

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>CENTRAL ILLINOIS LIGHT COMPANY</b>	<b>:</b>	
<b>d/b/a AmerenCILCO</b>	<b>:</b>	<b>09-0306 and 09-0309</b>
	<b>:</b>	
<b>CENTRAL ILLINOIS PUBLIC SERVICE</b>	<b>:</b>	
<b>COMPANY, d/b/a AmerenCIPS</b>	<b>:</b>	<b>09-0307 and 09-0310</b>
	<b>:</b>	
<b>ILLINOIS POWER COMPANY,</b>	<b>:</b>	
<b>d/b/a AmerenIP,</b>	<b>:</b>	<b>09-0308 and 09-0311</b>
	<b>:</b>	
<b>Proposed general increase in electric and</b>	<b>:</b>	
<b>gas delivery service rates.</b>	<b>:</b>	<b>(Consolidated)</b>

**REPLY BRIEF OF THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS**

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## **REPLY BRIEF OF THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS**

### **I. Introduction**

#### **A. Overview**

The Illinois Industrial Energy Consumers<sup>1</sup> (“IIEC”) present this Reply Brief in response to certain issues and arguments raised by Central Illinois Light Company d/b/a AmerenCILCO (“AmerenCILCO”), Central Illinois Public Service Company d/b/a AmerenCIPS (“AmerenCIPS”), and Illinois Power Company d/b/a AmerenIP (“AmerenIP”) (collectively “Ameren”, “Ameren Companies”, “AIU” or “Company”), the Illinois Commerce Commission Staff (“Staff”), and Kroger Company (“Kroger”) in their Initial Briefs in this proceeding.

IIEC’s failure to respond to the Initial Brief or arguments of any party should not be considered an acceptance of, or agreement with, that Initial Brief or argument, unless specifically stated otherwise herein. IIEC’s failure to revisit any issue in its Reply Brief that was raised in its Initial Brief should not be considered an abandonment of that issue, unless specifically stated otherwise herein.

Ameren seeks approval for a significant increase in its delivery service rates for the second time in the last 36 months. Ameren’s request comes in the middle of what the Ameren Companies have characterized as the “Great Recession of 2008-09.” (Ameren Br. at 1). Ironically, Ameren uses the downturn in the economy to justify its requested revenue requirement increase and, by extension, delivery service rate increases of as much as 1000% for some of the largest customers and employers

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<sup>1</sup> Air Products & Chemicals, Inc., Archer-Daniels-Midland Company, ASF Keystone, Cargill, Inc., Caterpillar Inc., ConocoPhillips, Enbridge Energy, LLP, GBC Metals, LLC, Illinois Cement Company, Linde NA, Inc., Olin Corporation, Tate & Lyle Ingredients America, Inc., United States Steel Corporation - Granite City Works, Viscofan U.S.A., Inc., Washington Mills Hennepin, Inc., and the University of Illinois.

on its system. (*See*, Ameren Br. at 1-3).

Ameren apparently believes that the recession, despite its effect on all other Illinois businesses, including its largest customers, justifies an increase in utility profit levels -- returns on common equity for electric operations ranging from 11.3% to 11.7% and ranging from 10.8% to 11.2% for gas operations. (Ameren Br. at 151). These returns are well in excess of the market required return on equity of 10% for Ameren's natural gas and electric operations. (Gorman, IIEC Ex. 2.0-C at 51). Ameren also requests excessive overall rates of return for each Ameren Company (AmerenIP 9.521% gas and 9.741% electric; AmerenCIPS 8.435% gas and 8.679% electric; AmerenCILCO 9.403% gas and 9.621% electric). As IIEC demonstrated, appropriate rates of return would be 8.847% for AmerenIP, 7.866% for AmerenCIPS, and 8.453% for AmerenCILCO. (Ameren Br. at 190-191; IIEC Br. at 40).

Ameren matches its request for excessive profits with a request for an overstated rate base and unreasonably high operating expenses. Despite not currently recovering the requested unreasonable expenses and excessive returns on an inflated rate basis, Ameren insists it has provided "the best possible service at the least possible cost." (Ameren Br. at 4). If Ameren's recommendations on cost of capital, post test year capital additions, and operating expenses are accepted, Ameren will instead be providing its electric delivery service at the highest cost it can calculate. Ameren's brief also suggests an implicit threat that its customers will no longer receive safe, adequate and reliable service in a least cost fashion, unless the Commission approves rates reflecting its excessive requests for rate relief. (*See*, Ameren Br. at 7-8).

Ameren proposes the use of a cost of service studies ("COSS") that it concedes has

misallocated elements of the cost of its distribution system among its customer classes. (Ameren Br. at 207). Despite the questionable accuracy and reliability of Ameren's COSS, even at the class level, Ameren argues that any rate increase in this case should be allocated using its flawed COSS, instead of on an across-the-board basis, as proposed by IIEC. (Ameren Br. at 208).

Ameren also proposes an abrupt change in its allocation of the Public Utility Revenue Act Tax ("PURA Tax") that is inconsistent with cost causation principles. Additionally, Ameren proposes to collect the tax from customers on a cents per kWh basis as a separate line item on customer's bills, instead of properly recovering the tax in traditional base rates as it is currently recovered and has been recovered since its inception.

Ameren's proposed rate increases give little consideration to the fact that its larger customers face the same cost and price pressures complained of by Ameren. Ameren witnesses acknowledged that customers like IIEC members would have the same or similar concerns about increased costs that Ameren has. (Nelson, Dec. 14, Tr. 56-58). Yet, Ameren proposes rates that shift millions of dollars to the large customer classes and a rate mitigation plan that mitigates very little of the impact of its unreasonable and excessive request for rate relief on the customers facing by far the largest rate increases. Therefore, IIEC proposed a rate moderation approach that would limit the increase to any subclass to not more than 25% above the system average for each Ameren Company.

Finally, Ameren refuses to make reasonable changes to its tariffs to facilitate the construction of cogeneration/combined heat and power ("CHP") facilities on a going-forward basis, even though the Illinois legislature has recognized these types of facilities as energy efficient and has promoted their construction.

IIEC respectfully disagrees with Ameren, other parties and the Staff when they support Ameren's positions on cost of service, rate design, and the allocation and recovery of the PURA Tax. In addition, IIEC disagrees with the Staff on its proposed use of a coincident peak ("CP") allocator instead of a non-coincident peak ("NCP") allocator for the costs of primary and secondary lines and substations.

IIEC will address these issues in this Reply Brief.

On the basis of the record developed in this proceeding, including IIEC's evidence, the Commission should make the following evidentiary and legal determinations on the issues addressed in this Brief:

- Plant Additions/Accumulated Depreciation

The Commission should apply the well-reasoned analysis of its decision in Ameren's 2002 rate cases and recognize Ameren's proposed plant additions, "to the extent that they exceed increased accumulated depreciation." Ameren's proposed adjustment for post-Test Year plant additions should be reduced by approximately \$192 million (Gorman, IIEC Ex. 2.24, 2.25; Dec 16 Tr. at 539-540) to recognize the contemporaneous (through February 2010) decrease in plant investment that will be recorded as accumulated depreciation.

- Cash Working Capital

The Commission should adopt IIEC's proposed 21-day collection lag to calculate Ameren's cash working capital requirement.

- Amortization of Merger Expense

The Commission should order AmerenIP to amortize the remaining balance of the regulatory

asset representing its remaining merger expense over two years. IIEC does not oppose Ameren's proposed accounting change.

- Injuries and Damages Expense

The Commission should reject any inflation adjustment to Ameren's I&D expense determined using the Commission's systematic, multi-year average approach. Ameren has not shown any under-recovery under the current method, and an inflation adjustment to Test Year expenses would violate Section 287.40 of the Commission's rules.

- Cost of Equity/Rate of Return

The Commission should determine that IIEC's recommended 10.0% return on equity is a fair and appropriate return on equity for the Ameren Companies. If the Commission finds that distinct return for Ameren's gas and electric operations are appropriate despite the combined risk the market evaluates, the Commission should use IIEC's alternative recommendations of 10.37% for Ameren's electric operations and 9.62% for its gas operations. Appropriate overall rates of return for the Ameren Companies (using IIEC's recommended 10.0% return on equity) are 8.847% for AmerenIP, 7.866% for AmerenCIPS, and 8.453% for AmerenCILCO.

- Cost of Service Revenue Allocation

The Commission should reject the Ameren COSS for revenue allocation and rate design purposes and direct an across-the-board increase in this case.

If the Commission accepts the use of the Ameren cost of service studies for any purpose in this case, the studies should be corrected as recommended by IIEC to reflect proper allocation of the PURA Tax, the use of historically applied demand allocation factor DDSUTR and the appropriate crediting

of transformer revenue to the classes who pay for those transformers.

The Commission should specifically direct Ameren to retain the current method of allocating the PURA Tax and to recover the tax in base rates.

If the Commission determines that the allocation method should be changed, then IIEC's alternative method to allocate the tax in accordance with cost causation at a more granular level - - proportionately on plant in-service and kWh delivered - - should be adopted and the tax should be collected in base rates.

The Commission should approve the continued use of the non-coincident peak allocator for allocation of primary lines and substations. The Commission also should expressly approve the use of factor DDSUBTR instead of factor DEMSUBTR specifically for the allocation of FERC Account 362 costs.

The Commission should direct the Company to address the other deficiencies identified by IIEC in its next cost of service study.

- Rate Design

The Commission should accept IIEC's recommendation for an across-the-board adjustment of rates to conform to any revenue increase approved. If the Commission does not order an across-the-board allocation of any revenue increase, a rate moderation program will be required.

The Commission should reject Ameren's proposal for rate moderation, since it ignores critical cost components that have a significant effect on customers' bills, and approve IIEC's rate moderation approach. IIEC's proposal considers all costs, including the PURA Tax and extends to subclasses. In the alternative, the Commission could approve Staff's rate moderation approach modified to apply on

a subclass basis.

If the Commission does not approve an across-the-board increase in this case, it also should direct Ameren to re-run its cost of service studies reflecting the revenue requirement decisions of the Commission and the corrections to the cost of service study directed by the Commission. Using the correct cost of service study results the Commission should apply the rate moderation plan recommended by IIEC, or in the alternative, the Staff's rate moderation plan expanded to include subclasses in determining final rates using Ameren's traditional rate design approach.

If the Commission does not direct the performance of cost-of-service studies to conform to the approved revenue requirement and the directed modifications to the cost of service studies in this case, the Commission should adopt what appears to be an alternative proposal from Ameren to conform rates to the revenue requirement after the rate moderation plan is implemented, as described by IIEC herein.

The Commission should reject Ameren and Staff's proposal to recover the PURA Tax through a new line item charge on customers' bills.

The Commission should reject Ameren's proposal to combine DS-3 and DS-4 revenue allocation for the establishment of rates.

The Commission should direct Ameren to allow customers with multiple meters at the same site or adjacent sites to be billed on a combined basis.

**E. Legal Standard**

Ameren observes that Illinois law requires that its rates reflect the cost of providing delivery service. (Ameren Br. at 11). IIEC agrees. Thus, the rates in this proceeding will be set at the level the Commission determines will allow Ameren the opportunity to recover the cost of its delivery

services. One important implication of Ameren’s argument is that the relevant costs here are the costs of delivery service, and only those costs. Nonetheless, Ameren and, to a lesser degree, Staff have suggested that the cost of power should be considered in determining the reasonableness of the delivery rates. The cost of customers’ electric supply or gas supply is not relevant as a basis for setting delivery service rates, assessing the reasonableness of the proposed increases in delivery rates, or in determining the need for rate mitigation measures. Delivery service costs are the relevant consideration. (*See*, 220 ILCS 5/16-108(c)). Ameren’s arguments to the contrary must be rejected.

As Staff states in its brief, rates set by the Commission must be “just and reasonable,” and any “unjust or unreasonable” rate is unlawful. (Staff Br. at 3, citing 220 ILCS 5/9-101). For the reasons detailed in IIEC’s Initial Brief and in this brief, IIEC concludes that Ameren’s proposed rates for gas and electric delivery service are neither just nor reasonable. Ameren suggests that, in determining whether that statutory standard is met, the burden of proof in this case has shifted to Staff and Intervenors, because the “evidence submitted by AIUs in these proceedings meets the legal requirement to approve the rate requests.” (Ameren Br. at 11). Ameren reasons -- erroneously -- that the Commission may disallow costs only if there is a showing that the “business decisions” of Ameren have been unreasonable or imprudent. (*Id.*). Ameren cites BPI v. Illinois Commerce Commission, 279 Ill. App. 3d 824, 829-830 (1<sup>st</sup> Dist. 1996) (“BPI”) in support of its position.

Ameren’s argument is flawed in several respects. First, the Public Utilities Act (“PUA”) provides that in ratemaking proceedings:

“[t]he burden of proof to establish the justness and reasonableness of the proposed rates or other charges . . . in whole and in part, shall be upon the utility.” (220 ILCS 5/9-201(c)).

In the presence of competing evidence, Ameren - - not Staff and Intervenors - - has the burden of persuading the trier of fact by a preponderance of the evidence. Stated more particularly, Staff and Intervenors do not have the burden of proving the inappropriateness of Ameren's proposals;<sup>2</sup> by statute, Ameren always has the burden of proving that its proposals are just and reasonable - - that its costs and rates are reasonable, that its decisions were sound, and that its costs were prudently incurred. (220 ILCS 5/9-102, 9-201, 9-211).

Second, the BPI decision does not support Ameren's argument that the Commission may not disallow a cost if Ameren's business decisions are reasonable. More accurately, that case held that where a utility has made a prima facie case that is also unrebutted, a Commission finding in favor of the utility will not be deemed to have shifted the burden of proof. (BPI, 279 Ill. App. 3d 824, 829-830). Here the utility's evidence on many contested issues has been vigorously challenged, and largely rebutted. Therefore, the BPI decision does not ease Ameren's burden of proof. The burden of proof remains with Ameren. (220 ILCS 5/9-201(c)).

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<sup>2</sup> Requiring intervenors to establish unreasonableness is “. . . no substitute for requiring proof of reasonableness,” since intervenors are not required to appear or to present evidence.” (People, ex rel. Hartigan v. Illinois Commerce Commission, 117 Ill. 2d 120 (1987) at 135-136).

## **II. Rate Base**

### **C. Contested Issues**

- 1. Pro Forma Plant Additions (2009-2010)**
- 2. Accumulated Reserve for Depreciation**

As in its Initial Brief, IIEC will address Pro Forma Plant Additions and Accumulated Reserve for Depreciation together. These are inseparable components of the known and measurable, post-test year change in the value of Ameren's rate base. (*See*, Ebrey, Dec 17, Tr. 739-740).

In their Initial Briefs, several parties addressed Ameren's post-test year adjustment to add almost one-quarter billion dollars to rate base without recognizing offsetting decreases to rate base. While Ameren dealt with the issue at length, other parties' arguments on the issue were less extensive. IIEC addresses each in turn below. (CUB/AG's arguments in support of the position they share with IIEC are noted in the context of IIEC's response to Ameren).

#### **a. IBEW**

IBEW supports Ameren's adjustment to recognize post-test year plant additions and, following Ameren's lead, opposes recognizing contemporaneous changes in rate base value attributable to increases in accumulated depreciation. (IBEW Br. at 3-4). Like Ameren, IBEW offers no substantive reasons to justify the unbalanced adjustment Ameren proposes. IBEW merely refers to previous decisions (without any analysis), and cites only Ameren's testimony. However, IBEW frankly states its self-interest in supporting Ameren's unlawful, unbalanced proposal. (IBEW Br. at 2-4).

b. Staff

Staff's treatment of this issue is also short, but Staff's comments are substantive. Staff confirms the relevance and substantive content of the testimony from its accounting and revenue requirements expert Theresa Ebrey. (Staff Br. at 10-11). Ms. Ebrey's testimony on "the mechanics of the revenue requirement and the relationships among its various components" refutes any contention that Ameren's proposed unbalanced adjustment is consistent with the Commission's accounting rules, applicable accounting conventions, test year principles, or the PUA. (*Id.*).

Staff frames the dispute about post-test year adjustments as one of balancing "regulatory lag" against the "matching principle" (*Id.* at 11). The precise meaning of that observation is not clear. However, IIEC does not accept that any balancing of competing elements of regulatory doctrine can displace, in even the smallest degree, the PUA's express statutory prohibition against the Commission's inclusion of excess investment in Ameren's ratemaking rate base. (*See* 220 ILCS 5/9-211; Business & Professional People for the Public Interest v. Ill. Commerce Comm., 136 Ill. 2d 192 (1989) at 201). Similarly, an unexplained, unjustified departure from the accounting and depreciation requirements codified in the Commission's rules is a violation of law that cannot be excused by a balancing of regulatory issues. (Business & Professional People for the Public Interest v. Ill. Commerce Comm., 136 Ill. 2d 192 (1989) at 226).

