

Staff 2.0

**Illinois Commerce Commission
Docket No. 11-0083
Staff's Data Request No. JZ 1.08**

Request: In his Direct Testimony, at page 4, Mr. Albright states that: "...transit service is available to Big River pursuant to the terms of AT&T's tariff[,] and "the question here is not whether AT&T will or won't provide Big River with transit service[,] but rather "whether Big River is entitled to ask this Commission to require the inclusion of transit traffic service in a Section 252 ICA and to arbitrate disputes over the rates, terms and conditions of that service." With respect to this statement:

- A. Please state whether it is Mr. Albright's opinion that AT&T has a continuing obligation under the Illinois Public Utilities Act to offer transit service;
- B. Please state whether it is AT&T Illinois' position that it could, assuming it provided required notice, eliminate transit service from its tariff;
- C. Please state whether it is AT&T Illinois' position that the Commission can require it to provide transit service pursuant to the Illinois Public Utilities Act.

Response: AT&T Illinois objects to this request on the grounds that it calls for legal opinions. Notwithstanding and without waiving this objection, AT&T Illinois states that Mr. Albright does not have an opinion as to whether AT&T has a continuing obligation under the Illinois Public Utilities Act to offer transit service. AT&T further states that it has no plans to eliminate transit service from its tariff. Furthermore, even if AT&T Illinois were to file an amendment to its tariff to eliminate transit service from the tariff (and it has no intention of doing so), the Illinois Commerce Commission (the "Commission") would have the ability to suspend and investigate such a tariff amendment.

AT&T Illinois further states that it recognizes that, although the Commission has previously ruled that transiting is not required by state law (see Orders cited at pages 23 to 24 of Mr. McPhee's testimony), it has also determined in certain past arbitrations that, based on public policy considerations, where requested by a particular CLEC, rates, terms and conditions of transiting service offered by AT&T Illinois to those CLECs should be included in Section 252 interconnection agreements ("ICAs"). For the reasons discussed in Mr. McPhee's testimony, AT&T Illinois continues to believe that the Commission does not have authority to order the inclusion of transit service in the ICA being arbitrated in this case. Nonetheless, in light of prior Commission decisions and in order to simplify the issues in this case, AT&T Illinois will voluntarily agree to include transiting service in a Transiting Appendix to the ICA with Big River, subject to the rates, terms and conditions which have been proposed by AT&T Illinois in connection with Arbitration Issues 4 and 5, as set forth in the Decision Point List ("DPL") attached to the Petition and discussed at pages 30-38 of Mr. McPhee's testimony. As a result of this voluntary agreement, there should be no need for the Commission to address Issue 3 as listed in the DPL ("Should AT&T be required to provide transit service under the ICA").

Responsible Witnesses: Scott McPhee and Carl Albright

OFFICIAL FILE

C. C. DOCKET NO. 11-0083
 Staff Exhibit No. 2.0
 Witness James Zelnick
 Date 4-5-11 Reporter cb

Illinois Commerce Commission
Docket No. 11-0083
Staff's Data Request No. JZ 1.09

Request: In his Direct Testimony, at page 4, Mr. Albright states "as discussed by Mr. McPhee, AT&T has offered to enter into a negotiated commercial agreement, not subject to regulation under the 1996 Act, for the provision of transit traffic service to Big River."

- A. Please state whether the offer referred to by Mr. Albright guarantees, under existing Federal and State law, that AT&T Illinois will provide Big River with transit traffic service.
- B. Please state whether the offer referred to by Mr. Albright is conditioned on Big River's acceptance of the rates, terms, and conditions contained in any negotiated agreement.
- C. Under the terms of the offer referred to by Mr. Albright, please state whether AT&T Illinois can unilaterally refuse to provide Big River transit service if any rates, terms, and conditions proposed by Big River are unacceptable to AT&T Illinois.

Response:

- A. AT&T Illinois objects to this request on the grounds stated in response to Staff Data Request 1.03. AT&T Illinois objects to this request on the grounds that it calls for a legal opinion. Notwithstanding and without waiving these objections, AT&T Illinois states that the offer referred to by Mr. Albright and discussed by Mr. McPhee is an offer to enter into a negotiated commercial agreement. If Big River were to accept this offer and enter into a such an agreement, AT&T Illinois would have a contractual obligation to provide Big River with transit service in accordance with the rates, terms and conditions of the agreement.
- B. As stated in response to subpart A, the offer referred to by Mr. Albright and discussed by Mr. McPhee is an offer to enter into a negotiated commercial agreement. As the name necessarily implies, there would be no "agreement" unless both parties came to an agreement on the rates, terms and conditions to be contained in such an agreement. Both parties would be bound to comply with the rates, terms and conditions of such an agreement.
- C. See responses to Subparts A and B. If the parties were unable come to an agreement on rates, terms and conditions for a negotiated commercial agreement, transit service would still be available to Big River under the terms of AT&T Illinois' tariff. See also response to Data Request JZ 1.08.

Responsible Witness: Scott McPhee