

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	
Illinois Power Company	:	
d/b/a AmerenIP	:	05-0743
	:	
Reconciliation of revenues	:	
collected under gas adjustment	:	
charges with actual costs	:	
prudently incurred.	:	

PROPOSED ORDER

DATED: April 18, 2011

TABLE OF CONTENTS

I.	PROCEDURAL HISTORY	1
II.	APPLICABLE AUTHORITY; PRUDENCY STANDARDS	1
III.	PRIOR PGA ORDERS AFFIRMED BY APPELLATE COURT	2
IV.	HILLSBORO ADJUSTMENT IN CURRENT CASE	4
A.	Specific Hillsboro Actions.....	6
1.	Hillsboro Metering Review	6
2.	Orifice Metering Accuracy	12
3.	Withdrawal Volumes	15
4.	Other Actions	16
B.	Overall Storage Concerns.....	17
1.	Reduction in Peak Day Capacity.....	17
2.	Reductions in Supervisory and Technical Personnel	19
3.	Capital Expenditures	22
4.	Identification of Problems.....	24
a.	Hillsboro Incident.....	24
b.	Gas Dispatch Tracking	26
C.	Other Issues	28
V.	COMMISSION ANALYSIS AND CONCLUSIONS.....	29
VI.	FINDINGS AND ORDERING PARAGRAPHS.....	33

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission :
On Its Own Motion :
-vs- :
Illinois Power Company :
d/b/a AmerenIP : **05-0743**
:
Reconciliation of revenues :
collected under gas adjustment :
charges with actual costs :
prudently incurred. :

PROPOSED ORDER

By the Commission:

I. PROCEDURAL HISTORY

The Illinois Commerce Commission (“Commission”) entered an Order commencing the instant purchased gas adjustment (“PGA”) reconciliation proceeding, in accordance with the requirements of Section 9-220 of the Public Utilities Act (“Act”), 220 ILCS 5/1-101 et seq. The Order directed Illinois Power Company d/b/a AmerenIP (“IP”, “AmerenIP” or “Company”) to present evidence at a public hearing to “show the reconciliation of PGA revenues with the actual cost of such gas supplies obtained through purchases demonstrated by the [utility] to be prudent, and the measures taken to insulate the PGA from price volatility . . .” for the 12 months ended December 31, 2005 (the “reconciliation period” or “reconciliation year”).

Pursuant to due notice, hearings were held in this matter before a duly authorized Administrative Law Judge of the Commission at its offices in Springfield, Illinois. Appearances were entered by counsel for IP, the Staff of the Commission (“Staff”), and Dynegy Inc., whose Petition for Leave to Intervene was granted. Evidence was presented by IP and Staff, and at the conclusion of the hearings, the record was marked “Heard and Taken.”

IP and Staff each filed an initial brief (“IB”) and reply brief (“RB”). Additional filings were made on July 8, 2010, by IP (“IP 7/8/10 response”) and Staff, and on July 29, 2010 by Staff (“Staff 7/29/10 reply”) and IP.

II. APPLICABLE AUTHORITY; PRUDENCY STANDARDS

In accordance with Section 9-220 of the Act, the Commission may authorize an increase or decrease in rates and charges based upon changes in the cost of purchased gas through the application of a purchased gas adjustment clause. Section 9-220(a) requires the Commission to initiate annual public hearings “to determine

whether the clauses reflect actual costs of . . . gas . . . purchased to determine whether such purchases were prudent, and to reconcile any amounts collected with the actual cost of . . . gas . . . prudently purchased.”

For gas purchases, the provisions of Section 9-220 are implemented in 83 Ill. Adm. Code Part 525, “Uniform Purchased Gas Adjustment Clause.” Section 525.40 of Part 525 identifies gas costs which are recoverable through PGA. Adjustments to gas costs through the Adjustment Factor are addressed in Section 525.50. The gas charge formula is contained in Section 525.60. Annual reconciliation procedures are described in Section 525.70.

With regard to the prudence standard, the Appellate Court, in its decision affirming the Commission’s orders in Dockets 03-0699 and 04-0677, stated:

The Act clearly places upon those utilities taking advantage of a PGA clause the burden of proving the prudence of their gas purchases during the course of yearly reconciliation proceedings. 220 ILCS 5/9-220 (West 2002). Prudence is not defined within the Act. Commerce Commission proceedings and our court have defined prudence as “that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made.” *Illinois Commerce Comm’n v. Commonwealth Edison Co.*, Docket No. 84-0395, p. 17 (1987); *Illinois Power Co. v. Commerce Comm’n*, 339 Ill.App.3d 425, 428, 274 Ill.Dec. 1, 790 N.E.2d 377 (2003). In determining whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. *Illinois Power Co. v. Commerce Comm’n*, 245 Ill.App.3d 367, 184 Ill.Dec. 49, 612 N.E.2d 925 (1993). *Illinois Power Co. v. Illinois Commerce Com’n*, 382 Ill.App.3d 195, 887 N.E.2d 678 (2008).

Dockets 03-0699 and 04-0677, referenced above, were IP PGA reconciliation proceedings. In those dockets, as recommended by Staff, the Commission disallowed recovery of certain imprudently incurred costs related to the Hillsboro storage field (“HSF”), as discussed below.

III. PRIOR PGA ORDERS AFFIRMED BY APPELLATE COURT

As noted above, Dockets 03-0699 and 04-0677 were PGA reconciliation proceedings for IP. In those dockets, as recommended by Staff, the Commission entered Orders disallowing recovery of certain imprudently incurred costs related to the Hillsboro storage field. On page 37 of its Order in Docket 03-0699, the Commission found, in part, “AmerenIP acted imprudently in its response to the deliverability problems at the Hillsboro Storage Field and agrees with Staff that the Company should have begun replacement of the HSF inventory in 2000.” In Dockets 03-0699 and 04-0677, the amounts by which the cost of gas purchased in 2003 and 2004 exceeded what they would have been had IP begun replacing inventory in the 2000 injection season were found to be imprudently incurred.

Those Orders were appealed to, and affirmed by, the Appellate Court, Third District. As explained by the Appellate Court in its opinion:

In conclusion, [in Docket 03-0699] the Commission held that Illinois Power was imprudent in its operation of the Hillsboro field because it “(1) failed to conduct a thorough study of the injection error at the time it was identified, (2) failed to conduct any inspections to assure that the orifice meters were working properly, [and] (3) failed to begin returning the inventory to the field when the working gas volumes fell below the pre-expansion volume of 3.1 Bcf after the 1999-2000 winter season.” Consequently, the Commission ruled that \$6,870,109 of incurred costs related to Illinois Power's remediation of the Hillsboro depleted gas levels could not be recovered from its customers through PGA tariffs.”
382 Ill.App.3d 200.

The Court noted that “[t]he order in docket No. 04-0677 reiterated most of the findings contained in the 2003 case.” The Court added, “Based on the evidence adduced at the 2004 hearings and premised upon the Commission's order entered in docket No. 03-0699, the Commission found that Illinois Power imprudently incurred \$2,979,849 in additional gas costs in 2004.” *Id.* at 200, 201.

In its analysis, the Court found, “Initially, the record indicates that Illinois Power failed to promptly pursue potential metering problems that were plainly stated and thoroughly analyzed in the 1999 Peterson report.” *Id.* at 202.

The Court observed that the evidence further indicated Illinois Power had accurate injection well data from 1994 which could have been integrated to determine an accurate estimate of the total amount of gas that had been injected into the field between 1994 and 1999. *Id.*

Next, the Court disagreed with Illinois Power's assertion that it would have been imprudent to reinject the field with natural gas inventory in 2000 when working gas volumes fell below pre-expansion levels. The Court stated in part:

However, beginning in 1999, several reports and analyses indicated that the deliverability issue was caused by a field metering error rather than a structural one. Thus, the Staff claimed that once Illinois Power corrected the metering errors in 2000, testing those corrections during the 2000 injection season would have been appropriate. Lounsberry's testimony showed that many, if not most, of Illinois Power's concerns with reinjecting the field too soon were unfounded based on a review of the 1999 Petersen report and the inconsistent 3-D seismic data on hand. Thus, the Commission position that Illinois Power should have attempted to reinject the field in 2000 to test the metering corrections is not unreasonable. By waiting three more years before even attempting to begin replacement efforts, Illinois Power unnecessarily depleted the base gas volumes of the reservoir and exponentially increased the cost of injection. Based on the

entire record in both proceedings, a conclusion that Illinois Power was prudent is not clearly evident. *Id.* at 203.

The Court also found that the Commission properly considered similar deliverability issues occurring at an earlier period of at Illinois Power's Shanghai storage facility, where, like the Hillsboro field, there was a deliverability issue eventually associated with an injection metering problem.

In its conclusion, the Court affirmed the Commission finding that Illinois Power's decision to forego reinjecting the Hillsboro storage field until 2003 was imprudent. The Court held that "the Commission orders in case No. 03-699 and case No. 04-677 are therefore affirmed." *Id.* at 205.

IV. HILLSBORO ADJUSTMENT IN CURRENT CASE

In the instant docket, 05-0743, Staff again proposed a disallowance of gas costs related to the Hillsboro field, this time to reflect the cost impact of the inventory shortfall at Hillsboro on the 2005 reconciliation year. Staff states that its proposed adjustment and the position on which it is based are nearly identical to its positions, which were adopted by the Commission in the Company's 2003 PGA reconciliation in Docket No. 03-0699 and the 2004 PGA reconciliation in Docket No. 04-0677. (Staff IB at 43; Staff 7/29/10 reply at 3)

Staff is recommending that the Commission make the same findings it made in those earlier dockets. For the most part, where the evidence and arguments in the current docket are the same as in the prior two, they will not be repeated in detail in this order. Purported differences in the record in this proceeding as compared to the two earlier PGA dockets will be summarized in some detail in this order, usually with citations to the IP 7/8/10 response and the Staff 7/29/10 reply thereto.

Staff concluded in Docket 05-0743 that the Company imprudently incurred \$631,515 in additional gas costs in the reconciliation year as a result of the untimely reduction to the seasonal withdrawal capacity of its Hillsboro storage field. In Staff's view, the Company's actions were imprudent because it failed to identify a large inventory shortfall at the Hillsboro storage field and begin replacing it in a timely fashion. As a result of the inventory shortfall, after normalizing for weather, Staff asserted, as it did in the earlier PGA dockets, that the field did not fully cycle as it would have had there not been an inventory shortfall. That is, the Company operated the Hillsboro storage field in a manner that reduced the seasonal quantity of gas that could be withdrawn from the field as compared to what could have been withdrawn had it been fully functional.

