ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS
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ORIGINAL

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

REPLY BRIEF ON EXCEPTIONS

OF

LOCAL UNIONS 51, 309, 649, 702, AND 1306 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

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Dated: October 24, 2006

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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Proposed general increase in rates for delivery service.	)	**Docket No. 06-0070**
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BRIEF ON EXCEPTIONS OF
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Now comes Local Unions 51, 309, 649, 702, and 1306 of the International Brotherhood of Electrical Workers, AFL-CIO (the "IBEW"), by and through its attorneys, and pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), 83 Ill. Admin. Code Section 200.830, respectfully submits this Reply Brief on Exceptions in response to the Brief on Exceptions ("BOE") and Exceptions submitted by the Ameren Companies ("Ameren") on October 18, 2006. For the reasons stated below, the IBEW requests that the Commission reject Ameren's BOE and Exceptions to the Proposed Order's unbundling conclusions.

VII. MISCELLANEOUS ISSUES

A. Line and Service Extensions

I. THE PROPOSED ORDER CORRECTLY CONCLUDES THAT THE COMMISSION HAS THE AUTHORITY TO CONSIDER THE EFFECTS OF AMEREN'S UNBUNDLING PROPOSALS IN THIS PROCEEDING UNDER SECTION 16-108(A) OF THE PUBLIC UTILITIES ACT

The Proposed Order correctly concludes that the Commission has the authority to investigate the effects of Ameren's unbundling proposals on electric utility workers under Section 16-108(a) of the Public Utilities Act (the "Act"). Proposed Order at 205. The Proposed Order explains that the Act "explicitly anticipates subsequent modification of delivery service tariffs pursuant to Article IX and the Commission believes the last sentence of Section 16-108(a) would be applicable to any such unbundling." Id.

Ameren, however, takes exception to this conclusion and argues that the Commission lacks such authority to consider the impact that its unbundling proposal allowing developers to install their own distribution facilities will have on utility employees in this proceeding. Ameren BOE at 34-41. To support its claim, Ameren asserts that the plain language of the Act only permits the Commission to consider the impact of unbundling when evaluating Ameren's "initial delivery service" tariffs (which were filed in 1999) and when conducting the two "unbundling" investigations required under Section 16-109 of the Act (which the Commission performed in Docket Nos. 99-0013 and 03-0582). In Ameren's words, "the General Assembly provided no authority for the Commission to consider unbundling in the context of a rate case, at the request of an intervening party or otherwise." Ameren BOE at 35. As shown below, Ameren's argument is disingenuous and inconsistent with both the plain language of the Act or the Act's

legislative history. As a result, the Commission should reject Ameren's Exceptions to the Proposed Order's unbundling conclusion.

The fatal flaw with Ameren's argument is that it ignores a basic tenet of statutory interpretation; namely, that a statute must be read as a whole, and that no word or paragraph should be interpreted so as to render it meaningless. *Williams v. Staples*, 208 Ill. 2d 480, 487 (2004). Ameren ignores this tenet by failing discuss, let alone mention, the last sentence of Section 16-109. The last sentence of Section 16-109 plainly states that:

> 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.*
>
> 220 ILCS 5/16-109 (emphasis added)

In other words, Section 16-109 unambiguously provides the Commission with the power at any time, upon its own motion or complaint, to investigate the propriety of an electric utility's unbundling proposals and consider the impact of those proposals—as Section 16-108(a) requires—on electric utility employees, the objective of just and reasonable rates, and development of competitive markets for electric services.

In addition, by referencing Section 16-108, Section 16-109 indicates that the Commission can exercise such power in a delivery services tariff investigation under Section 9-201 or an investigation under Section 9-250 of the Act. Section 16-108(a) states that the Commission "shall otherwise have the authority *pursuant to Article IX* to review, approve, and modify the prices, terms, and conditions of those components of delivery services not subject to the jurisdiction of the Federal Regulatory Commission, including the authority to determine the

extent to which such delivery services should be offered on an unbundled basis." 220 ILCS 5/16-108(a) (emphasis added).[1]

