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.)

REPLY BRIEF OF THE AMEREN COMPANIES

September 6, 2006

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INTRODUCTION

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, the "Ameren Companies" or "Companies") hereby submits its Reply Brief in the above-captioned matter. Defined terms and abbreviations used in the Initial Brief are the same herein. Certain issues that have been fully addressed in the Ameren Companies' Initial Brief are not addressed below; those sections of the Initial Brief are incorporated by reference. The brevity of a reply does not reflect the significance of any given issue.

I. RATE BASE

A. Summary of Uncontested /Settled Issues

A summary of all uncontested and settled issues is listed in the Ameren Companies' Draft Order, which is being filed the day after filing of this brief.

B. Plant Additions

Ample support for the Ameren Companies' plant addition costs has been timely provided to Staff. The record supports allowing the Ameren Companies to recover those costs in rates. Staff's Initial Brief demonstrates that Staff does not object to any of the Ameren Companies' plant addition costs as being unreasonable or unnecessary. Staff's proposed disallowances are related solely to disputes over documentation of the Ameren Companies' reasonably incurred costs.

The record demonstrates that Staff's approach to determining whether costs are supported is inconsistent and arbitrary.

For example, during Staff's field work audit and in the weeks following, Staff Witness Ebrey was provided with a detailed list of the Ameren Companies' costs related to plant addition projects. (Tr. at 554, lines 6-12.) Ms. Ebrey testified that she did not have any reason to believe that the cost detail for the plant addition projects did not represent actual costs on the Ameren Companies' books, following her review. (Tr. at 555, lines 8-13.) In fact, Ms Ebrey relied on the Ameren Companies' accounting and cost detail in forming her recommendations for this case. (Tr. at 547-551.)

Staff also continues to assert an inconsistent approach to treatment of employee expense reports. (Staff Init. Br. p. 9.) During Staff's fieldwork audit Ms Ebrey was informed that pulling expense statements would be more time consuming than pulling straight invoices, and costs for employee expenses were not material. In response, Ms. Ebrey indicated that it was not necessary to obtain employee expense reports. (Resp. Exh. 16.0, p. 34, lines 765-768) Staff's recommendations show that, for some projects, Staff accepted costs without supporting employee expense reports (Resp. Exh. 16.0, p. 33, l. 762), for others, it did not. (Exh. 16.14, Sch. 1, page 3, col (C), lines 14-17) (Resp. Exh. 16.14, Sch. 2, page 3, col (C), lines 28-30, 32) (Resp. Exh. 16.14, Sch. 3, page 3, col (C) line 23) .

Further, while Ms. Ebrey accepted some of the accounting detail, sampling results, and additional documentation provided in rebuttal as adequate support for the Companies' costs, she did not accept various other documents as adequately supporting the underlying plant additions. (Staff Ex. 13.0, pp. 17-22.) The Ameren Companies disagree with Ms. Ebrey's uneven approach.

The Ameren Companies' surrebuttal testimony and Initial Brief noted certain errors with respect to Staff's proposed disallowances for recovery of plant additions; specifically, that Ms. Ebrey (1) made certain mathematical errors in summing invoice costs and schedule presentation, (2) did not accept contractual documentation as adequate support for certain project costs, and (3) erroneously continued to apply her adjustment percentage to all gross plant additions without regard to whether such additions are in the Ameren Companies requested level of utility plant in service. (Resp. Init. Br. at 2-5; Resp. Ex. 36.0, pp. 36-41.) Staff's responses regarding these issues are addressed below.

1. AmerenCILCO

The Ameren Companies agree with Staff's explanation for allowing only $60,381.78 instead of $75,681.13 for the disputed sum related to work order 3648. (Staff Init. Br., pp. 5-6.)

2. AmerenCIPS

As noted in the Ameren Companies' Initial Brief, the Commission has accepted contractual documentation as support for plant additions in the past. (Resp. Ex. 36.0, p. 39, lines 873-874.) The contracts provided in Respondents' Exhibit 16.14 should not be treated any differently. The documents give ample support of AmerenCIPS' reasonably incurred actual costs on the Company's books related to Windows NT Conversion and Alton HQTRS, for AmerenCIPS' work order 9915 and work order 11983, respectively. Staff has made no claim that these incurred costs are unreasonable.

Staff's complaint that the contracts are merely purchase orders is misplaced. (Staff Ex. 13.0, p. 19, lines 370-373.) A review of these documents shows that the purchase orders provided in support of the disallowed costs are indeed actual contracts with the vendors. (*See*

Exhibits 36.11 and 36.12.) These purchase orders represent blanket orders and define pricing and terms of the underlying agreement of work to be performed, thus providing direct support for the costs in question. The total amount supported by these contracts is $501,868.42 for work order 9915 and $6,624.30 for work order 11983, and is provided on Exhibits 36.11 and 36.12, respectively.

The Commission should thus reject Staff's arguments and allow AmerenCIPS to recover its reasonably incurred and supported costs for these projects.

3. AmerenIP

In our Initial Brief on p. 4, we erroneously repeated the testimony of Mr. Stafford corrected in the Statement filed on August 17, 2006.

4. Application of Adjustment Percentage

Staff continues to assert an incorrect application of adjustment percentage to plant additions. Respondents' Exhibit 36.13 (Revised) shows that Staff has applied its adjustment percentage to a population that included originally recorded intangible plant additions to account 303 (Ameren Companies Schedule B-5) that have subsequently been retired or transferred, and are not included in the Companies' requested level of gross Utility Plant in Service. As noted in the Ameren Companies' Initial Brief, Staff's calculation reduces Utility Plant in Service for certain asset groups below the level included in the Ameren Companies' proposed Rate Base, resulting in a negative Utility Plant balance for given asset groups. (Resp. Init. Br., pp. 4-5; Resp. Ex. 16.0, pp. 34-35; Resp. Ex. 36.0, pp. 40-41.)

Staff's argues that it has applied its adjustment to gross plant additions, and not to any particular account group. A review of Staff's Schedules shows that this is incorrect. Staff

Exhibit 2.0, Sch 2.02 reveals that Ms. Ebrey applied an adjustment to certain sub-group detail from the Ameren Companies' Schedule B-5. (Resp. Exh. 16.0, pp. 34-35, lines 771-788.) Ameren Companies' witness Stafford testified that the Staff adjustment shown on Staff Exhibit 2, Sch 2.02 provides sufficient detail to determine the functional split of plant. Such sub-group detail is concealed in Staff's rebuttal exhibit, but a review of this exhibits shows that Staff has used the same sub-group amounts without the detail shown in its previous exhibits. (*See* ICC Staff Rebuttal Exh. 13.0, Sch 13.02.) This is demonstrated by comparing page2, column (B) on each Staff Schedule 2.02 with page 1, Column (B) of each Staff's Schedule 13.02. The numbers to which the adjustment percentage is applied are identical – Staff has merely chosen not to provide the same sub-group detail in page 2, columns (C), (D), and (E) from Staff Schedule 2.02. The fact that Staff has not shown functional detail in Staff Exhibit 13, Schedule 13.02 does not change that fact that Staff has overstated the population of plant additions.

The same can be said for Staff Exhibit 12.0, Schedule 12.04. This schedule is a summary of the adjustment that was separately detailed by Ms. Ebrey in Exhibit 2.0, Schedule 2.02, and used in rebuttal in Exhibit 13.0, Schedule 13.02. Mr. Stafford is not required to break down Staff's summary amounts into detail during cross-examination. Staff's assertions to the contrary are meaningless. (Staff Init. Br., p. 10.)

Staff adds further confusion to this issue by citing the Statement of Auditing Standards No. 39, dealing with audit sampling, as support for its inclusion of retired plant additions in utility plant in service. (Staff Init. Br. pp. 9-10.) Staff's reliance on this standard is misplaced. Staff has calculated its proposed disallowance against *all* additions for the period 2001-2004, *not* a sample of those additions. The simple issue is whether Staff has applied its adjustment percentage to the correct population of plant additions. The record shows this is not the case.

The overwhelming evidence indicates that Staff's population includes additions that are no longer in service. (Respondents' Exhibit 36.13).

As shown in Respondents' Exhibit 36.13, Staff's adjustment in this case results in negative Utility Plant in Service in both Account 303 specifically and for the entire functional group of Intangible Plant in Service for both AmerenCILCO and AmerenCIPS. Staff witness Ebrey has admitted that she "is not aware of any rate cases where Staff has proposed that a regulated utility be authorized a negative balance of gross utility plant in service for any account or for any functional plant group." (Resp. Ex. 36.0, pp. 40-41.) For all of these reasons, the Commission should approve the Ameren Companies' corrected adjustment, to exclude from 2001-2004 Plant Additions the identified Intangible Plant assets not included in the Ameren Companies' requested level of gross Utility Plant in Service.

C. Pro forma Plant Additions

Staff's proposed adjustments to pro forma plant additions should not be approved. The costs of the project, integrating AmerenIP into Ameren's Customer Service System, are on the books of Company. Staff has provided no reason why the Ameren Companies' cost detail for the project cannot be relied upon – in fact, Ms. Ebrey testified that she relied upon it herself in determining "unsupported costs." (Tr. at p. 552, lines13-22, p. 553, lines 1-8.) Staff has not claimed that any of the costs incurred for this project are unreasonable.

In its initial brief, Staff has modified its adjustment to reflect the actual level of costs incurred by AmerenIP. (Staff Init. Br., p. 12.) The Ameren Companies and Staff now agree on the starting point from which any proposed adjustment would be applied. But no such adjustment is warranted. (*See* Resp. Init. Br., pp. 5-6.) Therefore, the electric distribution share, in the amount of $8.189 million (Resp. Ex. 36.8, Schedule 1, line 3), should be reflected in utility plant in service by the Commission for the CSS Integration project.

D. G&I Plant

1. Functionalization of Plant

We addressed this issue thoroughly in Initial Brief (pp. 7-18), and will limit our remarks here. The Commission should not interpret the brevity of our reply as an indication that this issue (or any other) is not significant. To the contrary, it is highly significant, and could influence heavily future investment decisions. If a regulator excludes from cost recovery investment in G&I plant – such as customer information systems or outage tracking systems – the regulator should not expect that a utility would aggressively pursue such improvements in its system. All we are trying to do is recover the investment we have made to serve our distribution customers today. That is what the law entitles us to, and it is what the record supports.

Staff and IIEC take aim at the Ameren Illinois Utilities' test year levels of G&I plant. They offer different reasons for their opposition, but share an underlying theme: never let the facts get in the way of a good story. Staff and IIEC extend a good deal of bluster, and toss in a pile of dollar amounts and percentages, but never anywhere at any stage in this proceeding has either one of them (or any other party, for matter) identified a single item of general or intangible plant included in the test year that is used to any extent by a non-utility function. Not one.[1]

[1] Staff has overstated the amount of G&I Plant the Ameren Companies are requesting in its Surrebuttal Revenue Requirement. The correct Ameren CILCO amount is $32.41 million (Exh. 36.1, Sch. 1, p. 1, line 3) rather than $42.1 million. The correct Ameren CIPS amount is $111.568 million (Exh. 36.2, Sch. 2, p. 1, line 1 + line 3) rather than $121.9 million. The correct Ameren IP amount is $192.365 million (Exh. 36.3, Sch. 1, p. 1, line 1 + line3) rather than $206.5 million.

To the contrary, Staff and the IIEC retreat at any mention of specifics. The point of this exercise is to accurately reflect for each function the level of G&I plant supporting it. The Ameren approach was to look at all plant accounts and identify the level of G&I plant related to it. This involved numerous discussions in the field, exhaustive review of documents, and identification of the specific functions of plant items – in other words, specifics. Staff and IIEC, on the other hand, disparage the use of specifics (or, as we call them, facts), advocating instead the use of a general allocator.

Staff's brief on this point, like much of its testimony regarding G&I plant, relies heavily on personal attack, at the expense of any discussion of current circumstances or presentation of sound regulatory policy.[2] In this regard, we respectfully direct Staff to its own brief, where with regard to cash working capital, the Staff states (p. 33), "while inapposite labeling may be the unfortunate reality of modern day campaign tactics, it is hardly expert opinion worthy of consideration in a Commission proceeding to resolve issues on the merits." We could argue with whether the Companies' criticism of the Staff's 180 degree reversal on cash working capital is"inapposite," but we agree wholeheartedly with the Staff's view that the issues should be decided on the merits and not on name-calling.

And when it comes to the merits, Staff's position is, to put it kindly, weak. Staff repeats its contention that the Commission "prefers" the use of a general allocator. The Staff couldn't be more wrong, which is surprising, given that just a few weeks ago the Commission rejected this

[2] For example, the proper surrebuttal testimony of Mr. Getz is disparaged as "too little, too late." There is no explanation of why it is "too little", but Staff fumes that it should have been provided earlier. We will take Staff's failure to incude Mr. Getz's testimony on the long list of items it sought to strike from the Companies' surrebuttal testimony as an acknowledgement that there was nothing inappropriate about the testimony.

same approach by the Staff in the ComEd DST order, as discussed in our initial brief. The Commission there made clear (as it had before) its strong preference for a direct approach, rather than the use of a general formula allocator.

As we explained in our initial brief, the Commission's position is sound. The labor expense allocator on which both Staff and IIEC is particularly unreliable. There is no direct link – theoretical or otherwise - between the level of G&I plant on a company's books and the level of labor expense it incurs. If anything, the record in this case suggests that there may be an inverse relationship, which is precisely the opposite of what Staff and IIEC assume.

We suppose that in a world in which information systems played a small role in utility service, assuming a relationship between G&I plant and labor expense may not have been unreasonable. G&I plant would have been more heavily influenced by items such as buildings – and the more employees in a function, then, arguably, the greater the percentage of buildings required to house their workspace.

As we established with Mr. Chalfant at hearings, however, investment in information systems – which are booked as intangible plant – can (and frankly should be expected to) produce the opposite relationship. As a utility invests in information systems to make itself more productive, the number of employees it requires decreases. Under the logic of the labor expense allocator, the utility would then be using less intangible plant – even though it was the increase in intangible plant that caused the decrease in its employee levels. Thus, the labor expense allocator (which Staff and IIEC argue is preferable to actually taking a look at and considering how plant on the utility's books is used in that most untheoretical arena we call the "real world") produces a result exactly opposite to what the utility is actually doing.

Staff and IIEC make it worse by advocating the use of the labor expense allocator as of a specific date in the past – the last DST rate case for each company. They want the levels of G&I plant in this case pegged to those cases. In other words, they don't even want today's labor expense allocator, they want yesterday's, irrespective of the many changes in operations that have occurred in the intervening years.

There is simply no basis for the Staff's and IIEC's adjustments. We believe we thoroughly discredited their positions in our opening brief, but will run down the list of their arguments for clarity's sake.

Staff

1. *There has been a significant shift of G&I plant to distribution*. (Staff Br., p. 13) This is not correct. As we explained, the Companies restructured, and the G&I plant in the test year is the G&I plant they use in their distribution business. No plant included in test year G&I has been identified as supporting non-distribution functions.

2. The Ameren Companies are proposing to "reverse" the Commission's prior allocation of costs. No, all we are seeking to do is properly include in rate base the G&I plant that is supporting distribution service. There is no reason to conclude that the Commission's allocation of plant at a particular point in time would apply in perpetuity. We are proposing a reflection of G&I plant as it exists and as operations are conducted today.

3. *The Ameren Companies seek to "restore to rate base" plant previously excluded.* This is not the case, as the Companies explained in their brief. Much of the plant that the Commission excluded from the DST rate base has been fully depreciated or otherwise written off

the Companies' books. This only highlights the problems with the Staff and IIEC seeking to freeze distribution-generation allocations at a specific point in time.

