STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AMEREN ILLINOIS COMPANY	**)**	
Proposed general increase in electric	)	Docket No. 11-0279
delivery service rates.	)	
	)	(cons.)
	)	
AMEREN ILLINOIS COMPANY	**)**	
Proposed general increase in gas delivery	)	Docket No. 11-0282
service rates.	)	

INITIAL BRIEF OF THE COMMERCIAL GROUP

I. INTRODUCTION

The Commercial Group is an ad hoc association of retail companies that own and operate retail stores within the service territory of the Ameren Illinois Company ("Ameren" or "AIC"). In this initial brief, the Commercial Group shall demonstrate that 1) the ROE proposed by AIC's witness Hevert is unreasonably high and contradicted by his own evidence; 2) the rate zone class cost of service studies should not be thrown out simply because of the timing by which they were filed; and 3) doing so would unfairly harm DS-3 ratepayers who already bear a heavy subsidy burden. The Commercial Group follows herein the brief outline adopted by the Administrative Law Judges, although it will not address every outline point. Failure to address an issue should not be construed as endorsement for any party's position.

IV. COST OF CAPITAL/RATE OF RETURN

C.4. Cost of Common Equity

Overview of Recommended Returns

The 11.0 percent return on equity ("ROE") proposed by AIC witness Hevert is unreasonably high and contradicted by his own evidence. That evidence indicates that AIC's ROE should be significantly lower than 10.3 percent.

Mr. Hevert presented at some length an analysis of how the Illinois regulatory environment compares with the regulatory environment in other states and testified that the expectations of average investors are influenced by the ROE authorized on average throughout the country. Hevert Rebuttal (ComEd Ex. 23.0), pp. 7-9; Hevert Surrebuttal (ComEd Ex. 41.0), pp. 38-40. According to Mr. Hevert, these ROEs of electric utilities have averaged approximately 10.3 percent for the period January 2008 to June 2011. Tr. 456:14-17. Mr. Hevert's proxy group (and the overall national average) contains a number of integrated generation and distribution utilities, including those facing the risk of nuclear and coal generation, such as the Southern Company. According to Standard & Poors, transmission and distribution-only utilities generally are lower risk operations than those of integrated electric utilities. *See* Gorman Direct (IIEC Ex. 3.0), p. 8, lns. 204-213, quoting Standard & Poors report on AIC ("we view the T&D businesses as lower risk than the generation businesses that are included in many fully integrated electric utilities"). Notwithstanding the fact that AIC faces none of these risks, Mr. Hevert recommended an ROE for AIC electric operations of 11.0 percent, which is 70 basis points above the national average.

So also, the other ROE witnesses in the case point out a number of other reasons for why AIC faces a lower risk than other electric utilities. For example, AIC has a lower financial risk than the electric sample (Freetly Direct [Staff Ex. 8.0], p. 25, lns. 488-490); AIC has reduced risk from Rider EUA (*Id*. at lns. 490-492); and AIC has sharply increased its equity ratio since the last rate case. Gorman Direct (IIEC Ex. 3.0), p. 13, lns. 312-319.

Accordingly, even at the high level of the average ROE analysis that Mr. Hevert presented, AIC's proposed ROE of 11.0 percent is unreasonably high. Instead, AIC as a distribution (and transmission) only utility should receive an ROE significantly below the 10.3 percent average cited by Mr. Hevert.

