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.)

<u>BRIEF ON EXCEPTIONS OF THE AMEREN COMPANIES</u>

October 18, 2006

I. 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 submit their Brief on Exceptions. The Ameren Companies have limited the number and discussion of exceptions to the Proposed Order for the sake of judicial efficiency. Failure to address any contested issues in this brief does not reflect a concession of the issue for this proceeding and future ones.[1]

The Ameren Companies take exception to the Proposed Order with respect to the following points:

Exception Number 1: Rate Design and Cost Allocation – Through a combination of allocation method and interclass subsidy, the Proposed Order creates a rate design recommendation that will encourage cost avoidance, and may soon lead to a revenue shortfall. The Commission should adopt a cost allocation and rate design that are both fair and realistic.

Exception Number 2: Ameren Ownership of IP Issue – The Proposed Order erroneously understates the revenue requirement at AmerenIP, basing it in part on the level of corporate support costs when the utility was owned by a financially strapped Dynegy.

[1] For example, while the Ameren Companies disagree with the finding in the Proposed Order to reject the movement to a ten-year to five-year refund, for purposes of this proceeding they are willing to accept that conclusion. Additionally, the Ameren Companies respectfully disagree with the ultimate conclusion reached in terms of the undue impact to the Rate RTP-L class as a result of Staff's recommendation, we do not object to those findings any further.

Exception Number 3: Unfunded Other Pensions and Benefits ("OPEB") - The Proposed Order errs in removing an accrued OPEB liability from the Ameren Companies' rate base. The record shows that this accrued liability does not represent ratepayer funds. The Commission's orders in Dockets 95-0219 and 04-0779 do not support a blanket conclusion on the facts of this case.

Exception Number 4: Administrative and General ("A&G") Expense – The Ameren Companies have met their burden of proof to support their requested level of A&G costs. The Commission should reject Staff's improper and inaccurate method of determining A&G expenses.

Exception Number 5: Rate Case Expense – The Commission should find that the Ameren Companies' requested recovery for rate case expense is reasonable. The record shows that the Ameren Companies have managed to keep their rate case expenses to an extraordinarily low level, a level far below what the Commission has deemed reasonable in other comparable cases. The Ameren Companies provided ample support for all of their rate case costs, including the most accurate estimates available, contracts, letters of engagement, and numerous invoices. The Ameren Companies' rate case costs are reasonable and should be approved.

Exception Number 6: Reallocation of IP Depreciation Reserve - The record supports a Commission conclusion that the Ameren Companies' proposed reallocation of AmerenIP depreciation reserve is reasonable and will be a significant benefit to AmerenIP's customers on a going-forward basis.

Exception Number 7: Cash Working Capital – The record supports a conclusion that the Ameren Companies have appropriately prepared, documented and supported their cash working capital analysis. The Net Lag methodology used by the Companies has been accepted by this Commission in prior rate proceedings and should be approved in this case.

Exception Number 8: Miscellaneous Corrections and Exceptions

II. ARGUMENT

A. <u>Exception Number 1:</u> Rate Design and Cost Allocation: The Proposed Order Encourages Industrial Customers to Avoid Costs, Which Will Lead to a Revenue Shortfall.

Although dry, arcane and frequently confusing, cost of service allocations and rate design can have a far greater effect on customers and utilities than the inclusion or exclusion of expense or plant items.

The cost of service and rate design recommended in the Proposed Order are, unintentionally, designed to fail. Through a combination of allocation method and subsidy, the Proposed Order assumes significant revenue collection from Rate DS-4 customers who will never pay it. This fiction – and it is just that, a fiction - serves no one's interests. Since the costs cannot go away when the revenue does not materialize, the Ameren Companies will likely have to seek rate relief again shortly unless the Proposed Order is altered. The Commission should adopt a cost allocation and rate design that are both fair and realistic.

1. COSS Allocation Factor

At issue in the docket was whether the Non-Coincident Peak ("NCP") demand allocation method or the Average & Peak (A&P) method should be used in the cost of service study. The Proposed Order adopts the A&P method. The Proposed Order is, respectfully, erroneous on several grounds.

The NCP method was rejected, and the A&P method was accepted, for the following reasons:

- CUB's "faulty impact analysis" could be disregarded.
- The record in this proceeding is more thoroughly developed than the record in the ComEd case, Docket No. 05-0597.
- The double counting of "average" costs and criticism of the A&P method was not persuasive.
- The differences explaining why the A&P method might be acceptable for a gas distribution system and not an electric distribution system were not material.

(Proposed Order, pp.162-163)

While the Ameren Companies were not parties in the ComEd case, we have reviewed the Commission's Order and assume that it accurately reflects the record in that case and supports the Commission's declaration that the record was not sufficiently developed to support the A&P method. Frankly, the record in this proceeding is far more developed in terms of proving up the propriety of the NCP method than was apparent in the ComEd case, and the arguments and evidence challenging the A&P method are far more detailed and exacting. (*See* Ameren Initial Br., pp.126-130; Ameren Reply Br., pp.48-51.)

The Proposed Order reasons that the Commission can reject CUB's faulty impact analysis because the approximate impact of the different allocation methods is not absolutely necessary. This would not be a sound exercise of regulatory authority; the Commission cannot shrug off its duty to establish just and reasonable rates. The Commission making a decision of this magnitude on an uninformed basis. The Commission only knows that dollars are moving from the residential customer class to the non-residential customer class; it does not and cannot know the magnitude of the dollars associated with the rate impact based on this record. Therefore, the Commission cannot know what is a just and reasonable rate for the non-residential customers, or for that matter if the resultant rate for the residential customers is just and reasonable. It is abundantly clear that the Commission's decision, based on the lack of information associated with the CUB "faulty impact analysis," cannot withstand appellant scrutiny.

With respect to the differences between an electric distribution system and a natural gas distribution system, and whether they are material in terms of supporting one allocation method over another, the Proposed Order overlooks the desire for rate continuity and rate stability. The Commission has always used the NCP method in the Ameren Companies' delivery service rate cases. Though Commission decisions are not binding precedent, if the Commission is to make a substantial change as being recommended in the Proposed Order, it should be able to identify some significant change in circumstance, and it should firmly grasp the consequences of its decision. The Proposed Order provides neither.

Last, the Proposed Order does not, and cannot, explain away the "double-counting" criticism of the A&P method by only referring to CUB's explanation. CUB's limited explanation was as follows:

> It is important for the Commission to understand that average use is determined by examining the entire 8,760 hours within the calendar year. (CUB Ex. 2.0 at 9, L1,999-2,000). On the other hand, non-coincident peak demand is determined by each customer's classes one-time maximum demand that occurs during one specific hour out of the 8,760 hours within the entire calendar year.

(CUB Reply Br.,pp.10-11)

The fact is, the system is designed to meet the customers' maximum demands whenever they occur as only the wire size large enough to meet the peak load is sufficient to safely meet the customers' load. Cost of the wire and for installation is directly tied to wire size and the length of wire installed. (Resp. Ex.19.0, pp.5-7). The Proposed Order has already determined that the length of wire should not be a factor in cost allocation by rejecting the minimum distribution system method, which means that the only other direct variable in the utility's cost matrix (wire size) is to be erroneously ignored. To now ignore this variable, or miscount the cost aspect by virtue of the double-counting, results in use of an allocation method that has no bearing on reality.

Whether the customers use the system once a day or everyday is irrelevant. The extent of such usage is, however, relevant as the system is designed with this feature in focus. Therefore, in deciding upon an allocation method that is consistent with costs being incurred in designing the system, consideration should be given to the method that best allocates the costs due to customers' usage of distribution system and not energy usage, as does the A&P method. Clearly the Commission can and will approve various rate mitigation methods as it sees fit. The Commission, however, should accept only approved allocation methodologies for electric rate plant that have some basis in fact and comport with the principle of cost-causation.

