

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company d/b/a AmerenCILCO	)	Docket No. 09-0306
Proposed general increase in electric delivery)	
service rates.)	
)	
Central Illinois Public Service Company d/b/a AmerenCIPS	)	Docket No. 09-0307
Proposed general increase in electric delivery)	
service rates.)	
)	
Illinois Power Company d/b/a AmerenIP	)	Docket No. 09-0308
Proposed general increase in electric delivery)	
service rates.)	
)	
Central Illinois Light Company d/b/a AmerenCILCO	)	Docket No. 09-0309
Proposed general decrease in gas delivery)	
service rates.)	
)	
Central Illinois Public Service Company d/b/a AmerenCIPS	)	Docket No. 09-0310
Proposed general increase in gas delivery)	
service rates.)	
)	
Illinois Power Company d/b/a AmerenIP	)	Docket No. 09-0311
Proposed general increase in gas delivery)	
service rates.	)	(Consolidated)

AMEREN ILLINOIS UTILITIES' RESPONSE TO
STAFF'S PETITION FOR INTERLOCUTORY REVIEW

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**AMEREN ILLINOIS UTILITIES' RESPONSE TO
PETITION FOR INTERLOCUTORY REVIEW**

The Ameren Illinois Utilities,¹ pursuant to Section 200.520 of the Commission's Rules of Practice, 83 Ill. Admin. Code § 200.520, hereby respond to the Commission Staff's ("Staff's") Petition for Interlocutory Review ("Petition") filed with the Commission on December 22, 2009.

I. Introduction

On June 15, 2009, the AIUs filed with the Illinois Commerce Commission ("Commission") tariffs, as well as supporting testimony and schedules, for a proposed general increase in rates pursuant to Section 9-201 of the Public Utilities Act. Pre-filed testimony was

¹ 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" or "AIUs").

submitted pursuant to the procedural schedule and evidentiary hearings were held from December 14, 2009 through December 17, 2009.

On November 25, 2009, the AIUs filed a Motion to Strike Certain Portions of the Rebuttal Testimony of David Sackett and For Expedited Ruling (“Motion to Strike”) seeking to strike certain portions of Mr. Sackett’s rebuttal testimony (Staff Exhibit 27.0, filed on November 20, 2009).² The Motion to Strike identified a number of discrete portions of Mr. Sackett’s rebuttal testimony that were not proper rebuttal (the “Identified Testimony”) and requested that those portions be struck from the record. On December 1, 2009, the Administrative Law Judges (“ALJs”) granted the Motion to Strike (the “ALJs’ Ruling”). With its Petition for Interlocutory Review (“Petition”), the Staff now, after the evidentiary hearing, seeks Commission review of ALJs’ Ruling.

The basis for the ALJs’ Ruling is set forth in the AIUs’ Motion to Strike (filed November 25, 2009) and Reply to Staff’s Response (filed December 1, 2009).³ The Identified Testimony is not proper rebuttal, but, instead, untimely direct testimony. The identified portions of Mr. Sackett’s rebuttal testimony raise the issue of entirely new tariff revision proposals that Mr. Sackett should have raised in his direct testimony. More specifically, for the first time in his rebuttal testimony (just 3 weeks before the evidentiary hearing), Mr. Sackett proposed substantial changes to the AIUs transportation tariffs.

Mr. Sackett should have made those proposals in his direct testimony. He, however, chose not to do so. Instead, Mr. Sackett initially testified that the AIUs should work with Staff and other interested parties to investigate Mr. Sackett’s perceived issues and to address those

² For clarity, the citations to ICC Staff Exhibit 27.0 refer the initial rebuttal testimony filed by Mr. Sackett on November 20, 2009. Citations to ICC Staff Exhibit 27.0R refer the revised rebuttal testimony filed by Mr. Sackett on December 8, 2009 with the stricken material redacted.

³ For easy reference, AIUs’ Motion to Strike and Reply to Staff Response are attached to this Response.

issues in the AIUs' next rate cases. The AIUs have expressly committed to participate in the proposed workshops. On rebuttal, and not in response to any AIU witness testimony, Mr. Sackett changed his mind and decided to recommend tariff changes in these rate case proceedings instead of the next rate cases.

The Commission should affirm the ALJs' Ruling and prevent Mr. Sackett from proposing new tariff revisions for implementation in these proceedings for the first time in his rebuttal testimony. As discussed in its Motion to Strike, the AIUs did not and still do not have time as part of these proceedings to fully investigate and respond to Mr. Sackett's new proposals. As a result, the Commission will not have a fully developed factual record upon which to evaluate Mr. Sackett's new issues and proposals. The AIUs will be seriously prejudiced if the Identified Testimony is allowed. The Commission should affirm the ALJs' decision to strike the improper rebuttal testimony from the record. Mr. Sackett's new issues are more properly addressed in the AIUs' future rate cases – where the Commission can meaningfully evaluate the results of the public workshops and fully developed testimony on the issues.

II. Background and Description of the Rebuttal Testimony that the ALJs Struck from the Record.

In his direct testimony, Staff witness Sackett proposed that the Commission require the AIUs to make three significant changes to their Rider T storage banking programs in the AIUs' next rate cases: (a) increase the days of bank available to transportation customers; (b) unbundle the banking program from base rates and, thereby, allow each customer to select level of banking; and (c) allocate storage costs between sales and transportation customers based on the level of banking chosen. (*See* ICC Staff Exhibit 14.0, lines 531-536; *see also* ICC Staff Exhibit 27.0, lines 146-154).

In his direct testimony, Mr. Sackett further asked the Commission to require the AIUs to “work with Staff and Intervenors” in a workshop process to flesh out the details of his recommendations. (*Id.*) Importantly, Mr. Sackett’s proposal centered on his goal that the AIUs’ submit revisions to their Rider T banking programs in their next rate cases. (*Id.*)

In his rebuttal testimony, Mr. Sackett for the first time proposed that the AIUs modify the size of their Rider T storage banking programs in these rate cases. Mr. Sackett proposed that the AIUs be required to increase the size of their Rider T bank by as much as 140% in these rate cases. (ICC Staff Exhibit 27.0, lines 534-535.)

