IBEW EXCEPTIONS

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company d/b/a AmerenCILCO	:	
Proposed general increase in rates for delivery service. (tariffs filed December 27, 2005)	:	**06-0070**
Central Illinois Public Service Company d/b/a AmerenCIPS	:	**(Cons.)**
Proposed general increase in rates for delivery service. (tariffs filed December 27, 2005)	:	**06-0071**
Illinois Power Company d/b/a AmerenIP	:	**(Cons.)**
Proposed general increase in rates for delivery service. (tariffs filed December 27, 2005)	:	**06-0072**

PROPOSED ORDER

By the Commission:

I. INTRODUCTION

On December 27, 2005, Central Illinois Light Company d/b/a AmerenCILCO ("CILCO"), Central Illinois Public Service Company d/b/a AmerenCIPS ("CIPS"), and Illinois Power Company d/b/a AmerenIP ("IP") (collectively "Ameren") separately filed with the Illinois Commerce Commission ("Commission") revised tariff sheets proposing general increases in rates for electric delivery service and changes in certain terms and conditions of service. The revised tariff sheets were to become effective February 10, 2006. Ameren made the filing pursuant to Sections 9-201 and 16-108 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq.

CILCO filed the following proposed tariff sheets: Ill. C. C. No. 18, 1st Revised Title Sheet, 1st Revised Sheet No. 1, Original Sheet No. 1.001, 1st Revised Sheet No. 2, Original Sheet No. 2.001, 1st Revised Sheet No. 3, Original Sheet Nos. 3.001 through 3.036, 1st Revised Sheet No. 4, Original Sheet Nos. 4.001 through 4.026, 1st Revised Sheet No. 5, Original Sheet Nos. 5.001 through 5.028, 1st Revised Sheet No. 11, Original Sheet Nos. 11.001 and 11.002, 1st Revised Sheet No. 12, Original Sheet

Nos. 12.001 and 12.002, 1st Revised Sheet No. 13, Original Sheet Nos. 13.001 and 13.002, 1st Revised Sheet No. 14, Original Sheet Nos. 14.001 and 14.002, 1st Revised Sheet No. 15, Original Sheet Nos. 15.001 through 15.008, Original Sheet Nos. 28 through 33, Original Sheet Nos. 34 and 34.001, Original Sheet Nos. 35, 35.001 and 35.002, Original Sheet Nos. 36, 36.001 through 36.008, Original Sheet Nos. 37, 37.001 and 37.002, Original Sheet Nos. 38, 38.001 and 38.002, Original Sheet Nos. 39, 39.001 and 39.002, Original Sheet Nos. 40 through 49, and Original Sheet Nos. 50, 50.001 through 50.004.

CIPS proposed the following tariffs sheets: Ill. C. C. No. 16, 1st Revised Title Sheet, 1st Revised Sheet No. 1, Original Sheet No. 1.001, 1st Revised Sheet No. 2, Original Sheet Nos. 2.001 through 2.007, 1st Revised Sheet No. 3, Original Sheet Nos. 3.001 through 3.036, 1st Revised Sheet No. 4, Original Sheet Nos. 4.001 through 4.026, 1st Revised Sheet No. 5, Original Sheet Nos. 5.001 through 5.028, 1st Revised Sheet No. 11, Original Sheet Nos. 11.001 and 11.002, 1st Revised Sheet No. 12, Original Sheet Nos. 12.001 and 12.002, 1st Revised Sheet No. 13, Original Sheet Nos. 13.001 and 13.002, 1st Revised Sheet No. 14, Original Sheet Nos. 14.001 and 14.002, 1st Revised Sheet No. 15, Original Sheet Nos. 15.001 through 15.008, Original Sheet Nos. 28 through 33, Original Sheet Nos. 34 and 34.001, Original Sheet Nos. 35, 35.001 and 35.002, Original Sheet Nos. 36, 36.001 through 36.008, Original Sheet Nos. 37, 37.001 through 37.004, Original Sheet Nos. 38, 38.001 and 38.002, Original Sheet Nos. 39, 39.001 and 39.002, Original Sheet Nos. 40, 40.001 through 40.005, Original Sheet Nos. 41 through 49, and Original Sheet Nos. 50, 50.001 through 50.004.

IP filed the following proposed tariff sheets: Ill. C. C. No. 35, 1st Revised Title Sheet, 1st Revised Sheet No. 1, Original Sheet No. 1.001, 1st Revised Sheet No. 2, Original Sheet Nos. 2.001 and 2.002, 1st Revised Sheet No. 3, Original Sheet Nos. 3.001 through 3.036, 1st Revised Sheet No. 4, Original Sheet Nos. 4.001 through 4.026, 1st Revised Sheet No. 5, Original Sheet Nos. 5.001 through 5.033, 1st Revised Sheet No. 11, Original Sheet Nos. 11.001 and 11.002, 1st Revised Sheet No. 12, Original Sheet Nos. 12.001 and 12.002, 1st Revised Sheet No. 13, Original Sheet Nos. 13.001 and 13.002, 1st Revised Sheet No. 14, Original Sheet Nos. 14.001 and 14.002, 1st Revised Sheet No. 15, Original Sheet Nos. 15.001 through 15.008, Original Sheet Nos. 28 through 33, Original Sheet Nos. 34 and 34.001, Original Sheet Nos. 35, 35.001 and 35.002, Original Sheet Nos. 36, 36.001 through 36.008, Original Sheet Nos. 37, 37.001 through 37.006, Original Sheet Nos. 38, 38.001 and 38.002, Original Sheet Nos. 39, 39.001 and 39.002, Original Sheet Nos. 40, 40.001 through 40.005, Original Sheet Nos. 41, 41.001 through 41.004, Original Sheet Nos. 42, 42.001 through 42.007, Original Sheet Nos. 43 through 49, and Original Sheet Nos. 50, 50.001 through 50.004.

In accordance with the requirements of Section 9-201(a) of the Act and 83 Ill. Adm. Code 255, Ameren published notice of its filings with the Commission in newspapers of general circulation throughout CILCO's, CIPS', and IP's respective electric service territories. Ameren indicates further that it posted notice of its filings in its business offices.

On January 25, 2006, the Commission entered orders suspending all of the revised tariff sheets until May 25, 2006. The investigations into CILCO's, CIPS', and IP's rate filings initiated by the January 25 Suspension Orders are identified as Docket Nos. 06-0070, 06-0071, and 06-0072, respectively. On May 17, 2006, the Commission entered Resuspension Orders in the dockets extending the suspension of the proposed tariff sheets until November 25, 2006.

Petitions to intervene were received from the Attorney General, on behalf of the People of the State of Illinois ("AG"); Citizens Utility Board ("CUB"); City of Champaign, City of Urbana, City of Bloomington, Town of Normal, and Champaign County (collectively referred to as the Local Government Interveners ["LGI"]); Local Unions 51, 309, 649, 702, and 1306 of the International Brotherhood of Electrical Workers, AFL-CIO ("IBEW"); Dynegy, Inc.; Wal-Mart Stores, Inc. ("Wal-Mart"); Blue Star Energy Services, Inc.; Kroger Company ("Kroger"); Constellation NewEnergy, Inc. ("Constellation"); and Peoples Energy Services Corporation ("Peoples") (Constellation and Peoples are collectively referred to as the Coalition of Energy Suppliers ["Coalition"]). Air Products & Chemicals Company, Archer-Daniels-Midland Company, ASF-Keystone, Inc., BOC Gases (a subsidiary of The BOC Group, Inc.), Caterpillar Inc., ConocoPhillips Company, Illinois Cement Company, Keystone Consolidated Industries, Inc., Marathon Petroleum Company, Olin Corporation, Tate & Lyle Ingredients America, Inc., Plastipak Packaging, Inc., United States Steel Corporation, and the University of Illinois also petitioned to intervene as the Illinois Industrial Energy Consumers ("IIEC"). The Administrative Law Judges granted the petitions to intervene. Commission Staff ("Staff") participated as well.