4. *The ASP doesn't take into account production plant at unregulated affiliates.* Staff repeated this canard throughout the case. First, it is unclear what production plant that Staff is talking about – the nuclear plant once owned by IP and now owned by Exelon? The fossil plants once owned by IP and now owned by Dynegy? The lion's share of Staff's adjustment relates to AmerenIP, but Staff refuses to acknowledge that G&I plant on that Company's books cannot possibly support the generating plants that the Company owned at the time of its last DST rate case – unless the Company is providing services to Dynegy or Exelon, which does own those plants. Staff's argument simply collapses at this point.

5. *The Commission prefers general allocators.* As discussed, the Commission says otherwise, and the inferiority of the labor expense allocator is apparent – it has theoretical flaws and doesn't capture the effect of changes in the Companies' operations. However, as Mr. Adams explained, if the labor expense allocator were performed now, using the Companies' present data, it would produce a result comparable to the ASP. Staff only arrives at a different result because it freezes the labor expense allocator at a now distant and unrepresentative point in time.

<u>IIEC</u>

IIEC fares no better. As we explained in our initial brief, IIEC relies on an assumption that increases in G&I plant will be proportional to increases in distribution plant, when in fact no such relationship exists. A utility does not need to install a new information system when it puts in a new distribution line, and it does not need to install a new distribution line when it purchases a new information system. The Commission properly rejected IIEC's proposal in the ComEd case.

One question raised by the positions of both Staff and IIEC is how long will G&I plant be based on a 2000 test year. In a rate case in 2028, will the Commission still use the initial round of DST cases as a starting point for determining the appropriate level of G&I plant in rate base? At some point, the Commission must base rates on the circumstances before it, and not the circumstances that were before it in the past. That point is now – the present circumstances support the level of G&I plant proposed by the Ameren Companies, and the Commission should reject the adjustments advanced by the Staff and IIEC.

2. Plant Transfer

Please refer to subsection 1 above.

3. G&I Plant Amortization

Please refer to subsection 1 above.

E. Reallocation of Depreciation Reserve

The Ameren Companies have explained in detail in their initial brief why they have not proposed a change in depreciation rates. (Resp. Init. Br., pp. 58-60.) Further, the Ameren Companies have provided compelling reasons why their proposal to reallocate depreciation rates is reasonable and will provide a significant benefit to AmerenIP's customers. (Resp. Init. Br., pp. 17-19.)

Staff now agrees that the proposed reallocation of AmerenIP's depreciation reserve would not be inequitable to customers. (Staff Init. Br., p. 26.) Equitable allocation is thus no longer at issue.

Staff continues to claim that the proposed reallocation of the depreciation reserve is "simply a way to make it appear that the Company is making some use of the depreciation study in order to justify recovery of the cost of the study through rate case expense." (*Id.*) As discussed further in subsection II.D.3, however, the proposed reallocation of the depreciation reserve is only one of a number of reasons why the costs of depreciation study should be approved for recovery. This specious argument cannot support rejection of a proposal that would provide obvious and real benefits to AmerenIP customers.

Staff witness Jones states that she "found nothing to indicate that reallocation of the depreciation reserve is acceptable under the rules of GAAP." (Staff Ex. 14.0, p.9; Staff Init. Br., p. 25.) Ms. Jones' conclusion is against the weight of the evidence.

The Ameren Companies are rate-regulated entities, and may refer to FAS 71 for accounting guidance that ultimately determines, in part, whether the Companies are in compliance with GAAP. Paragraphs 51 and 52 of FAS 71 support the Ameren Companies' position that the Commission's approval of reallocation of depreciation reserve would indeed support GAAP compliance.

For all of the reasons stated here and in the Ameren Companies' Initial Brief, reallocation of the depreciation reserve should be approved. Reallocating AmerenIP's depreciation reserve has the impact of mitigating an otherwise necessary increase in depreciation expense by $17,099,000 annually, as shown on Respondents' Exhibit 36.4. Because the record demonstrates that reallocation is reasonable and will be a significant benefit to AmerenIP's customers going forward, the Commission should approve this proposal.

F. OPEB Liability

1. Unfundeded OPEB

a. AG

b. ICC Staff

The Ameren Companies have explained in detail why Staff's and the AG's proposal to reduce rate base by the unfunded OPEB's liability at December 31, 2004, is incorrect. (Resp. Init. Br., pp. 19-24.) In their Initial Briefs, Staff and the AG have provided no basis for concluding otherwise. (Staff Init. Br., pp. 27-28; AG Init. Br., pp. 6-8.)

Staff is incorrect in asserting that the OPEB liability "reflects a cost-free source of capital on which shareholders are not entitled to receive a return." (Staff Init. Br., p. 27) This statement implies that all OPEB expenses have been funded by ratepayers, although the record shows that this is not the case.

As Ameren Companies' witness C. Kenneth Vogl has explained, accrued OPEB liability is the excess of OPEB expense recorded by the Company (a non-cash expense recorded by the Company on its income statement) over the amounts the Company has actually paid for OPEB. (Resp. Ex. 21.0, p. 8.; Resp. Init. Br., pp. 19-24.) An accrued OPEB liability does not necessarily represent ratepayer supplied funds that the Company intends to use for OPEB. Mr. Vogl has testified that the Ameren Companies have contributed far more for OPEB than it has collected from ratepayers, even though a small accrued OPEB liability exists. (Resp. Ex. 21.0, p. 8.; Resp. Init. Br., pp. 19-22.) Thus, there is no excess of ratepayer funding.

The AG's only response to Mr. Vogl's testimony is that "Mr. Vogl has not shown that the accrued liabilities for OPEB of the Ameren Companies are any different from the OPEB liability in Docket Nos. 95-0219 or 04-0779." (AG Init. Br., p. 8.) This adds nothing to the discussion. It is simply not the Ameren Companies' burden to address the facts or circumstances of other Dockets in this proceeding. A Commission order in this proceeding must be based on the record facts. Here, the facts plainly demonstrate that a rate base reduction is inappropriate, because there is simply no excess of ratepayer funds.

Further, a review of the Docket No. 04-0779 Order discussion beginning at page 20 indicates that the issue addressed relates to pension assets, not OPEB liabilities. The Order indicates that Docket No. 95-0219 also dealt with pension assets.

Staff's argument that "the cost of service must be considered in the aggregate" (Staff Init. Br., p. 27) similarly misses the point. An aggregate view of OPEB accounting would include not only a comparison of expenses versus funds on a given date, but also the source of OPEB funds recorded on the Companies' books. Again, the record shows that the major source of funding for the accrued OPEB liability is the Ameren Companies themselves, not ratepayers. (Resp. Ex. 21.0, p. 8.; Resp. Init. Br., pp. 19-22.)

For all of the reasons stated in the Initial Brief and above, Staff's and the AG's proposed reduction is inappropriate, not supported by the record, and must be rejected.

2. ADIT Treatment

For all the reasons discussed above and in the Ameren Companies' Initial Brief (pp. 19-24), the incorrect adjustment to OPEB-related Accumulated Deferred Income Taxes recommended by Staff and AG must also be rejected.

G. Cash Working Capital

As discussed in our Initial Brief, the Companies and the Staff differ as to the methodology that should be used to determine cash working capital. (Resp. Init. Br., p. 24.) Staff has abandoned the approach it endorsed in AmerenIP's last case, and now endorses the Gross Lag methodology. Staff argues that the Gross Lag methodology is preferable because it considers the amount of cash revenues received on account of cash expenses. This is an incorrect statement. Staff's approach starts with total electric revenues included in Staff's proposed revenue requirement, which does <u>not</u> include revenues in support of cash items such as add on taxes i.e. energy assistance charges and gross receipts taxes. On Schedule 9 of Appendix A to Staff's Brief, Staff reflects about $30 million of cash costs for just these two items that is not supported by cash revenues, because these costs are not included in Staff's pro forma proposed revenues on Appendix A, Schedule 1. Also, since the return on equity component is removed under Staff's calculation, there is no revenue to cover the capitalized portion of payroll that Staff wants to include. Staff's approach thus picks up any cash item, but excludes from revenues the cash receipts/ cash revenues needed to recover the portion of those costs not included in operating expenses on ICC Staff Initial Brief – Appendix A, Schedule 1. Under this approach, cash working capital would always be understated and in the case of the Ameren Companies, is severely understated using the Gross Lag Methodology, as proposed by Staff.

In addition, as stated above, since the return on equity component is removed under Staff's calculation, there is no revenue to cover the capitalized portion of payroll that Staff wants to include. Revenues included in Ms. Ebrey's proposed cash working capital calculation only includes the expensed portion of payroll.

Staff and the Companies also disagree with respect to expense levels. Staff states that its CWC calculations are based on the level of costs included in Staff's rebuttal revenue requirement. Similarly, Staff repeatedly uses the term expense levels in reference to amounts Staff proposes to apply cash working capital factors. Those statements are simply incorrect for many of the amounts. As stated previously, many of the amounts Staff proposes to use are not expenses, but rather cash outlays not supported by cash receipts/cash revenues. This is true for most of the costs that differ from the Ameren Companies proposed amounts, such as gross payroll, and is also true for all other costs that are not offset by a corresponding level of revenues, such as add on taxes. Unlike the Net Lag methodology proposed by the Ameren Companies, the level of revenues used in the Staff's GrossLag methodology directly impacts the amount of cash working capital. As such, it is critical that all identified costs are offset by cash receipts/cash revenues. Where Staff uses total costs (i.e. payroll), add on taxes (i.e. energy assistance charges and gross receipts taxes), total electric or total electric and gas amounts rather than the electric distribution only amounts (Tr. p. 451), then Staff's alleged expensed levels will not be supported by cash revenues/cash receipts, and the lead lag results will be unrealistic and understated with regard to the true cash working capital needs of the Ameren Companies.

Staff and the Companies disagree with the amounts that should be used for pension and benefit expenses that are included in revenue requirement, and various other amounts that are included in the cash working capital calculation. The Ameren Companies' proposed level of such expenses and/or costs represents the electric distribution only share of such expenses and/or costs. In most or all cases where the amounts differ, Staff's proposed expense/cost amount is greater. Either Staff has purposely used an amount greater than the expense level (i.e. capitalized payroll) or Staff has used total electric amounts (Tr. p. 451) and/or electric and gas amounts in its calculation. This is an electric distribution rate case. The amounts used should represent electric distribution only amounts. Further, under Staff's Gross Lag methodology, the amounts not supported by operating revenues need to either be removed, or revenues imputed to offset such costs, in order to achieve a result that could possibly border on reality. For the reasons stated above and in the Ameren Companies' initial brief, the Commission should find in favor of the Ameren Companies with respect to cash working capital.

1. Lead/lag Methodology

Please see p. 25 of the Ameren Companies' Initial Brief.

2. Interest Expense LED

Please see p. 32 of the Ameren Companies' Initial Brief.

3. Capitalization Payroll in CWC Requirements

Please see Section G, above, and p. 33 of the Ameren Companies' Initial Brief.

4. Payroll Withholding Taxes

Please see p. 34 of the Ameren Companies' Initial Brief.

5. Expense Levels to Which Cash Working Capital Factors are Applied.

Please see Section G, above, and p. 34 of the Ameren Companies' Initial Brief.

H. Other

II. OPERATING EXPENSES AND REVENUES

A. Summary of Uncontested/Settled Issues

A summary of all uncontested and settled issues is listed in the Ameren Companies' proposed order, which is being filed the day after filing of this brief.

B. Vegetation Management/Tree Trimming

1. ICC Staff

As fully set forth in the Ameren Companies' Initial Brief (pp. 39-44, 160-167) and in Section V.C below, the overwhelming evidence shows that the "no-touch" tree trimming policy advocated by Staff witness James Spencer (Staff Init. Br. pp. 41-46) should not be implemented. The no-touch policy is an inappropriate interpretation of NESC Rule 218. Implementation of such a rule is unnecessary, unwise, and is contrary to law. The record supports rejecting Staff's recommendation to adopt this new policy outright. However, if the Commission believes that this issue should be further explored, a new docket should be opened to address this issue in a proper rulemaking forum.

If the Commission were to implement Staff's proposed no-touch policy, the overwhelming evidence also shows that this would significantly increase the Ameren Companies' Distribution System Maintenance costs, as explained in the Ameren Companies' Initial Brief. Ameren Companies' witness Ray Wiesehan testified that, if the Commission were to accept Staff's new interpretation of NESC Rule 218, the Ameren Companies would be forced to increase the frequency and thus the costs of vegetation management. (Resp. Init. Br., pp. 39-44.) Respondents' Exhibit 16.5 shows that the Ameren Companies' additional costs for the No Touch Policy Adjustment would increase operating expense by $27,538,000. Of this total, $17,535,000 is incremental additional ongoing costs, and the remaining $10,003,000 reflects an amortization of the additional costs that will be incurred over the next four years, in order to convert from a four-year to a two-year tree trimming cycle. The increase in operating expense of $27,538,000 is also included in the Adjustments to Operating Income shown on Exhibits 16.1, 16.2, and 16.3. (Resp. Ex. 16.0, pp. 4-6.) The total additional cost to achieve and maintain a "no touch" program over a four year period is $57,548,000. (Resp. Ex. 25.0, pp. 11-12.) The Ameren Companies estimate that it will take four years to train new trimming personnel and integrate a no-touch approach into our program. (*Id.*)

Mr. Spencer concludes, without support, that Staff's new approach regarding NESC Rule 218 will not have a significant impact on tree trimming costs. (Staff Init. Br. pp. 46-47.) Mr. Spencer also admits that he does not know that this is the case. (ICC Staff Ex. 10.0, p. 23, lines 577-78.) Staff's brief states Mr. Spencer's "observations" and "opinions" of what "might be" or "could be" the case, but cites no solid evidence to refute the Ameren Companies' evidence. (Staff Init. Br. pp. 46-47.) Mr. Spencer does "not attempt . . . to quantify" costs or savings of implementing the proposed no-contact rule, he merely speculates on the possibilities. (*Id.* at 48.) Mr. Spencer's testimony is not helpful in determining the real world costs of implementing a "no-contact" policy.

The fact that Staff chooses not to "see" or accept any of the Ameren Companies' evidence on this issue (*Id.* at 46-48) is not determinative. Staff has tried to implement a new rule via this rate case, and makes much of the fact that the Ameren Companies' bear the burden of proof. (*Id.* at 50-51.) This is against Commission practice. The Ameren Companies strongly believe that the record supports not implementing Staff's proposed rule. However, if the "no-contact" rule is implemented, the overwhelming evidence supports increasing the Ameren Companies' Vegetation Management and Tree Trimming expenses by the proposed amounts.

2. Cities of Champaign and Urbana

The Cities of Champaign and Urbana ("Cities") have not raised their previous arguments regarding tree trimming expenses (Cities Ex. 1.0, pp.62-63) in briefings. This issue thus appears to have been resolved.

C. Injuries and Damages Expense

Please see p. 49 of the Ameren Companies' Initial Brief.

D. Rate Case Expense

The Ameren Companies incorporate the section of their Initial Brief addressing this issue by reference (Resp. Init. Br., pp. 50-60), and additionally respond briefly below. Staff raises no plausible argument in its brief to support its recommended disallowance of the Ameren Companies' rate case costs. The Commission should reject Staff's unfounded recommendations and allow the Companies to recover their reasonably incurred rate case expenses.

1. Delivery Services

a. Staff's Proposed Disallowance of Rate Case Expenses Must be Rejected.

b. CSS Consulting and Manpower, Inc. Invoices Detail Reasonably Incurred Rate Case Expenses.

Staff's complaint that the Ameren Companies have provided Staff with "no information" to determine the reasonableness of rate case costs is demonstrably not true. (Staff Init. Br., p. 53.) The record shows that the Ameren Companies used the most accurate information available at the time of filing – including service provider rates, contracts, letters of engagement and historical data, and communication with service providers – to provide original cost estimates to Staff. (Resp. Ex. 36.0, pp. 11-12.) Staff witness Jones further acknowledges that the Ameren Companies have provided contracts and "numerous invoices" to Staff supporting rate case costs (ICC Staff Ex. 14.0, p. 4), directly contradicting Staff's own "no information" claim.