The procedural history of this proceeding leaves little doubt that the impact of Ameren's unbundling proposals are subject to Commission evaluation under Section 16-108(a). The Proposed Order correctly points out that Ameren filed its proposed delivery service tariffs pursuant to Sections 9-201 and 16-108 of the Act, and that the Commission suspended all of those tariffs on its own motion to conduct an investigation. Proposed Order at 1, 3. Illinois courts have long held that when a utility submits tariff changes and the Commission investigates those tariffs, the utility puts at issue the just and reasonableness of all of its proposed changes. *Northern Illinois Water Corp. v. Ill. Commerce Comm'n*, 33 Ill. 2d 580, 586 (1966). In sum, it is clear that the Commission has the authority to investigate the impact of Ameren's unbundling proposals in this proceeding.

Even if Sections 16-108 and 16-109 of the Act were ambiguous regarding the Commission's unbundling authority, the Proposed Order's conclusion remains correct based on the legislative history of these statutory provisions.[2] As explained below, the legislative history of these provisions indicates that the General Assembly rejected the proposition now made by Ameren regarding the Commission's unbundling authority.

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[1] The Commission has previously explained in a delivery services tariff investigation it "retains all of its powers under the Act to review the tariff and propose modifications to the tariff." *Commonwealth Edison Company: Petition for approval of delivery services tariffs and of 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 at 134, 2002 Ill. PUC LEXIS 563 at *322 (Order entered Apr. 1, 2002).

[2] *See Local Union Nos. 15, 51, and 702, International Brotherhood of Electrical Workers v. Ill. Commerce Comm'n*, 331 Ill. App. 3d 607, 614 (5th Dist. 2002) (stating that it is permissible to look to a statute's legislative history to ascertain legislative intent for the provision); *Krohe v. City of Bloomington*, 329 Ill. App. 3d 1133, 1136-37 (4th Dist. 2002) (explaining that it is appropriate to look to legislative floor debates to discern legislative intent when a statutory provision is ambiguous).

Sections 16-108 and 16-109 of the Act—as with Article XVI of the Act—were the product of Public Act 90-0561.[3] Public Act 90-0561, in turn, resulted from the enactment of House Bill 362, which was signed into law by then-Governor Jim Edgar.[4]

Representative Philip Novak,[5] the House sponsor of House Bill 362,[6] explained during the floor debate that "Senate Bill 55 provided the framework for House Bill 362."[7] He also stated that House Bill 362 came about because of the "criticisms" and "improvements" the Commission had made regarding Senate Bill 55 in a report issued in the summer of 1997, and the legislature's adoption of those "improvements."[8]

The Administrative Law Judges in this proceeding have taken administrative notice of that report pursuant to the IBEW's motion on July 26, 2006.[9] The Commission's report, entitled REPORT TO THE SENATE PRESIDENT BY THE ILLINOIS COMMERCE COMMISSION: ANALYSIS OF ELECTRIC RESTRUCTURING WITH PARTICULAR EMPHASIS ON SENATE BILL 55 (August 15, 1997), is attached hereto as "IBEW RBOE Exhibit C."

One of the many criticisms the Commission made of Senate Bill 55 was its "vague unbundling authority." IBEW RBOE Exhibit C at 51. The Commission stated that "the bill

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[3] *See* Ill. Session Laws 1997, pp. 6204-6207 (attached hereto as "IBEW RBOE Exhibit A"). IBEW Motion to Take Administrative Notice at 2 (filed July 18, 2006) (requesting administrative notice of the Commission's August 15, 1997 REPORT TO THE SENATE PRESIDENT: ANALYSIS OF ELECTRIC RESTRUCTURING WITH PARTICULAR EMPHASIS ON SENATE BILL 55); Tr. 156-160 (IBEW oral argument in support of administrative notice of the report).

[4] Ill. Session Laws 1997, pp. 6195. 6335 ("IBEW RBOE Exhibit A").

[5] *Spinelli v. Immanual Evangelical Luthern Congregation*, 144 Ill. App. 3d 325, 330 (2nd Dist. 1986) (noting that statements by the sponsor of the legislation are especially significant in discerning legislative intent because "legislators look to the sponsor . . . to be particularly well informed about its purpose, meaning, and intended effect.")

[6] http://www.ilga.gov/legislation/legisnet90/status/900HB0362.html (Bill Status History of House Bill 362 of the 90th General Assembly).