Pursuant to due notice, a status hearing was held in these matters before duly authorized Administrative Law Judges of the Commission at its offices in Springfield, Illinois on February 27, 2006. At this hearing, the three dockets were consolidated and a procedural schedule was established. Additional hearings were held on June 5, June 7, and June 14, 2006 to resolve procedural and discovery disputes that had arisen. Following extensive discovery and the submission of prepared testimony, evidentiary hearings were held at the Commission's Springfield offices on July 24, 25, 26, and 27, 2006. Testimony and exhibits from Ameren, Staff, the AG, CUB, IBEW, IIEC, LGI, the Coalition, Kroger, and Wal-Mart were admitted into the record. On August 14, 2006, the record was marked "Heard and Taken." Ameren, Staff, the AG, CUB, IBEW, IIEC, the Coalition, LGI, Wal-Mart, and Kroger each submitted an Initial Brief and Reply Brief. A Proposed Order was served on the parties.

The following witnesses testified on behalf of Ameren: Scott Cisel, President and Chief Operating Officer of CILCO, CIPS, and IP; Martin Lyons, Jr., Vice President and Controller of Ameren Corporation, CILCO, CIPS, and IP; Kathleen McShane, Senior Vice President, Foster Associates, Inc.; Lee Nickloy, Director–Corporate Finance and Assistant Treasurer, Ameren Corporation; Michael O'Bryan, Senior Capital Markets Specialist in Treasury–Corporate Finance, Ameren Services Company; Ronald Stafford, Managing Supervisor of Regulatory Accounting, Ameren Services Company ("Ameren Services"); Michael Adams, Director, Energy, Navigant Consulting, Inc.; Wilbon Cooper,

Manager–Rate Engineering and Analysis–Regulatory Policy and Planning, Ameren Services; Philip Difani, Jr., Consulting Engineer–Regulatory Policy and Planning, Ameren Services; Leonard Jones, Managing Supervisor–Restructured Services–Regulatory Policy and Planning, Ameren Services; Kenneth Vogl, consultant, Towers Perrin; Robert Porter, Manager, Acquisitions, Ameren Services; Marla Langenhorst, Manager, Employee Benefits, Ameren Services; Krista Bauer, Managing Supervisor, Compensation and Performance, Ameren Services; Craig Boland, Supervising Engineer, Ameren Services; Ray Wiesehan, Manager - Safety and Resource Management, Ameren Services; Allen Clapp, President of Clapp Research Associates, P.C., Consulting Engineers and President of Clapp Research, Inc.; Keith Hock, Managing Supervisor, Transmission Services Business Center, Ameren Services; Paul Straughn, Manager of Development Energy Delivery, Ameren Services; Michael Getz, Managing Supervisor of Plant Accounting, Ameren Services; Richard Voytas, Manager of Corporate Analysis, Ameren Services; John B. Hollibaugh, Managing Supervisor–AMR Implementation, Ameren Services; and Jon Carls, Managing Supervisor–Regulatory Compliance, Ameren Services.

The following witnesses submitted testimony on behalf of Staff: Scott Struck Accountant, Accounting Department, Financial Analysis Division; Theresa Ebrey, Accountant, Accounting Department, Financial Analysis Division; Burma Jones, Accountant, Accounting Department, Financial Analysis Division; Janice Freetly, Senior Financial Analyst, Finance Department, Financial Analysis Division; Alan Pregozen, Manager, Finance Department, Financial Analysis Division; Peter Lazare, Senior Economic Analyst, Rates Department, Financial Analysis Division, Cheri Harden, Rate Analyst, Rates Department, Financial Analysis Division; Mike Luth, Rate Analyst, Rates Department, Financial Analysis Division, Greg Rockrohr, Senior Electrical Engineer, Engineering Department, Energy Division; James Spencer, Senior Electrical Engineer, Engineering Department, Energy Division; Thomas Griffin, Accountant, Accounting Department, Financial Analysis Division; and Eric Schlaf, Senior Economic Analyst, Energy Division.

The AG's witnesses were David Effron, consultant, and Scott Rubin, attorney and consultant. Richard Cuthbert, Principal and Senior Economist, R.W. Beck, Inc. testified on behalf of LGI. The Coalition called Philip O'Connor, Vice President, Illinois Market, Constellation; Jennifer Witt, Peoples; and John Domagalski, Director of Pricing and Product Development, Constellation, to testify. CUB's witnesses were Christopher Thomas, Director of Policy, and Edward Bodmer, consultant. Matthew Moore, Business Representative, Local Union 51, Daniel F. Miller, Business Representative, Local Union 702, and Tom Peterson, Business Representative, Local Union 51, testified on behalf of IBEW. IIEC called Robert Stephens, consultant, Brubaker & Associates, Inc., Alan Chalfant, consultant, Brubaker & Associates, Inc.; and Michael Gorman, consultant, Energy Advisor, and Managing Principal, Brubaker & Associates, Inc., to testify on its behalf. Kroger's witness was Kevin Higgins, Principal, Energy Strategies, LLC. Wal-Mart's witness was James Selecky, consultant, Brubaker & Associates, Inc.

Since the Commission initiated these proceedings under Section 9-201 of the Act to investigate Ameren's proposed tariffs, Ameren bears the burden of proof to establish the just and reasonableness of its tariffs. 220 ILCS 5/9-201(c). Ameren's burden of proof extends not only to its proposed tariff rates and charges, but also changes to practices affecting services.[1] Put differently, its burden of proof "goes to the *details* of the proposed tariffs, and not just whether or not it is just and reasonable in general." *Project Pronto Order* at *8 (emphasis in original).

Moreover, it is not enough for Ameren to argue in these proceedings that opposing parties have failed to show that its proposed tariffs were unreasonable. As the Illinois Appellate Court unequivocally explained, "requiring intervenors to establish unreasonableness is . . . no substitute for requiring proof of reasonableness." *Citizens Utility Bd. v. Ill. Commerce Comm'n*, 276 Ill.App.3d 730, 747 (1st Dist. 1995). This is so because there is no guarantee that any party will choose to intervene or actively participate in Commission proceedings.[2]

Finally, as contested proceedings, the standard of proof is the preponderance of the evidence. *Amendment of 83 Ill. Admin. Code Part 200*, ICC Docket No. 92-0024, 1992 Ill. PUC LEXIS 200 at *5 (Order entered Apr. 29, 1992).

The Commission's role in these tariff investigations is not only to ensure that Ameren has met its burden of proof, but also to act as an investigator and set just rates, terms, and service practices for all affected by the tariffs. *CUB*, 276 Ill.App.3d at 740. In keeping with that role, the Commission is obligated to inform itself of the manner and method in which Ameren will conduct its business, 220 ILCS 4-101, and ensure that Ameren will furnish, provide, and maintain services that promote the safety, health, comfort, and convenience of its patrons, employees, and the public. 220 ILCS 5/8-101, 220 ILCS 5/8-401.[3]

In addition, since Ameren has proposed new delivery service tariffs for all three Ameren Companies, Section 16-108(a) of the Act also applies. That provision allows the Commission to review, approve, and modify a utility's proposed delivery services

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[1] *Id.*; *Proposed Implementation of High Frequency Portion of the Loop (HFPL)/Line Sharing Service*, ICC Docket No. 00-0393, 2001 PUC LEXIS 271 at *8 (Order entered Mar. 14, 2001) ("*Project Pronto Order*").

[2] *People ex. rel. Hartigan v. Illinois Commerce Comm'n*, 117 Ill.2d 120, 135-36 (1987). *See Commonwealth Edison Company: Petition to protect confidential and proprietary information from public disclosure submitted pursuant to Section 16-111(g) of the Public Utilities Act as part of a Notice of Property Sale et al.*, ICC Docket Nos. 99-0273, 99-0282 (Consol.), 1999 Ill. PUC LEXIS 551, at *69-*70 (Order entered Aug. 3, 1999) ("*ComEd Order*").

[3] *Commonwealth Edison Company: Proposed general increase in electric rates et seq.*, ICC Docket No. 58340, 1974 Ill. PUC LEXIS 12, at *65 (Order entered Apr. 10, 1974) ("The obligation of the Commission to protect and enhance the safety, health, comfort and convenience of the patrons, employees and the public serviced by a public utility is one of the primary purposes of regulation"). *See Brotherhood of Railroad Trainmen v. Elgin J & E Ry. Co.*, 382 Ill. 55, 68-69 (1943) (Holding that the PUA provides the Commission, in the most comprehensive terms, the power through its orders and rules to require public utilities to implement changes to promote the security and safety of its employees and the public). *Accord, Central Illinois Public Service Co. v. Ill. Commerce Comm'n*, 18 Ill.2d 506, 512 (1960).

tariffs when they, *inter alia*, offer those services on an "unbundled"[4] basis. 220 ILCS 5/16-108(a).[5] If such an offering is made, then the Commission is required "to consider, at minimum, the effect of additional unbundling on (i) the objective of just and reasonable rates, (ii) electric utility employees, and (iii) the development of competitive markets for electric energy services in Illinois." 220 ILCS 5/16-108(a).

