.STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

CENTRAL ILLINOIS LIGHT COMPANY d/b/a AmerenCILCO, Proposed general increase in rates for delivery service.	)))))	Docket No. 06-0070
CENTRAL ILLINOIS PUBLIC SERVICE COMPANY d/b/a AmerenCIPS, Proposed general increase in rates for delivery service.	)))))	Docket No. 06-0071
ILLINOIS POWER COMPANY d/b/a AmerenIP, Proposed general increase in rates for delivery service.	))))	Docket No. 06-0072 (consol.)

REPLY BRIEF ON EXCEPTIONS OF THE AMEREN COMPANIES

October 24, 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 Reply Brief on Exceptions.

II. BACKGROUND

III. RATE BASE

A. Summary of Uncontested Issues

B. Plant Additions

C. Pro forma Plant Additions

D. G&I Plant

Staff and IIEC take exception to the Proposed Order's findings regarding general and intangible ("G&I") plant in rate base. (Staff BOE, p. 2; IIEC BOE, p. 2.) We briefed this issue extensively in our Initial Brief (pp. 7-17) and Reply Brief (pp. 7-12). Staff and IIEC paint the Companies as engaging in nothing less than a scam – duping the Commission into "restoring" to rate base plant that the Commission allocated years ago to the generation function.

Nothing could be further from the truth. What is happening is that Staff and IIEC want the Commission to ignore reality and build a hypothetical rate base from Staff's and IIEC's calculations of what that rate base should look like today based on the Commission's application of the notoriously fickle labor allocator several years ago. In other words, Staff and IIEC are huffing and puffing because when they adjust the 1999 test years used in the initial DST cases, they come up with a different result than the actual 2004 test years.

We will not repeat the many flaws with their arguments. However, we will note that IIEC's witness acknowledged on the stand that the labor allocator on which both Staff and IIEC ultimately rely can produce counter-intuitive and inaccurate results. (Init. Br., pp. 8-9.) Given how the labor allocator works, the more investment a company makes in an area, the more investment is allocated away from that area.

The Ameren Companies also note that we showed in our evidence that much of the plant that was allocated away from the utilities originally either (1) no longer exists and thus cannot be allocated back to the utilities or (2) was actually transferred to affiliates. (*See* Init. Br., pp. 13-15.) This plant was either largely intangible plant, such as software, which was short-lived, and which has been fully depreciated or written off since the original DST cases, or hard assets moved into generating affiliates.

Accordingly, what the Staff and IIEC must be saying is that it is not old investment that is being allocated back, but new investment that has been recently added that is inappropriate. But which investment? The Staff and IIEC either cannot or will not say. If they would alert us, we could consider whether to discontinue such investment. Is it software systems that allow us to identify and thus remedy outages more quickly? Is it software that enhances communications with customers? Is it software that allows us to process bills and payments more quickly? If Staff and IIEC oppose these investments, they should say so directly, and not hide behind their adjustment of a seven-year-old test year.

Moreover, IIEC's witness admitted the infirmity of his proportionality principle at hearing. (*See* Init. Br. at 16; Reply Br. at 9-10.) There is no relationship between intangible plant and hard utility assets, as he acknowledged. It follows that the Commission should not limit investment based on a relationship that does not exist.

Staff and IIEC identified no plant item that was improperly allocated or assigned or booked to utility G&I. They argue that they don't have to – it's our job to show that each item was properly booked. We believe our ASP does just that. One would also think, however, that with hundreds of millions of dollars of plant improperly booked (at least according to Staff and IIEC) that they would be able to find at least one item – a piece of software, a pick-up truck, anything – improperly on the Companies' books. They did not and they could not.

The Companies' G&I was properly documented and supported and the Proposed Order's findings should be adopted.

E. Reallocation of IP's Depreciation Reserve

(Staff BOE pp. 8-9) As set forth in the Brief on Exceptions, the Ameren Companies believe strongly that reallocation of AmerenIP's depreciation reserve will benefit AmerenIP customers going forward. (BOE, pp. 28-31.) Respondents' Exhibit 36.4 shows that the proposed reallocation will mitigate an increase in depreciation expense by $17,099,000 annually. The Ameren Companies neither suggested nor intended to suggest that the proposed reallocation would have an effect on revenue requirement in the current proceeding.

The Ameren Companies believe that the proposed language in the Brief on Exceptions (pp. 30-31) states this issue clearly and should be adopted. To the extent that Staff wishes to clarify their own position on this issue, the Ameren Companies do not object.

F. Other Post-Employment Benefits Liability

1. Unfunded OPEB

Either Staff's (Staff's BOE, p. 9) or the Ameren Companies' (BOE, p. 41) recommended edit to the Proposed Order would clarify the Ameren Companies' total amount of accrued OPEB liability.

2. ADIT Treatment

G. Cash Working Capital

1. Lead/lag methodology

Not content with prevailing on the cash working capital issue in this case, Staff attempts to rewrite prior Commission orders as well. (Staff BOE p. 9.) In its BOE, Staff recommends revising the discussion of the Commission's conclusions from Docket Nos. 02-0798/03-0008/03-0009 (Consol.). Staff argues that the Commission did not support a methodology by which to calculate the Companies' cash working capital requirements. While the Commission clearly did not adopt a preferred approach, it just as clearly relied upon a methodology by which to calculate the Companies' cash working capital requirements. The methodology adopted by the Commission in those proceedings was the net lag methodology. While Staff had some perceived issues with the Companies' calculations in those proceedings, Staff also recommended the use of the net lag methodology. Staff's recommendation should be disregarded.

2. Capitalized Payroll in CWC Requirements

3. Expense Levels to which CWC Factors are Applied

IV. OPERATING EXPENSES AND REVENUES

A. Uncontested Issues

The Ameren Companies agree with Staff's recommended change regarding Purchase-Accounting Elimination (Staff BOE, p. 10).

