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.)

RESPONSE IN OBJECTION TO STAFF OF THE ILLINOIS COMMERCE COMMISSION'S MOTION TO STRIKE

The Ameren Companies[1] hereby respond to the Motion to Strike ("Motion") of Staff of the Illinois Commerce Commission ("Staff" of the "ICC" or "Commission"). The Motion should be denied for the reasons that follow.

I. INTRODUCTION

Staff's Motion requests that portions of the surrebuttal testimonies and schedules of Ronald D. Stafford, Michael J. Adams, Krista Bauer, and Allen L. Clapp be stricken, on various grounds. The Motion's overarching theme is that Staff will suffer prejudice if certain portions of the Ameren Companies' testimony and exhibits are allowed into evidence. The contrary is true. The Ameren Companies will suffer prejudice if they are not allowed to recover their actual costs. Most of the evidence Staff wants to strike is simply backup support for real dollars already

[1] 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.

requested by the Ameren Companies, in response to Staff's rebuttal testimony. There is nothing improper with submitting this information through surrebuttal.

The purpose of rebuttal testimony is to refute, contradict or correct the testimony to which it responds. That is exactly what the disputed portions of the testimony at issue here do – no more, no less. Staff cannot reasonably expect to be able to make statements in its rebuttal testimony with the expectation that the Ameren Companies will let those statements go unchalleged. The purpose of rebuttal is to rebut, and the Ameren Companies have done just that. Because Staff is not *unfairly* prejudiced as a result, its Motion should be denied.

II. ARGUMENT

A. The Testimony of Ronald D. Stafford is Timely and Appropriate.

1. Exhibit 36.8

While Staff claims that Exhibit 36.8 should be stricken in its entirety, the Motion provides no reason why. Staff's request to strike Exhibit 36.8 should be rejected for this reason alone. The Commission cannot strike the exhibit solely because Staff wants it to.

Exhibit 36.8, Schedule 1 addresses inconsistencies in Ms. Ebrey's rebuttal testimony. It provides a recalculation of Customer Service System Integration costs based upon later known actual information, rather than Company's original filed estimates. As Mr. Stafford's testified in surrebuttal, this information was provided to Staff witness Ebrey on January 30, 2006. (Resp. Ex. 36.0, Line 742.) Ms. Ebrey's proposed adjustment is derived directly from a detailed list of actual costs reflected on Exhibit 36.8, Schedule 1. Ms Ebrey's rebuttal testimony proposes both an adjustment for unsupported actual costs and uses actual costs from the same project list to calculate a proposed disallowance. Ms. Ebrey should have based her calculation of the Staff project costs on the best information available, or on a consistent basis with her proposed adjustment. In either case, the project cost number would then match the information shown on

Schedule 1. Exhibit 36.8 requires no additional discovery from Staff, because the underlying data was provided to Staff months ago, and was used by Ms. Ebrey to calculate the proposed disallowance. In addition, the format of the schedule is consistent with calculations performed by Staff for other adjustments.

Exhibit 36.8, Schedule 2 recalculates Staff's adjustment based upon additional supporting documents provided in Exhibit 36.9. This schedule requires limited review, because the calculations within the schedule are structured similar to Staff's other proposed adjustment schedules.

2. Exhibit 36.9

At the time of Staff's field work audit in January and February 2006, the Ameren Companies provided thousands of invoices in support of at least 35 different projects. (Resp. Ex. 16.0, p. 31, line 12.) Exhibit 36.9 is just one of those projects. The documentation provided in Exhibit 36.9 is copies of third party invoices and timesheets and expense reimbursement forms, reflecting costs recorded within the Ameren Companies' accounts payable system.

Although Staff has reviewed thousands of documents in support of the Ameren Companies' project costs, not one such document is proposed for disallowance.