In Staff's opinion, the Company should have identified and acted upon the reduced inventory and deliverability problems at the Hillsboro storage field several years prior to the reconciliation period involved in the instant proceeding. The gas the Company purchased to make up for this reduced seasonal withdrawal capacity was more expensive than the replacement gas, causing the Company to incur additional gas costs during the reconciliation period. (Staff brief at 3-4, 9; Staff Ex. 2.00 at 4)

IP opposes the adjustment proposed by Staff, as explained in detail in IP's testimony and briefs and in its response filed July 8, 2010. In IP's opinion, its actions at the Hillsboro field were appropriate. IP believes the record demonstrates IP acted prudently and reasonably in its investigation, identification and remediation of the Hillsboro deliverability decline, and that Staff's characterizations of IP's actions as imprudent were made with the benefit of hindsight and constitute second-guessing and, at most, differences of opinion. IP argues that it would have been imprudent for IP to begin reinjecting significant quantities of replacement gas inventory into HSF in 2000 or 2001. Further, IP asserts, the record shows each of the Staff witness' "overall storage concerns" is unfounded, and does not indicate any causal connection between any of the overall storage concerns and the HSF deliverability decline or the speed with which IP investigated, identified and remedied it. (IP IB at 12-13)

IP also argues that "if the Commission concludes that IP should have started to reinject gas inventory into Hillsboro during the 2002 injection season (rather than in 2000, 2001 or 2003), the resultant amount of the imprudently-incurred gas costs in the 2005 reconciliation year is \$39,385." (IP 7/8/10 response at 47, citing AmerenIP Ex. 2.3 at 4 and AmerenIP Ex. 2.5)

With regard to the earlier PGA dockets, IP, in its initial brief in Docket 05-0743, pages 77-78, states, in part:

The record in this case is similar to (but not identical to) the record in Docket 03-0699. AmerenIP respectfully disagrees with the findings and conclusions in the Order in Docket 03-0699 to the extent the Commission adopted Staff's arguments and found the Company acted imprudently with respect to Hillsboro. AmerenIP has appealed the Commission's findings and conclusions in Docket 03-0699 to the Illinois Appellate Court. (citation omitted) Briefing on the appeal is in progress. In its evidence in the instant docket and in this brief, AmerenIP has made the same or similar arguments in opposition to the Staff recommendation as it made in Docket 03-0699 and is making in the Appellate Court proceeding.

In its Response filed July 8, 2010, however, IP argues, "Key Points Relied on by the Appellate Court in Affirming the Commission's Orders in Dockets 03-0699 and 04-0677 Are Not Supported by the Record in Docket 05-0743" (IP 7/8/10 response at Section III); and that "There is Significant Additional and Different Evidence in the Record of Docket 05-0743 that is Material to the Principal Issues in the Case and Supports a Different Conclusion than that Reached in Dockets 03-0699 and 04-0677." (*Id.* at Section IV) IP also argues, "In Reaching its Decision in this Docket, the Commission is Not Bound by its Orders in Dockets 03-0699 and 04-0677 or the Appellate Court Decision in Those Cases, But Rather Must Reach its Decision Based on the Record in this Docket." (*Id.* at Section II)

Staff asserts, in reply, that despite IP's attempts to distinguish the records, it remains clear that the adjustments proposed by Staff in the 2005 PGA case "are based upon the same actions by IP over the same general time period", and reflect the

adverse effects of such actions or inactions on PGA costs in 2005. (Staff brief at 44; Staff 7/29/10 reply at 3)

A. Specific Hillsboro Actions

Staff's review into the history of the Company's actions at the Hillsboro storage field indicated to Staff that the Company had several opportunities to detect the large inventory problem at the Hillsboro storage field, yet failed to do so. (Staff IB at 12) These issues were previously addressed by the parties and the Commission in Dockets 03-0699 and 04-0677.

1. Hillsboro Metering Review

The first such action addressed by Staff was the Hillsboro metering review. In Staff's view, IP made a significant error when it originally reviewed the meter accuracy problems that occurred at its Hillsboro storage field. In 2000, Staff states, the Company erroneously concluded that the measurement errors that occurred during injection and withdrawal basically offset each other. However, the injection error at the Hillsboro storage field was much more significant than the Company thought. (Staff IB at 13-17)

Staff states that in August 1999, IP hired Peterson Engineering to conduct an audit of its metering at the Hillsboro storage field. The firm issued a report ("Peterson Report") in December 1999.

Had the Company conducted a thorough review after receiving the Peterson Report, Staff argues, the true magnitude of the injection measurement error would have been discovered by the 2000 injection season, and the Company could have started replacing the 5.8 Bcf of gas into the Hillsboro storage field during the 2000 injection season, and it would have completed the gas inventory replacement at the Hillsboro storage field prior to the instant reconciliation period. (Staff IB at 15; Staff Ex. 2.00 at 23-24, 27) In Staff's view, having the full capacity of the field would have allowed IP to use more of the seasonal capacity of the Hillsboro storage field in the instant reconciliation period instead of relying upon more expensive gas sources. (Staff Ex. 2.0 at 23-24)

According to **IP**, Staff's argument concerning the "Hillsboro Metering Review" does not demonstrate that the Company failed to act prudently. (IP RB at 10-16) Regarding the underestimation of the aggregate amount of over-registration that had occurred prior to discovery of the over-registration problem, IP argues, among other things, that the Company used the best information it had available, which was the experience and judgment of its operating personnel as to the percent of time the compressors had operated at different loading levels, coupled with the calculations provided by Peterson Engineering of the percentage over-registration at specified compressor loading levels. (*Id.* at 10-11)

Regarding the use of well chart data, IP states that the Company compared the injection volume estimates derived from the I/W well charts to the injection volumes recorded on the main plant meters, which were assumed to be correct, and adjusted the

injection volumes derived from the well charts to match the injection volumes recorded on the main plant injection meters. (IP RB at 12-13)

IP further asserts that even in 2003-2004, the Company did not estimate the amount of the inventory depletion solely using I/W well chart data. Rather, IP states, the Company used data from the well charts in conjunction with the reservoir simulation model it had developed of the Hillsboro Field to estimate the amount of the inventory depletion. IP asserts that development of the reservoir simulation model was an ongoing process and the model was not fully developed in 2000 as it was in 2003 when it was used to estimate the inventory depletion. Thus, IP argues, Staff's suggestion that IP simply should have done in 2000 what it did in 2003 is flawed and is based on selective use of the facts. (IP RB at 13)

IP also argues that "it would not have been prudent to begin reinjecting significant amounts of replacement gas inventory before the Company had determined the inventory shortfall was not due to reservoir or structural problems that could cause the reinjected gas to be lost as well." (IP RB at 14-15)

In its 7/8/10 response, IP claims there is additional evidence in the record of Docket 05-0743 that was not in the records of Dockets 03-0699 and 04-0677, and that there are also a number of differences in important components of the evidence in Docket 05-0743 from the evidence presented on the same topics in the records of Dockets 03-0699 and 04-0677.

In Section III of its 7/8/10 response, in discussing the third of the "key points relied upon by the Appellate Court in affirming the Commission's Orders in Dockets 03-0699 and 04-0677 [that] are not supported by the record in Docket No. 05-0743", IP argues that the Appellate Court's analysis is based on statements about the contents of the 1999 Peterson Report that would not be supported by evidence in the record in Docket 05-0743. (IP 7/8/10 response at 12) IP refers to statements by the Appellate Court that "the Peterson report presented a clear indication that the deliverability issues at Hillsboro were due to injection metering problems", that "many, if not most, of Illinois Power's concerns with reinjecting the field too soon were unfounded based on a review of the 1999 Peterson report" and that "beginning in 1999, several reports and analyses indicated that the deliverability issue was caused by a field metering error rather than a structural one." 382 Ill. App. 3d at 203-204.

According to IP, "although the record in all three cases shows that the Peterson Report (i) identified that the injection meters were over-registering injection volumes when the nearby plant compressors operated at certain levels, and (ii) provided estimates of the percentage over-registration errors on the injection meters at various levels of compressor operation (citation omitted), the Peterson Report certainly did not conclude that (or even address whether) the injection meter error was the cause of the Hillsboro deliverability issues, or whether or not it was appropriate to begin reinjecting inventory into the Field in 2000 notwithstanding the potential structural and geologic issues still being investigated." (IP 7/8/10 response at 12-13) In IP's view, "Regardless of what it was in the records of Dockets 03-0699 and 04-0677 that the Court believed

supported the above-quoted statements about the Peterson Report, there is nothing in the Docket 05-0743 record that would support them.”

In its reply, **Staff** suggests that IP’s argument really seems to be with the Appellate Court’s opinion itself, and that the proper venue to attack that decision is through appealing it, not here at the Commission in a different docket. (Staff 7/29/10 reply at 7-8) Staff also argues that the record in Docket No. 05-0743 does support the Court’s conclusion. (*Id.* at 7) Staff states, “Staff testified that had IP reviewed the well chart data it already had available to it at the time of the Peterson study, IP would have reached a different conclusion regarding the magnitude of the injection metering error.” (*Id.* citing Docket No. 05-0743, Staff Ex. 2.00, pp. 26-27, and 29) In Staff’s opinion, “This argument is consistent with Staff’s position in both the 03-0699 and 04-0677 cases.”

Further, Staff argues, “Staff also noted that the pre-expansion capacity of the Hillsboro storage field was 3.1 Bcf (post expansion was 7.6 Bcf) and it was significant that starting in the winter season of 1999-2000 that the Hillsboro storage field was unable to withdraw the 3.1 Bcf amount.” (Staff 7/29/10 reply at 7-8 citing Docket No. 05-0743, Staff Ex. 2.00 at 40-41) Staff asserts that this argument was also part of Staff’s case in Docket Nos. 03-0699 and 04-0677, and that in both instances, events occurred and reviews or analyses could have been done with a starting point in the 1999 year.

Staff further states, “IP also notes that the Appellate Court’s opinion also states that ‘the record indicate that Illinois Power failed to promptly pursue potential meter problems that were plainly stated and thoroughly analyzed in the 1999 Peterson Report.’” (Staff 7/29/10 reply at 8) Staff says IP then contended that this statement by the Court is inconsistent with statements elsewhere in the Appellate Court opinion that IP made operating corrections to eliminate the meter measurement error identified in the Peterson report in May 2000. (*Id.*, citing IP Response at 13) In Staff’s view, IP had the opportunity to appeal the Appellate Court ruling if it believed the decision was based on incorrect information or was internally inconsistent with itself. Staff asserts, “The Commission should not be reading the Appellate Court decisions for alleged inconsistencies, but for the determination that the Appellate Court made.” (Staff 7/29/10 reply at 8)

In Section IV.A of **IP’s** 7/8/10 response, regarding evidence of whether IP was aware of injection metering errors at Hillsboro prior to the Peterson Report, IP argues that “there was testimony in Dockets 03-0699 and 04-0677 that, according to the Peterson Report, IP had known since at least 1996 that it had been unable to reconcile the injection volume data on its main plant injection meters with the I/W well chart data since 1994, thereby indicating that IP should have been aware of accuracy problems with the Hillsboro injection meters.” According to IP, “there is no such evidence in the Docket 05-0743 record (because it was recognized that the statement in the Peterson Report was incorrect).” (IP 7/8/10 response at 14-15)

IP argues, in part, that “in concluding there was substantial evidence to support the Commission’s conclusion that IP was imprudent in not determining in 2000 that the

source of the Hillsboro deliverability problems was a metering error, and beginning to reinject the Field, the Appellate Court placed heavy reliance on evidence that as of 1999-2000, IP had been aware since at least 1996 (and possibly since 1994, shortly after the Hillsboro Field was expanded) that there were problems with the accuracy of the Hillsboro injection metering.” (IP 7/8/10 response at 8)

According to IP, “However, the evidence that IP was aware by at least 1996 that there were problems with the accuracy of the Hillsboro injection metering is not present in the record of Docket 05-0743.” IP continues, “In Dockets 03-0699 and 04-0677, this evidence was found in Staff witness Mr. Lounsberry’s prepared testimony, but Mr. Lounsberry did not so testify in Docket 05-0743.” (*Id.* at 9)

In IP’s view, this “key point” relied upon by the Appellate Court is not supported by the record in docket 05-0743.