B. Vegetation Management/Tree Trimming

The Proposed Order correctly concludes that this is not the appropriate forum to address whether Staff's proposed "no-touch" policy should be adopted. (P.O., p. 45.) Staff takes no "formal" exception to the Proposed Order on this issue, but notes one "informal" exception, which has no merit and should be disregarded.

The Ameren Companies made essentially two arguments against adopting a no-touch policy in briefing: (1) that Staff's new interpretation of Rule 218 is incorrect, and (2) that Staff's proposal to implement a new no-touch interpretation of NESC Rule 218 through this proceeding constitutes illegal rulemaking.[1] (Init. Br., pp. 156-162; Reply Br., pp. 19-20.) The Ameren Companies presented extensive, compelling witness testimony that Staff's position on the first point is incorrect, which the Proposed Order correctly concluded would be more appropriately considered in a rulemaking forum. Regarding the second issue, the Ameren Companies' illegal rulemaking argument is fully supported by the testimony of Staff's own witness, Mr. James Spencer. Mr. Spencer testified that Staff began interpreting Rule 218 as a no-touch rule in October 2002. (ICC Staff Exhibit 21.0, p. 10, line 215.) Assuming Mr. Spencer's statement is correct, October 2002 does not coincide with the Commission's adoption of any new rule or amendment. It is difficult to see how Staff's decision to adopt a new interpretation of a Commission Rule outside of a Commission proceeding could constitute anything but illegal rulemaking, and the Ameren Companies noted this fact in briefing.

Staff takes exception to the fact that the Proposed Order notes this fact in its "Commission Conclusion" section, because "Ameren's argument lacks merit, and the vague reference could be read by some to imply that the Commission agrees to some extent with Ameren's argument." (Staff BOE, pp. 11-12.) The Ameren Companies believe that Staff's own testimony supports the merits of this argument, and the Proposed Order should not be altered to conceal this fact. Even Staff admits that it did not interpret Rule 218 as a "no-touch" rule until October 2002. The record on this issue could not be more clear.

C. Injuries and Damages Expense

The Ameren Companies agree with Staff's recommended change regarding Injuries and Damages Expense (Staff BOE, pp. 13-14). As the Ameren Companies stated more fully in

[1] Staff's attempt to meld these two issues into one makes no sense. The Proposed Order correctly determined that this rate case is the wrong forum to weigh the appropriateness of Staff's new policy. Rulemaking proceedings to weigh the appropriateness of the no-touch policy simply have not taken place.

briefing (Init. Br., p. 49), Staff's proposed normalization method is reasonable and accurate and should be adopted.

D. Rate Case Expense

1. Delivery Service Rate Case Expense

2. Post-2006 Basic Generation Services

3. Depreciation Study

In preparation for this rate case, the Ameren Companies commissioned a depreciation study to determine the Ameren Companies' current appropriate depreciation rates. (Resp. Ex. 36.0, p. 14.) Staff argues that because the Ameren Companies did not request a change in rates, the depreciation study was not reasonably used. (Staff BOE, pp. 14-15.) The Ameren Companies have submitted ample evidence that the results of the depreciation study, in light of prevailing circumstances, supported their ultimate decision not to request a change in rates. (Resp. Init. Br., pp. 58-60.) That decision was made with AmerenIP customers in mind. (*Id.*) Notably, Staff recommended no change in depreciation rates based on the study, either. Staff offers no convincing reason not to allow the Ameren Companies' reasonably incurred costs related to the study. For all of the reasons set forth in the Proposed Order (P.O. p. 53), Staff's recommendation to disallow costs related to the depreciation study is groundless and must be rejected.

E. Administrative and General Expenses

1. Functionalization

IIEC complains about the level of A&G expense reflected in the Proposed Order. (IIEC BOE p. 6.) The IIEC offers nothing new on this point, and we refer the Commission to our

Initial Brief (pp. 60-64), Reply Brief (p. 25) and Brief on Exceptions (pp. 24-25.).[2] The Proposed Order's amounts were fully vetted by the Staff and are reasonable. We note that the amounts in the Proposed Order were significantly lower than those proposed by the Companies.

2. Incentive Compensation

3. Pension and OPEB Expense

4. Major Medical

The Ameren Companies agree with Staff's proposed changes. (Staff BOE, pp. 15-17.)

F. Effect of Ameren Ownership on IP Expenses

In this proceeding, the ALJs considered whether AmerenIP had satisfied certain commitments made in Docket No. 04-0294, where Ameren Corporation received ICC approval to acquire that utility. IIEC now disputes whether AmerenIP satisfied those commitments. (IIEC BOE, p. 8.)

In Docket No. 04-0294, it was understood that it would be difficult to demonstrate the specific level of savings achieved through a quantitative analysis. Accordingly, AmerenIP committed to achieving certain milestones, with which certain savings were assumed, based on forecasts.

In this proceeding, AmerenIP showed to the satisfaction of the ALJs that the milestones were achieved and that AmerenIP had satisfied the merger commitments. IIEC now appears to contend that the procedure established in Docket 04-0294 was statutorily insufficient, and that AmerenIP must now demonstrate that actual savings were achieved.

If IIEC, or any of the group, had a problem with the merger conditions approved in Docket No. 04-0294, it or they should have raised concern in that proceeding. IIEC may not

[2] The Ameren Companies have taken exception to the Proposed Order's adoption of Staff's methodology regarding A&G expense.

collaterally attack the sufficiency of the Order in that docket in this case. The time to appeal the Order in Docket No. 04-0294 has long run, and no party availed itself of that option. Accordingly, the Proposed Order's conclusion is correct and should be adopted by the Commission.