The Ameren Companies provided substantial support for the project costs at issue at the time of Staff's audit in January-February 2006. This is based upon a review of Ms. Ebrey's adjustment, indicating that over 95% of the project costs were supported by documentation provided at that time. Therefore, Ms. Ebrey's proposed adjustment for this portion of the costs should be reversed, whether or not Exhibit 36.9 is admitted into evidence.

Staff claims it requested all support for project costs during its field work audit. This is not correct. Rather, Staff specifically requested support for project costs recorded in the Company's Accounts Payable system, and performed separate audit tests of other costs.

At the time of audit, the Ameren Companies provided Staff with all invoices that were readily available, which, as noted, totaled in the thousands, in support of at least 35 different projects. (Resp. Ex. 16.0, p. 31, line 12.) In the Ameren Companies' experience, a cost or transaction audit or review entails either: (1) a sampling of data, (2) a threshold test where only costs above a certain dollar amount would be audited (*see, e.g.*, 83 Ill. Adm. Code 285, Sections 285.3065(c), 285.3070(c), 285.3080(d)), (3) a materiality test where an adequate transaction level or dollar level of overall costs are supported (*see, e.g.*, 83 Ill. Adm. Code 285, Section 285.120(a), 83 Ill. Adm. Code 287, Section 287.30(b)), and/or (4) some combination of the above. Staff witness Ebrey, in fact, did apply a sampling approach to her review of invoices supporting the lead lag study, but elected not to with regard to plant additions. (ICC Staff Exhibit 2.0, p. 15-16, lines 265-281.) If any of the above approaches had been used, it is much more likely that Staff would have proposed either no disallowance, and Exhibit 36.9 would not have been necessary. For some unknown reason, none of these tests, or any other audit tests that limit scope of review for a large number of transactions, were applied here, although the Companies were under the impression that Staff would do so with respect to certain audited projects. The Ameren Companies believed, based on conversations with Staff, that if missing invoices were deemed material, Staff would tell the Companies. (Exhibit 16.0, lines 720-725.) The Companies offered to attempt to recover missing invoices from third party vendors if needed, as stated in Mr. Stafford's Rebuttal Testimony.

Given cost-audit practices and the above-noted conversations with Staff in during the last week of on site field work (February 14-17, 2006), the Ameren Companies were surprised when Staff proposed to disallow a portion of these costs in its direct case. This unexpected disallowance called for a response. The Ameren Companies did not know the details of the

disallowance until receiving Ms. Ebrey's workpapers on May 16, 2006, only ten days before the Company's Rebuttal filing. The Ameren Companies would have been able to provide Exhibit 36.9 in rebuttal if the disallowance had been set forth more clearly in Staff's direct testimony, or if they had received Staff's workpapers on the date Staff's direct testimony was filed, April 26, 2006, as the Ameren Companies requested.

The invoices provided in Exhibit 36.9 were not in the Ameren Companies' electronic imaging system, and were therefore not readily available to provide to Staff at time of audit. Otherwise, the Ameren Companies would have done so. However, the invoices provided in Exhibit 36.9 are similar in nature to other documents reviewed and accepted by Ms. Ebrey for numerous other projects, and are not difficult or complicated to review.

With regard to timesheets and expense reimbursement forms, Mr. Stafford stated in his Rebuttal Testimony at lines 765-770 that the initial request for this information was retracted by Staff in follow-up conversation. Therefore, the proposed adjustment for this portion of the costs should be reversed, whether or not Exhibit 36.9 is admitted into evidence.

3. Exhibit 36.5

The invoices in question with regard to Exhibit 36.5 represent actual costs that should be included in the calculation of rate case expense in these proceedings, whether such documents are admitted into evidence. The lack of prior submission in response to BCJ 11.02 was an inadvertent omission, and should not preclude Ameren from recovering legitimate, prudently-incurred costs for these proceedings. In addition, these invoices are for the same vendors from which Staff witness Jones has reviewed numerous invoices, and therefore it is not reasonable to expect that such costs would entail either extensive Staff review, or alternatively, would be subject to a proposed disallowance. Ameren objects to the characterization that this information was requested in response to BCJ 4.01, as previously stated in Mr. Stafford's rebuttal testimony,

p. 15, lines 344-351. That request asked for support of the Company's original rate case estimates, and invoices were not relied on to develop those estimates. The invoices in question were represent actual costs, which obviously had not been incurred at the time estimates were developed.