Further, Ms. Jones recommendation to disallow rate case expenses detailed by certain CSS Consulting and Manpower, Inc. invoices (Staff Init. Br., p. 53-54) only underlines how unreasonable Staff's position is on this entire issue. Staff wholly ignores Mr. Stafford's testimony identifying the rate-case-related services invoiced by those documents. (Resp. Init. Br., pp. 55-56.) It should go without saying that the Ameren Companies' recovery of reasonable rate case costs should not rise or fall on how an outside service provider chooses to invoice a particular service. Mr. Stafford's sworn testimony on the issue should be sufficient. Staff has provided no reason to support a conclusion that Mr. Stafford's testimony is not true. The Ameren Companies' CSS Consulting and Manpower, Inc. costs should be allowed.

Lastly, the Ameren Companies' proposed rate expense is demonstrably reasonable if for no other reason than how it compares to ComEd's approved rate case expense in ComEd's recently concluded DST proceeding. Ms Jones justified Staff's failure to compare the Ameren Companies' proposed level of expense with ComEd's by arguing that rate cases cannot be compared because there are too many variables (Tr. at 595, lines 9-16), but that just isn't so:

- Both ComEd and the Companies filed cases proposing changes in DST rates;
- The Ameren Companies prepared three sets of minimum filing requirements; ComEd prepared one;
- Neither case was settled;
- There were five rounds of testimony in both cases;
- Numerous parties filed testimony of numerous witnesses in both cases;
- ComEd's approved rate case expense was approximately $7.3 million; Staff has recommended *only* $1.4 million for the Ameren Companies as compared to the Ameren Companies' requested amount of $2.7 million.

There are indeed differences between the cases (e.g., the Ameren Companies' cost of preparing the filing requirements should be higher than ComEd's, while ComEd's shorter hearings would reduce costs). But these cases are as similar as any two rate cases could be, and no difference between them could explain the enormous disparity in rate case expense, if Staff gets its way.

Staff's view is that the Ameren Companies are not minding the store because they haven't asked the vendors with whom they have prior experience for detailed estimates. This is clearly a forest versus trees situation. A more reasonable question, is why the Ameren Companies are able to prosecute a complex rate case for less than half of what it costs ComEd. The Commission should recognize the efficiencies the Ameren Companies have achieved here, and approve their proposed rate case expense, which is reasonable by any measure – except the Staff's, apparently.

For all of the reasons set forth in the Initial Brief and above, the Commission should entirely disregard Staff's recommendations on this issue.

2. Post-2006 Basic Generation Services

Similarly, the Commission should reject Staff's position that Post-2006 rate case expense costs not invoiced as of the date of the Ameren Companies' rebuttal testimony are not substantiated. (*See* ICC Staff Ex. 14.0, Schedule 14.02, p. 1; Staff Init. Br., p. 56.) As a practical reality, future costs cannot be substantiated by invoice. The record shows that those costs have been substantiated by good-faith, reasonable estimates.

Staff's further recommendation that Post-2006 Rate Case expenses should be recovered through the Supply Procurement Adjustment is contrary to cost-causation principles. The

Ameren Companies' *ability* to provide supply service to whoever wants it after December 31, 2006, does not predate the Post-2006 Rate Case. That ability was secured through the Post-2006 Rate Case. All Ameren Companies' customers thus benefited from the Post-2006 Rate Case. Cost causation principles thus dictate that Post-2006 Rate Case costs should be allocated to all of the Ameren Companies' customers.

As set forth in the Ameren Companies' Initial Brief (pp. 56-57), if the Companies were to recover their BGS proceeding costs through the SPA, only a portion of their customers would actually pay for costs that were incurred for the benefit of all customers. And, due to the nature of the Ameren Companies' customer populations, such costs would be disproportionately borne by residential customers, who do not currently have the same supply service options as large industrial customers. (Resp. Ex. 36.0, p. 20.) Under Staff's proposal, large industrial customers with supply service options could choose alternative electricity suppliers in the short term, while reserving the right to return to the Ameren Companies' supply service options in the future without paying for those options.

For all of the reasons explained above and in the Initial Brief, the Ameren Companies' Post-2006 Rate Case costs should be recovered in their delivery service rates.

3. Depreciation Study

The Ameren Companies have presented ample evidence that the results of the depreciation study, in light of prevailing circumstances, supported their ultimate decision not to request a change in rates. (Resp. Init. Br., pp. 58-60.) That decision was made with AmerenIP customers in mind. (*Id.*) Notably, Staff has recommended no change in depreciation rates based on the study, either. Staff offers nothing new or convincing in its brief. (Staff. Init. Br., pp. 56-

58.) For all of the reasons set forth in the Ameren Companies' Initial Brief, Staff's recommendation to disallow costs related to the depreciation study is groundless and must be rejected.

E. A&G Expenses

1. Functionalization

The Ameren Companies addressed this point in our initial brief (Resp. Init. Br., p. 17), but wish to note that IIEC makes the same argument that the Commission just rejected in the ComEd DST order. There is no necessary relationship between A&G and non-A&G expenses. What IIEC is trying to do is to peg current A&G to an historical date – without any demonstration that the relationship as of that date was typical, normal or perpetual.

2. Incentive Compensation

Staff's brief addresses only part of the record testimony on incentive compensation and ignores the large majority of the testimony supporting recovery of the Ameren Companies' reasonably incurred incentive compensation costs. (Staff Init. Br., pp. 67-71.) Staff has rehashed the same arguments it presented in direct testimony, and is silent on most of the facts supporting recovery stated in the rebuttal and surrebuttal testimony of Ameren Companies' witness Krista Bauer. (*See* Resp. Exs. 23.0 and 44.0.) The record shows that incentive compensation costs are a necessary component of the Ameren Companies' compensation package, are beneficial to ratepayers, and thus should be recoverable in rates. Further, Staff witness Jones' testimony supports, at the very least, a partial recovery of incentive compensation costs, as discussed further below. (ICC Staff Ex. 14.0, p. 13, lines 250-51.)

Staff does not address and has completely disregarded the large majority of Ms. Bauer's testimony. Specifically, Staff does not dispute Ms. Bauer's testimony on any of the following points, illustrating real ratepayer benefits achieved through the incentive compensation plan:

- Incentive compensation payouts are a standard business practice that is necessary for any business to attract and maintain a well-qualified, efficient, and focused workforce. (Resp. Ex. 23.0, pp. 7-8; Resp. Ex. 44.0, pp. 1-2.)
- Incentive compensation is an essential component of a fair and market-based compensation package. (Resp. Ex. 44.0, pp. 1-2.)
- Ratepayers need the Ameren Companies to be able to compete with other companies for the best and most qualified employees. (*Id.*, p. 1.) Reliable and efficient electricity service depends on it. (*Id.*)
- The alternative to offering a competitive compensation package consisting of both base and incentive pay is to simply eliminate incentive pay, which would likely increase fixed labor costs and reduce employee interest/focus on key operational goals. (*Id.*, p. 2.)
- Ratepayers benefit from incentive compensation payouts through realization of operational goals, motivated by the incentive payout formulas. (*Id.*)
- Incentive payouts are driven by performance on key customer-focused operational metrics, such as:
  - Reliability measures, such as electric service disruption frequency and duration (*Id.*, pp. 2-3);
  - Customer satisfaction measures, including customer contact center and field service experience enhancement (*Id.*, p. 3);
  - Safe work practice measures, including lost workday away cases. (*Id.*, pp. 3-4.) Reducing lost workdays serves to reduce operating costs, a concern raised by AG witness David Effron. (*Id.*)

(Resp. Init. Br., pp. 64-68.) The ratepayers' and the Ameren Companies' interests are aligned on the above issues. Both the ratepayers' and the Companies' interests are served through the incentive compensation plan.

Staff ignores these benefits to ratepayers and focuses only on shareholder benefits from the plan through realization of financial goals. This is misguided for several reasons. First, there is absolutely no merit to the suggestion that ratepayers do not benefit from the Ameren Companies' financial health. Reliable and affordable electricity service is absolutely dependent upon the Ameren Companies' financial well-being. Staff does not and cannot say otherwise. Rather, Ms. Jones states that the incentive compensation "plans are dependent upon financial goals of the Companies that primarily benefit shareholders." (Staff Ex. 14.0, p. 13; Staff Init. Br., p. 68.) Whether Ms. Jones is stating that it is the plans or the financial goals related to the plans that primarily benefit shareholders, this statement obviously implies that ratepayers also receive benefits from the structure and function of the incentive compensation plan.

Further, Staff argues that incentive compensation recovery should be disallowed because "ratepayers would provide funding even when no costs were incurred by the Company because the plans' goals were not met . . . [and] the plans are discretionary and may be discontinued at any time." (Staff Ex. 3.0, p. 16; Staff Init. Br., pp. 69-70.) This statement is not in line with the Ameren Companies' actual practices. (Resp. Init. Br., p. 67.) As Ms. Bauer's testimony explains, the Ameren Companies' incentive compensation plans are based on the financial and operational fitness of the company (Resp. Ex. 23.0, pp. 3-4), consistent with the fact that the plans are a necessary component of their employment compensation packages. (Resp. Ex. 44.0, p. 5-6.) Ameren Corporation has a long history of using incentive compensation plans. (*Id.*) The Ameren Companies have no intention of discontinuing the plans. (*Id.*, p. 6.)

While the Ameren Companies' incentive plans may provide payouts in any given year that are greater or less than those provided during the test year; over time, those year-to-year deviations are expected to balance out. (*Id.*) Financial goals triggering incentive compensation payouts are met regularly, and "are not designed to be unattainable." (Resp. Ex. 44.0, p. 6.) Further, "[e]mployees almost always receive some portion of their business line/group goals." (*Id.*)

Additionally, the incentive dollars funded to reward individual performance are usually spent in full. (*Id.*) Incentive dollars that are withheld from one employee because he/she does not perform at the expected level may be used to reward another employee who performs above and beyond expectations. (*Id.*) Thus, a given employee may not receive any monetary benefit due to his/her individual performance – but those dollars are generally reallocated in an effort to reward employees who are demonstrating high levels of performance. (*Id.*)

Finally, Ms. Jones' claim that shareholders are the primary beneficiaries of incentive compensation packages (Staff Ex. 14.0, p. 13, lines 250-51; Staff Init. Br., pp. 68-69) is not true, as noted in the Ameren Companies' Initial Brief. Ratepayers clearly benefit directly from this plan, as noted above. However, even if the statement were true, Staff has implicitly acknowledged that there are shared ratepayer benefits, whether from the plan itself or from meeting financial goals related to the plan. Thus, Ms. Jones' testimony does not support a full disallowance of incentive compensation costs.

The record supports the Ameren Companies full recovery of incentive compensation benefits. But, at the very least, the Commission should allow partial recovery of these costs (for example, 50%), based on Staff's testimony alone.

3. Pension and OPEB Expense

The Ameren Companies incorporate by reference the section of their Initial Brief addressing this issue. (Resp. Init. Br., pp. 68-72.) As noted in the initial brief, ICC Staff witness

Peter Lazare, IIEC witness Alan Chalfant, and Wal-Mart witness James T. Selecky each raised certain issues directly or indirectly pertaining to pension and/or OPEB benefits, which were addressed in significant detail in the rebuttal testimony of Ameren Companies' witness C. Kenneth Vogl, Respondents' Ex. 21.0 (see also AmerenCILCO, AmerenCIPS, and AmerenIP Ex. 11.0 for discussion of relevant issues). In rebuttal testimony, Mr. Lazare acknowledged Mr. Vogl's evidence on pension and OPEB expenses, and did not offer any rebuttal to such evidence. Both Mr. Chalfant and Mr. Selecky were silent on these issues in their respective rebuttal testimony. Only Wal-Mart restated its direct testimony on this issue in its initial brief, yet no new arguments were raised. (Wal-Mart Init. Br., pp. 3-6.) The Commission should reject Wal-Mart's arguments on this issue for all the reasons stated in the Ameren Companies' Initial Brief and cited testimony. (Resp. Init. Br., pp. 70-72.)

Additionally, the AG's claims regarding Pension and Benefits Expenses (AG Init. Br., pp. 13-18) should be rejected, for all of the reasons set forth in the rebuttal and surrebuttal testimony of Ameren Companies' witness Ronald Stafford. (Resp. Ex. 16.0, pp. 9-11; Resp. Ex. 36.0, pp. 6-9.) Mr. Stafford's rebuttal testimony provided a number of reasons why it is most appropriate to use 2006 information to determine pensions and benefits expenses:

- 2006 data includes a full year of Illinois Power on the Ameren financial system. Thus, 2006 data more accurately reflects AmerenIP's allocable share of pensions and other post employment benefits expense.
- 2006 data also includes a full year of the transfer of the former IllinoisUE employees to AmerenCIPS, and therefore reflects a more accurate determination of the impact of pensions and benefits costs of AmerenCIPS.
- 2006 data more closely coincides with the date new rates will go into effect as a result of these proceedings. (January 2, 2007).

- Reasonably certain changes in cost components (such as medical inflation rates and plan changes) are reflected in 2006 estimates, but would not be fully reflected, or reflected at all, in 2005 actual data.
- 2006 data thus satisfies the criteria established in Section 287.40 of the Illinois Administrative Code for use of estimates in establishing rates.

AG witness David Effron did not address these points in his rebuttal testimony. (AG Ex. 3.0, pp. 3-4.) Instead, Mr. Effron's testimony, and the AG's Initial Brief, focuses on the fact that the testimony is not supported by complete actuarial studies in support of 2006 expense levels. As Mr. Stafford testified, actuarial studies are not conducted for all pensions and benefits costs. Actuarial studies only pertain to pensions and other post employment benefits expense, and are not prepared for other benefits expense. (Resp. Ex. 36.0, pp. 7-8.)

Actuarial studies provide useful information and are very helpful in measuring the overall levels of, and changes in, plan costs, for a period of time. If there is a reasonable expectation that the period of time covered by the study is representative of going-forward levels, such data can be reasonably relied upon in whole or in part. (*Id.*)

However, due to the passage of time, costs begin to change immediately after the study date. Even if there were no change in eligible participants, and no change in the assumption for inflation rates and return on plan assets, costs would immediately change due to changes in service plan costs, and changes in the amortization of plan gains or losses. Such costs may increase or they may decrease, but they will change. (*Id.*)

Therefore, it is generally more appropriate to use more current information to establish such costs, including consideration by the actuary of anticipated changes in cost components, such as medical inflation rates and other plan changes – especially considering the fact that rates to be established in this case will not go into effect until January 2, 2007, well after the 2005 study period recommended by Mr. Effron. (*Id.*)

The estimates are reasonably expected to be representative of going-forward levels, and are more accurate than the actual 2005 data. Thus, the Commission should adopt the Ameren Companies' 2006 actuarial estimates as proposed.

4. Major Medical

In rebuttal testimony, Mr. Lazare acknowledged the testimony of Ameren Companies' witness Marla Langenhorst, Major Medical, and did not offer any rebuttal to such evidence. The AG has proposed the used of 2005 actual data for AmerenIP's major medical expense. (AG Init. Br., pp. 16-17.) The Ameren Companies do not agree with this approach for the reasons provided above in the Pension and OPEB expense section. AmerenIP and Staff are in agreement as to the appropriate level of major medical expense, as discussed at page 72 of Staff's Initial Brief.

5. Other A&G

F. Effect of Ameren Ownership on Illinois Power Expenses

In its initial brief (pp. 18-22), the AG takes issue with the reflection of certain AMS costs in the test year for AmerenIP. Specifically, the AG argues that the balance of costs and benefits from Ameren's acquisition of what we now call AmerenIP was established in Docket No. 04-0294, that the balance must not be "upset" and that the AMS costs allocated to AmerenIP exceed a reasonable allowance for Dynegy costs by approximately $4.7 million.

