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Memorandum

DATE: August 13, 2004

TO: Mayor Satterthwaite and the Urbana City Council

FROM: Steve Holz, City Attorney

RE: Ordinance Authorizing Settlement Agreement with Ameren (Ameren/Illinois Power merger litigation at ICC)

Introduction: The attached Ordinance authorizes the Chief Administrative Officer to execute an Agreement with Ameren Corporation concerning Ameren's acquisition of the distribution and transmission assets of Illinois Power Company. The Agreement is a joint agreement with the City of Champaign.

I recommend passage of this Ordinance.

Background:

As you will recall, the Cities of Champaign and Urbana have been investigating the issue of electrical reliability in the community since June 2003. A public airing of complaints about Illinois Power was held at that time, with speakers from a variety of community stakeholders, including individuals, business representatives, developers, and builders commenting about serious difficulties with respect to IP's customer service and electric reliability. One outcome of that meeting was that the Cities of Champaign and Urbana filed an informal complaint with the Illinois Commerce Commission concerning Illinois Power's customer service and reliability.

In the meantime, Dyengy Corp., the parent company of Illinois Power, entered into an agreement with Exelon Corp. for Exelon to purchase Illinois Power. Part of that effort was an effort by Dyengy and Exelon to gain fundamental changes in Illinois law with respect to review of utility mergers. Ultimately, that effort failed.

Ameren stepped up as the next interested buyer of Illinois Power. An agreement was reached between those two companies, and the matter is now before the Illinois

Commerce Commission for review of the companies' request for Illinois Commerce Commission approval of the transaction.

Numerous parties, including the Cities of Champaign and Urbana, have intervened in the ICC proceeding. The Cities, together with the University of Illinois, entered into a three-way agreement to fund expert analysis and assistance, in part to aid the Cities in the ICC process. The Intergovernmental Agreement between the Cities of Champaign and Urbana and the University of Illinois authorized \$100,000.00 (33-1/3% each) for the purpose of investigating the electric reliability of Illinois Power. Consultants, R.W. Beck, have been retained and have provided testimony that the Cities have filed in opposition to the proposed transaction. The bulk of the testimony focuses on reliability concerns about the electric transmission and distribution system as it affects our communities. Specialty legal counsel has also been retained. It is estimated that the cost of the intervention to date is approximately \$50,000.00, not including significant staff time by the Legal Departments and administrations of both Cities as well as time spent by University staff.

Negotiation of a Settlement Agreement:

Various parties, including staff at the Illinois Commerce Commission, had informally recommended to the Cities that they utilize the opportunity of the ICC acquisition proceeding to negotiate with Ameren Corporation concerning the specific issues of electric reliability that the Cities have been discussing for over a year now. This is a common practice in an acquisition/merger case. The Cities have had numerous negotiating sessions with Ameren Corporation and have developed a Settlement Agreement which is the subject of this Resolution.

Ameren has agreed to the following terms:

- a. Preconditions.** The Settlement Agreement goes into effect only if the Cities withdraw their opposition to the Ameren acquisition and provide testimony in support of the transaction. The Agreement also is of no effect unless the acquisition is actually concluded. The Agreement is with Ameren Corporation and not Illinois Power.
- b. Audit.** The major provision is an agreement by Ameren that if it acquires IP, it will conduct an audit of its electric transmission and distribution facilities. The audit provisions require specific studies to be done. These studies will produce sufficient information to generate recommendations that will lead to improvement of the system. The audit's conclusions will be shared with the Cities. The Cities' recommendation on which work should be done first will be accepted by Ameren.
- c. Other Issues.** The Agreement also requires Ameren to come up with plans concerning two issues which were the source of frequent complaint in the public hearing: animal intrusion causing system outages and outages of less than one minute. The Agreement also recognizes under-grounding electrical facilities as a goal of the Cities. A major benefit of the Agreement is that Ameren agrees to complete the work recommended by the audit within five years, if reasonably

possible. The Agreement also provides for future audits, so that the Cities will remain aware of the condition of the system. Ameren will report every six months as to the progress of the audit recommendations. The expense to the Cities of technically reviewing these documents by expert engineers will be reimbursed by Ameren, up to \$50,000.00.

d. Expenditures Commitment. Another major benefit of the Agreement is a commitment to spend at least \$6,000,000.00 in each of the next two years following the close of the transaction. Although the \$6,000,000.00 is not specifically committed to do the work required by the audit, it is a commitment to spend a minimum amount on capital infrastructure and enhanced maintenance. In addition to the \$6,000,000.00 per year, Ameren has committed to spending an additional \$1,000,000.00 per year for two years on projects deemed a priority by the Cities. These projects could include under-grounding projects.

e. Response to the Public Hearing. Previously identified concerns such as customer service, communication and cooperation with the electric utility are the subject of specific commitments by Ameren.

