STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company d/b/a AmerenCILCO Proposed general increase in electric delivery and gas delivery service rates. Central Illinois Public Service Company d/b/a AmerenCIPS Proposed general increase in electric delivery and gas delivery service rates. Illinois Power Company d/b/a AmerenIP Proposed general increase in electric delivery and gas delivery service rates.	)	Docket Nos. 09-0306 – 09-0311 (Consolidated)

MOTION TO STRIKE

NOW COME the Staff witnesses of the Illinois Commerce Commission ("Staff"), through its undersigned counsel, and pursuant to 83 Ill. Adm. Code Sec. 200.190, move to strike portions of the Direct Testimony of various witnesses of the Ameren Illinois Utilities. In support of this motion, Staff states as follows:

1. On June 15, 2010, a Notice of Commission Action was filed on e-Docket. In that Notice, the Commission granted in part and denied in part both the Application for Rehearing of the Ameren Illinois Utilities ("Ameren," the "Company," or "AIU") filed on May 28, 2010 and the Application for Rehearing of the Illinois Industrial Energy Consumers ("IIEC") filed on June 1, 2010. The Commission also denied

the joint Application for Rehearing of the Citizens Utility Board and the People of the State of Illinois filed on June 1, 2010.

2. As part of that Notice of Commission Action, the Commission specifically delineated questions it would consider on rehearing. The seventh of those questions, regarding pension and other post-employment benefits ("OPEB"), specifically stated: "(7) With regard to pension and other post-employment benefits, what, if any, adjustment is legally appropriate?"
3. Staff objects to portions of the prefiled direct testimonies and exhibits of the Ameren witnesses: Ronald D. Stafford (Ameren Exhibit 2.0RH), Michael J. Getz (Ameren Exhibit 5.0RH, lines 109 – 197, and Exhibit 5.3RH) and Randall K. Lynn (Ameren Exhibit 8.0RH, including Exhibits 8.1RH – 8.7RH), as it is not in compliance with the Commission's ruling regarding the issue of pension and other post-employment benefits.
4. There is no direct testimony filed by Ameren which addresses the question raised by the Commission - With regard to pension and other post-employment benefits, what, if any, adjustment is *legally appropriate*? (emphasis added) Instead, Ameren has provided the January 2010 Actuarial Valuation Report ("January 2010 Report") and the numbers that it provides as evidence of what it thinks the adjustment should be, but there is nothing which answers the question on rehearing about the legal appropriateness of an adjustment.
5. Ameren could be under the misapprehension that simply because there is a rehearing on this issue, it has been given carte blanche to provide support for its pro forma adjustments, that all it needs to do is introduce the new report and the

potential adjustments, and the Commission will then allow the January 2010 Report into evidence and allow an adjustment.

6. Staff has argued in this case and the Commission concurred that pursuant to Commission Rule (83 Ill. Adm. Code 287.40), if a utility prepares a pro forma adjustment to historical test year data, the adjustment must be shown to be known and measurable, i.e., ***where such changes occurred during the selected historical test year or are reasonably certain to occur subsequent to the historical test year within 12 months after the filing date of the tariffs and where the amounts of the changes are determinable***. Ameren had previously offered the July 2009 Actuarial Report in support of its pro forma adjustment to Pension and OPEB in its supplemental direct testimony. However, as Staff argued in both direct and rebuttal testimonies, the July Actuarial Report failed to meet the known and measurable standard because the Report contained assumptions and estimates which had already changed from the January 2009 Report, issued 6 months prior. [1]

7. Staff objects to Ameren's attempt on rehearing to enter the January 2010 Report into evidence. This evidence is not new evidence in the sense of being evidence that Ameren could not have known would come into existence or would not have known when it would come into existence. The same type of annual actuarial valuation report is prepared every year at approximately the same time, i.e., after the end of the year.

[1] Staff Exhibit 1.0, pp. 25-26; Staff Exhibit 15.0, pp.17-20.