In its 7/29/10 reply, pages 10-11, **Staff** responds:

Staff does not dispute the variances in the testimony. However, as noted above, this topic was addressed in Docket No. 04-0677. As IP itself noted, Staff’s testimony did not quote the same language in Docket No. 04-0677 that it had in Docket No. 03-0699. In Docket No. 04-0677, IP clarified this topic via cross-examination of Staff’s witness. (*Id.*, p. 10) As such, Staff does not agree that a large variation exists between the record of Docket No. 04-0677 and Docket No. 05-0743 on this topic. As such, IP’s concern is baseless

On page 5, Staff also argues:

IP correctly indicated that certain references to the Peterson Engineering Study that were contained in Mr. Lounsberry’s testimony in Docket No. 03-0699 were not repeated in Docket No. 04-0677 and Docket No. 05-0743. (IP Response, pp. 9-10) Although IP’s argument is that this absence of testimony differentiates the record in Docket No. 05-0743, IP concedes that this testimony was not a part of the record in Docket No. 04-0677. IP references its cross examination of Mr. Lounsberry in Docket No. 04-0677 as the basis for its conclusion that the assertions ‘were not correct.’ (*Id.*, p. 10) Thus, the records in Docket Nos. 04-0677 and 05-0743 are similar on this subject. Yet, the Appellate Court affirmed the Commission’s disallowance in Docket No. 04-0677.

According to Staff, “If IP truly thought this was a mistake on the Appellate Court’s ruling, the proper venue for making this claim would be through an appeal of the Appellate Court’s affirmation of the Commission’s decision.” (*Id.* at 6)

IP also argues, in Section IV.B of its 7/8/10 response “A critical prong of the Staff’s argument, and of the Commission’s conclusion in Dockets 03-0699 and 04-0677, that IP should have started to reinject inventory into the Hillsboro Field in 2000, was the contention that IP should have known to use data from the Hillsboro I/W well meters on

injections in the 1994-1999 period to compare to the injection volumes measured on the main plant injection meters, which (it is argued) would have shown IP that the inventory shortfall due to the main plant injection metering error was much larger than IP had estimated.” (IP 7/8/10 response at 15-22)

IP responded that it had not believed the I/W well meters or the injection data they recorded were sufficiently complete or accurate to provide a reliable measurement of injection volumes that could be used for such a purpose, and therefore IP was not imprudent in not using the I/W well metering data to make such a comparison in 2000. (*Id.* at 15) In Docket 05-0743, IP asserts, it presented detailed testimony, which it did not present in Docket 03-0699 or Docket 04-0677, to show that in Docket 04-0476, IP’s 2004-2005 gas rate case, Staff witness Lounsberry testified that the Hillsboro I/W well metering data was not sufficiently complete, accurate or reliable to produce an acceptable estimate of the inventory depletion that had occurred at Hillsboro due to the main plant injection metering error. IP states that in Docket 05-0743, IP witnesses Wayne Hood and Curtis Kempainen provided testimony which was not given in Docket 03-0699 or Docket 04-0677. Passages of that testimony are contained in pages 16-21 of IP’s 7/8/10 response.

It is IP’s position, supported in part by the additional testimony in Docket 05-0743, “that IP cannot be found to have been imprudent in failing to use the I/W well chart metering data in 2000 to estimate the amount of the Hillsboro inventory depletion, because IP believed the I/W well chart metering data was not sufficiently complete, accurate or reliable to use for that purpose, when Mr. Lounsberry testified in Docket 04-0476 that the I/W well chart metering data was not sufficiently complete, accurate or reliable to use to estimate the Hillsboro inventory depletion.” (IP 7/8/10 response at 18)

In IP’s view, “it is noteworthy that in his prepared rebuttal testimony in Docket 05-0743, Mr. Lounsberry acknowledged that he has never accepted as accurate IP’s estimate (whether based on the I/W well meter data or the other methods IP used) of the total amount of the Hillsboro inventory depletion caused by the injection meter over-registration between 1993 and 1999.” (IP 7/8/10 response at 21-22, citing Docket 05-0743, Staff Ex. 4.00 at 45) In light of Mr. Lounsberry’s acknowledgement of this fact, IP asserts, IP should not be found imprudent for not using I/W well meter data in 2000 to determine the amount of the Hillsboro inventory depletion.

According to IP, the above-referenced testimony of the IP and Staff witnesses in Docket 05-0743 is new or different testimony on one of the principal components of Staff’s theory (and the Commission’s conclusion in Dockets 03-0699 and 04-0677) as to why IP was imprudent, that was not in the record in the two earlier dockets. IP argues, “This new and additional testimony specifically undercuts the Commission’s conclusion in the Docket 03-0699 Order (which it adopted for purposes of the Docket 04-0677 Order) that IP should have used the I/W well charts to calculate the overstated injections in 2000 (Order in Docket 03-0699, p. 36), and warrants a different conclusion in Docket 05-0743.” (IP 7/8/10 response at 21-22)

IP further argues that on this “key point” relied upon by the Appellate Court, the record in Docket 05-0743 is materially different from the record in Dockets 03-0699 and 04-0677 on which the Appellate Court based its analysis. (IP 7/8/10 response at 11-12)

In its reply, **Staff** disputes IP’s claims that there a material difference in the information that was available to the Commission, or the Appellate Court, between Docket Nos. 04-0677 and 05-0743. (Staff 7/29/10 reply at 11) According to Staff, IP provided a detailed review of the variances between the testimonies filed in Docket Nos. 03-0699/04-0677/04-0476 versus Docket No. 05-0743 on the issue of the accuracy of the well chart data, in particular, Mr. Lounsberry’s comments regarding the accuracy of the date for use in IP’s Docket No. 04-0476 gas rate case versus the PGA proceedings. Staff agrees that the testimony differed. Staff asserts, however, that “the cross examination in Docket No. 04-0677 (Docket No. 04-0667, Tr. pp. 61-76, pp. 127-128, June 20, 2006) covered this same topic”, and the Appellate Court through the 04-0677 case had available to it the manner Staff viewed the information for use in a PGA proceeding versus its use in a rate case proceeding.” (Staff 7/29/10 reply at 11) As such, Staff disputes IP’s claims that there a material difference in the information that was available to the Commission, or the Appellate Court, between Docket Nos. 04-0677 and 05-0743. (Staff 7/29/10 reply at 6, 11)

IP also addresses what it refers to as additional evidence on the reasonableness of the estimate IP developed in 2000, after receiving the Peterson Report, of the amount of the Hillsboro main plant injection metering error. IP describes this issue as related to the issue of whether IP should have used the I/W well chart metering data from 1994-1999 that was available in 2000 to determine the cumulative amount of the Hillsboro main plant injection metering error. (IP 7/8/10 response at 22-25)

IP states, “Staff witness Lounsberry contended that IP’s estimate was unreasonable because it was based on estimates of the amounts of time the compressors operated at different loading levels (recall that the meter error occurred because the meters over-registered volumes when the compressors located nearby were operating at certain levels) but there was not enough data available in the plant compressor operating records, or logs, to provide the basis for an estimate.” (*Id.* at 23) In Docket 05-0743, AmerenIP asserts, IP witnesses Hood and Kempainen provided additional testimony to explain how IP developed its estimate of the injection metering error in 2000, including showing that the estimate IP developed in 2000 was not based on data from the compressor logs. IP provides quotations of such testimony that was not, IP states, provided in Dockets 03-0699 or 04-0677 (*Id.* at 23-24), including the following from IP Exhibit 3.2, pages 9-10, in Docket 05-0743:

First, ... we did not use information from the compressor logs. We did use the calculations of the injection error at the 50% loading step and the 100% loading step as determined in the Peterson Study and the judgment and experience of the plant operating personnel as to the amount of time the compressors had operated at these loading levels. We agree that in the 2004 Hillsboro Study it was stated that the compressor logs could not be used to estimate the injection metering error ‘because of the lack of records during the off shift’, but that was the same conclusion that had

been reached in 2000. We do not agree with Mr. Lounsberry's statement at lines 278-282 that the Hillsboro Study reached the conclusion that the Company "did not have sufficient information to use . . . the experience of on-site personnel to determine any injection error correction factors from estimating the loading factors from the compressors...."

In IP's view, the additional evidence on this topic in Docket 05-0743 undercuts the Commission's conclusion in the Docket 03-0699 Order (which it adopted for purposes of the Docket 04-0677 Order) that 'it was unreasonable for IP to calculate the overstated injections in 2000 based upon estimated compressor loading levels when it had insufficient information from the compressor logs to make a reasonable estimate of loading levels,' (Order in Docket 03-0699, p. 36), and warrants a different conclusion in Docket 05-0743." (IP 7/8/10 response at 24)

In its reply, **Staff** disputes IP's claim that this additional testimony undercuts the Commission's conclusion. (Staff 7/29/10 reply at 12-13) In particular, Staff cites the following Staff testimony its Docket No. 05-0743:

Q. Do you agree with the Panel's second statement that the Company's estimated compressor loading values were supportable?