Finally, the order in these proceedings must be within the Commission's statutory authority, must lawfully implement the substantive mandates of the General Assembly, and must be based exclusively on the evidence in the record. *Commonwealth Edison: Petition for approval of delivery services tariffs and residential delivery services implementation plan, and for approval of certain other amendments and additions to its rates, terms, and conditions*, ICC Docket No. 01-0423, 2002 Ill. PUC LEXIS 563, at *17 (Order entered Apr. 1, 2002).

VII. MISCELLANEOUS ISSUES

A. Line and Service Extensions

1. IBEW's Position

As noted in Section VI.E above, Ameren proposes to allow certain customers and developers the option of installing their own conduit and electric facilities. Ameren, IBEW argues, has failed to submit any evidence demonstrating that its customers possess the requisite skills to install their own conduit for underground line and service extensions. IBEW further argues that Ameren has submitted no evidence demonstrating the justness and reasonableness of its proposal to allow residential subdivision developers to install electric distribution facilities. IBEW claims that Ameren's installation options constitute "unbundling" under the statute, and that these installation options will have a significant and adverse impact on Ameren's IBEW personnel. Accordingly, the IBEW believes the Commission should find that Ameren's proposed installation options for customers and subdivision developers are not "just and reasonable."

A "line extension," according to the IBEW, is that part of Ameren's electric distribution system, including power lines (or conductors), utility poles, and other equipment, that is located on a public and/or private right of way and used to provide one or more customers with electric service. A "service extension," IBEW states, is that portion of the system, including conductors, poles, and other equipment located on

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4 Section 16-102 of the PUA defines an "unbundled service" as "a component or constituent part of a tariffed service which the electric utility subsequently offers separately to its customers." 220 ILCS 5/16-102.

5 *See* 220 ILCS 5/16-109 ("The Commission may also, in accordance with Section 16-108, upon complaint or upon its own initiative without complaint, upon reasonable notice, enter upon a hearing concerning the need and desirability of requiring additional or other unbundling of delivery services offered by electric utilities.").

customer property to provide one customer with electric service. IBEW adds that line and service extensions may be either overhead or underground in that the conductor is located above or below ground. Ameren, IBEW states, typically provide customers with overhead service because it is cheaper to deploy and underground extensions are usually provided when overhead service is impractical or the customer requests underground service. Once installed, IBEW says Ameren owns and maintains the service on a going forward basis, including the transformers, meters, conductors, and other equipment and facilities.

To install and maintain these services, Ameren depends upon its journeymen linemen represented by the IBEW.[6] IBEW journeymen linemen have installed and maintained the State's electric generating, transmission, and distribution systems for decades, including line and service extensions. *Id.* IBEW states that it is beyond question that IBEW journeymen linemen are highly qualified individuals who have completed several years of apprenticeship training,[7] and possess the requisite skills and experience to install and maintain these systems. 220 ILCS 5/16-128(a). IBEW points out that Ameren witness John Hollibaugh explained at hearing that IBEW journeymen linemen are specifically trained to perform each of the work functions necessary to provide Ameren customers with line and service extensions.[8]

When a customer requests underground service, Ameren's established practice has been (by tariff or otherwise) to have its IBEW journeymen linemen directly bury the line conductor in a trench, rather than install the conductor in underground conduit.[9] *See e.g.*, IBEW Exhibit 2.0 at 25 (lines 538-543). Under this practice, IBEW personnel perform the following steps:

- Pick up a trenching machine (trencher) at Ameren's area headquaters.
- Bring the trencher and other equipment and tools to the jobsite.
- Unload the trencher, equipment, and tools.
- Locate any other utility service already installed.
- Use the trencher to dig the entire length of the extension.
- Connect the conductor to the transformer and/or pedestal.
- Connect the conductor to the meter.
- Back fill the trench with clean soil.
- Check the meter base for proper wiring.

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6 IBEW Exhibit 1.0 at 22-23 (lines 470-492); IBEW Exhibit 2.0 at 23-24 (lines 492-518); IBEW Exhibit 3.0 at 25 (lines 531-548).

7 *See* IBEW Exhibit 1.15; IBEW Exhibit 2.15; IBEW Exhibit 3.15 (IBEW journeymen linemen apprenticeship program).

8 *See* Revised Ameren Exhibit 30.0 at 4-5 (listing each of the work functions that IBEW journeymen linemen are specifically trained and responsible for providing to Ameren); Tr. at 708-711 (agreeing that each of the work functions listed in his revised rebuttal testimony are work functions that IBEW journeymen linemen are specifically trained and responsible for providing to Ameren).

9 "Conduit" is essentially metal or PVC pipe that provides an enclosed structure for a conductor (or power line).

- Install the electric meter.[10]

Until recently, IBEW says Ameren's practice for underground service has been that customers can not install their own underground conduit for line conductors where IBEW journeymen linemen would directly bury the conductor. IBEW also states that, currently, residential subdivision developers may not install their own conduit systems for underground extensions or electric distribution facilities and equipment comprising those extensions.

In March 2004, IBEW asserts that CIPS initiated a new underground service practice that gave residential customers the option of installing their own conduit for underground extensions in lieu of having, and paying for, Ameren's IBEW personnel directly bury the conductor. IBEW states that under the new practice, the customer (or its contractor) would buy the proper conduit, dig the trench, connect the conduit together, insert a rope in it so IBEW personnel could later pull the conductor through the conduit, and refill the trench with clean soil. Once the conduit was installed, IBEW says its journeymen linemen would insert and pull the conductor through the conduit and connect the conductor to the transformer and meter box.

IBEW states that Ameren offered the new service option to its customers at a reduced installation charge because IBEW personnel would no longer directly bury the conductor. CIPS, IBEW says, implemented the practice without amending its tariffs or obtaining Commission approval.

IBEW adds that, in 2003, IP initiated a "pilot program" permitting residential subdivision developers to install their own conduit for underground extensions and electric distribution facilities and equipment comprising those extensions. IBEW explains that electric distribution facilities and equipment include, among other things, padmount transformers, junction boxes, secondary pedestals, primary and secondary conductor, risers, elbows, and all associated fittings. IBEW states that while no developer apparently opted for the new service practice, IP intended to implement the new practice without amending its tariffs or obtaining Commission approval. According to IBEW, Ameren recommitted to this service practice in Docket No. 03-0767 when it executed an agreement with the Home Builders Association of Illinois. Under that agreement, IBEW says Ameren agreed to implement the "pilot program" in each of its Illinois service territories.

These service practices, IBEW claims, are the subject of Ameren's proposed tariffs in these proceedings. IBEW states that under its proposed line and service

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[10] *Id.* It should be noted that there are circumstances where underground conduit is installed to house the conductor rather than directly burying the conductor. IBEW Exhibit 2.0 at 26 (lines 571-575). Such circumstances include when the conductor must travel under a patio, driveway, parking lot or roadway. *Id.* Similarly, if the soil conditions are unsuitable, then the conductor is installed in conduit to protect the conductor's sheathing from damage. *Id.* If the sheathing is damaged, a cable fault can occur and cause customers to lose service. *Id.* Except for a few instances in AmerenCIPS's service territory, only IBEW personnel have been permitted to install conduit for underground service for Ameren customers. *Id.* at 31 (lines 677-688).

extension tariffs, Ameren seeks Commission approval to do two things: (1) allow residential and commercial customers to install their own conduit for underground extensions, rather than have the utility's IBEW personnel directly bury the conductor; and (2) permit its residential subdivision developers to install not only their own conduit for underground extensions but also the electric distribution facilities and equipment comprising those extensions. IBEW urges the Commission to reject both requests because Ameren has not demonstrated based on record evidence that these service practices are "just and reasonable" from the perspective of safeguarding system reliability and the health and safety of utility employees, customers, and the public.

IBEW says Ameren bears the burden of proof to affirmatively demonstrate that its proposal to permit customers to install their own conduit for underground extensions is "just and reasonable." To meet its burden, IBEW claims Ameren must show that its proposal will safeguard system reliability and the health and safety of utility employees, customers, and the public. Ameren, IBEW avers, has failed to make such a showing based on the record evidence, and the Commission should reject the proposal.

