Motion, ¶ 6) First, as demonstrated above, the subject testimony is proper rebuttal testimony. Thus, IIEC has suffered no prejudice. Second, IIEC's argument amounts to an untimely objection to the schedule adopted by the Administrative Law Judges in this proceeding. The schedule adopted in this proceeding could have provided an opportunity for Staff and Intervenor surrebuttal to each other, but did not. IIEC cannot complain now that the schedule does not afford them an opportunity to respond to Staff's rebuttal testimony via surrebuttal testimony to Staff. Furthermore, pursuant to 83 Ill. Adm. Code Section 200.335, the IIEC may engage in discovery by issuing data requests to Staff witness Luth with respect to the subject testimony, which it has already done, and it will have the ability to cross-examine Mr. Luth at hearing. Therefore, the IIEC's argument must be rejected.

IV. CONCLUSION

WHEREFORE, In conclusion for all the foregoing reasons, the Staff of the Illinois Commerce Commission respectfully requests that the Administrative Law Judges deny IIEC's Motion to Strike Portions of Staff Witness Mike Luth's Rebuttal Testimony.

Respectfully submitted,

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