A. No. I do understand that the Company, in the Panel's opinion, did what it could at that time to obtain as good an estimate as possible about the compressor loading rates. However, the fact remains that the Company when it conducted its Hillsboro Study in 2004, reached the conclusion that it did not have sufficient information to use either the data from the compressor logs or the experience of on-site personnel to determine any injection error correction factors from estimating the loading factors from the compressors. Therefore, I continue to disagree with the Company that its original estimate from late 1999 or early 2000 for the metering errors it obtained from estimating the loading factors from the compressors at the Hillsboro storage field were supportable. (Docket No. 05-0743, Staff Ex. 4.00 at 13)

In short, Staff states, after the Commission issued its Order in Docket No. 03-0699, IP provided additional testimony in Docket No. 05-0743 in an attempt to explain why it considers its actions with regard to its use of the compressor logs as prudent. Staff disagreed with the Company's arguments. (Staff 7/29/10 reply at 13)

2. Orifice Metering Accuracy

As in the prior PGA dockets, Staff also concluded that the Company did not place a high priority on accurate measurement for natural gas withdrawals from the Hillsboro storage field immediately after the 1994 expansion of the field. In fact, Staff asserts, its review indicated that had the Company followed some basic industry standards, the Company would have found the withdrawal meter accuracy problem shortly after the meters were installed. In Staff's view, this failure is yet another example of the

Company's imprudent actions regarding its operations of the Hillsboro storage field. (Staff IB at 17-25)

In December 1999, Staff states, the Company received the Peterson Report which noted several problems with the metering used to measure the withdrawals from the Hillsboro storage field. In particular, Staff asserts, the Peterson Report noted that there was an incorrectly sized orifice plate installed at one location because the plate size stamped on the orifice plate was incorrect due to a manufacturer error, and also found that the orifice plates associated with the orifice meters at the Hillsboro storage field's North and South metering runs had not been pulled and inspected since their original installation. (Staff IB at 17; Staff Ex. 2.00 at 31)

According to Staff, the Peterson Report indicated that the Company had not thoroughly inspected its orifice meters, used to measure its withdrawals from the Hillsboro storage field, for over six years, from 1993 through 1999, and also indicated that when the orifice plates were pulled and cleaned during the plant visit, the plant personnel reported that the South Field Primary Orifice Meter was very dirty and the other plates were dirty to a lesser degree. Further, Staff states, the Peterson Report noted that dirty plates can introduce significant metering errors, which can have a negative or a positive bias, and also noted that American Gas Association ["AGA"] Report #3 states that "the plate shall be clean at all times and free from accumulations of dirt, ice, and other extraneous material..." (Staff IB at 17-19; Staff Ex. 2.00 at 33, 36) Staff adds that Peterson Engineering, after it reviewed the Hillsboro storage field orifice metering situation, recommended that the "Orifice plates should be pulled, inspected, cleaned and replaced as necessary, at least annually and after process upsets and changes to ensure metering accuracy." (Staff IB at 24)

Staff also submits that the Company's actions were not consistent with the Commission's requirements for orifice meters in 83 Illinois Administrative Code 500, Standards of Service for Gas Utilities ("Part 500")

IP disagrees with Staff's position. (IP IB at 35-43; IP RB at 16-21) IP argues, in part:

Staff's argument is based entirely on the Company's inspection practices with respect to the HSF withdrawal meters. The HSF deliverability decline resulted from over-registration by the Hillsboro injection meters and was not due to any problem with the withdrawal meters.

Staff's arguments are based on a Commission regulation and industry documents that by their terms are not applicable to, and do not establish standards the Company was required to follow with respect to, the HSF withdrawal metering.

IP further argues:

The Company employed maintenance and inspection practices for the HSF withdrawal meters that were appropriate in light of the purpose, use and operation of these meters and their location at the Field.

Even if the Company had found and corrected the mis-labeled orifice plate on one of the four HSF withdrawal meters earlier than 1999, this would not have led to earlier discovery of the extent of the over-registration that had occurred on the HSF injection meters. In fact, even if there had never been a withdrawal metering error, there is no basis to conclude that the true extent of the injection meter over-registration would have been discovered sooner. The Company did under-estimate the amount of the injection meter over-registration in 2000, after it was first discovered, but the reasons for the under-estimation were independent of the much smaller withdrawal meter error.

(IP RB at 16)

IP also states that Commission Code Part 500 is inapplicable to storage fields, and AGA Report #3 is an installation standard, not an operation and maintenance standard, and the provisions of Report #3 quoted by Staff specify the condition of an orifice plate at the time it is installed. (IP RB at 17-18)

IP also asserts the Company added instrumentation to electronically measure and perform the computation of withdrawal volumes, which improved measurement accuracy. (IP RB at 18)

Regarding Staff's argument that IP ignored the recommendations of Peterson Engineering, IP responds that the Peterson metering review was not issued until late 1999. (IP RB at 19)

According to IP, the Company did not ignore the orifice meters, and did in fact conduct an annual inspection and maintenance procedure for the orifice meters. (IP IB at 38-39; IP RB at 19; AmerenIP Ex. 3.0 at 33)

In its 7/8/10 response, page 25, IP cites "additional evidence on the impact of IP not discovering the Hillsboro withdrawal meter orifice plate problem sooner." IP states that IP witnesses Hood and Kempainen provided testimony in Docket 05-0743, including the passage below, which they did not provide in Dockets 03-0699 and 04-0677, to rebut Staff witness Lounsberry's argument that if IP had discovered the Hillsboro withdrawal meter orifice plate problem sooner than 2000, IP likely could have determined the true extent of the Hillsboro main plant injection metering error when it was discovered in 1999. This topic is related, in part, to the issue concerning the basis and reasonableness of the estimate of the cumulative amount of the injection metering over-registration that IP did make in 2000.

The IP witnesses stated, in part, "[T]here is no basis for Mr. Lounsberry's assertion ... that had IP found and corrected the orifice plate problem sooner, this would have allowed the Company the opportunity at the time of the Peterson report 'to concentrate on the true magnitude of the injection metering error, instead of having the

opportunity to reach a conclusion based on unfounded assumptions that the injection and withdrawal metering errors basically offset one another.” They added, “The Company did not simply ‘assume’ that the injection and withdrawal metering errors offset each other; rather, independent determinations were made of the extent of each error.” (IP 7/8/10 response at 25, citing AmerenIP Ex. 3.0 at. 41)

In its 7/29/10 reply, page 13, **Staff** stands by its assertion that had IP found the Hillsboro withdrawal meter orifice plate problem sooner than 2000, IP likely could have determined the true extent of the Hillsboro main plant injection meter error when it was discovered in 1999. Staff states, “As in Docket Nos. 03-0699 and 04-0677, the case involves differences of opinion between experts and the record was sufficient for the Commission to reach the conclusions it reached in the preceding dockets and the same is true in this proceeding.” (*Id.*)

3. Withdrawal Volumes

As in the two preceding PGA dockets, Staff asserts that the volume of gas a utility withdraws from a storage field during the year provides an indication of the volume of top gas that is maintained by the field, and as such, IP’s actual operating experience with the field should have provided clues to the utility that it was experiencing an inventory problem. (Staff IB at 25-26)

According to Staff, with the pre-expansion field, the Company expected to cycle 3.1 Bcf in a normal winter, and the Company had the opportunity to observe that the working gas volumes in the reservoir had declined to below the pre-expansion volume of 3.1 Bcf, even though the number of injection/withdrawal (“I/W”) wells at the field increased from five to 14 and that the total volume of gas in the field (sum of working gas and base gas) went from 10.2 Bcf to 21.7 Bcf. (*Id.*; Staff Ex. 2.00 at 40-42)

The last year the Company was able to cycle a gas volume in excess of 3.1 Bcf was the winter season of 1998/1999 when about 4.1 Bcf of gas was cycled. The Hillsboro storage field for the following two winter seasons, 1999/2000 and 2000/2001, cycled only 3.0 Bcf and 2.9 Bcf, respectively, of its inventory. Staff asserts that the Company failed to act upon this information and instead waited until 2003 to start returning the inventory shortfall, which Staff considers to be a missed opportunity to identify the inventory problem and return the gas to the field in a timely fashion. (Staff IB at 25-26)

In response, **IP** claims the fact that the Company could not withdraw as much gas as it had withdrawn prior to expanding the Field did not tell the Company what the source of the problem was. (IP IB at 43-44; IP RB at 22) To the contrary, IP argues, withdrawing less gas than the pre-expansion withdrawal volumes was consistent with the occurrence of a breach in the underground reservoir during the expansion process causing injected gas to be lost off-structure (as well as other possible causes for the “inventory shortfall”). IP adds, “Nor did this observation indicate it would be prudent for the Company to being reinjecting significant amounts of replacement inventory while the possibility of structural or reservoir causes for the deliverability decline still existed and were being investigated.” (IP RB at 22)

4. Other Actions

Staff also reviewed the information and basis relied upon by the Company to support conducting the vertical seismic survey, or vertical seismic profile (“VSP”), in 1997 at the Hillsboro storage field. This information, Staff states, indicated that the purpose of the VSP was to determine the feasibility of a 3D seismic survey for optimizing gas storage reservoir operations and future field expansion. Further, in a Company letter to the Gas Research Institute (“GRI”) regarding the VSP, the Company sought to have GRI consider funding a portion or all of the cost of the “proposed preliminary experimental work”. (Staff IB at 27; Staff Ex. 4.00 at 23)

Staff states that the first written acknowledgement of deliverability problems at the Hillsboro storage field came from documentation, associated with the 1998 3-D seismic survey, which indicated that the 1998 3-D seismic survey at Hillsboro was conducted to optimize both future expansion and current reservoir operations which did not meet the design criteria for annual withdrawal volume. Further, Staff asserts, these documents indicate that one of the benefits associated with doing this study is that the Company avoids having to inject 3 Bcf of base gas to regain the 7.6 Bcf in annual deliverability. (Staff IB at 27)

In Staff’s view, this information indicates that the Company was using an experimental method to review the Hillsboro storage field and the initial basis for doing so was not necessarily to investigate the deliverability problems that the field was experiencing. Further, Staff states, the Company already recognized in 1998 the potential need to return inventory to the field in order to return it to its rated deliverability, but instead of replacing or adding any inventory, the Company waited another five years before it injected any additional gas into the Hillsboro storage field. In short, Staff argues, had the Company detected the large inventory shortfall in a timely fashion, the Company should have begun replacement of the gas shortly thereafter. (*Id.* at 27-28)

In response, **IP** states, in part, that IP witnesses Hood and Kemppainen explained in their testimony that the purpose of conducting the VSP was “to evaluate whether conducting a three-dimensional (‘3-D’) seismic profile of the Field would be a viable approach to defining the structure of the Field.” (IP IR at 23-24; AmerenIP Ex. 3.0 at 8) In IP’s view, the activities described in AmerenIP Exhibit 3.3 were relevant areas of inquiry to investigate the deliverability problems that had arisen subsequent to the expansion of the Field and that could have resulted from the activities that had been undertaken to expand the capacity of the underground reservoir.