Moreover, we note that the procedure adopted in the acquisition docket was appropriate. It is difficult to estimate savings either prospectively or after the fact because both involve a comparison of costs that do not occur with that those that did or will. One view (forward or backward) is not necessarily more accurate than the other. The milestone approach made sense, and continues to make sense.

Lastly, nothing in Section 7-204 of the Act requires the Commission to do an after-the-fact review of merger costs and savings in the next rate case to determine whether a transaction is proper. To the contrary, the Act requires that the determination of costs and savings and assignment of responsibility be determined in the merger proceeding – which is exactly what was done. The Commission imposed additional conditions on AmerenIP to protect the public and AmerenIP satisfied those conditions. There is nothing more to be considered.

V. RATE OF RETURN

A. Summary of Uncontested/Settled Issues

B. Capital Structure

CUB and IIEC take exception to the Proposed Order's findings regarding the appropriate capital structure to be used. (CUB BOE, p. 1; IIEC BOE, p. 10.) CUB argues that AmerenCIPS and AmerenCILCO should be heavily leveraged, with equity ratios below 30% and that AmerenIP should be not quite so heavily leveraged, with a common equity ratio of 41%. CUB's recommendations are at odds with reason and reality. CUB frames its exception as a matter of consistency, with both S&P's guidelines (as CUB spins them) and the ComEd DST proceeding. IIEC contends that the ALJs got the burden of proof backwards. Neither contention is correct and the Commission should approve the capital structures proposed by the Companies and Staff and adopted in the Proposed Order.

The Ameren Companies discussed this matter thoroughly in their Initial Brief at pp. 76-82 and Reply Brief at pp. 39-40. CUB argues that the Companies can support much more debt than they do today. This is just not the case, as we have explained. CUB has both oversimplified credit analysis (by ignoring the many factors that a ratings agency will look at) and ignored reality. The Ameren Companies are barely above non-investment grade status. Nothing in the record of this case would suggest that the Ameren Companies could take on more debt without serious impairment of their credit ratings.

CUB also complains that the capital structures are consistent with a rating of at least A, whereas in the ComEd DST proceeding, the Commission set a capital structure for ComEd consistent with a rating of BBB+, and one that is "dramatically different" from the Ameren Companies' structures. Without arguing over whether ComEd's capital structure is dramatically different or not, there is nothing inappropriate about the Commission reaching capital structures specific to each Company. CUB cannot evade the fact that in the real world the Ameren Companies' current ratings would not support significantly greater levels of debt than they have today, regardless of whatever ComEd can or cannot support. Under CUB's theory, the Ameren Companies could contact lenders today and replace equity with debt with no credit implications. This is not correct, as we have discussed in the proceedings before the ALJs (as addressed in our briefs).

Moreover, CUB would leave no margin for error. Any slippage would drive the Ameren Companies below investment grade. This would not be sound regulatory policy.

IIEC's argument carries this same baggage. It seeks to impose for "regulatory" purposes a capital structure different from that used for "financial" purposes. While there are many reasons that a company's capital structure may differ for ratemaking purposes, it is not appropriate to incur debt that a company cannot support. In other words, if, as here, a company is at the edge of investment grade, it is not appropriate the reduce the level of equity for ratemaking purposes when that equity is required to maintain an investment grade rating for the benefit of customers. What IIEC would do is have the shareholders provide the level of equity required in today's circumstances to maintain an investment grade, but not pay an equity return on that equity. It would be, in effect, a gift from shareholders to customers. That is not valid ratemaking.

Moreover, IIEC misunderstands the burden of proof. Under Illinois law, the amounts reflected on a utility's books are entitled to a presumption of reasonableness. *See, e.g., City of Chicago v. Illinois Commerce Comm'n*, 133 Ill. App. 3d 435 (1st Dist. 1985). Thus, a utility satisfies the burden of proof by providing the data from its books required under the Commission's rules (which the Companies did). A utility does not have "the burden of going forward on any and all issues which are conceivably relevant to the reasonableness of its proposed rates." *Id.* at 442. Once a utility makes its initial showing, the burden shifts back to the utility only when another party introduces competent evidence to the contrary. *Id.*

The Proposed Order does nothing inconsistent with Illinois law. The Companies satisfied their burden. The IIEC introduced no meaningful evidence to the contrary. Simply saying "that's not reasonable" is not enough.

Moreover, the Ameren Companies did respond to the IIEC's claims, as discussed in our briefs. (Init. Br., pp. 80-82; Reply Br., pp. 39-40.) Accordingly, there is no reason to disturb the Proposed Order's findings in this regard.

C. Measurement date of Short-Term and Variable Interest Rates

Staff and LGE take exception to the Proposed Order's conclusions regarding measurement dates for short-term and variable interest rates. (Staff BOE, p. 17; LGE BOE, p. 2.) The Proposed Order found it proper to consider cost increases occurring after Staff's measurement date.

Staff argues that the Proposed Order's approach would encourage "selective updating" and would not allow adequate time for verification. Staff does not (and cannot) deny that in fact interest rates did go up and the Ameren Companies were able to document their costs. Thus, neither concern voiced by Staff is present here. Staff's concern is with some other, future, case.

Staff also argues that there was a mistake in the Proposed Order's interest calculations – which the Staff corrects. Again, there does not seem to be some insurmountable problem that should cause the Commission to disregard real costs experienced by the Companies.

LGE's argument is that the short-term rate should reflect a six-month average, rather than a single date. LGE argues that it discovered the selected date represents a rate higher than the preceding years.

LGE's "discovery" is not surprising in a period of generally increasing interest rates. One would expect that when rates are going up, the later the date, the higher the rate. One would also expect that the later the date, the closer the rate will be to the rate actually incurred when the new utility rates go into effect, unless there is some reason why it is expected that rates will decrease.