According to IBEW, the Public Utilities Act has long required electric utilities to provide service that is safe and reliable for its employees, patrons, and the public. 220 ILCS 5/8-101; 220 ILCS 5/8-401. In 1997, IBEW states that when the General Assembly enacted electric deregulation, it preserved this obligation.

Not only that, IBEW says that the legislature declared that the safety and reliability of Illinois' electric system "has depended upon a workforce of skilled and dedicated employees equipped with technical training and experience." 220 ILCS 5/16-128(a). IBEW notes that the General Assembly concluded that in a deregulated market it is necessary that electric industry personnel installing, operating, and maintaining generation, transmission or distribution facilities have "the requisite skills, knowledge, and competence to provide reliable and safe electric service." *Id.* Moreover, IBEW states that the benchmark for determining whether persons have the skills necessary to provide safe and reliable service is if those persons possess the same knowledge and skills as electric utility employees. *Id.*

IBEW argues that Section 16-128(a) makes clear that a precondition for safe and reliable electric service is a showing that the persons providing such service possess the requisite skills to do the job. IBEW contends that the Commission itself acknowledged the significance of Section 16-128 in a report it submitted to then-Illinois Senate President, James "Pate" Philip. In that report, IBEW notes that the Commission stated that Section 16-128(a) was enacted to address the concerns of labor unions, and that the provision conferred new authority on the Commission "in a completely new area: assessing the qualifications of electrical workers."[11] IBEW avers that since

[11] REPORT TO THE SENATE PRESIDENT BY THE ILLINOIS COMMERCE COMMISSION: ANALYSIS OF ELECTRIC RESTRUCTURING WITH PARTICULAR EMPHASIS ON SENATE BILL 55, *at 20-21 (Aug. 15, 1997). The report was* submitted to the Senate President at his invitation according to the Commission's cover letter. In the report the Commission analyzed the provisions of the provisions of Senate Bill 55, which passed the Illinois House of Representatives on May 30, 1997. The provisions of Senate Bill 55, including Section

Ameren proposes a tariff practice that allows its customers to install their own conduit for underground service, Ameren must show that its customers possess the requisite skills to do the job in order to fulfill Section 16-128(a) precondition. Without such a demonstration, according to IBEW, the practice cannot be considered "just and reasonable." IBEW believes Ameren has offered no evidence to demonstrate that its customers possess the requisite skills to install their own conduit for underground extensions. ~~According to IBEW, the benchmark for determining whether persons have the skills necessary to provide safe and reliable service is if those persons possess the same knowledge and skills as electric utility employees. IBEW claims that Section 16-128(a) of the Act makes as a precondition for safe and reliable electric service a showing that the persons providing such service possess the requisite skills to do the job. Since Ameren proposes a tariff practice that allows its customers to install their own conduit for underground service, IBEW asserts that Ameren must show that its customers possess the requisite skills to do the job in order to fulfill Section 16-128(a)'s precondition. IBEW believes Ameren has offered no evidence to demonstrate that its customers possess the requisite skills to install their own conduit for underground extensions.~~

In its Initial Brief, IBEW states that Ameren submitted the unsubstantiated testimony of one witness, Jon Carls, to defend its line extension proposals. IBEW submits that Mr. Carls offered three reasons why the Commission should approve its proposals. First, according to IBEW, Mr. Carls asserts that the Commission may simply assume that since Ameren's proposed tariffs state that customers must install conduit according to good engineering practices and utility specifications, all customers will have the ability and follow those practices and specifications when installing conduit. Second, IBEW contends that Mr. Carls states that the safety hazards the IBEW raises are speculative because IBEW's witnesses did not identify any instances where its safety hazards occurred. Third, IBEW asserts that Mr. Carls claims that Ameren will inspect customer-installed conduit to ensure compliance with its specifications and good engineering practices. IBEW, however, contends that each of Ameren's purported reasons is without merit.

As to Mr. Carls' first reason, IBEW explains that it is easily disposed of because it equates the mere filing of Ameren's tariff proposal with a presumption that the proposal is reasonable and will operate as Mr. Carls contends. IBEW argues that the Illinois Supreme Court has long rejected the notion that a utility is entitled to a presumption of reasonableness for its tariff proposals merely because it filed them. IBEW Initial Br. at 12 citing *People ex. rel. Hartigan v. Ill. Commerce Comm'n*, 117 Ill2d 120, 135-136 (1987). IBEW states that the *Hartigan* decision requires Ameren to supply affirmative evidence supporting the details of each of its tariff proposals.

16-128 verbatim, were later rolled in House Bill 362 during the General Assembly's Fall Veto Session. The General Assembly passed House Bill 362 and Governor Jim Edgar signed it into law as Public Act 90-0561 on December 16, 1997. The Commission's analysis of Section 16-128(a) and other provisions that later became law is a valid source of discerning legislative intent. *See Maiter v. Chicago Bd. of Education*, 82 Ill. 2d 373, 386-88 (1980) (looking to prior versions of the statute that became law to discern legislative intent.)

IBEW contends that the record shows that Ameren provided no affirmative evidence supporting its customer conduit proposal when it filed its tariffs with the Commission. In fact, IBEW states, Ameren did not even state a witness to address the tariff proposal until the IBEW challenged the proposal in its direct testimony. According to the IBEW, while Ameren's proposed tariffs include prescriptions that customers follow the utility's good engineering practices and installation specifications, Ameren offered no evidence detailing what those practices or specifications consist of, let alone its sufficiency. In IBEW's view, the record is devoid of any affirmative evidence regarding the propriety of Ameren's practices and specifications, even if one assumes that customers possess the skills to properly install their own conduit for underground extensions.

As to Mr. Carls' second reason, IBEW claims that by arguing that the IBEW has not identified instances where safety hazards occurred, Ameren has improperly attempted to shift its burden of proof regarding Ameren's tariff proposal to the IBEW. IBEW asserts that the fact safety hazards have not manifested as reported instances in no way reduces its probability and legitimacy. IBEW argues that it presented the testimony of three witnesses who are journeymen linemen that have several years of experience performing line and service extensions for Ameren, and are familiar with the hazards of trenching and improperly installed conduit based on personal experience. *See generally* Revised IBEW Exhibits 4.0, 5.0, and 6.0 at 2 (lines 30-38).

IBEW contends that Ameren's witness, Jon Carls, in contrast, admitted on cross examination that he is neither trained to perform line and service extensions nor install conduit for Ameren. Tr. 693-94. IBEW further states that Mr. Carls also admitted that he does not supervise IBEW journeymen linemen performing line and service extensions as part of his job duties. Tr. 695-96. In short, IBEW asserts that Ameren's witness has no credible basis upon which to deride IBEW's safety concerns as speculative.

In its Reply Brief, IBEW adds that since Ameren is seeking Commission approval of its tariffs, Ameren bears the burden of producing information essential to Commission decision making. IBEW contends that the Commission's Order in Docket No. 99-0273 provides that this burden requires Ameren to provide evidence that IBEW's safety hazards have not occurred because it is the "repository of the prodigious information" pertinent to its case.[12] IBEW further states that Ameren has never stated that instances involving those hazards have not occurred in its service territory.

In addition, Tthe fact that Ameren does not have accessible records of the names, dates or locations of customers who have installed conduit, IBEW aversasserts, lends credence to the safety hazard concern. IBEW says that in Docket No. 00-0699,

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[12] IBEW Reply Br. at 6 quoting *Commonwealth Edison Company, Petition to protect confidential and proprietary information from public disclosure pursuant to Section 16-111(g) of the Public Utilities Act as part of a Notice of Property Sale, et al.*, ICC Docket No. 99-0273, 1999 Ill. PUC LEXIS 551, at *65-*70 (Order entered Aug. 3, 1999).

CILCO claimed that because there were no complaints regarding its tree trimming practices, the Commission had no basis to find the utility's practices inadequate. The Commission, IBEW claims, explained that since CILCO did not keep records of customer complaints about the manner in which it trims trees and lacked complete records of its tree trimming activities, the utility had no basis to assert the adequacy of its practices. In IBEW's view, the Commission need not wait for injuries or service outages to occur to reject a utility practice when the evidence shows that hazards exist.