Proposed Language

The Ameren Companies recommend deleting subsection VI.C.2.d, "Commission Conclusion," which begins on page 162 and concludes on page 163, and inserting the following:

The Commission is not persuaded at this time to deviate from the use of the NCP demand allocation method in electric delivery service rate cases. The Commission is particularly concerned that a deviation from this method at this time when the utilities are moving from traditional bundled rates to effectively rebundled rates (delivery service rates and basic generation service rates), fails to take into account the importance of rate stability and rate continuity. Other than the pronounced shift in revenue from residential to non-residential customers, no other basis in fact has been offered by CUB or any other party in support of the A&P method.

In addition, the Commission recognizes that the CUB analysis, in its efforts to either determine or even estimate the revenue requirement shift from the residential to non-residential customer classes, is deficient to the point that the Commission lacks confidence in knowing the magnitude of the rate impact to all respective classes. While the Commission enjoys considerable discretion in deciding on an appropriate allocation method in the rate making process, the Commission must be mindful of the resulting rate impacts, at least to some measurable degree.

The Commission, of course, reserves the right to consider the A&P method or some other method in the Ameren Companies' next delivery service rate cases.

2. Interclass Subsidization

The second problem with respect to rate design is the Proposed Order's inclusion of the DS-4 rate class in the sharing of the subsidy to the DS-1 rate class, which should be rejected by the Commission for the following reasons:

- there are significant rate impacts resulting in rate shock to the DS-4 rate class;

- there is a complete deviation from a critical principle in ratemaking – cost causers should be responsible for the costs that the utility incurs on their behalf;

- the Proposed Order fails to recognize the manner in which a distribution system is constructed and utilized to provide service to certain customer classes;

- the record is lacking in terms of an explicit method by which to implement the proposed subsidization;

- the record is lacking as to what is, or should be, the subsidy, in the event the A&P method is affirmed.

While the rationale of avoiding rate shock to DS-1 customers is certainly appropriate, and indeed there are other allocation approaches being recommended and approved that will accomplish this goal, the resulting rate shock to the DS-4 rate class has not been fully explored and should be avoided. Further, if the Commission agrees with the Proposed Order that it is appropriate to use the A&P allocation method in this case, there is no meaningful evidence showing the impact on class revenue allocation. It is generally believed that use of the A&P will shift more cost responsibility to the DS-4 class and less to the DS-1 class. The impact to DS-2 and DS-3 is unclear. Consequently, there is no reliable evidence in the record that after use of the A&P method, there will still be a subsidy to DS-1 from DS-2 or DS-3. If the A&P method is used, it is unclear what, if any, subsidy burden is to be shared by the DS-4 class.

There needs to be a firm understanding as to why certain customer classes are allocated certain categories of costs. The reason the DS-4 average per kWh rates are lower than those for residential customers is largely due to the extent of the delivery service infrastructure, and thus costs incurred to serve the respective classes. The residential class is typically served at the secondary voltage level (the lowest voltage level). Service at secondary voltage typically uses the full extent of the delivery service network. Conversely, usage for DS-4 customers ranges from the primary voltage up to +100 kV service. An examination of Respondents' Exhibit 20.0, Schedule 20.6 shows that for AmerenIP, only 10.5% of total usage is supplied at the primary or lower voltages. For AmerenCIPS and AmerenCILCO, 28.6% and 23.3% of usage is at the primary voltage level, respectively. On a combined Ameren Illinois basis, 18.3% of DS-4 demand is at primary voltage.

It may also be instructive to approach the analysis from the other direction. Customers connected directly to the +100 kV system represent 28.1%, 21.5%, and 57.9% of the total DS-4 demand for AmerenIP, AmerenCIPS, and AmerenCILCO, respectively. Weighted across the Ameren Illinois system, 31.5% of DS-4 demand is at +100 kV. Simply put, these larger customers use comparatively little of the distribution system. It should be no surprise that these larger customers pay comparatively little in the way of distribution costs. Class average comparisons pitting DS-1 average rates against DS-4 average rates are overly simplistic at best.

Similar class average rate comparisons between DS-3 and DS-4 are also overly simplistic. The demands of customers in the DS-3 class are heavily concentrated in the lower voltages. On a combined Ameren Illinois basis, nearly 89% of DS-3 demand is served at the primary voltage level, only 11% served at the high voltage (34.5kV to 69kV) level, and virtually no load served at the +100 kV voltage level. These customers clearly use much more of the distribution system than their DS-4 counterparts. As a result, we should expect the DS-3 class average rate to be higher than the DS-4 class average rate. Incorporation of the DS-4 rate class runs counter to any semblance of allocating costs based on cost causation. Meaning, simply pushing residential dollars to non-residential customers cannot be defended on any cost causation basis, or based on how the distribution system is utilized by the customer classes.

With this as backdrop, we begin to examine the problems of attempting to implement the Proposed Order's recommendation. Adding a subsidization amount to DS-4 rates would at a minimum require recalculation of DS-2, DS-3 and DS-4 rates before application of an Ameren Company specific factor to adjust rates to recover the final, approved revenue level (this is true with or without approval of the A&P cost of service allocation method). In the event the DS-4 class is to contribute to the subsidy to the DS-1 rate class, the Distribution Delivery Charges should also be recalculated using the Ameren Company's rate design methodology presented in Schedules 20.5 attached to Respondents' Exhibit 20.0. After DS-4 rates are recalculated, the agreed upon rate adjustment methodology will be applied in the event the revenue requirement approved is different than that proposed by any of the parties.

On page 173, the Proposed Order reads "The Commission also believes that at least until Ameren's next delivery services rate case that DS-4 customers should share in the burden of DS-2 and DS-3 customers in subsidizing DS-1 customers." The Ameren Company's proposed revenue allocation methodology presently sets DS-1, DS-2, and DS-3 overall revenue targets at a level that would provide an equal average increase when comparing present "rebundled" revenue to proposed "rebundled" revenue. (*See* Respondents' Exhibit 20.0, Schedule 20.1.) For each of the three utilities, the revenue allocation methodology resulted in a subsidy from DS-2 and DS-3, to DS-1. The Ameren Companies explained why DS-4 was excluded from the "average rebundled" revenue allocation methodology in rebuttal testimony:

> "The Ameren Companies excluded DS-4 from the "average rebundled" revenue allocation methodology since these customers' delivery service rate contribution, as a percentage of their total bill, is so much smaller than it is for the other rate classes. Including them in the calculation would produce rates greatly in excess of costs. For example, looking at the revised revenue allocation Schedule 20.1, AmerenIP's DS-1 delivery revenue represents 41% of a customer's average total rebundled bill. Conversely, the DS-4 delivery revenue is only 5% of the total rebundled bill. The DS-4 class contributes approximately 7% of the AmerenIP total DS revenue, is proposed to receive a 109% increase in DS rates, and yet is only receiving an overall "rebundled" increase of 2.8%. Simply moving the DS-4 rate class to an average 10.8% "rebundled" increase would require a DS-4 increase to delivery service rates of about 415%. Including the DS-4 group in the "average rebundled" formula would result in DS that would no longer resemble cost-based rates."

(Respondents' Exhibit 20.0, pp. 6-7)

The Proposed Order should not be interpreted to mean the Ameren Company's proposed "average rebundled" allocation methodology to allocate a portion of the subsidy to DS-4 is to be used. Doing so would produce severe rate shock for the DS-4 rate class. At the revenue requirement being proposed, the increase to AmerenIP DS-4 customers would be 415%, or more than seven times the average increase of 57%. For AmerenCILCO, rather than a 32% increase, DS-4 rates would be increased 191%, or more than four times the average increase of 44.2%.