B. The Testimony of Michael J. Adams is Timely and Appropriate.

1. Net Lag Methodology

Staff complains that it has no opportunity for discovery regarding a "new claim" by Mr. Adams in his surrebuttal testimony (Ameren Ex. 37, pp. 39-40, ll. 804-812) that several jurisdictions have adopted the "net lag" approach. Staff may wish to keep this information from the Commission, but striking the testimony will not be enough. The Ameren Companies can simply cite the orders in their briefs. Striking this testimony would be pointless.

The more troubling question is why this is "new" to the Staff, i.e., why Staff is not familiar with the use of various tools and approaches by other regulators. Presumably, when selecting a particular methodology, Staff considers various factors such as the acceptance or use of the various alternatives in other jurisdictions. To argue now that Staff cannot conduct discovery on this point suggests that Staff failed to independently investigate alternate methodologies in determining which methodology to use.

The Ameren Companies will withdraw what Staff considers to be the offending language from Mr. Adams' surrebuttal if Staff stipulates that its witness did not conduct any analysis or investigation of the use of lead-lag variations or alternatives in other jurisdictions, and that she has no knowledge of what variations or alternatives are used in other jurisdictions. Absent such a stipulation, however, Mr. Adams's testimony should be admitted.

2. Lazare's Removal from Rate Base of G&I Plant Already Removed from Rate Base

Staff moves to strike substantial portions of Mr. Adams' surrebuttal testimony and exhibits that explain how Mr. Lazare is removing from rate base G&I plant that is not there, and that quantifies the effect of Mr. Lazare's error. Contrary to Staff's assertions, the material in Mr. Adams' surrebuttal is proper rebuttal that directly refutes strong statements in Mr. Lazare's rebuttal about the effect of the Companies' rate base calculation.

Mr. Lazare's adjustment to G&I plant has its roots in the initial DST cases for all three Ameren Companies, in which the Commission allocated various accounts on the Companies' books to different functions, using what is know as the labor allocator. G&I plant was among the accounts so affected, and a portion of the G&I balances was allocated to the electric generation function.

In this case, Mr. Lazare has challenged the Ameren Companies' determination of G&I plant to be included in rate base. It is his contention that the Ameren Companies are trying to restore to distribution rate base what the Commission allocated away in the prior cases. The adjustment is significant, and represents a little over a third of the difference between the Companies' and Staff's recommended revenue requirements. Specifically, in his rebuttal testimony, Mr. Lazare states that "the only meaningful event related to G&I plant since the last round of DST cases is that the Ameren Companies now seek to refunctionalize this plant back to the revenue requirement.[2]"

As Mr. Adams points out in his surrebuttal testimony, clearly Mr. Lazare's position is incorrect. Much of the plant that Mr. Lazare assumes is still on the books of the Companies has already been retired. Respondents' Exhibit Nos. 37.7, 37.8 and 37.9 merely quantify the magnitude of Mr. Lazare's error.

[2] Rebuttal testimony of Peter Lazare, p. 8, lines 174-176.

Mr. Lazare further states in his rebuttal testimony that "The Commission has consistently decided through numerous dockets that a general, approach, rather than focusing on the function of individual assets is the best approach to functionalize G&I plant.[3]

Despite Mr. Lazare's citation, the Commission has never proposed that plant which is not even on the Companies' books and thus is not included in the proposed rate base of the Companies should be disallowed simply because of a decision in a prior proceeding which has no applicability to the facts in these proceedings. The Companies have the right to challenge Mr. Lazare's statements and calculations related to his proposed adjustments. The exhibits sponsored by Mr. Adams merely respond to Mr. Lazare's statements and challenge the veracity of his position.

