December 18, 2001

Ms. Donna Caton
Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Re: Illinois Power Company
Docket No. 01-0432

Dear Ms. Caton:

The Initial Brief on behalf of the Illinois Industrial Energy Consumers has been filed electronically with the Clerk of the Illinois Commerce Commission this date. Electronic copies of the foregoing have been provided to parties on the service list.

The Hearing Examiner has been provided a hard copy by overnight mail.

Sincerely,

Eric Robertson

ECF/alb

cc: Service List

Enclosure/34444

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER COMPANY	:	
	:	Docket No. 01-0432
Proposed revisions to delivery services tariff	:	
sheets and other sheets.	:	

ILLINOIS INDUSTRIAL ENERGY CONSUMERS' INITIAL BRIEF

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ILLINOIS INDUSTRIAL ENERGY CONSUMERS' INITIAL BRIEF

INTRODUCTION

A. Description Of IIEC's Witnesses And Testimonies

In the course of this proceeding, the Illinois Industrial Energy Consumers (IIEC)[1] sponsored the testimonies of several witnesses: Robert Stephens testified as to the impact of Illinois Power Company's (IP) rates on the promotion of a competitive market, IP's proposed requirements for customers with standby service, charges for reactive demand, charges for transformation, and various aspects of Rider ISS, Rider PRS and Rider PPO. (IIEC Ex. 1). In his rebuttal testimony, Mr. Stephens responded to the various rebuttal testimonies of IP witnesses and certain direct testimonies of the Illinois Commerce Commission Staff (Staff) witnesses, again focusing on the same subject matters as addressed in his direct testimony, plus issues related to transmission service. (IIEC Ex. 4). IIEC also sponsored the direct testimony of Nicholas Phillips who addressed selected revenue requirement issues, cost of service, and the

[1] IIEC member companies participating in this proceeding include the following: A. E. Staley Manufacturing Company, Air Products & Chemicals Company, Archer-Daniels-Midland Company, Bunge North America, Inc., Cargill, Inc., Caterpillar Inc., Continental General Tire Company, Granite City Steel Company, Olin Corporation, and Spectrulite Consortium, Inc.

delivery service rate level proposals of IP (IIEC Ex. 3). Mr. Phillips responded to the rebuttal testimonies of certain IP witnesses, and generally addressed the same subject matters as outlined in his direct testimony. (IIEC Ex. 6).[2]

B. The State Of Retail Competition In The IP Service Territory

IIEC has long been an advocate of a competitive retail market in Illinois. The Illinois Commerce Commission (Commission) knows well IIEC's many arguments and positions in this regard. Notwithstanding IIEC's enthusiasm for a bonafide and working retail energy market, we understand that the development of such a market takes some amount of time in order to ensure that all the rules and other structures are in place. Still, by the time the Commission enters its order in this docket, customers will have had the "opportunity" for retail choice for well over two years, and it is fair to say the level of retail competition in the IP service territory is dismal.

IIEC's description of the retail electric market in the IP service territory is not a matter of rhetoric, but is a matter of fact:

- Less than 2% of the non-residential customers in the IP service territory have opted for delivery service.
- On a kilowatthour usage basis, 34.4% of eligible customer usage has switched to delivery services. Nearly 40% of this amount is accounted for by one customer that switched in August 2000, so that only 20% of all other eligible customer usage has switched.
- 92% of IP delivery service customers greater than 1 MW are utilizing the power purchase option.

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[2] IIEC also submitted the pre-filed direct and rebuttal testimonies of Michael Gorman, IIEC Exhibits 2 and 5, respectively. The pre-filed testimonies were not admitted into evidence in light of the settlement reached regarding rate of return, as set forth in the Staff Exhibit 20.

- Only 9 of IP's 222 customers in the 1 MW and above size range are utilizing a competitive power supply.

- 90% of the 23% of commercial and industrial customers over 200 kW taking delivery services, are taking PPO.

- Only 0.5% of the 64,000 eligible customers that are smaller than 1 MW have switched to delivery service.

- Less than 1% of IP's eligible customers greater than 1 MW in size had switched to a competitive power supply by the end of 2000.

- At the current rate of customer switching, in 20 years only 16% of IP's non-residential customers will have switched to delivery services.

(IIEC Ex. 1 at 2, 5-6; IIEC Ex. 4 at 2, 4; IP Ex. 5.11 at 10; Voiles Tr. 593, 617).

There are matters that are beyond the Commission's control in terms of what can be done to enhance customer choice in the IP service territory. However, where the Commission can exercise its authority to promote the retail market for electricity in the IP service territory, every opportunity to do so should be pursued. Indeed, the Electric Service Customer Choice and Rate Relief Law of 1997 (Customer Choice Law) mandates that the Commission undertake this endeavor: "The Illinois Commerce Commission should act to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers.... "All consumers must benefit in an equitable and timely fashion from the lower costs for electricity that result from retail and wholesale competition..." (220 ILCS 5/16-101A(d) and (e)).

In this proceeding, the Commission must also ensure that it sets just and reasonable delivery service rates. Just and reasonable delivery service rates, among other considerations, should consider the impact of the proposed rate increase upon customers. Consider the proposed increases under IP's proposed rates for a 5 MW hypothetical customer driven by the service voltage in which they take service:

SERVICE VOLTAGE	PERCENTAGE INCREASE
12.47 kV and below	16%
34.kV to 69 kV	55%
138 kV and above	75%

(IIEC Ex. 4 at 12)

IP has a direct financial incentive to artificially assign more of the revenue requirement increase to large customers than to small customers. IP will not net any increase in revenues for delivery services to customers that are paying positive transition charges. As delivery service rates increase, transition charges decrease; if delivery service rates decrease, transition charges increase and, so in this regard, IP is revenue indifferent. Because many of IP's largest customers have a zero transition charge, it can realize more net revenue from increasing delivery service rates to customers with a zero transition charge. (IIEC Ex. 1 at 10).

The Commission should be vigilant against allowing IP to collect revenues and impose charges that are not cost justified and are punitive in application. The Commission should support rate design changes to IP's delivery service tariffs that will enhance competition and the development of a competitive market in the IP service territory.

C. Summary Of IIEC's Recommendations

A summary of IIEC's positions in this docket are as follows:

- Adopt IIEC's recommendations regarding functionalization and allocation of A&G expense and net G&I Plant costs. IP's near threefold increases for those costs and expenses for distribution should be rejected.

- Adopt IIEC's recommendation to maintain the current rate structure within the demand metered class by increasing current changes by an equal percentage.

- Modify IP's SC 110 tariff to allow a customer who is otherwise eligible for delivery service, to provide a thirty (30) day notice of its intent to leave bundled service, without regard to the provisions of any bundled service tariff. The Commission also could modify the bundled service tariff to accomplish this objective.

- Provide greater flexibility for customers who have tested the competitive market only to find that it is not favorable to bundled service at that time. The Commission should modify SC 110 to specifically provide: (1) customers who were previously taking bundled service can return to that service under the same primary term status held when they originally switched from bundled service to delivery service; and (2) customers who would otherwise lose the right to take service under interruptible rates that have been closed to new customers, e.g., Rider S and Rate SC 30 have a right to return to those rates.

- IP's proposal with regard to standby charges for delivery service can result in disparate treatment between customers who have generating capability and customers that do not. The Commission should allow IP to enter into contracts with customers for pre-established and agreed levels of standby delivery capacity, and should reject IP's proposal to penalize customers by <u>tripling</u> the demand charge, distribution capacity charge and transformation charge applied to the excess of the customer's maximum demand over its standby capacity requirement, without regard to what may have caused the maximum demand to exceed the contracted standby capacity requirement in the first place.

- The Commission should reject IP's proposal to charge a transformation rate of $0.50 per kW for customers below 3 MW while charging $0.75 per kW for customers greater than 3 MW. All customers should be charged the same transformation charge.

- The Commission should not approve IP's proposed Rider ISS as currently constituted, as it includes numerous markups on the price of energy, which are not cost-based, and provides for inflated transmission charges that do not take into account the time of use of the transmission system or the customer's load profile.

- The Commission should not approve IP's tariffs that would deny RESs the right to be liable for transmission service charges.

- The Commission should modify Rider PRS to provide for both the hourly pricing option as originally proposed by IP along with IIEC's recommended modifications, and the option to utilize bundled service tariffs for the partial requirements load.

- The Commission should reject IP's proposal to modify its Rider PPO by including Factor A4c (energy imbalance) at this time.