The bottom-line point, IP states, is that the Company suspected, with good basis, that the deliverability performance of the recently-expanded Field was being impacted by a structural problem with the reservoir, and the Company needed the type of information a 3-D seismic analysis could provide on the shape and characteristics of the underground structure and the gas bubble in order to fully investigate this possibility. (IP RB at 25) Therefore, the Company first commissioned performance of a VSP in order to determine if a 3-D seismic analysis could in fact be used effectively to determine

structural characteristics of the underground reservoir. (AmerenIP Exs. 3.0 at 8-9 and 3.2 at 19-20)

Regarding Staff's reference to the description of VSP as "proposed preliminary experimental work", IP submits that the VSP was in fact "preliminary work" in that it was a feasibility tool to determine if a 3-D seismic analysis would be a viable technique for obtaining structural information on the HSF underground reservoir. (AmerenIP Ex. 3.2, at 20) With respect to the reference to the VSP as "experimental", IP states, using the VSP and the 3-D seismic techniques for underground gas storage reservoirs was innovative and state-of-the-art at the time. (IP RB at 25-26)

In response to Staff's comment about the benefit of avoiding having to inject 3 Bcf of base gas to regain the 7.6 Bcf in annual deliverability, IP asserts that if the migrating gas could be located, it would be possible to drill additional wells to access this gas, and thus replacement of the lost gas would not be necessary. (IP IB at 16-17; IP RB at 28-29) According to IP, the 3-D seismic survey would provide a better image of the underground structure, and could thereby enable the Company to determine if in fact there were previously-unidentified substructures to which gas had migrated, and from which it could be accessed.

B. Overall Storage Concerns

As in the earlier PGA dockets, 03-0699 and 04-0677, Staff also addressed several overall concerns regarding the manner that the Company has operated its natural gas storage fields in the recent past. Staff considered these concerns relevant to the prudence of the Company's actions because the Company has the responsibility to maintain the capabilities of its storage facilities. In Staff's view, these storage concerns indicate that the Company has failed in that responsibility. Staff believes these concerns also indicate that the Company's actions, or lack thereof, exacerbated or contributed to the problems faced at the Hillsboro storage field, and as such, has a bearing on the prudence of the Company's actions within the instant proceeding. (Staff IB at 28)

In particular, Staff again addressed four areas for concern regarding the Company's storage operations, which are identified below.

1. Reduction in Peak Day Capacity

Staff testified that the Hillsboro storage field was rated at 125,000 Mcf/day until it was reduced to 100,000 Mcf/day in the fall of 1999, and not returned to the 125,000 Mcf/day capacity rating in the fall of 2003. The Company had also reduced the peak day capacity rating of the Shanghai storage field by 25,000 Mcf/day for the winter season of 2001-2002. (Staff IB at 29; Staff Ex. 2.00 at 45)

According to Staff, the reduction of the peak day capacity at a storage field is a rare event. Staff witness Mr. Lounsberry said IP was the only storage field operator in the state to experience problems to such a degree that it needed to reduce the peak day capacity rating at its two largest storage fields. Staff believes IP's reduction of the

peak day ratings at its two largest storage fields reflects negatively on its management or oversight over those facilities. (Staff IB at 29; Staff Ex. 2.0 at 45-46)

Staff also stated that there is a difference between a decline in an individual storage well deliverability and the overall deliverability of a storage field. For example, Staff noted that the Company had provided information that indicated two wells at the Hillsboro storage field were not productive during the 1995-1996 heating season; however, the Company did not reduce the peak day rating of the storage field until 1999. Obviously, Staff argues, the combined output for the remaining wells at Hillsboro more than made up for the shortfall caused by the other two during the interim. To Staff this indicates that surplus deliverability capacity exists when all of the wells within a storage field are considered.

In response, **IP** asserts that deliverability decline has been reported to be the most common problem experienced by operators in the gas storage industry. (IP IB at 56; IP RB at 30)

AmerenIP witness Mr. Hower stated the most frequent cause was gas leaks or gas losses across faults or through fractures in the reservoir rock, resulting in a permanent loss of gas and an unwanted migration of gas into non-storage areas. (AmerenIP Ex. 5.1 at 6-7) Further, IP asserts, neither Mr. Hower's own professional experience nor the overall experience of the gas storage industry as reported by the U.S. Department of Energy ("DOE") is specific to a decline in performance in individual wells. To the contrary, IP argues, the DOE data is based on declines in deliverability of gas storage reservoirs, and in Mr. Hower's professional experience the causes of the deliverability declines have proven to be overall loss of inventory through leakage or migration from the structure, not problems at individual wells. (IP RB at 30)

IP further addresses Shanghai Storage Field deliverability problems in Section IV.E of its 7/8/10 response. According to IP, a principal component of Staff's argument and the Commission's conclusions in Dockets 03-0699 and 04-0677 -- that IP was imprudent in not discovering the cause of the Hillsboro deliverability problems before 2003 -- was that IP had earlier experienced a deliverability problem at its Shanghai Storage Field. (IP 7/8/10 response at 25) Additionally, IP asserts, the Appellate Court also relied on what it stated were similarities between the Shanghai and Hillsboro deliverability problems and between metering errors that occurred at each storage field, and that these "key points" relied upon by the Court are not supported by the record in Docket 05-0743. (IP 7/8/10 response at 13-14)

In Docket 05-0743, IP presented additional evidence intended to show that the causes of the deliverability problems that had been experienced at the Shanghai Storage Field were different from the cause of the Hillsboro deliverability problem. Passages of such testimony by Mr. Shipp are contained in IP's 7/8/10 response. IP argues on pages 26-27:

As the quoted testimony explains, Shanghai experienced a reduction in its peak day deliverability rating for one winter season, but unlike Hillsboro, did not experience a reduction in the amount of inventory that could be

cycled and withdrawn over the course of a winter season. Also, in the instant Docket, 05-0743, which pertains to the year 2005, AmerenIP's gas costs were not impacted by a reduction of Hillsboro's peak day capacity, because Hillsboro's peak day capacity was restored to its full value by the start of the 2003-2004 winter season. (citation omitted)

IP also quotes "new testimony" from Mr. Shipp in Docket 05-0743 "specifically about the causes of the metering errors that had occurred at Shanghai (which was not a cause of the one-season peak day deliverability reduction) and Hillsboro, to show that the metering errors occurring at the two storage fields had completely different causes." (IP 7/8/10 response at 27-28) He stated in part that "the metering error at Shanghai was not the cause of the temporary reduction in the peak day deliverability of the Shanghai Storage Field"; that "the cause of the injection metering error at Shanghai was completely different from the cause of the injection metering error at Hillsboro"; that at Shanghai "the error occurred because the incorrect K-factor constant was programmed for the gear ratio of the meter"; and that "at Hillsboro unlike Shanghai there was no easy way to calculate the amount of the injection metering error." (AmerenIP Ex. 2.12 at 5-6)

In its 7/29/10 reply, pages 13-15, **Staff** asserts that the records in the three PGA dockets are substantially similar with respect to this issue. Staff's position remained unchanged and Staff believes the same conclusions would be supported by the record in Docket No. 05-0743. (Staff 7/29/10 reply at 9-10)

Staff states that it "never disputed there were differences between the cases." (*Id.* at 9) In each proceeding, Mr. Lounsberry made the following statement:

There are factual differences between the adjustment advocated in regards to the Shanghai storage field in Docket No. 01-0701 and the adjustment offered in this docket. The context for the reductions of peak day capacity ratings of the two storage fields was different. For those reasons and given the additional detail discussed in the instant proceeding I consider it relevant information and an appropriate adjustment for this proceeding. (citations omitted)

Staff says it was not advocating that the deliverability problems at Hillsboro and Shanghai were identical. The Commission referenced and had available to it the 01-0701 Order that detailed the Shanghai reduction in deliverability issue when it issued the Docket No. 03-0699 Order. In Staff's view, "Since Staff never argued and the Commission never concluded that the deliverability problems at the two storage fields were identical, the additional evidence that IP provided in Docket No. 05-0743 does not affect Staff's argument or the Commission's ability to accept it." (Staff 7/29/10 reply at 14-15)

2. Reductions in Supervisory and Technical Personnel

Staff states that the Company significantly reduced the number of storage field supervisors from three or four supervisors from 1991 through November of 1995 to two

persons at the end of 1995 and finally dropping to one person at the beginning of 2000. (Staff IB at 30-31; Staff Ex. 2.00 at 47-48)

From 1995 through early 2000, Staff states, IP implemented a review of its storage field operations, and determined that its storage field operations could be conducted in a safe, reliable and efficient manner with one supervisor and by modifying the responsibilities of the operators and changing work practices. IP's decision to reduce storage staffing was not limited to the supervisory ranks. During the early 1990's, IP had three engineers and one geologist whose responsibility was the storage fields. (Staff Ex. 2.00 at 49) Shortly after the Hillsboro storage field expansion in 1993, the number of engineers dropped to two and then dropped to one in 1996, and the geologist retired in 2001.

Staff failed to see how any of the information provided by the Company supported the need to significantly reduce the number of supervisory and technical oversight personnel associated with the Company's storage field operations. (Staff IB at 32; Staff Ex. 4.00 at 32-33) Further, Staff opined that the Company's specific examples for retirements may indicate a reduction in workload, but any reductions would likely have been minimal. (Staff 7/29/10 reply at 15-17) Finally, Staff indicated that it expected one of the functions of technical personnel was to ensure compliance with various applicable codes and that since the Company maintained propane facilities through 2000, that function remained, but most of the personnel reductions occurred much earlier.

Staff states that in Docket No. 04-0294, (merger of Ameren and IP, collectively "Applicants"), the issue of adequate oversight of gas storage fields was also raised. The Applicants' testimony indicated that due to the concerns raised by Staff in Docket No. 01-0701 and in the merger proceeding, Ameren would, upon merger closing, establish a manager level position to lead its storage operation and would within six months of closing add additional engineering and supervisory personnel who will focus on storage activities and responsibilities. This testimony also indicated that these personnel would be in addition to the existing storage personnel from the combined companies. (Staff IB at 32-33; Staff 7/29/10 reply at 15-17, citing Staff Ex. 2.00 at 49-50)

Staff notes that in the current proceeding, IP indicated that the Applicants' testimony from Docket No. 04-0294 did not specifically state any agreement or sharing of the Staff's concerns related to the staffing of IP's storage facilities. Instead, IP asserts, Ameren's evaluation was based on the staffing of IP's storage facilities in 2004 and of the management and staff needs for the entire Ameren storage field operation when IP's storage operations were integrated with those of the existing Ameren companies. (Staff IB at 33)

Staff responded that of the 12 company-owned storage fields in Illinois, seven were IP fields. Staff also considers it significant that Ameren was adding a manager position as well as supervisory and engineering personnel to oversee these fields, in addition to what was on hand from the existing personnel. (Staff IB at 33; Staff 7/29/10 reply at 16-17, citing Staff Ex. 4.00 at 33-34) Staff views the recognition that additional

supervisory and technical personnel were needed as corroboration of its position that the number of supervisory and technical personnel maintained by the Company was insufficient to operate its storage fields in a prudent fashion.