Mr. Sackett freely admits that he is submitting a new proposal on rebuttal. His words:

- Q. Do you wish to modify your proposal?
- A. Yes. I propose that the inequitable allocation of storage capacity to transportation customers discussed in my direct testimony, be corrected *in the instant case as opposed to being held for consideration in workshops between this case and the next*.

(ICC Staff Exhibit 27.0, lines 160-164 (emphasis added).)

This is not simply a modified proposal as Staff suggests in its Petition. Mr. Sackett is proposing for the first time to increase dramatically the amount of storage provided transportation customers in these rate cases and to amend the AIUs’ tariffs accordingly. The new proposals could dramatically alter the AIUs’ operations and increase the AIUs’ cost of service.

The ALJs properly struck the Identified Testimony. Overturning the ALJs’ Ruling would prejudice the administrative process by preventing the AIUs and the Commission from adequately evaluating Mr. Sackett’s new issues and proposals.

III. Illinois Law Requires Rebuttal Testimony to Respond to Another Party’s Testimony and Does Not Permit Rebuttal Testimony to Raise New Issues.

As the AIUs explained in the Motion to Strike, under Illinois law rebuttal evidence is that which answers or responds to new affirmative matters raised by an adversary. *Rodriguez v. City of Chicago*, 21 Ill. App. 3d 623, 625-26 (1st Dist. 1974); *Gray v. Bonfield*, 59 Ill. App. 381 (1st Dist. 1895). Proper rebuttal evidence is also directed to the specific testimony of an opposing witness. *Pepe v. Caputo*, 408 Ill. 321, 328 (1951). Long-established Commission practice follows Illinois law in requiring that rebuttal testimony respond to another party’s testimony and not raise entirely new issues or introduce new information that should be properly presented in a party’s case in chief. *Illinois Bell Tel. Co.*, Docket 02-0864, Order, pp. 294-98 (2004); *Citizens Util. Co. of Ill.*, Docket 84-0237, 1985 Ill. PUC LEXIS 38, *42-52 (1985).

IV. The Commission Should Affirm the ALJs’ Decision to Strike the Identified Portions of Mr. Sackett’s Rebuttal Testimony.

A. The ALJs Correctly Struck Two Categories of Improper Rebuttal Testimony.

The ALJs struck two subject matter categories of testimony from Mr. Sackett’s rebuttal testimony. First, the ALJs struck Mr. Sackett’s late proposal to change the storage capacity allocation in this rate case. Second, the ALJs struck Mr. Sackett’s untimely direct testimony regarding selection of bank size and cost allocation based on bank size. Staff’s Petition seeks to reinstate both categories of Identified Testimony. These categories are separately addressed below.

(1) CATEGORY 1 - Mr. Sackett Proposed to Change the Storage Bank Allocation for the First Time on Rebuttal.

Despite Staff’s attempt to suggest otherwise, Mr. Sackett’s new proposals are not directed in response to the testimony of any witness in this proceeding. In his testimony, Mr. Sackett does not identify a witness, testimony, or issue that he is supposedly “rebutting.” Instead, the

Identified Testimony is in the nature of direct testimony setting forth his proposal for the first time. As a result, Mr. Sackett's modified proposals cannot be considered proper rebuttal testimony. The Commission, therefore, should affirm the ALJs' Ruling.

The Staff Petition appears to imply that Mr. Sackett's new proposals resulted from Ameren Illinois Witness Paul Normand's rebuttal testimony. (Petition at 2.) Staff claims that Mr. Normand failed to provide information about the cost allocation until late in discovery and that he revised that allocation methodology in his rebuttal testimony.

That, however, is a *post hoc* rationalization to defend the stricken portions of Mr. Sackett's rebuttal testimony. Mr. Sackett's rebuttal testimony does not even suggest that Mr. Normand's corrections prompted the new proposals. As such, Mr. Sackett could have made his reallocation proposal on direct. Mr. Sackett's sole justification for submitting a new proposal in the Identified Testimony to reallocate storage assets in these cases rather than have the companies propose reallocation in the next rate cases (as recommended in his direct testimony) relates to the AIUs' supposedly "inequitable method of allocating storage costs that do not reflect the level of bank provided." (ICC Staff Exhibit 27.0, lines 296-299.) The AIUs, however, did not substantively alter their underground storage costs allocator on rebuttal. Mr. Normand did correct certain errors in the storage cost allocations initially presented in his direct testimony. (Ameren Exhibit 27.0, lines 60-65.) But, Mr. Normand did not change the nature of his calculations or the nature of the resulting allocations on rebuttal. Mr. Normand testified that the changes did not impact his rate design recommendations. Mr. Normand, for example, testified in his rebuttal testimony:

Q. Do the changes in customer classes' ROR as a result of your storage allocation correction impact your rate design recommendations.

A. No, they do not. As with my earlier comment with respect to the Account 904 corrections, these results are rather small and have little impact on my initial rate design proposals for all of the AIUs. By far the most important consideration was again the goals of rate uniformity and revenue caps for AmerenCIPS and AmerenCILCO, which these changes do not diminish.

(Ameren Exhibit 27.0, lines 123-129.) The significance of this is that Mr. Normand's corrections did not change his rate design recommendations. Without any change in the rate design recommendations, there is no justification for proposing new tariff revisions in rebuttal.

Importantly, Mr. Sackett did not testify that Mr. Normand's minor corrections caused Mr. Sackett to change his proposal. Mr. Sackett had two options to address what he perceived to be a problem: address the issue in the next rate case after an organized workshop process or seek tariff changes in these cases. In his direct testimony, Mr. Sackett chose the former. In his rebuttal testimony, however, Mr. Sackett changed his mind and chose the latter. The bottom line is that Mr. Sackett's testimony does not show that his change of heart resulted from any information provided in the AIUs' rebuttal testimony.

Staff suggests that the Commission should overturn ALJs' Ruling because Mr. Normand supposedly failed to provide the information that Mr. Sackett needed to analyze proposed cost allocation methodologies. While Staff's Petition appears to suggest that Mr. Normand did not promptly or accurately respond to Staff's data requests, the Petition does not actually claim that Mr. Normand's data request response were untimely. Mr. Normand responded to the proffered data requests in a timely manner and provided supplemental or corrected information where appropriate. Staff's Petition, in effect, only complains that Mr. Sackett did not receive all the information that he wanted as quickly as he would have liked. That does not justify Mr. Sackett's late recommendation to change the tariff in these rate cases, especially where there was no material change to Mr. Normand's rate design proposal in his rebuttal testimony.