[7] 90th Ill. Gen. Assembly, House Proceedings, November 14, 1997 at 106 (attached hereto as "IBEW RBOE Exhibit B").

[8] IBEW RBOE Exhibit B at 106 ("Ladies and Gentlemen, over the summer after the Illinois Commerce Commission reviewed Senate Bill 5 and issued its report with some criticisms and some needs for improvement, we negotiated over the summer and fall and we made those improvements and we've come back with a better bill.") (statement of Representative Novak).

[9] Tr. 620 (granting the IBEW's Motion to Take Administrative Notice of the Commission's Report to Illinois Senate President James "Pate" Philip).

[(i.e., Senate Bill 55)] leaves substantial ambiguity over the Commission's authority to unbundled delivery services." Id. After detailing the provisions of Sections 16-108 and 16-109 under Senate Bill 55, the Commission expressed its concern that these provisions could be read "to limit the Commission's delivery services unbundling authority to the two instances expressly addressed in [Section 16-109]." Id. at 52. The Commission stated that its possession of "full Article IX unbundling authority" was "crucial to the development of competition." Id.

To address the Commission's concerns, the General Assembly expanded the Commission's unbundling authority by amending Section 16-108 and 16-109 of Senate Bill 55 when it enacted House Bill 362.[10] The table at the end of this Brief provides a side-by-side comparison of Sections 16-108(a) and 16-109 under Senate Bill 55 and House Bill 362 as codified in the Act with differing text in bold italics.

Unlike the provisions in Senate Bill 55 for Section 16-108(a), the General Assembly specified in House Bill 362 that: (1) the Commission has full Article IX authority to "review, approve, and modify the prices, terms, and conditions of those components of delivery services not subject to [FERC jurisdiction], including the authority to determine the extent to which such delivery services should be offered on an unbundled basis"; and (2) the Commission must consider the impact that unbundling proposals would have on just and reasonable rates, utility employees, and the development of competition.[11]

In addition, unlike the provision in Senate Bill 55 for Section 16-109, House Bill 362 provides the Commission with residual authority under Article IX of the Act to investigate the

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[10] *Compare* 90th Ill. Gen. Assem., Senate Bill 55, House Amendment No. 1, 1997 Sess. at 10, 13 (attached hereto as "IBEW RBOE Exhibit D") with 220 ILCS 5/16-108(a) & 220 ILCS 5/16-109. *See Maiter v Chicago Bd. of Education*, 82 Ill. 2d 373, 386-38 (1980) (looking to prior versions of a statute that became law to discern legislative intent).

[11] *Compare* IBEW RBOE Exhibit D at 10 *with* 220 ILCS 5/16-108(a).

propriety of a utility's unbundling proposals "upon complaint or upon its own initiative without complaint," "upon reasonable notice," and "in accordance with Section 16-108."[12]

Taken together, the Commission's Report regarding the shortcomings of Senate Bill 55 and the legislature's response remove any doubt as to the Commission's unbundling authority in this proceeding. To conclude otherwise would deprive the Commission of the "full Article IX unbundling authority" it requested in its Report to the General Assembly. Accordingly, the Commission should reject Ameren's exceptions to the Proposed Order's unbundling conclusion.

II. AMEREN MISCHARACTERIZES THE SCOPE OF THE COMMISSION'S AUTHORITY IN A DELIVERY SERVICES TARIFF INVESTIGATION

Ameren also claims that Section 16-108(a) of the Act only affords the Commission the authority to consider the effects of unbundling proposals when setting *rates*, not when determining the just and reasonableness of a utility's proposed delivery service practices. Ameren BOE at 35. Again, Ameren's argument ignores the plain language of the Act. As detailed below, the Commission's power in a delivery service tariff investigation extends to not only a utility's proposed rates, but also its proposed services and service practices.

Section 16-108(a) states that the Commission "shall otherwise have the authority *pursuant to Article IX* to review, approve and modify the prices, terms, and conditions of those components of delivery services not subject to [FERC jurisdiction], including the authority to determine the extent to which delivery services should be offered on an unbundled basis." 220 ILCS 5/16-108(a) (emphasis added).

