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ILLINOIS COMMERCE COMMISSION

CHIEF CLERK'S OFFICE

On Its Own Motion

-vs-

CENTRAL ILLINOIS LIGHT CO., et al.,

Respondents.

No. 00-0494

Proceeding On The Commission's Own
Motion Concerning Delivery Services
Tariffs Of All Illinois Electric Utilities To
Determine What If Any Changes Should Be
Ordered To Promote Statewide Uniformity
Of Delivery Services And Related Tariffed
Offerings.

**APPLICATION FOR REHEARING OF
COMMONWEALTH EDISON COMPANY**

Commonwealth Edison Company ("ComEd"), by its counsel, pursuant to 220 ILCS 5/10-113 and 83 Ill. Admin. Code § 200.880, hereby submits its application for rehearing, in part, of the Illinois Commerce Commission's ("the Commission") Order ("the Order").

INTRODUCTION

ComEd seeks rehearing of the Order for four overall reasons. In brief:

- The Order's holdings regarding billing and payment crediting under the single billing option (the "SBO") are illegal under the express language of Sections 16-102 and 16-118(b) of the Public Utilities Act ("the Act"), 220 ILCS 5/16-102, 16-118(b). The General Assembly determined that when a Retail Electric Supplier (a "RES") elects the SBO, the utility gets paid first for all its "tariffed services" -- bundled and delivery. The General Assembly also expressly anticipated that the utility would not bill for those services under the SBO.
- The Order is inconsistent with the Commission's prior determination of the SBO credit, which is calculated on the assumption that the RES bills for all of the utility's tariffed services -- bundled and delivery.

- The Order’s holdings regarding billing and payment crediting under the SBO are directly contrary to the interests of customers, impose undue burdens and costs on customers and utilities, and are entirely unnecessary to protect RESs.
- Finally, the Order should be revised in certain limited respects in relation to the subject of uniformity and the upcoming workshops. The revisions will increase the likelihood that the workshops will be productive.

ARGUMENT

I.

THE ORDER’S HOLDINGS REGARDING THE SBO ARE UNLAWFUL, UNJUST, UNREASONABLE, AND UNNECESSARY

The Order provides that, when a RES places on the SBO a customer that owes the utility for bundled services, the RES may issue a single bill that omits what is owed for those bundled services. (Order, p. 15). The Order further provides that, for purposes of calculating the customer’s delivery services bill going forward, the utility must credit customer payments remitted by the RES as if the customer had no debt for bundled services, even though that is the oldest debt. (*Id.*) Each of those two holdings is unlawful.

A. **The Order’s Holdings As To Billing And Payment Crediting Are Unlawful Under Sections 16-102 And 16-118(b)**

1. **Billing**

The Order’s holding as to billing under the SBO is directly contrary to the Act. Under Sections 16-102 and 16-118(b) of the Act, 220 ILCS 5/16-102, 16-118(b), a RES that issues a single bill must include a customer’s debt for bundled services. Section 16-118(b)(iii) provides that a utility’s SBO tariff “shall ... (iii) retain the electric utility’s right to disconnect the retail customers, if it does not receive payment for its tariffed services, in the same manner that it would be permitted to if it had billed for the services itself...” (Emphasis added.) The Act unambiguously defines the term “tariffed services” to include a utility’s bundled services as well

as its “delivery services”. Section 16-102 defines the term “tariffed service” to mean “services provided to retail customers by an electric utility as defined by its rates on file with the Commission pursuant to the provisions of Article IX of this Act, but shall not include competitive services.” (Delivery services also are defined in Section 16-102.)

The Order, in its determination relating to billing under the SBO, therefore errs, as a matter of law. Section 16-118(b)(iii) plainly contemplates that the utility no longer will be billing for its tariffed services -- i.e., both its bundled services and its delivery services -- when a customer is placed on the SBO. Indeed, Section 16-118(b)(iii) expressly confirms that the utility may disconnect an SBO customer if the utility is not paid for its bundled or unbundled tariffed services “in the same manner that it would be permitted to if it had billed for the services itself.” That language cannot be squared with the Order’s holding that under the SBO the utility must separately bill for the customer’s debt for bundled services.