According to Staff, the facts “do not explain why the Company did not discover its problems at its various fields earlier or why the Company is the only Illinois utility experiencing these significant storage field operating problems.” (Staff 7/29/10 reply at 17, citing Staff Ex. 2.00 at 45-46) Staff emphasizes that the Company had just completed the expansion of the Hillsboro storage field in 1993, when it decided to reduce the number of supervisory and technical oversight over all of its storage fields while at the same time to adding more responsibility to the remaining storage supervisor. Staff contends that there is a correlation between the personnel reductions and the problems that the Company began to experience at its storage field and its inability to conduct thorough root cause analyses resulting in the Company’s decision to reduce the peak day capacity at two of its largest storage fields.

IP responded that that the total staffing at the storage fields over the period analyzed by Staff was reduced only from 19 to 17, that new foreman positions were created, that throughout this period the Company continued to have a manager of the storage fields who was responsible for all the fields, and that the Company made use of external consultants and contractors where needed for special studies or projects. (IP IB at 57-59; IP RB at 31)

IP says considerable additional testimony was presented in Docket 05-0743 on the level of IP’s supervisory and technical personnel and other operation and maintenance resources in its storage field operations over the time period in question. In its 7/8/10 response, pages 29-32, IP quotes portions of such testimony from IP witnesses Hood and Kemppainen, and IP witness Kevin Shipp who presented the results of this review.

Based on this analysis, IP asserts, “Messrs. Hood and Kemppainen testified in Docket 05-0743, in testimony that was not provided in Dockets 03-0699 and 04-0677, that ‘the analysis of organizational records presented by Mr. Shipp shows that IP had sufficient management, technical and supervisory personnel involved in its storage field operations throughout the time period that is being discussed in this case.’” (IP 7/8/10 response at 32, citing AmerenIP Ex. 3.0 at 55)

Further, in “new” testimony in Docket 05-0743, IP witness Shipp described the gas facilities retirements that IP implemented from 1995 to 2001, which, IP states, reduced the scope of the facilities for which the IP storage fields technical staff was responsible. He also identified additional programmatic changes implemented by IP during this period that reduced the duties of the gas storage field supervisors and thus enabled IP to reduce the number of supervisors. (IP 7/8/10 response at 32-33)

IP also quotes new testimony from Mr. Shipp in Docket 05-0743 disputing Mr. Lounsberry’s assertions that IP had significantly reduced the numbers of supervisors and technical personnel in its storage field operations. (IP RB at 32; IP 7/8/10 response at 35-36)

In its filings, IP also quotes new testimony from Mr. Shipp disputing Staff witness Lounsberry's contention that the IP gas storage field supervisor had also been assigned additional responsibilities outside the storage fields during the period in question. (IP RB at 32; IP 7/8/10 response at 33-34) According to IP, during the time period from the early 1990s through 2005, at no time did the storage field supervisor having direct responsibility for the daily operations and activities at the storage fields also have the responsibility to supervise the gas control/dispatch function of the Company. (IP RB at 32)

IP also quotes new testimony from AmerenIP witnesses Hood and Kemppainen responding to Staff witness Lounsberry's assertion that IP had failed to accurately estimate the amount of the Hillsboro main plant injection metering over-registration in 2000 due to "lack of supervisory and technical personnel." In their view, involvement of additional technical and supervisory personnel would not have produced more information. (IP 7/8/10 response at 34-35)

3. Capital Expenditures

On this issue, the evidence in Dockets 05-0743 is essentially the same as in 03-0699 and 04-0677.

According to **Staff**, the Company's capital expenditure budget for storage operations indicated a significant drop in the amount of money being allocated. The Staff witness testified that the capital expenditure amounts for storage projects for the years 2002 through 2004 combined were less than the amount that the Company spent in either 2000 or in 2001, and that the years 2002, 2003, and 2004 account for three of the four lowest capital expenditure levels for gas underground storage plant for the Company since 1995. (Staff IB at 34; Staff Ex. 2.00 at 50)

In Staff's view, this information is indicative of the Company's being reactive rather than proactive when determining when to make upgrades or other improvements at its storage fields. (Staff IB at 34; Staff 7/29/10 reply at 18) A potential reason for a utility to behave in this fashion, Staff argues, is that a utility will not earn a return on its investments for improvements or upgrades at its storage facilities until it requests and receives a natural gas rate increase from the Commission. In contrast, increased gas supply costs, unless deemed imprudently incurred, are automatically passed through to customers through the PGA. So, Staff reasons, the Company could attempt to increase its gas operations profitability by reducing the amounts spent on its capital expenditures for its storage operations.

Staff asserts that this concern is also consistent with information Staff received from an outside resource in a "due diligence" report. (Staff IB at 35; Staff Ex. 2.00 at 51) According to Staff, even though IP's witness indicated he was not aware of any requested storage capital project being turned down, an outside source indicated that storage projects were not being considered. Staff believes its position recognizes the distinction between never denying a project and never asking for approval of a project. Staff's review led it to conclude it was not a coincidence that IP's reduced capital

expenditures levels occurred at same time as when the Company experienced problems at its two largest storage fields. (Staff 7/29/10 reply at 18)

In response, **IP** asserts that Staff has failed to identify any capital projects Staff believes the Company should have undertaken, but did not, either specifically related to the HSF deliverability decline or to other aspects of storage field operations. (IP IB at 64-68; IP RB at 35-36)

IP further states that it responded in each case by showing, among other things, that its year-to-year capital expenditures fluctuated based on whether or not a major capital project or projects were conducted in a particular year, and that capital expenditures were lower in 2002-2004 because a number of major capital improvements and upgrades had been completed at the storage fields over several preceding years. IP cites Mr. Shipp's testimony, "During my tenure in the Gas Supply department at IP (August 2001 through October 2004) I was involved in four budgeting cycles and during that period the storage fields never had a requested project rejected by management due to capital budget limitations." (IP 7/8/10 response at 38-39; AmerenIP Ex. 2.3 at 23-27; AmerenIP Ex. 2.7)

In IP's view, the Commission should reject any contention that IP's storage field capital expenditures in 2002-2004 are evidence that IP was imprudent in its management and investigation of the Hillsboro deliverability problem "because Docket 05-0743 is the third consecutive Gas Charge reconciliation case in which Staff witness Lounsberry responded to IP's detailed evidence on this point by stating that he could not dispute IP's testimony because he did not possess any detailed information concerning IP's gas storage budgeting procedures." (IP 7/8/10 response at 39)

IP believes Staff had ample opportunity over the course of these three cases to propound discovery to IP to obtain the information it needed to provide a substantive evidentiary response to IP's evidence on this topic, but failed to do so. In IP's view, "the Commission should accept AmerenIP's evidence on this topic as persuasive (and substantively un rebutted), and reject Staff's position that IP's levels of storage field capital expenditures in 2002-2004 are evidence that IP was imprudent in its management and investigation of the Hillsboro Storage Field deliverability issues." (*Id.* at 39-40)

In its reply brief, IP also responds to Staff's assertions, noted above, regarding information Staff received from an outside resource in a "due diligence" report prepared by Ameren Corporation during its negotiations to acquire Illinois Power, which Staff obtained in discovery in Docket 04-0294. AmerenIP witness Scott Glaeser, who was part of Ameren's acquisition team that was responsible for performing due diligence during Ameren's investigation and negotiations concerning the possible acquisition of Illinois Power, testified in Docket 05-0743 that the detailed integration activities have uncovered no evidence that Illinois Power's capital spending at its storage fields has been inadequate. (IP RB at 35-37)

IP also asserts that if Staff's argument concerning IP's storage field capital expenditures is rejected, such rejection would further undercut the Commission's

conclusion in its Docket 03-0699 Order, which it repeated in its Docket 04-0677 Order, that IP had repeatedly failed to properly operate and manage its gas storage fields in a prudent manner, and that there had been a “lack of oversight and attention that constitutes imprudent operation and management.” (IP 7/8/10 response at 39-40) According to IP, it also undercuts the support for the Commission’s conclusions in its Docket 03-0699 Order, which it adopted for purposes of its Docket 04-0677 Order. (*Id.*)

In response, **Staff** asserts, “IP’s arguments on this topic are not new and should not require any change to the Commission’s prior conclusion.” (Staff 7/29/10 reply at 18)

4. Identification of Problems

In Docket 05-0743, as in Dockets 03-0699 and 04-0677, Staff expressed concerns about the Company’s purported inability to identify and correct various problems associated with its storage fields, which, Staff contends, contributed significantly to the Company’s inability to adequately maintain its Hillsboro storage facility. (Staff IB at 36) Staff states that the following scenarios are representative of the Company’s inability to identify problems: (1) IP’s investigation into an incident on December 16, 2000, that completely shut down the storage field for a short time and further reduced its peak day capacity for about one month after the accident; and (2) IP’s ability to track its gas usage.

a. Hillsboro Incident

Staff states that on December 16, 2000, the Company was forced to shut down its Hillsboro storage field because a produced water tank at the field exploded, launched 275 feet, and landed on the field’s regulator building causing extensive damage. As a result of the explosion the Company hired Packer Engineering (“Packer”) to conduct an investigation into the incident to determine, if possible, the origin and cause of the explosion. Packer issued a report (“Packer Report”) on February 14, 2001, regarding its investigation. (Staff IB at 36; Staff Ex. 2.00 at 53-55)

Staff’s review of this event led to the conclusion by Staff that the Company failed to properly investigate the “root cause” of the problems it faced at the Hillsboro storage field. In particular, Staff stated that after the incident, it took five months of prompting by Staff for the Company to determine the produced water tank should have had sufficient relief capacity to vent pressurized gas once it entered the produced water tank from the separator. Staff concluded that the Company’s inability to make this basic discovery was a reflection of the poor management oversight by the Company over the safe, reliable, and efficient operation of its storage fields. (Staff IB at 37)

In other words, Staff submits, IP did not follow up with any review to determine what set of events allowed or caused the separator to release high pressure gas into the produced water tank in the first place. Further, Staff stated, the last word on this incident from IP is that the contributing factors “are still being investigated.” Staff adds, “More than 5 years have passed, yet IP still has not established a position on what caused the over-pressurization.” (*Id.* at 38; Staff 7/29/10 reply at 19)

One of the purposes of the root cause analysis, Staff argues, is to enable the Company to avoid similar accidents in the future. IP has not completed the root cause analysis and as a result, Staff submits, there remains the possibility that the episode could be repeated. Staff considered this incident as illustrative of IP's failure to conduct a root cause analysis during the same time period that it failed to recognize that the inventory shortfall was the primary problem at the Hillsboro storage field. (*Id.* at 38; Staff 7/29/10 reply at 19-20)

In its testimony, briefs and 7/8/10 response, IP disputes Staff's position. IP states, in part, "Another prong of Staff's argument in all three dockets, that IP was imprudent in its management and investigation of the Hillsboro deliverability issues was its contention that IP's handling of a December 2000 incident at Hillsboro, involving a produced water tank that became over-pressurized, showed that IP did not conduct proper root cause analyses." (IP 7/8/10 response at 40-41) The testimony on this topic focused on the sufficiency of IP's corrective actions taken in response to the December 2000 incident. In Docket 05-0743, evidence was presented concerning IP's response to and corrective actions for the December 2000 Hillsboro incident that was not presented in Docket 03-0699 or Docket 04-0677.