Article IX of the Act requires Ameren to file tariffs not only for its proposed rates or charges, but also for its proposed *services* and *terms and conditions for obtaining such services*.

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[12] *Compare* IBEW Exhibit RBOE D at 13 *with* 220 ILCS 5/16-109.

220 ILCS 5/9-102; 220 ILCS 5/9-201. Article IX further provides that Ameren cannot begin offering service until it has properly filed and published its proposed tariffs and those tariffs are approved or allowed to take effect by the Commission. 220 ILCS 5/9-104; 220 ILCS 5/9-201.

Section 9-201(a) states that a utility cannot change "*any* rate or other charge or classification" or "*any* rule, regulation, *practice* or contract *relating to or affecting any service*" unless the Commission permits the change to take effect. 220 ILCS 5/9-201(a) (emphasis added). Section 9-201(b) authorizes the Commission to investigate "any" proposed tariff change on its own motion or upon complaint. 220 ILCS 5/9-201(b). Section 9-201(c) builds off of the preceding subsections and provides that when the Commission investigates a proposed tariff change it "*shall*" "establish the rates or other charges, classifications, contracts, *practices*, rules or regulations" that the Commission finds "just and reasonable." 220 ILCS 5/9-201(c) (emphasis added). Section 9-201(c) "just and reasonable" standard applies equally to a utility's proposed service practices and rates. *See Illinois Bell Telephone Co. v. Ill. Commerce Comm'n*, 327 Ill. App. 3d 768, 774-76 (3rd Dist. 2002) (holding the Commission properly applied the "just and reasonable" standard when determining whether Ameritech's proposed collocation service practices were consistent with the FCC's "technical feasibility" requirement).

Illinois court decisions construing the above provisions make clear that the Commission cannot "abdicate its duties" under Article IX. *Citizens Utility Bd. v. Ill. Commerce Comm'n*, 275 Ill. App. 3d 329, 342 (1st Dist. 1995). Rather, the Commission, "as the legislatively appointed guardian of the public's interest, must carry out is statutory mission" as plainly written irrespective of its opinion regarding the desirability of the results surrounding the operation of its enabling authority. *Id.* at 341-42, 344. Otherwise, the regulatory world is turned on its head "where the regulated has in effect become the regulator." *Id.* at 344.

In sum, Article IX vests the Commission with the authority in a tariff investigation to assess the just and reasonableness of Ameren's unbundling proposals not only from the standpoint of setting rates, but also from the perspective of establishing delivery service practices. Since the Commission has suspended *all* of Ameren's proposed tariff changes, including its unbundling proposals,[13] there is no merit to Ameren's claim that the Commission can only determine the just and reasonableness of its proposed delivery service rates in this proceeding. Accordingly, the Commission should reject Ameren's argument because it would require the Commission to cede its statutory power.

III. THE PROPOSED ORDER'S CONCLUSION THAT AMEREN'S SUBDIVISION DEVELOPER PROPOSAL CONSTITUTES UNBUNDLING IS CONSISTENT WITH THE COMMISSION'S ORDER IN DOCKET 03-0767

Ameren finally complains that the Proposed Order is inconsistent with the Commission's Order in Docket 03-0767, which purportedly prejudged the IBEW's objections to Ameren's subdivision developer proposal in this proceeding as "labor relations matters" beyond the scope of the Act. Ameren BOE at 34, 36. From this argument, Ameren asserts that the Commission must limit its statutory authority under the Act in order to stop "the IBEW's continued abuse of Commission proceedings to advance their labor agenda." *Id.* at 36. As detailed below, Ameren's argument is spurious and stems from a gross mischaracterization of the Commission's Order in Docket 03-0767 that cannot be squared with prevailing authority.

[13] As previously established, when a utility submits tariff changes and the Commission undertakes an investigation to determine the just and reasonableness of those changes, the utility puts at issue the just and reasonableness of all its proposed changes. *See* supra at 5.

