

DIRECT TESTIMONY

OF

DR. JAMES ZOLNIEREK

POLICY DIVISION

ILLINOIS COMMERCE COMMISSION

ILLINOIS ELECTRIC COOPERATIVE

APPLICATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS  
CARRIER FOR THE PURPOSES OF RECEIVING FEDERAL UNIVERSAL SERVICE  
SUPPORT PURSUANT TO SECTION 214(e)(2) OF THE TELECOMMUNICATIONS  
ACT OF 1996

ICC DOCKET NO. 16-0191

PUBLIC VERSION

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JULY 13, 2016

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1 **I. Introduction and Summary**

2 **Q. Please state your name and business address.**

3 A. My name is James Zolnierек and my business address is 527 East Capitol Avenue,  
4 Springfield, Illinois 62701.

5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by the Illinois Commerce Commission (“Commission” or “ICC”)  
7 as the Director of the Policy Division within the Public Utility Bureau.

8 **Q. Please describe your education background.**

9 A. I earned my Doctor of Philosophy degree in economics from Michigan State  
10 University in 1996. Prior to joining the Illinois Commerce Commission, I was  
11 employed by the Federal Communications Commission (“FCC”) as an Industry  
12 Economist in the Common Carrier Bureau, Industry Analysis Division.

13 **Q. What is the purpose of your testimony?**

14 A. Illinois Electric Cooperative (“IEC”) filed a petition (“Petition”) with the  
15 Commission on March 17, 2016 seeking designation as an eligible  
16 telecommunications carrier (“ETC”) for the purpose of receiving federal universal  
17 service fund (“USF”) support. Illinois Electric Cooperative additionally filed both  
18 the Direct (“Griffin Direct”) and Supplemental (“Griffin Supplemental”)   
19 Testimony of Bruce N. Griffin on March 17, 2016 and June 10, 2016, respectively.  
20 My testimony addresses the appropriate requirements a company should comply  
21 with to be designated as an ETC for these purposes. My testimony also evaluates

22 whether IEC satisfies all appropriate regulatory requirements. Finally, my  
23 testimony presents recommendations to the Commission concerning the IEC's ETC  
24 petition.

25 **II. Federal Standards and Guidelines for ETC Designations**

26 ***A. Federal Statutory Requirements for ETC Designation***

27 **Q. Please describe the statutory framework governing Commission designation**  
28 **of ETCs in Illinois.**

29 A. Pursuant to the Federal Telecommunications Act of 1996 ("1996 Act"), and in  
30 particular Section 214(e)(2) (47 U.S.C. §214(e)(2)), state commissions are  
31 authorized to designate common carriers subject to their jurisdiction as eligible to  
32 receive federal USF support. Such carriers, when designated as ETCs by state  
33 commissions, are required by Section 54.101(b) of the FCC's rules (47 C.F.R.  
34 §54.101(b)) to offer supported voice telephony service in order to receive federal  
35 USF support for the provision of such services. Currently, supported services are  
36 defined in Section 54.101(a) of the Rules of the Federal Communications  
37 Commission (FCC) (47 C.F.R. §54.101(a)) as voice telephony services that:

38 provide voice grade access to the public switched network or its  
39 functional equivalent; minutes of use for local service provided at  
40 no additional charge to end users; access to the emergency services  
41 provided by local government or other public safety organizations,  
42 such as 911 and enhanced 911, to the extent the local government in  
43 an eligible carrier's service area has implemented 911 or enhanced  
44 911 systems; and toll limitation services to qualifying low-income  
45 consumers as provided in subpart E of this part.