I. RATE BASE

B. Functionalization of G&I Plant Accounts[3]

IP originally requested a net level of General and Intangible (G&I) plant investment in its distribution service rate base of $191,564,000. That amount was revised by IP to $180,974,000. (*See* IP Ex. 3.15 at 3, Lines 2 & 3 - 24 & 25). IIEC proposes a level of net G&I plant for distribution rate base of $111,110,000. IIEC's proposal is a reduction in net G&I plant of $80.5 million from IP's original request and $69.9 million from IP's revised request. However, IIEC's proposed level of net G&I plant is a $35.9 million increase ($111.1 million - $75.2 million) over the level of G&I plant allowed by the Commission in the 1999 DST case. (IIEC Ex. 3, Sch.2).

IP originally requested a combined level of depreciation and amortization expense for G&I plant of $12.4 million which was revised to $12.2 million. Based on the level of net G&I plant, IIEC recommends a level of depreciation and amortization expense for G&I plant of $7.2 million as shown on IIEC Exhibit 3, Sch 2. This is a reduction of $5.0 million from IP's revised request.

IP originally requested an Administrative and General (A&G) expense level of $47.1 million which was revised to $41.8 million. IIEC recommends an appropriate level of A&G expenses for distribution service of $16.8 million. This represents a reduction of $30.3 million from IP's original request and a reduction of $25.0 million from IP's revised request. (IIEC Ex. 3, Sch. 1)

It is IIEC's opinion that IP should not be allowed to increase the amount of A&G expense

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[3] The arguments for functionalization and allocation of A&G expense and G&I Plant are basically the same and the recommended method of allocation is the same for each. Therefore, in order to reduce the length of the brief and reduce repetition IIEC addresses both issues here.

associated with distribution service, nor should IP be allowed to increase the net amount of G&I Plant costs associated with distribution service, as it proposes. The better approach is to allow A&G expense to increase in proportion to the authorized increase in other (non-A&G) O&M expense in this case. IIEC recommends the same approach with regard to net G&I Plant costs, that is, these costs be increased in proportion to the authorized increase in other (non-A&G) O&M expense.

Before proceeding further, it is appropriate to explain A&G expenses. These expenses are primarily related to the corporate level activities of the utility such as the salaries of corporate officials, pensions and benefits, injuries and damages, office supplies, and miscellaneous expenses often referred to as "overhead." (IIEC Ex. 3 at 5). Net G&I Plant includes patent rights, licenses, land, land rights, structures and improvements, furniture, transportation equipment, stores and shop equipment, which are not properly includible in other functional plant accounts. (IP Ex. 1.62)

The Commission should be wary of IP's intentions regarding these expenses. The requested increases in A&G expenses and net G&I Plant costs drive the increase in the revenue requirement in this proceeding. The requested increases in A&G expenses and G&I Plant costs account for about 60% of the revenue requirement sought by IP. (IIEC Ex. 3 at 3). In a matter of two years, IP claims its A&G and net G&I Plant costs have almost tripled! A&G expense allowed in the 1999 DST case was $15.9 million; initially IP requested $47.1 million which was later revised to $41.8 million. In the 1999 DST case[4] the Commission approved $75.2 million in net G&I Plant costs; in this proceeding, IP initially requested $191.6 million which was later revised to $181 million. (IIEC Ex. 3, Schs. 1 & 2, IP Ex. 3.15 at 3) Depreciation

[4] Illinois Power Company, Ill. C.C. Dkt. Nos. 99-0120 / 0134 (Aug. 25, 1999) ("Order").

expense for G&I Plant is also proposed to be increased from $2.9 million in 1999 to $12.4 million which was later revised to $12.2 million.(IIEC Ex. 3 at 4-5 and Sch. 2; IP Ex. 3.15 at 3)

By way of further demonstration, in the 1999 DST case the Commission found O&M expense in the amount of $67 million appropriate for delivery services. Therefore, for each dollar of O&M expense authorized by the Commission, approximately 23.7¢ of A&G or "overhead" was found as a reasonable cost to provide delivery services. (IIEC Ex. 3 at 5).

Given the nature of A&G expenses - overhead - it is difficult to comprehend how these expenses could almost triple from the amount found appropriate just two years ago ($15.9 million vs. $47.1 million (revised to $41.8 million)). In order to better appreciate the magnitude of this significant increase, at the expense levels filed by IP in this proceeding, consider that A&G would have represented an additional 66.5¢ to every dollar of O&M expense, which is nearly three times greater than allowed in the last case. (IIEC Ex. 3 at 6). Based on IP Exhibit 3.15, IP's revised A&G request is $41.798 million and its revised O&M request is $69.920 million, which results in A&G of about 60¢ for every dollar of O&M expense.

Not only has IP failed to explain the basis for the significant increase in these expenses, but its reliance upon the so called "labor allocator" is suspect. IP claims it is allocating A&G to functions based on the labor allocator. A significant amount of A&G expense was allocated to the production function in the 1999 DST case, but in this proceeding IP does not allocate any A&G to the production function because its generating assets have either been sold or transferred. The deficiency in the IP argument is apparent: because IP has sold or transferred its generating assets does not in itself mean that A&G expenses required for distribution services should triple. (IIEC Ex. 3 at 7).

Further, IIEC witness Phillips testified that IP should not be allowed to reflect the full amount of its requested G&I Plant cost in its revenue requirement. The Commission found in 1999 that more than half of IP's requested G&I Plant costs were not related to distribution. The same holding should apply in this proceeding, as well. (IIEC Ex. 3 at 10).

1. IIEC's Recommendations

The more appropriate approach is to reflect the level of O&M expense in relation to the amount of overhead or A&G expense to be recovered in rates in this proceeding, based on the 1999 DST case. This means taking the 23.7% overhead requirement from the 1999 DST case and using that percentage as a ratio to A&G expense to be recovered, which produces a result of $16.8 million. As Mr. Phillips explains, this methodology maintains the appropriate relationship of A&G expense to O&M expense as approved by the Commission in the 1999 DST case. (IIEC Ex. 3 at 8).

For the reasons and arguments set forth above regarding A&G expense, IIEC's arguments and recommendations regarding net G&I Plant costs apply. IIEC witness Phillips recommended that the initial amount of net G&I Plant costs be increased in proportion to the increased amount of O&M expense required for delivery service. Net G&I Plant costs would be increased by the same percentage amount that IP's requested O&M expense level increased over the previously authorized amount. This results in a decrease of 69.9 million from IP's revised request of $180.9 million for net G&I Plant, to a more reasonable $111.1 million cost level. Depreciation expense associated with G&I Plant would be similarly adjusted. (IIEC Ex. 3 at 9-10).

Mr. Phillips performed a reasonableness check with regard to his recommended approach concerning net G&I Plant costs. In the 1999 DST case, the amount of net G&I Plant amounted to about 11.4% of the total allowed ratebase. IIEC's recommended amount of net G&I Plant of $111.1 million is

11.8% of the ratebase proposed by IP in this proceeding. (IIEC Ex. 3 at 10). Based on revisions made in IP's rebuttal and surrebuttal cases, IP's proposed G&I would be 19.4% of rate base and completely change the level of required G&I allowed as appropriate in the 1999 DST Case. (IP Ex. 3.15 at 3; IIEC Ex. 3, Sch. 2).

2. <u>IP's Response To IIEC's Recommendations</u>

Despite IP's summary rejection of IIEC's recommendations, the fact is IP could not undermine IIEC's arguments with any credible evidence. Mr. Phillips' noted IP had not provided any studies substantiating whether IP pursued the most cost efficient and economic level of A&G expense for the provision of distribution service for IP. IP witness Peggy Carter candidly states that in the context of this case, there were no studies done by IP, economic or otherwise, regarding the most cost efficient and economic level of A&G expense for the provision of delivery services to IP customers. (Carter Tr. 219)

IP has not come close to meeting its burden of justifying the increased level of A&G, what it represents, why it is required or what amount of A&G is economic or efficient for the provision of delivery services. As IP witness Carter testified, IP and the Commission are essentially setting a revenue requirement for delivery service from scratch. (Carter Tr. 219-220). Under such circumstances it is not sufficient to simply argue, as IP does, that there are "fewer lines of business" over which to allocate the A&G expense remaining after divestiture of IP's generation. (IP Ex. 1.34 at 56)

Similarly, IP did not produce any studies that evidenced a determination of the most economic and efficient level of General Plant required to provide distribution services. The same holds true with respect to Intangible Plant (IIEC Ex. 6 at 2-4).