V. COST OF SERVICE

C.1.a. Use of Embedded Class Cost of Service Studies

The Commission has a long history of setting rates based on cost, and class cost of service studies are an important element in setting cost-based rates. Thus, in the 2007 Commonwealth Edison rate case (Docket No. 07-0566), the Commission relied on ComEd's class cost study even though parties had pointed out flaws that needed correction (or at least further review) in a subsequent rate design docket (No. 08-0532). In that 2007 ComEd rate case proceeding, Staff witness Lazare proposed an across-the-board increase because of substantive flaws alleged in the utility's class cost study. But despite noting that the ECOSS was "problematic" because of at least some of those apparent ECOSS flaws, the Commission rejected Mr. Lazare's approach, determining "that an across the board increase not only goes against movement towards cost-based rates, but would exacerbate conflict between the classes and as such is inequitable for setting rates in this proceeding." Docket No. 07-0566, Final Order (September 10, 2008), p. 213. In the current Ameren proceeding, Staff witness Lazare again proposes an across-the-board increase, but this time primarily to correct procedural flaws alleged in the utility's presentation of its class cost studies. These alleged procedural flaws provide even less of a reason than in the ComEd case for the Commission to throw out the cost studies entirely and increase class subsidy burdens.

In this proceeding, Mr. Schonhoff for AIC testified that the Commission should rely in setting rates on the class cost of service studies AIC submitted on rebuttal. Tr. 669. Those class cost studies were submitted to address substantive concerns raised by Staff in its direct case concerning the ECOSS AIC filed with its direct testimony and in its supplemental filing. Tr. 666:1-9 (Schonhoff). Mr. Stowe for IIEC also raised a number of substantive issues concerning AIC's class cost of service studies. These specific cost issues are addressed later in the brief outline. Importantly however, apart from those cost issues, Mr. Stowe testified that the class cost studies AIC submitted with its rebuttal testimony would "be a reasonable basis for setting rates in this proceeding." Tr. 735:6-14.

The main objection of Staff to the rebuttal class cost of service studies appears to be not that they are substantively faulty but that they were procedurally faulty, i.e., filed too late. Tr. 824-825 (Lazare). But by the time of the evidentiary hearings, Staff had five and a half months to review the original per zone class cost studies.[1] Staff provided comments on how those zonal ECOSSs could be improved, and AIC revised them accordingly. Staff then had an additional seven weeks before the hearing to review the three corrected ECOSSs, and appeared primarily concerned with imposing some consequences on AIC for its lateness of filing. Tr. 824:3-825:1. The Commercial Group appreciates Mr. Lazare's frustration at the timing of AIC's cost study filings. Unfortunately, however, the main practical consequence of Staff's across-the-board proposal is to punish DS-3 customers for AIC's late filing. Instead, if the Commission determines that AIC must file zonal class cost studies, the Commercial Group submits that a better way to address this timing issue would be to require that AIC file zonal class cost studies with its next rate case application or have that application rejected.

Staff witness Lazare testified that no ratepayer class should be punished for any alleged failure of the utility.

> Q. (Jenkins) Okay. To be clear, you don't recommend to the Commission that ratepayers in general or any rate class in particular should be punished for any failure by AIC to

[1] AIC filed its rate zone ECOSS's on March 24, 2011. See Staff Ex. 30.0, p. 13, line 289 (Lazare Rebuttal).

> comply with the Commission's directives or requirements, right?
>
> A. (Lazare) No.

Tr. 825:2-7. But the effect of the across-the-board proposal is to do just that. Indeed, all class cost studies performed in this case show that the DS-3 class and its primary subclass already pay more than the cost of AIC to serve the DS-3 (and primary subclass) or very close to that cost – even assuming that AIC receives its entire proposed revenue increase. *E.g.* Tr. 835 (Lazare); *see also* Section VI.C.1.b below. Therefore, throwing out the cost studies simply to change AIC's future behavior would harm DS-3 ratepayers who already are subsidizing other classes. There must be some better way to address the timing of AIC's ECOSS filings.