46

47 Sections 214(e)(1) and 214(e)(2) of the 1996 Act (47 U.S.C. §214(e)(1) and 47  
48 U.S.C. §214(e)(2)) provide that carriers must meet certain requirements in order to  
49 be designated as ETCs. These Sections also prescribe requirements which state  
50 commissions must follow in designating carriers as ETCs. In particular, Section  
51 214(e)(1) and (e)(2) of the 1996 Act state:

52 (1) ELIGIBLE TELECOMMUNICATIONS CARRIERS.--A  
53 common carrier designated as an eligible telecommunications  
54 carrier under paragraph (2) or (3) shall be eligible to receive  
55 universal service support in accordance with Section 254 and shall,  
56 throughout the service area for which the designation is received--

57 (A) offer the services that are supported by Federal universal  
58 service support mechanisms under Section 254(c), either using its  
59 own facilities or a combination of its own facilities and resale of  
60 another carrier's services (including the services offered by another  
61 eligible telecommunications carrier); and

62 (B) advertise the availability of such services and the charges  
63 there for using media of general distribution.

64 (2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS  
65 CARRIERS.-- A State commission shall upon its own motion or  
66 upon request designate a common carrier that meets the  
67 requirements of paragraph (1) as an eligible telecommunications  
68 carrier for a service area designated by the State commission. Upon  
69 request and consistent with the public interest, convenience, and  
70 necessity, the State commission may, in the case of an area served  
71 by a rural telephone company, and shall, in the case of all other  
72 areas, designate more than one common carrier as an eligible  
73 telecommunications carrier for a service area designated by the State  
74 commission, so long as each additional requesting carrier meets the  
75 requirements of paragraph (1). Before designating an additional  
76 eligible telecommunications carrier for an area served by a rural  
77 telephone company, the State commission shall find that the  
78 designation is in the public interest.

79 ETCs must satisfy the requirements of Section 214(e)(1), requirements prescribed  
80 by the FCC for ETC designation under Section 214(e)(2), and all additional

81 requirements appropriate and reasonable to ensure that an ETC designation is  
82 consistent with the public interest, convenience, and necessity.<sup>1</sup>

83 **Q. Are there any pending changes to the requirements you describe above?**

84 A. Yes. On April 27, 2016, the FCC released an order which changes the requirements  
85 of Section 54.101 of its rules.<sup>2</sup> In particular, the FCC added, within Section 54.101,  
86 a definition of supported broadband Internet access services, defining such services  
87 as those that:

88 provide the capability to transmit data to and receive data by wire or  
89 radio from all or substantially all Internet endpoints, including any  
90 capabilities that are incidental to and enable the operation of the  
91 communications service, but excluding dial-up service.  
92

93 ETCs subject to high-cost public interest obligations to offer broadband Internet  
94 access services will, when this rule change becomes effective, be required by  
95 Section 54.101(c) of the FCC's rules (47 C.F.R. §54.101(c)) to offer broadband  
96 Internet access services in order to receive federal USF support. Additionally, the  
97 FCC's new rules make explicit, in Section 54.101(d) of the FCC's rules (47 C.F.R.  
98 §54.101(d)), that ETCs must comply with Lifeline provisions of the FCC's rules  
99 (Subpart E of 47 C.F.R. §54). These changes are not effective until approved by  
100 the Office of Management and Budget.

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<sup>1</sup> *In the Matter of Federal-State Joint Bd. On Universal Service, Highland Cellular, Inc.*, 2004 WL 770088 (F.C.C. 04-37), ¶21 (Apr. 12, 2004) ("Highland Cellular ETC Order").

<sup>2</sup> *In the Matter of Lifeline and Link Up Reform and Modernization*, 2016 WL 1706939 (F.C.C. 16-38), Appendix A (Apr. 27, 2016) ("2016 Lifeline Order").

101 ***B. FCC Guidelines for ETC Designation***

102 **Q. What types of requirements does the FCC impose upon carriers seeking ETC**  
103 **designation?**

104 A. In cases where carriers seeking ETC designation are not subject to the jurisdiction  
105 of state commissions, the FCC is assigned by Section 214(e)(6) of the 1996 Act (47  
106 U.S.C. §214(e)(6)) the task to perform ETC designation.<sup>3</sup> There are two general  
107 types of requirements that the FCC imposes upon carriers seeking ETC designation:  
108 (1) requirements imposed on carriers seeking designation from the FCC when the  
109 FCC is performing the ETC designation; and (2) requirements imposed on all  
110 carriers seeking designation (whether from the FCC or a state commission).