Reading the term “tariffed services” in Section 16-118(b)(iii) to mean “delivery services” is precluded by Section 16-102. Such a reading would mean that the General Assembly’s use of the defined term “tariffed service” rather than the defined term “delivery services” in that subsection would be meaningless. That reading would be unreasonable and improper. *Niven v. Siqueira*, 109 Ill.2d 357, 365, 487 N.E.2d 937, 942 (1985).¹

The Order apparently proceeds based on the theory that, because Section 16-118(b) requires that a utility’s SBO tariff allow the RES to bill for the utility’s “delivery services”, then the RES may not be required to bill for unpaid bundled services charges. 220 ILCS 5/16-118(b). (Order, p. 15). Even apart from being contrary to Section 16-118(b)(iii), the reasoning

I. _____

¹ The conclusion that a RES must issue a single bill that includes the customer’s unpaid bundled services charges also is supported by Section 16-118(b)(iii) of the Act, 220 ILCS 5/16-118(b)(iii), which is discussed in the next subsection of this Application for Rehearing.

underlying that theory is erroneous. Nothing in Section 16-118(b) states or implies that the SBO tariff cannot include a term or condition requiring the RES to also bill for the customer's unpaid bundled services charges. Moreover, any such reading of Section 16-118(b) is legally impossible. Section 16-118(b) later states that the tariff "may also include other just and reasonable terms and conditions." 220 ILCS 5/16-118(b). Such a reading also contradicts the very idea of the single billing option. If RESs do not include debt for bundled services on the single bill, then customers will not receive a single bill -- they will continue to receive two bills, both of which will have charges from the utility. Reading Section 16-118(b) to require dual billing instead of single billing makes no sense, and thus is improper. *See Baker v. Miller*, 159 Ill. 2d 249, 262, 636 N.E.2d 551, 557 (1994); *Actunes v. Sookhakitch*, 146 Ill. 2d 477, 486, 588 N.E.2d 1111, 1115 (1992).

Reading Section 16-118(b) to require dual billing also is inconsistent with the principle that the Act may not be read to imply duties on a public utility. *Turgeon v. Commonwealth Edison Co.*, 258 Ill. App. 3d 234, 251, 630 N.E.2d 1318, 1330 (2d Dist.), *appeal denied*, 157 Ill.2d 524, 642 N.E.2d 1305 (1994).

The Order's holding also is contradicted by its determination of the SBO credit, which is calculated on the basis that when a RES elects the SBO the utility no longer will bill for its tariffed services. (Initial Brief of [ComEd] ["ComEd Init. Br."], p. 39; Reply Brief of [ComEd] ["ComEd Reply Br."], pp. 41-42, 43; Brief on Exceptions of [ComEd] ["ComEd Br. Exc."], p. 4; Reply Brief on Exceptions of [ComEd] ["ComEd Reply Br. Exc."], pp. 2, 33-34).

The Order's holding as to billing under the SBO is illegal and should be revised on rehearing to comport with the law. A Commission Order that is unlawful is subject to reversal on appeal. 220 ILCS 5/10-201(e)(iv)(C).

2. Payment Crediting

The Order's holding as to payment crediting under the SBO also is directly contrary to the Act. Under Sections 16-102 and 16-118(b) of the Act, 220 ILCS 5/16-102, 16-118(b), when a RES remits a customer payment, the payment should be credited to the customer's oldest debt for tariffed services, including any debt for bundled services.

Section 16-118(b)(i) of the Act, 220 ILCS 5/16-118(b)(i), could not be clearer that the utility gets paid for its tariffed services first. Section 16-118(b)(i) states that a utility's SBO tariff "shall (i) require partial payments to be credited first to the electric utility's tariffed services..." (Emphasis added.) As shown earlier, under Section 16-102 of the Act, the term "tariffed services" includes bundled services.²

The Order relies on the statement that: "If the oldest bundled balance was credited and not the delivery services portion, then the utility could consider the delivery service portion of the customer's balance past due." (Order, p. 15). Where the customer does not pay all that it owes for tariffed services, that statement may be true, but it does not authorize the Commission to disregard the plain language of the Act. Moreover, while the Order apparently assumes otherwise, the Order does not and cannot identify anything wrong with the fact that, if a customer owes a debt for prior bundled services as well as for delivery services, and the customer does not pay enough to cover both sets of charges, then the customer's more recent charges are past due. The Act is not intended to permit customers or RESs to game the system so that customers may fail to pay utilities and then claim that their payments somehow are not

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² The conclusion stated here also is supported by Section 16-118(b)(iii) of the Act, 220 ILCS 5/16-118(b)(iii), discussed earlier.

past due. Section 16-118(b)(iii) of the Act, as discussed earlier, is flatly to the contrary. The Order's holding as to payment crediting under the SBO is illegal and should be revised on rehearing to comport with the law.