In his rebuttal testimony, Mr. Lazare was clear about what he felt the Companies were doing: "[The Ameren Companies'] proposal would place in the revenue requirement G&I plant that the Commission excluded in the previous round of delivery service dockets." He then characterizes what the Companies are doing as a "refunctionalization" of G&I costs back to the distribution revenue requirement.

The point of the disputed portions of Mr. Adams' surrebuttal is that it is not possible to refunctionalize or add back what is not there. In direct response to Mr. Lazare's statements in his rebuttal testimony, Mr. Adams identifies two mistakes in Mr. Lazare's assumptions: 1) much of the intangible plant is relatively short-lived, and thus the specific plant that the Commission previously functionalized to generation has been fully depreciated and is no longer on the Companies' books; and 2) AmerenIP wrote off much of its remaining G&I plant when it was acquired by Ameren. Thus, the G&I plant that Mr. Lazare claims the Companies are adding

[3] Ibid, p. 7, lines 159-162.

back does not exist and is not on the Companies' books, and what Mr. Lazare is doing is excluding from rate base plant that was never there in the first place.

Mr. Adams then quantifies the effect of Mr. Lazare's fundamental mistake. Mr. Adams' exhibits show that the non-existent G&I plant represents a substantial portion (approximately 2/3) of Mr. Lazare's proposed adjustment.

Nothing about Mr. Adams' presentation is inappropriate. Mr. Lazare made statements in rebuttal and Mr. Adams responded to them to show that the statements are not true and reflect erroneous assumptions. That is the fundamental purpose of rebuttal testimony.

C. The Testimony of Krista Bauer is Timely and Appropriate.

Similarly, Krista Bauer's testimony responds to Burma Jones' testimony in rebuttal that benefits from incentive compensation packages "primarily" benefit shareholders. While the Ameren Companies' strongly disagree with Ms. Jones' testimony, Ms. Bauer notes in the following Q & A that Ms. Jones' statement implicitly supports a partial disallowance of incentive compensation costs:

> **Q. Please respond to Ms. Jones' statement that shareholders are the primary beneficiaries of incentive compensation packages. (Lines 250-51)**
>
> A. This statement is simply not true. Incentive compensation packages provide benefits all around – primarily to employees, but also to ratepayers, as described above. Implicitly, Ms. Jones statement acknowledges these shared ratepayer benefits. Even if the statement were true, Ms. Jones implicitly supports a partial disallowance of incentive compensation costs. At the very least, the Commission should allow partial recovery of these costs (for example, 50%), based on Staff's testimony alone.

(Resp. Ex. 44.0, p. 7, lines 135-143.) Ms. Jones' implicit concession that ratepayers derive at least *some* benefits from the Ameren Companies' incentive compensation plans supports a conclusion that the value of the plans to ratepayers is somewhere between zero and the total

amount. Ms. Bauer's estimate of the Staff position, "for example, 50%", is thus wholly in line with the Staff testimony. If the Staff position is that the majority of the benefits are to shareholders, the minority of the benefits must then be derived by customers, statistically a 50% estimate falls within the range of less than the majority-50% -and more than 0%. Ms. Bauer's testimony merely responds to Ms. Jones' testimony.

Moreover, the Ameren Companies are not suggesting any new theories upon which to base incentive compensation recovery. The Ameren Companies are still requesting recovery of the full amount. On the weight of the evidence in the record, the Commission can approve some lesser amount.

D. The Testimony of Allen Clapp is Relevant and Necessary.

Mr. Clapp's testimony regarding the 2007 version of National Electric Safety Code ("NESC") Rule 218 is relevant to show that Staff's interpretation of 83 Ill. Admin. Code 305 is wrong. Staff's attempts to strike portions of Mr. Clapp's testimony only highlights the weakness of its position.