The Staff Petition makes much of Mr. Sackett's discussion of bank size in his direct testimony to support its request that the Commission overturn the ALJs' Ruling. (*See* Petition at 2). The Staff Petition, however, fails to clarify that Mr. Sackett's direct testimony argued only that his proposed changes should occur in the next rate case after the workshops that he proposed. The AIUs' Petition to Strike did not suggest that Mr. Sackett did not discuss the broad issue of the storage bank size in his direct testimony. Rather, the Motion argued that Mr. Sackett fundamentally altered his proposal on rebuttal when he for the first time sought to make substantial changes to the AIUs' tariff and gas operations in these rate cases.

(2) **CATEGORY 2 - Mr. Sackett Provides New Direct Testimony Regarding Selection of Bank Size and Cost Allocation Based on Bank Size.**

As with his late proposal to modify the storage capacity allocations in these proceedings (described in the above section), Mr. Sackett waited until his rebuttal testimony to for the first time testify about the options that the Commission has with respect to allowing each transportation customer to select the number of days of bank that it desires (ICC Staff Exhibit 27.0, lines 657-699) and to allocate storage costs to those customers in proportion to the amount of bank chosen (ICC Staff Exhibit 27.0, lines 701-738). Mr. Sackett still maintains that the unbundling should occur in the next rate cases. His rebuttal testimony, however, provides substantial new issues regarding implementation of unbundling in those rate cases. Although Staff Petition seeks to reinstate this category of the stricken testimony, the Petition does not actually address (much less seek to justify) Mr. Sackett's submission of this new information in his rebuttal testimony. The Commission, therefore, should affirm the ALJs' Ruling.

This new information regarding the Commission unbundling options does not respond to any witness, issue, or testimony provided by the AIUs on rebuttal. Mr. Sackett does not testify that his new testimony rebuts the AIUs' rebuttal or intervenor direct testimony much less cite the

testimony to which he responds. Mr. Sackett could have presented this information in his direct testimony. Instead, Mr. Sackett introduces significant new information regarding his view on what options the Commission has with respect to letting customers choose the level of storage banking and cost allocations based on the customers' choices. (*See* ICC Staff Exhibit 27.0, lines 657-728.) The issue of Commission unbundling options simply has not been raised in these proceedings until Mr. Sackett's rebuttal testimony.

Mr. Sackett's direct testimony did propose unbundling in the next rate case. That, however, misses the point. Mr. Sackett's direct testimony did not substantively address this issue and relegated this topic to only a few distributed sentences.⁴ In his rebuttal testimony, however, Mr. Sackett expands his discussion of issue to all or part of five pages. Mr. Sackett's lengthy new information (*i.e.*, a 5-page clarification of 2 sentences) does not respond to the AIUs' rebuttal testimony. By definition, this is improper rebuttal testimony that was properly stricken from the record.

B. The AIUs Did Not Have Sufficient Time to Respond to the Improper Portions of Mr. Sackett's "Rebuttal" Testimony.

The schedule for submission of pre-filed testimony in Commission proceedings is designed to allow the orderly presentation of, and response to, evidence. The improper designation of the Identified Testimony as rebuttal testimony subverts that process by introducing significant new proposals and information into the cases late in the proceeding.

In the Motion to Strike, the AIUs described the steps that they would need to take to evaluate and respond to Mr. Sackett's new proposals. In particular, the AIUs explained that they, at a minimum, would need to:

⁴ Mr. Sackett states, for example, "I recommend ... that this banking service be unbundled from base rates and that it be provided on a subscription basis" (ICC Staff Exhibit 14.0, lines 403-404) and "But only AIU transportation customers are currently prevented from selecting a level of bank capacity that is appropriate to meet their individual needs" (ICC Staff Exhibit 14.0, lines 430-433).

- (a) prepare discovery requests (possibly multiple rounds) and analyze Mr. Sackett's responses;
- (b) model the economic and operational effects of Mr. Sackett's new proposals and information to evaluate the effects on cost recovery, rate design, and system reliability;
- (c) potentially consult with current and future transportation customers regarding Mr. Sackett's proposals;
- (d) consider whether other allocation methods or tariff structures would be acceptable to the AIUs that would satisfy Staff and customer concerns – possibly using expert consultants not currently retained by the AIUs;
- (e) model the economic and operational effects of the alternative proposals to evaluate the effects on cost recovery, rate design, and system reliability; and
- (f) prepare testimony addressing Mr. Sackett's new proposals and alternatives, if any, offered by the AIUs.

These evaluation steps were not required for the AIUs to respond to Mr. Sackett's direct testimony because he did not propose changes to the AIUs' tariffs in these cases.

Mr. Sackett initially proposed public workshops that would have allowed the AIUs sufficient time to evaluate the economic and operational effects Mr. Sackett's proposals and, possibly, offer alternative methods for satisfying the Mr. Sackett's perceived need for change. The analysis described above could be part of the workshops. Ameren Witness Kenneth Dothage explained on surrebuttal that the AIUs are willing to participate in the industry workshops initially proposed by Mr. Sackett. (*See, e.g.*, Ameren Exhibit 64.0 (Revised), lines 378-384). In the workshops, the AIUs will work with Staff, transportation customers, and marketers to tackle the issues raised by Mr. Sackett. (*Id.*, lines 264-268.) The workshops would give the AIUs, Staff, and other parties the opportunity to develop a reasoned approach to the Rider T storage bank program. Even if the parties did not agree on all aspects of the program at

the end of the workshop process, at least the issues would be fully developed and the Commission would have the opportunity for reasoned decision-making.

If the Commission overturns the ALJs' Ruling and adopts Mr. Sackett's improper "rebuttal" proposals to adopt the bank size changes in these cases without allowing the AIUs a full and necessary opportunity to investigate the proposals, then the Commission risks reducing the amount on-system storage capacity available to the AIUs sales customers. This might require the AIUs to seek additional off-system storage capacity for the AIUs sales customers from a capacity limited market and cause the AIUs to under recover any new costs associated with the capacity reallocation. The Commission should not risk these outcomes without proper analysis and evaluation.