B. The Order's Determinations On Billing And Payment Crediting Are Unjust And Unreasonable For Customers And Utilities, And Are Unnecessary To Protect RESs

1. Billing

The evidence in the record shows that the Order's approach to billing under the SBO is contrary to the interests of customers as well as utilities, and unnecessary to protect RESs, for a host of reasons. The relevant evidence is uncontradicted, and it includes admissions by the four parties -- the Commission's Staff ("Staff"), MidAmerican Energy Company ("MidAmerican"), AES NewEnergy Midwest, L.L.C. ("NewEnergy"), and the Illinois Industrial Energy Consumers ("the IIEC") -- that argued for various changes in the SBO.

Under ComEd's approach to the SBO, the RES must issue a single bill that includes all charges for tariffed services, both bundled and unbundled, and, as a result, the concept of the SBO is achieved -- the customer actually gets a single bill, not two bills. (*E.g.*, Clair Direct ["Dir."], ComEd Exhibit ["Ex."] 1.0, pp. 4-5; Clair Rebuttal ["Reb."], ComEd. Ex. 3.0, pp. 4, 10, 12, 24-25, 33-34; Clair Surrebuttal ["Sur."], ComEd Ex. 7.0, pp. 6, 15). The evidence in the record shows that that is the only correct approach for customers as well as for utilities.

First, an approach to the SBO that actually results in a single bill is in the interests of customers. Staff, MidAmerican, NewEnergy, and the IIEC each acknowledge that customers prefer to receive a single bill, and to write a single check, for their energy charges. (Schlaf Transcript ["Tr."]. 107-108; Walsh Tr. 614; Kutsunis Tr. 294-97; Initial Brief [of NewEnergy/IIEC], p. 13). MidAmerican's witness also stated that it is in customers' interests to

have a single point of contact regarding their energy charges. (Kutsunis Tr. 297). Moreover, because customers on the SBO expect to receive only one bill, the dual billing required by the Order is likely to confuse them and to cause them to pay only one bill, which increases the likelihood of late charges, collections activities, disconnections, and bad debt, all of which is contrary to the interests of customers and RESs. (Clair Dir., ComEd Ex. 1.0, pp. 5, 8; Clair Reb., ComEd Ex. 3.0, pp. 5, 25, 26-27; Meehan Reb., ComEd Ex. 5.0, p. 8; Clair Sur., ComEd Ex. 7.0, pp. 7-8; Hock Reb., AmerenCIPS/AmerenUE [“Ameren”] Ex., p. 6). The true single bill approach also benefits RESs in that it permits a RES to expand the scope of its contact with the customer while diminishing that of the utility. (Clair Reb., ComEd Ex. 3.0, pp. 12, 24).

Second, requiring ComEd to bill customers placed on the SBO for unpaid bundled services charges would require ComEd to incur massive person-hours and new costs for training and for new manual processes and/or information systems modifications. (E.g., Clair Dir., ComEd Ex. 1.0, pp. 6-7, 8; Clair Reb., ComEd Ex. 3.0, pp. 4-5, 25, 32). Such costs ultimately may be borne in whole or in part by ratepayers, even though the change is not in their interests.

Third, the Order’s approach facilitates customer gaming, initially at ComEd’s expense. (Clair Reb., ComEd Ex. 3.0, pp. 27-28; *accord* Hock Reb., Ameren Ex., pp. 9-10). Such exploitation ultimately may harm those customers who actually pay their bills.