Still, even in the context of its framing of the issue, Staff concludes:

[T]here is a point in which the remedy for regulatory lag intentionally overstates anticipated costs as of at a certain point in time or during the time that rates would be in effect. The balance of net plant used to set rates in this case should not be greater than the anticipated actual net plant balance in February 2010 or during the time that rates from

this case are expected to be in effect. Any overstatement of net plant would violate the matching principle and clearly go beyond the remedy for regulatory lag.  
(Staff Br. at 11) (emphasis added).

“[P]ro forma additions are the restatement of test year events or conditions to measure future conditions more accurately.” (Re Commonwealth Edison Company, Dkt. 07-0566, Dissent at 5 (quoting from Matthew Bender Series, Accounting for Public Utilities, Rel. No. 23, at 4-15) (Oct. 2006)). Staff expert Ebrey’s testimony on accounting fundamentals makes it crystal clear that Ameren’s proposed adjustment would make the test year data considerably less accurate and would violate test year matching requirements and the PUA. (See, Staff Br. at 10-11; Ebrey, Dec 17, Tr. 746). Ameren’s proposal to pair increases to rate base as of February 2010 with decreases to rate base as of December 2008 has the following effects on certain standard accounting quantities (citations are to Ms. Ebrey’s testimony on regulatory accounting). Ameren’s proposal:

- ignores the second largest component of net plant, accumulated deferred depreciation (Ebrey, Dec 17, Tr. 739), which is the driver of rate base magnitude and necessary to any accurate determination of net plant;
- does not represent an accurate determination of rate base as of any date (*Id.* at 740);
- overstates net plant by ignoring accumulated depreciation (*Id.*);
- departs from Commission accounting and depreciation requirements that mandate monthly decreases to rate base value contemporaneous with Ameren’s planned plant additions (*Id.* at 742-744);

- does not represent any rate base amount that will ever appear in Ameren’s books of account (*Id.* at 745-746);
- is not consistent with the matching principle of test year ratemaking, as it is commonly understood (*Id.* at 747); and
- would set rates on a rate base that exceeds what its books will show as the actual value of its invested plant as of February 2010, a violation of the PUA (*Id.* at 800-801).

In IIEC’s view, these facts and Staff’s final statement on this issue -- “Any overstatement of net plant would violate the matching principle and clearly go beyond the remedy for regulatory lag.” -- must align Staff with opponents of Ameren’s proposed adjustment. (Staff Br. at 11). Ameren’s adjustment overstates net plant and rate base, departs from Commission accounting and depreciation rules, violates the test year matching principle, and results in an unlawful, excessive rate base the Commission lacks authority to approve.

c. Ameren

i. *Ameren’s Strategy of Relying On Precedent Lacks Legal and Evidentiary Support*

Ameren understands that its rates, as well as its supporting costs and procedures, must meet the statutory standards of just and reasonable. (*See, e.g.,* Stafford, Dec 15, Tr. 319-321). Ameren also understands that its proposal in this case must stand on its own, notwithstanding the Commission’s response to particular challenges on prior records. (*See, e.g.,* Fiorella, Dec 16 Tr. 361-363). Yet, like its testimony, Ameren’s Initial Brief relies solely and completely on a selection

of prior Commission decisions that were based on different (and distinguishable) records, for different utilities, at different times, under different sets of facts. (Ameren Br. at 19).

Ameren's brief does not provide a substantive examination of the circumstances in prior cases, or even the substantive evidence of this record. Ameren argues that the "relevant and controlling facts and circumstances" are the same, because its proposed unbalanced adjustment is "functionally equivalent to the adjustments ComEd made in the Docket 07-0566 proceeding." (Ameren Br. at 25). To avoid the Commission's ruling on this precise issue for Ameren, the utility argues that "[t]he Commission has recognized that the circumstances in Docket 02-0798/03-0008/0009 (cons.) [("Ameren Cases")] are distinguishable from all other cases where it has considered the depreciation reserve adjustment. . . . In Dockets 01-0423, 05-0597, 07-0241/0242 and 07-0566, the evidence showed that the utilities' net plant in service had been increasing." (Ameren Br. at 25).

Ameren's complete reliance on legal argument from those cases is surprising. First, as IIEC explained in its Initial Brief, those decisions are not *res judicata*. They are not binding on the Commission, and they cannot compel any particular result. (*See* IIEC Br. at 14). Even prior Commission decisions cannot displace applicable statutory requirements. The pertinent provisions of the PUA require that the utility prove its proposed rates and costs are just and reasonable, that the Commission decide this issue exclusively on the evidence in this record, and that the Commission not exceed its authority. (220 ILCS 5/9-201, 5/10-103). Also, the Commission's own rules of test year ratemaking cannot be discarded. (Business & Professional People for the Public Interest v. Ill. Commerce Comm., 136 Ill. 2d 192 (1989) at 226). In addition, though accepted in some -- but not

all -- prior Commission orders, the adjustment that Ameren copies here has never once been validated by judicial review as consistent with either the PUA or the test year principles defined by the Illinois Supreme Court.

Ameren appears to argue that, despite those legal questions and irrespective of the evidence in this record, it is entitled to Commission approval if only two conditions are met: (1) that Ameren has successfully copied an adjustment approved in a prior case; and (2) that a trend of increasing plant is shown for periods outside the test year. (Ameren Br. at 18, 24). The impotence of precedent has been noted, and Ameren's crucial "trend" distinction is based on a mis-reading of the *Ameren Cases* decision that was succinctly exposed by members of the Commission itself.

In Docket 02-0798/03-0008/03-0009 the Commission approved AmerenUE's pro forma adjustment because "the post-test year additions to plant exceed the post-test year increase in accumulated depreciation." Staff and AG presented evidence showing a four year trend (from 1998 through 2001) of increasing net plant. The Commission adjusted rate base by the amount of net plant (i.e., pro forma adjustment minus the increased accumulated depreciation) which resulted in an increase of \$785,000. CUB points out that AmerenUE's situation is similar to ComEd's situation in the instant case.

In the instant case, the Majority improperly limits the application of the 02-0798/03-0008/03-0009 Order to cases in which net plant is not increasing. As the foregoing discussion shows, evidence was presented that AmerenUE experienced a four year trend of increasing net plant. If accumulated depreciation for embedded plant in the post-test year period was not to be included in rate base when there was a trend of increasing net plant then the Commission would not have allowed it under these facts. Therefore, it is improper for the Majority to state that the 02-0798/03-0008/03-0009 Order is

distinguishable from Dockets 01-0423, 05-0597 and 07-0241/07-0242 on a "fact pattern" that they all share. (Re Commonwealth Edison Company, Dkt. 07-0566, Dissent ( Nov 7, 2008) at 8).

Committed to its complete reliance on selected prior Commission decisions, Ameren's brief does not even attempt to assemble substantive evidence to support its post-test year adjustment as just and reasonable. (*See* Ameren Br. at 16-17). The bulk of Ameren's presentation on this issue is spent attacking what it calls "reconstituted" arguments. (*See Id.* at 17-26). Ameren maintains this excessively narrow focus despite its explicit acknowledgment that the Commission is obligated to consider each of those arguments seriously, and to "carefully weigh all the evidence and arguments in the case." (Fiorella, Dec 15, Tr. 361-363). Indeed, the PUA requires just such a re-examination of all issues, on the evidentiary record of each case -- and a different result if the evidence requires it.

As IIEC demonstrated in its Initial Brief, the record in this case contains evidence not previously available to the Commission or included in prior records, and that evidence requires a different result. (*See* IIEC Br. at 22-24). Consider Ameren's complete failure, in testimony or its brief, to address, much less rebut, the record evidence demonstrating the effect of Ameren's unbalanced and unlawful inflation of rate base. In fact, some of that evidence comes from Ameren's own expert Mr. Stafford:

Q. Do you agree that if we tried to calculate a utility's rate base without taking into account accumulated depreciation, that calculation would overstate the rate base?

A. I certainly agree. In fact, depreciation reserve is a big, very

material credit in the calculation of the AIU's rate base. . . .<sup>3</sup>  
(Stafford, Dec 15 Tr. 327) (emphasis added).

However, the most powerful evidence of the unlawful effect of Ameren's proposed adjustment is IIEC witness Michael Gorman's unchallenged and unrebutted analysis of the actual results of the ComEd adjustment Ameren has attempted to replicate here. That analysis shows that the consequence of Ameren's proposed adjustment is precisely what Ameren's Mr. Stafford predicted -- an overstatement of rate base. (*See*, Gorman, IIEC Ex. 2.0-C at 87-90 - - showing that Commonwealth Edison's rate base was overstated by approximately \$0.5 billion and as a result, ComEd's customers are paying \$50-\$60 million per year in excess revenue to ComEd as a result of the failure to recognize post-test year changes in accumulated depreciation). Though Ameren tries to belittle such substantive evidence (Ameren Br. at 25), it never rebuts that evidence.<sup>4</sup>

CUB/AG oppose Ameren's unlawful adjustment on many of the same bases that IIEC described in its brief. (CUB/AG Br. at 4-13). In their Initial Brief, CUB/AG include an extended discussion of the "synchronization" (matching principle) at the heart of test year ratemaking. (CUB/AG Br. at 6-7). That is an important discussion.

Ameren argues that "[c]ontrary to serving the matching principle, AG/CUB and IIEC's proposed adjustment expressly violates it." (Ameren Br. at 22). However, Ameren's brief confirms

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<sup>3</sup> Though Mr. Stafford opines that his calculation incorporates proper accounting, Mr. Gorman's examination of the actual results of ComEd's similar adjustment shows that Ameren's minor adjustments are inaccurate and legally inadequate.

<sup>4</sup> Ameren's Mr. Stafford conclusory speculation about how a future test year might have altered ComEd's historical test year results is both irrelevant and unsupported by any evidence in this case. (*See* Stafford, Ameren Ex. 29 at 26).

what the cross-examination of Ameren's expert witness on this issue revealed -- that either Ameren does not understand the test year matching principle, or it is purposefully misstating it. Ameren's expert witness Ronald Stafford provided his understanding of that principle:

The matching I am referring to here is the necessity to match the depreciation reserve with the utility plant. The utility has adopted a 2008 year end test year. Utility plant is at year end 2008. And to properly match that with the reserve, it is necessary to look at the reserve of 2008 also. That's what I am referring to as the matching principle in this case.  
(Stafford, Dec 15 Tr. 337).

The fundamental concept of the matching principle is a common date or time period for pairing potentially offsetting costs and revenues. (Ebrey, Dec 17, Tr. 747). Mr. Stafford's words appear to track the customary industry understanding that investment costs must be matched with depreciation cost recovery as of a common date. However, Ameren's application of the principle excludes all post-test year activity from the matching requirement. Ameren's matching principle applies only to status test year amounts.

Even as Ameren proposes one-quarter billion dollars in post-test year increases to utility plant, in Mr. Stafford's version of matching principle, "[u]tility plant is at year end 2008." (Stafford, Dec. 15, Tr. 337.). Similarly, under Mr. Stafford's version of the matching principle, "it is necessary to look at the reserve of 2008 also," ignoring the post-test year depreciation recovery recorded as accumulated depreciation. Under its version of the matching principle, Ameren's post-test year increases in plant investment costs are entirely exempt from any requirement to pair offsetting investment cost recovery over the same period. The investment recovered through rates that cover depreciation expense is reflected in Ameren's depreciation reserve). (Ebrey, Dec. 17, Tr. 742-743;

Stafford, Dec. 15, Tr. 330).

Mr. Stafford's peculiar version of the matching principle ignores Ameren's post-test year plant additions for matching, but recognizes them for setting rates. So, while the rate base Ameren uses for setting rates is boosted by almost one-quarter billion dollars, Mr. Stafford's version of the matching principle allows a self-serving mismatch of investment costs through February 2010 with a static 2008 test year accumulated depreciation reserve.

Contrast the following statements of the accepted understanding of the matching principle from various learned sources. A regulatory treatise:

If the utility proposes a change, particularly a major change, in the test year rate base, it is required also to consider the related changes in other costs or in revenue. Additional investments may result in efficiencies that reduce operating costs or quality improvements that will increase sales. Unless the utility shows that it has taken such matters into account, its revenue requirement is likely to be out of balance or overstated.

(CUB/AG Br. at 6-7 quoting Goodman, The Process of Ratemaking (1998), vol. II, p. 735).

The Illinois Supreme Court:

The purpose of the test-year rule is to prevent a utility from overstating its revenue requirement by mismatching low revenue data from one year with high expense data from a different year.

(*Business & Professional People in the Public Interest v. ICC*, 146 Ill. 2d 175, 238 (Ill. 1991) ("*BPI II*").

In that same opinion, the Court confirmed that the relevant revenue requirements include the recovery of depreciation expense (*see BPI II*, 146 Ill. 2d at 240 (depreciation as an operating expense)), which expense is recorded as accumulated depreciation. (Ebrey, Dec 17, Tr. 740-741).

Not surprisingly, the Illinois Supreme Court's statement of the matching principle has been

endorsed by members of this Commission. (Re Commonwealth Edison Company, Dkt. 07-0566, Dissent at 1).

A statement of the principle from Staff's expert in this case also contradicts Ameren's stated understanding of the test year principle.

The matching principle as far as ratemaking would line up the costs and all the factors that go into determining the revenue requirement. That includes the components of rate base, the rate of return information and a cost of service. Those would all be lined up for a given period. . . . As of a consistent date. . . .  
(Ebrey, Dec 17, Tr. 747).

There is a gulf between (a) the accepted understanding of the test year matching principle and (b) Ameren's peculiar statements and applications of the principle. Given that gulf, Ameren's arguments concerning this fundamental test year concept can be disregarded in their entirety. Ameren is not applying the same principle that the Illinois Supreme Court has determined governs the Commission's test year rate proceedings.

ii. *The Arguments Ameren Parrots from Prior Cases Are Illogical and Often Invalidated By Ameren's Own Testimony*

In its brief, Ameren offers hints of substantive arguments, but they only confirm the one-dimensional nature of Ameren's record "support" for its unbalanced adjustment. Both Ameren's evidentiary and legal arguments are contradicted or undermined by its own testimony. For instance, Ameren criticizes Mr. Gorman for not proposing adjustments for every revenue requirement item that could change after the test year. (Ameren Br. at 22). Not every potential post-test year change is "reasonably certain to occur" or "known and measurable" as Section 287.40 requires. In contrast, the growth in the reserve for accumulated depreciation will occur as surely as night follows day.

(See, Ebrey, Dec. 17, Tr. 744). In any case, it is Ameren's burden to prove that it has made all appropriate adjustments. (220 ILCS 5/9-201(c)).

Ameren also questions whether the post-test year changes in accumulated depreciation are known and measurable, pointing to a difference in the adjustment calculations of CUB/AG witness David Effron and IIEC's Mr. Gorman. (Ameren Br. at 22). First, the expert witness Ameren brought in specifically to address this issue, Salvatore Fiorella, confirmed that Ameren has no factual basis for its conclusion. Mr. Fiorella testified unambiguously that he had not bothered to verify that the two amounts he compared were actually calculations of identical adjustments. (Fiorella, Dec 15, Tr. 352). Moreover, Ameren's argument -- that a dispute as to the proper quantification proves that an adjustment is not known and measurable -- applies more aptly to Ameren's own adjustment. In fact, Ameren ultimately accepted an agreed -- not calculated or precise -- amount of "known and measurable" plant additions. (Stafford, Ameren Rev. Ex. 51.0-R at 17).

Parroting an argument from prior cases, Ameren asserts that IIEC seeks to move one element of rate base (and only one element) to a future period while all other elements of the revenue requirement remain based on a historical period. (Ameren Br. at 21). The absurdity of Ameren making this argument while it (a) proposes precisely such a change for its planned plant additions through February 2010 and (b) fights to keep other revenue requirement elements (*viz.*, accumulated depreciation) at Dec 2008 levels is too obvious to debate. How can Ameren rationally claim only one element of test year data is being brought forward when its own proposal is to bring only its test year gross plant in service up to February 2010? Ameren's own "brought forward" plant accounts define the date to which the calculation of net plant must be moved for an accurate determination of the

value of investment actually used and useful in providing service. (Ebrey, Dec 17, Tr. 747; Stafford Dec 15, Tr. 337). Investment already recovered through depreciation expense cannot lawfully be included in rate base. (220 ILCS 5/9-211). This acknowledged necessity of common dates for the components of net plant and rate base (*see* cite to Ebrey and Stafford, *supra.*) also answers Ameren’s “major concern” that the proposed adjustments do not correlate with any *pro forma* adjustments. (Ameren Br. at 21). Moreover, Ameren is simply describing the nature of any *pro forma* adjustment to a historical test year.

