

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

CENTRAL ILLINOIS LIGHT COMPANY d/b/a AmerenCILCO,)	
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CENTRAL ILLINOIS PUBLIC SERVICE COMPANY d/b/a AmerenCIPS,)	
)	
ILLINOIS POWER COMPANY d/b/a AmerenIP,)	Docket Nos. 07-0585, 07-0586, 07-0587, 07-0588, 07-0589, and 07-0590
)	(cons.)
)	
)	
Proposed general increase in rates for delivery service. (Tariffs filed November 2, 2007))	
)	

AMEREN ILLINOIS UTILITIES' REPLY IN SUPPORT OF MOTION

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 Illinois Utilities"), hereby submit this Reply to Staff's Response to the Ameren Illinois Utilities' Motion to Compel Responses to Discovery Requests or, in the Alternative, for Leave to Take a Deposition on Less than 14 Days Notice ("Reply"). The Ameren Illinois Utilities incorporate by reference all of the facts stated and verified in the Motion, none of which are disputed in Staff's Response.

Staff's Response is illogical and self-contradictory, and does nothing to explain why Staff is unable to offer any support for Ms. Everson's disallowance of plant additions since the last rate case. Our motion to compel is very simple, as is the discovery request behind it: all we want Staff to do is identify which invoices Ms. Everson disallowed, and why she disallowed them. The most basic notions of due process require that we receive this information.

The Ameren Illinois Utilities still do not understand how Staff could have arrived at an adjustment, without any roadmap of how it got there, given Staff's explanation of what took place and the scant documentation Staff has offered to support it. It is unclear how Staff could have double-checked its own review, much less how other parties can challenge it. We note that Staff's Response is also the first *narrative* "explanation" of what Staff has provided as workpapers. Until now, Staff has never attempted to explain how the stray pencil marks and marginalia Ms. Everson identifies as "workpapers" should provide any insight into Staff's disallowances. Even with this "explanation," we still have no idea what Ms. Everson did.

As shown below, Staff alternately claims (1) that it did and did not disallow individual invoices for specific reasons and (2) that the Ameren Illinois Utilities can identify Staff's individual invoice disallowances (that do or do not exist) but Staff cannot. This is nonsense. Staff should be compelled to identify which invoices Ms. Everson disallowed, and why she disallowed them, through discovery response or deposition. If Staff cannot support its testimony, Staff should never have submitted it in the first place, and due process would preclude its admission into the record at hearing.

Because time is short for reply, we will keep our points brief.

I. Staff's Response, Communications, Discovery Responses and Testimony Are Materially Inconsistent and Self-Contradictory.

The title of this Section speaks for itself. The following table shows several inconsistencies and contradictory statements by Staff regarding the discovery requests and the adjustment at issue:

Contradiction	Staff's Response	Staff's Response	Staff's DR Responses	Staff Exhibit 2.0
<p>Staff did and did not disallow individual invoices based on specific inadequacies.</p>	<p>“Staff’s review was not designed to determine specific inadequacies of individual invoices . . .” (p. 3.)</p>	<p>Staff made “tick marks” and margin notes (“to the extent Staff made notes,” Resp. p. 4) in produced documents showing individual disallowed invoices and the reasons behind the disallowances.</p> <p>“Ameren . . . has sufficient information to determine which specific invoices were disallowed by Staff witness Everson.” (p. 5.)</p>	<p>“Ms Everson’s adjustment does not disallow individual invoices.” (ICC Staff DRs 5.06, 5.07, 5.08)</p>	<p>Ms. Everson conducted a review of all invoices provided and based her disallowances on seven identified issues and deficiencies she found. (p. 7.)</p>
<p>The Ameren Illinois Utilities can identify individual invoices that were or were not disallowed for specific inadequacies before rebuttal, but Staff could not and cannot.</p>	<p>“If Ameren has reviewed the work papers provided by Staff, Ameren is aware of which proposed expenses were disallowed.” (p. 11.) “Ameren is perfectly capable of looking through the Summary Listings, identifying which invoices were disallowed, and then checking to see if they are duplicates, bills to the wrong company, etc. “ (p. 6.)</p>	<p>Reviewing and analyzing Staff’s workpapers “would take days or weeks, not hours.” (p. 12.) Staff does not have the time or resources to answer the Ameren Illinois Utilities’ discovery requests. (pp. 7, 12.) Deposing Ms. Everson would be “fruitless.” (p. 12.)</p>	<p>“Due to the time constraints and the large number of documents reviewed . . . specific isolation of each and every type of deficiency noted was not possible.” (ICC Staff DRs 5.06, 5.07, 5.08)</p>	<p>“I found various issues or deficiencies with some of the cost substantiation . . . Issues and or deficiencies include [list of 7 specific inadequacies of individual invoices].” (p. 7.)</p>