Fourth, ComEd’s approach is commercially reasonable and maximizes economic efficiency. (E.g., Clair Dir., ComEd Ex. 1.0, pp. 5, 6; Clair Reb., ComEd Ex. 3.0, pp. 25, 32). As a result, ComEd’s service territory is the only one in which two RESs have elected the SBO, and it has the most SBO customers. (Clair Reb., ComEd Ex. 3.0, pp. 16, 18).

Fifth, only a small portion of customers who are placed on the SBO have outstanding debts for bundled services, and those debts typically are cleared in very short order, with 90%

resolved within 90 days. (Clair Dir., ComEd Ex. 1.0, pp. 10-11; Clair Reb., ComEd Ex. 3.0, pp. 4, 15, 17, 22; Clair Sur., ComEd Ex. 7.0, pp. 7, 17). MidAmerican's witness testified it has no SBO customer with unpaid bundled services charges. (Kutsunis Tr. 294).

Finally, RESs have a host of additional options that allow them to avoid, minimize, or remedy any alleged problems that they might encounter when they place a customer on the SBO that has an outstanding debt for bundled services. A RES' options include: (i) whether to elect the SBO at all; (ii) which customers to place on the SBO; (iii) inquiring in advance whether customers have outstanding debts for bundled services; (iv) asking customers for deposits for any such debts; (v) charging customers for any extra costs the RES incurs due to such debts; (vi) not placing on the SBO any customer who has such a debt or asking that the utility not effectuate placement on the SBO of such customers (something ComEd has stated it is willing to do and which Central Illinois Light Company's approved tariffs already provides); (vii) waiting two or three months before placing a customer on the SBO; (viii) serving with consent as the customer's billing agent; and (ix) reverting to dual billing of the customer on the short notice already provided for in ComEd's SBO tariff. (ComEd Init. Br., pp. 40-41). Any arguments that ComEd's approach to billing somehow requires RESs to assume a portion of the collections function or to assume liability for customer debts are false. (*Id.* at 41). The Order, as to billing, should be revised on rehearing because it is unjust and unreasonable, 220 ILCS 5/9-201(c), 16-108(a), and cannot be sustained in view of the evidence.

2. Payment Crediting

The evidence shows that the Order's approach to payment crediting is against the interests of customers and utilities, and unnecessary to protect RESs, for numerous reasons.

Under ComEd's approach, when the RES remits a customer payment, the payment is credited to the customer's oldest debt for tariffed services -- the same practice ComEd has used for payments from customers for decades (at least) and that other major utilities use. (*E.g.*, Clair Dir., ComEd Ex. 1.0, p. 9; Meehan Sur., ComEd Ex. 9.0, p. 4). In fact, MidAmerican and NewEnergy also each admitted that follow this practice. (Kutsunis Tr., 300-301; Walsh, Tr. 636). The evidence shows that is the only correct approach for customers and utilities.

To begin with, the discussion of billing above also shows that when a customer payment is remitted by a RES the payment should be credited to the oldest charges for tariffed services. Thus, for example, the Order's approach to payment crediting, like its approach to billing, makes it more likely that customers will incur late charges, be placed in the collection process, and be disconnected. (Clair Dir., ComEd Ex. 1.0, p. 10; Clair Reb., ComEd Ex. 3.0, pp. 15, 32).

In addition, if the Order's approach ultimately forces utilities to create two or more accounts per actual "customer", then valuable customer history data will be lost or rendered not available, which would harm customers and RESs. (Clair Dir., ComEd Ex. 1.0, pp. 7-8; Meehan Sur., ComEd Ex. 9.0, p. 2). Creating multiple accounts per customer would hinder the tracking of outstanding debts, resulting in increased bad debt, which also harms customers. (Clair Dir., ComEd Ex. 1.0, pp. 7-8; Meehan Sur., ComEd Ex. 9.0, p. 2). Creating multiple accounts would require massive changes to ComEd's billing processes and information systems, with equally significant burdens, costs, and risks to the stability of the systems, as well as interfering with other important work on the systems. (Clair Dir., ComEd Ex. 1.0, pp. 9, 10; Meehan Reb., ComEd Ex. 5.0, pp. 3, 6-12; Meehan Sur., ComEd Ex. 9.0, p. 5).

Crediting payments to the oldest charges first is the only commercially reasonable approach here. (Clair Dir., ComEd Ex. 1.0, pp. 9, 10; Clair Reb., ComEd Ex. 3.0, p. 21; Clair

Sur., ComEd Ex. 7.0, p. 15; Meehan Sur, ComEd Ex. 9.0, pp. 2, 4). ComEd's crediting of payments to the oldest debt is consistent with industry practice; at least approximately 20 other major utilities follow this practice. (Meehan Sur., ComEd Ex. 9.0, p. 4). As noted earlier, MidAmerican and NewEnergy also follow this practice. (Kutsunis, Tr. 300-301; Walsh Tr. 636).

Altering the payment crediting order also unfairly would place ComEd in the position of not being paid for earlier-provided tariffed services while RESs are paid for later-provided services, thereby denying ComEd the time value of payment and increasing the risk of non-payment. (Clair Dir., ComEd Ex. 1.0, p. 10; Clair Reb., ComEd Ex. 3.0, pp. 26, 32-33; Clair Sur., ComEd Ex. 7.0, p. 15). The Order, as to payment crediting, should be revised on rehearing because it is unjust and unreasonable and not supported by the evidence in the record.

C. The Order's Determinations Relating To Cost Recovery And The SBO Credit Also Are In Error

ComEd is entitled to full recovery of its costs of providing delivery services and of costs imposed by law. *E.g.*, U.S. Const., amend. V, XIV; Ill. Const., art. I, §§ 2, 15; 220 ILCS 5/9-201(c), 16-108(c). The calculation of its SBO credit is based on the premise that the RES that performs the SBO will issue a single bill for the utility's tariffed services, including bundled services charges, as discussed earlier. ComEd, in the alternative, therefore asked that, in the interim until the issue is addressed in its next delivery services rate case, ComEd not be required to provide the SBO credit to any SBO customer that owes a debt for bundled services, and ComEd pointed to Staff testimony that appeared to indicate that is appropriate. (ComEd Reply Br. Exc., p. 34 (citing Schlaf Reb., Staff Ex. 3, p. 5)). No party offered any evidence or argument that would entitle such a customer to receive the SBO credit. The Order, given its

holding as to billing, errs by ignoring the issue and by not adopting ComEd's recommendation. The Order should be revised on rehearing to so provide.³

II.

THE ORDER SHOULD BE REVISED, IN PART, REGARDING UNIFORMITY AND THE WORKSHOPS

ComEd previously has shown why the Order's discussion of uniformity in relation to delivery services can be improved, and why the Order should provide for workshops focused on developing common definitions and more uniform business processes and implementation plans. (ComEd Init. Br., pp. 7-8; ComEd Br. Exc., pp. 34-35; ComEd Reply Br. Exc., pp. 2, 3-4, 7-12). ComEd adheres to its previously stated positions on the subject of uniformity and urges that the Order be revised on rehearing accordingly.

ComEd also notes that the Order states that "a perusal of the various existing DSTs indicates that they are dissimilar with respect to structure, definitions, and wording". (Order, p. 15). That conclusion overlooks that the Order itself provides for uniform outlines for customer and supplier delivery services tariffs⁴ and for workshops to develop common definitions. (*Id.*, pp. 10, 17-18). That conclusion should be amended to reflect those facts.

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³ ComEd incorporates its prior briefing on the issues relating to the SBO. (ComEd Init. Br., pp. 5-6, 36-43; ComEd Reply Br., pp. 35-54; ComEd Br. Exc., pp. 2, 4-6, 13-21; ComEd Reply Br. Exc., pp. 30-34.)

⁴ ComEd continues to believe that the Order errs by rejecting ComEd's proposed uniform outlines, which were jointly developed with Illinois Power Company and Ameren, in favor of Staff's proposed revised uniform outlines, which were not presented as evidence during the proceeding but rather submitted with briefs after the record was marked heard and taken. (ComEd Init. Br., pp. 9, 10-11; ComEd Reply Br., pp. 11-14; ComEd Br. Exc., pp. 2-3, 22-26; ComEd Reply Br. Exc., pp. 5-6).