With respect to defending the A&G expense levels, again IP's rebuttal was not persuasive. IP witness Carter testified that Account 923, Outside Services Employed, had increased by $25.2 million as purported justification that certain A&G expenses had increased. Yet, this increase was primarily attributable to the billings to IP associated with services now provided by Dynegy, Inc.. (IP Ex. 1.34 at 48). Aside from Ms. Carter's conclusory statements, IP did not produce any studies or analysis showing the economic advantage or cost savings associated with obtaining services from Dynegy, Inc.. (IIEC Ex. 6 at 4-5). Therefore, this Commission has no basis by which to judge whether or not the expenses paid by IP to Dynegy are reasonable and prudent from the perspective of ratepayers. The Commission should not allow IP to become a conduit for the collection of unexplained Dynegy overheads through the imposition of significant amounts of increased A&G in IP's delivery service rates.

In an attempt to show that total A&G expense had actually gone down since the merger, IP witness Carter presented IP Exhibit 1.72 as an attempt to show that if "Significant Unusual and Non-Recurring Expenses Removed for Ratemaking Purposes" are subtracted from the year 2000 A&G amount, the total company A&G expense level before functionalization would be approximately $34.4 million. Notwithstanding Ms. Carter's claims, IP Exhibit 1.72 refutes IP's A&G request. First, IP did not remove these amounts for ratemaking purposes. Second, IP is actually requesting $41.8 million in rates, not 34.3 million. Third, this total includes A&G for transmission service and bonuses for Dynegy executives.

IP has attributed $8.7 million of A&G for transmission service and subtracted $7.4 million for Dynegy, Inc. bonuses. (IP Ex. 1.14; Carter, Tr. 211-213). The subtractions would result in A&G expenses after functionalization and the removal of Dynegy bonuses of approximately $18 million which is very close to the amount of A&G found appropriate for delivery service in the 1999 DST case.

Ms. Carter admits that IP has an obligation to provide service to delivery service customers at least cost. (Carter Tr. 147) The burden is on IP to justify the level of A&G expense and G&I plant required for the least cost provision of delivery services. IP has not met this burden.

II. OPERATING REVENUES AND EXPENSES

E. Functionalization Of A&G Expense/Charges From Dynegy, Inc.

With respect to functionalization of A&G expense / charges from Dynegy, Inc., IIEC reiterates its arguments and positions set forth in the preceding section.

III. COST OF CAPITAL STRUCTURE / RATE OF RETURN

In the course of the proceeding, three witnesses sponsored testimony in support of their respective positions regarding IP's return on common equity. IP witness Paul Moul submitted pre-filed testimony supporting a return on common equity of 12.50% (IP Ex. 3.1 at 9). IIEC also submitted the pre-filed testimony of Michael Gorman, supporting a return on common equity for IP of 11.1%. (Langfeldt Tr. 577). Staff witness Rochelle Langfeldt sponsored testimony in support of return on common equity of 11.89%. (Staff Ex. 4.0 at 11).

A settlement was reached between the above parties with respect to this issue as reflected in Staff Exhibit 20. Staff Exhibit 20 reflects the return on common equity of 11.89% and an overall rate of return of 8.69% for IP. (Staff Ex. 20).[5]

IV. COST OF SERVICE STUDY

A. Use Of IP's ECOSS For Revenue Allocation And Rate Design

[5] IIEC's support of the settlement is part of an overall compromise of the cost of money issue and rate design issue relating to the kVAR charge. IIEC supports the rate of return as identified in Staff Exhibit 20 for settlement purposes only.

Not until the rebuttal phase of this case did IP present a cost of service study for the purpose of setting rates in this proceeding. IP's originally filed cost of service study contained numerous flaws and errors such that it had no use or purpose in this proceeding. (IIEC Ex. 3 at 11-19; IIEC Ex. 6 at 6-9). Indeed, IIEC CX Exhibit 2 showed that IP's original cost of service study indicated IP was currently earning a rate of return on distribution rate base of 53.7%. (Althoff Tr. 499, 520). (IP was only authorized to earn a return of 8.93%. (Althoff Tr. 499-500).) IP's revenues and income taxes in the original cost of service study were also misstated by hundreds and millions of dollars - amounts greater than the total revenue requirement requested in the proceeding. (IIEC Ex. 6 at 7-9).

Even though the IP rebuttal cost of service study corrects some of the errors and mistakes from the originally filed cost of service study, it still has its problems. For example, though the rebuttal cost of service study contains lower per unit rates for most elements of the over 1,000 kW segment of a demand metered rate class as compared to the originally filed cost of service study, the percentage increase for this class is approximately three times as large as the percentage increase as originally filed. This anomaly is not explained by IP witness Leonard Jones or any other IP witness. (IIEC Ex. 6 at 15).

Other misgivings about the IP rebuttal cost of service study include the fact the residential revenue requirement was taken from the 1999 DST case based on a 1997 test year. IP maintains it does not know the year 2000 residential revenues for delivery services, and has not provided any estimates for that amount for the test year 2000. (IIEC Ex. 6 at 7).

Given the timing of the rebuttal cost of service study filing, there was no opportunity to verify all the results of the purported corrections, changes and updates. The new rates, revenues, charges and rate design did not permit adequate time for discovery, review and analysis of the completely revised quantities, which are significantly different from the original quantities as provided for in the cost of service study filed in IP's direct case. (IIEC Ex. 6 at 15).

Nonetheless, it is IIEC's position that the IP rebuttal cost of service study may have a limited use as a basis for determining the percentage of net revenue requirement attributable to each rate class. Mr. Phillips explains that the percentages appear to be relatively constant and somewhat consistent with the Commission findings in the 1999 DST case. (IIEC Ex. 6 at 13).

Given the limited value of the IP rebuttal cost of service study, it is critically important that the Commission fairly determine the appropriate level of A&G expense and G&I Plant in order to ensure that ratepayers only pay the costs that are proper and justified. IP's allocation techniques concerning A&G expense and G&I Plant are not sufficient given the magnitude of the costs to be recovered. The level of these expenses are so large in both IP's original and rebuttal cost of service studies, that they distort the results of the study. For these reasons, while IIEC supports the use of IP's rebuttal ECOSS for allocation of revenue responsibility to the major delivery service customer classes, it does not support its use for rate design purposes for the demand metered customer classes.

V. RATE DESIGN

C. Demand Metered General Service

1. Facilities Charge

IIEC supports an equal percentage increase in the facilities charge for the reasons explained in V., C., 6 below.

2. Metering Charge

IIEC supports an equal percentage in the metering charge for the demand metered classes for the reasons stated in V., C., 6 below.

3. Distribution Capacity Charge

IIEC supports an equal percentage increase in currently approved rates, which do not contain a distribution capacity charge, for the demand metered classes for the reasons stated in V., C., 6 below.

4. Reactive Demand Charge

In its direct case, IP proposed a 100% increase in the reactive demand charge, changing it from 10¢ per kVAR to 20¢ per kVAR. A reactive demand charge is used to collect for the costs associated with a non-unity power factor. (IIEC Ex. 1 at 19).

In response to the IP proposal, IIEC witness Stephens took issue with and argued that the reactive demand charge should remain at its current level, 10¢ per kVAR, to be adjusted based on the overall revenue increase for a demand metered rate class. Staff witness Peter Lazare also took issue with IP's proposed increase in the kVAR charge, and recommended a 10¢ per kVAR charge be adopted. (Staff Ex. 5.0 at 40).

In the course of the proceeding, the active parties with respect to the kVAR charge dispute reached a settlement and compromise on the matter. IIEC, IP and the Staff agreed that the appropriate level of the kVAR charge to be determined in this proceeding is 13¢ per kVAR. (Stephens Tr. 688; Jones Tr. 804-5).[6]

5. Transformation Charges

Transformation charges are used when the supply line voltage is different from the voltage used at

[6] IIEC's agreement to this level of the kVAR charge is part of an overall settlement, which includes settlement of cost of money issues. Acceptance of the kVAR charge is for the purpose of settlement purposes only.

the customer's facility. In this proceeding, IP proposes to charge 50¢ per kW for customers below 3 MW and 75¢ per kW for customers greater than 3 MW. (IP Ex. 6.1 at 18). IP has failed to provide any cost justification for the disparity in treating customers greater than 3 MW differently than customers below 3 MW. There should be no different charge for customers above 3 MW as compared to customers below 3 MW, without a sound cost analysis. IP has not produced <u>any</u> credible cost analysis.