8. It is critical to any analysis of this issue to consider the timing of the rate case filed by Ameren. The AIU filed their rate case in June of 2009 and chose a 2008 historic test year. Rate cases are statutorily required to be concluded in 11 months. Thus, the time frame for producing evidence could be predicted based upon the date chosen to file the rate case. The Commission was required to act upon the cases by no later than May 3, 2010. To have a final order by that date, Ameren's rebuttal and surrebuttal testimony filings were scheduled for October 23, 2009 and December 2, 2009 respectively. The hearings in the AIU cases were held December 14 through 17, 2009. The January 2010 Report had not even been released at the time the hearings were concluded.
9. Had the final actuarial report been available, it could have arguably been used by the Company in its efforts to support the known and measurable standard for the pro forma adjustment, as was the case in the prior Ameren dockets cited to by the AIU.[2] However, the timing of the filing of the rate cases precluded consideration of the final 2009 data in its case. The final 2009 report is not released until January 2010. The timing of the report could not have been a surprise to Ameren; it is an annual report and could not be finalized until the end of 2009.
10. Ameren chose when to file its rate case in this matter. If Ameren wanted the Commission to consider the final 2009 data in this rate case, it should have timed the filing of the rate case so that the January 2010 Report would be available during the evidentiary portion of the rate case (after January 2010). The decision of when to file its rate cases was completely up to the Company.

11. Ameren did not time its rate case filing such that the final 2009 data could be finalized in the January 2010 Report and included in its evidence.
12. During the pendency of the rate cases, Ameren tried unsuccessfully several times to get information into the record to support its pro forma adjustment for pension and OPEB benefits. In its Brief on Exceptions, Ameren referenced the January 2010 Report even though it admitted that it was not part of the evidentiary record. (see Ameren BOE, p. 25) Staff moved to strike this reference as the Report was not in evidence, and the ALJs granted Staff's motion on March 25, 2010. On rehearing, it seeks to introduce into evidence the final 2009 data via the January 2010 Report.
13. Ameren should not be allowed to use the rehearing phase of these rate cases as an opportunity to introduce the final 2009 data as released in the January 2010 Report into evidence. As discussed above, the final 2009 data was not previously adduced because it was not previously available; year end reports are never final and available until the beginning of the next year. To allow Ameren to use the rehearing phase to introduce evidence that is relevant to one of its pro forma adjustments, which Ameren knew was unavailable during the rate case is tantamount to extending the 11 month time frame for the rate case. This would essentially mean that any party could introduce evidence at the rehearing phase, which only becomes available after a rate case has concluded. Staff is unaware of any other proceeding where the record is purposely held open for the entry of documentation supporting a pro forma adjustment well after the 11 month time frame for the matter has expired. This tactic is contrary to the known and

[2] Staff Exhibit 15.0, pp. 17-18.

measurable criteria which requires an adjustment to be "individually identified and supported in the direct testimony of the utility" (83 Ill. Adm. Code 287.40) when the case is filed, not after the evidentiary hearing.

14. Staff finds the Commission's holding in Consumers Illinois Water Company, Docket No. 93-0253 and 93-0303 (Consol.) instructive:

> Just and orderly processing of rate increase requests mandates that we cannot permit a utility, which has complete discretion over the timing of its rate filings, to use the flexibility afforded by the known and measurable provision of our rules to transform a rate proceeding into a guessing game, in which the Commission and all the parties are left merely to await the ultimate resolution of the Company's plan, with large rate impacts hanging in the balance.

15. If the Commission were to allow on rehearing evidence pertaining to an adjustment for a known and measurable adjustment that was predictably not in existence at the hearing, it would pervert the 11 month schedule for rate case determinations. Any company could extend the 11 month time frame in order to provide support for its pro forma adjustment by simply filing an application for rehearing in order to get the final data in support of the adjustment into the record. This is clearly not the purpose of a rehearing.

16. Expedited treatment of this Motion to Strike is requested in order that Staff direct testimony, which is due on July 29, 2010, may be directly responsive to the Commission's question and Ameren's testimony on this issue.

CONCLUSION

WHEREFORE, for the foregoing reasons, Staff respectfully requests:

A. That the following direct testimony on rehearing should be stricken:

- Ameren Exhibit 2.0RH, lines 443 – 457;

- Ameren Exhibit 5.0RH, lines 109 – 197;
- Ameren Exhibit 5.3RH;
- Ameren Exhibit 8.0 RH; and
- Ameren Exhibits 8.1RH – 8.7RH.

B. That expedited treatment of this Motion to Strike be considered, as the time for Staff to file its direct testimony is July 29, 2010.

C. Such other and further relief, as this is equitable and appropriate.

Respectfully submitted,

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