Contrary to the AG's position, the Companies' test year expense is reasonable. It does not upset or alter the balance between costs and benefits of the Ameren acquisition. To the contrary, Mr. Effron miscalculates the costs, and understates the benefits. The acquisition has provided and continues to provide substantial benefits.

Mr. Effron calculates the difference between the A&G expense expected to be allocated to AmerenIP by AMS and the actual A&G expense allocated to IP by Dynegy, as reflected in IP's 2004 actual results. He includes an adjustment to the Dynegy costs for injuries and damages costs reflected in the Company's Schedule C-2.12. Mr. Effron asserts that the difference between the expected AMS costs and the adjusted Dynegy costs represents a net increase in costs to customers resulting from the acquisition of Illinois Power by Ameren.

As Mr. Porter pointed out, Mr. Effron's analysis is questionable, at best. As with any acquisition, it is difficult to determine what actual costs of service would have been had the transaction not occurred. Such comparisons are speculative. While the kind of comparison Mr. Effron is attempting to make can be useful, there are problems in the numbers he uses. Specifically, the 2004 Dynegy allocation he uses is inappropriate for such a comparison.

Mr. Porter identified the adjustments that would need to be made to the Dynegy allocation to result in a valid comparison. First, Mr. Effron's adjustment for injuries and damages should be eliminated. At the time Mr. Effron filed his testimony this adjustment was valid. However, the Company has since accepted an adjustment to the injuries and damages amount on Schedule C-2.12 for the amount of the Dynegy allocated costs. Therefore, the adjustment is no longer needed. Eliminating this adjustment increases the Dynegy value from $13.5 million to $17.4 million. (Resp. Ex. 32.0, pp. 2-3.)

Second, the Dynegy allocation for 2004 represents only 9 months of allocated costs and should be adjusted to reflect a full year under Dynegy ownership. If Dynegy had owned IP for the entire year the cost would have been $23.1 million based on a simple extrapolation of the first nine months. (Resp. Ex. 32.0, p. 3.)

Third, Dynegy was already in the process of reducing its corporate support structure to reflect a change in focus to its core business. Prior to changes in Dynegy's corporate cost structure, the annual corporate allocation to IP was in excess of $40 million. Only after Dynegy was led by its circumstances to take a shorter-term business focus was the level of allocation to IP reduced to its 2004 level. Since IP would most likely have continued under Dynegy ownership only in the absence of Dynegy's financial challenges, it is more appropriate to use a historical average of the allocated corporate costs as an indication of what costs would have been under continued Dynegy ownership. Using the above-mentioned $23.1 million for a full year of 2004 costs, the average annual allocated corporate costs from 2001-2004 were $27.1 million. (Resp. Ex. 32.0, pp. 3-4.)

Finally, the Dynegy allocated costs are in 2004 dollars whereas the AMS costs are in 2006 dollars. Adjusting for two years of wage increases and general inflation brings the annual value for the Dynegy allocation to $29.3 million. *Id.*

Hence, Mr. Porter showed that the expected AMS allocation of A&G costs of $28.6 million is less than the estimated allocation of Dynegy A&G costs of $29.3 million. Therefore, no adjustment to O&M expense should be made based on differences in corporate A&G allocated costs.

Moreover, the "balance" the AG refers to involves more than allocated A&G costs, as Mr. Porter explained. The AG fails to take into account other benefits resulting from the acquisition of IP by Ameren, such as reductions in debt interest, depreciation expense, and fuel costs. The cost of capital presented in Company witness McShane's direct testimony reflects reductions in high cost debt issued by IP under Dynegy ownership. Changes in depreciation expense resulting from the acquisition of IP by Ameren are included in schedules filed with the Company's initial request and sponsored by Company witness Stafford. Benefits related to improvements in service and overall financial health are also ignored in Mr. Effron's analysis. All benefits of the acquisition, both quantitative and qualitative, must be included in any analysis of the overall costs and benefits to customers. Rep. Ex. 32.0, p. 4.

While noting that any such comparison would still be speculative, Mr. Porter explained that the qualitative benefits of the transaction have been substantial. Resp. Ex. 32.0, pp. 4-8. He listed many of them:

- Information Systems has experienced a large number of improvements. In Disaster Recovery, there have been improvements in data storage, data center operations, the Call Center, and Mainframe operations. These improvements lead to faster recovery with higher reliability. IP equipment that was no longer supported by the manufacturer was upgraded with new equipment and contracted maintenance programs were put into place. Sarbanes-Oxley compliance, documentation, and procedures were improved by a move to Ameren systems which were more fully documented and tested for compliance. IT Technology upgrades include Mobile Data Terminals, Mobile Data Radio Service, Mainframe technical software, and an upgrade from PC operating system to Windows XP. These upgrades have moved IP forward in technology. There have also been printer provisioning process improvements. Automated training applications are available to employees and these include free online classes, free user guides, and professional training throughout the territory. The shift from outsourced IT support to in house staff for application development and support has been of benefit. Online published information provide easy access to job postings, notification of IT outages, policies and plans, and on-line forms, reference materials, and documentation. Further improvements in Information Systems includes improvements in HR reporting capabilities, improved IT hardware repair and replacement capabilities, improvement within the IT Change Management process and notification, implementation of a voice recognition software for automated attendant, and better project management methodology and project management tools. Employees have access to specialized tools and expertise not available to smaller organizations. The Call Center has become more effective in responding to customers with improvements in overflow response, call load balancing, and off hours support. Service Dispatch has the potential for improvement in response time due to new systems implemented and future implementation of automated meter reading.

- General Counsel has been improved in several areas. A dedicated Rate department and specialization of legal resources have allowed for quicker response to regulatory inquiries, better resolution capability, and the ability to adapt to Staff and intervenor's concerns and needs. Security has also been greatly improved. When the IP facilities were taken over the card access system was so antiquated that spare parts are no longer available for them. The video system was also in a state of disrepair and numerous cameras had to be replaced. Both of these systems are being replaced. Improvements have also been made in attempting to meet requirements set by NERC and Illinois law with regard to providing specific levels of protection at "critical cyber" locations.

- Safety of employees, customers, and property has been a priority and an area that has also witnessed improvements. Safety was improved by flame resistant clothing requirements imposed on IP employees and by increased safety training and education. Economic Development has benefited from increased staff and resources dedicated to economic development. The supply chain has also been improved with cross company inventory sharing benefits. The supply chain has seen better standardization which has resulted in the use of best practices in equipment. Environmental has worked to find better solutions to potential environmental problems and to reduce risks to customers and communities. Improvements here include specialized support staff in specific disciplines and coal tar expertise. Fleet has seen increased service reliability, capability, and response by implementing fleet replacement cycles and has moved to in house fleet management. Forestry is utilizing newer technology for vegetation control and they are now back on a four year schedule for vegetation management.

- More indirect improvements have also been realized in a number of areas. Electric Planning has seen an improvement in reliability through shared expertise in key areas, such as underground methods and project design. Changes in processes and management to increase service levels to customers is an improvement that has come from Design and Engineering. Metering and Relay Services are now in house and this has led to quick response lab work. Improvements in the Human Resources area include a higher level of service provided to employees for benefit questions, an in-house Organizational Development staff, a return to industry standards with respect to training and development, and improvements in reporting capabilities for managing operations. All of these improvements have provided customers with a better trained, more professional staff that is able to deliver more effective solutions.

- Field training is another area that has been improved. Training facilities have been improved by increased in house training capability and specialization. There is also a potential increase in training standards.

- Another service area that has experienced improvement is Industrial Relations. Oversight and coordination of union relations at the corporate level is an improvement seen in this functional area.

- The Treasurer's account has seen better access to necessary cash flows by utilizing the Money Pool.

- The Corporate Communications area has been improved by offering a web-based information center that is available to employees. Real Estate has been improved by offering an in-house non-utility property management expertise. This has led to more effective utilization and management. Internal Audit replaced Dynegy functions with in-house, utility-specific capabilities.

- Finally, it should be noted that in approving the acquisition of IP by Ameren in 04-0294, the Commission recognized a number of benefits to IP and its customers that go beyond what is discussed above.

Accordingly, there is no basis for the AG's adjustment.

IIEC also offers an adjustment here. Mr. Gorman proposes a reduction in the amortization of the acquisition cost regulatory asset based on the premise that the Company has not met the commitments it made as outlined in the Commission's Order in Docket 04-0294. Mr. Gorman cites a portion of the Commission's conclusion in Finding 7 beginning on page 24 of the Order. The quoted portion is stated as follows, with emphasis shown as in Mr. Gorman's testimony:

> "Commission Conclusion: The Commission finds that Ameren, AG, and CUB have agreed that, with the conditions agreed to by Ameren, including Conditions 19 through 25 on Appendix A to this Order, the record supports a conclusion that the <u>Reorganization is not likely to result in any adverse rate impacts for retail customers</u>. No other party has disputed this conclusion. While there was some disagreement in the record as to the specific

> amounts of savings that IP will achieve after closing, <u>Ameren has agreed to measures to assure that IP is taking adequate steps to produce savings and to impose quantifiable measures to insure that rates are not increased if savings fail to materialize</u>." (ICC Docket No. 04-0294, Order, September 22, 2004, p. 24)

Mr. Gorman asserts that the Company has not met its commitments with respect to the estimated synergy savings based on information provided in direct testimony, which shows that the estimated synergy savings had not yet been achieved.

Mr. Porter explained that the portion of the Commission Order in Docket 04-0294 cited by Mr. Gorman refers to Commitments 19 through 25 of Appendix A to the Order. Commitments 21 through 23 address the treatment of synergy savings for purposes of setting rates:

> 21. In its next electric rate case and next gas rate case, IP will file as a component of its initial filing a report (verified by a witness in the case) detailing the milestones achieved as well as other identified savings. The verified report shall provide information current as of the time of the rate filing.
>
> 22. In IP's next electric rate case and next gas rate case, for all Associated Savings Amounts not reflected in the proposed test year, the Commission may reduce O&M expenses by the jurisdictional (i.e., electric vs. gas) portion of any Associated Savings Amount ("Jurisdictional O&M Reduction") for any milestone that IP has not achieved or cannot demonstrate that it is reasonably certain to achieve by the time the rates approved in that case go into effect…
>
> 23. In IP's next electric rate case and next gas rate case, IP will allocate Associated Savings Amounts on a basis consistent with the underlying O&M expenses to which they relate.

Resp. Ex. 32.0, pp. 8-11.

Mr. Porter provided the status of each milestone related to synergy savings, satisfying the terms of Commitment 21. Commitment 22 has been satisfied as shown in the Company's Schedule C-2, which includes a reduction to test year revenue requirements for savings not yet achieved, thus ensuring that all Associated Savings Amounts are reflected in the proposed test year. Commitment 23 has been satisfied as shown in the Company's Schedule C-2.4, in which savings are allocated to O&M accounts based on the costs to which the savings relate. Moreover, these savings were not offset by changes in the allocation of A&G costs from AMS to AmerenIP because the A&G costs allocated by AMS to AmerenIP are less than those that might have been allocated by Dynegy had the acquisition not occurred, based on historical costs. Id.

Mr. Gorman proposed a reduction to the Company's proposed amortization of acquisition cost regulatory asset. The Commission Order in Docket 04-0294 address treatment of these costs:

> "…the proposed allocation of savings and costs is reasonable, and that establishment of a regulatory asset of up to $67 million, to be amortized over the period 2007-2010, is acceptable and should be approved, subject to the conditions proposed by Staff and set forth in Paragraph 11 of Appendix A to this Order."

Paragraph 11 of Appendix A states that:

> "Except to the extent reflected in the regulatory asset approved in this Order, IP will not seek recovery in rate proceedings of: (i) the stock issuance costs associated with the equity issued by Ameren to acquire IP; (ii) the severance and relocation costs associated with the integration of IP into Ameren; (iii) the implementation costs associated with integration of IP into Ameren; (iv) any acquisition adjustment associated with the acquisition of IP by

> Ameren; and (v) any debt redemption costs associated with the recapitalization of IP described in Applicants' Ex. 24.1."

The record shows that the Company met the conditions of this commitment as it relates to this proceeding.. The Company has not included in its requested revenue requirement any of the costs proscribed by Paragraph 11. Resp. Ex. 32.0, pp. 8-11. Accordingly, there is no basis for IIEC's adjustment and it should rejected.

G. Other

III. RATE OF RETURN

A. Summary of Uncontested/Settled Issues

A summary of all uncontested and settled issues is listed in the Ameren Companies' proposed order, which is being filed the day after filing of this brief.

B. Capital Structure

The Ameren Companies addressed cost of capital issues extensively in their initial brief. Certain positions taken in other parties' briefs, however, merit additional comment. Our decision not to respond to any particular statement or position should not be construed as agreement with that statement or position.

1. Capital Structure Measurement Period

Please see discussion in this section at page 74 of the Ameren Companies' Initial Brief.

2. Imputed Capital Structure

CUB and IIEC argue that the Commission should impute capital structures in this case reflecting less equity than the Ameren Companies have reflected. Their argument is at its core the same: the Ameren Companies could support more debt while maintaining adequate credit ratings, so that debt should be assumed for ratemaking purposes.

The Ameren Companies readily agree that a capital structure should reflect a reasonable mix of equity and debt, and further that there may arise circumstances in which a regulatory agency could properly find that a utility has too much equity and as a result impute capital structure reflecting more debt. Such circumstances are not present here, however.

The Ameren Companies addressed the CUB and IIEC proposals extensively in our initial brief. We wish to emphasize one point here: there is no basis for concluding that the Ameren Companies could support the capital structures recommended by CUB and IIEC and still maintain their credit ratings. As we have explained, the Ameren Companies are uncomfortably close to falling below investment grade ratings with their current capital structures. That is, even at the current levels of debt – which CUB and IIEC say are too low – the Ameren Companies are barely investment grade. We cannot realistically assume the level of debt that CUB and IIEC say we can. Hence, we need the level of equity we have, and we are entitled to earn a return on it. The recent Moody's release shows that there is little room for error – thus, it would not be reasonable for the Company to assume large amounts of additional debt (if they even could), and the Commission should not assume for ratemaking purposes that it would be reasonable.

3. CILCO $4.64 Preferred Stock Expense

Please see discussion at p. 82 of the Ameren Companies' Initial Brief.

C. Measurement Date of Short-term and Variable Interest Rates

Please see discussion at p. 83 of the Ameren Companies' Initial Brief.

D. Cost of Illinois Power TFTNs

Please see discussion at p. 88 of the Ameren Companies' Initial Brief.

E. Cost of Equity

1. Reply to Staff

The Ameren Companies responded to Staff's testimony in the rebuttal and surrebuttal testimony of Ms. McShane, and will not belabor the matter here. However, there is one point that the Ameren Companies wish to address. As explained in our initial brief, Ms. Freetly adjusted downward the recommended return on equity for each of the Companies because, in her view, each was relatively lower risk than the companies in her sample group. As we also explained in our initial brief, she reached this conclusion by comparing hypothetical future credit ratings for each of the Companies (based on Ms. Freetly's view of the effect of the order in this case) with the average actual credit ratings of the sample.

The Ameren Companies showed that Ms. Freetly's assumed credit ratings bear no connection to reality. First, as Mr. Nickloy explained, use of the rating agency formulas alone is not a complete or appropriate basis for forecasting a credit rating. Second, Moody's downgrade of the Ameren Companies shows that the Companies' ratings are moving in the opposite direction of where Ms. Freetly believes they are headed, and they are moving that way for reasons that have nothing to do with, and that cannot be remedied by, this proceeding. No action that the Commission can take in this proceeding can relieve the pressure on the Companies' ratings, which is coming from the Companies' power supply acquisition.