Specifically, IP asserts, IP witnesses Hood and Kemppainen stated in Docket 05-0743 that the replacement water tank had not experienced an over-pressure condition after implementation of IP's corrective actions to prevent re-occurrence of another over-pressurization situation, thereby further demonstrating the effectiveness and appropriateness of IP's corrective actions for the December 2000 occurrence. (IP 7/8/10 response at 41; AmerenIP Ex. 3.0 at 54) The IP witnesses also summarized, in new testimony in Docket 05-0743, why Staff's criticisms of IP's handling and investigation of the December 2000 Hillsboro incident were unwarranted in their view. Among other things, they testified, "In the specific case of the December 2000 Hillsboro incident, IP hired a highly-qualified outside forensic engineering consulting firm to investigate the incident immediately after the occurrence; and IP implemented extensive corrective and preventative actions to keep such an incident from occurring again." (IP 7/8/10 response at 41; AmerenIP Ex. 3.0 at 55)

They further testified that "IP looked at the entire produced water collection system which includes both plant separators, the 12 well head units, and the water flow path into the storage tank" and that "IP relied in large part on the investigation and recommendations of a qualified outside consultant, Packer Engineering, whose qualifications and expertise for this assignment have not been questioned." (IP 7/8/10 reply at 41-42; AmerenIP Ex. 3.2 at 31-32)

IP also states, AmerenIP witnesses Hood and Kemppainen responded to Staff witness Lounsberry's testimony in Docket 05-0743 "in which Mr. Lounsberry, for the first time in the three dockets, questioned the coverage and sufficiency of the report prepared by the Commission's Office of Pipeline Safety ('OPS') on the December 2000 Hillsboro incident (in all three dockets, IP had pointed out that the OPS Report noted the root cause of the incident as determined by IP's forensic engineering consultant, Packer Engineering; did not question or criticize the adequacy or completeness of IP's investigation of the December 2000 incident; and did not criticize the adequacy or

completeness of IP's corrective actions in response to the incident)..." (IP 7/8/10 response at 42)

The IP witnesses stated, in part, that "a review of the complete OPS Incident Report (AmerenIP Exhibit 3.1, provided with our rebuttal testimony) shows that the OPS fully took the produced water tank into account in its incident investigation and analysis." They added, "Finally, we reiterate, as we stated above, that IP's corrective actions fully address the possibility that the root cause of the Hillsboro incident was that bubbling of the high pressure gas up through the water in the tank caused splashing and foaming which caused ice to form on the cold interior walls of the tank and seal off the manway and the 6 inch vent, thereby leading to the overpressurization of the tank." (IP 7/8/10 response at 42-43, citing AmerenIP Ex. 3.2 at 32)

IP also stated that in Docket 05-0743, Mr. Lounsberry testified "for the first time" that "to the best of my knowledge, no one from Staff has criticized the Company's corrective actions that resulted from the Hillsboro Incident." (IP 7/8/10 response at 43, citing Staff Ex. 4.00 at 39)

IP also argues that the additional evidence presented in Docket 05-0743 on IP's investigation of and corrective actions for the December 2000 Hillsboro incident further undercuts the support for the Commission's findings and conclusions in its Docket 03-0699 Order, which it repeated in its Docket 04-0677 Order, that IP had repeatedly failed to properly operate and manage its gas storage fields in a prudent manner. (IP 7/9/10 response at 43-44)

According to **Staff**, "Although IP presented some additional testimony on this issue in Docket 05-0743, Staff does not find the additional testimony or arguments persuasive and does not agree that a different Commission conclusion is warranted." (Staff 7/29/10 reply at 20) Other arguments in Staff's 7/29/10 reply on this issue are noted above.

b. Gas Dispatch Tracking

As in the prior dockets, Staff expressed a concern "with the fact that the Company's storage fields mis-measured a significant amount of gas for an extended period of time, yet the Company's dispatch facility failed to notice the variance." (Staff IB at 38) The Company tracks the volume of gas received from the pipelines through its SCADA/EMS systems. The Company noted it tracks about 95-98% of the total gas it receives from the pipelines through this system.

Staff's concern was that even through the Company experienced some significant measurement errors, which primarily occur during the injection months when gas usage is the lowest, its load forecasting and dispatch group failed to notice an extra Bcf, on average, of gas entering its system every year for six years. Staff regards this is another example of the Company's failure to adequately oversee its operations. (Staff IB at 39)

The 4,000 Mcf/day error alleged by the Company is roughly equivalent to 40,000 therms/day, which, Staff asserts, means that the Company during the summer months was seeing a customer load forecasting error for its customers in excess of 13%. Staff expects a utility to be aware of errors of that magnitude regarding its forecasting and dispatch. (Staff IB at 39-40; Staff Ex. 2.00 at 65-66)

Further, Staff considers the Company's example of the 4,000 Mcf/day value to be an understatement. Staff believes the average daily error on Hillsboro injection readings would exceed 8,000 Mcf/day reflecting a potential error in excess of 27%. (Staff IB at 40-41)

Staff also states that IP had the potential to back out of its daily deliveries everything except its sales customers usage, meaning IP then had the opportunity to observe, if it had been looking, a 27% error between its sales customer's forecasted use and actual deliveries. (Staff IB at 41)

In response to this argument, **IP** states, in part, that the gas dispatchers cannot know the system usage on a daily basis because of the system supply (sales) customers, which comprise the vast majority of the end users on AmerenIP's system, not the transportation customers, and if the Company removed the transportation volumes from its daily receipts, it still would not know the actual usage of its sales customers for each day. (IP RB at 43)

As explained in its filings, IP also disputes other elements of the Staff position. IP states that the annual and total estimated "measurement error" shown in Table 2 on page 39 of Staff's initial brief, which Staff contends the Company should have noticed through its gas dispatch facility, is the same estimated injection meter over-registration and HSF inventory depletion that, in Docket 04-0476, Staff criticized as, and the Commission found to be, inaccurate and unreliable. (IP RB at 40)

IP also asserts that the use of the estimated amount of metering error for each year, and the contention that the Company should have been able to detect this amount of additional gas entering its distribution system, were entirely creations by the Staff witness. (IP RB at 41)

IP claims Staff's calculation of a 13% load forecasting error is inaccurate, in part because the total load on the Company's system was lower in 2003 than it was during the 1994-199 period. (*Id.*)

IP argues that Staff calculation of an error of 27% is even more flawed, in part because the Company's total system throughput in 1994 was almost 100,000,000 therms higher than it was in 2003. (IP RB at 42)

IP also states that there was testimony presented in Docket 05-0743 that was not in the record in the previous two PGA cases, on the "Gas Dispatch Tracking" issue raised by Staff. (IP 7/8/10 response at 44-45) Specifically, IP quotes new testimony by IP witness Shipp in Docket 05-0743 disputing Staff witness Lounsberry's contention that

IP should have been alerted to a metering problem on its system by a high annual Lost and Unaccounted for Gas Factor. (AmerenIP Ex. 2.12 at 17-18)

Mr. Shipp further stated, “In any event, as I explained in my previous answer, the Lost and Unaccounted for Factor during the period the metering errors at Hillsboro were occurring was impacted by the storage field injection and withdrawal data that turned out to be incorrect due to metering errors, but IP did not know at the time that the metering errors were occurring.” (IP 7/8/10 response at 44-45; Docket 05-0743, AmerenIP Ex. 2.12 at 17-18)

In response, **Staff** asserts, “IP does not explain why this additional testimony was important.” (Staff 7/29/10 reply at 20) Staff does not dispute IP’s claim that additional testimony was provided on this issue, but does not see this additional information as constituting the basis for any alteration in the Commission’s prior Orders.

C. Other Issues

According to Staff, it is apparent that Ameren, prior to acquiring Illinois Power Company from Dynegy, was aware of the problems that the Company had experienced at its Hillsboro storage field, and was so concerned about the manner that the Company and Dynegy had operated the field that it included an indemnification clause in the February 2, 2004 Stock Purchase Agreement among Ameren Corporation, Illinova Generation, Illinova Generating Company and Dynegy Inc. Specifically, under Article IX INDEMNIFICATION, Section 9.1 (g), page 79, the document states, in part, the following:

any net refund of amounts under IPC’s purchased gas adjustment (“PGA”) rider ordered by the ICC, whether effected by adjustment of any PGA factor or otherwise, in any PGA reconciliation proceeding relating to any portion of the period from January 1, 2001 to December 31, 2004, to the extent that payments or PGA adjustments required to be made by IPC pursuant to such order exceed the reserve established for potential liability in such proceeding as reflected in the calculation of the Final Adjusted Working Capital; or any disallowance by the ICC of IPC’s gas costs or investment relating to events prior to the Closing at the Hillsboro gas storage field whether such disallowance shall be provided for in any PGA case (“working gas”) or in a gas rate case (“cushion gas”), but only to the extent that such disallowance is not due to any imprudence by IPC after the Closing; provided, however, that the Seller Indemnitors’ liability under this Section 9.1(g) with respect to any such refund or disallowance shall be equal to 50% of such refund or disallowance.

(Staff IB at 41-42; Staff Ex. 2.00, pp. 68-69)

Staff’s understanding is that under the indemnification clause, if the Commission determines that the Company’s actions or lack thereof regarding its Hillsboro storage field were not prudent through the end of calendar year 2004 (assuming the Company took or failed to take those actions prior to the closing of the Acquisition by Ameren),

then IP is only responsible for paying half of the prudence disallowance with the other half being paid by Dynegy. (Staff IB at 42)

IP disagrees with the Staff assessment. (IP RB at 44) IP witness Scot Glaeser stated that in light of the limitations inherent in the “due diligence” process, as well as the uncertainties associated with the outcome of litigation pending at the time of an acquisition, indemnification provisions in acquisition agreements are commonly used as a way for the parties to share or allocate the risks associated with such uncertainties. (Ameren IP Ex. 4.0 at 11) He also stated that the full indemnification provision was over seven pages long plus attachments, one of which was a 40 page list of potential litigation exposures. The indemnification covered all aspects of Illinois Power’s utility business including environmental issues, tax issues, outstanding lawsuits, and warranties and representation by the seller. Thus, IP argues, there was nothing unique about inclusion of potential PGA refunds in open reconciliation cases in the indemnification provision.