C.2.b. <u>Minimum Distribution System</u>

IIEC witness Stowe presented new information to demonstrate that the cost to AIC of having its wires, poles, and conduit conform minimally to National Electric Safety Code ("NESC") standards is 57.6 percent demand-related and 42.4 percent customer-related. Stowe Direct (IIEC Ex. 2.0), p. 34. AIC and Staff oppose Mr. Stowe's presentation largely on the basis that the Commission has not adopted such an analysis in the past. But at a high level, the position of AIC and Staff is extreme and counter-intuitive. According to that position, not one wire, not one pole, not one conduit on AIC's entire distribution system is in any way customer-related. Indeed, although Staff witness Lazare admits that a portion of the costs in the wire/poll/conduit accounts (364 to 367) are associated with NESC compliance, he nevertheless testifies that the costs in those accounts should be "allocated <u>solely</u> on the basis of peak demand." Tr. 840:13-18 (Lazare) *emphasis added*.

Whether the Commission should adopt Mr. Stowe's MDS analysis in its entirety and determine that a minority (42.4%) of these costs are customer-related is one issue. But what cannot possibly be supported is continuing an approach that requires that 100 percent of wire/pole/conduit cost be allocated solely on demand. There is no evidence that fluctuation in demand is the sole cause of AIC incurring all of its wire, pole, and conduit costs.

VI. REVENUE ALLOCATION

C.1. Electric

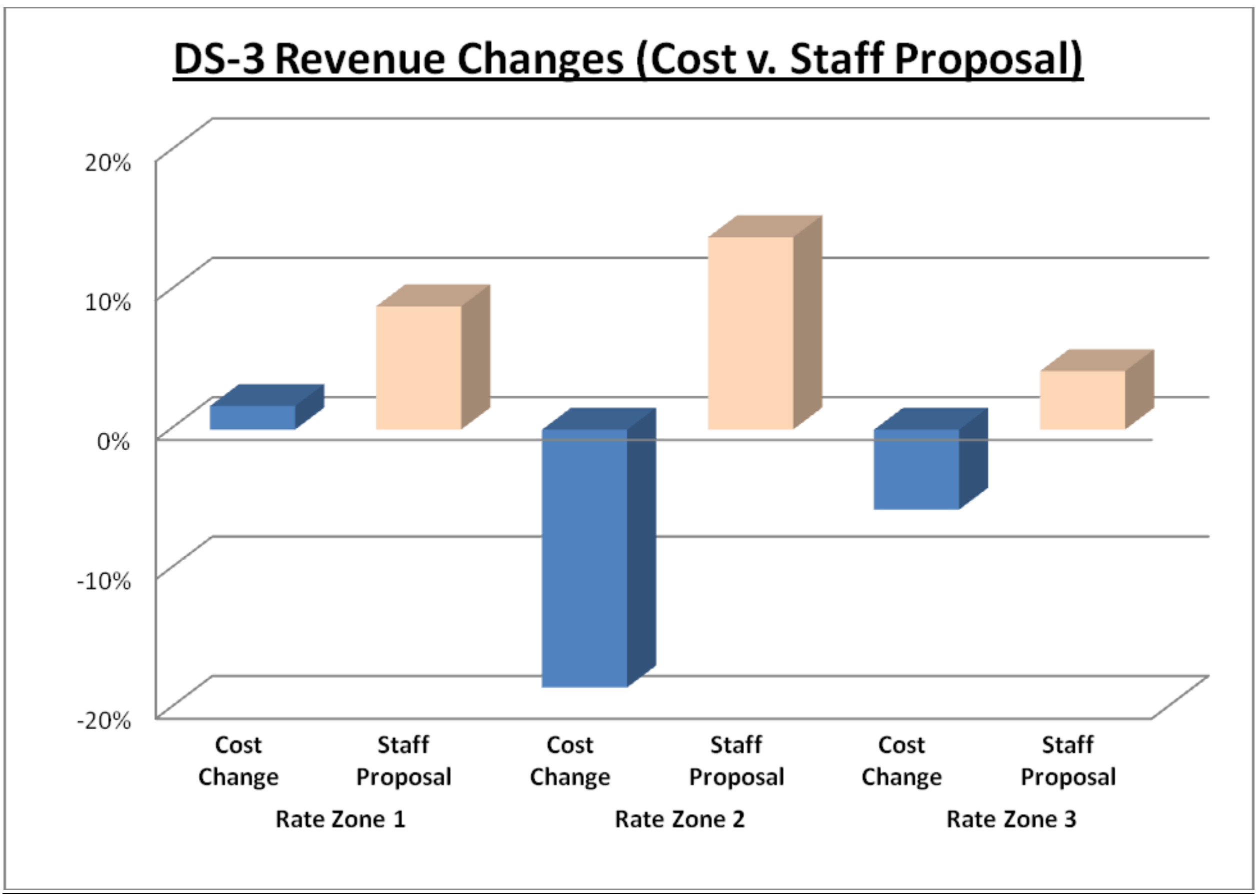
As stated in Section V.C.1.a above, in ComEd's 2007 rate case, Staff witness Lazare proposed an across-the-board increase because of alleged substantive flaws in ComEd's ECOSS. Here, the proposal is for alleged procedural flaws in Ameren's ECOSS. In both cases, the across-the-board proposal would disproportionately harm certain classes, i.e., classes already subsidizing other classes. The Commission should once again reject this non-cost approach, which would unfairly harm DS-3 ratepayers.