Mr. Clapp is an expert on NESC Rule 218. He testifies that he is a member of the NESC Subcommittee responsible for Rule 218, who has "personally examined every document known to exist in the history of [the] rule." (Resp. Ex. 26.0, p. 3, lines 65-66.) Mr. Clapp has "personally participated in each of the three modifications to the rule (1977 Ed., 1984 Ed., and 2007 Ed.)," including the modifications reflected in the current version. (Resp. Ex. 26.0, p. 4, lines 69-70.) Mr. Clapp testifies that Rule 218 will undergo modifications in 2007 to clarify the wording, not the intent, of the rule. (Resp. Ex. 26.0, p. 5, lines 98-99.) The modifications are necessary to address the type of misinterpretation reflected in Staff's "no contact" position, so that the intent of the *current* version of the rule is more clearly stated:

> The previous use of the term *interfere with the conductors* was not defined and was found to be misinterpreted by some to mean prohibiting contact by trees under any circumstances; the latter was never the intent of this rule. Rather, for those in the industry, the phrase was understood to be *damage the conductors*. To my knowledge, there has never been any intention by the NESC to prevent all contact of trees with utility line conductors. On the contrary, the intent of the code has been to require a *practical* vegetation management program that will *limit the opportunity for* damage to utility facilities due to contact by vegetation.

(Resp. Ex. 26.0, p. 5, lines 99-107.)

Staff's misinterpretation of NESC Rule 218 is further demonstrated in Respondents' Exhibit 26.1, which provides a blackline version of upcoming clarification to the rule. These revisions include changing the words "interfere with" to "damage," thus demonstrating the error in Staff's interpretation of the codified rule. (Resp. Ex. 26.1, p. 1.) Exhibit 26.1 further describes that those clarifying changes became necessary: "to better inform the users of the major concerns and factors to be considered in determining the extent of required vegetation management." (Resp. Ex. 26.1, p. 2.)

Thus, Mr. Clapp's testimony regarding the upcoming changes to the NESC Rule 218, the actual changes, and the accompanying descriptive text is absolutely relevant to this proceeding. Exhibits 26.0 and 26.1 demonstrate that Staff's new "no-contact" policy regarding vegetation management is based on an incorrect interpretation of the current codified rule.

III. CONCLUSION

For all of the above reasons, Staff's Motion should be rejected in its entirety.

Dated: June 21, 2006

Respectfully submitted,

CENTRAL ILLINOIS LIGHT COMPANY
d/b/a AmerenCILCO

CENTRAL ILLINOIS PUBLIC SERVICE
COMPANY d/b/a AmerenCIPS

ILLINOIS POWER COMPANY d/b/a
AmerenIP

By: /s/ Laura M. Earl
One of its attorneys

Christopher W. Flynn
Laura M. Earl
Jones Day
77 W. Wacker, Suite 3500
Chicago, Illinois 60601
(312) 782-3939 (voice)
(312) 782-8585 (fax)
cflynn@jonesday.com
learl@jonesday.com

Mark A. Whitt
Jones Day
Mailing Address:
Post Office Box 165017
Columbus, Ohio 43216-5017
Street Address:
325 John H. McConnell Boulevard
Suite 600
Columbus, Ohio 43215-2673
(614) 469-3939 (voice)
(614) 461-4198 (fax)

Edward C. Fitzhenry
Managing Associate General Counsel
Ameren Services Company
One Ameren Plaza
1901 Chouteau Avenue
St. Louis, Missouri 63166
(314) 554-3533 (voice)
(314 554-4014 (fax)
efitzhenry@ameren.com

PROOF OF SERVICE

I, Laura M. Earl, certify that on July 21, 2006, I served a copy of the foregoing Response by electronic mail to the individuals on the Commission's Service List for this Docket.

By: /s/ Laura M. Earl
Attorney for the Ameren Companies