A. The IBEW's Objections To Ameren's Tariffs Proposals Are Within The Scope Of The Commission's Authority Under The Act

The IBEW explained in its Brief on Exceptions that its core objection to Ameren's proposed line extension tariffs through this proceeding has been (and continues to be) that the proposed tariffs 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 at 11. The IBEW further explained that the Act obligates Ameren to provide reliable services that "promote the safety, health and comfort and convenience of its patrons, employees, and the public." Id. at 12-13. In addition, the IBEW established that a utility's tariff "plays an integral role" in allowing the utility to meet its obligations under the Act. Id. at 12. The IBEW also demonstrated that one of the Commission's primary regulatory obligations is "to protect and enhance the safety, health, and convenience of the patrons, employees and the public serviced by a public utility." Id. at 13. Finally, the IBEW showed that there is simply no merit to the proposition that the IBEW cannot challenge Ameren's tariffs from the perspective of whether they safeguard system reliability and the health and safety of utility employees, customers, and the public. Id. at 13-17.

Simply put, the objections the IBEW has pursued against Ameren's proposed tariffs, including its subdivision developer proposal, are based on the provisions of the Act, *not* the rights that the IBEW enjoys under its collective bargaining agreements with Ameren. Contrary to Ameren's shrill protests, the IBEW is not asking the Commission decide a "labor relations matter" beyond the scope of the Act. At no time has the IBEW submitted a collective bargaining agreement for the Commission to review in this proceeding, let alone a list of grievances for the Commission to resolve under such an agreement. The IBEW has only asked the Commission to decide a question that clearly lies within its jurisdiction—the just and reasonableness of

Ameren's tariff proposals from the perspective of safeguarding system reliability and the health and safety of utility employees, customers, and the public.

While it is true that the IBEW has arbitrated Ameren's authority to permit customers to install their own conduit under its collective bargaining agreement, and that arbitration shares operative facts raised in this proceeding, those facts in no way bar the IBEW from challenging the "just and reasonableness" of Ameren's tariff proposals under the Act. This is so because a labor arbitration can only decide the rights a party has under a collective bargaining agreement, nothing more. A labor arbitration cannot determine whether a utility employer's tariff proposals are "just and reasonable" under the Act. *See Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 212-13 (1985) (explaining that unions and unionized employers do not have the power through labor agreements to exempt themselves from state law obligations that exist independent of their agreements). Only the Commission can decide issues under the Act. Ameren itself admits this point in its Motion to Strike the 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").

Moreover, the Commission cannot sidestep its obligation to evaluate the "just and reasonableness" of Ameren's tariff proposals under the IBEW's theory merely to avoid a decision that may enhance the IBEW's bargaining position with Ameren.[14] *See Southwestern Bell Telephone Co. v. Arkansas Public Service Comm'n*, 824 F.2d 672, 674-76 (8th Cir. 1987).

[14] In addition, the Commission has recently held that it can neither limit nor extend the scope of its enabling legislation. *Illinois Bell Telephone Company: Filing to implement tariff provisions related to Section 13-801 of the Public Utilities Act*, ICC Docket No. 01-614, at 61 (Interim Order entered Apr. 20, 2005).

The Commission itself made this point clear in Docket 02-0426 when it concluded that federal labor law does not bar it from exercising its traditional authority to regulate utilities under the Act even though its decisions may bear upon labor relations matters and affect a party's bargaining position.[15] In that docket, the Commission held that federal labor law does not prevent the Commission from requiring incumbent local exchange carriers to pay customer out-of-service credits under Section 13-712 of the Act when a carrier's union workers are on strike. *Code Part 732 Order* at *93. The Commission reasoned that the "payment of credits and the associated Part 732 service quality standards are clearly matters deeply rooted in local feeling and responsibility" and a peripheral concern to labor issues addressed by federal law laws." Id. at *92-*93.

The California Public Utilities Commission ("California PUC") reached the same result in the face of arguments that are virtually identical to those made by Ameren in this proceeding. In 2001, the California PUC considered an emergency motion filed by utility employees to block two California electric utilities from laying off workers until that commission has the opportunity to review their proposals.[16] The utility employees argued and presented evidence that the lay offs would impair service quality and safety. The two utilities opposed the utility employees' motion on the grounds that the motion raised labor relations matters beyond the California PUC's jurisdiction. *California PUC Decision* at *2-*3. After extensively reviewing applicable federal labor law statutes and court decisions, the California PUC, like this Commission in Docket 02-0426, rejected the utilities' arguments. The California PUC explained in pertinent part that "collective bargaining agreements do not govern nor control the Commission's statutory

