STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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| Central Illinois Light Company d/b/a AmerenCILCO<br><br>Proposed general increase in electric delivery service rates. | : | 09-0306 |
| Central Illinois Public Service Company d/b/a AmerenCIPS<br><br>Proposed general increase in electric delivery service rates. | : | 09-0307 |
| Illinois Power Company d/b/a AmerenIP<br><br>Proposed general increase in electric delivery service rates. | : | 09-0308 |
| Central Illinois Light Company d/b/a AmerenCILCO<br><br>Proposed general decrease in gas delivery service rates. | : | 09-0309 |
| Central Illinois Public Service Company d/b/a AmerenCIPS<br><br>Proposed general increase in gas delivery service rates. | : | 09-0310 |
| Illinois Power Company d/b/a AmerenIP<br><br>Proposed general increase in gas delivery service rates. | : | 09-0311<br><br>(Consolidated) |

**MOTION TO STRIKE**

NOW COME the Staff witnesses of the Illinois Commerce Commission ("Staff"), through its undersigned counsel, and pursuant to 83 Ill. Adm. Code Sec. 200.190, move to strike portions of the Brief on Exceptions of the Ameren Illinois Utilities. In support of this motion, Staff states as follows:

1. On March 11, 2010, the Ameren Illinois Utilities ("Ameren," the "Company," or "AIU") filed its Brief on Exception ("Ameren BOE") to the ALJ's Proposed Order ("PO") of February 25, 2010.
2. Staff objects to certain portions of the Ameren BOE as citing to evidence or information which is not part of the evidentiary record in this docket and as such, inappropriate to include in the BOE.
3. Specifically, on page 22-23 of the Ameren BOE, the last sentence at the end of page 22 continuing on to page 23 (including footnote #5), Ameren states, "Although not part of the evidentiary record, the final report for calendar year 2009 confirms that the expense levels did not change from the July 2009 report.[5]"
4. As clearly acknowledged by Ameren, this final report for calendar year 2009 is *not* part of the record. There is no citation to where it is found in the record. The final actuarial report for calendar year 2009 was not issued until January 2010, well after the hearing in this case and the record marked heard and taken. This is improper and the sentence and footnote should be stricken.

5. On page 23 of the Ameren BOE, the last sentence at the first main paragraph, Ameren states, "Specifically, expense in the final 2009 actuarial report is based on information as of December 31, 2008; this information was already known and measurable in July 2009, and was reflected in the July 2009 report. (Ameren Ex. 54.0, pp. 4-6)"
6. The reference to the final 2009 actuarial report is improper. As stated above, the report was not issued until January 2010. It was never made a part of the record in this proceeding. This sentence should be stricken.
7. Further, on page 25 of the Ameren BOE, the first main paragraph, starting with the fifth sentence to the end of that paragraph (including footnote #7), Ameren states, "While not part of the evidentiary record, the final actuarial report for 2009, issued in January 2010, confirms that the expense levels presented in the July 2009 report did not change. The January 2010 report need not be admitted in the record to establish that the adjustment is known and measurable, however, because the known and measureable standard is satisfied by the July 2009 report.[7]"

   [7]With this said, the AIU renew their offer to submit this report to the Commission, if the Commission believes it would be helpful in its determination of this issue.

8. Again, as clearly acknowledged by Ameren, the information referenced is "*not part of the evidentiary record*." It is highly improper to reference information that is not part of the evidentiary record for the proposition that Ameren is attempting to make. The fact is the actuarial report issued in January 2010 is dated after the hearing in this docket in December of 2009 and after the record was marked heard and taken. Any reference to the January 2010 actuarial report is

improper. If the thrust of Ameren's argument is that known and measurable standard is met by the July 2009 actuarial report, it should simply cite to that report. The footnote to this section is another attempt to get the January 2010 actuarial report before the Commission when the record has already been closed. These repeated references to the January 2010 actuarial report throughout the BOE are improper. The above cited sentences and footnote should be stricken from the Ameren BOE.

9. On page 26 of the Ameren BOE, the first main paragraph, the fifth sentence, Ameren states, "Presumably because of the Commission's consistent practice, no party contested ComEd's adjustment, and the revenue requirement approved in that case reflects the adjustment."

10. Ameren does not provide a citation to the record in this proceeding or the ComEd order support its presumption regarding the reason no party contested ComEd's adjustment. As such, this is pure speculation. This goes beyond argument that is allowed in a party's BOE and should be stricken.

11. On page 28 of the Ameren BOE, subsection b, the second sentence of the paragraph, Ameren states, "Had this issue been raised during this proceeding (and it was not), the AIU would have presented evidence that losses on invested assets are amortized over a period of 14 years. Thus a rebound in financial markets in 2009 would not provide an opportunity to recoup the 2008 losses."

12. While Ameren disagrees with the PO that suggests the issues of improvement in financial markets in 2009 may have provided an opportunity for the AIU to "recoup" any of the increased pension expense incurred in 2009, Ameren

specifically acknowledges that this issue had *not* been raised during this proceeding. While it is proper to state that it would have responded to the issue, to then provide a conclusary summary of the evidence it would have presented at hearing is an desperate last ditch attempt to add to the record when the record has been closed. This sentence should be stricken.

13. On page 42 of the Ameren BOE, the top of the page, the first complete sentence, Ameren states, "The AIU are confident that the Commission will want to continue to the program, given the impressive success of the AmerenUE program."

14. The reference to the success of the AmerenUE program does not have a citation attached to this statement, as there was no evidence placed in the record as to the success of the AmerenUE program. Ameren is attempting to insert facts not in the record and then argue them for their position in its BOE. This is inappropriate and the sentence should be stricken.

15. Ameren's arguments regarding facts not of record should be stricken. The Commission's decision must be based exclusively upon record evidence in this case (see 220 ILCS 5-10-103), to allow these references to remain in the brief could allow the insinuation that the Commission considered the improper arguments when making its decision.

**CONCLUSION**

WHEREFORE, for the foregoing reasons, Staff respectfully requests:

A. That the following items be stricken as reflected in Appendix A:

- Ameren BOE, page 22-23, the last sentence at the end of page 22 continuing on to page 23 (including footnote #5);
- Ameren BOE, page 23, the last sentence at the first main paragraph;
- Ameren BOE, page 25, the first main paragraph, starting with the fifth sentence to the end of that paragraph (including footnote #7);
- Ameren BOE, page 26, the first main paragraph, the fifth sentence;
- Ameren BOE, page 28, subsection b, the second sentence of the paragraph;
- Ameren BOE, page 42, the top of the page, the first complete sentence;

B. Such other and further relief, as this is equitable and appropriate.

Respectfully submitted,

James V. Olivero
Staff Counsel

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Janis E. Von Qualen
James V. Olivero
Jennifer Lin
Office of General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
(217)785-3402
(217) 785-3808
(312)793-8183
(217)524-8928 (Fax)
jvonqual@icc.illinois.gov
jolivero@icc.illinois.gov
jlin@icc.illinois.gov

modifying a pro forma adjustment subsequent to the filing of direct testimony. To avoid reversal of the final order, the Commission Conclusion section of the ALJPO should be deleted and replaced with the substitute language provided in the accompanying Appendix.

*a. The Commission's prior cases establish that Pension and Benefits Expense should be based on the most current actuarial data available. The ALJPO disregards the most current data available.*

The evidence establishing that the July 2009 actuarial report establishes a known and measurable level of pension and benefits expense through September 2009 is explained in the AIU briefs and need not be repeated at length. The AIU would simply reiterate that Staff's argument that "[t]he fact that the budgeted amounts changed in the six months from January to July 2009 confirms that the amounts do not meet the known and measurable standard" (Staff Init. Br. 46-47) is a non sequitur. It is immaterial whether amounts changed from January to July 2009 because the AIU based their adjustment on the July report. As discussed in briefs, the January report provided a forecast of expenses for 2009 based on actual plan asset values and financial market conditions but <u>estimated</u> employee census data. (Ameren Ex. 54.0 (Lynn Sur.), p. 4.) The July report updated the estimated census data with <u>actual</u> data. (<u>Id.</u>) With issuance of the July report, the AIU's pension and benefits expense became known and measurable, subject to any "significant events," which Mr. Lynn explained did not occur, despite the AIU's fourth quarter 2009 workforce reductions. (Ameren Ex. 54.0, pp. 3-6.)

The expense amounts contained in the July 2009 report are not estimates or guesses -- these are the amounts recorded in the AIU's books for pension and benefits expense. (Ameren Ex. 51.8.) The AIU have done more than establish that these amounts are known and measurable. They have established the expense levels with certainty. ~~Although not part of the~~

~~evidentiary record, the final report for calendar year 2009 confirms that the expense levels did not change from the July 2009 report.~~[5]

Central to Staff's case is the argument that actual pension costs for the year ending 2009 "will not be determined until the year end 2009 actuarial study has been completed . . . ." (Staff Br. 47.) That the AIU rely on a second quarter actuarial report issued in July 2009, rather than the final 2009 actuarial report issued in January 2010, is of no consequence in determining whether the AIU's proposed adjustment meets the known and measurable standard. ~~Specifically, expense in the final 2009 actuarial report is based on information as of December 31, 2008; this information was already known and measurable in July 2009, and was reflected in the July 2009 report. (Ameren Ex. 54.0, pp. 4-6.)~~

The Commission has expressly rejected the argument that actuarial data considered in establishing pension expense should be limited to final calendar year data. In Docket 91-0586, a Peoples rate case involving a future test year of calendar year 1993, the parties disputed whether pension and benefits expense should be based on actuarial studies for 1991, 1992 or 1993 (the latter two of which were not submitted until Peoples' rebuttal testimony). Peoples Gas Light and Coke Co., 1992 Ill. PUC LEXIS 376, at *65-66 (Oct. 6, 1992). Characterizing the 1993 actuarial information as a "rough estimate," Staff argued that "the full actuarial report for 1992 is a more accurate indicator of the pension expense for the test year." (Id.) The Commission disagreed and relied on the 1993 data. "In a situation such as this, the most current information available is the most accurate; of necessity, any actuarial study or report is

[5] ~~As Mr. Lynn explained, the final actuarial report for 2009 would be completed by no later than February 1, 2010. (Ameren Ex. 54, p.6.) This report was completed and provided to the AIU in January 2010.~~

establish pension and benefits expense for the 2009 test year, even if the report does not present final results for calendar year 2009. The fact that the AIU are instead seeking a pro forma adjustment to a historical 2008 test year does not diminish the evidentiary value of the July 2009 report as the most current information available.

The record in this proceeding presents an even stronger case that the AIU have met the known and measurable standard. The July 2009 report is not just an "informed forward-looking estimate." As Mr. Lynn explained, 2009 pension and benefits expense became known and measurable upon completion of the July 2009 actuarial report. (Ameren Ex. 54.0, pp. 3, 6.) Mr. Lynn also explained that neither the AIU workforce reductions nor other factors constituted a "significant event" that would cause the 2009 expense levels to change. (Id., p. 5.) ~~While not part of the evidentiary record, the final actuarial report for 2009, issued in January 2010, confirms that the expense levels presented in the July 2009 report did not change. The January 2010 report need not be admitted in the record to establish that the adjustment is known and measurable, however, because the known and measurable standard is satisfied by the July 2009 report.~~[7]

In addition to establishing pension and benefits expense based on the most current data available, the Commission also routinely authorizes pro forma adjustments to establish pension and OPEB expense based on actuarial data for the year following the test year. The use of actual expense amounts for the year following the test year is consistent with the treatment of pension and benefits expense in the AIU's two most recent cases, Dockets 06-0070/0072

[7] ~~With this said, the AIU renew their offer to submit this report to the Commission, if the Commission believes it would be helpful in its determination of this issue.~~

(cons.) and 07-0585/90 (cons.). (Ameren Ex. 29.0 Rev. (Stafford Reb.), p. 12.) As discussed above, the fact that final calendar year actuarial reports were available in the prior cases but not here is not a basis for distinguishing the prior AIU cases from this one. The Commission historically has relied on the most recent actuarial data available, regardless of whether that data is a final report for a calendar year.

In fact, the adjustment proposed by the AIU in this case is indistinguishable from the adjustment that the Commission authorized in ComEd's most recent rate case. In Docket 07-0566, ComEd selected a historical calendar year 2006 test year, but proposed a pro forma adjustment of approximately $14.8 million to establish pension and OPEB expense at 2007 levels. To support its adjustment, ComEd cited "an updated actuarial analysis" prepared by Towers Perrin—the same actuaries that handle the AIU pension and OPEB accounting. (Docket 07-0566, ComEd Ex. 7.0, p. 40 line 785.) The "updated actuarial analysis" could not have been the final 2007 actuarial report because the "updated analysis" was prepared in May 2007. (Id.) ~~Presumably because of the Commission's consistent practice, no party contested ComEd's adjustment, and the revenue requirement approved in that case reflects the adjustment.~~ Moreover, the AIU's adjustment is more conservative than the ComEd adjustment accepted by the Commission. Although ComEd was authorized to recover pension expense based on the full calendar year following the test year, the AIU have limited their request to expense levels incurred through the 12 months ending in September 2009.

Additionally, in the most recent Peoples rate case, Docket 09-0166/09-0167, the utility selected a future test year of calendar year 2010. The Part 285 filing included a pension actuarial report for 2008. In rebuttal, Peoples sponsored testimony explaining that its pension

reasons for deciding a case different, the Commission will follow in line with precedent. To do otherwise risks a charge of arbitrary and capricious action." Peoples, Order, Docket 07-0241/0242, p. 16.

*b. The ALJPO conclusion is not otherwise supported by the record.*

The ALJPO incorrectly suggests that the improvement in financial markets in 2009 may have provided an opportunity for the AIU to "recoup" any of the increased pension expense incurred in 2009. ~~Had this issue been raised during this proceeding (and it was not), the AIU would have presented evidence explaining that losses on invested assets are amortized over a period of 14 years. Thus, a rebound in financial markets in 2009 would not provide an opportunity to recoup 2008 losses.~~

But there is an additional reason why a rebound in financial markets did not allow the AIU to recoup prior year losses. It is important to distinguish between "asset values," which represent the sum of all investments set aside in trust to pay future benefits, from annual expense accruals, which represent one year's amortization of the future cost of benefits. (See Ameren Ex. 38.0, pp. 3-4.) Investment losses on plan assets decrease the amount of money available to pay benefits, resulting in an increase in expense accruals in future periods. (Id.) As explained by AIU witness Lynn, per the accounting standard used to determine pension expense, AIU pension expense incurred in 2009 must be based on asset values as of December 31, 2008. (Ameren Ex. 54.0, p. 3.) An increase in asset values in 2009 cannot change the level of pension expense recorded in 2009, either through September 30 or through the end of the year. (See id., p. 5.) The fact that asset values might have been different in December 2008 as

that the program costs outweigh its benefits, the AIU will terminate the program. ~~The AIU are confident that the Commission will want to continue to the program, given the impressive success of the AmerenUE program.~~

The Proposed Order (p. 225) offers an alternative to Rider VGP, recommending that the "AIU may want to consider ways to participate in the Chicago Climate Exchange, Acid Rain Program or another emissions trading program." There is nothing in the record offered by any party to suggest that the Chicago Climate Exchange, Acid Rain Program or any other emissions trading program is a viable alternative to Rider VGP, nor is there any evidence to suggest that such program is superior to the use of RECs, or any demonstration how such program resolves Staff's concern for such anticipated and actual participation levels or how implementation costs will be better known. Finally, the State of Illinois has already established policy and protocols for the acquisition and contracting for RECs, and it is not clear the same can be said for Chicago Climate Exchange, Acid Rain Program.

## VIII. COST ALLOCATION

### B. Contested Electric Issues

#### 1. Cost Allocation for Customers at 100+ Kilovolts

The ALJPO reflects an incorrect association between the AIU's acceptance of the DDSUBTR allocator correction and the controversy between the AIU and IIEC regarding the use of both supply and delivered voltages in the AIU's development of allocators used in the ECOSS. (ALJPO, pp. 229-230.)

The "DDSUBTR" issue related to the AIU's recognition that the use of this allocator was preferable for allocation of a particular FERC account. The AIU had previously used the