II. The Ameren Illinois Utilities' Discovery Responses Were Proper and Limited to the Scope of Staff's Request.

The main complaint in Staff's Response appears to be that Staff accidentally requested too many invoices from the Ameren Illinois Utilities, and, because there were too many documents, Staff did not have time to take accurate, reviewable notes in calculating its adjustment. This is no fault of the Ameren Illinois Utilities. Staff cannot request thousands of invoices of supporting documentation for project costs and then complain when the Ameren Illinois Utilities produce thousands of invoices of supporting documentation for project costs. This is a reason for Staff to limit the scope of its review or its discovery requests. This is no excuse for not keeping accurate workpapers containing reviewable calculations.

The Ameren Illinois Utilities provided the invoices in response to data requests MHE 3.01, 3.02, 3.03, 3.04, 3.05, 3.06, and 9.01, which requested copies of invoices of specified gas projects (narrative responses attached as Exhibit 1). These invoices were scanned and provided in electronic format to Staff, as contemplated by the ALJs' case management order, with a corresponding summary list of the invoices that were provided. The Ameren Illinois Utilities also provided a corresponding excel file with each response, showing a summary of loadings, cash vouchers, and electronic transfers (attached as Exhibit 2.) Notably, Staff makes no claim that the Ameren Illinois Utilities provided invoices for projects beyond the scope of Staff's request, or that it tried but could not obtain clarifying information. Rather, Staff's complaint is that Staff should not have to support its testimony regarding the invoices because there were simply too many invoices to accurately review.

The Ameren Illinois Utilities will not address each unfounded discovery complaint in Staff's response, as to do so would merely assist Staff in this obvious attempt to distract from the fact that Staff's witness has no reviewable documentation or support for her testimony. We will note only two things in conclusion: (1) Staff never complained to the Ameren Illinois Utilities about the format of the discovery responses at issue. Staff makes no claim otherwise. (2) Staff requested future discovery responses in *the same format complained of here* in later discovery requests. (Exhibit 1, MHE 9.01 "Provide the same information and *in the same format* for AmerenIP electric project #16356 as provided in response to MHE 3.06. Provide the summary of loadings, cash vouchers, and electronic transfers *in the same format* as received for MHE 3.06." (emphasis added).) If the response format at issue here were truly as objectionable as Staff claims, Staff would not have explicitly requested it a second time.

III. Staff Is Responsible for Developing and Maintaining Its Own Workpapers.

Staff also, unbelievably, claims that the Ameren Illinois Utilities shouldn't expect reliable, reviewable evidence and workpapers from Staff because the Ameren Illinois Utilities did not create a detailed Excel sheet for Staff to work in. Staff suggests that, without being provided with such a workpaper template, Staff should not be expected to keep track of its disallowances and the reasons behind them. (Staff's Resp. p. 7 ("Ameren should not complain about a burdensome process when it is responsible for setting up the format of the workpapers.)) This complaint is beyond the pale. The Ameren Illinois Utilities are undeniably not responsible for creating templates for Staff's workpapers. Staff is responsible for keeping accurate records to support its own testimony. As Staff states in its response, the Ameren Illinois Utilities are not required to

“fashion some object . . . for the benefit of an adverse party.” (Staff Resp. p. 5, *quoting Mendelson v. Feingold*, 69 Ill.App.3d 227, 232 (2d Dist. 1979).) It pains us to point out that, for all of the regulatory requirements the utilities must meet in presenting and supporting a rate case, developing workpaper templates for Staff is not one of them.

