

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Central Illinois Public Service Company)	
(AmerenCIPS) and)	Docket No. 02-0798
Union Electric Company)	
(AmerenUE))	
)	
Proposed general increase in natural)	
gas rates)	

MOTION TO STRIKE

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, d/b/a AmerenCIPS

("AmerenCIPS") moves to strike certain portions, hereinafter specified, of the initial brief of the Citizens Utility Board ("CUB"). In support of this motion, AmerenCIPS states as follows:

I. CIPS' COST OF SERVICE STUDY

1. In support of its arguments regarding the misallocation of distribution plant in the CIPS' Cost of Service Study, CUB's initial brief (at page 7) cites testimony from a treatise that is clearly not the law nor part of the record:

The American Gas Association described the Atlantic Seaboard peak and average cost allocation methodology this way:

In 1952, the Atlantic Seaboard Case, the FPC established cost allocation principles for designing pipeline rates. Under this formula, the FPC assigned 50 percent of the fixed costs on the basis of demand (i.e., peak deliveries) and the other 50 percent on the basis of commodity (i.e., annual deliveries). In Atlantic Seaboard Corporation, et al., 11 FPC 43 1952

Gas Rate Fundamentals, American Gas Associated, 4th edition, Arlington, VA (1987).

2. The treatise was neither admitted nor offered during the evidentiary hearings in this proceeding. In fact, CUB raised the treatise citation for the first time in its initial brief.

According to the Illinois Administrative Code, statements within briefs submitted to the

Administrative Law Judge or the Commissioner should be supported by citation to the record or to evidence produced during the hearing. See Ill. Admin. Code, tit. 83, § 200.800 (2003).

3. Further, CUB did not request the ALJs to take administrative notice of this document, and even if CUB had made such a request, it would not have been proper. Pursuant to Section 200.640 of the Illinois Administrative Code, the Commissioner or Hearing Examiner may take administrative notice of the following:

- 1) Rules, regulations, administrative rulings and orders, and written policies of governmental bodies other than the Commission.
- 2) Contents of certificates, permits and licenses issued by the Commission, and the order, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed Commission proceedings.
- 3) Annual reports, tariffs, classifications and schedules regularly established by or filed with the Commission as required or authorized by law or by an order or rule of the Commission.
- 4) State and Federal statutes and municipal and local ordinances.
- 5) The decisions of the State and Federal courts.
- 6) Generally recognized scientific or technical facts within the specialized knowledge of the Commission.
- 7) All other matter of which the circuit courts of this State may take judicial notice.

Ill. Admin. Code tit. 83, § 200.640 (2003). The treatise that CUB cites to in its brief does not fall into any of the seven categories which warrant administrative notice. Therefore, the Commission should not consider the portions of the CUB brief relying on or containing this inadmissible evidence.

4. Additionally, allowing CUB to present and rely on this evidence in a post-hearing brief would undermine the general purpose of Commission hearings. In Globalcom, Inc. v. Illinois Bell Telephone Company, 2002 WL 32057533, No. 02-0365, at *1 (Ill. C.C. October 23, 2002), the Commission reasoned that evidentiary hearings "are the designated conduit for presenting evidence intended for Commission consideration." Id. at *35. Since the evidence adduced at the hearing is subjected to the scrutiny of adversaries, its implications can be

thoroughly explored. Id. However, when evidence is first offered in a post-hearing brief, these post-record materials clearly circumvent the process. Id. Therefore, by failing to offer the treatise as evidence during the hearing and by failing to ask the court to take administrative notice, the statements which CUB relies on in its post-hearing brief must be stricken.

WHEREFORE, for the reasons stated herein, Central Illinois Public Service Company respectfully requests that the portion of the CUB's initial brief specified above be stricken. CUB should be directed to submit new briefs with the stricken portions removed. The original briefs should be removed from the Commission's e-Docket so that the prejudicial matter is not inadvertently made available to persons seeking to review the briefs.

Dated: August 8, 2003

Respectfully submitted,

CENTRAL ILLINOIS PUBLIC SERVICE
COMPANY, d/b/a AmerenCIPS, and
UNION ELECTRIC COMPANY,
d/b/a AmerenUE

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