b. Allocation of Revenue Requirement Across Customer Classes

As discussed in Section V.C.1.a above, DS-3 ratepayers already must bear a significant burden of subsidizing other classes. Staff's across-the-board proposal would only add to this subsidy burden. For example, according to AIC's rebuttal rate zone class cost studies, proposed revenue to be collected from the DS-3 class in Rate Zone 2 should fall by 18.5 percent. *See* CG Ex. 2.1. Similarly, the proposed revenues to be collected from the DS-3 Primary subclass for that rate zone should fall by $2.862 million from present levels in order to be at cost according to AIC's ECOSS for that rate zone. *See* Ameren Ex. 32.2, p. 2, row 7. And the ECOSS filed with the rate application (combined rate zones) that Staff generally accepted substantively shows that DS-3 ratepayers pay more than $6 million in subsidies. CG Ex. 1.1, p. 2 (derived from AIC ex. 14.1E, p. 1). If Mr. Stowe's ECOSS improvements are adopted, this subsidy burden on DS-3 customers is shown to be even higher, $8.3 million higher in Rate Zone 1, $4.6 million higher in

Rate Zone 2, and $15.6 million higher in Rate Zone 3. Stowe Rebuttal (IIEC Ex. 6.0), pp. 37-39 (Tables 6-8, column 5, ln. 6).

Although the DS-3 class (and Primary subclass) already bear such a heavy burden, Staff's across-the-board proposal would only add to that burden. Thus, Staff has proposed a 13.8 percent revenue <u>increase</u> for the DS-3 class when the revenue change required to move DS-3 to Ameren's proposed rate of return is a <u>decrease</u> of 18.5 percent. CG. Ex. 2.0, p. 3, lines 57-60 (Chriss Rebuttal); *see also*, CG Ex. 2.1. The following graph compares the revenue change from present revenue required to move DS-3 to Ameren's proposed rate of return (based on Ameren's rebuttal rate zone ECOSSs) against Staff's across-the-board revenue proposal ("ATB"). The graph makes clear that the ATB proposal would harm DS-3 ratepayers in each rate zone.



Whether the Commission adopts AIC's rate zone class cost of service studies or improves them by adopting some or all of Mr. Stowe's proposals, the Commission should set class revenue targets based on the ECOSS the Commission adopts. If the Commission wants to moderate rate increases that may occur from these cost-based revenue targets, that is a separate issue. The correct starting point, however, is to adopt a class cost of service study and the class revenue targets set in that ECOSS.

VIII. CONCLUSION

WHEREFORE, the Commercial Group respectfully requests that the Commission order the relief requested herein.

Respectfully submitted this 11th day of October, 2011.

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