To the extent IP relies upon use of a marginal facilities cost approach in determining the level of the charge, that in itself justifies rejecting the IP proposal. IP is using an embedded revenue requirement and an embedded cost of service study for allocating costs in this case. To rely upon a marginal cost approach, as IP does, proves IP's end results orientation. (IIEC Ex. 1 at 22).

IP's alleged justification for using a marginal cost approach is that it "reflects the economic decision customers face." (IP Ex. 6.6 at P.16). However, transformation service has not been declared competitive for either bundled or delivery service, hence there is no basis to depart from embedded cost. In fact, when pricing metering service, IP uses embedded cost despite IP's own testimony that metering "is an unbundled service that may be provided by others." (IP Ex. 6.6 at 11, Jones Tr. 831-2).

Even assuming arguendo a marginal cost approach is appropriate, the evidence suggests lower transformation charges for larger customers are justified. According to information provided by IP intending to depict a representative sample of recently constructed substations for customers over 3 MW, three out of the five sample installations are below 50¢ per kW, and the only sample significantly above 50¢ per kW is associated with a transformer that is actually <u>less than</u> 3 MW in size. The average transformation charge based on IP's own information, suggests a 50¢ per kW charge or lower for customers greater than 3 MW, rather than the 75¢ per kW charge as proposed. (IIEC Ex. 1 at 23).

IP's response is hardly persuasive. First, Ms. Voiles argued that the Commission required larger customers to rent or own their transformation equipment, rather than imposing a fixed charge in the tariff because the cost of transformation equipment for larger customers varies considerably based on the circumstances of each customer. (IP Ex. 5.11 at 13). A review of the Commission's 1999 DST Order reveals nothing of the sort as stated by Ms. Voiles. All the Commission did was to approve IP's proposed 50¢ per kW transformation charge for delivery service customers with essentially no discussion, since the issue was uncontested in that case. (Order at 60-61).

Further, IP, when setting the 50¢ per kW charge for customers with less than 3 MW of demand, ignored the fact that the transformation charge for all customers (< 3 MW and > 3 MW) is 75¢ per kW. (IIEC Ex. 4 at 18).

Next, Ms. Voiles claimed that only upon request by an above 3 MW customer, did IP decide to offer the option of transformation service based on a tariff charge similar to the charge paid by customers under its bundled tariff. (IP Ex. 5.11 at 13). Yet, Ms. Voiles ignores that the customer rejected IP's offer to pay a charge that is 50% higher than the customer less than 3 MW. (IIEC Ex. 1 at 18).

IP's specious efforts to defend its transformation charge required IP witness Jones to respond to a "request" for additional support for the charge never made by any party. (IIEC Ex. 4 at 18). Notwithstanding IP's lack of ingenuity, the additional information works against IP. In rebuttal IP witness Jones provided basically the same marginal cost information that Mr. Stephens had summarized in Table 3 of his direct testimony. (IIEC Ex. 4 at 19; IP Ex. 6.10, Sch. 2, Item 4, at 1). Taking into account a slight reduction in the O&M and A&G loading factors, and even assuming some annual carrying charges assumption, the average cost of transformation for customers greater than 3 MW, as shown on Mr. Jones' schedule, is 55¢ per kW. Excluding the sample transformer that is actually below 3 MW the average marginal cost of the transformers above 3 MW drops to 44¢ per kW. (IIEC Ex. 4 at 19).

As further evidence of IP's inability to grasp the true cost of transformation charge for customers above 3 MW, in a data request response IP indicated the embedded cost of transformation on the IP system is not 50¢ per kW or 75¢ per kW, but instead $1.12 per kW! (IIEC Ex. 4 at 19).

Mr. Jones also testified one would expect the embedded and marginal cost of transformation to be reasonably close to one another. (Tr. 886 - 887). Obviously, in the case at bar they are not reasonably close. In this case the marginal costs of transformation is approximately 50¢ per kW and the embedded cost is $1.12 per kW.

To confuse matters further, the same IP witness testified in the 1999 DST case that the embedded cost of transformation was only 42¢ per kW, despite the fact that the new facilities shown on IP Exhibit 6.1, Schedule 2, Item 4, none of which exceed $1.00 per kW, are allegedly "representative of transformation installation over the last three years." (Jones Tr. 839-840). In redirect examination, IP witness Jones attempted to distinguish between the embedded costs of transformation in the 1999 DST case, as compared to the current case. Unfortunately, his testimony is undercut by his own rebuttal testimony where he indicated IP's accounting system provided insufficient detail to allow calculation of an embedded cost transformation charge. (Jones Tr. 877-878, 884-887).

In conclusion, IP has not justified a different level of transformation charges for customers below 3 MWs as compared to above 3 MW. There is no disparity in the bundled service rates, as all customers, regardless of size, pay 75¢ per kW. (Jones Tr. 858). All customers should be charged either 50¢ per kW, or all customers should be charged 75¢ per kW. There is no basis for a different charge for each group of customers. Continuity with the bundled service tariffs would favor a 75¢ per kW transformation charge for all delivery service customers.

6. Equal Percentage Increase To All Charges For Demand-Metered General Service Class

IP's request to radically increase metering charges should be rejected. IP's proposed metering charges represent an 1,100% increase for 138 kV transmission voltage customers (tr. 865). Witness Althoff's cost of service study for metering indicated that it was based on replacement cost allocations without valid reasons (IIEC Ex. 6 at 10). In addition, each $1 of metering expense was allocated $1 of A&G expense. Each $1 of metering investment was allocated $1 of General and Intangible Plant (IIEC Ex. 6 at 10-11; IIEC Ex. 3 at 15). IP could provide no support for the 100% overhead requirement and the validity of such allocations is at question. Frankly, the enormous magnitude of A&G expense and General and Intangible Plant allocated by IP to customers violates the principle of allocating costs based on cost causation. There is no evidence that distribution customers caused these costs or that the costs are related to distribution service. The principle of cost causation has been abandoned in the IP cost of service study (IIEC Ex. 3 at 15-16).

As the rebuttal cost of service study produces rates that are somewhat consistent with the 1999 DST approved rates, and there is a need for some amount of rate continuity in this regard, an equal percentage increase should be applied to all existing charges. (IIEC Ex. 6 at 16). Even with the less radical rate design results illustrated in IP's rebuttal, the increase is still heavily skewed to the larger, high voltage customers. (IIEC Ex. 4 at 12, Table 2 Revised).

IP's cost of service evidence is simply not adequate to justify the rate design by voltage category as proposed by IP. IP's original rate design for the demand metered class is for a 13% increase (IP Ex. 6.4; IIEC Ex. 3 at 21). IP's rebuttal filing regarding rate design did not in actuality rebutt any party, but attempted to correct countless errors associated with cost of service and rate design (IIEC Ex. 6 at 13-16). Mr. Jones decreased proposed rates for the demand metered class while changing the requested class increase from 13% to 39% without an explanation (IIEC Ex. 6 at 15).

Staff witness Peter Lazare criticized the late filed information by Mr. Jones and stated that the opportunity to respond by Staff and Intervenors was limited (Staff Ex.14 at 22). Mr. Lazare indicated that concerns continue to exist regarding the revised billing units for the demand metered class as presented by IP and that the confidence in the Company's method was undermined (Staff Ex. 14 at 26).

The Company's cost of service studies and rate design proposals were fraught with errors, updates, late filed supplements, a tripling of the increase to the demand metered class simultaneous with reduced rate levels and should not be the basis for a complete change in rate design from the rates established in the 1999 DST case. Drastic changes and significant increases to the currently approved rate design for the demand metered class based on questionable studies will make the dismal level of retail competition in the IP service territory that has occurred since the last Commission Order get worse.

For all the reasons listed above, IIEC contends that the rate elements within the demand metered class should be increased by the same percentage. (IIEC Ex. 3 at 21). With respect to total the demand metered class, IIEC recommends it pay its appropriate share of the revenue requirement 28%. (IIEC Ex. 3 at 21).

The 1999 DST rates were approved a little over two years ago. Rate continuity is recognized as a fundamental and appropriate element of rate design. IIEC Ex. 3 at 20; IIEC Ex. 6 at 16; Order at 58).

Therefore, given the prevalent circumstances in this proceeding, IIEC agrees to the broad allocations to classes as suggested by the IP rebuttal cost of service study, but an equal percentage increase in charges for the rates for the demand metered general service class.

D. Standby Capacity Requirement

1. Description of IP's Proposal

IP proposes a demand ratchet rate design for standby customers, and also a penalty of three times the charges for demands in excess of the standby capacity requirement. (IP Ex. 6.1 at 19-21). In surrebuttal testimony, IP indicated the penalty charge should only apply to demands in excess of 110% of the standby capacity requirement. (IP Ex. 6.17 at 17). IIEC opposes IP's position for the reasons expressed below. The Commission should at a minimum accept IIEC's recommendation that customers be permitted to enter into contracts for preestablished and agreed levels of standby delivery capacity.