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[15] *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) ("*Code Part 732 Order*").

duty to ensure that the utilities provide adequate, efficient, just and reasonable service." Id. at *8. The California PUC further explained that it was not interfering in the collective bargaining process, but rather "simply taking steps to ensure that customer service is not sacrificed by the planned and implemented layoffs," and in so doing, "the Commission [was] acting within its jurisdiction." Id. The California PUC noted that its "safety jurisdiction is an integral part of its police power," and that "jurisdiction to determine the adequacy of service being rendered by public utilities is vested exclusively in the Commission." Id. at *5.

The California PUC's reasoning makes abundant sense and applies equally to the Illinois Commerce Commission. The Commission, like its California counterpart, serves as "the legislatively appointed guardian of the public's interest,"[17] which includes the obligation to ensure that utility practices promote the security and safety of utility employees and the public. *Chicago B. & Q. R. Co. v. Ill. Commerce Comm'n*, 364 Ill. 213, 220-221 (1936). *Accord Brotherhood of Railroad Trainmen v. Elgin. J & E Ry. Co.*, 382 Ill. 55, 68-69 (1943); *Central Illinois Public Service Co. v. Ill. Commerce Comm'n*, 18 Ill. 2d 506, 512 (1960).

In sum, the only party seeking to abuse the Commission's proceedings is Ameren. Ameren demands that the Commission cede its authority to decide the propriety of unbundling proposals under the Act merely because an unfavorable result could impair its bargaining position with the IBEW. The Commission can neither cede its authority nor concern itself with who holds or will hold the better hand in bargaining. The Commission must, instead, decide whether Ameren's unbundling proposals are "just and reasonable" from the perspective of safeguarding system reliability and promoting the safety of utility employees, utility customers,

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[16] *In Re: Southern California Edison*, California Public Utilities Commission, Decision No. 01-03-029, 2001 WL 1700300, at *1 (Order entered Nov. 8, 2001) ("*California PUC Decision*") (attached hereto as "IBEW RBOE Exhibit E").

[17] *Citizens Utility Bd. v. Ill. Commerce Comm'n*, 275 Ill. App. 3d 329, 344 (1st Dist. 1995).

and the public as required by the Act. Therefore, the Commission should disregard Ameren's charge about the IBEW's so-called "labor agenda."

B. Ameren Grossly Mischaracterizes The Commission's Order From Docket 03-0767

Ameren claims that the Proposed Order is inconsistent with the Commission's Order in Docket 03-0767 because the Commission in that docket purportedly prejudged the IBEW's objections to Ameren's subdivision developer proposal as "labor relations matters" beyond the scope of the Act. As explained below, Ameren's characterization of the Commission's 03-0767 Order is myopic and lacks merit.

The Commission's Order in Docket 03-0767 derived from a rulemaking proceeding to investigate the need for amendments to Code Parts 410 and 500 of the Commission's Rules. Before the IBEW even intervened, the parties of record reached an agreement to dismiss the proceeding if various line and service extension issues were later litigated in the next tariff investigations of the utilities signing the agreement with Commission Staff. Order on Rehearing, Docket No. 03-0767 at 2 (entered Apr. 5, 2006).

Separately, Ameren and ComEd each executed agreements with the Home Builders Association of Illinois (the "Home Builders") that would permit subdivision developers (*i.e.*, Home Builder members) to install their own conduit systems and electric distributions systems for line and service extensions.[18] In exchange, the Home Builders agreed to drop their request for a Commission determination of whether subdivision developers had, among other things, the

[18] *See* Joint Response of HBAI and Ameren to the Administrative Law Judge's Notice Dated October 22, 2004 at 1-2 (filed Nov. 18, 2004); The Homebuilder's Associations of Illinois and Commonwealth Edison Company's Joint Supplemental Response to the Administrative Law Judge's Request for Position Statements at 1-2 (filed Feb. 8, 2005) (both available on the Commission's e-Docket system).

"right to install underground lines in new developments."[19] These parties also requested that the Commission enter no findings regarding the propriety of their agreements or arguments or issues related thereto. *Id.*

When the IBEW ultimately intervened, *the record was already closed.* Believing the Home Builder agreements were nonetheless sufficient to raise system reliability and public safety concerns, the IBEW requested that the Commission investigate, on its own motion, whether or not the agreements violated the PUA or Code Part 410 of the Commission's Rules. Order on Rehearing at 3. IBEW BOE at 7, 11.

The Commission declined the IBEW's request because it found the IBEW's alleged violations "vague," and because the docket's *closed* record contained no specific contentions that Home Builder installations posed a risk to system reliability or safety. Order on Rehearing at 2-3. The Commission also neither commented on nor approved the Home Builder agreements. *Id.* Further, the Commission stated that the IBEW was free to articulate its concerns in a complaint. Id. at 2-3. Finally, the Commission speculated that since IBEW disclosed that its members perform line and service extensions for Ameren and ComEd under collective bargaining agreements, "it [was] not clear" whether or not the IBEW's concerns were anything more than a labor "jurisdictional dispute." As a result, when placed in the proper context, it is readily apparent that nothing in the Commission's Order in Docket 03-0767 bars the IBEW's objections in this proceeding.

While the Commission did advise the IBEW to raise its concerns against Ameren in a complaint, the Commission did not bar the IBEW from seeking relief in these tariff proceedings for several reasons. First, in recommending the denial of the IBEW's Application for Rehearing,

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[19] Joint Response of the Home Builders Association of Illinois, Commonwealth Edison, and the Ameren Companies to the Administrative Law Judge's Mandatory Request of February 8, 2005 at 2 (filed Feb. 18, 2005)

the Administrative Law Judge correctly noted that the Commission had suspended Ameren's proposed line and service extension tariffs in Docket Nos. 06-0070, 06-0071, and 06-0072, and that "those dockets provide the appropriate forum for arguments against the terms of the tariffs filed therein, and [the] IBEW has intervened in those dockets." Administrative Law Judge Memorandum to the Commission, Docket No. 03-0767 at 2 (dated Mar. 3, 2006). If the Commission intended to bar the IBEW from participating in the instant proceeding, then it would have said so directly in its 03-0767 Order.

Second, such a result cannot be squared with past Commission decisions. The Commission has long held that the fundamental purpose of a tariff investigation under Section 9-201 of the Act is to "enable interested parties to challenge [a utility's] revisions before they are implemented." *National Data Corp. v. Illinois Bell Telephone Co.*, ICC Docket No. 87-0234, 1990 Ill. PUC LEXIS 349, at *29 (Order entered on July 6, 1990). More recently, the Commission concluded that proposed "changes to the terms and conditions of a tariff can be reviewed only in the context of a Section 9-201 or 9-250 proceeding." *See e.g. Rhythms Link Inc. v. Illinois Bell Telephone Co.*, ICC Docket No. 99-0465, 1999 Ill. PUC LEXIS 955, at *29 (Order entered Dec. 2, 1999).

As already noted above, the Commission 03-0767 Order simply speculated that the IBEW's concerns with the Home Builder agreements were merely "labor relations matters and not matters relevant to the Public Utilities Act." It is difficult to imagine that the Commission intended to blacklist the IBEW's concerns with Ameren's tariffs in the same breadth, especially when neither those tariffs nor the IBEW's testimony regarding them were before the Commission as they are in this proceeding. The Commission, after all, makes decisions based exclusively on the record evidence before it, not speculation. 220 ILCS 5/10-103.

(available on the Commission's e-docket system).

The most Ameren could hope to mine from the Commission's "labor relations" 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. Order on Rehearing 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, 121-24 (1994). Since the IBEW has neither submitted a collective bargaining agreement for the Commission to interpret, nor a labor grievance to resolve, that legal proposition serves no utility in these proceedings. Not only that, Ameren's attempt to recast the Commission's "labor relations" statement as a bar against evaluating the propriety of its unbundling proposals would not comport with the other Commission decisions and legal authority previously discussed, including the Commission's Code Part 732 Order. Accordingly, the Commission should reject Ameren's Exceptions to that Proposed Order's unbundling conclusion is inconsistent with the Commission's Order in Docket 03-0767.