Advantages of the Settlement:

- Ameren makes specific commitments to the Cities which will lead to improvement of the electric distribution and transmission system.
- These commitments are not likely to be able to be achieved through litigation in the ICC proceeding.
- Establishes a good working relationship between the potential new owner of the electric distribution and transmission system and the Cities.
- Does not preclude later action exploring other alternatives.

Disadvantages of the Settlement:

- Commits the City to withdraw its opposition in the ICC proceeding where opposition could possibly result in system improvements to be required by the ICC.

Rejecting the Settlement Agreement:

The Cities do have the option to reject the Settlement Agreement and to proceed with active litigation of the acquisition case. The advantage of that approach would be that the testimony of the Cities' expert witnesses in the ICC proceeding could be the basis for specific standards enforceable by the ICC. The disadvantages of that option would be that:

- Extensive staff time would be required to proceed with the litigation.
- The specific commitments in the Agreement would be unlikely to be achieved through the litigation.

Recommendation:

On the basis of the foregoing, I recommend acceptance of the settlement agreement. Our partners at the City of Champaign and the University concur in that recommendation. This matter will be before the Champaign City Council on Tuesday, August 17, 2004.

ORDINANCE NO. 2004-08-103

AN ORDINANCE AUTHORIZING THE CHIEF ADMINISTRATIVE OFFICER TO EXECUTE AN AGREEMENT BETWEEN AMEREN CORPORATION AND THE CITIES OF CHAMPAIGN, ILLINOIS, AND URBANA, ILLINOIS, CONCERNING THE ACQUISITION OF ILLINOIS POWER BY AMEREN

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That An Agreement Between Ameren Corporation and the Cities of Champaign, Illinois, and Urbana, Illinois, Concerning the Acquisition of Illinois Power by Ameren, in substantially the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2. That the Chief Administrative Officer of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

Section 3. That the Chief Administrative Officer is authorized to take such actions as are required of the City under the Agreement.

PASSED by the City Council this _____ day of _____, 2004.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of

_____, 2004.

Tod Satterthwaite, Mayor

AGREEMENT
BETWEEN AMEREN CORPORATION AND THE
CITIES OF CHAMPAIGN, ILLINOIS AND URBANA, ILLINOIS
CONCERNING THE ACQUISITION
OF ILLINOIS POWER BY AMEREN CORPORATION

THIS AGREEMENT memorializes the understandings and intentions of AMEREN CORPORATION (‘AMEREN’) and the CITIES OF CHAMPAIGN AND URBANA, ILLINOIS (‘CITIES’) regarding issues raised by the CITIES with respect to AMEREN’s request to the Illinois Commerce Commission (‘ICC’) for approval of a transaction whereby AMEREN acquires ownership of Illinois Power Company (to be then known as ‘AMERENIP’) in ICC Docket No. 04-0294.

Preconditions: The parties agree to the following, provided that: (i) CITIES move to withdraw their submissions to the ICC” opposing and/or protesting AMEREN’s efforts to acquire Illinois Power Company (the “Transaction”); (ii) CITIES file comments with the ICC in support of the Transaction prior to withdrawal; (iii) AMEREN acknowledges that this Agreement will better define and help meet the service needs of the CITIES and their citizens: residential, corporate and public, including the University of Illinois; (iv) and upon closing of the Transaction.