The Staff tries to soften the blow of the Moody's action on its theory by arguing that it has already taken that into account by limiting its analysis to companies with a business score of "4". This argument doesn't get the job done. Apart from other problems, it still does not explain why the Commission should conclude that its order in this case will produce credit ratings above the sample average when the Companies' real ratings are below the sample average for reasons that have nothing to do with this case. Plainly, rote application of the ratings formulas will not boost the Companies' ratings, or they would be higher today than they are.

Moreover, a business score is not the sole criterion for or measure of risk. There is no reasonable basis for concluding that the Ameren Companies are less risky than the sample because they have the same business score. The ratings agencies clearly don't see the Companies as less risky, or the Companies would carry different (and higher) credit ratings.

The Staff can't have it both ways: they can't argue that the Companies will be less risky than the sample because (Staff believes) they will have higher credit ratings, while arguing at the same time that the Companies' lower credit ratings don't matter because the Companies have the same business score. The Staff has not contended that the Companies' business score in the future will be any different, so it follows (using the Staff's reasoning) that the Companies will face no different set of business risks than the sample, and thus is not less risky.

Lastly, Ms. McShane pointed out that a difference in risk doesn't necessarily translate into a difference in required return. She explained that the DCF analysis isn't necessarily sensitive enough to pick up this type of difference in risk. To further illustrate this point, she took all the utilities that were in the utility samples of the five direct cost of capital testimonies filed in this proceeding, and calculated their DCF cost using the annual constant growth DCF model, the stock price as of April 4, 2006 (the same date used by Ms. Freetly in her DCF test), the most recent dividend paid prior to that date, and the I/B/E/S consensus forecast of earnings growth for each utility at the end of March 2006. She then sorted the utilities by their April 7, 2006 S&P bond rating. Next, she calculated the mean and median DCF costs for all of the utilities with a debt rating of BBB-, BBB, and BBB+, and the mean and median debt costs of all of the utilities with a debt rating of A-, A, or A+. The mean and median DCF costs for the utilities rated in the BBB category were 9.5% and 8.7% respectively; the mean and median DCF costs for the utilities with ratings in the A category were 9.7% and 9.1% respectively (*See* Resp. Ex. 33.0, Schedule 2). In other words, the estimated DCF costs were higher for the less risky companies. Thus Ms. Freetly's deduction from her sample's DCF cost of equity for the alleged relatively lower risk of the Ameren utilities cannot be empirically justified. (Resp. Ex. 33.0, pp. 5-6.)

If the Commission chooses to adopt Staff's cost of equity analysis, it should reject the Staff's adjustment to the results to reflect the so-called difference in risk. That adjustment is unfounded, and rests entirely on Staff's conjecture that the rates approved in this case will make the Ameren Companies less risky than the sample, when the evidence of record shows that the Ameren Companies are in fact at best of the same risk as the sample (business score) or riskier (credit ratings).

2. Reply to CUB

CUB witness Bodmer submitted testimony in this proceeding that recommended a strikingly low ROE, based on three points: 1) utilities have hoodwinked regulatory commissions into giving them high returns by complicating the process, using hired guns who will testify to anything; 2) business risks are lower than those assumed by Ms. McShane; and 3) a better measure of the cost of equity capital is that used by investment banks to discount future cash flows in merger situations. CUB's brief abandons much of Mr. Bodmer's testimony, and for good reason.

At hearing, we established as groundless Mr. Bodmer's starting point – his complaint that utilities have hijacked the regulatory process and used paid consultants to fool regulators. He conceded on cross-examination that, in fact, for at least the last few decades the Commission has consistently rejected the Companies' proposed ROEs and adopted those proposed by the Staff. Accordingly, Mr. Bodmer's explanation for how and why regulatory commissions have approved ROEs higher than he likes collapsed. It has nothing to do with deceptive utility presentations, and everything to do with the Commission's like for the Staff's analysis.

CUB now tries to spin the exchange between Mr. Bodmer and the Companies' counsel as an admission that the Companies consistently overestimate the ROE, rather than as a demonstration that Mr. Bodmer's presentation is long on lurid accusation and short on facts. To the contrary, it shows only that the Commission is comfortable with a particular analytical approach used by Staff. We – and CUB – are free to propose different or modified approaches, and that is what we have done (albeit without success).

While CUB argues at length with the Companies' position, CUB makes no effort in its brief to discredit the Staff's position. Hence, CUB can offer no reason why the Commission should abandon the Staff approach that it has repeatedly endorsed. Taking aim at the losing party's theory (i.e., ours) in the last 25 years of rate cases does nothing to explain the infirmity of the winning party's theory (i.e., Staff's).

All CUB is left with is its investment banking argument – i.e., that the "real" return on equity is something around 8% because that's what investment bankers think it is. That assertion is based on the sparsest of evidence.

Mr. Bodmer's conclusion does not follow from the document on which he relies. He quotes from a letter from Lehman Brothers regarding the "multi-billion dollar merger between Exelon and PSE&G first proposed in 2004." The specific statement in the letter is that "regulatory authorized ROEs are typically more than 300 or more basis points more than the discount rates used in investment bank fairness opinions."

There are numerous problems with Mr. Bodmer's position. First, he uses a statement from a document involving the merger of two entities not in this proceeding and utterly unrelated to any party in this proceeding, and makes no effort to demonstrate that it relates equally to the Ameren Companies. Second, he makes no effort to show that the assertion in the document is correct. Third, he does not demonstrate that, even if the statement is correct, regulatory ROEs should be reduced.

Lastly, CUB's conclusion cannot explain away Staff's analysis: "CUB suggests that the judgment of bankers, who are more closely attuned to investor expectations, should be substituted for the judgment of consultants hired by utility companies." Again, CUB makes the issue one of bias. But as we explained at the outset, and as CUB now agrees, the Commission routinely ignores us and listens to the Staff. We have no reason to believe that Staff is biased toward us. Mr. Bodmer readily agreed that the Staff is not paid by utilities and does not benefit financially from decisions favorable to utilities. Why then would the Commission conclude that a single statement from a party not present about a merger that may never occur involving parties not involved in this case provides greater insight into the cost of equity than the analysis employed by the Staff and long favored by the Commission? The answer is that the Commission wouldn't reach such a conclusion, and shouldn't here.

3. Reply to IIEC and Champaign et al.

The Ameren Companies believe they have already adequately addressed the positions of these parties in their Initial Brief.

F. Other

G. Recommended Return on Rate Base

IV. RATE DESIGN

A. Summary of Uncontested/Settled Issues

Staff has fairly described a number of settled or uncontested issues between it and the Ameren Companies. (ICC Staff Br., pp.126-134) In addition, we agree with Staff's description of the understanding reached regarding reactive demand charges. (ICC Staff. Br., p. 134)

B. Customer Class Issues

1. General Discussion

2. Wal-Mart Recommendation Regarding Separate Rate Classes

Wal-Mart continues to advocate the creation of two subclasses within the DS-3 customer classification (a category for 150 kW-400kW, and 400kW-1,000kW (note: should be up to but not including 1,000 kW). Wal-Mart requests the Commission require the Ameren Companies to create these subclasses in their next delivery service rate cases, or after the appropriate meters are installed in the next two years. (Wal-Mart Br., p.12)

The Ameren Companies do not have a per se objection to the creation of the new subclasses but not until the interval meters are installed, and not until such time as enough data has been collected by which to better formulate revenue responsibilities, understand the load profiles of each subclass, and obtain other relevant data. Interval meters should be in place by the end of 2008 and so the earliest the subclasses could be a reality would be 2009. Finally, any creation of these subclasses will need to be commensurate with the BGS-3 rate class—the rates that provide the commodity service and are matched to the appropriate Delivery Service rate class. (Resp. Int. Br., pp.120-121; Resp. Ex. 20.0, p.4)

Therefore, the Commission's order affirming the creation of these subclasses should also affirm the need to have the requisite data in place before the new subclasses are evaluated, and if warranted, created, and recognize the need to make timely and appropriate rate design changes to BGS-3.

C. Cost of Service Issues

1. Segregation and Accounting for Delivery Service and Generation-Related Uncollectible Expenses

At page 148 of its Brief, Staff correctly describes the understanding reached between it and the Ameren Companies regarding the proposed uncollectibles rate. The same uncollectibles rate utilized for the delivery service rates would be the same uncollectible rate for the Supply Procurement Adjustment ("SPA"). (ICC Staff Br., p.148; Resp. Int. Br., p.122)

2. Development of Meter Costs v. Customer Costs

In outlining its understanding of the Ameren Companies' proposed meter costs and their comparison to the customer costs, Staff notes the metering charge varies considerably among the rate classes. (ICC Staff Br., pp.140-141) The Ameren Companies fully explained this variance, which is due to the inclusion of customer current and potential transformers within the cost basis for the Customer Charge rather than the Meter Charge. DS-3 and DS-4 customers are larger than residential and small general service customers, and are often metered at higher voltages. Metering at higher voltages requires use of current and potential transformers, raising the cost basis and proposed prices, for those Customer Charges applicable to higher voltage customers. (See Resp. Int. Br., pp.122-123; Resp. Ex. 41.0, p.17)

Continuing, the Staff does not oppose the meter cost structure and recommends the Commission direct the Ameren Companies to continually review its accounting for costs recorded in meter-related accounts, so that the potential development of the alternative meter service provider market is not impaired. (ICC Staff Br., p.141) No reasoning is provided for the requested Commission finding.

The Ameren Companies intend to monitor the accounting for such costs as part of their normal course of business and need not have the Commission make that as part of its order. Further, the Staff can, from time to time, submit data requests, asking for relevant information. In the end, there is no basis for a Commission mandate of this nature.

3. NCP vs. A&P

As to the parties who have commented on the appropriateness of the Ameren Companies' cost of service studies, only CUB opposes the use of a non-coincident peak ("NCP") demand method in favor of the Average & Peak ("A&P") demand method. IIEC states it is generally supportive of the embedded cost of service study presented by each Ameren Company in this proceeding. (IIEC Br., p.38) Similarly, the Staff states it does not object to the Ameren Companies' embedded cost of service studies. (ICC Staff Br., p.129) To summarize, the CUB proposed A&P method should be rejected because:

- It assigns costs in a manner inconsistent with the design of the distribution and the attendant system ratemaking parameters
- It is inconsistent with the Commission's prior delivery service tariff orders which are in support of the NCP method for residential delivery service tariffs
- It over-allocates costs to the non-residential class
- The CUB schedules intending to show the shift in costs to the non-residential rate class are seriously flawed

It would appear the working premise for CUB's reliance on the A&P method is not so much its advocacy for this particular cost allocation method, but because CUB takes issue with the NCP method, claiming it wrongly relies upon each customer class' one time maximum demand. CUB explains that demands imposed by ratepayers throughout the year justify the use of the A&P allocation of distribution demand facilities. (CUB Br., p.16)

Perhaps it is a matter of semantics but there can be no dispute that the distribution system must be designed and be able to deliver power supply to each customer and customer class in order to meet the maximum demand of that customer or customer class. (Resp. Ex.19.0, p.5) Stated differently, if the distribution system was not so designed, then there may be a point in time when the distribution system is incapable of delivering power supply. While it is true there may be demands imposed by ratepayers throughout the year as CUB asserts, those costs must be allocated based on the customer classes and their use of the system, that is, the maximum demand which drives the final costs to be incurred by the utility simply because it is the maximum demand that determines the size of the facilities. The NCP method assigns costs in the same manner that they are incurred by the utility, namely by using the smallest wire size, transformer and other equipment, to reliably and safely serve the peak load. The NCP method is wholly in accord with the ratemaking principle of assigning the cost to the cost causer.

There are other holes in the CUB position. The NCP is not used for all distribution accounts; only those that require the system design be based on the maximum demand. These accounts consist of, among others, the cost of poles and substations. (Tr. 326). The size and placement of a substation, for example, is driven by the need to serve a customer or group of customers according to their contribution to some peak load. The size and placement of a substation is not driven by energy usage. These costs are "fixed" and do not vary with usage.

Therefore, regardless of the energy usage throughout the year, these fixed distribution costs do not change. Yet, the use of the A&P allocation methodology will, because it does rely upon energy usage to allocate fixed distribution costs, unfairly reallocates cost even though the demands imposed by customers are the same. (Resp. Ex. 19.0, pp. 5-7)

In its discussion regarding the minimum distribution system study proposed by Wal-Mart and IIEC, CUB refers to a NARUC Committee sponsored paper titled "Charging for Distribution Utility Service: Issues in Rate Design". (CUB Br., p.19) To the best of our knowledge, that paper was not introduced as evidence in the record, nor relied upon by a CUB witness in testimony. To the extent the Commission should find it appropriate to rely upon that study, the Commission should also know the study actually supports the NCP method. Under the section titled "2. Embedded Costs", the author's state,

> "For costing purposes it is the relevant subsystem's (substation, feeder, etc.?) peak that matters, but these peaks may or may not be coincident with each other or with the overall system's peak. There can be significant variation among them. Consequently, one practice is to allocate the cost of substations and primary feeders (which usually enjoy relatively high load factors) to customer class non-coincident peaks and to allocate secondary feeders and line transformers (with lower load factors) to an individual customer's maximum demand."

Incidentally, nowhere in the study is there any discussion about the appropriateness of the A&P method.

CUB's cross examination of Ameren Companies' witness Philip Difani demonstrated further the propriety of using the NCP method to allocate certain distribution system costs. Mr. Difani was posed a hypothetical as follows:

> Q. …Let's say I am a residential customer and under this hypothetical the system is designed so that if I only wanted to use the electric distribution system or access it during the peak demand period for my class, I could do so, correct?

A. That’s the intent, yes.

Q. So under my hypothetical it really would not matter whether I chose not to access the system any other point in time throughout the calendar year, correct?

A. That is correct.

(Tr. 305)

This dialogue demonstrates that the NCP method allocates costs based on a distribution system that Is designed and built to accommodate a customer’s maximum load regardless of whether that customer experiences said demand only once during the year. Conversely, energy usage, a heavily relied upon factor in the A&P method, distorts the allocation of fixed distribution costs and ignores the fact that the system is designed and built (the cost) to accommodate the cost causer.

We explained in the initial brief the flaws in the CUB cost study that became apparent during the hearings. Notably, CUB does not attempt to resurrect its exhibits in its brief that purported to show the Commission the shift in revenues from residential to non-residential customers. (Resp. Int. Br., pp.125-126) As of this stage of the record, the Commission cannot know the full impact of the CUB proposal. There is no agreement (or understanding) as to how the A&P method should be calculated. In sum, CUB has not advanced any persuasive arguments for the Commission to now change course.

D. Inter-Class Allocation Issues

1. Allocation Methodology

a. Staff Position

Staff repeats its argument presented in testimony that the rates for AmerenCILCO's DS-2 class should increase to 4.51% instead of 13.02%. Staff's states its recommendation to limit the increase to AmerenCILCO's DS-2 class, is to ensure against rate shock. Another argument prompted is that the increase in AmerenCILCO DS-2 rates is disproportionate when compared to the reduction in rates for the AmerenCILCO DS-1 and AmerenCILCO DS-3 classes. (ICC Staff Br., pp.141-142)

The goal of mitigating rate shock to a customer class is one worth pursuing. Fairness would suggest the same goal be for all classes where practicable. While the Staff proposal mitigates the rate impact for the AmerenCILCO DS-2 class, it creates undue rate shock to the DS-3 class. The DS-3 rates for AmerenCILCO are already proposed to increase by more than 80%, or by 13% when including an estimate of the cost of power. (Resp. Ex. 20.0, p.7) Under the Staff proposal, DS-3 customers will see an increase from 13.02% to more than 26%, which would require an increase of more than 55% to the Distribution Delivery Charges proposed by the Ameren Company. (Resp. Ex. 41.0, p.3) Staff's brief is completely silent as to why rate shock to the DS-3 class is justified.

Staff also fails to understand the totality of the Ameren Company revenue redistribution approach. The Ameren Companies' revenue allocation methodology ensures that the DS-1, DS-2, and DS-3 classes each receive an equal increase when comparing present rebundled revenues to proposed rebundled revenues, or an approximate increase of 13%. (Resp. Ex. 20.0, p.7) Staff's recommendation distorts this methodology and moves the DS-3 class above the 13% average, and undermines the objective of achieving an average bundled rate increase for these classes.