With the change of heart evidenced in his rebuttal testimony, Mr. Sackett sought to push the Rider T tariff changes into these rate cases. The ALJs properly struck Mr. Sackett's new proposals and thereby, in essence, limited the discussion in these cases to Mr. Sackett's original proposal that the Rider T tariff changes be considered in the next AIU rate cases following a public workshop process. As described above, all interested parties (including customers, marketers, staff, and the AIUs) would be best served if the Commission affirms the ALJs' Ruling.

C. The Motion to Strike is Narrowly Tailored to Address Only the Untimely Rebuttal Testimony Submitted by Mr. Sackett.

The Motion to Strike did not argue that the issue of storage allocation had never been raised in this proceeding. Instead, the Motion to Strike stated that the Identified Testimony raised entirely new proposals and introduces extensive new information with respect to storage allocation but is not directed in response to any witness or testimony in this proceeding. The Motion to Strike was narrowly tailored to address only those issues that presented new issues or

information that does not respond to the AIUs' rebuttal testimony. The ALJs' Ruling did not strike all of Mr. Sackett's rebuttal testimony much less the entire discussion of storage reallocations. Rather, the ALJs' Ruling is limited to those portions of the testimony in which Mr. Sackett sought to implement changes to the size of the bank as part of these rate cases and to the new detailed information about the Commission's unbundling options. The Commission should affirm the ALJs' narrowly focused Ruling.

D. Affirming the ALJs' Ruling Will Result in a Complete Record and Prevent the ALJs and Commission from Prematurely Addressing the Storage Bank Unbundling Issue in these Proceedings.

The Staff Petition states that the ALJs and the Commission should have a "full and complete record" before them. (Petition at 3.) However, the fairness and integrity of the fact-finding process (83 Ill. Admin. Code 200.25) are not aided by the late inclusion of new proposals not subject to adequate review and analysis. Moreover, accepting the Identified Testimony would prevent the AIUs from adequately responding to Mr. Sackett's new proposals, which, as Mr. Sackett originally testified, are more appropriately addressed through the workshop process and in the next rate cases. Overturning the ALJs' Ruling would thus not result in having a "full and complete record," but would rather result in an incomplete record on this issue.

V. Conclusion

WHEREFORE, the Ameren Illinois Utilities respectfully request that the Commission affirm the ALJs' Ruling to strike the identified portions of Mr. Sackett's rebuttal testimony.

December 29, 2009

Respectfully submitted,

By: /s/Peter I. Trombely
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CERTIFICATE OF SERVICE

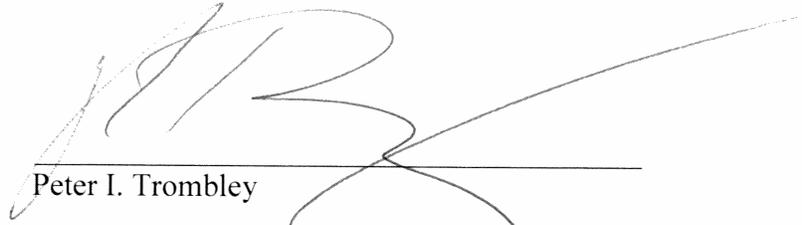
I, Peter I. Trombley, certify that a copy of the foregoing Ameren Illinois Utilities' Response To Petition For Interlocutory Review was filed on the Illinois Commerce Commission's e-Docket and electrically served to all parties of record as of this 29th day of December, 2009.

/s/Peter I. Trombely _____
Peter Trombley

*Attorney for Central Illinois Light Company
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VERIFICATION

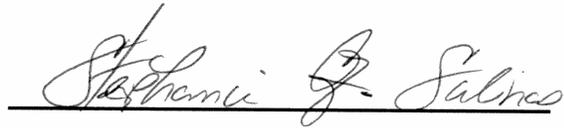
I, Peter I. Trombley, certify that: (i) I am an attorney for the Ameren Illinois Utilities; (ii) I have read the foregoing Ameren Illinois Utilities' Response To Petition For Interlocutory Review; (iii) I am familiar with the facts stated therein; and (iv) the facts are true and correct to the best of my knowledge.



Peter I. Trombley

*Attorney for Central Illinois Light Company
d/b/a AmerenCILCO, Central Illinois Public
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Illinois Power Company d/b/a AmerenIP*

SUBSCRIBED and SWORN to before me this 28th day of December 2009.



Notary Public



EXHIBIT A

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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MOTION TO STRIKE CERTAIN PORTIONS OF THE
REBUTTAL TESTIMONY OF DAVID SACKETT
AND FOR EXPEDITED RULING

The 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”) respectfully move to strike certain portions of the rebuttal testimony of David Sackett (“Sackett Rebuttal”) filed on behalf of the Staff of the Illinois Commerce Commission (“Staff”) as ICC Staff Exhibit 27.0, on the grounds that the portions of the Sackett Rebuttal identified below are not proper rebuttal testimony and, in fact, are direct testimony that could and should have been filed at part of the Staff’s direct case.

The Commission should strike following portions of the Sackett Rebuttal (hereinafter the “Identified Testimony”) from the record:

ICC Staff Exhibit 27.0		
Subject	From	Through and Including
Reallocation of On-system Storage In This Rate Case	Page 2, line 40	Page 2, line 42
	Page 8, line 160	Page 8, line 171
	Page 8, line 178 (starting with “Additionally ...”)	Page 8, line 180
	Page 13, line 280	
	Page 14, line 296 (starting with “I had ...”)	Page 14, line 300 (ending with “that,”)
	Page 16, line 343	Page 16, line 347
	Page 16, line 355 (starting with “In the ...”)	Page 16, line 358
	Page 17, line 367 (starting with “but suggest ...”)	Page 17, line 369
	Page 20, line 426 (starting with “While,”)	Page 20, line 429
	Page 25, line 531	Page 25, line 537
	Page 29, line 619	Page 26, line 624;
	Page 31, line 645	Page 31, line 655;
	Page 34, line 731	Page 34, line 733
Selection of Bank Size	Page 31, line 657	Page 33, line 699
Cost Allocation Based on Bank Size	Page 33, line 701	Page 34, line 728

This motion should be granted for the reasons set forth below.