Specifically with respect to PGA reconciliation cases, IP asserts, Ameren did not believe it should bear 100% of the risk of possible disallowances in open reconciliation cases relating to prior periods when Illinois Power was not under Ameren’s control, but was “sufficiently unconcerned” about the risks associated with open PGA cases, and the Hillsboro Field in particular, that it was willing to accept a 50-50 sharing of those risks rather than insisting Dynegy bear 100% of the risks. (IP RB at 44-45)

V. COMMISSION ANALYSIS AND CONCLUSIONS

As described above, there was a significant gas measurement error at IP’s Hillsboro Storage Field during the period of November 1993 through October 1999, resulting in a large shortfall of gas inventory at the Hillsboro field. IP began replacing the inventory in 2003. According to Staff, if the Company had begun replacing the inventory shortfall in 2000 instead of 2003, it would have been fully replaced in 2004; thus, there would have been substantially more inventory volumes available for withdrawal for ratepayer use during the 2005 winter season. The unit cost of the gas IP purchased in 2005 to make up for this reduced seasonal withdrawal capacity was more expensive than the inventory replacement gas would have been, causing the Company to incur additional gas costs of \$631,515 during the reconciliation period. In Staff’s view, this amount was imprudently incurred, and should not be charged to ratepayers.

Staff states that its proposed adjustment and the position on which it is based are nearly identical to the Staff positions which were adopted by the Commission in the Company’s PGA reconciliations in Docket Nos. 03-0699 and 04-0677. In those cases, the amounts by which the cost of gas purchased in 2003 and 2004 exceeded what they would have been had IP begun replacing inventory in the 2000 injection season were found to be imprudently incurred. As noted above, the Commission’s orders in those two dockets were affirmed by the Appellate Court.

In Docket 03-0699, based on its review of the record, the Commission concluded on page 35 that “the record establishes that IP did not act prudently in connection with the investigation, identification and remediation of the declines in the deliverability of the

Hillsboro Storage Field.” More specifically, the Commission concluded that “the Company was imprudent in its operation of the Hillsboro storage field in that it: 1) failed to conduct a thorough study of the injection error at the time it was identified; 2) failed to conduct any inspections to assure that the orifice meters were working properly; 3) failed to begin returning the inventory to the field when the working gas volumes fell below the pre-expansion volume of 3.1 Bcf after the 1999-2000 winter season.”

On page 37 of its Order in Docket 03-0699, the Commission further concluded:

In summary, the Commission concludes that all things considered, AmerenIP acted imprudently in its response to the deliverability problems at the Hillsboro Storage Field and agrees with Staff that the Company should have begun replacement of the HSF inventory in 2000. AmerenIP’s repeated failures to properly operate and manage its natural gas storage fields in a prudent manner has resulted in cost increases that the Commission can no longer allow to be passed on to captive customers. While human error is inevitable, AmerenIP’s repeated failures have risen to the level of imprudence. In the Commission’s view, repeated human error demonstrates a lack of oversight and attention that constitutes imprudent operation and management of the Hillsboro Storage Field.

11: In its Order in Docket 04-0677, the Commission concluded, in part, on pages 10-

While IP continues to argue that it acted prudently, the Commission has already ruled on this issue. The only open question in this proceeding is whether IP’s imprudent action resulted in increased costs that were improperly passed along to its customers. Staff has presented two calculations; one assuming IP started replacing the HSF inventory in 2000 and the other assuming IP started replacing the HSF inventory in 2001. As the quotation of the Order [in Docket 03-0699, page 37] above shows, the Commission already found that IP should have started replacing the HSF inventory in 2000.

The Commission’s Orders in Dockets 03-0699 and 04-0677 were affirmed on appeal. Among other things, the Appellate Court “disagree[d] with Illinois Power’s assertion that it would have been imprudent to reinject the field with natural gas inventory in 2000 when working gas volumes fell below pre-expansion levels.” 382 Ill.App.3d 202-203. The Court further stated:

Thus, the Commission position that Illinois Power should have attempted to reinject the field in 2000 to test the metering corrections is not unreasonable. By waiting three more years before even attempting to begin replacement efforts, Illinois Power unnecessarily depleted the base gas volumes of the reservoir and exponentially increased the cost of injection. Based on the entire record in both proceedings, a conclusion that Illinois Power was prudent is not clearly evident. *Id.* at 203.

In its conclusion, the Court affirmed the Commission finding that Illinois Power's decision to forego reinjecting the Hillsboro storage field until 2003 was imprudent. The Court held that "the Commission orders in case No. 03-699 and case No. 04-677 are therefore affirmed." *Id.* at 205.

As noted, Staff asserts that its proposed adjustment and the position on which it is based are nearly identical to the Staff positions which were adopted by the Commission in the Company's PGA reconciliations in Docket Nos. 03-0699 and 04-0677.

In its initial brief in Docket 05-0743, pages 77-78, Illinois Power states, in part:

The record in this case is similar to (but not identical to) the record in Docket 03-0699. AmerenIP respectfully disagrees with the findings and conclusions in the Order in Docket 03-0699 to the extent the Commission adopted Staff's arguments and found the Company acted imprudently with respect to Hillsboro. AmerenIP has appealed the Commission's findings and conclusions in Docket 03-0699 to the Illinois Appellate Court. [citation omitted] Briefing on the appeal is in progress. In its evidence in the instant docket and in this brief, AmerenIP has made the same or similar arguments in opposition to the Staff recommendation as it made in Docket 03-0699 and is making in the Appellate Court proceeding.

In its Response filed July 8, 2010, however, IP argues that "key points relied on by the Appellate Court in affirming the Commission's Orders in Dockets 03-0699 and 04-0677 are not supported by the record in Docket 05-0743", and that "[t]here is significant additional and different evidence in the record of Docket 05-0743 that is material to the principal issues in the case and supports a different conclusion than that reached in Dockets 03-0699 and 04-0677." IP also argues that "in reaching its decision in this Docket, the Commission is not bound by its Orders in Dockets 03-0699 and 04-0677 or the Appellate Court Decision in those cases, but rather must reach its decision based on the record in this Docket." (IP 7/8/10 response at Sections II, III, IV)

According to Staff, "Despite IP's arduous attempts to distinguish the records, 'it remains clear that the adjustments proposed by Staff in the 2005 PGA case are based upon the same actions by IP over the same general time period'", and reflect the adverse effects of such actions or inactions on PGA costs in 2005. (Staff initial brief at 44; Staff 7/29/10 reply at 3)

Having reviewed the record in the instant case, as well as the findings in the Commission Orders in Dockets 03-0699 and 04-0677 and the decision of the Appellate Court affirming those orders, the Commission again finds that IP did not act prudently in connection with the investigation, identification and remediation of the declines in the deliverability of the Hillsboro Storage Field. The Commission again concludes, as it did in Docket 03-0699, that IP failed to conduct a thorough study of the injection error at the time it was identified and also failed to conduct inspections to assure that the orifice meters were working properly. The Commission also finds that the overall storage

concerns identified by Staff indicate that IP's actions or lack thereof contributed to the problems experienced at the Hillsboro field.

In conclusion, the Commission agrees with Staff that IP acted imprudently in its response to the deliverability problems at the Hillsboro Storage Field and should have begun replacement of the Hillsboro inventory in 2000 rather than waiting until 2003. As indicated by Staff, the gas IP purchased in 2005 to make up for this reduced seasonal withdrawal capacity was more expensive than the inventory replacement gas would have been, causing the Company to incur additional gas costs of \$631,515 during the reconciliation period. As such, this amount was imprudently incurred, and should not be charged to ratepayers.

As noted above, IP also argues that in reaching its decision in this Docket, the Commission is not bound by its Orders in Dockets 03-0699 and 04-0677 or the Appellate Court decision in those cases, but rather must reach its decision based on the record in this Docket. On this point, the Commission agrees with Staff that while the Commission may not be bound by its prior orders, it is not required to disregard or ignore its orders in prior proceedings and the Court's affirmation of them. In fact, in its Order in Docket 04-0699, which was affirmed on appeal, the Commission found, "While IP continues to argue that it acted prudently, the Commission has already ruled on this issue."

Moreover, the three PGA dockets involve more than just a similar issue or situation. Rather, the underlying question in all three dockets is the same, namely whether IP should have begun replacement of the Hillsboro inventory in 2000 rather than waiting until 2003. The dollar impact of that decision by IP, on the other hand, does vary from one reconciliation year to the next, and calculations specific to each year were provided in each docket.

As indicated above, IP also argues that "[t]here is significant additional and different evidence in the record of Docket 05-0743 that is material to the principal issues in the case and supports a different conclusion than that reached in Dockets 03-0699 and 04-0677." (IP 7/8/10 response, Sec. IV) The Commission observes that IP has thoroughly identified and discussed the items of evidence to which it refers.

According to Staff, the differences in the record cited by IP are minor, and IP has not demonstrated that the basis for Staff's recommended adjustment in this proceeding is any different than the basis for its adjustments in the 2003 or 2004 proceedings. Also, as noted by Staff, some of the "new" evidence cited by IP was actually in the record that was before the Appellate Court, and some of IP's arguments regarding new evidence are essentially criticisms of the Appellate Court's findings on "key points." Staff concludes, "Neither has IP identified any new evidence that it produced in this proceeding which result in a meaningfully different record so as to produce a different conclusion regarding the operation of the Hillsboro Storage Field." (Staff 7/29/10 reply at 4-5)

In its review, the Commission has duly considered the "additional and different evidence" cited by IP. In the Commission's view, this evidence does not support a

different outcome than is reflected in the ultimate conclusions contained above and in the Orders in Dockets 03-0699 and 04-0677, where the Commission agreed with Staff that IP acted imprudently in its response to the deliverability problems at the Hillsboro Storage Field and should have begun replacement of the Hillsboro inventory in 2000 rather than waiting until 2003. The adjustment of \$631,515 as proposed by Staff should be adopted.

VI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record, is of the opinion and finds that:

- (1) IP is a corporation engaged, among other things, in the distribution of natural gas to the public in portions of the State of Illinois and is a public utility within the meaning of the Public Utilities Act;
- (2) the Commission has jurisdiction over IP and the subject matter of this proceeding;
- (3) the statements of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact, and the conclusions contained in prefatory portion of this Order are supported by the record and are hereby adopted;
- (4) the evidence shows that for the calendar year 2005 reconciliation period, purchased gas costs in the amount of \$631,515 were not prudently incurred as explained in the prefatory portion of this Order above;
- (5) the reconciliation of the revenues collected by IP under its PGA for calendar year 2005 with the actual costs prudently incurred for the purchase of gas supply, as shown in Appendix A of Staff's initial brief and in the Appendix to this Order, should be approved;
- (6) IP should implement Factor O refunds of \$631,515 as shown on Appendix A of Staff's initial brief and in the Appendix to this Order, in the first monthly PGA filing after the entry of the Order in this proceeding.

IT IS THEREFORE ORDERED that the reconciliation of the revenues collected by Illinois Power Company under its PGA for calendar year 2005 with the actual costs prudently incurred for the purchase of gas supply, as determined above and as shown in Appendix A of Staff's initial brief and in the Appendix to this Order, is approved.

IT IS FURTHER ORDERED that Illinois Power Company shall implement Factor O refunds of \$631,515, as described above, in its first monthly PGA filing following the date of this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By proposed order of the Administrative Law Judge this 18th day of April, 2011.

Administrative Law Judge