This is why a single measurement for this item is superior to an average. An average reflects not the trend but everywhere the interest rate has been over the measurement period. We suspect that if interest rates were generally going down, LGE would not suggest an average, since it would overstate interest costs going forward. LGE is happy, however, to understate those costs through an average.

The Staff's and LGE's exceptions should be rejected.

D. Cost of IP's Transitional Funding Trust Notes

E. Cost of Common Equity

Response to CUB

CUB takes exception to the cost of equity findings contained in the Proposed Order. (CUB BOE, p. 5.) In particular, CUB finds the Proposed Order's averaging of the Staff and IIEC recommendations to produce an "excessive result," at odds with the evidence and out of line with the utilities' needs. To the contrary, what is out of step is CUB's recommendation, which, at 8%, would be the lowest approved utility return on equity in the country.

What CUB wants to do, without mentioning it, is have the Commission abandon the manner in which it determines ROEs. The Commission has for some time calculated ROEs by establishing a range defined by the results of a discounted cash flow ("DCF") analysis and a capital asset pricing model ("CAPM") analysis. CUB wants the Commission to simply jettison the CAPM approach and use the low end of a DCF run to set ROEs.

CUB offers no basis for such a sea change in approach, other than it would produce a lower number more to CUB's liking. CUB dedicates much of its exceptions to arguing that, really, everyone agrees with CUB. Well, no, everyone doesn't. In fact, no one does. There is no regulatory agency in the United States that has set an ROE as low as CUB's recommendation in recent years.

CUB seems to be struck most by the fact that publicly traded utilities and their holding companies have market-to-book ratios. This, CUB suggests, indicates that regulators are doing something wrong. This is just not the case. Market/book ratios reflect all sorts of factors – unregulated operations, major differences between GAAP and regulatory accounting, future expected returns and the general level of the market. Inasmuch as regulation is supposed to be a substitute for competition, and no one expects competitive enterprises to have a market/book ratio of one, there is no reason to demand such a ratio of a utility holding company or to try to bring one about.

CUB also argues that even the DCF estimates are overstated because of changes in the dividend tax. The DCF costs, however, are also after tax, and thus reflect any effect of changes in the tax code.

Lastly, CUB alleges various errors in the Ameren Companies' presentation, which would be interesting, we suppose, if the Proposed Order hadn't rejected the Ameren Companies' recommended ROE. Accordingly, we will not respond, but do not concede the correctness of any of CUB's allegations in this regard.

This issue is discussed in our Initial Brief at pp. 110-111 and our Reply Brief at pp. 43-46.

Response to Staff

Staff objects to the Proposed Order's rejection of its downward adjustment to the recommended cost of equity (partially addressed by averaging Staff's result with IIEC's). (Staff BOE, p. 22.) This matter is fully discussed in our Reply Brief at pp. 41-43, but, in short, Staff contended in this case that the Ameren Companies were relatively lower risk than the sample group used by Staff. The Proposed Order correctly concludes that Staff's hypothetical risk measures on which its adjustment relies are simply not reality-based. The Ameren Companies are a hairsbreadth from junk status, and cannot be said to be lower risk than almost any utility, much less those in the sample group.

The Staff argues in its Brief on Exceptions that what is dragging the utilities' ratings down now is concern regarding the extension of the electric rate freeze and uncertainty regarding the power procurement process. These items, Staff argues, are unrelated to delivery service and should not be reflected in delivery rates. Staff also argues that credit ratings of related companies are dragging down the utilities.

Staff is simply wrong when it contends that it is "unfair" to use the Companies' actual credit ratings when determining if they are higher or lower risk than the sample. The Companies note first that customers are not being asked to pay for an upward adjustment to ROE because the Companies are higher risk than the sample group. All that is happening is that the Commission is declining to set an even lower ROE.

Second, the Companies' obligation to procure power relates directly to its status as an electric distribution utility. All customers – those who buy from power from the Companies and those who do not – will pay the delivery rates established in this case. All customers have the option to use the Companies as a supplier. Accordingly, this is not some other-world cost improperly imported into distribution rates.

Third, it is difficult to imagine how it would be sound policy to decrease the return to a utility so close to being below investment grade. This makes no sense at all. Staff is recommending that the Commission address the Companies' credit woes by giving them less cash with which to pay their bills. At some point in the process, regulation requires a reality check. In this case, that occurred in the Proposed Order, which reached the proper conclusion and the Commission should not disturb it.

Response to LGE

LGE argues that the Proposed Order erred by not dictating that in all future proceedings, the proxy group for electric delivery ROE may not include gas companies. (LGE BOE, p. 4.) This is not an issue critical to this case, and, in any event, is more properly taken up in a rulemaking proceeding considering the Part 285 requirements. The Commission should not, and need not, restrict what it may consider in future cases.

LGE also complains that the Proposed Order incorrectly reject its witness's use of what he termed sustainable growth rates for this proxy group of electric utilities. Inasmuch as the Commission rejected LGE's DCF results, it is not necessary to provide piecemeal analysis of what it will and will not accept in future cases. LGE is free to propose its method again; nothing in the Proposed Order would preclude that.

VI. RATE DESIGN

A. Summary of Uncontested/Settled Issues

B. Customer Classes – Propriety of DS-3 Subclasses

C. Cost of Service Issues

1. Minimum Distribution System Study

Both the IIEC and Wal-Mart argue against the Proposed Order's recommendation, and continue to assert that the Ameren Companies include a minimum distribution system study as a component of the cost of service studies presented in their next delivery service rate cases. (IIEC BOE, pp. 18-21; Wal-Mart BOE, p. 7.) IIEC argues in the alternative that the Ameren

Companies provide in their next delivery service cases the results of such a study for the Commission's consideration. (IIEC BOE, p. 21).