As to Ameren's final reason that it will inspect customer-installed conduit, IBEW claims that ~~Furthermore,~~ Ameren's promise to inspect customer-installed conduit is vacuous. ~~IBEW claims.~~ The IBEW says that when it asked for any documentation verifying that CIPS had actually inspected customer-installed conduit, Ameren admitted that it had no such documentation. IBEW also maintains that it submitted unrefuted testimony that CIPS does not currently inspect customer-installed conduit before IBEW journeymen linemen pull the conductor through conduit and connect it. Ameren, IBEW says, has made no commitment on the record to implement an inspection program documenting its inspection of customer-installed conduit. According to IBEW, Ameren's failure to inspect customer-installed conduit in CIPS service territory violates Rule 313 of the 2002 National Electrical Safety Code (NESC), which requires utilities to actually inspect newly-installed underground facilities it is responsible for, including directly-buried conductors and conduit used for underground service. IBEW states that the Commission requires electric utilities to comply with the requirements of the 2002 NESC through Code Part 305.20 of its Rules. IBEW concludes that the only available evidence demonstrates that Ameren's promise to inspect customer-installed conduit cannot be believed ~~the NESC requires utilities to actually inspect its newly-installed underground facilities and equipment, including directly-buried conductors and conduit used to house underground service.~~

IBEW's Reply Brief also addresses Ameren's contention in its Initial Brief that IBEW's trenching concerns are insignificant because they are common to anyone performing conduit installation work. IBEW Reply Br. at 5. IBEW responds by stating that the fact that a customer installing conduit will encounter trenching hazards similar to IBEW linemen directly burying conductor does not remove the existence of the hazards. According to IBEW, if anything, it confirms that the hazards exist. IBEW emphasizes that common sense dictates the need for persons who are familiar with these hazards and possess the skills to avoid or minimize them.

IBEW argues that the record shows that IBEW linemen are specifically trained to recognize and avoid trenching hazards, safely operate trenching equipment, and correctly install underground extensions. See e.g., IBEW Exhibit 2.0 at 25 (lines 546-568); Tr. 710-711. IBEW states that the same may not be said of customers installing their own conduit because, according to IBEW, Ameren has offered no affirmative evidence that its customers are able to safely trench or install conduit. In addition, IBEW states that Ameren makes no showing that a customer can safely install conduit without specialized knowledge or training.

IBEW further argues that Ameren does not dispute IBEW's testimony that unqualified persons are more likely to suffer injury while trenching. Nor, according to IBEW, does Ameren, contest that improperly installed conduit will damage the conductor when IBEW linemen pull it through the conduit, and that such damage can cause a service outage. IBEW claims that the Commission has an obligation to ensure that utility practices safeguard employees and customers and promote system reliability under Sections 8-101 and 8-401 of the Public Utilities Act. IBEW submits that Ameren's conduit proposal will achieve neither of these objectives and request that the Commission reject the proposal.

IBEW states that Ameren's proposed tariffs would also allow residential subdivision developers to install their own underground electric distribution facilities and equipment. Under this installation option, IBEW says the developer would enter into a contract with Ameren that required the developer to perform all the installation work and purchase all necessary materials and equipment. For conduit installations, IBEW indicates that the developer would decide who did the work. For distribution facilities and equipment, though, IBEW says Ameren would require the developer to use an "approved" contractor. Once the work is complete, IBEW states that the developer would sell the conduit systems and electric distribution facilities and equipment back to Ameren. Ameren, IBEW says, would then be obligated to maintain the distribution facilities and conduit systems on a going forward basis.

IBEW states that Ameren's discovery responses reveal that ~~complains that~~ Ameren has not developed a complete list of the facilities and equipment developers could install, nor the contract that developers would enter into with Ameren. *See* IBEW Exhibits 2.23 & 2.23. Similarly, IBEW says Ameren ~~has~~ admits in those responses that it has not developed any criteria to decide if a developer or its contractor possessed the skills, knowledge and competency to install electric distribution facilities. Revised IBEW Exhibit 5.0 at 11 (lines 228-233) & IBEW Exhibit 5.08. IBEW further points out that Ameren witness Jon Carls admitted in his surrebuttal testimony that the Company's tariff proposal was only a "general concept with the details to be filled in" later. Ameren Exhibit 51.0 at 8 (line 172).

Given what IBEW describes as the ambiguity regarding the tariff proposal, IBEW believes it is difficult to imagine how the Commission can make a determination that the proposal is "just and reasonable" from the perspective of safeguarding system reliability and the health and safety of utility employees, customers, and the public. Ameren, IBEW argues, has supplied no affirmative evidence demonstrating that subdivision developers possess the skills necessary to install conduit systems. IBEW also claims that the same hazards applicable to Ameren's customer conduit would equally apply to its subdivision developer proposal. IBEW contends that Ameren admits that it is unable to show that developers or their contractors would possess the requisite skills and training to install electric distribution facilities. IBEW Exhibit 5.08.

In light of these facts, IBEW argues that the Commission's approval of Ameren's subdivision developer proposal would be tantamount to providing Ameren with

unfettered discretion and arbitrary authority to render service under its proposal. This, according to IBEW, the Commission may not do. *Bloom Township High School v. Illinois Commerce Comm'n*, 309 Ill.App.3d 163, 175 (1st Dist. 1999) ("The notion that a public utility might be vested with unfettered discretion and the ability to act arbitrarily in the rendition of service to its customers is the antithesis of the purposes for regulating utilities."). IBEW submits that the whole purpose of this proceeding is to examine the details of Ameren's tariff proposal and gather evidence to determine whether they are "just and reasonable." *Hartigan*, 117 Ill.2d at 135-36. IBEW avers that it is obvious that if Ameren were to ask the Commission for a rate increase without providing a cost study, the Commission would flatly reject it as insufficient. *See Central Illinois Public Service Co v. Ill. Commerce Comm'n*, 5 Ill.2d 195, 200, 209-211 (1955) (Commission properly canceled a utility's proposed rate increase where the utility failed to support its proposal with a specific cost study). IBEW states that Section 9-201(c) of the Act requires Ameren to meet its burden of proof based on affirmative evidence, and obligates the Commission to ensure that the burden has been met. 220 ILCS 5/9-201(c). Accordingly, the IBEW asks that the Commission reject Ameren's tariff proposal because it is wholly undeveloped and Ameren has not met its burden of proof.

IBEW avers that Ameren's customer conduit and subdivision developer options constitute "unbundling" based on the plain language of Section 16-102 of the Act. Section 16-102 defines an "unbundled service" as "a component or constituent part of a tariffed service which the electric utility subsequently offers separately to its customers." IBEW states that Ameren's proposed line and service extension tariffs are tariffed delivery services~~proposals are tariffed delivery services~~. IBEW adds that Ameren intends to offer these delivery services to its customers in the form of ~~proposals as~~ separate options to its customers. Ameren's proposed tariffs, IBEW says, provide a residential customer with the option of either having Ameren's IBEW personnel install "free" overhead or underground service or installing their own conduit for underground service with IBEW personnel pulling and connecting the conductor at a later date.

According to IBEW, Ameren contends that its proposals are not unbundled delivery services because the Commission has never previously determined that customer-installed conduit, for example, constitutes unbundling. The fundamental flaw with Ameren's argument, IBEW argues, is that it ignores the statutory definition for an "unbundled service." The fact that the Commission determined in the past that certain tariffed delivery services constitute unbundling, IBEW claims has nothing to do with whether Ameren has proposed these services on an unbundled basis.

Since, in IBEW's view, Ameren's customer conduit and subdivision developer tariff proposals constitute unbundling, IBEW believes the next inquiry is to consider the impact that these proposals will have on, among other things, electric utility employees. IBEW asserts that Section 16-108(a) requires the Commission to consider this impact when determining whether Ameren's customer conduit and subdivision developer proposals are "just and reasonable." Ameren's unbundling proposal, IBEW contends, will have a significant and detrimental impact on IBEW personnel. According to IBEW,

Ameren's subdivision developer option will cause a significant loss of wages for IBEW personnel because developers would install conduit systems and electric distribution facilities in new subdivisions that were formerly performed by Ameren's IBEW journeymen linemen.

According to IBEW, Ameren's own documentation discloses that ~~stated that~~ subdivision developer ~~the~~ option would result "in significant material and labor dollar savings for the utility since developers will be responsible for the costs of all material and construction labor." Revised IBEW Exhibit 5.0 at 5 (lines 100-109) quoting Ameren's Response to IBEW DR 5-5 (IBEW Exhibit 5.02). IBEW states that since Ameren intends to implement the option for CILCO, CIPS, and IP, the negative impact of the proposal will affect all of Ameren's IBEW personnel. Ameren's subdivision developer option, IBEW argues, may place IBEW journeymen linemen in harms way without forewarning.