Comparison of DS-4 Distribution Delivery Charges			
	Result if Included in "Average Rebundled" Revenue Allocation		
	AmerenIP	AmerenCIPS	AmerenCILCO
Distribution Delivery Charge	Rates	Rates	Rates
Primary Voltage/kW	$11.854	$4.683	$9.370
High Voltage/kW	$3.030	$1.438	$2.059
+100 kV Voltage/kW	$0.176	$0.087	$0.117
	Proposed by Ameren in Rebuttal		
	AmerenIP	AmerenCIPS	AmerenCILCO
Distribution Delivery Charge	Rates	Rates	Rates
Primary Voltage/kW	$4.436	$2.782	$3.399
High Voltage/kW	$1.134	$0.855	$0.747
+100 kV Voltage/kW	$0.066	$0.052	$0.043
	Difference in Charges		
	AmerenIP	AmerenCIPS	AmerenCILCO
Distribution Delivery Charge	Rates	Rates	Rates
Primary Voltage/kW	$7.418	$1.901	$5.971
High Voltage/kW	$1.896	$0.583	$1.312
+100 kV Voltage/kW	$0.110	$0.035	$0.074

If DS-4 is to subsidize DS-1, it is unclear what method should be used to implement the subsidization. In rebuttal testimony, Staff, for the first time, generally discussed reasons why DS-4 could assist in providing a subsidy to other rate classes. Staff did not provide a specific methodology for accomplishing this task. As already discussed, application of the Ameren Company's revenue allocation methodology is not intended to incorporate DS-4 customers. The statement "DS-4 customers should share in the burden of DS-2 and DS-3 customers in subsidizing DS-1 customers" (Proposed Order, p. 173) could mean that the amount of total subsidy provided in DS-1 should not be changed, but rather a portion of the DS-2 and DS-3 subsidy burden should be apportioned to DS-4.

At the least, while still objectionable, the Ameren Companies seek clarification that the methodology to allocate a portion of the DS-1 subsidy to DS-4 is to keep the total amount of DS-1 subsidy fixed, and share the subsidy provided by DS-2 and DS-3, with DS-4. The amount shared by DS-4 would be in proportion to the total proposed delivery service cost of service at an equalized rate of return relative to the subtotal of the DS-2, DS-3, and DS-4 cost of service revenue. The portion of total subsidy provided by DS-2 and DS-3 would then be reduced in proportion to the relative percentage share of subsidy being provided before the DS-4 adjustment. An example, using values in Respondents' Exhibit 20.0, Schedule 20.1, is provided below:

Comparison of DS-4 Distribution Delivery Charges

	Result Using A&P ECOS Allocation, Suggested DS-4 Subsidization, and PO Revenue Requirement		
	AmerenIP	AmerenCIPS	AmerenCILCO
Distribution Delivery Charge	Rates	Rates	Rates
Primary Voltage/kW	$6.043	$4.294	$4.956
High Voltage/kW	$1.492	$1.177	$0.993
+100 kV Voltage/kW	$0.072	$0.059	$0.045

	Proposed by Ameren in Rebuttal, At Requested Revenue Requirement		
	AmerenIP	AmerenCIPS	AmerenCILCO
Distribution Delivery Charge	Rates	Rates	Rates
Primary Voltage/kW	$4.436	$2.782	$3.399
High Voltage/kW	$1.134	$0.855	$0.747
+100 kV Voltage/kW	$0.066	$0.052	$0.043

	Difference in Charges		
	AmerenIP	AmerenCIPS	AmerenCILCO
Distribution Delivery Charge	Rates	Rates	Rates
Primary Voltage/kW	$1.607	$1.512	$1.557
High Voltage/kW	$0.358	$0.322	$0.246
+100 kV Voltage/kW	$0.006	$0.007	$0.002

The Proposed Order also concludes that DS-4 rates should be increased by at least 5% in light of increases experienced by other rate classes. Delivery service rates for AmerenIP and AmerenCILCO are both well above the 5% threshold. However, a 5% minimum applied to AmerenCIPS would change the proposed $4 million reduction (equal to 18.3%) to a $1.1 million increase, a difference of $5.1 million. The subsidy sharing revenue allocation approach shown in the table above produces only an $824,248 shift in revenue. Thus, the 5% minimum increase would apply instead.

The impact of the revenue allocation methodology illustrated above could be adapted to use of the cost of service results using an A&P allocation methodology; however, in the event that no subsidy to DS-1 would be generated using the Ameren Company's "average rebundled" revenue allocation methodology shown on Schedule 20.1 and the use of cost of service results using the A&P methodology, the Ameren Companies seek clarification that no inter-class subsidization should occur.

Finally, the Proposed Order acknowledges, but apparently believes is too insignificant of a rate mitigation measure, including the DS-2 and DS-3 rate classes as part of the DS-1 mitigation strategy. The Commission approved the Staff bill impact proposal in the Ameren Companies' competitive procurement auction cases which presumably intended to mitigate the rate increase for the generation commodity among those rate classes as well. The Commission is aware that the Ameren Companies have proposed both securitization and an opt-in plan in Docket No. 06-0448, which is specifically directed to phasing-in residential rates. While the outcome of that docket is unknown, the Commission has another opportunity to mitigate the rate impact to the residential customers.[2]

[2] The Ameren Companies understand the Proposed Order recommends approval of Rider ESP on an interim basis. We also understand that we are to file a tariff with testimony and exhibits explaining in greater detail how the rider is consistent with the requirements of revised Section 16-107, meaning Public Act 94-0977. The Commission is aware that the Ameren Companies did file Rider PRP, with the intent of meeting the recommendation now being offered in the Proposed Order. Though testimony was not submitted with the tariff filing, we expect the tariff will be suspended and a schedule will be put in place in order for the utilities to file testimony in compliance with the Proposed Order. The use of Rider ESP on an interim basis would not be in conflict with the Ameren Companies Rider PRP filing. First, the revised Section 16-107 obligates the Commission

Proposed Language:

Based on the foregoing arguments, the Ameren Companies recommend deleting the first full paragraph in subsection g. Commission's Conclusion found on page 172 and the last full paragraph on page 173, and inserting the following:

A brief word on the Ameren Companies presentation of its rate increase proposal is in order before addressing the interclass subsidization issues. Some parties questioned whether the Ameren Companies have properly compared the proposed rates to current bundled and current unbundled rates. The Commission acknowledges that the Ameren Companies have done both, that is, the Ameren Companies have presented the change in delivery service rates with existing delivery service rates as is required. Even though residential customers are currently not taking delivery service rates, there are a number of non-residential delivery service customers taking delivery service rates and therefore, it is certainly appropriate to offer this comparison. In addition, the Ameren Companies offered a comparison of the change in delivery service rates and how it would bear upon current bundled rates which is additional information that the Commission believes is useful in terms of customers understanding how this proceeding would impact their current energy bill. (Resp. Ex.20, p10).

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to have approved the real time pricing tariff for residential customers as described therein by January 1, 2007. Whether or not Rider PRP can be in place by that point in time remains unknown and, therefore, for the benefit of the Commission as well as the Ameren Companies, having a rider/program in place that meets the objectives of the law is preferred. Once Rider PRP is approved, the Ameren Companies can withdraw Rider ESP from the tariff book leaving in place only one real time pricing tariff that is intended to meet and does comply with the objectives of revised Section 16-107.

As for the third issue, the Commission rejects the arguments that the DS-4 customers should assist the DS-2 and DS-3 customers in subsidizing the DS-1 customers. First, there are a number of means in place and being proposed by which to reduce the rate impact to residential customers. The Commission is cognizant in the Ameren Companies' competitive procurement auction cases, that it approved a bill impact proposal intended to moderate the rate increases among rate classes, including the residential customer class. Further, in these proceedings, the Ameren Companies have already made a step in that direction by incorporating the DS-2 and DS-3 rate classes as part of the rate mitigation strategy involving DS-1. And, of course, there is currently pending before the Commission the Ameren Companies' proposed securitization and opt-in plans in Docket No. 06-0448, which at this point in time has not been adjudicated, but presents the Commission another opportunity to consider mitigating the rate impact to residential customers.

An additional concern of the Commission is the undue rate impact to DS-4 customers. The record overwhelmingly demonstrates that a move to obligate the DS-4 rate class to assist in subsidizing DS-1 rate class would result in rate shock which the Commission seeks to avoid. The Commission's decision in part rests upon the undisputed fact that the DS-4 rate class utilizes the distribution system in a way much different than a DS-2 and DS-3 rate classes, meaning there is ample justification to incorporate the DS-2 and DS-3 rate classes as part of the DS-1 rate mitigation strategy due to the commonality in which these three rate classes make use of the distribution system. Further, the record is not sufficiently developed to know with some reasonable degree of certainty, how the inclusion of DS-4 impacts the DS-2 and 3 rate classes, and helps with the DS- 1 rate class.

B. <u>Exception Number 2:</u> Ameren Ownership of Illinois Power: The Proposed Order Erroneously Understates the Revenue Requirement at AmerenIP.

The Proposed Order accepts the AG's proposed adjustment to test year O&M expense based on differences in the allocated AMS costs included in test year O&M and the adjusted actual allocated costs from Dynegy to IP in 2004, rather than a historical average of Dynegy's allocated costs. The issue boils down to this: whether AmerenIP will recover in rates a level of expense consistent with the level of service it provides, or will the level of expense it recovers be tied to the inferior operations under Dynegy ownership? The question should answer itself.

In this proceeding, AmerenIP uses a 2004 test year. Because Ameren acquired the troubled utility in 2004, part of the actual data for the year reflects costs incurred under Dynegy ownership, and part reflects costs incurred under Ameren ownership. AmerenIP adjusted the test year, to reverse the effect of Dynegy's decreasing support of utility operations and to reflect the restoration of a sustainablehigher level of support being provided to the utility by Ameren. The AG argued, in effect, that actual costs should be used.

In siding with the AG, the Proposed Order notes that the lower level of Dynegy allocated costs was known to Ameren at the time it petitioned the Commission for approval of the acquisition of IP. In his surrebuttal testimony, Ameren Company witness Porter explained that Ameren's understanding at the time of the acquisition was that Ameren would provide a sustainable level of services to IP and that the actual costs at that time did not represent a sustainable level of service. The change in the level of service and costs from 2002 levels, which were consistent with the levels of service and associated costs included in the Company's prior DST filing, to the 2003 amount was specifically noted by AG witness Effron. Mr. Porter explained in his rebuttal testimony that this change was a clear result of a shift in Dynegy's business focus resulting from its financial difficulties. As such, neither the 2004 actual allocated costs nor the 2003 actual allocated costs represent a sustainable level of service.

The Proposed Order also accepts the AG's argument that if the test year is adjusted as AmerenIP proposed, it would mean that the costs of acquisition have exceeded the benefits, and that rates set in this case would violate a Memorandum of Understanding signed in the IP acquisition proceeding regarding treatment of costs and savings associated with the transaction. Mr. Porter pointed out both that the AG provided no analysis to support its claim, and that the transaction's numerous benefits, both tangible and intangible, substantially exceeded the overall costs. Reductions in debt interest costs and depreciation expense must be considered in weighing the overall costs and benefits of the acquisition, items which were specifically reflected in the record of the merger approval case and considered in the development of the Memorandum of Understanding agreed to by the AG and other parties. In addition to these benefits, reductions in the expected costs of the acquisition must also be considered, such as the reduction in the step-up in basis related to deferred taxes from the $310 million assumed in the Docket 04-0294 (merger case) to the $208 million included in the Company's request. Absent a complete analysis of the costs and benefits of the acquisition, there is no basis for an adjustment.

The undeniable facts are these: IP was troubled, owned by a failing parent that could not adequately support its operations, and Ameren stepped in, restored the utility to financial health, and invested nearly a billion dollars of new equity to right the ship. Ameren also provided a sustainable level of service to AmerenIP, which should now be entitled to recover the full cost of that support, rather than the cost of a level of service that all would agree would be inadequate.

Accordingly, the final paragraph of the conclusion on p. 85 of the Proposed Order be modified as follows:

The Commission is of the opinion that the AG's arguments are <u>not</u> correct regarding this expense. <u>The AG has not demonstrated that AmerenIP's proposal represent a departure</u> ~~Ameren has not shown a sufficient reason for the Commission to depart~~ from the understandings which were contained in Docket No. 04-0294 to approve the acquisition of IP by Ameren. The Commission will therefore <u>not</u> adopt the AG's proposed reduction in test year O&M for expense.

C. <u>Exception Number 3:</u> Unfunded OPEB – The Proposed Order Incorrectly Disallows Shareholder-Paid OPEB Liability from Rate Base.

The Proposed Order recommends removing an accrued liability for excess OPEB funds from each of the Ameren Companies' rate base. This recommendation is clearly incorrect under the law and the facts. The Proposed Order fails to recognize that the accrued liability does not represents ratepayer-supplied funds. This is clearly distinguishable from ICC Docket No. 95-0219, cited as support in the Proposed Order (p. 26), where the Commission disallowed net pension assets that were funded by ratepayers from rate base. Here, there is no excess of ratepayer funds. A rate base reduction is thus inappropriate.

There is simply no merit to Staff's and the AG's speculative claim that the accrued liability represents excess ratepayer funds. Ameren Companies' witness C. Kenneth Vogl testified that, over each of the past several years, AmerenCIPS has spent $5.2 million more on OPEB expenses than they have received in rates ($6.0 million average annual contribution less $0.8 million received annually in rates); AmerenCILCO has annually spent $1.4 million more than received in rates, and AmerenIP has annually spent $4.6 million more than received in rates. (Resp. Ex. 42.0, p. 4.) Thus, the record shows that the Ameren Companies have contributed far more for OPEB than has been collected from ratepayers. There is no excess of ratepayer funds. Neither Staff nor AG presented evidence to refute Mr. Vogl's testimony.

Staff's *only* argument in response to the Ameren Companies' unrefuted testimony is that the evidence should not be considered, because to do so would constitute single-issue ratemaking. This argument is completely illogical and was erroneously accepted in the Proposed Order. The Ameren Companies point out that we did not raise this "single" issue. The AG made the claim that the accrued liability represents ratepayer funds, and Staff joined in that claim. The Ameren Companies merely presented evidence to refute that claim. If the Ameren Companies' defense to the AG's claim constitutes single-issue ratemaking, then so must the original claim. If it is not inappropriate for the AG and Staff to support a disallowance because of their incorrect belief that the ratepayers have funded the excess OPEB liability, then the Ameren Companies must be allowed to refute the disallowance by presenting evidence that the shareholders, not the ratepayers, have funded the excess.

Indeed, the Commission's orders in Dockets 04-0779 and 95-0219, cited by Staff and the AG in briefing (PO, pp. 27-28), both support the conclusion that the determinitive issue here is whether the excess liability was funded by the ratepayers or the shareholders. In both cases, the Commission *weighed the facts* to determine that the pension asset at issue had been funded by ratepayers. In Docket No. 04-0779, the Commission found determinative the fact that "NI-Gas has made no cash contributions to its pension trust . . . ." *Northern Illinois Gas Company*, 1996 Ill. PUC LEXIS 204 at *23-24 (April 3, 1996). In the same company's next rate case, 05-0219, the Commission concluded that "Nicor has not presented any additional evidence since the 1996 Order to show why the Commission should arrive at a different conclusion now." *Northern*

Illinois Gas Company dba Nicor Gas Company, 245 PUR 4th 194 at *56-57 (September 20, 2005). Further, "The Company acknowledged that, due to the overfunded status of the pension plan, it was not required to contribute to the pension trust from 1997 through 2003."

It is clear that the Commission's orders in Dockets 04-0779 and 95-0219 do not support a blanket conclusion that every OPEB liability accrual is ratepayer funded, as argued by the AG and Staff, and as accepted by the Proposed Order. In those cases, the Commission weighed the record facts, and the Commission should do the same here. Here, the undisputed record facts show that the Ameren Companies, not the ratepayers, have funded the OPEB liability accrual. Thus, the Proposed Order's disallowance of this accrual from rate base is in error.

Proposed Language:

The Proposed Order (p. 27, subsection III.F.1.d) should be amended as follows:

Ameren shows on its books an accrued liability for excess funds contributed for OPEB. While Staff and the AG indicate that each company's rate base should be reduced by the amount of this excess, as it reflects an excess of contributions by ratepayers, Ameren contends that the excess actually results from payments by Ameren. Staff believes that it is improper to single out any particular component of the cost of service and analyze that item in isolation, as it contends Ameren is doing in this case.

~~The Commission agrees with Staff and the AG's analysis to remove these amounts from each utility's rate base. To look at this item in isolation from the other components of the cost of service, as Ameren attempts, and to then believe that the excess is solely attributable to Ameren is inappropriate. Ratepayers are not paying this cost of service as a separate line item, and it is~~

~~inappropriate to treat it as such. The AG also notes other Commission decisions which have analyzed this issue, where it has been determined that as long as the company continues to control the ratepayer supplied OPEB funds, this deduction should be recognized in rate base. (See Docket No. 95-0219) Ameren has failed to provide any reason why the Commission should deviate from this position. The Commission therefore will reduce CILCO's rate base by $28,659,000, CIPS' rate base by $2,740,000, and IP's rate base by $1,217,000.~~

The Commission finds that, over each of the past several years, AmerenCIPS has spent $5.2 million more on OPEB expenses than they have received in rates ($6.0 million average annual contribution less $0.8 million received annually in rates). AmerenCILCO has annually spent $1.4 million more than they have received in rates, and AmerenIP has annually spent $4.6 million more than they have received in rates. (Resp. Ex. 42.0, p. 4.) Thus, the record shows that the Ameren Companies have contributed far more for OPEB than has been collected from ratepayers, even though a small accrued OPEB liability exists. Staff and the AG's claim that this liability must represent excess ratepayer-supplied funds is thus not supported by the record.

For the above reasons, the Commission rejects the AG's and Staff's proposed disallowance of accrued OPEB liability from rate base.

Page 28, paragraph 3 (in subsection III.F.2) of the Proposed Order should be deleted in its entirety, and should instead read as follows:

As the Commission does not agree with the analysis of Staff and the AG regarding the unfunded OPEB liability issue, it is also appropriate to reject Staff's adjustment to include related ADIT in rate base, as reflected in the Appendices to this Order.

D. Exception Number 4: A&G Expense – Staff's Methodology Is Improper and Inaccurate and Should Be Rejected.

The Ameren Companies disagree with the Proposed Order's adoption of Staff's rebuttal recommendations on A&G Expense in this case, and its conclusion that the Ameren Companies and Staff reached agreement as to the appropriate A&G expense levels for CILCO and CIPS. (PO, p. 66.)

Adopting Staff's approach to calculating A&G expense in this case would set a troubling precedent. The entirety of Staff's testimony is based on comparing previously approved expense levels with the Ameren Companies' current expenses, and opining as to whether the percentage increase of actual expense levels is appropriate. This is an inappropriate ratemaking method. Just as the Ameren Companies cannot request A&G expense recovery based on projected increases from current levels, Staff and other parties should not be allowed to set A&G expense recovery according to what they think it "should" be, based on past approved amounts, adjusted for inflation. This method is obviously flawed and should not be adopted.

The Ameren Companies' A&G expenses should be set according to the record evidence in this case, not adjusted according to levels approved in prior cases. The record shows that the Ameren Companies have supported their total requested level of A&G costs, have demonstrated that such costs are reasonable both in total and in comparison with other O&M expenses, and have provided detailed support for not only pensions and benefits costs, but also for other A&G costs. The Ameren Companies have shown proper allocation of A&G costs among affiliates. In short, the Ameren Companies have met the burden of proof in this proceeding to demonstrate that their requested level of A&G costs is reasonable.

Proposed Language:

For these reasons, the first full paragraph on page 66 of the Proposed Order should be deleted, and should instead read as follows:

The record shows that the Ameren Companies have supported their requested level of A&G costs, have demonstrated that such costs are reasonable both in total in comparison with other O&M expenses, and have provided detailed support for not only pensions and benefits costs, but also for other A&G costs. In addition, the Ameren Companies have supported the fact that other Ameren affiliates involved in non-regulated production functions have substantial A&G costs independent of the costs recorded on the books of the Ameren Companies. The burden of proof has been met by the Ameren Companies in these proceedings to demonstrate that the requested level of A&G costs are reasonable. Neither Mr. Lazare nor Mr. Chalfant identified a single cost that is imprudent. Neither Mr. Lazare nor Mr. Chalfant has identified a single A&G cost that is not properly allocated to the Ameren Companies. Accordingly, the Commission rejects Staff's proposed methodology in calculating A&G expenses and accepts the traditional ratemaking approach proposed by the Ameren Companies.

E. Exception Number 5: Rate Case Expense – The Ameren Companies Have Shown Extraordinary Rate Case Cost Containment; Their Expenses Are Reasonable and Should Be Approved.

The Ameren Companies requested recovery of approximately $2.7 million in rate case expenses for this case, as the total amount of expenses for all utilities combined. (Resp. Ex. 16.9; ICC Staff Ex. 14.0, p. 1; Resp. Ex. 36.5, page 1.) To put this number in perspective, the Commission recently approved Commonwealth Edison's recovery of approximately $7.3 million in rate case expenses for their delivery services rate case expenses. (Final Order, ICC Docket

05-0597, p. 47; see also Resp. Ex. 36.0, p. 12.) That level of expense is consistent with rate case expenses approved for Commonwealth Edison in other cases. (Final Order, ICC Docket 05-0597, p. 47.)

In particular, ComEd's recently concluded DST case provides areasonable basis for comparison. There were comparable issues, a comparable number of witnesses and parties, and both cases went to hearing, without settlement. Indeed, this case was more involved because it addressed three Part 285 filings, not just one.

The level of expense incurred in this case demonstrates that the Ameren Companies have diligently managed the rate case expenses for three utilities at a level far below what the Commission, and Staff, has deemed reasonable for one. The Proposed Order fails to even mention this persuasive fact in its analysis. While Commonwealth Edison is able to spread its rate case expenses over a larger customer base, having fewer customers does not mean less work for the Ameren Companies in litigating their rate cases.

There are many ways available to Staff and the Commission to determine reasonableness of rate case costs. Here, Staff has been provided with the hourly rates of the Ameren Companies' expert witnesses and counsel in the form of contracts and "numerous" invoices, as well as total cost estimates for those services. (Tr. at pp. 583-85; ICC Staff Ex. 14.0, p. 5.) But Staff refused to perform any "reasonableness" analysis of the Ameren Companies' expenses or rate case estimates. (Tr. at p. 608, lines 2-22, p. 609, lines 1-14.) Staff simply recommended disallowance of all of the Ameren Companies' rate case expense costs incurred after the Ameren Companies filed their rebuttal testimony. (Tr. at p. 583-84.) Staff recommended allowing only approximately $1.4 million in rate case expenses for all of the Ameren Companies, thus disallowing almost half of the requested amount.

Staff's only apparent basis for the recommended disallowance is that the Ameren Companies' rate case estimates at time of filing were lower than their estimates at the rebuttal stage. (ICC Staff Ex. 14.0, p. 4.) Working backward, Staff Witness Jones speculates that this overly optimistic cost estimate must have been the result of "verbal communications with [the Companies'] outside service providers." (ICC Staff Ex. 14.0, p. 4.) Ms. Jones ultimately concluded that "verbal communications" are inherently unreliable. (Tr. at p. 606.) Thus, any costs that have not been invoiced are unreasonable. Ms. Jones did not identify any particular rate case expense that she believes is unsupported, and did not find any particular cost to be unreasonable.[3]

There is nothing in Ms. Jones' testimony to support Staff's proposed disallowance. The record shows that the Ameren Companies have managed to keep their rate case expenses to an extraordinarily low level, a level far below what the Commission deemed reasonable in other cases. The Ameren Companies have provided Staff with ample support for all of their rate case costs, including the most accurate estimates available, contracts, letters of engagement, and "numerous invoices."

Finally, the Commission should keep in mind the negative effect of accepting Staff's position on this issue. The Ameren Companies have a proven-effective means of keeping rate

[3] The only specific costs Ms. Jones' disallowed were certain CSS Consulting and Manpower, Inc. invoices that did not identify the Ameren Companies' rate cases. The Ameren Companies provided sworn testimony identifying those services as rate case expenses. 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. The Ameren Companies' CSS Consulting and Manpower, Inc. costs should also be allowed.

case costs approximately three times lower than Commonwealth Edison. Staff's position both penalizes the Ameren Companies and provides no incentive for the Companies to continue their effective cost management efforts. Staff's proposed disallowance is ill-advised and should be disregarded in its entirety.

Proposed Language:

Subsection IV.D.1.c (the first two paragraphs of page 51) of the Proposed Order should be deleted in its entirety, and should instead read as follows:

The Commission finds that the Ameren Companies' requested recovery for rate case expense is reasonable. The record shows that the Ameren Companies have managed to keep their rate case expenses to an extraordinarily low level, a level far below what the Commission has deemed reasonable in other cases. The Ameren Companies provided ample support for all of their rate case costs, including the most accurate estimates available, contracts, letters of engagement, and numerous invoices. Staff's proposed disallowance is thus without merit and is rejected.

F. Exception Number 6: Reallocating AmerenIP's Depreciation Reserve is in the Best Interest of Ratepayers and Should Be Approved.

The Ameren Companies have requested permission to reallocate the AmerenIP depreciation reserve in order to mitigate the future impacts of changes in depreciation rates on customers. (Resp. Ex. 16, pp. 11-13; Resp. Ex. 36.0, pp. 15-17.) The Ameren Companies believe that they could request such approval from FERC. (*Id.*) However, since a depreciation study has been conducted in conjunction with the instant proceedings, the Ameren Companies consider it to be more administratively efficient and more appropriate to request such approval from the ICC at this time.

The Proposed Order incorrectly accepts Staff's argument that there is no support for this request. (PO, p. 21.) The Ameren Companies presented evidence that AmerenIP's depreciation reserve by account and by function indicates a large disparity in the actual reserve vs. the calculated reserve conducted in preparation of the depreciation study. (Resp. Ex. 36.0, p. 18.) As illustrated on Respondents' Exhibit 36.4, the reserve shortfall is predominantly in shorter-lived assets. Amortization of the reserve shortfall of shorter-lived assets occurs over a much shorter remaining life, and results in higher overall depreciation expense. (*Id.*) By reallocating the reserve, the customer impact of any reserve shortfalls on an account by account basis is mitigated. (*Id.*) In this specific case, this reallocation of depreciation reserve has the impact of mitigating the otherwise necessary increase in depreciation expense by $17,099,000 annually, as shown on Respondents' Exhibit 36.4. (*Id.*)

Ameren Companies' witness Stafford testified that the proposal is in accordance with Generally Accepted Accounting Principles ("GAAP"), under the Statement of Financial Accounting Standards 71:

> While there may be other authoritative sources that provide support under GAAP, the Statement of Financial Accounting Standards ("FAS") 71: Accounting for the Effects of Certain Types of Regulation does provide guidance that can be construed as supportive of the Ameren Companies' request, given that AmerenIP is a rate-regulated utility under ICC jurisdiction. Specifically, at paragraph 51 of FAS 71, a threshold issue is addressed: "Should accounting prescribed by regulatory authorities be considered in and of itself generally accepted for purposes of financial reporting by rate-regulated enterprises?" The answer provided in paragraph 52 stated in part ".....the economic effect of

> regulatory decisions-not the mere existence of regulation-is the pervasive factor that determines the application of generally accepted accounting principles." In other words, actions of a regulator, such as in this case approving reallocation of the depreciation reserve, can directly impact and influence whether a rate-regulated utility is in compliance with GAAP.

(Resp. Ex. 36.0, pp. 17-18.)

The record demonstrates that reallocation is reasonable and will be a significant benefit to AmerenIP's customers on a going-forward basis. For all of these reasons, AmerenIP's proposed reallocation of depreciation reserve should be approved.

<u>Proposed Language:</u>

Subsection III.E.3 of the Proposed Order (p. 24) should thus be amended as follows:

Ameren seeks to reallocate IP's depreciation reserve as a result of a depreciation study that apparently shows a disparity between the actual and calculated depreciation reserve amount for IP. Staff finds no support for this reallocation under GAAP, and recommends disallowing the reallocation of the depreciation reserve. ~~The Commission agrees that there is no support for IP's proposed reallocation of depreciation reserve. The Commission also notes that whether this reallocation was allowed or not, it would have no apparent impact on IP's revenue requirement in this proceeding, nor would it correct the problem of inaccurate depreciation rates. Accordingly, the Commission denies Ameren's request to reallocate IP's depreciation reserve.the Commission approves this proposal.~~ <u>The Commission notes that GAAP support for the Ameren Companies proposal is found in Statement of Financial Accounting Standards 71, and that Staff has not presented evidence that the proposal would violate GAAP standards.</u>

The record shows that AmerenIP's proposed reallocation of depreciation reserve will mitigate an otherwise necessary increase in depreciation expense by $17,099,000 annually, as shown on Respondents' Exhibit 36.4. (*Id.*) Because the record demonstrates that reallocation is reasonable and will be a significant benefit to AmerenIP's customers on a going-forward basis, the Commission approves this proposal.

G. Exception Number 7: Cash Working Capital – The Net Lag Methodology Has Been Approved in Prior Proceedings and Is Appropriate Here.

The Proposed Order significantly understates the amount of investor-supplied working capital. Much of the argument pertaining to the determination of the Ameren Companies' cash working capital ("CWC") requirements has focused on the use of the net lag methodology employed by the Companies versus the gross lag methodology recommended by Staff. While in theory the approaches should produce similar results, Staff's methodology (adopted in the Proposed Order) produced results vastly different than those produced by the Companies' methodology. This alone should send up warning flags.

Simply stated, the difference in the methodologies lies in the treatment of revenues. The inherent assumption behind the use of the net lag approach is that the utility collects revenues at a level commensurate with the level of expenses. Since only those revenues which are used to cover expenses are considered, no adjustment of revenues is needed in the net lag approach. Staff (and now, by extension, the Proposed Order) is of the opinion that non-cash items need to be removed from revenues. According to Staff's analyses, the Ameren Companies are paying expenses which exceed revenue levels by between $25 million and $75 million. Therefore, according to Staff's own analyses, the Companies' shareholders would be required to provide funds to support day-to-day operations, which would mean that the Ameren Companies have a positive CWC requirement. The Proposed Order erroneously concludes, however, that they have negative CWC requirements ranging from $1.5 million to $6.6 million. This conclusion simply does not make sense.

The Proposed Order's methodology is flawed because the revenues considered in the analyses fails to 1) be sufficient to cover a number of cash expenses, 2) provide a revenue stream associated with the inclusion of capitalized payroll; 3) reflect the proper levels of other O&M expenses, and 4) provide revenues to cover taxes not included in the revenue requirement, including all employee and withholding taxes and add-on taxes. If the Ameren Companies' revenues were adjusted in an appropriate manner, the use of the gross lag methodology would actually produce a level of CWC requirements which exceeds that requested by the Companies. The Ameren Companies noted during the hearings that one of the major problems with employing the gross lag methodology was adjusting the revenues to the correct level. Clearly Staff's analyses fail to calculate the correct level of revenues to be used in the CWC analyses. The correct calculation of revenues consistent with the Proposed Order's level of cash expenses is provided on page 7 of Appendix A, Appendix B, and Appendix C, which are attached.

A sanity check of the reasonableness of a company's CWC requirements can be assessed by comparing the revenue lag and weighted expense lead. (*See* p. 7a of Apps. A, B, and C.) If the revenue lag days are longer than the weighted expense lead days, a company has a positive CWC requirement. If the weighted expense lead days are less than the revenue lag days, the company would have a negative CWC requirement. The revenue lag for the Ameren Companies is 43.24 days, which means that it takes 43.24 days, on average, for the utility to receive payment from its customers and to have access to the money for service provided during a given month.

Conversely, the utility is paying providers of services, on a dollar-weighted basis, approximately 38-40 days after services are provided. Both of these facts are undisputed. Therefore, on a net basis, the Ameren Companies are paying the vendors over 3 days <u>before</u> payment is received from the customers. To conclude that the Ameren Companies have negative CWC requirements given these facts defies both reason and basic arithmetic.

The Ameren Companies therefore request that the Proposed Order be modified to accurately reflect their CWC requirements. This correction can be made by 1) accepting the net lag methodology to determine the appropriate level of CWC or 2) modifying the gross lag methodology to reflect an accurate level of revenues to be considered in the CWC analyses. The corrected levels of revenues, by Ameren Company, are set forth on the attached schedules.

<u>Proposed Language</u>

The Ameren Companies propose that final paragraph of subsection III.G.1.d on p. 33 of the Proposed Order be deleted in its entirety, and replaced with the following modification language:

<u>The Commission finds that the Companies have appropriately prepared, documented and supported its cash working capital analysis. The Net Lag methodology used by the Companies has been accepted by this Commission in prior rate proceedings. No party to this proceeding has expressed valid concerns with the use of the Net Lag methodology. Accordingly, the use of the Net Lag approach is approved. The Commission does not by this action suggest that the Gross Lag approach is inappropriate for use in Illinois.</u>

H. Exception Number 8: Miscellaneous Issues

1. Line and Service Extensions

In its Proposed Order, the Commission rejected IBEW's arguments concerning the Ameren Companies' proposals to initiate pilot programs that would allow residential subdivision developers to install their own distribution facilities. The Commission applied Section 16-108(a) in concluding that these pilot programs are just and reasonable because they will benefit customers, with minimal (if any) adverse consequences for the Ameren Companies' union employees. While the Ameren Companies agree with the Commission's ultimate conclusion regarding the justness and reasonableness of these pilot programs, we respectfully disagree that Section 16-108(a) is in any way relevant to this analysis. The Commission's findings that allowing developers to install their own distribution facilities constitutes "unbundling" under Section 16-108(a) only serves to give the IBEW new fodder, in future proceedings, to seek Commission review of labor relations matters that are beyond the scope of the Act. The Commission can prevent this by amending the Proposed Order as requested below.

Section 16-108(a) plainly states that the statute applies only to initial delivery service tariff filings required under the Customer Choice Law. This is clear from the very first sentence in the statute: "An electric utility shall file a delivery services tariff with the Commission 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). The statute goes on to explain the components of these delivery services, jurisdictional considerations, and the applicability of Article IX in terms of the Commission's authority to set rates. Thus, Section 16-108 does nothing more than prescribe that the Commission has to consider in conjunction with the initial unbundling of services in preparation for customer choice. The Commission did this very thing in Docket No. 99-0013.

The General Assembly further provided that the Commission should continue to review "unbundling" at specified intervals following the initial investigation required by Section 16-108. 220 ILCS 5/16-109. Notably, the General Assembly provided no authority for the Commission to consider unbundling in the context of a rate case, at the request of an intervening party or otherwise. This makes sense. Rate cases are supposed to be about rates. Whether offering certain services constitutes "unbundling" should be reserved for a separate proceeding under Section 16-109. This is what the statute requires.

It is not to say, however, that the Commission is without authority to give consideration to the criteria it was statutorily required to consider when the initial delivery service tariffs were filed. Any unbundling that results in rates falls under the scrutiny of what are "just and reasonable" rates. The party could make the case that, for example, unbundling of a particular service has some bearing on the development of competitive markets for electric energy services in Illinois and that the resultant impact be considered. However, the IBEW approach adds complexity not otherwise necessary.

By focusing on Section 16-108 and whether the pilot programs constitute "unbundling", the Proposed Order establishes a precedent that arguably requires the Commission to take into account the impact on "electric utility employees" in every rate case. Although the Commission in this case found that the proposed pilot programs will not adversely affect IBEW employees, there is nothing to prevent the IBEW from attempting to argue in future proceedings the impact on utility employees is always something that the Commission has to consider in reviewing any rate or practice of a utility. If history repeats itself – and with the IBEW, it always does – this will surely happen. It happened, in fact, in this case. In Docket No. 03-0767, the IBEW intervened to complain about the installation of gas and electric facilities by non-union personnel. The Commission admonished IBEW:

> It is not clear that the issue to which IBEW avers concerning the HBAI agreements is anything more than a labor "jurisdictional dispute"; i.e. an issue concerning the identity or union membership of the persons performing the labor to install the electric line or gas main extensions. If so, it concerns labor relations matters rather than the Public Utilities Act. IBEW tries to make vague references to system reliability within the context of a requirement for "a workforce of skilled and dedicated employees", but fails to set forth any specific allegation to substantiate that the provision of electricity or natural gas to customers is, or could be, at risk. Given the vagueness of the contentions, the Commission declines to open an investigation on its own motion, as IBEW requests. Again, IBEW is not inhibited from filing a complaint if it can state sufficient allegations.

An investigation into the proper allocation of line extension and service of installation costs, Docket No. 03-0767, Order of Rehearing of April 6, 2006, at 3.

Here, as in Docket No. 03-0767, IBEW once again forced the Commission to devote considerable resources to labor jurisdictional issues that have nothing to do with the Public Utilities Act. But this time, contrary to the Order on Rehearing in Docket No. 03-0767, discussed above, the Commission determined that labor jurisdictional issue are relevant to the Public Utilities Act, provided there is a claim that a utility is offering an unbundled service. This is a dangerous precedent that the IBEW no doubt will seek to extend in future cases. The Commission needs to put a stop to the IBEW's continued abuse of Commission proceedings to advance their labor relations agenda. The Ameren Companies request that the Commission modify the Proposed Order at pages 205-207 as follows:

Proposed Language:

Ameren proposes to allow residential customers, or their contractors, to dig a trench and install plastic conduit with a rope inside so that Ameren can pull a conductor through the conduit. IBEW objects to this proposal on numerous grounds as explained in its Initial Brief and as summarized above. Among other things, IBEW argues that Ameren's tariffs are not just and reasonable because they would allow customers to engage in activities that interfere with safeguarding system reliability and the health and safety of utility employees, customers, and the public.

Ameren also proposes to allow, in limited circumstances, residential subdivision developers to install their own underground electric distribution facilities and equipment. For distribution facilities and equipment, Ameren would require the developer to use an approved contractor. IBEW complains that, among other things, Ameren's proposal is vague. IBEW also argues that under Section 16-108(a) of the Act, the Commission must consider the impact on utility employees when evaluating this proposal. IBEW claims this proposal would have a significant adverse impact on Ameren's IBEW employees.

The primary purpose of electric utility tariffs under the jurisdiction of the Commission is to govern the relationship between electric utilities and its customers. Such tariffs are, at most, incidental to governing the relationship between electric utilities and its employees and to safeguarding the safety of utility employees.