I. INTRODUCTION

The Identified Testimony is not rebuttal, but, instead, untimely direct testimony. Those portions of the Sackett Rebuttal raise entirely new proposals that Mr. Sackett could have raised in his direct testimony. Mr. Sackett chose not to do so. He cannot now, in his rebuttal testimony, for the first time propose new tariff revisions for implementation in these proceedings. The Ameren Illinois Utilities do not have time to fully investigate and respond to Mr. Sackett's new proposals. As a result, the Commission will not have a fully developed factual record upon which to evaluate those new proposals. The Identified Testimony should be stricken from the record.

II. ARGUMENT

A. Rebuttal Testimony Must Respond to Another Party's Testimony and Cannot Raise New Issues.

Under Illinois law rebuttal evidence is that which answers or responds to new affirmative matters raised by an adversary. *Rodriguez v. City of Chicago*, 21 Ill. App. 3d 623, 625-26 (1st Dist. 1974); *Gray v. Bonfield*, 59 Ill. App. 381 (1st Dist. 1895). Proper rebuttal evidence is also directed to the specific testimony of an opposing witness. *Pepe v. Caputo*, 408 Ill. 321, 328 (1951). Long-established Commission practice follows Illinois law in requiring that rebuttal testimony respond to another party's testimony and not raise entirely new issues or introduce new information that should be properly presented in a party's case in chief. *Illinois Bell Tel. Co.*, Docket 02-0864, Order, pp. 294-98 (2004); *Citizens Util. Co. of Ill.*, Docket 84-0237, 1985 Ill. PUC LEXIS 38, *42-52 (1985).

B. Mr. Sackett Used the Identified Testimony to Make New Proposals that Do Not Do Not Respond to Any Party's Testimony.

Each of the Ameren Illinois Utilities currently provides transportation customers flexibility to manage their supply and demand balance through a Rider T storage banking programs. In that program, the transportation customers can bank up 10 days of their Maximum Daily Contract Quantity ("MDCQ") for use in later periods.

In his direct testimony, Staff witness Sackett proposed that the Commission require the Ameren Illinois Utilities to make three changes to their Rider T storage banking programs in the Ameren Illinois Utilities' next rate cases: (a) increase the days of bank available to transportation customers; (b) unbundle the banking program from base rates and, thereby, allow each customer to select level of banking; and (c) allocate storage costs between sales and transportation customers based on the level of banking chosen. (*See* ICC Staff Exhibit 14.0, lines 531-536; *see also* ICC Staff Exhibit 27.0, lines 146-154).

In is direct testimony, Mr. Sackett asked the Commission to require the Ameren Illinois Utilities to "work with Staff and Intervenors" in a workshop process to flesh out the details of his recommendations. (*Id.*) Importantly, his proposal centered on his goal that the Ameren Illinois Utilities' submit revisions to their Rider T banking programs in their next rate cases. (*Id.*) The Ameren Illinois Utilities witnesses Dothage responded to Mr. Sackett's proposal that the Commission require the Ameren Illinois Utilities to propose those changes in their next rate cases. (Ameren Exhibit 44.0, lines 348-507.)

1. Mr. Sackett Proposed to Change the Storage Capacity Allocation for the First Time on Rebuttal.

In the Identified Testimony, Mr. Sackett for the first time proposes that the Ameren Illinois Utilities modify the size of their Rider T storage banking programs in these proceedings. He proposes that the Ameren Illinois Utilities be required to increase the size of their Rider T

bank by as much as 140% as a result of these rate cases (ICC Staff Exhibit 27.0, lines 534-535) and chides the Ameren Illinois Utilities for not suggesting different storage capacity allocation methods for use in this rate case (ICC Staff Exhibit 27.0, lines 383-384).¹

Mr. Sackett freely admits that he is submitting a new proposal on rebuttal. (ICC Staff Exhibit 27.0, lines 160-164.) His words:

Q. Do you wish to modify your proposal?

A. Yes. I propose that the inequitable allocation of storage capacity to transportation customers discussed in my direct testimony, be corrected in the instant case as opposed to being held for consideration in workshops between this case and the next.

There is no modified proposal—his alleged allocation of storage assets is a new proposal. New arguments are offered; new positions taken; new facts alleged. Mr. Sackett’s new proposals are not directed in response to the testimony of any witness in this proceeding. Mr. Sackett does not identify a witness, testimony, issue that he is supposedly “rebutting.” Instead, the Identified Testimony is in the nature of direct testimony setting forth his proposal for the first time. As a result, Mr. Sackett’s modified proposals cannot be considered proper rebuttal testimony.

His sole justification for submitting a new proposal in the Identified Testimony to reallocate storage assets in these cases rather than have the companies propose reallocation in the next rate cases (as recommended in his direct testimony), relates to the Ameren Illinois Utilities’ allocator for underground storage costs. (ICC Staff Exhibit 27.0, lines 296-299.) The Ameren Illinois Utilities, however, did not substantively alter their underground storage costs allocator on rebuttal. Ameren Illinois Utilities Witness Paul Normand corrected certain errors in the storage cost allocations initially presented in his direct testimony. (Ameren Exhibit 27.0, lines 60-65.)

¹ It is particularly disingenuous for Mr. Sackett to object to the Ameren Illinois Utilities’ not offering an alternative storage allocation program when Mr. Sackett specifically sought to address those matters in the workshop after this proceeding was complete.

But, he did not change the nature of his calculations or the nature of the resulting allocations. Mr. Normand testified that the changes did not impact his rate design recommendations. (Ameren Exhibit 27.0, lines 123-127.) Mr. Sackett does not even suggest that Mr. Normand's corrections prompted the new proposals. As such, Mr. Sackett could have made his reallocation proposal on direct. Instead, it appears that Mr. Sackett simply changed his mind and now is submitting new direct testimony as part of the Staff's rebuttal case.

2. Mr. Sackett Provides New Direct Testimony Regarding Selection of Bank Size and Cost Allocation Based on Bank Size

As with his late proposal to modify the storage capacity allocations in these proceedings, Mr. Sackett waited until his rebuttal testimony to for the first time testify about the options that the Commission has with respect to allowing each transportation customer to select the number of days of bank that it desires (ICC Staff Exhibit 27.0, lines 657-699) and to allocate storage costs to those customers in proportion to the amount of bank chosen (ICC Staff Exhibit 27.0, lines 701-738).

