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' BRIEF ON EXCEPTIONS

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COME NOW the Illinois Industrial Energy Consumers (IIEC), by their attorneys, Lueders, Robertson, Konzen & Fitzhenry, and pursuant to 83 Ill. Adm. Code Part 200.830, offer the following brief on exceptions to the Administrative Law Judge's Proposed Order (Proposed Order) dated February 1, 2002.

IIEC is in substantial agreement with the ALJ's Proposed Order. IIEC has four general areas of disagreement. First, IIEC respectfully disagrees with the Proposed Order's decision to use Illinois Power Company's (IP or Company) embedded cost of service study (ECOSS) for rate design purposes for the Demand Metered General Service class. Second, IIEC suggests a different starting point for calculation of allowable A&G expense. Third, IIEC respectfully disagrees with the Proposed Order's failure to set transformation charges at the same level for all non-residential delivery service customers. Finally, IIEC respectfully disagrees with the Proposed Order's rejection of IIEC's proposals to give non-residential delivery service customers served under SC 24, Rider S and SC 30 greater flexibility in selecting delivery service and returning to bundled service.

IV. REVENUE REQUIREMENTS

B. Rate Base

2. Contested Adjustments

a. Functionalization and Allocation of General & Intangible Plant Accounts

IIEC generally agrees with the conclusions set forth in the Proposed Order in regard to the appropriate functionalization of General & Intangible ("G&I") plant and Administrative & General expense ("A&G"). (Proposed Order at 17-18, 47).[1] IIEC also agrees with the methodology to determine the appropriate level of G&I plant and A&G expense for delivery service. IIEC does not agree with the determination of the allowable level of A&G expense, which is based on quantities as set forth in this portion of the Proposed Order.

IIEC does not propose any changes to the Proposed Order's findings with respect to the functionalization of G&I plant or A&G expense, or the determination of the appropriate level of G&I plant in this section of the order. IIEC provides a correction to the appropriate determination of allowable A&G expense in a different section of the order.

V. OPERATING REVENUE AND EXPENSES

C. Adjustments - Contested

5. Functionalization of A&G Expense

IIEC agrees with the Proposed Order in connection with the rejection of IP's large increases in A&G relative to the level approved in 1999. IIEC also agrees with the conclusion that states, "The

[1]Citations to the Proposed Order are to the PDF version from the e-Docket.

Commission also accepts the arguments of Staff and IIEC that based on the 1999 DST order, the mathematical relationships between A&G expenses in the distribution operating expenses and distribution labor expense must be maintained in this case." (Proposed Order at 47). However, IIEC believes that the Proposed Order incorrectly used the starting point as proposed by Staff of $23,860,000 in A&G expense from Docket No. 99-0134 (before ratemaking adjustments) (Proposed Order at 12 and 47).

As set forth in IIEC's testimony and not disputed by any party, the level of A&G expense found appropriate in the 1999 DST case is $15,918,000 ($15.9 million), which is set forth in the 1999 DST Order (Appendix A, Schedule 1). (Illinois Power Company, ICC Dkt. 99-0120 and 99-0134, Order, August 25, 1999). The 15.9 million is fully consistent with the use of the $67,125,000 in total distribution expense used by the Staff from the 1999 DST order (Proposed Order at 12). It is the final level of allowed A&G expense ($15.9 million), which supports the level of distribution operation and maintenance (O&M) expense ($67,125,000) set forth in the 1999 DST Order, that is the relative and appropriate starting point. IIEC recommends the appropriate method for determination of A&G expense in this case is to start with $15,918,000 and escalate that amount of A&G expense by Staff's method updated to reflect the ultimate level of O&M determined appropriate in this case. (Proposed Order at 12).

<u>Conclusion</u>

IIEC recommends the third full paragraph on page 47 be modified to read as follows:

> "The Commission concludes that the <u>appropriate starting point for determining</u> the amount of A&G expense that should be included in distribution <u>operating expense</u> ~~rate base~~ for purposes of this case is the amount <u>of A&G actually authorized in IP's last delivery service case of $15,918,000</u> proposed by ~~Staff~~ <u>IIEC in its brief on exceptions and</u>

> in IIEC Exhibit 3 at page 5, and escalated by Staff's method, as further adjusted based on any specific adjustments to A&G expense that are adopted by the Commission in other sections of this Order. The Commission accepts Staff's contention that based on the 1999 DST Order, IP should be required to allocate a portion of it's a&G expense to "generation" even though prior to the test year in this case IP divested all of its generation, and had essentially no generation facilities, business or labor expense during the 2000 test year. The Commission also accepts the arguments of Staff and IIEC that based on the 1999 DST Order, the mathematical relationships between A&G expenses in distribution operating expenses and distribution labor expense must be maintained in this case."

VII. COST OF SERVICE; RATE DESIGN; OTHER TARIFF ISSUES

C. Metering Service Drop Issues

The Proposed Order concludes that the underlying cause of IIEC's concerns about the level of IP's proposed metering charges appears to be the level of G&I plant and A&G expense allocated to the metering function. The Proposed Order finds that the underlying cause of IIEC's concern may be the level of G&I plant and A&G expense to which IP's allocation methodology was applied. The Proposed Order also states those issues are addressed in another section. The logic of this finding is that the enormous dollar-for-dollar relationship of G&I plant and A&G expense allocated to actual meter expense and meter investment set forth in the IP study will be corrected by the Commission's findings that lower the level of G&I plant and A&G expense to more reasonable levels.

G&I plant and A&G expense allocations are not necessarily uniform to all rate elements, classes or voltage levels which distort the study. However, the Proposed Order does not explicitly indicate that the IP cost of service study must be re-run, utilizing the authorized levels of G&I plant and A&G expense. The Proposed Order does not contain the remedy required to correct the metering study and design rates that follow a corrected study.

IIEC believes the same problems will carry through to all the quantities in the cost of service study utilized for "cost-based ratemaking." Therefore, IIEC recommends all intraclass rate design increases for the Demand Metered General Service class be implemented on an across-the-board basis. If any other method is used, parties should be given the opportunity to review the results of the other method and supporting documentation. This is especially important given the problems with IP's other cost of service and rate design filings in this case.

IIEC continues to recommend that metering charges be increased on an equal percentage basis because of concerns about the accuracy and reliability of the Company's meter cost of service study. (IIEC Int. Br. at 14).

Conclusion: The first full paragraph on page 60 of the Proposed Order should be eliminated and the following language inserted in its place:

> "The Commission accepts IIEC's arguments with regard to the use of the Company's metered cost study and, therefore, directs that metering charges be increased on an equal percentage basis."

E. Demand Metered General Service

1. Transformation Charges

The Proposed Order finds that based on the limited information in the record regarding the cost of providing transformation services, IP's proposed charges of 50¢ per kW for customers with demands of under 3 MW and 75¢ per kW for customers with demands of 3 MW or more, should be approved. Beyond the claim of "limited information," the Proposed Order states that IP's approach for allocating the embedded cost of transformation between customers is supported by the record and is reasonable, and that there is insufficient evidence to support IIEC's recommendation to increase the transformation charges for customers under 3 MW to 75¢ per kW. (Proposed Order at 71).

As explained below, the Proposed Order should be modified for these reasons:

- IP has not met its burden in substantiating its cost proposal for transformation charges. It is IIEC's primary recommendation that all customers below and above 3 MW be charged the same transformation charge, regardless of whether it is 50¢ per kW or 75¢ per kW.

- The evidence in the record also substantiates the claim that IP has failed to adequately explain why customers above and below 3 MW should be charged differently.

- Contrary to the claim of "limited information," there is credible evidence as to the appropriate transformation charges for customers below and above 3 MW.

- This is not an allocation issue. IP cannot distinguish between these two customer groups on an embedded cost basis.

IIEC's primary position is the transformation charge should be the same for all customers, and that IP failed to provide any credible evidence to justify a difference in charges. (IIEC Int. Br. at 15; IIEC Reply Br. at 15). The only evidence offered by IP was based on <u>marginal</u> cost of transformation, not embedded cost. However, even the marginal cost information relied upon by IP fails to justify a discrepancy in charges.

According to the Proposed Order, IP argued the 75¢ per kW charge for customers 3 MW and larger is appropriate because it is within the range of cost for recently installed transformation facilities for these customers. (Proposed Order at 72). Notwithstanding this finding, IP's own evidence warrants a different conclusion. Two of the five recently constructed substations for customers over 3 MW show a cost below 50¢ per kW, and the one sample significantly above 50¢ per kW is associated with a transformer that is actually less than 3 MW in size. The cost of transformation for above 3 MW installations ranged between 43¢ per kW and 69¢ per kW. (IIEC Ex. 1 at 23; IP Rev. Ex. 6.10, Sch. 2, Item 4, page 1, Col. 13). Thus, the proposed charge of 75¢

per kW is not within the range of costs for recently installed transformation facilities for customers 3 MW or over.

IP had argued the average cost per kW of the five recent transformation installations (including the below 3 MW installation) is 63¢. (Proposed Order at 72). IP does not explain how a 63¢ average cost per kW for transformation translates into a 75¢ per kW charge for transformation. Moreover, according to IP's revised exhibit, the average cost per kW of the transformation facilities installed for customers over 3 MW is not 63¢ per kW, but instead 54.5¢ per kW:

61¢ per kW
45¢ per kW
43¢ per kW
69¢ per kW

TOTAL $2.18 ÷ 4 = 54.5¢ per kW on average (Source: IP Rev. Ex. 6.10, Sch. 2, Item 4, page 1, Col. 13)

Instead of accurately portraying the costs of transformation facilities for customers over 3 MW, IP includes the cost for a transformation facility under 3 MW (97¢ per kW) , which has the effect of increasing the average transformation charge by almost 9¢ per kW. (IP Rev. Ex. 6.10, Sch. 2, Item 4, Page 1, Col. 13). IP has not properly calculated the average cost per kW for transformation for customers 3 MW and over. Had IP done so, it would have justified the same per kW charge for customers over and under 3 MW.

IP's claim "it is the range of costs of transformation installations for these larger customers, not the average, that is important" does not justify the disparate treatment. (Proposed Order at 72). Excluding the misclassified below 3 MW installation, the ranges for the two groups are similar and overlapping:

Size	Range

Below 3 MW	37¢ per kW - 50¢ per kW[2]
Above 3MW	43¢ per kW - 69¢ per kW.

IP Rev. Ex. 6.10, Sch. 2, Item 4

Because IP's evidence and cost analysis regarding its proposed transformation charges is so lacking, IIEC continues to maintain there is no credible basis to differentiate the charges for customers above and below 3 MW. Indeed, IP seemingly concedes its questionable cost analysis when it argued in the alternative, that if the Commission concludes there should not be a different transformation charge for customers above and below 3 MW, that the proper level of transformation charge would be 75¢ per kW. (IP Br. at 93) In this respect, IP acknowledges this level of charges would promote rate continuity as customers switch from bundled service to delivery services. (*See* Proposed Order at 71-72). IIEC agrees since the current charge for bundled service customers is 75¢ per kW. (Jones, Tr. 858).

Continuing with the limited cost analysis put forth by IP, despite the Proposed Order's conclusion that the IP approach for allocating the embedded cost of transformation between customers is supported by the record, the "evidence" is at best unreliable. Based on IP's response to an IIEC data request, IP claims the embedded cost of transformation on its system is actually $1.12 per kW (IIEC Ex. 4 at 19; Jones Tr. at 839-840) and not 50¢ per kW or even 75¢ per kW. This, despite IP witness Leonard Jones' testimony that he would have anticipated the embedded cost to

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[2]If the misclassified below 3 MW transformer (97¢ per kW) was to be included with the other below 3 MW transformers, the range becomes 37 ¢ per kW - 97¢ per kW. Using IP's rationale, a 75¢ per kW charge would be justified <u>only</u> for customers below 3 MW in this instance. Similarly, the average cost of all below 3 MW installations would be 56.6¢ per kW, <u>virtually identical</u> to the average charge of 54.5¢ per kW for above 3 MW transformers (.58 + .42 + .49 + .37 +.97 = 2.83. 2.83 ÷ 5 = 56.5¢ per kW on average). (IP Rev. Ex. 16.10, Sch. 2, Item 4, Page 1, Col. 13).

be close to the marginal cost. (Jones Tr. 886-887). In contrast, Mr. Jones agreed that in the 1999 DST case the embedded cost of transformation was only 42¢ per kW even though the cost of the new facilities shown on his exhibit, which are allegedly representative of transformation installation costs over the past three years, were all above 42¢ per kW. (*See* IP Rev. Ex. 6.1, Sch. 2, Item 4; Jones Tr. 839-840). It is readily apparent that IP's "evidence" regarding the appropriate level of transformation charges is paper thin in terms of reliability.

It is also apparent this is not an allocation of embedded cost issue. IP cannot distinguish between the under 3 MW customers and the 3 MW and over customers on embedded cost basis. (IP Ex. 6.6 at 17). Thus, there is no allocation issue here.

The Proposed Order avers there is "limited information" on the appropriate level of transformation charges. IIEC disputes this finding. There is ample evidence to substantiate the fact that there is no significant or reliable difference in costs, in terms of ranges or averages. (IIEC Ex. 1 at 21-23; IIEC Ex. 4 at 17-20). Moreover, the Proposed Order itself details the amount of evidence on this issue. (Proposed Order at 69-73).

IP has the burden to justify the reasonableness of its rates. The proposed disparity in transformation charges by IP cannot be approved on a *de facto* basis in the absence of record support. While IIEC could support <u>either</u> 75¢ per kW for all customers or 50¢ per kW for all customers, rate continuity argues for 75¢ per kW given that current bundled tariffs provide for a 75¢ per kW transformation charge. (Jones, Tr. 858). In no event should there be the disparate treatment proposed by IP and adopted in the Proposed Order.

Based on the foregoing, IIEC recommends deleting the second full paragraph on page 73 and insert the following:

c. Commission's Conclusion

> "The Commission finds based on the evidence in the record that IP's proposal to differentiate the transformation charges between customers 3 MW and under and customers over 3 MW is unsupportable. IP has not, and claims it cannot, provide the embedded costs to justify a disparity between these classes. Even accepting IP's revised exhibit that the marginal cost of recently installed transformation facilities is on the average 63¢ per kW, that average amount does not justify the higher per unit charges for larger customers as suggested by IP. IP's own evidence points to a 54.5¢ per kW charge for new facilities for customers over 3 MW and 56.6¢ per kW charge for new facilities for customers 3 MW and below on average.
>
> It is readily apparent that IP's cost analysis is limited and questionable. The embedded cost of transformation ($1.12 per kW) as compared to the embedded cost of transformation from the 1999 DST case (42¢ per kW) does not distinguish between groups of customers and so widely varies that reliance upon the IP analysis is problematic.
>
> Given IP's acknowledgment that rate continuity has some importance with respect to customers switching from bundled services to delivery services, the Commission affirms the same transformation charge for customers above 3 MW as customers below 3 MW, 75¢ per kW charge based solely on the marginal cost information provided by IP."

In the alternative, should the Commission find that a 50¢ per kW transformation charge is appropriate for all customer, IIEC recommends the last paragraph for its recommended language as follows:

> "Despite IP's and IIEC's acknowledgment that rate continuity has some importance with respect to customers switching from bundled services to delivery services, the Commission affirms the same 50¢ per kW transformation charge for customers above 3 MW and customers 3 MW and below."

2. Demand Charges and Distribution Capacity Charges

The Proposed Order rejects IIEC's recommendation that rates for the Demand Metered General Service class be increased by an equal percentage. The Proposed Order reasons that the only serious flaw in the IP ECOSS, as presented on rebuttal, has been corrected. While the Proposed

Order sympathizes with IIEC's concerns about the study, it notes the study cannot be ignored given that no errors or problems with the study have been identified. Therefore, it finds IP's ECOSS is reasonable for use in rate design in this proceeding. (Proposed Order at 79).

IIEC agrees that the revised study is suitable for interclass revenue allocation. However, the study should not be used for intraclass rate design for the Demand Metered General Service class.

IIEC proposed to adjust all rate components for the Demand Metered General Service class by an equal percentage to preserve rate relationships established in the 1999 DST case to ensure rate continuity. (IIEC Ex. 3 at 20).[3] IIEC's proposal does not affect the rate design of, or revenues collected from, any other class of service.

IIEC's recommendation is based on several concerns. IP did not present the basis for its rate design until after the rebuttal case. (IIEC Ex. 6 at 13-14). IP could have presented much of the information in its direct case. (Jones Tr. 863-864). IIEC acknowledges and shares the ALJ's frustration with IP's original filing (Proposed Order at 55), which appears to be a continuing problem for the Commission and parties to these DST cases. The IP approach offered interested parties inadequate time for discovery, review and analysis of the rates, revenues and charges encompassed within the study. These items on rebuttal differed significantly from the Company's original filing. In addition, IP's study tripled the increase for the demand metered class from 13% to 39% and heavily skewed the increase to the larger, high voltage customers. (IIEC Ex. 6 at 5; IIEC Ex. 4 at 12, Table 2 Rev.). IP's rate design produced as much as an 1100% increase in certain rate elements within the Demand Metered General Service class. (Tr. 865). In addition, IP's rebuttal cost of

[3]The IIEC recommendation does not apply to the kVAR charge of 13 cents per kVAR, which was the subject of a settlement between IP, IIEC and the Staff.

service study contains lower per unit rates for most elements of the over 1,000 kW segment of the Demand Metered rate class as compared to te original study but the percentage increase for the class is three times as large as the increase suggested by IP's original study. (IIEC Ex. 6 at 15). All these things suggest the presence of additional problems with the IP study.

For all these reasons, IP's revised embedded cost study should not be used for rate design for the Demand Metered General Service class.

Conclusion: At page 79 of the Proposed Order, the following language should be inserted in place of the first full paragraph:

> "While the Commission finds that IP's study is reasonable for use in allocating revenues among classes, it is not appropriate for use in designing rates within the Demand Metered General Service class. The Company prepared a revised study and rate design in the rebuttal portion of this case. This revised study produced increases in certain rate elements as much as 1100% and skewed the increase toward the high voltage customers within the class. It increased demand metered class revenue responsibility from 13% to 39%. In addition, there were mismatches between the overall increase to the demand metered class in comparison to the increase in the level of individual rate elements of the 1,000 kW segment of that class. Finally, IP's method of presentation did not give parties adequate time to respond. Therefore, the rate elements for the Demand Metered General Service class should be increased by an equal percentage (other than the kVAR charge)."

3. <u>Facilities Charge</u>

For the reasons stated above, the facilities charge should be increased by an equal percentage.

Conclusion: The second full paragraph on page 80 of the Proposed Order should be deleted and the following language inserted in its place:

> "For the reasons stated above, the Commission accepts IIEC's equal percentage increase proposal for establishing charges for the Demand Metered General Service class. Therefore, the current IP

facilities charge should be increased by an equal percentage."

M. Other Tariff Terms And Conditions

There is no question that the amount of customer switching in the IP service territory is dismal. Less than 2% of the non-residential customers in the IP service territory have opted for delivery service, and only 9 of IP's 223 customers in the 1 MW and above size range are utilizing a competitive power supply. (IIEC Ex. 1 at 5; IIEC Ex. 4 at 3). Only 0.5% of the 64,000 eligible customers smaller than 1 MW that were eligible for delivery service have switched to delivery service. (IIEC Ex. 4 at 4).

Some of the fault for the lack of customer switching in the IP service territory is IP's application of the terms and conditions in its bundled tariffs. (IIEC Ex. 1 at 2, 7). The terms and conditions in IP's bundled tariffs, in many instances, do not integrate the realities of a retail electric market with the needs of a customer to fairly participate in that market. Accordingly, IIEC made a number of recommendations, to wit:

- Provide greater flexibility for customers who have tested the competitive market and in this regard, IIEC recommends that the Commission 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 would have the right to return to those rates.

- Modify IP's SC 110 tariff to allow a customer who was otherwise eligible for delivery service to provide a 30 day notice of its intent to leave bundled service.
  (*See* IIEC Initial Br. at 4-5).

The Proposed Order rejects IIEC's recommendations *in toto*. The Proposed Order rejects IIEC's proposal because:

- IP's SC 24 would change.

- There would be no restrictions on how long a customer could take delivery service and still return to SC 24 without facing the five year primary term and as a result, similarly situated customers would be treated differently and unfairly.

- IIEC failed to adequately explain why customers switching to delivery services should be treated differently from customers wishing to terminate SC 24 service but not switch to delivery services, again claiming disparate treatment.

- IIEC failed to adequately explain why customers leaving either Rider S or SC 30 to take delivery services should be allowed to return to those services when customers that leave for any other reason cannot return to those services, again focusing on the alleged disparate treatment of similarly situated customers.
(Proposed Order at 122)

IIEC maintains none of its proposals require a *per se* change to bundled rates. Furthermore, IP has proposed and the ALJ and Commission have previously adopted other changes that impact bundled rates (e.g. waiver of primary term under SC 21, notice to return to bundled service, mandatory period for customers returning to bundled service.) Finally, as demonstrated below, none of IIEC's proposals result in a disparate treatment of similarly situated customers.

<u>Flexibility for SC 24, Rider S and SC 30 Customers Does Not Result In Disparate Treatment</u>

First of all, there is nothing about IIEC's proposal that allows a customer to avoid the five year primary term. If the SC 24 customer is in the third year of the five year primary term, IIEC's proposal would not apply. The customer must complete the five year primary term.

Consider a hypothetical where the SC 24 customer has completed the five year primary term. This customer is then on an annual contract with IP, that can be terminated at any time subject to the required notice. IIEC maintains that customer should be allowed to give notice to IP, take delivery services, and then return to SC 24 on the same basis as it was once subject. There is no disparate treatment regarding similarly situated customers because the customer that left IP's SC 24 service had, in fact, been subject to the entire five year primary term. A new customer coming to IP and wanting to take SC 24 service, will have to take service under the five year primary term. In both cases, each customer has been subject to the same five year primary term. There is no disparate treatment.

With respect to Rider S and SC 30 customers, again there is no disparate treatment. The Rider S or SC 30 customer that leaves IP's system and takes delivery services, and comes back to that service is back to the same position. These customers are only maintaining the status quo. Other customers are not being treated differently, as they were not entitled to Rider S or SC30 service in the first instance.

The Proposed Order misunderstands the nature of why a customer would leave SC 24 service or Rider S or SC 30 and <u>not</u> take delivery service. In these instances, the customer would either be significantly changing its operations (including closing the business) or switching to another bundled tariff for economic reasons. In either case, there would be little reason to seek to return to the tariffs deemed no longer appropriate.

In addition, the Commission's mandate under Section 16-101A of the Public Utilities Act (220 ILCS 5/16-101A) to "promote the development of an effectively competitive market" further distinguishes the situation in which a customer switches from one bundled service to another from a situation where a customer wishes to switch from bundled service to delivery service. The former maintains the status quo, the later helps develop a competitive market.

As explained by IIEC, IP's obstinence on these issues creates a legitimate barrier to customers who might be willing to try competitive service but for these "hammers" held over their heads, should they wish to return to bundled service. Customers who have left bundled service temporarily and returned create no different costs or obligations to the utility than do similar customers who simply remained on the bundled tariff throughout. In this sense, the "penalties" IP would impose on them relative to remaining customers would be unjust and accomplish nothing more than discourage pursuit of competitive supply.

<u>30 Day Notice Is Reasonable</u>

Under IP's current administration of its SC 24 tariff, a customer must give termination notice 12 months in advance of qualifying for SC 110 service.

Mr. Robert Stephens on behalf of the IIEC succinctly stated his objections to the 12 month termination notice as follows:

> "...under IP's administration of its SC 24 tariff, a customer would have to give termination *notice twelve months ago* in order to qualify for SC 110 service today. Yet what prudent consumer would have canceled its supply agreement 12 months ago, not knowing if it would qualify for PPO service or if there would be viable competitive options available today? The 12 month notice provision is an artifact of an era when the utility built and owned only generating resources needed to serve its captive bundled service customers. IP is no longer in this situation.
>
> This antiquated notice provision runs counter to the realities of the competitive market today, where opportunities can present themselves, and disappear, in a matter of days or weeks. Customers can have difficulty securing legitimate and dependable supply offers if they are not eligible for delivery services for another 12 months."
> (IIEC Ex. 1 at 12).

The Commission considered certain of these proposals in the 1999 DST case. In the 1999 DST case, IP did agree to make comparable changes to SC 21. (IIEC Ex. 4 at 6). Therefore, the notion that this docket is not the appropriate forum for considering changes to these tariffs is contrary to the Commission's past decision. In addition, we emphasize that the proposals IIEC is making are with respect to SC 110. The Commission has every right and authority to modify or change SC 110, consistent with the directives founded in the law. (*See* 220 ILCS 5/9-201 and 16-108).

IIEC presents again the question to the Commission as to whether it is satisfied with the level of competition in the IP service territory, or does the Commission want to eliminate barriers to customers that are interested in participating in the market? Chairman Richard Mathias made his position clear when he wrote the President of IP, complaining that IP was the only major incumbent Illinois electric utility that insisted on strictly enforcing the termination provisions of standard electric service and that IP's intransigence regarding these standard agreements appears to effectively stunt competition. (Voiles Tr. at 609).

IIEC's recommendation encourages the development of greater competition in the IP service territory by providing customers with greater flexibility. If IIEC's recommendations are not accepted, customer switching in the IP service territory is likely to remain stagnant.

Finally, there is no good reason why SC 21 customers electing delivery service should be treated better than SC 24 customers electing delivery service with regard to 30 days notice requirements. Both rates have lengthy primary (3-5 years for SC 21 depending on demand levels) terms and a 1 year automatic renewal term yet only the SC 21 customer can give 30 days notice and the SC 24 customer must give 12 months notice. (See IP SC 21 Sec. 4a, b, and c).

Conclusion

Based on the foregoing, IIEC recommends deleting all the language at page 122 beginning with the second full paragraph and insert the following:

> "The Commission finds that IIEC's proposals should be adopted at this time.

There is no disputing the lack of customer switching in the IP service territory. No doubt there are many reasons for the lack of customer switching, but the evidence in this case demonstrates the unreasonable conditions imposed on certain delivery service customers, who otherwise might seek competitive supply and on delivery service customers desiring to return to bundled service, as having a potential impact.

The Commission is not persuaded by IP's arguments that the IIEC proposals result in disparate treatment. For example, a customer taking SC 24 service that later desires to return to the service, will have already been subject to the five year primary term. A new customer desiring SC 24 service will also be subject to the same five year primary term. We agree with IIEC that given the similarity in term provisions there is no reason to treat SC 21 customers more generously than SC 24 customers with regard to a notice for delivery service. Similarly, a Rider S or SC 30 customer that desires to return to interruptible service is not receiving anything more than what it once was entitled. Customers that were not taking Rider S or SC 30 service and who chose to take delivery services, are not treated any differently because they are in no worse of a position than they were prior to taking delivery service.

The Commission emphasizes that its acceptance of IIEC's recommendations is in accord with its authorities to implement just and reasonable delivery service rates, and to promote competition. The Commission is of the view that the General Assembly did not intend for the Commission to act in a vacuum, that is, assume there would be no interrelationship between bundled service rates and delivery service rates as part of the deregulation of the electric utility industry. The Commission believes, from time to time, there may be a need to modify or change delivery service rates that have some bearing on bundled service rates as it has allowed for IP in the past, in order to ensure that customers have an opportunity to fairly take advantage of delivery services. The Commission believes its decision in the best case, will help promote the development of an effectively competitive market and, in the worst case, will have no detrimental impact on IP or its customers."

Respectfully submitted,

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35129.1

<u>PROOF OF SERVICE</u>

STATE OF ILLINOIS :
: SS
COUNTY OF MADISON :

I, Eric Robertson, 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 15th day of February, 2002, electronically file with the Illinois Commerce Commission, the Brief on Exceptions 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 15th day of February, 2002.

____

Notary Public

35129

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 15th day of February, 2002, we have electronically filed with the Illinois Commerce Commission, 527 East Capitol Ave., Springfield, Illinois, 62794, Brief on Exceptions on behalf of the Illinois Industrial Energy Consumers, along with Proof of Service thereon attached.

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February 15, 2002

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 Brief on Exceptions 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/35129