In response, the Ameren Companies have previously indicated there is merit to inclusion of the minimum distribution system study as part of a utility's cost of service study, and are willing to perform the necessary analysis and calculations, so long as the Commission intends to use this information in adjudicating an appropriate cost of service study. However, the Ameren Companies see no benefit in spending the time and resources to undertake this analysis if there is no expectation that the Commission will support the inclusion of that analysis as part of the cost of service.

2. COSS Allocation Factor

Response to IIEC

The IIEC, at great length, explains why this record does not support the use of the Average and Peak ("A&P") methodology for allocating distribution costs. (IIEC BOE, pp. 22-31.) The Ameren Companies urge the Commission to review the IIEC arguments as they fairly and accurately capture many of the reasons why the A&P method should be rejected.

Response to Staff

Staff seeks to cobble together some means by which to incorporate the A&P method. However, the necessary components by which to accomplish this objective are not in the record. In fact, Staff admits, "The Proposed Order also recognizes that a reliable COSS implementing the A&P is not included in the record", citing to the Proposed Order. (Staff BOE, p.35). Staff then concludes it is up to the "Proposed Order"—not the record or evidence submitted in the case, to specify the manner in which new delivery service rates should be determined using the A&P allocation factor.

At the outset, it is too late to now decide on the manner by which new rates should be developed using the A&P method. This is so because the means and data sets by which to accomplish this objective do not exist in the record. It is unfair and prejudicial to the parties to see for the first time the results of a new cost allocation proposal. No one has had an opportunity to review, respond or otherwise scrutinize the results of this method.

As a starting point for its proposal Staff acknowledges that the respective revenue allocations derived by CUB and the Ameren Companies result in a revenue difference that should not exist. (Staff BOE, p.36). Yet, Staff attempts to resurrect an implementation strategy through its reliance upon a CUB analysis, which is the virtual equivalent of a compass lacking a needle. Staff relies upon CUB Exhibit 4.02 to deduce the total delivery service revenues between that exhibit and the Ameren Companies' revenue allocation, in coming to a sum certain. Unfortunately, CUB Exhibit 4.02 is wrong – and it is incomplete. It is wrong because it relied upon errant data from the Ameren Companies' direct case that was later rectified in the rebuttal case. It is also wrong because, as made evident during the cross examination of Mr. Thomas (Tr. 965-977) and spelled out in the Ameren Companies' and IIEC briefs, it does not fairly or correctly allocate the revenue requirement. Further, it is incomplete in that CUB Exhibit 4.02 only indicates the revenue requirement for each rate class, and does not include the revenue requirement splits among voltage levels in each rate class. Rates cannot be derived without knowing how much of the class revenue requirement is to be allocated to each voltage class.

Continuing, Staff then takes the false ratio-the difference between the CUB revenue allocations and the Ameren Companies revenue allocation - a decidedly wrong number, and applies this percentage to the revenue requirements of each of the Ameren Companies. By definition the results have to be, and are, wrong. This is just another reason why the CUB proposed A&P allocation method should be rejected.

If the above is found unacceptable, Staff then proposes another approach by using CUB Exhibit 4.01, another source in the record. The allocators in CUB Exhibit 4.01 were used to derive the results in CUB's Exhibit 4.02 and suffer from exactly the same erroneous results. There are no corrected A&P factors in the record. There is no proposed direction to split class allocation factors into class voltage allocation factors. In fact, there is no direction as to which of the several formulae should be used to calculate A&P allocators.

Finally, the A&P method in Illinois has only been used for gas plant allocation. The peak is defined differently in gas than electric. If the A&P allocation method were to be employed in this case, the peak would have to be defined by the Commission and possibly be developed and introduced by the Company in this case. As there is no standard procedure for the introduction of such data at this stage of the case, the use of the non-coincident peak as a surrogate for peak demand remains the only viable option. It should be noted that such use would violate a strict application of the A&P method.

Response to CUB

Instead of arguing the facts associated with the appropriateness of the Non-Coincident Peak ("NCP") method versus the factual challenges to the A&P method, CUB works conclusory phrases such as "A&P is being used to allocate costs to the system among ratepayers and not for engineering purpose", as the essence of its arguments. (CUB BOE, p.16). Nonetheless, it is the cost drivers that are associated with the design, construction, and utilization of the distribution system that should be used as the deciding factors in determining to whom such cost should be allocated. There is no question the distribution system must be capable of delivering electricity to each customer's location and be sized adequately for the maximum demand of the customer or group of customers. This is not disputed, and it is not an engineering distinction; this is simply the way the system is being used by customers and, accordingly, it must follow that the costs follow the cost causers.

CUB takes issue with the Proposed Order's commentary regarding the nature and extent of differences between a natural gas distribution system and an electric distribution system. The essence of CUB's recommended change is to assert the differences between the electric distribution and gas distribution systems are irrelevant. (CUB BOE, p.17). Ironically, it was CUB witness Thomas who first introduced the topic in his direct testimony. If, indeed, the topic is irrelevant, so are CUB's arguments that relied on the Commission's order in a gas distribution case that had employed the A&P method.

CUB's failure to understand its own proposal is evident in its proposed language where it asks the Commission to use the A&P method to allocate "Transmission" costs. (CUB BOE, p.17). Of course, the record is completely devoid of any reference to transmission costs being at issue for this Commission. The Commission knows full well that transmission costs are in the jurisdiction of the Federal Energy Regulatory Commission.

The only lawful course of action that the Commission can take with regard to application of the A&P methodology in this case is to reject its use in determining the proposed class revenue requirements. Knowingly adopting the use of a flawed A&P study to now assign class revenue requirements will without question mis-allocate revenue among rate classes. Any attempts to ratio or otherwise reconcile the serious flaws of the CUB A&P analysis will deprive parties of their right to respond with evidence to this new proposal long after the record has closed.

3. Development of Meter Costs v. Customer Costs

4. Interclass Subsidization

We explained in our Brief on Exceptions why it was inappropriate to expand the DS-1 rate mitigation strategy to include the DS-4 rate class. The IIEC also has made clear why including the DS-4 rate class is inappropriate, as did Wal-Mart (IIEC BOE, pp.31-38; Wal-Mart BOE, pp.2-7). If the Ameren Companies, IIEC and Wal-Mart arguments were not persuasive enough, the Staff's own Brief on Exceptions makes abundantly clear why this Commission should disregard this particular proposal.

<u>Response to Staff</u>

There is no escaping the fact that no party to this proceeding, including Staff, knows how to implement the recommendation being made in the Proposed Order. Staff, who in the 11th hour in its rebuttal case, made the recommendation that the DS-4 rate class should be incorporated into the DS-1 rate mitigation strategy, does not cite to one piece of evidence it proffered to explain to the Commission how this should be accomplished. (See Staff BOE, pp. 38-39). In fact, the Staff admits in several instances the lack of clarity in the Proposed Order:

"It is unclear how the Proposed Order would include DS-4 in support of the DS-1 rate relief".

*   *   *

"If the Proposed Order favors another approach, that approach should be detailed in the Proposed Order".

*   *   *

"It is not clear whether the Proposed Order recommends DS-1 rate relief beyond the amount suggested by Ameren, or its reduced DS-1 cost of service from the A&P is considered to mitigate some of the need for DS-1 rate relief supported by other customer classes".

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"If the Proposed Order adopts this approach …."

It is understandable why Staff questions what is intended by the Proposed Order. The Ameren Companies asked the same question in our Brief on Exceptions, because the mechanism or data by which to implement the DS-4 rate class as part of the DS-1 rate mitigation strategy does not exist. So, if the mechanism or data does not exist, by definition there is nothing in the record upon which the Commission can decide this issue.

Moreover, it becomes plainly obvious that parties are being denied the fundamental right to due process. The record has been marked heard and taken. No party should be entitled to now develop a rate design or rate mitigation strategy and deny others the right or opportunity to test that proposal either through additional testimony or through cross examination. It is wrong at this late stage to now develop new evidence and this is precisely what the Staff is attempting to do in its Brief on Exceptions.

5. Relative Class Risk

CUB takes issue with the Proposed Order's rejection of its faulty class risk differential argument. CUB only regurgitates certain statements of its witness from the record in support of its arguments. Unfortunately for CUB, it fails to take specific issue with the Proposed Order's reasoning for rejecting the CUB position:

- The Commission is not convinced that the record justifies adoption of CUB's approach.

- CUB has not persuaded the Commission that residential customers are in fact less risky to serve than large industrial and commercial customers.
- CUB admits that no one has been able to effectively quantify the class risk differential, yet somehow recommending 90% multipliers reflect its position that residential customers are less risky to serve.
- The Commission is not comfortable adopting a multiplier without knowing how it was developed.
- The Commission questions how CUB could argue that residential customers are less risky because they lack the opportunity to utilize RTP.

(P.O., p.177)

In briefing, the Ameren Companies explained in great detail how the record does not support CUB's claim that the residential and governmental customer classes are less risky to serve as compared to the commercial and industrial customer classes; indeed, the opposite is true. (Init. Br. pp. 134-136; Reply Br., pp. 55-56.) In those briefs, as well as in the testimonies of Mr. Leonard Jones, we showed the analysis relied upon by CUB was distorted as well as faulty, which no doubt supports in part the reasoning in the Proposed Order that the CUB analysis is full of "uncertainties." These facts, relied upon in the Proposed Order, are not refuted by CUB.

In its Brief on Exceptions, CUB refers to the testimony of its witness Mr. Thomas, who admits that no one has been able to effectively quantify the class risk differential. Mr. Thomas then goes on to argue that to ignore this "risk" is wrong. CUB misses the point. Somehow CUB came up with a 90% ratio, but it appears to be just a number pulled from thin air. There is no record support for 90%. CUB has also failed to show how the 90% ratio reflects the claimed relative riskiness of the residential class in relation to the non-residential customer classes (assuming *arguendo* that this is even correct). In the end, CUB not only failed to provide any support whatsoever for its residential risk analysis, but has substantiated the uncertainty surrounding its proposal.

D. Supply Procurement Adjustment

Response to Staff

Staff has offered additional language intending to clarify the Proposed Order to mean that the costs to be recovered under the Supply Procurement Adjustment ("SPA") would have had to been substantiated in the record in this proceeding in order for there to be recovery. (Staff BOE, pp. 40-41). The Ameren Companies have no objection to this added language.

Response to Constellation Energy, Inc. and Peoples Energy Services Corporation (CNE/PES)

In large part CNE/PES argues that the Ameren Companies have not met their burden demonstrating the proper allocation of the subject costs between customers taking basic generation services and those taking delivery services. (CNE/PES BOE, pp. 3-7). The Ameren Companies respectfully disagree.

In its initial filing, the Ameren Companies proposed Rider MV, specifically Section 7 which details how the results of the competitive procurement auction are translated in supply charges. The SPA adjustment was detailed in Mr. Stafford's supplemental direct testimony. (Ameren Ex. 6.05, p. 2). In addition, Mr. Wilbon Cooper testified in both rebuttal and surrebuttal as to the categories of supply related costs to be recovered. (See Resp. Ex. 39.0, pp. 6-7.) Mr. Stafford also provided testimony and schedules supporting the amount that will be recovered through the SPA. (Resp. Ex. 36.14, Schedule 1). These are but a few of the references to the record where the Ameren Companies have put forth substantial evidence describing not only the category of costs to be recovered, but also the level of costs to be recovered.

CNE/PES's argument that the Ameren Companies have not identified specific costs is simply is not true. The rider identifies the nature of the costs to be recovered by category, and the Ameren Companies' witnesses have also testified as to the categories of costs to be recovered. Notwithstanding CNE/PES' advocacy to the contrary, the fact remains the Ameren Companies have met their burden in demonstrating a proper allocation of these costs.

In its proposed exceptions, CNE/PES assert that the Ameren Companies allocation was based upon a faulty assumption, that is, we incorrectly assumed it was proper to allocate costs based upon customer eligibility for a particular rate rather than traditional cost causation principles. This statement is not correct. The record is abundantly clear as to the nature and extent of the costs being recovered through the SPA, and the nature and extent of the costs to be recovered through delivery service rates. Customers taking specified services, whether it is basic generation services or delivery services, will pay the costs associated with those services.

The Commission should reject in its entirety the arguments put forth by CNE/PES.

E. Line Extension Refunds

F. Rider QF – Qualifying Facilities

G. Residential RTP Program

Staff recommends that the Commission reject Rider ESP and the Proposed Order's findings and related commentary suggesting it is not supported by the "current" record. (Staff BOE, p. 41). Staff then goes on to describe the Rider PRP filing recently made by the Ameren Companies on September 29, 2006, and concludes that the Commission should suspend this rider, or otherwise the Ameren Companies will have a surplus of residential RTP riders before the Commission.

The Ameren Companies contend Staff is being too rigid and overreaching on this topic. It is true the Ameren Companies submitted Rider PRP intending it to be compliant with Public Act 94-0977. What we cannot know at this point in time is whether or not that rider will be approved in a timely manner as required in the new legislation. Indeed, the tariff has not yet been suspended and a schedule has not been set for the Rider PRP filing. Whether Rider PRP will have been approved by the Commission by January 2, 2007, is simply not known.

There will not be a surplus of residential RTP riders before the Commission; there will be one. We understand the Proposed Order declares Rider ESP to be "interim" in nature. Further, as stated in our Brief on Exceptions (p. 15, n.2), the Ameren Companies can withdraw Rider ESP from the tariff books.

Finally, the record sufficiently defends the Ameren Companies claims that Rider ESP, and the program itself, can bring about benefits to all residential customers. The theory espoused by Mr. Jones is sound and has not been diffused by Staff or any other party in this proceeding.

VII. MISCELLANEOUS ISSUES

A. Line and Service Extensions

IBEW proffers six sets of exceptions to the Proposed Order. The Commission should reject all of them.

IBEW first requests that the Proposed Order be modified to include statements of the applicable standard of proof, burden of proof and a description and scope of this proceeding. (IBEW BOE, p. 2.) According to IBEW, "the parties, Commissioners, their assistants, and a court on review will benefit considerably by a brief but complete recitation of the applicable burden and standard of proof, and a discussion of the Commission's role and authority in a delivery services tariff investigation . . . ." (*Id.*) This is totally unnecessary. This Commission and any reviewing court are well aware of the applicable burden and standard of proof in a rate case. There is no reason for the Proposed Order to state the obvious. And, when one looks at the actual language proposed by IBEW in the exceptions to the proposed order submitted with its brief, it becomes clear that this language is simply lifted from the briefs that IBEW previously filed in this case. Cutting and pasting this language into the Proposed Order serves no useful purpose and would only make the order longer than it needs to be.

For its second exception, IBEW requests the ALJs to engage in the similarly useless exercise of modifying the Proposed Order to "clarify" IBEW's position on the Ameren Companies' proposed line extension tariffs. IBEW acknowledges that the Proposed Order "accurately and succinctly captures much of the IBEW's positions," but complain that it "leaves out many of IBEW's key legal and factual arguments." (IBEW BOE, p. 3.) IBEW requests eight specific changes so that the Proposed Order contains a "complete summary" of IBEW's positions. (*Id.*) There is no reason for the ALJs to attempt to parse through each of these proposed changes. Given that the Proposed Order "accurately and succinctly" captures IBEW positions, there is no need to further lard the Proposed Order with what is essentially a cut and paste of IBEW's testimony and legal briefs. Everyone knows that Commission orders summarize parties' positions. The parties' actual briefs are part of the record. Anyone with an interest in a "complete summary" of every IBEW position on every issue can look at IBEW's brief on e-docket. Including all of those arguments in the Proposed Order unnecessarily lengthens and complicates the order for no good reason.

For its third exception, IBEW argues that the Proposed Order should be modified to include a ruling that the Ameren Companies' line extension proposals are not just and reasonable "from the perspective of safeguarding system reliability and the health and safety of utility employees, customers, and the public." (IBEW BOE, p. 11.) Notable here is the fact that IBEW cannot point to any specific piece of evidence to support the implication of this statement, which is that the only relevant consideration in determining whether a tariff is just and reasonable is whether its promotes employee safety and system reliability. IBEW simply cites each of its witness's testimony in its entirety. The ALJs will recall that these witnesses had very little to say about safety and reliability, and much to say about their belief that the proposed tariffs would result in depriving IBEW members of certain work. The ALJs admitted IBEW's testimony, considered their arguments, and ultimately conclude that utility tariffs "are, at most, incidental to governing the relationship between electric utilities and its employees and to safeguarding the safety of utility employees." (P.O., p. 205.) Whether IBEW "vehemently disagrees" with this conclusion is of no consequence. (IBEW BOE, p. 12.) The Proposed Order clearly reflects a full consideration of IBEW's arguments, and to say that rejection of those arguments "deprives the IBEW of a fair hearing" is simply preposterous. The IBEW has failed to produce any new arguments or evidence that the Proposed Order is incorrect.