111 The FCC's public interest requirements for its own evaluations are contained in  
112 Section 54.202 of the FCC rules (47 C.F.R. §54.202) as well as its ETC Orders.<sup>4</sup>  
113 While similarly required to make the public interest determination for ETC  
114 designation, state commissions are not subject to the public interest standards of  
115 Section 54.202(b) of the FCC rules or any specific requirements contained in it.  
116 Instead, state commissions must make the public interest determination pursuant to  
117 Section 54.201(c) of the FCC rules (47 C.F.R. §54.201(c)) and Section 214(e)(2)  
118 of the 1996 Act. While the eligibility requirements of Section 54.202(a)-(b) are not

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<sup>3</sup> 47 U.S.C. §214(e)(6).

<sup>4</sup> See, e.g., *In the Matter of Federal-State Joint Bd. On Universal Service*, 2005 WL 646635 (F.C.C. 05-46), ¶28 (Apr. 21, 2005) ("ETC Order"); and *In the Matter of Lifeline and Link Up Reform and Modernization*, 2012 WL 387742 (FCC 12-11), ¶390 (Feb. 2012) ("Lifeline Reform Order").

119 binding upon state commissions, the FCC has encouraged them to apply those  
120 requirements to state ETC designation, as follows:

121 We encourage state commissions to require ETC applicants over  
122 which they have jurisdiction to meet these same conditions and to  
123 conduct the same public interest analysis [as are imposed by FCC  
124 Rules].<sup>5</sup>

125 Thus, in carrying out its responsibility of granting ETC designation for carriers not  
126 subject to the jurisdiction of state commissions, the FCC imposes public interest  
127 requirements through its Section 54.202 rules and related orders, which it  
128 recommends but does not require state commissions to follow.<sup>6</sup>

129 In addition to the requirements that the FCC has established for its own ETC  
130 designation under Section 214(e)(6), the FCC has prescribed requirements that all  
131 designated ETCs must meet and that all state commissions must follow when  
132 designating ETCs.<sup>7</sup> These requirements are binding on state commissions.

133 **Q. What guidance has the FCC provided regarding the burden of proof that**  
134 **designation of an ETC is in the public interest?**

135 A. In the ETC Order, the FCC concluded the following concerning an ETC applicant's  
136 burden of proof:

137 In determining whether an ETC has satisfied these criteria [the  
138 factors weighed in analyzing the public interest ramifications], the

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<sup>5</sup> ETC Order, at ¶¶19-20.

<sup>6</sup> ETC Order, at ¶58. The Commission has found that the requirements set forth in §214(e) of the Act and the ETC Order and FCC rules provide appropriate minimum guidelines for this Commission in evaluating the ETC petitions. *See, e.g., Order in TracFone Wireless, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the State of Illinois for the Limited Purpose of Offering Lifeline Service to Qualified Households*, Docket No. 08-0213, September 10, 2009, 21.

<sup>7</sup> *See, e.g., Lifeline Reform Order* at ¶¶387 - 388.

139 Commission [FCC] places the burden of proof upon the ETC  
140 applicant.<sup>8</sup>

141 **II. Evidence of Eligibility**

142 **Q. Should IEC bear the burden of proof in this proceeding?**

143 A. Yes. While I am not an attorney, it is my understanding that the general rule is that  
144 a petitioning party bears the burden of proof in Commission proceedings. Further,  
145 in ETC cases it is the company seeking ETC designation that possesses, and  
146 sometimes alone possesses, the information necessary to make designation  
147 determinations. Consequently, placing the burden of proof on IEC to demonstrate  
148 that its designation as an ETC is consistent with the public interest, convenience,  
149 and necessity, from a purely practical standpoint, is the only way to ensure that all  
150 ETC requirements, including concrete public interest benefits, are met. Further,  
151 placing the burden of proof on IEC, is consistent, as explained above, with the  
152 manner in which the FCC has conducted its own ETC designations pursuant to  
153 §214(e)(6).