Under the IP proposal, customers who have their own generation and seek delivery service for power and energy in the event their generating capabilities are unable to serve their entire load, would be required to enter into a contract for standby delivery capacity. To this, IIEC has no objection. Continuing, the customer's charges for delivery service would be based on the standby capacity requirement level of demand. If, however, the customer's maximum demand would exceed the contracted standby delivery capacity requirement, the customer's standby capacity requirement would automatically ratchet upward. Under the IP proposal, the customer would then pay for the standby capacity of demand at this new level and also be required to pay a penalty equal to three times the applicable demand, distribution capacity, and transformation charges applied to the excess of the customer's maximum demand over its 110% of standby capacity requirement in that month. (IP Ex. 6.1 at 20-21). To these provisions, IIEC strenuously objects.

2. IP Misunderstands The Nature Of Standby Service

IP misunderstands the nature of standby delivery service. Standby delivery service reserves capacity on the wires and other delivery facilities used to deliver generation from a third party supplier, in the event a customer's own generator fails or is temporarily unable to generate the customer's electric power needs. In a standby delivery service arrangement, a customer would contract with a RES for standby generation capacity. If a customer were to contract for 10 MW of standby generation capacity from a RES, it would make no sense not to contract for a commensurate amount of standby delivery capacity to deliver the power in those events when it is needed.

IP admits that standby generation capacity is likely to be more costly than standby delivery capacity. (Jones Tr. at 850-851). Using IP's SC 22 standby rate as an example, the charge for standby generation capacity is likely to be on the order of dollars per kW of standby generation capacity, while the cost of standby delivery capacity, even under IP's proposed rates, for large customers is likely to range from about 2¢ to 40¢ per kW. (Jones Tr. at 849) As stated previously, it would be illogical for a customer to contract for 10 MW of relatively expensive standby generation capacity (at dollars per kW) and skimp on the amount of delivery capacity it reserves (cents per kW). Any concerns that IP may have about a customer under-contracting for standby delivery capacity are not valid when considering the nature and relative cost of standby delivery capacity in comparison to the cost of standby generation capacity.

3. IP's Proposal Is Discriminatory and Unfair

The IP proposal results in disparate treatment between standby customers and other delivery service customers. IIEC witness Stephens posited a hypothetical where two different customers have identical delivery service usage profiles and identical associated distribution facilities, thus imposing identical costs on the utility. The only difference is that one customer has its own generating capability and the other customer has no generation capability and uses the delivery system all the time. If both customers were billed based on ratcheted demand, the charges would be the same. If both customers were billed based on an unratcheted demand charge, still the charges would be the same. The disparate treatment occurs when the non-generation customer is billed for delivery service based on a non-ratcheted demand, while the generation customer is billed based on a ratcheted demand. In this instance, the generation customer pays more for the same facilities and use than would the non-generation customer. (IIEC Ex. 1 at 18; *see also* Staff Ex. 9.0 at 5-7).

4. <u>Triple Demand Charges Are Unnecessarily Punitive</u>

IIEC also takes issue with the three times the charges for demand in excess of the standby capacity requirement as being unnecessarily punitive. First, customers who do not have generation are not penalized for abnormally high demands. (IIEC Ex. 1 at 18). A bundled service customer that does not have generation but whose demands exceed any level of demand it may have taken in the past 12 months is not subject to additional charges of any kind. IP states that it must be compensated for the cost to have distribution facilities in place to serve standby customers, but ignores the same rationale when applying to other customers who do not have generation - - these customers' demands fluctuate and they are not required to pay maximum charges on a going forward basis.

In addition, the treble damages are not necessary because standby customers already have the necessary incentive by which to ensure they have contracted for the correct amount of standby delivery capacity. A customer that has generation, and is in obvious need of standby generation, would expect to contract for the proper level of standby delivery service in the event its generation fails. (IIEC Ex. 1 at 18).

Upon cross-examination, IP witness Jones admitted that contracting for standby delivery capacity in any amount commensurate with standby generation capacity should suffice. (Tr. 855 - 857).

5. IIEC's Proposal

IIEC's recommendation is that IP and the customer enter into a contract for standby capacity based on agreed levels of standby delivery capacity. Mr. Stephens explains that the level of standby capacity and the term of the agreement would be based on the capacity and operating characteristics of the customer's load and generating units. This makes absolute sense. A customer with generation will want to back up that generation by a commensurate amount of standby generation and delivery capacity. There is no reason to believe that it would be problematic in setting an appropriate level of contract delivery capacity, and IP certainly did not come forward with any arguments or reasoning to suggest otherwise. (IIEC Ex. 1 at 19).

During Mr. Stephens' cross-examination, he was questioned as to what would happen if the parties could not agree to a level of standby capacity. Why IP believed this would even occur is never explained. Mr. Stephens suggested the customer would have recourse to the Commission. (Tr. 684). Mr. Stephens is correct. During the time the complaint is pending, the customer could pay whatever it was being charged on the basis of IP's estimate of the required standby capacity, just like any other customer that has a billing dispute or claims it is being overcharged for service. (83 Ill. Adm Code 280.150).

IIEC agrees with IP's proposal to use diversity factors to convert the customer's standby capacity to a billing determinant, as being more representative of the monthly maximum demand. (IIEC Ex. 4 at 15).

6. Response To Staff's Position Regarding Standby

IIEC is in conceptual agreement with a number of the policy concerns outlined in the testimony of

Staff witness Howard Haas (Staff Exs. 9.0, 18.0) regarding the discriminatory treatment of IP's proposal and the potential disincentive to construction of distributed generation facilities. Staff witness Haas outlines several possible rate treatments in his rebuttal testimony. (ICC Staff Ex. 18 at 7-10). IIEC did not have an opportunity for response in testimony and takes no position on Staff's proposal at this time.

VI. TARIFF TERMS AND CONDITIONS

A. Rider ISS

1. Pricing Generally

It is IIEC's position that IP should not be allowed to charge the current 10% adder on top of the energy prices under Rider ISS. It is also IIEC's position that IP should not be allowed to impose the fixed Recovery Factor of 0.9¢ per kWh. Finally, IIEC disagrees with IP's recovery of firm point-to- point-transmission service as a component charge of Rider ISS.

The 10% adder and 0.9¢ per kWh Recovery Factor are wholly inappropriate in the instance where Rider ISS intends to recover on behalf of IP, the market price of energy it pays to serve Rider ISS customers. Stated simply, if Rider DA-RTP is recovering the market energy price at the time the customer is taking Rider ISS, as IP contends, there is absolutely no need for IP to recover anything more. Allowing IP to recover these adders is allowing it to recover additional revenues to which it is not entitled.

If, in fact, IP incurs real administrative costs in the provision of Rider ISS, not recovered in the delivery service revenue requirement, then it should be entitled to recover the reasonable and prudent costs of same. (IIEC Ex. 1 at 26). However, IP has not been able to demonstrate, or even attempted to demonstrate, that it incurs actual administrative costs in providing interim supply service, not already covered in the delivery service revenue requirement. Indeed, IP fabricates all sort of reasons for the 10%

adder, none of which have anything to do with its actual cost of providing the service or any valid claim that is not recovering the market value of energy.

For example, Mr. Mark Peters testified at length that Rider ISS customers were using the service as an extended supply option and could secure a similar short-term supply from other suppliers. (IP Ex. 11.1 at 9; IP Ex. 11.2 at 2-3). Mr. Peters' testimony in this regard was nothing more than speculation. He was not aware of any suppliers in the IP service territory that currently offer the type of alternative back-up service he referenced in his testimony, whether in the form of a physical or financial option. (Tr. 441). He was not aware of any RES or any entity that is offering the kind of service he referred to in his surrebuttal testimony. (Tr. 441).

Furthermore, Mr. Peters' contention that a Rider ISS customer had as an option the right to return to bundled service was particularly specious. (IP Ex. 11.1 at 9). Mr. Peters admitted a customer that returned to SC 21 service would be obligated to take that service for a year and if a customer returned to SC 24 service, it would be subject to a five year service term. (Tr. 436 - 437). Also, under SC 110, smaller customers, when they return to bundled service, must remain for 24 months. Finally, Mr. Peters admitted there was no other entity in the IP service territory providing interim supply service but IP. (Tr. 454).

Rather than address the "cost" issue, IP witness Peters argues the 10% adder on Rider ISS is an incentive to customers to make a decision and move off Rider ISS as quickly as possible. (IP Ex. 11.1 at 14). IP apparently does not understand how its tariffs work. At the time a customer is on Rider ISS, it does not know how much it is being charged for that service. The customer only knows what it is being charged at the point in time it receives its bill, perhaps weeks later. (Peters Tr. 446-447). Whether the market price for energy on the day or days the customer is taking Rider ISS is high or low, the customer will not know how much is being charged until it receives the bill. Therefore, there is no basis for IP's claims that customers will abuse Rider ISS absent arbitrary markups since they do not know how much they are being charged at the time Rider ISS charges are actually being incurred.

Moreover, IP fails to comprehend the real world of energy for customers. Customers that take service from a supplier do not expect the supplier will default and that they will end up on Rider ISS. The evidence contravenes IP's arguments. Since the time of customer choice, less than 2.5% of the customers that have taken delivery service have ended up on Rider ISS. Out of over 1000 delivery service customers, only 24 ended up on Rider ISS. (Peters Tr. 432, 434). The lack of experience of customers in considering alternative supply options, and the small percentage of customers on Rider ISS, proves the service is not being abused as suggested by IP.

In addition, as Mr. Stephens explains, IP does not understand what a customer must do in order to take service from another supplier. Customers may issue requests for proposals, evaluate those proposals, work out and negotiate contract details, ensure that there is sufficient transmission capacity, and to do all these things within DASR lead-time constraints. (IIEC Ex. 4 at 20). No matter what IP contends, a customer on Rider ISS has to be there for a minimum of 10 days. (Peters Tr. 442). This ten day period assumes the customer does none of the procurement activities described by Mr. Stephens, a consultant who has worked with retail customers in procuring power supply from a RES. In contrast to Mr. Peters who has not worked with retail customers in his employment. (Peters Tr. 430-431) As Mr. Stephens assures, with the maximum stay of two billing cycles on Rider ISS, a customer needs no additional incentives to act expeditiously. (IIEC Ex. 4 at 20).

IP's claims that there are more administrative costs in supplying Rider ISS than just the spot market price risks runs absolutely contrary to any evidence in this proceeding. IP has not demonstrated it has incurred any additional costs as a result of Rider ISS. (IIEC Ex. 4 at 21). IP has not had to go out and procure power and energy for the specific purpose of supplying Rider ISS. (Peters Tr. 439-440). IP has had the benefit of a purchase power agreement to serve its bundled load, which includes Rider ISS load. Whatever it pays for Rider ISS is subsumed in its Power Purchase contracts' price. (IIEC Ex. 4 at 21). IP has not stated or claimed it has lost money as a result of Rider ISS. (IIEC Ex. 4 at 21). There is <u>no evidence</u> that IP has, in fact, incurred the alleged costs and charges that form the basis for the adders.

IP not only proposes to recover the 10% adder but as previously stated, a 0.9¢ per kWh Recovery Factor charge. This proposal should be rejected. The Recovery Factor has no nexus whatsoever to the market value of energy. Mr. Stephens explained that the Recovery Factor is an artifact of IP's use of Rider DA-RTP in its provision of bundled service. Rider DA-RTP was established in 1996. (IIEC Ex. 1 at 26). At that point in time, the Commission decided upon a fixed recovery factor in conjunction with a compensation package associated with a customer's purchase of power based on real time prices rather than full embedded costs associated with the provision of fully bundled service. (Rider ISS is not a bundled service.)

In 1998, IP proposed a fixed recovery factor in its proposed DA-RTP II which the Commission rejected and, instead, approved again the 10% adder for recovery of fixed costs. ((<u>Illinois Power Company</u>, Ill. C.C. Dkt. No. 98-0348 (Sept. 23, 1998); 1998 Ill. PUC LEXIS 825, *4, *27-*28)). The recovery factor was to represent "unquantifiable" administrative costs in addition to IP's fixed cost recovery. The Commission rejected the IP proposed recovery factor and approved a 10% adder as an acceptable substitute. The Commission was very specific in its finding that the adder would compensate IP for its costs and referred to "supply line facilities and contributing to other fixed costs.." (Id. 1998 Ill. PUC LEXIS 825, *27-*28). However, even the 10% adder is not appropriate for use in conjunction with the retail prices used in Rider ISS.

The "recovery factor" in Rider DA-RTP is to help IP recover its fixed cost of generation not covered in the hourly price of energy. To the extent there is to be any recovery, it is through the transition charge. Collection of both the recovery factor and a transition charge constitutes a form of double collection of the same costs and should be rejected. (IIEC Ex. 4 at 24).

The recovery of both the 0.9¢ of a cent per kWh and 10% adder is particularly onerous when the charges are cumulative. Assuming an average hourly DA-RTP price of 3¢ per kWh, the 0.9¢ per kWh recovery factor is equal to an additional 30% adder on the hourly price. Coupling the recovery factor with a 10% adder, IP then recovers about a 40% premium over and above the hourly cost of energy. (IIEC Ex. 4 at 22). IP does not dispute this very real example depicting the manner in which Rider ISS customers are being overcharged.

In summary, simply because the Commission once approved a 10% adder or a 0.9¢ per kWh Recovery Factor in the context of a bundled rate, is not grounds for its continuation in the unbundled Rider ISS, especially based on this record. IIEC appreciates an understanding of the aspects associated with interim supply service is something that takes place on a learning curve. We know now there is no cost based justification for the 10% adder, or the 0.9¢ per kWh Recovery Factor. We also know that the 10% adder or Recovery Factor cannot serve as a meaningful incentive to have customers move to other suppliers or to bundled rates. Indeed, the very fact the Commission limited the amount of time a customer can take Rider ISS speaks to the limited purpose for this service. The Commission should not allow IP an opportunity to recover revenues that are in the range of 10% to 40% greater than the cost of the service.

2. Pricing For Residential Customers

Staff recommends that IP charge residential customers on Rider ISS the applicable bundled rate, plus the 10% adder currently in the IP's Rider. (Staff Ex. 6.0 at 3). For a non-residential customer on Rider ISS, the customer currently pays the Rider PPO market price for the power and energy the utility must procure to serve that customer, including a 10% adder and administrative charge. (Harden Tr. 540). The only reason offered by the Staff as to why residential customers should be entitled to a different pricing method for Rider ISS service is that "some residential customers" may not be able to pay high market prices for energy should they lose their supplier. (Staff Ex. 6.0 at 3). No other reason or explanation is offered.

The Staff witness agreed some non-residential customers may not be able to pay high market prices, should that occur. (Harden Tr. 541). Yet, the Staff's proposal would treat these two groups of customers (residential and non-residential) differently. This is patently discriminatory and cannot be defended.

The Illinois Public Utilities Act is quite clear on this point. "No public utility shall, as to rates or other charges, services, facilities or in other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or other charges, services, facilities, or in any other respect, either as between localities or as between classes of service." (220 ILCS 5/9-241).

For the Commission to allow the Staff proposal to go into effect with respect to residential customers and not provide for the same charges and conditions for non-residential customers, is a violation of Section 9-241. There has been no demonstration that the proposed difference in Rider ISS for residential customers as compared to non-residential customers is reasonably related to the difference in the cost of providing service. *See* Austin View Civic Association V. City of Palos Heights, 40 Ill. Dec. 164, 405 N.E. 2d 1256 (1st Dist. 1980). The purported differences in treatment are not reasonable and are arbitrary, as made clear by this record. City of Chicago v. Illinois Commerce Comm'n, 217, Ill. Dec. 274, 666 N.E. 2d 1212 (1st. Dist. 1996).

Finally, the Commission just recently rejected the Staff pricing proposal for Rider ISS in the AmerenUE/AmerenCIPS delivery service tariff proceeding. (AmerenUE/AmerenCIPS, Ill. C.C. Dkt. No. 00-0802, Order at 50 (Dec. 11, 2001)). If the Commission rejects Staff's proposal here, the adoption of IIEC's recommendation becomes even more important.

The Staff should accept IIEC's recommendations on this issue. IIEC has clearly demonstrated that the 10% adder, 0.9¢ per kWh Recovery Factor, and alleged charges for point-to-point transmission service are not justified. Elimination of these additional charges would benefit all customers.

