

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

**AMEREN COMPANIES' RESPONSE IN OBJECTION TO IBEW'S
MOTION TO TAKE ADMINISTRATIVE NOTICE**

I. INTRODUCTION

The Ameren Companies¹ hereby object to IBEW's Motion to Take Administrative Notice ("Motion"). The Motion is wholly contrary to the rules of the Illinois Commerce Commission ("ICC" or "Commission") and should be rejected for this reason alone. The Motion cites only the sections of 83 Ill. Admin. Code § 200.640 that suit IBEW's purposes, ignoring those sections that defeat its arguments.

Further, IBEW's Motion is not a pretrial motion at all. As a continued distraction from the real factual issues to be determined at hearing, the Motion seeks, inappropriately, to leapfrog the factfinding process and proceed directly to briefing IBEW's legal issues. The Motion plainly admits its purpose to resolve legal, not factual, issues. (Motion, p.2, ¶¶ 2, 4.) The motion has

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.

left to speculation exactly what relevance these documents could possibly have to any witness's testimony, and exactly what use of these documents IBEW has in mind.

If IBEW wishes to argue in its brief that any of the information obtained in any of its Exhibits is somehow persuasive legal authority, there is nothing to stop them from doing so. The appropriateness and persuasiveness of the documents as legal authority can be argued and weighed at that time. But it is simply inappropriate for IBEW to attempt to thrust documents that have no apparent factual relevance to this case into the evidentiary record, contravening law and the Commission's Rules. For the reasons that follow, the Motion must be rejected.

II. ARGUMENT

IBEW asks the ALJs to take administrative notice of five exhibits to the Motion, which fall into two separate categories: (1) an August 15, 1997, Commission report that IBEW claims is "valid source history" of Section 16-128(a) of the Public Utilities Act (Exhibit A), and (2) four briefs filed by various parties in ICC Docket 99-0013 (Exhibits B-E). None of these documents are mentioned or relied upon by any of IBEW's witnesses or offered as exhibits to any witness's testimony.

The Commission's rules allow administrative notice of "[a]ll . . . matters of which the circuit courts of this State may take judicial notice." 83 Ill. Admin. Code 200.640(a)(7). "The doctrine of judicial notice operates to admit into evidence, without formal proof, those facts which are matters of *common and general knowledge* and which are established and known within the limits of the jurisdiction of the court." *Palmer v. Mitchell*, 57 Ill. App. 2d 160, 167 (1st Dist. 1965) (emphasis added). The term judicial notice "means no more than that a court will bring to its aid and consider – without proof of facts – its knowledge of those matters of public concern which are known by all well-informed persons." *Ashland Sav. & Loan Asso. v.*

Aetna Ins. Co., 18 Ill. App. 3d 70, 78 (1st Dist. 1974). ICC Rules do not provide for the Commission to take administrative notice of its own policies (Section 200.640(a)(1)), and “[r]equests for administrative notice of transcripts, exhibits, pleadings or any other matter contained in the record of other docketed Commission proceedings are discouraged.” 83 Ill. Admin. Code 200.640(b). This is consistent with the maxim that courts will take judicial notice of their records in a pending case, but “cannot do so in respect to records of other proceedings even where the facts are within the personal knowledge of the court.” *In re Estate of Fornof*, 96 Ill. App. 2d 260, 264 (4th Dist. 1968); *Palmer*, 57 Ill. App. 2d at 167.

A. The Commission Report is not the proper subject for judicial or administrative notice.

Administrative notice of the Commission Report offered as the Motion’s Exhibit A is not supported by the Commission’s Rules or case law. IBEW has ignored 83 Ill. Admin. Code § 200.640(a)(1), which does not allow for the Commission to take administrative notice of its own written policies. Section 200.640(a)(1) thus plainly does not allow for administrative notice of the Motion’s Exhibit A. Moreover, the document is not the proper subject for judicial or administrative notice. The Motion does not even allege that the document is public, or that it is part of a public record – thus it cannot possibly be a “common or generally known fact” that is properly the subject of judicial or administrative notice.

While it is correct that courts use legislative history to interpret ambiguity in a statute, that maxim does not help IBEW in this case, for several reasons. *First*, a careful read of the Motion reveals that IBEW does not even allege that Exhibit A is a public document, much less a part of the legislative history of 220 ILCS § 16-128(a). It is telling that IBEW has avoided directly claiming that Exhibit A is “legislative history” – because it is clearly not. The litany of facts set forth in the Motion provide no support for treating Exhibit A as anything other than

what it is – a Commission report. Nowhere in the Motion does IBEW state any fact showing that Exhibit A (or any portion of it that IBEW may wish to cite in the future) is part of the legislative history of 220 ILCS 5/15-128(a).² Nowhere does the Motion indicate that Exhibit A was relied upon in any way by legislative committee or congressperson, that it was discussed in legislative session, or that it was in any way cited as part of the legislative record leading to enactment of Section 16-128(a).

