

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ANTHONY JAMES GRASON,)	
)	
Complainant,)	
)	
vs.)	Docket No. 09-0575
)	
ILLINOIS POWER COMPANY)	
d/b/a AmerenIP,)	
)	
Respondent.)	
)	
Complaint as to billing/charges in)	
Decatur, Illinois)	

BRIEF OF ILLINOIS POWER COMPANY d/b/a AmerenIP

BROWN, HAY & STEPHENS, LLP
Charles Y. Davis
Registration No. 6286010
205 South Fifth Street, Suite 700
P.O. Box 2459
Springfield, IL 62705
(217) 544-8491
Fax: (217) 544-9609
cdavis@bhslaw.com

September 23, 2010

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NOW COMES, Respondent, ILLINOIS POWER COMPANY d/b/a AmerenIP (“AmerenIP”), by and through its attorneys, Brown, Hay & Stephens, LLP, by Charles Y. Davis, pursuant to Section 200.800 of the Rules of Practice (83 ILL. ADMIN. CODE 200.800) of the Illinois Commerce Commission (“Commission”), and respectfully submits its Brief in the above-captioned matter.

I. SUMMARY AND BACKGROUND

Complainant filed his Formal Complaint herein on November 24, 2009. In short, Complainant alleges in his Formal Complaint (1) that AmerenIP “failed to provide a true and correct amount owing,” (2) that AmerenIP has not disclosed “how AmerenIP has determined this amount,” and (3) that “no existing agreement” exists between the Complainant and AmerenIP. *See* Complainant’s Formal Complaint. After referring to an “amount in excess of \$7,000.00,” Complainant requests relief by asking the “Commission to correct this amount owing and determine how such amount can come to exist.” *Id.* In Complainant’s Formal Complaint, he

does not list any specific section of the law, Commission rule(s), or utility tariffs that are involved in the Formal Complaint. Furthermore, the Formal Complaint is absent of any allegation that AmerenIP violated any law, Commission rule(s), or utility tariffs. Complainant's Formal Complaint was scheduled for an evidentiary hearing on August 17, 2010, but it was later continued on Complainant's request to September 2, 2010.

II. LEGAL STANDARD

Under the Illinois Public Utilities Act, Complainant bears the burden of proving the allegations in his Formal Complaint. 220 ILCS 5/9-244(d). The rules of evidence which apply in civil cases before the circuit courts of the State of Illinois apply to proceedings before the Commission. 83 ILL. ADMIN. CODE 200.610. Therefore, standard Illinois rules of evidence regarding the burden of proof apply. The term "burden of proof" encompasses both the burden of persuasion and the burden of producing evidence. *Consolidated Communication Consultant Serv., Inc. v. Illinois Bell Tel. Co.*, Docket 99-0429, 2001 WL 34676516 (Ill.C.C.) (June 14, 2001). The burden of persuasion pertains to the ultimate burden of persuading the tribunal that the necessary elements of a claim have been proven. *Id.*

Complainant must make out a *prima facie* case in support of all allegations in his Formal Complaint. Complainant can only establish a *prima facie* case by proffering at least "some evidence on every element essential to [the plaintiff's underlying] cause of action." *People ex rel. Sherman v. Cryns* 203 Ill. 2d 264, 275, 786 N.E.2d 139, 148 (2003). If plaintiff has failed to meet this burden, the Commission should enter judgment in the defendant's favor. *Id.* "Complainant bears the burden of proof in a complaint case, and in substantiating its allegations the complainant must prove its case *by a preponderance of the evidence.*" *PlastoFilm Industries,*

Inc. v. Commonwealth Edison Company, Docket 94-0119, 1999 WL 33915076 (Ill.C.C) (July 8, 1999) (Emphasis added).

III. ARGUMENT

At the evidentiary hearing held on September 2, 2010, Complainant presented himself as a witness, but presented no other witnesses. (Transcript, September 2, 2010, pp. 36-39, 60). AmerenIP presented Suzanne L. Hankins as its sole witness. (Transcript, September 2, 2010, pp. 65-90). Complainant did not specifically allege that AmerenIP violated any law, Commission rule(s), or utility tariffs. As Complainant has not alleged that AmerenIP violated any specific law, Commission rule(s), or utility tariffs, and otherwise has not met his burden of proving by a preponderance of the evidence that AmerenIP violated any law, Commission rule(s), or utility tariffs, Complainant's Formal Complaint should be dismissed and an Order should be entered in AmerenIP's favor.

