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*Counsel for the Staff of the  
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## **I. INTRODUCTION**

The Initial Brief of the Staff of the Illinois Commerce Commission (“Staff’s Initial Brief” or “Staff IB”) was filed on July 14, 2006. The Joint Petitioners’ Initial Brief (“Joint Petitioners’ Initial Brief” or “Joint Petitioners’ IB”), the Joint Initial Brief Of The People Of The State Of Illinois, Citizens Utility Board and City of Chicago, Dynegy Inc.’s Opening Brief and the Joint Initial Brief Of Intervenors South Austin Coalition Community Council and Community Action For Fair Utility Practice In Opposition To Petition (“LIRC’s Initial Brief” or “LIRC IB”) were also filed on July 14, 2006.

Some of the issues raised in the parties’ Initial Briefs were addressed in Staff’s Initial Brief and, in the interest of efficiency, Staff has not raised or repeated every argument or response previously made in Staff’s Initial Brief. Thus, the omission of a response to an argument that Staff previously addressed simply means that Staff stands on the position taken in Staff’s Initial Brief because further or additional comment is neither needed nor warranted.

## **II. STAFF’S OVERALL POSITION ON JOINT PETITIONERS’ AMENDMENTS TO PART 280**

In their Initial Brief, the Joint Petitioners reach the following conclusion:

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.

(Joint Petitioner’s IB, p. 3) Staff objects to the Joint Petitioners’ characterization of Staff’s decision not to address all the proposed changes as tacit approval those changes or the Joint Petitioners’ petition as a whole. Such a characterization of Staff’s

position in this proceeding is presumptuous and unfounded. In fact, when Staff witness Howard was asked whether she was expressing an opinion with respect to the proposed amendments to Section 280.40, 280.60, 280.70, and 280.130 of 83 Illinois Administrative Code 280, her answer was an unqualified “No.” (ICC Staff Exhibit 1.0, p. 5, line 93) Therefore, no inference should be given to the fact that she did not object to the Joint Petitioners’ proposals as a whole or individually.

### **III. HOUSEHOLD RULE**

Only the Joint Petitioners addressed Staff’s proposals in their Initial Brief. (Joint Petitioners’ IB, pp. 6-7) Since no new arguments have been raised, as stated in the Introduction above, Staff stands on the position taken in Staff’s Initial Brief (See Staff IB, pp. 3-14) because further or additional comment is neither needed nor warranted.

The LIRC in its Initial Brief makes the following assertion:

The Joint Utilities seek to make liable to them a person who moves into a location where the prior occupant left an unpaid bill, in any situation where the applicant does not approve to the satisfaction of the utility company that the former occupant no longer resides there. Vicarious liability of this sort violates Illinois contract law. The Illinois Commerce Commission is a body with only the authority specifically given to it by the legislature. The legislature has not given the Commission the authority to extend liability to individuals beyond that established by contract law in Illinois.

(LIRC IB, p. 2) The LIRC’s assertion that the Commission does not have the authority to approve this proposal, if it so chooses, must be rejected for several reasons. First, the LIRC does not explain how the Household Rule meets the definition of vicarious liability or how it violates contract law in Illinois. Furthermore, its assertions are made without reference to Illinois statute and/or case law. Second, the Commission has already approved the Household Rule under its rules for Telecommunication providers,

83 Illinois Administrative Code Section 735.130. This rule has been in place for at least twelve years. (Tr., p. 88)

Finally, it appears to Staff that the Household Rule is better characterized as a quasi-contract. A quasi-contract is based on “the principle that a party who has received a benefit which was desired, under the circumstances rendering it inequitable for a party to retain the benefit without making compensation, must do so”. (Barron’s Law Dictionary 380 (2<sup>nd</sup> ed. 1984)) Further, Illinois courts recognize quasi-contracts. (See, *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill. App. 3d 1, 9, 812 N.E.2d 419, 426 (2004))

Staff shares the LIRC’s concerns that an applicant who has not received the benefit of previous utility service at the premises at issue may be required to pay a former customer of record’s outstanding bill in order to receive service. (ICC Staff Exhibit 1.0, p. 3, lines 49-53) However, under Staff’s amendments to the Household Rule, a utility must provide service for up to 30 days while it investigates whether the applicant is new to the premises or whether a customer of record continues to reside at the premises. (Staff IB, pp. 5-8) If the Commission approves the Household Rule, Staff strongly recommends that the Commission approve Staff’s amendments to the Rule. Doing so would greatly reduce, if not eliminate, the chance of an applicant paying a bill to which he or she is not legally obligated to pay.

Pursuant to the Public Utilities Act, the Commission is responsible for ensuring the provision of adequate, efficient, reliable, environmentally safe, and least-cost public utility services and for general supervision of all public utilities (220 ILCS 5/1-102 and 220 ILCS 5/4-101). As such, it is clearly within the Commission’s authority to approve

the Household Rule, if it so chooses. The LIRC's unsupported assertions must be rejected.

#### **IV. CONCLUSION**

WHEREFORE, for all the reasons set forth herein, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in this proceeding.

Respectfully submitted,

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