

Illinois Commerce Commission :
On its Own Motion :

-vs- :

Central Illinois Light Company :

01-0792

Proceeding pursuant to Section 16- :
111(g) of the Public Utilities Act :
concerning proposed transfer of :
generation assets to a subsidiary and :
entry into related agreements. :

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 51'S
PETITION FOR INTERLOCUTORY REVIEW OF ADMINISTRATIVE LAW JUDGE'S
DENIAL OF LOCAL 51'S PETITION TO INTERVENE

Comes now INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL 51 ("Local 51"), and, pursuant to Section 200.520 of the Rules of
Practice of the Illinois Commerce Commission ("Commission"), requests review of the
Administrative Law Judge's December 17, 2001 decision denying Local 51's Petition to
Intervene. In support, Local 51 states:

FACTS

On November 20, 2001, pursuant to Section 16-111(g) of the Electric Service
Customer Choice and Rate Relief Law of 1997 (the "Act"), 220 ILCS. 5/16-111(g)(vi),
Central Illinois Light Company ("CILCO") filed a Notice of Transfer of Electrical Generation
Assets with the Commission. CILCO proposed to transfer all of its generation assets to

Central Illinois Generation Inc. ("CIGI"), a wholly-owned subsidiary, while keeping its transmission and distribution operations.¹ To facilitate the transfer, CILCO and CIGI have agreed that CILCO will purchase all of its energy requirements from CIGI through 2004. (CILCO's Not. of Transfer at 8-9.) Under a Power Supply Agreement ("PSA" - filed as Appendix with CILCO's Notice of Transfer), CILCO will pay CIGI the cost of its energy requirements - the Capacity Charge - plus an additional \$17.05 per megawatt hour - the "Energy Charge." (App. C to CILCO's Not. of Transfer at Section 6.1.)

Further, the PSA's unique "force majeure" clause limits CIGI's liability even when it fails to provide power due to its own equipment failure. (App. C to CILCO's Not. of Transfer at Section 9.1.) The PSA bars CILCO from seeking power on its own from other sources in such instances. The clause requires CILCO to purchase its power at "market rates" from CIGI and to continue paying CIGI the \$17.05 per mega watt hour Energy Charge. (App. C to CILCO's Not. of Transfer at Section 9.2.) In short the new CILCO, formerly the old CILCO's Transmission and Distribution Departments, would bear most or all of the risk of permitting the new CIGI, formerly the old CILCO's Generation Department, to change to a new market energy producer and supplier.

On December 14, 2001, Local 51 filed a Petition to Intervene in the above-described case. Local 51 is the collective bargaining representative of all non-supervisory employees currently working in CILCO's transmission and distribution departments. On

¹ At the present time, CILCO, including both its generation and transmission and distribution divisions, is a subsidiary of AES Corporation which is required by federal regulations to divest itself of CILCO due to its purchase of Indianapolis Power and Light Co., a utility in a state neighboring Illinois.

December 17, 2001, the Administrative Law Judge ("ALJ") denied the Petition, stating that Section 16-111(g)'s intervention provision is very limited. The ALJ held that Local 51 may intervene at a later point in the event that CILCO later requests a rate increase, but that it could only participate in the present proceedings through a statutory consumer protection agency.

ARGUMENT

Section 16-111(g)(vi) of the Act provides that "intervention shall be limited to parties with a *direct interest in the transaction which is the subject of the hearing* and any statutory consumer protection agency as defined in subsection (d) of Section 9-102.1." 220 Ill. Comp. Stat. 5/16-111(g)(vi) (emphasis supplied). The Commission may only *prohibit the proposed transaction if it determines* "(1) that the proposed transaction will render the electric utility unable to provide its tariffed services in a safe and reliable manner, or (2) that there is a strong likelihood that consummation of the proposed transaction will result in the electric utility being entitled to request an increase in its base rates during the mandatory transition period pursuant to subsection (d) of this Section." *Id.*

Local 51 has "a direct interest" in this transaction. After reviewing CILCO's and CIGI's proposed Asset Transfer and Power Supply Agreement, Local 51 believes that the proposed asset transfer places an undue burden on CILCO while placing little or no risk on CIGI. Further, Local 51 believes that the total cost of energy that the new CILCO will have to pay for is inflated. As a result, CILCO could well become a shell of its former self, and many Local 51 members could lose their jobs or, to save the New CILCO from bankruptcy, be required to make terms and conditions of employment concessions. In such an event,

Local 51's collective bargaining agreement contract would be picked apart piecemeal. Needless to say, Local 51 has a vital interest in its members' livelihood and in preserving for them the rights and benefits in both its current and future collective bargaining agreements. However, the financial difficulties CILCO would likely face under the proposed transfer of assets would render it unable to provide services in a safe and reliable manner or cause it to request a rate increase during the mandatory transition period. Under either outcome, simply to permit CIGI to turn into a swashbuckling supplier of energy to all would-be purchasers is not one that Local 51 or its members at CILCO can or should stand by and let happen. There is clearly less likelihood that such negative consequences from the proposed transfer will occur if the Commission permits a transfer skeptic with a direct interest in the transaction to intervene in these proceedings.

Both as a matter of good statutory interpretation and fundamental fairness, intervention should not be limited to the present participants in the instant transaction. If only CILCO and CIGI can participate in this proceeding, then Section 16-111(g)(vi) will be rendered meaningless, "since the parties to the transaction could not reasonably be expected to oppose it." *Commonwealth Edison Co.*, Case 99-0282 (June 14, 1999) (Hearing Examiners decision). Because Section 16-111(g) (vi) expressly permits any consumer protection agency to intervene in this transfer of assets proceeding, the Legislature surely intended that other types of groups could intervene. Recognizing that consumer protection groups have very specific interests, the Legislature expanded the pool of potential interveners by inserting the words "parties with a direct interest" into Section 16-111(g)(vi).

Groups such as the Citizens Utility Board ("CUB"), a statutory consumer protection agency, represent ratepayers, who are most concerned with being provided reliable service and reasonable rates. But, CUB does not have a mission to protect the job security of utility and working conditions of utility employees such as Local 51's members. It cannot, then, adequately protect their interests. Only CILCO's employees, in this case through their union, Local 51, can protect those interests. By allowing consumer groups to intervene in transfer hearings, the legislature clearly hoped that consumers' concerns over reliability and rates - these public interests - would be fully vetted by the Commission. Accordingly, by allowing other parties the right to intervene in these hearings, the Legislature recognized that there were other types of interests, private interests, not represented by the transaction participants or CUB, that also deserved a full airing before the Commission.

CILCO argued that the representative of the transferred employees, the generation employees, are the only employees who can intervene. Local 51 agrees the generation employees may intervene. But, that is not the end. In *Commonwealth Edison*, the Hearing Examiners concluded that "direct interest intervention is accorded solely to parties whose legally cognizable rights and interests would be directly affected by consummation of the subject transaction." In that case, Local 15, IBEW petitioned to intervene in a hearing dealing with ComEd's proposed sale of its generating plants. Based on Section 16-128(c) and (d) of the Act, which requires a successor employer of an existing utility to continue to employ the former utility's generating employees under the same terms and conditions of employment as those employees used to enjoy, the Commission granted

Local 15's intervention petition. The Hearing Examiners believed that Local 15's rights under Section 16-128 would be directly affected by the sale and permitted Local 15 to intervene to protect its members' terms and conditions of employment.

There is no doubt that Section 16-128 affords transferred employees extra protection. But, surely, the Public Utilities Act does not leave the employees of the remaining entity hung out to dry. While Section 16-128 was inserted into the Act to ensure a bottom line protection that transferred employees' "terms and conditions" of employment would be protected at least through the mandatory transition period, the remaining employees also need protection, not as successor employees, but in their remainder status. The Legislature accomplished this by the language of Section 16-111(g)(vi) which gives the remaining employees the right, through their union in this case, to bring information to the Commission about the transaction that could have a direct impact on the stability of the entity employing them. Section 16-111(g)(vi) makes it clear that the Legislature intends the remaining entity should provide service in a safe and reliable manner without coming hat in hand to the Commission for rate increases. To test this issue, Section 16-111 (g) (vi) allows third parties with a direct interest in the outcome of a transfer of assets, such as employees of the remaining employer, to intervene.

In the hearing, CILCO cited to two cases in support of its position: *Egyptian Electric Cooperative Ass'n v. ICC*, 33 Ill. 2d 339, 211 N.E.2d 238 (1965) and *WPS Energy Services, Inc.*, Case 00-0199 (March 16, 2001) (ICC decision). In the former case, the court upheld the Commission's denial of intervention because the appellant had presented

an insufficient interest in a proceeding authorizing construction of a power line extension. *Egyptian Electric* is entirely inapposite. First, it concerned a competitor's right to intervene in a "convenience and necessity" hearing simply on the basis of that competition. Local 51 is not CILCO's competitor. Local 51 seeks to intervene because it is likely that its members' interests will be directly and adversely affected by CIGI eating CILCO's generation assets and because its participation will help the Commission's investigation of the proposed transfer.