B. Ultimate Consumer Of Transmission Services / Liability of Retail Delivery Services Customer For Transmission Charges Not Paid By RES/TSA

IIEC objects to IP's claim that a RES cannot take transmission service on its own behalf and ultimately be responsible for transmission arrangements and transmission charges. In IIEC's judgment, transactions should be allowed to structured such that the RES and only the RES, is liable for transmission service under the provisions of the Open Access Transmission Tariff (OATT). (IIEC Ex. 4 at 28-29). IP's delivery service tariff should not seek to effectively alter provisions in the OATT.

While IP acknowledges an agency relationship between the RES and the retail customer, and that IP would first pursue the RES for payment of transmission charges, IP has unfairly interpreted its OATT and particularly the definition of Eligible Customer to limit the parties that may be responsible for transmission service charges. IP categorizes Eligible Customers, in pertinent part, as follows:

> (i) Any electric utility (including the Transmission Provider and any power marketer), Federal power marketing agency, or any person generating electric energy for sale for resale is an Eligible Customer under the Tariff. Electric energy sold or produced by such entity may be electric energy produced in the United States, Canada or Mexico. However, with respect to transmission service that the Commission is prohibited from ordering by Section 212(h) of the Federal Power Act, such entity is eligible only if the service is provided pursuant to a state requirement that the Transmission Provider offer the unbundled transmission service, or pursuant to a voluntary offer of such service by the Transmission Provider.
>
> (ii) Any retail customer taking unbundled Transmission Service pursuant to a state requirement that the Transmission Provider offer the transmission service, or pursuant to a voluntary offer of such service by the Transmission Provider, is an Eligible Retail Customer under the Tariff.
> (IIEC Ex. 4 at 28).

As apparent from the plain reading of the tariff above, it only provides what sort of entities are eligible for service under the OATT. This language has nothing to do with end-user liability for charges.

Concerns were also raised by Staff witness David Borden with respect to whether IP in the context of a state-jurisdictional tariff could mandate whether the retail customer, or the RES serving the retail customer, would be liable for these transmission service charges. Staff witness Borden's primary concern is that the financial liability associated with procuring transmission services should be assigned to the RES. He takes this position because many retail customers may not have knowledge or expertise as to the provision of transmission service and the associated costs. Therefore, these customers would have little or no knowledge as to the financial liability they were about to assume. (ICC Staff Ex. 8.0 at 7).

Knowing that the Commission is most interested in advancing competition for the purchase and sale of retail energy, the Commission should find favor with the reasoning put forth by Mr. Stephens and Staff witness Borden. Customers should have the option to structure a transaction where the customers purchased the transmission service and the RES acts as their agent, or to have the RES entirely responsible for obtaining and paying for all necessary transmission service. Further, as Mr. Borden states, it is likely that some number of retail residential customers will not have the knowledge pertaining to the provisions of transmission service and the attendant costs, and this is further reason why they should be able to negotiate and allow for the RES to not only ensure the delivery of the power and energy to the receipt point on their behalf, but also be responsible for the transmission service charges. Mr. Borden agreed it was likely an aggregator would serve residential customers at least the beginning of customer choice, and that the aggregator should have the right and ability to negotiate the transmission service charges on behalf of the residential group with the RES. (Borden Tr. 482-484).

Although the issue is important, IIEC's concern transcends the issue of simple responsibility for transmission charges. IIEC is interested in the development of a vibrant and sustainable competitive electric market in Illinois. IIEC believes that development of this market will be facilitated through market structures which mimic the competitive retail market for other products, where possible. In what other competitive market would the ultimate consumer of a product be a party to, or have any liability for, transportation of an item between a wholesaler and retail distributor? Yet this is the implication of the constrained market structure implied by IP's delivery tariff wherein the RES itself cannot be the transmission customer.

In addition, it is bad policy, if not illegal, for the Commission to seek to limit eligibility for transmission service via a state jurisdictional tariff. Whether or not a RES should be able to take transmission service on its own behalf (rather than a customer taking transmission service with the RES acting as his agent) is clearly within the purview of the OATT. Indeed, Section 16-108(a) provides:

> ". . .. An electric utility shall provide the components of delivery services that are subject to the jurisdiction of the Federal Energy Regulatory Commission at the same prices, terms and conditions set forth in its applicable tariff as approved or allowed into effect by that Commission."
> (220 ILCS 5/16-108(a))

Delivery service tariffs approved by the Commission should not attempt to expand, contract, or alter in any way the rights to transmission service outlined in the OATT. A plain reading of the OATT provisions for Eligible Customers reproduced hereinabove indicates that either a retail customer or a RES is eligible, provided the state has required the provision of unbundled transmission service, which Illinois has. (*See* 220 ILCS 5/16-102).

C. Rider PPO - Factor A4c

IP witness Voiles proposed a change to Rider PPO, to include a charge for energy imbalance service in Rider PPO which will be set equal to Factor A4c in Rider TC. Factor A4c would initially be set at zero. (IP Ex. 5.1 at 15).

IIEC opposes changing Rider PPO in the manner proposed by IP. IIEC witness Stephens explained there is too much uncertainty in the events that could cause Factor A4c to change in the future. He noted IP will eventually be charging for transmission service under the Alliance RTO Open Access Transmission Tariff (OATT), and that the manner in which the energy imbalance tariff will operate is simply unknown. (IIEC Ex. 1 at 32). The Commission, which has intervened in a number of IP proceedings at the FERC, knows well the constant changes occurring regarding establishing a retail transmission organization, appropriate services and charges, appropriate standards and guidelines, etc.

IP's rebuttal was nothing more than a regurgitation of what was provided its direct case. (IIEC Ex. 4 at 29). No compelling reasoning was offered to justify the Commission accepting a placeholder for a number or value not yet determined, if ever to be determined.

Given the uncertainty surrounding the ultimate status and start up of the Alliance RTO and, the manner in which energy imbalance services will be provided at this level, it would be imprudent for the Commission to simply put in place a tariff that allows for the utility to fill in the price (or value) to be charged for the service described in the tariff at a later point in time, when the Commission will not have the opportunity to review or scrutinize whatever the amount the utility determined to be appropriate.

G. Ability To Rescind A Thirty Day Notice To Return To Bundled Service

H. Notice Requirement To Leave SC 24 For Delivery Services

I. Ability To Return From Delivery Service To SC 24 Without Primary Term

J. Ability To Return From Delivery Services To Closed Tariffs.[7]

1. IIEC's Recommendations

IIEC maintains that a number of terms and conditions in IP's bundled tariffs (or chosen application thereof) are contributing to the dismal level of a competitive market in the IP service territory. It is IIEC's recommendation a SC 24 customer, beyond the five year primary term, be able to give IP 30 days notice of its intent to take delivery services. This can be accomplished by inserting appropriate provisions within SC 110. SC 110 should be modified to allow such a customer to return to bundled service under the same

[7] The issues contemplated by VI., G., H., I., and J., are intertwined by their nature and addressed similarly in the record. Therefore, IIEC has addressed these subjects in a collective manner in this portion of its brief.

status it held when it originally switched from bundled service to delivery service. (IIEC Ex. 1 at 13-14).

IIEC recommends that current Rider S and Rate SC 30 customers electing delivery service also be permitted to return to Rider S and SC 30. Mr. Stephens explained these customers are likely discouraged from trying a competitive supply through the threatened loss of eligibility for Rider S and SC 30, which have been closed to new customers. IP has told these customers that if they utilize a competitive supply, they give up their rights to ever return to these rates. (IIEC Ex. 1 at 14).

It should be made clear that IIEC is not suggesting IP reopen these tariff options for new customers. Rather, customers that are currently taking Rider S or Rate SC 30 service, should not be discouraged from trying delivery service for fear they will lose their right to return to either Rider S or Rate SC 30 service should they decide to return to those rates. IP's policy encourages customers to remain on bundled service instead of trying delivery service. (IIEC Ex. 4 at 14).

IIEC's proposal recognizes the transitional nature of the circumstances and would not require IP to perpetually obligate it to allow SC 24 customers to give the 30 day notice to terminate SC 24 service, or to allow customers to return to SC 24 service without being subject to a new five year primary term. IIEC recommends that IP only be held to this obligation until the Commission declares services to these customers competitive. (IIEC Ex. 1 at 14-15).

The reasons for IIEC's recommendation are many. As discussed at the outset of this brief, the number of customers taking delivery services in the IP service territory is dismal. There are a variety of reasons why competition is near non-existent in the IP service territory, and the Commission should do what it can in order to reduce the barriers to competition. Holding customers to archaic notice provisions is an obstacle that warrants removal in this proceeding.