A. Audit. AMERENIP agrees to perform an audit of its electric transmission and distribution systems serving Champaign, Urbana and the immediate surrounding areas. The audit will be conducted in a manner consistent with industry standards, and shall produce recommendations for improved maintenance and capital expenditures, addressing performance of the electrical distribution and transmission systems in accord with best utility practices. At a minimum, the audit will include the following:

- 1) Analysis of the transmission system under normal and first contingency conditions checking for low voltages and to assure line flows are within equipment nameplate and/or other applicable engineering ratings. Report on results outside of allowed limits per AMERENIP and AMEREN standards, which may not be identical, and develop recommendations on how to address differences. Relay protection studies of the transmission system, if conducted by AMERENIP, will also be reviewed as part of the audit. Changes involving a transmission recommendation may require a study and will involve the Midwest Independent System Operator.
- 2) Analysis of the distribution system under normal and first contingency (where applicable) conditions checking feeder loading versus nameplate and/or other applicable engineering ratings, power factor correction, and delivery voltage. Report on results found including analysis of those outside of allowed limits and provide options for corrective action of items outside rated limits.
- 3) Review of substation equipment physical condition and maintenance records to determine if maintenance cycles have been appropriate. List additional maintenance recommendations based on applicable AMERENIP and AMEREN practices.

- 4) Provide available information on tree trimming cycles and status (ICC reports specific to CITIES).
- 5) Perform a field inspection (versus engineering analysis) of substations within one hundred twenty (120) days of closing and distribution feeders within one (1) year of closing, noting short-term and long-term maintenance required. Report on short-term items to be addressed within one (1) to two (2) years (more urgent) and long-term items to be addressed within three (3) to five (5) years (lower priority).
- 6) Inventory and evaluate all equipment items in service longer than forty (40) years for suitability of continued reliable operation. The inventory and evaluation shall be completed within one (1) year of closing of the Transaction.
- 7) Perform a substation and distribution feeder coordination study for all distribution feeders and substation supply services and evaluate status of proper tap fusing and relay design within six (6) months of having feeder model in place.

The audit will be completed by AMERENIP, exercising due diligence, and no later than one hundred twenty (120) days after closing of the Transaction (except as noted above due to timing restrictions). AMERENIP will share the findings of the audit with appropriate representatives of the CITIES. The CITIES and AMERENIP will enter into a mutually agreeable Confidentiality Agreement which addresses homeland security concerns and other concerns recognized as reasonable by both parties prior to sharing the results in any public forum.

Upon completion of the audit, AMERENIP agrees to cooperate with CITIES to arrange and engage in an all-day meeting between AMERENIP/AMEREN personnel and CITIES' personnel or agents (and follow-up meetings as otherwise necessary) to exchange information and discuss system issues in the CITIES and immediate surrounding areas. The audit results, analysis and reports will be provided to the CITIES and their agents at least fourteen (14) days prior to the meeting. AMERENIP/AMEREN and CITIES agree that these meetings are for the purpose of discussing service quality, outage and coordination issues as a result of the audit. Specific recommendations from the audit will be discussed. Notwithstanding the specific recommendations that may come from the audit, the parties may consider and agree to alternative means of accomplishing the result(s) being recommended. The CITIES will recommend the priority of work to be accomplished. The CITIES' recommendation on work priority will be used unless business and operational necessity dictate otherwise. The schedule of work resulted from the audit will be shared with the CITIES.

All recommendations of the audit as mutually agreed by the parties will be accomplished within five (5) years of the completion of the audit, unless business or operational requirements dictate a longer time frame, in which case the recommendation(s) shall be completed within a reasonable time.

The parties agree and understand, however, that AMERENIP/AMEREN's commitment herein is not a guarantee or promise that all issues and concerns as identified will be able to be resolved.

B. Other Activities.

1) In addition to recommendations of the audit, AMERENIP agrees to develop a comprehensive plan within one hundred twenty (120) days of closing of the Transaction to minimize animal intrusion causing system outages, and develop a comprehensive plan within six (6) months of said closing to reduce outages of less than one (1) minute in duration. Implementation of these plans will be given consideration in the expenditure of funds committed below.

2) AMEREN recognizes that undergrounding current equipment is a goal of the CITIES. The parties will work to agree to a plan to achieve increased undergrounding, which plan shall take into account, without limitation, opportunities such as necessary replacement of electric equipment, matters of safety and reliability, AMERENIP costs and expenses, regulatory considerations, and customers' costs and aesthetic concerns of the CITIES.

C. Progress Reports. Every six (6) months, for a period not to exceed five (5) years after closing of the Transaction, AMERENIP shall provide a progress report demonstrating compliance with the implementation of the work, improvements, and expenditures contemplated by this Agreement and in meeting the AMERENIP/AMEREN system standards. Upon completion of each recommended improvement, AMERENIP shall provide information to the CITIES demonstrating that the improvement has been completed.