Second, the competitor in *Egyptian Electric* argued that, as a consumer and a landowner, it had the required interest to intervene. Rejecting that claim, the court noted that "any rates it would have as a landowner may be asserted in the condemnation suit." *Id.* at 342, 211 N.E.2d at 240. In the present case Local 51, as the representative of CILCO's employees, will not have another opportunity to protect its members' direct interest in a safe and healthy work environment.

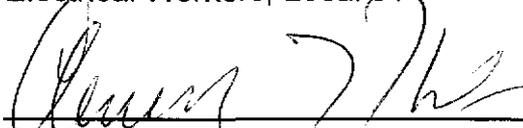
Clearly, the Legislature recognized the position of employees in a transfer of assets procedure by permitting them as ones with a direct interest in the outcome of such a transfer to bring in evidence and examine witnesses who might shed light on the proposed transfer's impact on health, safety and rates. Surely, these are the kinds of questions that should be addressed at this point of the proposed transfer, and not years later when the remaining entity is a shell of its former self forced to reduce the quality of services or to come to the Commission for frequent rate increases. Only by being allowed to intervene at this hearing, hopefully with expert testimony if the short time provided permits it, will Local 51 be able to protect CILCO's employees' interests.

In *WPS Energy Services*, the Commission was concerned with whether it could consider evidence other than that presented by WPS in its application for certification as an alternative retail electric supplier. The Commission compared Section 16-115(d) with Section 16-111(g), and found that in the latter the legislature intended to narrow participation in transfer proceedings. In *WPS Energy Services*, the Commission faced a broad array of interveners including unions, both in and out of the service area in which WPS intended to sell power directly to consumers, and Illinois State Legislators, who participated in the negotiations for the 1997 amendment to the Act. While the Commission noted that Section 16-111(g)(vi) requires that a proposed intervener demonstrate a direct interest in the transfer of assets, and, presumably, not State Legislators concerned with the Commission's construction of the Act, the Commission did not define who would meet the "direct interest" standard. As this Petition For Interlocutory Review hopefully demonstrates, if the employees of the entity left behind after a transfer of assets do not have a "direct interest" in the transaction, then it is virtually impossible to think who else would qualify under Section 16-111(g)(vi) other than the self interested parties seeking the transfer.

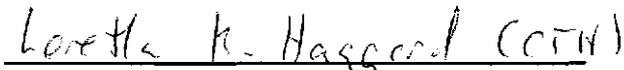
CONCLUSION

Having demonstrated that the cases cited by CILCO do not address the "direct interest" of employees affected by a transfer of assets, and having shown how strong a "direct interest" Local 51 and the employees it represents at CILCO do have in a proposed transfer, Local 51 prays that the Commission will promptly reverse the ALJ's decision to reject Local 51's Petition to Intervene.

Respectfully submitted,
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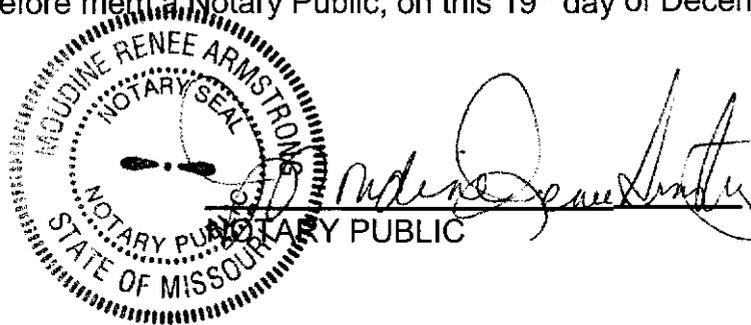
CITY OF ST. LOUIS:

Christopher T. Hexter, being duly sworn, deposes and says that he is one of the practicing attorneys in the law firm of Schuchat, Cook & Werner and one of the attorneys for International Brotherhood of Electrical Workers, Local 51, and that he is duly authorized to execute this Petition for Interlocutory Review, that he has read the above and foregoing document, has knowledge of the facts stated therein and herewith states that the matters set forth therein are true in substance and in fact.



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Subscribed and sworn to before me, a Notary Public, on this 19th day of December, 2001.



MOUDINE RENEE ARMSTRONG
Notary Public - State of Missouri
County of St. Louis
Commission Expires September 24, 2004

VERIFICATION OF SERVICE

Undersigned hereby verifies that he served an original of this Petition for Interlocutory Appeal was served upon Donna M. Caton, Chief Clerk of the Illinois Commerce Commission, 527 E. Capitol Ave., Springfield, IL 62701 by the Commission's E-mail System, by the United States Postal Service, first class mail, postage prepaid, and upon the below mentioned parties to this proceeding by facsimile and the United States Postal Service, first class mail, postage prepaid this 19th day of December, 2001:

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