Ameren’s contention that it may move gross plant (with minor modifications) to a post-test year date, but that offsetting elements of rate base cannot be moved (Ameren Br. at 18-19) is essentially an argument that only post-test year increases to rate base are permitted by Section 287.40. Reading 287.40 to refer to variations of gross plant is not reasonable, when the only lawful “changes affecting the ratepayers in plant investment” are changes in net plant. (83 Ill. Admin. Code 287.40; Ebrey, Dec 17, Tr. 741; Gorman, IIEC Ex. 2.0-C at 81-82, 85).

Moreover, this reading of Section 287.40 contradicts Ameren’s testimony on the claimed purpose of an unbalanced post-test year adjustment -- that is, mitigating regulatory lag. (*See* Fiorella, Ameren Ex. 69.0 at 6 (“The basic purpose of such *pro forma* adjustments is to reduce regulatory lag”); Fiorella, Dec 15, Tr. 358-359 (also conceding a lack of authority for the proposition)). If anticipating regulatory lag were (a) lawful and (b) the actual purpose of *pro forma* adjustments, Ameren’s “increases-only” reading would bar known and measurable post-test year reductions, defeating mitigation of regulatory lag in many situations. Consider, for example, the case of a planned post-test year sale or transfer of a substantial portion of rate base (as was the case when

Illinois utilities shed generating plants). Any resulting known and measurable cost decreases would be frustrated by Ameren's self-serving "increases only" reading of the Commission's *pro forma* adjustment rule. If Ameren truly wanted to mitigate regulatory lag, they could have chosen to file a future test year case. (*See* 83 Ill. Adm. Code 287.20).

Ameren's interpretation of Section 287.40 also requires that the Commission discard other provisions of its rules. The universally consistent testimony respecting the proper determination of net plant and rate base under the Commission's accounting and depreciation rules establishes that any interpretation of Section 287.40 that allows Ameren's unbalanced adjustment would be inconsistent with the Commission's standard accounting practice. Logic and the law favor rule constructions that give effect to all relevant provisions. (Central States, Southeast & Southwest Areas Pension Fund v. Reimer Express World Corp, 230 F. 3d 934, 942 (7<sup>th</sup> Cir. 2000), citing Public Lands Council v. Babbitt, 529 U.S. 728, 146 L. Ed. 2d 753, 120 S. Ct. 1815, 1826 (2000); *See also*, Abrahamson v. Illinois Department of Professional Regulation, 153 Ill. 2d 76, 91, (1992). (The statute must be evaluated as a whole, with each provision construed in connection with every other section). IIEC's interpretation of 287.40 is consistent with the Commission's accounting, depreciation and other test year rules. Ameren's interpretation requires that otherwise applicable rules, conventions and procedures be abandoned to allow computation of net plant and rate base in a way not proposed or countenanced by any party in any other context. (*Contrast* Ebrey, Dec 17, Tr. 744-745; Stafford, Dec 15, Tr. 332).

Ameren also argues "The Commission made an observation in the Peoples/North Shore proceeding that rings equally true here: 'All parties should agree that Commission action brings

certainty to a situation and settles expectations.’ Order, Docket 07-0241/0242 (cons.) (Feb. 5, 2008), p. 16.” (Ameren Br. at 26). But Ameren willingly discards that certainty whenever it is convenient, as it often is with its own proposals for higher revenue requirements. In the face of prior Commission rejections of its positions, Ameren proposes, for example, rejected approaches to incentive compensation and a leverage adjustment for returns, and pension expense. (See Ameren Br. at 74, 178; compare Staff Br. at 44, IIEC Br. at 53). However, in each case Ameren’s proposals -- like IIEC’s -- must be approved or rejected on the basis of the evidence it has presented in this record -- including, if necessary, a re-examination of prior Commission rulings on the issue.

Finally, it must be noted that the Commission has never overruled the cogent analysis of its *Ameren Cases* decision, even though it has purported to distinguish the case factually. Ameren argues that a determination contrary to the result in its selected cases would constitute “abrupt, arbitrary and capricious (and hence unlawful) departure from past practice.” That is clearly not the case. The decision IIEC seeks would be neither abrupt (since it applies an extant Commission analysis) nor arbitrary (since it is fully justified by the record in this proceeding, an unbiased reading of the *Ameren Cases* decision, and Section 287.40). In fact, the decisions on which Ameren relies are all based on the flawed interpretation of the analysis and facts of the *Ameren Cases* decision discussed earlier.

## **5. Cash Working Capital**

The Company responded to the cash working capital (“CWC”) adjustment proposed by IIEC. (Ameren Br. at 46-47). IIEC recommended an adjustment to the CWC based on an appropriate revenue collection lag of 21 days. (*Id.*). For the reasons set forth below, and as discussed in more

detail in IIEC's Initial Brief, if the Company's collection lag is used, its CWC study will be overstated and flawed and will inflate its requested CWC balance. (IIEC Br. at 24-32). The collection lag aspect of the Company's CWC study should be rejected, and IIEC's proposed cash working capital 21-day collection lag should be adopted.

- i. Ameren's Proposed 28.13 Day Collection Lag Suggests All Customers Except Certain Non-Residential Customers, Pay After the Due Date.*

The Company argues that it was unreasonable for IIEC witness Meyer to recommend a collection lag period of 21 days. (Ameren Br. at 47). The Company claims their CWC analyses "reflects the reality that, while many of their customers pay their utility bills in full and on time, there are customers who are delinquent in the payment of their bills." (*Id.* at 46). Unfortunately the Company never provides data that distinguishes the percentages of the "many" who pay on time (prior to 21 days) and the percentages of customers who are delinquent. Without this information the Company's arguments lack substance, and the Commission cannot determine whether Ameren's collection lag is realistic.

To illustrate, Ameren applies the Illinois Administrative Code, Section 280.90 for determining the timing of customer payments. (Meyer, IIEC Ex. 3.0 at 4-5). Section 280.90 requires Residential customers to pay their bill within 21 days from the issuance of their bill; Commercial customers to pay within 14 days; Industrial customers to pay within 14 days; and Non-Residential Special Customer Type within 14 days. If the Commission considers Ameren's total revenue, and the percentage of total revenue that comes from the customer classes with a 14 day payment period, i.e., non-residential customers, the Commission would find that the 14 day customer classes account for

48% of the total revenues for AmerenIP; 57.4% for AmerenCIPS; and 56.1% for AmerenCILCO. (Meyer, IIEC Ex. 4.2). To put this in context, by proposing a 28.13 day collection lag, Ameren is asserting that it must wait for payment on average, a period of time more than twice the payment period applicable to half its revenues. In addition, Ameren's collection lag suggests that on average every Ameren customer pays their bill beyond the due date. (Meyer, IIEC Ex. 3.0 at 6). These assertions are not credible and have not been proven to be realistic. Therefore, Ameren's collection lag proposal should be rejected.

*ii. Ameren Bears the Burden to Prove Its 28.13-day Collection Lag is Reasonable.*

Ameren claims IIEC has not provided support for the reasonableness of its 21 day collection lag. (Ameren Br. at 46). As IIEC states in its Initial Brief, the 21-day collection lag IIEC recommends matches the Illinois Administrative Code collection period for the residential class and is 7 days longer than the collection periods for the commercial and industrial customers. (IIEC Br. at 26). Undoubtedly, many customers pay their utility bills in full and on time. (Ameren Br. at 46). In this context, IIEC believes that the use of a 21-day collection lag is actually conservative.

On the other hand, Ameren is proposing a collection lag that is over seven (7) days longer (28.13 v. 21) than the period within which residential customers are required to pay their bills and fourteen (14) days longer (28.13 v. 14) than the period within which non-residential customers are required to pay their bills, according to the Commission's rules. (83 Ill. Adm. Code 280.90). Ameren's attempt to shift the responsibility for demonstrating the reasonableness of its proposal is defeated by the express burden of proof requirements of the PUA. (220 ILCS 5/9-201(c)). IIEC has

no responsibility to prove the unreasonableness of Ameren’s proposal. Rather, Ameren must prove the reasonableness of their proposed 28.13 day collection lag, and has failed to do so. Therefore, Ameren’s collection lag proposal should be rejected.

*iii. Ameren’s Comparison of its Collection Lag to Other Illinois Utility Collection Lags Has No Merit.*

In support of its collection lag, Ameren suggests that it compares favorably to other regulated utilities in the State of Illinois. (Ameren Br. at 46). Ameren cites the approved collection lag days for Nicor (“Nicor”) (33.77), Peoples Gas Light and Coke and North Shore Gas Company (“Peoples”) (32.72), and MidAmerican Energy Company (25.68). (*Id.*). Comparisons to other utilities in this instance will not help the Commission in its determination. Ameren does not offer any evidence to establish whether the pertinent factual circumstances are even comparable. If those lags were calculated using the same flawed methodology used by Ameren (uncollectibles included, payment period weightings distorted), those studies are also flawed and their results unrealistic. (Meyer, IIEC Ex. 7.0 at 7). Collection lags of 33.77 (Nicor) and 32.72 (Peoples) days suggest that on average, every customer of those utilities has two unpaid utility bills in hand every month. (*Id.* at 7-8). To suggest that on average, every customer would continuously have two bills payable to the utility should raise serious questions about the validity of the analysis. Ameren’s attempt to support their collection lag with other flawed collection lags has no merit. Therefore, Ameren’s collection lag proposal should be rejected.

*iv. Ameren’s Collection Lag is Flawed Because it Includes Uncollectible Expenses.*

Ameren continues to rationalize its failure to exclude uncollectible expenses from its CWC

analyses. (Ameren Br. at 47). Ameren argues, “[w]hile disagreeing with the IIEC as to whether uncollectible expenses need to be excluded from the CWC analyses, the AIUs performed a recalculation of the collection lag excluding the uncollectibles expenses.” (Ameren Br. at 47).

Ameren appears to reject the testimony of its expert, Mr. Heintz. Mr. Heintz expressly agreed that uncollectibles should not be included in the collection lag study. (Heintz, Dec. 15, Tr. 240). His failed effort to show that the removal of uncollectibles would not change his collection lag result further supports this point. (*Id.* at 240). IIEC continues to maintain its position that including uncollectibles is an error in Ameren’s collection lag calculation. (IIEC Br. at 27-30). Despite Ameren’s arguments to the contrary, removing the uncollectibles costs would in fact decrease the collection lag calculated by Ameren. (Meyer, IIEC Ex. 7.0 at 6).

Further, the recalculation performed by Mr. Heintz was a nullity. Mr. Heintz admits that mathematically it could only produce one result - - no change, except for his rounding error. (*Id.* at 250-251). Ameren’s recalculation simply reduces the percentage of contributions of each bill payment period by the same factor. (*Id.* at 251). It is a mathematical exercise that illustrates that if one has a series of ratios and reduces each ratio in that series by the same percentage, the relationships of the ratios in the series will not change. (*Id.* at 251-252). Despite this truth, Mr. Heintz reasoned that the calculation and result were acceptable because Ameren has no actual data on the uncollectibles used to weight his payment periods for the lag calculation. (*Id.* at 249).

In IIEC’s view, the total lack of information on proper weighting factors for the uncollectibles Ameren included is another reason to reject their inclusion entirely. Ameren’s calculation and recalculation of the collection lag does not support the reasonableness of Ameren’s proposed 28.13

day collection lag. The Commission should instead approve IIEC's witness Meyer's 21 day collection lag recommendation which properly excludes uncollectibles from the collection lag determination.

### **III. Operating Revenues and Expenses**

#### **C. Contested Issues**

##### **5. Amortization of IP Merger Expense/Regulatory Asset**

At the conclusion of testimony in this case, the mechanics of how AmerenIP's rates should be aligned with its amortization of the merger related regulatory asset was a matter not fully agreed upon. However, on the most important issue there was unanimity. While AmerenIP was entitled to amortization in accordance with the Commission directive in its merger case, all parties agreed that AmerenIP should not collect an amount in excess of the authorized asset. (*See* IIEC Br. at 33; Staff Br. at 54; Ameren Br. at 91-92; *Illinois Power Company and Ameren Corporation*, ICC Dkt. 04-0294 Order Sept. 22, 2004 at 56).

Ameren now closes this issue.

[T]he AIUs agree with the Staff and IIEC approach of amortizing the remaining balance of the regulatory asset, calculated as of May 2010, over two years.  
(Ameren Br. at 91-92).

In connection with aligning rates to this objective, Ameren asks for permission to change its accounting amortization period to match the two year period established for rates. IIEC does not oppose a grant of permission to modify Ameren's accounting as part of assuring its collection of no more than the authorized regulatory asset.

## **8. Electric Distribution Tax/Public Utilities Revenue Act Tax**

Ameren adopts IIEC's recommended adjustment to the determination of Ameren's test year PURA Tax expense recovery. (Ameren Br. at 98). IIEC will not argue this issue further. IIEC addresses the allocation and method of recovery of the PURA Tax in Sections VI.C.1.c. and VII.C.2.c. below.

## **11. Injuries and Damages Expense**

Ameren accurately states the disputed issue on this expense item. "The only point of contention with respect to the AIUs' normalization approach is the use of an inflation factor in calculating the historical average. Elimination of an inflation factor would reduce the total electric revenue requirement by \$673,000 and the gas revenue requirement by \$129,000. (IIEC Ex. 3.0 (Meyer Dir.), p. 8.)" (Ameren Br. at 109). Staff did not take issue in testimony with Ameren's inflation adjustment. (Staff Br. at 69).

IIEC maintains its position that the systematic, multi-year averaging method the Commission has used to determine Ameren's I&D expense should not include an inflation component. First, it violates the Commission's test year rules, which bar the use of inflation adjustments to modify historical test year data. Second, it is not supported by the facts of record. There is no evidence that the Commission's historical multi-year averaging method has caused Ameren to under-recover its I&D expenses. Finally, the Commission's systematic approach, if maintained, will make Ameren whole. What Ameren seeks is recovery of expected future expenditures, in the context of its historical test year case.

In its Initial Brief, Ameren argues:

Assuming a positive level of inflation between 2004 and 2008, a dollar would be worth less today than it was worth in 2004. (Tr. 560.) Consequently, all other things being equal, if it cost \$100 to settle a claim in 2004, it would cost more than \$100 to settle that same claim in 2010, when rates in this proceeding go into effect. (Tr. 561.) (Ameren Br. at 110).

This excerpt reveals the true purpose and objective of Ameren's proposed adjustment. Those revelations confirm a new reason that Ameren's proposed inflation adjustment cannot lawfully be added to the Commission's historical systematic approach to test year I&D costs.

Test year ratemaking rests on an assessment of a utility's costs and revenues over a consistent time period -- the test year. In this case, Ameren proposed a historical test year, 2008. Data from post-test year periods can be considered only if they meet the requirements established by the Commission's rule on post-test year adjustments. As its brief states, Ameren seeks to adjust its historical average I&D expense to anticipate inflation in periods after the historical test year. (*Id.*). Previously, Ameren had suggested that its inflation adjustment related to the effect of inflation over the periods included in its historical averages. (*See, e.g.,* Wichmann, Ameren Ex. 30.0 at 3 ("the purpose of the inflation factor is that the underlying materials or labor costs giving rise to historical claims payments would cost more today than they did five years ago"))).

Section 287.40, the Commission's pro forma adjustment rule provides unambiguously that:

Attrition or inflation factors shall not be substituted for a specific study of individual capital, revenue, and expense components.  
(83 Ill. Adm. Code 287.40).

Ameren does not even claim to have performed a specific study of its I&D expenses. In fact, IIEC pointed out the deficiency of Ameren's testimony. "Company witness Wichmann did not refute the

Commission’s systematic approach for annualizing the expense and provided no analysis revealing any under-collections of this expense over time.” (Meyer, IIEC Ex. 7.0 at 3). Instead Ameren baldly applies an “inflation factor[]” as a substitute for a specific study of I&D expenses, in direct conflict with the clear prohibition in the Commission’s rule.

Second, the evidence of record, even as explained in Ameren’s brief, does not support the assumptions on which Ameren’s request depends. Ameren argues that “all other things being equal, if it cost \$100 to settle a claim in 2004, it would cost more than \$100 to settle that same claim in 2010, when rates in this proceeding go into effect.” (Ameren Br. at 110). That argument depends on “all other things being equal.” But Ameren has presented no evidence that all other things will be held equal. In fact, prudent management of I&D costs requires that Ameren work to assure that all things are not held equal. Through safety programs to prevent claims and through investigations, negotiations, and litigation to reduce the cost of claims that do occur, Ameren is presumably working to assure that all things are not equal.

IIEC’s Initial Brief addressed Ameren’s previous arguments and the deficiencies in Ameren’s evidence of record. (IIEC Br. at 37-40). Even in its brief, Ameren provides no connection between its I&D expense and the rising costs of the goods acquired or services performed when its I&D claims arose, which increased costs are claimed as support for its inflation adjustment. (*See*, Ameren Br. at 109-110). Similarly, Ameren has cited no evidence to support its characterization of inflation as a cause of the fluctuating annual expenses that comprise its historical data. Ameren’s counter-intuitive assumption of a connection that supports its proposed inflation adjustment is not supported by evidence.

Finally, as IIEC's witness Greg Meyer explained in his testimony, if the Commission's systematic approach is maintained, Ameren will be kept whole. (Meyer, IIEC Ex. 7.0 at 3; IIEC Ex. 3.0 at 8). Ameren has not challenged that conclusion, and it has not offered any evidence that the Commission's unadjusted averaging method has resulted in any under-recovery. What Ameren seeks is to be made whole for future expected (inflation-adjusted) expenditures in the context of a historical test year case. As explained above, the Commission's rules do not permit such a mixture of data from different test years, except on the terms of its pro forma adjustment rule, which Ameren's inflation adjustment does not satisfy. Ameren had the option of a future test year to recover future costs as affected by inflation. Under the Commission's rules (287.40), Ameren's choice of a historical test year precludes such recovery in this case. In this context, an inflation adjustment creates an opportunity for over-recovery.

#### **IV. Cost of Capital/Rate of Return**

##### **F. Cost of Common Equity**

##### **2. Contested Issues**

##### **a. Return on Equity Estimates**

Ameren's Initial Brief restates the recommendations of its witness Kathleen McShane for Ameren's costs of equity. For the gas distribution operations of AmerenCILCO, AmerenCIPS, and AmerenIP, she recommends a cost of common equity of 11.2%, 10.8%, and 11.2%, respectively. For their electric utility operations, her cost of common equity recommendations are 11.7%, 11.3%, and 11.7%, respectively. (Ameren Br. at 151). The cost of equity estimates developed by Ms. McShane are overstated, and should be rejected as bases for the cost of equity determination in this case.

There are several uncomplicated, high-level reasons -- aside from the technical deficiencies of her estimation analyses that IIEC discusses later -- why her recommendations are inappropriate. The most significant non-technical flaw in Ms. McShane's model results is the fact that they do not reflect recent changes in the financial market environment. Her data was taken mainly from time periods when the market was still severely distressed due to the market collapse of late 2008 and early 2009. (Gorman, IIEC Ex. 6.0-C at 2-3). Mr. Gorman provided versions of his analyses that were modified to incorporate most of the methodology changes Ms. McShane recommended as part of her critique of his estimates and to use more recent data. Those modified analyses show that simply updating her input data (*i.e.*, using the same sources but from a later period) had the most significant effect on her cost of equity estimates. Mr. Gorman's updated analyses (using Ms. McShane's modifications) produced a return on equity of approximately 10.1%. (Gorman, IIEC Ex. 6.0-C at 3). The 10.1% result of Mr. Gorman's updated analysis -- incorporating recommended changes from Ms. McShane -- validates his original recommended return on equity of 10.0% for Ameren's gas and electric operations. The Commission's approved cost should be set at or near 10.0%, to reflect recent changes in the relevant market environment.

A second reason Ms. McShane's recommended returns are overstated is her use of short-term growth forecasts in a constant growth model. Every expert in this case -- including Ms. McShane -- has concluded that future growth will not be constant, because the forecast growth rates cannot be sustained. (Gorman, IIEC Ex. 2.0-C at 26-28; Freetly, Staff Ex. 20.0 at 25; McShane, Ameren Ex. 52.0 at 7). Yet, Ms. McShane's analyses incorporate the results of a model that assumes infinite constant growth, using an unsustainable growth rate. (McShane, Ameren Ex. 52.0 at 8). Predictably,

that mismatch has the effect of artificially inflating Ameren's cost of equity estimates. Additional, more technical, aspects of Ms. McShane's flawed analyses are discussed below.

Ameren's brief also criticizes Mr. Gorman's recommended returns. Mr. Gorman proposes a combined return on equity of 10.0% for Ameren's gas and electric operations. "[T]hat the AIUs are a combination of gas and electric utilities does not mean that the same cost of equity applies to each of the operations." (Ameren Br. at 158). Ameren argues that the same return on equity for both gas and electric operations would result in cross-subsidies, erroneous investment decisions, and a misallocation of capital resources. (*Id.*). Ameren's arguments are without merit.

Mr. Gorman's recommendation reflects Ameren's actual combination gas and electric investment fundamentals. (Gorman, IIEC Ex. 6.0-C at 2-3). When Ameren seeks capital in the market, Ameren issues debt that reflects the risk of the combined gas and electric companies. Ameren does not issue separate bonds for electric and gas operations. (*Id.* at 12). Further, when the Companies retain earnings, it is on a consolidated basis; when Ameren Companies receive equity infusions from the parent company, it is also on a consolidated basis.

From the perspective of the market, there is no separation in the investment risk of Ameren's electric and gas operations. (*Id.*). Thus, a determination of the market-required cost of equity will reflect that consolidated risk profile, which results in common return on equity, capital structure, and embedded debt cost determinations. Any separation between Ameren's electric and gas operations would be purely subjective. More important, it would not be based on true market information, but rather some allocation method devised to accomplish an artificial separation that does not exist in the market. Such methodologies are neither necessary nor reliable. The more direct and accurate

measure of Ameren's cost of equity is a determination of a fair return on equity for Ameren's consolidated operations.

In any case, Ameren acknowledges that the gravamen of its criticism is addressed by Mr. Gorman's contemporaneous presentation of alternative estimates that effect the separation Ameren desires. "If the Commission chooses to determine distinct returns for AIU's electric and gas operations, Mr. Gorman recommends the following: 10.37% and 9.62%, respectively." (Ameren Br. at 158).

**b. DCF and CAPM Model Issues**

Ameren's Initial Brief argues, in support of Ms. McShane's DCF estimate, that "[b]ecause she weighs all three [DCF] estimates, she incorporates a potential range of utility investor expected returns." (Ameren Br. at 153). One of the estimates incorporated in her analysis is the result of a constant growth DCF model that is inappropriate for the economic circumstances of record. (IIEC Br. at 44-45). Incorporating an estimate from Ms. McShane's constant growth DCF model, which used analysts' current growth forecasts as its long-term growth input, is not justified. The inflated result of that model cannot be camouflaged by combining it with more legitimate estimates. The effect of that process, even if not its purpose, is to inflate the combination estimate to an unreasonable level. (A more detailed discussion of Ms. McShane's use of inappropriate growth rates is presented in the following section of this brief.)

In defense of Ms. McShane's use of a constant growth DCF model, Ameren attacks Mr. Gorman's use of a multistage model directly. Ameren argues that because Mr. Gorman has previously relied on a constant growth DCF model, there is no valid reason not to do so here.

(Ameren Br. at 160). Ameren’s simplistic reasoning has no basis in logic or in economic theory, which actually requires models appropriate to the circumstances. Ameren’s position would bind an expert to one estimation model and set of inputs for life, no matter the relevant circumstances. Even Ms. McShane refuses to be so illogically constrained in her return analyses. “[E]ach test has its own strengths and weaknesses and not all tests are equally reliable in different capital market conditions.” (McShane, Rev. AmerenCILCO Ex. 12.0E at 24-25). As explained in IIEC’s Initial Brief (at 44-46), Mr. Gorman relied on a constant growth model when it was appropriate. Now that it is not appropriate (according to the requirements and limitations of the model), he relies on a multi-stage model that is appropriate to the circumstances of record. (The reasons a multi-stage DCF model are appropriate in the financial environment established in this record are explained more fully in IIEC’s Initial Brief at pages 44-46.)

Ameren also asserts that Mr. Gorman’s model selection substitutes subjective judgment for “the objective views of analysts,” itself an oxymoron. (Ameren Br. at 160). In fact, Mr. Gorman used the analysts short-term projection for the period they are intended to represent, but rejected the short-term analysts projections as long-term growth projections (which the analysts did not represent them to be). Short-term growth rates are not reasonable long-term growth rates estimates, and they are unsustainable when used for that purpose. Instead he used an accepted estimate of a ceiling rate for utilities’ long term growth (growth in the economy), and a gradual transition between the short and long term rates. (Gorman, IIEC Ex. 2.0-C at 33).

**c. Growth Rates**

Ameren’s Initial Brief criticizes Staff witness Janis Freetly for using a multi-stage DCF

analysis in this case. (Ameren Br. at 154-155). Because IIEC's expert Mr. Gorman also used a multi-stage DCF model, for the reasons explained in his testimony and in IIEC's Initial Brief, IIEC responds to Ameren's argument. Ameren asserts that analysts' growth forecasts are the most objective measure of investor expectations, which Ms. McShane incorporated into a single-stage constant growth DCF model. (Ameren Br. at 155). However, McShane's own testimony contradicts the assumption of indefinite sustainability incorporated in her single-stage DCF model. (McShane, Ameren Ex. 52.0 at 7). Ms. McShane acknowledges that the growth rates used in constant growth DCF must be sustainable over the indefinite period the DCF model encompasses. (McShane, Rev. AmerenCILCO Ex. 12.0E at 35-36; *also see* Gorman, IIEC Ex. 2.0-C at 61; Gorman, IIEC Ex. 6.0-C at 6-7). To the extent Ms. Freetly found, as did Mr. Gorman, that current three- to five-year earnings growth rate estimates are not reasonable estimates of long-term sustainable growth, the constant growth DCF analysis will produce highly problematic results.

Ameren also contends that Mr. Gorman did not accurately estimate the growth rate for his sustainable growth rate DCF model. (Ameren Br. at 158-159). Ms. McShane's criticisms of Mr. Gorman's original model are no longer valid. As Ameren acknowledges, Mr. Gorman's sustainable growth rate model is updated in his corrected rebuttal testimony. (*Id.*). As, updated, Mr. Gorman's model still supports an ROE of 10.0%. (Gorman, IIEC Ex. 6.0-C at 3). In her surrebuttal testimony, Ms. McShane opines that Mr. Gorman's revision to incorporate an external growth component failed to estimate it correctly. (McShane, Ameren Ex. 52.0 at 24; Ameren Br. at 159). Her reasoning is a variation of the preservation of market-to-book ratios pursued through her leverage adjustment. Ms. McShane concluded that Mr. Gorman's revision "implies a significant decline in the utilities'

market/book ratios, an outcome for which there is no basis.” (McShane, Ameren Ex. 52.0 at 25). Though preservation of Ameren’s market-to-book ratio is a clear objective (*See* McShane, AmerenIP Ex. 12.0E at 59-60), Ms. McShane presents no evidence to rebut Mr. Gorman’s findings.

Ameren also argues that Mr. Gorman was incorrect in his assessment that analysts’ short-term growth rates are too high to be reasonable estimates of long-term sustainable growth. (Ameren Br. at 160). Ameren contends that because analysts do not make forecasts longer than five years, it is not possible to determine whether investors expect the forecasted growth rates to continue indefinitely. (*Id.* (citing Ameren Ex. 36.0, p. 21)). Ameren’s arguments require one to reject investors as reasoning actors, and the market as an efficient reflector of investors’ rational decisions. It simply is not reasonable to conclude that informed investors cannot distinguish short-term and long-term forecasts, or that they would expect abnormally high growth rates to persist indefinitely. This basic competence of investors is also endorsed by Ms. McShane:

My application of the three-stage growth model is based on the premise that investors expect the growth rate for the sample of electric utilities to be equal to company-specific growth rates for the near-term (Stage 1 Growth), but, in the longer-term (from Year 6 onward) will migrate to the expected long-run rate of growth in the economy (nominal GDP Growth).  
(AmerenIP Ex. 12.0E Rev at 32).

The contrary implication, a logical consequence of Ms. McShane’s criticism, is rejected by virtually every rate of return witness in this proceeding. Ameren’s argument, therefore, should be rejected.

**e. Market Risk Premium**

Beginning at page 167 of its brief, Ameren presents its defense of the market risk premium used in Ameren’s CAPM estimate. In its testimony and in its Initial Brief, IIEC discussed the flaws

in Ameren witness McShane's development of the market risk premium used in her CAPM analyses. (IIEC Br. at 56-59). IIEC raises similar issues with Staff's CAPM analyses. (*Id.* at 59).

Ms. McShane used an ex-post (historical) market risk premium and one based on ex-ante (forward-looking) estimate in her analyses. (Ameren Br at 169). Ms. McShane's forward-looking risk premium is a DCF-based return estimate for the S&P 500, as a proxy for the market. The market-based DCF return used by Ms. McShane was based on an S&P dividend yield of 2.1% and a five-year I/B/E/S growth rate of 9.63%, yielding an expected return on the market of 12.0%. (*Id.* at 170). The 9.63% growth rate is substantially higher than the long-term expected growth of the U.S. economy, as represented by a GDP growth rate of 5.0%. (Gorman, IIEC Ex. 2.0-C at 64). Growth considerably faster than U.S. GDP growth cannot be sustained indefinitely, making this DCF return of the market inflated and unreliable. (*Id.*). By overstating the DCF return on the market, Ms. McShane overstates the market risk premium. The resulting market risk premium (12.0%) is unreasonable and inflates the CAPM return estimate.

Staff developed a similar DCF return on the market -- one based on a growth rate that is too high to be sustainable. Therefore, both Ameren's and Staff's market-based DCF estimates of the market risk premium are flawed and produce overstated premiums and CAPM return estimates. (*See* Gorman, IIEC Ex. 2.0-C at 64-67; Gorman, IIEC Ex. 6.0-C at 14).

Ms. McShane's historical estimate of utility equity risk premiums is derived based on achieved returns on utility stock relative to that of utility bond yields and Treasury bond yields. (*See* Ameren Br. at 171). Her methodology for deriving this estimate is also flawed and overstates a fair return. Ms. McShane did not compare the actual historical achieved total return on utility stocks,

relative to the historical total achieved returns on utility bonds and Treasury bond investments. Rather, she considered only the income portion of the total return of Treasury bonds to produce this equity risk premium. Ms. McShane ignores changes in capital appreciations and losses for bonds, but she does reflect the change in market value for stock. As a result, the methodology exaggerates the difference in actual total returns, and does not properly measure the premium investors actually achieved by investing in utility equities versus the compared bonds. Consequently, her methodology overstates the equity risk premium. Correcting her analysis for this flaw would substantially lower her utility bond equity risk premium estimates. (Gorman, IIEC Ex. 2.0-C at 71).

**f. Proposed Adjustments**

Ameren's Initial Brief repeats Ms. McShane's criticism of Mr. Gorman's estimates as too low, in part because they do not include her proposed (and consistently rejected) leverage adjustment. (Ameren Br. at 158, fn. 31). Mr. Gorman showed the effect of the financial risk adjustment Ms. McShane proposes at page 59 of his direct testimony. As shown there on the line "Capital Structure Risk Adjustment," Ms. McShane proposed to increase the electric return on equity by 0.50%, and for the gas utilities in the range of 0.75% to 1.0%. (Gorman, IIEC Ex. 2.0-C at 59, Table 5).

Ameren also attempts to validate its proposed adjustment by comparing it to Staff's risk adjustment. (Ameren Br. at 178). In IIEC's view, that is not an apt comparison. Ms. McShane's so-called "financial risk" adjustment is simply the latest guise for the leverage adjustment the Commission has consistently rejected as inappropriate. In attempting to embed current market-to-book differentials in the Commission's authorized returns, the focus of the adjustment is Ameren's stock price performance, not the utility's market-required cost of equity. In contrast, as IIEC

understands Staff's adjustment, it seeks to correct for measurable differences in the relative risk of Ameren and the proxy groups used to estimate Ameren's cost of equity.

**g. Other**

Ameren's "defense" of Ms. McShane's comparable earnings analysis includes the following observations.

- Ms. McShane agrees that the comparable earnings test does not measure the investor's opportunity cost of attracting equity capital as measured relative to market values. (Ameren Br. at 153).
- Thus, she does not use the comparable earnings test to actually determine the cost of equity. (*Id.*)

As Ameren admits, Ms. McShane's comparable earnings test does not provide an estimate of the market-required return. Consequently, it is not a valid comparative for the market-based cost of equity estimates in the record, and it should not be used in assessing the reasonableness of market-based Discounted Cash Flow (DCF), Risk Premium (RP) or Capital Asset Pricing Model (CAPM) estimates. The comparable earnings model does not measure the returns investors demand to invest in low risk non-regulated companies. Rather, it measures only accounting return data. (Gorman, IIEC Ex. 2.0-C at 79-80). This is a disqualifying difference from the return investors require to assume the risk of an Ameren investment. As the Commission's objective is a fair, market-based return, a comparable earnings model provides no useful information for accurately estimating this return.

## **VI. Cost of Service/Revenue Allocation**

### **C. Contested Issues**

#### **1. Electric**

##### **a. AIU's Cost of Service Studies**

Ameren argues that it is the only party that has performed an independent cost of service study. (Ameren Br. at 204). Ameren also claims that the methods it used in its cost of service studies were approved by the Commission in its Final Order in Docket Nos. 06-0070 (cons.). (*Id.* at 207).

What Ameren fails to say, however, is that in developing the cost of service studies in this case, Ameren performed new demand studies that are different from those used in Ameren's last rate case. Ameren relied on these new and un-reviewed demand studies to develop the demand-related allocators used as part of the cost of service studies presented in this case. (IIEC Br. at 67). The allocation factors affected by Ameren's new demand study are labeled DEMSUBTR, D368SBTR, DDSUBTR, and DEMPRI in the COSS. (Stowe, IIEC Ex. 4.0 at 14). The allocation factor DEMSUBTR has not been previously used in Ameren's COSS. In this case, however, Ameren replaced the allocation factor DDSUBTR, which was used in all of the previous Ameren studies, to allocate distribution substation costs recorded in FERC Account 362 with factor DEMSUBTR. As such, Ameren's COSS abandoned methods approved in past cases in favor of new and untested methods.

Ameren notes that the allocator used to distribute FERC Account 362 costs was incorrect. (Ameren Br. at 205-206). Therefore, Ameren agreed with IIEC's recommendation to use allocator

DDSUBTR to allocate the cost of Account 362 instead of allocator DEMSUBTR. (Ameren Br. at 207).

Ameren claims that use of allocator DDSUBTR results in the distribution of approximately \$25 million in additional costs “to the DS-4, 100+ kV customer subclass.” (Ameren Br. at 207). Ameren cites to the testimony of IIEC witness Stowe in support of this statement. However, Mr. Stowe’s testimony states that use of the incorrect allocator, allocator DEMSUBTR, resulted in the over-allocation of nearly \$27.5 million in primary voltage and/or subtransmission voltage substation costs to the DS-4 100 kV and above customers. (Stowe, IIEC Ex. 4.0 at 9-11). Ameren is incorrect in arguing that using the correct allocator, distributes additional costs “to” DS-4 100 kV and Above customers.<sup>5</sup>

Ameren’s “adoption” of the allocator DDSUBTR has no practical effect in this case, unless Ameren re-runs its COSS. Ameren has simply agreed to use an allocation factor it has used in each of its cost of service studies during the last 10 years in its next cost study.

Ameren claims that it is confident that its cost study represents a highly accurate allocation of cost causation. (Ameren Br. at 208-209). Ameren suggests that the COSS were thoroughly vetted by IIEC during the proceeding. However, such vetting exposed a number of significant errors and inconsistencies in the COSS, most of which have not been corrected by Ameren. In IIEC’s view, the

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<sup>5</sup> In addition, Ameren attempts to downplay the importance of its error by providing extra-record analysis of the impact of the correction, in its Appendix G. Unfortunately, Appendix G and the calculations contained therein, go well beyond simple verification of numbers and effectively constitute extra-record “expert” analysis, but which has not been sponsored by any witness, subjected to discovery, cross-examination or any of the other rigors of evidentiary process. Therefore, it should not be relied on by the Commission in this case.

errors and inconsistencies it has identified call into question the fundamental accuracy of the studies' calculations of class cost responsibility. Therefore, the Commission would be justified in adopting, and IIEC recommends adopting, an across-the-board increase in this case. These errors and inconsistencies were identified in IIEC's Initial Brief. They include:

- the misallocation of 34.5 kV and 69 kV substations to the customers taking service at voltages of 100 kV or higher (discussed above); (IIEC Br. at 68)
- the misallocation of PURA Taxes; (IIEC Br. at 70-84)
- errors in the development of Ameren's non-coincident peak demand allocators; (IIEC Br. at 84)
- improper allocation of transformer rental revenue in Ameren's cost of service studies; (IIEC Br. at 90-91)
- misallocation of secondary costs to primary customers resulting from Ameren's new demand studies; (IIEC Br. at 89-90)
- failure to allocate costs of poles, wires and substations to thousands of large customers taking service at secondary voltage; (IIEC Br. at 87-88)
- Ameren's problematic class definitions and failure to properly distinguish between customer demand at supply voltage, delivery voltage and metered voltage in the context of this study; and (IIEC Br. at 88-89)
- discrepancies in customer counts in the COSS. (IIEC Br. at 87).

IIEC will not repeat its discussion of each of these points in this Reply Brief. However, IIEC does note that Ameren's proposals, which include an attempt to move rates toward cost, are guided by its

cost of service studies. Those studies contain non-trivial errors in allocation logic as well as factual inconsistencies that render them deficient for the purpose of establishing proper allocated cost, and therefore, inappropriate for setting rates in this proceeding.

For the reasons stated above, or identified in IIEC's Initial Brief (*See*, IIEC Br. at 62-91), the Commission should not use the Ameren COSS for revenue allocation and rate design in this case. Instead, the Commission should, in the absence of a reliable COSS that accurately determines class cost responsibility, authorize an across-the-board increase.

**b. Allocation of Costs to Customers Receiving Service at Voltages 100+kV**

Ameren argues that its general approach for allocation of costs to the 100+ kV class of customers should be adopted by the Commission. (Ameren Br. at 209-211). Ameren devotes almost all of its discussion to a response to certain observations and arguments made by IIEC with regard to the misallocation of 34 kV and 69 kV substation equipment to customers served at 100 kV and above. While Ameren initially disagreed with IIEC's suggestion that the costs of the 34 kV and 69 kV substations had been misallocated, the Ameren cost of service witness eventually agreed that the Ameren COSS had been in error in this regard. Ameren agreed to use factor DDSUBTR instead of factor DEMSUBTR to allocate the cost of 34 kV and 69kV substations, which would resolve IIEC's criticism of the cost of service study in this regard. (IIEC Br. at 68-70). However, as will be discussed below, Ameren now attempts to downplay its original error by providing extra-record calculations that suggest that correction of the error is not necessary due to Ameren's alleged rate moderation approach.

Ameren argues that IIEC contends customers taking service at a voltage above 100 kV do not receive any benefit from the portions of the distribution system that operate below the 100 kV voltage level, citing Mr. Stowe's rebuttal testimony as support for its claim. (Ameren Br. at 209). Ameren's statements in this regard are incorrect. Mr. Stowe stated that all customers, including those taking service at 100 kV or higher, should be allocated costs of the distribution system that they use, but that it is of vital importance to demonstrate that the customers do, in fact, use the subject facilities, and are therefore responsible for the facility costs allocated to them. (*See*, Stowe, IIEC Ex. 8.0 at 10).

Contrary to Ameren's suggestion, IIEC does not claim that 100+ kV customers do not use transformers and substations owned by Ameren, nor does IIEC suggest that these customers should be able to by-pass delivery service rate responsibility associated with the use of such transformers. (*See*, Ameren Br. at 210). In fact, 100+ kV customers are unable to bypass delivery service rate responsibility. As Ameren witness Althoff testified during cross-examination by the Staff, the use of the DDSUBTR allocation factor does, in fact, allocate costs to customers supplied at 100+ kV. (*See*, Althoff, Dec. 16, Tr. 609-610).

Ameren also claims that IIEC's statements regarding the proper allocation of costs to customers that operate at the highest voltage level -- 100 kV and above -- only considers the "supply voltage" of these customers. (Ameren Br. at 209-210). Ameren claims that IIEC's allocations do not appropriately portray the changes in the class demand studies in the current case, compared to prior delivery service rate cases. Ameren states that the allocation factors used in the current case are based on a combination of supply and delivery voltage. (Ameren Br. at 210). IIEC would note that it has not disputed the difference between, or the importance of, supply and delivery voltages.

(Stowe, IIEC Ex. 8.0-C at 4 and 10). IIEC merely attempted to ensure that the costs of 34 kV and 69 kV substations were not misallocated to customers taking service at 100 kV and above. Ameren has agreed that its cost of service study was in error in this regard, and has proposed to use the appropriate demand allocation factor for the allocation of these costs. While IIEC believes that Ameren must go to the next step and actually provide the Commission with the results of a corrected cost of service study, it has not made any recommendations with regard to the use of supply or delivery voltages or disputed those differences in this case.

**c. Allocation of Cost of Primary Distribution Lines and Substations**

Staff argues that the CP allocation method should be used for allocation of primary distribution lines and substations instead of the NCP method. (Staff Br. at 149-155). IIEC and Ameren support the continued use of the NCP method. (IIEC Br. at 85-86; Ameren Br. at 212-215).

The Staff objects to IIEC witness Mr. Stowe's support for the use of the NCP method. Specifically, Staff suggests that Mr. Stowe's argument, that the use of the CP method to allocate distribution costs is flawed because it does not allocate costs to certain classes, is incorrect. (Staff Br. at 154). First, Staff opines that it is not advocating the CP approach for all distribution costs, just for the cost of primary lines and substations. Second, Staff argues that cost of service should not focus on the amount of costs the CP method allocates, but on the allocation method that most accurately reflects how costs are caused. (*Id.*).

With regard to Staff's first argument, whether Staff advocates use of the CP method only for some distribution costs (primary lines and substations) or all distribution costs, is entirely irrelevant to IIEC witness Stowe's criticism of the CP method. Mr. Stowe specifically pointed out that the CP

method, as proposed by the Staff in this case, does not allocate any of the costs of primary lines and substations to certain rate classes. (Stowe, IIEC Ex. 8.0-C at 20-21). This result is nonsensical, since clearly all rate classes require the use of primary lines and substations to receive service. Staff's proposal makes no sense regardless of whether it has proposed the use of the CP method for allocation of all distribution system costs, or only primary lines and substations.

Staff's second argument is without merit as well. IIEC's criticism of the use of the CP method does not focus on the "amount of costs allocated," but on the fact that the method, if used to allocate primary lines and substations, fails to allocate any of those costs to certain classes, even though they require the use of such facilities to receive their electric service.

Also, Staff reasons that the use of the CP allocation method would more closely conform to cost causation. However, Staff's position overlooks the fact that the costs of the distribution system are traditionally allocated on the basis of NCP demand, because diversity at the distribution level is the primary factor responsible for the investment in, and sizing of, distribution equipment. (Althoff, Ameren Rev. Ex. 56.0 at 7). This conclusion is supported by the provisions of the 1992 NARUC Electric Utility Cost Allocation Manual which provides in relevant part:

Local area loads are the major factors in sizing distribution equipment. Consequently, customer class non-coincident peak demands, NCPs, and individual customer maximum demands, are the load characteristics that are normally used to allocate the demand components of distribution facilities. The customer class load characterizations used to allocate the demand component of distribution plant (whether customer class, NCPs or the summation of individual customers max demand), depends on the load diversity that is present at the equipment to be allocated. The load diversity at distribution substations and primary feeders is usually high. For this reason, class peaks are normally used for the allocation of these

facilities. The facilities near the customer, much as secondary feeders and line transformers, have much lower load diversity. (Althoff, Dec. 16, Tr. 598-600, quoting 1992 NARUC Manual at 97).

Therefore, the use of the NCP method for the allocation of primary lines and substations is fully consistent with standard practice in the industry. Staff's proposal to use the CP method to allocate the cost of primary lines and substations should therefore be rejected.

**d. Allocation of Electric Distribution Tax/Public Utilities Revenue Act Tax**

Ameren proposes to allocate and collect the Public Utilities Revenue Act ("PURA") Tax (35 ILCS 620/1 et seq.) on the basis of "kWh sales."<sup>6</sup> (Ameren Br. at 215). Staff supports this method of allocation and recovery for the PURA Tax. (Staff Br. at 155). Ameren and Staff continue the overly simplistic arguments they presented in their testimony, without any real analysis of the history and true cause of the PURA Tax and how that tax is best reflected in the COSS.

Ameren reasons that "all other things constant," the PURA Tax will increase or decrease as a utility delivers more or less electric energy. (*Id.*). Therefore, according to Ameren, kWh deliveries are the determinative factor for the PURA Tax. (*Id.*). Staff also argues that the determinative factor for the PURA Tax is kWh delivered. (Staff Br. at 155). Both Staff and Ameren argue that allocation of the tax on the basis of kWh delivered is consistent with legislative intent. (Ameren Br. at 215; Staff Br. at 158-159). Staff argues, in addition, that IIEC's recommendation, that the current method of allocation and collection remain in effect, is inconsistent with cost causation principles. (*Id.*).

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<sup>6</sup> IIEC assumes that Ameren intended to reference "kWh deliveries" and not "kWh sales" since Ameren does not sell electric energy to customers served by third party suppliers, such as the IIEC Companies in this case.

Ameren also reasons that allocating the PURA Tax on kWh is better than allocating the tax on the basis of costs that no longer include the cost of generating plant. (Ameren Br. at 215). Elsewhere in its brief, Ameren argues the amount of utility plant does not affect the amount of distribution tax paid, and even if utility plant were to double or to decline by half, it would have no impact on the PURA Tax. (Ameren Br. at 276). Staff makes a similar argument in its brief. (Staff Br. at 158). The arguments of Ameren and the Staff are misplaced and incorrect.

*i. Cost Causation.*

First, many of the Ameren and Staff arguments are based on an assumption that kWh delivered drives the amount of PURA Tax paid by the utility. Specifically, Ameren has stated that “all other things constant,” the amount of the tax will increase or decrease as a utility delivers more or less energy. (Ameren Br. at 215). However, all other things are not constant. Other factors have effects of varying magnitude on the level of PURA Tax. For example, there is a cap on each utility’s tax responsibility that is applied in every year. (Stephens, IIEC Ex. 1.0-C at 21). Obviously, kWh delivered has no impact on the cap. In years when the cap is exceeded, other factors besides the kWh delivered affect the calculated amount of the tax. In any year, the largest causative factor is the utilities’ plant in service level in 1997. (Stephens, IIEC Ex. 1.0-C at 24). In fact, 84% of the test year PURA Tax, on average, is based directly on the utilities’ 1997 level of invested capital. (IIEC Br. at 78 and Fn. 6).

The arguments of Ameren and Staff ignore IIEC’s unrebutted analysis that shows the 1997 level of tax in the test year amount is not exclusively a function of kWh delivered, but is determined primarily by the level of the utility’s invested capital tax prior to 1997. That tax level was in turn,

a function of the amount of invested capital for each Illinois utility (*i.e.*, a function of each utility's plant investment). (Stephens, IIEC Ex. 5.0-C at 10; *See also*, Lazare, Staff Ex. 21.0 at 4). Ameren and Staff also ignore a similar analysis demonstrating that there is little or no correlation between Ameren's kWh delivered and the amount of tax paid by the Ameren Companies. (Stephens, IIEC Ex. 5.0-C at 11-12). Neither Ameren nor Staff provided any evidence to show that there is any actual correlation between kWh delivered and the amount of tax paid by the Ameren Companies. Ameren has the burden of proof on the issue of cost causation. (*See*, Section I.B. above). Given the absence of any affirmative evidence to establish a correlation between kWh delivered and the amount of tax paid, Ameren has failed to meet its burden. The proposed change in the allocation of the PURA Tax supported by Ameren and Staff has not been shown to be reasonable or consistent with cost causation.

Contrary to the arguments of Ameren and the Staff, allocating the PURA Tax on a kWh basis is not better than allocating the tax on the basis of plant in service, since a kWh allocation does not more closely track cost causation. The record shows that 84% of the tax paid by the Ameren Companies is actually based on the 1997 level of invested capital for these companies, which even Staff acknowledges established the initial level of taxes under the 1997 law. (*See*, Lazare, Staff Ex. 21.0 at 4). A kWh allocation of that large portion of the PURA Tax, which is almost exclusively related to plant investment, is inconsistent with cost causation principles, and should not be approved.

It appears that Ameren and Staff have confused causation with calculation. The current tax burden is based on the 1997 level of PURA Tax, which was caused by the utilities' invested capital (plant investment) level. As noted, 84% of the tax paid by the Ameren Companies is attributable to

this 1997 level of plant investment. The tiered structure of kWh rates described in the statute, are designed to produce a calculated amount equal to its 1997 tax level. (Stephens, IIEC Ex. 5.0-C at 10). A per kWh calculation that largely replicates a previously determined amount is not cost causation, and it is not determinative of the amount of each utility's tax responsibility. That remaining balance of 16% is a function of several factors.

While one can argue that there are several causative factors, including kWh deliveries, for the growth in that portion of the PURA Tax (16%) that is above the 1997 invested capital tax levels, no one can reasonably argue that kWh delivered is the sole determinant. Staff's witness agreed that kWh deliveries are not the only determinative factor for the tax. (Lazare, Dec. 14, Tr. 135). However, even for the other portion of the total PURA tax, i.e., the remaining 16%, kWh deliveries are not a predominant cause. At least as "causative" is the marginal tax rate, which itself was computed on the basis of 1997 invested capital tax levels, since the tax revenue depends on both the amount and the rate (along with other factors, when the cap is exceeded). (*See*, IIEC Br. at 76-77, 82). Since the 1997 level of invested capital is the single basis for 84% of the PURA Tax, and is a large determinant for the remaining 16%, it is by far the largest single causative factor for Ameren's 2008 PURA Tax. The tail would truly wag the cost causation dog if the 84% or more of the Ameren tax liability attributable to invested plant is subordinated to the responsibility of kWh deliveries, which is only a portion of 16% of the cost. Ameren's proposal to change the only allocation basis it has ever used without any evidence of a change in cost causation and without any quantitative evidence of causation for kWh delivered is not consistent with cost causation principles or Ameren's obligation to demonstrate that the change is just and reasonable. The change should be rejected.

While offering nothing to rebut Mr. Stephens' quantitative analysis, Ameren and Staff suggest that the level of investment in plant does not affect the PURA Tax. (Ameren Br. at 276; Staff Br. at 158). Ameren correctly points out that it no longer owns electric generating plant, as it did in 1997, but Ameren does not provide any evidence that the pro rata responsibility of each customer class for Ameren's plant in service has materially changed. Absent at least such a showing, there is no basis for suggesting that continued allocation on the basis of the factor (plant investment) that accounts for 84% of the cost is inappropriate. Neither Ameren nor the Staff has made such a showing.

*ii. Legislative Intent.*

As IIEC explained in its Initial Brief, the current method of allocating the PURA Tax on plant in service is fully consistent with the stated intent of the legislature in modifying the PURA Tax. Ameren's proposal to change that allocation is not. The Legislature sought to maintain the same level of PURA Tax responsibility for each utility in Illinois, and to provide a level playing field among electricity suppliers. (*See*, IIEC Br. at 79-82). The tax was, and remains, almost completely a function of 1997 invested capital tax. Essentially, the Legislature intended to maintain the status quo. Since the legislature maintained invested capital as the underlying basis for the amount of tax imposed (though calculated using a different method), the cost causation that determines the Commission's allocation of the tax need not change.

*iii. Precedent.*

Staff has suggested that IIEC's approach is based on precedent, not cost causation principles. (Staff Br. at 156-157). Staff's argument is contradicted by the record. While precedent certainly weighs in its favor, IIEC has presented substantial evidence to demonstrate the relationship between

the amount of tax paid and Ameren's plant investment. IIEC also showed the absence of a causal relationship between kWh delivered and the PURA Tax. That evidence confirms the determination of causality that Ameren made, and the Commission accepted, in every Ameren delivery services rate case since the current form of the PURA Tax was established over a decade ago. (Stephens, IIEC Ex. 1.0-C at 17-18, Table 4). Allocation of the PURA Tax on the basis of plant investment has repeatedly been deemed just and reasonable. In those cases, Ameren and Staff were the only parties with an obligation to examine all issues and neither has previously questioned the Commission's consistent allocation. IIEC's approach, which is based on cost causation principles, is consistent with the Commission's past rate determinations for Ameren.<sup>7</sup>

Finally, Staff implies that the General Assembly "explicitly rejected" the plant in service method of allocation of the PURA Tax. (*See*, Staff Br. at 159). Staff is clearly wrong. The General Assembly does not explicitly discuss how the tax should be allocated among customers of the utilities. The Commission's application of cost causation principles is not legislatively constrained. Nonetheless, maintenance of the current allocation, as IIEC proposes is more consistent with the Legislature's intent to maintain the status quo. IIEC's recommendation to retain the current allocation takes into consideration the demonstrated cause of the tax and governing cost causation principles. It should be adopted by the Commission.

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<sup>7</sup> The Commission did approve an allocation based on kWh delivered in the initial Commonwealth Edison Company delivery service rate case. (Commonwealth Edison Company, ICC Dkt. 99-0117, Order, Aug. 26, 1999 at 40). However, IIEC respectfully suggests that the Commission did not, at that time, have the breadth of information on the tax, its cause, and the lack of correlation between kWh delivered and the amount of the tax that is contained in the record in this case. Thus, this record is distinguishable, and requires a different result from that in the Commonwealth Edison case.

iv. *Alternative Approach*

Neither Ameren nor Staff addressed directly IIEC's alternative proposal on PURA Tax in their briefs. IIEC explained its alternative proposal in testimony and in its Initial Brief. (Stephens, IIEC Ex. 5.0-C at 14-15; IIEC Br. at 82-84). Briefly, it breaks the test year PURA Tax amount into two separate cost categories for PURA Tax in the cost of service study, with different allocation factors for each. The first cost category is the 1997 levels of PURA Tax, which should be allocated on the basis of utility plant in-service. The second category of costs would reflect PURA Tax amounts in excess of the 1997 levels, i.e., "Post-1997 PURA Tax" and could be allocated based on kWh sales. (Stephens, IIEC Ex. 5.0-C at 15). IIEC witness Stowe implemented this alternative approach in IIEC's cost of service runs by developing a composite allocation factor based on plant in service and energy allocations in respective proportions. (Stowe, IIEC Ex. 8.0-C at 18-19).

If the Commission concludes that some portion of the amount of the PURA Tax is so distant from invested plant that a different allocator is required, it should adopt IIEC's alternative approach for allocation of the tax. IIEC's alternative approach is also based on cost causation, but at a granular level. IIEC's alternative allocation approach recognizes the possibility that a portion of the amount of the tax is affected by kWh deliveries, while also recognizing that a majority of the tax is not related in any way to kWh delivered. (*See*, IIEC Br. at 82-84). This alternative approach would be more consistent with cost causation principles than the approach of Ameren and the Staff, which would allocate 100% of the PURA Tax on kWh delivered.

Cost allocations using more than one factor, or a composite factor certainly are not unknown to the Commission. In several recent gas distribution rate cases, the Commission has approved

allocation of fixed plant costs on the basis of a combination of factors. (*See, Central Illinois Public Utility Service Company (AmerenCIPS)*, 2003 Ill. PUC Lexis 824 at 217-233; *Central Illinois Public Service Co.*, 1999 Ill. PUC Lexis 186 at 22-27), (allocating gas distribution plant partly on peak demand and partly on average demand (volumes)). Indeed, in this case, the Ameren Companies have proposed such an allocation for the cost of their gas distribution systems. (*See, Normand, Ameren Ex. 16.0G at 8-9*).

The PURA Tax could be allocated on a combination of plant in service and kWh deliveries (volumes), as IIEC recommends in its alternative approach. As mentioned above, no party raised specific objections to IIEC's alternative approach in their Initial Briefs. At least one party, the Grain and Feed Association, has supported it. (*See, GFA Br. at 14*). Under IIEC's alternative approach, as the PURA Tax grows, more of the tax would be allocated on kWh delivered. (Lazare, Dec. 14, Tr. 128-129). Thus, the change in allocation from plant in service to kWh delivered would occur over time. This new allocation method also does not produce the dramatic rate impacts associated with allocating 100% of the tax on the basis of kWh delivered, since 84% of the tax is a function of plant investment.

**e. NCP Class Demands**

IIEC has addressed arguments regarding use of the NCP class demands for allocation of primary lines and substations in Section VI.C.1.c. above.

**f. Other**

In this section of its Initial Brief, Ameren opposes IIEC's recommendation that its cost of service studies be re-run. (Ameren Br. at 216-217). Ameren makes three arguments in opposition

to IIEC's recommendation. First, re-running the cost of service studies would not be beneficial; second, the re-running of such studies is not usually done; and third, both Ameren and Staff have offered recommendations on how to adjust rates to reflect the revenue requirement finally approved by the Commission in this case.

Before responding to Ameren's arguments, IIEC would like to restate that it has proposed that Ameren's cost of service studies not be used for revenue allocation and rate design in this case, and that the Commission approve an across-the-board increase. If the Commission adopts IIEC's recommendation in this regard, it would, of course, not be necessary to re-run the Company's studies. However, if the Commission approves the studies and they are considered for revenue allocation and rate design purposes, then IIEC believes they should be re-run to reflect the changes described below.

Ameren's initial argument (that re-running the studies would not be beneficial) is without merit because under the circumstances, major cost shifting occurs under Ameren's cost studies. As IIEC explained in its Initial Brief, only if the cost studies are re-run can the Commission ensure that its findings on COSS issues that differ from Ameren's positions on those issues, make any difference in the ultimate rates paid by customers. (*See*, IIEC Br. at 107-109).

Ameren's second argument, that re-running cost of service studies is not usually done, must be considered in light of recent Commission orders directing that Ameren cost of service studies be re-run. In Dockets 02-0798, et al. (Cons.), the Commission concurred with the recommendations of Ameren and the Staff that Ameren be required to re-run its cost of service study in light of changes to revenue allocations approved in the Commission's order. (Central Illinois Public Service Company (AmerenCIPS) and Union Electric Company (AmerenUE), et al., ICC Dkts. 02-0798, et

al., (Cons.), Order, Oct. 22, 2003 at 102).

In addition, IIEC notes that Ameren has already voluntarily re-run the study at least once in this case, at Staff's request, to show the impact of changing to a CP allocation method for allocation of primary lines and substations. (*See*, Stowe, IIEC Ex. 8.0-C at 20-21). Thus, there appears to be no significant barrier to re-running the study if Ameren is directed to do so.

Finally, the fact that Staff and Ameren have offered recommendations on how to adjust rates in the event the Commission approves a revenue requirement for Ameren different from that reflected in its cost of service study, does not eliminate the need to re-run the study to correct the errors and deficiencies identified in the COSS by IIEC. Simply adjusting the Ameren COSS results downward does not adequately capture class cost responsibility since the Staff and Ameren rate adjustments are based on a flawed study. In the event the Commission decides to rely on the COSS, to appropriately determine class cost responsibility, the study should be corrected in the following respects:

1. The COSS should be adjusted so that 34 kV and 69 kV substations are allocated to the customer classes using allocation factor DDSUBTR rather than allocation factor DEMSUBTR.
2. The COSS should be further adjusted so that the PURA Tax expense is allocated to the customer classes on the basis of plant in service.
3. Revenues collected through transformer rentals are currently distributed to the customer classes using a demand-related allocation factor. Such revenues should be allocated on a basis consistent with how those revenues were collected. (*See*, IIEC Br. at 90-91). Therefore, the COSS should be further

adjusted to credit revenues collected via transformer rental fees to the classes that paid such fees.

## **VII. Rate Design/Tariff Terms and Conditions**

### **C. Contested Issues**

#### **2. Electric**

##### **a. Rate Moderation/Mitigation Approaches**

###### *i. Response to Ameren*

Ameren addresses rate moderation and rate mitigation approaches in this section of its Initial Brief, but fails to discuss its specific approach to rate moderation and mitigation in this case. (*See*, Ameren Br. at 269-272). Instead, Ameren raises concerns about, and objections to, the rate mitigation approaches recommended by IIEC and Staff. (*Id.*). IIEC has explained in detail the flaws in and problems with Ameren's rate mitigation approach, which abandon any reasonable concept of gradualism, and would result in unprecedented rate impacts. This involved its failure to reflect the impact of the PURA Tax and its failure to apply rate moderation criteria at a subclass level. (*See*, IIEC Br. at 94-101). IIEC will not repeat those arguments here. In its brief, Ameren criticizes Staff's rate mitigation proposal as one that puts a disproportionate burden on classes DS-3 and DS-4 and thus increases the gap between DS-3 and DS-4 on a dollar per kW demand charge basis. (Ameren Br. at 270). Ameren is wrong. In fact, it is Ameren's proposal that places the most disproportionate burden on the DS-3 and DS-4 classes, by its ignoring the PURA Tax impacts. This is amply demonstrated in Table 1 of the direct testimony of IIEC witness Mr. Stephens. (Stephens, IIEC Ex. 1.0-C at 5:Table 1). That table is reproduced below:

<u>Rate Class</u>	<u>AmerenIP</u>	<u>AmerenCIPS</u>	<u>AmerenCILCO</u>
DS-1 Residential Service	21.7%	20.5%	20.5%
DS-2 Small General Service	23.6%	19.4%	27.6%
DS-3 General Service	29.4%	20.5%	24.5%
DS-4 Large General Service	60.1%	57.6%	57.3%
DS-5 Protective Lighting Service	(8.3%)	15.5%	(0.7%)

The excerpted Table 1 shows that the increases for DS-1, DS-2 and DS-5 rate classes range from negative 8.3% to a positive 27.6%. The increases for the DS-3 and DS-4 classes range from 20.5% to 60.1%. These figures reflect Ameren's purported rate moderation, since they are based on rates proposed by Ameren in its direct testimony. (Stephens, IIEC Ex. 1.0-C at 5).

Contrary to Ameren's proposal, Staff's rate moderation proposal would limit the increase in Ameren's rates so that there would be no class increases as large as 60.1%. (Unfortunately Staff's approach, unlike IIEC's approach, does not extend to subclasses). Under the Staff approach, or the IIEC approach, all rate classes would come much closer to sharing the same proportionate burden of the Ameren rate increase, since each approach assumes a cap on the system average increase that would not be exceeded. Specifically, Staff sets its cap at 150% of the system average increase, and IIEC set its cap at 25 percentage points above the system average increase. (Staff Br. at 203; IIEC Br. at 102-103).

While Staff's and IIEC's approach are both far superior to Ameren's, if the concern in rate moderation and mitigation is to address delivery service bill impacts, the impact on individual

customer subclasses should be considered, as IIEC has recommended. (IIEC Br. at 101). Ameren’s rate designs produce wildly disparate bill impacts on the subclasses within DS-4, as demonstrated in Table 2 of IIEC witness Stephens direct testimony. (Stephens, IIEC Ex. 1.0-C at 7:Table 2). That table is reproduced below:

<u>DS-4 Sub-classes</u>	<u>AmerenIP</u>	<u>AmerenCIPS</u>	<u>AmerenCILCO</u>
DS-4 Secondary	0%	0%	0%
DS-4 Primary	20%	24%	35%
DS-4 High Voltage	78%	131%	125%
DS-4 100 kV and Above	760%	1270%	541%

This table demonstrates that the burden of Ameren’s “moderated” rates is beyond “disproportionate” in the case of the DS-4 rate subclasses. They range from 20% for the DS-4 Primary subclass to as high as 1270% for the DS-4 100 kV and Above subclass. Even if one accepts for the sake of argument that Ameren’s approach to rate mitigation will provide some relief for the “average” customer in a given rate class, it will not provide any meaningful moderation to customers within some rate subclasses, such as the DS-4 High Voltage subclass and the DS-4 100 kV and Above subclass. (See, Table 1 - Average Impacts vs. Table 2 - Subclass Impacts, above).

In addition, Ameren’s claim that the Staff’s approach will widen the gap between DS-3 and DS-4 classes on a dollar per kW demand charge basis, even if true, is not an adequate reason to forego the implementation of meaningful rate moderation. Rate moderation is an over-arching

concern in rate design and is one that the Commission has implemented in several cases, including the most recent Ameren cases. (*See, Central Illinois Light Company d/b/a AmerenCILCO, et al.*, ICC Dkts. 07-0585, et al., (Cons.) Order, Sept 24, 2008 at 279-280). In contrast, the difference between DS-3 and DS-4 rates is a relatively minor rate design concern, and is disputed in this case. (*See, e.g., Staff Br. at 210-215; IIEC Br. at 111-112*). For instance, the record shows that there is a difference of only \$0.024 per kW between the current DS-3 demand charge for 100 kV and Above customers (\$0.056) and the current DS-4 demand charge for 100 kV and Above customers (\$0.032). (Kroger Ex. 1.4 at 6, Lns. 36, 31 and 32). Elimination of this differential certainly does not justify increasing DS-4 100 kV and Above customers' rates by 760% in AmerenIP, 1270% in AmerenCIPS and 541% in AmerenCILCO. (*See, Table 2 above*). In this context, rate moderation on actual delivery service bills should prevail over any academic disputes over adjusting differences between DS-3 and DS-4 demand charges.

Ameren is also critical of IIEC's proposal for rate moderation. Ameren correctly says that IIEC's proposal defines "subclasses" based on customer's supply voltage. Ameren says that customers often use more than one voltage. (Ameren Br. at 270). Ameren reasons that many customers take service supplied at a higher voltage than the delivered and metered voltages. (*Id.*). Therefore, Ameren recommends that IIEC's proposal be rejected because the proposal is lacking in both detail and guidance. (*Id.*).

Ameren's argument is a red herring. Ameren's own tariffs define Supply Voltage as "... the voltage of transmission or distribution lines used for delivery of electric energy to Customer's Premises before the connection of transformers." (*See, Stowe, IIEC Ex. 8.0-C at 5*). This is a very

legitimate subclass distinction, one readily used in Ameren’s tariff for the purpose of assessing Distribution Delivery Charges, which are themselves based on Supply Voltage. (L. Jones, Ameren 2<sup>nd</sup> Rev. Ex. 16.0E at 38-39). Ameren knows very well how many customers take service at each supply voltage within the DS-3 and DS-4 rate classes, and how many kW of demand are attributable to each subgroup of customers. Ameren’s own exhibits in this case provide a confirming illustration of this fact. (See, L. Jones, Ameren Ex. 16.14E). Furthermore, relatively few customers take service at multiple voltages, due to Ameren’s current policy against combined metering in all but one utility area, where only “grandfathered” customers can retain combined metering. (Stephens, IIEC Ex. 1.0-C at 33-34). Yet, for the customers who do take service at multiple supply voltages, Ameren has somehow managed to overcome the alleged barrier it has identified, as demonstrated by its ability to determine supply voltages and design Distribution Delivery rates by supply voltage subclass, as noted above. If Ameren can design its delivery service rates in the manner described above, it most certainly can, if directed by the Commission, implement IIEC’s rate moderation approach. Indeed, Ameren witness Leonard Jones breaks the customer classes into the exact same supply voltage subclasses recommended by IIEC in his Ameren Exhibit 40.1, which he uses to purportedly support his own rate impact testimony. (L. Jones, Ameren Rev. Ex. 40.0 at 5).

Furthermore, Ameren does not specifically state what details and guidance it lacks in order to implement IIEC’s rate moderation approach should the Commission order it to do so. IIEC witness Stephens could not have been much clearer in his recommendation:

I recommend that the sub-class revenue allocations, inclusive of PURA Tax impacts, be limited to no more than 25% increases over the system average increases for each of the utilities . . . (to the extent the

allocated revenues that result in this case would exceed the rate moderation thresholds I outlined) a reasonable approach to this allocation would be to first spread any revenue deficiencies to other sub-classes within a rate class, e.g., DS-4, on a proportional basis, unless and until the 25% above system average threshold is exceeded for any of the other subclasses. If all sub-classes within a delivery rate class are maxed out at 25% above the system average increase, then it will be necessary to spread any remaining revenue shortfall among the other subclasses, again on a proportional basis.” (Stephens, IIEC Ex. 1.0-C at 31).

IIEC has not taken specific exception to Ameren’s proposed rate design approach of establishing uniform customer, meter, transformation and reactive demand charges and letting the distribution delivery charge “float” to recover the remaining revenue requirement. (*See, generally, IIEC Br. at 107*). Ameren has not explained why it cannot apply these same principles at the subclass level. If the revenues for each subclass are moderated pursuant to IIEC’s rate moderation proposal, Ameren would simply follow its own rate design approach, i.e., use the uniform customer, meter transformation and reactive demand charges, and let the distribution delivery charge for each subclass “float” to recover the remaining revenue requirement from that subclass, once moderated.

If the Commission does adopt the Ameren COSS over IIEC’s objections, and as a result does not adopt the across-the-board approach recommended by IIEC, the Commission should adopt IIEC’s rate moderation approach. IIEC’s approach is the fairest, most comprehensive and most meaningful rate moderation plan in the record. It is designed to apply equally to all classes and subclasses, it includes all relevant delivery service costs that can impact customers’ delivery service bills, and it is not dependent on any particular Commission finding on individual issues in this case. (Stephens, IIEC Ex. 1.0-C at 32). IIEC is confident that if the Commission directs Ameren to design its rates

on a subclass basis, pursuant to IIEC's rate moderation approach, Ameren will be able to accomplish it. If necessary, IIEC stands ready to provide assistance in doing so.

*ii. Response to Staff*

As noted above, Staff proposes to cap the rate increases for each rate class at 150% of the system average increase. (Staff Br. at 203). Staff reasons that its approach represents a reasoned judgment of how much progress can be made towards cost-based revenue allocations in this case and at the same time addresses bill impact concerns. The Staff notes that its constraint is 150%, while the Company's constraint is 125%. However, Staff's approach encompasses all costs in the Ameren revenue requirement, while the Ameren approach does not include the impact of PURA Taxes. Staff, therefore, believes its approach is more consistent and equitable. (Staff Br. at 203-204).

Staff correctly points out a major deficiency in Ameren's rate moderation proposal is its failure to include the effect of the PURA Tax. Staff also argues that Ameren's revenue allocation is based on a flawed cost of service foundation.<sup>1</sup> (Staff Br. at 202). Therefore, for these reasons and other reasons identified in its brief, Staff proposes the Commission adopt its rate moderation plan instead of the Company's.

Staff does not specifically address IIEC's rate moderation plan. IIEC believes that Staff's rate moderation plan is superior to the Ameren plan, but, the Staff plan does not extend to rate subclasses and therefore it does not fully provide moderation to the delivery service rates of customers in heavily

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<sup>1</sup> Staff has identified the Company's failure to use the CP allocation method instead of the NCP method as a flaw in the Company's study. IIEC addresses Staff on that issue in Section VI.C.1.c. above.

affected subclasses. Therefore, Staff's plan produces the same kinds of disparate increases in delivery service rates at the subclass level as the Ameren plan, but perhaps in a scaled-back manner.

As IIEC has noted in Section VI.C.1.a. of this Brief and in its Initial Brief, the flawed nature of Ameren's cost of service studies actually justify an across-the-board increase in this case. (IIEC Br. at 62-91). However, if the Commission elects to permit the use of Ameren's cost study for revenue allocation purposes in this case, Staff's rate moderation approach could be acceptable if it extended to rate subclasses. Staff witness Lazare testified that extending the rate moderation plan to subclasses, as recommended by IIEC, was acceptable as a second alternative to the Staff's rate moderation plan. (Lazare, Dec. 14, Tr. 126). Mr. Lazare also testified that IIEC's approach was preferable to that of the Company. (*Id.*). Under the circumstances, if the Commission adopts the Staff's rate moderation proposal, it should be adjusted to extend to subclasses as proposed by IIEC. (*See*, Section VII.C.2.a. above for a description of IIEC's recommendation).

Also, IIEC feels compelled to respond to that portion of Staff's brief which argues in favor of larger increases to larger customers because increases in delivery rates, even though large, produce only a small percentage increase in such a customer's total electricity costs. (Staff Br. at 204-205). Unfortunately, this type of inappropriate analysis will always appear to justify huge increases in delivery service rates for the largest customers. Because of the amount of electricity they purchase and their total electricity costs, delivery service charges (and increases to delivery service charges) will always be a much smaller percentage of their total cost of electricity than for other customer groups such as the residential customers. IIEC understands the desire to minimize increases to smaller customers. But as the Staff itself has argued in response to Ameren's rate moderation

constraints, this analysis is really based on the faulty premise that “ratepayers are concerned about bill impacts caused by some costs, but not by others.” (*See*, Staff Br. at 201). Staff goes on to state that there is “no evidence on the record to indicate that customers make such distinction.” (*Id.*). IIEC agrees.

IIEC wishes to assure the Commission that large customers do not make “such a distinction”. Increases of over 1000% in delivery service bills which increase bills from \$250,000 to \$2 million per year are not viewed as reasonable, even if delivery service costs are a relatively small percentage of the total electricity bill. (*See*, Stephens, IIEC Ex. 1.0-C at 12, Fn. 8). Any rationale justifying such huge increases in the words of the Staff, “. . . defies logic which would indicate ratepayers care about all components of their electric bills, . . .” (*See*, Staff Br. at 201).

Furthermore, Staff’s position is akin to suggesting that the postal department should base its charges for mail delivery on the basis of the value of the material contained in the envelope or the box being mailed. This, of course, is not logical. Justifying such unreasonable delivery service rate increases for any customer, large or small, on the theory that it is only a small percent of its total cost, is unreasonable on its face. IIEC has responded to similar arguments made by the Company in its Initial Brief. (IIEC Br. at 7, 96-99). It will not repeat all of those arguments here. Suffice it to say that IIEC seriously questions the wisdom of a ratemaking policy that produces such excessive increases for any customer or customer group, the Commission should as well.

**b. Overall Rate Design**

In this section of its Initial Brief, Ameren criticizes Staff’s recommendation on how to conform rates to the approved revenue requirement in this case. Ameren does not specifically

describe its own proposal for doing so. (Ameren Br. at 272-274). Staff on the other hand, focuses primarily on its position with regard to electric delivery service rates DS-1 and DS-2 and the Basic Generation Service (“BGS”) supply charge issues, while addressing conformance of final rates to the approved revenue requirement in Section VII.C.2.i. - Other - of its Initial Brief. (See, Staff Br. at 206-209, 222-223). IIEC replies to both Ameren and Staff on the issue of conforming final rates to the approved revenue requirement in this section of its Reply Brief. (See also, Section VI.C.1.f., supra).

First, IIEC addressed the issue of how to conform rates to the final revenue requirement in its Initial Brief. (IIEC Br. at 106-109). IIEC recommended use of an across-the-board increase to current rates as its preferred approach, given the numerous flaws in the Ameren cost of service study. Second, IIEC further stated that if its primary recommendation was not adopted, then Ameren should be directed to re-run its cost of service studies and determine class and subclass revenue allocations in accordance with Commission findings in this case. (IIEC Br. at 108-109). IIEC originally expressed support for Staff’s method of conforming rates to the approved revenue requirement, if IIEC’s recommendations for an overall across-the-board increase, proper allocation of the PURA Tax, etc., were not adopted. (IIEC Br. at 109).

*i. Response to Ameren*

Ameren reasons that Staff’s approach to conforming rates to the approved revenue requirement misses opportunities to address the elimination of subsidies, rate continuity and bill impact concerns as well as concerns raised by other parties in the case, while exacerbating the problematic divergence of DS-3 and DS-4 delivery rates. (Ameren Br. at 274). Ameren implies that

its rate conformance approach embraces the goals of cost-based ratemaking and mitigating bill impacts, contrary to the Staff approach. (*Id.*).

As mentioned above, Ameren does not explain its own approach in its brief. Parties are left to speculate, to some degree, on Ameren's recommended approach. Indeed, Ameren's entire discussion of its approach appears to be limited to the statement: "While Staff's across-the-board approach is indeed one easy way to set rates, it is no easier than using AIUs' cost-based approach." (Ameren Br. at 274). In support of its statement Ameren refers to the surrebuttal testimony of Ameren witness Leonard Jones, Ameren Revised Exhibit 40.0 at page 7. This citation fails to disclose a description of Ameren's approach. Therefore IIEC must, to a certain extent, speculate about Ameren's approach. IIEC has informed its speculation by reviewing again the rebuttal testimony of Ameren witness L. Jones. (*See*, L. Jones, Ameren 2<sup>nd</sup> Rev. Ex. 40.0 at 15-17). There, among other things, Mr. Jones proposed that any reduced revenue target for DS-3 rates be accomplished through a uniform percentage reduction to the \$/kW Distribution Delivery Charge for each Ameren Company, while all other charges would be held at the level proposed by Staff and the Ameren Companies. (L. Jones, Ameren 2<sup>nd</sup> Rev. Ex. 40.0 at 16). Mr. Jones further stated that with regard to DS-4 rates:

"A reduced revenue target for DS-4 would be accomplished by adjusting the new variable Delivery Charge to a level to match the revenue target, but not lower than one-half of the average Distribution Tax amount, and then lower the \$/kW Distribution Delivery Charge for each AIU if necessary, to achieve the revenue allocation target. Lowering the new ¢/kWh charge first will partially address the concerns of the high kWh usage customers, especially those supplied from +100 kV facilities." (*Id.*).

IIEC is unable to find a definition of the term “new variable Delivery Charge.” IIEC believes that it could be a reference to the Distribution Delivery Charge, which is variable in that it “floats” to reflect the revenue requirement not captured by the uniform, meter, transformation and reactive demand charges for DS-4. (L. Jones, Ameren 2<sup>nd</sup> Rev. Ex. 16.0E at 15-16). As the class revenue requirement changes, the revised Distribution Delivery Charge appears to be a “new variable Delivery Charge.” However, in the context of Mr. Jones’ rebuttal testimony, it appears that by the phrase “new variable Delivery Charge,” Ameren may actually mean the proposed line item charge for PURA Tax, which is new, but is not variable. While IIEC still remains uncertain of Ameren’s actual proposal, if the reference to “new variable Delivery Charge” is really a reference to the proposed line item charge or the PURA Tax, IIEC has explained, at several locations in this brief and in its Initial Brief, why Ameren’s overall position on the PURA Tax is wrong and should not be adopted by the Commission. (*See*, Sections VI.C.1.d; VII.C.2.c. and IIEC Br. at 70-82, 109-110).

Nonetheless, if the Commission does not accept IIEC’s position on the PURA Tax and allows Ameren to establish a new tax line item on delivery service bills, IIEC believes it would be appropriate to reduce the charge associated with that new line item as much as possible in order to conform rates to class or subclass revenues resulting from lowering the revenue requirement. IIEC believes this is consistent with Ameren’s proposal; it is certainly consistent with IIEC’s new understanding of Ameren’s proposal.

IIEC initially supported Staff’s across-the-board approach to adjusting rates to conform with the Commission’s approved revenue requirement. (*See*, IIEC Br. at 109). IIEC’s endorsement of Staff’s position conditioned on the circumstance that IIEC’s principal recommendation (the rejection

of the Company's cost of service study, allocation of the increase to customer classes on an across-the-board basis, and the proper allocation of the PURA Tax) were not accepted by the Commission. If Ameren's position on the conformance of rates to the approved revenue requirement includes lowering the proposed DS-4 PURA Tax charge, as described above, and assuming further that IIEC's positions on the relevant issues are not adopted by the Commission, IIEC supports what it now believes to be Ameren's Brief position on rate conformance over that of the Staff. While Staff's approach does not address the onerous PURA Tax charge, it is IIEC's understanding that the Company does. However, IIEC believes that Ameren has not provided justification for limiting the reduction in the charge to one-half of the PURA Tax amount as recommended by Ameren witness Jones, and therefore recommends that the artificial limitation be eliminated, allowing the tax charge to be reduced as much as needed to conform the class or subclass rates to the reduced revenue requirement.

*ii. Response to Staff*

Staff reasons that compliance rates are not a good place in which to adjust rates for specific rate design objectives, explaining that some customers benefit, while others might be at a disadvantage. (Staff Br. at 222). IIEC would normally agree. However, due to the problematic Ameren cost of service studies and shifts in revenue responsibility that would result from their use, it cannot agree in this instance. (*See*, IIEC Br. at 64-68). Furthermore, the need for rate moderation in this case is a fundamental and over-arching issue that warrants a departure from normal practice.

However, in the event the Commission does not acknowledge IIEC's recommendation for an overall across-the-board increase, its allocation of the PURA Tax and/or its rate moderation

approach, IIEC would favor Ameren's approach to conforming rates to the approved revenue requirement based on its understanding of the Ameren approach as described above.

Staff also argues that its equal percentage approach to conforming rates to the approved revenue requirement treats all ratepayers the same. (Staff Br. at 222-223). IIEC notes that an across-the-board increase, for Ameren in this case, as recommended by IIEC, would meet that same objective and do so more equitably than the Staff's approach to conforming rates to the approved revenue requirement, which is based on Ameren's flawed cost of service studies.

It is IIEC's position on rate conformance that under the circumstances of this case, and given the problems with the Ameren cost of service studies, an across-the-board increase in current rates is most appropriate. It would allow Ameren full cost recovery of its approved revenue requirement, and would not disrupt current class and subclass revenue relationships. Furthermore, it would conform to Staff and IIEC's proposed rate moderation approaches.

**c. Recovery of Electric Distribution Tax/Public Utilities Revenue Act Tax**

In this section of its brief, Staff suggests that this issue has been resolved, because Ameren has withdrawn its request to collect the PURA Tax from customers through a rider and agreed to Staff's proposal to include the tax in base rates. (Staff Br. at 210). Ameren notes that it has accepted Staff's proposal to recover the PURA Tax in base rates. (Ameren Br. at 275). Ameren then goes on to argue that the PURA Tax should be allocated on the basis of delivered energy, not invested capital, as argued by IIEC. (Ameren Br. at 275-276).

First, IIEC would like to respectfully state that contrary to Staff's suggestion, the appropriate recovery mechanism for the PURA Tax is not a resolved issue. Collecting the tax through a cents per kWh charge as a separate line item on a customer's bill (as recommended by the Staff), is not an acceptable means of recovery. (*See*, IIEC Br. at 109-110). Second, Ameren's arguments regarding cost causation of the PURA Tax and its relationship to kWh delivered are addressed in Section VI.C.1.c. of this Brief.

IIEC continues to advocate the allocation of the PURA Tax on the basis of plant investment and its collection in base rates in the same manner it is currently being collected. If IIEC's alternative approach is adopted, which would allocate the PURA Tax partly on the basis of plant in service and partly on kWh delivered, the portion allocated based on plant in service would then be recovered through base rates in the same manner it is currently recovered in delivery service rates and charges. The component allocated on kWh would be recovered in rate base as well. (*See*, Stephens, IIEC Ex. 5.0-C at 16). However, if the Commission determines that establishment of a new line item charge for the PURA Tax is necessary, only the portion that is allocated on the basis of energy, i.e., the post 1997 PURA Tax, should be recovered through such new energy charge.

Furthermore, IIEC explained how collection as a separate line item on the bill would thwart meaningful rate moderation, or (at a minimum) would dictate that IIEC's alternative approach to allocating the PURA Tax be used.

**d. Distribution Delivery Charges: DS-3 and DS-4**

*i. Response to Ameren*

Ameren addresses the issues relating to distribution delivery charges for DS-3 and DS-4 customers in its Initial Brief. (Ameren Br. at 277-279). Ameren argues that the Distribution Delivery Charges proposed for DS-3 and DS-4 in this case were developed using an approach similar to that used to establish these same charge components in Commission dockets 06-0070, 06-0072 (Consolidated). (Ameren Br. at 277). According to Ameren in those dockets, the demand related costs for DS-3 and DS-4 were combined and divided by the combined voltage differentiated demands. (*Id.*).

IIEC does not agree with the implications of Ameren's argument. Ameren implies that its proposal in this case to combine the DS-3 and DS-4 rate classes for revenue allocation is consistent with rate design approaches taken in prior Ameren cases. It is certainly true that Ameren uses the overall approach of letting the distribution delivery charges "float" to recover remaining revenue requirements, after the revenues for uniform customer, meter, transformation, and reactive demand charges are computed. (*See*, L. Jones, 2<sup>nd</sup> Rev. Ameren Ex. 16.0E at 16:294-298). This is consistent with approaches taken in past cases. However, Ameren's proposal to combine the DS-3 and DS-4 rate classes for revenue allocation in this case is not consistent with Ameren's prior cases. In fact, the Commission specifically rejected such an approach in the most recent Ameren rate case, Docket Nos. 07-0585, et al., (Consolidated), but directed Ameren "address the issue" in this case. (*See*, Central Illinois Light Company, d/b/a/ AmerenCILCO, et al, ICC Dkt. Nos. 07-0585, et al., (Cons.),

Order, Sept. 24, 2008 at 362-363). Ameren's approach of combining class revenue allocations in this case is new and represents a significant change in practice.

Ameren has certainly fulfilled its obligation to "address the issue" in this case. IIEC and Staff have addressed the Ameren proposal in their Initial Briefs. (IIEC Br. at 111-112; Staff Br. at 210-215).

Ameren argues that its revenue allocation approach (the combination of DS-3 and DS-4 revenues) should be used to determine Distribution Delivery Charges for DS-3 and DS-4, because the Ameren approach establishes more consistent total bill (delivery and commodity) impacts among customer classes than the Staff approach. IIEC has addressed the Ameren revenue allocation approach in its Initial Brief. (IIEC Br. at 94-106). It will not repeat those arguments here. However, the Company's concern about "total bill impacts" to help determine the appropriate level of DS-3 and DS-4 Distribution Delivery Charges is a flawed approach for the reasons discussed here in Section VII.C.2.a. *supra*, and in IIEC's Initial Brief. (IIEC Br. at 96-99). The subject of this case is a request by the Company to increase its delivery service rates, not the cost of electricity commodity. Delivery service rates are to be cost-based, and permit recovery of the cost of facilities and services associated with providing delivery service. These costs include the cost of owning, operating and maintaining transmission and distribution facilities. (220 ILCS 5/16-108(c)). The cost of the commodity delivered is not relevant to the determination of just and reasonable delivery service rates and charges.

The Company objects to Staff's rate moderation approach in this portion of its brief, because it will allegedly increase the gap between DS-3 and DS-4 distribution delivery charges and thereby cause an inefficient use of electricity. Specifically, Ameren witness Mr. Leonard Jones testified:

A larger DS-3 customer may be encouraged to register two billing periods of 1,000 kW billing demands to qualify for DS-4. Conversely, a small DS-4 customer may be encouraged to maintain at least two billing periods of 1,000 kW demand.”  
(L. Jones, Ameren 2<sup>nd</sup> Rev. Ex. 40.0 at 32-33).

However, Ameren and its witness, Mr. Jones, failed to mention that the differences of concern have existed in Ameren's rates (as designed by Ameren) for many years. Second, they provide no proof of any customer activities under the present rate structure that would justify a change in that structure. Third, the number of customers just below DS-4 size (1,000 kW), who could, and would, artificially raise demands above the 1,000 kW threshold is likely very small, as a customer cannot raise its demand indiscriminately. The customer must have sufficient idle equipment to effect a large artificial increase, and such customers could run the risk of damaging their manufacturing equipment and systems if they attempted to artificially increase their demand, as suggested by Ameren. (Stephens, IIEC Ex. 5.0-C at 26). Ameren has not specifically disputed these facts. Indeed, Ameren witness Mr. Jones agreed that if a customer took the types of actions that Ameren has suggested it could place the customer at an economic disadvantage under the customer's supply contract. (L. Jones, Dec. 14, Tr. 92-93).

Thus, the alleged “inefficient use” of the Ameren distribution system is not a valid basis for seeking to artificially hold or move DS-3 and DS-4 distribution delivery charges close together. Ameren's proposal in this regard should be rejected.

Ameren alleges that its approach for the design of DS-3 and DS-4 addresses the concerns of several parties, including IIEC. Specifically, Ameren notes that under its approach, the DS-4 cents per kWh charge will be reduced first and then, if necessary, the dollars per kW Distribution Delivery Charge will be reduced. Ameren claims this is responsive to concerns of IIEC. (Ameren Br. at 278).

First, it should be noted that the Ameren testimony referenced in this section of the Ameren Brief is from witnesses who testified about conforming Ameren's rates to their final revenue requirement, not the specific issue of combining DS-3 and DS-4 revenue requirements. However, IIEC wishes to state to the Commission that Ameren's approach does not address its concerns about the combination of class revenues for DS-3 and DS-4. The Ameren approach would effectively shift revenue responsibility from the DS-3 class to the DS-4 class without any cost basis through a rate design change. (Lazare, Staff Ex. 21.0 at 17:364-385).

As stated in its Initial Brief, IIEC continues to believe that Ameren's proposed combination of DS-3 and DS-4 charges should be rejected.

*ii. Response to Kroger*

Kroger argues that DS-3 customers currently pay distribution delivery rates well above DS-4 rates, and the gap would widen under Ameren's proposed rates. (Kroger Br. at 3-5). Kroger's argument is based on an inaccurate analysis of Ameren's proposed rates. In support of its argument, Kroger provides an analysis of the proposed overall rate increase for DS-3 and DS-4 customers in the AmerenCIPS service territory. Based on that analysis, it suggests that the overall rate increase for DS-3 is 12.43%, while the overall increase for DS-4 is 19.53% (excluding the distribution tax). (Kroger Br. at 5). As IIEC witness Stephens explained, the Kroger analysis which compares

proposed rates to present rates is not valid. Present rates collect the PURA Tax for DS-3 and DS-4 customers in the distribution delivery charge. (L. Jones, Dec. 14, Tr. 108-109). Ameren's proposed rates do not, as acknowledged by Kroger in its Brief. (*Id.*). Therefore, a comparison of Ameren's present rates (including the PURA Tax) to proposed rates, (excluding the PURA Tax), is really an apples to oranges comparison, and does not support Kroger's contention. IIEC, on the other hand, has provided a valid illustration of the potential impact of Ameren's proposed rates which properly reflects the impact of the PURA tax. (*See*, Tables 1 and 2 in Section VII.C.2.a. above). The IIEC analysis demonstrates that the DS-4 class would receive the largest increase under Ameren's proposed rates.

Next, Kroger argues that the widely divergent distribution delivery charges for DS-3 and DS-4 customers are not cost justified. (Kroger Br. at 5-6). In support of that argument, Kroger suggests that voltage service levels, not demands, are the most important determinant of cost causation. (*Id.*). Kroger cites to Ameren witness L. Jones' statement that "conceptually providing a kW of service to customers at a given voltage level costs the same whether the customer requires 150 kW or 2,000 kW." (L. Jones, Ameren 2<sup>nd</sup> Rev. Ex. 16.0E at 39). What Kroger and Ameren fail to acknowledge is that rates are not set on an individual customer basis, but are based on the average cost for a class, as explained by Staff witness Lazare. In discussing Ameren's approach to the design of DS-3 and DS-4 rates, Mr. Lazare noted that the Ameren approach was contrary to general ratemaking:

" . . . which first allocates costs to individual classes and then designs rates to recover those costs from individual ratepayers. The reason customers are placed into rate classes is because the demands of those customers are assumed to have a similar affect on system costs. The AIUs' combined approach essentially treats the DS-3 and DS-4

classes as a single class for ratemaking purposes. However, the Companies do take a step back from this collective approach by making adjustments that cause some divergence in the rates for the two classes.” (Lazare, Staff Ex. 7.0 at 36).

IIEC generally agrees with Staff on the inappropriateness of combining DS-3 and DS-4 rates, or artificially bringing the rates closer together without a cost basis. The Kroger approach should be rejected.

In addition, Kroger claims that Ameren’s cost of service studies in this proceeding show there is no cost based justification for treating DS-3 customers differently relative to DS-4 customers. In support of its argument, Kroger compares the rates of return being provided by DS-3 and DS-4 customers. (Kroger Br. at 9-10). Kroger’s analysis overlooks the fact that there are problems with Ameren’s cost of service study, which contains numerous deficiencies and errors, most of which tilt the results against DS-4 customers. Therefore, the study does not accurately reflect class cost responsibilities. Under such circumstances, Kroger’s reliance on the study is misplaced.

Finally, Kroger suggests that the differential between DS-3 and DS-4 delivery distribution charges creates perverse incentives. (Kroger Br. at 11-12). Kroger argues that the current differential between DS-3 and DS-4 gives customers on DS-3 a perverse incentive to alter their demands upward to become members of the DS-4 rate class. (Kroger Br. at 11-12). IIEC believes this concern is misplaced. It has addressed this specific issue in the response to Ameren, *supra*.

However, assuming *arguendo*, that such gaming were to occur, given the differences in the rate levels for DS-3 and DS-4, most “gaming” probably has already occurred. Therefore, existence of comparable differentials in proposed rates are not likely to cause increased “gaming” in the future.

For all of these reasons, Kroger’s position on DS-3 and DS-4 distribution delivery charges should be rejected.

**g. Combined Billing of Multiple Meters**

Ameren replies to IIEC’s recommendation that the Ameren Standards and Qualifications for Electric Service be modified to allow customers with multiple meters on the same or adjacent premises to be billed on a combined basis. (Ameren Br. at 282-286). Ameren makes several arguments in response to IIEC’s proposal.

First, Ameren apparently concedes the adverse economic consequences for customers associated with Ameren’s current policy. (*See*, Ameren Br. at 282-283).

Second, Ameren also concedes IIEC’s argument that its policy reduces the beneficial impact on the Distribution Delivery Charge of diversity in the separately metered loads of a single customer in a single location. (*See*, Ameren Br. at 283 - - agreeing that its policy “may reduce a possible reduction in the Distribution Delivery Charge for the customer . . .”). However, Ameren reasons that IIEC overlooks Ameren tariffs that allegedly allow 40 kW and over cogenerators to reduce their Distribution Delivery Charge through net metering. (Ameren Br. at 283). Ameren cites to the Electricity Net Metering Act - P.A. 95-420. (*Id.*). However, what Ameren does not explain to the Commission is that the Net Metering Act does not apply to generating units with a rated capacity greater than 2,000 kW. (220 ILCS 5/16-107.5). Eligible units are relatively small, and would be hardly comparable to a cogeneration or combined heat with power unit that may be built by a large manufacturing customer to serve the load at its manufacturing facility, which may be much larger than 2,000 kW of electrical demand.

Further, Ameren has also apparently overlooked the provisions of the Net Metering Act which limits the applicability of the law to retail customers owning or operating a “solar, wind or other renewable electrical generating facility.” (220 ILCS 5/16-107.5(b)). The Act further defines “renewable generating facility” to mean a facility powered by “solar electric energy, wind, dedicated crop for energy generation, anaerobic digestion of livestock or food processing waste, fuel cells or micro turbines powered by renewable fuels, or hydroelectric energies.” (*Id.*). Obviously, a large cogenerating unit at a steel manufacturing facility, for example, fueled by something like coke oven gas or fuels other than those mentioned, would not benefit from the Net Metering Act or Ameren’s associated tariffs. Ameren also argues that its policy is not a barrier to the development of CHP installations under any circumstance, because its current tariff provisions allow customers the opportunity to achieve the economic benefits IIEC has identified. Further, Ameren reasons that for customers who are not able to achieve those benefits under Ameren’s tariffs, its Rider QF provides two different compensation options that provide the customer with a fair market value for the output of its generating unit. (Ameren Br. at 285). This, of course, applies only to the energy value of the generating unit, and does not address the recovery of delivery service costs generally, or the PURA Tax specifically from these customers, without giving them credit for their cogeneration.

Ameren also argues that a change in policy would impact its billing determinants because it would effectively reduce billing demands associated with customers who have large CHP facilities. (*Id.*). Therefore, Ameren argues that prices to other customers would need to be increased in order that it recover its authorized revenue requirement. It suggests that IIEC’s recommendation be rejected because no one has performed such an analysis. What Ameren fails to acknowledge is that

if the CHP facility were simply located on the customer's premises, behind the meter, the reduction in billing demands would be the same whether the CHP unit was located on or adjacent to the customer's premises. Siting a facility on an adjacent property rather than on its main plant property may be due to circumstances largely beyond the customer's control (e.g., a bisecting roadway), and they should not be penalized simply due to such circumstances.

Lastly, Ameren argues that IIEC has not proposed any specific tariff language to be reviewed by the Commission. IIEC would note that its recommendation is that the Company be required to change its policy. Presumably, if the Commission follows IIEC's recommendation, the Company would present the tariff language necessary to accomplish that change in policy. IIEC would also note that until recently, AmerenIP had provisions in its Standard Terms and Conditions which addressed IIEC's concerns. (IIEC Br. at 112; Stephens, IIEC Ex. 1.0-C at 33-35). IIEC does not believe it would be difficult for Ameren to develop, or simply modify and reuse, the prior language to achieve the change in policy directed by the Commission. (*See also*, Stephens, IIEC Ex. 5.0-C at 29).

### **VIII. Conclusion**

For the reasons set forth in this Reply Brief and IIEC's Initial Brief, IIEC respectfully requests the Commission to adopt IIEC's positions and recommendations as set forth therein.

DATED this 28th day of January, 2010.

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