CONCLUSION

WHEREFORE, the IBEW respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

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Dated: October 24, 2006

Sections 16-108(a) and 16-109 under Senate Bill 55	Sections 16-108(a) and 16-109 under the Act
Section 16-108 (a) under Senate Bill 55: (a) An electric utility shall file a delivery services tariff with the Commission at least 210 days prior to the date that it is required to begin offering such services pursuant to the Act. An electric utility shall provide the components of delivery services that are subject to the jurisdiction of the Federal Energy Regulatory Commission at the same prices, terms and conditions set forth in its applicable tariff as approved or allowed to take effect by that Commission. The Commission shall otherwise have the authority 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, pursuant to Article IX of this Act and Section 16-109. * * * Section 16-109 under Senate Bill 55: The Commission finds that the offering of delivery services will, and is intended to, facilitate the development of competition for generation services, and that development of competition may develop for other services currently offered on a tariffed basis by the electric utility. The Commission shall open a proceeding to investigate the need for and desirability of different or additional unbundling of delivery services for some or all electric utilities 3 years from the date that a tariff for delivery services is first approved or allowed into effect pursuant to this Section. The Commission shall open an additional proceeding to again investigate the need for and desirability of different or additional unbundling of delivery services for some or all electric utilities, 3 years after the entry of its final order in the first investigation proceeding. The Commission shall issue its final order in each investigation proceeding no later than 6 months after the proceeding is initiated. In each such proceeding the Commission shall consider, at a 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. Specific changes to the delivery services tariffs of individual electric utilities to implement the findings and directives stated in an order in an investigation proceeding initiated under this Section shall be addressed through individual electric utility tariff filings.	Section 16-108(a) under the Act: a) An electric utility shall file a delivery services tariff with the Commission at least 210 days prior to the date that it is required to begin offering such services pursuant to this Act. An electric utility shall provide the components of delivery services that are subject to the jurisdiction of the Federal Energy Regulatory Commission at the same prices, terms and conditions set forth in its applicable tariff as approved or allowed into effect by that Commission. The Commission shall otherwise have the authority ***pursuant to Article IX*** 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 making any such determination the Commission shall consider, at a 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.*** * * * Section 16-109 under the Act: The General Assembly finds that the offering of delivery services will, and is intended to, facilitate the development of competition for generation services, and that competition may develop for other services currently offered on a tariffed basis by the electric utility. The Commission shall open a proceeding to investigate the need for and desirability of different or additional unbundling of delivery services for some or all electric utilities 3 years from the date that a tariff for delivery services is first approved or allowed into effect pursuant to this Section. The Commission shall open an additional proceeding to again investigate the need for and desirability of different or additional unbundling of delivery services for some or all electric utilities, 3 years after the entry of its final order in the first investigation proceeding. The Commission shall issue its final order in each investigation proceeding no later than 6 months after the proceeding is initiated. In each such proceeding the Commission shall consider, at a 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. Specific changes to the delivery services tariffs of individual electric utilities to implement findings and directives stated in an order in an investigation proceeding initiated under this Section shall be addressed through individual electric utility tariff filings. ***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.*** **NOTE: The language above in *bold italics* denotes the statutory text added by House Bill 362, which became law.**

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**

NOTICE OF FILING

Please take notice that on October 24, 2006, I caused to be filed with the Chief Clerk of the Illinois Commerce Commission, Elizabeth Rolando, 527 East Capitol Avenue, Springfield, IL 62701 the enclosed Reply Brief on Exceptions and Exhibits on behalf of Local Unions 51, 309, 649, 702 and 1306 of the International Brotherhood of Electrical Workers, AFL-CIO in the above-captioned proceedings.

Eric M. Madiar
Attorney for Local Unions 51, 309, 649, 702 and 1306
International Brotherhood of Electrical Workers, AFL-CIO

CERTIFICATE OF SERVICE

Please take note that on October 24, 2006, I, Eric M. Madiar, hereby certify that I did file with the Illinois Commerce Commission the foregoing Reply Brief on Exceptions and Exhibits, and electronically served the same upon the persons identified on the docket's service list.

Eric M. Madiar
Attorney for Local Unions 51, 309, 649, 702 and 1306
International Brotherhood of Electrical Workers, AFL-CIO

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