Turning to the topic of including the DS-4 rate class as part of the DS-1 through DS-3 revenue allocation methodology, Ms. Harden had testified the revenue allocation methodology (DS- through DS-3) was appropriate for AmerenIP, AmerenCIPS, and AmerenCILCO (with the caveat regarding the DS-2 and DS-3 rate class for AmerenCILCO addressed above). She affirmed that "…it is reasonable to balance the increase for the three classes [DS-1 through DS-3] without causing rate shock for any one particular rate class". (ICC Staff Ex. 7.0, p.7) Later in her rebuttal testimony, she states again that the revenue methodology for AmerenIP and AmerenCIPS reasonably balances the increase for the three classes without causing rate shock for any one particular rate class (but again holding to her position regarding the AmerenCILCO DS-2 and DS-3 issue). (ICC Staff Ex. 18.0, p.2) In rebuttal, the parties first learned Staff witness Mike Luth would be upholding the Kroger position, and support including the DS-4 rate class as part of the DS-1 through DS-3 revenue allocation methodology, seemingly in conflict with Ms. Harden's stated position. (See ICC Staff Br., pp.134-140) We address below the impropriety of the Kroger (and Staff) position.

b. Kroger Position

Once the innuendo and rhetoric is disposed with as well as the narrow interpretation of Illinois law, Kroger finally takes the position that if all non-subsidized customer classes should be called upon to subsidize the DS-1 class, then the DS-4 rate class should also bear some of this cost responsibility. (Kroger comes to this conclusion despite its erroneous arguments that the Commission as a matter of law cannot set rates based on anything but cost of service. The Commission knows well that in setting just and reasonable rates, a variety of factors may come into play, such as rate shock, rate continuity, and the like.).

The Ameren Companies excluded DS-4 from the DS-1 through DS-3 revenue allocation methodology because the DS-4 delivery service rate contribution, as a percentage of the total bill, is much smaller than it is for the other rate classes. This is not disputed by Kroger. Mr. Jones pointed to Respondents' Exhibit 20.0, Schedule 20.1, where it shows the AmerenIP DS-4 class contributing 7% to the total deliver service revenue requirement, but is to already receive a 109% increase in rates. Including the DS-4 rate class as part of the average rebundled formula (DS-1 through DS-3) would result in an increase in AmerenIP DS-4 rates of about 415%. (Resp. Ex.20.0, p.7) We believe this is a result that should be avoided.

Kroger re-states its argument from testimony that the demand charge for the DS-3 and DS-4 rates should be established on a common basis. (Kroger Br., pp.2-5) The Kroger arguments can best be summarized as follows:

- Kroger claims the differences in the Distribution Delivery Service charges for DS-3 and DS-4 cannot be justified by cost of service.
- Kroger claims there remains an incentive for customers with demands less than 1,000 kW to raise their demand above 1,000 kW in order to gain access to the lower DS-4 rates.

The Ameren Companies thoroughly debunked the Kroger position, that there would be an incentive to move to DS-4. Customers will not be so incented because 1) it is unknown whether they can increase their demand during a later period of time 2) by increasing their demand they will pay the higher Distribution Delivery Charge for the month and higher Transformation Charges for the remaining year 3) and they will have different supply options. (Resp. Int. Br., p.130) None of these consequences have been challenged in the record.

In terms of whether it is appropriate to create a "joint cost of service" for these charges, it may be appropriate to do so in the long term, however, doing so now would result in unacceptable results to the DS-4 rate classes. (Resp. Ex. 20.0, p.4)

c. Wal-Mart Position

Wal-Mart opposes Kroger's proposal to combine the DS-3 and DS-4 customer classes demand charges. Relying upon IIEC witness Robert Stephens's testimony, Wal-Mart asserts that combining these classes inaccurately combines too many dissimilar types of customers with different demand response behaviors and creates too broad of a category for customer classification. It is also asserted that combining the two customer classes would allow gross over-collection of revenues from the DS-4 customers. (Wal-Mart Br., p.10) The Ameren Companies are in agreement with regard to Wal-Mart's assertions pertaining to the Kroger proposal.

d. CUB Position

CUB argues the Commission should set a lower rate of return for the Ameren Companies' residential and government classes based on the false premise that these customers are less risky to serve than other customer classes. (CUB Br., pp.20-22)

The Ameren Companies thoroughly rebutted the arguments of CUB, which are only now briefly mentioned at page 21 of CUB's brief, and so the rebuttal arguments will not be repeated. (Resp. Int. Br., pp.131-132) CUB, though, offers another argument without citation to the record, that is, large commercial and industrial customers are able to take advantage of real time energy prices and, thus, can reduce their consumption as prices rise whereas residential customers cannot make those same adjustments. (CUB Br., p.21)

Strangely, CUB who is a proponent of residential RTP and knows full well that the Commission approved a residential RTP service offering in the Ameren Companies competitive procurement auction dockets, and also knows of the existence of Public Act 94-0977 calling for a residential RTP tariff, should then know that residential customers will also have the very same opportunity to take advantage of real time energy prices. Would it follow, then, that residential customers will be able to reduce their consumption? Nonetheless, CUB has presented no empirical evidence to support its argument, or an argument grounded in logic, and if nothing else, the evidence in the record simply proves the opposite.

e. AG Position

The AG contends the Ameren Companies' rate design hides the impacts associated with the change in delivery service rates. The AG's arguments miss the mark. (AG Br., pp.22-23)

The vast, vast majority of Ameren Companies' customers does not take third party supply, and currently remain on legacy bundled rates. To this there is no dispute. In order for our customers to understand the rate impact associated with the delivery service rate cases, it makes abundant sense to place in the record the resulting effects on the "bundled rate" associated with the change in the delivery service rates. Even so, the Ameren Companies did, in fact, present information that compares the current delivery service rate with the proposed delivery service rate. (Resp. Ex. 2.0., p.10) So for the AG, and even Kroger, to suggest or imply there was some hidden agenda by the Ameren Companies, is nothing more than a red herring.

The AG goes on about residential rate increases and the "median customer's energy usage" and the like. These are delivery service rate cases, not the Basic Generation Service rate cases. These rate design considerations have already been addressed by the Commission. (Resp. Ex. 20.0, pp.10-11)

Finally, the AG prattles on about annual increases throughout its brief, for example, claiming annual increases of 57% for AmerenIP. (AG Br., pp. 23-24) The AG's numbers were shown as false. Mr. Jones testified the AG double counted the AmerenIP Customer Charge on the "proposed" side, thus inflating the amount and percentage increases. (Tr. at 904)

2. Minimum Distribution System Study

Wal-Mart requests the Commission modify the Ameren Companies' allocation of related costs in Plant Accounts 364-368 in this proceeding. IIEC requests that the Commission order the Ameren Companies to include this component in their next delivery service rate cases, or at the least, make available to the parties the results of the analysis. The Staff and CUB oppose the use of the minimum distribution system study as part of a cost of service study. (ICC Staff Br., pp.142-144; CUB Br., pp.17-19)

As set forth in the Ameren Companies' brief, we believe there is merit to the minimum distribution system study as part of a cost of service study. The Ameren Companies are willing to include this analysis as part of their cost of service study in the next delivery service rate cases, if the Commission does intend to incorporate the results of same as part of an approved cost of service study. However, we disagree the study should be prepared for the sake of a party's interest in its results as it is time consuming to prepare such a study, and to this there is no debate. (IIEC Br., p.44)

The Ameren Companies do oppose the inclusion of the results from the Wal-Mart analysis part of these proceedings. As explained by Mr. Jones, a simple re-allocation of Plant Account costs without a more complete understanding of the revenue requirement responsibilities among rate classes creates an uncertainty that the Commission should not endorse at this time. (Resp. Ex. 20.0, p.4)

Staff generally takes the position that the Commission should not endorse the minimum distribution system study because it has not done so in the past and Staff does not believe there is any compelling evidence in this proceeding to consider it at this time. CUB elaborates further with regard to its opposition to this aspect of a cost of service study. The CUB argument is without merit. CUB asserts the minimum distribution method fails to account for both customers connected to the system and their demands. (CUB Br., p.18) In truth the method relies on the assumption that there is a minimum-size distribution system to serve customers' minimum needs. Mr. James Selecky testified the method examines "…the smallest size pole, conductor, cable, and transformer..." (Wal-Mart Ex. No. 1, p.18) Hence, this minimum sized system is by both customer and demand driven.

E. Rider QF

The Commission should be keenly aware the Staff position distorts the price for RTP-L customers. If the Commission expects RTP to be a legitimate power supply option, it needs to fully comprehend the effect of the Staff recommendation.

The premise for Staff's recommendation of a fixed price compensation option centers around Mr. Rockrohr's unsubstantiated beliefs this would be "very helpful to the small QF operators/owners" and that the pricing as proposed "…could be confusing and could appear to be arbitrary". (ICC Staff Br., p.145) There is no factual basis to support Mr. Rockrohr's conclusions. His opinions are a matter of pure speculation. (Resp. Int. Br., p.135) Mr. Rockrohr did not point to one aspect of Rider QF that he could contend on its face was confusing.

As mentioned above, the Ameren Companies express a very valid concern, that the pricing mechanism proposed by Staff will distort the price of Rider RTP-L. Staff does not dispute this phenomenon. Staff only offers that over time a fixed price option would have little effect on the energy costs these customers would pay. Staff then goes on to claim that the auction results, among other data sources, should be taken into account in determining the fixed price to include in Rider QF. (ICC Staff Br., p.146)

Somehow, without explanation, Staff wrongly believes assembling various data points in determining the "avoided cost" will result in Rider RTP-L customers paying the correct cost of service. We are not sure how that could be as it would see only by random chance the resultant fixed QF price will equal the utility's avoided cost. Whatever the price eventually paid for RTP-L service will not undermine the fact that Rider RTP-L customers will pay a price that is higher or lower than they should. In the end, Staff has not and cannot support its claim that "over time" Rider RTP-L customers will be indifferent.

F. Supply Procurement Adjustment

1. Recovery of Supply-Related Costs

Staff has correctly described the understanding reached between it and the Ameren Companies as it relates to the allocation of costs among the Ameren Companies, as well as the use of the proposed cash working capital rate of .3080% associated with power supply, with the caveat that the rate be recalculated in future rate cases. (ICC Staff Br., p.147)

2. Amount of Supply-Related Costs

Explained in the Ameren Companies brief, and confirmed by the Staff, there is no dispute with regard to the original total costs in the amount of $812,857 being recovered through the SPA. (Resp. Int. Br., p.138) For clarification, currently this amount represents the labor and benefit of those personnel that are directly involved in preparing for and assisting in the competitive procurement auction. (AmerenIP Ex. 6.0S, p.2)

Where Staff and the Ameren Companies differ is with regard to the treatment of BGS tariff support costs being recovered through the SPA. BGS tariff support costs are in the nature of costs and expenses that were incurred in preparing the Ameren Companies' basic generation service tariff filings and other related matters with respect to the competitive procurement auction. The Ameren Companies contend the BGS tariff support costs should be recovered through delivery service rates whereas Staff takes the position that only substantiated BGS tariff support costs should be recovered through the SPA. CNE/PES, in turn, would like to see these costs recovered through the SPA.

In the event the Commission finds in favor of Staff's proposal to recover BGS tariff support costs through the SPA rather than through delivery service rates, the Ameren Companies agree that the amount to be recovered should be amortized over a three year period. The appropriate amount of BGS tariff support costs to be recovered are in the amount of $2,717,000, (Resp. Ex. 36.5, Schedule 1, p.2 of 2) and when amortized over three years, is in the annual amount of $905,667.

As between CNE/PES and the Staff, apparently each misunderstands the other's position. CNE/PES suggests they and Staff agree that the Ameren Companies improperly shifted expenses related to the procurement proceedings and supply related costs from the supply customers to the delivery service customers. (CNE/PES Br., p.8) In contrast, Staff asserts CNE/PES has identified additional costs as being procurement related but that Staff does not agree those costs have been adequately identified as being procurement related. (ICC Staff Br., p.149) The Ameren Companies agree with Staff that CNE/PES has not adequately identified these costs as being procurement related.

The basis for the CNE/PES position is that the procurement BGS tariff costs support is for the benefit of supply customers. (CNE/PES Br., pp.8-10) What CNE/PES fails to understand or acknowledge, is that the Ameren Companies are the provider of last resort in the context of being delivery service companies. It is in this capacity as delivery service utilities that we are obligated to procure power supply for those customers who are without third party supply. The Ameren Companies do not compete for customers in terms of providing them power supply and, in the end, only perform the function of providing power supply as delivery service companies. Further substantiation that these costs are properly allocated to delivery service rates, it is in the recognition of "choice" of retail supply by customers. Customers have and will continue to have opportunities to procure third party supply. If they choose not to take third party supply, they can come back to the delivery service provider who offers a limited number of supply options.

CNE/PES truly misunderstands or narrowly interprets the Ameren Companies role as delivery service companies. They state all the costs to be recovered are those that relate to the "…maintenance of the Companies' distribution infrastructure." (CNE/PES Br., p.10) The undisputed facts are that the Ameren Companies are much more. They have to, as a matter of law, procure power. They are required to arrange for the transmission and delivery of this power. They have call centers and billing systems, and they do these things as delivery service companies. In summary, the CNE/PES broad-brush approach to cost allocation remains unsubstantiated.

In addition, both Staff witness Lazare and IIEC witness Chalfant have assigned costs on the books of the Ameren Companies to the generation/production business line. To the extent the Commission adopts Mr. Lazare or Mr. Chalfant's position in whole or in part, a determination would need to be made as to whether such costs are includable as costs assigned to the power supply administration function in accordance with the express language of the SPA. (Resp. Ex. 36.0, p.46)

3. SPA Tracking Through the Market Value Adjustment Factor

The Ameren Companies outlined in great detail the propriety of tracking the SPA costs through the Market Value Adjustment Factor ("Rider MVAF"). (Resp. Int. Br., pp.139-140) Staff's meager rebuttal should not win the day as to this particular topic. Staff pins its hopes on the fact the Ameren Companies cannot offer an estimate of any customer switching level that may occur. (ICC Staff Br., p.151).

It matters little whether an estimate could or could not have been provided. What does matter is that there will be some customer switching, and this is not in dispute. Because there will be some customer switching, there will not be a proper tracking of the SPA costs.

The Ameren Companies are fully aware of the notion that costs and expenses fluctuate over the course of time so that it is not a given an increase in a specific cost will necessarily result in the utility not earning its authorized rate of return, however, that is not the case with regard to the SPA costs. It is anticipated the transition to market based power and energy rates could result in significant customer switching to third party supply. Since the advent of the Customer Choice Law in 1997, the Ameren Companies have experienced limited customer switching likely due to the below market level of existing rates. Now, even under the guidance offered by Ms. Ebrey – that the relationship between cost and the level of service reflected in the rate should remain within appropriate parameters -- it is fair to reason there will not be an appropriate match between SPA costs and the level of service. (Resp. Ex. 18.0, pp.5-6) Right from the start, the Ameren Companies will not be recovering their cost of service.

In our view, there is no downside to accepting this tracking proposal. The utilities are only recovering the cost they incur, nothing more, nothing less. And given the nature of thee costs and they fact there is little, if any, to judge consumer behavior, at least at this juncture it is better to error on the side of caution.