The Commission is not convinced that the installation of conduit by a residential customer, or its contractor, constitutes a delivery service and thus, a Commission decision regarding unbundling of this service is unnecessary. The installation of conduit is not necessary for residential customers to receive electric power and energy from suppliers other than Ameren. Because the installation of conduit is not a delivery service, the Commission need not consider Section 16-108(a). If, however, the Commission were to conclude that the installation of conduit by residential customers, or their contractors, constituted a delivery service, the Commission believes Section 16-108(a) of the Act would apply. In such a situation, the Commission would reject Ameren's argument that Section 16-108(a) unbundling considerations are only applicable to the initial delivery services tariff establishment. That Section explicitly anticipates subsequent modification of delivery services tariffs pursuant to Article IX and the Commission believes the last sentence of Section 16-108(a) would be applicable to any such unbundling.

While the Commission does not believe the installation of conduit by residential customers constitutes a delivery service, the Commission observes that in addition to considering the impact of unbundling on utility employees, under Section 16-108(a) of the Act the Commission must also consider the objective of just and reasonable rates and the development of competitive markets for electric energy services in Illinois. The consideration of these two factors would tend to favor allowing residential customers to install conduit. Such an arrangement would tend to produce lower costs and increase the service options available to residential customers. Thus, even though the Commission does not believe the installation of conduit by residential customers constitutes a delivery service, if it did, the Commission likely would still determine that unbundling of that service is in the public interest. The Commission believes it is just and reasonable to allow residential customers, or their contractors, to install conduit for a service line conductor. This is not to say that this conclusion in any way excuses Ameren from its responsibilities to ensure the safety and reliability of its distribution and transmission system. Nevertheless, the Commission believes that the record supports Ameren's proposal.

The Commission believes that Ameren’s proposal to allow residential developers to install their own the installation of underground electric distribution facilities and equipment constitutes an unbundling of a delivery services. The Commission finds that while the installation of conduit is not necessary for residential customers to receive electric power and energy from suppliers other than Ameren, the installation of underground electric distribution facilities and equipment is necessary and meets the statutory definition of delivery service.

The Commission’s finding that the installation of underground electric distribution facilities and equipment constitutes a delivery service does not end the analysis. The question remains whether As previously discussed, the Commission believes that this proposal is, therefore, subject to the provisions of Section 16-108(a) of the Act apply to this proceeding. The Commission finds that they do not. By its express terms, Section 16-108(a) applies only to the delivery services tariff initially required to be filed within 210 days of passage of the Electric Service Customer Choice and Rate Relief Law of 1997 (“Customer Choice Law”). Section 16-109 confers authority to the Commission to consider additional unbundling in subsequent Commission proceedings, but the statute envisions a separate proceeding dedicated to a review of that issue. The Customer Choice Law does not provide for the Commission to make unbundling determinations in the context of a distribution services rate case, regardless of whether a “delivery service” is involved.

The Commission further notes that the issues raised by IBEW predominately involve the identity or union membership of persons involved in installing underground electric distribution facilities and equipment. In the Commission's Order on Rehearing in Docket No. 03-0767, the Commission determined that such issues involve a "labor jurisdictional dispute" that is beyond the scope of the Public Utilities Act. The Commission's finding in Docket No. 03-0767 is of equal import here. IBEW's attempt to link such issues as employee training and qualifications with system reliability and the need to maintain a "skilled and dedicated workforce" is both unpersuasive and irrelevant. The Ameren Companies are ultimately responsible for their underground electric distribution facilities and equipment, regardless of who installs them. To the extent IBEW believes that the Companies are not in compliance with any provision of the Public Utilities Act, they are free to raise their concerns to the Commission by way of a complaint.

Even if Section 16-108(a) applied in this proceeding, a As noted previously, there are three criteria the Commission must consider in evaluating a proposal to unbundle delivery services. IBEW expresses concern that Ameren's proposal will have a significant adverse impact on IBEW utility employees. The Commission, however, is not convinced that is true. In its testimony, the IBEW indicates that IP initiated a pilot program to allow residential developers to undertake the same activity that is the subject of dispute here. After reviewing Ameren's proposed tariffs, the Commission believes that this proposed provision is not likely to be used extensively and is unlikely to have a significant impact on utility employees. On the other hand, the Commission believes this provision could contribute to just and reasonable rates by allowing residential developers to have underground electric distribution facilities installed in a more timely and cost effective manner. Additionally, allowing residential developers to undertake such activities might enhance the development of the competitive market for such services. The Commission emphasizes, however, that in approving this tariff provision, Ameren remains responsible for ensuring that its electric distribution system is constructed and maintained in a safe and reliable condition. Thus, as part of the transition from a fully regulated electric services market to a partially competitive market, Ameren's proposed tariff provisions that would allow residential customers or their contractors to install conduit and that would allow developers of residential subdivisions to install conduit and distribution facilities under Ameren's direction is hereby approved as a pilot program.

Additionally, the Commission directs CILCO, CIPS, and IP to submit annual reports to the Manager of the Commission's Rates Department listing and detailing the level of participation in this tariff provision. The first such reports shall be submitted by April 30, 2008 for the calendar year 2007 and on April 30th of each subsequent year for activity in the preceding calendar year until each company's next distribution rate increase is completed.

2. Miscellaneous Errors

a. Accrued OPEB Liability

Page 24, subsection III.F. 1. – The last sentence of this paragraph should read as follows:

As of December 31, 2004, all parties are in agreement that pursuant to FAS 106, Ameren had an accrued OPEB liability related to electric distribution operation of $28,659,000 for AmerenCILCO, $2,740,000 for AmerenCIPS, and $1,217,000 for AmerenIP.

b. Summary of Uncontested/Settled Issues: Duplicate Charges

Page 39, subsection IV.A.4. – This paragraph should be amended as follows:

The AG originally proposed an adjustment to eliminate duplicate charges. ~~Subsequently, Ameren adjusted its revenues to reflect this proposal and accept the AG adjustment.~~In response to AG, Ameren adjusted its revenues to fully account for duplicate charges and the AG accepted that no further adjustment was necessary. The Commission finds this adjustment appropriate.

c. Ameren Services Reallocation

Page 39, subsection IV. A. 6. – This heading should be amended to read "Ameren Services Reallocation" or "CILCO and CIPS Ameren Services Reallocation". The text of this subsection should be amended as follows:

Staff proposed an adjustment to CILCO's Ameren Services reallocation, which Ameren has accepted. ~~The Commission finds this adjustment appropriate.~~Staff accepted additional adjustments proposed by Ameren to correct CILCO and CIPS Ameren Services reallocation. The Commission finds these adjustments to be appropriate.

d. Rate Case Expense

Page 48, Subsection IV.D, first sentence, should be amended to read:

Staff proposes to disallow a portion of the rate case expenses that Ameren proposes to include in ~~rate base~~operation and maintenance expenses.

e. Recovery of Supply Related Costs

Page 151, subsection VI.A.6: The following sentence should be added before the last sentence of this paragraph:

In addition, both Staff and Ameren are in agreement that the uncollectibles rate should also be recalculated in future delivery service rate cases. (Resp. Exh. 36.0, pp. 42-43, lines 948-955).

f. Findings and Orderings Paragraphs

The Proposed Order provides amounts for electric service revenue only, rather than total electric delivery service operating revenue in Findings (11), (12), (13), (16), (17), (18). These paragraphs should be amended for two reasons: (1) The Ameren Companies' final rate design has to consider changes in both customer class revenues and other operating revenues; and (2) the percentage increases shown in Findings (16), (17), and (18) are developed based total electric delivery service operating revenue from line 3 of Appendix (A), (B), and (C), respectively, rather than the amounts from 1 of Appendix (A), (B), and (C), respectively, as is currently shown in the Proposed Order. The Ameren Companies recommend these paragraphs be amended as follows:

Findings (11) and (16): Delete \$124,768,000 and replace with \$126,979,000;

Findings (12) and (17): Delete \$208,666,000 and replace with \$218,702,000;

Findings (13) and (18): Delete \$350,611,000 and replace with \$365,398,000.

Dated: October 18, 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 October 18, 2006, I served a copy of the foregoing Brief on Exceptions of the Ameren Companies by electronic mail to the individuals on the Commission's Service List for this Docket.

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CHI-1556997v1