IBEW states that ~~According to IBEW,~~ since Ameren is unable to show that developers or their contractors possess the requisite skills and training to install conduit systems or electric distribution facilities, IBEW ~~claims its~~ personnel will be walking into a potentially dangerous situation when maintaining those facilities and conduit systems.

IBEW also states that its witnesses demonstrated at the hearing ~~complains~~ that Ameren's customer conduit option will result in a reduction of man-hours for IBEW personnel because these persons would no longer perform trenching when installing line and service extension for customers installing their own conduit. Tr. 661-663, 665-667. With a customer installing its own conduit, IBEW's witness stated in response to questions from the Administrative Law Judge that ~~says~~ the time needed to connect the customer's service would decline. Tr. 665-667. IBEW also asserts that Ameren's tariff proposal provides the utility with arbitrary authority to decide when "limited circumstances" exist to make the conduit installation option available to a customer. IBEW Exhibit 1.0 at 27, 29 (lines 589, 616). Based on these reasons, IBEW requests that the Commission reject Ameren's tariff proposals because of their negative impact on IBEW personnel.

In its Reply Brief, IBEW says Ameren confuses the definition for an "unbundled service" with that of a "delivery service." The plain language definition for an "unbundled service," IBEW asserts, indicates that "unbundling" exists if a component of a delivery service is offered separately by a utility to its customers. IBEW claims that nothing in the Act requires the component itself to independently meet the statutory definition of a "delivery service." Since conduit installation is a component of a delivery service option that Ameren separately offers to its customers, IBEW maintains that unbundling exists. IBEW also asserts, contrary to Ameren's argument that the Act neither includes a restriction on who owns or maintains the "unbundled service" nor provides an exemption for a "pilot program" for a delivery service. According to IBEW, Ameren's option allowing developers to install their own distribution facilities constitutes "unbundling."

IBEW asserts that unbundling in the delivery service context exists when a utility offers a component of a delivery service to its customers through a separate offering. IBEW says Ameren is incorrect that the component of the delivery service must itself be a "delivery service." All the Act requires, IBEW claims, is for the component to be part of a delivery service package that the utility separately offers to its customers. IBEW says that it is undisputed that the delivery services that Ameren offers to its customers in its proposed tariffs are line and service extensions. This is so, IBEW claims, because without these extensions customers could not receive electricity from any supplier.

For individual residential and non-residential customers, IBEW says Ameren offers two options for obtaining line and service extensions. Under the first option, the customer relies upon Ameren to have its IBEW personnel install the line and service extensions either overhead or underground for a set charge. If the extension is installed underground by Ameren, then IBEW personnel will dig a trench, bury the conductor in the trench, and connect the conductor to the Ameren-supplied transformer and customer's meter box. For this option, the customer purchases each of these delivery service components as a package to obtain line and service extensions.

Under the second option, Ameren offers customers a packaged delivery service that has the customer installing some of their own delivery service components. Under this package, the customer will do the following: (1) buy their own conduit, (2) dig the trench necessary for underground extensions, and (3) install and bury the conduit in that trench. IBEW states that once the customer installs these delivery service components, Ameren will have its IBEW journeymen linemen pull the conductor through the customer-installed conduit, and connect the conductor to the utility's transformer and customer's meter box. According to IBEW, Ameren witness Jon Carls explained that customers selecting this option would pay Ameren a charge that is less than what they would pay for the first option. *See* Ameren Exhibit 51.0 at 3 (lines 48-51); Tr. 700-701.

~~one of which has the customer installing some of their own delivery service components.~~ IBEW maintains that the customer conduit option described above meets the definition of an "unbundled service," because Ameren's proposed tariffs offer individual customers a component of a delivery service (i.e., the ability to install their own conduit) in the form of a separately offered option from Ameren's standard service option. IBEW, thus, concludes that ~~and~~ the Commission must assess the impact that this option will have on electric utility employees.

IBEW asserts that Ameren also offers subdivision developers two tariff options for obtaining the delivery services (i.e., line and service extensions) necessary to receive electricity from any electric supplier. The first option, according to IBEW, is Ameren's standard service offering where Ameren would dispatch its IBEW personnel to install all delivery service components to either establish overhead or underground service, including the installation of the requisite distribution facilities for each new home. The second option, IBEW states, allows the subdivision developer as a separate tariff offering, the right to not only install their own conduit for underground extensions, but also their own electric distribution facilities. Put differently, IBEW

explains, Ameren offers subdivision developers one package where the developer installs all the delivery service components or a separate package where Ameren's IBEW personnel perform the installation work for the developer. IBEW concludes that since Ameren is offering subdivision developers the option to install all delivery service components as part of a separate tariff offering, the option constitutes an "unbundled service" and the Commission must evaluate its impact on IBEW members.

IBEW disputes Ameren's suggestion that there is nothing in the Act that authorizes the Commission to reject tariffs that could lead to workforce reductions for utility employees. Section 16-108(a), IBEW claims, empowers the Commission to reject Ameren's unbundled delivery service tariffs as unjust and unreasonable if it determines that they will negatively impact electric utility employees, whether because of workforce or wage reductions, increased risks to employee safety or other reasons the Commission deems appropriate. Ameren's two unbundling proposals, IBEW avers, will have a detrimental impact on IBEW personnel in the form of significant wage losses and increased risks to employee safety. Beyond these direct impacts, IBEW believes the unbundling proposals will also have the secondary effect of creating a disincentive for Ameren to hire replacements for IBEW journeymen linemen who are lost through retirement or attrition.

IBEW states that this is truly troubling because it claims that the IBEW offered unrebutted testimony that Ameren has a difficult time performing storm restorations and everday system maintenance with the linemen workforce it currently has. IBEW claims that its witnesses testified in rebuttal that since 1999 the Ameren Companies have reduced their respective IBEW workforces by as much as 37.5%. According to IBEW, those reductions included IBEW journeymen linemen who IBEW describes as the first responders called in to restore service outages and perform regular system maintenance. IBEW argues that with fewer linemen, Ameren simply has fewer workers to conduct the everyday system maintenance needed to keep the electric grid operating safely, and restore service outages in a timely manner.

IBEW contends that it is Commission Staff's position that Ameren's cost-cutting choices have caught up with it because the Ameren Companies have the worse performance for company-wide average duration customer interruptions. IBEW Reply Br. at 14. According to IBEW, Commission Staff notes that AmereCIPS under-spent its O&M budget by nearly 20% in 2004, which directly led to a "significant reduction in [its] electric service reliability." Id. quoting ICC Staff Initial Br. at 166. IBEW asserts that it is unsurprising that Commission Staff strongly recommends that each Ameren Company increase its field inspections and not delay corrective action in order to improve reliability and public safety. IBEW Reply Br. citing ICC Staff Initial Br. at 165-166, 168. IBEW concludes that since Ameren needs more personnel to ensure system reliability, not less, the Commission should not permit an unbundling proposal that will further cause workforce reductions and impair system reliability.

Finally, in its Reply Brief, the IBEW refuted Ameren's claims that the IBEW's opposition to Ameren's line extension tariffs and metering service practices are

irrelevant as either "labor grievances" or "labor relations matters" beyond the Commission's jurisdiction. IBEW Reply Br. at 21. The IBEW pointed out that all of Ameren's arguments were already considered and rejected by the Administrative Law Judges in these proceedings when Ameren moved to strike the IBEW's direct testimony,[13] and opposed the IBEW's subpoena application.[14] *See* IBEW Reply Br. at 21. The IBEW stated that rather than waste the Commission's time with further argument, the IBEW will stand on the positions outlined in its Response to Ameren's Motion to Strike and Reply to Ameren's Opposition to the IBEW's Subpoena Application. Id.

The IBEW further added that the Commission decided long ago that if a party is dissatisfied with an Administrative Law Judge's ruling, then its only recourse is to seek interlocutory review from the Commission. IBEW Reply Br. at 22 citing *North Shore Gas Company: Proposed increase in natural gas rates*, ICC Docket No. 91-0010, 1991 Ill. PUC LEXIS 636, at *150 (Order entered Nov. 8, 1991).