The Proposed Order concludes that conduit installation by customers does not constitute "unbundling." Thus, for its fourth exception, IBEW requests that the Proposed Order be changed to conclude that conduit installation does constitute unbundling. (IBEW BOE, p. 20.) Notably, the Proposed Order concludes even if conduit installation did constitute unbundling, the record evidence would still support a finding that the tariffs are just and reasonable. (P.O., p. 206.) IBEW, however, argues that the Commission erred by confusing an "unbundled service" with a "delivery service." IBEW is the party that is confused. IBEW reaches its conclusion by trying to meld together the definitions of "delivery service"' and "unbundled service" under Section 16-102 with the definition of "tariffed service" under 16-103(b). By conflating these statutes, IBEW argues, "Taken together, then, unbundling in the delivery service context exists when a utility offers a component part of a delivery service to its customers through a separate offering." (IBEW BOE, p. 22.) IBEW cites no authority for this conclusion, nor can it. As the Ameren Companies explained in their Initial Brief (p. 153), "unbundling" applies only to "delivery services." Delivery services are "services that are necessary in order for the transmission and distribution system to function so that retail customers . . . can receive electric power and energy . . . ." 220 ILCS 5/16-102. The Commission concluded, based on the record evidence (which IBEW does not and cannot dispute), that conduit is not necessary for customers to receive service. Allowing customers to install their own conduit therefore does not constitute unbundling. The Proposed Order was correct in this regard and should not be changed based on IBEW's flawed interpretation of the applicable statutes.

For its fifth exception, IBEW argues that the Proposed Order should be changed to conclude that IBEW's conduit installation and subdivision developer tariffs are unjust and unreasonable. (IBEW BOE, p. 24.) IBEW claims that the Proposed Order's findings to the contrary are based on "speculation." The Ameren Companies fail to see how the findings in the Proposed Order can be characterized as "speculation" when the Commission devoted almost 10 pages to explaining each party's position, summarizing the record and explaining the basis for its conclusions. (P.O., pp. 197-206.) More to the point, there is record evidence that the Ameren Companies' line and service extension tariffs will reduce costs and increase service options. (*E.g.*, Tr. at 658.) IBEW also claims that it is "speculation" to conclude that the subdivision developer option “could contribute” to just and reasonable rates and “might enhance” market development, but it is not. Indeed, the very reason IBEW intervened in this case is because it believes that the Ameren Companies will incur lower costs by allowing customers to install conduit or developers to install their own facilities. (See IBEW BOE, p. 26.) Lower costs for the utility translates into lower rates for customers. IBEW has yet to explain how this is contrary to the public interest. The Commission should reject IBEW's fifth set of exceptions in their entirety.

B. Metering Services

IBEW's sixth and final exception pertains to the Ameren Companies' meter service tariffs. The Ameren Companies fail to comprehend what IBEW's requested changes are supposed to add to the Proposed Order. For the most part IBEW simply adds more words to say the exact same thing. The only exception is IBEW's request that the Commission adopt its conclusion that “AMR modules and wireless infrastructure are an integral part of the metering system used to collect and transmit billing data that is used for retail billing and settlement purposes.”(IBEW P.O., p. 37.) IBEW argued the point about AMR equipment being an “integral part” of the metering system throughout this proceeding, but whether it is or is not is irrelevant to the conclusion that Part 460 does not apply to AMR services provided by outside service providers under contract with utilities. And, AMR equipment does not have to be an “integral part” of the meter system to constitute “associated equipment” under the reasoning of the Proposed Order. There is no useful purpose in modifying the Proposed Order to accommodate IBEW's proposed changes.

VIII. FINDINGS AND ORDERINGS PARAGRAPHS

A. Finding 20

Staff proposes language adjusting the timetable for filing compliance tariffs and Commission review of those tariffs. The Ameren Companies propose the following alternative language:

> (20) new tariff~~s~~ sheets authorized to be filed by this Order should be filed with the Chief Clerk's Office within 10 business days from the date of this Order and reflect an effective date not less than ~~three~~ eight business days after the date of filing with the tariff sheets to be corrected, if necessary, within that time period. The tariff sheets shall further specify that, retail charges and tariff provisions shall become applicable for service provided on and after January 2, 2007; and

Rate calculations for certain tariffs are required prior to January 2, 2007. Some of these tariffs include Rider TS, Rider EEAC, and Rider HMAC, which include informational sheets to be filed earlier than January 2, 2007. While the Proposed Order would not have prohibited these filings, we want to be sure the Staff's proposed language also is not prohibitive of these filings being made prior to January 2, 2007.

B. Original Cost Determination

Staff's request to include an Original Cost Determination should be disregarded. (Staff BOE, pp. 44-46.) Staff did not previously raise this issue in briefs, the ALJs did not consider it, and thus it does not constitute a valid exception to the Proposed Order. Staff had plenty of opportunity to introduce this request in a timely manner, but elected not to do so. It is simply too late to do so now.

Staff implies that the Ameren Companies did not provide journal vouchers and journal entries. (Staff BOE, p. 45.) This implication is incorrect and not supported by the record. The Ameren Companies did, in fact, provide all journal vouchers and journal entries for plant additions that were audited by Staff in this case.

If the Commission elects to include Staff's Original Cost Determination in its final order, Staff's Recommended Language should indicate that the referenced amounts are Electric Distribution Plant in Service, rather than Electric Plant in Service. Staff's calculation shown on Schedule 1 for each of the Ameren Companies shows Electric Plant in Service, deducting production and transmission plant to arrive at Electric Distribution Plant in Service. Thus, the description shown on line 5 column (A) for each of the Ameren Companies should be changed to read "Electric Distribution Plant in Service."

IX. STAFF'S TECHNICAL CORRECTIONS

The Ameren Companies agree with Staff's proposed changes. (Staff BOE, pp. 47-48.)

Dated: October 24, 2006

Respectfully submitted,

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PROOF OF SERVICE

I, Laura M. Earl, certify that on October 24, 2006, I served a copy of the foregoing Reply 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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