There are 57 customers still taking SC 24 service as of September 2001. (Voiles Tr. 617). These are typically the largest customers in the IP service territory. Once these customers exhaust their five year primary term under SC 24, they continue to take service on a year to year basis. Under IP's current rate regime, if the customer were to leave SC 24 service and then later decide it wanted to go back to SC 24 service, that customer would be subject to the five year primary term. Clearly, this requirement presents a chilling effect on customers that are interested in delivery services.

A good example of the chilling effect is demonstrated by the cross-examination of IP witness Voiles. Ms. Voiles was asked to assume the following facts: (1) an SC 24 customer had completed the five year primary term under SC 24; (2) in the first year following the primary term the customer elected to take PPO service; and (3) two months after the customer elected PPO service the customer's transition charge went to zero making the customer ineligible for PPO service. Ms. Voiles was asked whether under these circumstances a customer wishing to return to SC 24 service would be required to do so on the basis of a new five year primary term. She answered in the affirmative. (Tr. 605-607). In this instance, the SC 24 customer could end up taking SC 24 service for almost 11 years, and only because its transition charge went to zero two months into taking PPO service. IP's position will certainly discourage customers from testing the market.

2. <u>Response To IP's Criticisms</u>

IP's criticisms to the IIEC recommendation were mainly 1) there is already in existence a changed notice provision, 2) the Commission cannot affect or change bundled rates, and 3) that customers, even if given more liberalized notice requirements, would pursue the PPO. However, before addressing IP's criticisms to IIEC's recommendations, it is appropriate to first examine the current policy.

IP's current policy to allow an SC 24 customer outside its primary term to give the twelve month notice to cancel service under SC 24, but then allow that customer to rescind notice any time within the ensuing 10 months. (IP Ex. 5.11 at 15). IIEC witness Stephens explained that the current IP policy is cumbersome. Requiring the customer to give notice of termination on one day, hoping that a competitive supply opportunity develops for service 12 months later, simply is unworkable. Under the IP proposal, a customer at the end of the ten month notice period would have to decide one way or another to pursue a competitive supply opportunity. If the competitive supply opportunity was not available, the customer would not be able to look for another supply alternative for at least twelve months. "This arrangement simply does not match up with the operating flexibility a customer needs to operate effectively within the competitive market." (IIEC Ex. 4 at 8).[8]

One of the initial criticisms was IP witness Voiles' argument that SC 24 and Rider S are not at issue in this docket, as somehow justifying why the Commission should not consider IIEC's proposal. (IP Ex. 5.11 at 14). Again, the IP rebuttal fails to explain the whole story. IP knows well that in the 1999 DST case, where similar issues regarding notice and recission under bundled tariffs were argued, IP did, in fact, make changes to SC 21. (IIEC Ex. 4 at 6).

IP presupposes that the Commission cannot do anything that affects bundled tariffs. To the contrary, the Commission has every right and obligation to determine just and reasonable delivery service rates. (220 ILCS 5/9-201 and 16-108). The terms and conditions under which a customer may elect to

[8] To illustrate the cumbersome aspect of IP's policy, IIEC raised the specter of a customer giving a 12 month notice every day (with recission every day 10 months later) as a possible way to have effective access to the competitive market. (Voiles Tr. 606). IP was not agreeable to this approach either.

take delivery service (i.e. notice requirements) and return to bundled rates are appropriate for consideration in a delivery service case. Once a customer is eligible for delivery service, the Commission has every right and authority to decide the appropriateness of those tariffs and rates that affect the delivery service customer, including what happens to that delivery service customer when it returns to bundled service, consistent with its statutory obligation to promote the development of an effectively competitive market..

IP witness Voiles responded to Mr Stephen's suggestion that the notice provisions for terminating SC24 service should be liberalized even if customers took PPO service. (IP Ex. 5.12 at 9-10). She argued that movement to PPO service was not a significant step toward competition. IIEC disagrees.

First, PPO is an important part of delivery services. The General Assembly provided the PPO as an opportunity for delivery service customers to purchase power and energy based on a market value, and not in the context of a bundled rate. The customer must take delivery service in order to get PPO. (*See* 220 ILCS 5/16-110(a). For Ms. Voiles to suggest that the PPO is an inconsequential step toward competition from the point of view of the customer, is a suggestion that has no basis in fact. A customer that is interested in PPO will also need to evaluate other competitive alternative options. (IIEC Ex. 4 at 7). A customer taking PPO is paying a transition charge. (220 ILCS 5/16-110(b)). A customer taking PPO will have to enter into a PPO contract and would be subject to Rider TC. (Voiles, Tr. 599-601). To the extent the customer has an individually calculated TC, the customer will have to enter into a contract explaining the terms and conditions associated with having a transition charge. (Voiles Tr. 627). A customer taking service under PPO could readily assign the power and energy to a RES and in conjunction therewith, enter into a multiple year contract with the RES. (IIEC Ex. 4 at 7; Voiles Tr. 602). The PPO is similar in many respects to purchasing power and energy from a RES, it requires the customer to undertake most of the same steps and analysis. It also exposes the customer to competitive market decisions such as assignment transactions.

Ms. Voiles argues SC24 is optional and therefore customers should not have the ability to return to that rate from delivery service. (IP Ex. 5.12 at 11-12). SC 24 is no more optional than SC 21 or any other bundled rate. A bundled service customer greater than 1 MW has multiple choices for rates. The customer may choose SC 21 or SC 24 if it otherwise meets the requirements and conditions of those rates. (Voiles Tr. 610-613) Furthermore, presumably, customers could choose to participate in one of the IP real-time pricing rates, those are available as well. Each of these bundled choices are "options" – different, but equally available.

K. Rider PRS

Under Section 16-104(e) of the Act (220 ILCS 5/16-104(e)), retail customers are permitted to place a portion of their load on delivery service. The utility may require the customer to place its remaining load on a tariff containing charges that are set to recover the lowest reasonably available cost to the electric utility of acquiring power and energy to serve the customer's partial load. (220 ILCS 5/16-104(f)). IP's originally proposed Rider PRS was to be based solely on IP's hourly pricing proposal and eliminated the possibility of customers using the bundled service tariff as is allowed under current SC 110. IIEC objects to this undue limitation regarding Rider PRS and recommends the Commission modify the tariff to provide for both the hourly pricing option as originally proposed by IP, along with the modifications per Mr. Stephens' direct testimony, and the option to utilize the bundled service tariffs. To the extent the Commission rejects IIEC's approach, IIEC recommends Rider PRS be approved with both the hourly pricing option as originally proposed by IP, and the option to utilize the bundled service tariffs. (IIEC Ex.

4 at 25-26).

The modifications outlined by Mr. Stephens include rejecting the 10% surcharge on the hourly real time price as there is no indication that the cost of arranging for Rider PRS electric power or energy varies with the cost of the power and energy itself. In addition, there is no supply risk of serving energy to customers under this rider, as IP's power supply arrangements are covered by the existing purchase power agreements now in place. Therefore, the 10% adder is not necessary. Finally, IP has not provided a valid rationale for assuming only firm point-to-point transmission service can or will be used for PRS service, and so the Commission should reject this requirement that PRS customers pay for such service under Rider PRS. (IIEC Ex. 1 at 27, 31).

Under IP's current proposal, delivery service customers taking partial requirements from IP are treated in a discriminatory manner as compared to fully bundled service customers. Full requirements bundled service customers have a real time pricing option from IP. Under IP's complete withdrawal of its hourly pricing option, partial requirements delivery service customers will not have this option. (Jones Tr. 870-871). IP has offered no credible explanation as to why partial requirements delivery service customers should be denied the same option offered to fully bundled service customers.

Dated this 18th day of December, 2001.

Respectfully submitted,

____

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PROOF OF SERVICE

STATE OF ILLINOIS :
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I, Edward C. Fitzhenry, being an attorney admitted to practice in the State of Illinois and one of the attorneys for Illinois Industrial Energy Consumers herewith certify that I did on the 18th day of December, 2001, electronically file with the Illinois Commerce Commission, the Initial Brief on behalf of the Illinois Industrial Energy Consumers, and electronically serve same upon the persons identified on the attached service list.

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SUBSCRIBED AND SWORN to me, a Notary Public, on this 18th day of December, 2001.

Notary Public

34444

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER COMPANY	:	
	:	01-0432
Proposed revisions to delivery services tariff	:	
sheets and other sheets.	:	

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on this 18th day of December, 2001, we have electronically filed with the Illinois Commerce Commission, 527 East Capitol Ave., Springfield, Illinois, 62794, Initial Brief on behalf of the Illinois Industrial Energy Consumers, along with Proof of Service thereon attached.

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