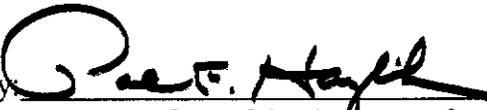
CONCLUSION

Therefore, for all reasons appearing of record, Commonwealth Edison Company respectfully requests that the Order be revised as requested in its Brief on Exceptions, Reply Brief on Exceptions, and herein.

Dated: April 20, 2001

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By: 
One of the Attorneys for
Commonwealth Edison Company

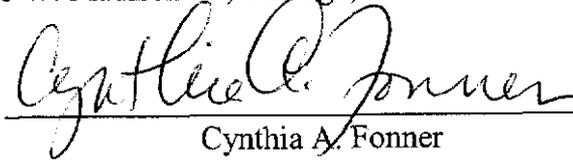
Paul F. Hanzlik
John P. Ratnaswamy
Cynthia A. Fonner
FOLEY & LARDNER
Suite 4100
Three First National Plaza
70 W. Madison St.
Chicago, Illinois 60602
(312) 558-6600

Rebecca J. Lauer
Vice President and General Counsel
Michael S. Pabian
Associate General Counsel
COMMONWEALTH EDISON COMPANY
One Financial Place
440 S. LaSalle St.
Suite 3300
Chicago, Illinois 60605

Attorneys for
Commonwealth Edison Company

CERTIFICATE OF SERVICE

I, Cynthia A. Fonner, do hereby certify that on April 20, 2001, a copy of the foregoing Application For Rehearing Of Commonwealth Edison Company was served upon all parties on the attached Service List at the addresses specified by deposit in the United States mail first class postage prepaid, at Three First National Plaza, 70 W. Madison St., Chicago, Illinois 60602.



Cynthia A. Fonner

SERVICE LIST
ICC DOCKET NO. 00-0494

Hearing Examiner Michael L. Wallace
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
e-Mail: mwallace@icc.state.il.us

John Feeley
Robert Garcia
Steven G. Revethis
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle, Suite C-800
Chicago, IL 60601
e-Mail: jfeeley@icc.state.il.us
bgarcia@icc.state.il.us
srevethi@icc.state.il.us

Janis Freetly,
Financial Analysis Division
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
e-Mail: jfreetly@icc.state.il.us

John Hendrickson,
Financial Analysis Division
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
e-Mail: johendri@icc.state.il.us

Peter Lazare
Financial Analysis Division
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
e-Mail: plazare@icc.state.il.us

Jennifer Moore
Assistant to Commissioner Kretschmer
Illinois Commerce Commission
State of Illinois Building
160 North LaSalle Street, Suite C-800
Chicago, IL 60601-3104
e-Mail: jmoore@icc.state.il.us

Eric Schlaf
Energy Division
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
e-Mail: eschlaf@icc.state.il.us

Scott Struck
Financial Analysis Division
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
e-Mail: sstruck@icc.state.il.us

David Eley
Interstate Power Company and South
Beloit Water, Gas and Electric Company
12014 Waxwing Court
Roscoe, IL 61703
e-Mail: daveeley@alliant-energy.com

Darcy Hackel
Regulatory Affairs and Restructuring
Alliant Energy
P.O. Box 192
222 W. Washington Ave.
Madison, WI 53701-0192
e-Mail: darcyhackel@alliant-energy.com

Michael S. Gillson
Manager
Union Electric Company
500 E. Broadway
East St. Louis, IL 62201
e-Mail: mgillson@ameren.com

Helen L. Liebman
Attorney for CIPS/UE
Jones, Day Reavis & Pogue
1900 Huntington Center
41 South high Street
Columbus, OH 43215
e-Mail: hlliebman@jonesday.com

Robert J. Mill
Central Illinois Public Service Company
607 East Adams Street
Springfield, IL 62739
e-Mail: bob_mill@ameren.com

Steven R. Sullivan
CIPS/UE
One Ameren Plaza
1901 Chouteau Avenue
Post Office Box 66149, MC 1300
St. Louis, MO 63166-6149
e-Mail: srsullivan@ameren.com

Michael W. Hastings
General Counsel
Assn. of Ill. Elec. Coops.
6460 S. 6th Frontage Rd.
PO Box 3787
Springfield, IL 62708-3787
e-Mail: hastings@fgi.net