D. Future Audits. At the conclusion of the initial audit, AMERENIP commits to repeat the auditing process described in Section A above every five (5) years and to meet with the CITIES in revising and updating the work required to implement corrective action for identified deficiencies.

E. CITIES' Costs. AMEREN or AMERENIP shall reimburse the CITIES up to a maximum of FIFTY THOUSAND DOLLARS (\$50,000) for the cost of the CITIES' engineers and other consultants plus the expenses (including travel, lodging, and meals) for the engineers and consultants retained by the CITIES to participate in the process contemplated. The CITIES will provide a copy of the itemized invoices of the engineers and consultants when reimbursement is requested.

F. Expenditure Commitment.

1) AMERENIP commits to expend a minimum of SIX MILLION DOLLARS (\$6,000,000) each year in the two (2) years following the closing of the Transaction on capital projects and enhanced maintenance directly related to the distribution system or utilized on the transmission system directly supplying electricity to the CITIES and the immediate surrounding areas. The parties anticipate closing of the Transaction will occur before the end of 2004, in which case the expenditure commitment above will be for calendar years 2005 and 2006.

2) The Parties agree and understand, however, that AMERENIP's commitment in (1) above should not be construed or understood by the CITIES as an agreement to expend these funds on

any particular project identified by the CITIES, nor construed or understood as an agreement that all funds will be directed to the issues and concerns outlined in the audit, acknowledging that AMERENIP retains management authority and control over its utility systems. Nonetheless, it is AMERENIP's intention to, in good faith, consider the projects, issues and concerns outlined in the audit, and those identified through the collaborative process, as well as plans for minimizing animal intrusion and reducing outages less than one (1) minute, and to make such improvements and undergo such maintenance consistent with best utility practices. AMERENIP agrees to work with CITIES to resolve issues and concerns identified by CITIES' engineers and consultants as a result of the aforesaid collaborative processes described in Sections A and B above.

3) AMERENIP agrees to expend a maximum of ONE MILLION DOLLARS (\$1,000,000) in each of 2005 and 2006, subject to the same timing considerations described in Section F(1) above, for projects initiated in those years, to accomplish the priority projects jointly agreed to by the parties. Such projects shall be identified pursuant to the audit and collaborative processes described in Sections A and B above, and may include undergrounding existing facilities as addressed in Section B(2) above.

G. Previously Identified Concerns.

1) Within ninety (90) days after closing of the Transaction, AMERENIP/AMEREN shall make generally available its customer service processes and procedures for requesting new services, repair or relocation, and its customer service standards for prompt resolution of non-billing commercial and industrial consumer complaints. AMERENIP/AMEREN shall hold semi-annual public meetings in the CITIES as an opportunity to communicate these procedures and standards and to address issues raised concerning electric and gas service. Such meetings will be discontinued after five (5) years from the closing of the Transaction unless the parties mutually agree that further regular public meetings are beneficial.

2) For all projects involving public infrastructure, within forty -five (45) days after written notification of the need for relocation of its facilities, AMERENIP shall respond with a firm date by which its facilities shall be relocated based on the information provided in the written notification and shall make a reasonable attempt to meet the date requested by the CITIES.

3) AMERENIP shall coordinate with the CITIES and shall assure appropriate local division representatives are available in planning and scheduling all major construction, and shall reasonably and in good faith participate in utility coordination groups sponsored by the CITIES.

H. Third Part Beneficiary Prohibition. It is agreed and understood by the parties that reference to the University of Illinois hereinabove and the University's physical presence within the immediate surrounding areas to which the Agreement applies, should not be construed as the University being a third-party beneficiary to the Agreement, and that it has no rights of enforcement.

I. Enforcement. AMERENIP/AMEREN and the CITIES agree that an alleged violation of this Agreement may be filed as a complaint before the ICC and the parties will not object to the jurisdiction of the ICC to enforce this Agreement. If administrative remedies before the ICC

have been exhausted or otherwise are not available, the parties may request enforcement in the appropriate Circuit Court.

J. Assignment. This Agreement is binding on all successors and assigns of the parties.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement as of the last date shown below.

AMEREN CORPORATION

By: _____
David Whitely
Senior Vice President
Energy Delivery

CITY OF CHAMPAIGN, ILLINOIS

By: _____
City Manager

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF URBANA, ILLINOIS

By: _____
Chief Administrative Officer

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney