STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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ILLINOIS POWER COMPANY	)	**01-0432**
Proposed revisions to delivery services tariff	)	
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REPLY BRIEF ON EXCEPTIONS

OF

THE CITIZENS UTILITY BOARD AND

THE PEOPLE OF THE STATE OF ILLINOIS

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<u>REPLY BRIEF ON EXCEPTIONS OF THE CITIZENS UTILITY BOARD AND THE PEOPLE OF THE STATE OF ILLINOIS</u>

NOW COME, The Citizens Utility Board ("CUB") and the People of the State of Illinois, Illinois Attorney General's Office ("AG") (collectively, "Governmental and Consumer Intervenors," or "GCI"), by their attorneys, and file their Reply Brief on Exceptions in the above-captioned proceeding.

I. REPLY TO ILLINOIS POWER EXCEPTIONS

A. Incentive Compensation

IP takes exception to the PO's denial of recovery for all of IP's incentive compensation expenses for the test year. IP Exceptions at 45. IP then advocated for the inclusion of all of its test year incentive compensation expenses. IP's exceptions do not distinguish between incentive compensation for union and non-union employees as GCI did in it initial brief. GCI Initial Brief at 16. Nor do IP's exceptions discuss the difference between union and non-union incentive programs. Indeed, the closest that IP comes to differentiating the various types of incentive compensation is in arguing that "...the incentive compensation program provides a tool to focus and motivate employee performance in specific areas that are important to customers as well as to the Company." IP Exceptions at 48. However, IP's argument does not illuminate the fact that, for 2001, the incentive program for non-union employees only benefits the company.

In fact, for 2001 the incentive compensation program for non-union employees will be based on Earnings Before Interest and Taxes ("EBIT"). IP Ex. 10.1 at 13. GCI witness Effron testified, "[i]ncreasing EBIT is a shareholder-oriented goal, not a customer-oriented goal." GCI Ex. 4.0 at 9. For example, all else being equal, higher rates will result in higher revenues, which in turn will result in a higher EBIT. *See* GCI Initial Brief at 16. Thus, including incentive compensation related to EBIT in the revenue requirement would, in effect, require customers to reward company management on a contingency basis for getting them to pay higher rates. Therefore, GCI proposes that the incentive compensation related to EBIT be excluded from the delivery service revenue requirement. GCI Initial Brief at 16.

Having excluded all incentive compensation expenses, the Commission did not reach GCI's more specific argument against the EBIT-based incentive compensation for non-union employees. However, if the Commission finds that a total exclusion of incentive compensation is not warranted, GCI submits that, because the EBIT-based incentive compensation for non-union employees would require customers to reward company management on a contingency basis for getting them to pay higher rates, the Commission should continue to deny recovery for the non-union subset of incentive compensation expenses. Therefore, regardless of IP's exceptions, the Commission should continue to deny recovery for the $4,563,000 expense for non-union employee incentive compensation.

B. The PO Correctly Reduced IP's Proposed A&G Expense Increase

In its exceptions, IP continues to argue for a substantial increase to A&G expense from the $15,938,000 approved in the 1999 DST docket to the $41,682,000[1] proposed by IP in this docket, an approximate 162% increase. *See* GCI Initial Brief at 18. IP dismisses the magnitude of this increase by attacking the 1999 DST number "…as not a determination of A&G expense that would actually be needed to operate the distribution business." IP Exceptions at 52 (emphasis in original). Rather, IP claims that the 1999 DST A&G expense of $15,938,000 was simply an allocation of the A&G expense for distribution. IP argues that the Commission should accept a 1997 A&G expense amount, which IP adjusted to include the very non-recurring charge exclusions and ratemaking adjustments made in the 1999 DST order. IP's entire argument in favor of this substantial increase requires the Commission to ignore the A&G expense of $15,938,000 that it found in the 1999 DST Docket.

First, using its own adjusted 1997 DST figure, IP's argument that it actually reduced A&G expenses from 1997 to 2000 does not counter the PO's conclusions. IP, itself, cannot reconcile this reduction with the significant increase that it seeks. In fact, IP's comparison supports the PO's more moderate increase.

Second, IP's argument that the disparity in A&G expenses arises from the difference between IP being a vertically integrated utility and being a distribution affiliate does not give the Commission reason to increase rates. IP Exceptions at 52-53. Indeed, IP's dismissal of the 1999 DST determination of A&G expense calls into question IP's economic decision to sell its generation plants. Where IP's voluntary business decision to sell its generation plants rather than retain them resulted in comparatively higher expenses for distribution services, IP's obligation to provide least-cost public utility services was not met. *See* 220 ILCS 5/1-102. Ratepayers should not be required to underwrite the increased expense brought about by this voluntary business decision.

Therefore, the PO correctly reduced IP's proposed A&G expense increase. IP's questionable analysis should not dissuade the Commission from adopting the PO's finding.

C. The PO Correctly Accepted GCI's Declining Block Differential Proposal

IP takes exception to the declining block rate accepted in the PO. IP Brief on Exceptions at 67. GCI agrees with IP to the extent that the PO "correctly concludes that the residential delivery charge should have a two-block structure…" Id. However, IP also claims that the level of differential between the blocks accepted in the PO fails to contribute to rate continuity. Id. IP proposes that the Commission use a load-weighted average differential between the current summer and winter block rates, which would be equal to 1.4 cents/kWh. Id. at 68. IP's position is difficult to reconcile with the concept of "rate continuity."

Though IP claims its declining block charge rate design proposal effectuates a closer similarity to the current bundled rate structure, this is clearly not the case. Jones Rebuttal, IP Ex. 6.6 at 6. First, the Company admits that its proposal is higher than the cost-based differential. IP Ex. 6.14 at 5; Tr. at 822-823; IP Brief on Exceptions at 68. IP Witness Mr. Jones accepts that secondary distribution costs vary with customer size and that, under IP's approach, some customers will pay for more facilities than they use. IP Ex. 6.14 at 5. He agreed that when looking at the Delivery Charge, the revenues resulting from the higher first block would be

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[1] GCI notes that the $34.5 million, IP used in its Brief on Exceptions to compare with 1999 DST case, admittedly did not include increases to that number for amortizations of non-recurring charges and pro forma adjustments. *See*

greater than the cost the company has computed for the residential share of the distribution system. Tr. at 823. Second, no customer would see a delivery service rate parallel to the current bundled rate under IP's proposal. Therefore, there is no real rate continuity associated with IP's proposal.

GCI's proposal, which was adopted by the PO, maintains the current bundled rate summer differential of 0.8 cents/kWh, with the same differential in both seasons. GCI's approach will allow customers to easily compare bundled rates to the new delivery rates. Customers considering delivery services will observe the same differential in the summer season that they pay on the current bundled rate. Therefore, the PO wisely accepted GCI's proposal for a modified declining block rate, with the differential held to 0.8 cents/kWh.

II. Reply to Staff Exceptions

As set out in its Brief on Exceptions, GCI submits that electronic signatures are legally authorized in Illinois. GCI agrees with Staff that the Illinois Electronic Commerce and Security Act ("ECSA") allows a Illinois Consumer Fraud and Deceptive Business Practices Act ("Consumer Fraud Act") Section 2EE Letter of Authority ("LOA") to be authorized by an electronic signature. GCI Exceptions at 19, *see also* 5 ILCS 175/1 et seq.; 815 ILCS 505/1 et seq. However, GCI cautions the Commission from citing its order in the Nicor Gas ICC Docket No. 00-0620/0621. *See* Staff Exceptions at 10, 18.

While that order did allow for internet enrollment for natural gas customers, those customers do not enjoy the same LOA protections that the Consumer Fraud Act affords electricity customers, i.e. there is no analogous LOA section for gas customers. The Commission's deliberations regarding internet enrollment of gas customers did not require the

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IP Brief on Exceptions at 58, n.17.

Commission to reconcile the statutory consumer protections of the Section 2EE of the Consumer Fraud Act with the competitive interest of broadening the available tools with which an alternate supplier may enroll new customers. Therefore, GCI maintains that LOAs may be authorized electronically, but because of differences in the applicable law, GCI does not find support for that position in the Docket 00-0620/0621 Order cited by Staff.

CONCLUSION

For the reasons discussed in this brief, GCI asks that the Commission grant the relief we have requested on those issues addressed herein.

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This Reply Brief on Exceptions in the ICC Docket NO. 01-0432 is being filed on behalf of:

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