Jerry Tice
Atty. For Assoc. of Illinois Electric
Cooperatives
Grosboll, Becker, Tice & Smith
101 E. Douglas
Petersburg, IL 62675

R. Lawrence Warren
Senior Assistant Attorney General
Public Utilities Bureau
100 W. Randolph St., 12th Fl.
Chicago, IL 60601
e-Mail: lwarren@atg.state.il.us

Julie A. Voeck
Director, Energy Marketing
Blackhawk Energy Services
N16 W23217 Stone Ridge Dr., Suite 100
Waukesha, WI 53188
e-Mail: jvoeck@wisvest.com

Edward J. Griffin
W. Michael Seidel
Attys. For Central Illinois Light Company
Defrees & Fiske
200 S. Michigan Ave., Suite 1100
Chicago, IL 60604
e-Mail: egriffin@defrees.com
wmseidel@defrees.com

Nick T. Shea
Rates & Regulatory Affairs
Central Illinois Light Company
300 Liberty Street
Peoria, IL 61602
e-Mail: nshea@cilco.com

David I. Fein
Christopher J. Townsend
Karen S. Way
Attys. For Enron Energy Services,
Inc., and Metropolitan Chicago
Healthcare Council
Piper Marbury Rudnick & Wolfe
203 N. LaSalle St., Suite 1800
Chicago, IL 60601-1293
e-Mail: david.fein@piperrudnick.com
chris.townsend@piperrudnick.com
karen.way@piperrudnick.com

Susan M. Landwehr
Director, Government Affairs
Enron Energy Services, Inc.
900 Second Ave. South, Ste. 890
Minneapolis, MN 55402
e-Mail: Susan_M_Landwehr@enron.com

Edward C. Fitzhenry
Attorney for IIEC
Lueders, Robertson & Konzen
1939 Delmar Ave.
P.O. Box 735
Granite City, IL 62040
e-Mail: efitzhenry@lrklaw.com

Randy W. Clemens
Chris Olsen
Beth A. O'Donnell
Public and Regulatory Affairs
Illinois Power
500 South 27th Street
Decatur, IL 62521-2200
e-Mail:
randy_clemens@illinoispower.com
chris_olsen@illinoispower.com
beth_odonnell@illinoispower.com

Owen E. MacBride
Attorney for Illinois Power
Schiff Hardin & Waite
6600 Sears Tower
Chicago, IL 60606
e-Mail: omacbride@schiffhardin.com

Kevin Scanlan
Metropolitan Chicago Healthcare Council
222 S. Riverside Plaza, 17th Floor
Chicago, IL 60606

Robert P. Jared
Regulatory Law & Analysis
MidAmerican Energy Company
106 East Second Street
Post Office Box 4350
Davenport, IA 52808
e-Mail: rpjared@midamerican.com

Jeff Schirm
MidAmerican Energy Company
716 17th Street
Moline, IL 61265
e-Mail: jaschirm@midamerican.com

Eric Bramlet
Mt. Carmel Public Utility Co.
Koger & Bramlet, P.C.
316 ½ Market Street
Mt. Carmel, IL 62863
e-Mail: kblaw@midwest.net

Julie Hextell
NewEnergy Midwest, L.L.C.
309 W. Washington, Suite 1100
Chicago, IL 60603
e-Mail: jhextell@newenergy.com

Wendy Ito
Nicor Energy, L.L.C.
1001 Warrenville Rd., Suite 550
Lisle, IL 60532-4306
e-Mail: wendyito@nicorenergy.com

Michael A. Munson
Atty. For Nicor Energy L.L.C.
Law Office of Michael A. Munson
8300 Sears Tower
233 S. Wacker Dr.
Chicago, IL 60606
e-Mail: michael@munson.com

Gerald T. Fox
James Hinchliff
Mary Klyasheff
Timothy P. Walsh
Peoples Energy Services Corporation
130 East Randolph Drive, 23rd Floor
Chicago, IL 60601
e-Mail: gtfox@pecorp.com
j.inchliff@pecorp.com
mklyash@pecorp.com
twalsh@pecorp.com

Thomas Russell
Unicom Energy, Inc.
125 S. Clark St., Ste. 1535
Chicago, IL 60603
thomas.russell@exeloncorp.com