The IBEW argued that because Ameren raises the same evidentiary arguments that the Administrative Law Judges previously found unavailing on May 22, 2006 and June 8, 2006 respectively when it denied Ameren's Motion to Strike and Opposition to the IBEW's Subpoena Application, and because Ameren never sought interlocutory review of those rulings, Ameren's position is tantamount to a collateral attack on the Administrative Law Judges' previous rulings that should be rejected. IBEW Reply Br. at 22 citing *Central Telephone Company, Proposed increase in Local Service Rates*, ICC Docket No. 93-0252, 1994 Ill. PUC LEXIS 206, at *62-*63 (Order entered May 11, 1994).

2. Ameren's Position

The most common method for new service installations, Ameren says, is to direct-bury the conductor. Ameren's proposed tariffs would allow customers and subdivision developers, at their option, to have the conductor installed in a plastic conduit. A conduit, Ameren asserts, provides greater protection against accidental line strikes than bare conductor. For customers that choose to install conduit, Ameren says the customer is permitted to dig the trench and also to lay the conduit in the ground. Ameren states that its employees will then install the conductor in the conduit and make the necessary service connections. Ameren claims that customer-installed conduit must be installed in a manner consistent with good engineering practices and is subject to inspection by Ameren before any service connections are made. Ameren states that its proposed tariffs also seek authority to "develop alternative options for developers regarding installation of electric infrastructure in Subdivisions, which may include but are

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[13] *See* Response of the IBEW to Ameren's Motion to Strike at 5-10, 12-18 (filed on e-Docket on May, 16, 2006).

[14] *See* IBEW Reply to Ameren's Response In Objection to the IBEW's Subpoena Application at 2 & n.1 (filed on e-Docket on June 6, 2006).

not limited to: developer installation of some distribution facilities . . . ." Ameren says it developed the line extension tariffs because of concerns expressed by customers over the cost and timeliness of new installations.

IBEW argues that allowing customers to install conduit, or allowing developers to install their own distribution facilities, constitutes "unbundling" under Section 16-102 of the Act because Ameren is proposing to allow customers and contractors to perform work previously performed exclusively by them. IBEW further argues, according to Ameren, that where a utility proposes to offer an "unbundled" service, the Commission, in determining whether tariffs providing for such services are just and reasonable, is required to consider the effect of unbundling on utility company employees, as stated in Section 16-108(a). Because Ameren's line extension tariffs supposedly will result in a loss of jobs for IBEW members, Ameren says the IBEW urges the Commission to reject the tariffs as unjust and unreasonable.

According to Ameren, IBEW cites no authority for its claim that allowing customers to install conduit constitutes "unbundling." In January 1999, in Docket No. 99-0013, Ameren says the Commission entered an order initiating a proceeding under Section 16-108(a) of the Act to investigate and make determinations about unbundling of metering and billing services. Ameren contends that at no time during that proceeding did anyone suggest that allowing a customer to install conduit on its own property constitutes "unbundling."

Sections 16-102 and 16-108, Ameren contends, do not support a conclusion that allowing customers to install their own conduit constitutes "unbundling." Ameren says Section 16-102 defines "unbundled service" as "a component or constituent part of a tariffed service which the electric utility subsequently offers separately to its customers." Ameren argues that whether the Commission is required to consider the effect of "unbundling" on utility employees depends on exactly what kind of service is being unbundled. According to Ameren, Section 16-108, titled "Recovery of costs associated with delivery services," grants authority to the Commission "to review, approve and modify the prices, terms and conditions of those components of delivery services not subject to the jurisdiction of the Federal Energy Regulatory Commission, including the authority to determine the extent to which such delivery services should be offered on an unbundled basis." In Ameren's view, if a statutorily-defined "delivery service" is being unbundled, Section 16-108(a) comes into play and the Commission must consider the effect on utility employees of unbundling that service.

The Act, Ameren asserts, makes it clear that not every service provided by an electric utility constitutes a "delivery service." Under the Act, "delivery service" means "those services provided by the electric utility that are necessary in order for the transmission and distribution systems to function so that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility, and shall include, without limitation, standard metering and billing services." Conduit installation, Ameren argues, can not be considered a service component "necessary in order of the transmission and distribution systems to function

so that retail customers . . . can receive electric power and energy from suppliers other than the electric utility . . . ." According to Ameren, the use of conduit in service line extensions is the exception rather than the rule; most of the time the conductor is direct buried. Because of cost considerations, Ameren claims it expects very few customers to elect to install conduit. Because conduit is not necessary for the distribution of electricity to customers, Ameren maintains that the installation of conduit is not a "delivery service," and because it is not a "delivery service," the Commission does not need to consider the effects to utility employees of "unbundling" this service.

Ameren also argues that allowing subdivision developers to install their own distribution systems also can not be considered "unbundling" under Section 16-102. Under the proposed tariffs, Ameren claims it is not proposing to "unbundle" the installation of distribution facilities in the sense that any customer will be permitted to install its own distribution facilities. The tariffs, Ameren says, propose to give it the authority to develop pilot programs to determine the feasibility of allowing a limited class of customers; i.e., subdivision developers; to hire their own contractors to install distribution facilities. Ameren states that upon installation, these facilities would then be sold to CILCO, CIPS and IP. Ameren asserts that IBEW employees would continue to service these facilities, just as they do today.

The IBEW's concern about job losses, Ameren claims, implicates a labor relations issue that is beyond the scope of this or any other Commission proceeding. Ameren maintains there is no basis for IBEW's claim that Section 16-108(a) requires the Commission to consider the effects of the proposed tariffs on employees.

Ameren says IBEW also attempts to make the case that the line extension tariffs are unreasonable because they will permit customers to perform dangerous activities. According to Ameren, IBEW witness Miller testified about a number of alleged hazards associated with customers installing their own conduit, such as digging into existing utilities. Ameren argues, however, that this hazard exists regardless of whether it is a customer or an Ameren employee performing the trenching. This hazard, Ameren asserts, can be reduced by customers' calling J.U.L.I.E. before performing trenching, as they are required to do by law. The IBEW's speculation about what could happen if customers install their own conduit, Ameren maintains, is contrary to fact.

The IBEW, in Ameren's view, is asking this Commission to find that any tariff provision that results in a reduced workforce is prima facie unjust and unreasonable. Ameren believes that nothing in the Act supports this conclusion. The IBEW, Ameren asserts, has failed to provide any basis to reject the proposed tariffs. None of IBEW's witnesses, Ameren claims, testified that any proposed rate or charge for metering or line extension services is unjust or unreasonable, or that any aspect of the metering or line extension tariffs is in any way relevant to whether any costs that Ameren seeks to recover in rates were prudently incurred. IBEW's entire case, Ameren contends, is predicated on a theory that any utility policy that results in workforce reductions is necessarily unjust and unreasonable, regardless of whether the policy benefits the utility, its investor, ratepayers, and the public. Ameren believes that theory is fatally

flawed because nothing in the Act authorizes the Commission to reject tariffs that could lead to workforce reductions.

3. Commission Conclusion

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. IBEW's central objection is that Ameren's tariff proposal is not "just and reasonable" from the perspective of safeguarding system reliability and the health and safety of utility employees, customers, and the public. IBEW claims that Ameren has failed to meet its burden of proof of providing affirmative evidence that its tariff proposal is "just and reasonable" from this perspective. In IBEW's view, the record evidence demonstrates that the proposal is not "just and reasonable." IBEW further claims that the Commission is required by Section 16-108(a) of the Act to consider the impact that this proposal will have on utility workers. IBEW argues that the proposal should be rejected for the further reason of its negative impact on utility workers. ~~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 claims that this proposal is not "just and reasonable" from the perspective of safeguarding system reliability and the health and safety of utility employees, customers, and the public. In addition, IBEW argues that Ameren's proposal is incomplete and if the Commission were to approve it then the Commission would delegate arbitrary authority to Ameren to implement the proposal. Similarly, IBEW avers~~lso 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 also have a significant adverse impact on Ameren's IBEW employees.

In response to IBEW's objections that its proposals are not "just and reasonable", Ameren claims that IBEW's objections are not relevant to the scope of a tariff investigation. Ameren contends that the Commission lacks jurisdiction to hear IBEW's objections and states that IBEW's claims should be made before a labor arbitrator. Ameren continues that even if IBEW's objections were relevant and the Commission has jurisdiction, the record shows that its proposals are "just and reasonable." Finally, Ameren argues that neither of its proposals constitute "unbundling" under the Act. As a result, Ameren states that the Commission need not evaluate the effect of its proposals on IBEW members under Section 16-108(a) of the Act.