This new information, however, does not respond to any witness, issue, or testimony provided by the Ameren Illinois Utilities on rebuttal. Sackett does not even attempt to suggest that this new testimony rebuts Ameren Illinois Utilities rebuttal or intervenor direct testimony much less cite the testimony to which he responds. Sackett could have presented this information in his direct testimony. Instead, he now ambushes the Ameren Illinois Utilities with new testimony in a manner that does not provide the Ameren Illinois Utilities with a reasonable opportunity to respond.

III. The Ameren Illinois Utilities Do Not Have Sufficient Time to Respond to the Improper Portions of Mr. Sackett's "Rebuttal" Testimony

The schedule for submission of pre-filed testimony in Commission proceedings is designed to allow the orderly presentation of, and response to, evidence. The improper

designation of the referenced portions of the Sackett Rebuttal as rebuttal testimony subverts that process by introducing significant new proposals and information into the case late in the proceeding. As such, it prejudices Ameren Illinois Utilities ability to respond to that new information.

Mr. Sackett had the opportunity to submit his recommendations and information in his direct testimony earlier in the case but failed to do so. He now seeks, at this late stage in the proceeding, to file new direct testimony in the guise of rebuttal. Such a maneuver is unfair to the Ameren Illinois Utilities and will prejudice their ability to prosecute this case.

Ameren Illinois Utilities is now in the position of having to review and respond to Mr. Sackett's new proposals and information in approximately 10 days (including the Thanksgiving holiday). That period is designed to provide the Ameren Illinois Utilities an opportunity to respond to the narrowed issues addressed in proper rebuttal testimony. By submitting new proposals and information in the Identified Testimony, Mr. Sackett seeks to deny the Ameren Illinois Utilities the opportunity to undertake proper discovery. It also severely limits the Ameren Illinois Utilities' ability to respond meaningfully to the Identified Testimony. Had the Mr. Sackett included the revised proposals and information in his direct testimony, the Ameren Illinois Utilities could have conducted discovery and developed a full response. Because the Ameren Illinois Utilities cannot respond in full to the Identified Testimony, the Ameren Illinois Utilities are now placed at a significant disadvantage.

To evaluate and respond to the proposals, the Ameren Illinois Utilities, at a minimum, would need to: (a) prepare discovery requests (possibly multiple rounds) and analyze Mr. Sackett's responses; (b) model the economic and operational effects of Mr. Sackett's new proposals and information to evaluate the effects on cost recovery, rate design, and system

reliability; (c) potentially consult with current and future transportation customers regarding Mr. Sackett's proposals; (d) consider whether other allocation methods or tariff structures would be acceptable to the Ameren Illinois Utilities that would satisfy Staff and customer concerns – possibly using expert consultants not currently retained by the Ameren Illinois Utilities; (d) model the economic and operational effects of the alternative proposals to evaluate the effects on cost recovery, rate design, and system reliability; (e) prepare testimony addressing Mr. Sackett's new proposals and alternatives, if any, offered by the Ameren Illinois Utilities. The 10 days provided for surrebuttal testimony simply does not provide sufficient time for this process.

These evaluation steps were not required for the Ameren Illinois Utilities to respond to Mr. Sackett's direct testimony because he did not propose changes to the Ameren Illinois Utilities' tariffs in these cases. Rather, he proposed that the companies participate in workshops between these cases and the next. The Ameren Illinois Utilities believe that those workshops would be the appropriate places, if any, to evaluate the Mr. Sackett's new proposals for the first time.

Importantly, all of activities described above would be part of the workshops Mr. Sackett initially proposed. In other words, Mr. Sackett initially proposed a structure that would have allowed the Ameren Illinois Utilities sufficient time to evaluate the economic and operational effects Mr. Sackett's proposals and, possibly, offer alternative methods for satisfying the Mr. Sackett's perceived need for change. This would give the Ameren Illinois Utilities, Staff, and other parties the opportunity to develop a reasoned approach to the Rider T storage bank program. Even if the parties did not agree on all aspects of the program at the end of the workshop process, at least the issues would be fully developed and the Commission would have the opportunity for reasoned decision-making.

If the Commission adopts Mr. Sackett's improper "rebuttal" proposals to adopt changes in these cases without allowing the Ameren Illinois Utilities a full and necessary opportunity to investigate the proposals, then the Commission risks reducing the amount on-system storage capacity available to the Ameren Illinois Utilities sales customers, requiring the Ameren Illinois Utilities to seek additional off-system storage capacity for the Ameren Illinois Utilities sales customers from a capacity limited market, causing the Ameren Illinois Utilities to under recover any new costs associated with the capacity reallocation, and adoption of rate design structures that do not properly account for the new storage allocation. The Commission should not allow Mr. Sackett to foist these eventualities onto the Ameren Illinois Utilities' customers by proposing these changes for the first time in the Identified Testimony.

IV. The Ameren Illinois Utilities Are Prepared to Participate in Mr. Sackett's Proposed Workshops.

In his direct testimony, Mr. Sackett recommended that the Ameren Illinois Utilities be required to participate in industry workshops to address the unbundling of the Rider T storage banking programs. The Ameren Illinois Utilities are willing to participate in the industry workshops initially proposed by Mr. Sackett. In the workshops, Ameren Illinois Utilities can work with Staff, transportation customers, and marketers to tackle the issues raised by Mr. Sackett.

The identified portions of Mr. Sackett's "rebuttal" testimony might be appropriate direct testimony for the next rate case once the Ameren Illinois Utilities have gone through the workshop process. But, Mr. Sackett's "rebuttal" testimony is not proper rebuttal testimony in these proceedings and should be struck from the record.

V. Request For Expedited Ruling

Given that Ameren Illinois Utilities' surrebuttal testimony is due on Wednesday, December 2, 2009, an expedited ruling is requested. If a schedule for reply is decided, we recommend a reply by the close of business on Monday, November 30, 2009 and an Ameren Illinois Utilities' response by noon on Tuesday, December 1, 2009.

WHEREFORE, for the above reasons, The 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 Identified Testimony of David Sackett on behalf of the Staff be stricken and such other and further equitable relieve that is deemed just.