G. Line Extension Refunds

The Ameren Companies disagree with Staff's position that the shorter period of time for refunds (five years instead of 10 years) coupled with the options described in testimony and as outlined in the brief, (Resp. Int. Br., p.141) is less favorable than only the 10 year refund period. Despite Staff's general opposition, it does acknowledge that some aspects of the proposal may be more favorable to some non-residential customers, and does agree that under some circumstances benefits could be realized. (See ICC Staff Br., p.154)

In the event the Commission does not approve the Ameren Companies initial proposal, then the Staff description of the alternative extension provision is acceptable. In its brief, Staff acknowledges the Ameren Companies conditionally proposed that in the initial proposal was rejected, then the proposed refund period from five to 10 years for applicants who are required to pay refunded deposits for line extensions, and where the Ameren Companies would continue to offer line extension options in lieu of Part 410, would be acceptable. (ICC Staff Br., p.156)

H. Residential RTP Program

In its Initial Brief, CUB offered support for the Ameren Companies' proposed Rider ESP. (CUB Br., p.22) The Staff takes issue with Rider ESP, arguing it is not responsive to Public Act 94-0977 and, therefore, Staff does not recommend approval of the rider. (ICC Staff Br., p.158)

Staff's opposition, in part, is with regard to its belief that there has not been a net benefits calculation. Ameren Company witness Jones testified there could likely be a reduction in wholesale market prices, due to RTP which is one of the considerations in Section 16-107(b)(5) of the Act. Specifically, assuming the RTP program goes forward, it will incent residential customers to alter their consumption behavior. For example, if the price for power and energy is, say, at 11 cents per kWh during the hours of 4 pm to 7 pm, and then it is reduced to 7 cents per kWh after 7 pm, customers interested in lowering their total bill will alter their behavior and limit consumption during the peak hours and increase consumption during the off-peak hours. Mr. Jones explains the suppliers bidding into the competitive procurement auction will take note of the altering behavior by residential customers and bid accordingly. Meaning, if the amount of load being consumed during the peak hours is now less than what it has been historically, the bid price will be lower and all residential customers will benefit. (Resp. Ex. 4.0, pp.31-32)

Obviously the Commission will have to decide whether the record supports a tariff in compliance with the new legislation. To the extent Rider ESP is rejected, the Ameren Companies will undertake whatever action is required to meet their obligations under the law.

I. Uniform Lighting Rates for AmerenIP

In its Initial Brief the Cities correctly cite the surrebuttal testimony of Mr. Jones whereby AmerenIP agrees the subsidy from the Street Lighting service should be removed and that the pricing differences under the DS-5 rate only distinguish between mercury vapor and sodium vapor fixtures. (Cities Br., pp.12-13) The Cities are also correct that based on the testimony and evidence submitted in the record, and the briefs submitted by the parties, this is an uncontested issue.

V. MISCELLANEOUS SERVICES ISSUES

A. Line and Service Extensions

B. Metering Services

Regardless of how broad the Commission's authority is to regulate the Ameren Companies' rates, services and practices, one thing is clear: the Commission has no authority, statutory or otherwise, to arbitrate labor disputes between utilities and their employees. (Docket No. 03-0767, Order on Reh'rg of Apr. 5, 2006, at 3.) IBEW's initial brief confirms that this is exactly what their case is: a labor dispute. Simply stated, IBEW does not want non-Ameren

Company personnel to exchange electric meters or allow customers to install their own conduit or line extensions because these practices may result in less work for IBEW members. According to IBEW, "IBEW journeymen linemen have installed and maintained the State's electric generating, transmission, and distribution systems for decades, including line and service extensions." (IBEW Br., p. 7.) Likewise, IBEW claims, " It is beyond question that IBEW journeymen are highly qualified individuals who have completed several years of apprenticeship training, and possess the requisite skills and experience to install and maintain these systems."(*Id.*) IBEW concludes that if the tariffs are approved, they will "have a significant and detrimental impact on IBEW personnel" in the form of lost wages and fewer jobs. (*Id.* at p. 19.) These are the very same issues that have already been (or currently are) the subject of labor grievances. (Tr. at 634, 659.) IBEW's intervention in this case is simply a continuation of the same old grievances in a new forum.

As in every other filing that IBEW has made in this case, the IBEW initial brief focuses almost solely on labor jurisdictional matters, such as a comparison of qualifications between Ameren and non-Ameren employees; evolution in Company practices about who has historically has been allowed to do what kind of work; and what kind of work Ameren employees will or will not do under the proposed tariffs. The Ameren Companies invite comparison between the IBEW's arguments in their initial brief and their arguments in Docket No. 03-0767. Even the most cursory review will reveal that the IBEW's positions there and their positions here are essentially identical. That case, like this one, involved what the Commission determined to be a labor jurisdictional dispute and therefore beyond the scope of the Public Utilities Act. Resurrecting these claims as part of a rate case does not change the fundamental character of these claims as labor disputes.

Additionally, the Companies take exception to the implicit, yet central, theme of IBEW's brief: that the only relevant consideration in determining the justness and reasonableness of the proposed tariffs is the impact those tariffs will have on IBEW members. The IBEW isn't the only stakeholder in this proceeding. The Commission also needs to consider the interests non-union employees, investors, ratepayers and the public. The Ameren Companies provided affirmative evidence that the proposed tariffs benefit ratepayers and the public. (*See* Ameren Br., p. 151 (line extension tariff developed over concern about cost and timeliness of new installations); 156 (benefits of AMR expansion include elimination of estimated bills, better outage response and better customer service). The provable benefits that the tariffs offer to the public far outweigh the speculative harm that IBEW claims will befall its members if these tariffs are approved.

In its attempt to get the Commission to review what is in essence a labor jurisdictional dispute, the IBEW cites Section 16-108 of the Customer Choice Law. The IBEW's selective reading of the statute does not, as IBEW claims, provide for Commission review of labor jurisdictional matters under the guise of a required "unbundling" review. IBEW asserts that "Ameren has proposed *new* delivery service tariffs for all three Ameren Companies" and , therefore, Section 16-108(a) applies and requires the Commission to consider the effect of unbundling on utility employees. (emphasis added.) From this the IBEW concludes the Commission has the authority to review the delivery service tariffs when they purportedly offer services on an "unbundled" basis, and to consider the criteria laid out in the last sentence of Section 16-108(a).

The problem for IBEW is that there is more to Section 16-108(a) than just the last sentence. The first several sentences of Section16-108(a) (as well as the rest of the Customer

Choice Law) make it clear that Section 16-108 applies only to the initial delivery service tariffs required by the statute. Utilities were required to file their initial delivery services tariffs "at least 210 days prior to the date that it is required to begin offering such services pursuant to this Act." 220 ILCS 5/16-108(a). Under Section 16-104(a)(1), the General Assembly mandated that delivery services tariffs be in place by October 1, 1999. The General Assembly further provided that the proceeding for approval of initial delivery service tariffs should also include a review of which services should be offered on an unbundled basis. The unbundling review that the Commission was required to undertake per Section 16-108(a) took place in Docket No. 99-0013. Although IBEW apparently reads Section 16-108(a) as requiring the Commission to consider the criteria for approval of "unbundled" services whenever a utility subsequently modifies its delivery services tariff, nothing in the statute says that. Because the present case does not involve *new* delivery service rates but instead a *change* in delivery service rates, Section 16-108(a) simply does not apply.

An additional fatal flaw in IBEW's "unbundling" argument is that the argument simply doesn't fit with the claim that allowing customers to install their own conduit constitutes "unbundling." If its doesn't "fit", the Commission must "omit," to put one light on the argument. IBEW continues to the beat the drum of "unbundling" under the mistaken belief that if they say that allowing customers to install their own conduit constitutes "unbundling" enough times, this will somehow make their statement true. But as the Ameren Companies pointed out in their initial brief, Section 16-108(a) applies only to "delivery services." (Ameren Br., p. 153.) The term delivery services has a specific, limited meaning. Under the statute, the only services of an electric utility that constitute "delivery services" are "those services . . . that are *necessary* in order for the transmission and distribution systems to function so that retail customers . . . can receive electric power and energy from suppliers other than the electric utility . . . ." 220 ILCS 5/16-102 (emphasis added.). The record in this case is clear: customers don't need conduit to receive electric service. (Tr. at 660.) In fact, service to most customers is direct-buried without the use of conduit. (*Id.*) The tariffs merely give customers the choice of digging a shallow trench and placing their own conduit in the ground if they so choose. IBEW employees will continue to install and pull the cable, just as they would if no conduit were used. (IBEW Br., p. 7.) To suggest that allowing a customer to dig a trench and lay a piece of pipe in the ground (on the customer's own property, no less) constitutes "unbundling" of an electric delivery service extends the meaning of the statute well beyond what the General Assembly intended.

IBEW's interpretation of 220 ILCS 5/16-128 is equally flawed. IBEW cites this statute for the proposition that any person performing services in any way remotely related to electric service has to have the same skill and experience as electric utility employees. (IBEW Br., p. 10.) That isn't what the statute says. Although the statute acknowledges that "the reliability and safety of the electric system has depended on a workforce of skilled and dedicated employees . . .," the point of Section 16-128(a)(3) is to ensure that alternative retail electric suppliers ("ARES") employees have "the requisite knowledge, skills, and competence to perform those functions in a safe and responsible manner . . . ." Setting aside momentarily the fact that IBEW has never argued that outside service contractors or customers installing their own conduit have to be certified as ARES suppliers, the statute doesn't say that persons performing these functions have to have the same experience as electric utility employees. The standard under the statute is "adequacy," not equivalency. Moreover, the statute expressly recognizes that restructuring of the electric industry may result in workforce reductions. To say that any tariff that results in workforce reductions is necessary unjust and unreasonable is contrary to law.

Thus, while IBEW spills a substantial amount of ink arguing that non-Ameren Company employees do not have equivalent experience in exchanging meters or installing conduit, their argument is irrelevant. All that the Ameren Companies have to demonstrate is that this work will be performed by adequately trained personnel. The Ameren Companies have met this burden. In the case of meter exchange services, Terasen employees will receive training comparable to what AmerenIP's meter changers receive. (Tr. at 656.) The AMR expansion will otherwise be performed in compliance with Part 410. (Tr. at 653-654; Resp. Ex. 30, p.7.) Similarly, conduit installations and service extensions must be installed consistent with good engineering practices and are subject to inspection by the Ameren Companies before any service inspections are made. (Resp. Ex. 51, p. 4.) The claim that the Ameren Companies "had no interest in knowing what skills its customers possessed or who installed the conduit" (IBEW Br., p. 11) is flatly contrary to the record in this case.

Even if the IBEW's labor disputes were the proper subject of a Commission proceeding – and they are not – several problems with the IBEW's arguments remain. Among these is the claim that allowing non-utility employees to exchange meters or install conduit poses a danger to the public. This claim has been thoroughly exposed as rank speculation. The only thing that IBEW really has to say in response is that the Ameren Companies are improperly trying to shift the burden of proof to IBEW. (IBEW Br., p. 13.) IBEW thus labors under the misimpression that all they have to do is lob allegations about perceived dangers to the public and the Ameren Companies must provide evidence to rebut those allegations. But that isn't how the burden of proof works. The Companies do not have the burden of proving a negative. The IBEW is the party that claims that allowing customers to install conduit or allowing outside service providers to exchange meters will endanger the public. It is IBEW's burden to present evidence to support this claim. It is not the Ameren Companies burden to prove that what IBEW says isn't true. The same can be said for the IBEW's claim that the Ameren Companies will not perform inspections of customer-installed conduit or line extensions. How can the Companies prove that they will do something in the future? All they can say is that the tariffs require compliance with good engineering practices and all work by non-Ameren Company personnel is subject to inspection. If the tariffs are approved and IBEW believes that the Ameren Companies are not performing inspections required under those tariffs, or that work is being performed in a slipshod manner, they are free to file a complaint at the Commission.

IBEW attempts to bolster its claim about the "dangers" associated with conduit installation by claiming that because their witnesses have years of field experience in installing conduit and Ameren witness Mr. Carls does not, then IBEW's testimony is entitled to more weight than Mr. Carls's. (IBEW Br., p. 13.) But Mr. Carls, in fact, has installed conduit. (Tr. at 694.) Moreover, when IBEW witness Miller was specifically asked whether any of the hazards associated with conduit trenching occurred during the 23 instances of customer-installed conduit mentioned in his testimony, Mr. Miller testified, "No Sir. I'm not aware of any." (Tr. at 643.) So, regardless of any IBEW witnesses' qualifications and experience, their testimony about what could happen if customers install their own conduit is not only speculation, it is also contrary to fact and a matter of speculation.

IBEW also still has not tied the Ameren Companies' AMR expansion to the metering services tariffs. Indeed, the metering services tariffs say nothing about the AMR expansion. So how is it that the metering services tariff is unjust or unreasonable? The IBEW can't say. The point remains, as explained in the Ameren Companies' initial brief, that neither Cellnet nor Terasen are providing metering services. (Ameren Br., pp. 158-159.) Metering services will be provided by the Ameren Companies or an MSP. The fact that the meters will contain a module that allows remote reading does not change this fundamental fact. (*See id.*, pp. 158-159.) Indeed, under the IBEW's logic that anything in any way associated with data from an electric meter constitutes a "metering service" under Part 460, there are numerous entities in this state that must also become certified under Part 460, including telecommunications providers (whose telephone and data lines transmit metering information between the customer and the Companies) and the U.S. Postal Service (which delivers bills to customers containing metering data). The Union's interpretation of "metering services" under Part 460 renders that term so broad as to be meaningless.

IBEW essentially concedes that whether outside service providers working for a utility in the utility's service are subject to Part 460 is ultimately a legal conclusion. This conclusion should be informed by the purpose of the metering service rules, not by whether Ameren Companies' union employees have more training that non-Ameren Company service providers. The metering service rules have different requirements depending on who is responsible for providing services. Where a utility provides metering services within its own service territory, the utility is ultimately responsible for those services and Part 410 applies. (*See* Docket No. 00-0182, Order of Sept. 20, 2000, at 8.) Where an MSP provides metering services, however, the MSP, not the utility, is responsible for those services and Part 460 applies. Here, as explained above, the Ameren Companies will remain responsible for metering services within its service territory. Because the Ameren Companies are the party responsible for providing service, Part 410 applies. The fact that non-Ameren Company personnel will perform a limited scope of work on behalf of the utilities does not change the fact that it is ultimately responsible for providing metering services. This is no different than where the Ameren Companies hire outside service providers to perform work on transmission or distribution facilities – the kind of work that IBEW witness Mr. Moore used to do. (Tr. at 649.) No one has ever suggested that such outside service providers have to certified before performing work for a utility. The utility is ultimately responsible for its system regardless of who does the work. The same can be said here, as the Ameren Companies are ultimately responsible for compliance with Part 410, even though non-Ameren personnel will perform some of the work. Thus, it makes no sense to subject Cellnet or Terasen to Part 460 because the Ameren companies are ultimately responsible for providing metering services under Part 410.

IBEW also claims that the metering services tariffs are "false" because "[t]he plain language of Ameren's proposed tariffs make clear that Ameren must own all meters and associated equipment." (IBEW Br., p. 29.) This argument is baseless. As explained above, the metering services tariffs do not address the AMR expansion. The metering services described in the tariff and the AMR expansion are completely different activities. The meter is the fundamental measuring device. (Tr. at 714-715.) The AMR modules do not measure consumption. (*Id.* at 715.) Rather, the modules capture data and allow this data to be transmitted wirelessly. (*Id.* at 715-716.) The AMR module is not "associated equipment" because the modules have nothing to do with measuring consumption. The tariffs are not "false" in any way.

In summary, the IBEW simply has failed to provide any basis to reject the Ameren Companies proposed line extension or metering services tariffs. The Commission should reject the IBEW's claims and approve these tariffs so that customers can begin to enjoy the benefits that these tariffs offer.

C. Vegetation Management/Tree Trimming

Staff raised certain arguments in testimony regarding the Ameren Companies' reliability, in support of its proposed "no contact" tree trimming policy. Staff raises these reliability arguments again as an issue separate from vegetation management, in subsection V.D.3. Because the large majority of Staff's testimony regarding service reliability issues focused on tree-related outages, which typically occur as a result of major storms, the Ameren Companies respond to Sections II.B, V.C and V.D.3 of Staff's brief (Staff Init. Br., pp. 161-62, pp. 164-69) together in this Section.

