

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company)
d/b/a AmerenCILCO)
Central Illinois Public Service)
Company)
d/b/a AmerenCIPS)
Illinois Power Company)
d/b/a AmerenIP)
)
Approval of Energy Efficiency and)
Demand Response Plan)

Docket No. 07-0539

**STAFF OF THE ILLINOIS COMMERCE COMMISSION'S RESPONSE
TO AMEREN ILLINOIS UTILITIES' MOTION FOR RECONSIDERATION**

NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), through its undersigned counsel, and pursuant to Section 200.190 of the Rules of Practice of the Illinois Commerce Commission's ("Commission"), 83 Ill. Admin. Code 200.190, responds as follows to the Ameren Illinois Utilities' Motion For Reconsideration ("Motion") filed on January 8, 2008:

1. The Motion filed by 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 ("Ameren" or the "Ameren Illinois Utilities") seeks reconsideration and reversal by the Administrative Law Judge ("ALJ") of "her January 4, 2008 ruling striking the Direct and Rebuttal Testimony of Richard A. Voytas (Ameren Exhibits 2.0 and 7.0) from the evidentiary record." Motion at 1.

2. Staff does not take issue in any way with the ALJ's decision to sanction the Ameren Illinois Utilities for their actions with respect to certain discovery matters involving data requests issued by the Environmental Law and Policy Center ("ELPC"). Having said that, Staff believes that the sanction imposed by the ALJ (striking all of Mr.

Voytas' testimony) is a remedy that goes beyond the subject matter of the underlying discovery dispute and prejudices the public, Staff, other parties and the record in a manner not intended or contemplated by the ALJ's ruling.

3. Staff understands the underlying discovery dispute to involve the subject or issue of differences between the Commonwealth Edison Company ("ComEd") service territory and the Ameren Illinois Utilities service territories with respect to the saturation level of appliances. Staff submits that it could be an appropriate sanction for failure to produce information on a particular subject to exclude any evidence on that subject from the non-producing party. Thus, as Staff understands the parties' positions, it would be appropriate to strike all references in Ameren's testimony contending or asserting that there are differences between the saturation levels in ComEd's and Ameren's service territories. It may even be appropriate to prohibit Ameren from making such assertions in its brief.

4. However, striking all of Mr. Voytas' testimony as a remedy will harm the record in this proceeding. Mr. Voytas presents testimony that supports numerous aspects of Ameren's energy efficiency and demand response plan ("EE/DR Plan"), and his testimony goes well beyond the appliance issue discussed above. Indeed, Ameren's EE/DR Plan is an attachment to Mr. Voytas' direct testimony (Ameren Ex. 2.1 and 2.2), and striking Ameren Ex. 2.0 would appear to mean there is no sponsor of Ameren's EE/DR Plan. As noted in Ameren's Motion, Staff and other parties rely on various portions of Mr. Voytas' testimony to assess compliance of Ameren's EE/DR Plan with applicable requirements. Without that testimony, it will limit the ability of Staff and other parties to assess whether Ameren's EE/DR Plan complies with statutory requirements, and it may be impossible for the Commission to approve Ameren's EE/DR Plan in this docket (even if it were otherwise appropriate). Similarly, the

statements in Mr. Voytas' rebuttal testimony agreeing to incorporate various parties' recommendations seems to call into the question the status of those previously agreed upon changes. While Ameren's EE/DR Plan should be rejected if it does not meet applicable requirements, Staff believes it would be contrary to the public interest to have a rejection of Ameren's plan on the basis of a limited discovery dispute resulting in a procedural obstacle to approval (lack of record evidence). The legislature clearly supports the implementation of energy efficiency and demand response measures, and the potential delay in obtaining an approved set of energy efficiency and demand response measures due to the evidentiary impact of a discovery sanction would be, in Staff's opinion, contrary to the public interest and was not intended by the ALJ's ruling.

Wherefore, Staff respectfully submits that the ALJ should revise her ruling to allow into the evidentiary record those portions of Mr. Voytas testimony not directly related to the subject matter of the discovery dispute that formed the basis for the ALJ's ruling.

Respectfully submitted,

/s/
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