Dated: November 25, 2009

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 AmerenIP

By: /s/ Albert D. Sturtevant
Albert D. Sturtevant
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Certificate of Service

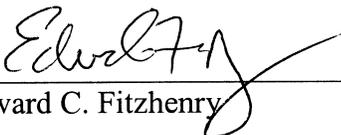
I, Albert D. Sturtevant, certify that on November 25, 2009, I served a copy of the foregoing MOTION TO STRIKE CERTAIN PORTIONS OF THE REBUTTAL TESTIMONY OF DAVID SACKETT AND FOR EXPEDITED RULING and VERIFICATION by electronic mail to the individuals on the Commission's Service List for the above captioned dockets.

By: /s/ Albert D. Sturtevant
Albert D. Sturtevant

*Attorney for Central Illinois Light Company
d/b/a AmerenCILCO, Central Illinois Public
Service Company d/b/a AmerenCIPS, Illinois
Power Company d/b/a AmerenIP*

Verification

I, Edward C. Fitzhenry, certify that: (i) I am counsel for Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, Illinois Power Company d/b/a AmerenIP; (ii) I have read the foregoing MOTION TO STRIKE CERTAIN PORTIONS OF THE REBUTTAL TESTIMONY OF DAVID SACKETT AND FOR EXPEDITED RULING; (iii) I am familiar with the fact stated therein; and (iv) the facts stated therein are true and correct to the best of my knowledge.

By: 
Edward C. Fitzhenry

*Attorney for Central Illinois Light Company
d/b/a AmerenCILCO, Central Illinois Public
Service Company d/b/a AmerenCIPS, Illinois
Power Company d/b/a AmerenIP*

SUBSCRIBED and SWORN to before
me this 25th day of November, 2009.


Notary



EXHIBIT B

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company d/b/a AmerenCILCO	)	Docket No. 09-0306
Proposed general increase in electric delivery)	
service rates.)	
)	
Central Illinois Public Service Company d/b/a AmerenCIPS	)	Docket No. 09-0307
Proposed general increase in electric delivery)	
service rates.)	
)	
Illinois Power Company d/b/a AmerenIP	)	Docket No. 09-0308
Proposed general increase in electric delivery)	
service rates.)	
)	
Central Illinois Light Company d/b/a AmerenCILCO	)	Docket No. 09-0309
Proposed general decrease in gas delivery)	
service rates.)	
)	
Central Illinois Public Service Company d/b/a AmerenCIPS	)	Docket No. 09-0310
Proposed general increase in gas delivery)	
service rates.)	
)	
Illinois Power Company d/b/a AmerenIP	)	Docket No. 09-0311
Proposed general increase in gas delivery)	
service rates.	)	(Consolidated)

**REPLY TO STAFF’S RESPONSE TO THE MOTION TO STRIKE CERTAIN
PORTIONS OF THE REBUTTAL TESTIMONY OF DAVID SACKETT**

The 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 reply to the Response (“Response”) of the Commission Staff (“Staff”) to Motion to Strike Certain Portions of the Rebuttal Testimony of David Sackett and For Expedited Ruling (“Motion to Strike”). In support of this reply, the Ameren Illinois Utilities state as follows:

I. The Identified Testimony Does Not Respond to Another Party’s Testimony.

The Motion to Strike did not argue that the issue of storage allocation had never been raised in this proceeding. Instead, the Motion to Strike stated that the identified portions of Mr. Sackett’s the Rebuttal Testimony (the “Identified Testimony”) raised entirely new proposals and introduces extensive new information with respect to storage allocation but is not directed in response to any witness or testimony in this proceeding. The Motion to Strike stated that the Identified Testimony was not proper rebuttal testimony but rather direct testimony that could and should have been filed at part of the Staff’s direct case.

A. The Commission Should Strike the New Proposal to Raise the Bank Size in these Proceedings

As the Ameren Illinois Utilities pointed out in their Motion to Strike, the Identified Testimony for the first time recommends that new tariff language be adopted in these proceedings to address a perceived cost allocation issue. The issue of adopting new tariff language in these proceedings has not been raised in these proceedings previously. Mr. Sackett did not raise that issue in his direct testimony and the Ameren Illinois Utilities’ witnesses did not address it in their rebuttal to Mr. Sackett’s direct testimony.

Staff focuses on their claim that Ameren Illinois Witness Mr. Normand failed to provide information about the cost allocation until rebuttal testimony and that he revised that allocation methodology in his rebuttal testimony. Staff claims that the timing of Mr. Sackett’s recommendation was a direct result of the Ameren Illinois Utilities’ mistakes and misinformation. (Staff Response at 5.)

Staff, for instance, claims the Motion to Strike incorrectly concludes that Normand did not change the “cost allocation methodology” in his rebuttal (Staff response at 5.) The Motion to

Strike, however, did not claim that Mr. Normand did not revise the cost allocation methodology on rebuttal. To the contrary, the Motion to Strike clearly and accurately stated that Mr. Normand “correct certain errors” in the allocation methodology but did “not change the nature of his calculations or the resulting allocations.” (Motion to Strike at 5-6.) The Motion to Strike also accurately represented Mr. Normand’s ultimate conclusions regarding the effect of the change on his rate design recommendations. Mr. Normand, for example, testified as followed in his rebuttal testimony:

Q. Do the changes in customer classes’ ROR as a result of your storage allocation correction impact your rate design recommendations.

A. No, they do not. As with my earlier comment with respect to the Account 904 corrections, these results are rather small and have little impact on my initial rate design proposals for all of the AIUs. By far the most important consideration was again the goals of rate uniformity and revenue caps for AmerenCIPS and AmerenCILCO, which these changes do not diminish.

(Ameren Exhibit 27, lines 123-129.) The Motion to Strike states that Mr. Normand made corrections in his rebuttal. The real point is that Mr. Normand’s corrections did not change his rate design recommendations. Without any change in the rate design recommendations, there is no justification for proposing new tariff revisions in rebuttal. Importantly, Mr. Sackett does not even suggest that Mr. Normand’s minor corrections affected his proposal.

Staff suggests that the AIUs’ objection to the Identified Testimony should be ignored because Mr. Normand supposedly failed to provide the information that Mr. Sackett needed to analyze proposed cost allocation methodologies. Mr. Normand provided detailed work papers supporting his analysis, including, as Staff states, the inputs to his models. Mr. Normand’s work papers were not deficient or incomplete. Mr. Normand responded to Staff’s data requests in a timely manner. Staff suggests that Mr. Normand should have “promptly and accurately”

responded to Staff's data requests. (Staff Response at 5.) But, Staff does not actually claim that Mr. Normand's data request response were untimely. Rather, Staff in effect only complains that it did not receive the information it wanted as quickly as it would have liked. That does not excuse Mr. Sackett's late recommendation to change the tariff.