In addition, Complainant alleged that the amount provided by AmerenIP as the amount due and owing was inaccurate and that he had witnesses and bank statements that would prove that this was the case; however, Complainant failed to produce any witnesses or any bank statements to support this allegation. (Transcript, September 2, 2010, pp. 36-39, 60). Complainant also alleged that he potentially made additional payments which would reduce the amount owed as alleged by AmerenIP. (Transcript, September 2, 2010, pp. 60-63). Again, Complainant failed to produce any evidence to support this allegation. *Id.* Finally, Complainant alluded that non-functioning meters caused his bills to increase in an unfair manner and that he was over-billed as a result. As before, Complainant produced no evidence supporting this allegation. (Transcript, September 2, 2010, pp. 53-54). In sum, Complainant has not met his

burden of proving by a preponderance of the evidence that AmerenIP violated any law, Commission rule(s), or utility tariffs.

The testimony of Suzanne L. Hankins clearly demonstrated that (1) Complainant was accurately billed for electric and gas usage read on Complainant's meters at his different properties (Transcript, September 2, 2010, p. 68; Testimony of Suzanne L. Hankins, June 1, 2010, pp. 2-16 and AmerenIP Exhibits 1.1-1.22), (2) \$11,527.49 is suspended and is at issue in Complainant's Formal Complaint (*Id.*), (3) that meters were replaced to provide an upgrade of service to Complainant and to correct one malfunctioning meter (Transcript, September 2, 2010, pp. 71-73), (4) that any time a meter was replaced, and when Complainant's service was changed from a commercial account to a residential account, that Complainant was adequately credited for any excess disputed amounts which were previously reflected on his bills (Transcript, September 2, 2010, p. 68; Testimony of Suzanne L. Hankins, June 1, 2010, pp. 2-16 and AmerenIP Exhibits 1.1-1.22), and (5) that, although irrelevant to Complainant's Formal Complaint, AmerenIP acted appropriately with respect to responding to Complainant's allegations regarding the medical issues of his cohabitants, and by providing information related to the Medical Equipment Registry and the Medical Certificate. (Testimony of Suzanne L. Hankins, June 1, 2010, pp. 14-15; Transcript, September 2, 2010, pp. 68-71).

In any event, the burden is on Complainant and not on AmerenIP. Complainant has not proven that the currently suspended amount of \$11,527.49 is not due and owing from Complainant to AmerenIP and he has not met his burden of proof in this case by not showing by a preponderance of the evidence that AmerenIP has done anything wrong or violated any laws, Commission rule(s), or utility tariffs. Furthermore, Complainant's financial obligation to AmerenIP has not been discharged in any bankruptcy case and thus the debt owed should not be

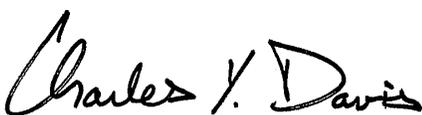
considered discharged nor under the jurisdiction of any other court. (Transcript, September 2, 2010, pp. 46-48, 64).

IV. CONCLUSION

WHEREFORE, Respondent, ILLINOIS POWER COMPANY d/b/a AmerenIP, respectfully requests that the Commission enter an Order denying Complainant's Formal Complaint and find that the suspended amount of \$11,527.49, plus charges accruing after the disputed period are due and owing from Complainant to AmerenIP.

Respectfully submitted,

**ILLINOIS POWER COMPANY, d/b/a
AmerenIP, Respondent**

By: 
One of Its Attorneys

BROWN, HAY & STEPHENS, LLP

Charles Y. Davis
Registration No. 6286010
205 South Fifth Street, Suite 700
P.O. Box 2459
Springfield, IL 62705
(217) 544-8491
Fax: (217) 544-9609
cdavis@bhslaw.com

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon:

Mr. Anthony J. Grason
357 W. Decatur St.
Decatur, IL 62522
grapal1@live.com

Ms. Lisa M. Tapia, Administrative Law Judge
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701
ltapia@icc.illinois.gov

Mr. Edward C. Fitzhenry
Ameren Services Company
1901 Chouteau Ave.
P.O. Box 66149 (M/C 1310)
St. Louis, MO 63166-6149
efitzhenry@ameren.com

Mr. Matthew R. Tomc
Ameren Services Company
1901 Chouteau Ave.
P.O. Box 66149 (M/C 1310)
St. Louis, MO 63166-6149
mtomc@ameren.com

Ms. Erika Dominick, Paralegal Legal Dept.
Ameren Services Company
1901 Chouteau Ave.
P.O. Box 66149
St. Louis, MO 63166-6149
edominick@ameren.com

via electronic transmission on this 23rd day of September, 2010.