The Commission’s Rules require the Ameren Illinois Utilities and other parties to create, maintain, and produce detailed and accurate workpapers. *See* 83 Ill. Admin. Code Parts 285 and 286. For example, 83 Ill. Admin. Code 286.30 requires that workpapers required to support a utility’s revised revenue requirement should “include assumptions, schedule amounts, narrative, or other support so the reasonableness of the work paper can be reviewed.” Workpaper standards should be no less rigorous for those supporting Staff’s adjustments to revenue requirements. *See Illinois Bell Tel. Co. v. Illinois Commerce Comm’n*, 327 Ill. App. 3d 768, 776 (3d Dist. 2002) (quoting *City of Chicago v. People of Cook County*, 133 Ill.App. 3d 435 (1985) (describing the evidentiary burden of others to refute a utility’s rate case evidence).

Moreover, this is not merely a question of evidentiary weight. Because Staff cannot or will not identify the bases for its specific disallowances, the Ameren Illinois Utilities cannot respond to them. This is extreme prejudice that cannot be cured by assigning less weight to Staff’s analysis.

IV. Staff Is Responsible for Supporting Its Own Testimony.

The Ameren Illinois Utilities remind Staff that we have not requested a complete listing of allowed and disallowed invoices from Staff, as Staff repeatedly suggests. We have requested, simply (1) workpapers supporting disallowances and/or (2) a list of

disallowances and the reasons behind them. If Staff did not have the foresight to keep track of each disallowed invoice and the reason for the disallowance in a prophylactic workpaper, Staff should be able to at least put together an answer to a discovery request to provide the information in hindsight. Staff's own citation to case law supports compelling Staff to provide the knowledge possessed by Ms. Everson – why she disallowed invoices – in response to our discovery requests. *See Mendelson*, 69 Ill.App.3d at 232 (“These rules are directed only towards the disclosure of that which does exist, for example, tangible things or *knowledge possessed by persons*. (emphasis added)).

Staff's Response is notably and damningly silent regarding why Staff cannot provide this knowledge. While Staff provides every excuse why it does not have workpapers supporting its testimony on plant additions – in sum, Staff claims, it is the Ameren Illinois Utilities' fault – Staff never explains why it cannot simply answer a discovery request for a list of disallowances and the reasons behind them. Staff's Response asserts that the Ameren Illinois Utilities are able to glean this information from mysterious and undefined markings on “workpapers” Staff has already provided (six days ago, during the back end of rebuttal preparation). But Staff never explains why – if the Ameren Illinois Utilities can do so easily and quickly – the same Staff who made those markings cannot.

The answer is found – or more appropriately, not found – in Staff's “workpapers.” Quite simply, the “workpapers” do not provide the reasons to support Staff's disallowances. Staff's argument assumes that every disallowance Ms. Everson made is patently correct, and thus the Ameren Illinois Utilities should be able to tell from

the face of any invoice why Ms. Everson believes that it should have been disallowed. But the Ameren Illinois Utilities cannot review the documents from Ms. Everson's perspective – only Ms. Everson can. Without the benefit of Ms. Everson's analysis, we have no way of reviewing her work.