Staff's Response states that Mr. Sackett had two options to address what he perceived to be a problem: address the issue in the next rate case after an organized workshop process or seek tariff changes in these cases. In his direct testimony, Mr. Sackett chose the former. In his rebuttal, however, Mr. Sackett changed his mind and chose the latter. The bottom line is that Mr. Sackett's change of heart did not result from any information provided in the AIU's rebuttal testimony. Mr. Sackett described the Nicor model in detail in his direct testimony and could have recommended adoption of the Nicor model there. He did not do so.

Staff claims that the issue must be addressed in these cases because failure to do so would lead to a subsidy. This exemplifies the problem with Mr. Sackett's late filed proposal. Mr. Sackett's direct testimony never uses the term "subsidy" or "inequity." On rebuttal, however, Mr. Sackett claimed for the first time that a subsidy existed that needed to be addressed. The AIUs are not convinced by Mr. Sackett's rebuttal testimony that a subsidy exists or needs to be addressed. Staff further claims that the existence of a subsidy necessarily would make the rates "not just and reasonable." That statement is a glaring oversimplification of difficult issue. The existence of subsidy would not necessarily make the AIUs' rates "not just and reasonable." The Commission has approved rates for that included subsidies in the past for a number of policy reasons that are beyond the scope of this reply. Mr. Sackett's claims that a subsidy exists and that the subsidy must be resolved in these rate cases perhaps is the best example of why Mr. Sackett's late proposal is unwarranted. The Ameren Illinois Utilities do not have the time

necessary to investigate Mr. Sackett's rebuttal claims, prepare the necessary rate models, and respond to the new proposal.

Staff suggests that Mr. Sackett's late proposal "would have been contrary to Staff's responsibilities to provide a full and complete record...." (Staff Response at 6.) Mr. Sackett's late proposal, however, has the precise opposite effect. By proposing tariff changes on rebuttal, Mr. Sackett will prevent the Ameren Illinois Utilities from adequately responding to his proposal and submitting testimony and evidence rebutting his claims. As a result, the record will be incomplete on this issue.

B. New Information Regarding Unbundling Options

Likewise, in the Identified Testimony, Mr. Sackett introduces significant new information regarding his view on what options the Commission has with respect to letting customers choose the level of storage banking and cost allocations based on the customers' choices. (*See* ICC Staff Exhibit Page 31, line 657 through Page 34, line 728.) The issue of what options the Commission simply has not been raised in these proceedings until Mr. Sackett's rebuttal testimony.

Staff argues that Mr. Sackett's this testimony should not be stricken because Staff did not change their ultimate proposal regarding the unbundling of storage services in the next rate case and because Mr. Dothage rejected that proposal. (Staff Response at 7.) There is no doubt that Mr. Sackett proposed the later unbundling in his direct testimony. But that misses the point. Staff also suggests that the new information is simply clarification of Mr. Sackett's direct testimony. (*Id.*) Staff seriously understates the nature of Mr. Sackett's new information. Mr.

Sackett relegated his initial discussion of this topic to only a few distributed sentences.¹ Now, in his rebuttal testimony, Mr. Sackett addresses the Commissions options for all or part of 5 pages. Staff states that Mr. Sackett's lengthy new information about the Commission options is proper because Mr. Dothage rejected "Mr. Sackett's proposals in their entirety." (*Id.*) Staff, however, does not explain how 5 pages of "clarification" of 2 sentences responds to Mr. Dothage's rebuttal testimony. They do not explain it because Mr. Sackett's new information does not respond to Mr. Dothage's rebuttal. Mr. Sackett only adds additional information that he could have included in his direct testimony but chose not to.

This is "entirely new information" that should have been properly presented in direct testimony. Instead, he adds it at a time when the AIUs do not have time to evaluate or adequately respond.

C. The Motion to Strike is Narrowly Tailored.

The Motion to Strike is narrowly tailored to address only those issues that present new issues or information that does not respond to the Ameren Illinois Utilities' rebuttal testimony. The Motion to Strike does not seek to eliminate all of Mr. Sackett's rebuttal testimony much less the entire discussion of storage reallocations. Rather, the Motion to Strike is limited to those portions of the testimony in which Mr. Sackett seeks to implement changes to the size of the bank as part of these rate cases and to the new detailed information about the Commissions unbundling options.

¹ Mr. Sackett states, for example, "I recommend ... that this banking service be unbundled from bas rates and that it be provided on a subscription basis" (ICC Staff Exhibit 14.0, lines 403-404) and "But only AIU transportation customers are currently prevented from selecting a level of bank capacity that is appropriate to meet their individual needs" (ICC Staff Exhibit 14.0, lines 430-433)

D. The Ameren Illinois Utilities Will Be Prejudiced if the Identified Testimony is Allowed

Mr. Sackett's criticism of the Ameren Illinois Utilities' case in chief should have been properly included in his direct testimony. The Identified Testimony presents new information for this proceeding to which Ameren must review and respond. Striking the Identified Testimony would protect the integrity of the existing procedural schedule and prevent the Staff from burdening the Ameren Illinois Utilities with the need to respond to Mr. Sackett's new information and proposals at the eleventh hour. It would be unreasonable to permit Mr. Sackett to introduce entirely new testimony that is not properly rebuttal at this late stage. Ameren will be, as discussed in its Motion, seriously prejudiced if the Identified Testimony is allowed.

Dated: December 1, 2009

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 AmerenIP

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One of their attorneys

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Certificate of Service

I, Christopher W. Flynn, certify that on December 1, 2009, I served a copy of the foregoing REPLY TO STAFF'S RESPONSE TO THE MOTION TO STRIKE CERTAIN PORTIONS OF THE REBUTTAL TESTIMONY OF DAVID SACKETT and VERIFICATION by electronic mail to the individuals on the Commission's Service List for the above captioned dockets.

By: /s/ Christopher W. Flynn
Christopher W. Flynn

*Attorney for Central Illinois Light Company
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Service Company d/b/a AmerenCIPS, Illinois
Power Company d/b/a AmerenIP*