Staff's testimony and reliability reports (Staff Init. Br., pp. 164-69) are severely flawed, because Staff has no method of taking into account weather in determining reliability. Staff attempted to use Mr. Spencer's reliability reports as support for the proposed "no-contact" rule in testimony (*See generally,* Staff Exs. 10.0, 21.0), but have now separated the two issues in briefing, apparently recognizing the serious flaws in Mr. Spencer's reliability assessments. The record shows that the Ameren Companies' weather-normalized reliability statistics have steadily improved over Ameren Corporation's history of ownership. (Resp. Ex. 24.0., pp. 2-6.)

Significant problems in Staff's arguments are noted below.

1. Reply to Staff's Reports on Service Reliability

a. Staff's Reliability Data Does Not Take Into Account Weather-Related Events, as Required by Commission Rules.

Staff Witness James Spencer's reliability testimony on each utility (Staff Init. Br., pp. 161-62, 165-69) is extremely flawed because his methodology deliberately does not take into account weather-related outages, as is required by the Commission Rules. Part 411 of the

Commission's Rules requires that uncontrollable events, such as weather, be taken into account when evaluating a utility's reliability performance:

> The Commission recognizes that circumstances and events beyond a jurisdictional entity's control can affect reliability statistics and the interruptions experienced by customers. The Commission shall consider such circumstances and events when evaluating a jurisdictional entity's reliability performance.
>
> 83 Ill. Admin. Code Section 411.140(a)(1). Section 411.140(b)(1) further states:
>
> When assessing a jurisdictional entity's annual report, the Commission shall consider . . . .
>
> G) The reliability effects of severe weather events and other events and circumstances that may be beyond the jurisdictional entity's control.

And Section 411.140(b)(3) states:

> When assessing a jurisdictional entity's reliability performance, the Commission shall consider . . . .
>
> M) The reliability effects of severe weather events and other events and circumstances that may be beyond the jurisdictional entity's control.

83 Ill. Admin. Code Section 411.140(b)(1). Part 411 clearly does not allow for utility reliability to be measured based on uncontrollable events.

Responding to Mr. Spencer's flawed reliability statistics (*see* Staff Init. Br., pp. 165-69), Ameren Companies' witness Craig Boland testified that by using IEEE Standard 1366 for reliability assessment, the Commission could incorporate an objective means to take into account severe weather and other uncontrollable events. (Resp. Ex. 24.0, pp. 2-6.) Mr. Spencer testified in rebuttal that he does not agree with using IEEE Standard 1366, because he believes that (1) "Code Part 411 does not provide for excluding "Major Event Days" as defined in IEEE standard

1366 from the utility reliability reporting, nor does it provide for excluding major storms"; (2) taking weather-related events into account might "favor utilities with poorly maintained systems"; and (3) "customers do not know and are not especially concerned about the particular reasons for their service interruptions." (Staff Ex. 21.0, pp. 2-3.)

First, as demonstrated above, Mr. Spencer's position is directly at odds with Part 411 of the Commission's Rules, which require for uncontrollable events to be taken into account when assessing a utility's system reliability. By advocating the use of IEEE standard 1366, the Ameren Companies are merely supporting a different means of assessing overall reliability in accordance with the standards set forth in Part 411, rather than suggesting a change in the reporting requirements of Part 411. (Resp. Ex. 45.0, pp. 4.) ronically, by failing to employ any method to screen out major storms, Staff's analysis cannot distinguish poor performing utilities from those that happen to experience bad weather in any given year. This is clearly inaccurate, is directly contrary to the Commission's Rules, and fails from a practicality standpoint.

Second, as Ameren Companies' witness Craig Boland testified, the IEEE standard 1366 method does not favor poorly maintained systems, because it is designed to identify trends in reliability performance. (Resp. Ex. 45.0, pp. 4-5.) If a utility with a poorly maintained system experiences more and longer outages for the same-strength major storm, then it should also experience more and longer outages for the dozens of lesser storms that occur throughout the year but which do not qualify as Major Event Days. While an additional Major Event Day might be excluded, all of the remaining days with similarly poor performance and an upward trend in reliability results would still be readily identifiable.

Third, Mr. Spencer's is wrong in his speculation that many customers do not know and are not especially concerned about the particular reasons for their service interruptions. (*Id.*) Mr. Boland testified that the Ameren Companies have conducted extensive research on this topic. This research, conducted by JD Power and Associates, shows that customers in the Ameren Companies' service territories are very concerned with the reason for their outage. In fact, information on the cause and extent of the outage has been identified by JD Power and Associates as two of the top drivers of customer satisfaction when customers call about their outage. As a result, the Ameren Companies strive to provide this information when customers call regarding an outage.

Based on the record in this case, the Ameren Companies request that the Commission enter an order requiring Staff to measure or assess severe weather events and other events and circumstances beyond the utility's control in some manner, in order to comply with Part 411. The Code does not specify or restrict the method that the Commission may use to assess "severe weather events and other events and circumstances that may be beyond the jurisdictional entity's control," but the Ameren Companies believe that implementing IEEE standard 1366 would accomplish the Commission's objectives as stated in Part 411. Alternatively, the Commission could open a separate docket to further explore implementing IEEE Standard 1366 or an alternative weather-normalization standard.

b. The Ameren Companies' Service is Reliable and Steadily Improving.

Contrary to Staff's claims (Staff Init. Br., pp. 161-62, pp. 164-69), Ameren Companies' witnesses Craig Boland and Ray Wiesehan testified that the Ameren Companies service is reliable and steadily improving.

In 2003, tree-related outages accounted for a total of 7.4% of all customer interruptions on all Ameren Illinois Company distribution systems. In 2004, tree-related outages accounted for 5.4% of all customer interruptions. This represents an improvement of 27% when compared to all cause codes for years 2003 and 2004. (Resp. Ex. 25.0, p. 3.)

The record shows that the Ameren Companies have improved system reliability over the last several years with regard to tree-related outages. In 2003, all Ameren Illinois Companies combined had a total of 2,866 tree-related outages. In 2004 those outages were reduced to 2,350. This represents an 18% improvement over the 2003 performance. (*Id.*)

The data that supports tree-related outages includes major event days experienced in 2003 and 2004. This is significant because storm activity increased in 2004, from 2003. In other words, the Ameren Companies were able to reduce tree-related outages even though there were more Major Event Days experienced on the Ameren Illinois system. (*Id.*, pp. 3-4.)

Staff's specific comments regarding the reliability of each utility is addressed below.

i. AmerenCILCO

The Ameren Companies note that AmerenCILCO's service reliability statistics are steadily improving, by Staff Witness Greg Rockrohr's testimony. (Staff Init. Br., p. 164) In response to certain arguments regarding AmerenCILCO's reliability raised by Mr. Rockrohr in testimony (*Id.*, p. 165), Mr. Wiesehan testified that AmerenCILCO instruct trimming crews to trim trees to provide adequate clearance for safe and reliable electric operations. (Resp. Ex. 25.0, p. 13.) Contractors general foreman audit a minimum of two days work per month per crew. Ameren Vegetation supervisors review every audit and do field investigations on a minimum of

10% of the audits per month. The Ameren Companies do monitor the contractor's performance to ensure that proper clearance is obtained when trimming trees.

ii. AmerenCIPS

As noted in the testimony of Craig Boland, Mr. Spencer's testimony with respect to AmerenCIPS (Staff Init. Br. pp. 165-67) is severely flawed, because Mr. Spencer has refused to take weather into account in assessing reliability. (Resp. Ex. 24.0, pp. 2-6; Resp. Ex. 45.0, pp. 6-8.) Mr. Boland demonstrated that, taking weather into account, there is no "worsening trend" in AmerenCIPS reliability data. (Resp. Ex. 24.0, pp. 2-6.)

Staff's claim that AmerenCIPS has underspent its O&M budget, resulting in decreased reliability, is also wrong. (Staff Init. Br. pp. 165-66.) The Ameren Companies have presented clear and convincing evidence to refute Staff's error on this point. Notably, Staff's accountants have not provided testimony on this issue – only Mr. Spencer, who is not an accountant.

Mr. Boland testified that Staff first notified AmerenCIPS of its inability to understand the O&M calculation in a draft of the 2005 AmerenCIPS Assessment Report. (Resp. Ex. 45.0, pp. 7-8.) AmerenCIPS pointed out the error in Staff's calculations on November 11, 2005, stating:

> The 20% variance noted by Staff results from a change in the parameters included in the calculation of budgeted and actual expenses. The percentage is derived from AmerenCIPS' June 10, 2005 response to Data Request ENG 3.6. In its response, AmerenCIPS clearly noted that the 2004 budgeted and actual numbers were from two different points in time and used two different methodologies.
>
> To recap, the 2004 budgeted amount of $43,944,490 provided in the 2004 Data Request response carried forward this number, which was originally provided in the 2003 response to the same data question. The 2004 actual number of $35,266,586 is consistent with the revised methodology all the Ameren companies

> reported in the 2004 annual reports. As discussed, this methodology revision provides Staff with more consistency between all the Ameren companies. Year-to-year comparisons can now be made on actual expenditures on a forward-looking basis. . . AmerenCIPS recommends Staff remove all references to a 20% reduction in O&M expenses. Actual O&M expenses were relatively flat over the period in question.

(*Id.*) Mr. Boland also refuted Mr. Spencer's incorrect claims that an underspent O&M budget or NESC violations would necessarily lead to decreased reliability (*Id.* at 8-9) – points on which Staff is silent in its brief.

iii. AmerenIP

For all of the reasons set forth with respect to AmerenCIPS above, Staff's claims regarding AmerenIP (Staff Init. Br. pp. 167-69) should also be rejected.

Staff raises an additional claim regarding AmerenIP; specifically, that AmerenIP has not shown that its current fuse tap program is an improvement over Illinois Power Company's practices prior to Ameren ownership. (Staff Init. Br., pp. 168-69.) Mr. Boland testified that Illinois Power Company did not have a tap fusing program prior to Ameren ownership:

> As I stated in my previous testimony, Illinois Power Company had no existing tap fusing program at the time it was acquired by Ameren. Tap fuses were installed when deemed necessary by engineering and no formal retrofitting program existed at the time of the Ameren acquisition or in the immediate prior years. I have verified this fact with former Illinois Power Company management. The point being, the tap fusing program now in place is substantially more involved than Illinois Power Company's prior practices. And, as confirmed by Mr. Spencer, the benefits of now AmerenIP's current tap fusing program are evident.

(Resp. Ex. 45.0, pp. 9-10.) Thus, Staff's complaint that AmerenIP has not shown an improvement during Ameren ownership is wrong.

2. Vegetation Management/Tree Trimming Practices

As Staff notes in its brief, the Commission has adopted Rule 218 of the National Electrical Safety Code ("NESC"), which the Commission has made a part of Illinois Administrative Code 305.20 through incorporation by reference of Section 21 of the NESC. (Staff Init. Br., pp. 39-40.) NESC Rule 218(A)(1) states that "[t]rees that may interfere with ungrounded supply conductors should be trimmed or removed."

The record shows that Staff began interpreting the "may interfere" language of Rule 218 to mean "no contact," in October 2002. (ICC Staff Exhibit 21.0, p. 10, line 215.) Notably, the date on which Staff first began implementing its "no contact" rule does not coincide with the Commission's adoption of any new rule or amendment. As pointed out in the Ameren Companies' Initial Brief, it is contrary to law and the Commission's Rules for Staff to develop new rules without an appropriate rulemaking proceeding. (Resp. Init. Br., p. 160-61.)

The Ameren Companies' incorporate by reference all of the arguments set forth in the Initial Brief stating why Staff's proposed new "no contact" interpretation of the existing rule should not be adopted. (Resp. Init. Br., pp. 160-65.) Notably, Staff does not respond to any of the testimony regarding responsible industry practices and normal vegetation growth and behavior set forth by Ameren Companies' witnesses Allen Clapp and Ray Wiesehan. Staff's entire position on this issue stands on Mr. Spencer's unsupported speculations.

Staff notes that the "primary rule of statutory construction is to give effect to legislative intent by first looking at the plain meaning of the language." (Staff Init. Br., p. 45, *citing Davis v. Toshiba,* 186 Ill.2d 181, 184-85 (1999).) This is true. Nowhere do the words "no" or "contact" or "no contact" appear in NESC Rule 218. The rule says "may interfere," and the words “interfere” and “contact” have two distinct meanings. The plain language of the rule simply does not say, or mean, “no contact.”

Further, “[i]f possible, a court will avoid constructions of a statute that render any term superfluous or meaningless.” *Ryan v. Agpro,* 214 Ill. 2d 222, 227 (2005). Here, Rule 218 contemplates circumstances “[w]here trimming or removal is not practical . . . .” This section of the rule would be meaningless if the intent of the rule is “no contact.” NESC, Section 21, Rule 218.A.2 (2002).

To the extent that there is any ambiguity in the plain meaning of Rule 218, the Ameren Companies have provided ample evidence that Staff’s “no contact” interpretation is incorrect from Allen Clapp, a member of the NESC Committee and the editor of the NESC Handbook, among many other qualifications. As Editor of the NESC Handbook, Mr. Clapp has reviewed every document known to exist relating to the original codification and subsequent revisions of the NESC. Mr. Clapp served on the NESC Subcommittee responsible for Rule 218: NESC Subcommittee 4 on overhead clearances, and has personally examined every document known to exist in the history of this rule. The rule was originally codified as Rule 281 in the 4th Edition (1927) and remained unchanged in the 5th Edition (1941) and 6th Edition (1961). It moved to Rule 218 in the 1990 Edition. Mr. Clapp has personally participated in each of the three modifications to the rule (1977 Ed., 1984 Ed., and 2007 Ed.) – that is, he discussed, considered and debated with his colleagues as to the propriety to each rule change and the associated intent.

As set forth more fully in the Initial Brief , Mr. Clapp testified that each edition of the NESC has recognized that it may not be practical to prevent contact between portions of trees and utility lines in all cases, due to the competing desires of consumers to (a) have an aesthetic environment (i.e., to limit the drastic pruning or complete removal of trees necessary to absolutely prevent all contact by trees with utility lines and to (b) have economical utility service, but that it is practical to limit such contact between trees and utility lines to levels that are not likely to cause a safety or reliability problem. (*Id.* at 4-5.)

Mr. Clapp testified that 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.

In their rebuttal testimony and Initial Brief, Staff had no response to Mr. Clapp's testimony regarding the intended meaning of NESC 218.

For these and all of the reasons set forth in the Ameren Companies' Initial Brief, Staff's proposed no-contact rule should be rejected.

D. Other

1. Ameren Companies and CNE/PES MOU

CNE/PES has accurately recited the resolutions reached between the Ameren Companies and these parties. Further, the Ameren Companies agree with the relief being sought in terms of the Commission entering an order that is consistent with the resolution of issues outlined in the MOU. (CNE/PES Br., p.15)

2. Distribution Loss Multipliers

IIEC has agreed to accept the Ameren Companies method for calculating distribution losses assuming no other party opposes the method. To our knowledge, no other party has opposed the use of the variable loss multiplier being proposed by the Ameren Companies. Staff affirmatively states it has no objection as well. (ICC Staff Br., p.133). The IIEC has also outlined the other commitments the Ameren Companies intend to make, to which there is no disagreement. (IIEC Br., pp.45-46; Resp. Int. Br., p.165)

VI. RESPONSES TO COMMISSIONERS' QUESTIONS

Filed testimony on this issue is discussed in the Ameren Companies' Draft Order.

Dated: September 6, 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

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PROOF OF SERVICE

I, Laura M. Earl, certify that on September 6, 2006, I served a copy of the foregoing Reply Brief of the Ameren Companies by electronic mail to the individuals on the Commission's Service List for this Docket.

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