154 **Q. The Petition and testimony filed by IEC in this proceeding include**  
155 **commitments IEC offers as proof that it meets the requirements necessary and**  
156 **sufficient to be designated as an ETC. Are these commitments firm?**

157 A. No. IEC is seeking an ETC designation from the Commission so that it will be  
158 eligible to receive telecommunications subsidies through one or more FCC USF  
159 programs including the FCC's Connect America Fund ("CAF") program. If IEC is

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<sup>8</sup> ETC Order, at ¶44.

160 not awarded CAF or other FCC funding – and, as seen below, there is no assurance  
161 IEC will receive such funds – it will not build-out to high cost areas and therefore  
162 will not fulfill the commitments contained in its Petition and testimony.<sup>9</sup>

163 **Q. Is IEC assured of receiving CAF or other FCC USF funding?**

164 A. No. The FCC’s CAF program provides support through a combination of a  
165 forward-looking cost model of the cost of constructing modern multipurpose  
166 networks and a competitive bidding process.<sup>10</sup> CAF model-based support in areas  
167 served by incumbent telephone companies that are “price cap” carriers for federal  
168 ratemaking purposes was made available only to the incumbent price cap telephone  
169 companies. In such areas, competitive providers such as IEC will have the  
170 opportunity to compete for CAF funding in areas where incumbent price cap  
171 telephone companies declined such funding, or where the FCC otherwise  
172 determined to fund deployment through the competitive process. Whether or not  
173 IEC receives CAF funding will depend on the outcome of a competitive bidding  
174 process. Accordingly, there is no assurance that IEC will receive any such funding.  
175 Nor is there any assurance that IEC will receive high-cost USF funding from other  
176 USF funding sources that the FCC may offer in the future.

177 **Q. How has IEC proposed to define its ETC service area?**

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<sup>9</sup> See IEC Response to Staff Data Request JZ 1.07 included as Attachment A.

<sup>10</sup> *In the Matter of Connect America Fund*, 2016 WL 3034969 (F.C.C. 16-64), ¶ 4 (May 26, 2016) (“2016 CAF Order”).

178 A. IEC proposed service area is represented by a list of counties.<sup>11</sup>

179 **Q. Will the FCC provide CAF funding by county?**

180 A. No. The FCC specifically determined not to provide support at the county level  
181 and instead determined to provide support by census block group containing or  
182 census tract.<sup>12</sup>

183 **Q. Will IEC meet the commitments contained in its Petition and testimony**  
184 **throughout its proposed ETC service area?**

185 A. Not necessarily. IEC intends to expand its service into the counties in its designated  
186 service area, including municipalities, unincorporated areas, and other units of  
187 government only as prospective CAF support allows.<sup>13</sup> Thus, IEC’s deployment  
188 plan and provisioning of service depend on where, within its designated ETC  
189 service area, it is able to obtain CAF support through the competitive process.

190 **Q. Does IEC have the financial capability to offer service in its ETC service area**  
191 **absent federal support?**

192 A. **\*\*\*Begin Conf XX**  
193 **XX**  
194 **XXXXXXXXXXXXX<sup>14</sup> End Conf\*\*\***

195 **Q. IEC asserts that it will comply with service requirements applicable to the**  
196 **support that it receives. Has IEC demonstrated that it will meet such**  
197 **requirements?**

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<sup>11</sup> Petition, 9. See also IEC Response to Staff Data Request JZ 1.04 included as Attachment A.  
<sup>12</sup> 2016 CAF Order, ¶ 89.  
<sup>13</sup> IEC Response to Staff Data Request JZ 1.04 included as Attachment A.  
<sup>14</sup> Giffin Supplemental, 6.

198 A. No. IEC has not yet received, and may never receive, federal USF support. As  
199 such, it cannot know what, if any, requirements that will be attached to such support  
200 and cannot offer proof that it can meet all such commitments. For example, while  
201 IEC offers a proposed deployment plan, IEC cannot know whether it will be able  
202 to achieve its proposed deployment plan without knowing where it will receive  
203 federal support. It is also impossible at this time to determine whether IEC’s  
204 proposed deployment plan will meet FCC deployment requirements that attach to  
205 any grant of CAF support. \*\*\*Begin Conf XXXXXXXXXXXXXXXXXXXXXXXX

206 XX

207 XXXXXXXXXXXXXXXXXXXX.<sup>15</sup> XX

208 XX

209 XX

210 XX. End Conf\*\*\*

211 **Q. Is it your opinion that IEC is unqualified to be designated an ETC?**

212 A. No. IEC’s Petition, testimony, and its history of successfully operating electric  
213 distribution assets in Illinois demonstrate that it has the managerial and technical  
214 capability to offer telecommunications services in Illinois and to meet obligations  
215 imposed upon it by rules, regulations, and funding requirements. What IEC has  
216 failed to do, however, is offer a plan that shows how it will comply all the  
217 requirements applicable to the support it receives or that it is financially capable of

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<sup>15</sup> Id.

218 meeting such requirements. This is because IEC does not know what, if any,  
219 funding it will receive or what requirements will be imposed upon it as a condition  
220 of receipt of any funding. Further, IEC has been forthright with the Commission is  
221 stating that it cannot and will not pursue the project without funding.

222 **III. ETC Designation Process for Recipients of Competitive CAF Funding**

223 **Q. Does IEC need to be designated as an ETC to participate in order to compete**  
224 **for CAF funding?**

225 A. Not in my opinion. The FCC has determined that providers can compete for CAF  
226 funding and obtain ETC designation after the announcement of winning bidders.<sup>16</sup>  
227 The FCC requires winning bidders to submit proof of their ETC designation within  
228 180 days of the public notice issued by the FCC announcing winning bidders.<sup>17</sup>  
229 The FCC will provide additional time beyond 180 days if a winning bidder has  
230 engaged in good faith efforts to obtain ETC designation, but the proceeding is not  
231 yet complete.<sup>18</sup>

232 **Q. What would be the impact of designating IEC as an ETC prior to IEC knowing**  
233 **whether it will receive any CAF or other FCC funding?**

234 A. Designating IEC as an ETC now would potentially remove any pressure placed  
235 upon IEC and/or the Commission to timely make an ETC designation in the event  
236 IEC is awarded CAF funding.<sup>19</sup> As noted above, however, the FCC has provided

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<sup>16</sup> Id, ¶ 147.

<sup>17</sup> Id, ¶ 149.

<sup>18</sup> Id, ¶ 152.

<sup>19</sup> 2016 CAF Order, ¶ 141.

237 designating agencies such as the Commission, what it considers adequate time to  
238 conduct post award designations.

239 Alternatively, designating IEC as an ETC now could result in IEC being designated  
240 in areas in which it will not receive any federal USF funding or with respect to  
241 programs/mechanisms from which it does not receive funding. In such cases, IEC  
242 will be an ETC in such areas or for such programs/mechanisms, but will not, in  
243 effect, operate as such.

244 **Q. Has the FCC signaled any changes to how it views the ETC designation**  
245 **processes?**

246 A. Yes. Recently, the FCC stated the following:

247 Indeed, as we explain above, we interpret section 214(e) to  
248 accommodate ETC designations specific to particular universal  
249 service mechanisms or programs. Insofar as ETC designations can  
250 be obtained on a mechanism- or program-specific basis, we likewise  
251 find it reasonable to interpret section 214(e)(4) as allowing ETC  
252 designations to be relinquished on a mechanism- or program-  
253 specific basis.<sup>20</sup>

254 As this passage indicates, the FCC envisions going forward that providers will  
255 obtain and relinquish ETC designations based upon specific USF programs or  
256 mechanisms they are participating in. For example, they may obtain ETC  
257 designation to provide only Lifeline supported Broadband Internet Access Service.

258 An ETC might also obtain an ETC designation for purposes of providing high-cost

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<sup>20</sup> 2016 Lifeline Order, ¶ 334.

259 funding supported services, but specifically request that it not be required to provide  
260 Lifeline supported services.