Second, IBEW has cited no case law indicating that an agency report should be treated as legislative history. The one case cited by IBEW, *Scofield v. Board of Education*, 411 Ill. 11, 16 (1952) is inapposite. In that case, the court took judicial notice of a report submitted by a special “School Problems Commission,” created by statute for the expressed purpose of evaluating various school problems and submitting to the legislature an official report recommending legislation. The *Scofield* facts show that the report was publicly presented to the Governor and the General Assembly, was required by law to recommend legislation, and was in fact considered by the legislature in drafting and enacting new legislation. Here, the Motion does not allege that Exhibit A was ever introduced to the legislature or considered in passing Senate Bill 55 – instead, the Motion shows that Exhibit A was drafted *after* and *in response to* Senate Bill 55. IBEW does not claim that Exhibit A resulted in any changes to Senate Bill 55. In contrast to *Scofield*, the Motion does not even claim that Exhibit A is a part of any public record. The Motion makes no claim to support treating Exhibit A as anything other than what it is – a Commission report, of which the ALJs may not take administrative notice under the Commission’s rules.

² Black’s Law Dictionary defines “legislative history” as follows: “The background and events leading to the enactment of a statute, including committee reports, hearings, and floor debates; legislative history is usually recorded so that it can later be used to aid in interpreting the statute.” Black’s Law Dictionary 371 (1996). Obviously, this definition does not include agency reports.

Finally, the Motion offers no basis for Exhibit A's evidentiary value or relevance. It plainly has no use to impeach any Ameren Company witness, or to bolster any IBEW witness testimony. To the extent that IBEW intends to argue Exhibit A's persuasive value in interpreting the Public Utilities Act, such legal arguments are more appropriately set forth in briefing. Exhibit A's value as a legal source can be weighed at that time. Simply, IBEW offers no legal basis to conclude that Exhibit A is admissible and factually relevant to this case.

B. Commission Rules discourage administrative notice of pleadings and documents from other ICC Dockets.

Administrative notice of Exhibits B-E is also inappropriate, as the Commission's Rules plainly discourage taking administrative notice of pleadings from other Commission dockets. 83 Ill. Admin. Code § 200.640(b) ("Requests for administrative notice of transcripts, exhibits, pleadings or any other matter contained in the record of other docketed Commission proceedings are discouraged.") The Motion ignores this part of the rule. Further, this rule is consistent with case law stating that courts will take judicial notice of their records in a pending case, but "cannot do so in respect to records of other proceedings even where the facts are within the personal knowledge of the court." *In re Estate of Fornof*, 96 Ill. App. 2d 260, 264 (4th Dist. 1968); *Palmer*, 57 Ill. App. 2d at 167. In short, a Commission proceeding must rely on evidence properly a part of the record in each particular case, and not on evidence presented in another docket. The logic is inescapable. Briefs are written based on the facts at issue in those proceedings—the record. The effort to piecemeal another record in some fashion as relevance to another docket with a different record, through a brief, is a recipe for mush.

It is again entirely unclear why IBEW has raised this issue in a pretrial motion. IBEW's expressed intended use for Exhibits B-E is to resolve the "legal issue . . . [of] the scope of the exemption contained in Section 460.15 of the Commission's meter service provider rules."

(Motion, p. 2, ¶4.) IBEW has not claimed that it intends to use Exhibits B-E as part of any witness's examination at hearing. None of the witnesses scheduled to testify at hearing will be presenting evidence on the history of enacting Section 460.15. IBEW has not demonstrated that any of the Exhibits or section thereof has any factual relevance to the issues in this case. If IBEW wishes to claim that any of the information obtained in any of its Exhibits is persuasive legal authority, it is free to make that argument in its brief.

III. CONCLUSION

The Motion fails to show that the Exhibits are the proper subject of administrative notice or are relevant to any issue in this proceeding. The Motion should be rejected in its entirety.

Dated: July 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
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By: /s/ Laura M. Earl

One of its attorneys

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PROOF OF SERVICE

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

By: /s/ Laura M. Earl
Attorney for Movant