After reviewing IBEW and Ameren's arguments and record evidence, the Commission concludes that Ameren has not met its burden of proof to affirmatively demonstrate that its tariff proposals are "just and reasonable." The Commission finds persuasive IBEW's position that Ameren has failed to demonstrate that its proposals are just and reasonable from the perspective of safeguarding system reliability and the safety of utility employees, customers, and the public.

Moreover, the Commission rejects Ameren's contentions that the IBEW's opposition to Ameren's line extension tariffs (and metering service practices) are irrelevant as either "labor grievances" or "labor relations matters" beyond the Commission's jurisdiction under the Public Utilities Act for two reasons. First, all of Ameren's arguments were previously entertained and rejected by the Administrative Law Judges in these proceedings when Ameren moved to strike the IBEW's direct testimony, and opposed the IBEW's subpoena application. The Administrative Law Judges previously found these arguments unavailing and Ameren chose not to seek interlocutory review of those rulings. By not appealing those rulings, Ameren waived its right to continue to press those arguments here. And, by re-raising these arguments in its Initial and Reply Briefs, Ameren has engaged in a collateral attack on the Administrative Law Judges' rulings. For this reason alone we may disregard Ameren's "labor relations" arguments.

Second, the Commission has independently reviewed Ameren's "labor relations" arguments and finds them unpersuasive. At no time has the IBEW submitted a collective bargaining agreement for the Commission to review, let alone a list of grievances for the Commission to resolve under such an agreement. While the record indicates that IBEW is arbitrating or has arbitrated certain issues under its collective bargaining agreements, and those issues concern facts raised in these proceedings, that fact has no bearing on these proceedings. Labor arbitrations decide the rights a party enjoys under a collective bargaining agreement. Labor arbitrations cannot determine whether or not a utility employer's tariff proposals are "just and reasonable" under the Public Utilities Act and the Commission's Rules. *See Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 212 (1985). Only the Commission can decide that issue in the context of these tariff proceedings. Ameren itself admits this point in its Motion to Strike IBEW's testimony. Ameren Mot. at 11 (stating that whether certain service installations may be done by non-utility personnel under collective bargaining agreements "is immaterial to any analysis of the just and reasonableness of [Ameren's] tariffs").

We also reject Ameren's contention that our order in Docket 03-0767 bars IBEW from raising the issues set forth in its Briefs and testimony in these proceedings. While the Commission did advise IBEW to raise its concerns against Ameren in a complaint, the Commission certainly did not bar IBEW from seeking relief in these proceedings for several reasons. First, in recommending the denial of IBEW's Application for Rehearing in Docket 03-0767, the Administrative Law Judge correctly noted that the Commission had suspended Ameren proposed line and service extension tariffs in instant dockets, and that "those dockets provide the appropriate forum for arguments against the terms of the tariffs filed therein, and IBEW has intervened in those dockets." IBEW is correct

that if the Commission intended to bar IBEW from participating in instant proceedings, then it would have said so directly.

Second, Ameren's claims cannot be squared with our past decisions. The Commission has long held that the fundamental purpose of a tariff investigation under 9-201 of the Act is to "enable interested parties to challenge [a utility's tariff] revisions before they are implemented. *See e.g., National Data Corp. v. Illinois Bell Telephone Co.*, ICC Docket No. 87-0234, 1990 Ill. PUC LEXIS 349, at *29 (Order entered July 6, 1990). While it is true that a complaint may trigger a Commission tariff investigation under Section 9-201(b), nothing in the Act, the Commission's Rules or past decisions requires a party to file a complaint to kick-off such an investigation when the Commission has already done so on its own—as we have in these proceedings.

In addition, our order in Docket 03-0767 does not have the preclusive effect that Ameren claims. Because of the limited record, it was not clear to the Commission whether or not IBEW's concerns regarding Ameren's agreement with the Home Builders were anything more than a labor jurisdictional dispute. Order on Rehearing, ICC Docket No. 03-0767 at 2-3. As a result, we speculated that if IBEW's concerns were "labor relations matters," then they were "not matters relevant to the Public Utilities Act." Id. at 3. The most that Ameren could hope to mine from our statement is an unremarkable legal proposition: the Commission has no authority to decide whether union or non-union labor is allowed to do certain work under a collective bargaining agreement. Id. at 3. That proposition comports with federal labor law, which prohibits state tribunals from interpreting or litigating a party's rights under a collective bargaining agreement. *Livadas v. Bradshaw*, 512 U.S. 107, 121-124 (1994). Since IBEW has neither submitted a collective bargaining agreement for the Commission to interpret, nor a labor grievance to resolve, that legal proposition serves no purpose in these proceedings. The Commission has recognized that federal labor law does not bar it from exercising its traditional authority to regulate utilities under the Public Utilities Act even though its decisions may bear upon labor relation and affect a party's bargaining position. *See Revision of 83 Ill. Admin. Code 732*, ICC Docket No. 02-0426, 2003 Ill. PUC LEXIS 128, at *91-*94 (Order entered Feb 5, 2003). Accordingly, Ameren's claims is rejected and we address IBEW's arguments on the merits.

With respect to Ameren's customer conduit proposal, the evidence shows that the proper installation of conduit for underground extensions requires persons with the requisite training and experience not only to ensure the installer's safety, but also the safety of others and system reliability. Ameren supplied no affirmative evidence indicating that its customers either possess such skills or that the activities it seeks to assign to customers do not require such training and experience. The Commission finds persuasive the testimony of IBEW's witnesses regarding the extensive training that Ameren's own employees (IBEW journeymen linemen) must have before performing trenching work and installing conduit.

All Ameren offers in support of its position is the unsubstantiated testimony of a witness who has no job duties or specific training in the installation of line extensions.

That witness, in turn, does little more than parrot what Ameren's tariff proposal says. For example, Ameren's witness states that its proposed tariffs require customers to follow the utility's "good engineering practices" and installation "specifications." The problem with this claim is that it puts the cart before the horse by assuming that customers are qualified to properly install the conduit and will follow the Company's engineering practices and installation specifications. In addition, the record is devoid of any evidence regarding what Ameren's engineering practices and installation specifications consist of; Ameren did not submit copies or descriptions into evidence. Given the lack of evidence and fact that the General Assembly has found that the installation, maintenance, and construction of electric distribution facilities and equipment requires persons who possess the requisite training and experience to perform those tasks, the Commission cannot accept Ameren's assumption. 220 ILCS 5/16-128(a). The Commission is required to make decisions based on record evidence, not speculation and assumptions.

As IBEW correctly points out, a utility does not enjoy a presumption of reasonableness regarding its tariff proposals merely by filing it with the Commission. Governing case law requires Ameren to supply affirmative evidence demonstrating the reasonableness of its proposals. It is not enough for Ameren to simply argue that IBEW or any other party has failed to prove unreasonableness.

Another argument Ameren advances to defend its conduit proposal is that IBEW failed to identify instances where its safety concerns regarding trenching and conduit installations have occurred. The Commission finds Ameren's claim to be without merit for several reasons. First, the safety hazards raised by IBEW witnesses are credible given that these witnesses are journeymen linemen who have several years of experience performing the type of work at issue, and are familiar with the hazards of trenching and improperly installed conduit.

Second, since Ameren is seeking Commission approval of its tariffs, Ameren bears the burden of producing information essential to Commission decision-making. This burden requires Ameren to provide evidence that the safety hazards raised by IBEW have not occurred because it is repository of the prodigious information pertinent to its case. The Commission finds instructive that Ameren's conduit proposal is essentially a company-wide implementation of a conduit option it began offering in its AmerenCIPS service territory in March 2004. At no point has Ameren stated that IBEW's hazards have not in fact occurred, nor has it submitted documentation to bolster its contention that IBEW's safety concerns are speculative. The fact that Ameren does not have accessible records of the names, dates, or locations of customers who installed conduit strongly cuts against Ameren's position and lends credence to IBEW's safety concerns. *Shumak v. Shumak*, 30 Ill.App.3d 188, 190 (2nd Dist. 1975) ("where a particular fact necessary to be proved rests peculiarly within the knowledge of one of the parties it is his duty to come forward with the proof. If he fails to do so, an inference or presumption is raised that the evidence, if produced, would be unfavorable to his cause.").