261 **Q. Is this type of targeted ETC designation consistent with IEC's Petition?**

262 A. No. While IEC may have plans to compete for USF support through the CAF  
263 competitive allocation bidding process, what IEC seeks in this case is a more  
264 ambiguous ETC designation that is not targeted to any particular USF funding  
265 support program/mechanism and that applies for an area broader than what it might  
266 ultimately serve in its capacity as a designated ETC.

267 **Q. Should the Commission provide a generic ETC designation to IEC?**

268 A. No. Based upon IEC's Petition, testimony, and history of operations in Illinois I  
269 have no reason to believe that IEC will not be able to prove that it has the  
270 managerial, technical, and financial ability to comply with the obligations imposed  
271 upon it by rules, regulations, and funding requirements that it is ultimately required  
272 to comply with. Nevertheless, because it does not yet know what those  
273 requirements are, it is simply not in a position to offer the requisite proof at this  
274 time.

275 IEC cannot specify what programs/mechanisms it will use its ETC designation for  
276 because it has not yet been awarded funding under any such program/mechanism  
277 for any particular area. I do not recommend the Commission grant an ETC  
278 designation for all possible FCC USF support programs/mechanisms for IEC's  
279 entire designated service area because in the event IEC does not receive funding

280 under all such support programs/mechanisms in this entire area, this will require  
281 IEC to either relinquish its ETC designation with respect to areas where it does not  
282 receive support from any such programs/mechanisms or to not fully fulfill its ETC  
283 obligations.

284 **IV. Summary of Findings and Recommendation**

285 **Q. Please summarize your findings and recommendation concerning IEC's**  
286 **wireless ETC application.**

287 A. The Commission should not designate IEC as an ETC as this time. The  
288 Commission should instead deny IEC's Petition, specifying the no prejudice  
289 attaches to such denial, and invite IEC to reapply if and when it is awarded funding  
290 under one or more federal USF support programs/mechanisms.

291 **Q. Does this conclude your testimony?**

292 A. Yes.

ICC STAFF EXHIBIT 1.0, ATTACHMENT A

ILLINOIS ELECTRIC COOPERATIVE

APPLICATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS  
CARRIER FOR THE PURPOSES OF RECEIVING FEDERAL UNIVERSAL SERVICE  
SUPPORT PURSUANT TO SECTION 214(e)(2) OF THE TELECOMMUNICATIONS  
ACT OF 1996

ICC DOCKET NO. 16-0191

JULY 13, 2016

**Illinois Commerce Commission Docket 16-0191**  
**Illinois Electric Cooperative Response to Staff Data Request JZ 1.01-1.11**

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JZ 1.04 Page 9 of IEC's Petition states "Exhibit D ... lists Illinois municipalities and counties comprising IEC's proposed designated ETC service area." Please confirm that Exhibit D does not identify any municipalities.

Answer

Yes, the Exhibit lists counties as IEC intends to expand service into the listed counties. While it is IEC's understanding that the municipalities in the counties would be included, we intend to include municipalities, unincorporated areas, and other units of local government as prospective CAF II support allows.

**Respondent**

**Name:** Bruce N. Giffin

**Title:** General Manager, Illinois Electric Cooperative

**Phone Number:** 217 742-3128

**Date:** May 12, 2016

**Illinois Commerce Commission Docket 16-0191**  
**Illinois Electric Cooperative Response to Staff Data Request JZ 1.01-1.11**

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JZ 1.07 Please state whether IEC's commitment to provide Lifeline services is conditional on IEC's receipt of high-cost, CAF, and/or Rural Broadband Experiment funding. If so, please explain IEC's commitment to provide Lifeline services in the absence of any high-cost, CAF, or Rural Broadband Experiment funding including IEC's build out plan by census block in the absence of high-cost, CAF, or Rural Broadband Experiment funding.

Answer

Without an Eligible Telephone Company designation and receipt of CAF funding, or other FCC funding, there will be no build out in high-cost areas.

Respondent
<b>Name:</b> Bruce N. Giffin
<b>Title:</b> General Manager, Illinois Electric Cooperative
<b>Phone Number:</b> 217 742-3128
<b>Date:</b> May 12, 2016