At least one example cited in Staff's Response proves this point. Staff cites IP Project Number 16354, page 1 of 7, as an example of a duplicate disallowance. (Staff's Resp., p. 9. (“[L]isted on two different lines are duplicate expense amounts and voucher numbers attributed to Dunker Electric.”) A quick review of this invoice reveals that the on separate lines there is a debit and a credit to an amount (which nets to zero). On another line the amount is shown that is presented on the invoice as well as the amount associated with the loading factor calculation – thus, this entry is in fact correct. But, without Ms. Everson's explanation (which is all we seek), the Ameren Illinois Utilities would have no way of knowing how Ms. Everson assessed the invoice, and why her assessment was incorrect. The fact of Ms. Everson's error – without any accompanying explanation for the disallowance – makes it impossible for the Ameren Illinois Utilities to identify Ms. Everson's error. We only understand the error now because Staff provided an explanation for disallowing the invoice. Without such explanation, we have no way of checking Ms. Everson's errors. This is why it has been necessary to take extraordinary measures to seek this information from Staff.¹

¹ Staff's claim that the Ameren Illinois Utilities have not notified Staff that we cannot identify the cause for disallowance of invoices is simply not true. The Ameren Illinois Utilities have timely and repeatedly notified Staff that we have not been able to identify which invoices were disallowed and for what reasons. (*See facts stated in Motion.*) Staff responded in several emails that such information was being gathered and would be provided. Staff only provided the list of invoices with “tick marks” described in Staff's Response to the Ameren Illinois Utilities on April 2, 2008. Counsel for the Ameren Illinois Utilities notified Staff of this Motion by telephone on April 3, 2008, and that Staff had yet to identify which invoices had been disallowed and for what reasons. (*See Staff Report of Ex Parte Communication, April 3,*

V. **If Staff Cannot Support Its Own Testimony, the Relevant Portions Should Be Withdrawn.**

The Public Utilities Act requires that persons testifying before the Commission must be prepared to support their own testimony in cross-examination. If a witness is unable to do so, the testimony may be stricken:

The Commission or a commissioner or hearing examiner may, on the motion of a party or on its own motion, strike, in whole or in part, the testimony of a person who is not reasonably prepared to respond to questions under cross-examination intending to elicit information directly related to matters raised by that person in his testimony.

220 ILCS 5/10-105.

Ms. Everson's testimony very simply describes a review of identified invoices, "issues and deficiencies" in those invoices, and an adjustment based on those invoices. Ms. Everson has yet been unable to answer very simple discovery questions regarding that testimony. Laying aside the immediate fact that the Ameren Illinois Utilities cannot prepare rebuttal on this issue, if Ms. Everson cannot answer basic questions in support of her testimony, and if deposing her would be "fruitless" (Staff Resp., p. 12), she obviously cannot respond to these same questions under cross-examination. Further, the schedule in this case does not allow for cross-examination of one witness that would last for "days or weeks." (*Id.*) Accordingly, if Staff is unable to comply with an order granting this Motion, the relevant portions of Ms. Everson's testimony should be withdrawn by Staff, or are plainly subject to being stricken by the ALJs.

(continued...)

2008.) Staff's explanation of "tick marks" is the first – and only – narrative description of Ms. Everson's review the Ameren Illinois Utilities have received to date.

CONCLUSION

WHEREFORE, for the above reasons, 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 request that the Administrative Law Judges compel Staff to provide the information sought in Ameren Illinois Utilities' Discovery Requests 5.06, 5.07 and 5.08, by providing a list of the invoices disallowed and the reasons for each disallowance in the review sample, or, alternatively, for leave to take Ms. Everson's deposition at the earliest possible date.

April 8, 2008

Respectfully submitted,

CENTRAL ILLINOIS LIGHT COMPANY
d/b/a AmerenCILCO

CENTRAL ILLINOIS PUBLIC SERVICE
COMPANY d/b/a AmerenCIPS

ILLINOIS POWER COMPANY d/b/a
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PROOF OF SERVICE

I, Laura M. Earl, certify that on April 8, 2008, I served a copy of the foregoing Reply in Support of Motion by electronic mail to the individuals on the Illinois Commerce Commission's Service List for this Docket.

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